

No. 26-239

IN THE
Supreme Court of the United States

MARKWAYNE MULLIN, SECRETARY OF HOMELAND
SECURITY, ET AL., *Petitioners*,

v.

REFUGEE AND IMMIGRANT CENTER FOR
EDUCATION AND LEGAL SERVICES, ET AL.
Respondents.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the District of Columbia
Circuit

**Brief *Amicus Curiae* of
America's Future,
Citizens United,
Citizens United Foundation, and
Conservative Legal Defense
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INTEREST OF THE *AMICI CURIAE*¹

Amici America's Future, Citizens United, Citizens United Foundation, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

One of these *amici*, America's Future, filed two *amicus* briefs in this case in the Circuit Court below: *RICELES v. Noem*, U.S. Court of Appeals for the District of Columbia Circuit, No. 25-5243:

- Brief *Amicus Curiae* of America's Future in Support of Defendants-Appellants and Emergency Stay (July 9, 2025), and
- Brief *Amicus Curiae* of America's Future in Support of Defendants-Appellants and Reversal (Aug. 29, 2025).

¹ It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

STATEMENT OF THE CASE

On January 20, 2025, the first day of his second administration, President Trump issued a Proclamation² declaring, *inter alia*, “that ‘the current situation at the southern border qualifies as an invasion’ because ‘the sheer number of aliens entering the United States has overwhelmed the system’ and is ‘prevent[ing] the Federal Government from obtaining operational control of the border.’” *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, 793 F. Supp. 3d 19, 38 (D.D.C. July 2, 2025) (“*RICELES I*”). The Proclamation declared that any aliens who managed to cross the southern border illegally until the emergency is lifted are barred “from invoking any provision of the Immigration and Nationality Act (‘INA’), 8 U.S.C. §§ 1101 *et seq.*, ‘that would permit their continued presence in the United States, including but not limited to’ the asylum statute, 8 U.S.C. § 1158.” *RICELES I* at 39. President Trump relied on his emergency authority under 8 U.S.C. § 1182(f) to “suspend the entry of all aliens or any class of aliens whenever he finds that their entry would be detrimental to the interests of the United States.” *Id.* at 44 (internal quotations omitted).

Thirteen individuals and three nonprofit organizations sought injunctive relief alleging, *inter*

² Proclamation 10888, “Guaranteeing the States Protection Against Invasion,” 90 *Fed. Reg.* 8333 (Jan. 20, 2025). That same day, the President also issued Executive Order 14159, “Protecting the American People Against Invasion,” 90 *Fed. Reg.* 8443 (Jan. 20, 2025).

alia, that the INA bars the Proclamation. *Id.* at 40. The district court certified a “worldwide” class “consisting of all individuals who are or will be subject to the Proclamation and/or its implementation and who are now or will be present in the United States.” *Id.* at 98. The court enjoined all defendants except the President from enforcing the Proclamation. *Id.* at 110. Finally, the district court refused to stay its injunction pending appeal, but agreed to “postpone the effective date of its class-wide order by fourteen days.” *Id.* at 111.

On July 11, 2025, the D.C. Circuit entered an administrative stay of the lower court’s order except as to the named plaintiffs. *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, 2025 U.S. App. LEXIS 17228 (D.C. Cir. 2025). On August 1, 2025, the D.C. Circuit dissolved the administrative stay, and granted in part and denied in part the government’s motion for a stay pending appeal. *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, 2025 U.S. App. LEXIS 19422 (D.C. Cir. 2025).

In April of this year, a divided panel of the D.C. Circuit upheld the district court, over a partial dissent from Judge Justin R. Walker. *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81 (D.C. Cir. 2026) (“*RICELES II*”). The panel ruled that 8 U.S.C. § 1182(f) provides the President power only to exclude, not to remove an alien who evades the exclusion. *Id.* at 102. It applied the same reasoning to 8 U.S.C. § 1185(a)(1). *Id.* at 104. The court ruled that the President’s removal power is limited to that outlined in 8 U.S.C. §§ 1229(a) and 1225(b), which

require case-by-case determinations and permitting aliens to file asylum claims. *Id.* at 118.

The court rejected the government’s argument that 8 U.S.C. § 1252(f), which provides that “no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter” applies to §§ 1182 and 1185, as they are in subchapter II rather than IV. *Id.* at 117.

In July, the circuit court denied the government’s motion for rehearing en banc. *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 2026 U.S. App. LEXIS 22093 (D.C. Cir. 2026).

SUMMARY OF ARGUMENT

The circuit court began with the premise that all power to control the nation’s border is vested in Congress, and the President may only exercise the power which Congress delegated. However, the power to control the border and repel invasions is a shared power inherent in the nation’s sovereignty, with the President having special Constitutional authority as the Commander in Chief.

Then, the circuit court reads the supplemental authorities delegated to the President to address “detrimental” or emergency situations at the border in the narrowest possible manner, inventing statutory conflicts, and stripping from the President the ability to address threats to the nation. The Government’s reading of 8 U.S.C. §§ 1182(f) and 1185(a) is entirely

consistent with their text and all legislative history showing Congress wanted to ensure the President could effectively respond to a threat to the nation.

The courts below would have us forget the crisis that existed at the border when President Trump took office in January 2025, when over 10 million migrants had been let into the country through nonenforcement of our nation's laws. Largely for this reason that the People elected Donald Trump as President, and the circuit court's decision, if it goes into effect, would negate his power to fulfil his promises.

In order to circumvent this Court's ban on universal injunctions, the courts below employed a near-universal class certification, where the class included members with disparate interests in violation of Rule 23. Should this type of class certification be sanctioned, it will effect a *de facto* repeal of *Trump v. CASA*.

ARGUMENT

I. THE CIRCUIT COURT INCORRECTLY ATTRIBUTED THE POWER TO CONTROL THE NATION'S BORDERS EXCLUSIVELY TO CONGRESS.

The D.C. Circuit began its opinion with unqualified statements from prior decisions of this Court to the effect that the total control over our borders and the admission of aliens is vested exclusively in Congress, citing several cases (*e.g.*, “More than a century of precedent assures that ‘over

no conceivable subject is the legislative power of Congress more complete' than it is over the admission of foreign individuals." "The plenary authority of Congress over aliens under Art. I, § 8, cl. 4 is not open to question." *RICELES II* at 90 (citations omitted). It appears these broad statements were selected to give impression that the President has no independent authority to protect the nation's borders. This proposition is not supported by any citation to the Constitution, and it disregards the President's role as "Commander in Chief."

However, the authority of the nation to control its borders and to restrict immigration **does not derive from the U.S. Constitution**. Indeed, neither the word "border" nor the word "immigration" even appears in the U.S. Constitution. The Constitution's only express provision addressing noncitizens is Article I, Section 8, which grants Congress the power to "establish an uniform Rule of Naturalization" — the process by which a noncitizen acquires citizenship in the United States.

As Justice Scalia explained in *Arizona v. United States*, 567 U.S. 387, 422 (2012) (Scalia, J., concurring in part and dissenting in part): "I accept [immigration regulation] as a valid exercise of **federal power** — not because of the Naturalization Clause (it has no necessary connection to citizenship) but because it is an **inherent attribute of sovereignty**." (Emphasis added.) This proposition can be sourced to such

eminent authorities as Blackstone³ and de Vattel.⁴ Thus, the power to control immigration is properly understood as a “federal power,” not an exclusively congressional power.

II. CONGRESS HAS ENHANCED, NOT LIMITED, THE PRESIDENT’S AUTHORITY TO CONTROL IMMIGRATION.

The district court below rejected the President’s reliance on 8 U.S.C. §§ 1185(a) and 1182(f) in taking the actions he did in his Proclamation:

the Court concludes that ... neither the INA nor the Constitution authorizes the changes in immigration law embodied in the Proclamation and implementing guidance ... the President may not assert an authority not found in the text of a statute merely because

³ See William Blackstone, I Commentaries on the Laws of England at 251 (“Upon exactly the same reason stands the prerogative of granting safe-conducts, without which **by the law of nations no member of one society has a right to intrude into another**. And therefore Puffendorf very justly resolves, that it is left in **the power of all states, to take such measures about the admission of strangers**, as they think convenient; those being ever excepted who are driven on the coasts by necessity, or by any cause that deserves pity or compassion.”) (Emphasis added.)

⁴ Emmerich de Vattel, The Law of Nations, Book II, Chapt. VII, Sect. 94 (“**The sovereign may forbid the entrance of his territory** either to foreigners in general, or in particular cases, or to certain persons, or for certain particular purposes, according as he may think it advantageous to the state.”) (Emphasis added.)

that additional authority would render his statutorily authorized actions more effective. [*RICELES I* at 79, 82.]

The Circuit Court followed the district court's error: "Section 1182(f) and Section 1185(a) afford the President discretionary powers over who may cross our borders and enter the United States. But those provisions do not confer presidential discretion over removal procedures." *RICELES II* at 105.

However, in 8 U.S.C. §§ 1185(a) and 1182(f), Congress granted broad supplemental powers to the President to impose restrictions on immigration without the need to seek additional congressional authorization. These powers operate as an exception to the INA's general rules for asylum and removal proceedings, whenever the President deems that additional controls are needed. There is no conflict here, as the statute was written exactly as Congress chose.

A. Congress Rejected Efforts to Limit the President's Authority under § 1182(f) to Time of War or National Emergency.

Section 1182(f)'s title indicates that its clear purpose was to empower the President to act as he has:

Suspension of entry or imposition of restrictions by President. Whenever the President finds that the entry of any aliens or of any class of aliens into the United States

would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, **suspend the entry of all aliens or any class of aliens** as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. [Emphasis added.]

When this provision was being considered, Representative Abraham Multer (D-NY) introduced an amendment that would have added to the beginning of the section, “When the United States is at war or during the existence of a national emergency proclaimed by the President...” 98 *Cong. Rec.* 4423 (1952). Multer argued: “my amendment simply provides that instead of being able to do that at any time, the President may ... effectuate such a suspension only in the event of a national emergency, or a state of war.” *Id.* The INA’s sponsor, Representative Francis Walter (D-PA), responded that the bill’s language was intended to permit the President to restrict immigration for reasons of **national interest** that might **not** rise to the level of a **national emergency**:

We believe that the language ‘whenever the president finds that the entry of any aliens or class of aliens in the United States would be detrimental to the interest of the United States’ is absolutely essential because when there is an outbreak of an epidemic in some country, whence these people are coming, it is impossible for Congress to act. **People might**

conceivably in large numbers come to the United States and bring all sorts of communicable diseases with them. More than that, suppose we have a period of great unemployment? In the judgment of the committee, **it is advisable at such time to permit the president to say that for a certain time, we are not going to aggravate that situation.** [*Id.* (emphasis added).]

Representative Emanuel Celler (D-NY) “favored the liberalization of immigration laws,”⁵ arguing that:

[u]nder the bill, as proposed, **the President is given an untrammelled right, an uninhibited right to suspend immigration entirely.** That is very broad power. There is no restriction upon his power. There is no statement that as a condition precedent for the exercise of such power, there has to be a state of national emergency.... A state of war is not needed. [98 *Cong. Rec.* 4423 (1952) (emphasis added).]

The House overwhelmingly rejected such warnings and eventually adopted Representative Walter’s bill by a final vote of 278-113, overriding President Truman’s veto.

⁵ U.S. State Department, “The Immigration and Nationality Act of 1952 (The McCarran-Walter Act).”

A similar debate was held on the Senate side. Senator Wayne Morse (D-OR) proposed an amendment which, he argued: “seeks only to bring the procedures in the administration of the proposed immigration law under the provisions of the Administrative Procedure Act.” 98 *Cong. Rec.* 5781 (1952). Morse’s proposed amendment sought to guarantee APA review to every alien challenging for admission. It provided that “[n]otwithstanding any provisions to the contrary, no alien shall be denied a hearing either in exclusion or deportation proceedings, and every person aggrieved by an adverse order in exclusion or deportation proceedings may obtain court review in an action for declaratory judgment.” *Id.* (emphasis added). Morse argued that “[t]he McCarran... bill would delegate to the Executive large new powers in the field of immigration, deportation, naturalization, and denaturalization, and would correspondingly remove congressional and judicial restraints upon executive power ... [b]y delegating to the President law-making powers now vested in Congress....” *Id.* at 5787 (emphasis added). His amendment was designed to strip that power from the President by providing APA “notice and hearing” and judicial review provisions to any alien proposed to be excluded or deported.

Arguing specifically against the provision that is now § 1182(f), Morse argued that it “authorizes the President to set up new restrictions or absolute bars upon new immigration, in his plenary discretion, without legislative or judicial guidance, establishing this power for peace time, as extensively as such power has been established for wartime under

earlier legislation.” *Id.* at 5788 (emphasis added). The district court decision ignores the fact that Morse’s amendment was defeated in the House, and Morse’s amendment was defeated in the Senate. *Id.* at 5789.

**B. Congress Amended § 1185(a) to Remove
“Emergency” Language and Make the
President’s Authority Permanent.**

Section 1185(a) was developed in a somewhat different manner, yet it leads to the same conclusion: Congress delegated discretion to the President to create exceptions to the standard asylum and removal rules of the INA where required by the national interest. As originally enacted in 1952, 8 U.S.C. § 1185(a) was designed to allow the President to impose supplemental conditions and restrictions on immigration only in times of emergencies:

When the United States is at war or during the existence of any national emergency proclaimed by the President, ... and the President shall find that the interests of the United States require that restrictions and prohibitions **in addition to those provided otherwise than by this section** be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or the Congress, be unlawful — (1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and

subject to such limitations and exceptions as the President may prescribe. [Pub. L. No. 414, 66 STAT. 190 (June 27, 1952) (emphasis added).]

The House Report on the INA noted that the language of 8 U.S.C. § 1185(a) was drawn nearly verbatim from the Immigration Act of 1917. “The powers of the President to provide additional prohibitions and restrictions on the entry and departure of persons during time of war or the existence of a national emergency are incorporated in the bill (sec. 215) in practically the same form as they now appear in the act of May 22, 1918 (40 Stat. 559).”⁶ That earlier act was H.R. 10264, the Immigration Act of 1917. In the bill, Congress significantly expanded the President’s emergency powers in the midst of World War I. That act dealt with the specific emergency of war and stated:

when the United States is at war, if the President shall find that the public safety requires that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful ... [f]or any alien to depart from or enter or attempt to depart from or enter the United States except

⁶ H. Rep. 1365, in 1952 United States Code Congressional and Administrative News 1653, 1708 (1952).

under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe. [Pub. L. No. 154, 40 STAT. 559 (May 22, 1918) (emphasis added).]

Here, the INA broadened what had been a specific war power under the 1917 Immigration Act to include any general national emergency the President might deem it necessary to declare.

The President's power was broadened still further when Congress adopted § 1185(a) in its current form. In 1976, Congress had passed the National Emergencies Act, to generally limit the duration of presidential emergency declarations to two years. The Act provided that "[a]ll powers and authorities possessed by the President ... as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment." Pub. L. No. 94-412, 90 STAT. 1255 (Sept. 14, 1976). The law further provided that any presidential declaration of emergency was to be reviewed by Congress every six months, and that Congress would have authority to terminate any such declaration. *See* 90 STAT. 1256.

In 1978, in order to avoid the two-year termination of the President's authority under 8 U.S.C. § 1185(a), Congress enacted the Foreign Relations Authorization Act, to amend 8 U.S.C. § 1185(a) to its current language:

Unless otherwise ordered by the President, it shall be unlawful ... for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.

The House Conference Report for that amendment specified: “The ... bill **made permanent the authority of the President to regulate the entry of aliens into the United States....** This authority, which is now exercised on an ‘emergency’ basis, would otherwise lapse in September 1978, pursuant to the National Emergencies Act enacted in 1976.” 1978 House Conf. Rep. No. 95–1535, p. 44. Thus, Congress removed the “emergency” language from the statute, expressly to save the President’s power under 8 U.S.C. § 1185(a) from terminating every two years, and to make a previous “emergency” power a general power of the President, secured against the congressional review which controls emergency presidential powers.

The Government argued below: “the INA’s other provisions governing expedited and non-expedited removal ... are the default method of removal; § 1182(f) is an emergency provision designed to authorize repatriation for a limited period. The provisions work in harmony, not conflict.” Brief for Appellants at 24. The same pertains to § 1185(a). Congress has expressly and intentionally delegated to the President the authority **to alter the default provisions** if he determines the nature of the exigency warrants it. If the President shall find that the interests of the

United States require that “limitations and exceptions” be imposed, he is fully within his power to do so. 8 U.S.C. § 1185(a)(1).

III. THE CRISIS AT THE BORDER IN JANUARY 2025 ILLUSTRATES WHY CONGRESS GAVE THE PRESIDENT SUPPLEMENTAL POWER TO MODIFY ASYLUM AND REMOVAL RULES.

The state of affairs at America’s southern border on inauguration day in 2025 was what Congress envisioned could happen when it enacted § 1185(a). In 2021, more than 2 million border crossers and illegal aliens arrived at the porous southern border — **a foreign population larger than the resident population of Philadelphia**, Pennsylvania. “From January 2021 to August 2021, for example, more than a half million were released into the U.S. interior.”⁷

In July 2021, Representative Bob Good (R-VA) visited the border and warned that the U.S. had lost any type of control of the border.⁸ “We have no operational control, no legal control, no law enforcement control of our border,” he said. *Id.*

⁷ John Binder, “Biden’s Next Move: Busing, Flying Thousands of Illegal Aliens into American Communities Every Day,” *Breitbart* (Apr. 1, 2022).

⁸ Adam Shaw, “GOP rep warns ‘no operational control’ of border after seeing migrants stream in, board flights,” *Fox News* (July 1, 2021).

Twenty months later, in March 2023, U.S. Border Patrol Chief Raul Ortiz admitted that the Border Patrol still did not have operational control of the border. “[Homeland Security] Committee Chairman Representative Mark Green [R-TN] asked Ortiz, ‘Does DHS have operational control of our entire border?’ Ortiz responded, ‘No, sir.’”⁹

In just one state, “between June 1, 2011 and July 31, 2019,” illegal immigrants in Texas jails were convicted of “500 homicides; 23,954 assaults; 8,070 burglaries; 297 kidnappings; 14,178 thefts; 2,026 robberies; 3,122 sexual assaults; 3,840 sexual offenses; 3,158 weapon charges and tens of thousands of drug and obstruction charges.”¹⁰

According to the Texas Department of Public Safety, between June 1, 2011 and July 31, 2025:

329,000 illegal noncitizens were charged with more than 581,000 criminal offenses which included arrests for 1,075 homicide charges; 75,743 assault charges; 10,352 burglary charges; 67,981 drug charges; 1,450 kidnapping charges; 29,597 theft charges; 45,633 obstructing police charges; 3,320 robbery charges; 7,430 sexual assault charges;

⁹ Nick Mordowanec, “Border Patrol Chief Admits Biden Official Wrong About ‘Operational Control,’” *Newsweek* (Mar. 15, 2023).

¹⁰ Hans von Spakovsky, “Crimes by Illegal Immigrants Widespread Across U.S. – Sanctuaries Shouldn’t Shield Them,” *Heritage Foundation* (Sept. 3, 2019).

8,437 sexual offense charges; and 7,313 weapon charges.¹¹

The nationwide numbers are still more staggering:

At the federal, state, and local levels, taxpayers shell out approximately \$182 billion to cover the costs incurred from the presence of more than 15.5 million illegal aliens, and about 5.4 million citizen children of illegal aliens. That amounts to a cost burden of approximately \$8,776 per illegal alien/citizen child. The burden of illegal immigration on U.S. taxpayers is both staggering and crippling, with the gross cost per taxpayer at \$1,156 every year.¹²

According to the House Homeland Security Committee, “169 individuals on the terrorist watchlist were apprehended attempting to enter the country illegally, and at least 1.7 million known gotaways have evaded apprehension since FY2021.”¹³ As numerous congressmen have noted, heavily armed drug cartels

¹¹ Texas Dep’t of Public Safety, “Texas Criminal Illegal Noncitizen Data” (updated Aug. 1, 2025).

¹² Federation for American Immigration Reform, “The Fiscal Burden of Illegal Immigration on United States Taxpayers — 2023 Cost Study” (Mar. 2023).

¹³ House Homeland Security Committee, “FACTSHEET: Final FY23 Numbers Show Worst Year at America’s Borders — Ever” (Oct. 26, 2023).

and human trafficking rings have operational control of our southern border.¹⁴

In December 2023, as Governors Greg Abbott of Texas and Ron DeSantis of Florida continued busing illegal immigrants to major cities across the nation in an effort to alleviate the pressure on their own states, the mayors of many major “blue” cities, including New York, Chicago, and Denver, begged for federal help to accommodate the influx.¹⁵ In July 2023, New York City Mayor Eric Adams had declared that New York had “no more room for migrants.”¹⁶ “[W]e have reached full capacity,” Adams said. “We have no more room in the city, and we need help.” *Id.*

Numerous leaders have called for action to stem the invasion. Senator Roger Marshall (R-KS) sponsored legislation that would declare an invasion at the southern border, “trigger[ing] language in the Constitution that holds that states may take measures independent of the federal government to repel

¹⁴ See, e.g., “Rep. [Chip] Roy: Cartels have ‘operational control’ of border, Kamala Harris has done ‘nothing,’” *Fox News* (Apr. 21, 2021); Rep. Steve Scalise, Press Release, “Scalise: Biden Gave Control of Southern Border to Drug Cartels” (May 11, 2022) (“Biden turned operational control of our southern border over to the drug cartels. He did it deliberately. He started [on] day one when he stopped building the wall”); Adam Shaw, *supra*.

¹⁵ James Bickerton, “Democrat Cities Feel Pressure of Migrant Surge,” *Newsweek* (Dec. 28, 2023).

¹⁶ Sarah Rumpf-Whitten, “NYC Mayor Eric Adams says ‘no more room’ for migrants: ‘Our cup runneth over,’” *Fox News* (July 20, 2023).

“invaders,” as the Biden administration openly welcomed more of the same.¹⁷ Marshall noted that “[o]ver 6 million migrants have crossed our southern border under Joe Biden’s watch. That’s more than double the population of the entire state of Kansas...” *Id.* Including “gotaways,” “nearly 10 million migrants have crossed into the US illegally during the Biden administration, a record Biden’s critics assert could only be achieved by intentionally refusing to enforce the law.”¹⁸

On July 6, 2022, “four county judges in Texas declared an invasion citing Article 4, Section 7 of the Texas Constitution and Article 1, Section 10, Clause 3 of the U.S. Constitution.”¹⁹ They “called on Texas Gov. Greg Abbott to ‘immediately prevent and/or remove all persons invading the sovereignty of Texas and that of the United States.’” *Id.* By January 2024, 51 Texas counties had declared that a state of invasion existed.

Entire Texas towns have been overrun by mobs of illegal aliens that overwhelm their local populations and the services they provide. On September 20, 2023:

¹⁷ Caitlin Doornbos, “Sen. Roger Marshall pitching resolution declaring US southern border ‘invasion,’” *New York Post* (Sept. 26, 2023).

¹⁸ Chris Pandolfo, “7.2M illegals entered the US under Biden admin, an amount greater than population of 36 states,” *New York Post* (Feb. 21, 2024).

¹⁹ Bethany Blankley, “Cuccinelli: No judge has ever declared invasion before in U.S. history,” *TheCenterSquare.com* (July 6, 2022).

[a]n unprecedented surge of 4,000 migrants streamed across the US border with Mexico into Eagle Pass, Texas, on Wednesday — forcing the overwhelmed city to declare a state of emergency. Mayor Rolando Salinas said a separate 2,500-person mob crossed the border into the city illegally Monday, on top of approximately 7,200 illegal crossers apprehended in the previous week.... Salinas said the new mob, many of them from Venezuela, has overrun Mission Border Hope, the only migrant shelter in the border city. “One of the situations is that a lot of these [migrants], they’re single males and they don’t want to listen to instructions and they’re leaving the facility,” the mayor said. “Not all of these people come in peace.” ... [T]he huge influx over the last week [is] close to 50% of the city’s 29,000 population.²⁰

CNN reporter Rosa Flores, on site in El Paso in May 2023, said that the scope of the influx was “difficult to describe ... with words.”²¹

Armed clashes along the border have become more and more frequent. After U.S. authorities:

²⁰ MaryAnn Martinez & Jorge Fitz-Gibbon, “Overwhelmed Texas city declares state of emergency as over 11K migrants — close to half its population — surge across border,” *New York Post* (Sept. 20, 2023).

²¹ Ben Wilson, “‘Difficult To Describe With Words’: CNN Reporter Stunned By Number of Illegal Immigrants In Texas City,” *Washington Free Beacon* (May 2, 2023).

arrested two Sinaloa Cartel leaders in late July [2024], sparking a turf war among rival factions ... [a]n internal alert [was] sent out to the El Paso, Texas sector, warn[ing] Border Patrol agents that cartel members are now permitted [by cartel leaders] to fire at them.... President-elect Donald Trump told News Nation that a “military operation” was the answer. “These people have become military,” Trump said. “They’re very rich, have a lot of money. They’re among the richest people, probably in the world.”²²

In October 2023, heavily-armed Texas Rangers and state police assaulted an island in the middle of the Rio Grande to retake it from well-armed drug smugglers.

[T]he Texans ... were about to invade an enemy-held island, this one being a 170-acre, mile-long land mass in the middle of the Rio Grande. The declared enemy: ultra-violent Mexican cartels that have occupied and used it with impunity to smuggle cocaine, heroin, fentanyl, weapons, and illegal immigrants, all while shooting at American cops, riddling Border Patrol boats with bullets, and intimidating Texas farmers, ranchers, and the

²² Carola DeLeon, “Cartel Members Are Now Reportedly Allowed To Shoot at U.S. Border Agents From Across The Border,” *Latin Times* (Nov. 11, 2024).

180 residents of the isolated Texas riverfront village of Fronzon.²³

Again and again, gangsters, cartels, and human smugglers attack U.S. military, law enforcement, and civilians at the border in early 2025.²⁴ No immigration during World War I, when the language in 8 U.S.C. § 1185(a) was first passed by Congress, even began to do the damage to America that the invasion on the southern border has caused. It is the greatest immigration crisis in the nation's history, by orders of magnitude.

As President Trump exercised his authority under Section 1185(a), the border stabilized.²⁵ The type of crisis faced by President Trump was exactly why Congress granted the President supplemental powers over immigration.

²³ Todd Bensman, "Texas Seizes Large Sanctuary Island in Campaign Against Cartels," *TheUnitedWest.org* (Oct. 13, 2023).

²⁴ See, e.g., David Propper, et al., "US Border Patrol and Mexican cartel members trade gunfire at southern border: report," *New York Post* (Jan. 28, 2025); Sabrina Penty & Brittany Chain, "Brazen moment Mexican cartel gangsters with high powered rifles open fire on US Border Patrol after Trump branded them terrorists," *Daily Mail* (Jan. 28, 2025); Audrey Conklin, "Billion-dollar Mexican cartel ops disrupted by Trump's border crackdown as US issues do-not-travel warning," *Fox News* (Jan. 30, 2025).

²⁵ U.S. Customs and Border Protection, "CBP Releases April 2025 Monthly Update" (May 12, 2025).

IV. THE DISTRICT COURT'S CLASS-WIDE INJUNCTION WAS EFFECTIVELY THE SAME AS THE NATIONWIDE INJUNCTION WHICH THIS COURT BANNED IN *TRUMP V. CASA*.

A. The Class Certified Below Fails to Comply With Rule 23.

The district court's "worldwide class" certification did not comply with F.R.Civ.P. 23, but was fashioned to make an end-run on *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). When this Court put an end to universal injunctions, it explained they were being used to "circumvent Rule 23's procedural protections and allow courts to create *de facto* class actions at will." *Id.* at 849 (internal quotation omitted). Here, the district court failed to apply all of Rule 23's procedural protections to circumvent that rule. If allowed to stand, the district courts will be right back in the business of issuing universal injunctions.

This Court has repeatedly held that "a class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members." *East Tex. Motor Freight Sys. v. Rodriguez*, 431 U.S. 395, 403 (1977) (quoting *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 216 (1974)). Here, the district court acknowledged the rule (*RICELES I* at 98-99) but established a class of "all individuals who are or will be subject to the Proclamation and/or its implementation and who are now or will be present in the United States" (*id.* at 98) — even though they lack

a common injury. The purported class includes: (i) aliens who do not claim or manifest fear of return and thus cannot claim that the Proclamation has caused them to lose any statutory protections; (ii) aliens who are ineligible for asylum or withholding of removal for other reasons, *see* 8 U.S.C. §§1231(a)(5), (b)(3)(B), 1158(a)(2), (b)(2), and thus cannot claim harm from the Proclamation; and (iii) aliens who will not be processed under the Proclamation at all.

A Rule 23(b)(1)(A) certification is only appropriate when the class seeks injunctive or declaratory relief to change an alleged ongoing course of conduct that is illegal as to all members of the class. “Rule 23(b)(1)(A) ‘takes in cases where the party is obliged by law to treat the members of the class alike.’” *Amchem Prods. v. Windsor*, 521 U.S. 591, 614 (1997). But here, the government is not obliged by other law to treat alike all illegal immigrants crossing the southern border. The law would treat very differently an illegal alien seeking asylum as a political refugee under the Convention Against Torture, for example, than a drug smuggler crossing the border actively engaged in a smuggling operation.

For certification under Rule 23(b)(2), this Court has made clear, “[t]he key ... is ‘the indivisible nature of the injunctive or declaratory remedy warranted — the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.’” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). “Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the

class. It does not authorize class certification when each individual class member would be entitled to a *different* injunction or declaratory judgment against the defendant.” *Id.* Because the Proclamation here will indisputably be lawful as to some members of the worldwide class, Rule 23(b)(2) certification is not appropriate.

B. The District Court’s Class Certification Circumvents *Trump v. CASA*.

Justice Alito warned the lower courts against lax application of Rule 23 to continue seeking a “workaround” to the Court’s ruling: “Lax enforcement of the requirements for third-party standing and class certification would create a potentially significant loophole to today’s decision. Federal courts should thus be vigilant against such potential abuses of these tools.” *CASA* at 868 (Alito, J., concurring). *See also Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014) (“[P]laintiffs wishing to proceed through a class action must actually *prove* — not simply plead — that their proposed class satisfies each requirement of Rule 23....”).

Justice Alito’s prediction came true almost immediately. “Litigants quickly seized on class actions as a means to seek universal relief following *CASA*. Plaintiffs in *Trump v. CASA*, who had not previously sought to proceed via a class action, filed a motion for class certification and an emergency motion for a class-wide TRO and PI the same day the Supreme

Court issued its decision.”²⁶ The same play book was followed by Plaintiffs below to circumvent *CASA*.

CONCLUSION

For the foregoing reasons, these *amici* urge the Court to grant the petition.

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²⁶ Joanna Lampe, “*Trump v. CASA, Inc. and Nationwide Injunctions During the Second Trump Administration*” at 20, *Congressional Research Service* (July 16, 2025).