No. 08-1356

In the Supreme Court of the United States

SUNGWOOK KIM, PETITIONER

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether 8 U.S.C. 1256(a)'s five-year limitation on the government's authority to rescind the grant of an adjustment to permanent resident status also precludes the initiation of removal proceedings under 8 U.S.C. 1229a based on the unlawfulness of that adjustment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 560 F.3d 833. The opinion of the Board of Immigration Appeals (Pet. App. 14a-20a) is unreported. The opinion of the immigration judge (Pet. App. 21a-27a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 26, 2009. The petition for a writ of certiorari was filed on May 4, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Section 1256(a) of Title 8 states:

> If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of [S]ection 1255 or 1259 of this title or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling removal in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this chapter to the same extent as if the adjustment of status had not been made. Nothing in this subsection shall require the Attorney General to rescind the alien's status prior to commencement of procedures to remove the alien under [S]ection 1229a of this title, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien's status.

8 U.S.C. 1256(a).

Although Section 1256(a) was originally enacted in 1952, its last sentence was added by a 1996 amendment. See Immigration and Nationality Act (INA), Pub. L. No. 82-414, § 246(a), 66 Stat. 217, amended by Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, § 378(a), 110 Stat. 3009-649.[1]

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[1] In 2003, the Immigration and Naturalization Service was abolished and its functions were transferred to the Department of Homeland Security (DHS). Pet. App. 2a n.3; see Homeland Security Act, Pub. L. No. 107-296, 116 Stat. 2135 (2002). The text of 8 U.S.C. 1256(a),

2. Petitioner, a native and citizen of South Korea, was admitted into the United States as a non-immigrant student in 1988. Pet. App. 2a. In 1992, petitioner applied to adjust his status to that of a lawful permanent resident, based on his purported employer's immigrant visa sponsorship. *Ibid.* Petitioner, although residing in St. Louis, Missouri, traveled to San Jose, California, to apply for permanent residence at the San Jose district office of the Immigration and Naturalization Service (INS). *Ibid*. Petitioner's application to adjust his status was approved that same year. *Ibid.*

At that time, Leland Sustaire was employed as a Supervisory District Adjudications Officer with the INS office in San Jose. Pet. App. 3a. Sustaire was responsible for approving applications for adjustment of status. *Ibid.* In 1998, Sustaire was convicted for having "accept[ed] bribes in exchange for issuing green cards." *Ibid.* During the course of his criminal proceeding, Sustaire testified that he had accepted bribes to approve the applications of aliens who were not qualified to become permanent residents and that many of the granted applications were incomplete in that they were missing the requisite labor certifications and other necessary documents. Administrative Record (A.R.) 399-400, 409-410.

In March 2003, believing that petitioner was one of those aliens whose application for permanent residence was fraudulently approved by Sustaire, the Department of Homeland Security (DHS) served petitioner with a Notice to Appear. The notice charged petitioner with removability as an alien present in the United States without being lawfully admitted or paroled, 8 U.S.C.

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however, has not yet been amended to reflect that rescission authority now lies with the Secretary of DHS and not the Attorney General.

1182(a)(6)(A)(i), and as an alien not in possession of a valid entry document, 8 U.S.C. 1182(a)(7)(A)(i)(I). A.R. 619-622. DHS subsequently lodged an additional charge of removability under 8 U.S.C. 1182(a)(6)(C)(i) for attempting to acquire an immigration benefit through fraud. A.R. 617-618.

During petitioner's removal proceeding, DHS proffered, *inter alia*, the following evidence in support of the charges of removability: (1) a Form I-213 (Record of Deportable/Inadmissible Alien); (2) "a list of alien numbers, prepared by Sustaire, representing those persons from whom Sustaire received bribes"; (3) "from the bribery trials, the government's Motion for Downward Departure, a transcript of Sustaire's testimony, and a copy of the judgments"; and (4) the testimony of DHS Agent Lesley Brown on "the bribery scheme," petitioner's connection to that scheme, and why petitioner "was ineligible for a status adjustment at the time it was issued to him in 1992." Pet. App. 3a; see A.R. 122-149, 293-517.

3. The immigration judge (IJ) rendered an oral decision in which he sustained the charges of removability under 8 U.S.C. 1182(a)(6)(A)(i) and (7)(A)(i)(I). Pet. App. 21a-27a.[2]

The IJ found "unusual" several facts relating to petitioner's adjustment to lawful permanent resident status, including that petitioner had obtained his green card in San Jose despite living in St. Louis at the time; that he had received the green card just one or two months after applying; and that he had paid an "excessive" fee of $10,000 for the adjustment. Pet. App. 23a-24a. The IJ further observed that petitioner had not during the

[2] The IJ determined that the additional charge under 8 U.S.C. 1182(a)(6)(C)(i) had not been proven. Pet. App. 27a.

course of his removal proceeding provided "any of the supporting documentation or copies of * * * anything that * * * would corroborate [his] position that he obtained lawfully" his employment-based permanent resident status (*e.g.*, labor certification or bachelor's degree). *Id.* at 22a-23a. The IJ also credited the government's corroborating evidence, including Agent Brown's testimony linking Sustaire's bribery scheme to petitioner's case and that petitioner appeared on the list (sorted by alien number), prepared by Sustaire, of fraudulently issued green cards. *Id.* at 22a-25a.

Based on those factual findings, the IJ found "by clear and convincing evidence" that a "legally and factually baseless immigration record was fraudulent[ly] created as a direct result of a monetary bribe paid by [petitioner] or an agent" acting on his behalf. Pet. App. 25a. The IJ further concluded that because petitioner had not lawfully acquired his permanent resident status, he was statutorily ineligible for cancellation of removal under 8 U.S.C. 1229b(a). Pet. App. 26a. Accordingly, the IJ ordered petitioner removed to South Korea. *Id.* at 27a.

4. The Board of Immigration Appeals (Board) dismissed petitioner's appeal of the IJ's decision. Pet. App. 14a-20a.

The Board rejected petitioner's hearsay objections to the admission of certain evidence, upheld the IJ's factual findings, and affirmed that petitioner was inadmissible under 8 U.S.C. 1182(a)(7)(A)(i)(I) as an immigrant lacking a valid entry document. Pet. App. 15a-18a.[3]

[3] The Board declined to consider whether petitioner was also inadmissible under 8 U.S.C. 1182(a)(6)(A)(i) as an alien present in the United States without being lawfully admitted or paroled. Pet. App. 18a n.5.

The Board then addressed petitioner's argument that DHS was not permitted to place petitioner in removal proceedings because the five-year statutory period for rescission of his permanent resident status under 8 U.S.C. 1256(a) had expired. Pet. App. 18a-19a. The Board ruled that although DHS must initiate rescission proceedings within five years of an alien's unlawful adjustment, "there is no statute of limitations applicable to the initiation of removal proceedings * * * despite an improper grant of adjustment of status by * * * DHS." *Id.* at 19a. The Board relied in part on the 1996 amendment to Section 1256(a) that added the following language: "Nothing in this subsection shall require [DHS] to rescind the alien's status prior to commencement of procedures to remove the alien under section 240, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien's status." *Ibid.* The Board also cited the Fourth Circuit's decision in *Asika* v. *Ashcroft*, 362 F.3d 264, 269-271 (2004), cert. denied, 543 U.S. 1049 (2005), which held that Section 1256(a) restricts DHS's power to rescind an adjustment of status after five years, but does not curtail its ability to initiate removal proceedings based on the same erroneous adjustment. Pet. App. 19a.

Finally, the Board upheld the IJ's denial of cancellation of removal on the ground that petitioner was not a "lawful" permanent resident. Pet. App. 20a.

5. The court of appeals denied the petition for review. Pet. App. 1a-13a.

After noting that petitioner had not "challeng[ed] the sufficiency of the government's evidence establishing that [petitioner's] green card was illegally issued," the court of appeals upheld the IJ's admission of hearsay evidence. Pet. App. 5a-6a.

The court then rejected petitioner's argument that 8 U.S.C. 1256(a) barred the institution of his removal proceeding (because he had adjusted his status more than five years prior to its institution), declining to adopt the Third Circuit's conclusion in *Garcia* v. *Attorney General*, 553 F.3d 724 (2009), "that th[e] limitations period [of Section 1256(a)] applies to removal proceedings, not just rescission of status adjustments." Pet. App. 7a. The court relied on Section 1256(a)'s plain text, which "applie[s] the five-year limitations period to rescission only." *Id.* at 8a. The court viewed the 1996 amendment to Section 1256(a) as bolstering that conclusion because it "makes clear that the legislature viewed rescission and removal as separate." *Ibid.* The court also noted that, since 1962, the Attorney General has "interpreted [8 U.S.C. 1256(a)] to only apply to the rescission of status adjustments, not removal proceedings." Pet. App. 8a. (citing *Asika*, 362 F.3d at 269, and *In re S–*, 9 I. & N. Dec. 548 (Att'y Gen. 1962)). The court concluded that "[t]o the extent there [was] any doubt as to the plain meaning of the statute," it would defer to the Attorney General's interpretation under *Chevron U.S.A., Inc.* v. *NRDC*, 467 U.S. 837, 843-844 (1984). Pet. App. 8a-9a.[4]

[4] Although not at issue in the certiorari petition before this Court, the court of appeals also rejected petitioner's argument that he should have been charged with removability rather than inadmissibility (Pet. App. 9a-11a); agreed with the IJ that petitioner was inadmissible under 8 U.S.C. 1182(a)(6)(A)(i) and (7)(A)(i)(I) (Pet. App. 10a-11a); and upheld the Board's ruling that petitioner was statutorily ineligible for cancellation of removal (*id.* at 11a-12a).

ARGUMENT

The court of appeals' decision is correct, and it only makes the limited disagreement among the courts of appeals more lopsided in the government's favor. This Court could benefit from further percolation of the issue in the courts of appeals in the aftermath of the 1996 amendment to 8 U.S.C. 1256(a), and there is no countervailing need for the Court to review this relatively infrequently arising issue now. Accordingly, further review is not warranted.

1. a. Rather than create a new circuit conflict, the court of appeals' decision in this case reinforces the majority view against the Third Circuit's outlying interpretation of 8 U.S.C. 1256(a). The Eighth Circuit joined the Fourth and Ninth Circuits in holding that although Section 1256(a) precludes the government from rescinding an alien's permanent resident status more than five years after the date of the alien's adjustment, it does not bar the government from thereafter initiating removal proceedings based on the same unlawful adjustment. See Pet. App. 7a-8a; *Asika* v. *Ashcroft*, 362 F.3d 264, 267-271 (4th Cir. 2004); *Biggs* v. *INS*, 55 F.3d 1398, 1401 & n.3 (9th Cir. 1995). And, most recently, the Sixth Circuit reached the same conclusion. See *Stolaj* v. *Holder*, No. 08-3858, 2009 WL 2513608, at *4-5 (Aug. 19, 2009). Only the Third Circuit has held that Section 1256(a)'s five-year limitation on rescission actions applies to removal proceedings. See *Garcia* v. *Attorney Gen.*, 553 F.3d 724, 727-728 (2009); *Bamidele* v. *INS*, 99 F.3d 557, 562-564 (1996); but see *De Guzman* v. *Attorney Gen.*, 263 Fed. Appx. 222, 225-226 (2008) (allowing removal proceedings and distinguishing *Bamidele* on ground that, unlike in that case, the government in *De Guzman*

did not become aware of the alien's ineligibility to adjust status until after the five-year period had lapsed).[5]

To date, only those five circuits have issued published decisions on the question presented. Given that the Third Circuit stands alone, both the importance and the intractability of the circuit conflict may depend on whether any other courts of appeals align themselves with the Third Circuit and whether the Third Circuit revisits the issue in response. This Court's intervention would thus be premature. That is especially true in light of the 1996 amendment to Section 1256(a), on which the court below relied. Further percolation is appropriate to allow other courts of appeals to adjudicate the issue under the current version of the statute.

b. Petitioner's secondary contention (Pet. 16-17) that the courts of appeals are divided on whether "the government's view of Section 1256(a) [is] entitled to *Chevron* deference" is not independently worthy of this Court's review—both because the issue is subsumed in the interpretation of 8 U.S.C. 1256(a) and because it is not essential to the court of appeals' decision in this case.

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[5] As in *De Guzman*, the government in this case did not become aware of petitioner's ineligibility until more than five years after the adjustment of status—thereby similarly distinguishing this case from *Bamidele*. Pet. App. 3a. The facts underlying the unlawful adjustment of status in this case also arguably distinguish it from both *Garcia* and *Bamidele*. In the Third Circuit cases, the government erroneously had granted adjustments based on fraudulent representations by the applicants that went undetected at the time of the adjustments. See *Garcia*, 553 F.3d at 726; *Bamidele*, 99 F.3d at 558. But this case does not involve such a mistaken grant; rather, petitioner's adjustment was procured through bribery of a rogue officer. Pet. App. 2a-4a. Petitioner therefore seeks an extension of the Third Circuit's rule to this distinct context.

Petitioner claims (Pet. 16) that a conflict exists inasmuch as "the Eighth and Fourth Circuits [have] concluded that *Chevron* deference should be afforded to the Attorney General's interpretation of Section 1256(a)," while the Third Circuit in *Garcia* has concluded that the Attorney General's "view of Section 1256(a) [is] not entitled to *Chevron* deference." But the court of appeals in this case relied primarily on the plain meaning of Section 1256(a), noting only as an alternative basis that, to the extent any doubt remained, it would defer to the Attorney General's interpretation under *Chevron*. Pet. App. 8a-9a. Accordingly, not only is the alleged conflict subsidiary to the question presented, it also is not essential to the court of appeals' holding below.[6]

2. Petitioner has failed to establish that the issue at hand arises frequently enough or is important enough to justify the Court's intervention in this case.

Aside from the published circuit decisions that have given rise to the conflict, petitioner cites (Pet. 18 & n.7) ten other cases in which the issue purportedly "has arisen directly or was implicated." But several of those decisions either refer to the issue only to point out that it did not actually arise in the case at all[7] or did not

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[6] Petitioner contends (Pet. 17 n.6) that the Second Circuit's decision in *Iavorski* v. *INS*, 232 F.3d 124 (2000), compounds the conflict on whether *Chevron* deference applies here. That is incorrect. *Iavorski* does not address 8 U.S.C. 1256(a); it addresses whether a limitations period is subject to equitable tolling in the very different context of motions to reopen. The interplay between rescission and removal proceedings under the INA in the context of adjustments of status concern matters uniquely within the agency's expertise.

[7] See, *e.g.*, *Savoury* v. *Attorney Gen.*, 449 F.3d 1307, 1314 (11th Cir. 2006); *Arellano-Garcia* v. *Gonzales,* 429 F.3d 1183, 1186 (8th Cir. 2005); *Kim* v. *Ashcroft*, 95 Fed. Appx. 418, 422 (3d Cir. 2004).

reach the issue due to a failure to exhaust administrative remedies on the issue.[8] Petitioner's reliance on a handful of cases since Section 1256(a)'s enactment 57 years ago does not make the issue sufficiently recurring to warrant this Court's review.

Petitioner also claims (Pet. 18) that the issue is "important" because of the consequences of removal for a person in his situation. An alien who has obtained his permanent resident status unlawfully or fraudulently, however, has no reasonable basis to rely on that status. See, *e.g.*, *In re Koloamatangi*, 23 I. & N. Dec. 548, 550 (B.I.A. 2003) ("It is illogical that Congress could have intended that an alien who committed fraud in order to obtain such status, and whose fraud was not discovered until more than 5 years had passed, could rely on having obtained such status 'lawfully' to claim eligibility for relief."). Petitioner, or others in his situation, therefore do not have a "legitimate expectation" of reliance (Pet. 19) on a fraudulent grant of permanent residence.

3. a. In any event, the court of appeals' decision is correct. The court properly relied on the plain text of 8 U.S.C. 1256(a) to conclude that the five-year time limit on rescission of adjustment of status does not apply to removal proceedings brought on the basis of the unlawfulness of that adjustment. As the court observed, "[o]n its face, § 1256(a) only discusses the five-year statute of limitations in terms of rescinding a status adjustment," and not in relation to removal proceedings under 8 U.S.C. 1229a. Pet. App. 8a; see, *e.g.*, *Asika*, 362 F.3d at 269. As the court further noted, the 1996 amendment to Section 1256(a)—adding in part that "[n]othing in this

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[8] See, *e.g.*, *Omar* v. *INS*, 266 Fed. Appx. 37, 38 (2d Cir. 2008); *Sanchez* v. *Winfrey*, 134 Fed. Appx. 720, 722 (5th Cir. 2005).

subsection shall require the Attorney General to rescind the alien's status prior to commencement of procedures to remove the alien"—"makes clear that the legislature viewed rescission and removal as separate, and applied the five-year limitations period to rescission only." Pet. App. 8a; see *Garcia*, 553 F.3d at 729-731 (Fuentes, J., dissenting).

The textual distinction between rescission and removal proceedings for purposes of Section 1256(a)'s limitations period is consistent with the evolution of the broader statutory scheme. Before 1952, the relevant statutes prescribed a five-year limitations period within which the Government could initiate deportation proceedings from the time that an alien became deportable. See *Oloteo* v. *INS*, 643 F.2d 679, 682-683 & n.7 (9th Cir. 1981). When Congress enacted the Immigration and Nationality Act (INA) in 1952, Congress eliminated any limitations period from the provisions governing deportation proceedings. *Ibid*. (citations omitted); see INA § 242, 66 Stat. 208 (8 U.S.C. 1229a). Congress also, however, separately provided for the first time in Section 1256(a) for action by the Attorney General to rescind an erroneous grant of adjustment of status to an alien, subject to the five-year limitations period. *Oloteo*, 643 F.2d at 683; see INA § 246(a), 66 Stat. 217. Congress's categorical elimination of a limitations period for deportation proceedings in the INA, while engrafting one on the newly created rescission procedure, supports the court of appeals' reading.

The court of appeals' interpretation avoids strange policy consequences as well. Petitioner's reading would create the anomalous result that aliens who initially entered the country as nonimmigrants and subsequently adjusted their status while in the United States would

be immune from deportation after the lapse of the five-year period, whereas aliens who initially entered the country as lawful permanent residents would be subject to deportation based on a defect in the initial grant without any time limitation. See *Asika*, 362 F.3d at 271; *In re S–*, 9 I. & N. Dec. 548, 553-554 (Att'y Gen. 1962).

In construing Section 1256(a) in 1962, the Attorney General acknowledged that the five-year limitations period for rescission actions "may be of little practical value" to many aliens because, even if an alien was insulated from rescission of status after the five-year period, "the same conduct nevertheless [could] be utilized independently as a ground for his deportation or exclusion." *In re S–*, 9 I. & N. Dec. at 555. At the same time, however, the Attorney General recognized the distinction between rescission and removal proceedings and the reason why Congress would have applied the limitations period to the former but the not latter. As the Attorney General explained, the "rescission procedure apparently resulted from congressional recognition that a means more informal and expeditious than deportation was needed to correct mistakes made in granting permanent residence to nonimmigrants through adjustment of status." *Id.* at 555 n.8; see *Asika*, 362 F.2d at 270 ("Under the Act, rescission proceedings are subject to few, if any, procedural protections, see 8 U.S.C. 1256; deportation proceedings, in contrast, are subject to extensive procedural regulations set forth in 8 U.S.C. 1229a."). Accordingly, the Attorney General correctly concluded that "the significance which Congress attached to the five-year limitation was that it cut off the availability of a procedure which, although to all intents and purposes would establish deportability, permitted the Attorney General to act more informally and expeditiously than

he could in a deportation proceeding." *In re S–*, 9 I. & N. Dec. at 555 n.8; see *Asika*, 362 F.2d at 270 ("[S]ection [1256(a)]'s five-year limitation on rescission—even if interpreted to apply only to rescission proceedings—provides an important safeguard to aliens * * * who have been in the country for more than five years after their status has been erroneously adjusted, by forcing the Attorney General to establish their deportability through the more rigorous procedures of removal rather than the less procedurally-onerous process of rescission.") (citation omitted).

In sum, Congress's decision to place a five-year limitation on the less formal rescission procedure but not on more protective removal proceedings is a reasonable accommodation between protecting an adjusted alien's expectations and preventing circumvention of the immigration laws (which may not be discovered, as here, until much later).[9]

b. The court of appeals (Pet. App. 8a-9a) was also correct in concluding that, to the extent that there is any ambiguity as to the meaning of 8 U.S.C. 1256(a), the Attorney General's interpretation is entitled to *Chevron* deference. In 1962, as discussed above (pp. 13-14, *supra*), the Attorney General determined that the five-

[9] As the Attorney General noted, "while Congress may have permitted the Attorney General to make use of more informal procedures in rescission, in practice under the governing regulation there is little difference between the safeguards afforded an alien in deportation and that afforded him in rescission." *In re S–*, 9 I. & N. Dec. at 556 n.8 (citing 8 C.F.R. 246.12(a) and (b)); see generally 8 C.F.R. Pt. 246. "That the INS has chosen *in its discretion* to provide additional procedural protections to aliens in rescission proceedings reveals nothing about whether Congress relied on the *statutory* disparity in procedures for rescission and removal in enacting section 246(a)." *Asika*, 362 F.3d at 270 n.7.

year limitations period for rescission actions did not apply to exclusion or deportation proceedings. See *In re S–*, 9 I. & N. Dec. at 551-557. Since *In re S–*, the Attorney General and Board have adhered to the same considered view. See, *e.g.*, *In re Belenzo*, 17 I. & N. Dec. 374 (Att'y Gen. 1981); Pet. App. 19a. The 1996 amendment, by making clear that rescission is not a prerequisite to removal, confirms and strengthens the Attorney General's interpretation. Indeed, if Congress had meant to overturn that longstanding interpretation, it surely would have done so expressly.

Petitioner contends (Pet. 24) that *Chevron* deference is inapplicable because the question presented involves interpretation of a limitations provision and resolution of such questions does not require agency expertise. But Section 1256(a) does not pertain to the time period within which an alien aggrieved by agency action can seek *judicial* review; it instead relates to the time period within which the *agency* itself can carry out its responsibilities under the INA by conducting removal proceedings. See *Asika*, 362 F.2d at 271 n.8 ("The Attorney General's answer to the question presented * * * does not depend on a straightforward interpretation and application of a statute of limitations; rather, it requires the Attorney General to consider whether a five-year statute of limitations would be consistent with the statutory and regulatory framework for deportation, when applied to a few, but not all, of the cases within that framework."). The interpretation of the limitations period in Section 1256(a) thus directly affects the Attorney General's execution of the INA—an issue well within his administrative responsibility and expertise.

Congress committed the adjudication of such matters under the INA to the Attorney General (authority that

has been transferred in part to the Secretary of DHS), and *Chevron* deference therefore applies. See 8 U.S.C. 1103(a)(1) (2000) ("The Attorney General shall be charged with administration and enforcement" of the INA and "determination and ruling by the Attorney General with respect to all questions of law shall be controlling."), amended by Homeland Security Act, Pub. L. No. 107-296, § 1102, 116 Stat. 2273 (substituting "Secretary of Homeland Security" for Attorney General in first clause); *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 424 (1999) ("It is clear that principles of *Chevron* deference are applicable to [the INA]."). The Attorney General's reasonable and longstanding interpretation of 8 U.S.C. 1256(a) falls well within the bounds of *Chevron* and thus controls here. That conclusion is reinforced by the general rule that any ambiguities in the application of a statute of limitations are to be resolved in favor of the government. See *BP America Prod. Co.* v. *Burton*, 549 U.S. 84, 95-96 (2006) ("[W]hen the sovereign elects to subject itself to a statute of limitations, the sovereign is given the benefit of the doubt if the scope of the statute is ambiguous.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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