No. 23-1270

In the Supreme Court of the United States

PIERRE YASSUE NASHUN RILEY,
PETITIONER

v.

MERRICK B. GARLAND, ATTORNEY GENERAL

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT
SUPPORTING PETITIONER

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
EPHRAIM A. MCDOWELL
Assistant to the Solicitor General
JOHN W. BLAKELEY
MELISSA L. NEIMAN-KELTING
DAWN S. CONRAD
ELIZABETH K. OTTMAN
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the 30-day deadline in 8 U.S.C. 1252(b)(1) for filing a petition for review of an order of removal is jurisdictional.

2. Whether a noncitizen satisfies the deadline in Section 1252(b)(1) by filing a petition for review challenging an agency order denying withholding of removal or protection under the Convention Against Torture within 30 days of the issuance of that order.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is not published in the Federal Reporter but is available at 2024 WL 1826979. The decisions of the Board of Immigration Appeals (Pet. App. 7a-14a) and the immigration judge (Pet. App. 15a-27a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 26, 2024. The petition for a writ of certiorari was filed on May 31, 2024. The petition was granted on November 4, 2024. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-33a.

STATEMENT

A. Legal Background

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, establishes a comprehensive framework for "[j]udicial review of a final order of removal." 8 U.S.C. 1252(a)(1). That review is initiated by the filing of a "petition for review" in the appropriate court of appeals "not later than 30 days after the date of the final order of removal." 8 U.S.C. 1252(b)(1). In successive enactments since the 1960s, Congress made clear that the INA's judicial-review provisions are generally the sole and exclusive means for a noncitizen to seek review of administrative determinations made in removal proceedings, including the denial of a noncitizen's request for relief or protection from removal.[1]

a. Before 1952, federal immigration law contained no express provision for judicial review of orders of deportation or exclusion—the predecessors to removal, see *Calcano-Martinez* v. *INS*, 533 U.S. 348, 350 n.1 (2001). Such orders could be reviewed only by a petition for a writ of habeas corpus. See *Heikkila* v. *Barber*, 345 U.S. 229, 235 (1953). After the INA's enactment in 1952, however, this Court held that judicial review of deportation or exclusion orders was also available in district

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[1] This brief uses "noncitizen" as equivalent to the statutory term "alien." See *Barton* v. *Barr*, 590 U.S. 222, 226 n.2 (2020) (quoting 8 U.S.C. 1101(a)(3)). In addition, many of the provisions at issue in this case refer to the Attorney General, but Congress has transferred their enforcement to the Secretary of Homeland Security. See *Nielsen* v. *Preap*, 586 U.S. 392, 397 n.2 (2019).

court under the Administrative Procedure Act. See *Shaughnessy* v. *Pedreiro*, 349 U.S. 48, 50-52 (1955) (deportation); *Brownell* v. *Tom We Shung*, 352 U.S. 180, 184-185 (1956) (exclusion).

Congress responded by amending the INA to channel judicial review of "all final orders of deportation" to the courts of appeals. 8 U.S.C. 1105a(a) (1964); see Act of Sept. 26, 1961, Pub. L. No. 87-301, § 5(a), 75 Stat. 651. Specifically, Congress made review in the courts of appeals under the Administrative Orders Review Act (Hobbs Act), ch. 1189, 64 Stat. 1129 (28 U.S.C. 2341 *et seq.*), the "sole and exclusive procedure" for a noncitizen to obtain judicial review of a "final order[] of deportation." 8 U.S.C. 1105a(a) (1964). Congress thus sought to "create a single, separate, statutory form of judicial review." H.R. Rep. No. 1086, 87th Cong., 1st Sess. 22-23 (1961). Under that framework, the deadline for filing a petition for review was "not later than six months from the date of the final deportation order," 8 U.S.C. 1105a(a)(1) (1964), which Congress later shortened to 90 days, see *Stone* v. *INS*, 514 U.S. 386, 393 (1995).

b. In two laws enacted in 1996, Congress revised the INA's judicial-review provisions to streamline the removal process for noncitizens who had been convicted of crimes. First, in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, Congress restricted review of a "final order of deportation" for certain noncitizens. § 440(a), 110 Stat. 1276-1277. Congress defined the "order of deportation" as "the order * * * concluding that the alien is deportable or ordering deportation." § 440(b), 110 Stat. 1277; see 8 U.S.C. 1101(a)(47)(A). Congress further specified that the "'order of deportation'" "become[s] final upon" "a determination by the

Board of Immigration Appeals affirming such order" or "'the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.'" § 440(b), 110 Stat. 1277; see 8 U.S.C. 1101(a)(47)(B).

Second, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546, Congress repealed the INA's previous judicial-review provision and replaced it with the one now codified with amendments at 8 U.S.C. 1252. IIRIRA § 306(a) and (b), 110 Stat. 3009-607 to 3009-612. Section 1252(a)(1) provides for judicial review of a "final order of removal" by means of a petition for review in a court of appeals. 8 U.S.C. 1252(a)(1).[2] Congress also modified the filing deadline, providing that the "petition for review must be filed not later than 30 days after the date of the final order of removal." 8 U.S.C. 1252(b)(1).

IIRIRA additionally specified that "[j]udicial review of all questions of law and fact * * * arising from any action taken or proceeding brought to remove an alien from the United States * * * shall be available only in judicial review of a final order under this section." 8 U.S.C. 1252(b)(9). Under that so-called zipper clause, "a noncitizen's various challenges arising from the removal proceeding must be 'consolidated in a petition for review and considered by the courts of appeals.'" *Nasrallah* v. *Barr*, 590 U.S. 573, 580 (2020) (citation omitted).

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[2] IIRIRA provides that "any reference in law to an order of removal shall be deemed to include a reference to an order of exclusion and deportation or an order of deportation." § 309(d)(2), 110 Stat. 3009-627.

2. Congress has also enacted provisions for determining the country to which a noncitizen is to be removed. See 8 U.S.C. 1231(b)(1) and (2). Possible destinations can include a country designated by the noncitizen, the noncitizen's country of citizenship, the noncitizen's previous country of residence, and, if the other options fail, any country willing to accept the noncitizen. See *Jama* v. *ICE*, 543 U.S. 335, 338-341 (2005).

As relevant here, Congress has left open two avenues for a noncitizen to avoid removal to a particular country where he faces persecution or torture. First, the noncitizen may seek statutory withholding of removal under 8 U.S.C. 1231(b)(3), which prohibits the removal of a noncitizen to a country where he would face persecution because of his "race, religion, nationality, membership in a particular social group, or political opinion." *Ibid.* Second, the noncitizen may seek withholding or deferral of removal under regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85—a treaty that addresses the removal of noncitizens to countries where they would face torture. See Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105-277, Div. G, § 2242(b), 112 Stat. 2681-822; 8 C.F.R. 208.16(c), 208.18, 208.31, 241.8(e).

Statutory withholding and CAT protection provide country-specific protection from removal. A grant of statutory withholding means that the noncitizen is "presently protected" from removal to the particular country covered by the grant, though it "would not prevent" the noncitizen's removal to "any other hospitable country." *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 428

n.6 (1987) (citation omitted). Similarly, a grant of CAT protection means "that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country," though "the noncitizen still 'may be removed at any time to another country where he or she is not likely to be tortured.'" *Nasrallah*, 590 U.S. at 582 (quoting 8 C.F.R. 1208.17(b)(2)).

Even noncitizens subject to certain abbreviated removal procedures may seek statutory withholding and CAT protection. See *Johnson* v. *Guzman Chavez*, 594 U.S. 523, 530 (2021). Those noncitizens include any nonpermanent resident who has been convicted of an aggravated-felony offense and is therefore "conclusively presumed to be deportable" and ineligible for any form of "relief from removal that the Attorney General may grant in the Attorney General's discretion." 8 U.S.C. 1228(b)(5) and (c). And they include someone who has previously been removed from the United States under a final order of removal, has reentered the country unlawfully, has had the removal order "reinstated from its original date," and has been rendered ineligible "for any relief" from the reinstated removal order. 8 U.S.C. 1231(a)(5).

Under applicable regulations, a noncitizen who is subject to abbreviated procedures under Section 1228(b) generally does not appear before an immigration judge (IJ) or have a right to an administrative appeal before the Board of Immigration Appeals (Board). See 8 C.F.R. 238.1. Instead, an immigration officer from the Department of Homeland Security (DHS) conducts written removal proceedings. 8 C.F.R. 238.1(a)-(c). If the officer finds that the noncitizen is subject to removal under Section 1228(b), the officer issues a "Fi-

nal Administrative Removal Order." 8 C.F.R. 238.1(d).[3] That order is reviewable only in a court of appeals; it is not appealable to the Board. See 8 U.S.C. 1228(b)(3); 8 C.F.R. 1003.1(b).

The regulations, however, provide an exception for noncitizens who seek statutory withholding or CAT protection. 8 C.F.R. 238.1(f)(3). "Upon issuance of a" removal order under Section 1228(b), a noncitizen who "expresses a fear of returning to the country of removal" will "be referred to an asylum officer" to determine whether he has a reasonable fear of persecution or torture in the country of removal. 8 C.F.R. 208.31(a) and (b); see 8 C.F.R. 238.1(f)(3). If the asylum officer finds that the noncitizen has no reasonable fear and an IJ sustains that finding, then DHS may remove the noncitizen without further administrative review. 8 C.F.R. 208.31(f) and (g)(1). But a noncitizen who establishes a reasonable fear is referred to an IJ "for full consideration of the request for withholding of removal only." 8 C.F.R. 208.31(e); see 8 C.F.R. 208.16, 1208.16. The IJ's determination in those withholding-only proceedings is subject to review by the Board. 8 C.F.R. 208.31(e).[4]

As is evident from the foregoing summary of relevant provisions, withholding-only proceedings do not begin until after a noncitizen has been found removable

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[3] The phrase "Final Administrative Removal Order" appears only in regulations, not in statutory text. The term "final" denotes only that DHS has definitively determined that the noncitizen is removable; it is not intended to suggest that the removal order is final for purposes of judicial review.

[4] The same procedures apply to a noncitizen seeking statutory withholding or CAT protection after a reinstatement order under Section 1231(a)(5). See 8 C.F.R. 208.31(a).

through abbreviated procedures under Section 1228(b). See 8 C.F.R. 208.31(b). And the final decision on statutory withholding or CAT protection may not come until months or even years later. See pp. 37-38, *infra*.

3. Finally, in the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 310, Congress amended Section 1252 to confirm that judicial review of CAT claims may occur only in conformity with Section 1252's framework. Specifically, Congress directed that, "[n]otwithstanding any other provision of law," "a petition for review filed with an appropriate court of appeals in accordance with [Section 1252] shall be the sole and exclusive means for judicial review of any cause or claim under the [CAT]," subject to certain exceptions inapplicable here. 8 U.S.C. 1252(a)(4); see REAL ID Act § 106(a)(1)(B), 119 Stat. 310.

B. Prior Proceedings

1. Petitioner is a native and citizen of Jamaica. Pet. App. 2a. He entered the United States in 1995 as a tourist and overstayed his authorized period of admission. *Id.* at 16a. In 2006, he was convicted in federal court of firearm and drug-trafficking offenses and sentenced to a 25-year term of imprisonment. *Id.* at 2a. In January 2021, he was granted compassionate release. *Ibid.*

Following petitioner's release from prison, DHS took him into custody and found him removable under Section 1228(b)'s abbreviated procedures for noncitizens who have been convicted of an aggravated felony. Pet. App. 2a. On January 26, 2021, an immigration officer issued a removal order under Section 1228(b). *Ibid.* Petitioner then expressed a fear of returning to Jamaica, which prompted an immigration officer to conduct a reasonable-fear interview. *Id.* at 2a. The officer found that petitioner had not established a reasonable

fear of persecution or torture in Jamaica, but an IJ disagreed and allowed petitioner to present his claims in withholding-only proceedings. *Id.* at 2a-3a. Petitioner subsequently appeared with counsel before the IJ, where he sought deferral of removal under the CAT. *Ibid.*[5]

In a decision issued on July 27, 2021, the IJ granted petitioner's application for deferral of removal under the CAT, finding it more likely than not that petitioner would be tortured upon returning to Jamaica. Pet. App. 16a-27a. Specifically, the IJ found credible petitioner's testimony that a gang leader controls petitioner's old neighborhood, had killed two of petitioner's cousins, recently sent death threats to petitioner's mother and sister, and would kill or threaten to kill petitioner if he returned to Jamaica. *Id.* at 17a-18a. And the IJ further found credible petitioner's testimony that the police had previously been informed of the gang leader's violence and refused to intervene. *Id.* at 24a. Accordingly, the IJ granted petitioner deferral of removal under the CAT. *Id.* at 26a.

In a decision issued on May 31, 2022, the Board vacated the IJ's order. Pet. App. 7a-14a. The Board "discern[ed] clear error in the [IJ's] factual findings regarding what is likely to happen to [petitioner] upon his removal to Jamaica, and [it] agree[d] with DHS that [petitioner] has not met his burden of proof to show eligi-

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[5] A noncitizen, like petitioner, who has been convicted of an aggravated felony for which he was sentenced to an aggregate term of imprisonment of at least five years, is ineligible for withholding of removal under either the INA or the CAT. See 8 U.S.C. 1231(b)(3)(B); 8 C.F.R. 1208.16(d)(2) and (3). But such a noncitizen remains eligible for deferral of removal under the CAT. See 8 C.F.R. 1208.17(a).

bility for deferral of removal under the CAT." *Id.* at 9a. In particular, the Board found that petitioner's claims that the gang leader "killed or ordered the killing of his cousins and is behind the threats his mother and sister received in 2021 are speculative." *Id.* at 11a. And the Board found a lack of evidence that "the police will acquiesce in torture." *Id.* at 12a. The Board therefore vacated the IJ's decision and ordered petitioner to be "removed from the United States to Jamaica." *Id.* at 14a. Four days later, on June 3, 2022, petitioner filed a petition for review of the Board's decision in the court of appeals. *Id.* at 3a.

2. On April 26, 2024, the court of appeals issued an unpublished decision dismissing the petition for review for lack of jurisdiction. Pet. App. 2a-6a. The court found that its decision was controlled by *Martinez* v. *Garland*, 86 F.4th 561, 566 (4th Cir. 2023), petition for cert. pending, No. 23-7678 (filed May 29, 2024). Pet. App. 4a-6a.

In *Martinez*, the Fourth Circuit held that it lacked jurisdiction to consider a petition for review of an order denying statutory withholding and CAT protection because the petition was filed more than 30 days after the noncitizen's prior order of removal was reinstated under Section 1231(a)(5). 86 F.4th at 571. In reaching that holding, the court first found that Section 1252(b)(1)'s 30-day filing deadline is jurisdictional in light of this Court's 1995 decision in *Stone*. *Martinez*, 86 F.4th at 566-567 & n.3. The court of appeals applied circuit precedent concluding that this Court's subsequent decision in *Santos-Zacaria* v. *Garland*, 598 U.S. 411 (2023), had not abrogated *Stone*'s discussion of jurisdiction. *Martinez*, 86 F.4th at 566 n.3. Thus, the *Martinez* court believed it was "bound to apply *Stone* unless and until the

Supreme Court provides to the contrary." *Ibid.* (citation omitted).

Next, relying on the Second Circuit's decision in *Bhaktibhai-Patel* v. *Garland*, 32 F.4th 180 (2022), *Martinez* found that the petition for review failed to satisfy Section 1252(b)(1)'s "jurisdictional requirements because it was not filed within 30 days of a final order of removal." 86 F.4th at 567. The court assumed that "a reinstatement decision" under Section 1231(a)(5) "is an order of removal," so the court turned "to the dispositive question of finality." *Id.* at 568. In resolving that question, the court acknowledged that Section 1101(a)(47)(B)'s definition of finality "appears inapposite" because it ties finality to the completion of Board review, and "[a]n alien cannot appeal an immigration officer's reinstatement decision to the Board." *Ibid.*; see 8 U.S.C. 1231(a)(5). Nonetheless, the court stated that "when a decision is not appealable to the Board," "the ruling at the last available stage of agency review" is "the agency's 'final order' for purposes of judicial review." *Martinez*, 86 F.4th at 568 (citation and internal quotation marks omitted). And because "[a]n immigration officer's decision to reinstate a prior order of removal is definitive and not subject to further review by the agency," the court concluded that "the reinstatement decision becomes final when the alien chooses not to contest it or, if the alien does contest it, when the immigration officer rejects the alien's objections." *Ibid.*

Martinez rejected the argument that "the immigration officer's reinstatement decision becomes final only after the conclusion of the alien's withholding-only proceedings." 86 F.4th at 569. The court observed that "[a] removal order decides whether the alien should be removed from the United States," whereas "statu-

tory withholding and CAT orders take the alien's removability as a given and decide only *where* the alien may be removed to." *Ibid.* Because "'removal orders and withholding-only proceedings address two distinct questions,'" the court concluded that the finality of a removal order "cannot depend on withholding-only proceedings." *Ibid.* (citation omitted). Accordingly, the court deemed the petition there untimely because, although it was filed within 30 days of the conclusion of withholding-only proceedings, it was not filed within 30 days of the reinstatement order. *Id.* at 571. Both the noncitizen and the government petitioned for rehearing en banc in *Martinez*, but their petitions were denied.

Applying *Martinez* to this case, the court of appeals first stated that "[t]he 30-day deadline is mandatory and jurisdictional." Pet. App. 4a (quoting *Martinez*, 86 F.4th at 566). Next, the court determined that petitioner "did not timely petition for review of a final order of removal" because he "did not petition for review within 30 days of the January 26, 2021" removal order. *Ibid.* The court discerned no "justification for differentiating between" the reinstatement order at issue in *Martinez* and the Section 1228(b) removal order at issue in this case. *Id.* at 5a. Because the court concluded that "there is no final order of removal properly in front of [it] that would allow [it] to review the Board's order denying CAT relief," it found that it "lack[ed] jurisdiction over [petitioner's] petition for review." *Id.* at 4a-5a.

SUMMARY OF ARGUMENT

This case turns on the proper interpretation of 8 U.S.C. 1252(b)(1), which provides that a "petition for review must be filed not later than 30 days after the date of the final order of removal." Section 1252(b)(1)

is a claim-processing rule, not a jurisdictional requirement. And the petition in this case satisfied Section 1252(b)(1)'s 30-day filing deadline.

I. Section 1252(b)(1) is not jurisdictional.

A. A procedural rule is jurisdictional only if Congress clearly imbued it with jurisdictional consequences. This Court has repeatedly held that litigation time bars are nonjurisdictional claim-processing rules. The only exception this Court has identified involved a statutory deadline to appeal from one Article III court to another. See *Bowles* v. *Russell*, 551 U.S. 205 (2007).

B. Under this Court's precedents, the 30-day filing deadline in Section 1252(b)(1) is not jurisdictional. It simply sets a deadline for filing a petition for review of a removal order in a court of appeals, without referencing the court's jurisdiction. And because the deadline governs a petition from an agency to a court—not an appeal from one Article III court to another—the *Bowles* exception does not apply.

C. The court of appeals erred in treating Section 1252(b)(1) as jurisdictional. The court rested that view on this Court's decision in *Stone* v. *INS*, 514 U.S. 386 (1995), which described a prior version of the INA's filing deadline as "jurisdictional." *Id.* at 405. But in *Santos-Zacaria* v. *Garland*, 598 U.S. 411 (2023), this Court explained that *Stone* did not use the term "jurisdictional" in its strict sense. See *id.* at 421-422. Accordingly, following *Santos-Zacaria*, *Stone* "cannot be read to establish" that Section 1252(b)(1) is "jurisdictional." *Id.* at 422.

II. The petition for review in this case was timely under Section 1252(b)(1) because petitioner filed it within 30 days of the Board's order denying CAT protection.

A. Removal orders under 8 U.S.C. 1228(b) do not become "final" for purposes of judicial review under Section 1252(b)(1) until withholding-only proceedings are complete. That conclusion follows from the statutory text and context, especially when read in light of the presumption favoring judicial review of executive action.

1. The definition of finality in 8 U.S.C. 1101(a)(47)(B) does not apply to removal orders under Section 1228(b). That definition ties finality to the conclusion of the Board's appellate review. It therefore does not govern removal orders—such as those under Section 1228(b)—that are not appealable to the Board.

Despite the Fourth Circuit's recognition that Section 1101(a)(47)(B)'s definition "appears inapposite," the court still read that definition to imply that Section 1228(b) removal orders and Section 1231(a)(5) reinstatement orders are immediately final for purposes of judicial review, even when withholding-only proceedings remain pending. *Martinez* v. *Garland*, 86 F.4th 561, 568 (2023). The court's analysis was flawed even on its own terms, because Section 1101(a)(47)(B)'s definition in fact favors the government's interpretation. In any event, where an Act-wide definition does not sensibly apply to a particular operative provision, this Court looks to the relevant term's ordinary meaning in context. See *Utility Air Regulatory Grp.* v. *EPA*, 573 U.S. 302, 316 (2014).

2. Finality in the context of judicial review means that all proceedings in the lower tribunal have concluded, so that a single appeal can resolve all issues in the case. That traditional final-judgment rule governs court of appeals review of district court decisions. And

the INA's zipper clause, 8 U.S.C. 1252(b)(9), applies that rule to judicial review of removal orders.

Under those principles, removal orders under Section 1228(b) do not become final until the conclusion of withholding-only proceedings. While such proceedings do not determine whether a noncitizen can be removed, they do determine where that noncitizen can be sent. So until withholding-only claims have been adjudicated by the IJ and the Board, the determination of the noncitizen's country of removal remains outstanding—and the removal order is not final for purposes of judicial review. That interpretation is confirmed by other INA provisions expressly contemplating that courts will review statutory-withholding and CAT claims alongside final removal orders.

3. The presumption favoring judicial review of executive action reinforces the government's interpretation. That interpretation facilitates judicial review of statutory-withholding and CAT claims, whereas the decision below threatens to foreclose review of such claims in the context of Section 1228(b) removal orders and Section 1231(a)(5) reinstatement orders. Because Section 1252(b)(1) is at least reasonably susceptible to the government's interpretation, this Court should adopt it.

B. The government's interpretation is consistent with this Court's decisions in *Nasrallah* v. *Barr*, 590 U.S. 573 (2020), and *Johnson* v. *Guzman Chavez*, 594 U.S. 523 (2021).

1. *Nasrallah* suggests that a CAT order cannot itself be treated as the final order of removal that triggers Section 1252(b)(1)'s 30-day clock. But the government's interpretation here does not treat a statutory-withholding or CAT order as the relevant final order of removal. Instead, the order of removal is the Section

1228(b) removal determination—and that order does not become final for purposes of judicial review until the conclusion of withholding-only proceedings. *Nasrallah* does not undermine that understanding.

2. The government's interpretation is likewise consistent with *Guzman Chavez*. This Court has recognized that finality can mean different things in different contexts. *Guzman Chavez* interpreted the phrase "administratively final" in the context of mandatory detention, 8 U.S.C. 1231(a)(1)(B)(i), and it expressly reserved the question whether the term "final" would be construed differently in the context of judicial review, 594 U.S. at 535 n.6. Finality in the context of judicial review must be understood against the background of the final-judgment rule. By contrast, nothing in Section 1231(a) implicates such a rule. Accordingly, while Section 1228(b) removal orders are administratively final, they are not final for purposes of judicial review until the conclusion of withholding-only proceedings.

ARGUMENT

Section 1252(b)(1) creates a classic time bar, without referencing a court's adjudicatory authority. It is therefore a nonjurisdictional claim-processing rule under this Court's precedents. Yet regardless of Section 1252(b)(1)'s jurisdictional status, there remains a question of when an "order of removal" becomes "final" and thus triggers Section 1252(b)(1)'s 30-day clock. Under the traditional final-judgment rule, a judgment does not become final until all lower-court proceedings have concluded. The INA's zipper clause incorporates that traditional rule. An order of removal therefore does not become final for purposes of judicial review under Section 1252(b)(1) until withholding-only proceedings are complete. Because petitioner filed his petition for re-

view within 30 days of the Board's order denying his CAT claim, his petition was timely.

I. SECTION 1252(b)(1) IS NOT JURISDICTIONAL

The court of appeals erred in holding that Section 1252(b)(1)'s 30-day deadline for filing a petition for review is jurisdictional. This Court has repeatedly emphasized that most litigation time bars are nonjurisdictional. Section 1252(b)(1) fits within that general rule: It simply sets a 30-day filing deadline, without referencing the court's jurisdiction. The statutory context confirms Section 1252(b)(1)'s nonjurisdictional nature. And the Court's passing characterization of the INA's filing deadline in *Stone* v. *INS*, 514 U.S. 386 (1995), does not compel a different result.

A. Litigation Time Bars Ordinarily Lack Jurisdictional Consequences

1. Most "procedural requirements that Congress enacts to govern the litigation process" are subject to certain exceptions. *Harrow* v. *Department of Def.*, 601 U.S. 480, 483 (2024). For instance, a court will generally "not enforce a procedural rule against a non-complying party if his opponent has forfeited or waived an objection." *Id.* at 483-484.

Some "procedural rule[s]," however, "count[] as 'jurisdictional.'" *Harrow*, 601 U.S. at 484. "When Congress enacts a jurisdictional requirement, it 'mark[s] the bounds' of a court's power: A litigant's failure to follow the rule 'deprives a court of all authority to hear a case.'" *Ibid.* (citation omitted; brackets in original). And "because courts are not able to exceed limits on their adjudicative authority," jurisdictional rules are not subject to "equitable exceptions," "can be raised at any time in the litigation," and must be enforced by

courts "*sua sponte*, even in the face of a litigant's forfeiture or waiver." *Santos-Zacaria* v. *Garland*, 598 U.S. 411, 416 (2023).

In light of "those repercussions, this Court will 'treat a procedural requirement as jurisdictional only if Congress "clearly states" that it is.'" *Harrow*, 601 U.S. at 484 (citation omitted). While Congress "need not use 'magic words' to" make a requirement jurisdictional, the Court's "demand for a clear statement erects a 'high bar.'" *Ibid.* (citations omitted). For a procedural rule to meet that threshold, "traditional tools of statutory construction must plainly show that Congress imbued [the rule] with jurisdictional consequences." *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 410 (2015).

2. Critically here, "'most time bars are nonjurisdictional.'" *Harrow*, 601 U.S. at 484 (citation omitted); see *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 154-155 (2013) (citing cases). Thus, the Court has repeatedly "described filing deadlines as 'quintessential claim-processing rules,' which 'seek to promote the orderly progress of litigation,' but do not deprive a court of authority to hear a case." *Kwai Fun Wong*, 575 U.S. at 410 (citation omitted). That has been true even when a filing deadline "is framed in mandatory terms." *Ibid.*

For instance, last Term in *Harrow*, the Court considered a provision stating that "any petition for review" of a decision of the Merit Systems Protection Board "shall be filed" in the Federal Circuit "within 60 days after the Board issues notice of the final order or decision." 5 U.S.C. 7703(b)(1)(A). The Court held that that "time-bar provision" is not jurisdictional because it does not "speak[] to a court's authority to hear a case." 601 U.S. at 485. "There is no mention," the Court reasoned, "of the Federal Circuit's jurisdiction, whether generally

or over untimely claims." *Id.* at 485-486. And while the time bar "is stated in mandatory terms," the Court emphasized that such mandatory language "is 'of no consequence' to the jurisdictional issue." *Id.* at 485 (citation omitted). Thus, the Court concluded that the provision "does not deprive the Federal Circuit of power to hear [the petitioner's] appeal." *Id.* at 486.

Harrow followed in the footsteps of several decisions that likewise found time bars to be nonjurisdictional. For example, in *Wilkins* v. *United States*, 598 U.S. 152 (2023), the Court held that a provision stating that a quiet-title action "shall be barred unless it is commenced within twelve years of the date upon which it accrued," 28 U.S.C. 2409a(g), speaks "only to a claim's timeliness" and "lacks a jurisdictional clear statement," 598 U.S. at 159 (citation omitted). In *Kwai Fun Wong*, the Court held that a provision stating that a "tort claim against the United States shall be forever barred unless it is presented [to the agency] within two years," 28 U.S.C. 2401(b), is "a standard time bar" that "'does not speak in jurisdictional terms,'" *Kwai Fun Wong*, 575 U.S. at 410-411 (citation and internal quotation marks omitted). And in *Henderson* v. *Shinseki*, 562 U.S. 428 (2011), the Court held that a provision stating that litigants "shall file a notice of appeal * * * within 120 days," 38 U.S.C. 7266(a), is a "quintessential claim-processing rule[]" that "does not have jurisdictional attributes," *Shinseki*, 562 U.S. at 435, 441.

To be sure, the Court has identified one type of "exceptional" time limit "that counts as jurisdictional." *Harrow*, 601 U.S. at 488. In *Bowles* v. *Russell*, 551 U.S. 205 (2007), the Court held that the deadline for filing an appeal from a district court's decision in a civil case is jurisdictional, even though the relevant statute con-

tained no express jurisdictional language. But this Court has since clarified that *Bowles* governs only "statutory deadlines to appeal 'from one Article III court to another.'" *Harrow*, 601 U.S. at 489 (quoting *Hamer* v. *Neighborhood Hous. Servs.*, 583 U.S. 17, 25 (2017)). "As to all other time bars," the Court "demand[s] a 'clear statement.'" *Ibid.* (citation omitted).

B. The Time Bar In Section 1252(b)(1) Is Not Jurisdictional

Under the foregoing principles, Section 1252(b)(1)'s time bar is not jurisdictional. Section 1252(b)(1) provides that a "petition for review must be filed not later than 30 days after the date of the final order of removal." 8 U.S.C. 1252(b)(1). Like the provision in *Harrow*, Section 1252(b)(1) "describes how a litigant can obtain judicial review of" an agency order and "sets a deadline," *Harrow*, 601 U.S. at 485—here, 30 days after the final order of removal. Like the provision in *Harrow*, nothing in Section 1252(b)(1) "speaks to a court's authority to hear a case": Section 1252(b)(1) does not mention the court of appeals' "jurisdiction, whether generally or over untimely claims." *Id.* at 485-486. And like the provision in *Harrow*, Section 1252(b)(1) creates a deadline to appeal from an agency to a court—not "from one Article III court to another"—so the *Bowles* exception does not apply. *Id.* at 489 (citation omitted). Thus, Section 1252(b)(1) "is not a jurisdictional requirement"; it is simply a "time limit[], nothing more." *Kwai Fun Wong*, 575 U.S. at 412.

It is true that Section 1252(b)(1) is phrased in mandatory terms, providing that "[t]he petition for review *must* be filed" within 30 days of the final removal order. 8 U.S.C. 1252(b)(1) (emphasis added). But as explained above, this Court has consistently found such "mandatory" language to be "of no consequence" to the analysis

of whether a provision is jurisdictional. *Kwai Fun Wong*, 575 U.S. at 411; see *Gonzalez* v. *Thaler*, 565 U.S. 134, 146 (2012); *Shinseki*, 562 U.S. at 439. "What matters instead is that [Section 1252(b)(1)] 'does not speak in jurisdictional terms or refer in any way to the jurisdiction of'" the courts. *Kwai Fun Wong*, 575 U.S. at 411 (citation omitted).

"Statutory context confirms" that Section 1252(b)(1) is not jurisdictional. *Kwai Fun Wong*, 575 U.S. at 411. As the Court explained in *Santos-Zacaria*, "[e]lsewhere in the laws governing immigration cases, Congress specified that 'no court shall have jurisdiction' to review certain matters." 598 U.S. at 418-419. Indeed, "Congress used that language in provisions that were enacted at the same time—and even in the same section—as [Section 1252(b)(1)]." *Id.* at 419; see *id.* at 419 n.6 (citing provisions). "But Congress eschewed such plainly jurisdictional language in [Section 1252(b)(1)]." *Id.* at 419. That "contrast between the text of" Section 1252(b)(1) and "the 'unambiguous jurisdictional terms' in related provisions 'show[s] that Congress would have spoken in clearer terms if it intended' for [Section 1252(b)(1)] 'to have similar jurisdictional force.'" *Ibid.* (citation omitted; first set of brackets in original).

What is more, the other requirements in Section 1252(b), which immediately follow the filing deadline, plainly create nonjurisdictional procedural rules for the proceeding that a timely petition for review initiates. They specify, for instance, that briefs in the court of appeals must be "typewritten," 8 U.S.C. 1252(b)(2); that "[t]he petition shall be served on the Attorney General and on the officer or employee" in charge of the district in which the removal order was entered, 8 U.S.C. 1252(b)(3)(A); and that "[t]he alien shall serve and file a

brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available," 8 U.S.C. 1252(b)(3)(C). Where, as here, Congress houses a deadline among "routine" "procedural rules" that would not ordinarily be "read[] as absolute bars to judicial action," the statutory context "confirms" that the deadline also lacks jurisdictional status. *Harrow*, 601 U.S. at 488.

C. The Court Of Appeals Erred In Treating Section 1252(b)(1) As Jurisdictional

The Fourth Circuit has held that "[t]he 30-day period" in Section 1252(b)(1) "is 'jurisdictional in nature and must be construed with strict fidelity to [its] terms.'" *Salgado* v. *Garland*, 69 F.4th 179, 181 (2023) (quoting *Stone*, 514 U.S. at 405); see Pet. App. 4a (following this circuit precedent). In reaching that conclusion, the Fourth Circuit relied on this Court's decision in *Stone*, which described a prior version of the filing deadline, 8 U.S.C. 1105a(a)(1) (Supp. V 1993), as "jurisdictional." 514 U.S. at 405 (citation omitted). The Court reasoned that "[j]udicial review provisions * * * are jurisdictional in nature," and "[t]his is all the more true of statutory provisions specifying the timing of review, for those time limits are, as we have often stated, 'mandatory and jurisdictional.'" *Ibid.* (citation omitted).

Contrary to the Fourth Circuit's view, *Stone* does not dictate that Section 1252(b)(1)'s 30-day filing deadline is jurisdictional. In *Santos-Zacaria*, the Court explained that *Stone* used the term "jurisdictional" loosely "to describe rules beyond those governing a court's adjudicatory authority." 598 U.S. at 421. *Stone* did not "attend[] to the distinction between 'jurisdictional' rules (as we understand them today) and nonjurisdictional but mandatory ones." *Ibid.* That is unsurprising, be-

cause *Stone* "predates [the Court's] cases, starting principally with" *Arbaugh* v. *Y & H Corp.*, 546 U.S. 500 (2006), that brought "'some discipline to the use of th[e] term' 'jurisdictional.'" *Santos-Zacaria*, 598 U.S. at 421 (citation omitted; second set of brackets in original). And in *Stone*, "whether the provision[was] jurisdictional 'was not central to the case.'" *Ibid.* (citation omitted). Accordingly, following *Santos-Zacaria*, *Stone* "cannot be read to establish" that Section 1252(b)(1) is "jurisdictional." *Id.* at 422; see *Wilkins*, 598 U.S. at 160 (similarly rejecting reliance on prior decisions that merely referred to a provision as jurisdictional in passing, without "address[ing] whether [the] provision is 'technically jurisdictional'") (citation omitted).

Even after *Santos-Zacaria*, the Fourth Circuit determined that it should adhere to *Stone*'s "jurisdictional" language, on the ground that *Santos-Zacaria* addressed Section 1252(d)(1), not Section 1252(b)(1). *Salgado*, 69 F.4th at 181 n.1. But the logic of *Santos-Zacaria* applies equally to Section 1252(b)(1). After all, *Stone* described the INA's earlier provision "specifying the timing of review" of removal orders—that is, the predecessor to Section 1252(b)(1)—as "'jurisdictional.'" 514 U.S. at 405 (citation omitted); see 8 U.S.C. 1105a(a)(1) (Supp. V 1993) (providing that "a petition for review may be filed not later than 90 days after the date of the issuance of the final deportation order"). In turn, *Santos-Zacaria* made clear that *Stone* did not use the term "jurisdictional" in the way it is properly understood today. 598 U.S. at 421-422. So just as courts should not rely on *Stone*'s language when evaluating Section 1252(d)(1)'s jurisdictional status, *id.* at 422, they

should not do so when evaluating Section 1252(b)(1).[6] The Fourth Circuit erred in concluding otherwise.[7]

II. THE PETITION FOR REVIEW WAS TIMELY UNDER SECTION 1252(b)(1) BECAUSE PETITIONER FILED IT WITHIN 30 DAYS OF THE BOARD'S ORDER DENYING CAT PROTECTION

Regardless of whether Section 1252(b)(1) is jurisdictional, there remains a question of how to calculate the provision's 30-day deadline. The 30-day clock begins to run from "the date of the final order of removal." 8 U.S.C. 1252(b)(1). Here, petitioner filed his petition for review within 30 days of the Board's order denying CAT protection, but not within 30 days of DHS's order of removal under Section 1228(b). The second question presented asks whether his petition was timely under Section 1252(b)(1).

The answer is yes: The petition was timely because petitioner filed it within 30 days of the Board's order denying CAT protection. That conclusion follows from the statutory text and context—particularly when read in light of the presumption favoring judicial review. And that conclusion is fully consistent with this Court's decisions in *Nasrallah* v. *Barr*, 590 U.S. 573 (2020), and *Johnson* v. *Guzman Chavez*, 594 U.S. 523 (2021).

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[6] See, *e.g.*, *Alonso-Juarez* v. *Garland*, 80 F.4th 1039, 1047 (9th Cir. 2023) ("[A]lthough we previously relied on *Stone* to hold that § 1252(b)(1) was a jurisdictional rule, that reasoning is now 'clearly irreconcilable' with the Supreme Court's intervening reasoning in *Santos-Zacaria*.").

[7] Although Section 1252(b)(1) is not jurisdictional, it is nonetheless mandatory and not subject to equitable tolling. See *Nutraceutical Corp.* v. *Lambert*, 586 U.S. 188, 192-193 (2019). This Court need not address that issue here, however, because petitioner timely filed his petition for review, as explained below in Part II.

A. Removal Orders Under Section 1228(b) Do Not Become "Final" For Purposes Of Section 1252(b)(1) Until Withholding-Only Proceedings Are Complete

In the INA, Congress expressly defined when ordinary removal orders—which are appealable to the Board—become final. But it did not define when removal orders under Section 1228(b)—which are not appealable to the Board—become final. In the absence of an applicable statutory definition, the Court should look to the ordinary meaning of "final" in the context of the final-judgment rule governing judicial review—a rule that the INA's text incorporates. Applying that approach here, it follows that removal orders under Section 1228(b) do not become final for purposes of judicial review until withholding-only proceedings have concluded. And the presumption favoring judicial review of administrative action confirms that interpretation.

1. Section 1101(a)(47)(B)'s definition of finality does not apply to removal orders under Section 1228(b)

a. Section 1252(b)(1) provides that a noncitizen's "petition for review must be filed not later than 30 days after the date of the final order of removal." 8 U.S.C. 1252(b)(1). The INA defines "'order of deportation'"—the equivalent of order of removal—to mean "the order of the" relevant "administrative officer" "concluding that the alien is deportable or ordering deportation." 8 U.S.C. 1101(a)(47)(A). Here, the relevant order of removal was the immigration officer's finding on January 26, 2021, that petitioner was removable under Section 1228(b). Pet. App. 2a. That order "explain[ed] that [petitioner] was removable because he had been convicted of an aggravated felony." *Ibid.*; see J.A. 7-8; 8 U.S.C. 1228(b). It therefore "conclude[d] that [petitioner] is deportable" and "order[ed] deportation," satisfying

Section 1101(a)(47)(A)'s definition of order of removal. 8 U.S.C. 1101(a)(47)(A).

The dispositive question, then, is when that order became "final" for purposes of Section 1252(b)(1)'s 30-day clock. 8 U.S.C. 1252(b)(1). Section 1101(a)(47)(B) expressly defines when ordinary removal orders "become final." 8 U.S.C. 1101(a)(47)(B). Specifically, that provision states that a removal order "shall become final upon the earlier of" (i) "a determination by the [Board] affirming such order"; or (ii) "the expiration of the period in which the alien is permitted to seek review of such order by the [Board]." *Ibid.* By its terms, that provision only governs the finality of removal orders that are appealable to the Board. For instance, a noncitizen who appears in removal proceedings under 8 U.S.C. 1229a—*i.e.*, the ordinary IJ "proceedings for deciding the inadmissibility or deportability of an alien," 8 U.S.C. 1229a(a)(1)—may appeal an IJ's removal order, as well as any statutory-withholding or CAT rulings, to the Board as of right. See 8 C.F.R. 1003.1(b)(3); *DHS* v. *Thuraissigiam*, 591 U.S. 103, 108 (2020) (describing Section 1229a proceedings as the "usual removal process"). Section 1101(a)(47)(B), in turn, governs the finality of removal orders in such ordinary cases.

But as explained above, Section 1228(b) creates streamlined removal procedures for noncitizens convicted of crimes. And under those procedures, removal orders are not appealable to the Board. Indeed, federal regulations do not provide the Board with jurisdiction over appeals from Section 1228(b) removal orders. See 8 C.F.R. 1003.1(b). Such orders are instead reviewable only in the courts of appeals. See 8 U.S.C. 1228(b)(3). And because such orders are not appealable to the

Board, Section 1101(a)(47)(B)'s definition of finality does not apply to them. Thus, while it is generally true that "[w]hen a statute includes an explicit definition," the Court "must follow that definition," *Digital Realty Trust, Inc.* v. *Somers*, 583 U.S. 149, 160 (2018), that principle has no application here because no INA provision defines finality in the context of Section 1228(b) removal orders.

Section 1101(a)(47)(B)'s history reveals why its definition of finality does not apply here. In April 1996, Congress enacted AEDPA, which added Section 1101(a)(47)(B)'s definition of finality to the INA. See § 440(b), 110 Stat. 1277. At that time, the removal procedures for noncitizens convicted of aggravated felonies, and for those who unlawfully reentered the country after prior removal orders, included IJ determinations and Board appellate review. See 8 U.S.C. 1252a(a)(3)(A) (1994) (providing for "deportation proceedings" and "administrative appeals" by noncitizens "convicted of an aggravated felony"); 8 U.S.C. 1252(f) (1994) (predecessor reinstatement provision); 8 C.F.R. 242.21(a), 242.23(b) and (d) (1994) (providing for IJ determinations and Board appeals of reinstated removal orders).

In September 1996, Congress enacted IIRIRA, which established the current streamlined procedures for removal orders under Section 1228(b) and reinstatement orders under Section 1231(a)(5). See § 304(c), 110 Stat. 3009-597; § 305(a)(3), Sec. 241(a)(5), 110 Stat. 3009-599. Those new procedures "toed a harder line" than the previous ones. *Fernandez-Vargas* v. *Gonzales*, 548 U.S. 30, 34 (2006). Section 1228(b) generally eliminated any "hearing before an immigration judge" and any "eligibility for any form of discretionary relief from

removal" for aggravated felons (other than lawful permanent residents). *Gonzalez* v. *Chertoff*, 454 F.3d 813, 815 (8th Cir. 2006); see *Osuna-Gutierrez* v. *Johnson*, 838 F.3d 1030, 1033 (10th Cir. 2016). And Section 1231(a)(5) "explicitly insulate[d] [reinstatement] orders from review, and generally foreclose[d] discretionary relief from the terms of the reinstated order." *Fernandez-Vargas*, 548 U.S. at 35. Those provisions thus introduced new procedures that restricted the availability of IJ hearings and Board appellate review for aggravated felons and unlawful reentrants. Because Congress enacted those procedures *after* it enacted Section 1101(a)(47)(B)'s finality definition, it is unsurprising that the definition cannot be applied to them.

b. The Fourth and Second Circuits recognized that Section 1101(a)(47)(B)'s finality definition "appears inapposite" and "does not squarely apply" to Section 1228(b) removal orders or Section 1231(a)(5) reinstatement orders. *Martinez* v. *Garland*, 86 F.4th 561, 568 (4th Cir. 2023); *Bhaktibhai-Patel* v. *Garland*, 32 F.4th 180, 192 (2d Cir. 2022). Those courts nonetheless sought to derive an "implication" from that definition—namely, that a removal order becomes final following "the final stage of agency review available as of right to aliens." *Bhaktibhai-Patel*, 32 F.4th at 192, 194. The courts therefore concluded that "[a]n immigration officer's decision to reinstate an illegal reentrant's prior order of removal"—and by extension, an immigration officer's order of removal under Section 1228(b)—becomes final "when the alien chooses not to contest the decision or, if the alien does contest it, when the immigration officer reviews and rejects the alien's objection." *Id.* at 192-193.

That analysis is flawed even on its own terms. As noted above, Section 1101(a)(47)(B) ties finality to the completion of appellate review by the Board. In cases like this one involving a removal order under Section 1228(b), the Board will conduct appellate review only if an immigration officer finds that a noncitizen has a reasonable fear and an IJ rules on the noncitizen's withholding-only claim. See 8 C.F.R. 208.31(e), 208.31(g), 1003.1(b)(9), 1208.2(c)(2). Here, for instance, the Board reviewed and vacated the IJ's order granting deferral of removal under the CAT. See pp. 9-10, *supra*. Thus, in this context, the most natural inference from Section 1101(a)(47)(B) is that a Section 1228(b) removal order "become[s] final" after the Board completes its review of the IJ's withholding-only determination, 8 U.S.C. 1101(a)(47)(B)—in which case the petition here was timely. So even accepting the Fourth and Second Circuits' premise that finality should be determined by best approximating Section 1101(a)(47)(B)'s definition, those courts still reached the wrong conclusion.

More fundamentally, however, the underlying premise was also incorrect. This Court has recognized that where Congress includes an "Act-wide definition" of a particular term, that term may sometimes have a different, "context-appropriate meaning" in particular "operative provisions." *Utility Air Regulatory Grp.* v. *EPA*, 573 U.S. 302, 316 (2014); see *Environmental Def.* v. *Duke Energy Corp.*, 549 U.S. 561, 574 (2007) (recognizing that a "statutory definition" may not apply to "[a] given term" when used in different "provisions" of a statute); *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 343-344 (1997) (similar). That principle governs here because Section 1101(a)(47)(B)'s general definition of finality cannot "sensibly" be applied in the "context" of

Section 1228(b) removal orders. *Utility Air*, 573 U.S. at 319; see *Lawson* v. *Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949) (declining to apply a statutory definition in a "mechanical fashion" where doing so would "create obvious incongruities"). Thus, rather than picking a definition of finality based on a loose analogy to Section 1101(a)(47)(B), the Fourth and Second Circuits should have applied the ordinary meaning of finality in light of "the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson*, 519 U.S. at 341.

2. Finality for judicial review means that proceedings in the lower tribunal have concluded, so that a single appellate proceeding can resolve all issues in the case

The correct interpretive approach yields a clear meaning of "final" in the context of Section 1252(b)(1): Removal orders under Section 1228(b)—just like ordinary removal orders under Section 1229a—become final for purposes of judicial review only after all proceedings before the agency, including withholding-only proceedings, are complete.

a. "Final" ordinarily means "[m]arking the last stage of a process," such that "nothing" is left "to be looked for or expected," 5 *The Oxford English Dictionary* 920 (2d ed. 1989) (*OED*), and nothing is "to be changed or reconsidered," *The American Heritage Dictionary of the English Language* 682 (3d ed. 1996). Thus, when interpreting the phrase "final decision" in the context of a different statute providing for judicial review of agency adjudications, this Court relied on such definitions and explained that the phrase "clearly denotes some kind of terminal event." *Smith* v. *Berryhill*, 587 U.S. 471, 479 (2019); see *id.* at 479 n.8; *F.J.A.P.* v. *Gar-*

land, 94 F.4th 620, 633 (7th Cir. 2024) (citing similar definitions).

Of course, "like many legal terms," the "precise meaning" of "[f]inality" often "depends on context." *Clay* v. *United States*, 537 U.S. 522, 527 (2003). The relevant context here is court of appeals review of DHS removal orders. See 8 U.S.C. 1252(a)(1) (providing for judicial review in the courts of appeals). And "[t]ypically," a "judgment becomes final for" court of appeals review when the lower tribunal "disassociates itself from the case, leaving nothing to be done at the [tribunal] of first instance save execution of the judgment." *Clay*, 537 U.S. at 527; see *Black's Law Dictionary* 629 (6th ed. 1990) (defining "final" as requiring "no further judicial action by [the] court rendering judgment"). In turn, the "final-judgment rule" requires that after judgment is entered, "'the whole case and every matter in controversy in it [must be] decided in a single appeal.'" *Microsoft Corp.* v. *Baker*, 582 U.S. 23, 36 (2017) (quoting *McLish* v. *Roff*, 141 U.S. 661, 665-666 (1891) (brackets in original)); see *Digital Equip. Corp.* v. *Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994) (explaining that "a party is entitled to a single appeal, to be deferred until final judgment has been entered, in which claims of district court error at any stage of the litigation may be ventilated").

Section 1252 applies the traditional final-judgment rule to judicial review of removal orders. As noted above, the zipper clause states that "[j]udicial review of all questions of law and fact * * * arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. 1252(b)(9). Under that provision, "a noncitizen's various challenges arising from the re-

moval proceeding must be 'consolidated in a petition for review and considered by the courts of appeals.'" *Nasrallah*, 590 U.S. at 580 (quoting *INS* v. *St. Cyr*, 533 U.S. 289, 313 n.37 (2001)).

So, in ordinary removal proceedings under Section 1229a, a noncitizen must exhaust all issues before the IJ and Board—including statutory-withholding and CAT claims—and then following the conclusion of Board proceedings, the noncitizen may file a petition for review in the court of appeals raising all of his challenges arising from those proceedings. See 8 U.S.C. 1252(b)(1) and (d)(1). Congress thus designed judicial review under Section 1252 to operate in the same basic manner as appellate review of district court judgments: The noncitizen may file a petition for review, after the conclusion of all "proceeding[s] brought to remove [him] from the United States," in which he may raise all challenges arising from those proceedings. 8 U.S.C. 1252(b)(9).[8]

b. Under those principles, removal orders under Section 1228(b) do not become final for purposes of judicial review until the conclusion of withholding-only proceedings. Federal regulations provide that a noncitizen "shall not be * * * removed" to the designated country "before a decision is rendered" on his application for withholding of removal. 8 C.F.R. 1208.5(a); see

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[8] In fact, Congress further provided that "any review sought of a motion to reopen or reconsider the [removal] order shall be consolidated with the review of the order." 8 U.S.C. 1252(b)(6). In ordinary civil litigation, appellate review of a motion for relief from judgment under Federal Rule of Civil Procedure 60(b) would take place in a separate proceeding and need not be consolidated with an appeal from the judgment itself. See *Stone*, 514 U.S. at 401. By requiring consolidation in Section 1252(b)(6), Congress streamlined judicial review under the INA to an even greater extent than appellate review in ordinary civil litigation.

8 C.F.R. 208.5(a).[9] That rule recognizes that, although withholding-only proceedings "do[] not determine *whether* a noncitizen can be removed, [they] do[] determine *where* that noncitizen can be sent." *F.J.A.P.*, 94 F.4th at 634. As a result, in cases like this one, withholding-only proceedings "[m]ark the last stage" of the removal "process." 5 *OED* 920. And a grant of statutory withholding or CAT protection would alter the enforcement of a removal order "by barring removal to the specific country that the order lists." *Kolov* v. *Garland*, 78 F.4th 911, 928 (6th Cir. 2023) (Murphy, J., concurring). So until withholding-only proceedings are complete, a removal order is not final for purposes of judicial review because there is still something "to be looked for or expected," 5 *OED* 920, in the removal process—namely, a determination whether the noncitizen may be removed to the country designated for removal.

The traditional final-judgment rule supports the same understanding of finality here. While withholding-only proceedings remain ongoing, "every matter in controversy" has not been decided, *Microsoft*, 582 U.S. at 36 (citation omitted), and the agency has not "disassociate[d] itself from the case," *Clay*, 537 U.S. at 527. Only upon the conclusion of those proceedings will there be a final decision—at which point the court of appeals can adjudicate a petition for review to resolve "the whole case." *Microsoft*, 582 U.S. at 36 (citation omitted).

The INA's text solidifies the point. The only way to ensure consolidated "[j]udicial review of *all* questions

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[9] Although 8 C.F.R. 1208.5(a) refers to an "asylum application," applications for statutory withholding and CAT protection are encompassed within the term "'asylum applications,'" 8 C.F.R. 1208.1(a)(1).

of law and fact * * * arising from" removal proceedings, 8 U.S.C. 1252(b)(9) (emphasis added), is to defer a petition for review until the noncitizen's withholding-only claims have been resolved. Indeed, this Court in *Nasrallah* recognized that "CAT orders may be reviewed together with final orders of removal in a court of appeals." 590 U.S. at 581. Specifically, Section 1252(a)(4) provides that "a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of" a claim for CAT protection. 8 U.S.C. 1252(a)(4); see also FARRA § 2242(d), 112 Stat. 2681-822. Similarly, Section 1252(b)(4) provides a judicial standard of review for factual findings in statutory-withholding orders. See 8 U.S.C. 1252(b)(4) (referencing determinations made under Section 1231(b)(3)(C)). Accordingly, Congress envisioned a single round of judicial review in the court of appeals, following the conclusion of all removal proceedings, in which a noncitizen could raise all removal-related claims together—including CAT and statutory-withholding claims.[10]

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[10] Even outside the judicial-review context, the INA contemplates that an order of removal becomes final after the resolution of statutory-withholding and CAT claims. For instance, the INA imposes criminal penalties on certain noncitizens "against whom a final order of removal is outstanding" if they "willfully fail or refuse[] to make timely application in good faith for travel or other documents necessary to [their] departure." 8 U.S.C. 1253(a)(1)(B). Noncitizens cannot arrange for their travel until they know the country to which they are being removed—which will not occur until their statutory-withholding and CAT claims have been resolved. Accordingly, the phrase "final order of removal" in Section 1253(a)(1)—just as in Section 1252(b)(1)—is tied to the resolution of statutory-withholding and CAT claims.

c. A contrary interpretation of Section 1252(b)(1) would invite precisely the system of "piecemeal appeals" that the final-judgment rule and the zipper clause seek to prevent. *Microsoft*, 582 U.S. at 37. Under that view, a noncitizen would be forced to file a "premature and incomplete" petition for review within 30 days of a Section 1228(b) removal order, even though he may have no basis for challenging that order, and even though his withholding-only proceedings are still playing out. *F.J.A.P.*, 94 F.4th at 636. He would then likely need to persuade the court of appeals to hold his petition in abeyance for the duration of his withholding-only proceedings. Only if the court agreed to do so could the noncitizen then raise challenges to the Board's withholding-only determinations. That disjointed scheme contravenes the traditional final-judgment rule, as well as the zipper clause's requirement that "a noncitizen's various challenges arising from the removal proceeding" be "consolidated" into a "petition for review" to be "'considered by the court[] of appeals.'" *Nasrallah*, 590 U.S. at 580 (citation omitted).

That scheme could also visit "disastrous consequences on the immigration and judicial systems." *Argueta-Hernandez* v. *Garland*, 87 F.4th 698, 706 (5th Cir. 2023). "It would lead to an increase in filings, as petitioners would inevitably have to file a petition for review to preserve the possibility of judicial review, even when unsure if they would need to, or even choose to, challenge the decision in the future." *Alonso-Juarez* v. *Garland*, 80 F.4th 1039, 1053 (9th Cir. 2023). In turn, courts of appeals "would need to establish a system of holding petitions for review in abeyance for years at a time and require parties to inform [the] court of the progress of [the] administrative proceedings." *Ibid.* In

Santos-Zacaria, this Court rejected a reading of Section 1252 that would have "flood[ed] the courts with pointless premature petitions." 598 U.S. at 429. It should do the same here.

3. The presumption of judicial review supports the government's interpretation

a. "[T]he presumption favoring judicial review of administrative action" supports the government's interpretation here. *Guerrero-Lasprilla* v. *Barr*, 589 U.S. 221, 229 (2020) (citation omitted). Because the presumption of reviewability is a "familiar principle of statutory construction," the Court "assumes that 'Congress legislates with knowledge of'" it. *Kucana* v. *Holder*, 558 U.S. 233, 251-252 (2010) (citation omitted). Under the presumption, when a statutory provision "is 'reasonably susceptible to divergent interpretation, [the Court] adopt[s] the reading that accords with traditional understandings and basic principles: that executive determinations generally are subject to judicial review.'" *Id.* at 251 (quoting *Gutierrez de Martinez* v. *Lamagno*, 515 U.S. 417, 434 (1995)). "The presumption can only be overcome by 'clear and convincing evidence' of congressional intent to preclude judicial review." *Guerrero-Lasprilla*, 589 U.S. at 229 (citation omitted).

Here, as explained above, Section 1252(b)(1) is most naturally read to mean that Section 1228(b) removal orders do not become "final" until withholding-only proceedings are complete. At the very least, Section 1252(b)(1) is "reasonably susceptible" to that reading. *Kucana*, 558 U.S. at 251 (citation omitted). Because that reading facilitates judicial review of statutory-withholding and CAT claims, this Court should adopt it.

By contrast, unless the courts of appeals were to embrace the system of premature petitions and lengthy

abeyances discussed above, the Fourth Circuit's interpretation would "foreclose judicial review" of many statutory-withholding and CAT claims. *F.J.A.P.*, 94 F.4th at 635. If a Section 1228(b) removal order or Section 1231(a)(5) reinstatement order were deemed immediately final, as the Fourth Circuit concluded, then Section 1252(b)(1) would require a noncitizen to file a petition for review within 30 days of that order. But at that time, any withholding-only proceedings may not even have commenced—let alone been completed. After all, "withholding and CAT proceedings often take months or even years to conclude." *Martinez*, 86 F.4th at 574 (Floyd, J., concurring in the judgment); see *Guzman Chavez*, 594 U.S. at 552 (Breyer, J., dissenting) (citing studies finding that withholding-only proceedings "often take[] over a year, with some proceedings lasting well over two years before eligibility for withholding-only relief is resolved").

This case illustrates the point. An immigration officer found petitioner removable under Section 1228(b) on January 26, 2021. Pet. App. 2a. Under the Fourth Circuit's rule, then, petitioner had to file his petition for review by February 25, 2021. But the Board did not issue its decision on petitioner's CAT claim until May 31, 2022—over a year later. *Id.* at 3a. So under the Fourth Circuit's view, the Board's decision on the CAT claim would be reviewable only if (i) petitioner had filed a petition for review within 30 days of the immigration officer's order of removal, even though petitioner had no apparent basis to challenge that order; and (ii) the Fourth Circuit was willing to hold the petition for review in abeyance for over a year while the CAT proceedings remained pending. See *Inestroza-Tosta* v. *Attorney Gen.*, 105 F.4th 499, 514 (3d Cir. 2024) (explaining

that because the noncitizen there "did not get a final decision from the BIA until a year after his removal order was reinstated," "[t]he promise of judicial review of agency action would be illusory for him").

b. The Fourth and Second Circuits acknowledged "the 'strong presumption' in favor of judicial review of agency action," and did not dispute that their interpretation would "foreclose judicial review" of "withholding-only proceedings" in a wide swath of cases. *Martinez*, 86 F.4th at 571 (citation omitted); see *Bhaktibhai-Patel*, 32 F.4th at 196. But the courts found that result compelled by "[t]he language and structure of Sections 1101(a)(47) and 1252." *Martinez*, 86 F.4th at 571. As explained above, however, those provisions are most naturally read to allow for judicial review in cases like this one—and at minimum, they do not foreclose review in the "clear and convincing" fashion necessary to overcome the presumption favoring judicial review. *Guerrero-Lasprilla*, 589 U.S. at 229 (citation omitted).

Moreover, the interpretation of the Fourth and Second Circuits threatens to foreclose judicial review in an additional category of cases as well. "In ordinary removal proceedings [under Section 1229a], the Board often affirms a conclusion that an immigrant is removable but remands for more proceedings on the immigrant's claims for withholding of removal under § 1231(b)(3)(A) or CAT." *Kolov*, 78 F.4th at 924 (Murphy, J., concurring); see *ibid.* (citing cases). Until recently, courts of appeals had held that in such mixed decisions, the order of removal did not become final for purposes of Section 1252(b)(1) until the remand proceedings were complete. See, *e.g.*, *Chupina* v. *Holder*, 570 F.3d 99, 103 (2d Cir. 2009). That interpretation allows noncitizens to file a petition for review "once the agency has fully adjudi-

cated [their] remaining applications for withholding of removal and protection under the CAT." *Id.* at 105.

The logic of the decision below threatens to eliminate judicial review of statutory-withholding or CAT orders in mixed decisions. After *Martinez*, the Fourth Circuit might well conclude that the part of the Board order affirming removability qualifies as "final" under Section 1101(a)(47)(B). 8 U.S.C. 1101(a)(47)(B). A noncitizen would then have to file his petition for review within 30 days of the Board's order, see 8 U.S.C. 1252(b)(1)—even though his statutory-withholding and CAT claims remain pending on remand. "[T]he failure to file this petition could bar judicial review" altogether. *Kolov*, 78 F.4th at 927 (Murphy, J., concurring). And even if the noncitizen did file the petition, there is no guarantee that a court of appeals would hold it in abeyance for the duration of the proceedings on remand. Thus, the decision below risks foreclosing judicial review of statutory-withholding or CAT claims not only in the context of Section 1228(b) removal orders and Section 1231(a)(5) reinstatement orders, but also in cases arising from mixed Board decisions. See *F.J.A.P.*, 94 F.4th at 637 n.10.[11]

c. It would have been "easy enough for Congress to" preclude "judicial review" of statutory-withholding and CAT orders, "just as Congress has precluded judicial review" of other categories of decisions elsewhere in the

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[11] In addition, the Fourth Circuit recently requested supplemental briefing about the impact of *Martinez* on the jurisdictional analysis in a case involving Section 1229a removal proceedings where the noncitizen "conceded her removability and litigated only whether she was entitled to relief from removal." *Rivas de Nolasco* v. *Garland*, No. 22-1176, Doc. 44 (Oct. 30, 2024).

INA. *Nasrallah*, 590 U.S. at 583.[12] Indeed, Congress could have listed statutory-withholding and CAT orders among the "[m]atters not subject to judicial review" in Section 1252(a)(2). 8 U.S.C. 1252(a)(2). But Congress did not do so. To the contrary, as already noted, Sections 1252(a)(4) and 1252(b)(4) expressly contemplate that statutory-withholding and CAT determinations *will* be reviewed alongside final removal orders.

It would also be anomalous to interpret the time bar in Section 1252(b)(1)—which is a quintessential claim-processing rule, see pp. 20-22, *supra*—to limit "the classes of cases a court may entertain." *Fort Bend County* v. *Davis*, 587 U.S. 541, 548 (2019). Section 1252(b)(1) is not the type of "jurisdiction-stripping" provision that overcomes "the presumption of reviewability." *Bouarfa* v. *Mayorkas*, No. 23-583 (Dec. 10, 2024), slip op. 11-12 (quoting *Patel* v. *Garland*, 596 U.S. 328, 347 (2022)). The Fourth Circuit thus erred in effectively precluding judicial review of statutory-withholding and CAT determinations in the context of Section 1228(b) removal orders.

B. The Government's Interpretation Is Consistent With This Court's Decisions In *Nasrallah* And *Guzman Chavez*

Before 2022, the courts of appeals unanimously agreed that a reinstatement order under Section 1231(a)(5) "does not become final until the [withholding-

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[12] See, *e.g.*, 8 U.S.C. 1229c(f) ("No court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure under subsection (b)[.]"); 8 U.S.C. 1182(h) ("No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection."); 8 U.S.C. 1226(e) ("No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.").

only] proceedings are complete." *Luna-Garcia* v. *Holder*, 777 F.3d 1182, 1186 (10th Cir. 2015).[13] And the government concurred with that position. *Id.* at 1183; see, *e.g.*, *Eke* v. *Mukasey*, 512 F.3d 372, 377-378 (7th Cir. 2008) (same position for removal order under Section 1228(b)). Thus, for more than 25 years following Congress's enactment of IIRIRA and AEDPA, it was well established that noncitizens could obtain judicial review of statutory-withholding and CAT orders in cases like this one.[14]

That changed with the Second Circuit's decision in *Bhaktibhai-Patel*, which the Fourth Circuit then embraced in *Martinez*. Those two courts read this Court's decisions in *Nasrallah* and *Guzman Chavez* to "abrogate[]" the prior consensus and compel the conclusion that Section 1252(b)(1)'s 30-day clock runs from the date of the removability determination—not from the end of the withholding-only proceedings. *Bhaktibhai-Patel*, 32 F.4th at 193; see *Martinez*, 86 F.4th at 570. That reading of *Nasrallah* and *Guzman Chavez* is incorrect. Nothing in those decisions upsets the long-

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[13] See, *e.g.*, *Ponce-Osorio* v. *Johnson*, 824 F.3d 502, 505-506 (5th Cir. 2016) (per curiam); *Jimenez-Morales* v. *U.S. Attorney Gen.*, 821 F.3d 1307, 1308 (11th Cir. 2016), cert. denied, 580 U.S. 1055 (2017); *Ortiz-Alfaro* v. *Holder*, 694 F.3d 955, 958 (9th Cir. 2012). Although each of those decisions involved a reinstatement order under Section 1231(a)(5) rather than a removal order under Section 1228(b), the court of appeals found that distinction immaterial when it determined that its Section 1231(a)(5) precedent controlled the outcome of this case. Pet. App. 5a.

[14] Similarly, before IIRIRA and AEDPA, noncitizens could obtain judicial review not only of the "adjudication of deportability," but also of other decisions made during a deportation proceeding, including the denial of suspension of deportation. *Foti* v. *INS*, 375 U.S. 217, 222 (1963).

standing rule providing for judicial review in this context.

1. **Nasrallah** ***does not support the decision below***

a. In *Nasrallah*, the Court interpreted Section 1252(a)(2)(C), which provides for only limited judicial review of "final order[s] of removal" in cases involving noncitizens who have been convicted of certain crimes. 8 U.S.C. 1252(a)(2)(C); see 590 U.S. at 581. Specifically, "[i]n those cases, a court of appeals may review constitutional or legal challenges to a final order of removal, but the court of appeals may not review *factual* challenges to a final order of removal." *Nasrallah*, 590 U.S. at 581. The question in *Nasrallah* was whether Section 1252(a)(2)(C)'s preclusion of "judicial review of factual challenges to final orders of removal" also "preclude[s] judicial review of factual challenges to CAT orders." *Ibid.*

The Court "conclude[d] that it does not." *Nasrallah*, 590 U.S. at 581. The Court reasoned that Section 1252(a)(2)(C) "precludes judicial review of factual challenges" only "to final orders of removal." *Ibid.* And the Court determined that "[a] CAT order is not itself a final order of removal because it is not an order 'concluding that the alien is deportable or ordering deportation.'" *Id.* at 582; see 8 U.S.C. 1101(a)(47)(A). Instead, "[a]n order granting CAT relief means only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal." *Nasrallah*, 590 U.S. at 582. Nor do CAT orders "merge into final orders of removal" because they do not "affect the validity of the final order of removal." *Ibid.*

b. *Nasrallah* thus suggests that a CAT order cannot be treated as "the final order of removal" that triggers Section 1252(b)(1)'s 30-day clock. 8 U.S.C. 1252(b)(1).

Just as "[a] CAT order is not itself a final order of removal" for purposes of Section 1252(a)(2)(C), *Nasrallah*, 590 U.S. at 582, it is not a final order of removal for purposes of Section 1252(b)(1).

But as explained above, the government's argument here does not treat a CAT or statutory-withholding order as the relevant "final order of removal." 8 U.S.C. 1252(b)(1). Rather, the relevant order of removal is the Section 1228(b) removal determination—and that order does not become final until the conclusion of withholding-only proceedings. Nothing in *Nasrallah* undermines that understanding because nothing in *Nasrallah* speaks to when Section 1228(b) removal orders become final.

The Fourth Circuit observed that *Nasrallah* "defined finality by reference to Section 1101(a)(47)." *Martinez*, 86 F.4th at 569; see *Bhaktibhai-Patel*, 32 F.4th at 194. But *Nasrallah* involved an ordinary removal proceeding under Section 1229a, in which an IJ decided issues of removability and CAT protection and the noncitizen then appealed that decision to the Board. See 590 U.S. at 577. As noted above, Section 1101(a)(47)(B) applies by its terms to ordinary removal orders that are appealable to the Board. Section 1101(a)(47)(B) does not apply, however, to removal orders—like those under Section 1228(b)—that are not appealable to the Board. Because *Nasrallah* did not involve such an order, it says nothing about Section 1101(a)(47)(B)'s application to this case.

If anything, *Nasrallah* supports the government's position here. As the Court explained, Sections 1252(a)(4) and 1252(b)(9) "establish that a CAT order may be reviewed together" with the removal order. *Nasrallah*, 590 U.S. at 583. Under the government's in-

terpretation here, a CAT or statutory-withholding order "may be reviewed together" with the Section 1228(b) removal order after the conclusion of withholding-only proceedings. *Ibid.* By contrast, under the Fourth Circuit's interpretation, many CAT and statutory-withholding orders will be unreviewable. See pp. 37, *supra*.

Significantly, the Court in *Nasrallah* emphasized that its "decision does not affect the authority of the courts of appeals to review CAT orders." 590 U.S. at 585. Under the government's interpretation here, the courts of appeals retain their well-settled authority to "review CAT orders" in conjunction with Section 1228(b) removal orders and Section 1231(a)(5) reinstatement orders. *Ibid.* By contrast, the Fourth Circuit reads *Nasrallah* to strip courts of that authority—despite *Nasrallah*'s own assurances to the contrary.

2. **Guzman Chavez *does not support the decision below***

a. In *Guzman Chavez*, the Court interpreted Section 1231(a)(1), which requires the detention of certain noncitizens subject to reinstated removal orders beginning on "[t]he date the order of removal becomes administratively final." 8 U.S.C. 1231(a)(1)(B)(i). The Court concluded that a reinstated removal order is "'administratively final'" once DHS reinstates a prior removal order "following [a noncitizen's] unlawful reentry." *Guzman Chavez*, 594 U.S. at 534-535. In so doing, the Court rejected the argument that, when a noncitizen "pursues withholding-only relief," a reinstatement order is not administratively final until the withholding-only proceedings are complete. *Id.* at 535. The Court reasoned that because "withholding-only relief is country-specific," it "relates" only "to *where* an alien may be removed" but "says nothing" about "the

antecedent question *whether* an alien is to be removed from the United States." *Id.* at 536.

Critically here, however, the Court "express[ed] no view on whether" lower courts had correctly interpreted "the phrase 'final order of removal' as it is used in 8 U.S.C. § 1252(b)(1)." *Guzman Chavez*, 594 U.S. at 535 n.6. The Court observed that Section 1252(b)(1) "uses different language than § 1231 and relates to judicial review of removal orders rather than detention." *Ibid.* And the Court made those statements after the government contended at oral argument that judicial "review would be available" following the conclusion of withholding-only proceedings because the term "final" means "something different in [Section] 1252" than in Section 1231. Tr. of Oral Arg. at 24, *Guzman Chavez*, *supra* (No. 19-897). Thus, the Court expressly reserved the second question presented here.

b. The government's interpretation here is fully consistent with *Guzman Chavez*. This Court has recognized that "[f]inality is variously defined; like many legal terms, its precise meaning depends on context." *Clay*, 537 U.S. at 527; see *Shaughnessy* v. *Pedreiro*, 349 U.S. 48, 51 (1955) (observing that the term "'final'" is "ambiguous"). And finality in the context of Section 1252(b)(1) differs from finality in the context of Section 1231(a)(1).

As an initial matter, Section 1252(b)(1) "uses different language" from Section 1231(a)(1). *Guzman Chavez*, 594 U.S. at 535 n.6. Section 1252(b)(1) is located in a provision captioned "[j]udicial review of orders of removal," 8 U.S.C. 1252, and refers to "the date of the final order of removal," 8 U.S.C. 1252(b)(1). Conversely, Section 1231(a)(1) is located in a provision captioned "[d]etention and removal of aliens ordered removed,"

8 U.S.C. 1231, and refers to "[t]he date the order of removal becomes *administratively* final," 8 U.S.C. 1231(a)(1)(B)(i) (emphasis added). Thus, whereas the text of Section 1252(b)(1) focuses on an order's finality for purposes of judicial review, the text of Section 1231(a)(1) focuses on an order's administrative finality for purposes of detention and removal.

That textual distinction indicates that "Congress intended a difference in meaning." *Loughrin* v. *United States*, 573 U.S. 351, 358 (2014). Because Section 1252(b)(1) is a judicial-review provision, it is natural to "interpret the word 'final'" in that provision "against the background of the final judgment rule" that applies when appellate courts review decisions of lower tribunals. *Kolov*, 78 F.4th at 928 (Murphy, J., concurring). And as explained above, that rule "presumes that there will be one appeal at the end of proceedings rather than many appeals in 'fits and starts' after each order." *Ibid.* (citation omitted). Section 1252(b)(9)'s zipper clause confirms that the final-judgment rule applies to judicial review of removal orders under the INA. By contrast, Section 1231(a)(1)'s reference to "administrative[]" finality does not invoke the final-judgment rule. 8 U.S.C. 1231(a)(1). As the Court explained in *Guzman Chavez*, "[b]y using the word 'administratively,' Congress focused our attention on the *agency*'s review proceedings, separate and apart from any judicial review proceedings." 594 U.S. at 534; see *Shaughnessy*, 349 U.S. at 51 (distinguishing "finality in administrative procedure" from finality for purposes of "the right of judicial review").[15]

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[15] Because a removal order under Section 1228(b) is administratively final, DHS may "remove[] an alien to a third country other than the country" at issue in withholding-only proceedings, so long

Section 1231's detention context is also meaningfully distinct from Section 1252's judicial-review context. In Section 1231, Congress mandated detention of certain noncitizens who have been "ordered removed" but have not yet been "physically remove[d] * * * from the United States." *Guzman Chavez*, 594 U.S. at 528; see 8 U.S.C. 1231(a)(2). Congress determined that such noncitizens are more "likely to abscond" than those "who have not been ordered removed" because they "are generally inadmissible" and have no legal path to remaining in the country. *Guzman Chavez*, 594 U.S. at 544. Whether a noncitizen in that category has applied for withholding-only protection has little bearing on his flight risk because withholding-only protection does not prevent removal. The pendency of withholding-only proceedings is therefore largely immaterial to Section 1231's objective of detaining noncitizens who are more likely to abscond because they have been ordered removed. In contrast, the pendency of withholding-only proceedings is directly relevant to Section 1252's objective of "consolidating the issues arising from a final order of removal" into a petition in order to "expedite[] judicial review." *Nasrallah*, 590 U.S. at 580.

The Fourth and Second Circuits rejected the possibility that "whether an order of removal is 'administratively final' for purposes of Section 1231" could be distinct from whether an order of removal is final "for purposes of judicial review." *Martinez*, 86 F.4th at 569; see *Bkahtibhai-Patel*, 32 F.4th at 193-194. But those courts did not grapple with the different language and contexts of Sections 1231 and 1252. Instead, they simply assumed—with scarce reasoning other than citations to

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as the noncitizen does not express a fear of removal to that third country. 8 C.F.R. 208.16(f).

prior circuit precedent—that finality must mean the same thing in both provisions. For the reasons given above, that is not so.

c. As just explained, Section 1252(b)(1) "uses different language than § 1231." *Guzman Chavez*, 594 U.S. at 535 n.6. But even if one regarded the language of the two provisions as largely identical, the result would be the same. "[T]he presumption of consistent usage 'readily yields' to context, and a statutory term—even one defined in the statute—'may take on distinct characters from association with distinct statutory objects.'" *Utility Air*, 573 U.S. at 320 (quoting *Duke Energy*, 549 U.S. at 574). That is particularly true where reading a term to mean the same thing throughout a statute would render the overall scheme "unworkable." *Ibid.*

As just shown, the term "final" takes on "distinct characters" when used in "association with" judicial review, as opposed to detention. *Utility Air*, 573 U.S. at 320. And reading "final" in Section 1252(b)(1) to mean the same thing as "administratively final" in Section 1231(a)(1) would render Section 1252's judicial-review scheme "unworkable" by effectively requiring premature petitions for review followed by lengthy abeyances. *Ibid.*; see p. 35, *supra*. Accordingly, the Fourth Circuit erred in concluding that "final[]" "clearly cannot" "mean[] something different under those two provisions." *Martinez*, 86 F.4th at 569 (citation omitted).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
EPHRAIM A. MCDOWELL
Assistant to the Solicitor General
JOHN W. BLAKELEY
MELISSA L. NEIMAN-KELTING
DAWN S. CONRAD
ELIZABETH K. OTTMAN
Attorneys

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APPENDIX

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APPENDIX

1. 8 U.S.C. 1101(a)(47) provides:

Definitions

(a) As used in this chapter—

(47)(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

(B) The order described under subparagraph (A) shall become final upon the earlier of—

(i) a determination by the Board of Immigration Appeals affirming such order; or

(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

2. 8 U.S.C. 1228 provides:

Expedited removal of aliens convicted of committing aggravated felonies

(a) Removal of criminal aliens

(1) In general

The Attorney General shall provide for the availability of special removal proceedings at certain Federal, State, and local correctional facilities for aliens convicted of any criminal offense covered in section

1227(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 1227(a)(2)(A)(i) of this title. Such proceedings shall be conducted in conformity with section 1229a of this title (except as otherwise provided in this section), and in a manner which eliminates the need for additional detention at any processing center of the Service and in a manner which assures expeditious removal following the end of the alien's incarceration for the underlying sentence. Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(2) Implementation

With respect to an alien convicted of an aggravated felony who is taken into custody by the Attorney General pursuant to section 1226(c) of this title, the Attorney General shall, to the maximum extent practicable, detain any such felon at a facility at which other such aliens are detained. In the selection of such facility, the Attorney General shall make reasonable efforts to ensure that the alien's access to counsel and right to counsel under section 1362 of this title are not impaired.

(3) Expedited proceedings

(A) Notwithstanding any other provision of law, the Attorney General shall provide for the initiation and, to the extent possible, the completion of removal proceedings, and any administrative appeals thereof,

in the case of any alien convicted of an aggravated felony before the alien's release from incarceration for the underlying aggravated felony.

(B) Nothing in this section shall be construed as requiring the Attorney General to effect the removal of any alien sentenced to actual incarceration, before release from the penitentiary or correctional institution where such alien is confined.

(4) Review

(A) The Attorney General shall review and evaluate removal proceedings conducted under this section.

(B) The Comptroller General shall monitor, review, and evaluate removal proceedings conducted under this section. Within 18 months after the effective date of this section, the Comptroller General shall submit a report to such Committees concerning the extent to which removal proceedings conducted under this section may adversely affect the ability of such aliens to contest removal effectively.

(b) Removal of aliens who are not permanent residents

(1) The Attorney General may, in the case of an alien described in paragraph (2), determine the deportability of such alien under section 1227(a)(2)(A)(iii) of this title (relating to conviction of an aggravated felony) and issue an order of removal pursuant to the procedures set forth in this subsection or section 1229a of this title.

(2) An alien is described in this paragraph if the alien—

(A) was not lawfully admitted for permanent residence at the time at which proceedings under this section commenced; or

(B) had permanent resident status on a conditional basis (as described in section 1186a of this title) at the time that proceedings under this section commenced.

(3) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to apply for judicial review under section 1252 of this title.

(4) Proceedings before the Attorney General under this subsection shall be in accordance with such regulations as the Attorney General shall prescribe. The Attorney General shall provide that—

(A) the alien is given reasonable notice of the charges and of the opportunity described in subparagraph (C);

(B) the alien shall have the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as the alien shall choose;

(C) the alien has a reasonable opportunity to inspect the evidence and rebut the charges;

(D) a determination is made for the record that the individual upon whom the notice for the proceeding under this section is served (either in person or by mail) is, in fact, the alien named in such notice;

(E) a record is maintained for judicial review; and

(F) the final order of removal is not adjudicated by the same person who issues the charges.

(5) No alien described in this section shall be eligible for any relief from removal that the Attorney General may grant in the Attorney General's discretion.

(c)[1] Presumption of deportability

An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.

(c)[1] Judicial removal

(1) Authority

Notwithstanding any other provision of this chapter, a United States district court shall have jurisdiction to enter a judicial order of removal at the time of sentencing against an alien who is deportable, if such an order has been requested by the United States Attorney with the concurrence of the Commissioner and if the court chooses to exercise such jurisdiction.

(2) Procedure

(A) The United States Attorney shall file with the United States district court, and serve upon the defendant and the Service, prior to commencement of the trial or entry of a guilty plea a notice of intent to request judicial removal.

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[1] So in original. Two subsecs. (c) have been enacted.

(B) Notwithstanding section 1252b[2] of this title, the United States Attorney, with the concurrence of the Commissioner, shall file at least 30 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and identifying the crime or crimes which make the defendant deportable under section 1227(a)(2)(A) of this title.

(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from removal under this chapter, the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief. The court shall either grant or deny the relief sought.

(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 1229a of this title.

(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

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[2] See References in Text note below.

(iv) The court may order the alien removed if the Attorney General demonstrates that the alien is deportable under this chapter.

(3) Notice, appeal, and execution of judicial order of removal

(A)(i) A judicial order of removal or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 1252 of this title.

(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of removal is based, the expiration of the period described in section 1252(b)(1) of this title, or the final dismissal of an appeal from such conviction, the order of removal shall become final and shall be executed at the end of the prison term in accordance with the terms of the order. If the conviction is reversed on direct appeal, the order entered pursuant to this section shall be void.

(B) As soon as is practicable after entry of a judicial order of removal, the Commissioner shall provide the defendant with written notice of the order of removal, which shall designate the defendant's country of choice for removal and any alternate country pursuant to section 1253(a)[3] of this title.

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[3] See References in Text note below.

(4) Denial of judicial order

Denial of a request for a judicial order of removal shall not preclude the Attorney General from initiating removal proceedings pursuant to section 1229a of this title upon the same ground of deportability or upon any other ground of deportability provided under section 1227(a) of this title.

(5) Stipulated judicial order of removal

The United States Attorney, with the concurrence of the Commissioner, may, pursuant to Federal Rule of Criminal Procedure 11, enter into a plea agreement which calls for the alien, who is deportable under this chapter, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of removal from the United States as a condition of the plea agreement or as a condition of probation or supervised release, or both. The United States district court, in both felony and misdemeanor cases, and a United States magistrate judge in misdemeanor cases, may accept such a stipulation and shall have jurisdiction to enter a judicial order of removal pursuant to the terms of such stipulation.

3. 8 U.S.C. 1231(a)-(b) provides:

Detention and removal of aliens ordered removed

(a) Detention, release, and removal of aliens ordered removed

(1) Removal period

(A) In general

Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

(B) Beginning of period

The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(C) Suspension of period

The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good

faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

(2) Detention

During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

(3) Supervision after 90-day period

If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

(A) to appear before an immigration officer periodically for identification;

(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

(4) Aliens imprisoned, arrested, or on parole, supervised release, or probation

(A) In general

Except as provided in section 259(a)[1] of title 42 and paragraph (2),[2] the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(B) Exception for removal of nonviolent offenders prior to completion of sentence of imprisonment

The Attorney General is authorized to remove an alien in accordance with applicable procedures under this chapter before the alien has completed a sentence of imprisonment—

(i) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense related to smuggling or harboring of aliens or an offense described in section 1101(a)(43)(B), (C), (E), (I), or (L) of this title[3] and (II) the removal of the alien is appropriate and in the best interest of the United States; or

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[1] See References in Text note below.

[2] So in original. Probably should be "subparagraph (B),".

[3] So in original. Probably should be followed by a closing parenthesis.

(ii) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (I) the alien is confined pursuant to a final conviction for a nonviolent offense (other than an offense described in section 1101(a)(43)(C) or (E) of this title), (II) the removal is appropriate and in the best interest of the State, and (III) submits a written request to the Attorney General that such alien be so removed.

(C) Notice

Any alien removed pursuant to this paragraph shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly the expanded penalties for aliens removed under subparagraph (B).

(D) No private right

No cause or claim may be asserted under this paragraph against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(5) Reinstatement of removal orders against aliens illegally reentering

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter,

and the alien shall be removed under the prior order at any time after the reentry.

(6) Inadmissible or criminal aliens

An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

(7) Employment authorization

No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that—

(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien, or

(B) the removal of the alien is otherwise impracticable or contrary to the public interest.

(b) Countries to which aliens may be removed

(1) Aliens arriving at the United States

Subject to paragraph (3)—

(A) In general

Except as provided by subparagraphs (B) and (C), an alien who arrives at the United States and with respect to whom proceedings under section 1229a of this title were initiated at the time of such

alien's arrival shall be removed to the country in which the alien boarded the vessel or aircraft on which the alien arrived in the United States.

(B) Travel from contiguous territory

If the alien boarded the vessel or aircraft on which the alien arrived in the United States in a foreign territory contiguous to the United States, an island adjacent to the United States, or an island adjacent to a foreign territory contiguous to the United States, and the alien is not a native, citizen, subject, or national of, or does not reside in, the territory or island, removal shall be to the country in which the alien boarded the vessel that transported the alien to the territory or island.

(C) Alternative countries

If the government of the country designated in subparagraph (A) or (B) is unwilling to accept the alien into that country's territory, removal shall be to any of the following countries, as directed by the Attorney General:

(i) The country of which the alien is a citizen, subject, or national.

(ii) The country in which the alien was born.

(iii) The country in which the alien has a residence.

(iv) A country with a government that will accept the alien into the country's territory if removal to each country described in a previous clause of this subparagraph is impracticable, inadvisable, or impossible.

(2) Other aliens

Subject to paragraph (3)—

(A) Selection of country by alien

Except as otherwise provided in this paragraph—

(i) any alien not described in paragraph (1) who has been ordered removed may designate one country to which the alien wants to be removed, and

(ii) the Attorney General shall remove the alien to the country the alien so designates.

(B) Limitation on designation

An alien may designate under subparagraph (A)(i) a foreign territory contiguous to the United States, an adjacent island, or an island adjacent to a foreign territory contiguous to the United States as the place to which the alien is to be removed only if the alien is a native, citizen, subject, or national of, or has resided in, that designated territory or island.

(C) Disregarding designation

The Attorney General may disregard a designation under subparagraph (A)(i) if—

(i) the alien fails to designate a country promptly;

(ii) the government of the country does not inform the Attorney General finally, within 30 days after the date the Attorney General first

inquires, whether the government will accept the alien into the country;

(iii) the government of the country is not willing to accept the alien into the country; or

(iv) the Attorney General decides that removing the alien to the country is prejudicial to the United States.

(D) Alternative country

If an alien is not removed to a country designated under subparagraph (A)(i), the Attorney General shall remove the alien to a country of which the alien is a subject, national, or citizen unless the government of the country—

(i) does not inform the Attorney General or the alien finally, within 30 days after the date the Attorney General first inquires or within another period of time the Attorney General decides is reasonable, whether the government will accept the alien into the country; or

(ii) is not willing to accept the alien into the country.

(E) Additional removal countries

If an alien is not removed to a country under the previous subparagraphs of this paragraph, the Attorney General shall remove the alien to any of the following countries:

(i) The country from which the alien was admitted to the United States.

(ii) The country in which is located the foreign port from which the alien left for the

United States or for a foreign territory contiguous to the United States.

(iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.

(iv) The country in which the alien was born.

(v) The country that had sovereignty over the alien's birthplace when the alien was born.

(vi) The country in which the alien's birthplace is located when the alien is ordered removed.

(vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

(F) Removal country when United States is at war

When the United States is at war and the Attorney General decides that it is impracticable, inadvisable, inconvenient, or impossible to remove an alien under this subsection because of the war, the Attorney General may remove the alien—

(i) to the country that is host to a government in exile of the country of which the alien is a citizen or subject if the government of the host country will permit the alien's entry; or

(ii) if the recognized government of the country of which the alien is a citizen or subject

is not in exile, to a country, or a political or territorial subdivision of a country, that is very near the country of which the alien is a citizen or subject, or, with the consent of the government of the country of which the alien is a citizen or subject, to another country.

(3) Restriction on removal to a country where alien's life or freedom would be threatened

(A) In general

Notwithstanding paragraphs (1) and (2), the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

(B) Exception

Subparagraph (A) does not apply to an alien deportable under section 1227(a)(4)(D) of this title or if the Attorney General decides that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime is a danger to the community of the United States;

(iii) there are serious reasons to believe that the alien committed a serious nonpolitical

crime outside the United States before the alien arrived in the United States; or

(iv) there are reasonable grounds to believe that the alien is a danger to the security of the United States.

For purposes of clause (ii), an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not preclude the Attorney General from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime. For purposes of clause (iv), an alien who is described in section 1227(a)(4)(B) of this title shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.

(C) Sustaining burden of proof; credibility determinations

In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien's burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 1158(b)(1)(B) of this title.

4. 8 U.S.C. 1252 provides:

Judicial review of orders of removal

(a) Applicable provisions

(1) General orders of removal

Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 1225(b)(1) of this title) is governed only by chapter 158 of title 28, except as provided in subsection (b) and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) Matters not subject to judicial review

(A) Review relating to section 1225(b)(1)

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review—

(i) except as provided in subsection (e), any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1) of this title,

(ii) except as provided in subsection (e), a decision by the Attorney General to invoke the provisions of such section,

(iii) the application of such section to individual aliens, including the determination made under section 1225(b)(1)(B) of this title, or

(iv) except as provided in subsection (e), procedures and policies adopted by the Attorney General to implement the provisions of section 1225(b)(1) of this title.

(B) Denials of discretionary relief

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—

(i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title, or

(ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

(C) Orders against criminal aliens

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense cov-

ered in section 1182(a)(2) or 1227(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 1227(a)(2)(A)(i) of this title.

(D) Judicial review of certain legal claims

Nothing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

(3) Treatment of certain decisions

No alien shall have a right to appeal from a decision of an immigration judge which is based solely on a certification described in section 1229a(c)(1)(B) of this title.

(4) Claims under the United Nations Convention

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).

(5) Exclusive means of review

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e). For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

(b) Requirements for review of orders of removal

With respect to review of an order of removal under subsection (a)(1), the following requirements apply:

(1) Deadline

The petition for review must be filed not later than 30 days after the date of the final order of removal.

(2) Venue and forms

The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

(3) Service

(A) In general

The respondent is the Attorney General. The petition shall be served on the Attorney General and on the officer or employee of the Service in charge of the Service district in which the final order of removal under section 1229a of this title was entered.

(B) Stay of order

Service of the petition on the officer or employee does not stay the removal of an alien pending the court's decision on the petition, unless the court orders otherwise.

(C) Alien's brief

The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the Attorney General, and the court may not extend these deadlines except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

(4) Scope and standard for review

Except as provided in paragraph (5)(B)—

(A) the court of appeals shall decide the petition only on the administrative record on which the order of removal is based,

(B) the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary,

(C) a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to law, and

(D) the Attorney General's discretionary judgment whether to grant relief under section 1158(a) of this title shall be conclusive unless manifestly contrary to the law and an abuse of discretion.

No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 1158(b)(1)(B), 1229a(c)(4)(B), or 1231(b)(3)(C) of this title, unless the court finds, pursuant to subsection (b)(4)(B), that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.

(5) Treatment of nationality claims

(A) Court determination if no issue of fact

If the petitioner claims to be a national of the United States and the court of appeals finds from the pleadings and affidavits that no genuine issue of material fact about the petitioner's nationality is presented, the court shall decide the nationality claim.

(B) Transfer if issue of fact

If the petitioner claims to be a national of the United States and the court of appeals finds that a genuine issue of material fact about the petitioner's nationality is presented, the court shall

transfer the proceeding to the district court of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court under section 2201 of title 28.

(C) Limitation on determination

The petitioner may have such nationality claim decided only as provided in this paragraph.

(6) Consolidation with review of motions to reopen or reconsider

When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with the review of the order.

(7) Challenge to validity of orders in certain criminal proceedings

(A) In general

If the validity of an order of removal has not been judicially decided, a defendant in a criminal proceeding charged with violating section 1253(a) of this title may challenge the validity of the order in the criminal proceeding only by filing a separate motion before trial. The district court, without a jury, shall decide the motion before trial.

(B) Claims of United States nationality

If the defendant claims in the motion to be a national of the United States and the district court finds that—

(i) no genuine issue of material fact about the defendant's nationality is presented, the court shall decide the motion only on the administrative record on which the removal order is based and the administrative findings of fact are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole; or

(ii) a genuine issue of material fact about the defendant's nationality is presented, the court shall hold a new hearing on the nationality claim and decide that claim as if an action had been brought under section 2201 of title 28.

The defendant may have such nationality claim decided only as provided in this subparagraph.

(C) Consequence of invalidation

If the district court rules that the removal order is invalid, the court shall dismiss the indictment for violation of section 1253(a) of this title. The United States Government may appeal the dismissal to the court of appeals for the appropriate circuit within 30 days after the date of the dismissal.

(D) Limitation on filing petitions for review

The defendant in a criminal proceeding under section 1253(a) of this title may not file a petition for review under subsection (a) during the criminal proceeding.

(8) Construction

This subsection—

(A) does not prevent the Attorney General, after a final order of removal has been issued, from detaining the alien under section 1231(a) of this title;

(B) does not relieve the alien from complying with section 1231(a)(4) of this title and section 1253(g)[1] of this title; and

(C) does not require the Attorney General to defer removal of the alien.

(9) Consolidation of questions for judicial review

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

(c) Requirements for petition

A petition for review or for habeas corpus of an order of removal—

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[1] See References in text note below.

(1) shall attach a copy of such order, and

(2) shall state whether a court has upheld the validity of the order, and, if so, shall state the name of the court, the date of the court's ruling, and the kind of proceeding.

(d) Review of final orders

A court may review a final order of removal only if—

(1) the alien has exhausted all administrative remedies available to the alien as of right, and

(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

(e) Judicial review of orders under section 1225(b)(1)

(1) Limitations on relief

Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may—

(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to an order to exclude an alien in accordance with section 1225(b)(1) of this title except as specifically authorized in a subsequent paragraph of this subsection, or

(B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

(2) Habeas corpus proceedings

Judicial review of any determination made under section 1225(b)(1) of this title is available in habeas corpus proceedings, but shall be limited to determinations of—

(A) whether the petitioner is an alien,

(B) whether the petitioner was ordered removed under such section, and

(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

(3) Challenges on validity of the system

(A) In general

Judicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

(i) whether such section, or any regulation issued to implement such section, is constitutional; or

(ii) whether such a regulation, or a written policy directive, written policy guideline, or

written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this subchapter or is otherwise in violation of law.

(B) Deadlines for bringing actions

Any action instituted under this paragraph must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.

(C) Notice of appeal

A notice of appeal of an order issued by the District Court under this paragraph may be filed not later than 30 days after the date of issuance of such order.

(D) Expeditious consideration of cases

It shall be the duty of the District Court, the Court of Appeals, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any case considered under this paragraph.

(4) Decision

In any case where the court determines that the petitioner—

(A) is an alien who was not ordered removed under section 1225(b)(1) of this title, or

(B) has demonstrated by a preponderance of the evidence that the alien is an alien lawfully admitted for permanent residence, has been admit-

ted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, the court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 1229a of this title. Any alien who is provided a hearing under section 1229a of this title pursuant to this paragraph may thereafter obtain judicial review of any resulting final order of removal pursuant to subsection (a)(1).

(5) Scope of inquiry

In determining whether an alien has been ordered removed under section 1225(b)(1) of this title, the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

(f) Limit on injunctive relief

(1) In general

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

(2) Particular cases

Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

(g) Exclusive jurisdiction

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.