No. 25-641

In the Supreme Court of the United States

ABDULMALIK MAHYOUB MULHI ABDULLA, PETITIONER

v.

PAMELA BONDI, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner obtained derivative U.S. citizenship through his father under former 8 U.S.C. 1432(a) (1994).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 153 F.4th 342. The orders of the Board of Immigration Appeals (Pet. App. 43a-44a) and the immigration judges (Pet. App. 45a-46a, 47a-57a) are unreported. A prior opinion of the court of appeals (Pet. App. 30a-42a) is reported at 971 F.3d 409.

JURISDICTION

The judgment of the court of appeals was entered on August 27, 2025. The petition for a writ of certiorari was filed on November 25, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Article I of the Constitution vests in Congress the power "[t]o establish an uniform Rule of Naturalization * * * throughout the United States." U.S. Const.

Art. I, § 8, Cl. 4. Under that authority, Congress has conferred U.S. citizenship by statute on certain persons born outside the United States. At issue here is derivative citizenship, a form of naturalization that a child obtains after birth through the naturalization of a parent. See 7 Charles Gordon et al., *Immigration Law and Procedure* § 98.03[1] (2020).

Petitioner's claim of derivative citizenship is governed by former 8 U.S.C. 1432(a) (1994).[1] That provision conferred derivative citizenship upon a child born outside the United States "upon fulfillment" of certain "conditions." *Ibid.* As relevant in this case, one condition was satisfied upon "[t]he naturalization of the parent having legal custody of the child when there has been a legal separation of the parents." 8 U.S.C. 1432(a)(3). The statute further required that "[s]uch naturalization take[] place while such child is unmarried and under the age of eighteen years" and that the child "resid[e] in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization" or "thereafter begin[] to reside permanently in the United States while under the age of eighteen years." 8 U.S.C. 1432(a)(4) and (5); see *Jordon* v. *Attorney Gen.*, 424 F.3d 320, 329 (3d Cir. 2005) (explaining that "[s]ubsections (3), (4) and (5) set forth, in combination," one "avenue for establishing derivative citizenship"). In short, Section 1432(a) provided for derivative citizenship when four key requirements were fulfilled before the child's 18th

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[1] Although 8 U.S.C. 1432(a) was repealed by the Child Citizenship Act of 2000, Pub. L. No. 106-395, § 103(a), 114 Stat. 1632, it continues to apply to individuals (like petitioner) who turned 18 on or before February 27, 2001. *In re Rodriguez-Tejedor*, 23 I. & N. Dec. 153, 156 (B.I.A. 2001) (en banc). All citations of Section 1432 in this brief refer to the statute as codified in the 1994 edition of the U.S. Code.

birthday: (1) the parents must legally separate; (2) one of the parents must naturalize; (3) the naturalized parent must have legal custody of the child; and (4) the child must reside in the United States as a lawful permanent resident at the time of or after the custodial parent's naturalization.

In *Jordon* v. *Attorney General*, the Third Circuit held that, to establish derivative citizenship under former 8 U.S.C. 1432(a)(3)-(5), the custodial parent must naturalize *after* the parents legally separate. 424 F.3d at 330 (citing *Bagot* v. *Ashcroft*, 398 F.3d 252, 257 (3d Cir. 2005)). In *In re Baires*, 24 I. & N. Dec. 467 (2008), however, the Board of Immigration Appeals (Board) held that a claimant did not need to be in the legal custody of his naturalized parent on the date that the parent naturalized, so long as he was in that parent's custody before he reached the age of 18. *Id.* at 470. And in *In re Douglas*, 26 I. & N. Dec. 197 (2013), the Board reaffirmed that interpretation and recognized that derivative citizenship could arise when the parents' legal separation occurred after the relevant parent naturalized (but before the child turned 18). *Id.* at 198, 201. The Board indicated that its view aligned with longstanding administrative practice, noting that *Baires* relied on a decision of the Commissioner of the former Immigration and Naturalization Service, a Department of State policy statement, and a U.S. Citizenship and Immigration Services field manual. *Id.* at 200.

2. Petitioner was born in Yemen to Yemeni parents in 1976. Pet. App. 3a. He entered the United States as a lawful permanent resident in 1990. *Id.* at 3a, 48a. In 2014, he was convicted of food-stamp fraud and wire fraud in the United States District Court for the District of Maryland. *Ibid.* The Department of Homeland

Security initiated removal proceedings against him on the ground that he had been convicted of an aggravated felony (specifically, an offense involving fraud in which the loss to the victim exceeded $10,000). *Id.* at 48a; see 8 U.S.C. 1101(a)(43)(M)(i), 1227(a)(2)(A)(iii).

Before an immigration judge, petitioner raised various claims for relief and protection from removal. See Pet. App. 3a-4a, 45a-46a. At issue here is petitioner's threshold contention that he is not removable because he claims to have derived U.S. citizenship from his father under former 8 U.S.C. 1432(a)(3)-(5). See *id.* at 4a. In support of that contention, petitioner submitted a naturalization certificate showing that his father naturalized in 1986. Administrative Record (A.R.) 1271; see Pet. App. 62a. He also provided an affidavit from a local official in Yemen dated January 8, 1989, which recounted the statement of petitioner's father that he and his wife "have a marital dispute and * * * no longer live together," that he was petitioner's "only guardian," and that he planned to travel with his two sons (petitioner included) to the United States. A.R. 1275; see Pet. App. 66a (similar translation). But petitioner stopped pressing his citizenship claim while his removal proceedings were still before the immigration judge, who then rejected petitioner's other claims for relief and protection and ordered his removal. See Pet. App. 45a-46a.[2]

Petitioner filed an appeal with the Board, seeking to revive his claim of derivative citizenship and renew his other claims for relief. Pet. App. 4a-5a. But the Board

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[2] Because petitioner did not timely appeal the immigration judge's decision to the Board, see p. 5, *infra*, the immigration judge's decision was not transcribed. See *Board of Immigration Appeals Practice Manual* § 4.2(f) (2025) (stating that transcripts are prepared in appropriate cases after a properly filed appeal).

found that petitioner's appeal was filed after the 30-day appeal deadline and he had failed to demonstrate exceptional circumstances warranting certification of the appeal out of time. *Id.* at 5a, 43a-44a. It accordingly dismissed the appeal as untimely. *Ibid.*

3. Petitioner filed a petition for review of the Board's decision, which the court of appeals denied in part and dismissed in part. Pet. App. 30a-42a.

As relevant here, the court concluded that, despite petitioner's untimely appeal to the Board, the court had jurisdiction over his citizenship claim under 8 U.S.C. 1252(b)(5), which provides for judicial determinations about such claims. Pet. App. 34a. But the court rejected petitioner's citizenship claim on the merits, applying its prior holding in *Jordon* that to establish derivative citizenship under former 8 U.S.C. 1432(a)(3)-(5), the custodial parent must naturalize after the parents have legally separated. *Id.* at 42a. Because petitioner did "not dispute that he fails to satisfy this requirement," the court found him statutorily ineligible for derivative citizenship. *Ibid.*

4. Petitioner filed a petition for a writ of certiorari from this Court, seeking review of the derivative-citizenship issue. Pet. App. 5a. In its response to that petition, the government noted that neither party had brought the Board's decisions in *Baires* or *Douglas* to the court of appeals' attention. 20-1492 Cert. Resp. Br. 4-5, 9-10. It contended that, notwithstanding *Jordon*, the Board's interpretation of Section 1432(a)(3) warranted judicial deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and *National Cable & Telecommunications Ass'n* v. *Brand X Internet Services*, 545 U.S. 967 (2005). See 20-1492 Cert. Resp. Br. 8-9. The government further explained

that, if "petitioner's factual presentation is accurate, and if his parents were 'legal[ly] separat[ed]' rather than merely living apart" during the relevant time period, then petitioner "may have acquired derivative citizenship" under the Board's approach. *Id.* at 10 (quoting 8 U.S.C. 1432(a)(3)) (brackets in original); contra Pet. i (asserting that the government's response brief "agree[d] with the Petitioner that he was a citizen"). The government therefore urged this Court to grant the petition for certiorari, vacate the court of appeals' decision, and remand for consideration of the applicability of the Board decisions to petitioner's case. 20-1492 Cert. Resp. Br. 11-12. The Court entered such an order "in light of the brief filed by the Acting Solicitor General for the United States." 142 S. Ct. 393, 393.

5. a. On remand, the parties filed supplemental letter briefs contending that the court of appeals should defer to and apply *Baires* and *Douglas* in lieu of *Jordon*. Gov't C.A. Supp. Br. 1-8 (July 18, 2022); Pet. C.A. Supp. Br. 1-9 (July 18, 2022). Yet the government further contended that, even under the Board's legal standard, the "discrepancies in [his] own evidence" meant that petitioner had not met "his burden of proving his citizenship claim." Gov't C.A. Supp. Br. 10. It attached a letter from a foreign-law specialist at the Library of Congress explaining that petitioner's principal piece of evidence, the 1989 affidavit, "is not a divorce certificate under Yemen's law." *Id.* at 9-10. It also noted that a 1990 affidavit described petitioner's parents as still married. *Id.* at 9 (citing A.R. 513). The government suggested that the court transfer the case to district court under 8 U.S.C. 1252(b)(5)(B), which provides for such a transfer "[i]f the petitioner claims to be a national of the United States and the court of appeals finds that a gen-

uine issue of material fact about the petitioner's nationality is presented." See Gov't C.A. Supp. Br. 8-10. A transfer, the government said, would give petitioner "the opportunity to present any additional evidence supporting his derivative citizenship claim." *Id.* at 10.

b. The court of appeals again denied in part and dismissed in part the petition for review. Pet. App. 1a-23a. By the time the court issued its decision, this Court had overruled *Chevron* in *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369 (2024). See Pet. App. 19a. The court of appeals accordingly concluded, in pertinent part, that it had no basis for deferring to the Board's decisions and no basis for deviating from its holding in *Jordon* that, to establish derivative citizenship under former Section 1432(a)(3)-(5), the custodial parent must have naturalized after the parents legally separated. *Id.* at 23a (citing 424 F.3d at 330). The court noted that petitioner did not dispute that his claim failed under *Jordon* because he alleged that his father naturalized before his parents separated. *Ibid.* Therefore, the court denied petitioner's citizenship claim as foreclosed by precedent. *Ibid.* Petitioner did not seek rehearing en banc.

ARGUMENT

Petitioner contends (Pet. 23-31) that the court of appeals erred by rejecting his claim of derivative citizenship under former 8 U.S.C. 1432(a) on the ground that his father naturalized before legally separating from his mother. Even if that contention is correct, however, this case is a poor vehicle for considering it because petitioner has not shown that his parents were legally separated at any point during the relevant time period. Nor does petitioner's claim implicate any circuit conflict; indeed, no other court of appeals has decided the sequencing issue under Section 1432(a)(3). Further review is unwarranted.

1. In rejecting petitioner's derivative-citizenship claim, the court of appeals applied its holding in *Jordon* v. *Attorney General*, 424 F.3d 320 (3d Cir. 2005), that a parent's "legal separation must occur prior to naturalization in order to satisfy the first clause of § 1432(a)(3)." *Id.* at 330; see Pet. App. 23a. *Jordon* treated as binding a statement in *Bagot* v. *Ashcroft*, 398 F.3d 252 (3d Cir. 2005), that Section 1432(a)(3) requires that the custodial parent "was naturalized after a legal separation" from his spouse, even though that statement was unexplained and the purported sequential requirement was concededly satisfied in that case. *Id.* at 257; see *Jordon*, 424 F.3d at 330. The Board of Immigration Appeals disagreed with *Jordon* in *In re Douglas*, 26 I. & N. Dec. 197 (2013), explaining that the statute's reference to the custodial parent's naturalization "when there has been a legal separation of the parents," 8 U.S.C. 1432(a)(3), is best read not to require the separation to precede the parent's naturalization "so long as the statutory conditions were satisfied before the child reached the age of 18." 26 I. & N. Dec. at 201.

Even assuming that *Douglas* is correct and *Jordon* is not, the court of appeals' disposition of petitioner's derivative-citizenship claim was correct. See *Schiro* v. *Farley*, 510 U.S. 222, 228-229 (1994) (respondent may "rely on any legal argument in support of the judgment below"). Petitioner's foreign birth "gives rise to a rebuttable presumption of alienage" in removal proceedings, so he bears the burden to "prove citizenship." *Scales* v. *INS*, 232 F.3d 1159, 1163 (9th Cir. 2000); cf. *Berenyi* v. *District Dir.*, 385 U.S. 630, 637 (1967) ("[I]t has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect," and "doubts 'should be resolved in favor of the United States and against the claimant.' ") (citation omitted). As the government explained below, petitioner failed to carry that evidentiary burden. See Gov't C.A. Supp. Br. 10.

Petitioner acknowledges (Pet. i-ii, 31) that Section 1432(a)(3)-(5) requires all of the conditions for derivative citizenship, including the "legal separation of the parents," to be satisfied at least before the child's 18th birthday. 8 U.S.C. 1432(a)(3); see *Douglas*, 26 I. & N. Dec. at 201. But petitioner has provided virtually no evidence that his parents were legally (rather than informally) separated before he turned 18 in 1994. See *Brissett* v. *Ashcroft*, 363 F.3d 130, 133 & n.2 (2d Cir. 2004) (Sotomayor, J.) (explaining that, when the parents "decide to reside separately but do not invoke any legal or administrative process to formalize their decision," such "an informal separation is not sufficient to render the parties legally separated"); see also *Morgan* v. *Attorney Gen.*, 432 F.3d 226, 232 (3d Cir. 2005) ("every court of appeals that has considered the question has concluded that a 'legal separation' requires some formal action" by a governmental entity with "authority to formally modify the petitioner's parents' marital relationship"). Here, petitioner's principal evidence is a 1989 affidavit that describes petitioner's father as petitioner's "only guardian" and states that "he and his wife have a marital dispute and * * * no longer live together." A.R. 1275; see Pet. App. 66a; see also A.R. 520 (2018 affidavit of petitioner's brother stating that their parents "separated [i]n 1986" and had "lived separated ever since then"). But that document is neither a divorce record, see p. 6, *supra*, nor evidence of any other "formal act which * * * mandat[es] or recogniz[es] the separate existence of the marital parties," *Brissett*, 363 F.3d at 134. It therefore does not refer to the kind of *legal* separation that the statute requires.

By referring to an ongoing "marital" dispute, moreover, the 1989 affidavit affirmatively indicates that petitioner's parents had remained married. Cf. *Estate of Waters* v. *Commissioner*, 48 F.3d 838, 847 (4th Cir. 1995) (statutory reference to "marital rights" reflected "the implicit assumption that * * * the parties are still married"). And that is consistent with the 1990 affidavit, which describes petitioner's father as still married to his mother. See p. 6, *supra*. While petitioner also cites his brother's certificate of citizenship as evidence of his own citizenship, Pet. App. 58a-60a; see Pet. i, 10, 31, he offers no evidence that his brother obtained derivative citizenship under Section 1432(a)(3)-(5). Cf. 8 U.S.C. 1433 (1994) (authorizing naturalization of certain foreign-born children upon application, without a legal-separation requirement).

Although the government suggested in 2022 that the court of appeals transfer the case to district court to allow petitioner to identify any "additional evidence supporting his derivative citizenship claim," Gov't C.A. Supp. Br. 10, the refusal to transfer was justified. Under 8 U.S.C. 1252(b)(5)(B), a transfer is appropriate if "the court of appeals finds that a genuine issue of material fact about the petitioner's nationality is presented." That standard mirrors the summary-judgment standard of Federal Rule of Civil Procedure 56(a). See *Agosto* v. *INS*, 436 U.S. 748, 754 (1978). But the mere possibility that unidentified "additional evidence" might support a claim does not raise a genuine issue of material fact. See *Matsushita Elec. Indus. Co.* v. *Zenith Ra-*

dio Corp., 475 U.S. 574, 586 (1986) (opponent of summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts"); *SEC* v. *Spence & Green Chem. Co.*, 612 F.2d 896, 901 (5th Cir. 1980) (party cannot defeat summary judgment with "vague assertions that additional discovery will produce needed, but unspecified, facts"), cert. denied, 449 U.S. 1082 (1981). And for the reasons discussed above, pp. 9-10, *supra*, the evidence petitioner has identified was too weak to trigger Section 1252(b)(5)(B). See *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 249-250 (1986). The case therefore did not need to be transferred to district court.

Petitioner's citizenship claim would therefore fail even if—contrary to the Third Circuit precedent applied in the decision below—former Section 1432(a)(3) does not require the parents' legal separation to precede the custodial spouse's naturalization. This Court does not grant review to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties. *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882); see *Herb* v. *Pitcairn*, 324 U.S. 117, 126 (1945) ("[O]ur power is to correct wrong judgments, not to revise opinions.").

2. Petitioner nevertheless contends (Pet. 12-23, 35-36) that this Court should grant a writ of certiorari to resolve the sequencing issue under Section 1432(a)(3), which he asserts is the subject of disagreement among several courts of appeals. That is incorrect. Only the Third Circuit has decided the issue, and even that court, as noted above, has not meaningfully analyzed it. See *Jordon*, 424 F.3d at 330.

a. As a threshold matter, petitioner errs in contending (Pet. 7) that the Eleventh Circuit "adopted the

Third Circuit's interpretation" of Section 1432(a)(3) in *Turner* v. *United States Attorney General*, 130 F.4th 1254 (2025). *Turner* involved the question whether Section 1432(a)(3) "imposes a continuing requirement of legal separation that must still exist at the time that all other conditions of derivative citizenship are satisfied." *Id.* at 1256. The Eleventh Circuit thus had no occasion to decide the sequence in which the conditions must be satisfied. In fact, the court expressly distinguished the Board's decisions in *In re Baires*, 24 I. & N. Dec. 467 (2008), and *Douglas*, observing that "neither [decision] addresse[d] the statutory question at issue" in *Turner*. 130 F.4th at 1264; see *id.* at 1265-1266.

Nor was the Third Circuit's view adopted in *Minasyan* v. *Gonzales*, 401 F.3d 1069 (9th Cir. 2005), as petitioner suggests (Pet. 18). The question in *Minasyan* was whether a legal separation had occurred as a matter of California law, not whether it had occurred in a particular sequence mandated by Section 1432(a)(3). See 401 F.3d at 1076-1079. The court of appeals' reference to "whether, at the time of [the petitioner's] mother's naturalization, 'there had been a legal separation of the parents,'" *id.* at 1076 (brackets and citation omitted), merely reflected the sequence of those events in that case. See *id.* at 1079. Petitioner recognizes (Pet. 18) that the Ninth Circuit itself has not treated *Minasyan* as imposing the same sequential requirement imposed by the Third Circuit in *Jordon*. Accord *Douglas*, 26 I. & N. Dec. at 201 ("aside from the Third Circuit's opinions, we are aware of no case law that is contrary to our holding in *Matter of Baires*"). And the other Ninth Circuit decisions cited by petitioner (Pet. 18-21) do not discuss the sequencing issue either, and are, in any event, nonprecedential. See *Estrada-Chavez*

v. *Sessions*, 705 Fed. Appx. 604, 605-606 (2017) (rejecting derivative-citizenship claim for failure to establish legal separation of the parents); *Romo-Jimenez* v. *Lynch*, 607 Fed. Appx. 745, 746 (2015) (rejecting claim for lack of legal custody by the naturalized parent); *Romo-Jimenez* v. *Holder*, 539 Fed. Appx. 759, 759-760 (2013) (finding legal separation without addressing sequencing); *Tabucbuc* v. *Ashcroft*, 84 Fed. Appx. 966, 968-969 (2004) (addressing legal-custody requirement).

b. Petitioner is also incorrect in positing (Pet. 13-18, 21-23) a conflict between the decision below and precedent of the First, Second, and Fifth Circuits.

In *Fierro* v. *Reno*, 217 F.3d 1 (2000), the First Circuit did not discuss the timing of the custodial parent's naturalization vis-à-vis the parents' separation; the issue under Section 1432(a)(3) was "whether the first condition ('legal custody') [could] be met." *Id.* at 3. Because that issue was dispositive of the citizenship claim, the court of appeals did not address the separate question whether the petitioner's father naturalized after the parents' separation—and the facts actually indicated that he did. See *id.* at 2. Nor did the court address the sequencing issue in *Batista* v. *Ashcroft*, 270 F.3d 8 (1st Cir. 2001), which concerned whether the petitioner had adduced sufficient evidence of legal separation to warrant a hearing under 8 U.S.C. 1252(b)(5)(B). See *id.* at 15-16.

The Second Circuit's decisions are also inapposite. The question in *Langhorne* v. *Ashcroft*, 377 F.3d 175 (2d Cir. 2004), cert. denied, 543 U.S. 1167 (2005), was whether Section 1432(a)(3) requires that the parents' legal separation occur before the child turns 18. See *id.* at 176. And *Spaulding* v. *Sessions*, 751 Fed. Appx. 130 (2d Cir. 2018), did not involve the relevant clause of Section 1432(a)(3). *Id.* at 132; see *id.* at 133 (distinguishing *Baires* and *Douglas* on that basis). Neither case addressed the sequencing issue.

As with *Fierro*, both *Bustamante-Barrera* v. *Gonzales*, 447 F.3d 388 (5th Cir. 2006), cert. denied, 549 U.S. 1205 (2007), and *Castaneda* v. *Mukasey*, 281 Fed. Appx. 284 (5th Cir. 2008) (per curiam), concerned Section 1432(a)(3)'s legal-custody requirement, not the order in which the naturalization and legal-separation elements must be satisfied. See *Bustamante-Barrera*, 447 F.3d at 390; *Castaneda*, 281 Fed. Appx. at 288; see also Pet. 22 (recognizing that the issue in *Bustamante-Barrera* "was not whether legal separation must occur at the time of the parent's naturalization"). In sum, petitioner fails to establish that any other court of appeals has decided the sequencing issue, much less that a division of authority exists on the subject.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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