No. 23-929

IN THE
Supreme Court of the United States

HUGO ABISAÍ MONSALVO VELÁZQUEZ,

Petitioner,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF FOR PETITIONER

HENRY D. HOLLITHRON
HOLLITHRON ADVOCATES, P.C.
4155 East Jewell Avenue
Suite 1004
Denver, CO 80222

GERARD J. CEDRONE
Counsel of Record
DAVID J. ZIMMER
SIERRA J. PEREZ-SPARKS
JONATHAN E. RANKIN
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
gcedrone@goodwinlaw.com
(617) 570-1849

Counsel for Petitioner

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QUESTION PRESENTED

Under 8 U.S.C. §1229c(b), an immigration judge may allow a noncitizen of good moral character to voluntarily depart the United States at the end of removal proceedings instead of being detained and forcibly removed. Such a grant of voluntary departure "shall not be valid for a period exceeding 60 days." §1229c(b)(2). If the noncitizen wishes to reopen the removal proceedings or seek reconsideration of the immigration judge's decision instead of leaving the country, the noncitizen must file an appropriate motion "during the period allowed for voluntary departure" to avoid strict statutory penalties for failure to depart. 8 C.F.R. §1240.26(b)(3)(iii).

The question presented is:

When the sixtieth day of a voluntary-departure period falls on a weekend or public holiday, does the noncitizen's time to leave the country or file a motion to reopen or reconsider run until the next business day?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

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INTRODUCTION

This case involves a rule that generations of lawyers have learned early and applied often: deadlines falling on a Saturday, Sunday, or public holiday carry over to the next business day. The rule is everywhere in the law. It can be found in familiar court rules like Civil Rule 6(a) and this Court's Rule 30.1. It is written into agency regulations, including regulations governing immigration proceedings. And it is woven into the fabric of American common law, drawing on centuries of legal tradition to supply a default deadline-calculation rule for statutes that do not otherwise provide one.

The government now argues that a stricter rule should apply to 8 U.S.C. §1229c, but there is no basis for that one-off exception. Section 1229c(b)(2) allows an immigration judge, at the close of removal proceedings, to grant a noncitizen up to "60 days" to voluntarily leave the country or file a motion seeking relief from removal. Petitioner Hugo Monsalvo chose the latter course: after the Board of Immigration Appeals awarded him voluntary departure, he filed a motion arguing that he qualified for cancellation of removal. The sixty-day period for filing that motion ended on a Saturday; Mr. Monsalvo filed the next business day. But the BIA deemed the motion untimely, and the Tenth Circuit agreed, holding that §1229c(b)(2) "unambiguously" required him to file within "60 days" of the grant of voluntary departure. Pet. App. 13a-14a. For two separate reasons, that decision misreads the statute, and this Court should reverse.

First, §1229c(b)(2) incorporates a common-law presumption that deadlines falling on a weekend or holiday carry over to the next business day. English courts first fashioned this rule before the Founding,

holding that deadlines landing on a *dies non juridicus*—a "non-juridical" day—should be observed the following day. *See Davy* v. *Salter*, 6 Mod. 251, 87 Eng. Rep. 998 (K.B. 1704). That "common-law rule" for calculating deadlines eventually became an entrenched feature of American law, "both from respect for religious considerations and by long-established legal and commercial tradition." *Sherwood Bros.* v. *District of Columbia*, 113 F.2d 162, 163 (D.C. Cir. 1940). By 1996, when Congress enacted §1229c(b)(2), the rule was "embedded in the habits and customs of the community." *Id.* Because this Court reads statutes in light of such settled background rules, and because nothing in the text of §1229c(b)(2) departs from the traditional rule for weekend and holiday deadlines, that deadline-calculation rule is built into the statutory term "60 days." *See Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 129 (2014).

Second, §1229c(b)(2) incorporates a longstanding, on-point regulatory definition that prevailed at the time of the statute's enactment. For decades, immigration regulations have defined the term "day" to mean that if "the last day of the period" for "taking any action" falls "on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday." 8 C.F.R. §1001.1(h). Because §1229c(b)(2) contains no "evidence of any intent to repudiate" that "longstanding administrative construction," the proper conclusion is that Congress "adopted [it]" for purposes of understanding the statutory phrase "60 days." *Haig* v. *Agee*, 453 U.S. 280, 297-298 (1981).

The consequences of the Tenth Circuit's interpretation of §1229c(b)(2) provide still more evidence that

it is wrong. The Tenth Circuit's reading of the statute could penalize noncitizens who previously left the country in good-faith reliance on the traditional weekend-and-holiday deadline rule. That interpretation would also cause problems for noncitizens departing the country in the future, especially those who have religious obligations on the weekend. And it would have a destabilizing effect on the law more generally: accepting the government's reasoning would raise doubts about the operation of virtually *every* statute without an express deadline-calculation rule.

Fortunately, nothing in §1229c(b)(2) requires these results. The ordinary rules of statutory construction make clear—twice over—that the statute's use of the term "60 days" follows the traditional rule: when the sixtieth day falls on a Saturday, Sunday, or public holiday, a noncitizen has until the next business day to act.

OPINIONS BELOW

The Tenth Circuit's opinion (Pet. App. 1a-17a) is reported at 88 F.4th 1301. An earlier, superseded opinion (Pet. App. 18a-32a) is reported at 82 F.4th 909. The opinions of the BIA (Pet. App. 33a-43a) and immigration judge (Pet. App. 44a-76a) are not reported.

JURISDICTION

The court of appeals entered judgment on September 8, 2023. It granted rehearing in part, withdrew its prior opinion, and entered a revised opinion on December 14, 2023. The petition for a writ of certiorari was filed on February 24, 2024, and granted on July 2, 2024. The Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Title 8 of the United States Code provides, in relevant part:

§1229c. Voluntary departure

* * *

(b) At conclusion of proceedings

(1) In general. The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense if, at the conclusion of a proceeding under section 1229a of this title, the immigration judge enters an order granting voluntary departure in lieu of removal and finds that—

(A) the alien has been physically present in the United States for a period of at least one year immediately preceding the date the notice to appear was served under section 1229(a) of this title;

(B) the alien is, and has been, a person of good moral character for at least 5 years immediately preceding the alien's application for voluntary departure;

(C) the alien is not deportable under section 1227(a)(2)(A)(iii) or section 1227(a)(4) of this title; and

(D) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so.

(2) Period. Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 60 days.

* * *

(d) Civil penalty for failure to depart

(1) In general. Subject to paragraph (2), if an alien is permitted to depart voluntarily under this section and voluntarily fails to depart the United States within the time period specified, the alien—

(A) shall be subject to a civil penalty of not less than $1,000 and not more than $5,000; and

(B) shall be ineligible, for a period of 10 years, to receive any further relief under this section and sections 1229b, 1255, 1258, and 1259 of this title.

Title 8 of the Code of Federal Regulations provides, in relevant part:

§1001.1 Definitions

As used in this chapter:

* * *

(h) The term *day* when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

* * *

§1240.26 Voluntary departure—authority of the Executive Office for Immigration Review

* * *

(b) * * * (3) *Conditions*. * * * (iii) If the alien files a post-decision motion to reopen or reconsider during the period allowed for voluntary departure, the grant of voluntary departure shall be terminated automatically, and the alternate order of removal will take effect immediately. The penalties for failure to depart voluntarily under [8 U.S.C. §1229c] shall not apply if the alien has filed a post-decision motion to reopen or reconsider during the period allowed for voluntary departure. Upon the granting of voluntary departure, the immigration judge shall advise the alien of the provisions of this paragraph (b)(3)(iii).

The pertinent text of the foregoing provisions, together with the text of 8 C.F.R. §1.1(a)(6) (1952), 8 C.F.R. §1.1(a)(6) (1958), and 8 C.F.R. §1.1(h) (1996), is reproduced in the appendix to this brief.

STATEMENT

I. Legal Background

A. Voluntary Departure

Voluntary departure is a "discretionary form of relief" that allows noncitizens who meet certain criteria "to leave the country willingly" rather than face forcible removal. *Dada* v. *Mukasey*, 554 U.S. 1, 8 (2008). In choosing voluntary departure, a noncitizen "avoids extended detention" and gains the ability to pick both a destination country and the specific timing of his or her departure. *Id.* at 11. Even more importantly, "by

departing voluntarily," a noncitizen "facilitates the possibility of readmission." *Id.* Whereas involuntary removal results in lengthy restrictions on returning to the United States, voluntary departure does not trigger those limitations. *Id.* at 11-12.

Congress enacted the current voluntary-departure statute, 8 U.S.C. §1229c, as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, §304, 110 Stat. 3009-546, 3009-596 (IIRIRA). Under §1229c, an immigration judge may allow a noncitizen "voluntarily to depart the United States at [his or her] own expense if, at the conclusion of [removal] proceeding[s]," the judge finds that the noncitizen (1) was "physically present in the United States" for at least one year before the start of removal proceedings, (2) has been "a person of good moral character for at least 5 years," (3) has not committed specified criminal or terrorist activity, and (4) "has the means to depart the United States and intends to do so." §1229c(b)(1); *see* 8 C.F.R. §1240.26(c).

In passing IIRIRA, Congress imposed new timing restrictions on grants of voluntary departure. Before 1996, the voluntary-departure statute "contained no time limitation," allowing the Attorney General to choose how much time a noncitizen had to leave the country. 62 Fed. Reg. 10,312, 10,324 (Mar. 6, 1997); *see* 8 U.S.C. §1254(e) (1994). IIRIRA curtailed that discretion, providing that "[p]ermission to depart voluntarily [after the conclusion of removal proceedings]

shall not be valid for a period exceeding 60 days." 8 U.S.C. §1229c(b)(2); *see* 8 C.F.R. §1240.26(e).[1]

Section 1229c imposes harsh penalties on noncitizens who fail to leave the country within the appointed timeframe. Subject to certain exceptions not relevant here, if a noncitizen "voluntarily fails to depart the United States within the time period specified," he or she is (1) "subject to a civil penalty of not less than $1,000 and not more than $5,000," and (2) "ineligible, for a period of 10 years, to receive" various forms of immigration relief, including cancellation of removal, adjustment of status, and change of nonimmigrant classification. 8 U.S.C. §1229c(d)(1); *see* 8 C.F.R. §1240.26(*l*) (presumptively fixing the civil penalty at $3,000). A removal order is also automatically entered against the noncitizen without further proceedings. *See* Pet. App. 51a, 74a.

B. Motions to Reconsider and Reopen

Federal immigration law affords noncitizens two avenues for challenging their removability after an adverse removal decision. First, a noncitizen may file a "motion to reconsider" raising "errors of law or fact" in the immigration court or BIA decision. 8 U.S.C. §1229a(c)(6)(C); *see* 8 C.F.R. §§1003.2(b), 1003.23(b)(2). Second, a noncitizen may file a "motion to reopen" raising "newly discovered evidence or a change in circumstances since the hearing." *Dada*, 554 U.S. at 12 (quotation marks omitted); *see* 8 U.S.C. §1229a(c)(7)(B); 8 C.F.R. §§1003.2(c)(1), 1003.23(b)(3).

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[1] A separate 120-day limitation governs "pre-conclusion" voluntary departure—*i.e.*, voluntary departure offered "in lieu of" or "prior to the completion of" removal proceedings. 8 U.S.C. §1229c(a)(1).

Regulations promulgated after this Court's decision in *Dada* harmonize this right to seek reopening and reconsideration with the voluntary-departure framework discussed above. *See Dada*, 554 U.S. at 21 (holding that, "to safeguard the right to pursue a motion to reopen for voluntary departure recipients," a noncitizen "must be permitted to withdraw, unilaterally, a voluntary departure request before expiration of the departure period"). These regulations provide that, "[u]pon granting a request made for voluntary departure," an immigration judge must simultaneously "enter an alternate order o[f] removal." 8 C.F.R. §1240.26(d). If the noncitizen "files a post-decision motion to reopen or reconsider during the period allowed for voluntary departure, the grant of voluntary departure" then "terminate[s] automatically, and the alternate order of removal [takes] effect immediately." §1240.26(b)(3)(iii); *see* §1240.26(e)(1). As a result, "[t]he penalties for failure to depart voluntarily" set forth in §1229c(d)(1) "[do] not apply" if a noncitizen "file[s] a post-decision motion to reopen or reconsider during the period allowed for voluntary departure." 8 C.F.R. §1240.26(b)(3)(iii); *see* §1240.26(e)(1).

II. Procedural History

A. Immigration Court

Petitioner Hugo Monsalvo, a native and citizen of Mexico, came to the United States as a teenager in 2004 and settled in the Denver area. Pet. App. 4a; Administrative Record (A.R.) 24, 28, 165-168.[2] He has continuously lived in the United States since that

[2] Some parts of the record (*e.g.*, A.R. 713) state that Mr. Monsalvo arrived in October 2005. The discrepancy is immaterial.

time, A.R. 27-28, building strong family and community ties in this country. He attended Cherry Creek High School, where he was a varsity soccer player. A.R. 29, 172. After graduating in 2008, he took classes at the Community College of Denver and held jobs at local businesses. A.R. 29, 200-204. In 2009, he met his wife, Nataly. A.R. 44. They married in 2013 and have two U.S.-citizen children—an eleven-year-old son and nine-year-old daughter. A.R. 28, 30. The couple purchased a home in Aurora, Colorado, in 2016, and Mr. Monsalvo opened his own small business, an auto-detailing service, in 2021. A.R. 29, 44.

On September 19, 2011, the Department of Homeland Security initiated removal proceedings against Mr. Monsalvo, asserting that he is present in the United States without authorization. Pet. App. 4a, 45a, 62a; *see* 8 U.S.C. §1182(a)(6)(A)(i). The charging document did not include the date and time of Mr. Monsalvo's removal proceeding as required by law. Instead, the document contained placeholders for that information (*see* A.R. 713)—a practice this Court has since rejected. *See Pereira* v. *Sessions*, 585 U.S. 198 (2018); *Niz-Chavez* v. *Garland*, 593 U.S. 155 (2021).

Mr. Monsalvo conceded removability but filed an application for withholding of removal and relief under the Convention Against Torture (CAT). Pet. App. 45a-46a; A.R. 526-590, 681-690; *see* 8 U.S.C. §1231(b)(3) & note; 8 C.F.R. §208.16(c). In the alternative, Mr. Monsalvo requested voluntary departure. Pet. App. 46a. The Department of Homeland Security did not oppose this alternative request. Pet. App. 50a.

An immigration judge denied Mr. Monsalvo's application for withholding and CAT protection but

found him eligible for and deserving of voluntary departure. *Id.* The judge's order gave Mr. Monsalvo "60 calendar days from the date of service of th[e] order" to depart the country. Pet. App. 51a. The order issued on March 5, 2019 (Pet. App. 52a), meaning the sixtieth calendar day fell on Saturday, May 4. As the government acknowledges, however, "[t]he IJ stated, both orally ([A.R.] 523) and in a written order (Pet. App. 70a), that the 60-day period would last 'until May 6, 2019'"—that is, until the first business day after the sixtieth calendar day. Opp. 8 (quoting Pet. App. 5a). Consistent with 8 C.F.R. §1240.26(d), the immigration judge simultaneously entered an alternative order of removal to Mexico. Pet. App. 68a; *see supra*, at 9.

B. Board of Immigration Appeals

Mr. Monsalvo filed a timely notice of appeal to the BIA. A.R. 404. While that appeal was pending, but before the Board had issued a briefing schedule, the Board disbarred Mr. Monsalvo's attorney. A.R. 393-396; *see also People* v. *Caldbeck*, 466 P.3d 1174 (Colo. O.P.D.J. 2020). Mr. Monsalvo thus proceeded *pro se*. *See* Pet. App. 39 & n. 1.

On October 12, 2021, the BIA affirmed the immigration judge's decision, concluding that Mr. Monsalvo was not eligible for withholding or CAT relief. Pet. App. 39a-43a. The Board reinstated Mr. Monsalvo's voluntary-departure period, "provid[ing] [him] with an additional 60 days to voluntarily depart this country." Pet. App. 40a; *see* Pet. App. 42a. The sixtieth calendar day was December 11, 2022—again a Saturday. Pet. App. 34a.

Represented by new counsel, Mr. Monsalvo filed a motion to reopen and an accompanying application for

cancellation of removal and adjustment of status. Pet. App. 6a, 34a; *see* A.R. 21-384. He argued that this Court's decision in *Niz-Chavez*—which the Court handed down while his BIA appeal was pending—provided new grounds for relief from removal by making him newly eligible for cancellation. A.R. 24-25. Mr. Monsalvo explained that cancellation was appropriate because his removal would result in exceptional hardship for his two U.S.-citizen children. A.R. 27.

Mr. Monsalvo mailed these papers to the BIA on Friday, December 10, via FedEx's "Priority Overnight" service. A.R. 384. He served them on the Department of Homeland Security the same day. A.R. 381. The BIA accepted them for filing the next business day—Monday, December 13. A.R. 21.

The BIA denied Mr. Monsalvo's motion on May 4, 2022. The Board held that *Niz-Chavez* was not a significant enough change in the law to warrant reopening in light of this Court's earlier decision in *Pereira*. *See* Pet. App. 37a-38a. In addition, although the Department of Homeland Security had not challenged the timeliness of Mr. Monsalvo's motion to reopen, *see* Pet. App. 36a, the Board ruled that Mr. Monsalvo had filed the motion "after the 60-day period of voluntary departure expired," making him ineligible for cancellation of removal. Pet. App. 38a; *see* 8 U.S.C. §1229c(d)(1)(B) (providing that a noncitizen who "fails to depart the United States within the time period specified" for voluntary departure is "ineligible, for a period of 10 years," for cancellation). The Board reached this conclusion even though the sixtieth calendar day of the voluntary-departure period had fallen on a Saturday and Mr. Monsalvo had filed his motion to reopen the next business day. The Board

did not acknowledge nearly two decades of Ninth Circuit decisions holding that, when a voluntary-departure period expires on a weekend or holiday, the deadline runs to the next business day. *See Salvador-Calleros* v. *Ashcroft*, 389 F.3d 959, 965 (2004); *Barroso* v. *Gonzales*, 429 F.3d 1195, 1204 (2005), *abrogated on other grounds by Dada*, 554 U.S. 1; *Meza-Vallejos* v. *Holder*, 669 F.3d 920, 927 (2012).

Mr. Monsalvo sought reconsideration of the Board's *sua sponte* timeliness determination; the Board denied that request. *See* Pet. App. 33a-35a.

C. Tenth Circuit

Mr. Monsalvo petitioned for review of the BIA's decision. The Tenth Circuit denied the petition, reasoning that §1229c "unambiguously states that while the Attorney General has the discretion to grant voluntary departure, in no event may the time allotted exceed 60 days." Pet. App. 13a-14a.

The Tenth Circuit rejected Mr. Monsalvo's argument that §1229c should follow the usual rule for weekend and holiday deadlines. *See* Pet. App. 12a-13a. According to the court, it "makes sense" that the term "'day' is applied in one manner when filing appeals, motions, or other documents in immigration court or with the BIA and another when interpreting a maximum time period designated by statute," because "the same restrictions that apply in the filing context—court or agency closures—do not prevent one from departing, by, for example, boarding a plane, or otherwise being transported to one's chosen destination." Pet. App. 13a. The court acknowledged that the Ninth Circuit—the only other circuit to address the issue—had reached the opposite conclusion. *See* Pet.

App. 8a, 15a-16a. According to the Tenth Circuit, however, the Ninth Circuit's rule impermissibly "reconfigure[d] the statute." Pet. App. 16a.

This Court granted certiorari to resolve the split created by the decision below.

SUMMARY OF THE ARGUMENT

I. Section 1229c(b)(2) incorporates the well-established background principle that legal deadlines falling on "non-juridical" days—*i.e.*, weekends and holidays—roll over to the next business day. This deadline-computation rule, which took shape in English courts before the Founding, has become a settled feature of American law, "both from respect for religious considerations and by long-established legal and commercial tradition." *Sherwood Bros.* v. *District of Columbia*, 113 F.2d 162, 163 (D.C. Cir. 1940). This Court regularly reads even facially unqualified federal statutes to incorporate such background principles absent some clear indication to the contrary. *See, e.g.*, *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 129 (2014). Nothing in §1229c(b)(2) suggests that Congress intended the statutory term "60 days" to deviate from the traditional understanding that weekend and holiday deadlines extend to the next business day.

II. Section 1229c(b)(2) is also best read to incorporate the definition of "day" in longstanding immigration regulations. When Congress enacted §1229c(b)(2) in 1996, immigration regulations had for decades defined the word "day" to extend statutory deadlines falling on weekends and holidays to the next business day. 8 C.F.R. §1001.1(h). Because there is "no evidence of any intent to repudiate" that "longstanding

administrative construction" of the word "day," the most natural conclusion is that Congress "adopted [it]." *Haig* v. *Agee*, 453 U.S. 280, 297-298 (1981).

III. A contrary reading of §1229c would create significant unfairness and confusion. Applying a unique deadline-computation rule to §1229c would raise serious timeliness questions for noncitizens who previously relied on the traditional rule. It would also deprive some noncitizens—for instance, those whose religious obligations prevent them from working or traveling on certain days—of their ability to use a portion of the voluntary-departure window to which they would otherwise be entitled. And it would create needless confusion about every statutory deadline that does not specify a time-computation rule.

ARGUMENT

This case presents a straightforward question of statutory interpretation: when the "60 days" described in §1229c(b)(2) ends on a weekend or holiday, does the deadline carry over to the next business day? The answer to that question is equally straightforward: it does. When Congress enacted §1229c(b)(2) in 1996, a traditional common-law rule had long provided that time periods expiring on a weekend or holiday presumptively run until the next business day. And a longstanding regulation had codified that rule in the immigration context, defining the word "day" for purposes of "computing the period of time for taking any action" to exclude a "Saturday, Sunday or a legal holiday" falling at the end of the period. 8 C.F.R. §1.1(h) (1996) (now codified at 8 C.F.R. §§1.2 and 1001.1(h)). Under settled principles of statutory interpretation, §1229c(b)(2) incorporates these background understandings.

I. Section 1229c incorporates a common-law rule governing weekend and holiday deadlines.

Congress legislates against the backdrop of settled common-law rules. This case involves one particularly timeworn common-law rule: deadlines falling on weekends and legal holidays carry over to the next business day. That rule evolved in English courts before the Founding, and it matured over three centuries of American legal tradition. Nothing in the text of §1229c(b)(2) displaces it.

A. Federal statutes presumptively incorporate settled common-law rules.

This Court "generally presumes" that federal statutes incorporate common-law rules and traditional legal principles unless Congress has "expressly negated" them. *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 129-134 (2014); *see Corner Post, Inc.* v. *Board of Governors*, 144 S. Ct. 2440, 2451 (2024) (recognizing that a "traditional rule" pertaining to limitations periods supplied "a strong background presumption" that applied "[u]nless Congress has told us otherwise"); A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 31 (2012) ("A traditional and hence anticipated rule of interpretation, no less than a traditional and hence anticipated meaning of a word, imparts meaning."); J. Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2467 (2003) (similar). In keeping with that interpretive principle, this Court routinely reads statutes—even facially unqualified ones—to embrace such background rules and principles. *See United States* v. *Texas*, 507 U.S. 529, 535 (1993) (holding that

a "statute must speak directly to the question" to abrogate a background common-law principle (quotation marks omitted)).

Take *Lexmark*, in which the Court unanimously held that the Lanham Act implicitly incorporates two background limitations into a provision allowing "any person who believes that he or she is or is likely to be damaged" to sue for false advertising. 15 U.S.C. §1125(a). "Read literally," the Court acknowledged, the statute's "broad language might suggest that" anyone with Article III standing could bring a claim. 572 U.S. at 129. But the Court presumed that Congress "legislate[s] against the background of the zone-of-interests limitation, which applies unless it is expressly negated." *Id.* at 129 (brackets and quotation marks omitted). And it "assume[d]" that Congress is "familiar with the common-law rule" of proximate causation "and does not mean to displace it *sub silentio*." *Id.* at 132. So, the Court held, the phrase "any person" must be read in light of—and therefore as limited by—both principles, "its broad language notwithstanding." *Id.*; *see also Bank of America Corp.* v. *City of Miami*, 581 U.S. 189 (2017) (reading the same two limitations into the FHA).

The Court employed similar reasoning in *Norfolk Redevelopment & Housing Authority* v. *Chesapeake & Potomac Telephone Co.*, 464 U.S. 30 (1983) (*NRHA*), which construed a statute providing reimbursements to individuals and businesses forced to relocate as a result of federally funded projects. The Court did not dispute that the plaintiff telephone company satisfied the literal definition of a "displaced person" entitled to reimbursement. *Id.* at 33, 35. But the Court held that the statute's seemingly unqualified language did not

displace a "traditional common-law rule"—unstated in the statute's text—that utilities generally "bear the entire cost of relocating from a public right-of-way whenever requested to do so by state or local authorities." *Id.* at 35.

These decisions are the tip of the iceberg; the Court has applied the same interpretive principle in countless contexts. In *Meyer* v. *Holley*, 537 U.S. 280 (2003), the Court read otherwise-unqualified language in the Fair Housing Act to incorporate traditional vicarious-liability rules, explaining that Congress "legislates against [the] legal background of [those] rules and consequently intends its legislation to incorporate [them]." *Id.* at 285. In *Texas*, the Court held that a statute regulating interest on federal debts preserved states' common-law duty to pay prejudgment interest because "[t]he statute [was] silent" on that question. 507 U.S. at 535. In *United States* v. *Bestfoods*, 524 U.S. 51 (1998), the Court read CERCLA in light of "fundamental principle[s] of corporate law" that are "deeply ingrained in our economic and legal systems" because "nothing in CERCLA purports to reject [them]." *Id.* at 61-62. In *Malley* v. *Briggs*, 475 U.S. 335 (1986), the Court explained that §1983 incorporates "general principles of tort immunities and defenses," even though its language "on its face admits of no immunities." *Id.* at 339. And in *Morissette* v. *United States*, 342 U.S. 246 (1952), the Cout held that criminal statutes presumptively require a showing of intent, because when Congress "borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word." *Id.* at 263.

Put simply, the Court routinely reads federal statutes to incorporate traditional common-law qualifications—even when the literal text does not reflect them.

B. The common law has long extended deadlines falling on a *dies non juridicus* to the next business day.

For centuries, courts—including this Court—have recognized a background principle that deadlines falling on a "*dies non juridicus*" (a non-juridical day like a Sunday or holiday) extend to the following business day. *See, e.g.*, *Street* v. *United States*, 133 U.S. 299 (1890); *see also Black's Law Dictionary* 571 (12th ed. 2024) (defining *dies non juridicus*). That principle was established in English common law before the Founding, and it has become a settled part of the American legal tradition.

1. English courts developed special rules for calculating deadlines falling on non-business days.

a. The origins of the current rule for weekend and holiday deadlines stretch back to an ancient legal tradition—and an even deeper and more engrained religious tradition. In "the first three centuries of this era," Sunday developed into "a recognised day of Divine worship" following "the customs and practice of the Christians at that period." A. Freedley, *Legal Effect of Sunday*, 28 Am. L. Reg. 137, 138 (1880) (Freedley); *see also* J. Bradley, *Miscellaneous Writings of the Late Hon. Joseph P. Bradley* 412-414 (C. Bradley ed. 1901) (Bradley).

This religious observance evolved into "[t]he earliest recognition of Sunday as a civil institution" in the

year 321, Freedley 138, when the Roman Emperor Constantine declared that "[a]ll judges, inhabitants of cities and artisans shall rest on the sacred day called Sunday," Bradley 414. Other imperial edicts and ecclesiastical decrees followed in subsequent centuries—including laws "exempt[ing]" individuals "from all compulsory process" on Sunday and laws declaring that no person should "spend his leisure in litigation" or "continue the pleading of any cause" on Sunday. Freedley 138-139. These precepts eventually made their way to England, *see id.* at 139-140, where centuries of laws restricting Sunday activities culminated in a 1677 statute providing, among other things, "[t]hat noe person or persons upon the Lords Day shall serve or execute or cause to be served or executed any Writt, Processe, Warrant, Order Judgement or Decree," 29 Car. II, ch. 7, 5 Statutes of the Realm 848.

b. English judicial decisions before the Founding era distilled these earlier laws into a background legal principle that legal deadlines falling on a *dies non juridicus* (or "*dies non*") carry over to the next business day.

Lord Holt catalogued several then-prevailing applications of this rule in *Davy* v. *Salter*, 6 Mod. 251, 87 Eng. Rep. 998 (K.B. 1704). If the first or last day of a court term fell on a Sunday or holiday, he explained, the court would observe it the next day. *Id.* at 251-252, 87 Eng. Rep. at 999.[3] One year, for example, "Midsummer-Day happened to be on a *Wednesday*, which should have been the last day of the term; but

[3] Lord Holt's opinion uses the term "*essoins*," referring to the "excuses" that courts heard on the first day of the term (or "*essoin* day"). *See* 6 Mod. at 251, 87 Eng. Rep. at 999; *Black's Law Dictionary* 686 (12th ed. 2024) (defining *essoin* and *essoin* day).

being a *dies non*, upon great consideration the day following was kept." *Id.* at 252, 87 Eng. Rep. at 999; *see also* 3 W. Blackstone, *Commentaries on the Law of England* 278 n. *z* (St. G. Tucker ed. 1804) (Blackstone) (identifying Midsummer-Day postponements in 1702, 1713, and 1724). A *dies non* could also extend pleading deadlines. For example, litigants normally had until the fourth day after a writ issued (the "*quarto die post*") to respond, but "[i]f the Sunday happen[ed] to be the *quarto die post*, it [would] of necessity go to the Monday." 6 Mod. at 251, 87 Eng. Rep. at 999; *see* 3 Blackstone 278; *see also, e.g.*, *Bullock* v. *Lincoln*, 2 Strange 914, 93 Eng. Rep. 938 (K.B. 1731) (similar).

The court applied these principles several decades later in *Swann* v. *Broome*, 1 Black. W. 526, 96 Eng. Rep. 305 (K.B. 1764), *aff'd*, 6 Bro. P.C. 333, 2 Eng. Rep. 1115 (H.L. 1766). Appearing as counsel for the appellant, Blackstone argued that "[w]henever a return-day falls on a dies non, . . .the business must be transacted the day after." 1 Black. W. at 529, 96 Eng. Rep. at 307. The court agreed: "The practice . . . of giving notices to appear &c. on Sundays," Lord Mansfield explained, "is known to signify only Monday." *Id.* at 531, 96 Eng. Rep. at 307; *accord* 3 Blackstone 277 (explaining that "though many of the return days are fixed upon Sundays, yet the court never sits to receive these returns till the Monday after").

Davy and *Swann* are just two examples; by the turn of the nineteenth century, this treatment of Sunday and holiday deadlines was a regular feature of English cases. *See, e.g.*, *Lee* v. *Carlton*, 3 Term Rep. 642, 100 Eng. Rep. 779 (K.B. 1790) (holding that "if the last of the four days [to plead] happen[ed] on a

Sunday," the defendant could plead "the next day," because "otherwise" he would effectively "be limited to three days"); *R.* v. *Ginever*, 6 Term Rep. 594, 101 Eng. Rep. 722 (K.B. 1796) (explaining that a four-day period starting on Friday, January 29, "did not expire until Wednesday the 3d of February (Tuesday being a dies non)"); *Wathen* v. *Beaumont*, 11 East 271 n. (*b*), 103 Eng. Rep. 1008 n. (*b*) (K.B. 1809) (stating that the rule for pleading deadlines "in actions in general" was that "a Sunday or a holiday reckons as a day, *except it be the last*" (emphasis added)).

2. The common-law rule became an entrenched part of American law.

a. Courts in this country picked up where their English counterparts left off, with early American decisions transparently borrowing the *dies non* concept from across the Atlantic. A leading decision of New York's Supreme Court of Judicature, for example, held that "[w]here [a] rule to plead expires on *Sunday*, the defendant has the next day, in which to plead." *Cock* v. *Bunn*, 6 Johns. 326, 326 (1810) (*per curiam*). In reaching that conclusion, the court explained that it was "adopt[ing] the practice of the *English* court." *Id.*

Other cases followed suit, citing *Cock* and its English predecessors to hold that various legal deadlines carried over from Sunday to the next day. These included deadlines as varied as the time for taking an appeal, *see Carothers* v. *Wheeler*, 1 Or. 194, 196 (1855), the time for settling a bill of exceptions, *see Bacon* v. *State*, 22 Fla. 46, 48 (1886), and the time for probate commissioners to meet and receive claims against an estate, *see Barnes* v. *Eddy*, 12 R.I. 25, 25 (1878). Early American courts also applied this Sunday-deadline

rule to private contracts. In a leading 1816 decision, for example, the Supreme Court of Errors of Connecticut held that a contract requiring the defendant to deliver a quantity of yarn "in sixty days" permitted the defendant to tender the yarn the next day when the sixtieth calendar day fell on a Sunday. *Avery* v. *Stewart*, 2 Conn. 69, 72-73 (1816) (Swift, C.J., joined by three justices); *id.* at 76 (Smith, J.); *id.* at 82 (Gould, J.); *see also e.g.*, *Salter* v. *Burt*, 20 Wend. 205, 206-207 (N.Y. Sup. Ct. 1838); *Hammond* v. *Am. Mut. Life Ins. Co.*, 10 Gray 306, 311 (Mass. 1858); *Post* v. *Garrow*, 26 N.W. 580, 580 (Neb. 1886).

Canvassing this early case law, the *Barnes* court concluded that "[t]he rule is this: Whenever by a rule of court or an act of the legislature a given number of days are allowed to do an act," Sundays "are counted unless the last day falls on Sunday, in which case the act may be done on the next day." 12 R.I. at 26.[4]

b. By the first half of the twentieth century, this "common-law rule" had "become embedded in the habits and customs of the community." *Sherwood Bros.* v. *District of Columbia*, 113 F.2d 162, 163 (D.C. Cir.

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[4] Sunday also received special treatment in the structuring of the Legislative and Executive Branches. The Constitution's Presentment Clauses give the President "ten days (Sundays excepted)" to act on a bill. Art. I, §7, cl. 2. And Senate and House rules treat Sunday as a *dies non* in the ordinary course. *See* F. Riddick & A. Frumin, *Riddick's Senate Procedure: Precedent and Practices* 1265 (1992) ("Sunday is generally not considered a day in the Senate, and therefore the Senate may adjourn from Thursday until Monday without violating the provision of the Constitution prohibiting an adjournment of more than 3 days without the consent of the House."); 5 A.C. Hinds, *Hinds' Precedents of the House of Representatives of the United States* §7245 (1907) ("In the ordinary practice of the House Sunday is regarded as a dies non.").

1940). Three decisions in particular underscore the established place this rule came to occupy in the American legal tradition.

First, this Court applied the *dies non* principle in *Street* v. *United States*, 133 U.S. 299 (1890), a case involving a statute reducing the size of the armed forces in the aftermath of the Civil War. The statute allowed the President to transfer certain military officers to a "list of supernumeraries," and then provided that any officer on the list "after the first day of January next" would be discharged. Pub. L. 41-294, §12, 16 Stat. 315, 318-319 (1870). The petitioner argued that the President had unlawfully transferred him to the list of supernumeraries on Monday, January 2, but this Court disagreed, noting "that the first day of January was Sunday, that is, a *dies non*." 133 U.S. at 302-306. "[A] power that may be exercised up to and including a given day of the month," the Court held, "may generally, when that day happens to be Sunday, be exercised on the succeeding day." *Id.*[5]

Second, in *Sherwood*, the D.C. Circuit considered whether the petitioner had filed a tax-refund claim

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[5] The government has previously discounted *Street* on the theory that the Court's decision also relied on "statutory context" demonstrating (in the Court's view) that Congress did not view "'[t]he matter of time'" as "'vital.'" Opp. 18 (quoting 133 U.S. at 305) (alteration in Opp.). But that was just one of several grounds *Street* offered for its holding; the Court also clearly relied on the fact that January 1 fell on a Sunday, and that a deadline falling on a *dies non* "generally" carries over to the "succeeding day." 133 U.S. at 306; *see also id.* at 307 ("All these matters justified the action of the President taken on the 2d of January . . . ."). Regardless, this Court's descriptions of the legal principles that were "generally" recognized at the time are obviously persuasive evidence of that fact.

"within the ninety-day period specified by the statute for doing so." 113 F.2d at 162. The relevant statute was silent on the question of weekend deadlines, but the court (per then-Judge Rutledge, joined by then-Judge Vinson) had little trouble concluding that the petitioner's Monday filing was timely. "Business practice and accepted legal principle, *apart from statute*," the court explained, "permit and in some instances require an act to be done on the following Monday where the last day upon which it should have been done falls on Sunday." *Id.* at 163 (emphasis added). Because this "common-law rule" was "embedded in the habits and customs of the community, both from respect for religious considerations and by long-established legal and commercial tradition," the court concluded that "[i]t would be reasonable . . . to assume that Congress had the common law rule in mind when it legislated, and to construe the statute accordingly." *Id.*; *see also id.* at 163-164 (noting that the common-law rule found support in "controlling authority" as well as "tradition, fairness and convenience").

Third, in *Union National Bank* v. *Lamb*, 337 U.S. 38 (1949), this Court considered the timeliness of a petition for certiorari under 28 U.S.C. §2101. Then, as now, the statute allowed a petitioner to seek this Court's review "within ninety days after the entry of [the lower court's] judgment or decree." §2101(c) (1946, Supp. II). "The ninetieth day" in that case "was December 12, 1948, which was a Sunday." 337 U.S. at 40. The Court held that the petitioner's request for review, perfected on Monday, December 13, "did not fail for lack of timeliness." *Id.* at 41. The Court drew guidance from, among other sources, Federal Rule of Civil Procedure 6(a)—which, as then written, "provide[d] that where the last day for performance of an

act falls on a Sunday or a legal holiday, performance on the next day . . . is timely." *Id.*; *see also infra*, at 26-27 (discussing Rule 6). Although the rule was not controlling—it only governs actions in district court, *see* Fed. R. Civ. P. 1—the Court found it instructive because it "had the concurrence of Congress" and "no contrary policy [was] expressed in [§2101(c)]." 337 U.S. at 41.[6]

As these and other cases show, the usual weekend-and-holiday rule was ensconced in our legal framework by the first half of the twentieth century, applying to all manner of "acts" a person might take. *See, e.g.*, *Monroe Cattle Co.* v. *Becker*, 147 U.S. 47, 55-56 (1893) (reciting "the general rule . . . that, when an act is to be performed within a certain number of days, and the last day falls on Sunday, the person charged with the performance of the act has the following day to comply with his obligation"); *Lamson* v. *Andrews*, 40 App. D.C. 39, 42 (1913) (holding that "the appellant was not obliged to perform the act . . . on that day, which happened to be Sunday, or the next succeeding day, which happened to be a legal holiday, each being *dies non*"); *In re Stevenson*, 94 F. 110, 115 (D. Del. 1899) (noting the "high authority to the effect that where the last day of a period, during which an act is required to be done, is dies non, the act can in many cases be legally done on the following day").

c. The history of Rule 6(a) of the Federal Rules of Civil Procedure reinforces the well-settled tradition

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[6] *Lamb* predated today's Rule 30.1, which effectively codifies the common-law rule in this Court, applying it to "any period of time prescribed or allowed by [the Court's] Rules, by order of the Court, or by an applicable statute."

that deadlines ending on a weekend or holiday extend to the next business day.

Promulgated in 1937, the rule codified the common-law concept for actions in federal district court. As originally written, the rule provided that "[i]n computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, . . . [t]he last day of the period so computed is to be included, unless it is a Sunday or legal holiday." Fed. R. Civ. P. 6(a) (1937). The Advisory Committee notes explain that the rule merely "amplifi[ed]" preexisting practices, Fed. R. Civ. P. 6 advisory committee's note (1937), and followed in the footsteps of the common-law "dies non" concept, Fed. R. Civ. P. 6 advisory committee's note (1963 amendments). The rule's special treatment of weekends and holidays, the notes explain further, stems at least in part from the "hardship" associated with completing work on days that are not "working days." Fed. R. Civ. P. 6 advisory committee's note (1985 amendments).

Because Rule 6(a) merely amplified preexisting practices, multiple courts—including this one—have invoked the rule and the background principles it reflects to extend deadlines falling on a weekend or holiday *even when Rule 6 itself does not apply*. As already discussed, for example, *Lamb* drew on Rule 6(a) in applying the usual weekend-and-holiday rule to the ninety-day certiorari deadline, even though Rule 6 does not govern actions in this Court. *See* 337 U.S. at 41; *supra*, at 25-26.

d. In the decades leading up to IIRIRA's passage in 1996, the common-law rule discussed above remained firmly in place, with one notable expansion: the recognition of Saturday as a non-business day.

Previously regarded as a regular workday or sometimes a half-holiday, Saturday came to be treated like Sundays and holidays in the first half of the twentieth century. *See, e.g.*, W. Rybczynski, *Waiting for the Weekend* 144 (1991). The reasons for this evolution were multifaceted, including decreased working hours as a result of the Great Depression and accommodation of Jewish workers observing the Saturday Sabbath. *See id.* at 141-144.

The law evolved to reflect this change. In 1963, Rule 6(a) was amended to treat Saturday as equivalent to "Sunday or a 'legal holiday'" in the computation of deadlines. Fed. R. Civ. P. 6 advisory committee's note (1963 amendments); *see also* Fed. R. App. P. 26(a); Sup. Ct. R. 30.1; *United Mine Workers of America* v. *Dole*, 870 F.2d 662, 665 (D.C. Cir. 1989) (citing *Lamb*, *Sherwood*, and Rule 26(a) in holding that a Saturday deadline continued to Monday). Importantly, however, courts extended the common-law *dies non* principle to Saturday deadlines even in cases where Rule 6(a) does not apply. In *Armstrong* v. *Tisch*, 835 F.2d 1139 (5th Cir. 1988), for example, the court held that a regulation giving the Postal Service thirty days to reach a decision in employment-discrimination investigations allowed the agency to issue its decision the Monday after a Saturday deadline. *See id.* at 1139-1140 (citing *Street* and Rule 6); *see also LeGras* v. *AETNA Life Ins. Co.*, 786 F.3d 1233, 1237 (9th Cir. 2015) (collecting cases and applying the rule).

Even the BIA has applied the background common-law rule to Saturday deadlines. In *Matter of Escobar*, 18 I. & N. Dec. 412 (1983), the Board considered a notice-of-appeal deadline that happened to fall on a Saturday. At the time, the rules for calculating

deadlines in immigration regulations covered Sundays and holidays, *see infra*, at 37-38, but were "silent as to the effect of the last day of an appeal period falling on a Saturday," 18 I. & N. Dec. at 414. Drawing on Civil Rule 6(a), the Board held that there was "no legitimate distinction between Saturdays, Sundays and legal holidays." *Id.*

C. Nothing in §1229c displaces the common-law rule.

1. As discussed above, courts presume that Congress infuses statutory language with established common-law doctrines and other traditional legal principles unless the statute "expressly negate[s]" them. *Lexmark*, 572 U.S. at 129; *see supra*, at 16-19. That "unless" is important: contra the government's straw-man contention (*see* Opp. 17), petitioner's argument is not that Congress can *never* permit a deadline to fall on a weekend or holiday—only that a statute must give a clear indication that it is doing so.

There is no such clear indication in the text of §1229c(b)(2): nothing in the statute signals a departure from the common law. Instead, the statute says only that a grant of voluntary departure "shall not be valid for a period exceeding 60 days." That language certainly does not "expressly negat[e]" the usual rule for weekend and holiday deadlines. *Lexmark*, 572 U.S. at 129. Nor does it otherwise suggest a desire to create an exception to that usual rule. To the contrary, the unadorned reference to "60 days" implies that the sixty-day period should be calculated using the "traditional rule." *Corner Post*, 144 S. Ct. at 2451.

To be clear, Congress need not use a particular set of magic words to depart from common-law rules or

background principles. In *Norfolk Southern Railway Co.* v. *Sorrell*, 549 U.S. 158 (2007), for example, the Court catalogued several provisions of the Federal Employers' Liability Act that "expressly departed from the common law." *Id.* at 168. A look at those provisions reveals a variety of verbal formulations. Some called out the common-law rule fairly directly. *See* 45 U.S.C. §53 (rejecting the doctrine of contributory negligence by stating that "the fact that the employee may have been guilty of contributory negligence shall not bar a recovery"). Others were more oblique. *See* 45 U.S.C. §51 (departing from the fellow-servant rule by stating that a railroad is liable for injuries caused by "the negligence of any of [its] officers, agents, or employees"). In one way or another, though, all of these provisions had what §1229c(b)(2) lacks: a textual displacement of the background rule.

2. The government offers no sound basis to disregard the common-law rule. Its principal counterargument, echoed by the Tenth Circuit, is that §1229c is "unambiguous"—by which the government apparently means that the statute does not contain an express exception for deadlines falling on Saturdays, Sundays, or holidays. *E.g.*, Opp. 13; *see* Pet. App. 13a, 16a. That argument conflicts with this Court's precedent in two ways.

First, it inverts the inference that this Court's decisions draw from statutory silence. As discussed above, numerous cases have made clear that otherwise-silent statutes *incorporate* (rather than displace) common-law rules and background legal principles. *See supra*, at 16-19. Each of those cases involved facially unqualified (or, to use the government's label, "unambiguous") statutory language. No one disputed,

for example, that the telephone company in *NHRA* satisfied the literal definition of a "displaced person," *see* 464 U.S. at 35, or that the phrase "any person" in *Lexmark* did not, on its own, limit the class of plaintiffs to individuals within the statute's zone of interests who could establish proximate cause, *see* 572 U.S. at 129-134. But the Court in both cases appreciated that Congress—which does not write statutes in a vacuum—would have intended background principles to be read into those statutory terms. In these and the other cases discussed above, therefore, the Court did exactly what the government asks it *not* to do here: read a facially unqualified statutory term in light of a background rule engrained in our legal tradition.

Second, and more specifically, the government's argument conflicts with prior decisions about weekend and holiday deadlines, including this Court's decisions in *Street* and *Lamb* and a raft of lower-court decisions. *See supra*, at 23-29. The statutes at issue in those cases were just as "unambiguous" as §1229c. The certiorari statute, for example, required a litigant to invoke this Court's jurisdiction "within ninety days after the entry of [a lower court's] judgment or decree." 28 U.S.C. §2101(c) (1946, Supp. II). Applying the government's ninety-days-means-ninety-days theory, the petitioner in *Lamb* should have been out of luck. But the Court understood that the best reading of the unqualified phrase "ninety days" accounted for background rules about weekend and holiday deadlines. 337 U.S. at 40-41.

3. Seeking a less disruptive pathway to its desired result, the government also argues (again, with the Tenth Circuit's backing) that the voluntary-departure deadline falls outside the common-law weekend-and-

holiday rule because "[n]o . . . impediment prevents a noncitizen from departing the United States on a weekend or holiday." Opp. 18; *see also* Pet. App. 13a (reasoning that "[t]he same restrictions that apply in the filing context" on a weekend or holiday "do not prevent one from departing, by, for example, boarding a plane"). On this theory, the common-law rule is limited to circumstances in which it is unlawful or physically impossible for a party to perform the act in question on the final day of the relevant time period—as when, for example, "'court or agency closures' . . . prevent filings." Opp. 17 (quoting Pet. App. 13a).

That cramped understanding of the common-law rule ignores history and precedent. As the court explained in *Sherwood*, the traditional weekend-and-holiday rule stems "both from respect for religious considerations" and "long-established legal and commercial tradition." 113 F.2d at 163. The fact that the rule developed at least in part as a religious accommodation makes especially clear that the rule is about more than just impossibility or illegality: it also protects individuals whose religious convictions would prevent them from taking certain actions—including "boarding a plane," Pet. App. 13a—on Saturdays and Sundays.

Accordingly, courts have routinely applied the usual weekend-and-holiday rule to situations in which it was decidedly *not* impossible or illegal to carry out the required act on a weekend or holiday. In *Street*, for example, the President could have added officers to the supernumerary list on Sunday. *See* 133 U.S. at 302-306. So, too, in *Armstrong*: nothing barred the Postal Service from making a decision on a Saturday. *See* 835 F.2d 1139-1140; *see also, e.g.*, *Post*, 26

N.W. at 580 (extending a Sunday deadline without any indication that it was unlawful or impossible to deliver contractually promised cattle on that day).

Modern rules governing litigation deadlines confirm that there is more animating the common-law principle than just concerns about court and agency closures. Rule 6(a), for example, applies the usual weekend-and-holiday rule to all manner of discovery and service deadlines in civil litigation—even though (as many a junior lawyer learns the hard way) it is certainly *possible* to serve pleadings and discovery responses on a weekend or holiday. Perhaps even more tellingly, Rule 6(a) has a separate subsection dealing with situations in which "the clerk's office is inaccessible"; in those circumstances, a filing deadline carries over until "the first accessible day that is not a Saturday, Sunday, or legal holiday." Fed. R. Civ. P. 6(a)(3). This separate carve-out makes clear that, under the traditional rule, a litigant is not expected to file on a Saturday, Sunday, or holiday *even if the clerk's office is accessible on those days*.

Indeed, the fact that the principles embodied in Rule 6 and similar provisions continue to exist *at all* is a sign that these norms are about more than just court closures. In an age of e-filing, it is often possible to submit a court filing 24/7, 365 days a year. But our legal tradition recognizes—contra the government's argument—that there are certain days on which legal deadlines should (presumptively, at least) be suspended until the next day. *See* Fed. R. Civ. P. 6 advisory committee's note (1985 amendments) (describing the "hardship" associated with preparing motions on Saturdays, Sundays, and holidays because they are not "working days").

4. Finally, the government suggests that the common-law rule cannot apply to §1229c because the "60-day limit on the time for voluntary departure is an important 'substantive' constraint that cannot be extended for equitable reasons." Opp. 18 (quoting *Dada* v. *Mukasey*, 554 U.S. 1, 19 (2008)); *see also* Pet. App. 16a-17a (similar). But petitioner is not asking for an *equitable exception* to the statute—he is asking the Court to apply the *best reading* of the statute. *Cf.* Fed. R. Civ. P. 6(a)-(b) (drawing a distinction between rules for *computing time*, which include the traditional weekend-and-holiday rule, and rules for *extending* time). For the reasons explained, an ordinary reader of §1229c in 1996 would have understood the statutory phrase "60 days" to incorporate the common-law rule for calculating deadlines. And that rule extends deadlines falling on a weekend or holiday to the next business day.

II. Section 1229c incorporates the preexisting regulatory definition of "day."

The phrase "60 days," as used in §1229c(b)(2), is also best read in light of a longstanding immigration regulation defining the word "day." *See* 8 C.F.R. §1.1(h) (1996) (now codified at 8 C.F.R. §§1.2 and 1001.1(h)). That regulation provides that, "when computing the period of time for taking any action," if "the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday." *Id.* Congress's failure to displace the regulatory definition—which long predates §1229c(b)(2)—informs the meaning of the statute in two ways: it confirms that Congress chose to incorporate the common-law rule discussed in the preceding

part, and it provides an independent basis for concluding that the statutory phrase "60 days" refers to a period that must terminate on a business day.

A. Statutes presumptively incorporate settled administrative interpretations.

The same interpretive principle that requires reading statutes in light of background common-law rules (*see supra*, at 16-19) also applies to "settled judicial and administrative interpretation[s]" of statutory terms. *Commissioner* v. *Keystone Consol. Indus., Inc.*, 508 U.S. 152, 159 (1993). That is, "Congress presumptively [is] aware when it enact[s]" a statute of any on-point regulatory definitions. *Id.* And when there is "no evidence of any intent to repudiate" such a "longstanding administrative construction," the most natural conclusion is that Congress "adopted [it]." *Haig* v. *Agee*, 453 U.S. 280, 297-298 (1981); *cf. Loper Bright Enterprises* v. *Raimondo*, 144 S. Ct. 2244, 2262 (2024) (explaining that "interpretations issued contemporaneously with the statute at issue" that "have remained consistent over time" can be "especially useful in determining the statute's meaning").

This Court has repeatedly applied that principle. In *United States* v. *Hill*, 506 U.S. 546 (1993), for example, the Court held that a federal statute dealing with taxation of "mineral deposits" implicitly incorporated longstanding Treasury rules distinguishing "mineral deposits" from "improvements." *See id.* at 553. "Because these regulatory definitions were well established at the time Congress passed [the tax statute]," the Court explained, it was "reasonable to assume that Congress relied on" them when it used the term "mineral deposit." *Id.* at 553-554.

The Court employed similar reasoning in *Agee*, holding that a 1926 statute allowing the Secretary of State to "grant and issue" passports, 22 U.S.C. §211a (1976, Supp. IV), also allowed the Secretary of State to revoke passports. 453 U.S. at 289-306. True, the statute did not give the Secretary that power "in so many words." *Id.* at 290. But "the President and the Secretary of State [had] consistently construed" an earlier passport statute to "preserve their authority to withhold passports on national security and foreign policy grounds." *Id.* at 295. Congress passed the 1926 statute "[a]gainst this background," and "[t]here [was] no evidence of any intent to repudiate the longstanding administrative construction." *Id.* at 297.

As above, these decisions are merely representative: the U.S. Reports are replete with cases in which the Court understood later statutory enactments to incorporate earlier, longstanding regulatory definitions.[7]

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[7] *See, e.g.*, *George* v. *McDonough*, 596 U.S. 740, 746 (2022) (holding that the "long regulatory history" of a statutory term provided "a robust regulatory backdrop" that "fill[ed] in the details" of that term's meaning); *Nat'l Cable & Telecomms. Ass'n* v. *Brand X Internet Servs.*, 545 U.S. 967, 992 (2005) ("Congress passed the definitions in the Communications Act against the background of [the FCC's] regulatory history, and we may assume that the parallel terms [in the Act] substantially incorporated their meaning . . . ."); *Johnson* v. *United States*, 529 U.S. 694, 711-712 (2000) (looking to pre-1984 regulations and practices to inform the meaning of the verb "revoke" in the Sentencing Reform Act of 1984); *cf. Harrow* v. *Department of Defense*, 601 U.S. 480, 483 (2024) ("Congress legislates against the backdrop of judicial doctrines creating exceptions, and typically expects those doctrines to apply.").

B. In 1996, immigration regulations had long defined "day" to extend statutory deadlines to the next business day.

1. At the time of IIRIRA's passage, the term "day" had a settled administrative construction in immigration law—one that mirrors the common-law rule discussed above.

That construction dates back to the very first set of regulations that the Department of Justice adopted after the passage of the Immigration and Nationality Act (INA). Those regulations, promulgated in 1952, provided that "[t]he term 'day,' when computing the period of time provided in [the regulations] for the taking of any action, means any day other than a Sunday or a legal holiday." 8 C.F.R. §1.1(a)(6) (1952). By 1958, that definitional provision was more or less in its current form, stating that the term "day," for purposes of computing a time period under the regulations for "taking any action," includes "Sundays and legal holidays" unless "the last day of the period so computed falls on a Sunday or legal holiday." 8 C.F.R. §1.1(a)(6) (1958).

The only change of any substance in the years since was the addition of Saturday. *Cf. supra*, at 27-29. As discussed above, the BIA held in *Escobar* that a notice-of-appeal deadline falling on a Saturday continued to run to the next business day, even though the regulatory definition at the time applied only to Sunday and holiday deadlines. *See* 18 I. & N. Dec. at 414; *supra*, at 28-29. After *Escobar*, the Department of Justice updated the regulation to add Saturday, explicitly codifying the decision and applying it to "any action" (not just the notice-of-appeal deadline). *See* 52 Fed. Reg. 2931, 2935-2936 (Jan. 29, 1987). Thus, by

1996, the wording of the regulation—then codified at 8 C.F.R. §1.1(h)—was identical to its wording today (and had been for a decade). *See id.* at 2936.[8]

This regulatory definition covers the waterfront of immigration-related deadlines. Both in 1996 and today, the definition controls "the period of time for taking *any* action provided in" title 8 of the Code of Federal Regulations. 8 C.F.R. §1.1(h) (1996) (emphasis added); *see* 8 C.F.R. §§1.2, 1001.1(h) (2024). Title 8, in turn, contains *all* of the regulations related to immigration matters, including deadlines as varied as the deadline for retaking a citizenship examination, the deadline for presenting for fingerprinting after turning 14, the deadline for getting married after entering the United States on a fiancé(e) visa, and—as obviously relevant here—the deadline for voluntarily departing the country. *See* 8 C.F.R. §§264.1(g), 312.5(a) (1996); 8 C.F.R. §§1240.26(e)-(f), 1245.1 (2024).

In short, by 1996, Department of Justice regulations had long provided that a whole host of immigration deadlines would carry over to the next business day any time they fell on a Saturday, Sunday, or holiday.

2. Resisting the relevance of this longstanding administrative interpretation, the government has argued that the definition of "day" in §1001.1(h) applies only to *regulatory* deadlines, and hence does not shed light on whether the agency understands the *statute*

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[8] In 2003, upon the transfer of certain DOJ functions to the newly created Department of Homeland Security, the definitions provision in 8 C.F.R. §1.1 was duplicated into two identical provisions: one governing DHS deadlines (§1.1, now codified at 8 C.F.R. §1.2), and the other governing DOJ deadlines (8 C.F.R. §1001.1). *See* 68 Fed. Reg. 9824, 9830 (Feb. 28, 2003).

to incorporate the traditional weekend-and-holiday rule. Opp. 15. But the premise of the government's argument is wrong, and its conclusion does not follow.

a. The government cannot credibly deny that the definition of "day" in §1001.1(h) reflects the Department of Justice's understanding of the term "day" in the INA. That is because many of the regulatory deadlines in title 8 of the Code of Federal Regulations—both in 1996 and today—simply parrot deadlines set forth in title 8 of the U.S. Code. The voluntary-departure deadline is one example of this kind of statute-copying provision. *See* 8 C.F.R. §1240.26(e) ("[T]he immigration judge may grant a period not to exceed 60 days."). There are other prominent examples, too. In 1996, for example, the INA required a noncitizen to notify the government of a change of address within ten days. 8 U.S.C. §1305 (1994). A regulation then echoed that ten-day deadline. 8 C.F.R. §265.1 (1996). Today's INA, meanwhile, sets forth deadlines for a noncitizen to file a motion to reopen, a motion to reconsider, or a motion challenging an *in absentia* removal order. 8 U.S.C. §1229a(b)(5)(C), (c)(6)(C), (c)(7)(C). A series of regulatory provisions then repeats those statutory deadlines. 8 C.F.R. §1003.23(b), (b)(4)(ii).

Because these statute-copying regulations use the defined term "day," they necessarily incorporate the definition set forth in §1001.1(h)—which applies throughout 8 C.F.R. It follows that §1001.1(h) (with its weekend-and-holiday rule) represents an administrative gloss on the statute itself—because, again, the regulatory deadlines discussed in the previous paragraph do nothing more than restate deadlines found in the INA. In other words, by defining the word "day"

in these statute-copying regulations to incorporate the traditional weekend-and-holiday rule, the Department of Justice necessarily signaled its understanding that the *statute* incorporates that rule as well.[9]

In other ways, too, the Department has taken a clear position that the weekend-and-holiday deadline rule embodied in §1001.1(h) applies to statutory deadlines. Consider, for example, the Department's treatment of the one-year asylum deadline. The INA requires a noncitizen to file an asylum application "within 1 year after" arriving in the United States, 8 U.S.C. §1158(a)(2)(B), and applicable regulations parrot that one-year deadline, 8 C.F.R. §§208.4(a)(2), 1208.4(a)(2). By its own terms, §1001.1(h) does not interpret either the statutory deadline or its regulatory counterpart, because both use the term "year" instead of "day." But the Department has promulgated a separate regulation stating that "[w]hen the last day of [this one-year period] falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday." §§208.4(a)(2)(ii), 1208.4(a)(2)(ii). In adopting this regulation, the Department explained that this language "was added for consistency with §1.1(h)," now §1001.1(h), "which defines the term 'day.'" 65 Fed. Reg. 76,121, 76,123 (Dec. 6, 2000); *see*

[9] Official agency guidance points in the same direction. The Department of Justice's binding practice manuals for immigration-court and BIA proceedings apply the traditional weekend-and-holiday deadline rule to the full gamut of motions and filings—including those, like motions to reopen, whose deadlines are set by statute. *See* Immigration Court Practice Manual §3.1(c)(2), at 41-42 (Aug. 12, 2024); BIA Practice Manual §3.1(b)(2), at 41 (June 1, 2023).

Jorgji v. *Mukasey*, 514 F.3d 53 (1st Cir. 2008) (applying this regulation). Because the only purpose of this regulatory provision is to clarify the statutory one-year asylum deadline, it necessarily signals the Department's view of how the statute works.

The Department's treatment of the ninety-day deadline for filing a motion to reopen set forth in 8 U.S.C. §1229a(c)(7)(C) and repeated in 8 C.F.R. §1003.2(c)(2) is similarly telling. As part of its implementation of an e-filing system for certain immigration cases, *see infra*, note 10, the Department promulgated rules dealing with unexpected system outages. "If [the] electronic filing application is unavailable due to an unplanned system outage on the last day for filing" a motion to reopen, the regulation provides, "the filing deadline will be extended to the first day that the electronic filing application becomes accessible that is not a Saturday, Sunday, or legal holiday." 8 C.F.R. §1003.2(g)(5). This regulation, too, exists solely to clarify a statutory period—here, the ninety-day motion-to-reopen deadline.

Taken together, these regulations remove any doubt that the Department of Justice ordinarily views deadlines in the INA itself as following the weekend-and-holiday rule reflected in §1001.1(h).

b. Even if the government were correct that §1001.1(h) does not directly govern statutory deadlines, the government's argument still misses the point. Because the regulatory definition of "day" long predated §1229c, it provides the appropriate prism through which to read the language that Congress adopted in 1996. *See supra*, at 35-38. In other words, even if the regulatory definition of "day" applied "only" to the regulatory immigration deadlines, the definition's

long and consistent pre-IIRIRA history—and its application to a wide range of immigration deadlines—makes it unlikely that Congress would have intended a different meaning of "day" in the voluntary-departure context without so much as a whisper to that effect. *See, e.g.*, *Hill*, 506 U.S. at 553-554.

3. The government also argues that, to the extent §1001.1(h) purports to "overrule" the statutory deadlines, it is "unlawful." Opp. 15. Putting aside the fact that the government's position requires it to characterize the natural operation of *its own longstanding regulation* as unlawful, the government's premise is again wrong.

As just discussed, the regulation does not "overrule" the statute—it provides an interpretive background that informs the statute's meaning. That is not uncommon: the immigration-specific regulations discussed above are part of a long and consistent line of regulations—across various agencies and substantive areas of the law—applying the traditional weekend-and-holiday rule to statutory deadlines. Indeed, many of those regulations *expressly state* that a statutory deadline ending on a weekend or holiday extends to the next business day. *See, e.g.*, 14 C.F.R. §302.8 (applying the rule to "any period of time prescribed or allowed . . . by *any applicable statute*" (emphasis added)); 16 C.F.R. §4.3(a) (same); 20 C.F.R. §725.311 (similar); 32 C.F.R. §150.7 (same); 37 C.F.R. §§1.7(a), 2.196 (similar); 45 C.F.R. §501.7(a) (same); 49 C.F.R. §821.10 (same); Sup. Ct. R. 30.1 (similar).

C. Nothing in §1229c displaces the longstanding regulatory construction.

As the foregoing history makes clear, by 1996, the word "day," as used in immigration law, had excluded final Sundays and holidays for four decades, and had excluded final Saturdays for a decade. There is no reason to believe that Congress sought to disrupt that settled meaning in passing §1229c. To the contrary, the statutory silence makes clear that Congress "adopted the longstanding administrative construction." *Agee*, 453 U.S. at 297-298.

The government's account of the statute, meanwhile, requires the Court to indulge some improbable assumptions about Congress's handiwork. To credit the government's interpretation of §1229c, the Court would have to believe that Congress knew about the regulations' settled definition of "day" and adopted a different rule solely applicable to voluntary departure *without saying it was doing so*. That is not how this Court (or the public) normally understands statutory language. Absent "evidence of any intent to repudiate the longstanding administrative construction," the proper conclusion is that Congress "adopted [it]." *Agee*, 453 U.S. at 297-298; *see supra*, at 35-36.

The government offers no sound basis to disregard this long-settled regulatory definition of "day." Its only argument is that the definition, "[b]y its terms," "applies only" to "time limits set by regulation." Opp. 15. As discussed above, however, that is incorrect: the regulation glosses the statute, as the government itself has consistently recognized. *Cf. Loper Bright*, 144 S. Ct. at 2262 (explaining that a "consistent" interpretation from "those responsible for implementing" a statute can provide strong evidence of its meaning).

For all these reasons, the regulatory definition of "day" both supports the common-law argument in Part I above and provides a freestanding reason to reject the government's interpretation of §1229c.

III. The consequences of the government's interpretation further undermine its construction of §1229c.

The government's approach to the voluntary-departure deadline is not only inconsistent with the ordinary rules of statutory construction; it is also a pathway to unfairness and confusion. For those reasons, too, the Court should hold that §1229c(b)(2) follows the traditional approach to weekend and holiday deadlines.

A. The government's interpretation leads to unfair and anomalous outcomes.

1. The government's reading of the statute threatens to impose a surprise penalty on any noncitizen who previously left the country or filed a motion to reopen or reconsider in reasonable reliance on the traditional rule for weekend and holiday deadlines.

Before the decision below, all available indications would have led a noncitizen to conclude that he or she could safely wait until the business day after a weekend or holiday deadline to leave the country or file a qualifying motion. That conclusion would have been supported not only by the statutory-interpretation principles discussed above, but also by two decades of unchallenged Ninth Circuit precedent applying the traditional rule—the only relevant precedent from an Article III court. *See supra*, at 13 (collecting cases). Indeed, the immigration judge *in this very case* understood §1229c(b)(2) to follow the traditional rule for

weekend and holiday deadlines. The judge issued the original grant of voluntary departure to Mr. Monsalvo on March 5, 2019, meaning the 60-day statutory deadline fell on Saturday, May 4. Pet. App. 70a; *see supra*, at 11. In keeping with the traditional rule, the immigration judge's oral and written orders both stated that Mr. Monsalvo had until May 6, 2019, to depart. Pet. App. 70a; *see supra*, at 11. The BIA obviously applied a different rule when it later considered the reinstated sixty-day period—but, again, it tossed aside extensive precedent in doing so.

The upshot is that, over the past several decades, there have likely been many noncitizens who left the country (or filed motions to reopen or reconsider) on the business day after a weekend or holiday deadline. If the Court adopts a different reading of the statute, those noncitizens may find—perhaps years later—that their ability to return to the country or to seek other forms of immigration relief is in jeopardy. *See* 8 U.S.C. §1229c(d)(1) (describing the penalties for failure to depart on time).

2. The government's construction also will burden those who choose voluntary departure in the future by depriving them of the full voluntary-departure period.

For example, the government's interpretation effectively cuts short the voluntary-departure period for noncitizens who find themselves unable to leave the country on a weekend, including noncitizens whose faiths restrict Saturday or Sunday travel. *See, e.g.*, Brief Amicus Curiae of the Union of Orthodox Jewish Congregations of America at 5-7, *Groff* v. *DeJoy*, 600 U.S. 447 (2023) (No. 22-174) (describing restrictions on adherents' Saturday activities); Brief Amicus Cu-

riae of the General Conference of Seventh-day Adventists at 26-28, *Groff*, *supra* (No. 22-174) (similar). That is a particularly perverse consequence given the "respect for religious considerations" that undergirds the traditional rule for weekend and holiday deadlines. *Sherwood*, 113 F.2d at 162.

The government's interpretation also places burdens on noncitizens who exercise their right to seek reopening or reconsideration rather than depart the country. As discussed above, noncitizens have a statutory right to seek those forms of relief, *see* 8 U.S.C. §1229a(c)(6)-(7); *supra*, at 8, and the law allows them until the end of the voluntary-departure period to do so, *see* 8 U.S.C. §1229a(c)(6)(B), (c)(7)(C)(i); 8 C.F.R. §§1003.23(b), 1240.26(b)(3)(iii). But for the majority of noncitizens, who are not allowed to electronically file documents in immigration court,[10] the government's interpretation cuts short the period to file whenever the voluntary-departure period ends on a weekend or holiday. That outcome can make a difference. Imagine, for example, a noncitizen who uncovers new evidence—the kind that would normally justify relief from removal—late on Friday before a Sunday voluntary-departure deadline. On the government's view, if e-filing is not available in that person's

[10] Most noncitizens in removal proceedings are *pro se*, and *pro se* parties may not e-file anything other than a basic change-of-address form in immigration court. *See* EOIR, Respondent Access, File EOIR Forms, https://respondentaccess.eoir.justice.gov/en/forms; EOIR, Adjudication Statistics: Current Representation Rates, https://www.justice.gov/eoir/media/1344931/dl?inline (Apr. 19, 2024). Even in counseled cases, attorneys may not file documents electronically in the many outstanding cases initiated before the advent of mandatory e-filing in 2022. *See* 86 Fed. Reg. 70,708, 70,710 (Dec. 13, 2021).

case, it is already too late for him to file a motion—even though his voluntary-departure period *has not expired yet*.

As the foregoing example indicates, the government's rule also creates anomalous disparities between noncitizens based on whether e-filing is available in their individual cases. In a paper-only case, a noncitizen effectively loses the final days of the period to file a motion to reopen when the voluntary-departure deadline falls on a weekend or holiday. But if the same noncitizen is instead represented by an attorney in a case in which e-filing is available (*see supra*, note 10), that person can take advantage of the full statutory period by having the attorney e-file on the weekend or holiday deadline. In short, the government is conditioning noncitizens' ability to benefit from the full filing period not only on whether they have the resources to retain counsel, but also on whether the *government* has chosen to make e-filing available in their cases.

B. The government's interpretation will cause unnecessary confusion.

For at least two reasons, the government's rule also risks sowing confusion in other cases.

First, applying the government's desired deadline-calculation rule will create a needless trap for unsuspecting noncitizens. As discussed above, virtually *every* immigration deadline follows the traditional rule for weekend and holiday deadlines. *See supra*, at 38. So if the Court adopts the government's interpretation of §1229c(b)(2), it will effectively be creating a

sui generis exception to that ubiquitous rule: the voluntary-departure statute—and that statute alone—will employ a different calculation method.

That one-off exception is particularly likely to surprise noncitizens (most of whom proceed *pro se*, *see supra*, note 10) because it will arise for the first time at the very end of removal proceedings. Over the course of lengthy removal proceedings, a noncitizen likely will have had several opportunities to become familiar with the traditional deadline rule. There is no good reason to spring a new rule on unsuspecting noncitizens at the eleventh hour—especially when the consequences for getting the deadline wrong are so severe. *See* 8 U.S.C. §1229c(d)(1) (describing the penalties for failure to depart on time).

Second, adopting the government's position risks confusion even outside the immigration context. As discussed above, there is nothing special about the wording of §1229c(b)(2)—it is just as "unambiguous" as other statutory time periods. *See supra*, at 30-31. There is thus no principled way for the Court to adopt the government's reasoning without creating an open question about virtually *every* statutory deadline—even ones that the relevant agency has explicitly interpreted to incorporate the weekend-and-holiday rule. *See supra*, at 42.

Fortunately, §1229c(b)(2) does not require the Court to accept these consequences. The ordinary rules of statutory interpretation make clear that, for the reasons stated, the statute incorporates the traditional rule for weekend and holiday deadlines embedded in the common law and reaffirmed in longstanding immigration regulations.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted.

HENRY D. HOLLITHRON
HOLLITHRON
ADVOCATES, P.C.
4155 East Jewell Avenue
Suite 1004
Denver, CO 80222

GERARD J. CEDRONE
Counsel of Record
DAVID J. ZIMMER
SIERRA J. PEREZ-SPARKS
JONATHAN E. RANKIN
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
gcedrone@goodwinlaw.com
(617) 570-1849

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Counsel for Petitioner

APPENDIX

APPENDIX CONTENTS

Statutes:

Regulations:

1. The current version of 8 U.S.C. §1229c provides:

§1229c. Voluntary departure

(a) Certain conditions

(1) In general

The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 1229a of this title or prior to the completion of such proceedings, if the alien is not deportable under section 1227(a)(2)(A)(iii) or section 1227(a)(4)(B) of this title.

(2) Period

(A) In general

Subject to subparagraph (B), permission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days.

(B) Three-year pilot program waiver

During the period October 1, 2000, through September 30, 2003, and subject to subparagraphs (C) and (D)(ii), the Attorney General may, in the discretion of the Attorney General for humanitarian purposes, waive application of subparagraph (A) in the case of an alien—

(i) who was admitted to the United States as a nonimmigrant visitor (described in section 1101(a)(15)(B) of this title) under the provisions of the visa waiver pilot program established pursuant to section 1187 of this title, seeks the waiver for the purpose of continuing to receive medical treatment in the United States from a

physician associated with a health care facility, and submits to the Attorney General—

(I) a detailed diagnosis statement from the physician, which includes the treatment being sought and the expected time period the alien will be required to remain in the United States;

(II) a statement from the health care facility containing an assurance that the alien's treatment is not being paid through any Federal or State public health assistance, that the alien's account has no outstanding balance, and that such facility will notify the Service when the alien is released or treatment is terminated; and

(III) evidence of financial ability to support the alien's day-to-day expenses while in the United States (including the expenses of any family member described in clause (ii)) and evidence that any such alien or family member is not receiving any form of public assistance; or

(ii) who—

(I) is a spouse, parent, brother, sister, son, daughter, or other family member of a principal alien described in clause (i); and

(II) entered the United States accompanying, and with the same status as, such principal alien.

(C) Waiver limitations

(i) Waivers under subparagraph (B) may be granted only upon a request submitted by a Service district office to Service headquarters.

(ii) Not more than 300 waivers may be granted for any fiscal year for a principal alien under subparagraph (B)(i).

(iii)

(I) Except as provided in subclause (II), in the case of each principal alien described in subparagraph (B)(i) not more than one adult may be granted a waiver under subparagraph (B)(ii).

(II) Not more than two adults may be granted a waiver under subparagraph (B)(ii) in a case in which—

(aa) the principal alien described in subparagraph (B)(i) is a dependent under the age of 18; or

(bb) one such adult is age 55 or older or is physically handicapped.

(D) Report to Congress; suspension of waiver authority

(i) Not later than March 30 of each year, the Commissioner shall submit to the Congress an annual report regarding all waivers granted under subparagraph (B) during the preceding fiscal year.

(ii) Notwithstanding any other provision of law, the authority of the Attorney General under subparagraph (B) shall be suspended during any period in which an annual report under clause (i) is past due and has not been submitted.

(3) Bond

The Attorney General may require an alien permitted to depart voluntarily under this subsection to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.

(4) Treatment of aliens arriving in the United States

In the case of an alien who is arriving in the United States and with respect to whom proceedings under section 1229a of this title are (or would otherwise be) initiated at the time of such alien's arrival, paragraph (1) shall not apply. Nothing in this paragraph shall be construed as preventing such an alien from withdrawing the application for admission in accordance with section 1225(a)(4) of this title.

(b) At conclusion of proceedings

(1) In general

The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense if, at the conclusion of a proceeding under section 1229a of this title, the immigration judge enters an order granting voluntary departure in lieu of removal and finds that—

(A) the alien has been physically present in the United States for a period of at least one year immediately preceding the date the notice to appear was served under section 1229(a) of this title;

(B) the alien is, and has been, a person of good moral character for at least 5 years immediately

preceding the alien's application for voluntary departure;

(C) the alien is not deportable under section 1227(a)(2)(A)(iii) or section 1227(a)(4) of this title; and

(D) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so.

(2) Period

Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 60 days.

(3) Bond

An alien permitted to depart voluntarily under this subsection shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified.

(c) Aliens not eligible

The Attorney General shall not permit an alien to depart voluntarily under this section if the alien was previously permitted to so depart after having been found inadmissible under section 1182(a)(6)(A) of this title.

(d) Civil penalty for failure to depart

(1) In general

Subject to paragraph (2), if an alien is permitted to depart voluntarily under this section and voluntarily fails to depart the United States within the time period specified, the alien—

(A) shall be subject to a civil penalty of not less than $1,000 and not more than $5,000; and

(B) shall be ineligible, for a period of 10 years, to receive any further relief under this section and sections 1229b, 1255, 1258, and 1259 of this title.

(2) Application of VAWA protections

The restrictions on relief under paragraph (1) shall not apply to relief under section 1229b or 1255 of this title on the basis of a petition filed by a VAWA self-petitioner, or a petition filed under section 1229b(b)(2) of this title, or under section 1254(a)(3) of this title (as in effect prior to March 31, 1997), if the extreme cruelty or battery was at least one central reason for the alien's overstaying the grant of voluntary departure.

(3) Notice of penalties

The order permitting an alien to depart voluntarily shall inform the alien of the penalties under this subsection.

(e) Additional conditions

The Attorney General may by regulation limit eligibility for voluntary departure under this section for any class or classes of aliens. No court may review any regulation issued under this subsection.

(f) Judicial review

No court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure under subsection (b), nor shall any court order a stay of an alien's removal pending consideration of any claim with respect to voluntary departure.

2. The 1952 version of 8 C.F.R. §1.1 provided, in pertinent part:

§1.1 *Definitions*—(a) *Terms used in this chapter.*

* * *

(6) The term "day," when computing the period of time provided in this chapter for the taking of any action, means any day other than a Sunday or a legal holiday.

3. The 1958 version of 8 C.F.R. §1.1 provided, in pertinent part:

§1.1 *Definitions*—(a) *Terms used in this chapter.*

* * *

(6) The term "day" when computing the period of time for taking any action provided in this chapter, including the taking of an appeal, shall include Sundays and legal holidays, except that when the last day of the period so computed falls on a Sunday or legal holiday, the period shall run until the end of the next day which is neither a Sunday nor a legal holiday.

4. The 1996 version of 8 C.F.R. §1.1 provided, in pertinent part:

§1.1 Definitions

As used in this chapter:

* * *

(h) The term *day* when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

* * *

5. The current version of 8 C.F.R. §1001.1 provides, in pertinent part:

§1001.1 Definitions

As used in this chapter:

* * *

(h) The term *day* when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sun days, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

* * *

6. The current version of 8 C.F.R. §1240.26 provides:

§1240.26 Voluntary departure—authority of the Executive Office for Immigration Review.

(a) *Eligibility: general.* An alien previously granted voluntary departure under section 240B of the Act, including by DHS under §240.25, and who fails to depart voluntarily within the time specified, shall thereafter be ineligible, for a period of ten years, for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Act.

(b) *Prior to completion of removal proceedings —*

(1) *Grant by the immigration judge.*

(i) An alien may be granted voluntary departure by an immigration judge pursuant to section 240B(a) of the Act only if the alien:

(A) Makes such request prior to or at the master calendar hearing at which the case is initially calendared for a merits hearing;

(B) Makes no additional requests for relief (or if such requests have been made, such requests are withdrawn prior to any grant of voluntary departure pursuant to this section);

(C) Concedes removability;

(D) Waives appeal of all issues; and

(E) Has not been convicted of a crime described in section 101(a)(43) of the Act and is not deportable under section 237(a)(4).

(ii) The judge may not grant voluntary departure under section 240B(a) of the Act beyond 30 days

after the master calendar hearing at which the case is initially calendared for a merits hearing, except pursuant to a stipulation under paragraph (b)(2) of this section.

(2) *Stipulation.* At any time prior to the completion of removal proceedings, the DHS counsel may stipulate to a grant of voluntary departure under section 240B(a) of the Act.

(3) *Conditions.*

(i) The judge may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States, including the posting of a voluntary departure bond to be canceled upon proof that the alien has departed the United States within the time specified. The alien shall be required to present to DHS, for inspection and photocopying, his or her passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing, unless:

(A) A travel document is not necessary to return to his or her native country or to which country the alien is departing; or

(B) The document is already in the possession of DHS.

(ii) DHS may hold the passport or documentation for sufficient time to investigate its authenticity. If such documentation is not immediately available to the alien, but the immigration judge is satisfied that the alien is making diligent efforts to secure it, voluntary departure may be granted for a period not to exceed 120 days, subject to the condition

that the alien within 60 days must secure such documentation and present it to DHS. DHS in its discretion may extend the period within which the alien must provide such documentation. If the documentation is not presented within the 60-day period or any extension thereof, the voluntary departure order shall vacate automatically and the alternate order of removal will take effect, as if in effect on the date of issuance of the immigration judge order.

(iii) If the alien files a post-decision motion to reopen or reconsider during the period allowed for voluntary departure, the grant of voluntary departure shall be terminated automatically, and the alternate order of removal will take effect immediately. The penalties for failure to depart voluntarily under section 240B(d) of the Act shall not apply if the alien has filed a post-decision motion to reopen or reconsider during the period allowed for voluntary departure. Upon the granting of voluntary departure, the immigration judge shall advise the alien of the provisions of this paragraph (b)(3)(iii).

(iv) The automatic termination of a grant of voluntary departure and the effectiveness of the alternative order of removal shall not affect, in any way, the date that the order of the immigration judge or the Board became administratively final, as determined under the provisions of the applicable regulations in this chapter.

(c) *At the conclusion of the removal proceedings—*

(1) *Required findings.* An immigration judge may grant voluntary departure at the conclusion of the

removal proceedings under section 240B(b) of the Act, if he or she finds that:

(i) The alien has been physically present in the United States for period of at least one year preceding the date the Notice to Appear was served under section 239(a) of the Act;

(ii) The alien is, and has been, a person of good moral character for at least five years immediately preceding the application;

(iii) The alien has not been convicted of a crime described in section 101(a)(43) of the Act and is not deportable under section 237(a)(4); and

(iv) The alien has established by clear and convincing evidence that the alien has the means to depart the United States and has the intention to do so.

(2) *Travel documentation.* Except as otherwise provided in paragraph (b)(3) of this section, the clear and convincing evidence of the means to depart shall include in all cases presentation by the alien of a passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing. DHS shall have full opportunity to inspect and photocopy the documentation, and to challenge its authenticity or sufficiency before voluntary departure is granted.

(3) *Conditions.* The immigration judge may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States. The immigration judge shall advise the alien of the conditions set forth in this paragraph (c)(3)(i)–(iii). If the immigration judge imposes conditions beyond those specifically enumerated below, the

immigration judge shall advise the alien of such conditions before granting voluntary departure. Upon the conditions being set forth, the alien shall be provided the opportunity to accept the grant of voluntary departure or decline voluntary departure if he or she is unwilling to accept the amount of the bond or other conditions. In all cases under section 240B(b) of the Act:

(i) The alien shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien departs within the time specified, but in no case less than $500. Before granting voluntary departure, the immigration judge shall advise the alien of the specific amount of the bond to be set and the duty to post the bond with the ICE Field Office Director within 5 business days of the immigration judge's order granting voluntary departure.

(ii) An alien who has been granted voluntary departure shall, within 30 days of filing of an appeal with the Board, submit sufficient proof of having posted the required voluntary departure bond. If the alien does not provide timely proof to the Board that the required voluntary departure bond has been posted with DHS, the Board will not reinstate the period of voluntary departure in its final order.

(iii) Upon granting voluntary departure, the immigration judge shall advise the alien that if the alien files a post-order motion to reopen or reconsider during the period allowed for voluntary departure, the grant of voluntary departure shall terminate automatically and the alternate order of removal will take effect immediately.

(iv) The automatic termination of an order of voluntary departure and the effectiveness of the alternative order of removal shall not impact, in any way, the date that the order of the immigration judge or the Board became administratively final, as determined under the provisions of the applicable regulations in this chapter.

(v) If, after posting the voluntary departure bond the alien satisfies the condition of the bond by departing the United States prior to the expiration of the period granted for voluntary departure, the alien may apply to the ICE Field Office Director for the bond to be canceled, upon submission of proof of the alien's timely departure by such methods as the ICE Field Office Director may prescribe.

(vi) The voluntary departure bond may be canceled by such methods as the ICE Field Office Director may prescribe if the alien is subsequently successful in overturning or remanding the immigration judge's decision regarding removability.

(4) *Provisions relating to bond.* The voluntary departure bond shall be posted with the ICE Field Office Director within 5 business days of the immigration judge's order granting voluntary departure, and the ICE Field Office Director may, at his or her discretion, hold the alien in custody until the bond is posted. Because the purpose of the voluntary departure bond is to ensure that the alien does depart from the United States, as promised, the failure to post the bond, when required, within 5 business days may be considered in evaluating whether the alien should be detained based on risk of flight, and also may be considered as a negative discretionary

factor with respect to any discretionary form of relief. The alien's failure to post the required voluntary departure bond within the time required does not terminate the alien's obligation to depart within the period allowed or exempt the alien from the consequences for failure to depart voluntarily during the period allowed. However, if the alien had waived appeal of the immigration judge's decision, the alien's failure to post the required voluntary departure bond within the period allowed means that the alternate order of removal takes effect immediately pursuant to 8 CFR 1241.1(f), except that an alien granted the privilege of voluntary departure under 8 CFR 1240.26(c) will not be deemed to have departed under an order of removal if the alien:

(i) Departs the United States no later than 25 days following the failure to post bond;

(ii) Provides to DHS such evidence of his or her departure as the ICE Field Office Director may require; and

(iii) Provides evidence DHS deems sufficient that he or she remains outside of the United States.

(d) *Alternate order of removal.* Upon granting a request made for voluntary departure either prior to the completion of proceedings or at the conclusion of proceedings, the immigration judge shall also enter an alternate order or removal.

(e) *Periods of time.* If voluntary departure is granted prior to the completion of removal proceedings, the immigration judge may grant a period not to exceed 120 days. If voluntary departure is granted at the

conclusion of proceedings, the immigration judge may grant a period not to exceed 60 days.

(1) *Motion to reopen or reconsider filed during the voluntary departure period.* The filing of a motion to reopen or reconsider prior to the expiration of the period allowed for voluntary departure has the effect of automatically terminating the grant of voluntary departure, and accordingly does not toll, stay, or extend the period allowed for voluntary departure under this section. See paragraphs (b)(3)(iii) and (c)(3)(ii) of this section. If the alien files a post-order motion to reopen or reconsider during the period allowed for voluntary departure, the penalties for failure to depart voluntarily under section 240B(d) of the Act shall not apply. The Board shall advise the alien of the condition provided in this paragraph in writing if it reinstates the immigration judge's grant of voluntary departure.

(2) *Motion to reopen or reconsider filed after the expiration of the period allowed for voluntary departure.* The filing of a motion to reopen or a motion to reconsider after the time allowed for voluntary departure has already expired does not in any way impact the period of time allowed for voluntary departure under this section. The granting of a motion to reopen or reconsider that was filed after the penalties under section 240B(d) of the Act had already taken effect, as a consequence of the alien's prior failure voluntarily to depart within the time allowed, does not have the effect of vitiating or vacating those penalties, except as provided in section 240B(d)(2) of the Act.

(f) *Extension of time to depart.* Authority to extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is only within the jurisdiction of the district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs. An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making an application for voluntarily departure if reopening was granted prior to the expiration of the original period of voluntary departure. In no event can the total period of time, including any extension, exceed 120 days or 60 days as set forth in section 240B of the Act. The filing of a motion to reopen or reconsider does not toll, stay, or extend the period allowed for voluntary departure. The filing of a petition for review has the effect of automatically terminating the grant of voluntary departure, and accordingly also does not toll, stay, or extend the period allowed for voluntary departure.

(g) *Administrative Appeals.* No appeal shall lie regarding the length of a period of voluntary departure (as distinguished from issues of whether to grant voluntary departure).

(h) *Reinstatement of voluntary departure.* An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making application for voluntary departure, if reopening was granted prior to the expiration of the original period of voluntary departure. In no event can the total period of time, including any extension, exceed 120 days or 60

days as set forth in section 240B of the Act and paragraph (a) of this section.

(i) *Effect of filing a petition for review.* If, prior to departing the United States, the alien files a petition for review pursuant to section 242 of the Act (8 U.S.C. 1252) or any other judicial challenge to the administratively final order, any grant of voluntary departure shall terminate automatically upon the filing of the petition or other judicial challenge and the alternate order of removal entered pursuant to paragraph (d) of this section shall immediately take effect, except that an alien granted the privilege of voluntary departure under 8 CFR 1240.26(c) will not be deemed to have departed under an order of removal if the alien departs the United States no later than 30 days following the filing of a petition for review, provides to DHS such evidence of his or her departure as the ICE Field Office Director may require, and provides evidence DHS deems sufficient that he or she remains outside of the United States. The Board shall advise the alien of the condition provided in this paragraph in writing if it reinstates the immigration judge's grant of voluntary departure. The automatic termination of a grant of voluntary departure and the effectiveness of the alternative order of removal shall not affect, in any way, the date that the order of the immigration judge or the Board became administratively final, as determined under the provisions of the applicable regulations in this chapter. Since the grant of voluntary departure is terminated by the filing of the petition for review, the alien will be subject to the alternate order of removal, but the penalties for failure to depart voluntarily under section 240B(d) of the Act shall not apply to an alien who files a petition for review, and who remains

in the United States while the petition for review is pending.

(j) [Reserved]

(k) *Authority of the Board to grant voluntary departure in the first instance.* The following procedures apply to any request for voluntary departure reviewed by the Board:

(1) The Board shall not remand a case to an immigration judge to reconsider a request for voluntary departure. If the Board first finds that an immigration judge incorrectly denied an alien's request for voluntary departure or failed to provide appropriate advisals, the Board shall consider the alien's request for voluntary departure de novo and, if warranted, may enter its own order of voluntary departure with an alternate order of removal.

(2) In cases which an alien has appealed an immigration judge's decision or in which DHS and the alien have both appealed an immigration judge's decision, the Board shall not grant voluntary departure under section 240B of the Act unless:

(i) The alien requested voluntary departure under that section before the immigration judge, the immigration judge denied the request, and the alien timely appealed;

(ii) The alien's notice of appeal specified that the alien is appealing the immigration judge's denial of voluntary departure and identified the specific factual and legal findings that the alien is challenging;

(iii) The Board finds that the immigration judge's decision was in error; and

(iv) The Board finds that the alien meets all applicable statutory and regulatory criteria for voluntary departure under that section.

(3) In cases in which DHS has appealed an immigration judge's decision, the Board shall not grant voluntary departure under section 240B of the Act unless:

(i) The alien requested voluntary departure under that section before the immigration judge and provided evidence or a proffer of evidence in support of the alien's request;

(ii) The immigration judge either granted the request or did not rule on it; and,

(iii) The Board finds that the alien meets all applicable statutory and regulatory criteria for voluntary departure under that section.

(4) The Board may impose such conditions as it deems necessary to ensure the alien's timely departure from the United States, if supported by the record on appeal and within the scope of the Board's authority on appeal. Unless otherwise indicated in this section, the Board shall advise the alien in writing of the conditions set by the Board, consistent with the conditions set forth in paragraphs (b), (c), (d), (e), (h), and (i) of this section (other than paragraph (c)(3)(ii) of this section), except that the Board shall advise the alien of the duty to post the bond with the ICE Field Office Director within 10 business days of the Board's order granting voluntary departure if that order was served by mail and shall advise the alien of the duty to post the bond with the ICE Field Office Director within five business days

of the Board's order granting voluntary departure if that order was served electronically. If documentation sufficient to assure lawful entry into the country to which the alien is departing is not contained in the record, but the alien continues to assert a request for voluntary departure under section 240B of the Act and the Board finds that the alien is otherwise eligible for voluntary departure under the Act, the Board may grant voluntary departure for a period not to exceed 120 days, subject to the condition that the alien within 60 days must secure such documentation and present it to DHS and the Board. If the Board imposes conditions beyond those specifically enumerated, the Board shall advise the alien in writing of such conditions. The alien may accept or decline the grant of voluntary departure and may manifest his or her declination either by written notice to the Board within five days of receipt of its decision, by failing to timely post any required bond, or by otherwise failing to comply with the Board's order. The grant of voluntary departure shall automatically terminate upon a filing by the alien of a motion to reopen or reconsider the Board's decision, or by filing a timely petition for review of the Board's decision. The alien may decline voluntary departure if he or she is unwilling to accept the amount of the bond or other conditions.

(*l*) *Penalty for failure to depart.* There shall be a rebuttable presumption that the civil penalty for failure to depart, pursuant to section 240B(d)(1)(A) of the Act, shall be set at $3,000 unless the immigration judge specifically orders a higher or lower amount at the time of granting voluntary departure within the permissible range allowed by law. The immigration judge

shall advise the alien of the amount of this civil penalty at the time of granting voluntary departure.