FOR PUBLICATION

resolution of a petition for review. The Immigration and Naturalization Service ("INS") contends that 8 U.S.C. § 1252(f)(2) permits a stay only when the alien shows by clear and convincing evidence that the removal order is prohibited as a matter of law. Section 1252(f), however, limits only a court's power to "enjoin

ANALYSIS

struction that saves § 1252(f)(1) from surplusage is that "en-

of §§ 1221-1231, but specifies that this ban does not extend to individual cases."

Similarly, we will not lightly assume that Congress intended the term "enjoin" in § 1252(f) as shorthand for the term "stay." Congress knew very well how to use the term "stay" when it wanted to, and it is not plausible that here, and

ing the petitioner to show a certainty of success. Such a standard would require full-scale briefing at the beginning of the appellate process, often before the petitioner has even received a copy of the administrative record. In those cases in which a motions panen(antsof tha sopynat theasisof g at ten) Tj T* -027127 Tc 027127 TwINS's ecooneisoclearly

various types of injunctions; nowhere in this list does the term "stay" appear. See id. at 788.

Moreover, Supreme Court precedent forbids simply equating "enjoin" and "stay" on the basis of dictionary definitions. In Gulfstream Aerospace Corp. v. Mayacamas Corp. , 485 U.S. 271 (1988), the Court rejected the Enelow-Ettelson doctrine, under which, for reasons relating to the merger of law and equity, certain types of stay orders had been considered as injunctions. The Court stated, "An order by a federal court that relates only to conduct or progress of litigation before

the parties providing the critical element in determining at what point on the continuum a stay pending review is justified." Id. We conclude that, even under the more generous Abbassi standard, the panel's conclusion that Andreiu is not entitled to a stay is correct.

As to the first Abbassi

petition for review. See

standard, which is less stringent than the statutory requirements for stays of deportation pending appeal. The opinion of the court rejects the statutory prescription of Congress as evidenced in the plain text of 8 U.S.C. § 1252(f)(2). It is the failure of the court's opinion to apply the statutory standard that provokes me to write separately. If the court persists in applying the lenient Abbassi standard after the passage of the Illegal Immigration Reform and Immigrant Responsibility Act, then it shall thwart the intention of Congress, and stays of removal pending appeal will issue virtually "on request."**1**

I

The plain text of the Illegal Immigration Reform and Immigrant Responsibility Act severely limits our power to stay an order of the Board of Immigration Appeals requiring removal of an aals T69 i7im6sFcaappFuirin364 Tc (I) Tj 0 007.6 TD -007.6 TNotwith 0.08 (remny o Twrel 0.isart the

order pending resolution of an alien's petition for review of a final order of the Board of Immigration Appeals.

To determine whether subsection (f)(2) applies to stays, "we must first look to the statutory language:`The starting point in interpreting a statute is its language, for if the intent of Congress is clear, that is the end of the matter.' " United States v. Morales-Alejo, 193 F.3d 1102, 1105 (9th Cir. 1999) (quoting Good Samaritan Hosp. v. Shalala, 508 U.S. 402, 409 (1993)). Both the dictionary and widespread judicial usage indicate that the term "stay" refers to a type of injunction. Consequently, subsection (f)(2)'s strict limit of our power to enjoin similarly restricts our ability to issue a stay.

Courts frequently turn to legal dictionaries when interpreting the clear language of a statute. See, e.g., Bartnicki v. Vopper

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PACCAR, Inc., 424 U.S. 1301, 1305) (1976) ("A court staying the action of . . . an administrative agency must take into account factors such as irreparable harm and probability of

§ 1252(f)(2) has the effect that the INS claims, all of

For these reasons, I would hold that subsection (f)(2)

something that is apparent, clear, indisputable, obvious or plain. See Dickinson v. Zurko, 527 U.S. 150, 155 (1999) (stating that "manifest error," "clear case of error" and "clearly wrong" are phrases that "might be thought to mean the same thing"); Webster's Third New International Dictionary 1375 (1993) (defining "manifest" as, inter alia

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