No. 23-929

IN THE

Supreme Court of the United States

HUGO ABISAÍ MONSALVO VELÁZQUEZ,

Petitioner,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

BRIEF OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*

The American Immigration Lawyers Association (AILA), founded in 1946, is a national, nonpartisan, nonprofit association with more than 16,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to promote justice, advocate for fair and reasonable immigration law and policy, and advance the quality of immigration and nationality legal practice. AILA's members practice regularly before the Department of Homeland Security, immigration courts, and the Board of Immigration Appeals, as well as in the federal courts.

AILA has participated as *amicus curiae* in numerous cases before the U.S. Courts of Appeals and the U.S. Supreme Court. It has a strong interest in the disposition of this case because its members regularly advise clients on voluntary departure deadlines and litigate issues involving voluntary departure in administrative and court proceedings. In addition, the proper construction of immigration statutes and regulations—including in light of the immigration rule of lenity—has important implications for the fair and orderly administration of immigration law more broadly.[1]

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

INTRODUCTION AND SUMMARY OF ARGUMENT

As Mr. Monsalvo's Brief demonstrates, statutory text, common-law history, regulatory guidance, and common sense all establish that the voluntary departure deadline—like just about every other legal deadline—must be treated as ending on the next regular business day if it would otherwise fall on a weekend or holiday. AILA respectfully submits that those arguments are correct and should carry the day. It writes separately, however, to provide the perspective of the immigration bar, which has always understood that the voluntary departure deadline works exactly as Mr. Monsalvo suggests and the Ninth Circuit has long held.

First, both the immigration bar and the immigration bench have long understood that the voluntary departure deadline is treated as ending on the next regular business day if it would otherwise fall on a weekend or holiday. That rule is expressly reflected in federal regulations, official guidance, AILA's own materials, and decisions by immigration judges and DHS hearing officers. And because the rule is so uncontroversial, many decisions have incorporated it implicitly by setting voluntary-departure deadlines on the weekday immediately following the weekend or holiday on which the voluntary departure period would otherwise have expired. Federal Courts of Appeals, save the Tenth Circuit, have taken the same tack in the same or similar contexts.

Second, the Tenth Circuit's contrary view creates harsh consequences that undermine the voluntary departure *quid pro quo*. It unfairly burdens noncitizens who choose to voluntarily depart, as well as those who choose to file motions to reopen within the voluntary departure period. It also creates confusion and uncertainty for noncitizens who timely departed under the old rule but whose departures would be considered untimely under the Tenth Circuit's rule. The Government derives no ostensible benefit from any of these harsh consequences, and Congress could not reasonably have intended them.

Third, if there were any doubt about the voluntary departure statute's meaning, the immigration rule of lenity requires the Court to resolve it in Mr. Monsalvo's favor. That rule is designed to ensure fair notice and to prevent the imposition of harsh penalties based on ambiguous statutes. The Court has already applied it in the voluntary departure context. And its application is clearly warranted here.

For all of these reasons, as well as those given in Mr. Monsalvo's Brief, this Court should reverse the Tenth Circuit's judgment and hold that, as the immigration bar has long understood, voluntary departure deadlines that would otherwise fall on a weekend or holiday extend to the next business day.

ARGUMENT

I. THE NINTH CIRCUIT'S RULE REFLECTS THE LONGSTANDING AND ACCEPTED PRACTICE OF THE IMMIGRATION BAR AND BENCH.

The immigration bar and bench have long understood that, when a deadline would otherwise fall

on a weekend or holiday, it is treated as falling on the next business day. That principle is reflected in federal regulations. *See, e.g.*, 8 C.F.R. §§ 1001.1(h), 1.2 (defining "day" and stating that "when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday"). It appears in official practice manuals. *See* Immigration Court Practice Manual, Chap. 3.1(c)(ii)(A), (D) (Feb. 20, 2020), *available at* https://www.justice.gov/eoir/file/1052736/dl?inline= (explaining that deadlines "fall[ing] on a Saturday, Sunday, or legal holiday … [are] construed to fall on the next business day"); BIA Practice Manual § 3.1(b)(2) (Feb. 22, 2022), *available at* https://www.justice.gov/eoir/book/file/1528926/dl?inline (similar); *cf. also* U.S.C.I.S., Administrative Appeals Office Practice Manual, § 3.7(c)(3), *available at* https://www.hsdl.org/c/view?docid=761650 (similar). It is endorsed in secondary source materials. *See, e.g.*, 1 Immigr. Law and Defense § 8:14; Ira J. Kurzban, Immigration Law Sourcebook 1244, 1278 (18th. Ed 2022). And it is reflected in AILA's own guidance documents. *See e.g.*, AILA, *Motions to Reopen Or Reconsider Immigration Proceedings*, AILA Doc. No. 19031540, C-24 (Jan. 2019), https://www.aila.org/aila-files/01F61DB5-A06E-4A5B-8D84-A444197B0482/19031540.pdf.

It thus should come as no surprise that immigration judges and DHS hearing officers have embraced this rule expressly in the context of the voluntary departure deadline. *See, e.g.*, *In Re: J-A-A-P*, 2017 WL 1550436, at *2 (D.H.S. A.A.O. Apr. 13, 2017) ("If the 30th day for voluntary departure falls on a Sunday,

that day is excluded from the 30-day count, and the period of voluntary departure would expire the following day on Monday."). Indeed, it is uncontroversial that adjudicators more often simply apply it without comment by setting voluntary departure deadlines on the weekday immediately following the weekend or holiday on which the voluntary departure period would otherwise have expired. Examples are too numerous to count. *See, e.g.*, *In Re: Oz Shemesh*, No.: AXXX XX9 200, 2016 WL 1357993, at *1 (BIA Mar. 10, 2016) (62-day voluntary departure period, to avoid Saturday and Sunday)[2]; *In Re: Rustem Keskin*, No.: AXX XX8 598, 2008 WL 3919039, at *1 (BIA July 17, 2008) (31-day voluntary departure period, avoiding Sunday)[3]; *In Re: Mark June Pizarro Evangelista*, No.: AXXX XX3 316, 2010 WL 1607047, at *1 (BIA Mar. 19, 2010) (122-day period, avoiding Saturday and Sunday); *In Re: Christopher Mensah Dekoladenu*, No.: AXX XX4 375, 2004 WL 2374875, at *1 (BIA Aug. 18, 2004) (123-day departure period, avoiding July 4th holiday that fell on prior Friday). Indeed, the immigration judge did

[2] *See also, e.g.*, *In Re: Francisco Herrera-Lopez*, No.: AXXX XX2 127, 2010 WL 2846352, at *1 (BIA June 25, 2010) (same); *[Party Names Redacted by Agency] Immigration Bond: Bond Conditioned For Voluntary Departure Under S 240b of the Immigration and Nationality*, 2007 WL 5328472, at *1 (D.H.S. A.A.O. May 31, 2007) (same); *[Party Names Redacted by Agency] Immigration Bond: Bond Conditioned For Voluntary Departure Under S 240b of the Immigration and Nationality*, 2007 WL 5316199, at *1 (D.H.S. A.A.O. Jan. 10, 2007) (same).

[3] *See also, e.g.*, *In Re: Felix Garcia-De Luna*, No.: AXXX XX3 691, 2017 WL 1045568, at *1 (BIA Jan. 6, 2017) (same); *In Re: James Rakesh Kumar*, No.: AXXX XX3 054, 2008 WL 5537746, at *1 n.1 (BIA Dec. 30, 2008) (same).

exactly that in setting the voluntary departure deadline for Mr. Monsalvo. *See* Pet. Br. 11; Pet. App. 5a, 70a (62-day departure period, avoiding Saturday and Sunday).

Courts of Appeals have followed their lead, extending immigration deadlines to the next business day in the same or similar contexts. *See, e.g.*, *Meza-Vallejos v. Holder*, 669 F.3d 920, 927 (9th Cir. 2012); *Barroso v. Gonzales*, 429 F.3d 1195, 1204 (9th Cir. 2005); *Salvador-Calleros v. Ashcroft*, 389 F.3d 959, 965 (9th Cir. 2004); *cf. Ascencio v. Garland*, No. 21-1147, 2022 WL 112071, at *3 n.4 (4th Cir. Jan. 12, 2022) (deadline to appeal IJ order treated as falling on next business day); *Espinosa v. Immigr. & Customs Enf't ("ICE")*, 181 F. App'x 89, 90 & n.2 (2d Cir. 2006) (same, but as to petitions for review).

Consistent with all of this authority, AILA has always understood that a voluntary departure period expires on the business day immediately following any weekend or holiday. Its members have advised clients accordingly. And they have filed motions to reconsider or reopen consistent with that understanding of how the deadline operates.

II. THE TENTH CIRCUIT'S RULE CREATES PRACTICAL PROBLEMS CONGRESS COULD NOT HAVE INTENDED.

Congress intended the voluntary departure scheme to effectuate a *quid pro quo* benefitting both the noncitizen and the Government. *See Dada v. Mukasey*, 554 U.S. 1, 11 (2008). The noncitizen "avoids extended detention," "is allowed to choose when to depart," "can select the country of destination," avoids "penalties attendant to deportation," "[a]nd, of great

importance," retains "the possibility of readmission." *Id.* For its part, the Government "expedites the departure process," "avoids the expense of deportation," and "eliminates some of the costs and burdens associated with litigation over the departure." *Id.*

When interpreting § 1229c, this Court has recognized that it must "preserve the alien's right to pursue reopening while respecting the Government's interest in the *quid pro quo* of the voluntary departure arrangement." *Id.* at 19. To the extent a proposed interpretation of 8 U.S.C. § 1229c creates practical problems that undermine that *quid pro quo*, those problems counsel against construing the statute in that way. *See id.* at 17 ("These practical limitations must be taken into account."); *cf., e.g.*, *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 545 (2013) (considering "practical problems" created by alternative interpretation of statute); *Daniels v. United States*, 532 U.S. 374, 385 (2001) (Scalia, J., concurring in part) (noting that "practical reasons" counsel against alternative interpretation of statute); *Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991) ("'In determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy.'" (quoting *Crandon v. United States*, 494 U.S. 152, 158 (1990)).

The Tenth Circuit's rule creates practical problems of exactly that sort. Recall that a noncitizen facing voluntary departure has two options: leave the country within the voluntary departure window, or file a motion to reconsider or reopen to seek further relief within that timeframe. *See Dada*, 554 U.S. at 15–16;

8 C.F.R. § 1240.26(d); *id.* at § 1240.26(b)(3)(iii). The Tenth's Circuit's "overly literal reading of" the 60-day departure deadline, *Andrus v. Charlestone Stone Prods. Co.*, 436 U.S. 604, 616 (1978), creates practical problems for noncitizens no matter which of those options they choose. Let stand, it will also create confusion and disorder for noncitizens who timely departed under the Ninth Circuit's rule but whose departures would be deemed untimely under the Tenth Circuit's. All this for no good reason, since the Government suffers no harm from departures effected or motions filed on the next business day.

A. First consider the obstacles it creates for noncitizens who decide to depart voluntarily. Noncitizens who choose to voluntarily depart often do so in the hopes of readmission sometime in the future. *See Dada*, 554 U.S. at 11 ("[O]f great importance, by departing voluntarily the alien facilitates the possibility of readmission."). To preserve that possibility, however, they must be able to prove that they left the country within the voluntary departure period. Airline tickets can do that work when noncitizens depart by air. But proof of timely departure can be more elusive when noncitizens depart by land. So some choose to obtain verification of their departure by visiting a government office as soon as they cross the border. *Cf., e.g.*, *U.S. Immigration and Customs Enforcement*, U.S. Embassy & Consulates in Mexico (Mar. 16, 2021), *available at* https://mx.usembassy.gov/u-s-immigration-and-customs-enforcement/ ("Individuals who were told by U.S. immigration to depart the United States and need their voluntary departure form signed by an immigration officer may appear

without an appointment at the Embassy in Mexico City[.]"). Government offices in neighboring countries, however, are generally closed on weekends and holidays, *see, e.g.*, *id.* ("We are closed to the public on Mexican and U.S. holidays.")—which means noncitizens departing by land must either forgo this form of proof or leave early.

Moreover, air travel—the primary mode of foreign travel—is significantly more expensive and harder to come by on holidays. *See, e.g.*, Marielle Segarra, *A flight expert's hot take on holiday travel: 'Don't do it,'* NPR (Nov. 13, 2023), *available at* https://www.npr.org/2023/11/13/1199885876/holiday-travel-best-flights; Toi Staff, *El Al cancels Saturday night flights from London for fear of desecrating Shabbat*, The Times of Israel (May 8, 2023), *available at* https://www.timesofisrael.com/el-al-cancels-saturday-night-flights-from-london-for-fear-of-desecrating-shabbat/ (explaining that Israeli airline El Al does not fly during Shabbat). Under the Tenth Circuit's rule, noncitizens who cannot find affordable flights on a holiday must forgo some of the time they are entitled to remain in this country—even if that means missing their last chance to spend the holidays with loved ones in the United States.

Finally, weekend and holiday travel also poses special problems for religious noncitizens. Noncitizens who observe a Sabbath, for example, must either violate their deeply held religious convictions or forfeit their final days in this country. *See, e.g.*, Pet. Br. 45–46; The Shabbat Prohibitions, *available at* https://www.exploringjudaism.org/holidays/shabbat/observing-shabbat/the-shabbat-prohibitions/ (explaining that many observant Jews are not

permitted to travel on Shabbat). And traveling on religious holidays—whether technically permitted by one's religious beliefs or not—can interrupt the observance of traditions and rituals.

B. The Tenth Circuit's interpretation poses even greater obstacles for noncitizens like Mr. Monsalvo, who wish to file a motion to reconsider or reopen. Many noncitizens represent themselves in immigration proceedings. *See, e.g.*, I. Eagly et al., American Immigration Council, *Access to Counsel in Immigration Court* at 2 (2016), *available at* https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf (finding that only 37 percent of noncitizens secured representation in removal cases); Transactional Records Access Clearinghouse, *Too Few Immigration Attorneys: Average Representation Rates Fall from 65% To 30%* (Jan. 24, 2024), *available at* https://trac.syr.edu/reports/736/. That means not only that they must navigate the reopening process without legal assistance, but also they must submit filings by mail. *See* Pet Br. at 46 & n. 10; EOIR, Respondent Access, File EOIR Forms, *available at* https://respondentaccess.eoir.justice.gov/en/forms/ (listing "forms available for respondents to file online," which are limited to change of address forms).

To make matters worse, immigration courts do not follow the so-called "mailbox rule," whereby documents are deemed timely filed or timely accepted if they are mailed on or before their due date. *Compare* Immigration Court Practice Manual § 3.1(a)(3) (June 20, 2023), *available at* https://www.justice.gov/eoir/reference-materials/ic/chapter-3/1 ("An application . . . is not

deemed 'filed' until it is received by the immigration court."), with *Houston v. Lack*, 487 U.S. 266, 275–76 (1988) (holding that the "mailbox rule" applies to notices of appeal filed by pro se prisoners); *Republic of Sudan v. Harrison*, 587 U.S. 1, 10 (2019) (explaining the application of the "venerable 'mailbox rule'" to contract acceptance). And the BIA does not accept mail filings outside normal business hours or on federal holidays. *See* EOIR Shared Practice Manual Appendices, Appendix A – Directory, *available at* https://www.justice.gov/eoir/reference-materials/general/shared-appendices/a ("Deliveries must be received during normal window hours[,]" and "[w]indow hours are: 8:00 a.m. – 4:30 p.m. (ET), Monday – Friday (except federal holidays).").

Consider what that means in practice for a noncitizen granted 60 days to voluntarily depart, with the 60th day falling on Memorial Day Monday. Like most noncitizens, this person lacks access to electronic filing and must submit his motion to reopen by mail. *See supra* p. 10. To account for the BIA's delivery window and ensure delivery by the Friday before the holiday weekend, a noncitizen should mail his motion on an expedited basis by Wednesday—*at least five days* before the Monday deadline. That artificially limits the statutory period the noncitizen has to make a decision about departing or filing. And noncitizens who cannot submit their motion that early, despite diligence, are simply out of luck.

Take, for example, a noncitizen who plans to depart on the Friday before the holiday weekend, so as to ensure compliance with the Tenth Circuit's rule. Shortly before he departs, however, that noncitizen learns of an imminent threat to his life awaiting him

in his home country. So he cancels his flight and prepares a motion to reopen. After drafting the motion, he attempts to mail it on Saturday—two days before the deadline. But because the Clerk's Office of the BIA does not reopen until Tuesday morning, his motion is not delivered until then. *See id.* ("Deliveries must be received during normal window hours."). Under the Ninth Circuit's interpretation, the motion is timely because it is received on the first business day following the voluntary departure deadline. But under the Tenth Circuit's, the motion is untimely, and the noncitizen is ineligible for cancellation of removal notwithstanding his diligence and regardless of the strength of his motion. Indeed, the motion was untimely as soon as the Clerk's Office of the BIA closed at 4:31 p.m. on Friday—*three days before* the departure deadline. *See id.*; Pet. Br. 45–46.

Now change that hypothetical slightly. Imagine that the same noncitizen—confronted with new information about a threat to his life—seeks counsel immediately and eventually obtains representation on Friday evening. (A difficult enough feat.) That leaves enough time for counsel to draft the motion and prepare necessary affidavits by Sunday morning. But because immigration proceedings were initiated on paper, e-filing remains unavailable. *See* 86 Fed. Reg. 70,708, 70,710 (Dec. 13, 2021) ("EOIR is unable to provide electronic filing in existing paper cases at this time due to resource constraints surrounding the digitization of existing case files."). With the Clerk's Office of the BIA closed until Tuesday morning, the noncitizen is up the creek without a paddle—despite having obtained counsel and having a potentially meritorious motion multiple days before the deadline.

Replace Memorial Day with Thanksgiving, Christmas, Labor Day or any other federal holiday and the same problems arise.

C. The Tenth Circuit's rule will also breed confusion and prompt unnecessary litigation for noncitizens who timely departed under the Ninth Circuit's rule, but whose departures would not be considered timely under the Tenth Circuit's rule. Consistent with the authority cited above, for decades noncitizens have been told that they may depart the country on the business day immediately following a weekend or holiday. Indeed, some—like Mr. Monsalvo—were expressly given such a deadline by an immigration court. *See* Pet. App. 5a, 70a.

If this Court adopts the Tenth Circuit's rule, however, confusion and needless litigation will invariably ensue regarding whether those departures were timely after all. Through no fault of their own, noncitizens who followed court instructions and departed on the first business day after their voluntary-departure period expired will face serious questions about whether they are subject to civil penalties and barred from applying for relief that would permit lawful reentry into the United States for a long period of time. *See* 8 U.S.C. § 1229c(d)(1). And litigation regarding the resolution of those questions will invariably percolate through immigration and federal courts.

D. None of these results makes practical sense or comports with the broader scheme Congress created, because they unfairly burden noncitizens while providing no added benefit to the Government. To the Government, it makes no meaningful difference

whether the noncitizen departs on Saturday versus the following Monday. Congress could not have intended a noncitizen's ability to utilize the full voluntary departure window to turn on the happenstance of the day of the week on which that deadline happens to fall. Similarly, Congress could not have intended the true length of that window to turn on whether the noncitizen happens to have access to e-filing. *See* Pet. Br. 46. The Tenth Circuit's rule, in effect, creates different voluntary departure periods for those whose deadlines happen to fall on certain days of the week and for those have access to e-filing. Those differences benefit no one. And confusion and litigation regarding the effect of departures that were timely under the old regime but untimely under the Tenth Circuit's rule benefit no one either.

III. THE RULE OF IMMIGRATION LENITY REQUIRES RESOLVING ANY DOUBTS ABOUT THE MEANING OF THE VOLUNTARY DEPARTURE DEADLINES IN MR. MONSALVO'S FAVOR.

For the foregoing reasons, as well as those given in Mr. Monsalvo's Brief, the Ninth Circuit's interpretation of 8 U.S.C. § 1229c's voluntary departure deadlines is the only reasonable one. But if there were any doubt about that, the immigration rule of lenity resolves it.

The immigration rule of lenity is "the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the [noncitizen]." *INS v. Cardoza–Fonseca*, 480 U.S. 421, 449 (1987). That rule, which this Court has recognized for at least three-quarters of a century, exists "because deportation is a drastic measure and at times the

equivalent of banishment [or] exile." *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948). Like the criminal rule of lenity, it ensures that individuals have fair notice of rules that implicate their liberty interests. *Cf., e.g.*, *Wooden v. United States*, 595 U.S. 360, 389 (2022) (Gorsuch, J., concurring) ("Lenity works to enforce the fair notice requirement by ensuring that an individual's liberty always prevails over ambiguous laws."). Consistent with the immigration rule of lenity, courts "will not assume that Congress meant to trench on [a noncitizen's] freedom beyond that which is required by the narrowest of several possible meanings of the words used." *Fong Haw Tan*, 333 U.S. at 10.

This Court has applied the immigration rule of lenity to the voluntary departure statute before. Specifically, in *Dada*, the Court recognized that it would be inappropriate "to assume that the voluntary departure statute was designed to remove [an] important safeguard for the distinct class of deportable [noncitizens] most favored by the same law." 554 U.S. at 18. Because "the plain text of the statute reveal[ed] no such limitation," the Court found it "necessary . . . to read the Act to preserve the [noncitizen's] right to pursue reopening while respecting the Government's interest in the *quid pro quo* of the voluntary departure arrangement." *Id.* at 18–19. In so doing, the Court favorably cited "'the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the [noncitizen].'" *Id.* at 19 (quoting *INS v. St. Cyr*, 533 U.S. 289, 320 (2001)).

That principle carries new importance in the wake of this Court's ruling in *Loper Bright Enters. v.*

Raimondo, 144 S. Ct. 2244 (2024). As this Court recognized in *Loper Bright*, *Chevron*'s heavy deference to agency interpretations had left lenity principles largely toothless in contexts—like immigration—where deference to agencies controlled questions of statutory construction. *See* 144 S. Ct. at 2271 (citing *Cargill v. Garland*, 57 F.4th 447, 465–68 (5th Cir. 2023) (en banc), and questioning whether *Chevron* deference had displaced the rule of lenity); *id.* at 2286 (Gorsuch, J., concurring) ("The ancient rule of lenity is still another of *Chevron*'s victims."). With *Chevron* gone, traditional interpretive canons like the immigration rule of lenity are all the more crucial.

Consistent with the immigration rule of lenity, this Court should resolve any "lingering ambiguities" regarding the intersection of voluntary departure deadlines with weekends and holidays in Mr. Monsalvo's favor. *Cardoza–Fonseca*, 480 U.S. at 449. That rule is meant to ensure that ambiguous immigration statutes are construed in a manner that provides fair notice to noncitizens and avoids imposing harsh penalties where no such congressional intent is apparent from the text. That describes this case to a "T."

Indeed, the case for lenity is unusually strong here, given the clear regulatory guidance and consensus among immigration lawyers and courts that voluntary departure deadlines that fall on weekends or holidays extend to the next business day. *See supra* Part I. Far from having "fair notice" of his obligation to depart or file a motion to reopen on a Saturday, Mr. Monsalvo had every reason to believe that his motion would be timely if filed on the following Monday. And he has a strong liberty interest in avoiding the harsh penalties

that would follow from application of the Tenth Circuit's rule. "Lenity works to enforce the fair notice requirement by ensuring that an individual's liberty always prevails over ambiguous laws." *Wooden*, 595 U.S. at 389 (Gorsuch, J., concurring). It should apply to prevent ambiguous laws from prevailing over Mr. Monsalvo's liberty here.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

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