No. _____

IN THE SUPREME COURT OF THE UNITED STATES

IVAN GRANILLO

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Veronica Portillo-Heap
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Veronica_Portillo-Heap@fd.org

Counsel for Petitioner

QUESTION PRESENTED FOR REVIEW

When a noncitizen is "in the United States in violation of law," it is a federal crime, punishable by five years in prison, to "transport or move" that person "within the United States by means of transportation or otherwise, in furtherance of such violation of law." 8 U.S.C. § 1324(a)(1)(A)(ii).

The question presented is:

What mens rea is required for the element that the defendant transport or move the noncitizen "in furtherance" of a violation of law?

PARTIES, RELATED PROCEEDINGS, AND RULE 29.6 STATEMENT

The parties to the proceeding below were Petitioner Ivan Granillo and the United States. There are no non-governmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

All proceedings related to the case, per Rule 14.1(b)(iii), are as follows:

- *United States v. Granillo*, No. 23-CR-1419-RSH. U.S. District Court for the Southern District of California. Judgment issued December 22, 2023. *United States v. Granillo*, No. 24-46, Docket No. 52. U.S. Court of Appeals for the Ninth Circuit, Memorandum disposition issued August 19, 2025.

- *United States v. Granillo*, No. 24-46, U.S. Court of Appeals for the Ninth Circuit. Order denying petition for rehearing. October 28, 2025.

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Petitioner Ivan Granillo respectfully requests that the Court issue a writ of certiorari to review the order of the United States Court of Appeals for the Ninth Circuit in this case.

INTRODUCTION

The relevant statute, 8 U.S.C. § 1324(a)(1)(A)(ii), makes it a felony to "transport or move" an unauthorized immigrant within the United States if the transport is "in furtherance of such violation of law." Circuit courts agree that it is

an element of the offense that the passenger (i.e., the person transported) must "ha[ve] come to, entered, or remain[ed] in the United States in violation of law"—i.e., they must be an unauthorized immigrant. The circuit courts also agree that a defendant must have "know[ledge] or [be] in reckless disregard of the fact" that the passenger is an unauthorized immigrant.

The circuit courts are hopelessly divided, however, over the mens rea for the "in furtherance" element of § 1324(a)(1)(A)(ii). There are roughly four different approaches. First, the Fifth Circuit requires that the defendant commit an "*intentional* furtherance of the violation of the law," and the Sixth Circuit requires functionally the same, i.e., that the defendant have "the *purpose* of furthering the[] [alien's] illegal presence in the United States." *See United States v. Diaz*, 936 F.2d 786, 788 (5th Cir. 1991) (emphasis added); *United States v. Stonefish*, 402 F.3d 691, 699 (6th Cir. 2005) (emphasis added). Second, the Seventh Circuit has a lower mens rea, holding that mere "*knowledge* that [a defendant's] transportation activity furthers an illegal alien's presence in the United States" is an element, but that specific intent is not. *United States v. Parmalee*, 42 F.3d 387, 391 (7th Cir. 1994) (emphasis added). Third, the Eleventh Circuit has adopted a *conduct*-based approach, allowing conviction only if the defendant's actions furthered a violation of immigration law. *United States v. Dominguez*, 661 F.3d 1051, 1068, 1070 (11th Cir. 2011) (holding that "conduct done knowingly or with reckless disregard is sufficient" and examining the defendant's conduct). Fourth, the First Circuit, Third Circuit, Eighth Circuit, and Tenth Circuit require that the defendant acted "willfully in

furtherance of the alien's unlawful presence," but do not have a uniform definition of "willfully." *United States v. Silveus*, 542 F.3d 993, 1002 (3d Cir. 2008); *United States v. Medina-Garcia*, 918 F.2d 4, 8 (1st Cir.1990) (same); *United States v. Hernandez*, 913 F.2d 568, 569 (8th Cir. 1990) (same); *United States v. Barajas-Chavez*, 162 F.3d 1285, 1287 (10th Cir. 1999) (en banc).

Finally, the Ninth Circuit does not have a consistent approach to the requisite mens rea. The Ninth Circuit has held the statute requires a specific intent to violate immigration law. *United States v. Barajas-Montiel*, 185 F.3d 947, 954 (9th Cir. 1999). But the Ninth Circuit's model instruction, which was affirmed here, permits conviction upon mere knowledge that the transportation would "help [the noncitizen] remain in the United States illegally." Pet. App. A, A4.

The approach taken matters because the instruction given in this case would likely pass muster in the Seventh Circuit or the Eleventh Circuit but would be deficient in the Fifth Circuit or the Sixth Circuit. The instruction would likely also be deficient in the First Circuit, Third Circuit, or Eighth Circuit for lack of the magic word "willfully." Because the Government prosecutes thousands of people every year under § 1324(a)(1)(A) for so-called "alien smuggling" crimes, acts that are entirely innocent in some circuits are criminal in others.

Only this Court can ensure that criminal liability for this offense is consistent nationwide, no matter where the transportation occurs.

OPINION BELOW

The Ninth Circuit panel affirmed petitioner's conviction in a memorandum disposition reprinted in the Appendix to the Petition. *See* Pet. App. A. Petitioner

subsequently filed a petition for rehearing and rehearing en banc, which was denied. *See United States v. Granillo*, No. 24-46, Docket No. 52.

JURISDICTION

The panel decision of the court of appeals was issued on August 19, 2025. *See* Pet. App. A. The Ninth Circuit denied en banc review on October 28, 2025. *See United States v. Granillo*, No. 24-46, Docket No. 52. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

8 U.S.C. § 1324(a)(1)(A) provides: "Any person who … (ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law … shall be punished[.]"

STATEMENT OF THE CASE

On June 23, 2023, petitioner Ivan Granillo drove to the San Ysidro Port of Entry, planning to check his mail and run errands in San Diego, California. A United States citizen by birth, Mr. Granillo lived in Tijuana, Baja California, Mexico, but maintained a P.O. Box in his native San Diego. That day Mr. Granillo was accompanied by a friend of a friend sitting in his front passenger seat who entered the car holding a United States passport.

Mr. Granillo and his passenger waited in a line of cars at the port of entry before inspection by Customs and Border Protection (CBP) officers. Before getting to

the inspection booth, they drove over a line of yellow speed bumps demarcating the international boundary between Mexico and the United States. Mr. Granillo then stopped his car at the primary inspection booth. The passenger handed Mr. Granillo a United States passport. Mr. Granillo provided a CBP officer with his own California identification card and the United States passport provided by the passenger.

Officers confirmed that the California identification card belonged to Mr. Granillo but determined that the passenger was an "imposter" who presented a document that was not rightfully his.

The government charged Mr. Granillo with attempting to transport an undocumented person within the United States in violation of 8 U.S.C. § 1324(a)(1)(A)(ii). Mr. Granillo proceeded to trial and maintained that he did not know the passenger was undocumented and did not intend to help him enter or remain in the United States illegally.

At trial, the government presented testimony from the CBP officers who inspected Mr. Granillo and the passenger at the port of entry. Mr. Granillo testified in his own defense that he did not learn that the passenger was not a United States citizen until the officers told him so at the primary inspection booth. Mr. Granillo explained that the passenger was a friend of a friend who he agreed to provide a ride to the port of entry. The government's case relied on circumstantial evidence, including a recorded deposition of the passenger and text messages on the passenger's phone, none of which conclusively established that Mr. Granillo had

knowledge of the passenger's status or that he intended to help the passenger enter or remain in the United States illegally.

At a jury instruction conference, the district court proposed using the Ninth Circuit's model instruction as to the elements of the offense. That instruction requires that the "defendant knowingly transported or moved the alien to help him remain in the United States illegally" but does not require an *intent* to help the passenger violate immigration law. *See* Ninth Circuit Model Criminal Jury Instruction 7.2 (Alien—Illegal Transportation or Attempted Transportation (8 U.S.C. § 1324(a)(1)(A)(ii)), *available at:* https://www.ce9.uscourts.gov/jury-instructions/node/912. Mr. Granillo objected, citing prior Ninth Circuit case law and proposing language that "the defendant acted with the intent to violate the immigration laws by assisting the passenger to enter the United States illegally." The district court overruled the objection and read the model instruction to the jury.

After closing arguments, the jury deliberated for several hours before they broke for the day. The next morning, the jury resumed deliberations and submitted two notes about the meaning of the word "knowingly." The jurors asked whether the word "'knowingly' appl[ied] to the whole sentence or only attempting to transport or move?" The second note asked whether the defendant had to know the passenger was undocumented "prior to imposter check," meaning before the CBP officer was provided identification documents. The district court read back part of the model instruction and also stated that "'knowingly' applied to 'attempted to transport or move [the passenger] to help him remain in the United States illegally."

The jury continued to deliberate and ultimately found Mr. Granillo guilty. He appealed his conviction on multiple grounds. As relevant here, he renewed his argument that § 1324(a)(1)(A)(ii) requires an intent to further a violation of immigration law.

The Ninth Circuit affirmed Mr. Granillo's conviction and its model instruction in a memorandum disposition. The court concluded that the model instruction "adequately conveyed the requisite specific intent." Pet. App., A4. In claiming any error was harmless, however, the memorandum described the mens rea as "Granillo knew his passenger was unlawfully present and *intended to transport* him." Pet. App., A5 (emphasis added). In other words, the decision rested on a theory that an individual need only have the "specific intent" to "transport," as opposed to any intent that the transportation help the noncitizen remain in the United States illegally. Mr. Granillo pointed to this inconsistency in the circuit's case law in his petition for panel rehearing, which was also denied.

REASONS FOR GRANTING THE WRIT

The courts of appeals are divided as to which mens rea applies to the "in furtherance" element of 8 U.S.C. § 1324(a)(1)(A)(ii). All courts agree that the defendant must either have knowledge or be in reckless disregard of the fact that the person transported is an unauthorized immigrant. But the courts have taken roughly four different approaches to the remaining elements. The Fifth Circuit and Sixth Circuit require a specific intent or purpose to violate immigration law. The Seventh Circuit holds that mere knowledge that the transportation furthers a

noncitizen's illegal presence is sufficient. The Eleventh Circuit requires that the defendant's conduct have furthered the unauthorized immigrant's illegal presence, even if that was not the defendant's actual intent. The First Circuit, Third Circuit, Eighth Circuit, and Tenth Circuit require that the defendant act "willfully in furtherance of the alien's unlawful presence" but do not have a unified definition for "willfully." And the Ninth Circuit has been inconsistent, alternating between requiring a specific intent or mere knowledge that the defendant's actions helped an unauthorized immigrant to stay in the United States illegally or in violation of immigration law.

The facts of Mr. Granillo's case illustrate how and why the different approaches matter. Here, if the jury determined that Mr. Granillo learned that his passenger was an imposter while waiting in line at the border it could (and did) convict him simply because he chose to continue driving. But if the same events occurred in the Fifth or Sixth Circuits, the jury would have had to determine that Mr. Granillo continued driving with the intent to further the alien's unlawful presence, as opposed to just the intent to continue on and pick up his mail.

The Court should resolve this split concerning a frequently prosecuted immigration offense. The issue was preserved below, and the Ninth Circuit has alternately appeared to agree with different approaches. In this case, the Ninth Circuit's memorandum asserted that § 1324(a)(1)(A) requires a specific intent but limited that to an intent to transport. However, the right instruction would have also required an intent to further or help the noncitizen to stay in the United States

illegally. Only this Court can remedy the circuit courts' disagreement about the elements of the offense so that the meaning of this law is comprehensible and people have fair warning as to the mens rea criminalized.

The Court should therefore grant the petition.

I. The circuits disagree about which mens rea is required for the "in furtherance" element of § 1324(a)(1)(A)(ii).

The courts of appeals are divided into approximately four different camps over the mens rea for the "in furtherance" element of § 1324(a)(1)(A)(ii).

A. The Fifth Circuit and Sixth Circuit require a specific intent to violate immigration law.

The Fifth Circuit has long required that the defendant have "transported the alien within the United States *with intent* to further the alien's unlawful presence." *United States v. Nolasco-Rosas*, 286 F.3d 762, 765 (5th Cir. 2002) (emphasis added). This intent element is in addition to the element that the defendant "knew or recklessly disregarded the fact that the alien was in the country in violation of the law." *Id.*

The Fifth Circuit recently reaffirmed the elements of § 1324(a)(1)(A)(ii) in *United States v. Irias-Romero*, 82 F.4th 422, 425 (5th Cir. 2023). The court held that "[t]o convict the defendant of violating this statute, 'the jury had to find beyond a reasonable doubt that (1) an alien illegally entered or remained in the United States; (2) [the defendant] transported the alien within the United States intending to further that unlawful purpose; and (3) [the defendant] knew or recklessly disregarded the fact that the alien was illegally in the United States." *Id.* at 425 (emphasis added).

The Fifth Circuit clearly distinguishes between the *knowledge* of unlawful status and the *intent* to further the undocumented person's unlawful presence. For example, the Fifth Circuit explained that the elements "require[] the jury to find that the defendant knows that a person, ... is an alien," but also that the defendant have "both actual knowledge of the alien's presence as well as '*intent* to further the alien's unlawful presence.'" *United States v. Sheridan*, 838 F.3d 671, 672-73 (5th Cir. 2016) (emphasis added). Likewise, the Fifth Circuit has held that "the defendant's knowledge of the illegal status and her knowing and *intentional* furtherance of the violation of the law by the alien" are both "essential element[s]" of the offense. *United States v. Diaz*, 936 F.2d 786, 788 (5th Cir. 1991).

The "intentional furtherance of the violation of law" means that a defendant who "asserts that she never intended to further the aliens' illegal presence in this country, but sought only to assist them in reaching" their destination has a defense to the "intent" element. *United States v. Merkt*, 764 F.2d 266, 270 (5th Cir. 1985). Put differently, "[b]y definition, a person intending to assist an alien in obtaining legal status is not acting 'in furtherance of' the alien's illegal presence in this country." *Id.* at 272. Consistent with this case law, the Fifth Circuit's pattern instruction requires that the "defendant transported [moved] [attempted to transport or move] the alien within the United States *with the intent* to further the alien's unlawful presence." *See* Fifth Circuit Model Instruction 2.01B, Transporting aliens within the United States, 8 U.S.C. § 1324(a)(1)(A)(ii), *available at*:

https://www.lb5.uscourts.gov/viewer/?/juryinstructions/Fifth/PJI-CRIMINAL_2024_EDITION_FINAL.pdf (emphasis added).

Much like the Fifth Circuit, the Sixth Circuit requires that the defendant "transported 'the person in order to help him remain in the United States illegally' and not for some 'other innocent reason.'" *United States v. Stonefish*, 402 F.3d 691, 699 (6th Cir. 2005). Specifically, the defendant must have "transported the illegal aliens for the *purpose* of furthering their illegal presence in the United States." *Id.* at 699 (emphasis added). In other words, the defendant must have a "*specific intent* ... 'to *deliberately assist* an alien in maintaining his illegal presence' in this country." *Id.* at 695 (emphases added). *See also United States v. Perez-Gonzalez*, 307 F.3d 443, 445 (6th Cir. 2002) ("[W]e adopted an intent-based approach that requires ... the specific intent of supporting the alien's illegal presence.")

The "purpose of furthering their illegal presence" means that the incidental transportation of noncitizens does not constitute a crime. For example, in *United States v. 1982 Ford Pick–Up, VIN 1FTDX15G7CKA31957, TEXAS LIC. NO. VM–5394 and 1979 Chevrolet Pick–Up VIN CCS349Z136258, Texas Lic. No. 377–8EE* , 873 F.2d 947, 950–51 (6th Cir.1989), the Sixth Circuit held that the government could "not obtain a forfeiture of the [defendants'] vehicles" for a violation of § 1324(a)(1)(A)(ii) because the defendants' "purpose was to promote the well-being of friends and relatives by helping them obtain employment," "not to support their illegal presence, though that may have been the ultimate effect of their actions." *Id.* at 952. The court found the defendants' actions "were quite innocent," given that

they "received no financial remuneration for helping their passengers move [out of state]" and that they "made no attempt to hide their passengers or otherwise conceal the fact that they were illegal aliens." *Id.* at 952. The government had "failed to prove" the essential element that the defendant "transported an illegal alien with the specific intent of supporting the alien's illegal presence." *Id.* at 951.

Similarly, in *Stonefish*, the Sixth Circuit elaborated that "a person who knowingly gives an alien a ride to a homeless shelter may not be prosecuted under the above statute for transporting an illegal alien" because the "acts performed [must have] the purpose of supporting or promoting an illegal alien's conduct." 402 F.3d at 696. The court explained that a defendant who provided transportation that was "incidental to or merely permit[ted] an individual to maintain his existence" and did not have the "specific intent" to "deliberately assist an alien in maintaining his or her illegal presence" has not violated the statute. *Id.* at 695–96. While the language they use is slightly different, the Fifth and Sixth Circuits both require the specific intent or purpose to "deliberately assist" a noncitizen to remain in the United States illegally.

B. The Seventh Circuit holds that mere knowledge that the transportation furthers a noncitizen's illegal presence is sufficient under § 1324(a)(1)(A)(ii).

Other circuits take a different approach, with a less exacting mens rea requirement. The Seventh Circuit, for example, has held that "a defendant's guilty knowledge that his transportation activity furthers an illegal alien's presence in the United States is an essential element of the crime." *United States v. Parmalee*, 42 F.3d 387, 391 (7th Cir. 1994). The Seventh Circuit acknowledged that the Sixth

Circuit had taken an "'intent-based' approach[]" to transportation offenses under § 1324(a)(1)(A)(ii), but "decline[d] to adopt" an intent-based approach or element. *Id.* *See also United States v. McClellan*, 794 F.3d 743, (7th Cir. 2015) (observing that there was "no law from th[e Seventh] [C]ircuit holding that § 1324 incorporates a specific intent requirement and, relatedly, no circuit law requiring a specific intent instruction"). In simpler terms, the Seventh Circuit requires that the defendant "act knowingly in furthering the transport of the illegal aliens." *Parmalee*, 42 F.3d at 393.

Applying this rule to the facts of that case, the court held that "under the factual circumstances of [that] case," a "rational jury, which found that the defendants knew that the aliens were illegal, also would have necessarily found that the defendants knew their activity furthered the aliens' violation of law." *Id.* (pointing to "unrebutted evidence that the defendants furtively transported the aliens late at night; drove evasively to elude police surveillance, at times at high rates of speed; and received compensation by the carload for the delivery of the luggage-laden and foreign-speaking aliens who were strangers to the defendants").

C. The Eleventh Circuit takes a conduct-based approach, requiring that the defendant's conduct further a violation of immigration law.

The Eleventh Circuit has found that "conduct done knowingly or with reckless disregard is sufficient" under § 1324(a)(1)(A)(ii), and that "a specific intent to violate the law is not required." *United States v. Dominguez*, 661 F.3d 1051, 1068, 1070 (11th Cir. 2011). In *Dominguez*, the Eleventh Circuit determined that an element of the offense is that the defendant "transported the aliens within the

United States to further their unlawful presence." *Id.* at 1061 (alterations omitted). As to this element, the court examined whether the defendant's conduct actually "furthered" the noncitizens' illegal presence. In that case, the court reversed the defendant's convictions under § 1324(a)(1)(A)(ii) for insufficiency of evidence, finding that "a reasonable jury could not find beyond a reasonable doubt that the defendant transported the aliens from Miami to Los Angeles in order to further their illegal status." *Id.* at 1062 (alterations omitted). The court was persuaded by evidence showing the noncitizens "were taken to an experienced immigration attorney shortly after arriving in Los Angeles for the purpose of processing [them] through immigration." *Id.* Put differently, it was a defense that the defendant's conduct (transportation) helped the noncitizens become lawfully present. *See id.* It appears that the Eleventh Circuit's case law is concerned with whether the transportation in fact furthered the noncitizens' unlawful presence or whether it did the opposite, that is, helped them to become (or obtain documentation to be) lawfully present. *See id.*

As to the mens rea, the court in *Dominguez* found that "'knowingly' merely requires proof of knowledge of facts that constitute the offense." *Dominguez*, 661 F.3d at 1068 (citation omitted). In subsequent cases, the Eleventh Circuit provided additional clarification that the "defendant need not know that the act is illegal or wrong." *United States v. Kendrick*, 682 F.3d 974, 984 (11th Cir. 2012) (discussing *Dominguez*). It is sufficient that the defendant "knowingly brought an alien to the United States" and that he "knew or recklessly disregarded the fact that the alien

had not received prior official authorization to come to or enter the United States." *Id.*[1] In *Kendrick*, the Eleventh Circuit upheld a challenge for insufficiency of evidence where the jury heard the defendant's "prior sworn testimony that he knew that he was going to be bringing back an illegal alien" and a Coast Guard officer's testimony that the defendant "fled from her vessel despite her repeated hails." *Id.* at 985. Under these circumstances, "the jury could have drawn the reasonable inference that [the defendant] would not have fled from the Coast Guard if he did not believe that he was doing something illegal." *Id.* So, while knowledge of doing something illegal is not required for conviction in the Eleventh Circuit, it was sufficient to establish the element that the defendant "knowingly brought [or transported] an alien to the United States." *See id.* at 984, 985.

D. In the First, Third, Eighth, and Tenth Circuits, the defendant must have acted "willfully" in furtherance of a violation of immigration law.

At least four circuits hold that a defendant must act "willfully" in furtherance of a violation of immigration law. However, they each appear to have a different interpretation of that term.

The Third Circuit has held that "[t]o sustain a conviction under [§ 1324(a)(1)(A)(ii)], the government must prove that ... the defendant acted willfully in furtherance of the alien's violation of law." *United States v. Silveus*, 542 F.3d 993,

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[1] Though the statute of conviction is § 1324(a)(1)(A)(ii) for transportation, the *Kendrick* opinion incorrectly describes it at points as an offense for "bringing or attempting to bring an alien into the United States," which corresponds with § 1324(a)(1)(A)(i). *Id.* at 978. *See also* Government's Brief, Dkt. 11-12620 (11th Cir. 2011 WL 532114 (11th Cir.) (correctly describing the offense more generally as "alien smuggling" under § 1324(a)(1)(A)(ii).)

1002 (3d Cir. 2008). In a challenge for insufficiency of evidence, the court determined that the evidence showed that the defendants "transported the illegal aliens not as a friendly gesture, but rather to develop their client base" in their business "filing asylum papers and translating for Haitian aliens." *Id.* at 1003. The Third Circuit thus concluded that the evidence supported a finding that the defendant "acted with the intent to further [the aliens'] illegal presence in the United States." *Id.* at 1003.

The First Circuit also requires that the defendant have "acted willfully in furtherance of the alien's illegal presence in the United States" for a conviction under § 1324(a)(1)(A)(ii). *United States v. Guerra-Garcia*, 336 F.3d 19, 23 (1st Cir. 2003). To establish that "the defendant acted willfully in furtherance of the alien's presence in the United States," the First Circuit found that "there must be a direct and substantial relationship between the transportation and its furtherance of the alien's presence in the United States." *United States v. Medina-Garcia*, 918 F.2d 4, 8 (1st Cir. 1990). The court explained that the "[w]illful transportation of illegal aliens is not, per se, a violation of the statute, for the law proscribes such conduct only when it is in furtherance of the alien's unlawful presence." *Id.* Put differently, "to have been acting in furtherance of [the alien's] violation of law, the defendant must have "move[d]" the noncitizen "within the United States in aid of his initial illegal entry." *Id.* But the court has not provided a clear statement as to the meaning of the word "willfully" in this context. *See, e.g.*, *Guerra-Garcia*, 336 F.3d

19, 23-25 (1st Cir. 2003) (not explaining what "willfully" means where the defendant must have "acted willfully in furtherance of the alien's illegal presence").

The Eighth Circuit also requires that the "defendant acted willfully in furtherance of the alien's violation of law." *United States v. Hernandez*, 913 F.2d 568, 569 (8th Cir. 1990); *see also United States v. 1982 Chevrolet Crew-Cab Truck*, 810 F.2d 178, 181 (8th Cir. 1987) (using identical language). However, the Eighth Circuit has rejected the argument that "the government must prove that the defendant transported an alien with the purpose of supporting or promoting his or her illegal presence." *United States v. Velasquez-Cruz*, 929 F.2d 420, 422 (8th Cir. 1991). In that case, the court affirmed based on a finding that "there was evidence before the jury from the testimony of [the aliens] ... from which the jury could infer that [the defendant's] driving of the illegal aliens when she was apprehended in Arkansas was more than merely 'incidental' to the presence of those illegal aliens in the United States." *Id.* at 423 (alterations in original). The Eighth Circuit cautioned that "courts must distinguish between 'surreptitious or furtive transportation of undocumented aliens which inhibits government enforcement of immigration laws and more attenuated incidents involving minimal employment-related transportation.'" *Id.* at 424 (quoting *United States v. One 1982 Toyota SR 5 Pick-Up Truck*, 642 F.Supp 335, 337 (N.D. Ill. 1986). It appears that, in the Eighth Circuit, "willfully" in this context requires that the transportation be "more than merely incidental" to the unauthorized immigrants' presence in the country. *See id.* at 423.

And still another circuit, the Tenth Circuit also requires that the "defendant acted willfully in furtherance of the alien's violation of law." *United States v. Barajas-Chavez*, 162 F.3d 1285, 1288 (10th Cir. 1999) (en banc). The Tenth Circuit sitting en banc held that the "statute requires [1] that a defendant know or act in reckless disregard of the fact that an individual is an illegal alien, and [2] that defendant's transportation or movement of the alien will help, advance, or promote the alien's illegal entry or continued illegal presence in the United States." *Id.* at 1288. The second element does not contain an intent but rather concerns whether the defendant's conduct actually "help[ed]" the noncitizen's "continued illegal presence." *See id.* But the court "reject[ed] the use of any particular 'test' or 'formula for determining whether the 'in furtherance of' requirement has been satisfied," thereby leaving some ambiguity as the elements of the offense. *Id.* at 1289.

The Tenth Circuit appears to focus on whether the defendant's conduct actually "help[ed] the noncitizen to "continue[] [their] their illegal presence in the United States." *United States v. De La Cruz*, 703 F.3d 1193, 1199 (10th Cir. 2013). In *United States v. De La Cruz*, the Tenth Circuit found that where "the driver was dropping off [the noncitizen passenger] to work at the truck wash," which was "a job he already had," the defendant's conduct was not "in any way furthering [the passenger's] unlawful presence in the country." *Id.* at 1199. Instead, the conduct was "just an ordinary social interaction that occurs every day between family, friends, and acquaintances" and was not criminalized under § 1324(a)(1)(A)(ii). *Id.* The court explained that:

> § 1324(a)(1)(A)(ii) proscribes, for example, transportation of an alien by friends or family to enable the illegal alien to find work and/or evade authorities. But § 1324(a)(1)(A)(ii) 'does not encompass persons who come into daily contact with undocumented aliens and who, with no evil or criminal intent, intermingle with illegal aliens socially and otherwise.

Id. (quoting *Barajas–Chavez*, 162 F.3d at 1288). The Tenth Circuit's analysis focused, not on the defendant's intent, but on whether his conduct actually helped the passenger to remain in the United States illegally, such as by evading immigration authorities. *See id*. ("Transportation furthers an alien's violation of the law if it 'will help, advance, or promote the alien's illegal entry or continued illegal presence in the United States.'") (quoting *Barajas–Chavez*, 162 F.3d at 1288.)

E. The Ninth Circuit has taken inconsistent approaches.

The Ninth Circuit has taken inconsistent approaches to the elements of the offense. The Ninth Circuit has held that, to be convicted of § 1324(a)(1)(A)(ii), the defendant must have "intended to help the alien remain in the United States illegally." *United States v. Barajas-Montiel*, 185 F.3d 947, 954 (9th Cir. 1999). Accordingly, the court approved of an instruction that "the defendant knowingly transported or moved or attempted to transport or move the alien *in order to help* the alien remain in the United States illegally." *Id*. (emphasis added).

But the Ninth Circuit's current model instruction, which was used in Mr. Granillo's trial, on its face, does not require an intent or purpose to violate the law. The instruction simply requires that the "defendant knowingly transported or moved the alien to help him remain in the United States illegally." *See* Ninth Circuit Model Criminal Jury Instruction 7.2 (Alien—Illegal Transportation or Attempted Transportation (8 U.S.C. § 1324(a)(1)(A)(ii)), *available at*:

https://www.ce9.uscourts.gov/jury-instructions/node/912. This instruction is missing the phrase "in order to," which is present in the instruction approved of in *Barajas-Montiel*.

The Ninth Circuit's omission of "in order to" matters. The phrase "in order to" is used to "express the aim or purpose of doing something." *In order to do something*, CAMBRIDGE'S ENGLISH GRAMMAR, https://dictionary.cambridge.org/us/dictionary/english/in-order-to. Thus, by omitting the "in order to" language from its model instruction, the Ninth Circuit changed the mens rea from an *intent* "to help" to mere knowledge that the transportation *would* "help."

In other words, the model instruction's omission of "in order to" allows for a conviction if the defendant simply "knowingly" helped the noncitizen remain in United States illegally. And in the § 1324(a)(1)(A)(ii) context, the "difference between purpose and knowledge matters" because "a purposeful mental state … help[s] separate criminal conduct from innocent behavior." *Borden v. United States*, 593 U.S. 420, 426 n.3 (2021); *see also Barajas-Montiel*, 185 F.3d at 953 ("Without a specific intent instruction, the jury does not have to consider whether a defendant intended to violate immigration laws, and therefore the jury could conceivably believe that they had to convict … where the defendant conceded his involvement in performing the act of [noncitizen] smuggling but had plausible claims that he nevertheless lacked the intent to violate the law.").

II. The division among the circuits demands this Court's attention.

The question presented is highly consequential. The Government prosecutes thousands of so-called "alien smuggling" cases every year.[2] While the number of illegal reentry prosecutions fluctuates significantly year by year, the number of felony "alien smuggling" prosecutions has steadily risen over the past decade.[3] The people prosecuted are as young as teenagers, while many others are elderly.[4] And each defendant faces up to five years in prison per passenger, per count.

The possible reach of this statute is even greater. Unauthorized immigrants are "transported or moved" within the United States every day, and their transportation could support a criminal conviction for their drivers under § 1324(a)(1)(A)(ii). An estimated 14 million unauthorized immigrants live in the United States.[5] In most states, people without lawful immigration status cannot obtain a driver's license,[6] and must rely on other people (family, friends, bus drivers, etc.) to help them get to work or school, all within the United States.

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[2] *See* U.S. Sentencing Commission, 2023 Sourcebook of Federal Sentencing Statistics, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2023/Immigration-Offenses-Section.pdf (showing nearly 5,000 individuals were sentenced in "alien smuggling" cases under U.S.S.G. § 2L1.1 during Fiscal Year 2023).

[3] *See id.* (Figure I-2, Number of Immigration Cases Over Time: Fiscal year 2014-2023).

[4] *See id.* (Table I-3, Age of Sentenced Individuals in Immigration Cases, Fiscal Year 2023).

[5] *See* Pew Research Center, *U.S. Unauthorized Immigrant Population Reached a Record 14 million in 2023* (Aug. 21, 2025), https://www.pewresearch.org/race-and-ethnicity/2025/08/21/u-s-unauthorized-immigrant-population-reached-a-record-14-million-in-2023/.

[6] *See* National Conference of State Legislatures, *Brief: States Offering Driver's Licenses to Immigrants* (March 13, 2023), https://www.ncsl.org/immigration/states-offering-drivers-licenses-to-immigrants

Family and friends of undocumented people need clarification of when and whether driving someone they know to be illegally in the United States is a crime. It is unclear whether a friend who drives a homeless, undocumented person to a shelter would be criminally liable. It is also unclear whether a Good Samaritan who gives an undocumented person a ride to a hospital for life-saving care would be criminally liable since, on a practical level, that transportation would help that person to remain in the United States illegally. And the friend or Good Samaritan would fare differently depending on where they live in the country.

People prosecuted for driving their undocumented neighbors to work have faced different consequences in different parts of the country, even where their conduct and relevant knowledge were the same. People who help transport undocumented people as a part of their employment (for example, people who drive taxis, rideshare vehicles, or buses) have also fared differently in different circuits. All these individuals deserve to know when their transportation of undocumented people is punishable as a felony.

At bottom, criminal liability should not change based on which part of the country the transportation takes place in. Conduct that is innocent in Illinois and Massachusetts is a felony punishable by five years in prison in Texas and perhaps also California. This Court's intervention is needed to ensure an evenhanded and fair application of this commonly prosecuted immigration offense nationwide.

III. Mr. Granillo's case presents the right vehicle to resolve this circuit split.

This petition presents an appropriate vehicle to determine the essential elements of § 1324(a)(1)(A)(ii) and to resolve whether the statute requires a specific intent to violate immigration law. The question presented was expressly preserved and ruled upon at Mr. Granillo's trial and on appeal, is outcome determinative, and is ripe for review.

At trial, Mr. Granillo proposed an instruction that "the defendant acted with the intent to violate the United States immigration laws by assisting [the passenger] to enter the United States illegally." The district court declined and instead read the Ninth Circuit's model instruction without modification. That instruction provided, in relevant part, that "the defendant knowingly attempted to transport or move [the alien] to help him remain in the United States illegally."

The Ninth Circuit's prior model instruction, which the court approved of in *Barajas-Montiel*, required that the defendant "knowingly transported or moved or attempted to transport or move [the alien] in order to help him remain in the United States illegally." 185 F.3d 947, 954 (9th Cir. 1999). But the model instruction in effect today and read at Mr. Granillo's trial omitted the phrase "in order to," merely requiring that the defendant's transportation have been "knowingly" done. This is significant because the use of the phrase "in order to" "contemplate[s] that the defendant must not merely engage in conduct knowingly, but purposefully and intentionally." *United States v. Fei Lin*, 139 F.3d 1303, 1306 (9th Cir. 1998). The model instruction given at Mr. Granillo's trial also did not

include any other synonym for "purpose" or "intent," thereby omitting what the Ninth Circuit previously stated is an element of the crime.

There is good reason to believe that an instruction requiring a mens rea of purpose or intent would have resulted in a different outcome. The evidence presented at trial showed Mr. Granillo crossed the border several mornings a week to run errands, such as buying groceries and checking his mailbox. The jury could have determined that Mr. Granillo was simply running errands that morning and did not realize his passenger was not a citizen until he reached the inspection booth. Indeed, during deliberations the jury asked whether the instruction required Mr. Granillo to "know" that the passenger "was a [noncitizen] prior to the imposter check" at the inspection booth.

A jury instructed on intent could have also found that Mr. Granillo knew that going through with the inspection would help his passenger travel within the United States illegally but still found him not guilty. For instance, the jury could have found that Mr. Granillo's purpose was simply to get through the inspection so he could run his errands, not to violate immigration law.

Finally, the question presented is ripe for resolution. The split between courts of appeal on this question dates back at least 25 years. Almost all courts of appeal have weighed in on this question. But the courts' disagreements and divisions have become more complex and varied over time. The development of the case law and varying perspectives would aid this Court in determining a fair and appropriate

resolution. If this Court does not intervene, it seems inevitable that the case law would continue to develop without an eye towards national uniformity.

IV. This Court should find that § 1324(a)(1)(A)(ii) requires an intentional or purposeful mens rea, as the Fifth Circuit and Sixth Circuit have long held.

The Court should resolve this national problem by adopting the approach taken by the Fifth Circuit and the Sixth Circuit. Those courts appropriately require that the defendant have the "purpose" or "intent" to violate the law or to further a violation of law. These circuits have determined that "intent" or "purpose" is necessary to give effect to the "in furtherance" language Congress placed in the statute. Specifically, "in adopting the language 'transportation ... in furtherance of such violation of law' Congress placed a specific qualification on the type of transportation activity it meant to prohibit." *United States v. 1982 Ford Pick-Up,* 873 F.2d 947, 950 (6th Cir. 1989) (quotations omitted). And a "broader interpretation, … one that would prohibit the mere transportation of a known illegal alien, would render the qualification placed there by Congress a nullity." *United States v. Merkt*, 764 F.2d 266, 271 (5th Cir. 1985) (quotations omitted).

This approach would limit criminal liability to people who actually intend to circumvent immigration law, such as people who are paid to transport noncitizens with the purpose of helping them evade detection by immigration authorities. *1982 Ford Pick-Up,* 873 F.2d at 951 (requiring the defendant to have "the purpose of supporting or promoting [the noncitizen's] illegal presence"). The "intent" or "purpose" approach "provide[s] a way of distinguishing those who support ... a smuggling operation or some other form of illicit transportation from those

'American citizens who come into daily contact with undocumented aliens and who, with no evil or criminal intent, intermingle with them socially or otherwise." *Id.* at 950. "A strong scienter requirement helps reduce the risk of 'overdeterrence,' i.e., punishing conduct that lies close to, but on the permissible side of, the criminal line." *Ruan v. United States*, 597 U.S. 450, 459 (2022*); see also United States v. United States Gypsum Company*, 438 U.S. 422, 441 (1978) ("The imposition of criminal liability ... without inquiring into the intent with which it was undertaken, holds out the distinct possibility of overdeterrence.") This approach would leave no doubt that people driving friends and neighbors to work or Good Samaritans driving people in need to the hospital or a shelter are not criminally liable for this federal felony offense. *See 1982 Ford Pick-Up,* 873 F.2d at 951 (observing that the "purpose" approach can "distinguish between someone who smuggles aliens across the country from someone who knowingly gives an illegal alien a ride to a shelter").

This interpretation would also bring needed uniformity to the interpretation of the four alien smuggling offenses under § 1324(a)(1)(A). There is a national consensus that the other three offenses, involving bringing undocumented people to the United States, harboring undocumented people, and encouraging people to violate immigration law, all require a specific intent. *See e.g., United States v. Hansen*, 599 U.S. 762, 766, 781 (2023) (finding that § 1324(a)(1)(A)(iv) requires a "purposeful" or "intentional" mens rea). Clarifying the mens rea requirement for § 1324(a)(1)(A)(ii) would promote a more even-handed application of the law. And it

would ensure that people have clarity about what kind of transportation or action would subject them to criminal liability.

CONCLUSION

For these reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

s/ Veronica Portillo-Heap

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Veronica Portillo-Heap
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5008
Telephone: (619) 234-8467
Attorneys for Petitioner