No. 26-104

In the Supreme Court of the United States

PHILIP L. RHONEY, ACTING FIELD OFFICE DIRECTOR OF THE BUFFALO FIELD OFFICE OF U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, PETITIONER

v.

RICARDO APARECIDO BARBOSA DA CUNHA

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

REPLY BRIEF FOR THE PETITIONER

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This case presents the question whether 8 U.S.C. 1225(b)(2)(A) mandates the detention of aliens like respondent who are present in the United States without having been admitted. For the reasons given in the petition for a writ of certiorari (at 11-13), this Court should hold the petition pending the resolution of the petition in *Putra* v. *Lopez-Campos*, petition for cert. pending, No. 25-1415 (filed June 22, 2026). In addition to presenting the statutory question at issue in this case, *Lopez-Campos* also presents a due-process challenge to detention under Section 1225(b)(2)(A), which the Court should resolve alongside the statutory question. See Pet. 12-13.

Respondent acknowledges that the statutory question presented in this case has divided the courts of appeals, is extremely important, and merits this Court's

review. See Cert. Resp. Br. 18. But he contends (*id.* at 18-19) that the Court should resolve that question in a case that does not separately present the question whether an alien's detention under Section 1225(b)(2)(A) comports with due process. Accordingly, he urges (*id.* at 20) the Court to grant a writ of certiorari in this case or in *Buenrostro-Mendez* v. *Blanche*, petition for cert. pending, No. 26-43 (filed July 2, 2026), rather than in *Lopez-Campos*.

Respondent's arguments lack merit. As the government has explained, *Lopez-Campos* is an ideal vehicle precisely because it presents both the statutory and the constitutional question. See Pet. at 32-34, *Lopez-Campos*, *supra* (No. 25-1415) (*Lopez-Campos* Pet.); Br. for Fed. Resp. at 13-14, *Buenrostro-Mendez*, *supra* (No. 26-43) (*Buenrostro-Mendez* Br.). The due-process question is constantly recurring because aliens detained under Section 1225(b)(2)(A)—including respondent in this case—overwhelmingly raise it alongside a statutory claim in their habeas petitions. If this Court were to grant review of only the statutory question and adopt the government's interpretation, district courts around the country may continue to order bond hearings for covered aliens on due-process grounds. See *Buenrostro-Mendez* Br. at 14. Another year could pass before a uniform rule governs the detention of aliens who are present in this country without being admitted. See *id.* at 15.

Moreover, the statutory and due-process issues are conceptually entwined. As respondent acknowledges (at 19), the court of appeals in this case considered due-process arguments in the context of constitutional avoidance, as an additional argument for adopting respondent's interpretation. See Pet. App. 55a-59a. Respondent nevertheless denies that the constitutional

and statutory challenges to Section 1225(b)(2)(A) detention are necessarily linked, on the theory that the Second Circuit's discussion of constitutional avoidance was "unnecessary" to its ultimate conclusion. Cert. Resp. Br. 19. But it is unclear why respondent would not want the Court to consider all possible arguments for his preferred interpretation, including constitutional avoidance. Moreover, even if the parties to the case do not raise that argument, amici may put it before the Court. Given that the Court may be asked to consider due-process issues in the course of its statutory analysis, it would be more efficient to grant a petition that squarely presents both questions and arises from lower-court decisions that thoroughly addressed both issues.

Respondent's remaining arguments for deferring consideration of the due-process issue lack merit. Respondent asserts (at 18) that the due-process issue "involves no circuit split." But this Court regularly grants review without waiting for a circuit conflict when lower courts invalidate federal statutes on constitutional grounds. See *Lopez-Campos* Pet. at 32. Respondent also urges (at 18-19) the Court to wait to decide *Genalo* v. *Black*, cert. granted, No. 25-886 (oral argument scheduled for Oct. 13, 2026), before it takes up a due-process challenge to Section 1225(b)(2)(A). That is a difficult position for respondent to maintain now that counsel for the respondent in *Genalo*—who are also respondent's counsel here—have asked this Court to dismiss that case as moot without reaching the due-process issue. See Resp. Br. at 20, *Genalo*, *supra* (No. 25-886). Regardless, there is no reason to defer consideration of the due-process issue in this case for *Genalo*. While there is conceptual overlap between the issues in the two cases, they involve due-process challenges to dis-

tinct statutory provisions. See *Buenrostro-Mendez* Br. at 16. Moreover, respondent does not explain why the Court could not consider both issues during the same Term. Indeed, the Court might find it useful to do so. See *id.* at 17.

Because only *Lopez-Campos* squarely and separately presents the due-process issue, that case is the best vehicle for this Court's review.

* * * * *

For the foregoing reasons and those stated in the petition for a writ of certiorari, the Court should hold the petition pending the disposition of the petition in *Putra* v. *Lopez-Campos*, petition for cert. pending, No. 25-1415 (filed June 22, 2026), and should then dispose of this petition as appropriate.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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