No. 25-693

In the Supreme Court of the United States

JUAN JOSE GARCIA MORIN, PETITIONER

v.

PAMELA BONDI, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly held that the Board of Immigration Appeals did not abuse its discretion in denying petitioner's second untimely motion to reopen his removal proceedings under 8 U.S.C. 1229a(c)(7)(A), which limits aliens to one motion to reopen.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is available at 152 F.4th 626. The orders of the Board of Immigration Appeals (Pet. App. 16a-19a, 20a-25a, and 28a-32a) and immigration judge (Pet. App. 33a-37a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 12, 2025. A petition for a writ of certiorari was filed on December 10, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, establishes the procedures by which an alien may move to reopen proceedings after the Board of Immigration Appeals (Board) has issued a fi-

nal order of removal. In general, the INA allows an alien to file only "one motion to reopen proceedings," 8 U.S.C. 1229a(c)(7)(A), and it specifies that "the motion to reopen shall be filed within 90 days of the date of entry of a final administrative order of removal," 8 U.S.C. 1229a(c)(7)(C)(i).

The numerical limitation is subject to a single statutory exception for a "motion to reopen described in subparagraph (C)(iv)," 8 U.S.C. 1229a(c)(7)(A), which provides a "[s]pecial rule for battered spouses, children, and parents," 8 U.S.C. 1229a(c)(7)(C)(iv). The statute also specifically excepts two kinds of cases from the 90-day deadline: In cases involving asylum or withholding of removal, there is "no time limit" for filing a motion to reopen involving a claim of "changed country conditions," 8 U.S.C. 1229a(c)(7)(C)(ii); and there is a 180-day limit for filing a motion to reopen a proceeding in which a removal or deportation order was entered *in absentia*, 8 U.S.C. 1229a(b)(5)(C); 8 U.S.C. 1229a(c)(7)(C)(iii).

2. a. Petitioner is a native and citizen of Mexico who was admitted to the United States as a lawful permanent resident in 1982. Pet. App. 2a. Since his admission, petitioner was twice convicted of aggravated assault with a deadly weapon under Texas Penal Code § 22.02(a)(2) (2001). Pet. App. 2a; see *id.* at 29a. In 2011, petitioner was convicted for shooting his ex-wife in the head, for which he received a sentence of ten years of imprisonment. *Id.* at 2a. In 2018, he was convicted for assaulting a roommate with a knife, for which he was sentenced to five years of imprisonment. *Ibid.* That same year, the Department of Homeland Security placed him in removal proceedings, charging him with being removable under 8 U.S.C. 1227(a)(2)(C). Pet. App. 2a. As relevant here, that provision renders an al-

ien removable if, "after admission," the alien "is convicted under any law of * * * using, owning, possessing, or carrying * * * any weapon, part, or accessory which is a firearm * * * in violation of any law." 8 U.S.C. 1227(a)(2)(C).

After a hearing, an immigration judge ordered petitioner removed once he served his criminal sentences. Pet. App. 2a. The immigration judge also found petitioner ineligible for cancellation of removal, asylum, and withholding of removal. *Id.* at 34a-35a. The immigration judge explained that petitioner was convicted of two "aggravated felonies" that are "particularly serious offenses," rendering such relief from removal unavailable. *Id.* at 34a See 8 U.S.C. 1229b(a)(3) (providing for cancellation of removal if, *inter alia*, an alien "has not been convicted of any aggravated felony"); 8 U.S.C. 1101(a)(43) (defining an aggravated felony to include a "crime of violence * * * for which the term of imprisonment at least one year"); 8 U.S.C. 1158(b)(2)(A) (providing that an alien is not eligible for asylum if the alien has "been convicted by a final judgment of a particularly serious crime"); 8 U.S.C. 1158(b)(2)(B)(i) (providing that conviction of an "aggravated felony shall be considered" a "particularly serious crime"); 8 U.S.C. 1231(b)(3)(B) (providing for no withholding of removal where the alien has "been convicted by final judgment of a particularly serious crime," including "an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years"). The immigration judge further determined that petitioner failed to satisfy the requirements for protection under the regulations implementing U.S. obligations under the Convention Against Torture. Pet. App. 34a-36a. The Board denied petitioner's appeal, *id.* at 28a-

32a, and the court of appeals dismissed his petition for review as untimely, *id.* at 26a-27a.

b. More than two years after the Board affirmed the final removal order, petitioner filed a motion to reopen arguing that he was no longer removable, or alternatively that he was now eligible for relief from removal, in light of this Court's intervening decision in *Borden* v. *United States*, 593 U.S. 420 (2021). See Pet. App. 21a. In *Borden*, this Court held that a crime with a minimum mens rea of recklessness does not qualify as a "violent felony" under the Armed Career Criminal Act, 18 U.S.C. 924(e)(2)(B)(i). See 593 U.S. at 429 (plurality opinion). Petitioner contended that *Borden*'s reasoning indicated that his convictions for aggravated assault with a deadly weapon were not for an aggravated felony, which is defined to incorporate a definition substantially similar to the one at issue in *Borden*. Pet. App. 21a; see 8 U.S.C. 1101(a)(43)(F); 18 U.S.C. 16.

The Board denied petitioner's motion to reopen. Pet. App. 20a-25a. The Board explained that *Borden* was "immaterial to [petitioner's] removability" because he had been convicted of a firearm offense, which rendered him removable separate and apart from whether that conviction qualified as an aggravated felony. *Id.* at 22a (citing 8 U.S.C. 1227(a)(2)(C)). Turning to relief from removal, the Board concluded that petitioner's motion was untimely and that equitable tolling of the filing deadline was unwarranted because petitioner waited more than 11 months after *Borden* to file the motion to reopen and therefore failed to exercise due diligence. *Id.* at 22a-23a. The Board also declined to exercise its sua sponte reopening authority, concluding that a potential change in the law affecting eligibility for relief from removal does not by itself qualify as an "excep-

tional situation warranting consideration of an untimely motion." *Id.* at 23a. One Board member dissented and would have exercised the Board's sua sponte authority to reopen proceedings. *Id.* at 24a-25a. Petitioner did not seek judicial review of the Board's decision. *Id.* at 4a.

c. Nevertheless, more than 18 months after the denial of his first motion to reopen, petitioner filed a second motion to reopen, "rehash[ing] the same *Borden* arguments," while adding an argument that refusing to apply *Borden* retroactively would violate due process. Pet. App. 4a. The Board denied the motion. *Id.* at 16a-19a. The Board explained that petitioner's "motion to reopen is number barred because it is [his] second motion to reopen these proceedings." *Id.* at 17a. The Board also rejected petitioner's argument that he "warrants equitable tolling of the numerical limit on motions to reopen," because the court of appeals "in whose jurisdiction this matter arises[] has not applied equitable tolling to the numerical limitation for motions to reopen." *Id.* at 17a-18a. Regardless, the Board once again rejected petitioner's argument that *Borden* would entitle him to reopening because that decision "is immaterial to the [petitioner's] removability, as his conviction for aggravated assault with a deadly weapon constitutes a firearm offense rendering him removable" under Section 1227(a)(2)(C). *Id.* 18a. And the Board once again concluded that petitioner did not "present an exceptional situation that warrants the exercise of [its] sua sponte reopening authority." *Ibid.* "Holding otherwise," the Board explained, "would vitiate the statutory and regulatory deadlines, which are designed to bring finality to immigration proceedings." *Id.* at 19a.

3. Petitioner filed a petition for review with the court of appeals, contending that the Board abused its

discretion in denying his second motion to reopen. Pet. App. 5a. The court of appeals denied the petition for review in part and dismissed in part. *Id.* at 1a-15a.

As a preliminary matter, the court of appeals noted that it lacked jurisdiction to review the challenge to the Board's denial of the request for sua sponte reopening and dismissed that portion of the petition for review. Pet. App. 5a.

The court of appeals then turned to petitioner's contention that the Board abused its discretion in refusing to grant equitable tolling of the filing deadline and numerical limitation on his second motion to reopen. As for the time bar, the court acknowledged that it "applies the 'same equitable tolling standard' to the deadline for filing a motion to reopen that it uses for limitations periods in other statutes." Pet. App. 6a. The court explained, however, that "[t]he number bar is a separate impediment to relief." *Id.* at 7a (citation omitted). That bar, the court noted, is "subject to 'one and only one exception'"—the one for battered spouses, children, and parents—for which petitioner does not qualify. *Ibid.* (citation omitted).

The court of appeals rejected petitioner's contention that the number bar must also be subject to equitable tolling. Pet. App. 7a-15a. The court explained that "applying a time-based rule of equitable tolling to a res-judicata-based rule like the number bar is by its terms a misnomer." *Id.* at 7a. Whereas applying equitable tolling to a statute of limitations "has a venerable history" against which Congress is presumed to have legislated, the statutory "number bar" is a "substantive limit[] and res judicata rule[]" that has "no background equitable exceptions." *Id.* at 9a-10a (citation and internal quotation marks omitted). Instead, the "number bar rep-

resents Congress's deliberate choice to preserve finality." *Id.* at 10a. The court also reasoned that "[b]ecause the statute lays out a mandatory rule and only one enumerated exception, the statute's silence on further exceptions . . . implicitly rules them out." *Id.* at 8a-9a (citation, emphasis, and internal quotation marks omitted).

The court of appeals recognized that other circuits have concluded that the number bar is a "non-jurisdictional claim processing rule," but the court below rejected the assertion that equitable tolling necessarily follows from that conclusion. Pet. App. 11a (citation and internal quotation marks omitted). The court noted that none of those circuits explained why they could "invent a non-statutory exception," particularly where Congress showed in other portions of the statute that it knew how to adopt exceptions to the number bar. *Id.* at 12a.

The court of appeals also rejected the contention that the Board's sua sponte authority to reopen removal proceedings is "irreconcilable with the strict application" of the number bar. Pet. App. 12a (citation and internal quotation marks omitted). The court explained that the "INA vests the Attorney General with broad discretion to make immigration decisions," and that the "Attorney General's broad grant of discretion to the [Board] includes authorizing" it to grant sua sponte reopening. *Id.* at 12a-13a. Sua sponte reopening is thus "grounded in Congress's decision to vest discretion in the Attorney General," which has "no bearing on whether courts may exercise [their] equitable powers in this context." *Ibid.* The court likewise concluded that due process concerns do not support equitable tolling, because the "Due Process Clause doesn't apply to proceedings involving motions to reopen," in light of the Board's discretionary authority to deny such motions even where a movant es-

tablishes a prima facie case for relief. *Id.* at 14a; see *id.* at 14a-15a. The court thus denied the remainder of the petition for review. *Id.* at 15a.

ARGUMENT

Petitioner contends (Pet. 6-18) that this Court should review the decision below to resolve a conflict in the circuits as to whether equitable tolling applies to the numerical limitation that Congress has imposed on motions to reopen in 8 U.S.C. 1229a(c)(7)(A). This Court's review is unwarranted in this case. The court of appeals' holding is correct; petitioner overstates the disagreement among the circuits; and even if equitable tolling were available, the Board already found that petitioner would not be entitled to it because he failed to exercise due diligence. The petition for a writ of certiorari should be denied.

1. a. Congress has specified that, with one exception that is not applicable here, "[a]n alien may file one motion to reopen" removal proceedings. 8 U.S.C. 1229a(c)(7)(A). The court of appeals correctly held that the numerical limitation on filing a motion to reopen is not subject to equitable tolling.

In order to read a statute to incorporate equitable remedies like tolling, those remedies must be found within the traditional powers of a court in equity. See, *e.g.*, *Grupo Mexicano de Desarrollo, S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 332 (1999). Accordingly, when addressing statutes of limitations, this Court has explained that equitable tolling of such time limits is a "long-established feature of American jurisprudence derived from 'the old chancery rule.'" *Lozano* v. *Montoya Alvarez*, 572 U.S. 1, 10-11 (2014) (quoting *Holmberg* v. *Armbrecht*, 327 U.S. 392, 397 (1946)). Because "[t]ime requirements in lawsuits" were "custom-

arily subject to 'equitable tolling,'" *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89, 95 (1990) (citation omitted), the Court has "presumed" that Congress "draft[s] limitations periods in light of this background principle," *Young* v. *United States*, 535 U.S. 43, 49-50 (2002). And the Court "will not construe a statute to displace courts' traditional equitable authority absent the clearest command." *Holland* v. *Florida*, 560 U.S. 631, 646 (2010) (citation and internal quotation marks omitted).

No such background principle applies to the type of numerical limitation at issue here. This Court explained as much in addressing the bar on second-or-successive habeas petitions in *Jones* v. *Hendrix*, 599 U.S. 465 (2023). The Court noted that "there is a significant difference between reading equitable exceptions into a statute of limitations, on the one hand, and demanding a clear statement before foreclosing workarounds to [statutory] second-or-successive restrictions, on the other." *Id.* at 491. Whereas "[s]tatutes of limitations merely govern the *timeframe* for bringing a claim," a numerical limit "constitute[s] a modified res judicata rule," which sets out Congress's judgment regarding "the appropriate balance between finality and error correction." *Ibid.* (citation and internal quotation marks omitted). In the absence of any "historically or constitutionally grounded norms that we would not expect Congress to unsettle lightly," the Court found no basis to question that Congress would have foreclosed second-or-successive petitions except in the two enumerated conditions in which they were expressly permitted to proceed. *Id.* at 477-478, 492.

That analysis applies equally here. Petitioner has not pointed to any relevant background principle

against which Congress was legislating when it provided for only a single motion to reopen removal proceedings. And there is no dispute that the statutory text does not provide for a second motion to reopen in petitioner's circumstances. Under the statute, "[a]n alien may file one motion to reopen proceedings under this section, except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv)," which addresses certain battered relatives. 8 U.S.C. 1229a(c)(7)(A). Reading Section 1229a(c)(7)(A) to allow courts to recognize equitable exceptions beyond the single exception identified in that statute would disrupt "Congress's attempt to balance aliens' interest in having 'a fair opportunity to develop and present their respective cases' with the 'strong public interest in bringing litigation to a close.'" Pet. App. 10a (quoting *INS* v. *Abudu*, 485 U.S. 94, 107 (1988)).*

b. Petitioner's contrary arguments lack merit. Petitioner largely relies (Pet. 9-11) on the fact that some courts of appeals have concluded that the time limit for a motion to reopen is nonjurisdictional and that it may therefore be equitably tolled. Petitioner reasons (Pet. 11) that "[s]ince the one-motion rule was enacted in the same way and for the same purpose" as the time limit,

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* The existence of regulatory exceptions to the numerical limit is not to the contrary. See 8 C.F.R. 1003.2(c)(3). Those regulations may be understood as the government's waiver of the numerical limit in the circumstances specified, as is permitted for a nonjurisdictional provision. See p. 11, *infra*. Although the Fifth Circuit has held that the regulation is inconsistent with the statutory language and therefore invalid, see *Djie* v. *Garland*, 39 F.4th 280, 285 (2022), that issue is not presented in this case.

it should also be considered nonjurisdictional and subject to tolling. But that conclusion does not follow.

The fact that a statutory limit is nonjurisdictional does not automatically render it subject to equitable tolling. When a time limit is jurisdictional, that "conclusively rebut[s]" the background presumption that equitable tolling is available. *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 409 n.3 (2015). But when a time limit is nonjurisdictional, the background presumption of equitable tolling may still be rebutted if tolling is otherwise "inconsistent with the statutory scheme." *Arellano* v. *McDonough*, 598 U.S. 1, 6-7 (2023). At all times, the question is whether Congress has displaced an existing background principle that allows for equitable tolling of statutes of limitations.

Because no such background principle exists with respect to *numerical* limits on motions to reopen, there is nothing for Congress to displace. See Pet. App. 10a ("Unlike time limits, substantive limits and res judicata rules have no background equitable exceptions."). In making the numerical limit nonjurisdictional, Congress allowed it to be "subject to waiver and forfeiture by a litigant." *McIntosh* v. *United States*, 601 U.S. 330, 337 (2024). But imposing a nonjurisdictional limit does not equate to congressional authorization of equitable tolling of that limit.

Petitioner also contends (Pet. 11-14) that allowing for equitable tolling of the numerical limitation is necessary to guard against ineffective assistance of counsel. According to petitioner (Pet. 11-12), absent equitable tolling of the limit, attorneys who provide ineffective assistance would be able to "shield themselves from professional liability by filing a frivolous or non-meritorious motion to reopen" that would "preclud[e]" their clients

from seeking any further relief. But petitioner offers no basis for suggesting that such bad faith pervades the immigration bar. And even if petitioner could make such a showing, the Board retains sua sponte authority to reopen removal proceedings to address such injustices. See Pet. App. 12a-13a, 23a-24a.

Petitioner likewise errs in contending (Pet. 14) that denying equitable tolling would "deprive noncitizens of due process." As this Court explained in *Jones*, "[d]ue process does not guarantee a direct appeal, let alone the opportunity to have legal issues redetermined in successive collateral attacks on a final sentence." 599 U.S. at 487 (citation omitted). The same is true in the context of a motion to reopen removal proceedings. Indeed, as the court of appeals recognized, "the decision to grant or deny a motion to reopen is purely discretionary." Pet. App. 15a (brackets, citation, and internal quotation marks omitted). The Board has the discretion to deny a motion to reopen "even if the moving party has made out a prima facie case for relief." 8 C.F.R. 1003.2(a). The denial of such discretionary relief as barred by a numerical limitation thus does not result in a denial of due process. See, *e.g.*, *Ali* v. *Ashcroft*, 395 F.3d 722, 732 (7th Cir. 2005) ("[A]n alien cannot have a liberty or property interest in what is discretionary relief."); *Smith* v. *Ashcroft*, 295 F.3d 425, 430 (4th Cir. 2002) ("[D]iscretionary statutory 'rights' do not create liberty or property interests protected by the Due Process Clause.")

2. Petitioner contends (Pet. 8-15) that the decision below conflicts with decisions from the Second, Seventh, Ninth, and Eleventh Circuits. But petitioner overstates any conflict with the Seventh and Eleventh Circuits. And while the court of appeals' decision diverges from the

Second and Ninth Circuits, that conflict does not warrant this Court's review.

Although petitioner alleges a conflict with the Seventh Circuit, he fails to identify any decision from that circuit holding that the numerical limit on motions to reopen is subject to equitable tolling. Instead, petitioner cites (Pet. 9) *Pervaiz* v. *Gonzales*, 405 F.3d 488 (7th Cir. 2005), which holds only that the time limit for filing a motion to reopen *in absentia* removal proceedings is subject to equitable tolling. *Id.* at 490. While that case involved a "second motion to reopen," the court never grappled with the separate statutory limit on the number of motions for reopening. *Ibid.* To be sure, in a case petitioner does not identify, the Seventh Circuit has stated in dicta that both the "time and numerical limits are * * * non-jurisdictional claim-processing rules, subject to the doctrine of equitable tolling and statutory exceptions." *Ramos-Braga* v. *Sessions*, 900 F.3d 871, 876 (2018). But the court provided no analysis for that proposition and went on to hold that the Board did not err in holding that the alien's second motion to reopen was "numerically barred and untimely." *Id.* at 883.

Petitioner also errs in asserting a conflict with the Eleventh Circuit. In *Ruiz-Turcios* v. *United States Attorney General*, 717 F.3d 847 (2013), the Eleventh Circuit remanded a decision to allow the Board to "address whether reopening was barred by the one-motion rule" because the Board had "denied reopening based only on the 90-day deadline," which the court held was subject to equitable tolling. *Id.* at 850. In doing so, the court suggested that the reasoning of its decision on the time limit "appears equally applicable to, and to support, the related conclusion that the one-motion rule is a non-jurisdictional claim processing rule subject to equitable

tolling," but it declined to adopt that position. *Ibid.* Indeed, in a later unpublished decision holding that the Board did not abuse its discretion in denying a second motion to reopen as both time- and number-barred, the court explained that *Ruiz-Turcios* had not "specifically answered whether the rule allowing just one motion is also subject to equitable tolling." *Esparza-Diaz* v. *United States Attorney General*, 666 Fed. Appx. 865, 867 (11th Cir. 2016) (emphasis omitted).

As for the Second and Ninth Circuits, petitioner is correct that both courts have held that the numerical limitation in Section 1129a(c)(7)(A) is subject to equitable tolling. Yet both courts provided minimal analysis of the question. In *Zhao* v. *INS*, 452 F.3d 154 (2006), the Second Circuit reasoned that because the alien's "second motion to reopen alleged that his first such motion was denied because of ineffective assistance," equitable tolling of the numerical limit must be available. *Id.* at 159. Otherwise, "no petitioner could ever argue that his prior, otherwise-meritorious motion to reopen was denied because of ineffective assistance." *Id.* at 159-160. The Ninth Circuit engaged in similar reasoning in *Ray* v. *Gonzales*, 439 F.3d 582, 590 (2006), and has provided no more significant analysis in other cases involving the numerical limitation. See, *e.g.*, *Varela* v. *INS*, 204 F.3d 1237, 1240 (2000) (holding that the "rationale underlying equitable tolling of the statute of limitation also justifies waiving [the statutory] numerical limit on motions to reopen."); *Rodriguez-Lariz* v. *INS*, 282 F.3d 1218, 1226-1227 (2002) (similar).

The court of appeals below is thus the first circuit to analyze the question presented in any detail—and the first to have the benefit of this Court's reasoning in *Jones* about the lack of an equitable exception to the

statutory bar on second-or-successive habeas petitions. It would be premature to grant certiorari before other circuits have the opportunity to consider the analysis of the court below and of this Court in *Jones*.

3. At all events, this case would be an inappropriate vehicle in which to address the question presented. Petitioner asks (Pet. 18) that this case be remanded for the Board to address whether the numerical limitation of Section 1229a(c)(7)(A) should be tolled. But, when adjudicating petitioner's first motion to reopen (which was not number barred), the Board already addressed whether tolling was warranted and found that it was not. Pet. App. 22a-23a. The Board concluded that petitioner had failed to show "the requisite due diligence" when he "waited over 11 months after [*Borden*] was issued" before filing a motion to reopen based on *Borden*. *Id.* at 22a. In light of that decision, and the nearly 18 additional months that petitioner then took to file his second motion to reopen, there is no basis to suggest that the Board would now find that petitioner acted with sufficient diligence to justify an exception to the numerical limit. Nor is this a case in which petitioner has alleged that his failure to timely file a motion to reopen was due to the type of ineffective assistance of counsel that the Second and Ninth Circuits have recognized as a basis for tolling the numerical limitation. Thus, the resolution of any disagreement among the circuits would have no effect on the ultimate outcome of petitioner's case. Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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