No. 23-7678

In the Supreme Court of the United States

JOSE ANTONIO MARTINEZ,
Petitioner,
v.
MERRICK B. GARLAND, ATTORNEY GENERAL,
Respondent.

ANA CECILIA MARROQUIN-ZANAS,
Petitioner,
v.
MERRICK B. GARLAND, ATTORNEY GENERAL,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

BRIEF OF CIVIL PROCEDURE AND FEDERAL COURTS PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PETITONERS

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INTEREST OF *AMICI CURIAE*

Amici are professors in the areas of civil procedure and federal courts. *See infra* page 20 (listing *amici*). *Amici* teach and write about jurisdiction, judicial review, and procedural rules, including in the immigration context. *Amici* have an interest in ensuring that procedural statutes are interpreted consistent with their text and towards the goal of ensuring the orderly, efficient, and fair course of litigation. Mistakenly treating such provisions as jurisdictional, in contrast, threatens to undercut Congress' purpose, causing harsh consequences for litigants and a waste of judicial resources. *Amici* therefore file this brief in support of Mr. Martinez's and Ms. Marroquin-Zanas's petition for a writ of certiorari.[1]

INTRODUCTION AND SUMMARY OF ARGUMENT

Over the last decade and a half, this Court has repeatedly reversed lower courts that elevated garden-variety procedural rules to jurisdictional status. In doing so, the Court has emphasized the distinction between true limits on subject-matter jurisdiction and mere claim-processing rules.

This distinction reflects a fundamental difference between rules that serve to keep litigation moving efficiently and true limits on the adjudicatory authority of federal courts to hear certain classes of cases. One set of rules tells parties to file their briefs on time. The other are

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[1] *Amici* are all individuals, and no non-governmental corporation, party, or counsel for any party contributed funds or authored this brief in whole or in part. No one other than *amici* and their counsel contributed funding for the preparation and submission of this brief. On June 27, 2024, counsel for *amici* informed the counsel of record for each party that *amici* would be filing this brief in accordance with Supreme Court Rule 37.2.

weighty decisions by Congress to withdraw a class of claims from judicial review.

Mixing up these rules, and mistakenly treating a claim-processing rule as jurisdictional, undermines the very reason Congress creates claim-processing rules. The purpose of claim-processing rules is to promote fair and orderly litigation—by, for example, providing deadlines by which important milestones in the litigation are to take place. Jurisdictional arguments, on the other hand, may be raised at any time—even post-trial and even when those arguments have been explicitly waived. That upends the fair, efficient, orderly system claim-processing rules are enacted to protect.

And that is precisely what will happen if this Court does not grant certiorari here. The Fourth Circuit, along with the Second and Seventh, has held that 8 U.S.C. § 1252(b)(1)'s 30-day filing deadline was jurisdictional. The Fourth Circuit also followed the Second Circuit and held that the deadline began to run prior to the conclusion of agency proceedings. The result is that, in those circuits, noncitizens must appeal the government's decision on claims that they fear persecution or torture *before* the government has rendered that decision—or lose their right to appeal entirely.

That makes no sense. It conflicts with the majority of circuits that have sensibly held that Congress did not enact a jurisdictional rule requiring noncitizens to appeal a decision that has not even been rendered yet. And it conflicts with this Court's precedent repeatedly urging lower courts not to conflate claim-processing rules with jurisdictional mandates. Yet, despite this Court's recent case law, the Fourth Circuit, in adopting the minority rule, has refused to reconsider its precedent. The minority rule

is now wreaking havoc in both the Second and Fourth Circuit. This Court should step in to fix the problem.

ARGUMENT

I. This Court has strictly enforced a distinction between claim-processing rules and jurisdictional limits, reflecting the fundamental difference between the two kinds of rules.

As this Court is well aware, it has repeatedly "emphasized the distinction between limits on 'the classes of cases a court may entertain (subject-matter jurisdiction)' and 'nonjurisdictional claim-processing rules, which seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times.'" *Wilkins v. United States*, 598 U.S. 152, 157 (2023).[2]

In the past two terms alone—in *Harrow* and *Santos-Zacaria*—this Court rejected comparable holdings to the one the Fourth Circuit made here, including analyzing the very appellate statutory scheme at issue here. Those cases should have settled the issue. Yet several lower courts appear to have missed this Court's clear statement and continue to treat (b)(1)'s filing deadline as jurisdictional. *See, e.g.*, *Martinez v. Garland*, 86 F.4th 561 (4th Cir. 2023); *F.J.A.P. v. Garland*, 94 F.4th 620 (7th Cir. 2024); *see also Valderamos-Madrid v. Garland*, 2023 WL 5423960 (2d Cir. Aug. 23, 2023) (citing *Bhaktibhai-Patel v. Garland*, 32 F.4th 180 (2d Cir. 2022)). This Court's intervention is thus needed once more.

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[2] Unless otherwise noted, all internal quotation marks, citations, alterations, brackets, and ellipses have been omitted from quotations throughout this brief.

A. Treating claim-processing rules as jurisdictional undermines the orderly, fair, and efficient procedure enacted by Congress.

To understand the problem with treating claim-processing rules as jurisdictional, it helps to start with the nature of these two kinds of limitations.

Jurisdiction refers to "a court's adjudicatory authority." *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004). And "subject-matter jurisdiction" is "the courts' statutory or constitutional *power* to adjudicate the case." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). Thus, limits on subject-matter jurisdiction "describe the classes of cases a court may entertain" and "delineat[e] the adjudicatory authority of courts." *Fort Bend Cnty., Texas v. Davis*, 139 S. Ct. 1843, 1846, 1851 (2019). This is why "jurisdictional statutes speak to the power of the court rather than to the rights or obligations of the parties." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 274 (1994).

If a provision is subject-matter jurisdictional—in other words, if it represents Congress' decision to limit the authority of federal courts to hear a certain class of cases—then courts must ensure that they have not overstepped those bounds. That's why courts have an independent duty to ensure their own jurisdiction, making limits on subject-matter jurisdiction "unique in our adversarial system." *Fort Bend*, 139 S. Ct. at 1849. "Unlike most arguments, challenges to subject-matter jurisdiction may be raised by the defendant at any point in the litigation, and courts must consider them *sua sponte*." *Id.*

And because it is "the province and duty of the judicial department to say what the law is," *Marbury v. Madison*, 5 U.S. 137, 177 (1803), courts will not lightly infer that

jurisdiction to hear a certain class of cases has been stripped away. This is especially true with constitutional claims: "[W]here Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear" because of "the serious constitutional question that would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim." *Webster v. Doe*, 486 U.S. 592, 603 (1988). Even beyond that, this Court "has long recognized a strong presumption in favor of judicial review of final agency action." *Am. Hosp. Ass'n v. Becerra*, 596 U.S. 724, 733 (2022).

Claim-processing rules are an entirely different animal. Such rules "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Wilkins*, 598 U.S. at 157. "[F]iling deadlines" are examples of "quintessential claim-processing rules," *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011), as are statutes of limitations, *Wilkins*, 598 U.S. at 159, and exhaustion requirements, *Santos-Zacaria v. Garland*, 598 U.S. 411, 421 (2023). Because these limits do not go to the authority of the courts but instead "speak to . . . a party's procedural obligations," they are subject to the ordinary rules of adversarial litigation, where arguments can be forfeited or waived. *Fort Bend*, 139 S. Ct. at 1849–51. And while mundane, these requirements reflect Congress' understanding of the need for such rules to conserve judicial resources and ensure the proper functioning of the adversarial system.

"Loosely treating procedural requirements as jurisdictional risks undermining the very reason Congress enacted them." *Wilkins,* 598 U.S. at 157. Where claim-

processing rules "seek to promote the orderly progress of litigation within our adversarial system," "[l]imits on subject-matter jurisdiction . . . have a unique potential to *disrupt* the orderly course of litigation." *Id.* (emphasis added). "Given this risk of disruption and waste that accompanies the jurisdictional label, courts will not lightly apply it to procedures Congress enacted to keep things running smoothly and efficiently." *Id.* at 158. Otherwise, courts would render statutes self-defeating.

For example, "[f]or purposes of efficiency and fairness, our legal system is replete with rules requiring that certain matters be raised at particular times." *Henderson*, 562 U.S. at 434. But "[o]bjections to subject-matter jurisdiction . . . may be raised at any time." *Id.* The result is disruption in the order of litigation and the "waste of judicial resources." *Id.* at 433–34. A party can wait to raise a jurisdictional objection until after they lost on the merits, and "[w]hen such eleventh-hour jurisdictional objections prevail post-trial or on appeal, many months of work on the part of the attorneys and the court may be wasted." *Wilkins*, 598 U.S. at 157–58. For example, in one case, a party did not raise a jurisdictional objection "until after an entire round of appeals all the way to the Supreme Court." *Fort Bend*, 139 S. Ct. at 1848. It makes little sense that Congress' desire for parties to follow certain steps at certain times to keep litigation moving smoothly would also justify undoing years of litigation because a deadline was missed by a day or two at the beginning of a case.

Jurisdictional objections also upend the basic rules of our adversarial system. "[D]octrines like waiver and estoppel ensure efficiency and fairness by precluding parties from raising arguments they had previously disavowed." *Wilkins*, 598 U.S. at 158. "Because these

doctrines do not apply to jurisdictional objections, parties can disclaim such an objection, only to resurrect it when things go poorly for them on the merits." *Id.* Recently, for instance, this Court heard a case where a litigant obtained a favorable ruling by "explicitly represent[ing]" that they would not invoke a statutory provision on appeal. *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 294 (2023). But once they lost on appeal, they invoked that provision, arguing that it was jurisdictional. "[N]ot even such egregious conduct by a litigant could permit the application of judicial estoppel" if the provision was truly jurisdictional—though like so many other provisions, it wasn't. *Id.* at 298, 304–05.

For these reasons, when Congress "enacts preconditions to facilitate the fair and orderly disposition of litigation," it "would not heedlessly give those same rules an unusual character that threatens to upend that orderly progress." *Id.* at 298. The purpose of a claim-processing rule is orderliness, efficiency, and fairness.

B. This Court has repeatedly reversed lower courts for failing to properly distinguish between limits on subject-matter jurisdiction and claim-processing rules.

To ensure that this distinction is carefully respected, this Court has repeatedly sought to "bring some discipline to the use of the term 'jurisdictional.'" *Santos-Zacaria*, 598 U.S. at 421. The first case in this series, *Arbaugh*, explained that courts had "been profligate" in using the term "jurisdiction," such as when the Court "described a nonextendable time limit as 'mandatory and jurisdictional.'" *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 510 (2006). Such decisions did not actually address the true nature of *subject-matter jurisdiction*, but were "drive-by

jurisdictional rulings" that "should be accorded no precedential effect on the question whether the federal court had authority to adjudicate the claim." *Id.* at 511. Instead, *Arbaugh* set out a simple clear-statement rule: A provision does not limit a court's subject-matter jurisdiction unless "the Legislature clearly states that a threshold limitation . . . shall count as jurisdictional." 546 U.S. at 515.

Yet lower courts continue to rely on outdated circuit caselaw that loosely described claim-processing rules as jurisdictional. This Court has therefore regularly and repeatedly needed to grant certiorari to correct the lower courts' errors. This includes in:

- *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 157 (2010) (Copyright Act's "registration requirement . . . does not restrict a federal court's subject-matter jurisdiction").
- *Henderson*, 562 U.S. at 441 ("[T]he deadline for filing a notice of appeal with the Veterans Court does not have jurisdictional attributes.").
- *Gonzalez v. Thaler*, 565 U.S. 134, 143 (2012) (requirement that a certificate of appealability must identify specific issues is nonjurisdictional).
- *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 148 (2013) (deadline to "file an administrative appeal from the initial determination of [Medicare] reimbursement" is "not 'jurisdictional'").
- *United States v. Wong*, 575 U.S. 402, 412 (2015) ("The time limits in the FTCA are just time limits, nothing more.").
- *Hamer v. Neighborhood Hous. Servs. of Chicago*, 538 U.S. 17, 27 (2017) ("30–day limitation on

extensions of time to file a notice of appeal" is nonjurisdictional).

- *Fort Bend*, 139 S. Ct. at 1850 ("Title VII's charge-filing requirement is not of jurisdictional cast.").
- *Boechler, P.C. v. Comm'r of Internal Revenue*, 596 U.S. 199, 211 (2022) ("30-day time limit to file a petition for review of a collection due process determination is an ordinary, nonjurisdictional deadline subject to equitable tolling.").
- *Wilkins*, 598 U.S. at 165 (Quiet Title Act's statute of limitations "is a nonjurisdictional claims-processing rule").
- *MOAC*, 598 U.S. at 292 (Bankruptcy Code's procedural limitation on relief if a party fails to obtain a stay pending appeal "is not a jurisdictional provision").
- *Santos-Zacaria*, 598 U.S. at 431 (Immigration and Nationality Act's "exhaustion requirement is not jurisdictional").
- *Harrow v. Dep't of Def.*, 144 S.Ct. 1178, 1182 (2024) (holding that 60-day deadline to seek review of ruling of Merit Systems in the Federal Circuit, "like most filing deadlines, is not jurisdictional").

These decisions, many of them unanimous, reflect the importance of enforcing this line—and the need for this Court's intervention where, as here, lower courts have again mistaken claim-processing rules for jurisdictional ones.

C. Section (b)(1)'s deadline is a quintessential claim-processing rule.

The Fourth Circuit made this very error, reading (b)(1)'s 30-day deadline as a limit on subject-matter jurisdiction. The panel relied on a footnote from a prior circuit decision, which in turn relied on a fleeting reference to jurisdiction in *Stone v. INS*, 514 U.S. 386 (1995). That reasoning should not have survived this Court's decision in *Santos-Zacaria v. Garland*, which rejected almost identical reasoning with respect to a neighboring statutory provision. 598 U.S. at 417.

First, like the exhaustion provision at issue in *Santos-Zacaria*, the filing deadline here is a "quintessential claim-processing rule[]." *Santos-Zacaria*, 598 U.S. at 417; *Henderson*, 562 U.S. at 435. Filing deadlines "promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Wilkins*, 598 U.S. at 157. Indeed, as this Court recently reiterated in *Harrow*, "most time bars are nonjurisdictional," regardless of "whether or not the bar is framed in mandatory terms." *Harrow,* 144 S. Ct. at 1183.

As this Court has explained, deadlines for agency appeals—and for that matter, all filing deadlines other than appeals "from one Article III court to another"—are not jurisdictional absent "a clear statement." *Harrow,* 144 S. Ct. at 1185. There must be "unmistakable evidence, on par with express language addressing the court's jurisdiction." *Santos-Zacaria*, 598 U.S. at 418. As in *Santos-Zacaria*, no such language exists here—(b)(1)'s deadline addresses only a party's procedural obligation, not the court's jurisdiction.

Second, the text of both the exhaustion provision in *Santos-Zacaria* and (b)(1)'s filing deadline here "differ[]

substantially from more clearly jurisdictional language in related statutory provisions." *Santos-Zacaria*, 598 U.S. at 418–19. Elsewhere in section 1252, Congress repeatedly used the language "no court shall have jurisdiction to review" to foreclose courts from reviewing classes of cases. *See, e.g.*, 8 U.S.C. §§ 1252(a)(2)(A), (a)(2)(B), (a)(2)(C), (b)(9), (g). Congress did not use these "unambiguous jurisdictional terms" here. *Santos-Zacaria*, 598 U.S. at 419.

Third, several circuits have tried to rely on this Court's decision in *Stone* to claim that (b)(1)'s deadline is jurisdictional. *See, e.g.*, *Martinez*, 86 F.4th at 566 n. 3; *Bhaktibhai-Patel*, 32 F.4th at 188; *F.J.A.P.,* 94 F.4th at 626. But *Santos-Zacaria* explained that *Stone*'s loose usage of the term jurisdiction "predate[d] our cases, starting principally with *Arbaugh* . . . , that bring some discipline to the use of the term jurisdictional." 598 U.S. at 421. *Stone*'s passing assertion that "statutory provisions specifying the timing of review . . . are . . . mandatory and jurisdictional," 514 U.S. at 405, is clearly not "jurisdictional" in the modern sense. Indeed, *Stone* is just what *Arbaugh* warned against: loosely describing a "nonextendable time limit as 'mandatory and jurisdictional,'" even though "time prescriptions . . . are not properly typed 'jurisdictional.'" 546 U.S. at 510. No wonder *Santos-Zacaria* concluded that *Stone* did not "attend[] to the distinction between 'jurisdictional' rules (as we understand them today) and nonjurisdictional but mandatory ones." 598 U.S. at 421.

But the Second, Fourth, and Seventh Circuits nevertheless continue to adhere to their precedent—post *Santos-Zacaria*. Their reasoning for doing so makes clear that this Court's intervention is necessary: The Fourth

Circuit said that because *Santos-Zacaria* "has not overruled *Stone*," it was "bound to apply *Stone*." *Salgado v. Garland*, 69 F.4th 179, 181 n.1 (4th Cir. 2023). The Seventh Circuit similarly claimed that "until *Stone* is overturned by the Court itself, [it] must continue to apply it." *F.J.A.P.*, 94 F.4th at 626. Those conclusions are wrong—*Stone* is a "drive-by jurisdictional ruling[] that should be accorded no precedential effect," *Arbaugh,* 546 U.S. at 511. But the Second, Fourth, and Seventh Circuits, relying on *Stone* instead of *Santos-Zacaria,* will only continue to give (b)(1) jurisdictional effect unless or until this Court steps in and corrects their errors.

II. Section (b)(1)'s status as a claim-processing rule also informs when the filing deadline starts to run.

Properly understanding that (b)(1) is a claim-processing rule is not only relevant to the provision's jurisdictional status, but also to the interpretation of when (b)(1)'s clock begins to run. Most circuits have held that the clock starts after the agency has adjudicated a noncitizen's claim for relief. *See, e.g., Inestroza-Tosta v. Attorney General*, --- F.4th ----, 2024 WL 3078270 (3d Cir. June 21, 2024); *Argueta-Hernandez v. Garland*, 87 F.4th 698, 705 (5th Cir. 2023). That is entirely consistent with the provision's status as a claim-processing rule that ensures the orderly course of litigation by requiring parties to take certain steps at certain times.

In contrast, the minority circuits' interpretation threatens to effectively foreclose an entire class of claims—which is the work of subject-matter limitations, not filing deadlines. It also scrambles the ordinary course of proceedings by requiring premature petitions for review of unexhausted claims.

Santos-Zacaria rejected just such a reading of another claim-processing rule in § 1252 as incoherent and putting the statute at war with itself. If anything more were needed, the strong presumption of judicial review—especially of constitutional claims—makes it inconceivable that Congress would use a claim-processing rule to categorically foreclose such claims. Yet, without this Court's intervention, that is exactly what will happen in the Second and Fourth Circuits.

A. The Third, Fifth, Sixth, Ninth, and Tenth Circuit's interpretation follows directly from (b)(1)'s status as a claim-processing rule.

The majority of courts of appeals to have addressed this question have interpreted (b)(1) in a manner that follows from the provision's status as a claim-processing rule. In these courts, a noncitizen raises her claims for withholding-only or Convention Against Torture relief before the agency. Then, once she has exhausted her claims and built a record, she petitions for review in the relevant court of appeals. *See Inestroza-Tosta*, 2024 WL 3078270, at *7; *Argueta-Hernandez*, 87 F.4th at 705; *Kolov v. Garland*, 78 F.4th 911, 916 (6th Cir. 2023); *Alonso-Juarez v. Garland*, 80 F.4th 1039, 1043 (9th Cir. 2023); *Arostegui-Maldonado v. Garland*, 75 F.4th 1132, 1137 (10th Cir. 2023); *Duenas v. Attorney General,* 2023 WL 6442601, at *1 (10th Cir. Oct. 3, 2023).[3]

Exhaustion before the agency followed by judicial review is not just the norm, it is required by the governing

[3] As noted above, the Seventh Circuit held that (b)(1) is jurisdictional. But the circuit still "cho[s]e a reasonable interpretation of § 1252(b)(1) that comports with both the preservation of review and a streamlined review process" by holding that the deadline ran from the conclusion of agency proceedings. *F.J.A.P.*, 94 F.4th at 635.

statutory framework. Under § 1252(d), "[a] court may review a final order of removal only if—(1) the [noncitizen] has exhausted all administrative remedies available to the [noncitizen] as of right."

This familiar requirement promotes efficient and orderly adjudication. "Exhaustion gives an agency an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court." *Woodford v. Ngo*, 548 U.S. 81, 89 (2006). Also, "exhaustion promotes efficiency," as "[c]laims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in federal court" and "proceedings before the agency [can] convince the losing party not to pursue the matter in federal court." *Id.*

Further, "the court of appeals shall decide the petition only on the administrative record." § 1252(b)(4)(A). This has long been the norm in judicial review of agency adjudication. *See, e.g.*, *Camp v. Pitts*, 411 U.S. 138, 142 (1973) ("[T]he focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.").

This record is built through testimony and evidence entered before the immigration judge, who provides a trial-style hearing and rules on evidentiary matters: "The IJ whose decision the Board reviews, unlike an Article III judge, is not merely the fact finder and adjudicator but also has an obligation to establish the record." *Roman v. Garland*, 49 F.4th 157, 167 (2d Cir. 2022). This again promotes efficiency by ensuring that the time-consuming taking of evidence and fact-finding will occur before the agency, not the reviewing court.

The claim-processing rules in § 1252 therefore establish a familiar agency-first, court-second framework. A party first exhausts and creates a record, and (b)(1) then sets the deadline for seeking judicial review.

B. The minority rule short-circuits the ordinary course of litigation, which is inconsistent with (b)(1)'s status as a claim-processing rule.

In contrast, the minority rule cannot be squared with (b)(1)'s status as a claim-processing rule. That reading short-circuits the ordinary and orderly course of litigation by requiring parties to take premature steps at illogical times. Indeed, *Santos-Zacaria* rejected an interpretation of another claim-processing rule in § 1252 because it produced precisely the same incoherent results.

As the Fifth and Ninth Circuits have explained, under the minority reading, "petitioners would inevitably have to file a petition for review to preserve the possibility of judicial review, even when unsure if they would need to, or even choose to, challenge the decision in the future." *Alonso-Juarez*, 80 F.4th at 1053; *see also Argueta-Hernandez*, 87 F.4th at 706 n.5. This flood of "premature petitions for review" before the noncitizen had exhausted their claims for relief would be "immensely resource intensive" and disrupt the normal course of judicial review. *Argueta-Hernandez*, 87 F.4th at 706 n.5.[4]

The *Santos-Zacaria* Court rejected an interpretation of the neighboring exhaustion requirement on just these grounds. In explaining why the exhaustion provision did not require noncitizens to first file petitions for review and *then* exhaust those very same claims through motions for

[4] Even the Second Circuit in *Bhaktibhai-Patel* recognized that its reading produced "a seemingly odd result." 32 F.4th at 195.

reconsideration before the BIA, the Court explained that this "would . . . flood the courts with pointless premature petitions." *Santos-Zacaria*, 598 U.S. at 428–29. The result would be "a world of administrability headaches for courts" and "traps for unwary noncitizens" who are "already navigating a complex bureaucracy, often *pro se* and in a foreign language." *Id.* at 430. This would be entirely at cross-purposes with a rule meant to ensure the orderly and efficient course of litigation. The Court therefore "decline[d] to interpret the statute to be so at war with itself." *Id.* at 429.

Once again, the same goes for (b)(1). Requiring noncitizens to file premature petitions with unexhausted claims would "undermin[e] the very reason Congress enacted" a claim-processing rule: to keep things moving in an orderly and efficient manner. *Wilkins*, 598 U.S. at 157. And it would undercut all the long-recognized benefits of exhaustion requirements. *See Woodford*, 548 U.S. at 89. Instead of allowing "an agency an opportunity to correct its own mistakes . . . before it is haled into federal court," *id.*, noncitizens must file petitions for review before they know whether the agency will change course and grant relief, rendering judicial review unnecessary.

Nor is this the only way that the minority circuits' reading would upend "the orderly progress of litigation." *Santos-Zacaria*, 598 U.S. at 416. As the Fifth Circuit explained, "[i]t cannot be the case that a petitioner may only seek review . . . without a full administrative record." *Argueta-Hernandez*, 87 F.4th at 706. Indeed, § 1252(b)(4)(A) mandates review based on the administrative record developed before the immigration courts. Yet in the Second and Fourth Circuits, noncitizens must file their petition for review before an immigration

judge has finished adjudicating her claims. It is implausible that Congress used a filing deadline to *sub silentio* depart from this basic feature of not just § 1252 but of judicial review of administrative decision-making in general.

C. The minority rule risks foreclosing judicial review of an entire class of claims, which is the work of a subject-matter limitation, not a filing deadline.

There is another fundamental problem. As the Second Circuit stated when adopting the minority rule, its reading poses a risk that "a reentrant generally may not obtain judicial review of subsequent withholding-only proceedings." 32 F.4th at 195. In other words, (b)(1) could serve as a "limit[] on the classes of cases a court may entertain." *Wilkins*, 598 U.S. at 157. But that kind of limitation is the work of a congressional decision to limit a court's "subject-matter jurisdiction," not a filing deadline. *Id.*

The structure of § 1252 itself illustrates this, as it contains side-by-side jurisdictional limits on the classes of cases courts can review and nonjurisdictional rules of the road. Once more, *Santos-Zacaria* is instructive. Section 1252 includes an entire set of provisions entitled "[m]atters not subject to judicial review." § 1252(a)(2). This includes provisions stating that "no court shall have jurisdiction to review" different kinds of subject matter, such as certain "[d]enials of discretionary relief." § 1252(a)(2)(B). These are limitations on the classes of claims that a court has authority to review, hence the "unambiguous jurisdictional terms." *Santos-Zacaria*, 598 U.S. at 419. So when Congress wanted to bar review of classes of claims, it showed that it knew how to do so.

In contrast, § 1252 also includes a whole range of other rules "merely prescribing the method by which the jurisdiction granted the courts by Congress is to be exercised." *Santos-Zacaria*, 598 U.S. at 419. In addition to the time deadline and exhaustion requirement, other "[e]xamples abound," such as that "[t]he court of appeals shall review the proceeding on a typewritten record and on typewritten briefs." *Id.* at 420 (quoting § 1252(b)(2)). These provisions lack jurisdictional language, and that is no accident. Congress spoke in "clear[] terms" when it wanted provisions to have "jurisdictional force," *id.* at 419—i.e., when a provision actually limits "the classes of cases a court may entertain," *Wilkins*, 598 U.S. at 157.

Finally, (b)(1)'s status as a claim-processing rule cannot be squared with that fact that judicial review is effectively foreclosed for all claims in reinstatement proceedings. It would raise a "serious constitutional question . . . if a federal statute were construed to deny any judicial forum for a colorable constitutional claim." *Webster*, 486 U.S. at 603. In the wake of *Santos-Zacaria,* accepting the minority rule would mean accepting that Congress took this momentous step by creating a garden-variety requirement that parties file their briefs on time. That is simply not plausible.

Both the nature of claim-processing rules and the statutory structure indicate that while other provisions of § 1252 set limits on the classes of cases courts can review, (b)(1) is not one of them.

CONCLUSION

For the reasons stated above, this Court should grant the petition for certiorari and hear both questions presented therein.

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