No. 02-249

In the Supreme Court of the United States

PEABODY COAL CO., PETITIONER

v.

WILMA J. GROVES AND DIRECTOR,
OFFICE OF WORKERS' COMPENSATION PROGRAMS,
DEPARTMENT OF LABOR

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

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the approach of the court of appeals concerning the weight to be accorded the medical opinion of a treating physician in adjudicating a claim for benefits under the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, is proper and consistent with the allocation of the burden of proof in Section 7(c) of the Administrative Procedure Act (APA), 5 U.S.C. 556(d).

2. Whether the Department of Labor's regulation addressing the opinion of a treating physician, 20 C.F.R. 718.104(d), conflicts with Section 7(c) of the APA or otherwise is arbitrary or capricious or not in accordance with law.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-16) is reported at 277 F.3d 829. The decisions and orders of the Benefits Review Board (Pet. App. 17-25, 39-45) and the administrative law judge (Pet. App. 26-38, 46-68) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 17, 2002. A petition for rehearing was denied on April 12, 2002 (Pet. App. 69). On July 8, 2002, Justice Stevens extended the time within which to file a petition for a writ of certiorari to and including August 15, 2002, and the petition was filed on that date. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. On May 11, 1995, following the death of her husband, Elze Groves, respondent Wilma Groves filed a claim for survivor's benefits under the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.* The BLBA provides for payment of benefits to "survivors of coal miners whose deaths were due to [pneumoconiosis]." 30 U.S.C. 901(a); 20 C.F.R. 718.205(a). On June 30, 1997, an administrative law judge (ALJ) denied respondent's claim. The ALJ, relying on the opinions of two treating physicians, found that Mr. Groves had suffered from pneumoconiosis. The ALJ denied benefits, however, on the basis that Mr. Groves's death had not been hastened by pneumoconiosis.[1] The ALJ reached that conclusion because the only medical opinion concluding that pneumoconiosis hastened death—the opinion of Mr. Groves's most recent treating physician, Dr. Blue—lacked supporting documentation. Pet. App. 2-4, 64-67.

b. On July 14, 1998, the Benefits Review Board (Board) issued a decision affirming the ALJ's finding of pneumoconiosis but vacating his conclusion concerning the cause of death. Pet. App. 4, 39-45. The Board ruled that the ALJ erred by failing to consider whether Dr. Blue's treatment notes constituted adequate docu-

[1] A miner's death is "due to" pneumoconiosis under the BLBA, 30 U.S.C. 901(a), when, *inter alia*, pneumoconiosis is a "substantially contributing cause or factor leading to the miner's death." 20 C.F.R. 718.205(c)(2). That standard is met when a survivor proves that pneumoconiosis hastened the miner's death. 20 C.F.R. 718.205(c)(5); see *Bradberry* v. *Director, OWCP*, 117 F.3d 1361, 1365-1367 (11th Cir. 1997) (collecting cases).

mentation in support of his conclusion that pneumoconiosis had hastened Mr. Groves's death. *Id.* at 4, 43.

2. a. On remand, the ALJ awarded benefits. Pet. App. 5, 26-38. This time, the ALJ specifically considered Dr. Blue's treatment notes—which recorded several years of breathing problems and lung impairment—and determined that they supported Dr. Blue's conclusion that pneumoconiosis hastened death and "bolster[ed] his credibility." *Id.* at 5, 36. The ALJ found "less credible" the opinions of consulting physicians, who had not examined Mr. Groves, that pneumoconiosis had not hastened his death. The ALJ reasoned that those physicians were of the view that pneumoconiosis was not present in the first place, a conclusion the ALJ had rejected in his first decision. *Id.* at 5, 35-36, 37. Because the ALJ concluded that "Dr. Blue's opinion and treatment notes [were] the most credible evidence in the record regarding the cause of Miner's death," *id.* at 37, the ALJ credited Dr. Blue's conclusion that pneumoconiosis was "a third to a half responsible" for death, *id.* at 5 (citation omitted).

b. The Benefits Review Board affirmed in a decision issued on December 22, 1999. Pet. App. 5, 19-25. The Board ruled that the ALJ's decision to give greatest weight to the treating physician's opinion was permissible in view of the lengthy period that Dr. Blue had treated Mr. Groves, the failure of the consulting physicians to examine Mr. Groves, and the failure of the consulting physicians to diagnose that Mr. Groves suffered from pneumoconiosis. *Id.* at 5-6, 23-24. The Board subsequently denied petitioner's motion for reconsideration. *Id.* at 6.

3. The court of appeals affirmed. Pet. App. 1-16. The court first rejected petitioner's argument that the

ALJ had presumed that the opinion of a treating physician "was automatically more credible than any other doctor's opinion simply by virtue of that treatment." *Id.* at 7 (citation omitted). The court explained that its previous decisions "did not suggest that treating physicians should automatically be presumed to be correct." *Ibid.* Instead, ALJs must "examine the medical opinions of treating physicians on their merits and * * * make a reasoned judgment about their credibility." *Id.* at 8. The court looked for guidance to the Secretary of Labor's recently promulgated regulation addressing the proper weight to be given the opinion of a treating physician, 20 C.F.R. 718.104(d), which the court explained was "instructive" although "not directly applicable" because it became effective only for evidence developed after January 19, 2001. Pet. App. 8 n.6. The court quoted a provision of the regulation stating that a treating physician's opinion "may" be given "controlling weight" in "appropriate cases" depending on the opinion's "credibility * * * in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. 718.104(d)(5); Pet. App. 8.

The court found it "abundantly clear" that, in this case, "the ALJ did not give presumptive weight to the opinions of Groves's treating physicians." Pet. App. 11. The court emphasized that the ALJ initially had denied benefits on finding that the treating physician's opinion on the cause of death lacked adequate documentation, *id.* at 8, and the court explained that the ALJ, when revisiting the issue on remand, had "examined all of the opinions on their merits and made reasoned judgments about the physicians' credibility." *Id.* at 11.

Next, the court rejected petitioner's contention that the opinions of the treating physicians did not con-

stitute substantial evidence supporting the ALJ's decision. Pet. App. 11-13. The court explained that, under the "limited scope of review" applicable in substantial evidence challenges, it could not second-guess the ALJ's assessment of Dr. Blue's credibility. *Id.* at 13. Accepting Dr. Blue's credibility, the court concluded that his treatment notes adequately supported the ALJ's determination that pneumoconiosis hastened Mr. Groves's death. The court "recognize[d] that the record may permit an alternative conclusion," but it "respect[ed] and defer[red] to the ALJ's authority in the finding of facts." *Ibid.*

Judge Kennedy dissented. Pet. App. 13-15. She disagreed with the majority's conclusion that the ALJ's decision was supported by substantial evidence. *Id.* at 13. She believed that an "ALJ is entitled to give extra weight to a treating physician's assessment of a patient's condition," but saw "no reason why a treating physician's opinion that one condition caused or contributed to another should be accepted in the face of expert opinions to the contrary, at least where there is no logical explanation for doing so offered by the ALJ." *Id.* at 14. Here, she believed, Dr. Blue's opinion and treatment notes contained "no objective support" for his conclusion, and the ALJ had not discounted the opinions of the consulting physicians "on any logical grounds." *Id.* at 15. She therefore would have remanded for further proceedings. *Ibid.*

4. In December 2000, while this case was pending in the court of appeals, the Department of Labor promulgated a regulation—which the court of appeals referred to in its opinion—addressing the weight to be accorded the opinion of a treating physician in adjudicating claims for Black Lung benefits. 20 C.F.R. 718.104(d); see Pet. App. 73-74. The Department "considered

codification of the treating physician's special status appropriate, given its longstanding judicial recognition in the caselaw." 65 Fed. Reg. 79,931 (2000). The regulation applies to evidence developed after January 19, 2001. 20 C.F.R. 718.101(b). In separate litigation, the District of Columbia Circuit, in an opinion issued after the court of appeals' decision in this case, rejected a facial challenge to the Department's treating physician regulation. *National Mining Ass'n (NMA)* v. *Department of Labor*, 292 F.3d 849, 861-862, 870-871 (D.C. Cir. 2002) (per curiam). The time for filing a petition for a writ of certiorari in that case has expired. See Pet. 3 n.1.

ARGUMENT

Petitioner seeks this Court's review of both the court of appeals' approach concerning the opinions of treating physicians in BLBA adjudications and the Department's new regulation addressing treating physicians' opinions. Review of petitioners' claims is not warranted. The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals.

1. Petitioner contends that the Sixth Circuit below applied "an automatic preference or *per se* rule" that credits the opinion of a treating physician "based solely on the status of the treating doctor." Pet. 17. The approach of the Sixth Circuit, petitioner asserts (Pet. 23), conflicts with the allocation of the burden of proof in Section 556(d) of the APA. Those arguments lack merit.

a. Petitioner errs in contending (Pet. 12-19) that the decision below conflicts with decisions from the Fourth and Seventh Circuits by applying an automatic presumption in favor of the opinion of a treating physician.

The courts of appeals, including the Sixth Circuit below, are in agreement that there is no automatic presumption favoring the opinion of a treating physician, but that the treating physician's opinion, if adequately documented and supported, may be entitled to controlling weight where justified by the record in a particular case. Accordingly, the D.C. Circuit, in reviewing the decisions of the courts of appeals giving rise to the Department's new treating physician regulation, found a "consensus among [the] courts * * * that an agency adjudicator may give weight to the treating physician's opinion when doing so makes sense in light of the evidence and the record, but may not mechanistically credit the treating physician solely because of his relationship with the claimant." *NMA*, 292 F.3d at 861. In concluding that the courts of appeals agree in their approach to the opinions of treating physicians, the D.C. Circuit relied on the same decisions relied on by petitioner. See *id.* at 861-862 (discussing *Sterling Smokeless Coal Co.* v. *Akers*, 131 F.3d 438 (4th Cir. 1997); *Peabody Coal Co.* v. *McCandless*, 255 F.3d 465 (7th Cir. 2001), and the decision of the Sixth Circuit in this case); Pet. 13-15.

Contrary to petitioner's argument, the Sixth Circuit does not apply "an automatic preference or *per se* rule." Pet. 17. The decision below made clear that the opinion of a treating physician is not "automatically * * * presumed to be correct" and must be "properly credited and weighed" against other evidence in the record. Pet. App. 7 (citation omitted). The Seventh Circuit likewise rejects a "blanket rule" preferring the treating physician's opinion, and requires the adjudicator to render a reasoned decision based on the circumstances of the particular case. *Peabody Coal Co.* v. *Helms*, 901 F.2d 571, 573 (7th Cir. 1990); see *McCandless*, 255 F.3d at

468. The Fourth Circuit similarly has held that, although the opinion of the treating physician may deserve "especial consideration," there is no requirement or presumption that necessarily favors a treating physician's opinion. *Sterling Smokeless*, 131 F.3d at 441 (quoting *Grizzle* v. *Pickands Mather & Co./Chisolm Mines*, 994 F.2d 1093, 1097 (4th Cir. 1993)).

Even if the Sixth Circuit's rejection of an automatic presumption were not apparent from its opinion in this case, the court subsequently issued another decision reinforcing the point. *Jericol Mining, Inc.* v. *Napier*, 301 F.3d 703 (6th Cir. 2002). In *Napier*, the court, specifically relying on its opinion below, "rejected the contention that [an ALJ is] require[d] * * * to give absolute deference to the opinion of a treating physician." *Id.* at 709; see *ibid.* (describing as "mistaken" the "belief that an automatic treating-physician presumption exists"). The court thus concluded that the ALJ in that case had erred by giving "extra weight" to the opinion of a treating physician based solely on the existence of the physician-patient relationship, and in the "absence of any documentation to support [the treating physician's] views" or of any evidence in the record concerning the "nature and duration of the relationship" and the "frequency and extent of the treatment." *Id.* at 710. *Napier* makes clear that, contrary to petitioner's assertion (Pet. 18), the Sixth Circuit does not "accord[] more weight to a treating doctor's opinion solely because of the doctor's status." Instead, the court's approach is "in line with the views of [its] sister circuits that have considered

the relevance of a treating physician's opinion." *Napier*, 301 F.3d at 709.[2]

b. Petitioner contends (Pet. 4, 23) that the Sixth Circuit's approach to the opinion of a treating physician violates Section 7(c) of the APA, 5 U.S.C. 556(d), and *Director, OWCP* v. *Greenwich Collieries*, 512 U.S. 267 (1994), by shifting the burden of persuasion on the credibility of a treating physician from the claimant to the adverse party. That contention lacks merit. Section 7(c) of the APA states that, "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." 5 U.S.C. 556(d). In *Greenwich Collieries*, this Court found that the "true doubt" rule— a rule requiring resolution of Black Lung adjudications in favor of the claimant if the evidence was evenly balanced—shifted the burden of persuasion in violation of Section 7(c) of the APA.

The Sixth Circuit's approach to a treating physician's opinion, by contrast, does not entail any burden-shifting presumption. In the first place, the court explained in this case that a treating physician should not "automatically be presumed * * * correct," and that

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[2] *Napier* was decided after *Gray* v. *Peabody Coal Co.*, 35 Fed. Appx. 138 (6th Cir. 2002), petition for cert. pending, No. 02-585, and *Wolf Creek Collieries* v. *Director, OWCP*, 298 F.3d 511, 522 (6th Cir. 2002), on which petitioner relies. See Pet. 16-18. Moreover, *Gray* is unpublished and does not establish circuit precedent, see, *e.g.*, *United States* v. *Humphrey*, 287 F.3d 422, 451 (6th Cir. 2002), and the ALJ in that case had found that the treating physician's opinion was reasoned and well documented, 35 Fed. Appx. at 141. In *Wolf Creek*, the court specifically denied the existence of a presumption, and it affirmed the ALJ's decision because the treating physician had examined the miner on "numerous occasions" in the years preceding his death whereas other physicians had not examined the miner at all or had examined him only on one occasion several years before his death. 298 F.3d at 522.

the existence of "conflicting proof in the record" does not require crediting a treating physician's opinion. Pet. App. 7 (citation omitted). Moreover, the issue raised in the cases about a treating physician's opinion concerns what weight the ALJ may attach to such an opinion when considered with other evidence in the record. The ALJ may award benefits only if the ALJ finds that the claimant has established eligibility by a preponderance of the evidence, after weighing all of the relevant evidence, including the treating physician's opinion. The true doubt rule at issue in *Greenwich Collieries*, by contrast, *relieved* the claimant of the burden of persuasion to establish eligibility by a preponderance of the evidence. See 512 U.S. at 272, 281.

The Sixth Circuit likewise has made clear in other cases that there is no treating physician presumption reallocating the claimant's burden of persuasion. See *Napier*, 301 F.3d at 709; *Wolf Creek Collieries*, 298 F.3d at 520-521; cf. *NMA*, 292 F.3d at 870 (the Department's codification of the rule does not "relieve[] claimants of the burden of proving both pneumoconiosis and the credibility of the doctor's opinion"). That burden instead remains with the claimant, who, in the case of a survivor's claim like the one at issue here, is entitled to an award of benefits only if the weight of medical evidence supports a finding both that the miner suffered from pneumoconiosis and that pneumoconiosis contributed to or hastened his death. See *Wolf Creek Collieries*, 298 F.3d at 520-522. Although a well-reasoned or documented opinion of a treating physician familiar with the miner's medical condition over a period of time can contribute to the claimant's proof and result in an award of benefits, the treating physician's opinion does not trump other medical opinions that are better reasoned or documented. Moreover, giving

effect to the opinion of a treating physician can work *against* the claimant if the treating physician concludes that pneumoconiosis did not exist or did not hasten death. The Sixth Circuit's approach to a treating physician's opinion, accordingly, does not shift the burden of proof in violation of Section 7(c) of the APA.

The Sixth Circuit's decision in this case would not warrant review in any event. In BLBA cases in which the evidence was developed after January 19, 2001, the weight to be accorded the opinion of a treating physician is governed by the Department's treating physician regulation, 20 C.F.R. 718.104(d). Accordingly, any flaw in the Sixth Circuit's approach is of little (and diminishing) continuing significance.

2. Petitioner also seeks review on the basis (Pet. 19-27) that the Department's treating physician regulation, 20 C.F.R. 718.104(d), is arbitrary and capricious and is in conflict with Section 7(c) of the APA.

a. As an initial matter, there is no basis for reviewing the treating physician regulation in this case. That regulation, as the court of appeals correctly observed, does not apply to respondent Groves's claim for benefits. Pet. App. 8 n.6. It applies only in cases in which the evidence was developed after January 19, 2001. 20 C.F.R. 718.101(b). Although the court of appeals discussed the regulation in support of its conclusion that its previous decisions had not established an automatic preference in favor of a treating physician's opinion, it understood that the regulation does not govern the resolution of the benefits claim in this case.

In addition, there is no disagreement among the courts of appeals on the validity of the regulation under the APA. The D.C. Circuit upheld the regulation against a facial challenge, *NMA*, 292 F.3d at 870-871,

and no court has reached a contrary conclusion. The regulation's application in a particular case has yet to be reviewed by any court of appeals.

b. Furthermore, petitioner's assertion (Pet. 23) that the treating physician regulation is arbitrary and capricious is without merit. The regulation requires the adjudication officer to "take into consideration" a number of specific factors "in weighing the opinion of the miner's treating physician"—*viz*, the "[n]ature of the relationship" between the physician and the miner in respect to whether the physician "treated the miner for respiratory or pulmonary conditions," the "[d]uration of [the] relationship," the "frequency of physician-patient visits," and the "types of testing and examinations conducted during the treatment relationship." 20 C.F.R. 718.104(d)(1)-(d)(5). The regulation provides that, "[i]n appropriate cases, the relationship between the miner and his treating physician *may* constitute substantial evidence in support of the adjudication officer's decision to give that physician's opinion controlling weight," but only "provided that the weight given to the [physician's] opinion * * * shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. 718.104(d)(5) (emphasis added).

Contrary to petitioner's argument (Pet. 19-23), the Department carefully considered adverse comments asserting that "the 'treating physician' rule has no scientific basis because a treating physician is in no better position than any other physician to assess a miner's pulmonary status." 65 Fed. Reg. at 79,933. The Department determined that those comments did not provide a basis for rejecting an approach that gives special weight to a treating physician's opinion in

appropriate circumstances. The Department explained that "a physician's professional relationship with the miner may enhance his [or her] insight into the miner's pulmonary condition," and that the regulation is "designed to force a careful and thorough assessment of the treatment relationship." *Id.* at 79,923, 79,931-79,932; see 20 C.F.R. 718.104(d)(1)-(d)(4). Under the regulation, the opinion of a treating physician "may receive 'controlling weight' over contrary opinions" where the "adjudicator concludes that the treating physician has a special understanding of the miner's pulmonary health," but that determination "may be made * * * only after the adjudicator considers the credibility of the physician's opinion in light of its documentation and reasoning and the relative merits of the other relevant medical evidence of record." 65 Fed. Reg. at 79,923; see *id.* at 79,933-79,934.

The Department's analysis makes clear that its promulgation of the regulation was not arbitrary and capricious. See *Motor Vehicle Mfrs. Ass'n of the United States* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (explaining that the "scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency," and that the standard is satisfied if the agency "examine[s] the relevant data and articulate[s] a satisfactory explanation for its action including a 'rational connection between the facts found and the choice[s] made'"). Accordingly, the D.C. Circuit in *NMA* properly rejected a facial challenge alleging that the Department's treating physician regulation is arbitrary and capricious, explaining that the Department "con-

sidered and rejected" in "convincing[]" fashion the same arguments made by petitioner here. 292 F.3d 870-871.[3]

c. There also is no merit to petitioner's contention (Pet. 23) that the Department's treating physician regulation is inconsistent with Section 7(c) of the APA. In the first place, if there were any inconsistency, the Department's regulation, rather than Section 7(c), would control. The BLBA (30 U.S.C. 932(a)) incorporates a number of provisions from the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.*, including the requirement in Section 19(d) of the LHWCA, 33 U.S.C. 919(d), that hearings be conducted in accordance with the hearing procedures of the APA, 5 U.S.C. 554. But the BLBA incorporates the LHWCA only to the extent not "otherwise provided * * * by regulations of the Secretary." 30 U.S.C. 932(a); see 20 C.F.R. 725.452(a) ("[e]xcept as otherwise provided by this part, all hearings shall be conducted in accordance with the provisions of 5 U.S.C. 554 *et seq.*"); *Director, OWCP* v. *National Mines Corp.*, 554 F.2d 1267, 1273-1274 (4th Cir. 1977) (describing "congressional intention to empower the Secretary to depart from specific requirements of the Longshoremen's Act

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[3] Petitioner errs in relying (Pet. 25-27) on a number of decisions that refuse to incorporate into other statutory schemes the treating physician regulation that the Social Security Administration has adopted for adjudication of claims for disability benefits under the Social Security Act, 42 U.S.C. 301 *et seq.* Those decisions do not hold that the treating physician rule that applies under the Social Security Act is arbitrary and capricious. In any event, as the Department explained when promulgating its regulation (65 Fed. Reg. at 79,933-79,934), the treating physician rule that applies under the Social Security Act, 20 C.F.R. 404.1527(d), differs from the rule that the Department adopted and that now governs in BLBA adjudications.

in order to administer the black lung compensation program properly"). Accordingly, if the treating physician regulation did depart from Section 7(c), then the Secretary would have "otherwise provided," and the Secretary's regulation, not the APA, would control. In that event, the APA's allocation of the burden of proof would be inapplicable by its own terms. 5 U.S.C. 556(d) ("[*e*]*xcept a s otherwise provided by statute*, the proponent of a rule or order has the burden of proof") (emphasis added).

In fact, however, the treating physician regulation does not shift the burden of proof. The Department has specifically rejected the suggestion that the regulation effects "a burden-shifting presumption which imposes on the party opposing the claim the burden to overcome the 'preference' for the treating physician's opinion." 65 Fed. Reg. at 79,933. Instead, the regulation requires an assessment of the physician-patient relationship to determine whether it might afford the physician superior insight, and an evaluation of the credibility of the physician's opinion both on its own terms and in light of other evidence in the record. The Department has made clear that it "does not consider [the treating physician regulation] to be an evidentiary presumption which shifts the burden of production or persuasion." *Id.* at 79,934. Thus, the criteria for evaluating the treating physician's opinion concern the distinct question of the role that the opinion may play in *satisfying* the claimant's burden of proof, not shifting it. The regulation therefore is fully consistent with the allocation of the burden of proof in Section 7(c).

Nor does the regulation "artificially exaggerate[]" (Pet. 24) the evidentiary significance of a treating physician's opinion. The D.C. Circuit in *NMA*, in rejecting precisely the same argument, understood that

the argument erroneously "assumes that ALJs will automatically give controlling weight to treating physicians' opinions." 292 F.3d at 870. The regulation "actually places limits on their capacity to do so," the D.C. Circuit explained, by "permitting reliance on treating physician testimony only where [the] physician's opinion is credible and consistent with record evidence." *Ibid.* (citing 20 C.F.R. 718.104(d)(5)). Furthermore, although petitioner submits (Pet. 27-30) that review is warranted because the Department's treating physician regulation and the Sixth Circuit's approach will have a substantial economic impact, the Sixth Circuit's approach mirrors that of other courts of appeals and the Department's regulation "codifies judicial precedent and does not work a substantive change in the law." *NMA*, 292 F.3d at 861; see *id.* at 862 (noting that the association challenging the regulation "do[es] not cite a single case from *any* circuit in which a Court of Appeals espoused principles at odds with" the regulation).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 2002