No. 16-837

In the Supreme Court of the United States

FERNANDO LAUREL-ABARCA, PETITIONER

v.

JEFFERSON B. SESSIONS III, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a court of appeals lacks jurisdiction to review a decision by the Board of Immigration Appeals (Board) finding an alien removable and denying an application for protection from removal, but remanding for further consideration of voluntary departure, where the alien fails to file a petition for review within 30 days of the Board's decision denying relief.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a-2a) is unreported. The decision of the Board of Immigration Appeals (Pet. App. 3a-6a) and the immigration judge's order (Pet. App. 7a-14a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 25, 2016. A petition for rehearing was denied on November 3, 2016 (Pet. App. 15a). The petition for a writ of certiorari was filed on December 28, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, a petition for review in a federal court of appeals is the "sole and exclusive means for judicial review of an order of removal."

8 U.S.C. 1252(a)(5). The courts of appeals' jurisdiction to review such orders is limited to "final order[s] of removal." 8 U.S.C. 1252(a)(1). A removal order becomes "final" for purposes of judicial review either upon "a determination by the Board of Immigration Appeals [Board] affirming such order" or "the expiration of the period in which the alien is permitted to seek review of such order" by the Board. 8 U.S.C. 1101(a)(47) (addressing finality of any "order of deportation"); see 8 C.F.R. 1003.39.

The INA authorizes a court of appeals to review an order in removal proceedings only when the alien files a petition for review "not later than 30 days after the date of the final order of removal." 8 U.S.C. 1252(b)(1). That filing deadline is "mandatory and jurisdictional" and is not subject to equitable exceptions. *Stone* v. *INS*, 514 U.S. 386, 405 (1995) (citation omitted). Review of a final order of removal in the court of appeals encompasses both findings of removability and the denial of any relief from removal. See *Foti* v. *INS*, 375 U.S. 217, 220-221, 232 (1963).

2. Petitioner is a native and citizen of Mexico who illegally entered the United States in or around May 2000. Certified Administrative Record (A.R.) 341; see Pet. App. 8a. In 2007, the Department of Homeland Security initiated removal proceedings against petitioner on the ground that he was unlawfully present in the United States. A.R. 341. Petitioner conceded his removability but sought cancellation of removal on the ground that his estranged wife, a United States citizen, had subjected him to mental and emotional abuse by making derogatory comments about his ethnicity, sexual orientation, and immigration status. A.R. 259-261, 299; see 8 U.S.C. 1229b(b)(2)(A)(i)(I) (authorizing

cancellation of removal where an alien can establish that he or she "has been battered or subjected to extreme cruelty by a spouse * * * who is or was a United States citizen").

An immigration judge denied petitioner's application for cancellation of removal. Pet. App. 13a-14a. The immigration judge noted that petitioner's allegations, even if true, failed to establish the sort of "hardship or extreme cruelty" necessary to qualify for relief under 8 U.S.C. 1229b(b)(2)(A)(i)(I). Pet. App. 13a. The immigration judge did, however, grant petitioner 60 days in which to voluntarily depart from the United States. *Id.* at 14a; see 8 U.S.C. 1229c(b)(1) (authorizing Attorney General to grant certain classes of removable aliens "voluntary departure in lieu of removal"). The immigration judge ordered that, if petitioner did not voluntarily depart within 60 days, he would become subject to "an order of removal without further notice or proceedings." Pet. App. 14a.

In June 2013, the Board dismissed petitioner's appeal. A.R. 49-50. The Board agreed with the immigration judge that, although petitioner's wife may have made comments to petitioner that were "unkind and even cruel," there was no evidence of the sort of "extreme cruelty" and "domestic violence" necessary to establish petitioner's eligibility for cancellation of removal under 8 U.S.C. 1229b(b)(2)(A)(i)(I). A.R. 50 (citation omitted). The Board noted, however, that the immigration judge failed to advise petitioner of certain requirements related to voluntary departure. *Ibid.* The Board therefore remanded to the immigration judge for the limited purpose of advising petitioner of those requirements. *Ibid.* Petitioner did not file a petition for review in the court of appeals.

3. On remand, the immigration judge informed petitioner of the relevant requirements for voluntary departure and granted him an additional 60 days in which to voluntarily depart. A.R. 33-34, 37-39. The immigration judge specifically noted that the Board's June 2013 decision had resolved questions concerning petitioner's removability and that the proceedings on remand were for the sole purpose of ensuring that petitioner "underst[oo]d the rules for voluntary departure." A.R. 36.

Petitioner filed an appeal with the Board in order to "confer federal appellate jurisdiction over" the Board's earlier decision upholding the denial of his request for cancellation of removal. A.R. 23. In March 2016, the Board dismissed petitioner's appeal on the ground that it did not address the immigration judge's most recent order. Pet. App. 3a-5a; see *id.* at 4a-5a (explaining that the Board's June 2013 decision resolved petitioner's challenge to the immigration judge's denial of his application for cancellation of removal and "explicitly limited the scope of the remand to the specific purpose of providing [petitioner] voluntary departure advisals and granting a new voluntary departure period"). The Board granted petitioner an additional 60 days in which to voluntarily depart from the United States. *Id.* at 5a-6a.

4. Petitioner filed a petition for review challenging the Board's June 2013 decision, which the court of appeals dismissed on the government's motion. Pet. App. 1a-2a. The court explained that, under longstanding Ninth Circuit precedent, a Board decision that affirms a finding of removability and "remands for consideration of voluntary departure but denies all other forms of relief" is a final removal order. *Id.* at 2a

(quoting *Abdisalan* v. *Holder*, 774 F.3d 517, 526 n.8 (2014) (en banc)). Because petitioner failed to file a petition for review within 30 days of the Board's June 2013 decision, the court concluded that it lacked jurisdiction to review that decision. *Id.* at 1a-2a.

ARGUMENT

Petitioner argues (Pet. 6-10) that the final reviewable order of removal in this case should be the Board's March 2016 decision, rather than the June 2013 decision in which the Board upheld the denial of his application for cancellation of removal. He further contends (Pet. 4-5) that this Court's review is warranted to resolve an alleged conflict among the courts of appeals over whether a Board decision affirming an immigration judge's removal order and denying protection from removal, but remanding for further consideration of voluntary departure, is a final order of removal from which the alien has 30 days to petition for review. Every court of appeals to have considered the question, however, has determined that such a decision is a "final order of removal" under 8 U.S.C. 1252(a)(1). That rule ensures that aliens, like petitioner, have a full and fair opportunity to seek review in the courts of appeals. Petitioner's failure to avail himself of that opportunity in a timely manner—despite longstanding precedent clearly informing him of the need to do so—is not an issue that merits this Court's review. The petition for a writ of certiorari should be denied.[1]

1. Courts of appeals may only review a "final order of removal." 8 U.S.C. 1252(a)(1). An immigra-

[1] The same issue is presented in *Singh* v. *Sessions*, petition for cert. pending, No. 16-952 (filed Jan. 30, 2017).

tion judge's decision that an alien should be removed becomes final when the Board affirms the immigration judge's determination or when the time for administratively appealing that finding has expired. 8 U.S.C. 1101(a)(47)(B); see 8 C.F.R. 1003.39. The court of appeals' conclusion that a Board decision affirming a finding of removability and denying protection from removal is a "final order of removal" under Section 1252(a)(1), even if the Board remands for consideration of voluntary departure, does not warrant review.

a. When the Board remands a case to an immigration judge, the Board's decision ordinarily is not a "final" decision on the alien's removal. Unless the Board explicitly retains jurisdiction or otherwise limits the scope of its remand order, the immigration judge reacquires jurisdiction over the proceedings on remand and may consider new evidence or new requests for relief. See *In re M-D-*, 24 I. & N. Dec. 138, 141 (B.I.A. 2007); see also *Fernandes* v. *Holder*, 619 F.3d 1069, 1074 (9th Cir. 2010). That is especially true in the case of a remand to consider various "impediments to removal" (such as asylum or withholding of removal) that must be cleared before "a final order of removal [i]s entered." *Lolong* v. *Gonzales*, 484 F.3d 1173, 1177-1178 (9th Cir. 2007) (en banc) (citation omitted); see *Abdisalan* v. *Holder*, 774 F.3d 517, 524 (9th Cir. 2014) (en banc) (concluding that "there is only one final order of removal per alien" and a removal determination cannot be regarded as "final" if the immigration judge is considering protection from removal on remand).

An immigration judge's ability to consider new claims on remand does not, however, authorize the judge to "relitigate issues that were previously con-

sidered and decided" by the Board. *In re Alcantara-Perez*, 23 I. & N. Dec. 882, 884 (B.I.A. 2006); see *In re M-D-*, 24 I. & N. Dec. at 141 (holding that an immigration judge may not reconsider the Board's decision on remand). As the Ninth Circuit has concluded, when the Board affirms a finding of removability and denies protection from removal, an immigration judge cannot "reconsider" those rulings on a remand for consideration of voluntary departure: the Board "ha[s] already adjudicated [the alien's] deportability" and, in most cases, "the only lingering question on remand [i]s *how*" the alien will leave the United States. *Pinto* v. *Holder*, 648 F.3d 976, 978-979 (2011) (emphasis added) (quoting *Castrejon-Garcia* v. *INS*, 60 F.3d 1359, 1361-1362 (9th Cir. 1995)); cf. *Dada* v. *Mukasey*, 554 U.S. 1, 8, 11 (2008) (explaining that "[v]oluntary departure is a discretionary form of relief that allows certain favored aliens * * * to leave the country willingly" and thus "sidestep some of the penalties" associated with "involuntar[y] remov[al]").

Moreover, courts of appeals typically lack jurisdiction to review voluntary departure decisions. See 8 U.S.C. 1229c(f) ("No court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure * * * nor shall any court order a stay of an alien's removal pending consideration of any claim with respect to voluntary departure.").[2] For that reason, a Board decision affirming an order of removal, denying protection from removal, and remanding for consideration of voluntary departure is

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[2] A limited exception to that rule exists for "constitutional claims or questions of law" related to a voluntary departure decision. 8 U.S.C. 1252(a)(2)(D); see *Corro-Barragan* v. *Holder*, 718 F.3d 1174, 1177 (9th Cir. 2013). That exception is not at issue here.

"effectively * * * the *only* order that [the court] can review." *Pinto*, 648 F.3d at 980 (emphasis added); see *Rizo* v. *Lynch*, 810 F.3d 688, 691 (9th Cir. 2016) (holding that, in such a circumstance, "all substantive matters judicially reviewable by this court have been finalized" and "[t]he only pending matter concerns voluntary departure—itself a form of removal, the granting or denial of which we are powerless to review").

In this case, the Board's June 2013 decision upheld the denial of petitioner's application for cancellation of removal. See A.R. 49-50. That decision resolved the only issue on which petitioner later sought review in the court of appeals. The Board remanded the case to the immigration judge for the sole purpose of providing petitioner with further information about voluntary departure and giving him another chance to voluntarily depart. A.R. 50; see Pet. App. 4a-5a. The immigration judge was not empowered to revisit any aspect of the Board's June 2013 decision on remand, nor was the judge's decision on remand subject to judicial review. The court of appeals therefore concluded that the Board's June 2013 decision was a "final order of removal" within the meaning of 8 U.S.C. 1252(a)(1). Pet. App. 1a-2a.

b. Petitioner argues (Pet. 6-10) that the court of appeals' decision is inconsistent with the principle that a removal order "cannot become final for any purpose when it depends on the resolution of further issues by the [immigration judge] on remand." Pet. 6 (quoting *Abdisalan*, 774 F.3d at 523). As the court has explained, however, that rule does not apply "when [the Board] remands for consideration of voluntary departure but denies all other forms of relief." *Abdisalan*,

774 F.3d at 526 n.8. *Abdisalan* held that when a substantive application for protection from removal remains pending on remand—in that case, background checks related to a grant of withholding of removal—a Board decision on removability is not "final" because the outcome of the proceedings on remand could substantively affect the government's ability to remove the alien. *Id.* at 525-526. The court has noted, however, that a remand for consideration of voluntary departure merely concerns *how* the alien will depart from the United States, not *whether* he will do so, and thus it does not affect the finality of the underlying order of removal. *Rizo*, 810 F.3d at 691-692 (distinguishing *Abdisalan*); see *id.* at 692 (holding that a remand for consideration of the unrelated and generally unreviewable issue of voluntary departure poses "no threat that the order of removal could become final at multiple points in time," because the alien "[i]s subject to the single, final order of removal contemplated by Congress * * * even if non-reviewable administrative matters regarding voluntary departure remain pending").[3]

Petitioner notes (Pet. 8-9) that a remand for consideration of voluntary departure does not preclude the immigration judge from considering newly discovered evidence or other newly available claims for

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[3] Petitioner's citations to 8 C.F.R. 1003.1(d)(7), see Pet. 8-9, are misplaced. Section 1003.1(d)(7) states that "[t]he Board *may* return a case to * * * an immigration judge for such further action as may be appropriate, without entering a final decision on the merits of the case." 8 C.F.R. 1003.1(d)(7) (emphasis added). Nothing in that regulation purports to require the Board to refrain from entering a final decision whenever it remands to the immigration judge on the discrete issue of voluntary departure.

protection from removal on remand. See *In re M-D-*, 24 I. & N. Dec. at 141. But the court of appeals' decision is not inconsistent with that possibility. The circumstance petitioner identifies would occur only in a rare case where new evidence or new grounds for contesting removal arise on remand that could not have been raised at an earlier stage of the proceedings. *Ibid.*; see *Fernandes*, 619 F.3d at 1074. In the vast majority of cases, a remand for consideration of voluntary departure will not give rise to any further dispute concerning the alien's removability, just as it did not in this case. See A.R. 36; cf. *In re Alcantara-Perez*, 23 I. & N. Dec. at 884 (explaining that an immigration judge's ability to consider new claims on remand does not permit the judge to "relitigate issues that were previously considered and decided" by the Board). Moreover, an immigration judge's ability to consider newly available evidence and claims on remand is based entirely on agency practice: the Board may limit the scope of remand proceedings by "retain[ing] jurisdiction and qualif[ying] or limit[ing] the scope of the remand to a specific purpose," or by "impos[ing] a different rule" in the exercise of its decisionmaking authority. *Fernandes*, 619 F.3d at 1074. Petitioner states no reason to alter the prevailing interpretation of the INA's finality requirement because of an agency practice that could change.

In any event, the possibility that a remand for consideration of voluntary departure could, in a rare case, give rise to another judicially reviewable order of removal does not suggest that the court of appeals erred. "Restricting appellate review to 'final decisions' prevents the debilitating effect on judicial administration caused by piecemeal appellate disposition

of what is, in practical consequence, but a single controversy." *Eisen* v. *Carlisle & Jacquelin*, 417 U.S. 156, 170 (1974); see *Abdisalan*, 774 F.3d at 526 (same under INA). But that does not mean that separate petitions for review are never permitted. This Court has held, for example, that separate petitions for review are required when an alien challenges a Board decision concerning his removability and a subsequent decision on either a motion to reopen or a motion to reconsider. *Stone* v. *INS*, 514 U.S. 386, 393-395 (1995); see *id.* at 405 ("[A] deportation order is final, and reviewable, when issued. Its finality is not affected by the subsequent filing of a motion to reconsider."). If an immigration judge on remand considers new evidence or a new claim on a matter unrelated to voluntary departure, it would be functionally equivalent to a motion to reopen. See *In re M-D-*, 24 I. & N. Dec. at 141-142. The possibility of a second petition for review addressing those new issues would not be at odds with the overall operation of the framework for administrative and judicial review.

For these reasons, the possibility that a voluntary departure remand could, in a rare case, result in another petition for review poses no risk of the sort of "debilitating effect on judicial administration" that finality rules are intended to prevent. *Eisen*, 417 U.S. at 170. In the great majority of cases in which the Board remands only for consideration of voluntary departure, its order represents the dispositive final agency decision on removability and protection from removal—just as it did in this case.[4]

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[4] Petitioner notes (Pet. 5) that the government has previously argued that the "better rule" in cases of this sort would be one that treats all remands the same for finality purposes and that defers

2. There is no conflict among the courts of appeals over whether a Board decision affirming an alien's removability, denying protection from removal, and remanding for consideration of voluntary departure is a final order of removal. The courts of appeals that have addressed the issue have unanimously concluded that such a decision is final for purposes of judicial review. See *Alibasic* v. *Mukasey*, 547 F.3d 78, 83-84 (2d Cir. 2008); *Qingyun Li* v. *Holder*, 666 F.3d 147, 149-151 (4th Cir. 2011); *Holguin-Mendoza* v. *Lynch*, 835 F.3d 508, 509 (5th Cir. 2016) (per curiam); *Giraldo* v. *Holder*, 654 F.3d 609, 611-615 (6th Cir. 2011); *Almutairi* v. *Holder*, 722 F.3d 996, 1000-1002 (7th Cir. 2013); *Batubara* v. *Holder*, 733 F.3d 1040, 1041-1043 (10th Cir. 2013). The Eleventh Circuit has reached the same result in a similar circumstance. See *Del Pilar* v. *United States Att'y Gen.*, 326 F.3d 1154, 1157 (2003) (per curiam) (concluding that a Board decision resolving all issues related to removability and remanding to determine "the country to which [the alien] will be removed" "constitute[d] a final order of removal"). The First Circuit has not definitively re-

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judicial review until all proceedings before the agency are complete. Gov't C.A. Supp. Br. at 2, *Singh* v. *Lynch*, 835 F.3d 880 (9th Cir. 2016) (per curiam) (No. 12-74163), petition for cert. pending, No. 16-952 (filed Jan. 30, 2017); see *id.* at 16-19. That position was based largely on the view that a bright-line rule applicable to all Board decisions would have the "benefit of clarity for the immigration bar." *Id.* at 14. The government argued, however, that en banc reconsideration was not warranted in *Singh* because the Ninth Circuit's rule is consistent with precedent and gives aliens sufficient notice of when they must petition for review. *Id.* at 17-19. The government has adhered to that view in opposing the petition for a writ of certiorari in *Singh*. See Br. in Opp. at 6-7, 8-9, *Singh*, *supra* (No. 16-952).

solved the issue, but it has assumed that such a decision is a final order of removal. See *Hakim* v. *Holder*, 611 F.3d 73, 79 (2010); cf. *Cano-Saldarriaga* v. *Holder*, 729 F.3d 25, 27 (1st Cir. 2013) (noting that the finality of a Board decision affirming removability and remanding to designate a country of removal "remains an open question" in light of *Hakim*). No court of appeals has held, in a precedential opinion, that such a decision is *not* a final order of removal.

As petitioner notes (Pet. 4-5), the First, Fourth, and Sixth Circuits have "decline[d]" to exercise their jurisdiction "for prudential reasons" in some cases where the Board has resolved questions of removability but has remanded for consideration of voluntary departure, opting instead to dismiss petitions for review "without prejudice" to renewal once voluntary departure proceedings are complete. *Giraldo*, 654 F.3d at 616, 618; see *Qingyun Li*, 666 F.3d at 153-154; *Hakim*, 611 F.3d at 79. Those cases do not create a circuit conflict that warrants review.

First, each of the decisions on which petitioner relies holds or assumes that a Board decision affirming an alien's removability, denying protection from removal, and remanding for consideration of voluntary departure is final and reviewable. See *Qingyun Li*, 666 F.3d at 149 (holding that a Board decision "denying relief from removal but remanding the case to the [immigration judge] to determine an alien's eligibility for voluntary departure is a final order of removal conferring jurisdiction"); *Giraldo*, 654 F.3d at 614-615 (same); see also *Hakim*, 611 F.3d at 79 & n.4 (noting that other circuits have "held that a [Board] order denying relief from removal and remanding for consideration of voluntary departure is a final order of

removal" and "[a]ssuming" the correctness of that rule). And in each case, the alien filed a timely petition for review within 30 days of the initial Board decision finding the alien removable and denying protection from removal. None of the decisions on which petitioner relies permits an alien to miss that filing deadline and seek judicial review only *after* the conclusion of the voluntary departure proceedings, as petitioner did here. In *Hih* v. *Lynch*, 812 F.3d 551 (2016), for example, the Sixth Circuit explained that the court was able to defer the exercise of its jurisdiction in *Giraldo* because it "had jurisdiction in the first place by virtue of the original timely petition for review." *Id.* at 555. But where, as here, an alien fails to file an initial petition for review, the court reasoned that "there has never been such jurisdiction" and thus nothing for the court to defer. *Ibid.* Petitioner's claim would thus fail even in the First, Fourth, and Sixth Circuits.

Second, none of the decisions on which petitioner relies *requires* the court of appeals to defer exercising its jurisdiction to consider a petition for review of a Board decision resolving issues of removability and remanding for consideration of voluntary departure. See, *e.g.*, *Hih*, 812 F.3d at 556 (rejecting argument that *Giraldo* "*requires* a dismissal without prejudice for prudential reasons; some discretion is inherent in the very idea of prudence"); *Perez-Vargas* v. *Gonzales*, 478 F.3d 191, 194-195 & n.4 (4th Cir. 2007) (reviewing Board decision on removability despite a pending remand "for the purpose of determining whether [the alien] is entitled to voluntary departure");

Saldarriaga v. *Gonzales*, 402 F.3d 461, 465 n.2 (4th Cir. 2005) (same), cert. denied, 546 U.S. 1169 (2006).[5]

Third, the courts of appeals that have deferred exercising their jurisdiction in cases of this sort have largely done so to preserve the operation of 8 C.F.R. 1240.26(i), which provides that a grant of voluntary departure automatically terminates with the filing of a petition for review. See, *e.g.*, *Hakim*, 611 F.3d at 79 (concluding that "[t]he automatic termination provision * * * assumes a chronological order, i.e., that the grant of voluntary departure *precedes* the filing of a petition for judicial review"). Permitting an alien "to seek both voluntary departure and judicial review" would, according to those courts, "circumvent the regulation" and "deny[] the government the benefit of

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[5] Although some courts have criticized the approach employed in *Giraldo*, *Hakim*, and *Qingyun Li*, that criticism reflects disagreement over the appropriate mechanism for deferring the exercise of a court's jurisdiction, not a dispute over whether a Board decision on removability is final notwithstanding the consideration of voluntary departure on remand or even over whether the exercise of jurisdiction may be deferred. See *Almutairi*, 722 F.3d at 1002 (concluding that, rather than "dismiss[ing] a properly filed petition without prejudice and invit[ing] a later filing after the voluntary departure terms are sorted out," the proper procedure "is for the alien to file her petition for review within 30 days of a Board order resolving everything except voluntary departure, and then for this court to retain jurisdiction but to stay proceedings on the petition until voluntary departure has been resolved one way or the other"); see also *Hih*, 812 F.3d at 555 (acknowledging that, "in retrospect," the approach described in *Almutairi* may "have been a preferable way for the *Giraldo* court to rule"). Although petitioner failed to do so in this case, nothing prevents aliens in future cases from petitioning for review and asking the court of appeals to defer action on the petition while the immigration court considers voluntary departure on remand.

'a prompt and costless departure.'" *Ibid.* (quoting *Dada*, 554 U.S. at 32-33).

Contrary to petitioner's contention (Pet. 4), there is no tension between 8 C.F.R. 1240.26(i) and a requirement that an alien petition for review from a Board decision before the resolution of voluntary departure. Even when voluntary departure is automatically terminated by the filing of a petition for review, an alien is provided a 30-day grace period in which to depart without being "deemed to have departed under an order of removal." 8 C.F.R. 1240.26(i). If the petition for review precedes the grant of voluntary departure, the alien, once voluntary departure is granted, must depart while the petition is pending (assuming the petition is not resolved before the voluntary departure period expires) or incur the consequences of departing under a removal order. *Ibid.* In either circumstance, an alien must decide whether to honor the *quid pro quo* by departing voluntarily (and thereby avoiding the consequences of a removal order) or to remain in the United States until the petition for review is resolved while being subject to a removal order.

3. The uniform rule adopted by the courts of appeals, under which a Board decision affirming an alien's removability, denying protection from removal, and remanding for the limited purpose of considering voluntary departure is "final" for purposes of judicial review, provides aliens with sufficient guidance on when they must seek review in such cases. That is especially true in petitioner's case: since at least 1995, the court of appeals has required aliens to petition for review from Board decisions on removability notwithstanding the pendency of voluntary departure proceedings on remand, see *Castrejon-Garcia*, 60 F.3d at

1361-1362, and petitioner has provided no explanation for his failure to comply with that straightforward requirement. No reason exists to grant review in these circumstances.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2017