No. ____

IN THE

Supreme Court of the United States

THOMAS STUART,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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May 31, 2024

QUESTION PRESENTED

In recent years, this Court has repeatedly granted certiorari to utilize textualist principles to correct interpretative errors in lower court decisions. This case presents the latest opportunity.

Section 2 of the federal alien smuggling statute, 8 U.S.C. § 1324(a)(2), describes two types of substantive offenses, each of which includes its own penalties provision that directs the computation of penalties in two different ways. Penalties for the first offense increase "for each alien in respect to whom a violation of this paragraph occurs." Penalties for the second group of offenses increase based on the number of "violation[s]" of each of the subparagraphs of § 1324(a)(2)(B), and each of those subparagraphs reference the commission of "an offense."

In *United States v. Ortega-Torres*, 174 F.3d 1199 (11th Cir. 1999)—a decision rubberstamped in the proceedings below—the Eleventh Circuit relied heavily on unenacted legislative history to justify grafting the "for each alien" language from the first penalties provision onto the second, and concluded that each alien smuggled counted as a separate "offense" under the statute.

The question presented is:

Whether the five-year mandatory minimum penalty of 8 U.S.C. § 1324(a)(2), which applies to a defendant's third "violation" of subsection (a)(2)(B)(ii)—a subsection which in turn requires the commission of "an offense done for the purpose of commercial advantage"—can be applied to first-time offenders.

INTERESTED PARTIES

Pursuant to Sup. Ct. R. 14.1(b)(i), Mr. Stuart submits that there are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Stuart*, No. 23-11760 (11th Cir. Mar. 4, 2024);
- *United States v. Stuart*, No. 23-CR-20064 (S.D. Fla. May 16, 2023).

There are no other proceedings related to this case under Rule 14.1(b)(iii).

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Petitioner, Thomas Stuart, respectfully seeks a writ of certiorari to review a judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, *United States v. Stuart*, No. 23-11760, 2024 WL 914027 (11th Cir. March 4, 2024), is reproduced as Appendix ("App.") A-2.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The United States Court of Appeals had jurisdiction over this cause pursuant to 28 U.S.C. § 1291 and 18 U.S.C.

§ 3742. The decision of the court of appeals was entered on March 4, 2024. This petition is timely filed pursuant to Sup. Ct. R. 13.1.

STATUTORY PROVISION INVOLVED

Title 8, Section 1324, subsection (a)(2), the only statute at issue on appeal, reads as follows:

> (2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs—
>
> (A) be fined in accordance with title 18 or imprisoned not more than one year, or both; or
>
> (B) in the case of—
>
> (i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,
>
> (ii) an offense done for the purpose of commercial advantage or private financial gain, or
>
> (iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,
>
> be fined under title 18 and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

INTRODUCTION

The federal alien-smuggling statute, 8 U.S.C. § 1324(a)(2), contains a classically worded recidivist provision that increases a defendant's mandatory minimum penalty based on the number of "offenses" committed. For violating subsection (a)(2)(B)(ii) (the provision at issue here), the statute provides that the defendant shall be imprisoned "in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years." Subparagraph (a)(2)(B)(ii) in turn states that the provision applies to "an offense done for the purpose of commercial advantage or private financial gain." It thus follows logically that, for the three-year mandatory minimum to apply, it must be the defendant's first or second "offense," and for the five-year mandatory minimum to apply, it must be the defendant's third or subsequent "offense." Because this is Mr. Stuart's first (not third) "offense," he has violated subsection (a)(2)(B)(ii) only once, and is thus not subject to the five-year mandatory minimum.

The Eleventh Circuit disagreed with this straightforward textual analysis in *United States v. Ortega-Torres*, 174 F.3d 1199 (11th Cir. 1999), in which the court held—without oral argument and with little textual analysis—that the five-year mandatory minimum prescribed by the statute can apply to first-time offenders so long as at least three aliens were involved in the commission of the offense. And the Eleventh Circuit rubberstamped that decision in the proceeding below, granting the government's motion for summary affirmance and denying Mr. Stuart's petition for

en banc review. *See United States v. Stuart*, No. 23-11760 (11th Cir. Feb. 26, 2024) (Order); *United States v. Stuart*, No. 23-11760 (11th Cir. March 4, 2024).

Only this Court can correct the Eleventh Circuit's repeated interpretive error. The Eleventh Circuit's ruling is contrary not only to precedent from this Court and various courts of appeals regarding the meaning of the word "offense", but also—perhaps more importantly—contrary to the plain meaning of the statute. Wherefore, this Court should grant review.

STATEMENT OF THE CASE

On February 15, 2023, Mr. Stuart was charged in a 37-count indictment with: eleven counts of encouraging and inducing aliens to enter the United States, in violation of 8 U.S.C. § 1324(a)(1)(A)(iv); eleven counts of bringing aliens into the United States, in violation of 8 U.S.C. § 1324(a)(1)(A)(i); eleven counts of bringing aliens to the United States for commercial and private financial gain, in violation of 8 U.S.C. § 1324(a)(2)(B)(ii); three counts of aiding or assisting certain aliens to enter, in violation of 8 U.S.C. § 1327; and one count of failure to heave to, in violation of 18 U.S.C. § 2237(a)(1).

On April 14, 2023, Mr. Stuart pleaded guilty to three counts of bringing aliens to the United States for private financial gain, in violation of 8 U.S.C. § 1324(a)(2)(B)(ii). See DE 16, 17, 18. In anticipation of the court's application of *United States v. Ortega-Torres*, 174 F.3d 1199 (11th Cir. 1999), which requires the imposition of a five-year mandatory minimum sentence, Mr. Stuart filed an objection to the impending Presentence Investigation Report ("PSI"), arguing that the five-year mandatory minimum did not apply. *See generally* DE 20.

On May 15, 2023, the district court overruled Mr. Stuart's objection and sentenced Mr. Stuart to 60 months as to each of those three counts, to run concurrently, and to be followed by one year of supervised release. *See* DE 24, 25. At Mr. Stuart's sentencing, the district court stated explicitly that it "would have given a lesser sentence if [it] had discretion to do so. So, if the law changes . . . at least there is some hope." (DE 30:10).

Mr. Stuart appealed his sentence to the United States Court of Appeals for the Eleventh Circuit. In response, the Government filed a motion for summary affirmance, seeking to expedite the appeal by circumventing the need to file a formal brief or participate in oral argument. At the same time, Mr. Stuart filed a petition for the Eleventh Circuit Court of Appeals to hear the appeal *en banc* in the first instance.

On February 26, 2024, the Eleventh Circuit denied Mr. Stuart's petition for *en banc* determination. *See* A-1. And on March 4, 2024, the Eleventh Circuit issued a non-published, *per curiam* opinion affirming Mr. Stuart's five-year sentence. *See United States v. Stuart*, 2024 WL 914027 (11th Cir. March 4, 2024). This petition follows.

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit's decision stretches the meaning of the word "offense" beyond comprehension and, in so doing, creates a conflict of authority with established Court of Appeals precedent on the meaning of that word, as well as Supreme Court authority suggesting the same.

I. THE ELEVENTH CIRCUIT'S READING OF THE STATUTE CONTRAVENES THE STATUTE'S PLAIN AND ORDINARY MEANING

The plain and ordinary meaning of 8 U.S.C. § 1324(a)(2) demands that the five-year mandatory minimum not apply to first-time offenders. The statute is bifurcated into two relevant parts: § 1324(a)(2)(A) deals with the bringing in or harboring of aliens regardless of purpose, and contains a penalties provision which states that the defendant "shall, for each alien in respect to whom a violation of this paragraph

occurs [] be fined in accordance with title 18 or imprisoned not more than one year, or both." Subsection (2)(A) thus increases the statutory maximum penalty faced by defendants prosecuted under this subsection by one year for each alien in respect to whom the violation occurs.

But the statute also has a second relevant part, introduced after the semicolon which terminates the above quotation and which is introduced with an "or". This second part of the statute, § 1324(a)(2)(B) states that "in the case of . . . an offense done for the purpose of commercial advantage or private financial gain" the defendant shall "be fined under title 18 and shall be imprisoned . . . in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years." This subsection imposes certain mandatory minimum penalties not present in subsection (a)(2)(A). And it imposes those mandatory minimums in reference to the number of "violations" of three defined subsections—each of which, importantly, requires the commission of "an offense."

The statute thus contains two separate substantive offenses with two separate penalties provisions that compute their penalties in two separate ways. Defendants charged with violating § 1324(a)(2)(A) face no mandatory minimum penalty, but face a statutory maximum penalty that increases by one year "for each alien in respect to whom a violation" occurs. Defendants charged with violating (a)(2)(B), on the other hand, face both a mandatory minimum and a statutory maximum that increases based on the number of "violations" of the particular "subparagraph" they violated—

and each of those subparagraphs themselves require the commission of "an offense." Thus, first-time § 1324(a)(2)(B) offenders face a three-year mandatory minimum penalty regardless of the number of aliens involved. And no defendant faces the five-year mandatory minimum until his or her third offense.

Numerous contextual clues point to this result:

First, Congress separated the substantive crimes of § 1324(a)(2) and § 1324(a)(2)(B) with both transitional language and semi-terminal punctuation, suggesting they should be treated separately. Subsection (a)(2)(B) is introduced in the statute with the language "or . . . in the case of". "Or," when used in a statute, is "almost always disjunctive." *United States v. Woods*, 571 U.S. 31, 45 (2013). So the crimes of § 1324(a)(2)(B) are introduced in contradistinction to the crime of § 1324(a)(2)(A). And "case" is defined by Black's Law Dictionary as a "civil or criminal proceeding, action, suit, or controversy at law or in equity." Case, *Black's Law Dictionary* (11th ed. 2019). So this transitional language is meant to introduce a new type of action—separate from the type of action mentioned in (a)(2)(A)—for which only the penalties section below (a)(2)(B)(iii) would apply. And, what is more, subsection § 1324(a)(2) separates the substantive crime of (a)(2)(A) (along with its penalties provision) from the substantive crimes of (a)(2)(B) (along with its penalties provision) with a semicolon. And semicolons "accentuate the independent nature of each provision in the statute's structure—signaling that they are separate by congressional design." *Fish v. Kobach*, 840 F.3d 710, 741 (10th Cir. 2016); *see also United States v. Republic Steel Corp.*, 362 U.S. 482, 486 (1960) (finding that a

provision is separate and distinct where it was followed by a semicolon and another provision). There is only one semicolon in this subsection, and it serves to separate the two substantive provisions of the statute and to emphasize that courts should treat them separately.

Second, Congress used the word "offense" in subsection (a)(2)(B), but not in subsection (a)(2)(A). Under § 1324(a)(2)(B), the five-year mandatory minimum applies to a defendant's third or subsequent "violation of subparagraph (B)(i) or (B)(ii)." Subparagraph (B)(ii), in turn, requires the commission of "an offense done for the purpose of commercial advantage or private financial gain." As such, it follows logically that the subparagraph is *violated* only by the commission of an *offense*. And the word "offense" when used in a criminal statute, is an established term with a technical, legal meaning. It refers not just to the commission, but the completion and conviction of a criminal act. *See Deal v. United States*, 508 U.S. 129, 135 (1993) ("The present statute, however, does not use the term 'offense,' so it cannot possibly be said that it requires a criminal act after the first conviction."); *see also Holst v. Owens*, 24 F.2d 100, 101 (5th Cir. 1928) ("It cannot legally be known that an offense has been committed until there has been a conviction."); *Smith v. United States*, 41 F.2d 215, 217 (9th Cir. 1930) ("In order that a conviction shall affect the penalty for subsequent offenses, it must be prior to the commission of the offense."); *Biddle v. Thiele*, 11 F.2d 235, 236 (8th Cir. 1926) ("Under this act, in order to constitute a second offense, there must be a commission and a conviction of a first offense and subsequently thereto the commission of the second offense. . . ; in other words, the subsequent offenses must

follow, not only previous commission, but also previous conviction."); *Singer v. United States*, 278 F. 415, 420 (3d Cir. 1922) ("The authorities overwhelmingly establish, first, that in the legal sense a conviction is a judgment on a plea or verdict of guilty; second, a second offense, carrying with it a more severe sentence, cannot be committed in law until there has been a judgment on the first[.]").

Third, other subsections of the statute make clear that the term "offense" was meant to refer to the completed transaction of bringing in aliens, and that multiple offenses are not committed in a single transaction when multiple aliens are involved. *See IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005) (describing "the normal rule of statutory interpretation that identical words used in different parts of the same statute are generally presumed to have the same meaning"). Indeed, § 1324(a)(4) states that:

> In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—
>
> (A) the offense was part of an ongoing commercial organization or enterprise;
>
> (B) aliens were transported in groups of 10 or more; and
>
> (C) (i) aliens were transported in a manner that endangered their lives; or
>
> (ii) the aliens presented a life-threatening health risk to people in the United States.

Here, the word "offense" clearly references the commission of a criminal act, and not the bringing in of a single alien. This is because subsection (a)(4)(B) contemplates "aliens [being] transported in groups of 10 or more" during the

commission of a *single offense*—suggesting that the transport of 10 or more aliens at one time would constitute but one offense.

Consider also the version of the statute in place before Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 110 Stat. 3009-546 (1996), which amended § 1324(a)(2) to include the "for each alien" language. In 1996, 8 U.S.C. § 1324(1)(B)(2)(B) (the same subsection at issue here, pre-amendment), read as follows:

> In the case of –
>
> (i) a second or subsequent offense
>
> (ii) an offense done for the purpose of commercial advantage or private financial gain, or
>
> (iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry

The use of the phrase "second or subsequent" is significant. "Subsequent" means "coming after; following in time, place, or order." *Webster's New World Dictionary* 1335 (3d ed. 1988). *See also Holst v. Owens*, 24 F.2d 100, 101 (5th Cir. 1928) ("A second offense, as used in the criminal statutes, is one that has been committed after conviction for a first offense."). By using the phrase "second or subsequent" to modify "offense," Congress clearly contemplated the word "offense" referring to the commission of a criminal act, and not the bringing in of a single alien. Because if one individual smuggles three aliens into the country at *one time* in *one boat*, it is nonsensical to refer to two of the aliens as "subsequent offenses" to the other.

Fourth, the "for each alien" language present in subsection (a)(2)(A)—and on which the Eleventh Circuit relied to conclude the penalties of § 1324(a)(2)(B) should be computed on a per-alien basis—cannot be reconciled with the "first or second violation" language that appears in the penalties clause at issue here. It is not possible to bypass clauses of the statute in such a way as to make the "for each alien" language read coherently with the penalties provision of (a)(2)(B). If attempted, the statute would read: "Any person who . . . attempts to bring to the United States in any manner whatsoever [an] alien . . . shall, *for each alien* in respect to whom a violation of this paragraph occurs . . . be fined under title 18 and shall be imprisoned . . . in the case of a *first or second violation* of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and *for any other violation*, not less than 5 nor more than 15 years." (emphases added). Are the penalties dispensed on the basis of the number of aliens or the number of violations? The "for each alien" language is plainly not intended to apply to the penalties provision of (a)(2)(B), because that language directs a different method of computing penalties than the "first or second violation" language of (a)(2)(B) does.

The statute suggests that a "violation" is an offense, but nevertheless dispenses the statutory maximum penalties of (a)(2)(A) on a per-alien basis (something not true of (a)(2)(B)). And it does so *by using the text*. But that text—the "for each alien" language—is not included in the penalties provision at issue here. This Court should honor Congress's decision to elide it. The better reading—the only one that harmonizes the numbering of the violations in (a)(2)(B) with the "for each alien"

language of (a)(2)(A)—is that the statutory penalties of (a)(2)(A) should be dispensed "for each alien," and the statutory penalties of (a)(2)(B) should be dispensed on the basis of the number of "violation[s]" of the particular subsections, each of which require the commission of an "offense."

In *United States v. Ortega-Torres*, 174 F.3d 1199 (11th Cir. 1999), however, the Eleventh Circuit disagreed with this straightforward textual analysis. There, without the benefit of oral argument, the Eleventh Circuit held that the mandatory minima specified in subsection (a)(2)(B) should be computed on a per-alien basis, rather than a per-offense basis. The entire textual analysis of the statute is reproduced below:

> The plain language of the statute indicates the penalties are intended to be applied "for each alien in respect to whom a violation of this paragraph occurs." The use of the terms "each alien" and "violation" together in the introductory sentence of § 1324(a)(2) make clear that courts should count each alien as a separate violation for sentencing purposes.

Id. at 1201 (internal citations omitted).

In so finding, the Eleventh Circuit improperly conflated subsection (a)(2)(A)'s direction to compute penalties on the basis of the number of aliens with the definition of the terms "violation" and "offense." Again: the statute never seeks to define a "violation" as the bringing in of a single alien. On the contrary, subsection (a)(2)(A) makes clear that regardless of the number of aliens, there is still but one violation. This is because the statute makes clear that penalties are dispensed "for each alien in respect to whom ***a violation***" occurs. This makes clear that, regardless of the number of aliens involved, one transaction still constitutes one violation. Couple this

with the fact that (a)(2)(B) explicitly references one violation occurring during the commission of a single offense and the result is obvious: the five-year mandatory minimum requires the commission of three separate criminal acts to apply.

II. The Eleventh Circuit's Decision Conflicts with this Court's, Congress's, and Numerous Courts of Appeals' Findings Regarding the Meaning of the Term "Offense"

The unmistakable import of the Eleventh Circuit's interpretation of the statute at issue is that first-time offenders can be said to have committed multiple offenses. Unfortunately, since the Eleventh Circuit first reached that conclusion in *Ortega-Torres*, the D.C. Circuit—via citation to *Ortega-Torres*—reached the same conclusion, holding that first-time offenders can be said to have committed three offenses, so long as three aliens were involved in the offense. *See United States v. Yeh*, 278 F.3d 9, 16 (D.C. Cir. 2002). The Ninth Circuit has also (in dicta) supported the Eleventh Circuit's analysis of the statute in a case which involved three separate instances of bringing in aliens, all charged in a single indictment. *See United States v. Tsai,* 282 F.3d 690, 698 n.8 (9th Cir. 2002) ("In reaching this conclusion, we agree with the Eleventh Circuit's construction of the same provision.").

Unfortunately, these decisions conflict not only with the statute's plain meaning, but also with precedent from around the country holding that the word "offense", when used in a criminal statute, has a technical meaning referring to the completion and conviction of a criminal act.

Begin with this Court's since-abrogated decision in *Deal v. United States*, 508 U.S. 129 (1993). There, this Court was tasked with interpreting the phrase "second

or subsequent conviction" in 18 U.S.C. § 924(c). The Court found that a "second or subsequent conviction" did not require the commission of multiple criminal acts, because the use of the word "conviction" rather than "offense" suggested Congress was referring to "the finding of guilt by a judge or jury that necessarily precedes the entry of a final judgment or conviction." *Id.* at 132. But Justice Scalia, writing for the majority, took great pains to explain that, had Congress used the word "offense" rather than "conviction," the result likely would have been different: "The present statute, however, does not use the term 'offense,' so it cannot possibly be said that it requires a criminal act after the first conviction." *Id.* at 135.

Congress has gone even further, abrogating the *Deal* Court's holding and finding that, even when a statute uses the phrase "second or subsequent conviction" rather than "second or subsequent offense," the statute is still meant to apply only to recidivists who commit separate criminal offenses. In Section 403 of the First Step Act of 2018, Congress provided a "[c]larification" of 18 U.S.C. § 924(c) and struck the phrase "second or subsequent conviction" from the statute, inserting in its place "violation of this subsection that occurs after a prior conviction under this subsection has become final." Pub. L. 115-391, § 403(a), 132 Stat. 5221.

Other circuit's decisions are firmly in line with this reading as well, holding that penalties attached to a second offense of a statute apply to criminal acts committed after a defendant's first conviction under that statute. *See Gonzalez v. United States*, 224 F.2d 431, 435 (1st Cir. 1955) ("Because of the purposes generally to be served by second offender legislation, the judicial interpretation of similar

statutes, and the legislative history of this particular statute, we hold that the subsequent offender provision of the Act of November 2, 1951, applies only to narcotics offenders who commit subsequent offenses after convictions."); *Smith v. United States*, 41 F.2d 215, 217 (9th Cir. 1930) ("In order that a conviction shall affect the penalty for subsequent offenses, it must be prior to the commission of the offense."); *Biddle v. Thiele*, 11 F. 2d 235, 236 (8th Cir. 1926) ("Under this act, in order to constitute a second offense, there must be a commission and a conviction of a first offense and subsequently thereto the commission of the second offense, and, in order to constitute a third or subsequent offense, there must be a commission and conviction of a first offense and subsequently thereto a commission and conviction of a second offense, and subsequently thereto a commission of the third offense; in other words, the subsequent offenses must follow, not only previous commission, but also previous conviction."); *Singer v. United States*, 278 F. 415, 420 (3d Cir. 1922) ("The authorities overwhelmingly establish, first, that in the legal sense a conviction is a judgment on a plea or verdict of guilty; second, a second offense, carrying with it a more severe sentence, cannot be committed in law until there has been a judgment on the first[.]").

Even the old Fifth Circuit, in *Holst v. Owens*, 24 F.2d 100 (5th Cir. 1928), has disagreed with the new Eleventh Circuit's interpretation of the term "offense". That decision dealt with the interpretation of the National Prohibition Act, which authorized "for a third or any such subsequent offense" a "fine of not less than $500 and imprisonment of not less than 3 months or more than 2 years." *Holst*, 24

F.2d at 100. Mr. Holst—who had on three separate occasions been found with a bottle of "intoxicating liquor"—challenged his penalty for a "third or subsequent offense" under the statute because the first two times he was found with a bottle of "intoxicating liquor" both pre-dated his first indictment (and thus, his first conviction). *See id.* The court agreed, finding that, because Mr. Holst had not yet been convicted of his first offense, the heightened recidivist-based penalties did not apply to the second bottle of liquor. *Id.* at 101. The court's analysis bears repeating in full:

> It cannot legally be known that an offense has been committed until there has been a conviction. A second offense, as used in the criminal statutes, is one that has been committed after conviction for a first offense. Likewise, a third or any subsequent offense implies a repetition of crime after each previous conviction.

Id.

These decisions confirm common sense. Statutes that increase penalties for "second or subsequent offenses" are meant to punish more severely defendants who commit and have been convicted of multiple criminal acts of the same type. They are not meant to apply to defendants facing their first experience with the criminal justice system.

This Court should grant certiorari to resolve this important question of federal law that has not been, but should be, settled by this Court. Because alien-smuggling cases are more prevalent in coastal districts, it is unlikely that a circuit split regarding this issue will develop. Indeed, it is not a coincidence that only the D.C. Circuit, the Ninth Circuit, and the Eleventh Circuit have spoken on this issue. Because of the importance of this federal question and the prevalence of immigration-

offense-related prosecutions in our country today, this Court should grant certiorari to resolve this important question of law.

CONCLUSION

Based upon the foregoing, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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