This sample is a 100% self-edited paper written in the style of a Supreme Court opinion. It is based on the actual briefs and oral arguments in the Supreme Court case *Zivotofsky v. Kerry*. As of the time that I uploaded this sample to OSCAR, the Supreme Court had not issued its opinion.

I particularly recommend pages 7-19, which address unsettled questions about the proper scope of the recognition power.

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Opinion of the Court

SUPREME COURT OF THE UNITED STATES

No. 13-628

MENACHEM BINYAMIN ZIVOTOFSKY BY HIS PARENTS AND GUARDIANS ZIVOTOFSKY ET UX. *v.* KERRY, SECRETARY OF STATE

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

[December 9, 2014]

JUSTICE GLOSSON delivered the opinion of the Court.

Section 214(d) of the Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. No. 107-228, 116 Stat. 1350, requires the Secretary ("Secretary") of United States Department of State ("State Department") to record "Israel" on the passport of any United States citizen born in Jerusalem on the request of his parents or guardians. *Id.* § 214(d), 116 Stat. at 1366. Believing that the statute impermissibly interfered with the President's

constitutional authority, the Secretary has declined to enforce it, instead recording only "Jerusalem" on the relevant passports.

We disagree that the birthplace requirement infringes the President's constitutional authority, and consequently, we uphold the statute.

I

A

In 2002, Congress passed the Foreign Relations Authorization Act, Fiscal Year 2003, 116 Stat. 1350 ("FRAA"). Section 214 includes several provisions regulating various governmental functions that implicate Israel. Section 214(d) is the only provision at issue in this case. That subsection provides that:

> (d) RECORD OF PLACE OF BIRTH AS ISRAEL FOR PASSPORT PURPOSES.—For purposes of the registration of birth, certification of nationality, or issuance of a passport of a United States citizen born in the city of Jerusalem, the Secretary shall, upon the request of the citizen or the citizen's legal guardian, record the place of birth as Israel.

Id. § 214(d), 116 Stat. at 1366. That requirement purports to modify the State Department's standing practice of recording only "Jerusalem" in an effort to align passport designations with the Executive Branch's policy of neutrality on the question of which nation and government is sovereign over Jerusalem.

The State Department sets forth its passport policy in its Foreign Affairs Manual ("FAM"), stating that "[w]here the birthplace of the applicant is located in territory disputed by another country, the city or area of birth may be written in the passport." 7 FAM §1383.5–2, App. 108. With respect to Jerusalem, FAM instructions state: "Do not write Israel or Jordan." 7 FAM 1383 (JA 130). They also provide that, for purposes of birthplace identification, Israel "[d]oes not include Jerusalem or areas under military occupation." *Id*. (JA 129).

The FAM further explains the Secretary's position that:

> Any unilateral action by the United States that would signal, symbolically or concretely, that it recognizes that Jerusalem is a city that is located within the sovereign territory of Israel would critically compromise the ability of the United States to work with Israelis, Palestinians and others in the region to further the peace process. *Id*. (JA 55-56).

Although the President signed the FRAA into law, he issued a signing statement objecting to the entirety of Section 214. See *Statement on Signing the Foreign Relations Authorization Act*, Fiscal Year 2003, 2002 WL 31161653 (Sept. 30, 2002). The President's statement maintained that:

> Section 214, concerning Jerusalem, impermissibly interferes with the

> President's constitutional authority to conduct the Nation's foreign affairs and to supervise the unitary executive branch. Moreover, the purported direction in section 214 would, if construed as mandatory rather than advisory, impermissibly interfere with the President's constitutional authority to formulate the position of the United States, speak for the Nation in international affairs, and determine the terms on which recognition is given to foreign states. U.S. policy regarding Jerusalem has not changed.

Id. In keeping with the President's sentiment, the Secretary has construed Section 214(d) as advisory, and has continued rejecting requests from United States citizens born in Jerusalem to record their birthplace as "Israel" on their passports.

B

Petitioner, Menachem Binyamin Zivotofsky, was born in Jerusalem on October 17, 2002. Petitioner is a United States citizen by birth under federal law because both of his parents were United States citizens at the time of his birth. Shortly thereafter, Petitioner's parents applied for a Consular Report of Birth Abroad and a passport on his behalf, requesting that the documents indicate "Israel" as Petitioner's place of birth.

Pursuant to State Department policy, Petitioner's requests were denied, and the documents describe his

place of birth simply as "Jerusalem," without a country designation. Petitioner's parents subsequently commenced this lawsuit, requesting that the Secretary change the documents to designate "Israel" as Petitioner's birthplace.

C

The district court initially determined that the validity of Section 214(d) was a nonjusticiable political question, and dismissed Petitioner's lawsuit. The Court of Appeals for the District of Columbia Circuit affirmed that dismissal. We granted certiorari and, on review, concluded that the judiciary is competent to weigh the separation of powers issues implicated in Petitioner's suit. We therefore reversed the Court of Appeals' decision and remanded the case for analysis on the merits of Petitioner's claims.

On remand, the Court of Appeals again affirmed the district court's dismissal of the lawsuit, this time on the grounds that Section 214(d) impermissibly infringes on the President's constitutional powers. In conducting its analysis, the Court of Appeals rightly looked to this Court's commendation of Justice Jackson's tripartite framework for evaluating Executive power in the foreign relations context. *See Medellin v. Texas*, 552 U.S. 491, 524 (2008) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610-611 (1952) (Frankfurter, J., concurring). The first component of the Jackson framework provides that "[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can

delegate." *Youngstown*, 343 U.S. at 635. The second holds that "[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." *Id.* at 637. The third provides that "[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." *Id.* Here, the third component of the Jackson framework governs because Congress has explicitly sought to overrule the President's birthplace designation policy. Thus, as the court below concluded, the pertinent question is whether the policy falls within the President's exclusive constitutional powers.

After a review of historical applications of the recognition power, the Court of Appeals determined that the recognition power belongs exclusively to the President by operation of the Reception Clause. The Court of Appeals then concluded that the President's recognition power constituted a substantive limitation on Congress's powers under the Foreign Commerce and Immigration Clauses, and that Section 214(d) ran afoul of that limitation by suggesting that Jerusalem is a place in Israel.

We agree that the Reception Clause confers some recognition power on the President. Even assuming that power is exclusive, however, we disagree that Section 214(d) infringes on the President's recognition

authority. Instead, we hold that it represents a valid exercise of Congress's powers over foreign commerce, immigration, and naturalization. Accordingly, we reverse the Court of Appeals' decision.

II

The Constitution assigns to the President the responsibility to "receive Ambassadors and other public Ministers." U.S. Const. Art. II, § 3. Structurally, it also commits a "vast share" of the foreign affairs power to the President. *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 414 (2003) (citing *Youngstown*, 343 U.S. at 610 (Frankfurter, J., concurring)). Whatever the contours of the former grant, it is an express and exclusive provision, while the latter is implied and necessarily subject to Congress's enumerated constitutional powers. Accordingly, when a presidential action falls within the third part of the Jackson framework, the precise foundation of the President's power is a paramount determination.

The Secretary defends his passport policy by invoking the recognition power, which he argues is grounded in the Reception Clause. See Brief for Respondent at 13. The Secretary characterizes the Reception Clause as a "grant of authority," which "necessarily includes the power to decide which ambassadors the President will receive, and therefore the power to decide whether to establish diplomatic relations with a foreign entity." *Id.* at 14. To evaluate this claim, we first look to the text of the Constitution and ratification-era evidence of its meaning.

The Reception Clause provides that the President "shall receive ambassadors and other public ministers." U.S. Const. Art II § 3. On its face, this language is unclear as to whether the President holds a power to *refuse* to receive some ambassadors, and there are few historical resources to guide our inquiry on that question. The parties agree, and historical resources confirm, that President Madison at one point unilaterally refused to receive Luis Onis, a Spanish ambassador.[1] Apparently, Madison believed that the Reception Clause conferred something of a discretionary duty, rather than a mandatory one. More importantly, however, functional considerations support a discretionary reception duty. It is implausible that the Constitution, having assigned to the President the responsibility of receiving foreign ambassadors, nevertheless deprived him of the ability to decide against receiving certain ones.[2] The prospect of compelling the President, against his will, to meet with any and all ambassadors (or at least, those sanctioned by the legislature or judiciary) is as demeaning as it is impracticable.

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[1] See Letter from Madison to Rodney (Oct. 22, 1809) in 2 *The Papers of James Madison* 26 (1992). The parties, of course, dispute the relevance of Madison's actions to the recognition power.

[2] Although historical documents suggest that President Washington may have felt obligated to receive ambassadors, his opinion was evidently based on his understanding of the law of nations, rather than on constitutional considerations. See *Letter from John Jay to Alexander Hamilton* (April 11, 1793), in 14 *The Papers of Alexander Hamilton* 307-31 (Harold C. Syretted. 1969).

The more difficult issue, in our view, is whether the Executive's discretion to receive or reject ambassadors carries with it an implicit power to recognize foreign states or governments. In Federalist No. 69, Alexander Hamilton initially seemed to dispute this view, characterizing the Clause as "more a matter of dignity than of authority." The Federalist No. 69 (Alexander Hamilton). Hamilton continued:

> It is a circumstance which will be without consequence in the administration of the government; and it was far more convenient that it should be arranged in this manner, than that there should be a necessity of convening the legislature, or one of its branches, upon every arrival of a foreign minister, though it were merely to take the place of a departed predecessor.

Id. Hamilton adopted a different view of the Reception Clause, however, as a member of George Washington's cabinet. At that point, Hamilton understood the Reception Clause to be a "right of the Executive," under which he is empowered to determine "in the case of a Revolution of Government in a foreign Country, whether the new rulers are competent organs of the National Will and ought to be recognized or not." Pacificus No. 1 (June 29, 1793) (Alexander Hamilton). Hamilton further explained that "acknowledgment of a government" could be effected "by the reception of its ambassador." Letter from Hamilton to Washington (Apr. 1793), in 4 *The Works of Alexander Hamilton* 394 (1904). Finally,

Hamilton recounted that the President "acknowledged the republic of France, by the reception of its minister." Alexander Hamilton, Pacificus No. 1. Thomas Jefferson expressed a similar view, noting that reception of foreign officials "is an ackno[w]le[d]gment of the legitimacy of their government." See Opinion on the Treaties with France (Apr. 28, 1793), in 25 *The Papers of Thomas Jefferson* 612 (1992).

Contemporaneous foreign affairs literature confirms that reception afforded recognition to the sending state. See Emmerich de Vattel, The Law of Nations Vol. IV § 68, at 457-58 (Joseph Chitty trans., 1853) (first published 1737) (explaining that one state could recognize the sovereignty of another by receiving its minister). Similarly, foreign governments adhered to that practice during the founding era. The Netherlands, for example, recognized the United States by confirming that John Adams would be formally received as the United States' representative, 5 Francis Wharton, *The Revolutionary Diplomatic Correspondence of the United States* 319-20 (1889), while Spanish officials met with John Jay informally to avoid appearing to recognize the United States, Samuel Flagg Bemis, *The Diplomacy of the American Revolution* 216 (1957).

The weight of the historical evidence therefore suggests that the ratifying public understood the responsibility of receiving ambassadors to necessarily include with it the power to recognize foreign states and governments. Further, that understanding of the Reception Clause is consistent with other constitutional provisions that imply a presidential

recognition power. Section 2 of Article II gives the President the power to nominate ambassadors, and the action of sending ambassadors implies that the United States recognizes the receiving states. The same provision assigns to the President the power to negotiate treaties, which likewise requires that the United States recognize its treaty counterparts. Thus, functional evidence affirms that the Reception Clause supplies the Executive with a derivative power to recognize foreign states and governments.

III

A

It does not necessarily follow, however, that the Reception Clause grants the President an *exclusive* recognition power. Petitioner argues that, even if the Reception Clause confers recognition power on the Executive, the Constitution simultaneously permits Congress to recognize a foreign nation by operation of its powers over war, foreign commerce, immigration, naturalization, the ratification of treaties, and the confirmation of foreign ambassadors. See Brief for Petitioner at 30.

The dissent dismisses that argument, reasoning that any Congressional recognition of a foreign state would strip the President of his discretion to meet with its ambassadors, and therefore would implicate the same dignity and practicability concerns inherent in denying the Executive any discretion in the first place. But this concern is misplaced: while formal reception of an ambassador unavoidably constitutes recognition of the sending state, refusal to meet with

an ambassador can, but need not, nullify recognition. See, e.g., *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 408 (1964). Thus, while the President's discretion to meet with ambassadors must include power to recognize their sending states, his discretion *not* to meet with certain ambassadors does not necessarily include the power to veto or revoke United States recognition of their nations. The Reception Clause's allowance for Presidential discretion, therefore, is not fundamentally inconsistent with a parallel grant of recognition power to the legislature.

The parties vigorously dispute whether the Constitution in fact grants any recognition power to Congress—a question that this Court has not had occasion to confront directly. See Brief for Petitioner at 28-63; Brief for Respondent at 12-39; Reply Brief at 5-18. We need not address that issue here, however, because even if the Reception Clause confers exclusive recognition power on the President, the passport legislation at issue here does not infringe it.[3] The reception of a government's ambassadors, and the resulting act of recognition, has never constituted acceptance of that government's asserted territorial boundaries. As amici observe, there are only two varieties of recognition under international law, and neither implicates territorial boundaries at all. See Brief of The Lois D. Brandeis Center for Human Rights under Law, at 10. First, "state recognition" entails a decision to "treat as a state an entity meeting the requirements of statehood." *Id.* Second,

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[3] We must refrain from addressing issues extraneous to the resolution of the case at hand. Cf. *Bond v. United States*, 134 S. Ct. 2077 (2014).

"governmental recognition" conveys acceptance of a particular authority's claim to represent a sovereign entity. See *id.*, at 10 (citing Restatement (Third) of the Foreign Relations Law of the U.S. § 202(1) (1987) ("Restatement"); 7 FAM 1300 et seq. at 1340(a)). These two definitions "exhaust the meanings of recognition in foreign relations and international law." *Id.* at 11. The Secretary has not offered any evidence that the ratifying generation understood recognition to mean anything different than its meaning today, and we can discern no reason to assume that it did.

Indeed, a review of the ratification-era evidence reveals suggests that the founders held this understanding of recognition. See, e.g., Opinion on the Treaties with France (Apr. 28, 1793), in 25 *The Papers of Thomas Jefferson* 612 (1992) (containing Thomas Jefferson's counsel to Washington that reception of foreign officials "is an ackno[w]le[d]gment of the *legitimacy of their government*.") (emphasis added); *Hamilton supra* at 394 ("[A]cknowledgment *of a government* [could be effected] by the reception of its ambassador.") (emphasis added). These documents are devoid of any reference to territorial boundaries, and speak only of recognition of *governments* broadly. Likewise, Joseph Story's treatise on constitutional law—on which the Secretary relies for its assertion that the Executive recognition power is exclusive—arrives at that conclusion precisely because the Reception Clause's mandate "entails determining that the entity should be treated as a state." 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1560, at 415-16. Boundary determinations appear to have been inapposite to Story's view of

recognition; what mattered was official acknowledgment of an entity's existence as a sovereign state. The same holds true for the evidence of contemporaneous international practice that the Secretary marshals in support of his position. See Brief for Respondent at 15-16 (discussing recognition of the United States by the Netherlands and collecting early foreign relations treaty materials).

B

We may also look to "long-established tradition" to confirm our analysis. *Republican Party of Minn. v. White*, 536 U.S. 765, 785 (2002); see also *Mistretta v. United States*, 488 U.S. 361, 401 (1989); *Marsh v. Chambers*, 463 U.S. 783, 790 (1983). The Secretary has offered several historical occasions on which, in his view, the Executive has exclusively exercised the recognition power. See Brief for Respondent at 27-30. We express no opinion on whether history in fact supports an exclusive Executive recognition power, but we note that a common thread running through each of the Secretary's examples is the lack of a boundary-drawing component. First, the Secretary points to President Washington's reception of Genet, a representative of the French revolutionary government. The Secretary contends that Washington's failure to consult with Congress prior to receiving Genet serves as evidence that Washington believed his recognition authority was exclusive. Whether or not that is the case, Washington's decision simply confirmed that the United States had recognized the new French government—and despite extensive French colonization of America, records of Washington's personal correspondence do not suggest

that boundary considerations constituted any part of the reception decision. See Letter from Edmund Randolph to George Washington (May 6, 1793) in 12 *The Papers of George Washington, Presidential Series* 534 (Christine Sternberg Patrick & John C. Pinheiro eds. 2005). Likewise, neither President Madison's refusal to recognize Spain, see 1 John Bassett Moore, *A Digest of International Law* § 43 (1906) ("Moore"), nor President Monroe's recognition of Brazil, see 6 *Memoirs of John Quincy Adams* 329, 358-59 (1875), entailed geographic judgments; rather, those decisions were simply assessments of governmental legitimacy.

The Secretary also looks to the Jefferson Administration's instruction to the United States ambassador to France that the United States would recognize Napoleon's government "when satisfied that the Empire was in possession and control of the governmental power and territory of the nation." See Brief for Respondent at 28 (quoting Moore at 122). Notwithstanding the reference to French territory, that instruction simply reflects the reality that the Executive may, quite reasonably, decline to recognize an instable regime lacking actual sovereignty. It hardly suggests that President Jefferson sought to exercise a "geographic recognition" power, much less that recognition includes an endorsement of the entirety of a state's claimed boundaries.[4] Indeed, it is

[4] Tellingly, the Secretary's nearest historical analogue is not historical at all, but rather a recent press release by the current administration from earlier this year, which stated that "the United States will not recognize Russia's illegal attempt to annex

commonly recognized that a state may qualify for recognition "even if its boundaries have not been finally settled," Restatement § 201, so it is difficult to see how the recognition component of the Reception Clause can be said to require that the Executive have exclusive authority to review state boundaries.[5]

Indeed, Congress itself has explicitly distinguished designations of territorial boundaries for legislative purposes on the one hand from any official indication of recognition on the other. For instance, Congress has stipulated that "[t]he provision of an immigration quota for a quota area shall not constitute recognition by the United States of the political transfer of territory from one country to another, or recognition of a government not recognized by the United States." Immigration and Nationality Act, Pub. L. No. 82-414, § 204(d), 66 Stat. 163, 178 (1952).

This historical evidence, therefore, suggests that the Reception Clause does not grant exclusive boundary-determining authority to the Executive branch.

C

Given the historical usage of the recognition

Crimea." That press release, however, contains no indication that the Executive's disapproval of Russia's actions would alter any of the legal effects of government recognition, such as access to United States courts, for the Russian regime. See *Banco Nacional de Cuba*, 376 U.S. 398.

[5] Contra Brief for Respondent at 29.

power, it is perhaps unsurprising that this Court's precedents have all discussed it in terms of state recognition or governmental recognition. For example, in *United States v. Palmer*, this Court explained that:

> When a civil war rages in a foreign nation, one part of which separates itself from the old established government, and erects itself into a distinct government, the courts of the Union must view such newly constituted government as it is viewed by the legislative and executive departments of the government of the United States.

16 U.S. 610 (1818). Moreover, in *Baker v. Carr*, this Court's language treated as distinct the questions of "recognition of foreign governments" on the one hand, and those of "which nation has sovereignty over disputed territory" on the other. 369 U.S. 186, 212 (1962). The former question "so strongly defies judicial treatment that without executive recognition a foreign state has been called 'a republic of whose existence we know nothing,'" while for purposes of the latter "the judiciary *ordinarily* follows the executive." *Id.* (citations omitted) (emphasis added).

This court has also frequently discussed recognition in the context of the benefits governmental recognition confers. See *Nat'l City Bank of New York v. Republic of China*, 348 U.S. 356, 358 ("[T]he Republic [of China] and its governmental agencies enjoy a foreign sovereign's immunities to the same extent as any other country duly recognized by the United States."); *Guar. Trust*

Co. of New York v. United States, 304 U.S. 126, 128 (1938) (discussing the right of recognized sovereigns to appear in United States courts); *Kennett v. Chambers*, 55 U.S. 38, 51 (1852) (explaining that in the case of a revolution, courts must not afford the new state sovereign status until "recognition, either by our own government or the government to which the new state belonged.").

Conversely, when this Court has addressed issues implicating territorial boundaries, it has carefully done so without reference to the Reception Clause or the recognition power. For instance, in *Williams v. Suffolk Insurance Company*, the Court reasoned:

> [C]an there be any doubt, that when the executive branch of the government, which is charged with our foreign relations, shall in its correspondence with a foreign nation assume a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department? And in this view it is not material to inquire, nor is it the province of the Court to determine, whether the executive be right or wrong. It is enough to know, that in the exercise of his constitutional functions, he has decided the question.

38 U.S. 415, 420 (1839). Throughout its entire treatment of the territorial issue, the *Williams* Court invoked neither the Reception Clause nor the recognition power, instead placing the boundary determination for the purposes of treaty enforcement

in the generalized province of the President's "constitutional functions." *Id*. Further, the *Williams* opinion characterized the Executive's determination as merely his "assum[ing] a fact in regard to the sovereignty" of the territory, not as an exclusive decree of "geographic recognition." *Id*.

Therefore, we conclude that any recognition power that the Executive may derive from his reception responsibilities includes the recognition of a state or of the legitimacy of its government, but it does not include the power to make territorial boundary determinations. The Executive may, of course, make such determinations in discharging his other constitutional duties, but the Secretary has not specified another Executive power that inherently requires unilateral boundary-drawing authority for all governmental purposes.

IV

A

The Secretary has, to be sure, offered an independent functional argument that the Executive holds a power to define territorial boundaries. He alludes to "the national-security and foreign-relations implications" of boundary determinations. See Brief for Respondent at 24. Likewise, our own observation that the President must occasionally "assume a fact in regard to the sovereignty of an[] island or country" could include geographical facts. Doubtless, the Executive is entitled to make the requisite territorial determinations to exercise his shared constitutional powers, at least until Congress registers its

disagreement. Moreover, the Executive may make any territorial determinations necessary to exercise his exclusive powers.[6]

But if the President may claim boundary-drawing powers incident to his constitutional powers, Congress may certainly do the same. After all, it is Congress, not the Executive Branch, to which the Constitution entrusts the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8 cl. 18.

Moreover, the Constitution gives Congress a number of exclusive responsibilities that may require boundary determinations. It assigns to Congress the powers "[t]o regulate Commerce with foreign Nations," *id.* § 8, cl. 3; "[t]o establish an uniform law of Naturalization," *id.* § 8, cl. 4; "[t]o declare War," *id.* § 8, cl. 11; and to regulate immigration, *id.* § 9.7. Clearly, Congress is not required, in making use of its foreign commerce and war powers, to treat every foreign state the same in trade, or to declare war on

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[6] The Executive might, in his capacity as Commander in Chief of the armed forces, record a service member's birthplace in a military personnel file as "Jerusalem"; "Jerusalem, Israel"; "Jerusalem, Antarctica"; or any other designation he sees fit. That authority, however, would extend only so far as the President's supervision of the armed forces required, and Congress could contradict it when exercising its own powers in other areas.

all of the earth or none of it. Congress must be able to distinguish among foreign states and their constituent parts in performing its constitutional functions. On its face, then, the Constitution requires Congress to make boundary determinations.

Further, structural considerations reinforce the Constitution's facial support for legislative boundary-drawing. Congressional references to state boundaries must not be subject to Executive reinterpretation; otherwise, the foreign affairs powers allocated to Congress would mean very little indeed. Imagine, for instance, that Congress passes a law authorizing disaster relief funding in one foreign state, but the Executive believes that the funding might be better spent in a neighboring state. Under the Secretary's view, the Executive could declare that Congress's intended recipient state included the Executive's preferred state. Because the Executive's determination would be binding on Congress's enactments, the Executive would then be free to allocate the funding to his preferred region.

Similarly, if Congress enacted a free trade agreement to the detriment of a domestic industry that the Executive sought to protect, the Executive could simply redefine the boundaries of the affected states to exclude competitors of the threatened domestic industry. The list goes on: the Executive could redefine boundaries to manipulate immigration quotas; to make war on the neighbor of the country against whom war was authorized; and so forth.

A review of Congress's historical exercise of its share of the foreign affairs power further supports our

analysis. Congress has, for example, long enacted legislation governing the issuance of visas to immigrants from various parts of the world. In 1921, Congress passed the Emergency Quota Act pursuant to its immigration powers, which restricted immigration rates based on state of origin. Pub. L. No. 67-5, § 2, 42 Stat. 5, 6 (1921). Likewise, in 1953, Congress passed the Refugee Relief Act, which relaxed immigration quotas for certain states of origin. Pub. L. No. 83-203, § 4, 67 Stat. 400, 401 (1953). The will of Congress with regard to these pieces of legislation, and countless others like them, could easily be thwarted were the Executive not bound by Congress's border determinations while implementing Congress's mandates. And this principle holds true whether or not the Executive comes to the same territorial boundary conclusions for the purposes of implementing his own foreign affairs powers.

B

Acknowledging the potential conflict between congressional boundary determinations and a broad interpretation of Executive foreign policy powers, the concurring judge below reasoned that Congress's authority must yield, citing the principle that even Congress's enumerated powers are subject to substantive constitutional limitations, such as the First Amendment.[7] While we might infer such a

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[7] See *Zivotofsky ex rel. Zivotofsky v. Sec'y of State*, 725 F.3d 197, 221 (D.C. Cir. 2013) (Tatel, J., concurring) *cert. granted sub nom. Zivotofsky ex rel. Zivotofsky v. Kerry*, 134 S. Ct. 1873 (2014).

substantive limitation here if we agreed that the Constitution grants the Executive exclusive boundary-drawing power, we decline to infer one on the basis of functional abstractions from shared Executive powers.

We have previously noted that "in determining whether [an Act of Congress] disrupts the proper balance between the coordinate branches, *the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions*. *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 443 (1977) (emphasis added). Because congressional boundary determinations impose, at most, mere inconveniences on the Executive—and certainly do not *prevent* him from accomplishing his constitutionally assigned functions—separation-of-powers principles do not prohibit such congressional determinations.

To hold otherwise would flip the Jackson tripartite framework on its head. Rather than inquiring whether the Executive acted "only upon his own constitutional powers minus any constitutional powers of Congress over the matter," *Youngstown*, 343 U.S. at 611, the Secretary would have us ask whether Congress acted only upon its own constitutional powers, minus those assigned to the Executive. But Justice Jackson's venerated observation was that in disagreements with Congress on foreign affairs, it is the *President*, not Congress, whose powers must be considered to be at their lowest ebb. This formulation affords the appropriate weight to both sides of the Constitution's structural balance. The Executive has, by default, the presumptive

benefit of a "zone of twilight" enabling him to act swiftly on the world stage, but when Congress finds itself sufficiently motivated to oppose the President in areas of shared power, Congress has the final word. See *id*. In this way, the Constitution captures the institutional advantages of both political branches of government, including the agility and dispatch of the unitary Executive, and the deliberative prudence of the legislature.

The Secretary's approach, by contrast, would endow the President with a virtually unchecked prerogative over an assortment of otherwise-valid legislation. Any number of Congressional actions may fairly be said to affect foreign policy. As we have recently acknowledged, "[i]mmigration policy can affect trade, investment, tourism, and diplomatic relations for the entire Nation . . . ." *Arizona v. United States*, 132 S. Ct. 2492, 2498 (2012). Congress also necessarily impacts foreign policy by regulating foreign commerce, imposing legislative economic sanctions, declaring war, appropriating funds to the military, and indeed, even in providing a budget to the State Department itself. We reject the notion that the President could override Congress's duly enacted judgments in these areas merely by alleging that they have adverse foreign policy consequences. See *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2595 (2012). Instead, we conclude that these congressional exercises of foreign policy authority reflect the Constitution's considered application of balance-of-powers principles to foreign affairs, and may not be superseded by Executive allegations of foreign policy

effects.[8]

V

A

Having determined that the Executive's general boundary-drawing power must give way when Congress draws boundaries in valid legislation, the final question remaining is whether Section 214(d) represents a valid exercise of Congress's powers. To answer that question, we must determine whether Section 214(d) is a necessary and proper means to the exercise of Congress's foreign commerce and naturalization powers.

Initially, we note that we have repeatedly held that Congress has broad authority to regulate passports under its foreign commerce and naturalization powers. As members of this Court have observed in the past, Congress has "broad powers to regulate the issuance of passports under its specific power to regulate commerce with foreign nations." *Aptheker v. Sec'y of State*, 378 U.S. 500, 518 (1964) (Black, J., concurring). Passports are "travel control

[8] We also reject the Secretary's resort to language in a section title of the FRAA ("United States policy with respect to Jerusalem as the capital of Israel") as evidence of an attempt to usurp Executive powers. As our ruling in *National Federation of Independent Businesses v. Sebelius* makes clear, Congress's designation of its laws is not controlling in determining their constitutional import. 132 S. Ct 2566.

document[s]," *Haig v. Agee*, 453 U.S. 280, 293 (1981), and as such, they provide the "crucial function [of] control over exit," *Kent v. Dulles*, 357 U.S. 116, 129 (1958). Moreover, as verifications of citizenship, they are inextricably tied to Congress's naturalization and immigration authority in the context of citizens born abroad—to whom citizenship accrues as a matter of "congressional generosity." *Rogers v. Bellei*, 401 U.S. 815, 835 (1971). This Court has applied these rules on a number of occasions, repeatedly arriving at the conclusion that Congress wields broad authority over various aspects of passport administration.

In *Zemel v. Rusk*, we upheld the President's refusal to validate passports for travel to Cuba only after acknowledging Congress's power to regulate them, and concluding that Congress had duly authorized the President's actions. 381 U.S. 1 (1965). The dissenters disputed that the President's decision was justifiable under existing legislation, but they too affirmed Congress's broad passport authority. *Id.* at 20 (Black, J., dissenting) (stating that the Constitution "grants Congress ample power to enact legislation regulating the issuance and use of passports for travel abroad"); *Id.* at 25 (Douglas, J., dissenting) (allowing that "Congress can restrict or ban travel" for reasons that do not violate individual rights); *Id.* at 28 (Goldberg, J., dissenting) ("I agree with the Court that Congress has the constitutional power to impose area restrictions on travel, consistent with constitutional guarantees, and I reject appellant's arguments to the contrary."). Further, in *Haig v. Agee*, we upheld the Executive's decision to revoke a citizen's passport on the grounds that "the [1928 passport] statute authorizes the action,"

thereby confirming that Congress had authority to regulate passports in the first instance. 453 U.S. 280, 280 (1981).

Indeed, Congress has long enacted passport legislation. Beginning in 1856, Congress authorized the Secretary of State to grant passports. See Act of August 18, 1856, 11 Stat. 52, 60—61. Subsequently, Congress has passed legislation governing a host of passport features and procedures, including providing for a biometric entry and exit data system, 8 U.S.C. § 1365b, providing for the cancellation of passports, 8 U.S.C. § 1504, mandating anti-fraud technology on passports, 8 U.S.C. § 1732, criminalizing false statements in using or applying for passports, 18 U.S.C. 1542, and forbidding certain impermissible bases for denying passports, 22 U.S.C. § 2721. Thus, historical gloss, in addition to this Court's precedents, make clear that passports are, in general, subject to a high degree of congressional control.

B

Consequently, we must determine whether Section 214(b)'s regulation of passports' informational content, in particular, falls within Congress's well-established passport power. The principles guiding this inquiry are familiar ones. "[T]he Necessary and Proper Clause makes clear that the Constitution's grants of specific federal legislative authority are accompanied by broad power to enact laws that are 'convenient, or useful' or 'conducive' to the authority's 'beneficial exercise.' *United States v. Comstock*, 560 U.S. 126, 133-34 (2010) (citing *McCulloch*, 4 Wheat. at 316). Further, "we long ago rejected the view that

the Necessary and Proper Clause demands that an Act of Congress be 'absolutely necessary' to the exercise of an enumerated power. *Jinks v. Richland Cnty., S.C.*, 538 U.S. 456, 462 (2003) (citing *McCulloch v. Maryland*, 4 Wheat. 316, 414-415, 4 L.Ed. 579 (1819)).

Applying those standards to Section 214(b), we must conclude that regulation of passport birthplace designations is reasonably 'convenient,' 'useful,' or 'conducive' to facilitating interstate commerce—a term that, after all, has traditionally been understood to include the movement of persons across borders. See, e.g., *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 72 (1824). In fact, Congress has historically exercised its foreign commerce power in ways that share remarkable similarities with Section 214(2), and that simultaneously illustrate the convenience and usefulness of territorial designations to discharging the foreign commerce power. For instance, Congress may pass legislation treating goods "shipped to the United States from the West Bank [or] Gaza" "as if they were shipped directly from Israel" for the purposes of international free trade agreements. See United States-Israel Free Trade Area Implementation Act ("FTAIA"), Pub. L. No. 99-47, 99 Stat. 82 (1985), as amended by Pub. L. No. 104-234, § 1, 110 Stat. 3058 (1996). There, Congress found territorial designations useful as a means of facilitating commerce from areas that, regardless of official U.S. Executive policy, were functionally administered by the Israeli government.

Section 214(d) has the effect of affording United States citizens travelling to Jerusalem broader

flexibility in their passport designations, and as Petitioner himself evidences, that flexibility constitutes a valuable right that might fairly be described as 'useful' or 'conducive' to foreign commerce. In addition, that flexibility facilitates Congress's immigration and naturalization powers. The Secretary has admitted that identification is the principal reason that passports contain a birthplace field in the first place—surely an important element in regulating both foreign commerce and naturalization. For these reasons, we are persuaded that Section 214(d) facilitates Congress's regulation of immigration and naturalization, as well as furthering its constitutional foreign commerce duties.

To recapitulate, the Reception Clause necessarily grants to the Executive the power to recognize states and governments, although we reserve the question of whether that power is exclusively his. In any event, the President's recognition power under the Reception Clause does not include the authority to make boundary determinations because that power is inapposite to the act of receiving ambassadors. While the Executive does enjoy some boundary-drawing power as necessary to administer his broader foreign affairs authority, his boundary-drawing power is not exclusive because Congress also retains the same power to the extent required to discharge its own enumerated powers. In particular, boundary-drawing for the purposes of passport birthplace designations is useful and conducive to the exercise of Congress's naturalization, immigration, and foreign commerce powers.

Accordingly, we hold that Section 214(d) is a valid

congressional enactment, and as such, the Secretary is obligated to enforce its provisions.

The judgment of the Court of Appeals is REVERSED.

It is so ordered.