IN THE SUPREME COURT OF THE UNITED STATES

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No. 20-979

PANKAJKUMAR S. PATEL, ET AL., PETITIONERS

v.

MERRICK B. GARLAND, ATTORNEY GENERAL

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

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MOTION OF RESPONDENT FOR DIVIDED ARGUMENT

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Pursuant to Rule 28.4 of the Rules of this Court, the Acting Solicitor General, on behalf of respondent, respectfully moves for divided argument in this case. Respondent has filed a brief in support of petitioners and requests the following division of argument time: 15 minutes for petitioners, 15 minutes for respondent, and 30 minutes for the Court-appointed amicus curiae who is supporting the judgment below. Counsel for petitioners has agreed to that allocation.

This case concerns the scope of judicial review available for certain discretionary determinations by the Executive in the immigration context. At issue is 8 U.S.C. 1252(a)(2)(B)(i), which provides that, "[n]otwithstanding any other provision of law[,] * * * and except as provided in subparagraph (D), and regardless

of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review * * * any judgment regarding the granting of relief under" various provisions. Ibid. One of the covered provisions is 8 U.S.C. 1255, which authorizes the Attorney General to grant relief from removal to a noncitizen by adjusting his or her status to that of a person admitted for lawful permanent residence. Section 1252(a)(2)(D), in turn, provides that "[n]othing in subparagraph (B) or (C) * * * shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." 8 U.S.C. 1252(a)(2)(D).

In 2012, the Department of Homeland Security commenced removal proceedings against petitioners, Pankajkumar Patel (Patel) and his wife, on the ground that they were present in the United States without admission or parole. Patel conceded removability but sought to adjust status to that of a lawful permanent resident, with his wife as a derivative beneficiary. The immigration judge denied relief, finding that Patel was ineligible for adjustment because he had lied about his citizenship to obtain a Georgia driver's license. The immigration judge rejected Patel's argument that his misstatement had been a simple mistake. The Board of Immigration Appeals affirmed.

Petitioners sought review in the court of appeals, challenging the agency's factual finding that Patel knowingly made a false representation of citizenship to obtain the driver's license. The panel held sua sponte that it lacked jurisdiction under Section 1252(a)(2)(B)(i). The court of appeals then vacated the panel's decision and ordered rehearing en banc. Consistent with its longstanding position, the government argued that Section 1252(a)(2)(B)(i) did not preclude jurisdiction over the factual question of Patel's subjective intent. The en banc court rejected the government's argument, reasoning that Section 1252(a)(2)(B)(i) bars all judicial review of the denial of adjustment of status, with the exception of constitutional claims and questions of law raised under Section 1252(a)(2)(D).

Petitioners filed a petition for a writ of certiorari. The government acquiesced in certiorari on the jurisdictional question. The Court granted the petition limited to that question and invited an amicus curiae to brief and argue the case in support of the judgment below. Respondent's brief supports reversal, arguing that the court of appeals possessed jurisdiction over the factual question at issue here.

Although petitioners and respondent both support reversal of the court of appeals' judgment, they interpret the relevant provision differently. Petitioners principally contend that Section

1252(a)(2)(B)(i) precludes judicial review of the Executive's ultimate, discretionary decision whether to grant or deny relief under the covered provisions, but does not preclude review of any eligibility determinations. Respondent, in contrast, interprets Section 1252(a)(2)(B)(i) to preclude review not just of the ultimate decision but also of any underlying discretionary determinations. Petitioners and respondent also bring distinct perspectives to the case. Whereas petitioners have a direct, personal stake in obtaining review of the agency's factual finding, the government has a broader institutional interest in ensuring that Section 1252(a)(2)(B)(i) -- which governs judicial review of applications for discretionary relief under a variety of statutory provisions -- is properly construed. The government thus believes that participation by both petitioners and respondent in the oral argument in this case would be of material assistance to the Court.

Respectfully submitted.

BRIAN H. FLETCHER
Acting Solicitor General
Counsel of Record

OCTOBER 2021