

No. 25-972

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

LEOPOLDO RIVERA-VALDES,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

**BRIEF IN OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI**

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QUESTION PRESENTED

In *Jones v. Flowers*, this Court held that, when the government knows notice has failed by the return of certified mail as “unclaimed,” due process requires that the government “must take additional reasonable steps to attempt to provide notice . . . if practicable to do so.” 547 U.S. 220, 234 (2006). The question presented is:

Where the government sent notice by certified mail under statutory procedures set forth in now-superseded provisions of the Immigration and Nationality Act – specifically, those that existed between 1990 and 1996 – and the mailing was returned “unclaimed,” did due process require the government to consider whether taking additional steps to provide notice would be practicable?

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INTRODUCTION

This case is not appropriate for the Court’s review. The appeal came to the Ninth Circuit raising a single question of law: where certified mail providing notice of the time and place for a removal hearing was returned “unclaimed,” did *Jones v. Flowers*, 547 U.S. 220, 234 (2006), require an assessment of whether further steps should have been taken? Sitting en banc, the Ninth Circuit unanimously agreed that *Jones* applies in immigration proceedings, with the majority remanding for the district court to consider in the first instance the failure to apply *Jones* and whether the prerequisites for collateral review under 8 U.S.C. § 1326(d) were met. Nevertheless, the government asserts the decision below presents a question of exceptional importance, arguing that the decision was wrong even though there is no circuit conflict on the issue and other circuits have applied *Jones* in immigration contexts. The government further argues that supposed sweeping consequences—raised for the first time by the concurring panel judges—call for this Court’s attention. Contrary to the government’s claims, the decision below does not warrant this Court’s review for five reasons.

First, there is no disagreement among the circuits on the application of *Jones* to immigration proceedings. Although the government claims that the Ninth Circuit “stands alone,” Pet. at 23, the circuit courts have uniformly applied *Jones* in immigration contexts since the Court decided *Jones*. For example, the Ninth Circuit had previously cited *Jones* as providing the “appropriate analytical framework’ for considering

the adequacy of notice” in the context of an immigrant’s motion to reopen immigration proceedings. App. 19a (quoting *Williams v. Mukasey*, 531 F.3d 1040, 1042 (9th Cir. 2008) (quoting *Dusenbery v. United States*, 534 U.S. 161, 167 (2002))). Even earlier, the Third and Seventh Circuits provided detailed explanations of the application of *Jones* in immigration removal proceedings in *Peralta-Cabrera v. Gonzales*, 501 F.3d 837, 845 (7th Cir. 2007), and *Perez-Alevante v. Gonzales*, 197 F. App’x 191, 195–96 (3d Cir. 2006). The Fifth Circuit applied *Jones* in the immigration bond context in *Echavarria v. Pitts*, 641 F.3d 92, 93–95 (5th Cir. 2011). And the First Circuit quoted *Jones* in finding that notice of a motion to reinstate a removal order satisfied due process in *Arevalo v. Barr*, 950 F.3d 15, 20 (1st Cir. 2020). No court has held that *Jones* does not apply in the immigration context.

Second, the government seeks review in the context of a statutory scheme that is a relic of the past. Congress amended the notice statute at issue 30 years ago to eliminate service by certified mail. Since enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), federal law requires, as an alternative to personal service, regular mail service of a Notice of Hearing that must include the date, time and place of the hearing in a single document. The statutory framework that governed when this case arose (in 1994) thus applies to a diminishing set of cases. Moreover, the issue will not even be relevant in those cases unless defendants overcome demanding procedural obstacles to place notice at issue.

Third, this case is an exceptionally poor vehicle, given its unresolved factual disputes and unexplored alternative legal grounds. The Ninth Circuit remanded the case for the district court to consider in the first instance how the *Jones* due process standard applies to the unique facts of this case. The remand also necessitates consideration of the requirements of 8 U.S.C. § 1326(d) that (at the government’s behest) the district court did not address. Because the petition is admittedly “interlocutory,” Pet. at 4, the Court lacks the factual and legal development of the issues appropriate for this Court’s review.

Fourth, the alarmist consequences raised for the first time by concurring panel judges (but not echoed by the en banc court) are unsupported in the record and contra-factual. The claims of imminent disaster are contradicted by the earlier circuit court cases applying *Jones* without ill effects. Despite cases holding or suggesting since 2007 that *Jones* applies in the immigration context, no flood of litigation has followed, nor has the decision below generated any confusion, much less the system-wide chaos the government predicts.

Fifth, the unanimous en banc court correctly determined that *Jones* applies in the immigration context. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), this Court set out the “elementary and fundamental requirement” for due process notice as “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections.” *Jones* sets the

standard for the “circumstance” in which the government knows notice had failed. Consistent with earlier cases from other circuits, the Ninth Circuit correctly held that this Court’s due process jurisprudence regarding unclaimed certified mail applies when the government seeks to deport someone from the United States. The Ninth Circuit correctly held that sending certified mail under the 1994 immigration statutes did not automatically satisfy due process.

STATEMENT OF THE CASE

The government charged Mr. Rivera-Valdes with a single count of illegal reentry to the United States following his removal, in violation of 8 U.S.C. § 1326(a). Excerpt of Record at 185–86, *United States v. Rivera-Valdes*, 157 F.4th 978 (9th Cir. 2025) (en banc) (No. 21-30177, Dkt. No. 12) (hereinafter ER). The indictment was based on a 1994 in absentia deportation order, which resulted in his removal in 2006. Mr. Rivera-Valdes challenged the validity of the removal proceedings underlying the § 1326 prosecution, asserting that he did not receive notice of the deportation hearing, that the in absentia removal violated due process for lack of notice, and that the requisites for dismissal were met under 8 U.S.C. § 1326(d). ER at 76–83, 160–71.

A. The government knew that the only advice of the time, date, and location of Mr. Rivera-Valdes's 1994 deportation hearing had not been received because the certified mail was returned "unclaimed."

Mr. Rivera-Valdes is a Mexican citizen who first arrived in the United States in 1992. ER at 160. In December 1993, Mr. Rivera-Valdes submitted an asylum application falsely stating that he was Guatemalan and that he feared for his safety in that country. ER at 160–61. He gave his address as: "4037 N. Cleveland Ave." in Portland, Oregon. ER at 172. No such address exists; Cleveland Avenue divides North and Northeast Portland, so the address should have been N.E. Cleveland Ave. ER at 161, 166. In response to a letter that apparently arrived at that address (ER at 112-13), Mr. Rivera-Valdes went to the immigration office where, upon being confronted, he admitted that he purchased his asylum application materials from a person named "Juan," who was successfully prosecuted for selling these materials to multiple people. ER at 161, 173–74.

Mr. Rivera-Valdes was released on his own recognition after being served an Order to Show Cause (OSC) that stated that the place and time of the deportation hearing would be specified in the future. ER at 161, 176. In April 1994, immigration officers sent a copy of the OSC to the provided address but omitted "Ave." ER at 177. The envelope was returned stamped with "Not Deliverable As Addressed Unable To Forward." *Id.* Immigration personnel then sent a certified notice of hearing to the same address, again omitting

“Ave.” ER at 149. The certified letter was stamped “return to sender” and “unclaimed,” which does not signify that the mail was refused. *Id.*; Opening Brief of Appellant, at 5 n.1, *United States v. Rivera-Valdes*, 157 F.4th 978 (9th Cir. 2025) (en banc) (No. 21-30177, Dkt. No. 11-1). The deportation hearing was thus held in Mr. Rivera-Valdes’s absence. ER at 162, 179.

In 2006, Mr. Rivera-Valdes was apprehended by immigration officers and, based on the 1994 in absentia deportation order, removed to Mexico. ER at 162, 182–83. He was again found in the United States in 2019, resulting in the present indictment. ER at 185–86.

B. The district court denied Mr. Rivera-Valdes’s motion to dismiss for failure to provide due process notice solely based on the undelivered certified letter.

Mr. Rivera-Valdes moved to dismiss the indictment based on the failure of due process notice. ER at 164. The government argued that mailing the certified letter alone discharged its due process obligations (ER at 93, 97), and Mr. Rivera-Valdes countered that the government’s efforts were not reasonably calculated to provide notice given that the certified letter was returned “unclaimed” (ER at 163-66). Neither party, nor the district court, cited *Jones*.¹

The district court accepted the government’s argument that sending the certified letter alone fulfilled

¹ Both the parties and the circuit court agreed Mr. Rivera-Valdes did not forfeit his due process claim. App. 10a n. 3.

the government's notice responsibility, rejecting the defense's arguments based on the Due Process Clause and the notice statute in effect in 1994. ER at 17–18. Mr. Rivera-Valdes asserted that the due process violation prejudiced him because he had plausible grounds for obtaining a grant of voluntary departure relief. ER at 79–83; 167–70. He further argued that he met the other requirements of § 1326(d): he exhausted administrative remedies and suffered a deprivation of judicial review because he did not have adequate time or notice to re-open his in absentia order at the time of his removal. ER at 76–79; 170–71.

After ruling on due process, the judge asked the prosecutor, “Does the Court need to address either prejudice or whether administrative remedies have been exhausted or the deportation deprived the defendant of the opportunity for judicial review?” Supplemental Excerpts of Record at 30, *United States v. Rivera-Valdes*, 157 F.4th 978 (9th Cir. 2025) (en banc) (No. 21-30177, Dkt. No. 20). The government responded, “No.” *Id.* Consistent with this exchange, the trial court reached neither the question of prejudice nor the other prerequisites for dismissal under § 1326(d). ER at 19 n.2. The court imposed a time-served sentence and one year of supervised release, which has been completed. ER at 5-6.

C. The divided panel on direct appeal affirmed, disagreeing on whether *Jones* applied.

On direct appeal, a divided three-judge panel affirmed Mr. Rivera-Valdes's conviction in a per curiam opinion. App. 67a. The panel relied on pre-*Jones* circuit precedent to conclude that mailing a hearing

notice by certified mail to the address listed on the OSC was “constitutionally sufficient,” even though the government already knew that a prior mailing to that address had been returned “not deliverable as addressed, unable to forward,” and the certified mail hearing notice—the only document containing the date, time, and location of the deportation hearing—came back “unclaimed.” App. 72a. Based on the OSC Mr. Rivera-Valdes had received, which did not include the hearing’s time and place, the panel declined to apply the *Mullane-Jones* framework and treated mailing the statutory certified mailing as dispositive. App. 74a–76a. Alternatively, the panel found that no further reasonable steps to provide notice were available. App. 76a–77a.

Two concurring opinions on the panel injected, for the first time, concerns about purportedly far-reaching litigation consequences if *Jones* were applied in the immigration context, speculating that recognizing a duty to consider additional reasonable steps could destabilize prior in absentia removal orders. App. 83a–87a. The government had not advanced any such systemic-impact theory, nor was there record evidence supporting such concerns. The concurring judges also assumed, without evidentiary support, that persons released on their own recognizance were incentivized to avoid notice. App. 83a, 85a–86a.

Judge Sanchez dissented, explaining that due process is governed by this Court’s *Mullane-Jones* framework, which requires notice “reasonably calculated under all the circumstances.” App. 95a. Where the government learns that notice has failed,

additional reasonable steps must be taken if practicable. App. 96a–97a. The per curiam opinion failed to follow binding Ninth Circuit cases finding that notice in the immigration context must be evaluated under the *Mullane-Jones* “analytical framework.” App. 98a–99a. Judge Sanchez found that prior service of an OSC that lacks the date, time, and place of the hearing does not, by itself, give a noncitizen a meaningful opportunity to appear and, thus, the government’s decision to do nothing when it knew its notice attempt had failed is incompatible with *Jones*’s requirement that the government act like a party genuinely “desirous of actually informing” the person whose rights are at stake. App. 104a.

Seeking rehearing en banc, Mr. Rivera-Valdes argued that the due process framework applied to all persons under the Fifth Amendment and that the alarmist concerns raised by the concurrences were unfounded. Petition for Panel Rehearing and Rehearing En Banc at 21, *United States v. Rivera-Valdes*, 157 F.4th 978 (9th Cir. 2025) (en banc) (No. 21-30177, Dkt. No. 47); *see also* Brief of Amici Curiae at 11–18, *United States v. Rivera-Valdes*, 157 F.4th 978 (9th Cir. 2025) (en banc) (No. 21-30177, Dkt. No. 48). The Ninth Circuit vacated the three-judge panel opinion and ordered that the case be reheard en banc. App. 118a.

D. The Ninth Circuit en banc unanimously found that *Jones* applies with the majority remanding for fact-specific application by the district court.

The entire en banc court adopted the *Mullane-Jones* constitutional framework, rejecting the panel’s holding that *Jones* did not apply. App. 19a–20a. The majority held that the government’s knowledge that its mailed notice was returned unclaimed is a critical “circumstance” under that test, and that such knowledge triggers an obligation to take additional reasonable steps to effect notice where practicable. App. 20a. Both the en banc majority and the dissenters agreed that *Jones* supplies the due process standard. App. 20a.

The majority concluded that Mr. Rivera-Valdes did not receive constitutionally adequate notice simply because he was handed an OSC with no date, time, or place of hearing; that the government’s sole reliance on the statutory certified letter did not satisfy due process when there was actual knowledge that notice was ineffective; and that the argument that constitutional notice was excused by purported failure to update his address was not established by the facts and inconsistent with *Jones*. App. 21a–25a. Recognizing that the *Mullane-Jones* inquiry is “quintessential[ly]” fact-specific and that 8 U.S.C. § 1326(d) adds distinct statutory predicates (exhaustion, deprivation of review, and prejudice), the en banc court remanded so that the district court could decide in the first instance what additional reasonable steps, if any, were practicable, and whether Mr. Rivera-

Valdes can satisfy the remaining § 1326(d) requirements. App. 26a–29a.

The dissenters all agreed that *Mullane* and *Jones* supplied the due process standard for immigration proceedings. App. 35a. Judge Bennett, joined by Judges Ikuta and Callahan, aggregated background facts about Mr. Rivera-Valdes and treated those circumstances, taken together, as making a single certified mailing to that address “reasonably calculated” notice, even after the government learned that the only letter containing the hearing’s time and location had been returned “unclaimed.” App. 39a–46a.

Judge Forrest, joined by Judge Miller, did not join the part of Judge Bennett’s dissent arguing that, under the facts, no further inquiry was needed despite the returned mail, agreeing with the majority that “when the government learned that its attempt to notify Leopoldo Rivera-Valdes of his removal hearing failed, it was required to ‘take additional reasonable steps to attempt to provide notice’ of the hearing to Rivera-Valdes, if ‘practicable to do so.’” App. 66a (citing *Jones*, 547 U.S. at 225). However, the judges agreed with Judge Bennett, that, based on their view of the facts, no reasonable additional steps were available, and that, in any event, Mr. Rivera-Valdes would be unable to satisfy the statutory requirements for collateral attacks under § 1326(d), which the district court had yet to address. App. 50a–58a, 66a.

The en banc majority addressed the dissents, explaining that *Jones* holds that statutory compliance and prior notice to expect notice of the hearing do not substitute for the individualized *Mullane-Jones*

inquiry once the government learns that its chosen method of notice has failed. App. 21a–25a. The majority pointed out that the reliance on purported failure to update the address was a “premise not established by the record” and that, in any event, *Jones* and related cases make clear that a statutory duty to keep an address updated cannot diminish the government’s independent obligation to take additional reasonable steps once it learns that its chosen method of notice has failed. App. 25a.

As did this Court in *Jones*, the majority remanded for the district court to consider the due process question under the proper standard. App. 26a (“This is a quintessential factual inquiry best left to the district court to undertake in the first instance.”). The court provided guidance for the remand, App. 26a–28a, and declined to resolve in the first instance the statutory requirements under § 1326(d) that the district court, with the government’s approval, had not addressed. App. 28a.

REASONS FOR DENYING THE WRIT

The government does not claim any circuit conflict regarding the application of *Jones* in the immigration context, nor was there disagreement on that point among any of the eleven en banc judges. The government asks this Court to review the lower court’s determination that sending certified mail, under a statutory scheme superseded 30 years ago, did not automatically satisfy due process where the government knew the mailing was not claimed, even though the district court has yet to consider whether and what further steps would be reasonable under

Jones. The reasoning of *Jones* has been applied in numerous contexts where the government knows notice was unsuccessful. Since the Court decided *Jones*, the First, Third, Fifth, Seventh, and Ninth Circuits have applied *Jones* in the context of immigration proceedings without adverse consequences. The government’s position that *Jones* does not apply to removal proceedings has no precedential support and contradicts this Court’s precedent. Indeed, during the rehearing argument, counsel for the government acknowledged that *Jones* provided the correct “umbrella” due process framework but argued that the earlier OSC without the time and place of the hearing met the *Jones* standard. Oral Argument at 37:06–39:54, *United States v. Rivera-Valdes*, 157 F.4th 978 (9th Cir. 2025) (en banc) (No. 21-30177).²

A. The Ninth Circuit’s ruling that *Jones* applies in immigration proceedings involves no circuit conflict and garnered the support of all eleven en banc judges.

The government does not identify a single post-*Jones* circuit decision that rejects the *Jones* framework in the immigration context. Nor could it: courts have invariably applied the *Jones* analysis in immigration cases. Reflecting this precedential consensus, the en banc court unanimously rejected the government’s claim that *Jones* does not apply to immigration proceedings:

- “All eleven members of this panel agree that the due process principles of *Mullane* and

² Avail. at <https://www.youtube.com/watch?v=68jsrcL1QFc>

Jones apply to immigration removal proceedings.” App. 20a.

- “I agree with the majority that ‘the due process principles’ of *Mullane v. Central Hanover Bank & Trust Co.* and *Jones v. Flowers* ‘apply generally across many legal proceedings,’ including ‘immigration removal proceedings.’” App. 35a (citations removed) (quoting majority opinion).

The en banc dissent only argued about how the *Jones* standard applies to the record in this case and whether any further steps were practicable, questions the majority left to the district court to address in the first instance. Such fact-driven disagreements in a single case do not warrant this Court’s review.

Since *Jones* was decided, courts have applied it in immigration contexts where there was no actual notice and where notice was otherwise at issue. Shortly after *Jones*, the Seventh Circuit in *Peralta-Cabrera* addressed the failure in 1994 to provide notice of a deportation hearing where certified mail was returned due to the failure to include “in care of” to the person controlling the noncitizen’s residence. 501 F.3d at 840. The court held that the notice failed under both the statutory requirement that notice be “given” and the government’s constitutional responsibility, as articulated in *Jones*, to take additional reasonable steps when a certified letter was returned unclaimed. *Id.* at 845. The court also cited *Jones* in reopening the removal proceedings because the government failed in its responsibility to correctly address the notice. *Id.* at 846.

Earlier, the Third Circuit applied *Jones* in reopening removal proceedings based on the immigration court's failure to provide notice to the noncitizen's attorney. *Perez-Alevante*, 197 F. App'x at 195–96. Although the noncitizen apparently failed to update his address, his attorney's address was on file. *Id.* at 194–95. “We, just as the *Jones* Court, are guided by the principle that ‘when notice is a person’s due. . .[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.’” *Id.* at 195–96 (quoting *Jones*, 547 U.S. at 238) (quoting *Mullane*, 339 U.S. at 315). “Considering that ‘the constitutionality of the procedure for notice is assessed *ex ante*,’ we have no difficulty finding that the additional step of providing notice to” counsel was required by the Due Process Clause. *Id.* at 196 (quoting *Jones*, 547 U.S. at 231).

In *Echavarria*, the Fifth Circuit addressed the returned notice of breach to obligors of the immigration bond for a noncitizen's release. 641 F.3d at 93–95. Rejecting the government's argument that *Jones* should not apply in the immigration bond context, the court held that, under *Jones*, when the immigration authorities “knew that the bond demands were returned as undeliverable, due process required that [they] take additional reasonable steps to notify the bond obligors of the bond demands.” *Id.* at 95. The court found a due process violation because the additional reasonable steps of checking the immigration service's A-file and the bond contract for alternative addresses were readily available. *Id.* at 96.

In *Arevalo*, the First Circuit explained why the notice provided by immigration authorities met due process requirements in providing counsel with notice of a motion to reinstate removal proceedings. 950 F.3d at 20. After finding that petitioner’s counsel had actual notice of the motion and ample time to reply, the court quoted *Jones* quoting *Mullane* in holding that “the petitioner received all of the process that was due.” *Id.*

Overlooking these precedents, the government incorrectly suggests the ruling is novel and asserts that “the Ninth Circuit stands alone” in applying *Jones* in the immigration setting. Pet. at 22. The government cites to pre-*Jones* cases, Pet. at 23, but those courts did not have this Court’s clarification that government knowledge of failed notice is a critical “circumstance” triggering additional reasonable steps if practicable.

The principle that *Jones* applies in immigration proceedings was not even novel in the Ninth Circuit, which had at least implicitly adopted *Jones* in immigration contexts from shortly after *Jones* was decided. In *Williams v. Mukasey*, the court published an opinion specifically to clarify the general rule concerning adequacy of notice through the Federal Register in the immigration context. 531 F.3d 1040, 1042 (9th Cir. 2008). In doing so, the court cited *Mullane* and its progeny—expressly *Jones*—as providing the due process analytical framework. *Id.* Beyond *Williams*, the Ninth Circuit has cited *Jones* in other immigration contexts. See *Rendon v. Holder*, 400 F. App’x 218, 219–20 (9th Cir. 2010) (approving immigration

service’s additional steps to effect notice under *Jones*); *Al Mutarreb v. Holder*, 561 F.3d 1023, 1027–28 (9th Cir. 2009) (citing *Jones* but finding removal order invalid for other reasons); *Chaidez v. Gonzales*, 486 F.3d 1079, 1086 n.8 (9th Cir. 2007) (citing *Jones* without reaching constitutional question due to defective statutory notice).

The only post-*Jones* immigration case the government offers, *Derezinski v. Mukasey*, 516 F.3d 619 (7th Cir. 2008), does not reflect a circuit conflict for three reasons. First, the Seventh Circuit had already adopted *Jones* in the immigration context in *Peralta-Cabrera* and did nothing to question that authority. *Id.* at 621. Second, in *Derezinski*, the immigration judge found “that the petitioner had *refused* to accept delivery of the notice.” *Id.* at 620 (emphasis added). Refusing notice is vastly different from not being aware of it in the first place. Third, acknowledging (as does Respondent) that actual notice is not required based on *Dusenbery*, the *Derezinski* court cited *Jones* for the proposition that, “[i]f the efforts are adequate, success is not required,” noting *Peralta-Cabrera* as an example of reopening proceedings where notice was not received. *Id.* at 621. The court simply held, on its facts, that notice was adequate where the immigration judge found the noncitizen evaded receipt. That fact-bound ruling does not conflict with *Peralta-Cabrera* or the Ninth Circuit’s unanimous en banc holding applying *Jones*’s reasoning in the immigration context.

The circuits uniformly look to the *Mullane-Jones* analytical framework in the immigration context. The

en banc court agreed. In the absence of disagreement on the legal standard, this Court’s review is not warranted.

B. The ruling below is of limited importance because the immigration notice statutes that governed in 1994 were superseded in 1996.

Very few cases will arise under the facts of this case because the statutory notice provision for certified mail as an alternative to personal service was only in effect between 1990 and 1996. Congress first authorized service by certified mail in 1990. Congressional Research Service, Immigration Act of 1990, P.L. 101-649, at 18 (“[A]n alien may now be served the document that institutes deportation proceedings by certified mail under certain circumstances.”). With the passage of the IIRIRA in 1996, the provision for certified mail was replaced with service by regular mail. *Compare* App. 119a *with* App. 138a. With the statutory amendment eliminating certified mail and replacing it with service by regular mail, Congress ended an experiment that lasted only six years. Certified mail has not been authorized as an alternative to personal service for 30 years.

Further, unlike the statutory scheme in 1994 under which the OSC did not need to provide time, date, and location of the hearing, the statute now explicitly requires that Notices of Hearing do so in a single document. 8 U.S.C. §1229(a)(1)(G)(i); *see Niz-Chavez v. Garland*, 593 U.S. 155, 159 (2021); *Pereira v. Sessions*, 585 U.S. 198, 203 (2018). Although the Court has permitted uncertified mailings to provide

adequate notice even when an initial notice was deficient (*Campos-Chaves v. Garland*, 602 U.S. 447, 450 (2024)), this case does not involve such remedial action by the government. The en banc decision addresses a narrow, long-abandoned statutory scheme, not a sweeping rule involving myriad cases, as the government posits.

What few cases may remain involving certified mail for notice of an OSC under the decades-old regime at issue here will continue to shrink to nothing as the pre-IIRIRA cases time out. The government's references to the statutory scheme for notice in the question presented and throughout its petition fail to clearly point out that the cases directly affected by a ruling would have to have arisen three decades ago.

C. This interlocutory petition is a poor vehicle for review.

The government's request for an "interlocutory" ruling, Pet. at 4, lacks factual and legal development in the district court in the first instance. The Ninth Circuit remanded for the district court to apply *Jones*, as had not previously occurred, and to develop and resolve factual disputes regarding the application of *Jones* and the other procedural issues under §1326(d). The government's invitation for this Court to consider granting review before the case plays out on remand runs counter to the firmly established norms and precedent regarding this Court's role in resolving mature legal disputes, rather than second-guessing a decision to remand to the district court for initial consideration of the case under the proper standard.

The case is especially undeveloped to the extent the government relies on the en banc dissenters, all of whom engaged in what they characterized as fact-intensive and case-specific arguments as to why Mr. Rivera-Valdes should lose under *Jones*. Fact-intensive inquiry is the bailiwick of the district court, which never applied *Jones* and—at the government’s behest—never addressed the additional requirements for collaterally challenging prior removal proceedings under § 1326(d). The type of appellate fact-finding underlying the government’s arguments, despite the district court’s silence on the issues, underscores why this case constitutes an especially poor vehicle for this Court’s review.

The present case is also a poor vehicle because the Ninth Circuit’s ruling is not remotely as categorical as the government’s petition suggests. The en banc court did not hold that any particular “additional step” is always required. Recognizing that the *Mullane-Jones* inquiry is fact-bound, the court remanded so that the district court could determine, in the first instance, whether any further practicable steps existed and whether § 1326(d)’s other requirements were met. App. 5a. Until the district court has applied *Jones* and resolved exhaustion, deprivation of review, and prejudice, there is no final, fully developed decision for this Court to review.

The undeveloped nature of this interlocutory case extends to the government’s claims regarding the statute meeting all due process interests. While relying on the statutory framework for notice, Pet. at 16–17, the government never comes to grips with the

statutory language that the OSC “shall be given by certified mail to the alien or to the alien’s counsel of record, if any[.]” 8 U.S.C. § 1252b(a) (1994). As the *Peralta-Cabrera* court found, the statutory “given” is implicated by the returned certified mail. While actual notice is not required, the government, under both statute and due process, cannot simply shrug its shoulders and automatically move on: practicable, reasonable additional steps must be taken. But the government never addressed the “given” language that can easily be read to incorporate *Jones*’s concern where the government has actual knowledge that notice failed.³ In any event, the Court in *Jones* explicitly required that the government “consider unique information about an intended recipient *regardless of whether a statutory scheme is reasonably calculated to provide notice[.]*” 547 U.S. at 230 (emphasis added).

When this case was originally in the district court, the court neither ruled on whether other forms of notice would have been reasonable nor on the alternative grounds for dismissal. Mr. Rivera-Valdes asserted that the returned notice provided insufficient notice under the statute and due process and addressed all the elements for dismissal listed in 8 U.S.C. § 1326(d). Without rulings on these issues, Supreme Court review is premature.

³ “Give” means “to provide to someone else: to put into the possession of another.” Give, *Merriam-Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/give> (last visited Apr. 13, 2026).

D. The government’s claims of alarming consequences are unfounded.

The government’s claim of sweeping consequences from the Ninth Circuit’s en banc decision is belied several times over. The lower courts have embraced *Jones* generally as an essential component of *Mullane*’s “reasonably calculated” standard where the government has actual knowledge that notice failed without problem, including in immigration contexts. The government’s floodgate claims all derive from the panel concurrences that were vacated and superseded by the en banc opinion. Pet. at 21–22. The government fails to mention that the rehearing petition and supporting amici controverted those claims as both procedurally inappropriate and substantively wrong. The en banc court tacitly rejected those unsupported factual and policy claims as bases for decision.

The floodgates argument is especially misplaced because the number of individuals subject to the statutory scheme in effect in 1994 is vanishingly small. The immigration statute providing for service by certified mail was only in effect for six years ending 30 years ago. The alternative to personally served notice is now a single document, now called Notice of Hearing rather than Order to Show Cause, sent by regular mail identifying the date, time, and place of the hearing. As this Court recognized in *Jones*, notice sent by regular mail is more likely to be delivered, as it can be left at the residence even if no one is present to sign for it. 547 U.S. at 234–35.

And where certified notice failed, courts have long applied *Jones* without the sky falling: in *Peralta-Cabrera*, the Seventh Circuit held that, where certified mail containing the time and place of the removal hearing was returned marked with “return to sender—attempted not known” and “unk,” the notice statute and *Jones* required the government—not the noncitizen—to take steps to assure that the hearing notice is “given” and “successfully delivered.” 501 F.3d at 845–46. In the 18 years since that decision, there has been no stream, or even a trickle, much less a flood of challenges to in absentia removals based on failed certified mail.

In addition to the reality that *Jones* has long been applied in immigration contexts, and that the applicable statutory scheme was superseded 30 years ago, additional statutory obstacles must be overcome to challenge a prior removal under § 1326(d), such as exhaustion, denial of judicial review, and prejudice. In the criminal context, this Court recognized the importance of constitutional challenges to prior deportation proceedings in *United States v. Mendoza-Lopez*, 481 U.S. 828, 839 (1987). The Court also enforced the statutory limitations on collateral challenges in *United States v. Palomar-Santiago*, 593 U.S. 321 (2021). Those statutory limitations provide a hard limit to challenges to in absentia removals.

The panel concurrences’ claim that noncitizens seek to avoid notice is contradicted by data from immigration proceedings showing that noncitizens have strong incentives to appear and pursue relief. Brief of Amici Curiae at 12, *United States v. Rivera-Valdes*,

157 F.4th 978 (9th Cir. 2025) (en banc) (No. 21-30177, Dkt. No. 48). Only about 12% of immigration matters between 2008 and 2018 resulted in in absentia orders, and 95% of respondents who applied for relief attended all hearings. *Id.* Noncitizens may be eligible for many different forms of relief, including asylum, cancellation of removal, withholding of removal, adjustment of status, and relief under the Convention Against Torture; in fact, most people in removal proceedings are not ultimately ordered removed. *Id.*; see Ingrid Eagly & Steven Shafer, *Measuring In Absentia Removal in Immigration Court*, 168 U. Pa. L. REV. 817 (2020). Where, as here, immigration authorities determined that personal recognizance was appropriate, the generalization that the released person will not appear is unfounded and contradicted by the statistics, none of which were before the district court.

When the en banc panel reheard the case, neither the majority nor the dissents relied on the prior panel concurrences' speculation about system-wide litigation "havoc." This Court should decline to credit extra-record, judge-generated predictions that the court below did not rely upon as bases for its decision.

E. The ruling below correctly follows this Court's governing precedent.

The en banc court's agreement that *Jones* applies in the immigration context is required by this Court's governing precedent. The Due Process Clause applies to all "persons" present in the United States, regardless of their legal status. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Shaughnessy v. United States ex rel.*

Mezei, 345 U.S. 206, 212 (1953). The principle that the Due Process Clause applies to all persons present in the United States forecloses a carve-out from this Court’s due process notice jurisprudence for persons alleged to be removable.⁴ In *Mullane*, the Court held that an “elementary and fundamental requirement” of due process is “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” 339 U.S. at 314.

Applying *Mullane*, *Jones* held that, where the government has actual knowledge that notice failed, it “must take additional reasonable steps to attempt to provide notice . . . if it is practicable to do so.” 547 U.S. at 225. The government must, as *Mullane* required, act as “someone who actually wanted to alert” the recipient of the relevant event. *Id.* at 238 (citing *Mullane*, 339 U.S. at 315). “[A] person who actually desired to inform” another would not “do nothing when a certified letter . . . is returned unclaimed.” *Id.* at 229. Instead, a reasonable sender “desirous of actually informing” the recipient would “take further steps if any were available.” *Id.* at 230.⁵

⁴ The government’s invocation of *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 139 (2020), is irrelevant to this case. Pet. at 14 n.2. That case involved expedited removal of individuals “on the threshold” who are detained when arriving at a port of entry or shortly thereafter—not individuals like Mr. Rivera-Valdes who have entered and established presence in the United States.

⁵ The government mischaracterizes the decision below, claiming it was drawn “by analogy from *Jones v. Flowers*[.]” Pet. at 2. Not so. The lower court applied *Jones* as integral to the

The reasoning behind this Court’s rulings in *Mullane* and *Jones* constitutes binding precedent, not limited to the facts of those cases. “It is usually a judicial decision’s reasoning—its *ratio decidendi*—that allows it to have life and effect in the disposition of future cases.” *Ramos v. Louisiana*, 590 U.S. 83, 104 (2020); see also *Ramos*, 590 U.S. at 125 n.6 (Kavanaugh, J., concurring in part) (“In the American system of *stare decisis*, the result and the reasoning each independently have precedential force[.]”). In recognition of the binding authority of *Jones*’s reasoning, the federal courts have applied its rule in a broad array of contexts. See, e.g., *D.R.T.G. Builders, LLC v. Occupational Safety & Health Rev. Comm’n*, 26 F.4th 306, 311 (5th Cir. 2022) (OSHA enforcement); *Grimm v. City of Portland*, 971 F.3d 1060, 1068 (9th Cir. 2020) (vehicle towing); *J.B. v. United States*, 916 F.3d 1161, 1173–74 (9th Cir. 2019) (tax records); *Yang v. City of Wyoming*, 793 F.3d 599, 603 (6th Cir. 2015) (building demolition); *Taylor v. Yee*, 780 F.3d 928, 935–38 (9th Cir. 2015) (unclaimed property); *Lampe v. Kash*, 735 F.3d 942, 943–44 (6th Cir. 2013) (bankruptcy); *García-Rubiera v. Fortuño*, 665 F.3d 261, 276 (1st Cir. 2011) (insurance reimbursement); *Linn Farms & Timber Ltd. P’ship v. Union Pac. R.R. Co.*, 661 F.3d 354, 358–59 (8th Cir. 2011) (mineral rights); *Luessenhop v. Clinton Cnty.*, 466 F.3d 259, 268–72 (2d Cir.

Mullane due process standard. App. 12a–14a. The reasoning of *Mullane* and *Jones* form a seamless methodology applicable to the full range of interests protected by the Due Process Clause. *Dusenbery*, 534 U.S. at 168 (“Since *Mullane* was decided, we have regularly turned to it when confronted with questions regarding the adequacy of the method used to give notice.”) (collecting cases).

2006) (property foreclosure); *Yi Tu v. Nat'l Transp. Safety Bd.*, 470 F.3d 941, 946 (9th Cir. 2006) (pilot license suspension).

To the same extent, state courts have applied *Jones* in any context where a due process interest is at stake. *See, e.g., Tacoma Police Dep't v. \$51,657.39 U.S. Currency*, 481 P.3d 1122, 1127–29 (Wash. Ct. App. 2021) (forfeiture of arrestee's property); *Spintz v. Div. of Family Servs.*, 228 A.3d 691, 705–06 (Del. 2020) (child protection registry); *Session v. Director of Revenue*, 417 S.W.3d 898, 904–06 (Mo. Ct. App. 2014) (driver's license suspension); *Norgrove v. Bd. of Educ. of City School Dist. of N.Y.*, 881 N.Y.S.2d 802, 809–12 (N.Y. Sup. Ct. 2009) (employment termination). The ruling in *Jones* applies generally where a due process interest is at issue.

Given their stakes, immigration proceedings warrant the full protection of the Due Process Clause. *See Sessions v. Dimaya*, 584 U.S. 148, 157 (2018) (“[D]eportation is ‘a particularly severe penalty,’ which may be of greater concern to a convicted alien than ‘any potential jail sentence.’”) (quoting *Jae Lee v. United States*, 582 U.S. 357, 370 (2017)). The legal status of the individual subject to a notice, including questions such as derivative United States citizenship, may be at issue in removal proceedings. As the government has acknowledged under the post-1996 statute, notice to appear at a removal hearing is “like an indictment in a criminal case [or] a complaint in a civil case.” *Niz-Chavez*, 593 U.S. at 163–64.

The courts have applied *Mullane-Jones* in every context involving an interest protected by the Due

Process Clause, even down to towing vehicles. With the great interests at stake in immigration proceedings, *Jones* routinely applies, as every reported case addressing the issue has recognized. While the government claims the court of appeal erroneously “extends” *Jones* to an entirely different context, Pet. at 14, this case is not about extending *Jones*; to the contrary, the government seeks to carve out from this Court’s uniform due process notice jurisprudence cases that involve the high stakes question of persons’ immigration status. No such exception finds support in this Court’s precedent.

The government is also wrong that, “even if” *Jones* applies to notice of removal proceedings, sending certified mail under the statutes in effect from 1990 to 1996 automatically satisfied due process where the notice was returned as unclaimed. Pet. at 21. Compliance with a statute does not automatically satisfy due process, as this Court expressly held in *Jones*. 547 U.S. at 230 (requiring that the government “consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice.”). Additional reasonable steps can be critical when notice fails: in *Peralta-Cabrera*, the additional check showed that the government failed to include “in care of” (501 F.3d at 840); in *Echavarría*, the government had the A-file and bond contract to check the address (641 F.3d at 96). Given the life-changing stakes in immigration proceedings, both the statute requiring that notice be “given” and due process call for further steps where practicable. As stated by the *Perez-Alevante* court: “This additional step [determining representation

and counsel's address] requires *de minimus* effort by the government, and is balanced against the significant interest an alien facing removal has in being able to continue his professional and familial life in this country." 197 F. App'x at 196.

This case involves a legal principle uniformly applied among the circuits and by the en banc court below. That principle has applied since *Jones* without ill effects. The statutory context for the decision below is a relic of the past unlikely to be repeated. The government admits its petition is "interlocutory" and does not claim a circuit split. The government's hyperbolic language fails to establish that this is an exceptional case, and, in any event, the fact-intensive and case-specific issues never addressed by the district court render it an inappropriate vehicle for this Court's review.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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