No. 19-8107

IN THE SUPREME COURT OF THE UNITED STATES

RAUL GUZMAN-IBAREZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether amendments to the definition of aggravated felony in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546, which "shall apply to actions taken on or after the date of the enactment of this Act, regardless of when the conviction occurred," § 321(c), 110 Stat. 3009-628, apply to orders entered by immigration authorities in the course of ongoing immigration proceedings.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-4a) is not published in the Federal Reporter but is reprinted at 789 Fed. Appx. 588. The prior opinion of the court of appeals (Pet. App. 12a-19a) is reported at 792 F.3d 1094.

JURISDICTION

The judgment of the court of appeals was entered on January 6, 2020. The petition for a writ of certiorari was filed on March 20, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the Central District of California, petitioner was convicted of unlawfully reentering the United States after removal, in violation of 8 U.S.C. 1326. Pet. App. 5a-6a. The district court sentenced him to 33 months of imprisonment, to be followed by three years of supervised release. Id. at 6a. The court of appeals vacated and remanded for further proceedings, and this Court denied a petition for a writ of certiorari. Id. at 12a-19a. On remand, the district court reinstated petitioner's sentence and conviction, id. at 10a, and the court of appeals affirmed, id. at 4a.

1. a. An alien who commits an "aggravated felony" is subject to removal from the United States. 8 U.S.C. 1227(a)(2)(A)(iii). Before 1996, the definition of "aggravated felony" included any theft offense for which the term of imprisonment imposed was at least five years. See 8 U.S.C. 1101(a)(43)(G) (1994); Pet. App. 16a. On September 30, 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. No. 104-208, Div. C., 110 Stat. 3009-546.[1] In Section 321 of IIRIRA, Congress amended the

[1] In Section 304 of IIRIRA, Congress instituted a new form of proceeding known as "removal," which replaced "deportation" and "exclusion." See 8 U.S.C. 1229, 1229a (Supp. IV 1998); § 304, 110 Stat. 3009-587 to 3009-593. To avoid confusion, this brief uses

definition of "aggravated felony" to include any theft offense for which the term of imprisonment imposed was at least one year. See § 321(a), 110 Stat. 3009-627 (amending Section 1101(a)(43)(G)).

Congress provided that the IIRIRA's amended definition of "aggravated felony" would apply, "[n]otwithstanding any other provision of law (including any effective date), * * * regardless of whether the conviction was entered before, on, or after" IIRIRA's date of enactment. § 321(b), 110 Stat. 3009-628. Congress further provided that the amended definition of aggravated felony "shall apply to actions taken on or after the date of the enactment of this Act, regardless of when the conviction occurred." § 321(c), 110 Stat. 3009-628.

b. Pursuant to 8 U.S.C. 1326, any alien who has been "deported[] or removed" from the United States "and thereafter * * * enters * * * or is at any time found in[] the United States" without obtaining consent from the Attorney General or the Secretary of Homeland Security (except under circumstances in which such consent is not necessary) has committed the crime of illegal reentry and shall be fined or imprisoned or both. 8 U.S.C. 1326(a); see 6 U.S.C. 202(3)-(4), 557.

In a prosecution for illegal reentry under Section 1326, an alien may challenge the validity of a removal order only under

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"removal" to refer to any means by which immigration authorities remove an alien from the United States.

limited circumstances. Such a challenge is permissible if "the alien demonstrates that * * * (1) the alien exhausted any administrative remedies that may have been available to seek relief against the order; (2) the [removal] proceedings at which the order was issued temporarily deprived the alien of the opportunity for judicial review; and (3) the entry of the order was fundamentally unfair." 8 U.S.C. 1326(d).

2. Petitioner was born in Mexico and came to the United States in 1979. Pet. App. 14a. On July 13, 1989, he became a lawful permanent resident. Ibid. From the age of 18 onward, he committed a variety of crimes in the United States. Presentence Investigation Report (PSR) ¶¶ 31-40 (listing ten convictions for a range of offenses).

On December 21, 1995, immigration authorities initiated a removal proceeding against petitioner as a result of his criminal activity. Pet. App. 14a. On February 14, 1997, he was convicted of first-degree robbery, in violation of California law, and sentenced to four years of imprisonment. Ibid. The California robbery conviction and petitioner's subsequent imprisonment necessitated a delay in that proceeding, which was administratively closed in 1997. Ibid. The proceeding was reopened after petitioner was released from prison, and "the robbery conviction was added to the charges supporting his [removal]." Ibid. On August 25, 1999, in reliance on the robbery

conviction, an IJ found petitioner removable as an alien convicted of an aggravated felony and issued a removal order. Ibid. Petitioner waived his right to appeal and was removed from the United States. Ibid.

After his 1999 removal, petitioner repeatedly reentered the United States without authorization and was repeatedly removed. Pet. App 14a. "[H]e reentered and was [removed] again in 2000, 2002, 2004 and 2010 based on the initial 1999 [removal]." Ibid.; see PSR ¶¶ 2, 8.

3. In 2012, petitioner reentered the United States illegally yet again. PSR ¶¶ 10-11. On August 31, 2012, petitioner was charged by indictment in the Central District of California with unlawfully reentering the United States, in violation of 8 U.S.C. 1326(a) and (b)(2), having been "officially deported and removed from the United States on or about August 26, 1999, November 8, 2000, November 8, 2002, November 16, 2004, and June 2, 2010." Indictment 1-2. The indictment alleged that "[a]t least one of [petitioner's] previously alleged deportations and removals from the United States occurred subsequent to [his] convictions for one or more of the following aggravated felonies: 1) Robbery, in violation of California Penal Code Section 211, on or about February 14, 1997," and "2) Inflicting Corporal Injury on a Spouse or Cohabitant, in violation of California Penal Code Section 273.5(a), on or about April 10, 2008." Indictment 2.

Petitioner moved to dismiss the indictment on the theory that his due process rights were violated by the 1999 removal order because he had not been informed of the availability of discretionary relief under 8 U.S.C. 1182(c) and (h) (1994). The district court denied the motion. The court determined that petitioner was not eligible for discretionary relief under either provision. See Pet. App. 23a-27a. The court also reasoned that, even if the failure to advise petitioner of the possibility of discretionary relief was erroneous, such an error did "not invalidate [petitioner's] subsequent deportations in 2000, 2002, 2004, and 2010, when [petitioner] was in fact an aggravated felon," which was an independent basis to remove him. Id. at 26a (citing United States v. Quintanilla-Gonzalez, 450 Fed. Appx. 612 (9th Cir. 2011), cert. denied, 565 U.S. 1183 (2012)); see id. at 27a ("Each one of those deportations would be sufficient to sustain [petitioner's] conviction in this case.").

After a bench trial, the district court found petitioner guilty of illegal reentry. See Pet. App. 14a. The court sentenced him to 33 months of imprisonment, to be followed by three years of supervised release. Id. at 6a.

4. The court of appeals vacated petitioner's conviction and sentence and remanded for further proceedings. Pet. App. 14a. The court found that the IJ who issued the 1999 removal order had failed to advise petitioner of his right to seek discretionary

relief under Section 1182(c), thus violating his due process rights. Id. at 16a. The court remanded for the district court to determine whether that error prejudiced petitioner. Id. at 16a-17a.[2]

The court of appeals rejected an alternative argument for relief that petitioner raised for the first time on appeal – namely, his contention that the legal basis "for finding him [removable]" in 1999 "was fundamentally flawed" because his robbery conviction did not qualify as an aggravated felony when the removal proceeding began in 1995. Pet. App. 15a. The court explained that, at the time of the 1999 removal order, the 1996 statutory change that modified the definition of "aggravated felony" was in effect so as to cover petitioner's California robbery conviction. Id. at 15a-16a.

The court of appeals recognized that, when the proceeding that resulted in petitioner's 1999 removal was commenced in 1995, a theft offense was an "aggravated felony" only if the term of imprisonment imposed upon the defendant was at least five years. Pet. App. 15a; see 8 U.S.C. 1101(a)(43)(G) (1994). Under that definition, petitioner's California robbery conviction would not constitute an aggravated felony because he was sentenced to a term

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[2] The court of appeals also determined that the IJ did not err by "fail[ing] to advise [petitioner] of the possibility of relief under 8 U.S.C. § 1182(h)." Pet. App. 17a; see id. at 18a. Judge Fisher dissented solely as to that determination, which petitioner does not challenge here. See id. at 18a-19a.

of four years. The court of appeals further recognized, however, that before petitioner pleaded guilty to the robbery offense, IIRIRA Section 321(a) made a theft offense an aggravated felony so long as the defendant was sentenced to one year or more in prison, rather than five years or more. Pet. App. 16a; see 8 U.S.C. 1101(a)(43)(G) (1994).

IIRIRA's effective-date provision states that the amended definition of "aggravated felony" applies to "actions taken" on or after September 30, 1996 (IIRIRA's date of enactment). § 321(c), 110 Stat. 3009-628; see § 321(b), 110 Stat. 3009-628 (amended definition of aggravated felony encompasses convictions "before, on, or after" that date). And, the court of appeals had previously determined that "'actions taken' refers to orders and decisions issued against an alien by the Attorney General acting through the BIA or an Immigration Judge." Pet. App. 16a (quoting Valderrama-Fonseca v. INS, 116 F.3d 853, 854-856 (9th Cir. 1997)). The court accordingly found that when "the [IJ] acted on August 25, 1999, by entering a removal order, she correctly decided that [petitioner's] robbery conviction was an aggravated felony because the term of imprisonment for his offense exceeded one year." Ibid.

Petitioner filed a petition for a writ of certiorari, raising the same question presented in the instant petition, and this Court denied review. 137 S. Ct. 34.

5. On remand, the district court carried out the court of appeals' instruction to analyze whether petitioner had been prejudiced by the IJ's failure to inform him of his right to seek discretionary relief under 8 U.S.C. 1182(c) during his 1999 removal proceedings. Pet. App. 6a. The district court determined that there was no prejudice because it was not "plausible" that "the IJ would have exercised discretion in [petitioner's] favor," and it reinstated petitioner's conviction and sentence. Id. at 6a-9a. The court of appeals affirmed. Id. at 2a-4a.

ARGUMENT

Petitioner contends (Pet. 10-18) that the court of appeals erred in interpreting "actions taken" in IIRIRA's effective-date provision to include actions taken by immigration authorities in the course of an ongoing immigration proceeding. In 2016, this court denied petitioner's previous petition for a writ of certiorari presenting an identical challenge to the court of appeals' decision in an interlocutory posture, 137 S. Ct. 34, and the same disposition is warranted here. The court of appeals correctly rejected petitioner's argument; its determination is consistent with the decisions of most other courts of appeals to have considered the issue; and the issue has little or no continuing significance. In any event, this case is a poor vehicle for consideration of the question because resolution of the question in petitioner's favor would not affect his conviction or

sentence, and because petitioner failed to raise the argument in the district court when he first had the opportunity, such that the plain error standard applies. Further review is not warranted.

1. The court of appeals correctly recognized that when the IJ ordered petitioner removed from the United States in 1999, "she correctly decided that [petitioner's] robbery conviction was an aggravated felony" under the 1996 amendments to the definition of that term "because the term of imprisonment for his offense exceeded one year." Pet. App. 16a. Petitioner does not dispute that the 1996 amendment to the "theft offense" portion of the aggravated-felony definition encompasses his robbery conviction. Petitioner asserts (Pet. 11-13), however, that the IJ was not entitled to rely on that amendment in entering a removal order against him in 1999 in a proceeding that originally commenced before IIRIRA was enacted. In particular, petitioner argues that the effective-date provision in Section 321(c) of IIRIRA, which provides that amendments to the aggravated-felony definition "shall apply to actions taken on or after the date of the enactment of this Act," § 321(c), 110 Stat. 3009-628, should be interpreted to apply the amendments only in the context of immigration proceedings that were initiated on or after the relevant date. That argument lacks merit.

In its prior opinion, the court of appeals correctly rejected petitioner's claim. The natural meaning of "actions taken," the

key phrase in Section 321(c), includes actions such as orders or the decisions of an IJ in an ongoing proceeding. See, e.g., Black's Law Dictionary 32 (9th ed. 2009) (defining "action" as "[t]he process of doing something; conduct or behavior" and "[a] thing done; act"); see also Biskupski v. Attorney Gen. of the U.S., 503 F.3d 274, 283 (3d Cir. 2007) ("This definition of 'actions taken' makes sense considering that until a final agency order is issued by either an [IJ] or the [Board of Immigration Appeals], an alien remains the subject of administrative adjudication."), cert. denied, 555 U.S. 820 (2008); Pet. App. 16a. While the word "action" can sometimes be used more restrictively to refer to "a civil or criminal judicial proceeding" as a whole, Black's Law Dictionary 32 (fourth definition), petitioner identifies no instance in which the word "taken" has been employed in modern legal parlance to connote initiation of such a proceeding. Had Congress intended in Section 321(c) to make its amendments applicable only in proceedings initiated after IIRIRA's effective date, Congress would have chosen instead to follow the word "actions" with "filed," "brought," "commenced," "initiated," or some other word to that effect. Cf. Gollust v. Mendell, 501 U.S. 115, 124 (1991) ("Today, as in 1934, the word 'institute' is commonly understood to mean 'inaugurate or commence; as to institute an action'"; construing 15 U.S.C. 78p(b) (1988), which

provides for recovery in a "[s]uit * * * instituted") (citation omitted).[3]

That commonsense understanding of "actions taken" is reinforced by a comparison of the language of Section 321(c) to the language of another provision enacted as part of the 1996 amendments to the immigration laws, 8 U.S.C. 1252(g). Section 1252(g) provides that (with certain exceptions) "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." IIRIRA § 306(a)(2), 110 Stat. 3009-612. That language makes clear that when the word "action" is used to refer to something done by immigration authorities it sweeps in not only an "action * * * to commence proceedings" but also an "action [to] * * * adjudicate [a] case[]." Ibid.; see Choeum v. INS, 129 F.3d 29, 37 (1st Cir. 1997).

Petitioner makes little effort to explain why "actions taken" should have the narrower meaning he suggests. While he notes that "removal proceedings are initiated by serving an alien with an

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[3] Congress could also have chosen to use language similar to the language used in the effective-date provision applicable to the 1990 revisions to the aggravated-felony definition. That earlier effective-date provision states that the 1990 revisions "shall not apply to deportation proceedings for which notice has been provided to the alien before" a particular date. Immigration Act of 1990, Pub. L. No. 101-649, § 602(d), 104 Stat. 5082.

order to show cause or notice to appear" (Pet. 12), that fact does not speak to the meaning of "actions taken" in Section 321(c). Even if the commencement of proceedings is one "action," the removal itself is another. Cf. 8 U.S.C. 1252(g). Petitioner's unadorned assertion that "regulations suggest that 'actions taken' refers to [the] moment" when a proceeding is initiated (Pet. 12) is unfounded. The regulations to which petitioner's citation refers discuss the consequences of the issuance of a notice to appear, but do not illuminate what Congress meant when it used the phrase "actions taken" in IIRIRA's effective-date provision. See 8 C.F.R. 236.1, 239.2, 1003.14 (cited in Saqr v. Holder, 580 F.3d 414, 421-422 (6th Cir. 2009)).

2. Most of the courts of appeals that have addressed the issue have agreed that the phrase "actions taken" in Section 321(c) encompasses actions carried out by immigration authorities during the pendency of an ongoing removal proceeding, including an IJ's issuance of a removal order. See Biskupski, 503 F.3d at 281-283 (3d Cir.); Garrido-Morato v. Gonzales, 485 F.3d 319, 323-324 (5th Cir. 2007); Xiong v. INS, 173 F.3d 601, 607 (7th Cir. 1999); Choeum, 129 F.3d at 35-37 (1st Cir.); see also Ortiz v. INS, 179 F.3d 1148, 1155-1156 (9th Cir. 1999).[4]

[4] The Board of Immigration Appeals has reached the same conclusion. See, e.g., In re Batista-Hernandez, 21 I. & N. Dec. 955, 961 (B.I.A. 1997) (en banc).

Contrary to petitioner's contention, the decisions of those courts do not rest on a "misreading" (Pet. 15) of the Ninth Circuit's decision in Valderrama-Fonseca v. INS, 116 F.3d 853 (1997). The decisions cite Valderrama-Fonseca, which concluded that the 1996 amendments to the aggravated-felony definition did not apply to the alien in that case because the "actions taken" language "make[s] the * * * amendments applicable to anything done by the Attorney General after the effective date (without regard to when the conviction occurred)" and the Attorney General had not taken any action with respect to the alien during the relevant period. Id. at 856-857. But those decisions also thoroughly analyze the text of Section 321(c), compare Section 321(c) to other immigration provisions, and employ other tools of statutory interpretation. See, e.g., Biskupski, 503 F.3d at 282-283; Choeum, 129 F.3d at 35-37.

The Sixth Circuit and (in an unpublished, non-precedential decision) the Fourth Circuit have reached a different conclusion. In Saqr, the Sixth Circuit stated that "the term 'action taken' appears to this Court to derive from the point at which the removal action begins for purposes of determining whether the pre- or post-IIRIRA definition of aggravated felony applies." 580 F.3d at 422. And in Tobar-Barrera v. Holder, 549 Fed. Appx. 124 (2013), the Fourth Circuit stated (over a dissent by Judge Keenan) that "'actions taken' refers to the point at which the Attorney General

began its initial removal proceedings." Id. at 127; see id. at 128. Those conclusions lack meaningful support "either in case law or statutory text," Biskupski, 503 F.3d at 283, and in the unlikely event that the issue were to arise again, the courts in question could revisit the issue and agree with the majority view. Indeed the Fourth Circuit has no relevant "binding precedent," Tobar-Barrera, 549 Fed. Appx. at 125, so the issue would be open to a later panel if any future case actually presented it.

In any event, any divergence in authority does not warrant this Court's review, as the issue is of little or no ongoing significance. Petitioner's interpretation of Section 321(c) could be relevant only with respect to a live controversy in which the dispositive issue is the validity of a removal order (or some other act by authorities) in an immigration proceeding initiated before September 30, 1996 that remained ongoing when the IIRIRA was enacted, and whose validity turns on the applicability of its amendments. At this point -- more than two full decades after enactment of the 1996 amendments to the aggravated-felony definition – that is unlikely to be true of any cases, and the relevant circuit precedents are not of recent vintage. The question presented is not, in fact, a dispositive issue in this very case, as explained at pp 16-18, infra, and few recent decisions of any court even cite and rely on the pertinent portions of the circuit decisions discussed above.

3. Even if the question presented would otherwise warrant this Court's review, this case is a poor vehicle for considering it, both because the resolution of the question would not affect the outcome and because his challenge may be reviewed only for plain error.

First, even if petitioner's interpretation of the effective-date provision were correct, that interpretation would not call into question his conviction for violation of Section 1326. Petitioner reentered the United States without permission following not only his 1999 removal but also his removals in 2000, 2002, 2004, and 2010. Indictment 1-2; see Indictment 2-3 (alleging that "[a]t least one of [petitioner's] previously alleged deportations and removals from the United States occurred subsequent" to the 1997 California robbery conviction or a 2008 California conviction for inflicting corporal injury on a spouse or cohabitant). So long as any of the removals was justified, petitioner's later reentry into the United States constituted the crime of which he was convicted. See 8 U.S.C. 1326; Pet. App. 26a-27a.

Regardless of how the term "actions taken" in IIRIRA's effective-date provision is interpreted, each of the post-1999 removals was indeed justified. As to each, because the removal proceeding commenced after the date when Congress enacted IIRIRA, see PSR ¶ 2, no dispute over the meaning of "actions taken" is

implicated. Petitioner's 1997 California robbery conviction thus indisputably qualified as an aggravated felony for purposes of all four of the post-1999 removals -- and commission of such a felony is (and was at the relevant times) an independently sufficient ground for removal from this country. See 8 U.S.C. 1227(a)(2)(A)(iii). Moreover, with respect to petitioner's 2010 removal, yet another independently sufficient basis for the removal existed – namely, a 2008 California conviction for inflicting corporal injury on a spouse or cohabitant. See 8 U.S.C. 1227(a)(2)(A) and (E); PSR ¶ 39. Accordingly, petitioner has no basis to contend that the government failed to properly allege or establish, as an element of a Section 1326 violation, that he had reentered the United States despite having previously been removed pursuant to a "valid[]" order. 8 U.S.C. 1326(a) and (d); see Pet. App. 26a-27a.

That is true even though the 2000, 2002, 2004, and 2010 removals were "reinstatement[s] of the 1999 removal," Pet. App. 22a n.2; see 8 U.S.C. 1231(a)(5). Petitioner is barred from collaterally attacking the "validity" of any of those later removals "[i]n a criminal proceeding" under Section 1326 unless "the entry of the [removal] order was fundamentally unfair." 8 U.S.C. 1326(d)(3). Entry of a removal order is not fundamentally unfair unless petitioner can show prejudice -- that is, "a reasonable likelihood that but for the error [] complained of" he

"would not have been [removed]." United States v. Perez-Ponce, 62 F.3d 1120, 1122 (8th Cir. 1995) (citation omitted); see, e.g., Pet. App. 15a; United States v. Charleswell, 456 F.3d 347, 361 (3d Cir. 2006). Precisely because petitioner was subject to removal in 2000, 2002, 2004, and 2010 on the basis of his California robbery conviction (and was additionally subject to removal in 2010 on the basis of his conviction for infliction of corporal injury on a spouse or cohabitant), regardless of whether he was properly removable in 1999, he cannot show that any alleged error in the 1999 removal caused him prejudice at a later date. See Pet. App. 26a ("In order to demonstrate prejudice, [petitioner] would have to wish away the 1997 robbery conviction.").

Second, because petitioner failed to raise the issue he now presses in the district court during the original proceedings, his claim is reviewable (at most) only for plain error, and he cannot satisfy that demanding standard. See Fed. R. Crim. P. 52(b); United States v. Olano, 507 U.S. 725, 731-732 (1993).[5] To establish

[5] In its prior opinion, the court of appeals acknowledged that petitioner raised the question presented for the first time on appeal, see Pet. App. 15a-16a, but did not apply plain error on the theory that the question was "a pure issue of law" and because it had to address "the aggravated felony question" anyway, ibid. Neither reason justifies declining to apply the plain-error rule. See Johnson v. United States, 520 U.S. 461, 466 (1997). And while petitioner attempted to raise the issue before the district court during the remand proceedings, D. Ct. Doc. 121, at 12-13 (Mar. 20, 2017) (Pet. Br. on Remand), he cannot overcome forfeiture by raising on remand an argument that the court of appeals had already rejected, Pet. App. 15a-16a.

reversible plain error, a defendant must demonstrate that (1) there was error; (2) the error is plain or obvious; (3) the error affected substantial rights; and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. Id. at 732-736; see, e.g., Puckett v. United States, 556 U.S. 129, 135 (2009). Here, the majority of circuits have agreed with the court below about the meaning of "actions taken" in Section 321(c). Petitioner therefore cannot demonstrate that the district court's failure to deem the 1999 removal invalid -- if it was error at all, cf. Musacchio v. United States, 136 S. Ct. 709, 718 (2016) -- was a "clear or obvious" error not "subject to reasonable dispute." Puckett, 556 U.S. at 135; see United States v. Williams, 469 F.3d 963, 966 (11th Cir. 2006) (per curiam) (no plain error when there is no controlling case law and circuits are in disagreement); United States v. Teague, 443 F.3d 1310, 1319 (10th Cir.) (same), cert. denied, 549 U.S. 911 (2006). In addition, because (for reasons just explained) the outcome of this case would be unaffected by resolution of the question presented in petitioner's favor, he cannot demonstrate that the alleged error of which he complains affected his substantial rights or the fairness of the judicial proceedings in his case. See, e.g., Olano, 507 U.S. at 735-737.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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