No. 15-362

In the Supreme Court of the United States

ELENILSON J. ORTIZ-FRANCO, PETITIONER

v.

LORETTA E. LYNCH, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

The Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, provides that "no court shall have jurisdiction to review any final order of removal against an alien who is removable" because he committed certain specified criminal offenses. 8 U.S.C. 1252(a)(2)(C). The question presented is whether that jurisdictional bar precludes a factual challenge to the denial of petitioner's application for deferral of removal under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, 1465 U.N.T.S. 85, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a–25a) is reported at 782 F.3d 81. The decisions of the Board of Immigration Appeals (Pet. App. 26a-31a) and the immigration judge (Pet. App. 32a-54a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 1, 2015. A petition for rehearing en banc was denied on August 31, 2015. The petition for a writ of certiorari was filed on September 18, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, provides that an alien convicted of "a crime involving moral turpitude," 8 U.S.C.

1182(a)(2)(A)(i)(I), or convicted of "a violation of * * * any law or regulation of a State * * * relating to a controlled substance," 8 U.S.C. 1182(a)(2)(A)(i)(II), is removable from the United States.

Under specified circumstances, however, an alien who demonstrates that he would more likely than not be tortured if removed to a particular country may obtain withholding or deferral of removal under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *adopted* Dec. 10, 1984, 1465 U.N.T.S. 85, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988).[1] To qualify for CAT protection, the acts alleged to constitute torture must be inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." 8 C.F.R. 1208.18(a)(1).

b. The INA provides for court of appeals review of "a final order of removal" under specified circumstances. 8 U.S.C. 1252(a)(1). In 1996, Congress amended the INA to expedite the removal of criminal and other illegal aliens from the United States. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208,

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[1] Article 3 of the CAT provides that "[n]o State Party shall expel, return * * * or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." 1465 U.N.T.S. 114. Congress directed that regulations be promulgated to implement that obligation. See Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105-277, Div. G, § 2242(b), 112 Stat. 2681-822. The regulations implementing Article 3 of the CAT in the immigration context appear primarily at 8 C.F.R. 208.16-208.18 and 1208.16-1208.18.

Div. C, 110 Stat. 3009-546. Specifically, as relevant here, Congress provided that "no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in" specified sections of the INA. IIRIRA § 306(a)(2), 110 Stat. 3009-607 to 3009-608; see 8 U.S.C. 1252(a)(2)(C).

Among other changes, Congress also provided that "administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. 1252(b)(4)(B). It further established that

> Judicial review of all questions of law and fact * * * arising from any action taken or proceeding brought to remove an alien from the United States under [Title 9, Chapter 12, Subchapter II of the U.S. Code] shall be available only in judicial review of a final order under this section.

8 U.S.C. 1252(b)(9).

Congress has expressly addressed judicial review of CAT claims in two statutes. In the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Congress provided that nothing in that statute's implementation of the CAT "shall be construed as providing any court jurisdiction to consider or review claims raised under the [CAT] * * * except as part of the review of a final order of removal pursuant to [8 U.S.C. 1252]." Pub. L. No. 105-277, Div. G, § 2242(d), 112 Stat. 2681-2682; see 8 U.S.C. 1231 note.

After this Court's decision in *INS* v. *St. Cyr*, 533 U.S. 289 (2001), Congress enacted Section 106 of the REAL ID Act of 2005 to consolidate all judicial review of removal proceedings in the courts of appeals. See Pub. L. No. 109-13, 119 Stat. 310. That statute ex-

pressly addressed CAT claims, stating that "[n]otwithstanding any other provision of law"—including the statutory provisions authorizing federal habeas corpus review—"a petition for review filed with an appropriate court of appeals in accordance with [8 U.S.C. 1252] shall be the sole and exclusive means for judicial review of any cause or claim under the [CAT], except as provided in [Section 1252(e)]." REAL ID Act, § 106(a)(1)(B), 119 Stat. 310; see 8 U.S.C. 1252(a)(4).[2]

The REAL ID Act also created an exception to the INA's jurisdictional bars for "constitutional claims or questions of law." REAL ID Act, § 106(a)(1)(A), 119 Stat. 310; see 8 U.S.C. 1252(a)(2)(D). The Act otherwise preserved the jurisdictional limitation applicable to criminal aliens. It further made clear that district courts lack jurisdiction to review removal orders, and it directed that all such cases pending in the district courts at the time of enactment should be transferred to the courts of appeals. REAL ID Act, § 106(a)(1)(B) (codified at 8 U.S.C. 1252(a)(5)) and (c), 119 Stat. 310-311.

2. Petitioner is a citizen of El Salvador who entered the United States illegally in 1987. Pet. App. 5a. By 1996, he had been convicted in state court of felony criminal possession of a weapon, attempted petit larceny, and possession of a controlled substance. *Ibid.*

Petitioner joined the international criminal gang MS-13 in 2008. Pet. App. 5a. He and other gang members were later indicted on federal charges in connection with a fight with a rival gang. *Id.* at 5a-6a.

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[2] Section 1252(e) authorizes limited judicial review of administrative determinations made in expedited removal proceedings pursuant to 8 U.S.C. 1225(b).

Petitioner offered to cooperate in the prosecution, and he made a proffer of testimony. *Id.* at 6a. The government did not credit his account as "completely truthful and accurate," and it did not offer him a cooperation agreement. *Ibid.* Because the proffer statements might have become admissible at trial, the government gave copies to petitioner's co-defendants. *Ibid.* Thereafter, defense counsel told the government that petitioner had "concerns about being deported to El Salvador, because of the MS-13's perception, albeit inaccurate, that he cooperated with the government." *Ibid.* Petitioner ultimately pleaded guilty to witness tampering and was sentenced to 24 months' imprisonment. *Ibid.*

In removal proceedings, the Department of Homeland Security charged petitioner with being subject to removal as an alien present in the United States without being admitted or paroled, as an alien convicted of violating a law related to a federally controlled substance under 8 U.S.C. 1182(a)(2)(A)(i)(II), and as an "alien convicted of * * * a crime involving moral turpitude" under 8 U.S.C. 1182(a)(2)(A)(i)(I). Pet. App. 5a, 33a. Petitioner conceded to an immigration judge (IJ) that he was removable on those grounds. *Id.* at 33a.

Petitioner applied for deferral of removal under the regulations implementing the CAT. Pet. App. 6a. Petitioner asserted that his co-defendant MS-13 members "must have sent copies" of documents reflecting his cooperation against them to contacts in El Salvador. *Id.* at 7a-8a. He also asserted that the police in El Salvador would not protect him because he was a gang member. *Id.* at 8a. Although petitioner stated that he was afraid of MS-13, he was "not afraid

of the government" or the police in El Salvador, and did not know of any connections between or among MS-13, the Salvadoran government, and his co-defendants. *Ibid.*

The IJ ordered petitioner removed to El Salvador. Pet. App. 8a, 54a. The IJ also denied his request for deferral of removal under the CAT. *Ibid.* The IJ did so after concluding—based on an extensive analysis of petitioner's factual assertions—that petitioner had failed to establish that it is more likely than not that he would be tortured in El Salvador by the government or with its acquiescence. *Id.* at 8a, 36a-53a.

3. The Board of Immigration Appeals (Board) affirmed. Pet. App. 9a, 26a-31a. Specifically, the Board upheld the IJ's key determination that petitioner had failed to establish that "he will be identified by anyone in El Salvador as an MS-13 member who cooperated with law enforcement officials in the United States." *Id.* at 28a. The Board thus affirmed the IJ's conclusion that petitioner "did not establish that it is more likely than not" that he will experience harm meeting the definition of torture in El Salvador, or "that the government of El Salvador will acquiesce to any harm caused to [him] by criminal gangs unaffiliated with the government." *Id.* at 29a.

4. Petitioner then filed a petition for review in the court of appeals. He argued that the Board had erred in analyzing the facts relevant to his claim for deferral of removal under the CAT. Pet. App. 9a. The court dismissed the petition for lack of jurisdiction. *Id.* at 11a-21a.

a. The court of appeals began by noting that Congress has authorized judicial review of CAT claims only "as part of the review of a final order of removal

pursuant to" Section 1252. Pet. App. 14a (quoting 8 U.S.C. 1231 note). The court explained, however, that Section 1252(a)(2)(C) deprives courts of jurisdiction over final orders of removal when the alien is "removable by reason of having committed [one of the specified] criminal offense[s]." *Ibid.* (quoting 8 U.S.C. 1252(a)(2)(C). Here, the court recognized, petitioner had conceded that he was removable as an alien who had committed offenses specified under Section 1252(a)(2)(C). *Id.* at 19a, 20a. The court also noted that petitioner had raised no constitutional claim or question of law reviewable under 8 U.S.C. 1252(a)(2)(D). *Id.* at 9a, 20a.

The court of appeals rejected petitioner's argument that it could review petitioner's factual contentions on the theory that Section 1252(a)(4) creates jurisdiction in the court of appeals to review a final order of removal entered against a criminal alien by authorizing judicial review—"in accordance with [Section 1252]"—of "any cause or claim under the [CAT]." Pet. App. 15a. The Court explained that Section 1252(a)(4) "provides that CAT claims may only be raised in petitions for review under [Section] 1252," but it "does not grant reviewing courts greater jurisdiction over CAT claims than over other claims." *Ibid.* (quoting *Lovan* v. *Holder*, 574 F.3d 990, 998 (8th Cir. 2009)).

The court of appeals also rejected petitioner's argument, based on the Seventh Circuit's decision in *Wanjiru* v. *Holder*, 705 F.3d 258, 264 (2013), that Section 1252(a)(2)(C)'s jurisdictional bar does not apply because the Board's rejection of his request for deferral of removal does not qualify as a "final order of removal" for purposes of that provision. Pet. App. 16a-18a. The court ruled that "[i]f we were to treat

the adjudication of the deferral claim as some non-final determination rather than (as instructed by the implementing regulations) 'as part of the review of a final order of removal,' 8 C.F.R. 208.18(e)(1), this Court would lack jurisdiction to review *any* denial of deferral, even one that did raise a constitutional claim or a question of law." Pet. App. 17a. The court further noted that, in any event, under circuit precedent "an adjudication of a claim for deferral under the CAT 'qualifies as an order of removal that [an alien] may appeal.'" *Ibid.* at 17a (quoting *Pierre* v. *Holder*, 738 F.3d 39, 47 (2d Cir. 2013), cert. denied, 135 S. Ct. 58 (2014)). It went on to reject the Seventh Circuit's view that an adjudication of a request for deferral of removal under the CAT can be "final enough to permit judicial review, but at the same time not be the kind of 'final' order covered by § 1252(a)(2)(C)." *Id.* at 18a (quoting *Wanjiru,* 705 F.3d at 264).

Finally, the court of appeals rejected petitioner's different argument based on the Ninth Circuit's decision in *Lemus-Galvan* v. *Mukasey*, 518 F.3d 1081 (2008). Pet. App. 18a-20a. In that case, the Ninth Circuit held that Section 1252(a)(2)(C) does not bar judicial review of the denial of a request for deferral of removal under the CAT because the alien's commission of a criminal offense specified in that provision has no direct bearing on the CAT claim. *Lemus-Galvin*, 518 F.3d at 1083. The court of appeals rejected the Ninth Circuit's analysis on the ground that Section 1252(a)(2)(C) deprived it of jurisdiction to adjudicate any challenge to petitioner's final order of removal, including any challenge to the factual findings underlying the denial of a CAT claim for deferral of removal. Pet. App. 19a.

b. Judge Lohier joined the court of appeals' opinion, and he also issued a separate concurrence expanding on the court's analysis. Pet. App. 22a-25a. He emphasized that the legislative history of Section 1252 confirms that Section 1252(a)(2)(C)'s criminal alien bar applies broadly and deprives courts of jurisdiction to consider claims for deferral of removal under the CAT. *Id.* at 23a-24a. Judge Lohier also noted the circuit split between the Second Circuit in this case and the Seventh and Ninth Circuit decisions discussed above. Pet. App. 22a n.1, 25a. He observed that, as a result of the split, similarly-situated aliens will be treated differently depending on where their respective claims are adjudicated, noting that "[t]his is not a sustainable way to administer uniform justice in the area of immigration." *Id.* at 25a. He concluded that "Congress, or the Supreme Court, can tell us who has it right and who has it wrong." *Ibid.*[3]

DISCUSSION

The Second Circuit correctly held that Section 1252(a)(2)(C) deprives it of jurisdiction to review factual challenges to the denial of a request for deferral of removal under the CAT. As petitioner explains (Pet. 11-16), however, that court's interpretation of Section 1252(a)(2)(C)—which is shared by seven other circuit courts of appeals—squarely conflicts with the interpretations adopted by the Seventh and Ninth Circuits. We agree with petitioner that this case presents a recurring question of substantial importance on which there is a direct conflict among the courts of

[3] The court of appeals subsequently denied petitioner's petition for rehearing en banc. Pet. App. 1a.

appeals. This Court should grant certiorari and affirm the decision below.

1. The court of appeals correctly concluded (Pet. App. 14a-20a) that Section 1252(a)(2)(C) bars judicial review of findings of fact underlying the denial of a CAT claim for deferral of removal. Petitioner's arguments to the contrary lack merit.

a. Section 1252(a)(2)(C) provides that "[n]otwithstanding any other provision of law, * * * no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a [specified] criminal offense." That categorical jurisdictional bar is subject to only one exception, which allows review of "constitutional claims or questions of law." 8 U.S.C. 1252(a)(2)(D). Petitioner, however, has raised no such claim in this case. Pet. App. 9a, 20a; see Pet. i.

The court of appeals was right to conclude that Section 1252(a)(2)(C) barred it from reviewing petitioner's "*factual* claims" (Pet. i, 2) relating to the denial of his request for deferral of removal under the CAT. Petitioner's status unambiguously triggers the conditions specified in that provision. It is undisputed that petitioner is (1) an "alien," who was (2) "removable," (3) "by reason of having committed a criminal offense covered in" one of the specified grounds for removal. 8 U.S.C. 1252(a)(2)(C); Pet. App. 20a; Pet. 6 n.2. Accordingly, and because petitioner raised no constitutional claim or question of law reviewable under Section 1252(a)(2)(D), the court lacked jurisdiction to review his final order of removal, including the denial of deferral of removal under the CAT.

b. Petitioner challenges that conclusion, primarily on the ground that "Congress did not view CAT claims

as orders of removal" subject to Section 1252(a)(2)(C)'s jurisdictional bar. Pet. 17; see Pet. 17-22 (discussing relationship between 8 U.S.C. 1252(a)(4) and (5)). He also endorses (Pet. 23-24) the Seventh Circuit's view that CAT deferral claims are not "final" removal orders "because the grant or denial of such claims in no way disturbs a final order." Pet. 23 (citing *Wanjiru* v. *Holder*, 705 F.3d 258 (7th Cir. 2013)).

Petitioner is mistaken. This Court's precedent makes clear that, for purposes of judicial review, the term "final order of removal" includes all administrative determinations regarding relief or protection from removal. See *Foti* v. *INS*, 375 U.S. 217, 232 (1963) (stating that "denials of suspension of deportation" fall within the ambit of the statutory term "final order of deportation"); *id.* at 229; see also, *e.g.*, *Cheng Fan Kwok* v. *INS*, 392 U.S. 206, 216 (1968). Congress legislated against the backdrop of that precedent when it enacted Section 1252 in 1996 and amended it in the REAL ID Act of 2005, and there is no reason to believe it wanted CAT claims to be treated any differently.

Treating the denial of CAT protection as part of a final removal order is consistent with Congress's directive in Section 1252(a)(4) that the "sole and exclusive" means of obtaining judicial review of a CAT claim is by filing a "petition for review * * * in accordance with [Section 1252]." Congress repeatedly made clear that Section 1252 governs "Judicial review of orders of removal" and "order[s] of removal." See generally 8 U.S.C. 1252 (title), (a)(1), (b), and (c). Congress would have been unlikely to indicate that the denial of deferral of removal under the CAT is

reviewable "in accordance with" Section 1252 if such a denial were not considered part of a final removal order. That interpretation also follows ineluctably from Congress's further express directive, in FARRA, that courts have jurisdiction to review CAT claims only "as part of the review of a final order of removal" pursuant to Section 1252. FARRA § 2242(d), 112 Stat. 2681-2682; 8 U.S.C. 1231 note.

In any event, even if petitioner were correct that the denial of a CAT claim is not *itself* part of a final removal order, that would not affect the jurisdictional inquiry. As petitioner concedes (Pet. 5), FARRA Section 2242(d) states that CAT claims are reviewable only "as part of the review of a final order of removal" pursuant to Section 1252. FARRA § 2242(d), 112 Stat. 2681-2682; 8 U.S.C. 1231 note. But because Section 1252(a)(2)(C) bars review of an alien's final removal order if he is removable by reason of having committed a specified criminal offense, it would be impossible for a court to address the alien's CAT claim "as *part of* the review of a final order of removal," since no such review is authorized in the first place. *Ibid.* (emphasis added); see Pet. App. 17a. Thus jurisdiction over the CAT claim is precluded even if the Board's decision denying CAT protection were regarded as separate and distinct from the underlying removal order.

Section 1252(b)(9) reinforces that conclusion. That provision states that judicial review of "all questions of law and fact * * * arising from" a removal proceeding under Title 9, Chapter 12, Subchapter II of the U.S. Code "shall be available only in judicial review of a final order under this section." Section 1252(b)(9) thus makes clear that—in circumstances where Section 1252(a)(2)(C) bars "judicial review of a final or-

der"—no court may adjudicate any factual question "arising from" a covered removal proceeding. Here, there is no doubt that factual disputes over the denial of CAT protection "aris[e] from" the underlying removal proceeding, in which petitioner's request for deferral of removal under the CAT was adjudicated. 8 U.S.C. 1252(b)(9).

c. Petitioner also argues (Pet. 22) that Section 1252(a)(4) constitutes an independent grant of jurisdiction that "trumps" Section 1252(a)(2)(C)'s criminal alien bar. His argument is at odds with the text of that provision. Section 1252(a)(4) contains no independent grant of jurisdiction; instead, it provides that judicial review of CAT claims may be obtained only in "a petition for review filed with an appropriate court of appeals in accordance with this section [*i.e.*, Section 1252]." Section 1252(a)(2)(C)'s criminal alien bar is of course part of Section 1252, and there is accordingly no basis for concluding that the bar is somehow inapplicable to CAT claims that Section 1252(a)(4) requires to be brought "in accordance with" Section 1252. See *Lovan* v. *Holder*, 574 F.3d 990, 998 (8th Cir. 2009) (rejecting this argument); Pet. App. 15a-16a (same).

d. Petitioner also endorses (Pet. 24-26) the Ninth Circuit's view that Section 1252(a)(2)(C)'s jurisdictional bar is not applicable here based on its text stating that the bar applies where the alien is "removable by reason of" one of the specified criminal offenses. According to the Ninth Circuit, that means that Section 1252(a)(2)(C) bars jurisdiction over CAT deferral claims only where the IJ relied on the alien's criminal convictions in denying CAT protection. See, *e.g.*, *Alphonsus* v. *Holder*, 705 F.3d 1031, 1036-1037, reh'g

en banc denied (2013); *Lemus-Galvan* v. *Mukasey,* 518 F.3d 1081, 1083-1084 (2008); see also *Garcia* v. *Lynch*, 798 F.3d 876, 880-81 (9th Cir. 2015), reh'g denied, Oct. 20, 2015 (expanding this rule to allow review of procedural orders, in removal proceedings generally, when the order was not predicted on the criminal conviction); *Pechenkov* v. *Holder*, 705 F.3d 444, 449-452 (2012) (Graber, J., concurring) (criticizing circuit's interpretation of Section 1252(a)(2)(C)).

The Ninth Circuit's approach is incorrect. Section 1252(a)(2)(C) bars review of "any final order of removal against an alien who is removable by reason of having committed a [specified] criminal offense." By its terms, that provision turns on the grounds on which the alien is removable from the United States. Section 1252(a)(2)(C) thus applies when the final removal order declares that the alien is removable because he committed one of the specified offenses. That is true regardless of whether—in addition to finding the alien removable on that basis—the removal order also concludes the alien is not entitled to protection under the CAT. As the court of appeals explained, in such a case, whether an alien is "removable by reason of having committed a [specified] criminal offense" turns on the basis of the underlying removal order, not on the merits of his CAT claim. Pet. App. 18a-20a; see *Pechenkov*, 705 F.3d at 451 (Graber, J., concurring).

2. For the reasons explained above, petitioner's various proffered interpretations of Section 1252(a)(2)(C)'s jurisdictional bar are incorrect. Nonetheless, the government recommends that this Court grant certiorari to resolve the mature split of authority among the circuits over the meaning of that provi-

sion. The question presented is important and frequently litigated, and this Court's resolution of that question would help ensure the uniform application of the jurisdictional bar to similarly-situated aliens across the country.

Petitioner is correct (Pet. 12-16) that the proper interpretation of Section 1252(a)(2)(C) has divided the courts of appeals. Eight circuits, including the Second Circuit in this case, have held that Section 1252(a)(2)(C) bars judicial review of the denial of CAT protection—except for review of constitutional claims or questions of law permitted by Section 1252(a)(2)(D)—in circumstances where the alien is removable from the United States because he has committed one of the offenses specified in that provision.[4] By contrast, the Seventh and Ninth Circuits do not apply Section 1252(a)(2)(C) in such circumstances. See pp. 7-9, *supra*; Pet. 12-13.

The circuit split is entrenched and has existed for more than five years. The Ninth Circuit recently declined to consider its rule en banc, see *Alphonsus*, 705 F.3d 1031, and the Seventh Circuit recently confirmed that the analysis set forth in *Wanjiru* constitutes binding circuit precedent, see *Lenjinac* v. *Holder*, 780 F.3d 852, 855 (7th Cir. 2015). Moreover, at least five of the circuits in the majority have expressly

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[4] See Pet. App. 14a-20a; *Ventura-Reyes* v. *Lynch*, 797 F.3d 348, 356-358 (6th Cir. 2015); *Cole* v. *United States Att'y Gen.*, 712 F.3d 517, 532-533 (11th Cir.), cert. denied, 134 S. Ct. 158 (2013); *Escudero-Arciniega* v. *Holder*, 702 F.3d 781, 785 (5th Cir. 2012); *Cherichel* v. *Holder*, 591 F.3d 1002, 1017 (8th Cir.), cert. denied, 562 U.S. 828 (2010); *Gourdet* v. *Holder*, 587 F.3d 1, 5 (1st Cir. 2009); *Saintha* v. *Mukasey*, 516 F.3d 243, 248 (4th Cir.), cert. denied, 555 U.S. 1031 (2008); *Ilchuk* v. *Attorney Gen.*, 434 F.3d 618, 624 (3d Cir. 2006).

declined to revisit their precedents based on the reasoning adopted by the Seventh or Ninth Circuit.[5] There thus appears to be no realistic prospect that the circuit split will be resolved without this Court's intervention.

This case is a suitable vehicle for the Court to resolve the circuit split and explain whether—and how—Section 1252(a)(2)(C) bars judicial review of denials of deferral of removal under the CAT (except to the extent review of constitutional claims and questions of law is available under Section 1252(a)(2)(D)). That question is squarely presented and was determinative of petitioner's claims below. See Pet. App. 14a-20a. Accordingly, this Court's review is warranted to resolve the division of authority among the lower courts.

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[5] See Pet. App. 14a-20a; *Ventura-Reyes*, 797 F.3d at 356-358; *Perez-Guerrero* v. *U.S. Atty. Gen.*, 717 F.3d 1224, 1231 (11th Cir. 2013) (rejecting argument that denial of deferral of removal is not a "final order" under section 1252(a)(2)(C) because alien is not removable "by reason of" his criminal conviction), cert. denied, 134 S. Ct. 1000 (2014); *Gallimore* v. *Holder*, 715 F.3d 687, 690 (8th Cir. 2013); *Kporlor* v. *Holder*, 597 F.3d 222, 226 (4th Cir.), cert. denied, 562 U.S. 1003 (2010) (rejecting arguments that Section 1252(a)(2)(C) should not apply because the resolution of a withholding of removal claim must rest on the criminal offense, and because withholding of removal is separate from and independent of the removal order); see also *Medrano-Olivas* v. *Holder*, 590 F. Appx. 770, 772 (10th Cir. 2014) (unpublished disposition, following the majority of circuits rather than the Seventh or Ninth Circuit).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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