

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 OF *AMICI CURIAE* IMMIGRATION LAW
PROFESSORS IN SUPPORT OF RESPONDENT**

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INTERESTS OF *AMICI CURIAE*¹

Amici are 35 law professors whose areas of specialization include immigration law. As practitioners and scholars in the field, *amici* have a strong interest in the proper interpretation of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.* (“INA”), as well as the practical consequences of interpretations advanced by parties to this Court’s immigration cases. *Amici* believe that the expansive interpretation of the INA claimed by the government in this case is unprecedented and inconsistent with the limits established by Congress.

In addition, *amici* will explain the strong historical pedigree and precedential status of the rule of strict construction for statutes relating to deportation—also known as the immigration rule of lenity—as a substantive rule of statutory interpretation. The rule requires that ambiguities in such statutes be resolved in favor of the noncitizen. If the Court should conclude that there is more than one plausible reading of the provisions at issue in this case, the rule of strict construction offers an appropriate tool of statutory interpretation with which to construe those provisions. The strict construction rule is rooted in a concern for the separation of powers and fair notice and requires that Congress speak clearly when exercising its broad powers. Applying the rule of strict construction reinforces the conclusion that the

¹ Pursuant to Supreme Court Rule 37.6, *amici* certify that no counsel for any party authored this brief in whole or in part, and that no party or counsel other than the *amici curiae* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

provisions at issue in this case, read together and in context, restrict the government’s discretion to parole a lawful permanent resident (“LPR”) returning from a trip abroad if, upon inspection at the border, the LPR does not have a conviction for or admit to crimes involving moral turpitude.

The list of the *amici curiae* law professors appears in the appendix to this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.* (“INA”), establishes the framework for the immigration system that governs millions of noncitizen² U.S. residents, including about 12 million lawful permanent residents (“LPRs”)—also known as “green card holders.”³

The INA prescribes different standards, procedures, and rights for noncitizens based on whether they are seeking admission or have already been admitted to the country. Green card holders receive greater procedural protections and substantive rights under our immigration laws than other noncitizens when they travel abroad and return to the U.S.

² This brief uses the term “noncitizen” to mean “alien” as defined in 8 U.S.C. § 1101(a)(3).

³ Stephanie Kramer & Jeffrey S. Passel, *What the Data Says About Immigrants in the U.S.*, Pew Rsch. Ctr. (Aug. 21, 2025), <https://perma.cc/S99D-FAYH>.

Congress has provided that when an LPR returns to the country from a trip abroad, the LPR “shall not be regarded as seeking an admission into the United States” unless he falls into one of six defined exceptions. 8 U.S.C. § 1101(a)(13)(C). Unless an LPR is deemed to be “applying for admission to the United States” under one of the exceptions, a border inspector cannot place the LPR in parole status. *Id.* §§ 1182(d)(5)(A), 1101(a)(13)(C).

The relevant exception in this case requires the border inspector to determine, upon the LPR’s return, whether the LPR is inadmissible on criminal or related grounds. *Id.* §§ 1101(a)(13)(C)(v), 1182(a)(2)(A)(i). As pertinent here, the officer must assess whether the LPR has been convicted of (or has admitted to) a crime involving moral turpitude. *Id.* § 1182(a)(2)(A)(i). Since Mr. Lau had not been convicted of (nor had he admitted to) a crime involving moral turpitude in June 2012 when he returned from his travels, he could not be deemed to be seeking admission. Therefore, he should have been allowed to re-enter the country as an LPR rather than being placed into parole.

The government’s position would allow it to flout the general principle that LPRs are not seeking admission upon their return from a trip abroad. It alleges that a border inspector has unreviewable power to indefinitely parole any returning LPR without evidence to corroborate that the LPR is applying for admission and thus, subject to parole. Based on this reading, the government could choose to parole every green card holder who dares to travel abroad and keep them in a state of limbo for as long

as the government takes to decide whether to initiate removal proceedings.

This chain of reasoning is not supported by the INA's text, structure, or context. Furthermore, the government's position, if accepted, would fundamentally alter our immigration system, threatening the professional and liberty interests of millions of LPRs, as well as the economic interests of both LPRs and their potential employers.

Even if the Court were to conclude that the INA's provisions were unclear on how an inspector should proceed in a case like this one, it should adopt a narrow reading of the statute in respondent's favor. The rule requiring strict construction of statutes relating to deportation—also known as the immigration rule of lenity—provides a substantive check on broad interpretations of unclear statutes, undercutting the government's reading here. This Court developed and applied the strict construction rule over decades, including in cases involving LPRs who leave and return to the country. Recognizing the severity of deportation, the rule of strict construction stands for the proposition that Congress must speak clearly when it intends to potentially subject noncitizens to banishment or exile.

Like the rule of lenity in criminal law, this substantive canon helps to enforce the constitutional separation of powers between Congress and the executive branch. The Court will not assume that Congress meant to impinge on a noncitizen's liberty beyond what is required by the narrowest interpretation of the statutory text. Strict

construction is especially appropriate in the context of deportation and re-entry in light of the expansive power Congress wields in these matters, the need for fair notice, and the serious consequences of government actions in this sphere. As applied here, the rule of strict construction counsels against an expansive interpretation of the law governing returning LPRs that subjects them to unreviewable parole and removal based on grounds of inadmissibility instead of the grounds applicable to deportability.

Contrary to the government's suggestion (Pet'r Br. 3, 39), placing an LPR in an indefinite parole status and improperly subjecting the LPR to inadmissibility grounds is not a favor to the LPR. Being placed in the limbo of open-ended parole—rather than re-entering without restrictions pending initiation of removal proceedings (if appropriate)—has serious adverse consequences for an LPR's ability to keep or gain employment and securely identify herself to enforcement officials. Here, where the government's reading of the statute would have a serious chilling effect on the freedom of LPRs to travel, the rule of strict construction ensures that LPRs have fair notice that merely traveling abroad for a short period could threaten the life they have established in the U.S.

ARGUMENT

I. The INA’s Text, Structure, and Context Make Clear That the Government Must Determine the Issue of Admissibility at the Border and May Not Classify Mr. Lau as Seeking Admission When He Had Not Been Convicted of—or Admitted to—a Crime Involving Moral Turpitude at That Time.

Admissibility is a cornerstone concept of the INA. “Admission” and “admitted” are statutory terms of art. These terms refer to “the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A).

An LPR, by definition, has already been admitted (often decades earlier when the LPR first arrived to the U.S.). The INA recognizes that LPRs have been “lawfully accorded the privilege of residing permanently in the United States.” *Id.* § 1101(a)(20). Accordingly, the statute creates the general presumption that an LPR is not seeking admission when he travels abroad and returns to the country unless he falls into one of six exceptions. *Id.* § 1101(a)(13)(C). An immigration officer makes the determination of whether a returning LPR falls within one of the exceptions at the port of entry, and only noncitizens “applying for admission” can be paroled. *Id.* §§ 1101(a)(13)(A), 1182(d)(5)(A). Once admitted, noncitizens (including LPRs) are subject to removal proceedings only if they fall within the statute’s extensive deportation criteria. *Id.* § 1227.

The government contends that under the INA, a border inspector has unreviewable authority to place an LPR in an indefinite parole status based on an unproven allegation that the LPR committed a crime involving moral turpitude. That is incorrect. By the terms of 8 U.S.C. section 1182(d)(5)(A), the inspector's authority to parole an LPR depends on the initial determination of whether the LPR is seeking admission at the border. The statute requires the inspector to determine whether the LPR is seeking admission based on the criteria cross-referenced in the statute (here, a pre-existing conviction or admission to a crime involving moral turpitude).

A. The text, structure, and context of section 1101(a)(13)(C)(v) confirm that an LPR may not be deemed to be seeking admission unless, as relevant here, he has been convicted of (or admitted to) a crime involving moral turpitude when he returns from a trip abroad.

The statutory exception under which the inspector purported to deem Mr. Lau to be seeking admission states that an LPR “shall not be regarded as seeking an admission . . . unless [the noncitizen] . . . has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title[.]” 8 U.S.C. § 1101(a)(13)(C)(v).

Amici agree with respondent that this provision requires the government to determine at the border, not at a later date, whether an LPR can be deemed to be seeking admission. Resp't Br. 19–25. *Amici*

further argue that this provision must be read in light of the part of the cross-referenced provision that identifies the offense in question, here 8 U.S.C. § 1182(a)(2)(A)(i)(I), which refers to “any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . . a crime involving moral turpitude.”

“It is a ‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quoting *Davis v. Mich. Dep’t of Treas.*, 489 U.S. 803, 809 (1989)). Section 1182(a)(2), cross-referenced in section 1101(a)(13)(C)(v), lists “[c]riminal and related grounds” for inadmissibility. Some of these grounds require criminal conviction (or admission to the elements of the crime), while others recite far less stringent requirements. For instance, if “the Attorney General *knows or has reason to believe*” that a noncitizen is or has been an illicit drug trafficker, the noncitizen would be inadmissible. 8 U.S.C. § 1182(a)(2)(C) (emphasis added). And some provisions look to past conduct while others consider intended, future acts. *See id.* § 1182(a)(2)(D)(i) (deeming inadmissible any noncitizen who “is coming . . . to engage in prostitution”). By contrast, for a noncitizen alleged to have committed a crime involving moral turpitude, the statute renders a noncitizen inadmissible if he has a pre-existing conviction or admits to the crime upon inspection at the border. *Id.* § 1182(a)(2)(A)(i)(I).

This Court has recognized that, when read in context, section 1101(a)(13)(C)(v) applies “to a lawful permanent resident who has been convicted of an offense under § 1182(a)(2) (or admits to one).” *Vartelas v. Holder*, 566 U.S. 257, 275 n.11 (2012). Thus, “to determine whether there is clear and convincing evidence that an alien has committed a qualifying crime, the immigration officer *at the border* would check the alien’s records for *a conviction*.” *Vartelas*, 566 U.S. at 275 (emphasis added).

The “unless” clause contained within section 1101(a)(13)(C)(v) further supports this conclusion. That clause references the relief provisions in sections 1182(h) and 1229b(a) of the title. 8 U.S.C. § 1101(a)(13)(C)(v). Section 1182(h) allows the Attorney General to waive the application of certain inadmissibility grounds, including a conviction or admission of a crime specified in section 1182(a)(2)(A)(i). *Id.* § 1182(h). Similarly, section 1229b(a) gives the Attorney General the power to grant cancellation of removal once the noncitizen has been deemed inadmissible or deportable. *Id.* § 1229b(a). There would be no reason to reference either of these provisions unless the earlier reference to section 1182(a)(2) meant that the LPR had previously been found to be removable. For a crime involving moral turpitude, a noncitizen is inadmissible, and hence removable, only if he is “convicted of, or ... admits having committed, or . . . admits committing” the elements of the crime. *Id.* § 1182(a)(2)(A)(i).

Indeed, the border inspector believed she was operating within this framework when she inspected

Mr. Lau. The inspector was aware of the criminal charge against Mr. Lau and proceeded to characterize Mr. Lau as a noncitizen “who has been convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude” J.A. 17. Yet, Mr. Lau had neither been convicted of, nor admitted to, a crime involving moral turpitude when he returned to the U.S. in June 2012.⁴ Therefore, he did not satisfy the substantive criteria of sections 1101(a)(13)(C)(v) and 1182(a)(2)(A)(i)(I) and could not be categorized as seeking admission.

The context of Congress’s enactment of section 1101(a)(13)(C)(v) is also relevant to an understanding of that provision. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 3009–546. IIRIRA added the modern version of section 1101(a)(13)(C) with its six exceptions, largely codifying the standard this Court set out in *Rosenberg v. Fleuti*, 374 U.S. 449 (1963).

In *Fleuti*, this Court recognized that an LPR should not be regarded as entering into the United States when he travels abroad and returns unless the

⁴ According to the administrative record, Mr. Lau stated that he was “arrested at a ware house [*sic*] that contained some merchandise I had stored there. I went to the ware house [*sic*] to retrieve the merchandise because I had not paid rent and when I got there the cops where there and arrested me. I did not know exactly what was contained in the boxes that I stored in the ware house [*sic*].” J.A. 16. At no point did he admit having committed acts constituting the essential elements of a crime involving moral turpitude. See 8 U.S.C. § 1182(a)(2)(A)(i).

departure is “meaningfully interruptive” of the LPR’s permanent residence in the U.S. *Fleuti*, 374 U.S. 462. After all, the “‘interests at stake’ for the resident [noncitizen] are ‘momentous,’” and “‘it is . . . important that the continued enjoyment of (our) hospitality, once granted, shall not be subject to meaningless and irrational hazards.’” *Id.* at 458–59 (omission and second alteration in original) (quoting *Di Pasquale v. Karnuth*, 158 F.2d 878, 879 (2d Cir. 1947)).

Congress legislates against the backdrop of this Court’s existing precedents. *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 700 (2022). When Congress passed IIRIRA, *Fleuti* “was not only a relevant precedent concerning [LPR re-entry]; it was *the* precedent.” *Id.* at 700–01. Congress was accordingly aware of the *Fleuti* doctrine and its favorable treatment of LPRs re-entering from abroad when it drafted the IIRIRA.

The government and *amicus* Federation for American Immigration Reform (“FAIR”) exaggerate the extent to which Congress intended to “deviate[] from *Fleuti*.” Pet’r Br. 19; *accord* FAIR Br. 7–8. The House Judiciary Committee report acknowledged an intent to “preserve” the *Fleuti* doctrine through all but one of the exceptions listed in section 1101(a)(13)(C), including the exception that would become 1101(a)(13)(C)(v). H.R. Rep. No. 104-469, pt. 1, at 225 (1996). Only the language in a different section—now 1101(a)(13)(C)(vi)—was intended “to overturn certain interpretations of *Fleuti*” that are irrelevant to this

case. *Id.* at 225–26.⁵ The language of section 1101(a)(13)(C)(v) changed—without explanation—between the House version of the bill and the text Congress passed in IIRIRA cross-referencing section 1182(A)(2).⁶ Compare *id.* at 13, with H.R. Rep. No. 104-828, at 29 (1996) (Conf. Rep.). But Congress’s actions taken against the backdrop of *Fleuti* strongly suggest that the provisions at issue here should be read in favor of returning LPRs.

B. The government’s counterarguments are without merit.

The government contests *amici’s* reading of the statute in two ways: (1) it argues that “has committed” means that the conviction (or admission) criterion in section 1182(a)(2)(A)(i) is not relevant to whether an LPR should be deemed to be seeking admission; and (2) the inspector did not need to first determine whether Mr. Lau should be deemed to be seeking admission before deciding to parole him. Neither argument is availing.

The government first claims that the dictionary definition of “commit” means that section 1101(a)(13)(C)(v) is not limited by the conviction (or

⁵ Subsection (vi) was included to make clear that a returning lawful permanent resident who evades inspection will be treated as seeking admission. H.R. Rep. No. 104-469, pt. 1, at 226 (1996) (citing *Matter of Romero*, (BIA, Dec. 19, 1990)).

⁶ The House version of what would become section 1101(a)(13)(C)(v) treated an LPR with an aggravated felony conviction as seeking admission under certain circumstances. H.R. Rep. No. 104-469, pt. 1, at 13 (1996).

admission) requirement in the cross-referenced section 1182(a)(2)(A)(i). Pet'r Br. 19, 34. While the meaning of "has committed an offense identified in section 1182(a)(2)" might be interpreted as the government proposes "when viewed in isolation,' such a reading turns out to be 'untenable in light of [the statute] as a whole.'" *King v. Burwell*, 576 U.S. 473, 497 (2015) (quoting *Dep't of Rev. v. ACF Indus., Inc.*, 510 U.S. 332, 343 (1994)). This Court has rejected myopic interpretations of isolated words where the statutory structure suggests a different meaning when "reviewing text in context." *Pulsifer v. United States*, 601 U.S. 124, 133 (2024) (rejecting abstracted reading of statute in favor of contextualized reading); *see also Yates v. United States*, 574 U.S. 528 (2015) (plurality opinion) (determining that the reference to a "tangible object" in the Sarbanes-Oxley Act does not encompass a fish).

While Congress used the phrase "has committed" in section 1101(a)(13)(C)(v), this simply reflects the fact that—as the government recognizes, Pet'r Br. 34–35—not all the cross-referenced offenses listed in section 1182(a)(2) require convictions to trigger inadmissibility. *See also supra* p. 8. Because "has committed" cannot be "construed in the abstract," *Pulsifer*, 601 U.S. at 140, the government's expansive reading of the phrasing of section 1101(a)(13)(C)(v) should be rejected.

Barton v. Barr, 590 U.S. 222 (1990), which the government cites (Pet'r Br. 14, 35), does not support the government's reading. There, the Court construed a different section of the INA, the cancellation-of-removal provision (8 U.S.C. § 1229b). *Barton*, 590

U.S. at 225. *Barton* addressed a specific statutory restriction on calculating length of residence when considering an LPR's eligibility for cancellation after the LPR was found removable. *Id.* at 232–33; 8 U.S.C. § 1229b(d). The statute specifies that the date one commits an offense is relevant for determining whether an LPR has accrued the required years of residence to be eligible for cancellation of removal under section 1229b. 8 U.S.C. § 1229b(a)(2), (d)(1). *Barton*, however, says nothing about the INA's treatment of an LPR who has not been found removable.⁷

The government also asserts that the border official was not required to properly characterize Mr. Lau as seeking admission before paroling him. Pet'r Br. 14. It claims that "the relevant question is whether respondent, by virtue of his parole, was seeking an admission at the time of the removal proceedings." Pet'r Br. 35–36. *Amici* agree with respondent that this framing is backward. Resp't Br. 32. Under the terms of the statute a noncitizen may not be paroled until the immigration officer determines that the noncitizen is "applying for admission." 8 U.S.C. § 1182(d)(5)(A). Contrary to the government's expansive claim (*see* Pet'r Br. 3), it had neither the power to place Mr. Lau in parole limbo nor

⁷ Furthermore, nothing in *Barton* supports the government's interpretation of the INA as authorizing a parole limbo status, allowing an immigration officer to indefinitely defer the question whether an LPR is seeking admission upon return from a trip abroad.

the power to detain him for removal proceedings when he returned from his travels in June 2012.

The government's reading of the statute would enable immigration officers to defer indefinitely the question whether an LPR can be deemed to be seeking or applying for admission whenever she travels abroad. Congress did not clearly authorize the executive to exercise such vast and previously unheralded power, upending Congress's presumption in favor of returning LPRs, with potentially devastating consequences for LPRs, as well as the U.S. economy.⁸

II. If the Court Finds That the Provisions at Issue are Subject to More Than One Reading, It Should Apply the Rule of Strict Construction and Resolve Any Ambiguities in Mr. Lau's Favor.

The “longstanding principle of construing any lingering ambiguities” in immigration statutes in noncitizens' favor supports a narrow construction of Section 1101(a)(13)(C)(v) in favor of Mr. Lau. *See, e.g., INS v. Cardoza-Fonseca*, 480 U. S. 421, 449 (1987). Since 1948, the Court has repeatedly reaffirmed the rule of strict construction, sometimes called the

⁸ If LPRs can no longer travel for work or family relationships without fear of being placed in an unreviewable limbo status, the economic consequences would be enormous. *See* Wendy Edelberg, Stan Veuger & Tara Watson, *Macroeconomic Implications of Immigration Flows in 2025 and 2026: January 2026 Update*, Brookings Inst. (Jan. 13, 2026) (observing major economic consequences of impeded immigration flows, including of LPRs).

immigration rule of lenity. Although the Court continued to look favorably on the rule of strict construction in recent years, citing it as support as recently as 2008, *see Dada v. Mukasey*, 554 U.S. 1, 18–19 (2008), the Court avoided addressing whether or how the rule interacted with deference to agency interpretations during the *Chevron* Era. But following the Court’s decision in *Loper Bright Enterprises v. Raimondo*, the call for judges to again “exercise independent judgment in determining the meaning of statutory provisions” clears the way for the rule of strict construction to return to the fore in cases involving the INA. 603 U.S. 369, 394 (2024).

A. The rule of strict construction requires that arguably ambiguous provisions relating to deportation be read in favor of the noncitizen.

Fong Haw Tan v. Phelan is “most frequently cited as the origin of the rule of strict construction.” Nancy Morawetz, *Strict Construction of Deportation Statutes After Loper Bright*, 100-1 N.Y.U. L. Rev. Online 1, 6 (2025), <https://perma.cc/5D9S-NS82> [hereinafter *Strict Construction*] (citing *Fong Haw Tan*, 333 U.S. 6 (1948)). In that unanimous opinion, the Court announced that it would “resolve the doubts in favor of [a narrow] construction because deportation is a drastic measure and at times the equivalent of banishment or exile.” *Fong Haw Tan*, 333 U.S. at 9–10 (citing *Delgadillo v. Carmichael*, 332 U.S. 388 (1947), a case involving an LPR who returned to the U.S. after a brief stay in Cuba).

Fong Haw Tan relied on *Delgadillo*, which hinged on the statutory definition of “entry of [a noncitizen] to the United States.” *Fong Haw Tan*, 333 U.S. at 10 & n.1 (noting that “since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used.”); *see also Delgadillo*, 332 U.S. at 390–91. Like the instant case, *Delgadillo* considered the immigration consequences of a legal resident’s travel outside the U.S., and the Court ultimately construed “entry” narrowly in the noncitizen’s favor.⁹ 332 U.S. at 390–91 (citing *Di Pasquale v. Karnuth*, 158 F.2d 878 (2d Cir. 1947)); *see also Di Pasquale*, 158 F.2d at 879 (construing “entry” narrowly and noting “[w]e cannot believe that Congress meant to subject to those who had acquired a residence, to the sport of chance, when the interests at stake may be so momentous.”).

Over the next twenty years, the Court consistently applied the rule of strict construction in construing ambiguous immigration provisions. In *Barber v. Gonzales*, the Court again relied on the rule to construe “entry” narrowly, rejecting the government’s argument that a U.S. resident from the Philippines—who was transformed from a U.S. national to an “alien” by the Philippine Independence Act after his arrival in the U.S.—was eligible for deportation based

⁹ Although the Court in *Delgadillo* noted that “there is language which taken from its context suggests that every return of [a noncitizen] to the United States constitutes an ‘entry’ within the meaning of the Act,” it held that no entry took place. 332 U.S. at 390.

on his criminal convictions. 347 U.S. 637, 640–43 (1954). Quoting *Fong Haw Tan*, the Court noted that “[a]lthough not penal in character, deportation statutes, as a practical matter, may inflict ‘the equivalent of banishment or exile,’ and should be strictly construed.” *Barber*, 347 U.S. at 642–43 (quoting *Fong Haw Tan*, 333 U.S. at 10).

By the 1960s, debate around the rule of strict construction focused on the threshold inquiry of whether sufficient statutory ambiguity existed to trigger its application, but members of the Court did not question the validity of the rule itself. In *Costello v. INS*, the majority and the dissent parted ways at this threshold question. 376 U.S. 120, 128, 148 (1964). The majority invoked the rule as resolving any doubts regarding the immigration statute’s applicability. *Id.* at 128 (citing *Fong Haw Tan*, 333 U.S. at 10). Meanwhile, the dissent argued that Congress’s intent was sufficiently clear and precluded application of the rule in that case, but it did not question the rule itself. *Id.* at 148 (White, J., dissenting) (“I have no quarrel with the doctrine that where the Court is unable to discern the intent of Congress, ambiguities should be resolved in favor of the deportee, but here there is a clear expression of congressional purpose.”).

Two years after the *Costello* decision, which cemented the status of the strict construction rule as a strong substantive doctrine, “the Solicitor General’s office expressly recognized the strict construction rule and made arguments about why it should not apply due to the clarity of congressional intent.” *Strict Construction, supra*, at 11 (citing Brief for the Petitioner, *INS v. Errico*, 385 U.S. 214 (1966) (No. 54),

<https://perma.cc/SL28-K2AR>). Like *Barber* and *Delgadillo*, the *Errico* decision centered on whether the noncitizen was inadmissible (or “excludable,” the predecessor term) “at the time of entry” within the meaning of the INA. *Errico*, 385 U.S. at 215; *see also Barber*, 347 U.S. 637 (1954); *Delgadillo*, 332 U.S. 388 (1947). The Court ultimately disagreed with the government’s position that congressional intent was clear, narrowly construing the statute in favor of the noncitizen. *See Errico*, 385 U.S. at 225 (citing *Fong Haw Tan*, 333 U.S. at 10).

The Court has never repudiated the rule of strict construction, but its substantive application was complicated by judicial deference to agency interpretations during the decades following this Court’s decision in *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). While lower courts openly discussed the conflict between *Chevron* deference and the rule of strict construction, this Court side-stepped the question entirely. *See Strict Construction, supra*, at 13. The Court largely ignored *Chevron* in immigration decisions concerning criminal grounds of removal, mentioning *Chevron* in only two out of ten cases and refraining from invoking *Chevron* in all ten. *See* Michael Kagan, *Chevron’s Liberty Exception*, 104 Iowa L. Rev. 491, 527–28 (2019) (listing decisions between 2004 to 2018 in which the Supreme Court did not apply *Chevron* deference).

Now that the *Chevron* Era is over, the rule of strict construction applies with full force. *See Castillo v. Bondi*, 140 F.4th 777, 781 (6th Cir. 2025) (Sutton, J.) (“When such uncertainty clouds a deportation statute,

‘the longstanding principle of construing’ it ‘in favor of the alien’ kicks into gear.” (citations omitted)).

B. Like the criminal rule of lenity, the rule of strict construction ensures that Congress considers the severe consequences of its actions and speaks clearly in such cases.

Beginning with *Fong Haw Tan*, the Court has consistently cited the severity of deportation as a reason for adopting a lenity-like doctrine based at least in part on separation of power concerns. 333 U.S. at 9–10. Given the harshness of deportation, the Court has demanded a clear statement when Congress intends to transform a noncitizen’s acts into grounds for inadmissibility or deportability. *See id.*; *Errico*, 385 U.S. at 225. In the absence of a clear congressional statement, the Court reads immigration statutes narrowly. *See Fong Haw Tan*, 333 U.S. at 10; *see also Galvan v. Press*, 347 U.S. 522, 530 (1954) (describing deportation as “a drastic measure,” equivalent to “banishment” and “exile,” sanctions that “deprive a man ‘of all that makes life worth living.’” (citations omitted)).

Here, accepting the government’s reading of the INA would expose LPRs to harsh consequences in the absence of a clear statement that Congress intended to authorize a “parole first, investigate later” approach to border inspection. The government’s expansive claim would enable arbitrary decision-making by border inspectors, with a chilling effect on any LPR who wishes to travel abroad.

Nothing in the power the government claims here is limited to noncitizens charged with a crime. The

government claims the authority to parole any noncitizen, Pet'r Br. 3–5 (asserting that 8 U.S.C. § 1182(d)(5)(A) “authoriz[es] discretionary parole of ‘any alien applying for admission’”—and potentially, the power to detain instead of parole. The government also claims that the decision to parole returning LPRs is entirely within the border inspector’s discretion. This is a very significant departure from Congress’s directive that returning LPRs are not considered to be seeking admission unless an express exception applies.

Diluting the standard and making border decisions unreviewable invites border inspectors to parole LPRs regardless of evidence. A border inspector might—intentionally or otherwise—parole LPRs based on personal biases, convenience, or simply to err on the side of caution, leaving it to another Department of Homeland Security (“DHS”) officer to investigate the LPR at some undefined later time. If, as the government claims, border inspectors’ parole decisions are unreviewable, pretextual or patently erroneous decision-making would pose grave dangers, with significant consequences for LPRs. *See infra* Part II.C.

A narrow construction of the statutory exception avoids these severe consequences and is also highly administrable. Existing border inspection systems are well-suited to determine whether there is a conviction or admission. Inspectors use law

enforcement databases¹⁰ to assess whether LPRs have been convicted of (or admitted to) a crime involving moral turpitude. If the LPR has no convictions and has admitted no crimes, the LPR can properly re-enter without the imposition of open-ended parole, as the statute contemplates.

The rule of strict construction ensures that the government does not wield its immigration power lightly. It stands for the proposition that Congress—in using its broad discretion to enact immigration laws—must be clear when it authorizes harsh immigration consequences.

C. The fair notice concerns underlying the doctrine of criminal lenity have additional force in the immigration context because of Congress’s broad powers in this area.

Like criminal lenity, the rule of strict construction helps to ensure that noncitizens are on notice of consequences they may face for their actions. It provides an appropriate counterweight to the otherwise expansive nature of congressional powers relating to removal.

Even before the strict construction rule gained prominence, the Court recognized the importance of fair notice of consequences of determinations in the

¹⁰ Border inspectors have access to state and federal databases that they can use to screen individuals for criminal convictions. See U.S. Dep’t of Homeland Sec., *Privacy Impact Assessment for the TECS System: CBP Primary and Secondary Processing* (Dec. 22, 2010), <https://perma.cc/Q82U-YYZF>.

immigration context. In *Jordan v. De George*, the Court required that immigration statutes provide “sufficiently definite warning” of deportation consequences. 341 U.S. 223, 231 (1951). The Court recently reaffirmed the need for fair notice in *Sessions v. Dimaya*, 584 U.S. 148, 156 (2018). The Court rejected a vaguely worded deportation statute, with Justice Gorsuch noting that vague laws “leav[e] the people in the dark about what the law demands and allow[] prosecutors and courts to make it up.” *Dimaya*, 584 U.S. at 175 (Gorsuch, J., concurring).

The INA provisions at issue here do not warn LPRs that they risk being placed in indefinite parole status merely by embarking on a brief trip abroad even if they are not inadmissible or otherwise fall into a category under 1101(a)(13)(C). *See supra* Part I.

And for LPRs, parole status can carry harsh unexpected consequences. First, placement in parole status deprives LPRs of the intended security of permanent residency by subjecting the LPR to an indefinite period in limbo with an ongoing potential for removal. The government offers no limiting principle for the duration or scope of its investigation into admissibility after an LPR is paroled at the border. The government could pursue fact development and interrogation indefinitely, with the goal of extracting an admission of conduct that would lead to removability.¹¹

¹¹ For example, the government could engage in a fishing expedition for evidence of minor offenses like marijuana possession during parole. Even if criminal charges were never

Second, parole’s consequences are far-reaching even in the absence of an ongoing investigation. As a practical matter, an LPR who is placed in parole status must surrender his Permanent Resident Card—the laminated photo ID green card. He receives as a replacement a temporary I-551 (ADIT) stamp or sticker valid only “[u]ntil the expiration date . . . or if there is no expiration date, one year from date of admission.”¹²

Although the temporary I-551 serves similar purposes to a green card, the State Department treats ADIT stamps as suspect, likely because they are much easier to counterfeit than a green card.¹³ The loss of the physical green card—instantly recognizable to employers and government officials alike—leaves the LPR in a risky situation.

Of particular significance, the loss of a green card can interfere with an LPR’s ability to obtain and retain employment and employers’ ability to recruit and screen potential employees. Many employers are reluctant to hire for a permanent position a noncitizen

filed for the conduct comprising marijuana possession—and the criminal statute of limitations for such conduct has long since passed—an admission to past conduct could satisfy the requirements for inadmissibility under the immigration statute.

¹² U.S. Citizenship & Immigr. Servs., *Handbook for Employers M-274*, §§ 4.4, 7.1 (Apr. 8, 2025), <https://perma.cc/3QRA-EWL3> [hereinafter *USCIS Handbook*]; see also J.A. 6.

¹³ See U.S. Dep’t of State, *Foreign Affairs Manual*, 9 FAM 202.2-6(A)(2) (Aug. 2, 2024), <https://perma.cc/FG48-ZE58> (noting that those verifying LPR status should “be aware . . . that you may encounter passports with counterfeit ADIT stamps.”).

who has only temporary status. *See* J.A. 6; *USCIS Handbook, supra*. And businesses have more reason than ever to be cautious when verifying an employee’s authorization to work in the U.S. Among other activities affecting business owners, ICE is increasingly auditing companies’ employment eligibility records.¹⁴ In the current enforcement environment, employers may be reluctant to hire an LPR if documentation certifying their eligibility is inherently “temporary” and suspect.

Today, an expanded and empowered immigration enforcement agency has been accompanied by a rise in street-level stops and arrests.¹⁵ Historically, DHS’s enforcement policy targeted specific persons pursuant to a warrant. But in January 2026, DHS issued an internal memo “empower[ing] agents to make warrantless arrests of people they believe are undocumented immigrants, if they are ‘likely to escape’ before an arrest warrant can be obtained.”¹⁶ The current enforcement environment makes

¹⁴ Wyatte Grantham-Philips, *Businesses Face Pressure to Respond to Immigration Enforcement While Also Becoming a Target of It*, Associated Press (Jan. 26, 2026), <https://perma.cc/B6J9-DGNZ>.

¹⁵ *See, e.g.*, Graeme Blair & David Hausman, *Immigration Enforcement in the First Nine Months of the Second Trump Administration*, Deportation Data Proj. (Jan. 27, 2026), <https://perma.cc/93U5-R6FQ>.

¹⁶ Hamed Aleaziz & Charlie Savage, *ICE Expands Power of Agents to Arrest People Without Warrants*, N.Y. Times (Jan. 30, 2026), <https://perma.cc/WSF3-5WD6>.

obtaining and retaining reliable documentation of immigration status all the more important for LPRs.¹⁷

The rule of strict construction serves to ensure that Congress has provided fair notice as it exercises its extensive powers relating to removal. The rule offers “a modicum of fair notice that a statute will not be

¹⁷ Faced with the choice between traveling abroad and the risk of losing their green card, many LPRs will likely forgo international travel. And LPRs are frequent travelers, accounting for tens of millions of border crossings each year. *See* Pet. 19 (“This Office is informed that every day last fiscal year, roughly 75,000 to 175,000 LPRs arrived at our Nation’s ports of entry, seeking to reenter the United States.”). Indeed, the cumulative impact of discouraging lawful travel by millions of LPRs and disrupting the economic contributions of those who leave and return would be far-reaching—reducing workforce flexibility, disrupting foreign supply-chain coordination, decreasing tax revenue and remittance flows, and destabilizing employers’ planning. Altogether, the economic effects would be substantial. And separate from the rule of strict construction, this Court has repeatedly invoked a clear-statement rule triggered by such nationwide, market-wide effects—the major questions doctrine. *See generally, e.g., Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758 (2021) (moratorium affecting the national housing market); *West Virginia v. EPA*, 597 U.S. 697 (2022) (generation-shifting rules affecting national energy markets); *Biden v. Nebraska*, 600 U.S. 477 (2023) (student loan relief with sweeping economic impact); *Learning Res., Inc. v. Trump*, 146 S. Ct. 628 (2026) (tariffs raising company import costs and influencing global trade negotiations). Here, the major questions raised by the extraordinary delegation claimed by the government provide additional grounds for requiring clear congressional authorization.

extended beyond its obvious reach.” *Strict Construction, supra*, at 21.

D. The Court should apply the rule of strict construction to favor respondent’s reading of the statute.

As discussed above (*see supra* Part I), the better reading of the statute’s text, structure, and context is a narrow one that precludes parole in Mr. Lau’s circumstances. But if the Court should conclude that there is more than one plausible construction of the statute,¹⁸ the rule of strict construction should tilt the balance in respondent’s favor.

Mr. Lau could not have anticipated being treated as seeking admission and placed in parole status because Congress never made a clear statement supporting the government’s reading of the statute (one at odds with this Court’s reading in *Vartelas*, *see supra* Part I.A). Mr. Lau therefore never received fair notice of the government’s reading of the statute or the potentially severe consequences he faced when he decided to make a brief trip abroad. In addition, Mr. Lau’s situation illustrates the harm of erroneous decision-making by border inspectors. *See supra* Part I.A (describing how the border inspector articulated the correct standard—conviction or admission of a crime—but incorrectly wrote that Mr. Lau satisfied

¹⁸ Some scholars argue that the rule of strict construction should be applied even when the text is arguably unambiguous. *See* Lane Shadgett, *A Unified Approach to Lenity: Reconnecting Strict Construction with Its Underlying Values*, 110 *Geo. L.J.* 685 (2022).

the standard, despite the fact that he had not been convicted at that point, nor had he ever admitted to a crime).¹⁹

To the extent that there may be uncertainty about the meaning of the INA provisions at issue in this case, separation of powers concerns and fair warning principles require rejection of the government's expansive reading.

¹⁹ If the Court rules against the government in this case, Mr. Lau might still be removable under the INA's deportability criteria, as noted by the court below. Pet. App. 14a. The government has articulated no prejudice from proceeding in this manner against Mr. Lau. Yet the implications of the government's position would be consequential for countless other LPRs who may not have committed any offenses rendering them deportable but might have committed offenses that would render them inadmissible. Consequently, this is an especially unsuitable case for greenlighting the extensive unreviewable powers sought by the government.

CONCLUSION

For the reasons set forth above, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX

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