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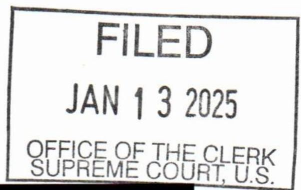

IN THE

Supreme Court of the United States

SILVIA TAPIA CORIA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney General

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Immigration and Nationality Act provides that "no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed [specified] criminal offenses," but clarifies that this jurisdiction-stripping provision does not preclude review "of constitutional claims or questions of law." 8 U.S.C. § 1252(a)(2)(C), (D).

The question presented is whether these provisions bar judicial review of collateral facts that do not bear on the merits of the final order of removal itself.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit:

Tapia Coria v. Garland, No. 22-970 (August 16, 2024)

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Petitioner Silvia Tapia Coria respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

INTRODUCTION

The Ninth Circuit in this case "respectfully disagree[d] with the Fourth Circuit[]," Pet. App. 15a, creating a circuit split on an important question regarding federal courts' jurisdiction to review certain factual findings by immigration judges and the Board of Immigration Appeals (Board). This Court should grant certiorari to resolve that conflict.

In adjudicating removal proceedings, the Immigration and Nationality Act (INA) tasks immigration courts with "conduct[ing] proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). In conducting such proceedings, the agency not only decides factual and legal questions concerning whether and on what terms the noncitizen should be removed, but also resolves a host of collateral procedural issues concerning, for instance, whether completed proceedings should be reopened or whether ongoing proceedings should be stayed given, for instance, the likelihood that U.S. Citizenship and Immigration Services (USCIS) might grant the noncitizen relief that would make the removal proceedings moot. *E.g.*, 8 C.F.R. §§ 1003.1(l), 1003.18(c) (administrative closure); 8 C.F.R. § 1003.23 (reopening or reconsideration).

The INA includes a broad grant of authority for the federal courts of appeals to review both the agency's final decision ordering a noncitizen removed as well as any other "questions of law and fact ... arising from any action taken or proceeding brought to remove [a

noncitizen] from the United States." 8 U.S.C. § 1252(b)(9). But the INA also strips the courts of appeals of jurisdiction "to review any final order of removal against [a noncitizen] who is removable by reason of having committed" specified criminal offenses—while separately authorizing the courts of appeals, even in cases involving such criminal offenses, to review "constitutional claims or questions of law." 8 U.S.C. § 1252(a)(2)(C), (D). The upshot is that, while the courts of appeals can generally review all "questions of law and fact ... arising from any action taken or proceeding brought to remove [a noncitizen] from the United States," the courts cannot review factual findings underlying a "final order of removal" if the noncitizen is removable based on a specified criminal offense.

The question in this case is whether the jurisdiction-stripping provision that applies to noncitizens convicted of a specified criminal offense bars the courts of appeals from reviewing collateral factual findings regarding procedural issues that do not bear on the merits of the final order of removal itself—*i.e.*, do not bear on whether the noncitizen is removable or the terms of her removal. In this case, for instance, Ms. Tapia Coria sought review of the agency's finding that she was unlikely to obtain a U Visa from USCIS. That finding had no bearing on whether or on what terms Ms. Tapia Coria was removable. Instead, that finding was the basis for the agency's denial of Ms. Tapia Coria's motion for administrative closure (effectively a stay of proceedings) while her U-Visa application was pending.

The Fourth Circuit has held that the INA's jurisdiction-stripping provision does *not* apply to such "collateral facts far removed from the underlying 'final order of removal.'" *Williams v. Garland*, 59 F.4th 620, 627 (quoting 8 U.S.C. § 1252(a)(2)(C)). Under the Fourth Circuit's holding in *Williams*, Ms. Tapia Coria could have obtained judicial review. But the Ninth Circuit in this case "respectfully disagree[d] with the Fourth Circuit[]" and concluded that it lacked jurisdiction to review Ms. Tapia Coria's argument, no matter how meritorious it might be. Pet. App. 15a.

This Court should grant certiorari to resolve that circuit conflict. Ms. Tapia Coria should not be denied judicial review of the agency's decision simply because she lives in California instead of West Virginia. Moreover, the question presented arises frequently, as the two published decisions in the last two years show. And the question presented is incredibly important when it does arise: Under the Ninth Circuit's decision, Ms. Tapia Coria can be ordered removed without *any* opportunity for judicial review of the key factual question on which the agency relied in refusing to stay proceedings while USCIS adjudicates her U-Visa application. This Court should grant certiorari.

OPINIONS BELOW

The original opinion of the court of appeals is reported at 96 F.4th 1192. The order denying rehearing en banc together with the revised opinion of the court of appeals (Pet. App. 1a-34a) is reported at 111 F.4th 994. The opinions of the Board of Immigration Appeals (Pet. App. 35a-48a) and of the immigration court (Pet. App. 49a-56a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on March 19, 2024. Pet. App. 1a. The court of appeals denied rehearing en banc and issued an amended opinion on August 16, 2024. Pet. App. 1a. On November 4, 2024, Justice Kagan extended the time to file this petition to January 13, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

8 U.S.C. § 1252 provides, in relevant part:

§ 1252. Judicial review of orders of removal

(a) Applicable provisions

(1) General orders of removal

Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 1225(b)(1) of this title) is governed only by chapter 158 of title 28, except as provided in subsection (b) and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) Matters not subject to judicial review

* * *

(C) Orders against criminal aliens

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), no court shall have jurisdiction to review any final order of removal against an alien who

is removable by reason of having committed a criminal offense covered in section 1182(a)(2) or 1227(a)(2)(A)(iii), (B), (C), or (D) of this title, or any offense covered by section 1227(a)(2)(A)(ii) of this title for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 1227(a)(2)(A)(i) of this title.

(D) Judicial review of certain legal claims

Nothing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

* * *

(b) Requirements for review of orders of removal

* * *

(6) Consolidation with review of motions to reopen or reconsider

When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with the review of the order.

* * *

(9) Consolidation of questions for judicial review

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be

available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

STATEMENT

A. Legal Background

1. The INA tasks the immigration courts with "conduct[ing] proceedings for deciding the inadmissibility or deportability of [a noncitizen]." 8 U.S.C. § 1229a(a)(1). "At the conclusion of the proceedings the immigration judge shall decide whether [a noncitizen] is removable from the United States"—a decision known as a final order of removal. 8 U.S.C. § 1229a(c)(1)(A); *see also Nasrallah v. Barr*, 590 U.S. 573, 581 (2020); 8 U.S.C. § 1101(a)(47).

In conducting those removal proceedings, immigration judges (and, on appeal, the Board) must resolve a host of procedural issues that do not relate to the ultimate question addressed in a final order of removal—*i.e.*, whether and on what terms the noncitizen is removable. For instance, after a final order of removal is entered, a noncitizen might file an untimely motion to reopen proceedings or reconsider a prior decision. *See* 8 U.S.C. § 1229a(c)(5), (6). Such an untimely motion would raise a host of factual questions concerning, among other things, equitable tolling—questions that are unrelated to whether and on what terms the noncitizen is removable. *See Wil-*

liams, 59 F.4th at 626-627. Or, while removal proceedings are ongoing, a noncitizen might ask the immigration judge or Board to administratively close proceedings given a likely grant of relief by USCIS—a type of stay that was authorized by *Matter of Cruz-Valdez*, 28 I. & N. Dec. 326 (A.G. 2021), and recently codified in regulation, 8 C.F.R. §§ 1003.1(l), 1003.18(c). Many of the questions at issue in resolving such motions do not speak to the validity of the final order of removal itself—*i.e.*, they are not relevant to the question "whether [a noncitizen] is deportable," 8 U.S.C. § 1101(a)(47)—but involve collateral procedural issues "far removed from the underlying 'final order of removal.'" *Williams*, 59 F.4th at 627.

2. The INA grants the courts of appeals broad authority to review the agency's actions in removal proceedings. This authority comes from several provisions in 8 U.S.C. § 1252. First, section 1252(a)(1) specifies the means of judicial review, stating that "[j]udicial review of a final order of removal … is governed only by [the Hobbs Act]." Second, section 1252(b)(6) makes clear that the statute also contemplates judicial review of "a motion to reopen or reconsider" the final order of review, stating that review of an order denying such a motion "shall be consolidated with the review of the final order." *See also Kucana v. Holder*, 558 U.S. 233, 242 (2010) (describing the long history of "[f]ederal-court review of administrative decisions denying motions to reopen removal proceedings"). And, third, section 1252(b)(9) makes clear that judicial review is not limited to the "final order of removal" itself, but also encompasses "all questions of law and fact … arising from any action taken or proceeding brought to remove [a noncitizen] from the United States." Thus, a noncitizen seeking judicial review of

the agency proceeding is not limited to challenging the "final order" itself, but can challenge "all questions of law and fact ... arising from any action taken or proceeding brought to remove" the noncitizen from the country.

This Court's decision in *Nasrallah* made clear that not all decisions made in removal proceedings are part of the "final order of removal" itself. *Nasrallah* held that orders withholding removal under the Convention Against Torture (CAT) are not part of the final order of removal because CAT withholding does not modify the agency's order that the noncitizen "is deportable or ordering deportation." 590 U.S. at 582. Instead, a CAT order merely impacts when and how a final order of removal can be carried out. *Id.* As this Court explained, the fact that the CAT order was reviewed together with the final order of removal did not make the CAT order *part* of the final order of removal. *Id.*

The INA also includes several provisions stripping the courts of appeals of jurisdiction in certain instances. As relevant here, section 1252(a)(2)(C) states that "no court shall have jurisdiction to review any final order of removal against [a noncitizen] who is removable by reason of having committed" specified criminal offenses. Section 1252(a)(2)(D) then restores jurisdiction over "constitutional claims or questions of law."

The impact of these two provisions is that, when reviewing agency proceedings involving a noncitizen convicted of a specified offense, the courts of appeals do not have jurisdiction to review factual findings underlying the "final order of removal."

B. Factual and Procedural Background

Ms. Tapia Coria is a native and citizen of Mexico who arrived in the United States in 1982 and became a lawful permanent resident in 1990. Pet. App. 5a. Twenty-five years ago, in 1999, she was convicted in California of possession for sale of methamphetamine and was sentenced to 180 days of imprisonment. Pet. App. 5a. The government made no effort to remove her based on this conviction, and she remained in the United States as a lawful permanent resident. Pet. App. 5a. She is now married and has four children, all of whom are U.S. citizens. A.R. 372-373.

In 2016, twenty-six years after she became a lawful permanent resident, Ms. Tapia Coria was stopped by immigration authorities upon her return from a short trip to Mexico and was ultimately placed in removal proceedings based on her then sixteen-year-old drug conviction. Pet. App. 5a. The immigration judge held that she is removable based on that conviction and denied her application for cancellation of removal. Pet. App. 5a-6a, 49a-56a. Ms. Tapia Coria appealed that decision to the Board of Immigration Appeals. Pet. App. 6a. In addition to challenging the immigration judge's decision ordering that she be removed, Ms. Tapia Coria requested that the Board remand her case to the immigration judge on the ground that she was eligible to become a derivative beneficiary of her husband's pending U-Visa application. Pet. App. 6a. Similarly, Ms. Tapia Coria argued that, given the likelihood she would obtain relief through that U-Visa application, the agency should administratively close her removal proceedings while the U-Visa application was being processed. Pet. App. 6a.

The Board dismissed her appeal and denied her requests for remand and administrative closure. As relevant here, the Board found it speculative whether Ms. Tapia Coria would be successful in obtaining relief through her husband's U-Visa application. Pet. App. 7a, 45a-48a.

Ms. Tapia Coria filed a petition for review with the Ninth Circuit, asking that court (as relevant here) to reverse the Board's denial of her request for remand and administrative closure. Specifically, Ms. Tapia Coria challenged the Board's finding that her entitlement to relief via her husband's U-Visa application was too speculative to warrant administrative closure. *See* Pet. App. 34a.

The Ninth Circuit dismissed her petition for lack of jurisdiction. Ms. Tapia Coria did not dispute that her conviction triggered the jurisdiction-stripping provisions of § 1252(a)(2)(C). Pet. App. 8a. But Ms. Tapia Coria argued (as relevant here) that § 1252(a)(2)(C) does not apply to her challenge to the Board's denial of her request for a remand and administrative closure. Pet. App. 8a. Ms. Tapia Coria argued that, in challenging those decisions, she was not seeking review of the final order of removal itself, but was instead seeking review of the Board's collateral decision not to administratively close the proceedings while she pursued relief through her husband's U-Visa application. Pet. App. 8a.

The Ninth Circuit rejected that argument and held that § 1252(a)(2)(C) did apply and stripped the court

of jurisdiction.[1] Pet. App. 9a-17a. The court recognized that the Fourth Circuit, in *Williams*, had held that § 1252(a)(2)(C) does not apply "when the petitioner seeks 'judicial review of collateral facts far removed from the underlying "final order of removal."'" Pet. App. 15a (quoting *Williams*, 59 F.4th at 627). But the Ninth Circuit "respectfully disagree[d] with the Fourth Circuit's analysis, finding the *Williams* dissent more persuasive." Pet. App. 15a-16a.

Ms. Tapia Coria filed a timely petition for rehearing en banc. On August 16, 2024, the Ninth Circuit denied that petition and revised its opinion in ways not material to this petition. Pet. App. 1a-3a.

REASONS FOR GRANTING THE WRIT

I. The circuit conflict on the question presented warrants this Court's review.

As the Ninth Circuit recognized, the courts of appeals are in conflict over the question presented—a conflict that warrants this Court's review.

A. The circuits are divided.

There is a clear conflict between the Ninth Circuit's decision in this case and the Fourth Circuit's decision in *Williams*.

1. Damien Williams, the petitioner in the Fourth Circuit case, had been a lawful permanent resident of the United States since 1987, when he was six years old. 59 F.4th at 625. In 2005, the government sought to remove Mr. Williams based on several 2003 convictions that stemmed from a single incident in which

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[1] The Ninth Circuit also rejected several other arguments Ms. Tapia Coria made that are not relevant to this petition.

Mr. Williams resisted an officer's spraying him with mace while he was in handcuffs. *Id.* The immigration judge held that Mr. Williams had *not* been convicted of an aggravated felony. *Id.* But the immigration judge held that Mr. Williams was nevertheless removable because he had been convicted of two or more crimes involving moral turpitude. *Id.* at 626. Unlike an aggravated felony conviction, however, the moral-turpitude offenses did not make Mr. Williams ineligible for cancellation of removal, and the immigration judge granted Mr. Williams cancellation of removal, allowing him to stay in the country. *Id.*

The government then appealed to the Board, and the Board held that Mr. Williams had, in fact, been convicted of an aggravated felony. That decision made Mr. Williams ineligible for cancellation of removal. Mr. Williams was thus ordered removed.

It later became clear, however, that the Board's aggravated-felony determination was wrong under this Court's subsequent decisions in *Johnson v. United States*, 559 U.S. 133 (2010), and *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018). *Williams*, 59 F.4th at 626. At the time of this Court's decisions, however, Mr. Williams was working in low-paying jobs in Jamaica and had no Internet access. *Id.* His family in the United States was earning $20,000 per year. *Id.* Ultimately, though, Mr. Williams and his family were able to retain an attorney who quickly moved for reconsideration in light of *Johnson* and *Dimaya*, arguing that the deadline for filing that motion should be equitably tolled. *Id.* at 626-627. The Board did not dispute that Mr. Williams's conviction no longer qualified as an aggravated felony. *Id.* at 627. But the Board refused to equitably toll the statutory deadline largely on the

ground that, if Mr. Williams could find pro bono counsel in 2019, he presumably could have found pro bono counsel earlier.

Mr. Williams filed a petition for review with the Fourth Circuit, arguing primarily that the agency's decision rested on a fundamental factual error: He had *never* found pro bono counsel, despite his diligent efforts, but had (with his family) finally saved enough money to *pay for* an attorney. *Id.* The Fourth Circuit agreed and granted the petition for review.

As relevant here, the Fourth Circuit rejected the government's argument that the jurisdiction-stripping provision in 8 U.S.C. § 1252(a)(2)(C) barred review of the agency's factual finding. The Fourth Circuit agreed with the government that a noncitizen cannot avoid that jurisdiction-stripping provision simply because the factual finding was made in a motion to reconsider a final order, not the final order itself. 59 F.4th at 628. But the court recognized a distinction between facts that "affect the validity of the final order of removal" in the sense that they impact whether the noncitizen was actually removable and "collateral facts" that are relevant only to procedural issues—in *Williams*, whether the agency should have equitably tolled the motion deadline. *Id.* The Fourth Circuit held that because the jurisdiction-stripping provision applies only to review of a "final order of removal," it does not apply to review of "collateral" issues that do not relate directly to whether and on what terms the noncitizen is removable.

Judge Rushing dissented, arguing that the jurisdiction-stripping provision in section 1252(a)(2)(B) applies to any factual finding in an order denying reopening or reconsideration. 59 F.4th at 644-650.

2. There can be little dispute that Ms. Tapia Coria was entitled to judicial review under the Fourth Circuit's decision in *Williams*. As in *Williams*, the factual question at issue below—whether Ms. Tapia Coria was likely to obtain a U-Visa from USCIS—did not relate to the validity of the final order of removal. Ms. Tapia Coria did not dispute (as relevant here) that her conviction made her removable. Nor did Ms. Tapia Coria challenge the terms on which she was ordered removed. Instead, like Mr. Williams, Ms. Tapia Coria challenged only "collateral facts" relating to a procedural issue far removed from the merits: whether her case should have been administratively closed while USCIS adjudicated her U-Visa application.

The Ninth Circuit agreed that, under *Williams*, the jurisdiction-stripping provision in section 1252(a)(2)(C) does not apply "when the petitioner seeks 'judicial review of collateral facts far removed from the underlying "final order of removal."'" Pet. App. 15a (quoting *Williams*, 59 F.4th at 627). Moreover, the Ninth Circuit did not dispute that Ms. Tapia Coria would be entitled to judicial review under that holding. The Ninth Circuit simply "disagree[d] with the Fourth Circuit's analysis in *Williams*, finding the *Williams* dissent more persuasive." Pet. App. 15a-16a. There is thus a clear and acknowledged circuit conflict.[2]

[2] In a footnote, the Ninth Circuit described *Williams* as "factually distinguishable" because, if Mr. Williams could overcome the adverse factual finding regarding equitable tolling, there was no dispute that he was not removable. Pet. App. 17a n.2. The Ninth Circuit did not explain why this creates any meaningful distinction between the two cases. After all, if USCIS grants Ms. Tapia

B. The circuit conflict warrants this Court's review in this case.

This Court should not allow this circuit conflict to persist.

First, the circuit conflict leads to great unfairness for noncitizens like Ms. Tapia Coria, who are denied judicial review of important factual questions based solely on geographic happenstance. Ms. Tapia Coria became a lawful permanent resident thirty-five years ago. She was ordered removed based on a sixteen-year-old conviction, from a phase in her life that she had long since moved past. And she has filed a likely meritorious application for a U Visa so that she can remain in this country with her husband and four U.S.-citizen children. The question whether she is entitled to judicial review of the agency's refusal to stay proceedings while USCIS processes her U-Visa application should not turn on the fact that she lives in California instead of West Virginia.

Second, the question presented arises frequently, as can be seen in the two published decisions addressing that question in the last two years. Immigration judges and the Board routinely decide collateral motions addressing issues like equitable tolling (as in *Williams*) and administrative closure (as in this case). Whether and when the jurisdiction-stripping provision in section 1252(a)(2)(C) applies to factual findings

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Coria's U-Visa application, she also will not be removable. The fact that Mr. Williams "had a winning argument on the law" while Ms. Tapia Coria still needs to obtain a U Visa from USCIS to avoid removal does not create a distinction with any legal significance. Indeed, even in its footnote, the Ninth Circuit never suggested that Ms. Tapia Coria would not have been entitled to judicial review under *Williams*.

underlying such rulings is an important question that should not be answered differently in different parts of the country.

Third, there is no realistic chance that this conflict will resolve on its own. The Ninth Circuit denied rehearing en banc in this case. And the government did not even seek rehearing in *Williams* despite Judge Rushing's dissent.

Fourth, there would be little benefit in further percolation. Both the Fourth Circuit's majority and dissenting opinions and the Ninth Circuit's decision include thorough analyses of the question presented. Waiting for other circuits to choose sides would do nothing to enhance this Court's ability to resolve the question presented.

This Court should thus grant certiorari now to resolve the conflict.

II. The Ninth Circuit's decision is wrong.

Certiorari is particularly warranted because the Fourth Circuit is correct. Ms. Tapia Coria *is* entitled to judicial review of the agency's finding that she is not likely to obtain a U Visa from USCIS—the primary basis on which the Board denied Ms. Tapia Coria's motion for administrative closure.

As an initial matter, as the Fourth Circuit recognized, section 1252(a)(2)(C) must be construed in light of a "familiar principle of statutory construction: the presumption favoring judicial review of administrative action." *Kucana*, 558 U.S. at 251; *see also Williams*, 59 F.4th at 630. Under that presumption, the question is whether section 1252(a)(2)(C) "clear[ly]

and convincing[ly] ... dislodge[d]" the courts of jurisdiction to review the type of factual question presented in this case. *Id.* at 252.

Section 1252(a)(2)(C) did no such thing. That section provides that "no court shall have jurisdiction to review *any final order of removal* against [a noncitizen] who is removable by reason of having committed" a specified criminal offense. (Emphasis added.) Even read on its own, section 1252(a)(2)(C) does not apply to *everything* the agency did in removal proceedings. It applies only to the final order of removal itself.

The rest of section 1252 makes clear that review of a "final order of removal" is only a *subset* of the judicial review of agency proceedings that the INA authorizes. For instance, the statute *separately* contemplates "review" of "a motion to reopen or reconsider," specifying that such review shall be consolidated with the review of the "order under this section"—*i.e.*, the final order of removal. 8 U.S.C. § 1225(b)(5). And the statute contemplates review of "all questions of law and fact ... arising from any action taken or proceeding brought to remove [a noncitizen] from the United States," specifying that review of such questions is available through "judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9). The statute thus instructs that, while judicial review of "a motion to reopen or reconsider" or a legal or factual question arising from "any action taken or proceeding brought" to remove a noncitizen must be *consolidated* with judicial review of a final order of removal, the judicial review of such motions or legal or factual questions is not *part* of the judicial review of the final order of removal. The jurisdiction-stripping provision only applies to judicial review of the final order of removal

itself—*i.e.*, the determination of whether and on what terms the noncitizen is removable. The jurisdiction-stripping provision does *not* apply to the reopening or reconsideration orders or other legal or factual questions that are distinct from, but resolved together with, judicial review of that final order.

As the Fourth Circuit recognized, it would have been easy for Congress to have written section 1252(a)(2)(C) to strip the courts of jurisdiction to review *all* factual questions had it wanted to do so. For instance, rather than *consolidating* judicial review of final orders of removal with judicial review of reopening and reconsideration orders and other legal and factual questions, Congress could have only authorized judicial review of the final order of removal, while clarifying that such review *encompassed* review of related reopening and reconsideration orders and all other legal and factual questions arising from the removal proceedings. Or, in the jurisdiction-stripping provision itself, Congress could have used language similar to the language it used in section 1252(b)(9)—*i.e.*, it could have stripped jurisdiction to review "all questions ... arising from any action taken or proceeding brought to remove a noncitizen from the United States." Instead, Congress (1) treated judicial review of the final order of removal as distinct from judicial review of other agency action in removal proceedings and (2) stripped the courts of appeals of jurisdiction to review *only* the final order of removal itself.

This Court's decision in *Nasrallah* confirms that the Fourth Circuit's interpretation of the statute is the right one. As *Nasrallah* explained, "[f]or purposes of this statute, final orders of removal encompass only the rulings made by the immigration judge or Board

of Immigration Appeals that affect the validity of the final order of removal." 590 U.S. at 582. A CAT order, *Nasrallah* held, did not "affect the validity" of the final order because it did not disturb the final order of removal itself—it simply determined whether and in what ways it could be carried out. *Id.*

The same is true here. Ms. Tapia Coria did not challenge the validity of the final order of removal because she did not dispute that her criminal conviction made her removable. Instead, she simply argued that the agency should have waited to complete proceedings until it knew whether USCIS would grant Ms. Tapia Coria's U-Visa application. As in *Nasrallah*, her challenge to the agency effectively turned on the timing of the final order, not its ultimate validity.

Nasrallah also supports the Fourth Circuit's decision in another way: It clarified that, just because something is "reviewed together with the final order of removal," that does not make it a part of that final order. *Id.* at 582-583. Again, the same is true here. Section 1252 may require that the review Ms. Tapia Coria seeks be carried out together with any review of the final order of removal. But that does not make it *part* of the final order of removal—and hence does not make it subject to the jurisdiction-stripping provision in section 1252(a)(2)(C).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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