No. 25-467

In the Supreme Court of the United States

JOSEPH EBU, PETITIONER

v.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's suit under 8 U.S.C. 1447(b) for a judicial determination of his eligibility for naturalization was correctly dismissed in light of pending removal proceedings against petitioner.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-40a) is reported at 134 F.4th 895. The order of the district court (Pet. App. 41a-51a) is available at 2024 WL 1356664.

JURISDICTION

The judgment of the court of appeals was entered on April 16, 2025. A petition for rehearing was denied on July 16, 2025 (Pet. App. 52a-53a). The petition for a writ of certiorari was filed on October 14, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Constitution vests in Congress the power "[t]o establish an uniform Rule of Naturalization." Art. I, § 8, Cl. 4. In the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, Congress provided that, to

be naturalized as U.S. citizens, applicants must generally show, *inter alia*, that they were lawfully admitted as permanent residents, have the requisite years of physical presence in the United States, and have been and remain persons of good moral character. 8 U.S.C. 1427, 1429. With limited exceptions not applicable here, "no person shall be naturalized against whom there is outstanding a final finding of deportability." 8 U.S.C. 1429. This Court has recognized that "there must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko* v. *United States*, 449 U.S. 490, 506 (1981).

Until 1990, "authority to naturalize aliens was vested in the district courts," whereas "removal of aliens was the province of the Attorney General." *Zayed* v. *United States*, 368 F.3d 902, 905 (6th Cir. 2004). Under that bifurcated system, there sometimes "ensued a race between the alien to gain citizenship and the Attorney General to deport him." *Shomberg* v. *United States*, 348 U.S. 540, 544 (1955). To remedy the situation, Congress enacted in 1950, and included in the INA two years later, a "priority provision," *id.* at 541 (citation omitted); see *id.* at 544, stating in pertinent part that "no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest." 8 U.S.C. 1429 (1952).

b. Congress transferred most of the courts' role in naturalization to the Attorney General in the Immigration Act of 1990 (1990 Act), Pub. L. No. 101-649, 104 Stat. 4978; see *Etape* v. *Chertoff*, 497 F.3d 379, 386 (4th Cir. 2007) (noting that the statute sought to "streamline the process" and resolve a "backlog" of applications in the courts). The 1990 Act amended the INA to provide

that "[t]he sole authority to naturalize persons as citizens of the United States is conferred upon the Attorney General." § 401, 104 Stat. 5038 (8 U.S.C. 1421(a)). It also made numerous "conforming amendments" to replace the INA's references to the naturalization court with references to the Attorney General. § 407, 104 Stat. 5040 (capitalization omitted); see § 407(d), 104 Stat. 5041. Thus, for example, Section 1429's priority provision now states that "no application for naturalization shall be considered by the Attorney General if there is pending against the applicant a removal proceeding." 8 U.S.C. 1429. In 2002, Congress transferred responsibility for adjudicating naturalization applications from the Attorney General to U.S. Citizenship and Immigration Services (USCIS), a component of the Department of Homeland Security (DHS). See 6 U.S.C. 271(b)(2); *Yith* v. *Nielsen*, 881 F.3d 1155, 1158 (9th Cir. 2018).

The 1990 Act left the courts with a limited role in the naturalization process. In a provision codified at 8 U.S.C. 1447(b), it provided that "[i]f there is a failure" by the agency to decide the naturalization application "before the end of the 120-day period after the date on which" the applicant is examined, "the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter." § 407(d)(14)(B), 104 Stat. 5044. "Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the [agency] to determine the matter." *Ibid.* Furthermore, a person whose naturalization application is denied by the agency "may seek review of such denial before the United States district court for the district in which such person resides." § 401(a), 104 Stat. 5038 (8 U.S.C. 1421(c)).

2. a. Petitioner became a lawful permanent resident of the United States in 2013. Pet. 5; Pet. App. 2a. In August 2017, he was convicted in Kentucky state court of facilitation of theft by deception and fraudulent use of a credit card. See *Ebu* v. *Commonwealth*, No. 2017-CA-2035-MR, 2019 WL 6245351, at *1 (Ky. Ct. App. Nov. 22, 2019); Am. Judgment at 1-3, *Commonwealth* v. *Ebu*, No. 15-CR-1061 (Fayette Cir. Ct. Aug. 8, 2017). Based on those convictions, DHS commenced removal proceedings against petitioner on the ground that he had been convicted of "crimes involving moral turpitude." 8 U.S.C. 1227(a)(2)(A)(i) and (ii); see Pet. App. 2a.

In 2018, an immigration judge ordered petitioner removed. Pet. 5. The Board of Immigration Appeals affirmed, and petitioner sought review in the Seventh Circuit. *Ibid.* In 2020, the Seventh Circuit remanded the matter to the Board, and the Board in turn remanded the matter to the immigration judge. *Ibid.* Petitioner currently remains in removal proceedings. See Pet. 8; Pet. App. 2a.

In June 2022, petitioner filed an application for naturalization with USCIS. Pet. 5; Pet. App. 3a. The following month, USCIS examined petitioner to determine his eligibility for naturalization. Pet. 5; see 8 U.S.C. 1446. USCIS did not resolve his naturalization application within 120 days of his examination, however, "apparently due" to the INA's current version of the "'priority provision,'" Pet. App. 3a, which bars consideration of a naturalization application while removal proceedings are pending, 8 U.S.C. 1429.

b. In 2023, petitioner sued USCIS in the United States District Court for the Eastern District of Kentucky, invoking 8 U.S.C. 1447(b) and requesting that the court determine his naturalization application. Pet. 5;

Pet. App. 3a. The court granted the government's motion to dismiss for failure to state a claim, concluding that a court may not consider a naturalization application under Section 1447(b) when USCIS is disabled from doing so, by virtue of removal proceedings pending against the applicant, under Section 1429. Pet. App. 41a-51a.

About a month after the district court's decision, USCIS denied petitioner's naturalization application in light of the pending removal proceedings. Pet. App. 16a; Gov't C.A. Br. 7. USCIS had previously denied the application based on both the pendency of removal proceedings and petitioner's ineligibility for naturalization on the merits, though USCIS withdrew the merits decision in light of Section 1429. Gov't C.A. Br. 7-8. Since 2020, USCIS policy has provided that "where a removal proceeding is pending against a naturalization applicant, USCIS denies the naturalization application * * * based solely on the existence of pending removal proceedings against the applicant," and will "not issue a decision based on the merits of the naturalization application." 12 USCIS, *Policy Manual* Pt. D, Ch. 2(F)(2) (2025), https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-2.

3. The court of appeals affirmed. Pet. App. 1a-40a.

a. The court of appeals held that a district court may not adjudicate a naturalization application while removal proceedings are pending and USCIS itself is thus prohibited from doing so by 8 U.S.C. 1429. Pet. App. 4a-13a. The court of appeals viewed that as the most "harmonious reading" of Sections 1429 and 1447(b) and consistent with the statutory history of Congress's efforts to avoid competing naturalization and deportation proceedings. *Id.* at 5a; see *id.* at 5a-11a. Although the

court recognized that Section 1429 no longer "explicitly refer[s] to district courts" since Congress amended the statute in 1990 to provide an administrative process for naturalization, *id.* at 9a, the court found it implausible that Congress intended thereby to grant courts new authority to make naturalization decisions while removal proceedings are pending, see *id.* at 9a-10a.

The court of appeals also held that, because petitioner could not state a claim under Section 1447(b), he also could not obtain a declaratory judgment on his eligibility for naturalization. See Pet. App. 13a-15a. The court further noted that USCIS had denied petitioner's application after the district court's decision, but the court of appeals declined to resolve "whether that denial moots this case" in light of its disposition of the other issues. *Id.* at 16a.

b. Judge Gibbons dissented. Pet. App. 17a-40a. In her view, Section 1429's reference to "the Attorney General" compels, by negative implication, the conclusion that courts may decide naturalization applications under Section 1447(b) irrespective of the pendency of removal proceedings. See *ibid.*

4. Petitioner filed a petition for rehearing en banc, which was denied. Pet. App. 53a.

ARGUMENT

Petitioner renews his contention (Pet. 14-16) that he is entitled to a judicial determination of his eligibility for naturalization under 8 U.S.C. 1447(b) despite the pendency of removal proceedings against him. That claim is incorrect, and petitioner does not show that it would succeed in any court of appeals. This case is also an unsuitable vehicle for resolving the question presented, including because USCIS has now denied petitioner's naturalization application and the fact pattern

of this case is unlikely to recur with any frequency. Further review is unwarranted.

1. The court of appeals correctly affirmed the dismissal of petitioner's suit under 8 U.S.C. 1447(b). Pet. App. 1a-16a.

As a threshold matter, even supposing that petitioner could state a claim under Section 1447(b), the district court lacked jurisdiction. See *Schiro* v. *Farley*, 510 U.S. 222, 228-229 (1994) (respondent may "rely on any legal argument in support of the judgment below"). Section 1447(b) grants a district court jurisdiction in a naturalization case "[i]f there is a *failure*" to make a determination on the naturalization application "before the end of the 120-day period after the date on which" the applicant is examined by USCIS. 8 U.S.C. 1447(b) (emphasis added). Thus, a necessary predicate for the court's jurisdiction is USCIS's failure to decide a naturalization application within the prescribed time. And a "'failure' is generally understood to reference the 'omission of an expected action, occurrence, or performance.'" *Ajlani* v. *Chertoff*, 545 F.3d 229, 240 (2d Cir. 2008) (quoting *Black's Law Dictionary* 631 (8th ed. 2004)); cf. *Norton* v. *Southern Utah Wilderness All.*, 542 U.S. 55, 63 (2004) (describing a "'failure to act'" as "the omission of an action," such as "the failure to promulgate a rule or take some decision by a statutory deadline").

There was no "failure" here. 8 U.S.C. 1447(b). When petitioner filed his naturalization application with USCIS in 2022, removal proceedings were ongoing and had been pending for several years. See Pet. 5. USCIS was therefore barred from deciding his application under the INA's priority provision, which provides that "no application for naturalization shall be considered by

the Attorney General [*i.e.*, USCIS*] if there is pending against the applicant a removal proceeding pursuant to a warrant of arrest." 8 U.S.C. 1429; see Gov't C.A. Br. 31-32 (noting petitioner does not dispute that a warrant of arrest issued). So USCIS's non-adjudication of petitioner's application within 120 days of his examination cannot be regarded as a "failure"—*i.e.*, the "omission of an expected action, occurrence, or performance." *Ajlani*, 545 F.3d at 240 (citation omitted). "Plainly, an action cannot be 'expected' when it is proscribed by law." *Ibid.*

The district court accordingly lacked jurisdiction under 8 U.S.C. 1447(b), and its dismissal of this case was correct on that basis. It is particularly important to heed statutory limits on the federal courts' jurisdiction in the immigration and naturalization context, where this Court has long recognized the primacy of the political branches. Cf. *Mathews* v. *Diaz*, 426 U.S. 67, 81-82 (1976).

2. Even setting aside that jurisdictional limitation, the court of appeals correctly held that petitioner failed to state a claim upon which relief could be granted. Pet. App. 4a-15a. Petitioner contends that because Section 1429 refers to "the Attorney General," 8 U.S.C. 1429, it permits district courts, by negative implication, to adjudicate naturalization applications under Section 1447(b)

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* When Congress transferred the function of adjudicating naturalization applications from the Department of Justice to USCIS, see 6 U.S.C. 271(b)(2), an accompanying transition provision specified that, with respect to the transferred function, any references in other statutory and administrative provisions "pertaining to a component of government from which such function is transferred" should be "deemed to refer to the Director of" USCIS or to USCIS itself, 6 U.S.C. 275(a)(1) and (2).

even when removal proceedings are pending. See Pet. 16 (invoking the canon *expressio unius est exclusio alterius*). But "[t]he force of any negative implication * * * depends on context." *Parrish* v. *United States*, 605 U.S. 376, 389 (2025) (citation omitted). Here, the statutory text, context, and history foreclose petitioner's inference.

a. Section 1447(b)'s text undercuts petitioner's interpretation. The statute authorizes a court with jurisdiction over a naturalization application to "either determine the matter or *remand* the matter, with appropriate instructions, to the Service to determine the matter." 8 U.S.C. 1447(b) (emphasis added). That reference to "the Service" was formerly to the Immigration and Naturalization Service in the Department of Justice, which previously adjudicated naturalization petitions, but now refers to USCIS. See p. 8 n.*, *supra*. Remand appears to be district courts' usual course under Section 1447(b). See *Hussein* v. *Gonzales*, 474 F. Supp. 2d 1265, 1269 (M.D. Fla. 2007). But the remand clause necessarily presupposes that USCIS has the ability to adjudicate the naturalization application—which, by virtue of the priority provision in Section 1429, the agency would not have while removal proceedings are pending.

The statutory history confirms that courts may not decide naturalization applications under Section 1447(b) while removal proceedings are pending. See Pet. App. 6a-9a. As discussed, pp. 2-3, *supra*, the Immigration Act of 1990 amended Section 1429 and other provisions of the INA to recognize the Attorney General (and after 2002, USCIS) as the primary and default decisionmaker on naturalization. There is no basis to conclude that Congress, in retaining Section 1429 and simultane-

ously enacting Section 1447(b) in the 1990 Act, intended to open an end-run around Section 1429's priority provision and undermine the longstanding "priority" of "removal proceedings * * * over naturalization proceedings." *Zayed* v. *United States*, 368 F.3d 902, 905 (6th Cir. 2004). That would simply restart the "race between the alien to gain citizenship and the [agency] to deport him," the dynamic that Congress eliminated long ago in Section 1429. *Shomberg* v. *United States*, 348 U.S. 540, 544 (1955). And this Court does not "interpret federal statutes to negate their own stated purposes." *New York State Dep't of Soc. Servs.* v. *Dublino*, 413 U.S. 405, 419-420 (1973); see *Department of Revenue* v. *ACF Indus., Inc.*, 510 U.S. 332, 343 (1994). Section 1447(b) was enacted as a backstop (or "safety valve," Pet. 17) for situations in which the agency fails to resolve a naturalization application "in a timely fashion," not where it is legally barred from making the decision. H.R. Rep. No. 187, 101st Cong., 1st Sess. 14 (1989); see *Yith* v. *Nielsen*, 881 F.3d 1155, 1164 (9th Cir. 2018).

Other sections of the INA similarly show that petitioner's negative-implication theory is untenable. The 1990 Act replaced references to courts with references to "the Attorney General" in various other naturalization provisions of the INA besides Section 1429, including provisions governing the substantive requirements and standards for naturalization. § 407(d), 104 Stat. 5041. Thus, for example, 8 U.S.C. 1427(e) now provides that "[i]n determining whether the applicant has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in [Section 1427(a)], the Attorney General shall not be limited to the applicant's conduct during the five years preceding the filing of the application." See also, *e.g.*, 8 U.S.C.

1427(b), 1428, 1435(b). Such references to "the Attorney General" must be presumed to mean the same thing as in Section 1429. See *Powerex Corp.* v. *Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007). Yet petitioner does not, and could not reasonably, contend that courts determining naturalization matters under Section 1447(b)—and effectively stepping into the shoes of USCIS—are exempt from or need not apply those other basic provisions of the naturalization laws. See, *e.g.*, *United States* v. *Hovsepian*, 359 F.3d 1144, 1166-1167 (9th Cir. 2004) (en banc) (applying Section 1427(e) in a Section 1447(b) case). Petitioner's narrow reading of Section 1429 would render the statutory framework incoherent.

b. Petitioner's remaining arguments lack merit. Although he contends that the court of appeals' holding rests on speculation about legislative intent, see Pet. 1, 14-15 (citing *Church of the Holy Trinity* v. *United States*, 143 U.S. 457 (1892)), the court employed the traditional tools of statutory construction, relying on "the text of § 1429 and its surrounding provisions" and the statutory "context and history," Pet. App. 5a, 10a. The court correctly declined petitioner's invitation to read Section 1429 in isolation, for "[i]t is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation omitted).

Petitioner highlights (Pet. 15-16) another clause of Section 1429 providing that "no person shall be naturalized against whom there is outstanding a final finding of deportability," and suggests that because that clause does not identify any particular decision-maker, the pri-

ority provision's reference to "the Attorney General" should be read narrowly under the canon against surplusage. 8 U.S.C. 1429. But those provisions were phrased in materially the same way even when the courts had exclusive responsibility for adjudicating naturalization cases, see 8 U.S.C. 1429 (1952), so petitioner errs in ascribing significance to that structural difference.

Nor does the "presumption favoring judicial review of administrative action," Pet. 16 (citation omitted), support petitioner's position. Congress expressly provided for judicial review of USCIS's naturalization decisions in a different section of the INA, Section 1421(c), which provides for de novo judicial review of the denial of a naturalization application. 8 U.S.C. 1421(c). In any event, for the reasons set forth above, the meaning of Sections 1429 and 1447(b) is sufficiently clear in context to overcome the presumption of reviewability to the extent that it applies. See *Patel* v. *Garland*, 596 U.S. 328, 347 (2022).

In sum, petitioner's suit under Section 1447(b) was correctly dismissed because, even assuming that the district court had jurisdiction, but see pp. 7-8, *supra*, petitioner failed to state a claim. And petitioner does not separately challenge the court of appeals' holding rejecting his request for declaratory relief. Pet. App. 13a (noting that the Declaratory Judgment Act, 28 U.S.C. 2201 (2018 & Supp. II 2020), "does not create an independent cause of action") (citation omitted); see Pet. 14-16.

3. Petitioner fails to show that the outcome of this case would have been different in any other circuit. He acknowledges (Pet. 9-10) that the decision below is consistent with decisions of the Second and Fifth Circuits. *Ajlani*, 545 F.3d at 238-241 (2d Cir.); *Saba-Bakare* v.

Chertoff, 507 F.3d 337, 340 (5th Cir. 2007). Although he principally asserts (Pet. 11-12) a conflict with the Ninth Circuit's decision in *Yith*, *supra*, there is no clear conflict between that decision and the decision below.

In *Yith*, two siblings submitted naturalization applications to USCIS, which delayed issuing decisions for several years. 881 F.3d at 1160. On the 119th day after the Yiths' examination, USCIS initiated removal proceedings against them, and they sought a judicial determination of their naturalization applications under Section 1447(b). *Ibid.* The district court dismissed their suit on the ground that Section 1429 barred the court from deciding the matter under Section 1447(b) "while removal proceedings remained pending." *Id.* at 1161; see *id.* at 1160, 1168.

The Ninth Circuit disagreed and reversed. In declining to apply Section 1429, it emphasized, among other things, that USCIS had "fail[ed]" to adjudicate the applications within 120 days, 8 U.S.C. 1447(b), because it "had the ability to make a timely determination" but "intentionally attempted to avoid the deadline set by § 1447(b)" by initiating removal proceedings at the last minute. *Yith*, 881 F.3d at 1164. The court of appeals concluded that it would "defeat Congress's intent" to apply Section 1429 and preclude relief under Section 1447(b) in those circumstances. *Ibid.* The court further held that Section 1429 did not apply for the additional reason that the Yiths' removal proceedings had not been brought "pursuant to a warrant of arrest." 8 U.S.C. 1429; see *Yith*, 881 F.3d at 1165-1168.

This case is distinguishable from *Yith*. Unlike in *Yith*, USCIS initiated removal proceedings against petitioner years *before* he applied for naturalization and filed suit under Section 1447(b). Pet. App. 2a-3a; Pet. 5.

As discussed above, there was accordingly no "failure" by USCIS to timely adjudicate his application and therefore no basis for a court to proceed under Section 1447(b). Applying the same definition of "failure" cited above, p. 7, *supra*, *Yith* reached the opposite conclusion on the facts there because USCIS had initiated removal proceedings only *after* the naturalization applications were filed, in an apparent attempt to avoid Section 1447(b)'s deadline. 881 F.3d at 1163-1164. And that conclusion undergirded the Ninth Circuit's refusal to apply Section 1429's priority provision. See *ibid.*

On the distinct facts of this case, petitioner cannot show that his invocation of Section 1447(b) would succeed in the Ninth Circuit. In any event, moreover, *Yith* did not consider the textual and contextual factors discussed above, including the references to "the Attorney General" in the INA's other naturalization provisions. *Yith*'s construction of that term in Section 1429 was also unnecessary to its disposition in light of the court's ruling on the "warrant of arrest" issue. 881 F.3d at 1169 (Bates, J., concurring in part and concurring in the judgment). The purported conflict with *Yith* therefore does not warrant this Court's intervention.

Petitioner also errs in asserting (Pet. 12-14) a conflict between the decision below and decisions of the Third and Seventh Circuits, *Gonzalez* v. *Secretary*, 678 F.3d 254 (3d Cir. 2012), and *Klene* v. *Napolitano*, 697 F.3d 666 (7th Cir. 2012). In those cases, USCIS denied naturalization applications before initiating removal proceedings against the applicants; the applicants sought review of the denials under 8 U.S.C. 1421(c); and the courts of appeals stated that declaratory relief was available under Section 1421(c) despite Section 1429 and the pending removal proceedings. See *Gonzalez*,

678 F.3d at 256, 259; *Klene*, 697 F.3d at 667, 669. Section 1447(b) was not at issue in either case. So as with *Yith*, neither *Gonzalez* nor *Klene* addressed the relationship between Sections 1429 and 1447(b) in the circumstances presented here. Furthermore, *Klene* agreed that courts may not grant (or order USCIS to grant) pending naturalization applications "after removal proceedings have begun," 697 F.3d at 668; the Seventh Circuit simply assumed without analysis that Section 1429 does not prevent courts from reviewing application denials under Section 1421(c), see *id.* at 669. And *Gonzalez*'s discussion of the availability of relief under Section 1421(c) was unnecessary because the court of appeals rejected the naturalization claim on the merits. See 678 F.3d at 261-264; see also *id.* at 264 (Chagares, J., concurring in part and dissenting in part). The decision below therefore does not directly conflict with those decisions, either.

4. Several additional reasons also make this case a poor candidate for this Court's review.

First, as the court of appeals noted, USCIS has now denied petitioner's naturalization application. Pet. App. 16a; see 8 U.S.C. 1421(a) ("The sole authority to naturalize persons as citizens of the United States is conferred upon the Attorney General [*i.e.*, USCIS]."); see also p. 8 n.*, *supra*. Even if that does not render this case moot, but cf. Pet. App. 16a, it makes this case an unsuitable vehicle for resolving the question presented because Section 1447(b) is not the proper avenue for adjudicating a naturalization application that has already been denied by USCIS. Cf. 8 U.S.C. 1421(c).

For related reasons, resolution of the question presented in petitioner's favor would not affect the ultimate outcome of this case. See *Supervisors* v. *Stanley*, 105

U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties). Even if the district court could have proceeded under Section 1447(b) despite petitioner's pending removal proceedings, the court likely would have remanded the matter to USCIS, see *Hussein*, 474 F. Supp. 2d at 1269, which would have then denied the naturalization application pursuant to Section 1429 (as USCIS has now done). If petitioner had sought judicial review of that denial under Section 1421(c), review would have been "limited to the ground for the denial" and resulted in dismissal. *De Lara Bellajaro* v. *Schiltgen*, 378 F.3d 1042, 1044 (9th Cir. 2004); see *Yith*, 881 F.3d at 1163. And at all events, petitioner's claim would ultimately fail on the merits. Petitioner is ineligible for naturalization because, among other reasons, he was convicted in 2017, within the five years preceding the filing of his application in 2022, of "unlawful acts that adversely reflect upon [his] moral character." 8 C.F.R. 316.10(b)(3)(iii); see 8 U.S.C. 1427(a)(3); see also p. 4, *supra* (discussing petitioner's convictions).

Finally, even apart from the facts of this particular case, the question presented is of limited prospective importance. As noted above, p. 5, *supra*, USCIS's general practice since 2020 has been to deny, pursuant to Section 1429, any naturalization application filed by a person who is subject to pending removal proceedings. Accordingly, the circumstances here—where USCIS nevertheless conducts an examination of the applicant and then does not deny the application within 120 days, 8 U.S.C. 1447(b)—are unlikely to recur with any frequency.

Furthermore, in 2024 the Department of Justice issued new regulations expanding the authority of an immigration judge and the Board of Immigration Appeals to terminate removal proceedings when an alien "is prima facie eligible for naturalization" and USCIS would have "jurisdiction to adjudicate the associated * * * application" if the alien "were not in [removal] proceedings." 8 C.F.R. 1003.1(m)(1)(ii)(B), 1003.18(d)(1)(ii)(B); see 89 Fed. Reg. 46,742, 46,760-46,761 (May 29, 2024). Those provisions further reduce the importance and propriety of enabling persons like petitioner to seek judicial determinations of their eligibility for naturalization while removal proceedings against them are pending.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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