No. 19-863

In the Supreme Court of the United States

AGUSTO NIZ-CHAVEZ, PETITIONER

v.

WILLIAM P. BARR, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the government must provide the written notice required to trigger the stop-time rule, 8 U.S.C. 1229b(d)(1)(A), in a single document.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is not published in the Federal Reporter but is reprinted at 789 Fed. Appx. 523. The decisions of the Board of Immigration Appeals (Pet. App. 16a-25a) and the immigration judge (Pet. App. 26a-40a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 24, 2019. The petition for a writ of certiorari was filed on January 9, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, grants the Attorney General the discretion to cancel the removal of an alien who is inadmissible or deportable. 8 U.S.C. 1229b(a)-(b). To obtain

cancellation of removal, the alien bears the burden of demonstrating both that he is statutorily eligible for such relief and that he warrants a favorable exercise of discretion. 8 U.S.C. 1229a(c)(4)(A).

To be statutorily eligible for cancellation of removal, an alien who is not a lawful permanent resident must show (A) that he "has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of [his] application" for cancellation for removal; (B) that he "has been a person of good moral character during such period"; (C) that he "has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of [Title 8], subject to paragraph (5) [of Section 1229b(b)]"; and (D) that "removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." 8 U.S.C. 1229b(b)(1)(A)-(D).

The continuous-physical-presence requirement is subject to the "stop-time rule." *Pereira* v. *Sessions*, 138 S. Ct. 2105, 2110 (2018). As relevant here, the stop-time rule provides that "any period of * * * continuous physical presence in the United States shall be deemed to end * * * when the alien is served a notice to appear under section 1229(a) of [Title 8]." 8 U.S.C. 1229b(d)(1)(A).

Paragraph (1) of Section 1229(a), in turn, provides that "written notice (in this section referred to as a 'notice to appear') shall be given * * * to the alien * * * specifying," among other things, the "nature of the proceedings against the alien," the "charges against the alien," the "time and place at which the proceedings will be held," and the "consequences under section 1229a(b)(5)" of failing to appear. 8 U.S.C. 1229(a)(1)(A),

(D), and (G)(i)-(ii). Paragraph (2) of Section 1229(a) provides that, "in the case of any change or postponement in the time and place of [the removal] proceedings," "a written notice shall be given" specifying the "new time or place of the proceedings," and the "consequences under section 1229a(b)(5)" of failing to attend. 8 U.S.C. 1229(a)(2)(A).

Under Section 1229a(b)(5), "[a]ny alien who, after written notice required under paragraph (1) or (2) of section 1229(a) of this title has been provided * * * , does not attend a proceeding under this section, shall be ordered removed in absentia." 8 U.S.C. 1229a(b)(5)(A). An alien may not be removed in absentia, however, unless the Department of Homeland Security (DHS) "establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable." *Ibid.* An order of removal entered in absentia may be rescinded "if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section 1229(a)." 8 U.S.C. 1229a(b)(5)(C)(ii).

2. Petitioner is a native and citizen of Guatemala. Administrative Record (A.R.) 425. In February 2005, he entered the United States illegally, without inspection by an immigration officer. Pet. App. 27a; see A.R. 180, 425.

In March 2013, DHS served petitioner with a document labeled "Notice to Appear." A.R. 425 (emphasis omitted). That notice informed petitioner of the "removal proceedings" being initiated against him, and charged that he was subject to removal because he was an alien present in the United States without being admitted or paroled. *Ibid.* (emphasis omitted); see 8 U.S.C. 1182(a)(6)(A)(i). The notice did not specify the date and

time of petitioner's initial removal hearing. See A.R. 425 (ordering petitioner to appear for removal proceedings "on a date to be set at a time to be set") (emphasis omitted).

DHS later filed the notice to appear with the immigration court. A.R. 425. The INA's implementing regulations provide that "[t]he Immigration Court shall be responsible for scheduling cases and providing notice to the government and the alien of the time, place, and date of hearings." 8 C.F.R. 1003.18(a). The regulations further provide that if "the time, place and date of the initial removal hearing" "is not contained in the Notice to Appear, the Immigration Court shall be responsible for scheduling the initial removal hearing and providing notice to the government and the alien of the time, place, and date of hearing." 8 C.F.R. 1003.18(b).

In May 2013, the immigration court provided petitioner with a document labeled "Notice of Hearing," which informed him that it had scheduled his removal hearing for June 25, 2013, at 8:30 a.m. A.R. 422 (capitalization altered). Petitioner appeared at that hearing before an immigration judge (IJ), A.R. 150, and conceded that he was removable as charged, A.R. 151; Pet. App. 27a. Petitioner expressed an intent to apply for withholding of removal and related protection, but asked the IJ for additional time to prepare the application. A.R. 151-152.

In August 2013, petitioner appeared at another hearing before the IJ, A.R. 155, and submitted an application for withholding of removal and related protection, A.R. 156, 348-358. After consulting with a clerk of the immigration court, the IJ scheduled an individual hearing on petitioner's application for February 2016—more than two years in the future. A.R. 158-159; see A.R. 418.

The immigration court subsequently informed petitioner that the February 2016 individual hearing had been cancelled. A.R. 417. In September 2016, the immigration court informed petitioner that a master-calendar hearing in his case had been scheduled for June 2017. A.R. 416. Petitioner appeared at that hearing, and the IJ explained that the February 2016 individual hearing had been cancelled "[d]ue to lack of resources." A.R. 163. After consulting with the clerk, the IJ rescheduled petitioner's individual hearing for April 2022. A.R. 164-165; see A.R. 414.

The immigration court later rescheduled petitioner's individual hearing for September 2017. A.R. 402. Petitioner appeared at that hearing and indicated that he was applying for asylum, in addition to withholding of removal and related protection. A.R. 170. The IJ noted that there had been an "off the record" discussion about petitioner's eligibility for cancellation for removal, but that the IJ "th[ought] we all agree[d] with the Government" that because the document labeled a "['Notice to Appear'] was issued March 26, 2013," petitioner lacked the requisite ten years of continuous physical presence in the United States following his entry in February 2005. Pet. App. 42a. Petitioner did not submit an application for cancellation of removal. A.R. 214; Pet. App. 22a.

In November 2017, the IJ found petitioner removable as charged, Pet. App. 38a; denied his applications for asylum, withholding of removal, and related protection, *id.* at 32a-38a; and granted his request for voluntary departure, *id.* at 38a-39a. Petitioner filed an appeal with the Board of Immigration Appeals (Board). A.R. 99-101.

3. a. While petitioner's appeal was pending before the Board, this Court issued its decision in *Pereira* v.

Sessions, 138 S. Ct. 2105 (2018). In *Pereira*, the Court was presented with the "narrow question," *id.* at 2110, whether a document labeled a "notice to appear" that does not specify the time or place of an alien's removal proceedings is a "notice to appear under section 1229(a)" that triggers the stop-time rule governing the calculation of the alien's continuous physical presence in the United States for purposes of cancellation of removal, 8 U.S.C. 1229b(d)(1). The Court answered no, holding that "[a] notice that does not inform a noncitizen when and where to appear for removal proceedings is not a 'notice to appear under section 1229(a)' and therefore does not trigger the stop-time rule." *Pereira*, 138 S. Ct. at 2110.

Following this Court's decision in *Pereira*, petitioner filed his brief before the Board, challenging the IJ's denial of petitioner's application for withholding of removal and related protection. A.R. 63-83. Four months later, petitioner filed a motion to remand his case to the IJ in light of *Pereira* so that he could apply for cancellation of removal. A.R. 16-20; see A.R. 26-33 (proposed application). In his motion, petitioner contended that he was "prima facie eligible" for such relief. A.R. 19. He argued that, in light of *Pereira*, the "Notice to Appear" with which he had been served did not trigger the stop-time rule, because it did not contain the date and time of his removal proceedings. A.R. 18. He therefore argued that he could establish the requisite ten years of continuous physical presence in the United States. A.R. 19.

In his motion, petitioner also argued that he could show that his removal would cause "exceptional and extremely unusual hardship" to his two U.S. citizen children, who he asserted were "dependent on him for housing, food, medical care, and financial stability." A.R. 19.

Petitioner attached to his motion two letters regarding his then-four-year-old U.S. citizen daughter. A.R. 36-37; see A.R. 35. One letter, from the Head Start program in which his daughter was enrolled, stated that she was "in the process" of receiving services for "speech and language" development. A.R. 36. The other letter, from an eye clinic, stated that she had been diagnosed with "an eye muscle problem called left Brown's Syndrome," which "does not cause developmental delay or learning disabilities." A.R. 37.

b. The Board dismissed petitioner's appeal. Pet. App. 16a-25a. The Board affirmed the IJ's denial of relief and related protection, finding no basis to disturb that denial. *Id.* at 17a-21a. The Board also denied petitioner's motion to remand. *Id.* at 21a-23a. The Board noted that petitioner "did not seek cancellation of removal before the [IJ]." *Id.* at 22a. The Board then found a remand "unwarranted" because petitioner had "not proffered any material evidence that was previously unavailable at his prior hearing or evidence which establishes his prima facie eligibility for the relief requested." *Id.* at 22a-23a.

The Board also explained that, in a recent decision, it had "held that a notice to appear that does not specify the time and place of an alien's initial removal hearing * * * meets the requirements of section [1229(a)], so long as a notice of hearing specifying this information is later sent to the alien." Pet. App. 22a (citing *Matter of Bermudez-Cota*, 27 I. & N. Dec. 441 (B.I.A. 2018)). The Board "note[d] that [petitioner] first entered the United States in February of 2005, he was placed in removal proceedings on or about March 26, 2013, and received the notice of hearing for his June 25, 2013, hearing." *Id.* at 23a n.3. The Board therefore found that petitioner

had "not established that he has been physically present in the United States for a continuous period of 10 years as required under section [1229a(b)(1)]." *Ibid.*

4. The court of appeals denied petitioner's petition for review. Pet. App. 1a-15a. The court affirmed the Board's decision to uphold the denial of withholding of removal and related protection. *Id.* at 5a-11a. The court also held that the Board "did not abuse its discretion" in denying petitioner's motion to remand. *Id.* at 15a. The court explained that in *Garcia-Romo* v. *Barr*, 940 F.3d 192 (6th Cir. 2019), petition for reh'g en banc denied, No. 18-3857 (Jan. 22, 2020), it had held that "the government can trigger the stop-time rule by satisfying the requirements of a notice to appear through multiple documents." Pet. App. 14a. The court determined that, "[u]nder *Garcia-Romo*, the stop-time rule was triggered for [petitioner] on May 29, 2013, when he received information concerning the time and place of the immigration proceedings against him, which occurred prior to him accruing ten years of continuous physical presence in the United States." *Ibid.* The court therefore concluded that petitioner "is not eligible for cancellation of removal under the governing statute." *Ibid.*

ARGUMENT

Petitioner contends (Pet. 26-35) that the court of appeals erred in determining that the government may provide the written notice required to trigger the stop-time rule in more than one document. The court of appeals' decision is correct and does not conflict with any decision of this Court. Although a circuit conflict currently exists on the question presented, further review is unwarranted. Any intervention by this Court to resolve the circuit conflict would be premature at this juncture, because the circuits may resolve that conflict

on their own. In any event, this case would be a poor vehicle for this Court's review, because the question presented is not outcome-determinative. The petition for a writ of certiorari should be denied.[1]

1. The court of appeals correctly determined that the government served petitioner with the "notice to appear" required to trigger the stop-time rule, 8 U.S.C. 1229b(d)(1)(A), by first serving him with written notice of all the information required under Section 1229(a)(1) except the date and time of his initial removal rehearing, and then serving him with written notice of the date and time of that hearing. Pet. App. 14a-15a.

a. The stop-time rule provides that an alien's period of continuous physical presence "shall be deemed to end * * * when the alien is served a notice to appear under section 1229(a)." 8 U.S.C. 1229b(d)(1)(A). Section 1229(a), in turn, provides that "written notice (in this section referred to as a 'notice to appear') shall be given * * * to the alien * * * specifying" various items of information, including the "time and place at which the [removal] proceedings will be held." 8 U.S.C. 1229(a)(1)(G)(i). There is no dispute in this case that the government served petitioner with "written notice" of all the information specified in Section 1229(a)(1). The government therefore served petitioner with the "notice to appear" to which Section 1229(a)(1) "refer[s]," 8 U.S.C. 1229(a)(1), and the stop-time rule was triggered when that notice was complete, 8 U.S.C. 1229b(d)(1)(A).

b. Petitioner contends (Pet. 26-35) that the stop-time rule was never triggered because the government provided written notice of the date and time of his initial

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[1] Another pending petition for a writ of certiorari raises a similar issue. See *Yanez-Pena* v. *Barr*, No. 19-___ (filed Apr. 8, 2020).

removal hearing in a document separate from written notice of the rest of the information Section 1229(a)(1) specifies. Nothing in the text, history, or purposes of the relevant statutory provisions suggests, however, that the "notice to appear" to which Section 1229(a)(1) refers must be provided in a single document in order to trigger the stop-time rule.

i. Petitioner contends that because Section 1229(a)(1) refers to "*a* 'notice to appear,'" the statutory text "indicates that service of a single document—not multiple—triggers the stop-time rule." Pet. 27 (citation omitted). But petitioner "gives too cramped a reading to the meaning of the indefinite article 'a' as understood in ordinary English." *Garcia-Romo* v. *Barr*, 940 F.3d 192, 201 (6th Cir. 2019), petition for reh'g en banc denied, No. 18-3857 (Jan. 22, 2020). The indefinite article "a" is often used to refer to something that may be provided in more than one installment. Thus, for instance, a writer may provide "a manuscript" to his publisher by providing some chapters on one day and the remaining chapters on another. See *ibid.* (providing similar examples). Or an employee may complete "a questionnaire" for his employer by completing some answers at one time and the remaining answers at a different time.

Likewise here, the government may provide "a notice to appear" to an alien by providing some information in one written notice and the rest of the information in another. Indeed, the text of Section 1229(a)(1) itself divides "a 'notice to appear'" into various items of information, labeled (A) through (G). 8 U.S.C. 1229(a)(1). And notably, it "defines" (*Pereira* v. *Sessions*, 138 S. Ct. 2105, 2116 (2018)) "a 'notice to appear'" as "written notice" of such information, without the word "a" preceding "written notice." 8 U.S.C. 1229(a)(1); cf. 8 U.S.C.

1229(a)(2)(A)(i) (referring to "*a* written notice" of "the new time or place of the proceedings") (emphasis added). Thus, the text does not foreclose the government from providing "a 'notice to appear'" by first providing all the specified items except the date and time in one "written notice," and then providing the date and time in a subsequent "written notice." 8 U.S.C. 1229(a)(1). Rather, the text makes clear that where, as here, the government has provided all the "written notice" required under Section 1229(a)(1), it has provided the "notice to appear" "referred to" in that Section. *Ibid.*

ii. Petitioner's reliance (Pet. 28-29) on the history of the statute is likewise misplaced. Petitioner contends (Pet. 29) that Congress's decision in 1996 to "move[] the time-and-place information from an *optional* part of the 'order to show cause' to a *required* part of the 'notice to appear'" shows that Congress "rejected the two-step process and required a one-step process." But that amendment suggests only that the government has not provided "a notice to appear under section 1229(a)" *until* it has provided such time-and-place information, 8 U.S.C. 1229b(d)(1)(A)—a proposition *Pereira* already establishes. See 138 S. Ct. at 2118 ("A document that fails to include such information is not a 'notice to appear under section 1229(a)' and thus does not trigger the stop-time rule."). It does not support petitioner's contention that the government has not provided "a notice to appear under section 1229(a)" *even after* it has provided all the information required under that Section, including time-and-place information.

Rather, the history of the statute supports the court of appeals' interpretation, not petitioner's. Congress enacted the stop-time rule to prevent aliens from ex-

ploiting administrative delays in their removal proceedings by continuing to accrue time toward their period of continuous physical presence during such delays. See *Pereira*, 138 S. Ct. at 2119. The court of appeals' interpretation is faithful to that intent, by cutting off the accrual of such time once the government has provided all the information constituting the "notice to appear" referred to in Section 1229(a)(1), including written notice of the date and time of the initial removal hearing. Petitioner's interpretation, in contrast, would frustrate Congress's intent, by allowing the alien to continue to accrue such time while his removal proceedings stretch on for months and even years, as they did in petitioner's own case. See pp. 3-5, *supra*.

iii. Petitioner's interpretation also lacks support in the broader purposes of the relevant statutory provisions. Cancellation of removal is a matter of grace. See *INS* v. *Yueh-Shaio Yang*, 519 U.S. 26, 30 (1996) (describing discretionary suspension of deportation under a predecessor provision as "an act of grace," akin to "a judge's power to suspend the execution of a sentence, or the President's to pardon a convict") (citations omitted). Accordingly, Congress restricted eligibility for cancellation of removal to those aliens it believed had the greatest claim to it, based in part on how long they had been continuously physically present in the country (in the case of aliens such as petitioner). 8 U.S.C. 1229b(b)(1)(A). But once an alien has been informed that "the Government is committed to moving forward with removal proceedings at a specific time and place," *Pereira*, 138 S. Ct. at 2115 n.6, that alien cannot claim any continued reliance on being physically present in the country. It therefore makes sense that Congress would cut off the accrual of any additional period of continuous physical

presence once an alien like petitioner has been provided all of the written notice Section 1229(a)(1) requires.

Petitioner's interpretation, in contrast, would serve little purpose. Petitioner does not appear to dispute, for example, that if the immigration court in this case had stapled to the "Notice of Hearing" a copy of the document labeled "Notice to Appear" that he had previously been provided, and gave both pieces of paper to petitioner in May 2013, then the stop-time rule would have been triggered on that date, because he would have "received *together*" (Pet. 30) all the information required by Section 1229(a)(1). No sound basis exists, however, to think Congress would have wanted application of the stop-time rule to turn on whether petitioner was provided a second copy of the "Notice to Appear" with the "Notice of Hearing." That is especially so given that he was already "required to carry * * * with [him] at all times" the original copy of the "Notice to Appear" he was provided. A.R. 426. That notice, moreover, informed him that he was ordered to appear for removal proceedings on a date and time to be set in the future, A.R. 425, and that "[n]otices of hearing" would be mailed to his address, A.R. 426.

c. At a minimum, the Board's interpretation of the stop-time rule is a reasonable one. See *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-844 & n.11 (1984). In *Matter of Mendoza-Hernandez & Capula-Cortes*, 27 I. & N. Dec. 520 (2019) (en banc), the Board held that "where a notice to appear does not specify the time and place of an alien's initial removal hearing, the subsequent service of a notice of hearing containing that information 'perfects' the deficient notice to appear, satisfies the notice requirements of section [1229(a)(1)], and triggers the 'stop-time' rule of section

[1229b(d)(1)(A)]." *Id.* at 535. Contrary to petitioner's contention (Pet. 33), the Board provided an "adequate explanation" for its decision, explaining that it had considered, among other things, *Pereira*'s "rejection" of the Board's earlier decision in *Matter of Camarillo*, 25 I. & N. Dec. 644 (2011). *Mendoza-Hernandez*, 27 I. & N. Dec. at 535. Because the Board's position is at the very least consistent with the text, history, and purposes of the relevant statutory provisions, it should be given deference. See *Holder* v. *Martinez Gutierrez*, 566 U.S. 583, 591 (2012).[2]

2. Although a circuit conflict currently exists on the question presented, further review is unwarranted. Any intervention by this Court would be premature at this juncture, because the circuits may resolve the conflict on their own.

a. Following this Court's decision in *Pereira*, five courts of appeals, including three after petitioner filed his petition for a writ of certiorari, have addressed the question presented. Two courts of appeals—the Fifth

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[2] Petitioner asserts (Pet. 5) that the government's position in this case represents "a new theory" "the government came up with" "[a]fter *Pereira*." That assertion is mistaken. The position dates to at least 2006, when the Seventh Circuit embraced it prior to *Pereira*. See *Dababneh* v. *Gonzales*, 471 F.3d 806, 810. And in *Pereira* itself, the petitioner acknowledged that if the government serves a notice to appear that does not specify a date and time, it can still trigger the stop-time rule by later providing the alien with a notice that does specify a date and time. See Pet. Reply Br. at 19, *Pereira*, *supra* (No. 17-459) ("The government can, whenever it wants, stop an immigrant from accruing time by serving notice of the information specified in section 1229(a). Even if the government omits service of the 'time and place' information from its initial notice, there is nothing an immigrant could do to delay service of notice that provides such information."); Pet. Br. at 42, *Pereira*, *supra* (No. 17-459).

and Sixth Circuits—have held that the government may provide the written notice required to trigger the stop-time rule in more than one document. See *Yanez-Pena* v. *Barr*, 952 F.3d 239, 241 (5th Cir. 2020) ("[A notice to appear] is perfected, and the stop-time rule is triggered, when the alien receives all required information, whether in one document or more."), petition for cert. pending, No. 19-____ (filed Apr. 8, 2020); *Garcia-Romo*, 940 F.3d at 196-197 (6th Cir.) ("[T]he stop-time rule is triggered when a noncitizen has received all of the required categories of information of § 1229(a)(1)(A)-(G) whether sent through a single written communication or in multiple written installments."). By contrast, three courts of appeals—the Third, Ninth, and Tenth Circuits—have held that the government must provide the written notice required to trigger the stop-time rule in a single document. See *Guadalupe* v. *Attorney Gen. of the U.S.*, 951 F.3d 161, 167 (3d Cir. 2020) (holding that, "for purposes of the stop-time rule, a deficient [notice to appear] cannot be supplemented with a subsequent notice that does not meet the requirements of [Section] 1229(a)(1)"); *Lopez* v. *Barr*, 925 F.3d 396, 405 (9th Cir. 2019) (holding that "[t]he law does not permit multiple documents to collectively satisfy the requirements of a Notice to Appear" and trigger the stop-time rule), petition for reh'g en banc granted, 948 F.3d 989 (9th Cir. 2020); *Banuelos-Galviz* v. *Barr*, No. 19-9517, 2020 WL 1443523, at *1 (10th Cir. Mar. 25, 2020) (holding that "the stop-time rule is triggered by one complete notice to appear rather than a combination of documents").

Any intervention by this Court to resolve the circuit conflict, however, would be premature at this juncture. The Ninth Circuit recently granted the government's petition for rehearing en banc in *Lopez*. 948 F.3d 989,

989 (2020). The Ninth Circuit's decision thus has been vacated and is no longer precedent of that court. *Ibid.* In addition, the government has filed petitions for rehearing en banc in the other two cases on that side of the circuit conflict: *Guadalupe* and *Banuelos-Galviz*. Those petitions remain pending. If the Third and Tenth Circuits grant rehearing en banc in those cases as the Ninth Circuit did in *Lopez*, then a circuit conflict on the question presented will no longer exist, rendering any intervention by this Court unnecessary. Given that the circuits may resolve the conflict on their own, further percolation is warranted.

b. Contrary to petitioner's contention (Pet. 22), neither the Seventh Circuit nor the Eleventh Circuit has addressed the question presented following this Court's decision in *Pereira*. Neither of the Seventh or Eleventh Circuit decisions petitioner cites (Pet. 15-16) involved a question about the notice required to trigger the stop-time rule. Rather, each case involved the question whether the immigration court lacked jurisdiction over the alien's removal proceedings because the notice to appear filed with the immigration court did not specify the date and time of the alien's initial removal hearing. See *Ortiz-Santiago* v. *Barr*, 924 F.3d 956, 957-958 (7th Cir. 2019); *Perez-Sanchez* v. *U.S. Attorney Gen.*, 935 F.3d 1148, 1152 (11th Cir. 2019). As the Third Circuit has recognized, that jurisdictional issue is distinct from the question presented here. See *Guadalupe*, 951 F.3d at 164 n.13 (noting that *Ortiz-Santiago* and *Perez-Sanchez* "did not squarely address the issue" here). Indeed, this Court has recently and repeatedly denied petitions for writs of certiorari raising that issue of the immigration court's jurisdiction or authority to proceed. See *Karingithi* v. *Barr*, No. 19-475 (Feb. 24, 2020); *Kadria* v.

Barr, 140 S. Ct. 955 (2020) (No. 19-534); *Banegas Gomez* v. *Barr*, 140 S. Ct. 954 (2020) (No. 19-510); *Perez-Cazun* v. *Barr*, 140 S. Ct. 908 (2020) (No. 19-358); *Deocampo* v. *Barr*, 140 S. Ct. 858 (2020) (No. 19-44).[3]

Moreover, to the extent the Seventh and Eleventh Circuit decisions petitioner cites (Pet. 15-16) addressed the written notice required under Section 1229(a)(1), neither decision foreclosed the possibility that the government could provide such notice through more than one document. Thus, in *Ortiz-Santiago*, although the Seventh Circuit stated that a notice to appear that does not specify the date and time of the initial removal hearing is "defective" under Section 1229(a)(1), 924 F.3d at 961, it stated only that it was "not so sure" that the government could complete the required notice by later providing a notice of hearing, *id.* at 962, without resolving the issue. Likewise, in *Perez-Sanchez*, the Eleventh Circuit stated only that a notice to appear that lacked a date and time would, in the absence of any additional notice, be deficient under Section 1229(a)(1), while leaving open the possibility that "a notice of hearing sent later might be relevant to a harmlessness inquiry." 935 F.3d at 1154.

3. In any event, this case would be a poor vehicle for this Court's review, because the question presented is not outcome-determinative. To be statutorily eligible

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[3] Other petitions for writs of certiorari raising the jurisdictional issue remain pending. See, *e.g.*, *Pedroza-Rocha* v. *United States*, No. 19-6588 (filed Nov. 6, 2019); *Pierre-Paul* v. *Barr*, No. 19-779 (filed Dec. 16, 2019); *Callejas Rivera* v. *United States*, No. 19-7052 (filed Dec. 19, 2019); *Araujo Buleje* v. *Barr*, No. 19-908 (filed Jan. 17, 2020); *Mora-Galindo* v. *United States*, No. 19-7410 (filed Jan. 21, 2020); *Gonzalez-De Leon* v. *Barr*, No. 19-940 (filed Jan. 22, 2020); *Nkomo* v. *Barr*, No. 19-957 (filed Jan. 28, 2020); *Ferreira* v. *Barr*, No. 19-1044 (filed Feb. 18, 2020).

for cancellation of removal, an alien such as petitioner must also establish that "removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." 8 U.S.C. 1229b(b)(1)(D). To meet that standard, the alien must prove that the hardship to his U.S. citizen (or lawful permanent resident) relatives, if the alien were removed, would be "'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *In re Monreal-Aguinaga*, 23 I. & N. Dec. 56, 62 (B.I.A. 2001) (quoting H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 213 (1996) (Conf. Report)). It can be met in only "'truly exceptional' situations." *Ibid.* (quoting Conf. Report 213-214).

In his motion to remand, petitioner asserted that his two U.S. citizen children at the time were "dependent on him for housing, food, medical care, and financial stability." A.R. 19. He also attached letters stating that his then-four-year-old daughter was "in the process" of receiving services for "speech and language" development, A.R. 36, and that she had been diagnosed with "an eye muscle problem called left Brown's Syndrome," which "does not cause developmental delay or learning disabilities," A.R. 37.

Without questioning whether petitioner's removal would cause some hardship to his U.S. citizen children, those facts do not make out a prima facie case of "exceptional and extremely unusual hardship." 8 U.S.C. 1229b(b)(1)(D); see *Monreal-Aguinaga*, 23 I. & N. Dec. at 62, 64 (concluding that the removal of a father of two U.S. citizen children would not cause "exceptional and extremely unusual hardship" because "[t]here [wa]s nothing to show that he would be unable to work and

support his United States citizen children in [his home country]"); *In re Andazola-Rivas*, 23 I. & N. Dec. 319, 324 (B.I.A. 2002) (concluding that the removal of a single mother of two children would not cause "exceptional and extremely unusual hardship"). Thus, even if this Court were to adopt petitioner's interpretation of the stop-time rule, the Board did not abuse its discretion in denying petitioner's motion to remand on the ground that he had not proffered evidence that "establishes his prima facie eligibility for the relief requested." Pet. App. 22a-23a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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