

No. 18-1255

In the Supreme Court of the United States

REYNALDO ANGELES, PETITIONER

v.

WILLIAM P. BARR, ATTORNEY GENERAL

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

MEMORANDUM FOR THE RESPONDENT

NOEL J. FRANCISCO
*Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

In the Supreme Court of the United States

No. 18-1255

REYNALDO ANGELES, PETITIONER

v.

WILLIAM P. BARR, ATTORNEY GENERAL

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

MEMORANDUM FOR THE RESPONDENT

Petitioner contends (Pet. 11-19) that the court of appeals erred in dismissing for lack of jurisdiction his petition for review of a decision of the Board of Immigration Appeals (Board) that denied petitioner's motion for reconsideration of the Board's decision not to reopen his removal proceedings. See Pet. App. 1-5. Specifically, petitioner contends that the question whether he acted with the requisite diligence to warrant equitable tolling of the statutory deadline for filing a motion to reopen, see 8 U.S.C. 1229a(c)(7)(C)(i), is a question of law reviewable by the court of appeals under 8 U.S.C. 1252(a)(2)(C)-(D).

On June 24, 2019, this Court granted two petitions for a writ of certiorari to consider that same question. See *Guerrero-Lasprilla v. Barr*, No. 18-776; *Ovalles v. Barr*, No. 18-1015. Because this Court's decision in those cases may affect the proper disposition of the petition for a writ of certiorari in this case, the petition

in this case should be held pending the decisions in *Guerrero-Lasprilla* and *Ovalles, supra*, and then disposed of as appropriate in light of those decisions.¹

Respectfully submitted.²

NOEL J. FRANCISCO
Solicitor General

JUNE 2019

¹ Petitioner also contends (Pet. 19-21) that certiorari is warranted to consider whether the court of appeals had jurisdiction over his claim that equitable tolling was warranted because he received allegedly ineffective assistance of counsel. But the Board did not address that claim in its decision denying reconsideration, which is the only decision that petitioner asked the court of appeals to review. See Pet. App. 2-5; Administrative Record 9-15. Petitioner's ineffective-assistance claim was therefore not before the court of appeals and is not before this Court. See 8 U.S.C. 1252(b)(6) (contemplating separate petitions for review of Board orders and motions for reconsideration); *Kane v. Holder*, 581 F.3d 231, 237 n.14 (5th Cir. 2009) (observing that "the statutory text * * * contemplates the filing of separate petitions for review following both the [Board's] initial order and the resolution of any subsequent motion to reconsider or reopen"); see also *Stone v. INS*, 514 U.S. 386, 389-390, 394-395, 397-398, 405-406 (1995) (articulating the same requirement under the prior statute and holding that jurisdiction existed only to review the Board's denial of reconsideration where a petition for review was timely only as to that decision).

² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.