Nos. 22-674 and 22-884

IN THE
Supreme Court of the United States

MORIS ESMELIS CAMPOS-CHAVES,
Petitioner,
v.
MERRICK B. GARLAND, ATTORNEY GENERAL,
Respondent.

MERRICK B. GARLAND, ATTORNEY GENERAL,
Petitioner,
v.
VARINDER SINGH,
Respondent.

MERRICK B. GARLAND, ATTORNEY GENERAL,
Petitioner,
v.
RAUL DANIEL MENDEZ-COLÍN,
Respondent.

On Writs of Certiorari to the United States Courts of Appeals for the Fifth and Ninth Circuits

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UNOPPOSED JOINT MOTION FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28.4 of this Court, Petitioner Moris Esmelis Campos-Chaves (No. 22-674), Respondent Varinder Singh (No. 22-884), and Respondent Raul Daniel Mendez-Colín (No. 22-884) (together, "noncitizen parties") jointly move for divided argument. The noncitizen parties request that the Court evenly divide 30

minutes of argument time between each of the three parties.

Division of the argument is warranted here because, although the three cases present a similar legal question, the different procedural postures of the three cases require each of the noncitizens to raise different arguments. Indeed, at the certiorari stage, the United States urged this Court to grant certiorari in all three cases, rather than granting one case and holding the others, because it wanted the Court to consider the legal question "in full view of th[e] three frequently recurring scenarios" presented by each of the three cases. Pet'r's Reply Br. at 11 (No. 22-884).

In the event the Court does not allow argument by three counsel, the noncitizen parties alternatively request that the Court evenly divide argument between two of the three parties. Each of the noncitizen parties' respective positions regarding how the Court should designate the arguing parties in that alternative scenario are outlined below.

The United States does not oppose this motion, provided that the United States is allowed the same amount of argument time as the noncitizen parties.

1. Each of the three cases raises the same overarching question whether a noncitizen "did not receive notice in accordance with paragraph (1) or (2) of section 1229(a)" of Title 8 of the United States Code, such that they may move, pursuant to 8 U.S.C. Section 1229a(b)(5)(C)(ii), to rescind an in absentia removal order. There is no dispute that the noncitizen parties did not receive "notice in accordance with paragraph (1)" of 8 U.S.C. Section 1229(a) (a "notice to appear"). *See* Br. for the Att'y Gen. at 26. The question is whether each of the noncitizen parties "receive[d] notice

in accordance with paragraph … (2)" of 8 U.S.C. section 1229(a) (a "notice of change in time and place of proceedings"; hereinafter "notice of change"), such that, if not, they may move to rescind their in absentia removal order under Section 1229a(b)(5)(C)(ii); or, regardless, whether they may move to rescind under Section 1229a(b)(5)(C)(ii) based on the invalid notice to appear alone.

2. Each of the noncitizen parties' cases arises in a different procedural posture. The government provided Petitioner Campos-Chaves with one document purporting to be a "notice of change," and Petitioner Campos-Chaves does not before this Court dispute that he received the document. Br. for the Att'y Gen. at 6-7. The government provided Respondent Singh with multiple purported "notices of change," and Respondent Singh did not receive the document informing him of the hearing that he did not attend. *Id.* at 9-11. Finally, the Government provided Respondent Mendez-Colín with multiple purported "notices of change," and Respondent Mendez-Colín attended several removal hearings. *Id.* at 13-14.

3. As a result, each of the three noncitizens has taken different positions and raises different arguments in this litigation. Respondent Mendez-Colín argues that his attendance at removal hearings should not change this Court's analysis. Br. for Resp't Mendez-Colín at 30-32. The other two noncitizen parties do not make that argument. Petitioner Campos-Chaves explains that "[t]o the extent the Court is concerned that some noncitizens, who appeared at removal proceedings and never contested proper notice, will benefit from a ruling that allows for rescission because of an invalid [paragraph (1) notice], that is not Mr. Campos-Chaves's case." Resp. Br.

of Pet'r Campos-Chaves at 41-42 n.7. Respondent Singh's position is similar: "Because Mr. Singh did not attend any hearings, this Court need not address whether, or under what circumstances, a noncitizen might waive any objection to a deficient notice to appear or notice of change of hearing by actually attending a hearing." Singh Br. for the Resp't at 23 n.4.

4. In addition, Respondent Mendez-Colín argues that the Government is wrong when it maintains that "even if the first [notice of hearing] that follows a defective [notice to appear] does not count" as a notice of change, the same "cannot be said of a subsequent [notice of hearing]." Br. for Resp't Mendez-Colín at 26-30 (quoting Br. for the Att'y Gen. at 31). Respondent Singh, too, asks that the Court reject the government's reading that the second and subsequent notices of hearing sent following a defective notice to appear are not notices of change. Br. for the Resp't Singh at 12-14. Although Petitioner Campos-Chaves agrees with the other noncitizen parties' reading of the statute, he maintains that "if the Court finds the government's distinction dispositive for purposes of Respondents Singh or Mendez-Colín, Mr. Campos-Chaves should still prevail." Resp. Br. of Pet'r Campos-Chaves at 22-23 n.5.

5. Finally, Respondent Singh argues that he may move to reopen his in absentia order "because he did not *actually* receive the date and time information sent by the Immigration Court to his address." Br. for the Resp't Singh at 49. Respondent Singh takes the position that "because [he] did not *actually* receive the notice of change of hearing, this Court can rule in his favor without addressing whether a noncitizen who did in fact receive such a notice, is entitled to move for

rescission." *Id.* at 23 n.4. Neither Petitioner Campos-Chaves nor Respondent Mendez-Colín argues before this Court that he "did not actually receive the date and time information sent by the Immigration Court."

6. At the certiorari stage, Respondents Singh and Mendez-Colín urged this Court to grant certiorari only in Petitioner Campos-Chaves's case and hold their cases pending the outcome of that case. Br. in Opp. at 29-30 (No. 22-884). The government instead urged this Court to grant certiorari in all three cases, rather than granting one case and holding the others, because it wanted the Court to consider the legal question "in full view of th[e] three frequently recurring scenarios" presented by each of the three cases. Reply Br. for the Pet'r at 11 (No. 22-884). Because the government maintained that each of the scenarios "recurs frequently," it asked the Court to grant review in each case to allow the Court to "consider all three of [the factual scenarios] at once." Br. for the Resp't at 8 (No. 22-674). When the Court agreed to hear all three cases (rather than granting one and holding the others), it did so presumably because it wished to hear arguments and examine facts unique to each case.

7. This Court has routinely granted divided argument in consolidated cases where parties on the same side present with unique facts. *E.g.*, *Rosen v. Dai*, 141 S. Ct. 1234 (2021) (mem.) (granting divided argument in related immigration cases); *Abbott v. Perez*, 138 S. Ct. 1544 (2018) (mem.); *Ziglar v. Abbasi*, 580 U.S. 1041 (2017) (mem); *Kansas v. Gleason*, 576 U.S. 1052 (2015) (mem.).

8. Furthermore, this Court often grants divided argument when multiple parties with their own counsel each file separate briefs emphasizing different

arguments in support of the same basic legal proposition. *See, e.g., Fulton v. City of Philadelphia*, 141 S. Ct. 230 (2020) (mem.); *Kelly v. United States*, 140 S. Ct. 661 (2019) (mem.); *Rucho v. Common Cause*, 139 S. Ct. 1316 (2019) (mem.); *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 951 (2019) (mem.); *McDonald v. City of Chicago*, 559 U.S. 902 (2010) (mem.). Divided argument is likewise appropriate here. *See* Stephen M. Shapiro et al., *Supreme Court Practice* § 14.5 at (11th ed. 2019) ("Having more than one lawyer argue on a side is justifiable … when they represent different parties with different interests or positions.").

9. For all these reasons, allowing each of the three noncitizen parties to participate in oral argument would materially aid the Court in resolving this case. Based on the foregoing, movants ask that each of them be allowed to present argument and that the Court allot 10 minutes of argument time to each. Because movants ask that the argument time be evenly allocated, division of the argument in this matter would not require an enlargement of time.

10. Alternatively, in the event the Court declines to divide argument between the three noncitizen parties, the noncitizen parties request that the Court instead divide argument evenly between counsel for two of the three noncitizens. Each of the noncitizen parties' positions on this alternative request is as follows:

a. Petitioner Campos-Chaves alternatively requests that the Court divide argument evenly between one counsel for each of the cases in which the Court granted certiorari: one counsel for No. 22-674 (*Campos-Chaves*) and one counsel for No. 22-884 (*Singh*; *Mendez-Colín*). Petitioner Campos-Chaves considers this to be

appropriate because, first, he has at all times in this case been represented by counsel independent from counsel in No. 22-884 and advanced his own arguments in favor of the Court's grant of certiorari and on consideration of the merits. In contrast, Respondents Singh and Mendez-Colín prepared a joint brief in opposition to certiorari and still, at the merits stage, share one attorney across both cases (Mr. Martin Robles-Avila), ensuring their interests will be well-represented regardless of whether counsel for Respondent Singh or for Respondent Mendez-Colín argues on their behalf. Second, Petitioner Campos-Chaves's case presents the most straightforward set of facts for the Court to consider the statutory interpretation question at issue. Resolution of his case, which involves only a single notice from the immigration court with date-and-time information, logically precedes resolution of the other cases. His case is also uncomplicated by the factual scenarios those cases present, and those distinguishing facts may be dispositive in their cases on grounds that would not affect Petitioner Campos-Chaves.

b. Respondents Singh and Mendez-Colín urge that, should this Court choose not to divide argument among all three noncitizen parties, argument should be divided between Respondents Singh and Mendez-Colín. As explained *supra*, ¶¶ 3-5, each of Respondents Mendez-Colín and Singh have raised claims that Petitioner Campos-Chaves has not. Respondent Mendez-Colín argues that his attendance at removal hearings should not change this Court's analysis. Br. for Resp. Mendez-Colín at 30-32. Neither Respondent Singh nor Petitioner Campos-Chaves take a position on that argument. Additionally, Respondent Mendez-Colín argues that the second or

subsequent notice of hearing following a defective notice to appear does not count as a notice of change. Br. for Resp. Mendez-Colín at 26-30. Petitioner Campos-Chaves does not raise that argument. Finally, Respondent Singh argues that he may move to reopen his *in absentia* order because he did not actually receive information about the date and time of his hearing. Br. for the Resp. Singh at 49. Neither Respondent Mendez-Colín nor Petitioner Campos-Chaves take a position on that argument. By contrast, Petitioner Campos-Chaves does not raise any claims that are not also raised by Respondents Mendez-Colín and Singh.

Respectfully submitted,

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