No. 25-972

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

LEOPOLDO RIVERA-VALDES

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

REPLY BRIEF FOR THE PETITIONER

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The decision below imposes extra-statutory requirements for providing notice of immigration proceedings, even though Congress carefully crafted a framework for providing such notice, and it calls into question thousands or even tens of thousands of *in absentia* deportation or removal orders, which could now be subject to litigation about whether the government might have been able, years or decades ago, to take unspecified steps beyond those required by the statute in order to attempt to effectuate actual notice. Notwithstanding the "narrow standard of review" that this Court applies to due-process challenges to "decisions made by the Congress or the President in the area of immigration and naturalization," *Mathews* v. *Diaz*, 426 U.S. 67, 82 (1976), the Ninth Circuit treated the additional-reasonable-steps requirement that this Court applied to tax sales of real property in *Jones* v. *Flowers*, 547 U.S. 220 (2006), as equally appropriate for deportation proceedings. That was error.

Respondent is unpersuasive in contending (Br. in Opp. 18-19, 22-24) that the decision below has little practical significance for the government's immigration enforcement efforts. Many aliens are already challenging *in absentia* orders, and the Ninth Circuit's intervening decisions suggest that it will apply its additional-reasonable-steps requirement to all *in absentia* deportations and removals, including those executed under the current statutory framework. Respondent also suggests (*id.* at 13-18) that review is unwarranted because the courts of appeals are in agreement, but respondent cites no case that has applied the additional-reasonable-steps requirement in the deportation context at issue here. And where a court's ruling impedes immigration enforcement in a manner like the decision below, review is appropriate even in the absence of a circuit conflict.

Respondent further claims (Br. in Opp. 19-21) that because the court of appeals ordered a remand, the petition is interlocutory and should be denied on that basis. But the issues to be decided on remand are wholly collateral to the question presented, and resolving the question presented in the government's favor would eliminate the need for any further proceedings. Finally, respondent's defense (*id.* at 24-29) of the Ninth Circuit's decision on the merits fails to appreciate this Court's consistent exercise of more deferential review in the immigration context. The Court should grant the petition for a writ of certiorari.

A. The Ninth Circuit's Decision Is Wrong

The Ninth Circuit erroneously held that Congress's framework for providing notice to aliens of deportation proceedings is inadequate under the Due Process Clause when the government learns that its compliance with the statute failed to provide actual notice. Pet.

App. 5a. In doing so, it relied on this Court's decision in *Jones* v. *Flowers*, which held that "when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." 547 U.S. at 225. But *Jones* by its terms did not announce an additional-reasonable-steps requirement to be applied whenever the government has a notice obligation, and this Court has repeatedly emphasized that Congress has particular flexibility when crafting procedures in the immigration context. See *Mathews*, 426 U.S. at 81-82; *Department of State* v. *Muñoz*, 602 U.S. 899, 911 (2024). The Ninth Circuit therefore erred in extending the additional-reasonable-steps framework from *Jones* to the distinct context of deportation proceedings.

Respondent's contrary contentions (Br. in Opp. 24-29) lack merit. Respondent treats (*id.* at 25-26) *Jones* as having crafted a new, universally applicable rule that anytime the government is obligated to give notice and learns that its efforts—no matter how sensible—have failed, it must take additional reasonable steps to attempt to effect notice. But *Jones* did not create a generally applicable additional-notice requirement; rather, it carefully and "repeatedly cabined its holding to the facts of the case." Pet. App. 37a (Bennett, J., dissenting); see, *e.g.*, *Jones*, 547 U.S. at 227 (explaining that most federal courts of appeals and state supreme courts had decided that, once a government "learns its attempt at notice has failed," it must "do something more *before real property may be sold in a tax sale*") (emphasis added). Respondent is correct to assert (Br. in Opp. 26), that lower courts must treat this Court's reasoning as precedential. But that includes the limitations acknowl-

edged by the Court. When the Court, as in *Jones*, makes clear that its decision is tied to the context of the particular case, courts confronting a similar question in a distinct context must consider whether the same result would make sense in that new context. Accordingly, the lower-court decisions that have extended *Jones*'s additional-reasonable-steps requirement to certain contexts beyond tax sales do not mean that the additional-reasonable-steps requirement "applies generally where a due process interest is at issue." Br. in Opp. 27. It means only that the requirement sensibly applies in those *particular* contexts.

Respondent next contends that "all 'persons' present in the United States, regardless of their legal status," have due-process rights, and that the important interests at issue in immigration proceedings "warrant the full protection of the Due Process Clause." Br. in Opp. 24, 27 (citation omitted). But those general statements miss the point: The question is what process is due to aliens under our constitutional framework.

This Court has made clear that aliens are *not* entitled to all of the due-process rights afforded to citizens—rather, "Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore* v. *Kim*, 538 U.S. 510, 522 (2003); see also *Mathews*, 426 U.S. at 78.* That is true even recognizing that deportation is a "severe penalty." *Sessions* v. *Dimaya*, 584 U.S. 148, 157 (2018) (citation omitted). It therefore does not

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* As explained in our petition (at 14 n.2), the Court need not decide the scope of due-process rights of aliens who have unlawfully entered the United States—which are further limited—because the Ninth Circuit's rule goes beyond what the Constitution requires even as to aliens who were at one time lawfully admitted and acquired greater due-process protections.

follow *a fortiori*, as respondent suggests (Br. in Opp. 27), that an alien facing deportation proceedings is entitled to the same efforts at notice as a citizen who faces the forfeiture and sale of his real property.

Furthermore, this Court has emphasized that when it comes to immigration, there is a "need for flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication." *Mathews*, 426 U.S. at 81. Accordingly, courts are to employ "a narrow standard of review of decisions made by the Congress or the President in the area of immigration and naturalization." *Id.* at 82; see also *Muñoz*, 602 U.S. at 911 (noting that "the field of immigration" is "an area unsuited to rigorous judicial oversight"). The Ninth Circuit erred in failing to account for those immigration-specific circumstances in holding that Congress's carefully crafted notice framework was inadequate to protect aliens' due-process interests.

B. This Court's Review Is Warranted

1. As the panel concurrences recognized, the decision below puts "on unsure footing every removal, deportation, and immigration conviction where the government had *any inkling* that the alien did not receive actual notice." Pet. App. 83a (Bumatay, J., concurring); *id.* at 86a (Baker, J., concurring). Respondent nonetheless asserts (Br. in Opp. 22-24) that the government's concerns are unfounded because few aliens would be affected by the new rule. That is incorrect.

This Office has been informed by the Executive Office for Immigration Review that in 1994, the year respondent was ordered deported, immigration courts within the Ninth Circuit ordered nearly 10,000 aliens deported *in absentia*. And that was no outlier. Every year in which the notice-by-certified-mail framework

was in effect, the government deported thousands of aliens *in absentia* pursuant to orders from immigration courts within the Ninth Circuit. And in the last five years alone, more than 1400 of those aliens have filed motions to reopen their deportation orders. That category alone is not "vanishingly small." Br. in Opp. 22.

Moreover, courts in the Ninth Circuit are likely to apply that court's new rule to the post-1996 statutory framework as well. Respondent is correct in noting (Br. in Opp. 18-19, 22) that the mechanics of certified mail and regular mail are different, and that the post-1996 statutory framework permits notice by regular mail. See Pet. 6 n.1. But the Ninth Circuit has already begun granting petitions for review from aliens who were ordered removed *in absentia* under the post-1996 framework, remanding cases for the Board of Immigration Appeals to determine "whether, after it learned that notice was ineffective, the agency had reasonable steps available to it to effectuate" notice, as "required by [the decision in this case]." *Chamorro-Castillo* v. *Bondi*, No. 20-73402, 2026 WL 92279, at *2 (9th Cir. Jan. 13, 2026); see *Colindrez Ortega* v. *Bondi*, No. 23-3496, 2026 WL 412939, at *1-*2 (9th Cir. Feb. 13, 2026); *Xue* v. *Bondi*, No. 25-771, 2025 WL 3034695, at *2 (9th Cir. Oct. 30, 2025).

Respondent contends (Br. in Opp. 23) that the other limits imposed by 8 U.S.C. 1326(d) on collateral challenges to removal orders in criminal prosecutions will limit the serious consequences of the decision below. But even if the government ultimately prevails in most criminal prosecutions for unlawful reentry, the decision below can still be expected to "wreck the federal courts' dockets with an explosion of litigation" as to the new additional-reasonable-steps requirement. Pet. App. 83a

(Bumatay, J., concurring). That burdensome litigation will strain the resources of the Executive and the federal courts alike. And that does not even account for the burdens that will be imposed by motions to reopen and rescind deportation or removal orders that are filed with immigration judges and not subject to any statute of limitations. See Pet. 21 n.4.

Finally, respondent's suggestion (Br. in Opp. 23) that aliens "have strong incentives to appear and pursue relief," rather than avoid attending their removal proceedings, is misplaced. The decision below *creates* an incentive to avoid notice by making the government's failure to pursue extra-statutory notice efforts an available ground for challenging an *in absentia* order. See Pet. 3, 22.

2. Respondent emphasizes (Br. in Opp. 13-18) the lack of a circuit conflict and asserts that there is a consensus among the courts of appeals. But this Court often grants review even absent a circuit conflict when a court of appeals' decision "has decided an important question of federal law that has not been, but should be, settled by this Court" or "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). This case satisfies those criteria. The court below rendered a constitutional ruling that expands the scope of aliens' due-process protections in a context where this Court is traditionally deferential to Congress's policy choices and "throws sand in the gears of immigration enforcement efforts." Pet. App. 85a-86a (Baker, J., concurring); see Pet. 13-22.

Respondent is wrong to suggest (Br. in Opp. 13-18) that the Ninth Circuit's decision reflects consensus with other courts of appeals to consider the question pre-

sented. None of those cases took the same radical approach as the decision below.

The decision in *Peralta-Cabrera* v. *Gonzales*, 501 F.3d 837 (7th Cir. 2007), for example, addressed whether an alien had received actual notice before the entry of an *in absentia* removal order, *id.* at 844, and it cited *Jones*, *id.* at 845. But the court expressly noted that it was *not* addressing "whether the notice itself satisfied statutory and constitutional requirements." *Id.* at 844. Instead, the court decided only that the alien had not "made himself unreachable" when he supplied immigration officers with the relevant facts about where he would be residing, and the government then apparently failed to comply with regulations about how to address certified mail to him at that address. *Id.* at 844; see *id.* at 844-845. In any event, the Seventh Circuit has recently recognized that "[i]n the context of immigration proceedings," the Due Process Clause "requires 'only that the government attempt to deliver notice to the last address provided' by the applicant seeking benefits or relief." *Muthana* v. *Mullin*, 171 F.4th 967, 973 (2026) (quoting *Patel* v. *Holder*, 563 F.3d 565, 568 (7th Cir. 2009)). That court has therefore not imposed anything like the Ninth Circuit's blanket application of the additional-reasonable-steps framework.

The other cases that respondent cites as evidence of a supposed consensus are even further afield. The Fifth Circuit's decision in *Echavarria* v. *Pitts*, 641 F.3d 92 (2011), did not concern aliens' due-process rights at all—it considered the rights of bond obligors who posted cash bonds to secure aliens' release. *Id.* at 93. In assessing whether the obligors were deprived of their property—the cash bonds—without adequate notice, the court of appeals found it sensible to apply *Jones*

in the *immigration-bond* context because it presented property-based concerns similar to *Jones*. *Id.* at 95. As for *Arevalo* v. *Barr*, 950 F.3d 15 (1st Cir. 2020), respondent concedes (Br. in Opp. 16) that all that court did was "quote[] *Jones* quoting *Mullane* [v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)], in holding that 'the petitioner received all of the process that was due.'" The First Circuit did not even mention, much less impose, the additional-reasonable-steps framework. *Arevalo*, 950 F.3d at 20. And *Perez-Alevante* v. *Gonzales*, 197 Fed. Appx. 191 (3d Cir. 2006), is a nonprecedential opinion in which the court found that the government's failure to send notice to an alien's attorney—as required by its own regulations—was improper *ex ante*, not because the government had additional obligations after it learned that mail had been returned. *Id.* at 194-196.

C. This Case Is An Appropriate Vehicle For Resolving The Question Presented

Respondent suggests (Br. in Opp. 3) that because the petition is "admittedly 'interlocutory,'" review is unwarranted. See *id.* at 3, 19-21. But "where the opinion of the court below has decided an important issue, otherwise worthy of review, and Supreme Court intervention may serve to hasten or finally resolve the litigation," review of an interlocutory decision may be appropriate. Stephen M. Shapiro et al., *Supreme Court Practice* 4-57 (11th ed. 2019). Those criteria are satisfied here. As explained in the petition (at 13-20), the court of appeals decided an important constitutional question in a manner that misapplies this Court's precedents. The decision poses substantial obstacles to the government's immigration enforcement efforts which warrant this Court's review. See Pet. 21-23. And this Court's decision could finally resolve the litigation, rendering

unnecessary any remand. The questions that the court of appeals identified for the district court to address on remand—what additional steps may have been practicable and whether respondent met the other criteria for relief under 8 U.S.C. 1326(d)—do not bear on the resolution of the question presented.

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For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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MAY 2026