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 THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION AND THE AMERICAN IMMIGRATION COUNCIL AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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BRIEF OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION AND THE AMERICAN IMMIGRATION COUNCIL AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

INTEREST OF *AMICI CURIAE*[1]

The American Immigration Lawyers Association ("AILA"), founded in 1946, is a national, non-partisan, non-profit association with more than 18,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to promote justice, advocate for fair and reasonable immigration law and policy, and advance the quality of immigration and nationality law and practice. AILA's members practice regularly before the Department of Homeland Security, immigration courts and the Board of Immigration Appeals, as well as before the U.S. Courts of Appeals and the Supreme Court.

The American Immigration Council ("Council") is a non-profit organization that strives to strengthen the United States by shaping immigration policies and practices through innovative programs, cutting-edge research, and strategic legal and advocacy efforts grounded in evidence, compassion, justice, and fairness. The Council regularly litigates and advocates around issues involving immigration detention and

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[1] Pursuant to this Court's Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

appears as amicus curiae before the U.S. Courts of Appeals and the Supreme Court.

SUMMARY OF ARGUMENT

Under the Immigration and Nationality Act, the government's ability to parole a noncitizen ends where the right to admission begins; the two statuses are mutually exclusive legal categories, not a menu of options for administrative convenience. DHS can only parole noncitizens who could be otherwise charged with inadmissibility under 8 U.S.C. § 1182. Mr. Lau could not have been charged with inadmissibility at the time he sought reentry because he had neither been convicted of a crime involving moral turpitude ("CIMT") nor admitted to committing such an offense. DHS thus lacked the authority to parole him even assuming he otherwise qualified as an applicant for admission. If DHS could parole noncitizens who were otherwise admissible, nothing would prevent it from paroling *every* noncitizen who would otherwise be admitted, thereby undermining the entire statutory scheme.

The INA, its legislative history, and the historical record confirm that parole is reserved for noncitizens facing inadmissibility determinations. Parole and admission are fundamentally different concepts with dramatically different legal and practical consequences. The government affords more robust procedural and substantive due process protections to noncitizens who are admitted than those who are paroled. By paroling admissible noncitizens like Mr. Lau, the Government seeks to bypass these protections and contravene the longstanding purpose of parole.

The Government's claim that parole is necessary to ensure a Lawful Permanent Resident's ("LPR") presence for trial is not credible, as LPRs already possess a statutory right to reside in the United States and parole is unnecessary for LPRs to attend court proceedings or organize their criminal defense.

The Government's contention that DHS's discretion in this area is not subject to judicial review is equally mistaken. The scope of DHS's parole authority is a pure question of law subject to judicial and administrative review. The Board of Immigration Appeals and federal courts must ensure that DHS does not bypass the carefully crafted statutory scheme and the protections that LPR status affords.[2]

ARGUMENT

I. UNDER THE INA, PAROLE IS RESERVED FOR NONCITIZENS WHO COULD BE CHARGED WITH INADMISSIBILITY.

Under the INA, parole is narrow in scope, allowing an otherwise inadmissible noncitizen to physically enter the United States temporarily without being formally admitted. *See* 8 U.S.C. § 1182(d)(5)(A). While the Second Circuit reached the correct result in this case, it overlooked a separate reason why DHS lacked authority to parole Mr. Lau when he sought to reenter the country: Mr. Lau was not inadmissible at the time he sought reentry because he had neither been convicted of a CIMT nor admitted committing

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[2] In addition to the specific issues discussed in this brief, *amici* agree with and support the arguments presented by Respondent. To avoid duplication of arguments and to assist the Court, this brief focuses on the history and purpose of parole and the Government's impermissible use of parole on admissible noncitizens.

such an offense. 8 U.S.C. § 1182(a)(2)(A)(i). DHS thus lacked the authority to parole him even if it possessed clear and convincing evidence that he had, in fact, committed the offense in question. Permitting DHS to parole noncitizens who are otherwise admissible contravenes the INA's text, purpose, and history and erodes the entire statutory scheme.

A. The History and Legislative Purpose of Parole Confirm That It Applies Only to Noncitizens Who Could Be Charged with Inadmissibility.

For over a century, parole has functioned as an "administrative device of long standing" used specifically to "permit inadmissible aliens" to come into the country. *Matter of R-*, 3 I. & N. Dec. 45, 46 (BIA 1947). The very concept of parole has long "presuppose[d] that [the applicant] is inadmissible, otherwise he should be admitted, *not* paroled." *Matter of B-*, 2 I. & N. Dec. 172, 176 (BIA 1944) (emphasis added).

When Congress codified parole in the INA seventy-plus years ago, it was meant to be used solely for noncitizens who could otherwise be charged with inadmissibility. The House Judiciary Committee "concluded that failure by an alien to meet the strict qualitative tests will disqualify him for admission to the United States," except in an emergency case and "surrounded with strict limitations." H.R. Rep. No. 82-1365, at 1705 (1952). The Senate Judiciary Committee likewise acknowledged that parole cases "will continue to rise where there are extenuating circumstances which justify the temporary admission of *otherwise inadmissible*" noncitizens. S. Rep. No. 82-1137, at 12 (1952) (emphasis added). Accordingly,

Congress vested discretionary authority in the Attorney General "to parole into the United States temporarily *otherwise inadmissible*" noncitizens for emergency and public interest reasons, such as to be a witness or for purposes of prosecution. *Id.* (emphasis added); *see also* H.R. Rep. No. 82-1365, at 1706.

This Court affirmed that narrow view in *Leng May Ma v. Barber*, 357 U.S. 185 (1958). There, the Court explained that "parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are being conducted." *Id.* at 190. Parole is the "humane" equivalent of detention for a person who "could not lawfully have landed in the United States" and whose "right to enter" is in question. *Id.* at 189, 190. Granting the petitioner in that case the benefits she sought, the Court continued, would likely lead the government to more often choose detention instead of parole—a result "inconsistent with the congressional mandate [and] the administrative concept of parole." *Id.* at 190. In other words, as the Court made plain, parole presupposes that the noncitizen would otherwise be detained pending resolution of an inadmissibility charge. It is not a mechanism for bypassing the standard admission process for those who are otherwise eligible for admission.

Following this lead, the circuit courts have consistently described parole as a tool for noncitizens who are "otherwise inadmissible." As the Third Circuit explained in *Moret v. Karn*, 746 F.2d 989, 990 (3d Cir. 1984), parole "does not grant [an] alien legal residence," but instead serves as "temporary harborage" for those who are "otherwise inadmissible." *See also Gazeli v. Sessions*, 856 F.3d 1101, 1104 (6th Cir.

2017); *Succar v. Ashcroft*, 394 F.3d 8, 14 (1st Cir. 2005); *Holley v. Lavine*, 553 F.2d 845, 851 (2d Cir. 1977); *Parole*, Black's Law Dictionary (12th ed. 2024) ("The temporary release of an inadmissible alien into the United States.").

The Government's own guidance mirrors this historical understanding. For example, Customs and Border Protection guidance states that parole may be "granted to a foreign national (who is otherwise inadmissible) to temporarily enter the United States." U.S. Customs and Border Protection, Humanitarian Parole (Nov. 4, 2025); *see also* DHS, Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611 (Mar. 25, 2025) (describing DHS's "narrow discretionary authority to parole inadmissible aliens"); Fact Sheet, Bureau of Population, Refugees, and Migration, U.S. Dep't of State and U.S. Dep't of Homeland Sec., In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras With Parents Lawfully Present in the United States (Nov. 14, 2014), available at https://2009-2017.state.gov/j/prm/releases/factsheets/2014/234067.htm (last visited Mar. 10, 2026) (describing parole as a "mechanism to allow someone who is otherwise inadmissible to come to the United States for urgent humanitarian reasons or significant public benefit").

The Government may point to *Matter of K-*, 9 I. & N. Dec. 143 (BIA 1959; A.G. 1961) and *Matter of Valenzuela-Felix*, 26 I. & N. Dec. 53 (BIA 2012), to argue that admissible noncitizens can be paroled for prosecution. But those cases are distinguishable, inconsistent with other ruling authorities, and were

themselves deeply contested. *In Matter of K-*, the Attorney General reversed the BIA and approved the exclusion of an LPR who had been paroled for prosecution of diamond smuggling charges. *Id.* at 154–58. Critically, *Matter of K-* was decided before this Court's decision in *Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963), which established that innocent, casual, and brief departures by LPRs would not subject them to the consequences of an "entry" upon return.

Additionally, the Attorney General's reversal of the BIA was in tension with the BIA's earlier decision in *Matter of B-*, 2 I. & N. Dec. at 176, which established that parole "presuppose[d] that [the applicant] is inadmissible, otherwise he should be admitted, not paroled." The Attorney General made no attempt to engage with or distinguish *Matter of B-*, a decision that predated Congress's codification of parole in the INA in 1952. And as mentioned, in codifying parole within the INA, Congress adopted the principle established in *Matter of B-*, expressly intending parole to serve as a narrow mechanism for "inadmissible" noncitizens.

Matter of Valenzuela-Felix relies heavily on *Matter of K-* for the proposition that admissibility is a continuing inquiry that can be resolved at the time of a removal hearing rather than at the border. 26 I. & N. Dec. at 59–60. But *Valenzuela-Felix* was itself contested: The concurring and dissenting opinion concluded that the majority impermissibly created a "third category" of returning LPR who is neither admitted nor deemed inadmissible, but "who, instead, is paroled . . . and may or may not subsequently be charged, tried, and convicted of a [CIMT], . . . and found to be inadmissible at a later removal hearing

based on whether or not [a] conviction has, in fact, occurred." *Id.* at 68 (Cole, J. concurring and dissenting). Moreover, the cases the majority cited do not demonstrate an established practice of paroling admissible noncitizens—with one or two possible exceptions, the cases on which the majority relied involved noncitizens who were clearly inadmissible at the time of arrival, not noncitizens who were otherwise admissible. *See Matter of Badalamenti,* 19 I. & N. Dec. 623, 626–27 (BIA 1988) (extradition and parole of inadmissible noncitizen for prosecution); *Matter of Accardi*, 14 I. & N. Dec. 367, 368 (BIA 1973) (extradition and parole of previously deported noncitizen for prosecution); *Matter of Alvarez-Verduzco*, 11 I. & N. Dec. 625, 626–27 (BIA 1966) (parole of returning LPR found to be smuggling heroin at port of entry and charged as excludable as drug addict though ultimately excluded based on subsequent conviction).

Throughout its history, parole has been used as a "temporary harborage" to permit the entry of noncitizens whom the government otherwise regards as inadmissible; it was never contemplated as a mechanism to bypass the standard admission processes for those already eligible for admission. If DHS could parole noncitizens who were otherwise admissible as the Government suggests, nothing would prevent it from paroling *every* noncitizen who would otherwise be admitted. Such conduct would render the entire statutory scheme meaningless.

B. The INA's Text and Structure Require Parole to Be Reserved for Those Who Cannot Be Admitted.

While 8 U.S.C. § 1182(d)(5)(A) facially permits parole of "any alien applying for admission," this language must be read in harmony with the INA's admission framework.

The INA deliberately distinguishes "admission" from "parole." Congress defined "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer," and separately provided that "an alien who is paroled into the United States . . . shall not be considered to have been admitted." 8 U.S.C. § 1101(a)(13)(A), (B). Permitting DHS to parole admissible noncitizens would effectively collapse that distinction. Effect must be given to both provisions: Parole is limited to situations where an otherwise inadmissible individual needs to enter the country for a particular purpose (e.g., to serve as a witness in a judicial proceeding); admission is required for those who meet the requirements for lawful entry.

The statute's structure reinforces this reading. Section 1225 governs inspection of "applicants for admission" and prescribes what follows. If an arriving noncitizen is "clearly and beyond a doubt entitled to be admitted," the statute directs admission; if not, the statute routes the person to further processing. *See* 8 U.S.C. § 1225(a), (b). Within that scheme, section 1182(d)(5)(A)'s parole authority operates as a narrow, temporary tool to manage otherwise-inadmissible cases—not as a freestanding license to displace admission outcomes. Allowing DHS to parole those "clearly and beyond a doubt" entitled to admission—

rather than admitting them outright—would invert section 1225's default rule and allow DHS to end-run the statute's admission policies entirely.

Other INA provisions confirm that parole is intended for individuals lacking a legal right to enter, not a discretionary alternative for those who should otherwise be admitted. For example, section 1184(f)(1) renders certain vessel crewmen inadmissible during labor disputes, and section 1184(f)(2)(A) then strips DHS of parole authority for those same individuals in that section. This structure fits within the framework that parole applies to inadmissible persons: Congress understood that parole could otherwise be available for these inadmissible crewmen and therefore acted to preclude its use in this specific context.

Additionally, section 1182(d)(5)(B) explicitly limits the government's ability to parole refugees. This provision was enacted as part of the Refugee Act of 1980, which sought to replace widespread parole of inadmissible refugees with a new system under which refugees would be admitted rather than paroled. *See Amanullah v. Nelson*, 811 F.2d 1, 12–13 (1st Cir. 1987). Congress accordingly sharply limited the availability of parole for refugees. While Congress concluded that it should not entirely extinguish the government's ability to use the parole power "as an informal vehicle to assure the admission of refugees," the legislative record is emphatic that Congress intended that leeway to have no impact on the limited scope of parole authority outside of the refugee context. *Id.* at 12.

Thus, the Government's claims of sweeping and unreviewable authority to parole rather than admit

noncitizens at the ports of entry, Pet. Br. at 20–22, are belied by the long-recognized parole prerequisite—a belief that the noncitizen is inadmissible. If DHS is permitted to parole admissible noncitizens, nothing would stop it from substituting parole for the standard admission process in every case. This interpretation cannot stand.

II. THE GOVERNMENT'S JUSTIFICATIONS FOR PAROLING MR. LAU ARE LEGALLY UNSOUND AND CONTRADICT THE STATUTORY SCHEME.

The Government suggests that parole is necessary to manage returning LPRs with pending legal issues. Pet. Br. at 20–21. This argument is misguided. Parole is unnecessary for the prosecution of LPRs, who can be prosecuted after they are admitted.

A. Mr. Lau Was Not Inadmissible Upon His Return to the United States.

Mr. Lau was not inadmissible because he had neither confessed to nor been convicted of a CIMT.

Congress provided that only individuals who admit committing or who are "convicted of" a CIMT are inadmissible. 8 U.S.C. § 1182(a)(2)(A)(i). But this provision does not apply to individuals who are merely charged with committing a CIMT (and do not admit to having done so). As mentioned, at the time of Mr. Lau's reentry, he had not been convicted of a CIMT, nor had he admitted to committing one. *See* Pet. Br. at 21–22. Thus, under the statute, Mr. Lau should have been properly admitted into the country.

B. Paroling Mr. Lau Was Unnecessary Even Under the Government's Own Rationale.

The Government relies on legislative history to argue that it has the authority to grant parole for the "purposes of prosecution." Pet. Br. at 37–38. The Government fails to acknowledge that the legislative history of the INA confirms that parole was intended to allow the temporary admission of *otherwise inadmissible* noncitizens so they could be prosecuted—because without parole, prosecution could not occur. For instance, Congress discussed giving the Attorney General discretionary authority to parole inadmissible individuals "into the United States in emergency cases" such as "where it is strictly in the public interest to have an inadmissible alien present in the United States." *Joshi v. INS*, 720 F.2d 799, 804 n.7 (4th Cir. 1983) (quoting H.R. Rep. No. 82-1365, at 52 (1952)). In explaining what could potentially be "in the public interest," Congress expressly gave the example of "for purposes of prosecution." *Id.* That rationale does not apply to LPRs, as they already possess the statutory right to reside in the United States. 8 U.S.C. § 1101(a)(20). Simply put, parole is unnecessary for an LPR to be prosecuted within the United States.

The Government argues that parole allows the government to "enable [the LPR's] presence for the criminal trial" and that it allows the LPR to "organize his criminal defense from inside the United States." Pet. Br. at 3, 39. There is no need to parole returning LPRs who have pending criminal charges. If the Government wants a returning LPR to be prosecuted for

a pending criminal charge, they may do so without resorting to parole. They could simply allow the returning LPR to reenter the country, just as it would a U.S. citizen subject to pending charges. LPRs already have these rights, so parole is unnecessary in these situations. By contrast, paroling an otherwise inadmissible noncitizen for purposes of prosecution provides a "significant public benefit," 8 U.S.C. § 1182(d)(5)(A), because trials generally cannot take place in the defendant's absence, *see, e.g.*, Fed. R. Crim. Pro. 43(a) (noting a defendant's required presence in criminal procedures).

Next, the Government argues that without parole, it would have an incentive to initiate removal proceedings immediately. Pet. Br. at 39. But that makes no sense under governing law, either. When initiating removal proceedings, federal law requires the government to provide noncitizens with a formal "notice to appear" which includes "[t]he charges against the alien and the statutory provisions alleged to have been violated." 8 U.S.C. § 1229(a)(1)(D). Because Mr. Lau was not inadmissible at the time of his reentry, the government would not have been able to comply with this statutory requirement. He could not be charged as inadmissible because he was not inadmissible. The Government cannot bring removal proceedings against noncitizens who are not removable. In short, the Government's argument that parole helps LPRs and disincentives the government from starting an immediate removal proceeding is disingenuous and constitutionally unsound in situations where an individual has been charged but not convicted of a CIMT.

* * *

We agree with Respondent that he was not "seeking . . . admission" within the meaning of section 101(a)(13)(C). But even if Respondent could have been regarded as seeking admission, he was entitled to admission, and thus the statute required him to be admitted to the United States rather than paroled. Holding otherwise contravenes the INA's text, purpose, and structure. As this Court has cautioned, it should be "reluctant to impute to the Congress" an intent to permit such manipulation of the statutory framework. *See Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958).

III. FEDERAL APPELLATE COURTS AND THE BOARD MUST REVIEW DHS'S AUTHORITY TO PAROLE ADMISSIBLE NONCITIZENS LIKE MR. LAU.

Contrary to the Government's contention (Pet. Br. at 25), federal courts have clear authority to review a definitive question of law, namely, the scope of agency authority. The Government's attempt to reframe the question as an unreviewable factual question fails for multiple reasons. This Court granted review of a question on the scope of an agency's power, which is "the occasion on which abdication in favor of the agency is *least* appropriate." *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 401 (2024). Appellate courts have a "virtually unflagging obligation" to review of questions of law before them, *Mata v. Lynch*, 576 U.S. 143, 150 (2015), which include issues embedded in final removal decisions, *Nasrallah v. Barr*, 590 U.S. 573, 579–82 (2020). Similarly, the Board has appellate power to review questions of law in appeals before it, and its determinations are "controlling" over decisions by DHS. 8 U.S.C. § 1103(a)(1).

A. The Scope of DHS's Authority Is a Classic Reviewable Question of Law.

As the Government acknowledges, Pet. Br. at 25, federal appellate courts retain jurisdiction to review even otherwise unreviewable discretionary decisions in removal proceedings when they present "constitutional claims or questions of law." 8 U.S.C. § 1252(a)(2)(D). This Court has "'consistently applied' the presumption of reviewability to immigration statutes," holding that this section includes "application of law to established facts" appropriate for federal appellate review. *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229, 230 (2020). And questions of an agency's authority are generally questions of law because "judges, rather than lay juries, are better equipped to evaluate the nature and scope of an agency's determination." *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 316 (2019). Moreover, as the Court recently clarified in *Loper Bright*, deference is particularly inappropriate when "the ambiguity is about the scope of an agency's own power." 603 U.S. at 401. The Court has emphasized that "this Court has so long applied a strong presumption favoring judicial review of administrative action" because otherwise "compliance with the law would rest in the [agency]'s hands alone" and the inevitable "legal lapses and violations occur, and especially so when they have no consequence." *Mach Mining v. EEOC*, 575 U.S. 480, 488–89 (2015).

Here, the question is squarely legal: whether DHS can parole a noncitizen to whom it would otherwise have no basis to deny admission—such as an LPR who has been charged with committing a CIMT, but who has neither been convicted of nor admitted to committing such an offense. The holdings below make clear

that this is a pure legal question. As the Second Circuit noted, "we are presented with the question of *whether* DHS may parole an LPR at the border who has been charged with – but not yet convicted of – a CIMT." *Lau v. Bondi*, 130 F.4th 42, 47 (2d Cir. 2025) (emphasis added). The court further explained it was reviewing the IJ's "legal conclusions – including whether a petitioner was properly treated as an arriving alien applying for admission." *Id.* at 46. The Board, for its part, reviewed the question whether "it is *permissible* for the DHS to rely on a later conviction resulting from that prosecution as proof in subsequent removal proceedings that the respondent was an applicant for admission under section 101(a)(13)(C)(v)." BIA Order at 5 (emphasis added). The questions presented below go to the heart of DHS's authority and the permissibility of its conduct under the law. Unsurprisingly, in addressing these questions, each tribunal discussed legal authorities, including precedent, statutes, and prior Board holdings.

B. Appellate Courts, and the Board, Retain Authority to Review Questions of Law Which Predicate or Run in Parallel with Removal Decisions.

Similarly, the Government mistakes the role of appellate courts, and the Board, in reviewing decisions which predicate removal decisions. Pet. Br. at 25. Appellate courts and the Board retain authority to review questions of law which predicate or run in parallel with removal decisions. The Government's assertion that DHS retains unreviewable power is baseless. In fact, Congress explicitly called for "consolidation of questions for judicial review," allowing that "final order[s]" be a vehicle for "*all questions* of

law and fact, including interpretation and application of constitutional and statutory provisions, *arising from* any action taken or proceeding brought to remove an alien from the United States." 8 U.S.C. § 1252(b)(9) (emphasis added). This Court has already clarified that this section was intended to "consolidate[] virtually all review of removal orders in one proceeding in the courts of appeals." *Guerrero-Lasprilla*, 589 U.S. at 233. What's more, the Court has held that section 1252(b)(9) both (1) "includes all matters on which the validity of the final order is contingent," and (2) "consolidate[s] in a petition for review" other "various challenges arising from the removal proceeding." *Nasrallah*, 590 U.S. at 580, 582. *Nasrallah* pointed out that by "consolidating the issues arising from a final order of removal, eliminating review in the district courts, and supplying direct review in the courts of appeals, the Act expedites judicial review of final orders of removal." *Id.* at 580. And on appeal of a removal decision, "when a federal court has jurisdiction, it also has a 'virtually unflagging obligation . . . to exercise' that authority." *Mata*, 576 U.S. at 150.

Similarly, the Board has authority to review IJ determinations of questions of law.[3] The Board is

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[3] The Government's cited cases do not contradict this. The Government cites *Matter of Arambula-Bravo*, 28 I. & N. Dec. 388 (2021) and *Matter of Valenzuela-Felix*, 26 I. & N. Dec. 53 (2012), for the proposition that the BIA lacks authority to review parole decisions. But *Valenzuela-Felix* expressly reserves the question of the Board's power to review DHS's misuse of its parole authority, while also making plain that in any event, limitations on BIA review do not extend to the courts. 26 I. & N. Dec. at 63 n.11. *Arambula-Bravo*, for its part, concerned only the *termination* of parole. 28 I. & N. Dec. at 392–96. And *Matter of Conceiro*, 14 I.

charged with reviewing "questions of law, discretion, and judgment and all other issues in appeals from decisions of immigration judges *de novo*." And the DOJ's, or Board's, views on questions of law are "controlling" to the extent they conflict with the views of DHS. 8 U.S.C. § 1103(a)(1).

CONCLUSION

For these reasons, the Court should affirm the decision of the Second Circuit.

& N. Dec. 278 (BIA 1973)—on which the Board relied in *Matter of Valenzuela-Felix*—is similarly unavailing. *Matter of Conceiro* offers the narrow proposition that the Board itself does not have the independent power to *grant* parole. *Id.* at 281–82. It does not stand for the broader proposition that the BIA lacks the power to *review* whether DHS erred as a matter of law in paroling a noncitizen who should have been admitted.

Respectfully submitted,

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