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

PETITIONERS' SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF

The Third Circuit recently addressed both questions presented here, further entrenching the circuit split on the first question and deepening the split on the second. See *Inestroza-Tosta* v. *Att'y Gen.*, No. 22-1667, --- F.4th ---, 2024 WL 3078270 (3d. Cir. June 21, 2024). In so doing, it acknowledged the splits on both questions and aligned itself against the Fourth Circuit's decision below. This decision thus underscores that review is warranted here.

In *Inestroza-Tosta*, as here, the petitioner requested fear-based relief after the reinstatement of a prior order of removal. *Id.* at *2. He filed a petition for review less than 30 days after the BIA rendered its final decision on his administrative appeal, but more than one year after the reinstatement of his removal order. *Id.* at *4. The Third Circuit addressed both questions presented here.

1. On the first question, the Third Circuit reaffirmed that § 1252(b)(1)'s 30-day deadline runs from the end of any fear-based proceedings. Although the court had so held before *Nasrallah* and *Guzman Chavez*, see Pet. 16, it made clear in *Inestroza-Tosta* that those decisions do not require a contrary rule. See 2024 WL 3078270, at *7. And the "'well-settled and strong presumption' that Congress intends agency action, including immigration decisions, to be subject to judicial review," bolstered that conclusion. *Id.* at *8. "If we were to hold that the order of removal was final at reinstatement rather than at the conclusion of withholding-only proceedings, judicial review of those proceedings would be impossible for aliens with reinstated orders of removal." *Id.* Thus, "an 'order of removal' does not become 'final' until an agency decides an alien's request for withholding of removal." *Id.* at *7.

In so holding, the Third Circuit noted that "several of our sister Circuits" have agreed, "[b]ut the Second and Fourth Circuits go the other way." *Id.* at *7 n.12. The Third Circuit considered and rejected those outlier decisions, instead emphasizing the concerns that Judge Floyd's concurrence noted below. See *id.* at *8; Pet. App. 14a.

2. On the second question presented, the Third Circuit held that § 1252(b)(1)'s 30-day filing deadline is a non-jurisdictional claim-processing rule. The court relied on the deadline's "status as a simple filing deadline and its contrast with related, plainly jurisdictional provisions." *Id.* at *6 (cleaned up). Although the circuit's "existing precedent" held otherwise, *Santos-Zacaria* made that conclusion untenable. See *id.* at *5–6. Indeed, *Santos-Zacaria* "all but abrogated *Stone v. I.N.S.*," on which the Third Circuit had "relied on in holding that § 1252(b)(1)'s filing deadline is jurisdictional." *Id.* at *6.

The Third Circuit thus "join[ed] the Ninth and Fifth Circuits in holding that § 1252(b)(1) is a nonjurisdictional claim-processing rule." *Id.* Again, the court noted "a circuit split on this question," pointing to the Fourth and Seventh Circuits' contrary decisions. *Id.* at *6 n.10. But it declined to follow those rulings, noting that the Seventh Circuit "did not have occasion to undertake the full analysis we do here." *Id.*

CONCLUSION

The petition should be granted.

Respectfully submitted,

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