No. 12-639

In the Supreme Court of the United States

HONG HUANG, aka LINDA HUANG, PETITIONER

v.

JANET NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Section 1421(c) of Title 8 of the United States Code provides that "[a] person whose application for naturalization * * * is denied, after a hearing before an immigration officer under section 1447(a) of this title, may seek review of such denial before the United States district court for the district in which such person resides." Under Section 1429, however, the government may not conduct a Section 1447(a) hearing while removal proceedings are pending against an applicant. The question presented is whether a naturalization applicant in removal proceedings may seek judicial review under Section 1421(c) when she has not yet had "a hearing before an immigration officer under section 1447(a)."

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OPINIONS BELOW

The opinions of the court of appeals (Pet. App. 1a-6a) and the district court (Pet. App. 7a-14a, 17a-23a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 6, 2012. A petition for rehearing was denied on June 18, 2012. Pet. App. 15a-16a. On September 13, 2012, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including October 16, 2012. On October 3, 2012, Justice Thomas further extended the time to November 15, 2012, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner, a Chinese citizen who has been a permanent resident of the United States since 2004, filed an application for naturalization with the United States Citizenship and Immigration Services (USCIS) in 2009. Pet. App. 2a. After interviewing her twice and concluding that she had made misrepresentations in her naturalization application, USCIS denied her application. See *id.* at 43a-49a. Simultaneously with that denial, the government initiated removal proceedings against petitioner, citing the misrepresentations. See *id.* at 2a, 50a-58a.

As provided by 8 U.S.C. 1447(a), petitioner then sought an administrative hearing to challenge the denial of her naturalization application. Pet. App. 2a; see 8 U.S.C. 1447(a) ("If, after an examination under section 1446 of this title, an application for naturalization is denied, the applicant may request a hearing before an immigration officer."). Because Section 1429 deprives USCIS of authority to review the denial of a naturalization application during the pendency of removal proceedings, however, the agency has not yet conducted a hearing on her application or rendered a final decision. See 8 U.S.C. 1429 ("[N]o application for naturalization shall be considered by the Attorney General if there is pending against the applicant a removal proceeding.").[1] If it is ultimately determined that there are no grounds to remove petitioner from the United States, USCIS will conduct a hearing on her naturalization application.

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[1] Under 6 U.S.C. 557, statutory references to the Attorney General must be read to include the Secretary of the Department of Homeland Security (DHS). The Secretary of DHS has delegated her authority to review naturalization applications to USCIS. See 6 U.S.C. 271(b).

2. In May 2010, before the conclusion of her removal proceedings, petitioner filed suit in the United States District Court for the Southern District of Florida under 8 U.S.C. 1421(c) to challenge USCIS's initial denial of her naturalization application. Pet. App. 2a, 18a. That provision states that "[a] person whose application for naturalization under this subchapter is denied, after a hearing before an immigration officer under section 1447(a) of this title, may seek review of such denial before the United States district court for the district in which such person resides in accordance with [the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*]." Because petitioner has not yet had a "hearing before an immigration officer under section 1447(a)," USCIS moved to dismiss her complaint. Pet. App. 7a.

The district court granted that motion. Pet. App. 7a-14a. It held that because petitioner has not yet attended a Section 1447(a) hearing, "she has not fully exhausted her administrative remedies." *Id.* at 11a. Accordingly, the court held, it lacked jurisdiction to review the denial of her naturalization application under Section 1421(c). *Id.* at 12a. The court also denied petitioner's motion for reconsideration. *Id.* at 23a.

3. The court of appeals affirmed (Pet. App. 1a-6a), holding that "[t]he district court correctly determined that it lacked jurisdiction over [petitioner's] case." *Id.* at 5a-6a. Quoting the text of Section 1421(c), it explained that "[a]n individual whose naturalization application has been denied may seek review" only "'after a hearing before an immigration officer.'" *Id.* at 5a. Courts, it explained, may not "read 'futility or other exceptions into statutory exhaustion requirements where Congress has provided otherwise.'" *Ibid.* (quoting *Booth* v. *Churner*, 532 U.S. 731, 741 n.6 (2001)). The

court noted that petitioner had "abandoned any argument" that the APA or the Declaratory Judgment Act, 28 U.S.C. 2201, authorized judicial review of the initial denial of her naturalization application. See Pet. App. 6a n.2.

ARGUMENT

The court of appeals correctly held that petitioner could not seek judicial review under Section 1421(c) because she has not yet had a hearing under Section 1447(a). The plain text of Section 1421(c) authorizes judicial review only "after a hearing before an immigration officer under section 1447(a)." 8 U.S.C. 1421(c). The fact that Congress has precluded USCIS from holding a hearing during the pendency of removal proceedings against petitioner does not abrogate the requirement that she exhaust administrative remedies before seeking judicial review. To the contrary, Congress's express preference is for naturalization proceedings to be held in abeyance until the conclusion of removal proceedings.

Petitioner claims (Pet. 10-16) that the decision below exacerbates an "entrenched circuit conflict." She mistakenly relies, however, on cases addressing whether a district court retains jurisdiction under Section 1421(c) when removal proceedings are initiated *after* a Section 1447(a) hearing resulting in the denial of a naturalization application. No circuit has held that if removal proceedings are initiated *before* a Section 1447(a) hearing, a district court has jurisdiction under Section 1421(c) to review a naturalization application—an interpretation that would ignore the plain text of that provision. In fact, one of the two appellate decisions that petitioner cites as favorable to her position made clear that "[i]f the application for naturalization [is] pending

when the removal proceedings beg[i]n, then the Attorney General [cannot] ma[k]e a final decision and § 1421(c) would not * * * allow[] [a plaintiff] to ask the district court for relief." *Klene* v. *Napolitano*, 697 F.3d 666, 669 (7th Cir. 2012). No circuit to have considered the question presented would permit petitioner to proceed with this suit.

Accordingly, review of the unpublished decision below is not warranted.

1. The court of appeals correctly held that Section 1421(c) does not provide a district court with jurisdiction to consider a naturalization application before a Section 1447(a) hearing has been conducted and has resulted in the final denial of the application.

a. The text of Section 1421(c) leaves no room for doubt as to whether an alien may seek judicial review of a naturalization determination prior to a Section 1447(a) hearing: "A person whose application for naturalization under this subchapter is denied, *after a hearing before an immigration officer under section 1447(a) of this title*, may seek review of such denial before the United States district court for the district in which such person resides." 8 U.S.C. 1421(c) (emphasis added). There is no reasonable construction of the provision that could support the view that a district court has jurisdiction before the conclusion of a Section 1447(a) hearing. Congress has thus unmistakably provided that judicial review must await a final determination by USCIS.

This Court has been clear that courts have no license to disregard specific exhaustion requirements established by statute. In *Booth* v. *Churner*, 532 U.S. 731 (2001), this Court explained that it "will not read futility or other exceptions into statutory exhaustion requirements where Congress has provided otherwise." *Id.* at

741 n.6. In Section 1421(c), Congress has clearly "provided otherwise" by authorizing judicial review only "after a hearing before an immigration offer under section 1447(a)."

Petitioner does not provide any sound reason to disregard the unexceptional principle of statutory interpretation set forth in *Booth*, noting only that the statute construed there (the Prison Litigation Reform Act of 1995, 18 U.S.C. 3601 *et seq.*) imposed an affirmative restriction on judicial review, whereas Section 1421(c)'s exhaustion requirement is expressed as a condition precedent to judicial review. See Pet. 25. There is no dispute, however, that the express text of each provision permits judicial review only after the completion of administrative proceedings, and *Booth* confirms that courts have no authority to ignore that requirement.

It would be particularly inappropriate for courts to fashion an exception to Section 1421(c)'s exhaustion requirement when, by operation of law, the initiation of removal proceedings delays USCIS from conducting a hearing on a naturalization application. Congress enacted 8 U.S.C. 1429 specifically to prioritize removal proceedings over naturalization proceedings by ensuring that naturalization proceedings would be held in abeyance until the conclusion of removal proceedings. Before 1952, "district courts had authority to naturalize, while authority to deport * * * aliens was vested in the Attorney General," and the two proceedings could be conducted simultaneously. *De Lara Bellajaro* v. *Schiltgen*, 378 F.3d 1042, 1045 (9th Cir. 2004); see *Shomberg* v. *United States*, 348 U.S. 540, 543-544 (1955). In practice, both proceedings would move forward "until either petitioner's deportation or naturalization *ipso facto* terminated the possibility of the other occurring."

Id. at 543. That led to a "race between the alien to gain citizenship and the Attorney General to deport." *Id.* at 544. To remedy that problem, in 1952, Congress added Section 1429, which "put an end to the race" by specifying that "'no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding.'" *Bellajaro*, 378 F.3d at 1045 (quoting 8 U.S.C. 1429 (1952)).

When Congress vested naturalization authority in the Attorney General in 1990, it amended Section 1429 to its current form, thereby prohibiting the Executive Branch from considering a naturalization application during removal proceedings. See *Bellajaro*, 378 F.3d at 1045; Immigration Act of 1990, Pub. L. No. 101-649, Tit. IV, § 407(c)(4) and (d)(3), 104 Stat. 5041-5042. In the same statute, Congress added Section 1421(c), with its limitation that judicial review may occur only after a Section 1447(a) hearing. § 401(a), 104 Stat. 5038.

There is therefore nothing anomalous about the fact that petitioner's naturalization application has been held in abeyance pending completion of removal proceedings against her. That is precisely the scheme that Congress contemplated when it enacted Section 1429, and it would thwart Congress's intent to engraft an atextual exception onto Section 1421(c)'s express limitation that judicial review not be conducted until "after a hearing before an immigration officer under section 1447(a)." 8 U.S.C. 1421(c). If courts could excuse Section 1421(c)'s exhaustion requirement on the ground that pending removal proceedings prohibit USCIS from conducting a Section 1447(a) hearing, naturalization applicants could simultaneously fight removal and seek

naturalization—the exact circumstance that Congress intended to prevent. See *Shomberg*, 348 U.S. at 543-544.

b. Petitioner offers no construction of the text of Section 1421(c) that would permit the inference that a naturalization applicant can obtain judicial review prior to the conclusion of "a hearing before an immigration officer under section 1447(a)." 8 U.S.C. 1421(c). She instead argues (Pet. 19-20) principally that this Court's decision in *Weinberger* v. *Salfi*, 422 U.S. 749 (1975), authorizes courts to fashion exceptions to statutory exhaustion requirements, notwithstanding this Court's later-expressed views in *Booth*.

Petitioner misreads *Salfi*. One of the questions in *Salfi* was whether a district court had jurisdiction to review a denial of Social Security benefits under a provision stating that "[a]ny individual, after any final decision of the Secretary made after a hearing to which he was a party, * * * may obtain a review of such decision by a civil action." 422 U.S. at 763 (quoting 42 U.S.C. 405(g) (brackets in original)). The plaintiffs had alleged that although the denied benefits were precluded by statute, the statute was unconstitutional. The Secretary, however, had not rendered a final decision on their applications. See *id.* at 764-765. In addressing whether judicial review was nevertheless available, this Court explained that the "statutorily specified jurisdictional prerequisite" of a final decision is "something more than simply a codification of the judicially developed doctrine of exhaustion, and may not be dispensed with merely by a judicial conclusion of futility." *Id.* at 766. The Court went on to state, however, that under the statutory scheme at issue in the case, "the Secretary may specify such requirements for exhaustion as he deems serve his own interests in effective and efficient administration."

Ibid. Because the Secretary had "determined that the only issue to be resolved [was] a matter of constitutional law concededly beyond his competence to decide," and had effectively made a "determination * * * that for the purposes of this litigation" there had been a final decision, the Court permitted the suit to proceed. *Id.* at 765, 767.

Salfi has no application here. In *Salfi*, no factual issues remained to be resolved through the administrative process, because the plaintiffs were challenging only the constitutionality of the statute, "a matter which [was] beyond [the Secretary's] jurisdiction to determine." 422 U.S. at 765; see also *Bowen* v. *City of New York*, 476 U.S. 467, 485 (1986) (authorizing judicial review under Section 405(g) without exhaustion for challenge to "systemwide, unrevealed policy" that did not "depend on the particular facts of [each] case," where relief would not "interfere with the agency's role as the ultimate determiner of eligibility"); *Mathews* v. *Eldridge*, 424 U.S. 319, 330-332 (1976) (authorizing judicial review under Section 405(g) for "collateral" constitutional claim where effective relief would be impossible to obtain through administrative process). But here, petitioner seeks to circumvent USCIS's role in making a specific factual determination about her eligibility for naturalization—a determination that will occur if petitioner prevails in her removal proceedings. *Salfi* does not suggest that a court may ignore a statutory exhaustion requirement in that circumstance.

Similarly misplaced is petitioner's reliance on "this Court's precedents describing the purposes of administrative exhaustion." Pet. 23. None of the cited cases construed an express statutory requirement that a person seeking judicial review complete a specific step

before an agency prior to filing suit. In *Woodford* v. *Ngo*, 548 U.S. 81 (2006), for example, the statute required generally that "'such administrative remedies as are available [be] exhausted,'" and the Court looked in part to the doctrine of administrative exhaustion to interpret "the term of art 'exhausted.'" *Id.* at 88, 93 (quoting 42 U.S.C. 1997e(a)). The discussion that petitioner excerpts from *Kappos* v. *Hyatt*, 132 S. Ct. 1690 (2012) (see Pet. 23-24), simply described the doctrine of administrative exhaustion in the course of rejecting its application to the statutory scheme at issue in the case. See *id.* at 1696-1697; Pet. 24. Neither decision countenances ignoring an express statutory condition precedent to judicial review.

Petitioner advances a number of other arguments that courts should ignore the plain text of Section 1421(c), none of which has merit. She cites (Pet. 21) unpublished district-court decisions allowing judicial review under Section 1421(c) where an alien has been expressly denied a hearing before an immigration officer and claims that she has experienced a "*de facto*" denial. But petitioner has not been denied a hearing; rather, the administrative appeal is pending but cannot be resolved until the conclusion of removal proceedings, exactly as Congress specified. Petitioner also claims, *ibid.*, that the section's reference to the APA evinces an intent to incorporate principles of non-statutory exhaustion. She cites no case supporting that view, and it cannot be squared with the APA's proviso that it does not "affect[] other limitations on judicial review." 5 U.S.C. 702.

Finding no support for her position in the text of Section 1421(c), petitioner adverts (Pet. 23) to what she calls "the structure of the statute": In particular, she claims that Section 1447(b), which authorizes judicial

review where USCIS fails to render an initial determination on a naturalization application within 120 days of an examination, suggests that judicial review should be available here as well. But as two of the decisions cited by petitioner for an alleged division of authority on the question presented make clear, where removal proceedings are pending, a court cannot grant naturalization under Section 1447(b) either. See *Ajlani* v. *Chertoff*, 545 F.3d 229, 238-239 (2d Cir. 2008); *Saba-Bakare* v. *Chertoff*, 507 F.3d 337, 340 (5th Cir. 2007). Moreover, in practice, as here, it is often the initial naturalization decision that brings to light information indicating that the applicant is removable. It therefore makes good sense for the statute to reflect that in the ordinary course, USCIS will conduct an initial naturalization examination but, where information emerges indicating the applicant's removability, postpone a final naturalization decision until the completion of removal proceedings.

Petitioner also refers (Pet. 21-22) the Court to the legislative history of Section 1421(c). But because the text of that provision could not be clearer that "a hearing before an immigration officer under section 1447(a)" is a condition precedent to judicial review, "reliance on legislative history is unnecessary." *Mohamad* v. *Palestinian Auth.*, 132 S. Ct. 1702, 1709 (2012) (internal quotation marks and citation omitted). In any event, none of the cited passages addresses whether an applicant may obtain judicial review prior to a Section 1447(a) hearing where removal proceedings bar immediate action on the naturalization application. Although the sponsor of the 1990 legislation that added Section 1421(c) stated that the statute would not limit judicial review of denials of naturalization applications, see Pet.

22 (quoting 135 Cong. Rec. 16,996 (1989)), that does not support petitioner's position: As discussed, see pp. 6-7, *supra*, prior to 1990, courts were precluded from exercising jurisdiction to review naturalization applications when removal proceedings were pending. See *Zayed* v. *United States*, 368 F.3d 902, 906 (6th Cir. 2004).

c. More broadly, petitioner erroneously characterizes (Pet. 17, 19) USCIS's actions here as an attempt to "deprive itself of the power" to consider her naturalization application and repeatedly suggests (Pet. 20-21, 25-26) that the agency has decided never to afford her a hearing on her naturalization application. Pet. 19. The agency, however, has not "stripped itself of the authority to provide [a hearing]." Pet. 17. Rather, for a subset of naturalization applicants who the government has reason to believe are removable (often for a reason that emerges during the initial review of the naturalization application), the statute instructs USCIS to hold their applications in abeyance until removal proceedings are completed.

Here, for example, if petitioner prevails in the removal proceedings and no final order of removal is entered, USCIS will then be required to address her naturalization application, and any final denial will be subject to judicial review under Section 1421(c). This is therefore not a circumstance in which (even absent clear statutory text) a judge-made exception to exhaustion such as "futility" could be justified. Of course, if petitioner is ordered removed, her naturalization application will be moot. But that merely illustrates why Congress required USCIS to suspend naturalization proceedings until the completion of removal proceedings.

2. Petitioner mistakenly claims (Pet. 16-26) that this case implicates a conflict of authority among the circuits

over a district court's authority to rule on a naturalization application when removal proceedings are pending against the applicant. The majority of the cases that petitioner cites addressed a question not raised by this case: whether the pendency of removal proceedings bars judicial review under Section 1421(c) *after* a Section 1447(a) hearing. That is a different question of statutory interpretation because, unlike here, the express prerequisite for judicial review under Section 1421(c)—that it occur "after a hearing before an immigration officer under section 1447(a)"—is met.

No circuit has adopted petitioner's view that even prior to a Section 1447(a) hearing, an applicant for naturalization may obtain judicial review on the ground that the initiation of removal proceedings has delayed the hearing on the naturalization application. One of the two circuits that petitioner claims are favorable to her position, in fact, expressly rejected the proposition that a district court may review a preliminary denial of a naturalization application prior to a Section 1447(a) hearing. Accordingly, the straightforward question of statutory interpretation presented by the petition does not warrant this Court's review.

a. Only two of the decisions cited by petitioner addressed the question whether a district court has jurisdiction to review a preliminary denial of a naturalization application when a Section 1447(a) hearing has not yet been held because of pending removal proceedings against the applicant. As petitioner acknowledges (Pet. 11), both concluded, like the decision below, that a district court does not have jurisdiction in that circumstance.

In *Barnes* v. *Holder*, 625 F.3d 801 (4th Cir. 2010), the plaintiff had submitted a naturalization application after

the initiation of removal proceedings against him. See *id.* at 802. He then invoked a regulation authorizing an immigration judge to terminate removal proceedings to permit an alien to obtain a naturalization hearing. See *id.* at 802-803 (citing 8 C.F.R. 1239.2(f)). The immigration judge denied the motion and ultimately ordered the alien's removal. See *id.* at 803. The Board of Immigration Appeals affirmed, concluding that the immigration judge had no authority to terminate removal proceedings pursuant to the regulation absent a prima facie determination by the Department of Homeland Security that the alien was eligible for naturalization. See *id.* at 802-803. The alien challenged that conclusion before the Fourth Circuit, arguing in part that the Board's interpretation of the regulation would effectively deprive him of judicial review under Section 1421(c). See *id.* at 806. The Fourth Circuit rejected that argument, explaining that "[b]ecause, under § 1429, an alien in removal proceedings does not have a right to have his application adjudicated [by USCIS], it follows that he cannot possibly have a right to have the adjudication judicially reviewed." *Ibid.*

The Fifth Circuit reached a similar conclusion in an unusual fact pattern in *Saba-Bakare* v. *Chertoff*, 507 F.3d 337 (2007). In that case, the alien filed a naturalization application after removal proceedings began, but USCIS mistakenly granted him a hearing and denied the application. See *id.* at 338-339. The agency then determined that, in light of the pending removal proceedings, it had lacked authority to consider his application and vacated its decision "as improvidently granted." *Id.* at 339-340. The Fifth Circuit held that the district court lacked jurisdiction under Section 1421(c) because the post-hearing denial of the naturalization application

"ha[d] no continuing legal effect," and thus the alien had not "exhausted administrative remedies." *Id.* at 340.

The Fourth and Fifth Circuits are the only circuits that have considered whether an alien may seek judicial review of the denial of a naturalization application under Section 1421(c) before the completion of "a hearing before an immigration officer under Section 1447(a)," 8 U.S.C. 1421(c), and both agreed with the decision below that the statute forecloses such review.

b. Five of the other decisions cited by petitioner involved a different issue than the one presented here: whether the pendency of removal proceedings bars a court from considering a suit for judicial review of the denial of a naturalization application filed *after* a Section 1447(a) hearing. That question is not resolved by the text of Section 1421(c), because in that circumstance the naturalization applicant has met the express requirement for judicial review. Rather, courts have asked whether a district court has the power to grant some form of relief despite the fact that, under Section 1429, USCIS has no power to grant naturalization until the removal proceedings conclude.

Three circuits have determined that district courts lack power to grant relief in that circumstance. Two have held that although a court has jurisdiction under Section 1421(c), "the restraints that § 1429 imposes upon the Attorney General prevent a district court from granting effective relief." *Zayed*, 368 F.3d at 906 (6th Cir.); see also *Bellajaro*, 378 F.3d at 1046 (9th Cir.) (agreeing with *Zayed* and holding that Section 1421(c) provides jurisdiction to review a post-hearing denial of a naturalization application on the ground that removal proceedings are pending, but that the district court may review only whether the denial on that basis was prop-

er). In its unpublished decision in *Awe* v. *Napolitano*, No. 11-5134, 2012 WL 3553721 (Aug. 20, 2012), the Tenth Circuit reached the same result under the doctrine of "constitutional mootness," reasoning that "[a] ruling by the district court ordering USCIS to grant * * * [a] naturalization application * * * would be ineffective because of § 1429's prohibition on agency action during the pendency of removal proceedings." *Id.* at *1, *5. In each case, unlike here, the alien had already had a Section 1447(a) hearing before seeking judicial review under Section 1421(c). See *Zayed*, 368 F.3d at 906, 907; *Bellajaro*, 378 F.3d at 1044; *Awe*, 2012 WL 3553721, at *1.

The Third and Seventh Circuits have held that where judicial review is sought under Section 1421(c) after a Section 1447(a) hearing and after the commencement of removal proceedings, the district court has the power to enter a declaratory judgment that the alien is entitled to naturalization but not to order the government to naturalize him. See *Klene*, 697 F.3d at 669 (7th Cir.); *Gonzalez* v. *Secretary of Dep't of Homeland Sec.*, 678 F.3d 254, 260-261 (3d Cir. 2012). But those decisions did not suggest that a district court would have jurisdiction under Section 1421(c) even *before* a Section 1447(a) hearing has been held. To the contrary, the Seventh Circuit explained that "[i]f the application for naturalization [is] pending when the removal proceedings beg[i]n, then the Attorney General [cannot] ma[k]e a final decision and § 1421(c) would not * * * allow[] [a plaintiff] to ask the district court for relief." *Klene*, 697 F.3d at 669.[2] That conclusion forecloses petitioner's claim.

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[2] Although the Seventh Circuit noted in *Klene* that it "disagree[d] with *Barnes* and *Saba-Bakare*," 697 F.3d at 668, it appeared to read those decisions to hold that Section 1429 would strip district courts of

c. Finally, two of the decisions cited by petitioner addressed a question involving a different statutory provision entirely: whether judicial review is available under Section 1447(b)—rather than Section 1421(c)—when removal proceedings are pending. As discussed above, see pp. 10-11, *supra*, Section 1447(b) provides that if an *initial* determination on a naturalization application is not made within 120 days of an initial examination, "the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter." 8 U.S.C. 1447(b). That provision is not at issue in this case, because petitioner has already received an initial denial of her naturalization application. See Pet. 7; Pet. App. 8a.

In *Saba-Bakare*, the Fifth Circuit, after holding that the district court lacked jurisdiction under Section 1421(c) to review the alien's naturalization application when the hearing before an immigration officer was legally invalid, see pp. 14-15, *supra*, went on to reject the alien's argument that he could obtain relief under Section 1447(b). See 507 F.3d at 340. Even if jurisdiction was proper under that provision, the court explained, invoking it "would be futile" because Section 1429 would not permit a grant of naturalization until the conclusion of removal proceedings. *Ibid.* The Second Circuit adopted that holding in *Ajlani* v. *Chertoff*, 545 F.3d 229 (2008), concluding that Section 1447(b) does not permit a district court to order naturalization during the pendency of removal proceedings. See *id.* at 238-239; see also *id.* at 239-241 (expressing approval of Sixth and Ninth Circuits' construction of Section 1421(c)). Neither

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jurisdiction even *after* a Section 1447(a) hearing has been conducted. Whatever the merits of the Seventh Circuit's view on that question, it is not at issue here.

of the decisions suggested that a defendant may obtain judicial review under Section 1421(c) after an initial determination but before a Section 1447(a) hearing.

d. Petitioner has failed to identify any conflict of authority over the question actually presented in this case. She appears to acknowledge this (Pet. 14-16), noting that "there is no express circuit conflict on" what she deems "the sub-issue of exhaustion," but she argues that the question presented is "functionally the same as in all of the cases cited." Pet. 15. That is incorrect. The question presented asks whether courts may disregard an express statutory requirement that judicial review await "a hearing before an immigration officer under section 1447(a)." 8 U.S.C. 1421(c). No circuit has endorsed petitioner's position that they may. Especially given the clarity of the statutory text, there is no sound reason for further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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