

No. 22-7243

IN THE SUPREME COURT OF THE UNITED STATES

MARIO ROBERTO BONILLA-DIAZ, PETITIONER

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Under 8 U.S.C. 1229a(b)(5), a noncitizen may be ordered removed in absentia when he "does not attend a [removal] proceeding" "after written notice required under paragraph (1) or (2) of [8 U.S.C. 1229(a)] has been provided" to him or his counsel of record. 8 U.S.C. 1229a(b)(5)(A). An order of removal that was entered in absentia "may be rescinded" "upon a motion to reopen filed at any time" if the noncitizen subject to the order demonstrates that he "did not receive" such notice. 8 U.S.C. 1229a(b)(5)(C)(ii). This Court recently granted certiorari on the question whether the failure to receive, in a single document, all of the information specified in paragraph (1) of 8 U.S.C. 1229(a)

precludes an additional document from providing adequate notice under paragraph (2), and renders any in absentia removal order subject, indefinitely, to rescission. See Garland v. Singh, No. 22-884 (June 30, 2023); Campos-Chaves v. Garland, No. 22-674 (June 30, 2023).

Petitioner contends (Pet. 8-9) that the petition for a writ of certiorari in this case should be held pending this Court's disposition of Singh and Campos-Chaves.¹ Petitioner contends (ibid.) that this Court's resolution of the question presented in Singh and Campos-Chaves could affect the validity of the in absentia removal order entered against him in 2004 and thus the validity of his conviction for illegal reentry under 8 U.S.C. 1326. In the courts below, however, petitioner did not challenge the validity of his in absentia removal order on the ground that he was not provided adequate notice under Section 1229a(b)(5). See Sent. Tr. 9-11, 17, 19; Pet. C.A. Br. 13-25; Pet. C.A. Reply Br. 1-9; 8 U.S.C. 1326(d). Nor did either of the courts below address such a challenge. See Sent. Tr. 9-11; Pet. App. A1-A5.

Accordingly, no basis exists to hold the petition for a writ of certiorari in this case pending this Court's disposition of Singh and Campos-Chaves. The decisions below do not implicate the

¹ Petitioner also asks (Pet. 9) that the petition for a writ of certiorari in this case be held pending this Court's disposition of Dacostagomez-Aguilar v. Garland, No. 22-775. After the filing of the petition in this case, however, the petition for a writ of certiorari in Dacostagomez-Aguilar was dismissed pursuant to this Court's Rule 46. See 143 S. Ct. 1102 (2023).

question presented in those cases, and petitioner has forfeited any contention that he was not provided adequate notice under Section 1229a(b)(5) by not raising the issue below. See United States v. Jones, 565 U.S. 400, 413 (2012) (deeming forfeited an argument not raised or addressed below); see also United States v. Williams, 504 U.S. 36, 41 (1992) (noting this Court's "traditional rule" that "precludes a grant of certiorari * * * when 'the question presented was not pressed or passed upon below'") (citation omitted).

The petition for a writ of certiorari should be denied.²

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

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² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.