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No. 26-591

In the Supreme Court of the United States

DANIEL ORIAKHI,
Petitioner,

v.

DEPARTMENT OF HOMELAND SECURITY, ET AL.,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *INS* v. *St. Cyr*, 533 U.S. 289 (2001), this Court held that a petition for a writ of habeas corpus challenging a removal order should be treated as a petition for review under 8 U. S. C. §1252, given the REAL ID Act's channeling of judicial review.

1. Whether the Second Circuit erred in treating 8 U.S.C. §1252(b)(1)'s 30-day filing deadline as a jurisdictional bar, in direct conflict with this Court's decision in *Riley* v. *Bondi*, 606 U. S. 259 (2025).

2. Whether the Second Circuit's refusal to construe the habeas filing as a petition for review contradicts the REAL ID Act and this Court's channeling doctrine.

PARTIES TO THE PROCEEDINGS

Petitioner, and petitioner-appellant below is Daniel Oriahkhi.

Respondent, and respondent-appellee below are the Department of Homeland Security and the United States Citizenship and Immigration Services.

RELATED PROCEEDINGS

Department of Homeland Security:

Daniel Oriakhi, Final Administrative Removal Order, Event No. RCM1310000026 (Oct. 23, 2012) (signed Nov. 7, 2012; served Nov. 8, 2012; removal to Nigeria ordered)

United States Citizenship and Immigration Services:

Daniel Oriakhi, Form I–485 Application to Register Permanent Residence or Adjust Status (resubmitted Sept. 10, 2019; denied Jan. 13, 2020) (application denied for lack of USCIS jurisdiction)

United States District Court (EDNY):

Daniel Oriakhi v. *Department of Homeland Security, United States Citizenship and Immigration Services*, No. 1:23–cv–05569–KAM (Jan. 8, 2025) (petition dismissed for lack of subject-matter jurisdiction; judgment entered Jan. 10, 2025)

Oriakhi v. *Department of Homeland Security*, No. 21–cv–2373 (KAM) (May 21, 2021) (petition dismissed for lack of subject-matter jurisdiction)

Oriakhi v. *Department of Homeland Security*, No. 20–cv–821 (KAM) (June 23, 2020) (petition dismissed for lack of subject-matter jurisdiction)

United States Court of Appeals (CA2):

Daniel Oriakhi v. *Department of Homeland Security, United States Citizenship and Immigration Services*, No. 25–243 (Feb. 5, 2026) (district court affirmed)

Daniel Oriakhi v. *Department of Homeland Security, United States Citizenship and Immigration Services*, No. 25–243 (Mar. 5, 2026) (panel rehearing and rehearing en banc denied)

Daniel Oriakhi v. *Merrick B. Garland, Attorney General*, No. 21–6385 (Feb. 10, 2022) (petition for review dismissed for lack of jurisdiction as untimely)

Supreme Court of the United States:

Daniel Oriakhi v. *Merrick B. Garland, Attorney General*, No. 22–129 (Oct. 11, 2022) (certiorari denied)

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JURISDICTION

The Second Circuit's judgment was entered on February 5, 2026. The Second Circuit denied rehearing on March 5, 2026. This Court has jurisdiction under 28 U. S. C. §1254(1).

STATUTORY PROVISIONS INVOLVED

8 U. S. C. §1252(a)(5) provides in pertinent part:

> "(a)(5) Exclusive means of review–
>
> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e)." 8 U. S. C. §1252(a)(5)

8 U. S. C. §1252(b)(1) provides "(1) Deadline [. . .] The petition for review must be filed not later than 30 days after the date of the final order of removal."

28 U. S. C. §1631 provides:

"Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court (or, for cases within the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred." 28 U. S. C. §1631.

INTRODUCTION

This case involves this Court's decisions in *Riley* v. *Bondi*, 606 U. S. 259 (2025), and *INS* v. *St. Cyr*, 533 U. S. 289 (2001).

In *Riley*, this Court held that the 30-day filing deadline in 8 U. S. C. §1252(b)(1) is a claim-processing rule, not a jurisdictional requirement. Classifying a procedural rule as jurisdictional has significant consequences, and this Court requires a clear indication from Congress before doing so. See *Henderson* v. *Shinseki*, 562 U. S. 428, 436 (2011).

In *St. Cyr*, this Court addressed habeas review in the removal context. Congress later enacted the REAL ID Act, which channels judicial review of removal orders into petitions for review filed in the courts of appeals. See 8 U. S. C. §1252(a)(5).

Oriakhi filed a habeas corpus petition in the Eastern District of New York challenging the validity of his Form I-851 administrative removal order. The district court dismissed the petition for lack of jurisdiction under the REAL ID Act, holding that habeas review was unavailable.

I appealed to the Second Circuit. The court acknowledged that Oriakhi was challenging Oriakhi's removal order but declined to construe Oriakhi's appeal as a petition for review. The panel further concluded that, "even if" it construed Oriakhi's filing as a petition for review, the filing was untimely under 8 U. S. C. §1252(b)(1).

After *Riley*, the Second Circuit itself recognized that §1252(b)(1) is nonjurisdictional. See *Castejon-Paz* v. *Bondi*, 143 F. 4th 116 (CA2 2025). Oriakhi contend that the disposition of his case cannot be reconciled with *Riley* and the Second Circuit's post-*Riley* treatment of the statute.

Oriakhi sought panel rehearing and rehearing en banc. Both were denied. Oriakhi then filed this petition for a writ of certiorari.

STATEMENT OF THE CASE

I. Administrative Removal Order and Adjustment-of-Status Proceedings

Upon Oriakhi's release from a federal facility, the Department of Homeland Security (DHS) served him in person with a Form I-851 administrative removal order dated November 8, 2012, at 9:20 a.m., in Richmond, Virginia. App. 13.

Oriakhi's immigration administrative record showed that he had an approved and available Form I-130 immediate-relative visa petition, which was

attached as Appendix A to his opening brief in the Second Circuit. Oriakhi contend that no immigration judge issued a removal or deportation order against me on November 8, 2012, despite a later statement by United States Citizenship and Immigration Services (USCIS) in a January 13, 2020, notice of decision. CA3 App. D. He also contend that he was never brought before an immigration judge for such an order.

On or about April 8, 2019, Oriakhi filed a Form I-485 application to adjust status to lawful permanent resident with USCIS.

In a notice of rejection dated April 25, 2019, USCIS requested a copy of Oriakhi's approved and available Form I-130 relative visa petition to establish Oriakhi's eligibility for lawful permanent residence. C.A. App. E. Oriakhi learned of that request only after making several inquiries of retained counsel. He contend that counsel repeatedly misled him about the filing and that a second attorney depleted his limited savings, leaving him indebted.

On September 10, 2019, Oriakhi refiled Oriakhi's Form I-485 application with USCIS and attached a copy of Oriakhi's approved and available Form I-130 relative visa petition.

In an appointment notice dated September 27, 2019, USCIS directed Oriakhi to an Application Support Center for a biometrics-processing appointment based on his submission. C.A. App. F.

USCIS later informed Oriakhi in a notice of decision dated January 13, 2020: "We are denying your application because USCIS does not have jurisdiction to decide whether you are eligible for adjustment of status since an Immigration Judge entered a final removal order against you on November 8, 2012." C.A. App. D.

II. Motion To Reopen or Terminate Removal Proceedings

After receiving the USCIS denial, Oriakhi sought to clarify the basis for his removal and to pursue adjustment to lawful permanent residence. Oriakhi therefore attempted to file motions to reopen or terminate removal proceedings with the Executive Office for Immigration Review (EOIR).

On January 27, 2020, Oriakhi filed a motion to reopen or terminate removal proceedings based on his approved Form I-130 petition, former §212(c) of the Immigration and Nationality Act, and humanitarian grounds. He submitted the filing at 26 Federal Plaza in New York, New York, together with a $110 filing fee and a completed Form EOIR-29. C.A. App. G.

USCIS staff subsequently directed Oriakhi to take the motion to the Immigration Court at 201 Varick Street, New York, New York 10014.

When he presented the motion there, court clerk Robin Gibbs told me that the Varick Street Immigration Court did not have jurisdiction over Oriakhi's case and that he should seek a change of venue. She indicated that jurisdiction lay with the Arlington Immigration Court at 1901 South Bell Street, Suite 200, Arlington, Virginia. Oriakhi followed that direction and forwarded the motion to the Arlington Immigration Court. C.A. App. H.

III. Rejection of the Motion by EOIR Offices in Arlington, Virginia, and New York, New York

On February 7, 2020, Oriakhi received a mailed package from the Arlington Immigration Court. The package included a notice dated February 4, 2020,

bearing the heading "REJECTED FILING NOTICE TO ATTORNEY OR REPRESENTATIVE." The notice stated:

> "CASE NOT PENDING—According to our records, this case is not pending before this Immigration Court, nor does it appear in our national computer database as pending before any Immigration Court. . . . The Immigration Court cannot schedule a hearing or take any action unless the Department of Homeland Security has filed the charging document with the Immigration Court."

The notice further stated: "OTHER: This case only had a Zero Bond Hearing."

On February 10, 2020, Oriakhi took the motion to reopen or terminate removal proceedings to the Immigration Court at 201 Varick Street. A court clerk accepted the motion and stamped it filed on that date.

On February 13, 2020, however, Oriakhi received a package from the Varick Street Immigration Court containing a similar rejected-filing notice dated February 11, 2020. The notice stated: "CASE NOT PENDING—According to our records, this case is not pending before this Immigration Court, nor does it appear in our national computer database as pending before any Immigration Court."

The notice again stated: "OTHER: This case only had a Zero Bond Hearing." C.A. App. I.

Oriakhi previously raised these issues in the Second Circuit in No. 21–6385. His petition for judicial review was dismissed on February 10, 2022, based on the 30-day filing deadline. C.A. App. B.

While later proceedings were pending, this Court decided *Riley* v. *Bondi*, 606 U. S. 259 (2025), holding

that §1252(b)(1)'s 30-day deadline is a nonjurisdictional claim-processing rule. Because the deadline is nonjurisdictional, it does not itself deprive a court of subject-matter jurisdiction; questions of waiver, forfeiture, and other potential relief from a filing deadline remain analytically distinct.

REASONS FOR GRANTING THE PETITION

I. The Second Circuit's Treatment of 8 U. S. C. §1252(b)(1) Conflicts With *Riley* v. *Bondi*

The decision below rests on a premise this Court rejected in *Riley*: that the 30-day deadline in 8 U. S. C. §1252(b)(1) is jurisdictional. The court of appeals concluded that, "even if" it construed Oriakhi's filing as a petition for review, the filing was untimely. To the extent that conclusion treated the deadline as a limit on the court's subject-matter jurisdiction, it cannot be reconciled with *Riley*, 606 U. S. 259, which holds that the deadline is a claim-processing rule rather than a jurisdictional bar.

Riley reaffirmed that Congress must clearly indicate when a procedural requirement is jurisdictional. Section 1252(b)(1) contains no such clear jurisdictional statement. The Second Circuit subsequently recognized this point in *Castejon-Paz* v. *Bondi*,. 143 F. 4th 116 (CA2 2025), holding that its earlier jurisdictional precedent had been abrogated by *Riley* and that the Government could waive the 30-day claim-processing rule.

The REAL ID Act also channels judicial review of removal orders into petitions for review in the courts of appeals. 8 U. S. C. §1252(a)(5). Oriakhi contend that, because the substance of Oriakhi's filing sought review of a removal order, the court of appeals should

have considered whether the filing could be treated as a petition for review or whether transfer was appropriate under 28 U. S. C. §1631. Section 1631 expressly authorizes transfer, in the interest of justice, when a filing is made in a court that lacks jurisdiction and the action or appeal could have been brought in the transferee court when originally filed.

The court of appeals acknowledged that Oriakhi's filing sought review of a final removal order. Oriakhi therefore contend that refusing to consider recharacterization or transfer, while treating the filing deadline as an absolute jurisdictional obstacle, frustrates the statutory channeling scheme and the distinction between jurisdictional rules and claim-processing rules recognized in *Riley*.

II. The Question Presented Is Exceptionally Important

The question whether §1252(b)(1) is jurisdictional—and how courts should treat a misfiled habeas petition that substantively seeks review of a removal order—affects access to judicial review, uniformity in immigration adjudication, and the proper application of this Court's jurisdictional precedents.

The Second Circuit cited *Shabaj* v. *Holder*, 718 F. 3d 48, 51–52 (CA2 2013), and *Nouritajer* v. *Jaddou*, 18 F. 4th 85, 90, n. 1 (CA2 2021). Those cases are distinguishable. *Shabaj* involved judicial review of a USCIS waiver determination subject to an express statutory limitation on review. *Nouritajer* involved USCIS's revocation of an approved Form I-140 and was not a petition for review of a final order of removal. 18 F. 4th, at 85–90, and n. 1.

Here, by contrast, Oriakhi challenges a final administrative removal order. Oriakhi contends that the statutory vehicle contemplated by 8 U. S. C. §1252 is therefore present. Treating Oriakhi's filing according to its substance would not create jurisdiction where Congress withheld it; rather, it would channel the challenge into the statutory mechanism Congress designated for review of removal orders.

The REAL ID Act's channeling function supports consideration of whether Oriakhi's filing can be treated as a petition for review. Courts also construe pro se filings liberally to avoid forfeiture based solely on technical labeling. In this case, Oriakhi contend that the substance of Oriakhi's filing consistently sought judicial review of the Form I-851 administrative removal order.

The risk of unreviewable removal orders is substantial. If a noncitizen challenges an administrative removal order in the wrong federal forum and the filing is dismissed without consideration of transfer, recharacterization, or other available procedural mechanisms, the litigant may lose the only practical opportunity for judicial review.

That concern is especially acute here. Oriakhi contends that the administrative record reflects an approved Form I-130 petition, that no immigration judge issued the removal order USCIS later described, and that the EOIR notices stated that no case was pending before the Immigration Court except for a zero-bond hearing. Oriakhi further contend that USCIS nevertheless declined to adjudicate Oriakhi's Form I-485 application because it believed an immigration judge had entered a final removal order on November 8, 2012.

The resulting procedural posture leaves an administrative removal order operating as a barrier to adjustment of status while, according to Oriakhi's allegations, no immigration-judge removal proceeding or BIA review ever occurred. Whether federal courts must account for the substance of a *pro se* filing and the statutory transfer mechanism before review is forfeited is therefore important not only to this case but also to the administration of the immigration-review system.

Petitioner further contends that courts should construe *pro se* filings liberally so that technical mislabeling does not defeat otherwise available review. In the immigration context, petitioner argues, that principle has special force because Congress has designated a single avenue for review of removal orders. Construing a filing according to its substance therefore furthers, rather than frustrates, the statutory scheme.

Petitioner also contends that other courts of appeals, including the Ninth, Seventh, and District of Columbia Circuits, have in appropriate circumstances treated mislabeled or misfiled submissions according to their substance, particularly when filed *pro se*. In petitioner's view, those decisions reflect three related considerations:

- The REAL ID Act channels review of removal orders into the petition-for-review process;
- claim-processing deadlines are not jurisdictional merely because they are mandatory; and
- equitable doctrines and transfer principles may be relevant when a litigant reasonably files in the wrong forum.

Petitioner contends that a contrary rule creates an unacceptable risk that removal orders will become

effectively unreviewable. If the disposition below is allowed to stand, *pro se* litigants who seek review in the wrong federal forum may lose their only opportunity for judicial review based on technical mislabeling or misfiling rather than the substance of their claims.

In petitioner's view, that outcome is incompatible with the REAL ID Act, this Court's modern distinction between jurisdictional requirements and nonjurisdictional claim-processing rules, and the strong presumption favoring judicial review of administrative action where Congress has provided a review mechanism. Petitioner therefore asks this Court to intervene where procedural barriers prevent meaningful review of a removal order.

Here, Oriakhi's appellate submission plainly sought review of the Form I-851 administrative removal order. Oriakhi contend that treating the filing as a petition for review—or considering transfer under the governing statutes—would align with the statutory scheme and with the liberal treatment ordinarily afforded to *pro se* filings.

Oriakhi further contend that, where an administrative process has deprived a noncitizen of an opportunity to appear before an immigration judge and the noncitizen reasonably pursues relief in a district court, available equitable and transfer doctrines should be considered before judicial review is irretrievably lost.

The decision below permits the administrative removal order in this case to operate as a final barrier to adjustment of status and other statutory relief. Oriakhi contend that this result conflicts with the structure Congress enacted and with fundamental fairness.

USCIS refused to adjudicate Oriakhi's Form I-485 application based on its assertion that an immigration judge had entered a removal order, while Oriakhi contend that no immigration-judge order or BIA record exists. Oriakhi also contend that Oriakhi possessed an approved and available Form I-130 petition. In Oriakhi's view, leaving the administrative removal order unreviewed effectively nullifies the adjustment process available to persons in Oriakhi's position and produces concrete harm.

This Court's review is therefore necessary, petitioner contends, to establish a clear rule governing when a court should consider construing a filing as a petition for review and when transfer or other relief may be available after a filing is made in the wrong federal forum.

Petitioner maintains that the questions presented are recurring and outcome-determinative for noncitizens who seek judicial review of administrative removal orders, including persons with approved family-based petitions. On that basis, petitioner submits that certiorari should be granted.

Petitioner further contends that the decision below effectively insulates administrative removal orders from meaningful judicial review when a litigant initially proceeds through the wrong vehicle. Congress did not create a system, petitioner argues, in which DHS may issue an administrative removal order, avoid immigration-court proceedings entirely, and then shield the order from review through procedural technicalities.

According to petitioner, the unreviewed administrative removal order now operates as a permanent barrier to statutory relief, with no judicial oversight at

any stage. Petitioner argues that such an outcome is incompatible with the statutory structure and with the premise that removal orders remain subject to the judicial review Congress has authorized.

Petitioner also contends that the circumstances expose a structural problem in the removal process. Although DHS was aware of petitioner's approved Form I-130, petitioner alleges that DHS issued a Form I-851 administrative removal order without the immigration-court process he believes was required. USCIS later refused to adjudicate petitioner's Form I-485 application on the ground that an immigration judge had issued a removal order on November 8, 2012. Petitioner maintains that no such immigration-judge order exists, that no such hearing occurred, and that no BIA review was available. He asserts that the only removal order in the record is the Form I-851 administrative order.

Petitioner argues that the combination of the Second Circuit's refusal to treat his filing as a petition for review and its treatment of the filing deadline produces a system in which:

- DHS may issue an administrative removal order;
- immigration-court proceedings may never occur; and
- judicial review may then be lost through procedural technicalities.

Petitioner submits that Congress did not create such a system and that this Court has not approved one. He contends that the court of appeals' treatment of his case cannot be reconciled with *Riley*, which requires a clear congressional statement before a procedural rule is classified as jurisdictional.

A court of appeals may not disregard a controlling decision of this Court. Petitioner therefore argues that the failure to apply *Riley* correctly is itself a reason to grant certiorari.

Finally, petitioner submits that the issue is nationally important and recurring. The question whether courts should construe filings according to substance—or consider transfer when a *pro se* litigant seeks review of a removal order through the wrong procedural vehicle—can affect many noncitizens each year. Petitioner further contends that administrative removal orders issued without immigration-judge hearings present a recurring review problem and that district courts routinely dismiss habeas petitions challenging removal orders for lack of jurisdiction under the REAL ID Act.

This Court's intervention is warranted to restore uniformity, enforce *Riley*, and ensure that administrative removal orders remain subject to meaningful judicial review under the statutory scheme. It is also warranted to clarify the application of 8 U. S. C. § 1252 and 28 U. S. C. § 1631 to filings that seek review of removal orders but are presented through an incorrect procedural vehicle.

CONCLUSION

This Court should grant certiorari to invalidate the administrative removal order, and direct that lawful permanent residency be issued.

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AUGUST 2026

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