

No. 25-11562

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

Jose Elpidio Figueroa-Cruz,

Petitioner,

v.

U. S. Attorney General,

Respondent.

ON PETITION FOR REVIEW

Board of Immigration Appeals
File No. A094-273-355

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

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October 5, 2026

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Figueroa-Cruz v. U. S. Att’y Gen.,
No. 25-11562 (BIA No. A094-273-355)

**Certificate of Interested Persons and
Corporate Disclosure Statement**

In accordance with Federal Rule of Appellate Procedure 26.1(a) and 11th Cir. R. 26.1-1(a)(2) & (4), *amicus curiae* submitting this brief make the following disclosures, and certify that the following additional persons and entities may have an interest in the outcome of this case:

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2. Prada, Mark A., Prada Dominguez, PLLC, Miami, FL
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October 5, 2026

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**Statement of Party Consent
and Authorship**

In accordance with Federal Rule of Appellate Procedure 29(a)(2), counsel for *amicus curiae* states that counsel for the petitioner Jose Elpidio Figueroa-Cruz **consents** to the filing of this brief. However, counsel for the U. S. Attorney General is **opposed** to the filing of this brief as being untimely filed.

And in accordance with Rule 29(a)(4)(E), counsel for *amicus curiae* states that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief, and no person other than the *amicus curiae*, their members, or its counsel contributed money intended to fund the preparation or submission of this brief.

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Statement of the *Amicus Curiae*

The American Immigration Lawyers Association (AILA), founded in 1946, is a national, non-partisan, non-profit association with more than 18,000 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 law and practice. AILA's members practice regularly before the Department of Homeland Security, immigration courts and the Board of Immigration Appeals, as well as before the U. S. Courts of Appeals and the Supreme Court. AILA has participated as *amicus curiae* in numerous cases before the U. S. Courts of Appeals and the Supreme Court.

Statement of the Issues

The issues presented are:

1. Whether this Court's deference to *Matter of Soram*, 25 I. & N. Dec. 378 (BIA 2010), and *Matter of Velazquez-Herrera*, 24 I. & N. Dec. 503 (BIA 2008), in *Pierre v. U. S. Att'y Gen.*, "to the extent they apply to Pierre's case," 879 F.3d 1241, 1251 (CA11 2018), is controlling here.
2. Whether the phrase "crime of child abuse, child neglect, or child abandonment" in 8 U.S.C. § 1227(a)(2)(E)(i) refers to a unitary concept or three different categories of deportable offenses.
3. Whether non-injurious child endangerment offenses with a mens rea of criminal negligence constitute deportable offenses under § 1227(a)(2)(E)(i).
4. Whether child endangerment offenses without a duty of care to the child as an element constitute deportable offenses under § 1227(a)(2)(E)(i).

Summary of the Argument

The proper interpretation of 8 U. S. C. § 1227(a)(2)(E)(i) has troubled the courts of appeals for several years, leading to split decisions from various panels (including an en banc court), and summary grants of certiorari by the Supreme Court. For example, when this Court last addressed the ordinary contemporary meaning of the terms used in § 1227(a)(2)(E)(i), the result was a roughly two-page per curiam precedential opinion, *Bastias v. U. S. Att’y Gen.*, 158 F.4th 1188, 1189–1191 (2025), followed by three separate concurring opinions, *id.*, at 1191–1227. While the panel agreed that the petitioner there was removable, there was no controlling opinion as to why.

This case presents an opportunity for the Court to provide stability and predictability to this area of law. Section 1227(a)(2)(E)(i) does not use the phrase “crime of child abuse, child neglect, or child abandonment” as a unitary concept to permit the Board to broaden the scope of the ordinary contemporary meaning of those terms. As for endangerment offenses, although there is good reason to rule that they are not covered by this

statute at all, to the extent that endangerment offenses are covered as a type “child neglect” offense, they can only qualify as such where: (1) the defendant had a duty of care for the child; or (2) in the absence of such a duty, there is either an element of injury or a mens rea greater than criminal negligence involved.

Argument and Citations of Authority

I. Interpretative history of the INA’s child abuse provision.

In 1996, Congress amended the INA to make one removable if they are “convicted of . . . a crime of child abuse, child neglect, or child abandonment.” Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), § 350(a), 110 Stat. 3009-639, 8 U.S.C. § 1227(a)(2)(E)(i); see also § 305(a)(2), *id.*, at 3009-598 (redesignating the deportation grounds as § 1227). For years, the Board interpreted this provision to exclude endangerment offenses that require neither harm to a child nor knowing or intentional conduct. *Matter of Rodriguez-Rodriguez*, 22 I. & N. Dec. 991, 996 (BIA 1999) (adopting *Black’s* definition of “child abuse”); *Black’s Law Dictionary* 239, 377 (6th ed. 1990) (defining “child abuse” to require “cruelty to a child’s physical, moral or

mental well-being,” and “cruelty” to require the “intentional and malicious infliction of physical or mental suffering”).

In 2008, the Board dropped the “intentional” conduct requirement, thus sweeping in criminally negligent or reckless conduct, *Matter of Velazquez-Herrera*, 24 I. & N. Dec. 503, 512 (BIA 2008), while continuing to require harm to the child, *Fregozo v. Holder*, 576 F.3d 1030, 1037 (CA9 2009). Then, in *Matter of Soram*, 25 I. & N. Dec. 378, 383 (BIA 2010), the Board expanded its interpretation to include negligent or reckless conduct that caused no injury, thus creating a new category of removable offenses.

Matter of Soram has proven controversial. In *Ibarra v. Holder*, 736 F.3d 903, 910 (2013), the Tenth Circuit refused to defer to the agency’s interpretation, concluding that the statute did not grant the Board “the sweeping interpretive license it has taken” by classifying negligent endangerment as a removable offense. The Second Circuit created a “direct conflict” with *Ibarra* by deferring to the agency under the defunct *Chevron*¹ doctrine,

¹ *Chevron U. S. A. Inc. v. NRDC*, 467 U.S. 837 (1984), overruled by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

Florez v. Holder, 779 F.3d 207, 211–212 (2015), though Judge Carney later criticized that decision as adopting an “implausible” interpretation of the statute that will “inflict needless suffering,” *Matthews v. Barr*, 927 F.3d 606, 637 (CA2 2019) (Carney, J., dissenting).

The Ninth Circuit initially deferred to *Soram* before granting rehearing en banc and dismissing the case after the petitioner passed away. *Martinez-Cedillo v. Sessions*, 896 F.3d 979, 988 (2018), reh’g en banc ordered, 918 F.3d 601, vacated as moot, 923 F.3d 1162 (2019) (en banc). A later Ninth Circuit panel then rejected *Soram*, only to be reversed by a split 4-2-5 en banc ruling which was thereafter summarily vacated by the Supreme Court, with the case ultimately ending up dismissed due to intervening mootness. *Diaz-Rodriguez v. Garland*, 12 F.4th 1126 (2021), 55 F.4th 697 (2022) (en banc), cert. granted, vacated, and remanded, 144 S.Ct. 2705 (2024), appeal dism’d, No. 13-73719 (CA9 Apr. 2, 2026). Thereafter, a third panel interpreted the statute in accord with the Board’s interpretation, relying in part on civil statutes, and subject to a concurrence as to the interpretative method

employed. *Leon-Briviesca v. Blanche*, 179 F.4th 1180, 1187–1196 (CA9 2026); *id.*, at 1201–1202 (Bumatay, J., concurring) (disagreeing with the unitary concept approach).

As for this Court, it has addressed the INA’s child abuse provision in three key cases.

In *Pierre v. U. S. Att’y Gen.*, this Court confronted *Matter of Soram* in the context of a Florida statute that requires that the defendant “knowingly cause or attempt to cause a child to come into contact with blood, seminal fluid, or urine or feces.” 879 F.3d 1241, 1246 (2018) (quoting Fla. Stat. § 784.085(1)). Applying *Chevron*, the Court concluded at step one that, because “[t]he INA does not define ‘child abuse,’” the statute is ambiguous. *Id.*, at 1249. At step two, the Court held that *Matter of Soram* was reasonable “to the extent [it] appl[ies] to Pierre’s case.” *Id.*, at 1251. But because the Florida statute there “necessarily involved a knowing and overt act,” the Court was “not require[d]” “to determine whether purely negligent acts with no injury to the child proscribed by a state statute constitute generic crimes of child abuse.” *Id.*, at 1251, n. 3 (citing, *inter alia*, *Ibarra*, 736 F.3d

903).

Earlier, in *Martinez v. U. S. Att’y Gen.*, this Court considered *Matter of Soram* in the context of the Florida child neglect statute under Fla. Stat. § 827.03. 413 Fed. Appx. 163 (2011). In that case, the petitioner was the mother of six U. S.-citizen children who briefly allowed her husband back in the house, on the advice of her pastor, after kicking him out for abusing her daughter from a prior marriage. There was no further abuse, but when the mother regretted her decision and called the police to report her husband, she was arrested as well. *Id.*, at 164–165. Before this Court, she did not challenge *Matter of Soram*, but the Court criticized the agency’s interpretation as leading to “a profoundly unfair, inequitable, and harsh result,” and “urge[d] the Attorney General to closely review the facts of this heartbreaking case.” *Id.*, at 168.

Most recently, in *Bastias*, the panel split three ways on how 8 U.S.C. § 1227(a)(2)(E)(i) should be interpreted, leading to a precedential per curiam decision and three concurring opinions. Despite the individual panel members’ agreement with many of

Bastias’ key arguments, all the panel could ultimately agree on is that Bastias’ offense of conviction — the same offense that Martinez was convicted of — made him removable.

Judge Newsom concluded, albeit “more than a little reluctantly,” *id.*, at 1192, that the panel was bound by *Pierre* to treat *Matter of Soram*’s interpretation as controlling through the Court’s prior application of *Chevron* deference. But he strongly suggested that, but for *Pierre*, he would conclude that “federal law likely requires proof of a mental state *higher* than recklessness.” *Id.*, at 1200. Under that approach, Bastias would not have been removable.

Judge Marcus concluded that the panel was **not** bound by *Pierre*. *Id.*, at 1203–1209. And he agreed with Bastias that the INA’s child-abuse provision does not sweep in negligent child endangerment. *Id.*, at 1217 (“[T]he *mens rea* actually required by the generic federal crime of child neglect is recklessness or higher.”). But Judge Marcus adopted a view not advanced by either party: that “culpable negligence” under Florida law is a form of *recklessness*, not negligence. *Id.*, at 1211–1213. And he

refused to consider whether the INA’s child-abuse provision encompasses recklessness on the theory that Bastias had conceded that it does. *Id.*, at 1217; see also *id.*, at 1200, n. 5 (Newsom, J., concurring in the judgment) (“Bastias isn’t so much conceding recklessness as much as he’s ruling out negligence.”).

Last, Judge Middlebrooks did not discuss whether *Pierre* was dispositive but “agree[d] that following *Loper Bright*, the question is far from settled.” *Id.*, at 1219. He instead concluded that the federal child-abuse provision sweeps in the negligent endangerment criminalized by the Florida statute, viewing “culpable negligence” under that statute as a sufficient *mens rea* for removability somewhere between criminal negligence and criminal recklessness. *Id.*, at 1219–1226.

II. The Court’s holding in *Pierre* should extend no further than with respect to the Florida offense at issue there.

Loper Bright Enterprises v. Raimondo, held that courts must “exercise their independent judgment in deciding whether an agency has acted within its statutory authority.” 603 U.S. 369, 412 (2024). But it qualified that it does not “call into question prior cases that relied on the *Chevron* framework,” stating that “[t]he holdings of those cases that specific agency actions are lawful . . . are still subject to statutory *stare decisis* despite our change in interpretive methodology.” *Ibid*.

Judge Newsom’s opinion in *Bastias* strongly implied that, were he to interpret the 8 U.S.C. § 1227(a)(2)(E)(i) de novo, he would have held that *Bastias* was not removable. 158 F.4th, at 1200. But he concluded that, even after *Loper Bright*, the panel was bound by *Pierre* to accept the agency’s interpretation of the child-abuse provision, including the parts that *Pierre* did not address. *Id.*, at 1195–1198. The *amicus curiae* respectfully disagrees.

The scope of *Loper Bright* is exceptionally important,

establishing whether or in what circumstances regulated individuals remain bound by an agency's erroneous statutory interpretation as a result of someone else's pre-*Loper Bright* challenge. Unfortunately, the scope of *Loper Bright* is "[h]ardly perfectly pellucid," *id.*, at 1195 (Newsom, J., concurring), leading to significant disagreement as to exactly which *Chevron*-era decisions the opinion preserves. See *Lopez v. Bondi*, 151 F.4th 1196, 1207-1211 (CA9 2025) (Bumatay, J., dissenting from denial of rehearing en banc).

The *Bastias* panel's 1-1 split on this issue only amplifies that confusion. But *Pierre* has no application here because it only deferred to the Board's interpretations "to the extent they apply to Pierre's case." 879 F.3d, at 1251. The conclusion that even *Pierre*'s cautious and expressly limited deference elevated the Board's precedents to the law of this Circuit for all purposes and applications is mistaken, and, if allowed to persist, risks binding this Court to a wide swath of erroneous agency precedent.

Loper Bright's statement regarding *stare decisis* is best read not to apply to the courts of appeals, which "treat [their]

circuit precedent differently than the Supreme Court treats its precedent.” *Lopez*, 151 F.4th, at 1209 (Bumatay, J., dissenting from denial of rehearing en banc). *Stare decisis* binds the Supreme Court to its own precedent unless there is a “special justification” for “overturning” that precedent. *Ibid.* By contrast, court of appeals panels cannot revisit precedent using the *stare decisis* factors; they are categorically bound by prior precedent unless the Supreme Court reverses or undercuts it. Thus, as Judge Bumatay recently explained, the Supreme Court’s reference to “statutory *stare decisis*” in *Loper Bright* is best understood to apply only to “*its own* prior agency deference precedents,” not court of appeals precedent. *Id.*, at 1209–1210.

Additionally, the specific language used by the Supreme Court focused on the preservation of “holdings . . . that specific agency actions are lawful.” *Loper Bright*, 603 U.S., at 412. This focus on specific agency actions requires a narrow interpretation of prior deference to an agency interpretation. *Murillo-Chavez v. Bondi*, 128 F.4th 1076, 1087 (CA9 2025) (“we take the Supreme Court to mean that although the holdings of our prior

cases in which *Chevron* deference was applied remain precedential until overruled, we are not compelled to use them as analytical building blocks in every case to determine whether the BIA correctly [decided] the case before us”); *In re MCP No. 185*, 124 F.4th 993, 1002–1003 (CA6 2025) (“The Safeguarding Order therefore is not the ‘specific agency action’ that the Court approved in *Brand X*.”).

Courts of appeals should simply apply their version of the “prior panel precedent” rule when asked to interpret statutes previously considered under *Chevron*. As Judge Marcus explained, and as this Court has “said many times, the holding of a case comprises both the result of the case and those portions of the opinion necessary to that result.” 158 F.4th, at 1204 (cleaned up). After defining the specific issue resolved by *Pierre*, *id.*, at 1204–1206, and noting that the Court “expressly limited the scope of [its] holding in *Pierre* at least two times,” *id.*, at 1206, Judge Marcus concluded that “the holding of *Pierre* is that, using *Chevron* deference because there is no definition of the term ‘crime of child abuse’ in the INA, the crime of battery of a child involving bodily fluids

under Florida law is a categorical ‘match’ with the federal ‘crime of child abuse’ found in the INA,” *id.*, at 1206, and nothing more. Otherwise, the Court would be “bound by” “even those parts of the BIA’s interpretation that were not relevant in the underlying dispute” in *Pierre*. *Id.*, at 1207. But “[a]gency interpretations of statutory language are often multifaceted, and not all aspects of a proffered definition are implicated in every dispute.” *Ibid.*

In sum, for all the reasons elucidated by Judge Marcus, *id.*, at 1204–1209, the Court should rule that *Pierre* is not controlling here, and determine its own best reading of 8 U.S.C. § 1227(a)(2)(E)(i) as pertinent to this case.

III. Section 1227(a)(2)(E)(i) does not use the phrase “crime of child abuse, child neglect, or child abandonment” as a unitary mega-crime.

In *Matter of Soram*, the Board “adopt[ed] the suggestion of the concurring opinion in *Matter of Velazquez-Herrera* that the phrase ‘a crime of child abuse, child neglect, or child abandonment’ in section [1227(a)(2)(E)(i)] denotes a unitary concept and that our broad definition of child abuse describes the entire phrase.” 25 I. & N. Dec., at 381 (citation omitted). The Board was wrong in doing so.

In *Leon-Briviesca*, Judge Bumatay concurred because he would have “preferred to leave ... out” the majority’s “constru[ction] [of] the statutory provision as a ‘unitary concept’ in which we compare the state law at issue against the discrete elements of all three listed crimes *as a whole*.” 179 F.4th, at 1201 (emphasis in original) (citation omitted). As Judge Bumatay described it:

Our task is to exhaust the “traditional tools of statutory construction” in discerning Congress’s meaning. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 401, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024). And defining three well-established crimes as a “unity” with a single definition seems very *untraditional* to me.

In essence, this approach acts like Congress enacted a brand-new crime—a single offense out of three—that we must now fill in with elements. But we don’t traditionally frankenstein multiple crimes to create a mega-crime. And I don’t think this is what Congress intended. Indeed, this interpretative mode seems plucked from a single line of a Board of Immigration Appeals decision. *See Matter of Soram*, 25 I. & N. Dec. 378, 381 (BIA 2010).

Ibid. (emphasis in original). In his view, “the better approach is to understand that Congress wanted to place a wide range of crimes against children within § 1227(a)(2)(E)(i)’s scope,” *ibid.*, and that “we should treat all three categories of crimes as discrete crimes with their own constitutive elements,” *ibid.* (citing *Bastias*, 158 F. 4th, at 1213–1214) (Marcus, J., concurring).

And looking back to *Diaz-Rodriguez* en banc, Judge Collins (joined by Judge Bumatay) in concurrence stated their “disagreement with the BI[A] . . . that the three sub-categories constitute a ‘unitary’ category of crimes with a single meaning.” 55 F. 4th, at 740, n.2 (citation omitted). As Judge Collins explained, “it is clear that the three phrases do not have the same meaning and cannot be reduced to a unitary formula.” *Ibid.* As for the five judges in dissent, they agreed with the two concurring judges that

“the ordinary meanings of child abuse, child neglect, and child abandonment” are such that “the ordinary meaning of each term is distinct, cutting against the inference that Congress intended to treat these terms as a ‘unitary concept.’” *Id.*, at 760–761 (Wardlaw, J., dissenting) (citations omitted).

Last, for this Court, Judge Marcus noted that “based on the introductory phrase ‘a crime of’ in the INA, the BIA has understood the phrase ‘a crime of child abuse, child neglect, or child abandonment’ to be a unitary concept, which sweeps in all three categories of offenses into one amorphous bundle.” *Bastias*, 158 F.4th, at 1213–1214 (citations omitted). However, “[i]n [his] view, the better reading is that the ordinary meanings conveyed by these terms are distinct, even if they overlap in some ways.” *Id.*, at 1214. Further, invoking the surplusage canon, Judge Marcus added that:

Congress chose to enumerate three separate crimes against children -- abuse, neglect, and abandonment. Although they may overlap in some ways, I do not think we should read this bundle of child crimes as being singular.

Ibid. And last, noting Congress’ design of the phrase in the

disjunctive, Judge Marcus reasoned:

I also note that Congress chose to list these federal crimes in the disjunctive. Again, the statute references “a crime of child abuse, child neglect, *or* child abandonment.” 8 U.S.C. § 1227(a)(2)(E)(i) (emphasis added). And “[a]s ‘a general rule, the use of a disjunctive in a statute indicates alternatives and requires that those alternatives be treated separately.’” . . . Congress used the disjunctive “or” when it listed three crimes against children, so it seems to me to be perfectly reasonable for matching purposes to read each of these crimes as distinct, each rendering an alien deportable.

Ibid. (citations omitted).

In sum, for the reasons stated by the various Circuit Judges discussed above, the *amicus curiae* urges the Court to reject the BIA’s unitary concept methodology.

IV. The Florida statute of conviction at issue here is overbroad under 8 U. S. C. § 1227(a)(2)(E)(i).

Section 827.03(2)(c), Fla. Stat., states that “[a] person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree.” In turn, the statute defines “[c]hild abuse” through the use of a disjunctive list:

1. Intentional infliction of physical or mental injury upon a child;
2. An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
3. Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

§ 827.03(1)(b). The parties’ briefing focuses on the means of committing child abuse under subparagraph (2) which defines a form of child endangerment offense.²

With that framing of this case in mind, the *amicus curiae* submits that, even assuming that 8 U.S.C. § 1227(a)(2)(E)(i)’s

² The petitioner argues that the mens rea in § 827.03(1)(b)(2) is negligence. Pet’r Reply Br. 13–14 (Nov. 25, 2025).

enumeration of “child neglect” as a removable offense can include child endangerment crimes, the Florida statute at issue is overbroad and thus not categorically a child neglect offense within the meaning of § 1227(a)(2)(E)(i).

a. The Court must independently determine the best ordinary and contemporary meaning of the statute’s provisions.

Loper Bright held that it is this Court’s job to decide what a federal statute means. As the Supreme Court put it, “[i]n an agency case as in any other, . . . even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same, which is the reading the court would have reached if no agency were involved.” 603 U.S., at 400. Thus, there can be no “‘permissible’ interpretation [of a statute] that is not the one the court, after applying all relevant interpretive tools, concludes is best. In the business of statutory interpretation, if it is not the best, it is not permissible.” *Ibid.*

In identifying the best reading of a statute, courts look to the “ordinary meaning” of the provision “at the time Congress enacted” it. *Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274,

277 (2018). “[E]very statute’s meaning is fixed at the time of enactment,” so courts must apply traditional interpretive tools to identify what the statute’s text meant at that time. *Ibid.*

And more specifically, when Congress writes a statute that refers to a type of crime in a general sense, that reference calls for a generic definition that is not “at odds with the generally accepted contemporary meaning of [the] term.” *Taylor v. United States*, 495 U.S. 575, 596 (1990) (citation omitted). To determine that contemporary meaning, courts look to definitions from contemporary legal dictionaries, statutory structure, state criminal codes in effect at the time of the law’s enactment, and related federal criminal statutes. *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391–397 (2017). Doing so here demonstrates that the Board in finding the petitioner removable under 8 U.S.C. § 1227(a)(2)(E)(i).

b. Non-injurious child endangerment offenses with a mens rea of criminal negligence do not suffice to constitute “child neglect” under 8 U.S.C. § 1227(a)(2)(E)(i).

i. Contemporary legal dictionaries.

The same legal dictionaries that the Supreme Court deemed “reliable” in *Esquivel-Quintana* make clear that, at the time

Congress passed the statute, child “endangerment” was understood as a distinct offense — one that Congress did not include in the statute. Additionally, these dictionaries define these terms generally, rather than not just in the context of crimes. Thus, these definitions are likely broader than the ordinary meaning of the **crimes** of child abuse, neglect, and abandonment. See *Ibarra*, 736 F.3d, at 910–911 (these terms are defined more narrowly in the criminal context because “[t]he purpose of civil definitions is to determine when social services may intervene” while “[t]he purpose of criminal definitions is to determine when an abuser is criminally culpable”).

In the *Bastias* case, Judge Marcus summarized these contemporary definitions with depth and brevity in his concurrence:

In essence, child neglect suggests the failure to fulfill a duty imposed by law that creates a risk of harm to a child, *see* Merriam Webster’s Dictionary of Law 324 (1996) (“a disregard of duty resulting from carelessness, indifference, or willfulness; *esp*: a failure to provide a child under one’s care with proper food, clothing, shelter, supervision, medical care, or emotional stability.”). Child abuse suggests a broader nature of offending conduct including a variety of sins against a child, *see* *Child Abuse*, Black’s Law Dictionary (6th ed. 1990) (“Any form of cruelty to a child’s physical, moral or mental well-being.”); while child

abandonment, in turn, suggests a different kind of crime, that is, one leaving a child without an intent to return, *see Abandonment*, Black's Law Dictionary (6th ed. 1990) ("Desertion or willful forsaking.").

158 F. 4th, at 1214;³ *see also Black's Law Dictionary* 1032 (6th ed. 1990) (defining a "neglected child" as one whose "parent or custodian, by reason of cruelty, mental incapacity, immorality or depravity, is unfit properly to care for him, or neglects or refuses to provide necessary . . . care for him"); *Webster's II New College Dictionary* (1995) ("child neglect" requires the "failure on the part of a parent or parental substitute to supervise a child and provide

³ With regard to child abuse, the type of sinful cruelty required by the statute is the infliction of harm against a child whether physical or psychological in nature. *See Black's Law Dictionary* 377 (6th ed. 1990) (defining "cruelty" as "[t]he intentional and malicious infliction of physical or mental suffering upon living creatures, particularly human beings; or, as applied to the latter, the wanton, malicious, and unnecessary infliction of pain upon the body, or the feelings and emotions; abusive treatment; inhumanity; outrage"); *id.*, at 11 ("Abused and neglected children" means children "suffering serious physical or emotional injury"); *Black's Law Dictionary* 10, 384 (7th ed. 1999) (requiring a "physical or emotional injury," and equating child abuse with "cruelty to a child" with a largely identical definition of "cruelty"); *Merriam-Webster's Dictionary of Law* 4, 76 (1996) ("abuse," in the context of children, means "the infliction of physical or emotional injury"); *Webster's II New College Dictionary* 194 (1995) ("child abuse" means "toleration of and complicity in conditions injurious to the child's health").

requisite care and protection”); Bryan A. Garner, *A Dictionary of Modern Legal Usage* 585 (2d ed. 1995) (neglect requires that “a person has not performed a duty”).

The definitions relating to child neglect are notable in two ways. First, they require that the defendant violate some duty akin to that of a parent or legal guardian. Second, the definitions do not specify the required mens rea. Where a crime is silent as to mens rea, courts should, “[w]ith few exceptions,” read the crime to require a mens rea of “knowledge or intent” because “wrongdoing must be conscious to be criminal.” *Ruan v. United States*, 597 U.S. 450, 457 (2022).

Importantly, “[n]eglect’ is **not** the same thing as ‘negligence.’” *Black’s Law Dictionary* 1055 (7th ed. 1999) (emphasis added). “[N]eglect’ indicates, as a purely objective fact, that a person has not done that which it was his duty to do; it does not indicate the *reason* for this failure. ‘Negligence,’ on the other hand, is a subjective state of mind, and it indicates a particular reason why the man has failed to do his duty.” *Id.* For example, ‘neglect of a child’ may be either negligent or willful.” Garner, *A*

Dictionary of Modern Legal Usage 585.

Additionally, contemporary dictionaries defined conduct by anyone — including non-parents — that put a child at *risk* of harm as a separate child-related offense: “child endangerment.” *Merriam-Webster’s*, for instance, defined “endangerment” as a distinct offense that involved “exposing others to possible harm or danger.” *Merriam-Webster’s Dictionary of Law* 160 (1996); see also *id.* at 1 (“abandonment”), 4 (“abuse”), 324 (“neglect”). The 1999 edition of *Black’s* similarly defined “child endangerment” as a distinct offense that encompasses “[t]he placing of a child in a place or position that exposes him or her to danger to life or health.” *Black’s Law Dictionary* 233 (7th ed. 1999).

Thus, to the extent non-injurious conduct by someone other than a parent or guardian was considered a crime, it was **not** abuse, neglect, or abandonment, but was instead the separate offense of “endangerment” — a crime Congress did **not** include in 8 U.S.C. § 1227(a)(2)(E)(i).

ii. Contemporary state criminal statutes.

In *Esquivel-Quintana*, the Supreme Court held that the

INA unambiguously foreclosed the agency's interpretation of a closely-related generic offense in large part because the agency's interpretation was broader than the criminal law of 34 states at the time of the provision's enactment. 581 U.S., at 395–397. Here, contemporary state criminal statutes similarly confirm the ordinary meaning of “abuse,” “neglect,” and “abandonment” — *i.e.*, that “child abuse” required harm and that “child neglect” required the violation of a legal duty akin to that of a parent or guardian. And they also show that “child neglect” was generally understood to require a mens rea greater than criminal negligence.

1. While courts have diverged somewhat in how they have classified the various state child-related criminal laws in effect in 1996, every court's state survey strongly supports interpreting the “crime of child abuse, child neglect, or child abandonment” to exclude negligent, non-injurious conduct — especially conduct not committed by a parent or guardian. Specifically:

- The Tenth Circuit in *Ibarra* concluded that, in 1996, “[o]nly eleven states clearly criminalized non-injurious child endangerment where the culpable mental state was only criminal negligence.” 736 F.3d, at 915.

- The three-judge panel in *Diaz-Rodriguez* read the state laws slightly differently but still concluded that, in 1996, “only 14 States criminalized child endangerment committed with a mens rea of criminal negligence.” 12 F.4th, at 1135.
- The Ninth Circuit en banc plurality in *Diaz-Rodriguez* identified only 15 states that, in 1996, “criminalized crimes against children that involved a mens rea of criminal negligence, did not require any injury to the child, and did not require the perpetrator to be a parent or legal guardian.” 55 F.4th, at 721–722.

These surveys are, if anything, too generous to the government because they consider *all* child-related crimes, even if the state did not describe the crime as “child abuse,” “child neglect,” or “child abandonment” (or some analogous term). For instance, of the fourteen negligent endangerment statutes the three-judge panel in *Diaz-Rodriguez* identified, only **seven** classified negligent child endangerment as child “abuse,” “neglect,” or “abandonment”—as opposed to the distinct, lesser offense of “endangering” a child.⁴

In sum, contemporary state criminal laws make clear that, in 1996, statutes criminalizing negligent child endangerment —

⁴ Those states are Arizona, Colorado, Nebraska, New Mexico, Oregon, South Dakota, and Virginia. See *Diaz-Rodriguez*, 12 F.4th, at 1137 (citing statutes).

and especially those criminalizing negligent child endangerment by non-parents or guardians — were significant outliers. And state laws that classified such negligent endangerment as “abuse,” “neglect,” or “abandonment,” as opposed to the lesser offense of child “endangerment,” were even further outside the norm.

2. The plurality and the concurrence in *Diaz-Rodriguez* disputed none of this. Instead, the plurality reasoned that, while only a significant minority of states criminalized negligent, non-injurious conduct, those states are among “the most populous regions of our nation,” comprising “more than 45 percent of the United States population.” 55 F.4th, at 722. But the Supreme Court in *Esquivel-Quintana* never weighted a state survey by population for purposes of defining a generic federal offense. And even under the plurality’s weighted survey, the approach of the states in which most people live **still** excludes negligent, non-injurious conduct.

The concurrence, by contrast, quoted *Esquivel-Quintana*’s statement that a state survey “is not required by the categorical approach,” and it dismissed the relevance of state law given the

“wide disparity” among state statutes. *Id.*, at 744–745 (Collins, J., concurring). But while a state survey may not be required, it is still persuasive “evidence about the generic meaning” of the federal offense at the time of its enactment. *Esquivel-Quintana*, 581 U.S., at 395. Indeed, as *Esquivel-Quintana* recognized, such surveys have been a regular feature of the Supreme Court’s cases interpreting generic federal offenses for more than three decades. *Ibid.* (citations omitted).

iii. Contemporary federal statutes.

Several federal statutes enacted in the years preceding IIRIRA further support the view that the INA’s child-abuse provision does not encompass broad, negligent child-endangerment statutes like the Florida statute at issue here.

Child Abuse Prevention and Treatment Act (CAPTA).

The same week that Congress enacted IIRIRA, it also enacted the CAPTA Amendments Act of 1996, 110 Stat. 3063. That statute revised CAPTA’s definition of “child abuse and neglect” to read:

[T]he term “child abuse and neglect” means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or

exploitation, or an act or failure to act which presents an imminent risk of serious harm[.]

§ 110(3), *id.*, at 3078.

First, even if this definition were imported wholesale into the INA's child-abuse provision, it would exclude Fla. Stat. § 827.03(1)(b)(2)'s endangerment offense. The CAPTA definition sweeps in only a narrow sliver of non-injurious conduct: conduct that “presents an **imminent** risk of **serious** harm.” Unlike other endangerment statutes, this Florida endangerment statute requires that the harm be neither “imminent” nor “serious.” See, *e. g.*, Tex. Pen. Code § 22.041 (1996) (“imminent danger of death, bodily injury, or physical or mental impairment”); Wash. Rev. Code 9A.42.030 (1996) (“imminent and substantial risk of death or great bodily harm”); see also ORS 109.807(2) (“child is imminently likely to suffer serious physical harm”).

Second, the statute's text and structure indicate that the INA's child-abuse provision is even narrower than this CAPTA definition. The CAPTA definition appears in a civil statute that, as its name suggests, focuses on “identifying, preventing, and treating child abuse and neglect,” not punishing those who

perpetrate it. Sen. R. 104-117 at 4 (1995). The INA’s child-abuse provision, by contrast, is limited to “crimes” of child abuse, neglect, and abandonment. As the Tenth Circuit recognized, statutes focused on “determin[ing] when social services may intervene” will define terms like “abuse” and “neglect” more broadly than statutes determining “when an abuser is criminally culpable.” *Ibarra*, 736 F.3d, at 910–911, and n.9. There are thus strong textual and structural reasons to think that Congress would not have intended that the INA’s child-abuse provision sweep in even the sliver of non-injurious conduct that Congress include in CAPTA’s “child abuse and neglect” definition.

Crime Control Act. Several years before IIRIRA, in the Crime Control Act of 1990, 104 Stat. 4789, Congress defined “child abuse” for various civil purposes, ranging from protecting children testifying in court, § 225, *id.*, at 4798, to mandatory reporting laws, § 226(c)(1), *id.*, at 4806, to conditions on grants for closed-circuit televising of court hearings, § 241(a), *id.*, at 4813. In each provision, the Act defined “child abuse” to mean “the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a

child.” And the Act defined “negligent treatment” to mean “the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child.” § 225, *id.*, at 4799; § 226, *id.*, at 4807. Not only does this definition only sweep in a far narrower set of non-injurious conduct than the Florida statute at issue here, there are strong reasons (as described above) to think that Congress would have intended that the “crime[s]” listed in the INA be narrower than the civil definition in the Crime Control Act.

National Child Protection Act. Congress also defined the term “child abuse crime” in the National Child Protection Act of 1993, 107 Stat. 2490. That statute, which established a new background-check system, defined “child abuse crime” to mean “a crime committed under any law of a state that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person.” § 5(3), *id.*, at 2494. The statute does not further define any of these terms. But Congress had recently defined “negligent treatment” in the Crime Control Act and longstanding regulations had defined the

phrase “negligent treatment or maltreatment” similarly. 48 Fed. Reg. 3698-01 (1983) (“[n]egligent treatment or maltreatment’ includes failure to provide adequate food, clothing, shelter, or medical care”). The statute thus defined “child abuse crime” in a way that excludes the broad, negligent endangerment offenses like the Florida statute here.

iv. Statutory structure.

First, the child-abuse provision is paired with two “heinous crimes,” which suggests that the child-abuse provision, too, “encompasses only especially egregious felonies.” *Esquivel-Quintana*, 581 U.S., at 393–394. Congress included the child-abuse provision in the same subparagraph as the crimes of “domestic violence” and “stalking,” 8 U.S.C. § 1227(a)(2)(E)(i), which require the use or threat of violence. See *ibid.* (“crime of domestic violence” must be a “crime of violence”); *Matter of Sanchez-Lopez*, 27 I. & N. Dec. 256, 258 (BIA 2018) (stalking requires “intent to cause [the victim] or a member of his or her immediate family to be placed in fear of bodily injury or death”).

Second, the drastic immigration consequences associated

with the INA’s child-abuse provision strongly suggest that the statute targets particularly serious crimes — not negligent endangerment crimes like the Florida statute here. A conviction under the child-abuse provision not only makes any noncitizen removal but also makes non-permanent residents ineligible for cancellation of removal, which allows certain non-permanent residents to remain in this country if their removal would cause “exceptional and extremely unusual hardship” to their child. 8 U.S.C. § 1229b(b)(1)(D). The same is true for the special form of cancellation of removable available to battered women and children. § 1229b(b)(2)(A).

The “[p]aradoxical[]” result of imposing these immigration consequences based on negligent endangerment is that children will be harmed by a provision intended to help them: “It requires no exercise of judicial imagination to conclude that a child will be harmed by being separated from a parent, who, even if imperfect, is generally competent and caring.” *Matthews v. Barr*, 927 F.3d 606, 636 (CA2 2019) (Carney, J., dissenting). In *Ibarra*, for instance, the immigration judge suggested that Ms. Ibarra’s

removal **would** cause her children “exceptional and extremely unusual hardship.” 736 F.3d, at 906; see also *Martinez*, 413 Fed. Appx., at 166 (describing Ms. Martinez as a “caring parent” who made a single, negligent mistake in allowing her husband to return home).

c. Endangerment offenses without a duty of care do not suffice to constitute “child neglect” under 8 U.S.C. § 1227(a)(2)(E)(i).

Regarding duties of care for a child, the en banc *Diaz-Rodriguez* concurrence focused on the term “child neglect,” and interpreted that term to require “the following minimum elements: (1) the person had a duty towards a child; (2) the person breached that duty in a manner that constitutes a gross deviation from accepted standards; and (3) the person should have been aware that his or her conduct presented a substantial and unjustifiable risk of serious physical or emotional harm to the child.” 55 F.4th, at 742 (Collins, J., concurring).

Similarly, in addition to concluding that “the generic federal crime of child neglect requires a *mens rea* of recklessness and conduct creating a risk of harm to a child,” *Bastias*, 158 F.4th, at 1218,

Judge Marcus also agreed in his concurrence that child neglect requires a duty of care, *id.*, at 1214–1216. See also *id.*, at 1216 (broadly interpreting the duty of care as applying to “all people who have a duty to take care of children, not just parents or guardians”).

The Florida statute here is broader than that definition because it does not require that the defendant have a duty of care of any kind towards a child. F. S. § 827.03(1)(b)(2). That outcome is plain on the face of § 827.03 which separately defines “[n]eglect of a child” as “[a] caregiver’s willful failure or omission,” § 827.03(1)(e), whereas subparagraph (b)(2) does not require the status of being a caregiver as an element of the offense.

d. To the extent any ambiguity remains, the rule of construing removal statutes in favor of the noncitizen resolves the outcome here.

To the extent any “lingering ambiguities” remain after applying the interpretive tools discussed above, this Court should apply “‘the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien.’” *INS v. St. Cyr*, 533 U.S. 289, 320 (2001) (citation omitted). As the Sixth

Circuit put it just last year in another immigration case, “a statute in equipoise would call for the rule of lenity to alleviate the ambiguity.” *Castillo v. Bondi*, 140 F.4th 777, 781 (CA6 2025). The Supreme Court, this Court, and other courts of appeals have repeatedly applied this principle. See, e.g., *Hylton v. U.S. Att’y Gen.*, 992 F.3d 1154, 1159 (CA11 2021) (recognizing that the Supreme Court has treated as “dispositive” the “principl[e] of statutory construction” to “resolve any remaining doubt” in favor of the noncitizen) (alterations omitted).

In sum, the rules of statutory construction are sufficient, on their own, to support construing the crime of “child neglect” to require both a mens rea greater than criminal negligence and a duty of care to the child. But to the extent any “lingering ambiguities” remain, and even if the government’s proposed interpretation “might find support in logic,” the Court should “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 v. Phelan*, 333 U.S. 6, 10 (1948).

Conclusion

The Court should grant the petition for review.

Respectfully submitted,

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This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5), excluding parts exempted by Fed. R. App. P. 32(f) and 11th Cir. R. 32-4,⁵ in that it contains no more than 6,500 words, to wit: **6,500 words**.

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⁵ 11th Cir. R. 32-4 exempts the R. 28-1(g) Statement of the Issues from the type-volume limitation.

Certificate of Service

I certify that, on October 5, 2026, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will therefore be accomplished through the appellate CM/ECF system.

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