

No. 25-429

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IN THE  
**Supreme Court of the United States**

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PAMELA BONDI, ATTORNEY GENERAL,  
*Petitioner,*

*v.*

MUK CHOI LAU,  
*Respondent.*

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

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**BRIEF OF ASIAN AMERICAN LEGAL DEFENSE  
AND EDUCATION FUND, ASIAN AMERICANS  
ADVANCING JUSTICE | AAJC, LATINOJUSTICE  
PRLDEF, AND IMMIGRANT DEFENSE PROJECT  
AS AMICI CURIAE SUPPORTING RESPONDENT**

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## **INTEREST OF AMICI CURIAE<sup>1</sup>**

Amici Asian American Legal Defense and Education Fund (“AALDEF”), Asian Americans Advancing Justice | AAJC (“AAJC”), LatinoJustice PRLDEF (“LatinoJustice”), and Immigrant Defense Project (“IDP”) are nationwide, non-profit legal advocacy organizations dedicated to protecting the civil and constitutional rights of immigrant members of the communities they serve. Through litigation, legislative advocacy, community education, and direct representation, amici work to mitigate the harsh consequences of interactions between community members and overreaching law enforcement, including immigration enforcement. Collectively, amici have longstanding experience and expertise in defending the due process rights of lawful permanent residents and other noncitizens, including by challenging statutory and procedural interpretations that unnecessarily subject immigrants—particularly immigrants of color—to detention and removal. AALDEF, AAJC, LatinoJustice, and IDP therefore have deep interests in promoting the correct interpretation of immigration law to safeguard immigrants’ access to basic rights, promote family unity, and support cultural integration.

This case presents an issue of national significance—whether the government may treat a lawful permanent resident (“LPR”; also “legal permanent resident”) as “seeking admission” upon return from travel abroad without first proving that the resident has committed a

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici curiae, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

designated offense. The resolution of that question will directly affect the fundamental liberty interests of millions of immigrants, including the roughly 12.8 million LPRs living in the United States as of January 1, 2024. See Miller, *Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2024 and Revised 2023*, at 1, 3, DHS (Sept. 2024). Many of these LPRs are members of communities served by amici, and this Court’s resolution will determine whether ordinary international travel may expose long-time residents to port of entry stops, confiscation of green cards, detention, removal proceedings, and separation from their families based on unproven allegations. Amici therefore have substantial interests in ensuring that the statutory protections Congress afforded returning LPRs are enforced in a manner consistent with due process, settled expectations of lawful residence, and this Court’s longstanding jurisprudence.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

This case concerns fundamental liberty interests of lawful permanent residents (“LPRs”). For many LPRs, obtaining permanent residency is an intensive process involving unrelenting administrative review and often decades-long wait times. Once permanent residency is obtained, LPRs have been “lawfully accorded the privilege of residing permanently” in the United States and are eligible for many of the benefits conferred by the government to citizens. 8 U.S.C. § 1101(a)(20). One critical benefit is the fundamental right to travel freely. *Califano v. Aznavorian*, 439 U.S. 170, 176 (1978) (recognizing international travel as a constitutionally protected liberty interest). LPRs live under the settled expectation and presumption that they will not be

treated as newcomers “seeking admission” upon return from travel abroad except in certain limited circumstances.

The plain text of the INA supports this. The INA provides that when an LPR travels abroad and returns home, they “shall not be regarded as seeking an admission into the United States for purposes of the immigration laws” unless they meet one of six enumerated exceptions. 8 U.S.C. § 1101(a)(13)(C). One of these exceptions is if an LPR commits an offense identified in the criminal inadmissibility grounds, including the ground for one who is convicted of or admits a “crime involving moral turpitude” (a “CIMT”). *Id.* § 1182(2)(A)(i)(I). Uncontested BIA precedent requires the government to prove by “clear and convincing evidence” that an LPR falls within an enumerated exception, including whether they have committed a CIMT, and therefore should be treated as “seeking admission.” *Matter of Rivens*, 25 I. & N. Dec. 623, 625 (BIA 2011). The government must meet this burden of proof at the time of the LPR’s reentry.

The government’s “parole-and-see” approach would allow it to meet the clear and convincing standard by hindsight, sometimes many years later, and thereby improperly treat an LPR as “seeking admission” on reentry based on mere charges or suspicion of alleged criminal conduct. Such an interpretation would have devastating effects on LPRs who have spent decades building their lives in the United States.

*First*, by allowing immigration officers to treat LPRs as seeking admission without proof of the alleged offense at the time of entry, LPRs may be exposed to serious immigration and other consequences when they return from essential trips abroad. Because many LPRs

may respond by foregoing necessary travel to avoid those risks, the government's approach will chill their constitutionally protected right to travel. For many LPRs, travel is not a discretionary privilege. Restrictions on travel may impose painful barriers to maintaining critical ties abroad, such as responding to urgent caregiving responsibilities, sustaining family relationships, pursuing educational obligations, accessing time-sensitive or medically necessary procedures, and fulfilling faith-based obligations.

*Second*, the government's approach unlawfully restricts the rights and privileges of LPRs to live and work permanently in the United States as authorized by statute. *See* 8 U.S.C. § 1101(a)(20). Under the government's position, already-admitted LPRs who are not deportable are, after brief trips abroad, rendered potentially subject to grounds of inadmissibility as if they were a first-time arrival. This is because the government's "parole-and-see" approach permits an immigration officer at a port of entry to treat an LPR perpetually as if they were at the border, using evidence obtained later as if it existed at the time of re-entry. This can occur even where the LPR would not be deportable based on the evidence obtained later in time—for instance, if an LPR's alleged CIMT occurred more than five years after their lawful admission. *See Shivaraman v. Ashcroft*, 360 F.3d 1142, 1146 (9th Cir. 2004). And, as they await resolution of their now-in-limbo immigration status, LPRs like Mr. Lau may endure serious and prolonged consequences. As demonstrated by Mr. Lau's case, LPRs may have their hard-won green cards lifted and replaced with flimsy temporary proof of their status, thus inhibiting their right to work. The government has also taken the position that LPRs deemed to be "seeking admission" at

the border may be placed in indefinite detention without the right to a bond hearing. And, to make matters even worse, LPRs are placed in legal limbo for as long as the government wants—often long past the expiration date of any temporary proof—to allow the government to see if evidence of inadmissibility comes into existence at some undetermined point in the future.

*Third*, allowing the government to deem an LPR as seeking admission by pointing to mere charges creates a dangerously low bar. Under this approach, an officer could theoretically use arrest records or subjective suspicion alone to treat an LPR as “seeking admission” into the United States. The government must meet a more meaningful standard of proof. The dangers of treating an LPR as “seeking admission” based on mere charges are amplified when DHS relies on the *possibility* that there will be a subsequent conviction to prove—in hindsight—that an LPR was inadmissible at the time of reentry. Under this interpretation, any suspicion for treating an LPR as having committed a CIMT would be justified by the possibility that evidence of the alleged conduct might later surface. This circumvents long-standing due process principles and invites arbitrary outcomes.

*Finally*, given the fundamental rights at issue, the Court should resolve any ambiguity regarding the INA’s text by applying the canon of constitutional avoidance and this Court’s rule of strict construction of deportation statutes. This Court has long construed statutory text to avoid unnecessary constitutional restraints. *United States v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909) (“[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the

latter.”). And given the “drastic” penalty of deportation, this Court may also invoke the presumption against deportation to construe any lingering ambiguities in the INA in favor of noncitizens. *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948).

## ARGUMENT

### I. TREATING LAWFUL PERMANENT RESIDENTS AS “SEEKING ADMISSION” BASED ON MERE SUSPICION OF PAST CRIMINAL CONDUCT CARRIES PROFOUND LEGAL AND PRACTICAL CONSEQUENCES FOR THE CONSTITUTIONAL RIGHT TO TRAVEL

LPR status is often described as the “gold standard” for noncitizen status. Morawetz, *The Invisible Border: Restrictions on Short-Term Travel for Noncitizens*, 21 *Geo. Immigr. L.J.* 201, 205 (2007). The United States government approves very few green card applications each year compared to the number of applicants, reflecting the demanding, laborious, and time-consuming process of obtaining LPR status. LPR status represents a formal recognition by the United States that the individual has the lawful privilege of residing here indefinitely, to work, to form families, and to participate, almost fully, in American civic life. *See* 8 U.S.C. § 1101(a)(20).

For many LPRs, overseas travel is not a luxury or a discretionary privilege. It is often unavoidable and intertwined with emergencies and caregiving responsibilities, the maintenance of family unity, and religious and familial obligations. Courts routinely confront cases in which LPRs travel for these reasons, including caring for ailing relatives, attending funerals, and reuniting with loved ones who remain abroad. *See infra* I.B. Consistent with that reality, a 2006 Pew

Hispanic Center analysis found, for example, that nearly two-thirds (65%) of Latino immigrants made at least one trip to their native country since moving to the United States, and 29% had done so within the previous two years. Waldinger, *Between Here and There: How Attached Are Latino Immigrants to Their Native Country?*, at 4 (Oct. 25, 2007). These numbers are also reflected among Asian communities. In a study published by the National Institutes of Health, roughly 65% of Asian immigrants returned to their native country at least once since moving to the United States. Tamaki, *Transnational Home Engagement Among Latino and Asian Americans: Resources and Motivation*, 45 Int'l Migration Rev. 148, 160 (2011).

Against that backdrop, this Court has long recognized that lawful permanent residency carries distinct legal benefits within the immigration system. *See Saxbe v. Bustos*, 419 U.S. 65, 72 (1974). This includes the ability to travel internationally without forfeiting LPR status or being treated as seeking admission without Congressional authorization, subject to exclusion or prolonged detention at the border upon arrival to the United States. *See Vartelas v. Holder*, 566 U.S. 257, 267-268 (2012) (describing the conditioning of ordinary LPR travel on the risk of exclusion and “banishment” as a “new disability”). LPRs build lives, families, and careers in the United States with the settled expectation that brief travel overseas will generally not subject them to the limitations and heightened procedures reserved for those seeking initial admission. Restrictions that undermine those benefits, by unduly conditioning free movement on the risk of detention, isolation, and years-long litigation, therefore alter the practical meaning of lawful permanent residency and disrupts the settled role LPRs occupy as

integrated members of American society in ways that are inconsistent with this Court’s jurisprudence.

**A. The Right To Travel Is A Core Liberty Interest For LPRs**

The freedom of movement is a fundamental liberty interest. *See Kent v. Dulles*, 357 U.S. 116, 125-126 (1958) (recognizing the right to travel as a liberty interest that “may be necessary for a livelihood” or “may be as close to the heart ... as the choice of what [to] eat ... wear ... or read”). This fundamental liberty applies with equal measure to LPRs. *Califano v. Aznavorian*, 439 U.S. 170, 176 (1978) (recognizing international travel as a constitutionally protected liberty interest); *see also Rafeedie v. INS*, 880 F.2d 506, 520 (D.C. Cir. 1989) (“[A] permanent resident ... has a liberty interest in being permitted to reenter this country.”).

Restraints on the fundamental liberty interest in traveling abroad undermines the very nature of LPR status. Such constraints effectively serve as invisible borders, confining noncitizens—who in this case have been approved for and who have committed to permanent residency in the United States—to never leaving the country for fear of prolonged detention or jeopardizing their legal status. As this Court recognized in *Vartelas*, treating returning LPRs as “seeking admission” imposes a “severe[] ... sanction” precisely because LPRs have long understood their status to allow travel abroad for the ordinary and essential activities of life. 566 U.S. at 267-268.

This Court has made clear that the liberty interests of LPRs do not vanish at the border. To the contrary, this Court has repeatedly rejected the premise that Congress intended, absent a clear statement, to attach drastic immigration consequences to routine travel by

LPRs. In *Vartelas*, for example, this Court refused to infer that Congress silently imposed retroactive travel restrictions that would expose LPRs to exclusion based on long-past conduct, merely because the LPR temporarily left the country. 566 U.S. at 273-275. And in *Landon v. Plasencia*, the Court emphasized that, although certain returning LPRs may be subject to formal admission procedures, they do not stand in the same position as first-time entrants with no prior connection to the United States. 459 U.S. 21, 32-33 (1982). This Court's decisions therefore confirm that an LPR's liberty interests are not temporary privileges that switch off once the LPR has traveled; they are continuing interests that accompany lawful permanent residency even when and after an LPR travels abroad.

**B. Short-Term Travel Is Essential To Family, Religious, And Other Personal Obligations**

Many LPRs have parents, siblings, spouses, or children who remain abroad, often because of years-long, or even decades-long, backlogs in the family-based immigration system.<sup>2</sup> Accordingly, funerals, births, and serious illness in the family are common among the myriad reasons LPRs travel internationally. *See, e.g., In re Morgan*, 2005 WL 3833046, at \*1 (BIA Nov. 16, 2005) (LPR detained and placed in removal proceedings after several short trips to visit ailing mother in St. Vincent); *In re Naturalization of Vafaei-Makhsos*, 597 F. Supp.

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<sup>2</sup> According to U.S. State Department figures, there were 3,773,401 people waiting in the family immigration backlog as of November 2023—with ever-increasing wait times for the approval of family-based visas. *See* U.S. Dep't of State, *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center as of November 1, 2023* (2023).

499, 499-501 (D. Minn. 1984) (LPR placed in exclusion proceedings after travel overseas for funeral). Other reasons LPRs may temporarily travel abroad include business travel, such as attending conferences or engaging in other business opportunities, *Zalawadia v. Ashcroft*, 371 F.3d 292, 295-296 (7th Cir. 2004); for educational reasons, such as studying abroad, *Li v. Chertoff*, 490 F. Supp. 2d 130, 131 (D. Mass. 2007); or simply to travel for leisure.

Free movement is essential to the ability of LPRs to maintain close family ties and fulfill religious and personal obligations. *See Vartelas*, 566 U.S. at 268 (“Loss of the ability to travel abroad is itself a harsh penalty, made all the more devastating if it means enduring separation from close family members living abroad.”); *see also Aptheker v. Secretary of State*, 378 U.S. 500, 519-520 (1964) (Douglas, J., concurring) (recognizing that the freedom to travel abroad is a basic liberty interest and that its denial can impose severe personal and familial hardship).

LPRs stand to lose the tremendous benefits of their lawful privilege of permanent residency status if the government’s position were accepted. In *Rosenberg v. Fleuti*, this Court warned against placing LPRs at the “mercy of the sport of chance” by attaching drastic immigration consequences to fleeting international travel. 374 U.S. 449, 460 (1963). There the Court rejected as “irrational” a regime in which an LPR could be rendered excludable for a condition that would not have made him deportable had he remained in the United States. *Id.* The government’s position today revives precisely the danger *Fleuti* identified: transforming the ordinary, often unavoidable travel that sustains families separated across borders and helps LPRs meet other personal, business, or religious

obligations, and rendering it into a high-stakes gamble where the price of stepping across the border, however briefly, risks the loss of their permanent residency status, prolonged detention, and possible expulsion based on mere suspicion.

## **II. CLASSIFYING RETURNING LPRs AS “SEEKING ADMISSION” BASED ON MERE SUSPICION OF PAST CRIMINAL CONDUCT SIGNIFICANTLY INTERFERES WITH THEIR STATUTORY RIGHT TO LIVE AND WORK IN THE COUNTRY PERMANENTLY AND OTHER STATUTORY PROTECTIONS CONGRESS ESTABLISHED IN THE INA**

The government’s practice of classifying returning LPRs as “seeking admission” without clear and convincing evidence of past criminal conduct unlawfully places LPRs in legal limbo. This approach is fundamentally at odds with Congress’s design that lawful permanent residency—defined in INA § 101(a)(20), 8 U.S.C. § 1101(a)(20) as a status that does not change absent proof—confers stability rather than vulnerability.

### **A. The INA Draws A Clear Distinction Between Inadmissibility And Deportability**

Placing an LPR in immigration limbo upon their return to the United States without concrete evidence, and based on conduct that would not trigger deportation had the resident remained in the country, is incompatible with the INA’s statutory framework governing lawful permanent residency. The INA establishes two distinct regimes, and the distinction is a critical one. Inadmissibility applies to individuals who are seeking entry at the border or who are otherwise treated as seeking admission. 8 U.S.C. § 1182(a). Deportability, by contrast, applies only after lawful admission into the United States and governs whether a

noncitizen who has already been admitted may be removed from the country. *Id.* § 1227(a). Further, given that the grounds of inadmissibility are broader in scope than grounds for deportability, certain convictions or conduct may trigger inadmissibility—but not deportability—as described below. Congress deliberately assigned different substantive standards and established distinct procedural regimes with “special procedures ... for the determination of whether or not an alien is subject to exclusion or deportation,” and making those procedures “the sole and exclusive ones in such matters.” *See* S. Rep. No. 82-1137, at 28 (1952). This structure reflects Congress’s judgment that admissibility and deportability serve different functions within the immigration system and are not interchangeable concepts. *See id.*

An LPR who remains in the United States with certain criminal allegations may not be removable at all if the alleged conduct does not fall within a ground of deportability. Yet under the government’s position, the same LPR who travels briefly abroad may be treated as “seeking admission,” charged as inadmissible under the broader CIMT ground, and placed in removal proceedings based on mere suspicion of having committed a CIMT. *See* Pet. App. 11a-15a; *see also* *Barton v. Barr*, 590 U.S. 222, 235-236 (2020) (explaining that inadmissibility and deportability operate independently). The government’s position is untenable and cannot be reconciled with the INA’s clear statutory distinction between inadmissibility and deportability.

**B. LPRs Face Immediate And Life-Altering Consequences That Are Incompatible With The INA If Labeled As “Seeking Admission” After Traveling Abroad**

By labeling LPRs as “seeking admission” *prior* to a determination of criminal conduct, the government disregards whether life-altering consequences for LPRs—who have not had their day in court—are warranted. For example, an LPR with a pending criminal charge may have the charge later dropped, dismissed, or deemed unsupported by actual evidence. Nevertheless, the consequences of “seeking admission” determinations are immediate and destabilizing for LPRs, stripping them of their green cards, subjecting them to prolonged or indefinite detention, and leaving them in uncertain legal limbo.

Once labeled as seeking admission, LPRs face cascading harms unrelated to any adjudicated criminal conduct, including inhibitions on their ability to work. For LPRs determined to be “seeking admission,” DHS routinely confiscates the LPR’s green card—their tangible proof of lawful permanent residency—and replaces it, if at all, with only a handwritten I-94 Arrival-Departure Card and a temporary I-551 stamp.<sup>3</sup> In Mr. Lau’s case, the government replaced a green card issued nearly five years earlier with a flimsy cardboard Form I-94 that bore handwritten notes and a stapled photograph, offering no indication it functioned as an I-551 except for a barely legible stamp. J.A. 6. These temporary documents frequently expire while removal

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<sup>3</sup> An Alien Documentation, Identification, and Telecommunication (“ADIT”) stamp, often called an “I-551 stamp,” is temporary proof of lawful permanent resident status issued by USCIS in a foreign passport or on a Form I-94.

proceedings linger for years, further undermining the exact rights LPRs have been granted in the United States.

Loss of concrete identification and proof of permanent residency imposes a host of barriers in everyday life for these noncitizens. Without reliable proof of identity and status, individuals may be unable to work, open bank accounts, secure housing, obtain health care or insurance, or enroll in school. Temporary or provisional identification exacerbates these harms by providing no durable assurance of lawful presence. For example, employers are frequently instructed to treat Form I-94s with I-551 stamps as short-term “receipts” rather than proof of permanent status. *See* USCIS, *Form I-9 Acceptable Documents – Receipts* (last visited Mar. 26, 2026). Furthermore, many LPRs find that it is difficult or effectively impossible to renew their temporary I-551 stamps prior to expiration. This leaves individuals repeatedly required to justify their status to employers, landlords, medical providers, and government officials. The resulting uncertainty undermines the ability of LPRs to work lawfully, plan for the future, or live settled lives, while simultaneously increasing their vulnerability to exclusion, error, and prolonged detention during routine encounters with authorities.

More troubling still, the government also asserts its authority to detain LPRs deemed seeking admission without bond under 8 U.S.C. § 1225(b), and to hold them—whether in detention or parole—for as long as the government wants to wait to see whether evidence of inadmissibility may later materialize. *See, e.g., Tineo v. Ashcroft*, 350 F.3d 382, 387 (3d Cir. 2003); *Moore v. Nielsen*, 2019 WL 2152582, at \*11 (N.D. Ala. 2019). An LPR charged with inadmissibility is subject to

mandatory detention under 8 U.S.C. § 1225(b) for the duration of any removal proceedings, with no entitlement to release on bond. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining that classification as seeking admission triggers detention under § 1225(b), rather than the detention regime applicable to noncitizens like LPRs who have already been deemed admitted under § 1226). By exploiting a gap between inadmissibility and deportability, DHS may detain a returning LPR—who would otherwise not be subject to mandatory detention even if deemed deportable had they remained in the United States—by classifying that individual as “seeking admission” at the border.

And to make matters worse, whether detained or paroled, LPRs like Mr. Lau may be kept in legal limbo for as long as the government chooses—often long past the expiration of any temporary proof of status. This framework allows the government to wait indefinitely to see whether evidence of actual inadmissibility might someday emerge, all while the LPR remains stripped of settled status, reliable documentation, and basic procedural protections.

Indeed, LPRs deemed to be “seeking admission” and charged with inadmissibility typically receive no assurances as to the length of their legal limbo while threshold legal questions are litigated. *See Jennings*, 583 U.S. at 299-300. For example, in *Azumah v. USCIS*, after a brief trip abroad, an LPR was classified as “seeking admission” under 8 U.S.C. § 1182(a)(2)(A)(i)(I) and spent four years in inadmissibility proceedings before ultimately pleading to the inadmissibility charge. 107 F.4th 272, 274 (4th Cir. 2024). The government’s position also allows detention of LPRs long after returning from overseas travel through mechanisms

such as deferred inspection or delayed initiation of proceedings. *See, e.g., Rosario v. Prindle*, 2011 WL 6942560, at \*1 (E.D. Ky. Nov. 28, 2011) (LPR placed in removal proceedings and detained almost three years after deferred inspection). And prolonged detention has been shown to exert pressure on individuals who may ultimately choose to succumb to the pressure and concede removability or abandon their defense. *Cf. Gomez-Zuluaga v. Attorney Gen. of U.S.*, 527 F.3d 330, 339 n.4 (3d Cir. 2008) (asylum seeker lifted stay of removal because detention was “affecting [her] physically and destroying [her] mentally”).

The government contends that parole mitigates these harms. *See* U.S. Br. 3 (describing parole as a “significant public benefit” that helps “both the LPR and the government”). But the plain text of the statute indicates otherwise—parole is only available for noncitizens who are “applying for admission,” 8 U.S.C. § 1182(d)(5)(A), and LPRs, by definition, have *already* been “lawfully admitted for permanent residence” and “shall not be regarded as seeking an admission” unless one of six enumerated exceptions apply, *id.* § 1101(a)(13)(C). Moreover, the government’s suggestion that parole can be a cure is inaccurate, because parole decisions are made unilaterally by DHS officers, are frequently denied, and are not subject to meaningful judicial review. *See* U.S. Br. 24-29. Even when granted, parole does not restore a noncitizen’s rights or status because it is a temporary measure that leaves the noncitizen in immigration limbo. *See Leng May Ma v. Barber*, 357 U.S. 185, 186 (1958) (concluding parole does not alter a noncitizen’s legal status as an excluded person nor does it place an individual “within the United States” for statutory protections). Parole therefore does not cure the underlying problem: an LPR

may remain legally classified as “seeking admission” subjecting them indefinitely to mandatory detention, loss of status, and diminished procedural rights, even while physically present in the country. The availability of discretionary parole cannot justify a statutory interpretation that creates an entire sub-class of LPRs stripped of their statutory and constitutionally protected rights.

**C. Treating LPRs As “Seeking Admission” Based On Unproven Suspicions Chills Travel And Undermines The Permanent And Stable Residency Status Congress Intended**

Lawful permanent residency is meant to provide stability and the freedom to live a settled life in the United States. *Landon*, 459 U.S. at 32-34; *see also* 8 U.S.C. § 1101(a)(20) (defining lawful permanent residency as “the status of having been lawfully accorded the privilege of residing permanently in the United States”). But when the government imperils that status based on the mere existence of an unproven criminal allegation, it converts permanent residency into a precarious and revocable privilege.

By turning routine international travel into a trigger for life-altering consequences, the government imposes concrete and substantial burdens on LPRs and their families, *see Wilson v. Gonzales*, 471 F.3d 111, 113, 117 (2d Cir. 2006), and the government’s mechanisms can function as punishment in effect well before any crimes have been adjudicated on the merits. *See Wong Wing v. United States*, 163 U.S. 228, 234 (1896). *Wilson*, for example, underscores the stakes of such a classification: after a brief trip abroad, an LPR was treated as “seeking admission” and inadmissible, and he was detained for over five years while questions regarding the propriety

of these determinations were litigated. 471 F.3d at 113-117. Once an LPR is designated as “seeking admission,” the expectations that define permanent residency give way to a regime marked by parole rather than admission, detention without bond, diminished access to relief, and prolonged legal uncertainty. *Vartelas*, 566 U.S. at 265-267; *Landon*, 459 U.S. at 32-34. This position undermines Congress’s evidentiary safeguards and imposes the most severe immigration penalties on LPRs before any alleged criminal conduct has been proven.

Recent reporting underscores how swiftly and severely these consequences can unfold once the government treats a returning LPR as “seeking admission” based on charges rather than convictions. In one account, a longtime LPR was detained upon returning to the United States based on decades-old misdemeanor charges that had already been dismissed, yet remained in a detention center for nearly two months before an immigration judge ultimately dismissed the government’s case in minutes.<sup>4</sup> In another account, an individual who had held LPR status since

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<sup>4</sup> Eil, *He Thought a Decade-Old Misdemeanor Was Behind Him. Then He Took a Vacation in Europe.*, N.H. Bull. (June 17, 2025); see also Keller Law Group, *Fabian Schmidt Freed: Attorney David Keller Secures Release After Two-Month ICE Detention*, (May 13, 2025). See generally *Communication to the U.N. Working Group on Enforced or Involuntary Disappearances*; *U.N. Working Group on Arbitrary Detention*; *U.N. Special Rapporteur on the Human Rights of Migrants*; *U.N. Special Rapporteur on Racism*; *U.N. Special Rapporteur on Torture*; & *U.N. Special Rapporteur on Truth, Justice and Reparation* (June 6, 2025) (summarizing hundreds of accounts of migrants detained by ICE and CBP without being entered in the ICE locator system or being allowed phone contact, including the case of a lawful permanent resident who was arrested at an airport, pressured to surrender his green card, and hospitalized after collapsing in custody).

2003 was detained after returning from Mexico, where he had traveled to scatter his mother's ashes. Upon returning to the United States, he was held for days before being transferred to ICE custody, all because he had been charged with a non-violent fraud charge that had been dismissed more than a decade earlier.<sup>5</sup> These accounts underscore how brief overseas travel can expose LPRs to inadmissibility-based detention notwithstanding their long-settled permanent residency status. Such outcomes also illustrate the folly of the government's approach, which exposes LPRs to diminished legal status, unnecessary detention, barriers to counsel, and profound personal and financial harm—not because of any adjudicated violation, but because they exercised their right to travel abroad.

### **III. ALLOWING IMMIGRATION OFFICERS TO CATEGORIZE LPRs AS “SEEKING ADMISSION” BASED ON MERE SUSPICION OF PAST CRIMINAL CONDUCT INVITES ARBITRARY OUTCOMES**

To determine whether an LPR has committed a designated offense under 8 U.S.C. § 1101(a)(13)(C)(v)—that is, a determination that the LPR has committed a crime involving moral turpitude—DHS bears the burden of proving by clear and convincing evidence that a returning LPR falls within the statutory exception that permits treating the LPR as “seeking admission.” *Matter of Rivens*, 25 I. & N. Dec. 623, 625 (BIA 2011); see also *Matter of Huang*, 19 I. & N. Dec. 749, 754 (BIA 1988). Practically speaking, that burden cannot be satisfied at a port of entry when the alleged conduct has not yet been established through a conviction or the

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<sup>5</sup> Mordowanec, *Man With Green Card for Over 20 Years Detained by ICE on Return to US—Wife*, Newsweek (June 17, 2025).

LPR's own admission of guilt. This is because a criminal charge standing alone does not meet the clear and convincing standard—indeed, it is not even evidence that the LPR has committed the charged crime. Treating an LPR as seeking admission based on unproven charges is analogous to conflating a criminal charge with guilt or conviction. This is inconsistent with the fundamental tenet of due process that absent conviction of a crime, one is presumed innocent. *See Nelson v. Colorado*, 581 U.S. 128, 135-136 (2017) (emphasizing criminal charges are not evidence of guilt, and a defendant is innocent until proven guilty).

But the government here would interpret 8 U.S.C. § 1101(a)(13)(C)(v) to mean that an immigration officer may (1) treat an LPR as “seeking admission” into the United States without a conviction or an admission of guilt, or any other actual proof of the basis for such a determination, and (2) reserve the right for DHS to retroactively establish that the LPR was “seeking admission” based on evidence that simply did not exist at the time the LPR sought re-entry. Such an approach invites arbitrary and inconsistent outcomes.

Allowing the government to meet its burden by pointing to mere criminal charges or other unproven allegations is a dangerously low bar with no defined stopping point. Under this approach, an officer could theoretically use arrest records, incident reports, or their subjective suspicion alone to treat an LPR as “seeking admission” into the United States. Based on the government's logic, an officer's suspicion may be justified by as little as an LPR's accent, tattoos, style of dress, race, national origin, and more.<sup>6</sup> The government

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<sup>6</sup> Indeed, recent immigration enforcement activity has shown an increased willingness to make stops or arrests on such meager

must meet a more meaningful threshold of proof—one that is consistent with the basic principles of due process.

The dangers of treating an LPR as “seeking admission” based on mere charges or other suspicions are further amplified when DHS relies on the possibility of a *subsequent* conviction to prove that an LPR was inadmissible at reentry. Under the government’s approach, prematurely treating an LPR as having committed a CIMT would be justified if there is some chance that the LPR might later be convicted. This wait-and-see approach transforms suspicion of a CIMT into a retroactive determination of clear and convincing evidence. Such an approach effectively eviscerates the clear and convincing standard entirely.

By paroling Mr. Lau into the United States based on a pending charge, the immigration officer unlawfully reserved the right for DHS to meet its evidentiary burden later—even if that decision was initially based on little to no evidence at all. The government should not be able to prove, in hindsight, that an immigration officer had clear and convincing evidence of a designated offense, when, at the time, there was none.

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grounds. *See, e.g.*, CNN Newsource Staff, *Border Patrol Agent Detains US citizen, Tells Him it’s ‘Because of Your Accent’* Fox 12 Oregon (Jan. 18, 2026) (CBP detaining US citizen “because of [his] accent”); Rios, *14-Year-Old Girl Detained by Federal Agents is Released ON Judge’s Orders*, WBUR News (Mar. 12, 2026) (discussing fourteen-year-old child detained by ICE based on suspicion that other passengers in car were gang affiliated).

**IV. WITH FUNDAMENTAL RIGHTS AT RISK, THE COURT SHOULD RESOLVE ANY DOUBTS ABOUT THE MEANING OF THE STATUTES AT ISSUE BY APPLYING THE CANONS OF CONSTITUTIONAL AVOIDANCE AND STRICT CONSTRUCTION**

The Court’s recent decision in *Loper Bright Enterprises v. Raimondo* emphasizes the judiciary’s role in resolving statutory ambiguity by deploying a broad range of statutory construction tools. *See* 603 U.S. 369, 401 (2024) (“The very point of the traditional tools of statutory construction—the tools courts use every day—is to resolve statutory ambiguities.”). Application of courts’ independent judgment to arrive at the best reading of a statute is particularly critical, absent the deference previously given agencies under *Chevron*. *Id.* at 400-401 (“[A]gencies have no special competence in resolving statutory ambiguities. Courts do.”).

Courts should therefore apply a full range of statutory interpretation tools to ensure that those enacting and enforcing immigration laws are clear about the scope of restrictions and penalties they are imposing. Morawetz, *Strict Construction of Deportation Statutes After Loper Bright*, 100 N.Y.U. L. Rev. 1, 21 (2025). Here, the Court should apply the canon of constitutional avoidance to eschew an interpretation of the INA that unnecessarily infringes on the fundamental right to travel. Any remaining ambiguity in how to interpret the statutory text should be resolved in accordance with the rule of strict construction of deportation statutes.

**A. This Court Should Interpret The INA To Avoid Serious Constitutional Concerns**

When questions about a statute’s constitutionality are raised—such as whether a statute burdens the right to travel freely—courts must interpret the statute in a

way that avoids unnecessary constitutional restraints. *United States v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909) (“[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.”).<sup>7</sup> This canon of constitutional avoidance is based on the guiding principle that Congress did not intend a statutory construction that raises “serious constitutional doubts.” *Clark v. Martinez*, 543 U.S. 371, 381 (2005).

In accordance with this principle, this Court has a long tradition of construing immigration statutes to avoid serious constitutional problems, including in cases that implicate the constitutional rights of noncitizens. For example, in *Yamataya v. Fisher*, this Court interpreted the Immigration Act of 1891 to require notice and a hearing before the deportation of a noncitizen, even though the statute did not explicitly require so. 189 U.S. 86, 100-101 (1903). The Court held that denying a noncitizen notice and hearing violated the principle that “no person shall be deprived of his liberty

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<sup>7</sup> See Fish, *Constitutional Avoidance as Interpretation and as Remedy*, 114 Mich. L. Rev. 1275, 1282-1283 (2016) (describing two approaches to the constitutional-avoidance canon: classic avoidance and modern avoidance). Under classic avoidance, if a statute has two possible interpretations, one that renders the statute unconstitutional and one that renders the statute valid, the court’s “plain duty” is to adopt the valid construction. *Blodgett v. Holden*, 275 U.S. 142, 148 (1927) (Holmes, J., concurring) (per curiam). The approach requires a court to determine that the disfavored reading would actually be unconstitutional. Modern avoidance, by contrast, does not require the court to find a disfavored reading unconstitutional. It is enough that the reading raises “grave constitutional questions.” *Delaware & Hudson Co.*, 213 U.S. at 408.

without opportunity, at some time, to be heard.” *Id.* at 101. When administrative officers carry out “the provisions of a statute involving the liberty of persons,” they “[cannot] disregard the fundamental principle that inhere in ‘due process of law’ as understood at the time of the adoption of the Constitution.” *Id.* at 100. Therefore, to interpret the statute in “harmony with the Constitution,” the Court found the text to implicitly require procedural due process safeguards for noncitizens in removal proceedings. *Id.* at 101.

The Court adopted similar reasoning when presented with the question of the government’s burden of proof in deportation proceedings. In *Woodby v. INS*, the Court read an immigration statute to require clear and convincing evidence to prove an LPR’s deportability—rather than a mere preponderance of the evidence. 385 U.S. 276, 285-286 (1966). Given the “drastic deprivations” of deportability, the Court found construing the statute to allow a lower burden of proof would raise due process concerns. *Id.* at 285. To avoid raising the constitutional issues inherent in allowing the government to deport noncitizens based on a mere preponderance of evidence, the Court mandated a higher evidentiary burden. *Id.* (explaining that although “a deportation proceeding is not a criminal prosecution,” a noncitizen cannot be “banished from this country upon no higher degree of proof than applies in a negligence case”).

In *Zadvydas v. Davis*, the Court similarly invoked the principle of constitutional avoidance because the indefinite detention of noncitizens with removal orders posed a “serious constitutional threat.” 533 U.S. 678, 699-700 (2001). The Court ruled that “read in light of the Constitution’s demands,” the INA implicitly limited a noncitizen’s detention to a “period reasonably

necessary” to initiate removal proceedings. *Id.* at 689. In doing so, the Court avoided raising the “serious constitutional problem” of a statute that potentially permitted indefinite detention. *Id.* at 690.

In applying the canon of constitutional avoidance, the Court considers whether application of a particular statutory interpretation would raise serious constitutional doubts. *See Jennings*, 583 U.S. at 286 (“[W]hen statutory language is susceptible of multiple interpretations, a court may shun an interpretation that raises serious constitutional doubts and instead may adopt an alternative that avoids those problems”).<sup>8</sup> In *Mr. Lau’s* case, the government’s construction of the INA raises such doubts. By allowing immigration officers to treat LPRs as “seeking admission” without

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<sup>8</sup> In *Jennings*, while the Court confirmed the vitality of the canon of constitutional avoidance, the Court found that the Ninth Circuit applied it incorrectly to read a six-month limit into sections of the INA that allowed for detention without bond. 583 U.S. at 298. Writing for the Court, Justice Alito held that the canon only applies if “after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction.” *Id.* at 296. The Court held that the Ninth Circuit adopted an implausible interpretation of the statutory text by grafting a six-month requirement when nothing in the text “even hint[ed]” to such a limitation. *Id.* at 298. *Jennings* is distinguishable from the case at hand. Here, unlike the Ninth Circuit’s analysis in *Jennings*, the Second Circuit did not rewrite the statutes at issue. Instead, it anchored its analysis in 8 U.S.C. § 1101(a)(13)(C)(v), which provides an LPR is not regarded as “seeking admission” unless the government establishes that the resident has *committed* a crime involving moral turpitude. Moreover, the Second Circuit followed uncontested BIA precedent that establishes the government must prove an 8 U.S.C. § 1101(a)(13)(C) exception by clear and convincing evidence. *Rivens*, 25 I. & N. Dec. at 625. The Second Circuit’s analysis offers a plausible interpretation of the INA that is grounded in the statutory text.

proof of an alleged offense at the time of entry, LPRs may be exposed to serious immigration consequences such as the loss of reliable proof of LPR status, detention without bond, and removal proceedings. Because LPRs may respond by limiting or foregoing even necessary travel to avoid those risks, the government's interpretation raises constitutional concerns. However, an alternative interpretation exists. The INA specifies that when an LPR travels abroad and returns home, they shall not be regarded as "seeking admission" into the United States unless they meet one of six enumerated exceptions. 8 U.S.C. § 1101(a)(13)(C). The BIA has determined that DHS "bears the burden of proving by clear and convincing evidence that a returning [LPR] is to be regarded as seeking admission." *Rivens*, 25 I. & N. Dec. at 625. By requiring DHS to prove that an exception applies at the time of re-entry, this Court can avoid construing the INA in a way that chills the right to travel. *See supra* Section I.A. In light of this alternative, the Court should employ constitutional avoidance.

**B. This Court Should Resolve Any Remaining Ambiguity In The Statutes At Issue To Avoid The Harsh Sanction Of Deportation**

The rule of strict construction requires courts to resolve ambiguities in deportation statutes in favor of the noncitizen in order to limit the sanction of deportation where not expressly authorized by the statutory text. This Court first articulated this rule and its presumption against deportation in *Fong Haw Tan v. Phelan*:

To construe this statutory provision less generously to the [noncitizen] might find support in logic. But 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.

333 U.S. 6, 10 (1948).

In *Fong Haw Tan v. Phelan*, an LPR was convicted of two murders in a single indictment and trial. 162 F.2d 663, 664 (9th Cir. 1947), *rev'd*, 333 U.S. 6 (1948). Under then-applicable law, the LPR was deportable if he had been “sentenced more than once” for a crime involving moral turpitude. However, circuit courts were split in how to interpret “sentenced more than once.” 333 U.S. at 8. The Ninth, Second, and Fourth Circuits read the phrase to turn on the number of distinct offenses—not the form of indictment or trial. *See, e.g., Nishimoto v. Nagle*, 44 F.2d 304, 306 (9th Cir. 1930); *Johnson v. United States ex rel. Pepe*, 28 F.2d 810, 811 (2d Cir. 1928); *Tassari v. Schmucker*, 53 F.2d 570, 573 (4th Cir. 1931). The Fifth Circuit, on the other hand, required a second offense committed after sentencing and punishment for the first. *Wallis v. Tecchio*, 65 F.2d 250, 251-252 (5th Cir. 1933). Confronting that split, this Court unanimously adopted the Fifth Circuit’s construction “because deportation is a drastic measure and at times the equivalent of banishment o[r] exile.” *Fong Haw Tan*, 333 U.S. at 10. In its decision, the Court emphasized that given the severe consequences of deportation, ambiguity in deportation statutes should be construed in favor of the noncitizen. This acts as a check against the harsh and life-altering consequences of removal.

This Court has subsequently reaffirmed the presumption against deportation in the face of statutory

ambiguity. In *Barber v. Gonzales*, for example, this Court invoked this presumption to interpret the term “entry” under the Immigration Act of 1917. 347 U.S. 637, 642-643 (1954). In particular, the Court interpreted “entry” to require an arrival from a foreign port or place, establishing that a noncitizen’s return from a place under United States jurisdiction (such as the Philippines prior to the Philippine Independence Act of 1934) did not constitute a new “entry” for purposes of a deportation statute. *Id.* at 641-642. While the Court acknowledged the common usage of the word “entry” to mean “coming from outside,” it referenced the rule of strict construction to construe the statutory language narrowly. *Id.* at 641-643. Echoing *Fong Haw Tan*, the Court emphasized that deportation provisions “should be strictly construed.” *Id.* at 643 (“Although not penal in character, deportation statutes as a practical matter may inflict ‘the equivalent of banishment o[r] exile.’”) (citing *Fong Haw Tan*, 333 U.S. at 10). In *Sessions v. Dimaya*, the Court similarly invalidated the INA’s residual clause as unconstitutionally vague, noting the “particularly severe penalty” of deportation and reinforcing the need for clear statutory lines in this context. 584 U.S. 148, 157 (2018). The Court rejected the government’s argument that deportation laws, which are civil rather than criminal, are not subject to the vagueness doctrine and are subject to a less stringent vagueness inquiry. Instead, the Court applied the void for vagueness doctrine equating deportation to “banishment” or “exile.” *Id.*

Implicit in these cases is the need to give noncitizens clarity about the harsh consequences of deportation statutes. In *INS v. St. Cyr*, the Court considered whether changes to deportation laws could retroactively cut off relief for noncitizens with past criminal

convictions. 533 U.S. 289, 321 (2001).<sup>9</sup> In concluding that Congress must explicitly articulate its intention to retroactively remove discretionary waivers for certain LPRs, the Court invoked the rule of strict construction. *Id.* at 320. The Court reasoned that the “presumption against retroactive application of ambiguous statutory provisions, buttressed by ‘the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the [noncitizen]’” foreclosed the conclusion that new legal consequences could attach to noncitizens with prior conviction. *Id.* (citing *INS v. Cardoza-Fonesca*, 480 U.S. 421, 449 (1987)); *see also INS v. Errico*, 385 U.S. 214, 225 (1966) (“[T]o give meaning to the statute in the light of its humanitarian purpose of preventing the breaking up of families composed in part at least of American citizens, the conflict between the circuits must be resolved in favor of the [noncitizen].”); *Costello v. INS*, 376 U.S. 120, 128 (1964) (emphasizing the Court was “constrained by accepted principles of statutory construction in this area of the law to resolve that doubt in favor of the [noncitizen]”).

This Court has repeatedly recognized deportation as a harsh sanction. For LPRs who have spent decades building their lives in the United States, the consequences of such a sanction are even more severe. Given the stakes, this Court should construe

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<sup>9</sup> Enrico St. Cyr was a citizen of Haiti who was admitted as an LPR to the United States in 1986. *St. Cyr*, 533 U.S. at 293. Ten years later, St. Cyr pled guilty to a criminal charge that made him deportable. *Id.* At the time of his plea, he was eligible for a waiver of deportation. *Id.* St. Cyr’s removal proceedings, however, began after sweeping changes to immigration laws were enacted in 1997. *Id.* These changes suggested St. Cyr was no longer eligible to apply for a waiver of deportation and so, the government claimed St. Cyr had no defense to deportation. *Id.*

8 U.S.C. §§ 1182(a)(2)(A)(i)(II) and 1101(a)(13)(C)(v) narrowly. Doing so will not only avoid an interpretation that imposes the drastic penalty of deportation, but will also honor the long-recognized freedom of movement and right to travel that come with the privileges of lawful permanent residency in the United States.

**CONCLUSION**

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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