No. 20-979

IN THE

Supreme Court of the United States

PANKAJKUMAR S. PATEL *AND* JYOTSNABEN P. PATEL,

Petitioners,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF FOR FORMER EXECUTIVE OFFICE FOR IMMIGRATION REVIEW JUDGES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

RICHARD W. MARK
Counsel of Record
AMER S. AHMED
CHRIS JONES
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
(212) 351-4000
rmark@gibsondunn.com

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE* [1]

Amici curiae are thirty-five former immigration judges (IJs) and members of the Board of Immigration Appeals (BIA or Board). A complete list of signatories can be found in the Appendix of *Amici Curiae*.

Amici have dedicated their careers to the immigration court system and to upholding the immigration laws of the United States of America. Each is intimately familiar with the immigration court system and its procedures. Together they have a distinct interest in ensuring that claims duly asserted in immigration cases are afforded the level of Article III appellate review required by governing law.

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress passed a number of provisions intended to "protect[] the Executive's discretion from the courts." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486 (1999). One such provision is 8 U.S.C. § 1252(a)(2)(B)(i), which eliminates judicial review of "any judgment regarding the granting of relief" as to five forms of discretionary relief authorized by statute. Circuit courts around the country have, for many years, almost uniformly interpreted this provision to strip federal courts of jurisdiction to review *discretionary* decisions—but not non-discretionary, predicate determinations such as, for example, whether a noncitizen can show 10 years of physical presence in

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[1] All parties have consented to the filing of this brief. *Amici* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici*, their members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

the United States. In *amici*'s experience, this longstanding approach appropriately respects decisions Congress committed to executive discretion while preserving Article III review for non-discretionary determinations in proceedings that can carry life-or-death consequences.

SUMMARY OF ARGUMENT

Congress drew clear boundaries in IIRIRA. The statute shields executive-branch discretionary decisions in immigration cases from judicial review while permitting Article III courts to review black-and-white, non-discretionary determinations that concern whether non-citizens are *eligible* for eventual discretionary relief.

This case illustrates that sharp distinction. Both the Immigration Judge and the BIA found that Mr. Patel's testimony was not credible based in large part on those agency officials' erroneous interpretation of Georgia law regarding necessary criteria for a driver's license. That misunderstanding of state law—which drove the outcome of the immigrant's petition—is precisely the type of predicate non-discretionary determination that Article III courts are well-suited to review.

Permitting judicial review of non-discretionary determinations also comports with the "well-settled" and "strong" presumption of judicial review that has "consistently" been applied to immigration legislation, "particularly to questions concerning the preservation of federal-court jurisdiction." *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1069 (2020) (quoting *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 496, 498 (1991)); *Kucana v. Holder*, 558 U.S. 233, 251 (2010). And it avoids the "[s]eparation-of-powers concerns"

created by further removing these cases from the judiciary's domain. *Kucana*, 558 U.S. at 237.

In *amici*'s experience, maintaining Article III review of predicate non-discretionary determinations aids the proper functioning of the immigration adjudication system. Both IJs and the BIA face heavy caseloads and are under significant pressure to complete cases rapidly. Review by an Article III court of objective, non-discretionary determinations generally improves outcomes and builds confidence in a system of adjudication. There have been numerous important examples over the years of federal appellate decisions sharply criticizing IJs or the BIA for error, including in cases involving erroneous interpretations of state law and the forms of discretionary relief covered by § 1252(a)(2)(B)(i). *Amici* have experienced firsthand what it means to operate within the severe resource constraints applied to the immigration courts. In that context and amidst that pressure, Article III review of non-discretionary determinations provides a structure that maintains fair, reasoned, and legally sound immigration court adjudications.

ARGUMENT

I. IIRIRA Properly Balances Executive Discretion and Article III Review

"Traditionally, courts recognized a distinction between eligibility for discretionary relief, on the one hand, and the favorable exercise of discretion, on the other hand." *INS v. St. Cyr*, 533 U.S. 289, 307 (2001). As such, "[e]ligibility that was 'governed by specific statutory standards' provided 'a right to a ruling on an applicant's eligibility,' even though the actual granting of relief was 'not a matter of right under any

circumstances, but rather is in all cases a matter of grace.'" *Id.* at 307–08 (quoting *Jay v. Boyd*, 351 U.S. 345, 353–354 (1956)).

This distinction is reflected in the statutory provision at issue here. In 1996, Congress amended the Immigration and Nationality Act by enacting the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Pub. L. No. 104–208, 110 Stat. 3009. The "theme" of IIRIRA is "protecting the Executive's *discretion* from the courts." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486 (1999) (emphasis added).

One of the ways it did so was the enactment of 8 U.S.C. § 1252(a)(2)(B). This subsection, titled "Denials of discretionary relief," contains two subclauses. The first, at issue here, provides that "no court shall have jurisdiction to review" "any judgment regarding the granting of relief" under five statutory provisions that each "address[] a different form of discretionary relief from removal, … and each contains language indicating that the decision is entrusted to the Attorney General's discretion." *Kucana*, 558 U.S. at 246 (2010).

Nine Circuit Courts of Appeal agree that this provision does not generally strip jurisdiction over the threshold determination of whether a noncitizen has shown that he or she "meets the statutory eligibility requirements" that would authorize the executive to subsequently make a discretionary decision as to whether relief should be granted in that particular case. *Rodriguez v. Gonzales*, 451 F.3d 60, 62 (2d Cir.

2006) (per curiam).[2] Put differently, while all the Courts of Appeals agree that 8 U.S.C. § 1252(a)(2)(B)(i) strips jurisdiction over discretionary determinations, the overwhelming majority have concluded that that provision does not bar Article III review of "nondiscretionary factors," *Mendez-Moranchel*, 338 F.3d at 178, or "nondiscretionary determinations underlying" a subsequent discretionary determination, *Ortiz-Cornejo*, 400 F.3d at 612.

This statutory scheme makes sense. Because "Congress has to structure and allocate the resources of our immigration system," "judicial review may be thought to be warranted in some, but not all, situations." *Bernardo ex rel. M & K Eng'g, Inc. v. Johnson*, 814 F.3d 481, 494 (1st Cir. 2016). IIRIRA did just that. *See, e.g.*, *CDI Info. Servs., Inc. v. Reno*, 278 F.3d 616, 618 (6th Cir. 2002) (IIRIRA "enacted to protect the discretion of the Executive" through "provisions limiting or eliminating judicial review of particular … decisions"). In § 1252(a)(2)(B)(i), Congress defined protected agency territory by removing judicial review over "subjective question[s] that depend[] on the value judgment of the person or entity examining the issue," *Romero-Torres v. Ashcroft*, 327 F.3d 887, 888 (9th Cir. 2003) (cleaned up), while retaining judicial review over the predicate non-discretionary determinations

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[2] *See also Singh v. Gonzales*, 413 F.3d 156, 160 n.4 (1st Cir. 2005); *Mendez-Moranchel v. Ashcroft*, 338 F.3d 176, 178 (3d Cir. 2003); *Garcia-Melendez v. Ashcroft*, 351 F.3d 657, 661 (5th Cir. 2003); *Aburto-Rocha v. Mukasey*, 535 F.3d 500, 502 (6th Cir. 2008); *Iddir v. INS*, 301 F.3d 492, 497 (7th Cir. 2002); *Ortiz-Cornejo v. Gonzales*, 400 F.3d 610, 612 (8th Cir. 2005); *Montero-Martinez v. Ashcroft*, 277 F.3d 1137, 1144 (9th Cir. 2002); *Sabido Valdivia v. Gonzales*, 423 F.3d 1144, 1149 (10th Cir. 2005).

that undergird discretionary judgments. This division prevents Article III courts from second-guessing subjective determinations—such as whether discretionary relief is appropriate in any particular case—while preserving the ability of those courts to correct errors involving legal principles or objective factual determinations that are antecedent to those discretionary determinations.

This case illustrates why § 1252(a)(2)(B)(i) should not be read to foreclose Article III review of all agency determinations that in any way touch upon the forms of relief specified therein. Mr. Patel testified that he inadvertently indicated that he was a U.S. citizen on his Georgia driver's license application. In rejecting that testimony as unpersuasive, the Immigration Judge completely misread Georgia law. Specifically, the IJ incorrectly concluded that Mr. Patel could not have obtained a Georgia driver's license "had [he] disclosed that he was neither a citizen [n]or a lawful permanent resident o[f] the United States." Pet. App 116a. In other words, the IJ misconstrued Georgia law as requiring U.S. citizenship or permanent residency for a driver's license, and on that basis concluded that Mr. Patel must have been lying when he testified that his conduct was innocent. The BIA majority agreed with this misinterpretation of Georgia law, concluding that the "implication of the questions set forth in the driver's license application is that [Mr. Patel] needed to show that he was either a citizen or a lawfully admitted alien in order to obtain the driver's license." *Id.* 108a.

In dissent, one Board member explained that this conclusion was objectively wrong, as Georgia law only

required "lawful presence in the United States" to receive a driver's license—not U.S. citizenship or permanent residency—and Mr. Patel had unquestionably satisfied that lawful-presence requirement through his "valid employment authorization document *and* a pending adjustment of status application." *Id.* 109a-110a (Wendtland, Board Member, dissenting).

The non-discretionary determination embedded within the IJ's and the BIA's ultimate conclusion—whether Georgia law required Mr. Patel to show he was a citizen or a lawful permanent resident in order to be eligible for a driver's license—is precisely the type of non-discretionary determination that Article III courts are well equipped to review. *Cf. Nasrallah v. Barr*, 140 S. Ct. 1683 (2020) (8 U.S.C. § 1252(a)(2)(C)-(D) does not preclude judicial review of facts underlying Convention Against Torture orders).

II. ENSURING ARTICLE III REVIEW OVER NON-DISCRETIONARY DETERMINATIONS IS CRITICAL TO CORRECT ERRORS THAT CAN OCCUR IN OVERBURDENED IMMIGRATION COURTS

"From the beginning," the Court has established that "judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress." *Bowen v. Michigan Acad. of Fam. Physicians*, 476 U.S. 667, 670 (1986) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140 (1967)).

As a result, there is a "well-settled" and "strong" presumption favoring judicial review of administrative action. *Guerrero-Lasprilla*, 140 S. Ct. at 1069 (citing *McNary*, 498 U.S. at 496, 498). Indeed, the Court

has "consistently" applied this presumption to "legislation regarding immigration, and particularly to questions concerning the preservation of federal-court jurisdiction." *Kucana*, 558 U.S. at 251; *see also Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948) ("[S]ince the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used."). To that end, the Court "assumes that 'Congress legislates with knowledge of' the presumption," and thus requires "'clear and convincing evidence' to dislodge the presumption." *Kucana*, 558 U.S. at 251 (citing *Reno v. Cath. Soc. Servs., Inc.*, 509 U.S. 43, 64 (1993)).

Relatedly, "[s]eparation-of-powers concerns" also militate "against reading legislation, absent clear statement, to place in executive hands authority to remove cases from the Judiciary's domain." *Kucana*, 558 U.S. at 237. That is because this Court has understood Article III as "barring congressional attempts 'to transfer jurisdiction [to non-Article III tribunals] for the purpose of emasculating' constitutional courts and thereby prevent[ing] 'the encroachment or aggrandizement of one branch at the expense of the other.'" *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 850 (1986) (alteration in original) (citation omitted) (first quoting *Nat'l Ins. Co. v. Tidewater Co.*, 337 U.S. 582, 644 (1949) (Vinson, C.J., dissenting); then *quoting Buckley v. Valeo*, 424 U.S. 1, 122 (1976) (per curiam)). Accordingly, in the bankruptcy context, for instance, this Court has held that "Article I adjudicators" may decide claims before them without "offend[ing] the separation of powers" only "so long as Article III courts retain supervisory authority

over the process." *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1944 (2015).

Against this backdrop, "it is most unlikely that Congress intended to foreclose *all* forms of meaningful judicial review" in § 1252(a)(2)(B)(i). *McNary*, 498 U.S. at 496 (emphasis added). Doing so would leave individuals aggrieved by an incorrect non-discretionary determination with "no remedy, no appeal to the laws of his country." *United States v. Nourse*, 34 U.S. 8, 9 (1835) (Marshall, C.J.). At the same time, it would remove from Article III courts the "supervisory authority" to check that non-discretionary determinations are correct. *Wellness Int'l*, 135 S. Ct. at 1944.

The impact of such a ruling would be substantial. Every year, there are tens of thousands of cases decided that involve requests for discretionary relief under § 1252(a)(2)(B)(i). Between January 2017 and September 2020, for instance, immigration judges decided over 94,000 such applications.[3]

By contrast, maintaining the approach that the vast majority of courts follow in reading

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[3] See *Beyond, Asylum: Deportation Relief During the Trump Administration*, TRAC (Oct. 29, 2020), https://trac.syr.edu/ immigration/reports/631/ (reporting that approximately 72,526 applications for cancellation of removal under 8 U.S.C. § 1229b, 18,482 applications for adjustment of status under 8 U.S.C. § 1255, 2,956 applications for waivers under 8 U.S.C. § 1182(h), and 678 applications for waivers under 8 U.S.C. § 1182(i) were decided during this period). This figure does not include the number of applications for voluntary departure under 8 U.S.C. § 1229c. In Fiscal Year 2018, over 20,000 such applications were granted by immigration courts. EOIR, Statistics Yearbook: Fiscal Year 2018, at 13, https://www.justice.gov/eoir/file/1198896/download (last accessed Aug. 28, 2021).

§ 1252(a)(2)(B)(i) would allow Article III judges to continue performing a review function with which they are completely familiar. *Cf. INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1, 483–84 (1992) (discussing nature of judicial review of a BIA finding). Indeed, there are many examples of appellate court decisions addressing significant non-discretionary errors in immigration proceedings involving the statutory eligibility criteria in § 1252(a)(2)(B)(i). *See, e.g.*, *Manzanarez-Santos v. Sessions*, 714 F. App'x 696, 698 (9th Cir. 2017) (even if BIA correctly refused to credit testimony, remand ordered because "no . . . evidence" in record, as is required, regarding acceptance of voluntary departure); *Lopez-Birrueta v. Holder*, 633 F.3d 1211, 1216 (9th Cir. 2011) (IJ and BIA "made several errors in [their] legal analysis," including improperly relying on state law to define key term in federal statute); *Peralta Gandarilla v. Gonzales*, 233 F. App'x 670, 672 (9th Cir. 2007) (IJ and BIA improperly ignored multiple pieces of evidence in the record which established physical presence); *Romano-Varian v. Att'y Gen. of United States*, 155 F. App'x 620, 624 (3d Cir. 2005) (denial not supported by substantial evidence given IJ's "own view . . . witnesses testified truthfully" and the "common-sense assumption that Mr. Romano did not arrive in the United States on the day of his first child's conception").

As these cases illustrate, Article III review of non-discretionary determinations can be critical to ensuring that the "minimum standards of legal justice" are satisfied. *Benslimane v. Gonzales*, 430 F.3d 828, 830 (7th Cir. 2005). That is particularly true where, as in the instant case, the IJ and the BIA majority erred on a critical legal question of state law—a question alien

to the agency's developed immigration law expertise—underpinning the discretionary determination that was made. Because "[d]eportation is always 'a particularly severe penalty,'" *Lee v. United States*, 137 S. Ct. 1958, 1968 (2017) (quoting *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010)), it is crucial that predicate non-discretionary determinations in a case be reviewable to ensure that IJs and the BIA do not categorically bar discretionary relief based on an objectively incorrect finding, or let an objectively incorrect finding improperly drive the exercise of discretion. Indeed, the BIA has been described as "[t]he single most important decision-maker in the immigration system," and it is doubtful "that any court or any other administrative tribunal so regularly addresses claims of life-changing significance, often involving consequences of life and death." *Quinteros v. Att'y Gen. of United States,* 945 F.3d 772, 794 (3d Cir. 2019) (McKee, J., concurring). It is well within the competence of an Article III court to recognize that the BIA's assessment of the record lacks substantial support or, at a minimum, was inadequately explained, and to require further agency proceedings to correct the error.

If the Court were to adopt the Eleventh Circuit's position that § 1252(a)(2)(B)(i) bars Article III review of *any* factual determination made by IJs or the BIA in requests for discretionary relief of the form listed in that provision, it would remove a critical check on immigration decisions. As *amici* are aware, blocking Article III court review would insulate the administrative decisionmaking process from independent *judicial* review of non-discretionary legal determinations.

The practical importance of preserving Article III review of non-discretionary determinations becomes

even clearer when the docket pressures on agency adjudicators are taken into account. In situations where IJs and the BIA have spent insufficient time considering a case, or failed to write out complete (even if brief) reasoning for a decision, it is critical that Article III courts retain the power to review and correct, where necessary, decisions made by EOIR adjudicators.

Immigration courts face a national backlog of nearly 1.4 million cases.[4] That calculates to an average backlog of over 2,600 cases for each of the approximately 535 immigration judges in the country.[5] Immigration judges face a daunting challenge because of these caseloads. One judge described her experience as "nightmarish," explaining that to tackle her well-above the mathematical average "pending caseload [of] about 4,000 cases" she had only "about half a judicial law clerk and less than one full-time legal assistant to help [her]."[6]

By contrast, in 2014, for instance, the entire federal appellate bench only had 54,988 cases, and the

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[4] *Backlog of Pending Cases in Immigration Courts as of July 2021*, The Transactional Records Access Clearinghouse, https://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php (last visited Aug. 27, 2021).

[5] United States Department of Justice, Executive Office for Immigration Review: About the Office, https://www.justice.gov/eoir/office-of-the-chief-immigration-judge (last updated Aug. 2, 2021).

[6] *Amid "nightmarish" case backlog, experts call for independent immigration courts*, A.B.A. News (Aug. 9, 2019), https://www.americanbar.org/news/abanews/aba-news-archives/2019/08/amid-_nightmarish-case-backlog--experts-call-for-independent-imm/.

law clerk-to-IJ ratio is 1:4, whereas federal judges generally have two to four clerks per judge.[7]

In *amici*'s respectful view, these docket pressures further heighten the risk that IJ errors will go unseen and uncorrected. Although agency adjudicators may have a better sense of the "overall … landscape" than federal judges, "the time and resource shortfalls that afflict agency decision-making may make its adjudicators more error-prone, while federal judges' comparative surfeit of both improves their relative capacity to decide cases accurately."[8] Indeed, social science research confirms that "[t]he accuracy of human judgments decreases under time pressure."[9] And the pressures on the immigration adjudication system already have produced significantly flawed results. *See, e.g.*, *Makwana v. Att'y Gen. of United States*, 611 F. App'x 58, 61 (3d Cir. 2015) (remanding case because of factual error by BIA regarding date visa was revoked); *Ssali v. Gonzales*, 424 F.3d 556, 563 (7th Cir. 2005) (remanding case where a "very significant mistake suggests that the Board was not aware of the most

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[7] Jonah B. Gelbach & David Marcus, *Rethinking Judicial Review of High Volume Agency Adjudication*, 96 TEX. L. REV. 1097, 1111 (2018).

[8] *Id.*

[9] Anne Edland & Ola Svenson, *Judgment and Decision Making Under Time Pressure Studies and Findings*, in TIME PRESSURE AND STRESS IN HUMAN JUDGMENT AND DECISION MAKING 29, 35–36 (Ola Svenson & A. John Maule eds., 1993); *see also* Eberhard Feess & Roee Sarel, *Judicial Effort and the Appeals System: Theory and Experiment*, 47 J. LEGAL STUD. 269, 270–71 (2018) (concluding from laboratory experiment that penalizing reversals prompts greater trial-level effort compared with systems with no appeals and systems where reversals are not penalized).

basic facts of [petitioner's] case and deprives its ruling of a rational basis"); *Niam v. Ashcroft*, 354 F.3d 652, 656 (7th Cir. 2004) ("[T]he remainder of the immigration judge's opinion is riven with errors as well, . . . and these were not noticed by the [B]oard . . . ."); *Berishaj v. Ashcroft*, 378 F.3d 314, 331 (3d Cir. 2004) (concluding that it was "an embarrassment to the Agency on multiple levels" where BIA's summary affirmance of a stale decision "shirk[ed] its role and duty of ensuring that the final agency determination in an immigration case is reasonably sound and reasonably current"), *abrogated on other grounds by Nbaye v. Att'y Gen. of U.S.*, 665 F.3d 57 (3d Cir. 2011).

In an attempt to cut through the backlog, BIA members have increasingly turned to mechanisms by which they can affirm the IJ's conclusion with minimal analysis. For instance, BIA members may fall back on the option of Affirmance Without Opinion ("AWO"). As recently as 2011, the percentage of cases resolved via AWO was low—2 to 5%.[10] A new rule, however (effective as of September 2019), provides that when a Board member issues an AWO, that decision is "presumed to have considered all of the parties' relevant issues and claims of error on appeal regardless of the type of the BIA's decision."[11] Thus, the BIA can now issue a two-sentence opinion endorsing the IJ

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[10] Arnold & Porter, 2019 Update Report: Reforming the Immigration System UD 3–7 (Mar. 2019), https://www.americanbar.org/content/dam/aba/publications/commis-si-on_on_immigration/2019_reforming_the_immigration_system_volume_2.pdf.

[11] Board of Immigration Appeals: Affirmance Without Opinion, Referral for Panel Review, and Publication of Decisions as Precedents, 84 Fed. Reg. 31463 (July 2, 2019) (to be codified at 8 C.F.R. pts. 1003, 1292).

and rely on a regulatory presumption of regularity, regardless of the record.

Federal courts have long been critical of IJ and BIA opinions as inadequately reasoned. To be sure, as *amici* are familiar, "the large number of cases" on IJs and BIA's dockets "imposes practical limitations on the length" of written opinions. *Voci v. Gonzales*, 409 F.3d 607, 613 n.3 (3d Cir. 2005). IJs and BIA members may have spent more time evaluating a case than the length of an opinion alone would suggest. At the same time, "every judge must learn to live with the fact he or she will make some mistakes; it comes with the territory." *Ramos v. Louisiana*, 140 S. Ct. 1390, 1408 (2020). Article III courts play a crucial role in ensuring that executive-branch productivity mandates do not override the obligation to give due attention to a case; that "crowded dockets or a backlog of cases" do not "allow an IJ or the BIA to dispense with an adequate explanation … merely to facilitate or accommodate administrative expediency." *Valarezo-Tirado v. Att'y Gen. of United States*, 6 F.4th 542, 549 (3d Cir. 2021).

The federal reporters are replete with examples where federal courts have found that BIA opinions were deficient because they were incorrect about key determinations in the case or made significant non-discretionary errors. *See, e.g.*, *Quinteros*, 945 F.3d at 789 (McKee, J., concurring) ("[I]t is difficult for me to read this record and conclude that the Board was acting as anything other than an agency focused on ensuring Quinteros' removal rather than as the neutral and fair tribunal it is expected to be."); *Mayorga v. Att'y Gen.*, 757 F.3d 126, 134 (3d Cir. 2014) (reversing a BIA decision without remand and observing that

"[i]deally the BIA would have provided more analysis, explaining why it accepted the IJ's (erroneous) reasoning…") (alteration in original); *Gallimore v. Att'y Gen.*, 619 F.3d 216, 221 (3d Cir. 2010) (holding that "[t]he BIA's analysis in all likelihood rests on an historically inaccurate premise …"); *Recinos De Leon v. Gonzales*, 400 F.3d 1185, 1193–94 (9th Cir. 2005) ("By streamlining the case, the BIA offered no coherent alternative explanation for the decision not dependent on the IJ's deficient finding of facts.").

In *amici*'s view, the Court should read § 1252(a)(2)(B)(i) to permit Article III courts to continue to correct these types of objective predicate determinations that can be critical in requests for ultimate discretionary relief.

CONCLUSION

For the reasons stated above and in Petitioners' briefs, the Court should reverse the Eleventh Circuit's judgment.

Respectfully submitted,

RICHARD W. MARK
Counsel of Record
AMER S. AHMED
CHRIS JONES
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
(212) 351-4000
rmark@gibsondunn.com

Counsel for Amici Curiae

September 7, 2021

APPENDIX OF *AMICI CURIAE*

1. **The Honorable Steven Abrams** served as an Immigration Judge at the New York, Varick Street, and Queens Wackenhut Immigration Courts in New York City from 1997 until 2013.

2. **The Honorable Terry A. Bain** served as an Immigration Judge in New York from 1994 until 2019.

3. **The Honorable Sarah Burr** served as an Immigration Judge, and then as Assistant Chief Immigration Judge, in New York from 1994 until 2012.

4. **The Honorable Teofilo Chapa** served as an Immigration Judge in Miami, Florida from 1995 until 2018.

5. **The Honorable Jeffrey S. Chase** served as an Immigration Judge in New York City from 1995 until 2007.

6. **The Honorable George T. Chew** served as an Immigration Judge in New York from 1995 until 2017.

7. **The Honorable Joan V. Churchill** served as an Immigration Judge from 1980 until 2005 in Washington DC-Arlington VA, including 5 terms as a Temporary Member of the Board of Immigration Appeals.

8. **The Honorable Bruce J. Einhorn served** as an Immigration Judge in Los Angeles from 1990 until 2007.

9. **The Honorable Cecelia M. Espenoza** served as a Member of the BIA from 2000 until 2003.

10. **The Honorable Noel Ferris** served as an Immigration Judge in New York from 1994 until 2013. Previously, she served as Chief of the Immigration Unit at the U.S. Attorney's Office for the Southern District of New York from 1987 until 1990.

11. **The Honorable James R. Fujimoto** served as an Immigration Judge in Chicago from 1990 until 2019.

12. **The Honorable Alberto E. Gonzalez** served as an Immigration Judge in San Francisco from 1995 until 2005.

13. **The Honorable John F. Gossart, Jr.** served as an Immigration Judge in Baltimore from 1982 until 2013.

14. **The Honorable Paul Grussendorf** served as an Immigration Judge in Philadelphia and San Francisco from 1997 until 2004.

15. **The Honorable Miriam Hayward** served as an Immigration Judge in San Francisco from 1997 until 2018.

16. **The Honorable Charles Honeyman** served as an Immigration Judge in Philadelphia and New

York from 1995 until 2020.

17. **The Honorable Rebecca Jamil** served as an Immigration Judge in San Francisco from 2016 until 2018.

18. **The Honorable William P. Joyce** served as an Immigration Judge in Boston, Massachusetts from 1996 until 2002.

19. **The Honorable Carol King** served as an Immigration Judge in San Francisco from 1995 until 2017 and was a temporary member of the Board for six months between 2010 and 2011.

20. **The Honorable Elizabeth A. Lamb** served as an Immigration Judge in New York from 1995 until 2018.

21. **The Honorable Margaret McManus** served as an Immigration Judge in New York from 1991 until 2018.

22. **The Honorable Charles Pazar** served as an Immigration Judge in Memphis, Tennessee, from 1998 until 2017.

23. **The Honorable Laura Ramirez** served as an Immigration Judge in San Francisco from 1997 until 2018.

24. **The Honorable John W. Richardson** served as an Immigration Judge in Phoenix, Arizona from 1990 until 2018.

25. **The Honorable Lory D. Rosenberg** served on the BIA from 1995 until 2002.

26. **The Honorable Susan Roy** served as an Immigration Judge from 2008 until 2010 in Newark.

27. **The Honorable Paul W. Schmidt** served as an Immigration Judge from 2003 until 2016 in Arlington, VA. He previously served as Chairman of the BIA from 1995 until 2001, and as a BIA Member from 2001 until 2003. He served as Deputy General Counsel of the former INS from 1978 until 1987, serving as Acting General Counsel from 1979 until 1981 and 1986 until 1987.

28. **The Honorable Patricia M. B. Sheppard** served as an Immigration Judge in Boston from 1993 until 2006.

29. **The Honorable Ilyce S. Shugall** served as an Immigration Judge in San Francisco from 2017 until 2019.

30. **The Honorable Helen Sichel** served as an Immigration Judge in New York from 1997 until 2020.

31. **The Honorable Denise Slavin** served as an Immigration Judge in the Miami, Krome Detention Center, and Baltimore Immigration Courts from 1995 until 2019.

32. **The Honorable Andrea Hawkins Sloan** served as an Immigration Judge in Portland from 2010 until 2017.

33. **The Honorable Tuê Phan-Quang** served as an Immigration Judge in San Francisco from 1995 until 2012.

34. **The Honorable Polly A. Webber** served as an Immigration Judge in San Francisco from 1995 until 2016.

35. **The Honorable Robert D. Weisel** served as an Immigration Judge, and then as an Assistant Chief Immigration Judge, in New York from 1989 until 2016.