No. 18-1329

In the Supreme Court of the United States

MOMODOULAMIN JOBE, PETITIONER

v.

WILLIAM P. BARR, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the date on which an alien's period of continuous residence in the United States shall be deemed to end under Subparagraph (B) of the stop-time rule, 8 U.S.C. 1229b(d)(1)(B), is the date of his commission of a qualifying offense.

ADDITIONAL RELATED PROCEEDINGS

United States Court of Appeals (2d Cir.):

Jobe v. *Sessions*, No. 17-284 (Dec. 21, 2018)

United States District Court (D. Mass.):

Jobe v. *Donelan*, No. 3:18-cv-30004-MGM (Mar. 30, 2018) (petition for a writ of habeas corpus challenging detention)

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a-7a) is not published in the Federal Reporter but is reprinted at 758 Fed. Appx. 144. A prior order of the court of appeals (Pet. App. 9a-11a) is unreported. The decisions of the Board of Immigration Appeals (Pet. App. 21a-23a) and the immigration judge (Pet. App. 25a-28a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 21, 2018. On March 5, 2019, Justice Ginsburg extended the time within which to file a petition for a writ of certiorari to and including April 19, 2019, and the petition was filed on that date. 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.*, an alien is "removable" if he is "inadmissible" under 8 U.S.C. 1182 or "deportable" under 8 U.S.C. 1227. 8 U.S.C. 1229a(e)(2); see 8 U.S.C. 1229a(a)(2) ("An alien placed in proceedings under this section may be charged with any applicable ground of inadmissibility under section 1182(a) of [Title 8] or any applicable ground of deportability under section 1227(a) of [Title 8].").

The Attorney General, in his discretion, may cancel the removal of an alien who is found to be inadmissible or deportable. 8 U.S.C. 1229b. To obtain cancellation of removal, the alien must demonstrate both that he is statutorily eligible for such relief and that he warrants a favorable exercise of discretion. 8 U.S.C. 1229a(c)(4)(A).

To demonstrate statutory eligibility for cancellation of removal, certain permanent residents must show (1) that they have been "lawfully admitted for permanent residence for not less than 5 years"; (2) that they have "resided in the United States continuously for 7 years after having been admitted in any status"; and (3) that they have "not been convicted of any aggravated felony." 8 U.S.C. 1229b(a).

The continuous-residence requirement is subject to the "stop-time rule." *Pereira* v. *Sessions*, 138 S. Ct. 2105, 2110 (2018). That rule provides:

> any period of continuous residence * * * in the United States shall be deemed to end * * * when the alien has committed an offense referred to in section 1182(a)(2) of [Title 8] that renders the alien inadmissible to the United States under section 1182(a)(2) of [Title 8] or removable from the United States under section 1227(a)(2) or 1227(a)(4) of [Title 8].

8 U.S.C. 1229b(d)(1).

2. Petitioner is a native and citizen of Gambia. Pet. App. 21a; Administrative Record (A.R.) 64. In November 2003, petitioner was admitted to the United States on a nonimmigrant visitor visa. Pet. App. 26a. In 2008, his status was adjusted to that of a lawful permanent resident. *Ibid.*; A.R. 159.

In September 2009, petitioner committed the offense of possession of less than four ounces of marijuana, in violation of Connecticut law. A.R. 87, 114. In January 2010, he pleaded guilty to the offense and was convicted in state court. *Ibid.*

3. Petitioner subsequently departed the United States on a trip to Gambia. A.R. 50; Pet. 9. Upon his return in August 2012, petitioner was stopped at John F. Kennedy International Airport in New York. A.R. 159. Under the INA, "lawful permanent residents are regarded as seeking admission into the United States if they fall into any of six enumerated categories." *Vartelas* v. *Holder*, 566 U.S. 257, 263 (2012); see 8 U.S.C. 1101(a)(13)(C). One of those categories covers aliens who "ha[ve] committed an offense identified in section 1182(a)(2) of [Title 8]," with exceptions not relevant here. 8 U.S.C. 1101(a)(13)(C)(v). Offenses within that category include "a violation of * * * any law or regulation of a State * * * relating to a controlled substance (as defined in section 802 of title 21)." 8 U.S.C. 1182(a)(2)(A)(i)(II).

The Department of Homeland Security (DHS) determined that petitioner's prior conviction for possession of marijuana fell within that category. A.R. 159. Petitioner therefore was regarded as seeking "admission" to the United States. *Ibid.* DHS further determined

that the same conviction rendered petitioner inadmissible under 8 U.S.C. 1182(a)(2)(A)(i)(II). A.R. 113, 159. DHS accordingly served petitioner with a notice to appear for removal proceedings, charging that he was subject to removal because of that conviction. A.R. 157-159. The notice to appear stated that his removal hearing had been scheduled for March 2014. *Ibid.*

The immigration court later mailed a notice of hearing to petitioner with a new September 2014 hearing date. A.R. 156. When petitioner did not appear at that hearing, A.R. 46, the immigration judge (IJ) ordered petitioner removed in absentia, A.R. 152. Two years later, petitioner moved to reopen his removal proceedings on the ground that he "never receive[d]" notice of the September 2014 hearing date. A.R. 140. The IJ granted the motion, A.R. 138, and DHS re-served petitioner with the notice to appear charging that he was inadmissible because of his prior conviction for possession of marijuana, A.R. 62-63, 81; see A.R. 159.

Following a hearing, A.R. 61-80, the IJ ordered petitioner removed to Gambia, Pet. App. 25a-28a. The IJ found petitioner "inadmissible" as charged under Section 1182(a)(2)(A)(i)(II). *Id.* at 25a, 27a. The IJ also determined that petitioner was statutorily ineligible for cancellation of removal because he could not establish the necessary seven years of continuous residence in the United States following his admission in November 2003. *Id.* at 27a. The IJ explained that, under the stop-time rule, "continuous residence * * * is deemed to end when the alien * * * has committed an offense referred to in Section [1182(a)(2)] that renders the alien inadmissible." *Ibid.* The IJ further explained that petitioner committed the offense of marijuana possession in Sep-

tember 2009 and pleaded guilty to that offense in November 2010—both before he had resided continuously in the United States for seven years. *Ibid.* The IJ therefore found petitioner "ineligible" for cancellation of removal under "the stop-time rule." *Ibid.*

The Board of Immigration Appeals (Board) dismissed petitioner's appeal. Pet. App. 21a-23a. The Board agreed with the IJ that petitioner was "removable as charged" because his prior conviction for possession of marijuana rendered him "inadmissible" under Section 1182(a)(2)(A)(i)(II). *Id.* at 22a. The Board also agreed with the IJ that petitioner was "ineligible for cancellation of removal" because the "required 7 year period of continuous residence was interrupted by his 2009 commission of the offense that rendered him removable." *Ibid.*

4. a. Petitioner filed a petition for review of the Board's decision. C.A. Doc. 1-2 (Jan. 30, 2017). The court of appeals ordered that the petition be held in abeyance pending the court's disposition of *Heredia* v. *Sessions*, 865 F.3d 60 (2d Cir. 2017), cert. denied, 138 S. Ct. 677 (2018). C.A. Doc. 50, at 1 (June 20, 2017).

About a month later, the court of appeals issued its decision in *Heredia*. The court in that case held, as a matter of statutory interpretation, that when an alien has committed an offense referred to in Section 1182(a)(2) that renders the alien inadmissible under that Section, the alien's period of continuous residence in the United States for purposes of cancellation of removal shall be deemed to end on "the date of his *commission* of the underlying offense," 865 F.3d at 70—not "the date on which he was rendered inadmissible," *id.* at 68.

Following its decision in *Heredia*, the court of appeals dismissed petitioner's petition for review. Pet. App. 9a-11a. The court explained that "[p]etitioner did not satisfy the continuous residence requirement for cancellation of removal because his commission of a controlled substance offense in 2009 ended his period of continuous residence in the United States." *Id.* at 10a (citing *Heredia*, 865 F.3d at 70-71).

b. Petitioner moved for reconsideration and panel rehearing of the court of appeals' order. C.A. Doc. 74-1 (Feb. 27, 2018). Petitioner argued that the court had "ignored" a constitutional claim that he had presented in his petition for review, *id.* at 3—namely, that it was a violation of equal protection to subject him to removal "*solely* because he had briefly traveled abroad," when "another [lawful permanent resident] who committed exactly the same offense but remained in the United States could not be deported on that basis," *id.* at 9.

The court of appeals granted reconsideration, C.A. Doc. 94, at 1 (Mar. 28, 2018), and—following briefing and argument—denied the petition for review, Pet. App. 1a-7a. The court rejected petitioner's equal protection claim, explaining that "'a resident alien returning from a brief trip' is 'differently situated' from 'a continuously present resident alien,' and therefore does not have 'a right to identical treatment.'" *Id.* at 4a (citation omitted). The court also determined that "charging [petitioner] as an arriving alien despite his [lawful permanent resident] status" did not violate "due process by arbitrarily restricting his liberty interest in traveling abroad." *Id.* at 5a.

Finally, the court of appeals rejected petitioner's contention—raised in a footnote in his brief—that the Board and the IJ had erred in concluding that he was

ineligible for cancellation of removal because his "continuous residence was interrupted upon commission of his marijuana offense in 2009." Pet. C.A. Br. 39 n.15; see Pet. App. 7a. Petitioner argued that his "continuous residence in the United States was not interrupted until he sought admission in 2012—more than seven years after he lawfully entered the United States in 2003." Pet. C.A. Br. 39 n.15. Petitioner acknowledged, however, that *Heredia* foreclosed that argument, *ibid.*, and the court likewise regarded that decision as controlling, Pet. App. 7a.[1]

ARGUMENT

Petitioner contends (Pet. 23-26) that the court of appeals erred in concluding that, under the stop-time rule, his period of continuous residence in the United States ended on the date of his commission of a controlled-substance offense. The court of appeals' decision is correct and does not conflict with any decision of this Court or of another court of appeals. This Court has previously denied review of the same question, see *Heredia* v. *Sessions*, 138 S. Ct. 677 (2018) (No. 17-661), and the same result is warranted here.

There is no need to hold the petition for a writ of certiorari in this case pending this Court's disposition of *Barton* v. *Barr*, cert. granted, No. 18-725 (oral argument scheduled for Nov. 4, 2019). The question pre-

[1] Petitioner initially sought a stay of removal in the court of appeals. Pet. App. 10a. In its order dismissing his petition for review, the court denied his request for a stay as moot. *Id.* at 11a. Although petitioner sought and obtained reconsideration of that order, C.A. Doc. 94, at 1, he declined to renew his request for a stay, C.A. Doc. 74-1, at 17 n.5, and he was removed to Gambia in March 2018, Gov't C.A. Br. 10 n.6.

sented in *Barton* is "[w]hether a lawfully admitted permanent resident who is not seeking admission to the United States can be 'render[ed] . . . inadmissible' for the purposes of the stop-time rule." Pet. Br. at i, *Barton*, *supra* (No. 18-725) (quoting 8 U.S.C. 1229b(d)(1)) (second set of brackets in original). Here, petitioner acknowledges (Pet. 29) that he "eventually sought admission and so was eventually rendered inadmissible." This case therefore does not implicate the question presented in *Barton*, and the petition for a writ of certiorari should be denied.

1. The court of appeals correctly concluded that petitioner is statutorily ineligible for cancellation of removal because his period of continuous residence in the United States ended on the date of his commission of a controlled-substance offense, before he had resided continuously in the United States for the requisite seven years. See Pet. App. 7a, 10a (citing *Heredia* v. *Sessions*, 865 F.3d 60, 70-71 (2d Cir. 2017), cert. denied, 138 S. Ct. 677 (2018)).

a. The text of the stop-time rule provides:

> any period of continuous residence * * * in the United States shall be deemed to end (A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2), when the alien is served a notice to appear under section 1229(a) of [Title 8], or (B) *when the alien has committed an offense* referred to in section 1182(a)(2) of [Title 8] that renders the alien inadmissible to the United States under section 1182(a)(2) of [Title 8] or removable from the United States under section 1227(a)(2) or 1227(a)(4) of [Title 8], whichever is earliest.

8 U.S.C. 1229b(d)(1) (emphasis added).

Subparagraph (B) specifies that an alien's period of continuous residence "shall be deemed to end * * * when the alien has committed" a qualifying "offense." 8 U.S.C. 1229b(d)(1)(B). The phrase "the alien has committed an offense" immediately follows the word "when." *Ibid.* Subparagraph (B) therefore is most naturally read to terminate an alien's period of continuous residence on the date of the alien's "commi[ssion]" of the offense. *Ibid.*; see *Holder* v. *Martinez Gutierrez*, 566 U.S. 583, 588 n.2 (2012) (noting, in a case presenting a different issue, that "[t]he 7-year clock stopped running on the date of [the alien's] offense under a statutory provision known as the 'stop-time' rule").

That reading of Subparagraph (B) accords with the broader structure of the stop-time rule. Like Subparagraph (B), Subparagraph (A) specifies a point at which an alien's period of continuous residence "shall be deemed to end." 8 U.S.C. 1229b(d)(1). And no one disputes that the point it specifies comes immediately after the word "when": "when *the alien is served a notice to appear*." 8 U.S.C. 1229b(d)(1)(A) (emphasis added). That reinforces the conclusion that, under Subparagraph (B), what immediately follows the "when" is likewise the controlling date: "when *the alien has committed an offense*." 8 U.S.C. 1229b(d)(1)(B) (emphasis added).

To be sure, Subparagraph (B) does not terminate an alien's period of continuous residence upon the commission of just any offense. The offense must be "an offense referred to in section 1182(a)(2) of [Title 8] that renders the alien inadmissible to the United States under section 1182(a)(2) of [Title 8] or removable from the United States under section 1227(a)(2) or 1227(a)(4) of [Title 8]." 8 U.S.C. 1229b(d)(1)(B). Subparagraph (B)

thus specifies the type of "offense" that qualifies. *Ibid.* But Subparagraph (B) makes clear that, once an offense is determined to be a qualifying offense, the alien's period of continuous residence shall be deemed to have ended on the date on which the offense was "committed," not some later date. *Ibid.*

The Board has issued a precedential decision adopting that construction of Subparagraph (B). In *In re Perez*, 22 I. & N. Dec. 689 (1999) (en banc), the Board concluded that, under a "natural and straightforward reading" of Subparagraph (B), an alien's period of continuous residence "is deemed to end at the point when the alien 'has committed' one of the designated offenses." *Id.* at 693 (citation omitted). At a minimum, the Board's construction of Subparagraph (B) is a reasonable one, entitled to deference. See *Martinez Gutierrez*, 566 U.S. at 591; *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-844 & n.11 (1984).

b. Reading Subparagraph (B) differently, petitioner contends that "the continuous-residence clock stops when an alien is rendered inadmissible, not earlier." Pet. 23 (capitalization and emphasis omitted). But if Congress had intended the continuous-residence clock to stop "when an alien is rendered inadmissible," it would have simply said so. Instead, Congress enacted a provision that stops the continuous-residence clock "when the alien *has committed an offense* * * * that renders the alien inadmissible." 8 U.S.C. 1229b(d)(1)(B) (emphasis added).

Petitioner construes that language (Pet. 23) to mean that "[c]ontinuous residence continues to accrue until the alien *both* commits a section 1182(a)(2) offense *and* is rendered inadmissible or removable." But the "'ren-

ders' clause does not impose a separate temporal requirement." *Perez*, 22 I. & N. at 693. Rather, as explained above, see pp. 9-10, *supra*, it "modifies the word 'offense' by limiting and defining the types of offenses which cut off the accrual of further time as of the date of their commission." *Perez*, 22 I. & N. at 693. Of course, "the steps necessary to 'render' an alien inadmissible or removable [must] occur[] before the offense qualifies for [stop-time-rule] purposes." *Ibid.* The rule provides, however, that once those steps occur and the offense qualifies, an alien's period of continuous residence "shall be deemed to end * * * when the alien has committed [the] offense," 8 U.S.C. 1229b(d)(1)(B)—not, as petitioner would have it, when the alien is rendered inadmissible or removable.

Petitioner also contends that the phrase "'whichever is earliest,'" which appears at the end of the stop-time rule, supports his reading because it suggests "*three* possible endpoints to a resident's period of continuous residence": "when the alien (1) receives a notice to appear, (2) becomes inadmissible, or (3) becomes removable." Pet. 24-25 (citation omitted). But there are "three possible endpoints," Pet. 25, under the court of appeals' and the Board's interpretation as well: when the alien (1) "is served a notice to appear," (2) "has committed an offense referred to in section 1182(a)(2) * * * that renders the alien inadmissible under section 1182(a)(2)," or (3) "has committed an offense referred to in section 1182(a)(2) * * * that renders the alien * * * removable under section 1227(a)(2) or 1227(a)(4)." 8 U.S.C. 1229b(d)(1). In any event, the phrase "whichever is earliest" does not refer to three possible endpoints; it refers to the two ways of triggering the stop-time rule, as set forth in Subparagraphs (A) and (B). See *In re*

Mendoza-Sandino, 22 I. & N. Dec. 1236, 1241 (B.I.A. 2000) (en banc). Petitioner's reliance on the phrase therefore is misplaced.

Petitioner further errs in asserting (Pet. 25) that his reading "better aligns" with the purposes of the stop-time rule. As petitioner acknowledges (*ibid.*), one of those purposes was "to prevent noncitizens from exploiting administrative delays to 'buy time' during which they accumulate periods of continuous presence." *Pereira* v. *Sessions*, 138 S. Ct. 2105, 2119 (2018) (citation omitted). Under petitioner's reading, however, an alien could still attempt to "buy time" by seeking to delay the moment that he is rendered inadmissible or removable—here, by delaying a "return" from "travel[] abroad" until after seven years had elapsed, Pet. 21. By contrast, under the court of appeals' and the Board's interpretation, an alien's period of continuous residence shall be deemed to end on the date of his commission of a qualifying offense—a date that cannot be changed.

The stop-time rule, in Subparagraph (B), also embodies another purpose served by the court of appeals' and the Board's interpretation. It identifies aliens whose criminal activity Congress believed made them unworthy of accruing additional time toward eligibility for the discretionary relief of cancellation of removal, without regard to the happenstance of when they were later caught and convicted, or when they left the country and sought to reenter. See *Perez*, 22 I. & N. at 700.

Petitioner also contends (Pet. 26) that his reading would give him "full credit for all time that he lawfully resided in the United States." But that merely raises the question what "full credit" means. The court of appeals correctly concluded that, under the stop-time rule, petitioner is not entitled to credit for any period of

residence following his commission of a controlled-substance offense. Pet. App. 10a, 19a.

Finally, petitioner disputes (Pet. 20-23) when he was "rendered inadmissible," arguing that he was "rendered inadmissible" when he traveled abroad and sought admission in 2012, not when he was convicted of the controlled-substance offense in 2010. But the date on which petitioner was "rendered inadmissible" is irrelevant under Subparagraph (B) of the stop-time rule. As explained above, see pp. 8-10, *supra*, Subparagraph (B) turns instead on the date of the commission of a qualifying offense—here, in September 2009, A.R. 87, 114. And there is no dispute that petitioner's controlled-substance offense is a qualifying offense, because the offense, referred to in Section 1182(a)(2), "eventually rendered [him] inadmissible." Pet. 29; see Pet. App. 22a, 27a-28a. Petitioner's argument that he was "rendered inadmissible" in 2012, not 2010, therefore is beside the point. See *Heredia*, 865 F.3d at 68 (deeming irrelevant "*when* [the alien] was rendered inadmissible," because "[b]oth parties agree[d] that he was in fact rendered inadmissible," and because "'the stop-time rule is triggered on the date an alien commits a predicate offense'") (citation omitted).

2. Contrary to petitioner's contention (Pet. 12-20), the courts of appeals are not divided on the question presented. Every court of appeals to have considered the question has concluded that Subparagraph (B) terminates an alien's period of continuous residence on the date of the alien's commission of a qualifying offense—not some later date, such as the date of the alien's conviction or the date on which the alien sought admission to the United States. See *Heredia*, 865 F.3d at 70-71 ("[A]s long as a qualifying offense later *does* render the

non-citizen inadmissible under 8 U.S.C. § 1182(a)(2), the date of the *commission* of the offense governs the computation of a lawful permanent resident's continuous residency in the United States."); *Calix* v. *Lynch*, 784 F.3d 1000, 1012 (5th Cir. 2015) ("Once [the alien] was convicted of the offense, he was rendered inadmissible to the United States. His accrual of continuous residence was halted as of the date he committed that offense."); *Jeudy* v. *Holder*, 768 F.3d 595, 598 n.3 (7th Cir. 2014) (explaining that "the stop-time rule operates based on the date the offense is committed," not "[t]he date of a resulting conviction"); *Barton* v. *United States Att'y Gen.*, 904 F.3d 1294, 1301 n.3 (11th Cir. 2018) ("Although it is an alien's conviction of a qualifying offense that 'renders [him] inadmissible' for stop-time purposes, his period of continuous residence is deemed to terminate on the date he initially committed that offense.") (brackets in original), cert. granted, 139 S. Ct. 1615 (2019).

Petitioner's contention (Pet. 20) that the decision below conflicts with the Ninth Circuit's decision in *Nguyen* v. *Sessions*, 901 F.3d 1093 (2018), is mistaken. The issue in *Nguyen* was not whether an alien's period of continuous residence ends on the date of his commission of a qualifying offense, but rather whether the alien had committed a qualifying offense at all. See *id.* at 1096-1097. The Ninth Circuit in *Nguyen* explained that "[b]oth parties agree[d] that the stop-time rule [under Subparagraph B] is triggered by two events: 1) 'commi[ssion] [of] an offense referred to in section 1182(a)(2) of this title,' and 2) the offense's effect of 'render[ing]' the applicant 'inadmissible to the United States under section 1182(a)(2) of this title or removable from the United

States under section 1227(a)(2) or 1227(a)(4) of this title.'" *Id.* at 1096 (quoting 8 U.S.C. 1229b(d)(1)) (fourth, fifth, and sixth sets of brackets in original). Both parties agreed, in other words, that each of those two requirements had to be satisfied for an offense to be given stop-time effect. The Ninth Circuit observed that there was no dispute that the offense at issue in *Nguyen* satisfied the first requirement, because the alien "admitted that he possessed cocaine—a controlled substance offense 'referred to in section 1182(a)(2).'" *Ibid.* The "dispute" in the case was thus limited to the second requirement—"whether [his] commission of that offense rendered him inadmissible." *Ibid.*; see *id.* at 1099 (describing "the question at issue" as "whether a lawful permanent resident can be 'rendered inadmissible' when he is not subject to the grounds of inadmissibility"). And because the Ninth Circuit held that the alien "was *not* rendered inadmissible by his admitted use of cocaine," *id.* at 1097 (emphasis added), it had no occasion to address the question presented here: whether an offense referred to in Section 1182(a)(2) that *does* render an alien inadmissible terminates his period of continuous residence on the date of his commission of the offense, as opposed to some later date. See *Rosales-Gonzalez* v. *Sessions*, 739 Fed. Appx. 454, 455 (9th Cir. 2018) (explaining that the "rule" in *Nguyen* "does not apply to an alien who is seeking admission to the United States" and who is rendered inadmissible by an offense referred to in Section 1182(a)(2)).[2]

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[2] Moreover, Ninth Circuit decisions both before and after *Nguyen* treat an alien's period of continuous residence as ending under Subparagraph (B) on the date of the alien's commission of a qualifying offense. See *Alanniz* v. *Barr*, 924 F.3d 1061, 1065 (2019) ("[The al-

3. The Ninth Circuit's decision in *Nguyen* does conflict with the decisions of other circuits on the issue it did decide: whether an offense referred to in Section 1182(a)(2) can "render[] the alien inadmissible," 8 U.S.C. 1229b(d)(1)(B), when the alien is a lawful permanent resident who is not seeking admission. Compare *Nguyen*, 901 F.3d at 1100 ("Under the plain language of the stop-time rule and the INA, a lawful permanent resident cannot be 'rendered inadmissible' unless he is seeking admission."), with *Barton*, 904 F.3d at 1298 (holding that "an already-admitted lawful permanent resident—who doesn't need and isn't seeking admission —*can* be 'render[ed] . . . inadmissible' for stop-time purposes") (brackets in original), and *Calix*, 784 F.3d at 1008-1012 (same). This Court recently granted review in *Barton* v. *Barr*, *supra*, to resolve that question.

Contrary to petitioner's suggestion (Pet. 29), there is no need to hold the petition for a writ of certiorari in this case pending the Court's disposition of *Barton*. Petitioner acknowledges (*ibid.*) that, "unlike the petitioner in *Barton*, [he] eventually sought admission and so was eventually rendered inadmissible." This case therefore does not implicate the question presented in *Barton*, which is limited to "[w]hether a lawfully admitted permanent resident who is not seeking admission to the

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ien's] eligibility for cancellation of removal turns on whether he accrued the requisite seven years of continuous residence prior to his violation of California law on February 4, 2006, for being under the influence of cocaine."); *Fuentes* v. *Lynch*, 837 F.3d 966, 967 (2016) (per curiam) ("[The alien's] continuous residence ended in 2009, when he committed a controlled substance offense, so he does not satisfy the seven years of continuous residency requirement."). Those decisions are further indication that *Nguyen* did not address the question presented here, let alone adopt petitioner's construction of the statute.

United States can be 'render[ed] . . . inadmissible.'" Pet. Br. at i, *Barton*, *supra* (No. 18-725). Indeed, the Second Circuit has never decided that question. See *Heredia*, 865 F.3d at 68 (declining to "definitively decide *when* [the alien] was rendered inadmissible"); *id.* at 70 (assuming, without deciding, that "the 'renders . . . inadmissible' clause * * * is not satisfied * * * until the alien applies for admission"). Moreover, the brief of the petitioner in *Barton* assumes, in accordance with what the Second Circuit has decided, see *id.* at 70-71, that "the date of the crime's *commission* * * * is the relevant date for purposes of the stop-time rule." Pet. Br. at 9 n.4, *Barton*, *supra* (No. 18-725) (citation omitted; second set of brackets in original). This Court's resolution of *Barton* therefore will not affect the Second Circuit's conclusion that the date of the crime's commission was the relevant date here. Pet. App. 7a, 10a (citing *Heredia*, 865 F.3d at 70-71).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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