No. 25-429

IN THE

Supreme Court of the United States

PAMELA BONDI, ATTORNEY GENERAL,

Petitioner,

v.

MUK CHOI LAU,

Respondent.

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

BRIEF FOR *AMICUS CURIAE* FEDERATION FOR AMERICAN IMMIGRATION REFORM IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Federation for American Immigration Reform (FAIR) is a nonprofit, nonpartisan public-policy and membership organization dedicated to advocating for immigration policies that are in America's best interest, and to promoting the faithful execution of the nation's immigration laws. FAIR regularly participates in litigation involving immigration law enforcement, border integrity, and the scope of executive authority over the entry of aliens into the United States.

This case presents a question vital to FAIR's mission and to the nation's border-screening system: whether 8 U.S.C. § 1101(a)(13)(C)(v), as the court below implied, in effect requires the admission of returning lawful permanent residents even if there is reliable evidence that they have committed a serious crime. Because the holding of the court below would have a result contrary to America's best interest—the continuance in this country of many lawful permanent residents even after being convicted of serious crimes—FAIR has a direct interest in the outcome of this case.

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1. Pursuant to Rule 37.6, counsel for *amicus* authored this brief in whole, no party's counsel authored this brief in whole or in part, and no person or entity—other than *amicus*, its members, or its counsel—contributed monetarily to its preparation or submission.

SUMMARY OF ARGUMENT

Congress enacted inspection and admissibility standards to protect the nation from potentially dangerous or undesirable aliens who seek admission, while preserving an orderly framework for resolving contested issues of admissibility in removal proceedings before an immigration judge. The decision of the court below disrupts that framework and prevents the government from fully implementing statutory measures designed to protect border integrity and public safety.

In 8 U.S.C. § 1101(a)(13)(C)(v), Congress directed that a lawful permanent resident alien "shall be regarded as seeking an admission" if the resident alien has "committed an offense" identified in 8 U.S.C. § 1182(a)(2) (defining crimes that render an alien inadmissible). Congress deliberately chose a conduct-based standard suited to border screening. It did not require a conviction at the time of inspection, or in principle at the time of removal, for nothing in the statute conditions border enforcement on the completion of criminal proceedings.

The interpretation of the court below materially alters the structure Congress enacted. The Immigration and Nationality Act (INA) does not require admissibility to be exhaustively adjudicated at the border. Instead, Congress created a two-staged framework: initial screening at the port of entry, followed by adjudication in removal proceedings before immigration judges.

Parole under 8 U.S.C. § 1182(d)(5)(A) is the mechanism Congress provided to maintain control at the border while admissibility is resolved in removal proceedings—

allowing risk management at ports of entry without forcing premature merits determinations. By conditioning parole on possession of clear and convincing evidence at the moment of reentry, the court below collapsed this framework, disabled parole as a practical tool, and transformed border screening into a merits adjudication—all consequences contrary to Congress's intent.

Read in context, the statute authorizes immigration officials to act on reliable evidence of criminal conduct at the border, to treat returning lawful permanent residents as applicants for admission, and to defer final resolution to the proper adjudicatory forum. It does not require border officials to ignore serious admissibility concerns and admit by default individuals whose conduct indicates a risk to public safety and security—precisely the risks Congress designed the border-inspection process to address.

ARGUMENT

Congress's conduct-based admission framework protects border integrity and public safety—and cannot function as Congress intended if conviction-level proof is required at the border

This case concerns statutory interpretation informed by text, structure, legislative history, and the operational realities of inspection at ports of entry. Section 1101(a)(13)(C)(v) provides that a lawful permanent resident "shall be regarded as seeking an admission" if the resident has "committed an offense" identified in § 1182(a)(2). Congress adopted that conduct-based trigger to ensure that border officers can identify and manage serious admissibility concerns at the nation's front line—where

uncertainty is inevitable, and public-safety and security are paramount—while reserving final adjudication for the proper forum, removal proceedings before an immigration judge.

The decision below upends Congress's border-control design. Even without stating a conviction-only rule, it effectively demands conviction-level proof at the time of inspection by importing a clear-and-convincing evidentiary burden into the border-screening context. That move collapses the line Congress drew between screening and adjudication, and deprives the government of the risk-management flexibility Congress provided through parole.

The statutory text confirms that "committed" is a conduct-based standard tailored to border screening. Throughout the INA, Congress uses the term "convicted" when it intends immigration consequences to turn on a formal judgment of guilt. By contrast, "committed" focuses on conduct. As this Court has recognized, the INA frequently attaches consequences to the *commission* of an offense independent of conviction. *Barton v. Barr*, 590 U.S. 222, 232-33 (2020). The statutory text thus fits the border's screening function: identifying serious admissibility concerns at the point of entry based on reliable information, rather than waiting for the completion of criminal litigation that occurs later and elsewhere.

Nothing in § 1101(a)(13)(C)(v) suggests that Congress intended border inspection to depend on the completion of criminal proceedings. Conversely, Congress designed inspection primarily to screen applicants for admission, not adjudicate difficult or close cases. *See* 8 U.S.C.

§ 1225(b)(2)(A) (requiring admissibility to be determined in a removal proceeding before an immigration judge if "the alien seeking admission is not clearly and beyond a doubt entitled to be admitted"). Ports of entry are not courts, and inspection officers do not control charging decisions and cannot readily predict the course a criminal case will take. Requiring conviction-level proof at inspection therefore demands what border screening cannot practically deliver. As a result, under the standard announced below, lawful permanent residents who have committed a crime identified in 8 U.S.C. § 1182(a)(2) will always or almost always be admitted, and—because such crimes do not always render them removable, *compare* 8 U.S.C. § 1182(a)(2) *with* § 1227(a)(2)—many will continue their status, and their presence in this country, even if convicted of their crimes.[2]

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2. As one district court recently observed:

> Grounds for inadmissibility and deportability do not always align, as some conduct and offenses may render a person inadmissible but not deportable, and vice versa. *See*, *e.g.*, [8 U.S.C.] § 1227(a)(2)(C) (creating removability for "[c]ertain firearm offenses," a ground that is not present in 8 U.S.C. § 1182(a)(2)); *compare id.* § 1227(a)(2)(B)(i) (allowing an exception to controlled substance offense removability for "a single offense involving possession for one's own use of 30 grams or less of marijuana"), *with id.* § 1182(a)(2)(A)(i)(II) (allowing no such exception in the parallel inadmissibility ground). And admitting to committing acts that "constitute the essential elements of" a specified offense may make an applicant inadmissible, while, in most cases, a conviction is required to make a noncitizen deportable for commission of a crime. *Compare id.* § 1182(a)(2)(A)(i), *with id.* § 1227(a)(2)(A).

Congress separated screening from adjudication and provided parole to preserve border control under conditions of uncertainty. Border inspection identifies admissibility concerns based on available and reliable information at the port of entry. Formal adjudication—where evidentiary burdens such as "clear and convincing evidence" apply—occurs later, in removal proceedings before immigration judges. *See* 8 U.S.C. § 1229a(c)(3)(A). That allocation reflects Congress's judgment that border integrity and public safety depend on immediate screening, while contested merits issues belong in an adjudicatory forum.

Parole under 8 U.S.C. § 1182(d)(5)(A) implements that design. It allows physical entry without admission while admissibility is resolved in removal proceedings, preserving border control and public safety without forcing premature merits determinations during inspection. Parole is thus a central risk-management tool: it avoids a false choice between automatic admission and attempting courtroom-grade adjudication at the border.

The decision below undermines that structure by effectively requiring conviction-level proof at the border. Even if the court did not explicitly require a conviction, it is clear-and-convincing evidentiary expectation at inspection produces that result in practice. Border officers cannot develop trial records or resolve disputed facts during inspection. In many cases, no conviction exists because criminal proceedings are ongoing, venue has not been fixed, or charges have not yet been filed. Conditioning border screening on those contingencies

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Joshua M. v. Barr, 439 F. Supp. 3d 632, 662 n.20 (E.D. Va. 2020).

creates a vulnerability Congress did not intend—one that can result in the admission of individuals whose conduct raises serious public-safety or national-security concerns.

Congress reformed the immigration laws in 1996 with the intent to restore meaningful border scrutiny, particularly for aliens who engage in criminal conduct. Statutory history confirms this understanding. Before 1996, *Rosenberg v. Fleuti*, 374 U.S. 449 (1963), created a judicially crafted exception to the "entry" doctrine under which a lawful permanent resident returning from an "innocent, casual, and brief" trip abroad was not treated as making an entry and therefore was insulated from exclusion based on preexisting grounds. *Id.* at 462. Over time, that doctrine came to shield some returning resident aliens from border scrutiny that applied to other aliens based on concerns about inadmissibility and public safety.

Congress responded in IIRIRA by replacing "entry" with "admission" and specifying when returning lawful permanent residents are to be treated as applicants for admission. The House Judiciary Committee explained that the new definition was intended to preserve only a limited portion of *Fleuti*, while overturning interpretations that allowed returning lawful permanent residents to avoid meaningful inspection despite evidence of criminal conduct.[3]

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3. H.R. Rep. No. 104-469, pt. 1, at 225-26 (1996) (explaining that amended INA § 101(a)(13) (codified at 8 U.S.C. § 1101(a)(13)) was intended "to preserve a portion of the *Fleuti* doctrine," while overturning interpretations that had insulated returning lawful permanent residents from inspection notwithstanding conduct implicating inadmissibility and public safety).

Administrative precedent reflects the same structure: border screening first, adjudication later. The Board of Immigration Appeals has held that lawful permanent residents who fall within § 1101(a)(13)(C)'s enumerated categories are to be regarded as "seeking an admission … without further inquiry into the nature and circumstances" of their travel, and that *Fleuti*'s "brief, casual, and innocent" inquiry does not compel admission where Congress has specified otherwise. *Matter of Collado*, 21 I. & N. Dec. 1061, 1063–64 (B.I.A. 1998). The government bears the burden to establish applicability of § 1101(a)(13)(C), but that burden is assumed in adjudicatory proceedings, not at the border. *Matter of Rivens*, 25 I. & N. Dec. 623, 625–26 (B.I.A. 2011).

In sum, the INA authorizes immigration officials to respond to reliable evidence of criminal conduct at the border to protect public safety and national security, and to defer final adjudication to the proper forum through parole. Reading § 1101(a)(13)(C)(v) to require conviction-level proof rewrites "committed" to mean "convicted," undermines Congress's border-control design, and constrains the tools Congress provided to manage risk at ports of entry under conditions of unavoidable uncertainty.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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