No. 22-666

In the Supreme Court of the United States

SITU KAMU WILKINSON, PETITIONER

v.

MERRICK B. GARLAND, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether the agency's determination that the facts failed to satisfy the "exceptional and extremely unusual hardship" requirement for cancellation of removal, 8 U.S.C. 1229b(b)(1)(D), is subject to judicial review as a mixed question of law and fact under 8 U.S.C. 1252(a)(2)(D).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Statutes and regulations:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-4a) is not published in the Federal Reporter but is available at 2022 WL 4298337. The decisions of the Board of Immigration Appeals (Pet. App. 5a-6a) and the immigration judge (Pet. App. 7a-55a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on September 19, 2022. On December 12, 2022, Justice Alito extended the time within which to file a petition for a writ of certiorari until January 17, 2023, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, the Attorney General, in

his discretion, "may" cancel the removal of a noncitizen who is found to be removable. 8 U.S.C. 1229b(b)(1).[1] To obtain cancellation of removal, the noncitizen bears the burden of proving both that he is statutorily eligible for such relief and that he warrants a favorable exercise of discretion. 8 U.S.C. 1229a(c)(4)(A); see 8 C.F.R. 1240.8(d).

To demonstrate that he is eligible for cancellation of removal, a noncitizen who is not a lawful permanent resident must establish that (i) he has been physically present in the United States for a continuous period of at least ten years; (ii) he has been a person of good moral character during that period; (iii) he has not been convicted of certain listed crimes; and (iv) "removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." 8 U.S.C. 1229b(b)(1).

An immigration judge (IJ) first rules on an application for cancellation of removal as part of determining whether a noncitizen is removable from the United States. See 8 C.F.R. 1003.10(b), 1240.1(a)(1)(i)-(ii). A noncitizen may appeal an adverse decision to the Board of Immigration Appeals (Board), which exercises delegated power from the Attorney General. 8 C.F.R. 1003.1(a)(1) and (b), 1003.10(c). The Board's decision is subject to judicial review under statutorily prescribed standards and limitations. 8 U.S.C. 1252(a)(1).

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546, Congress sought to fa-

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[1] This brief uses "noncitizen" as equivalent to the statutory term "alien." See *Barton* v. *Barr*, 140 S. Ct. 1442, 1446 n.2 (2020) (quoting 8 U.S.C. 1101(a)(3)).

cilitate the prompt removal of noncitizens who are unlawfully present in the United States by, among other things, limiting the scope of judicial review of the Executive Branch's discretionary determinations, including decisions denying cancellation of removal. *Id.* § 306(a)(2), 110 Stat. 3009-607; see generally *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484-487 (1999). As a result, 8 U.S.C. 1252(a)(2)(B) provides that "no court shall have jurisdiction to review—(i) any judgment regarding the granting of relief under section * * * 1229b * * * of this title, or (ii) any other decision or action of the Attorney General * * * the authority for which is specified under this subchapter to be in the discretion of the Attorney General."

In the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, § 106(a)(1)(A)(iii), 119 Stat. 310, Congress further amended Section 1252(a)(2) by adding a proviso in subparagraph (D). That proviso states that "[n]othing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review." 8 U.S.C. 1252(a)(2)(D).

2. Petitioner is a native and citizen of Trinidad and Tobago. Pet. App. 2a. He was admitted to the United States on a visitor visa, failed to depart under the terms of the visa in 2003, and then remained in the United States without authorization. *Id.* at 2a, 9a, 12a. In 2019, petitioner was arrested and charged with drug crimes under Pennsylvania law. *Id.* at 9a.

a. While the drug charges were pending, petitioner was taken into immigration custody and placed in re-

moval proceedings. Pet. App. 9a.[2] Petitioner conceded his removability but applied for cancellation of removal under Section 1229b(b)(1) and other forms of relief and protection. *Id.* at 9a-10a. In support of his application for cancellation of removal, petitioner testified before the IJ, *id.* at 12a-15a, as did the mother of petitioner's then-seven-year-old son "M," as well as M's maternal grandmother, *id.* at 18a-21a.

The IJ determined that petitioner satisfied the first three statutory requirements for cancellation of removal: physical presence, good moral character, and absence of a relevant criminal record. Pet. App. 25a-26a. The IJ then addressed whether petitioner's removal would cause "exceptional and extremely unusual hardship to his U.S. citizen child." *Id.* at 26a.

The IJ found that, if petitioner were removed, M would remain in the United States with his mother, who had legal custody and was his primary caretaker. See Pet. App. 27a-28a. M had eczema and "a serious medical condition"—asthma—that required the use of an asthma pump and medications and resulted in frequent hospital treatments. *Id.* at 27a. Since petitioner's detention, M had "been feeling sad, acting up, and breaking things." *Ibid.* M also had difficulty focusing in school, but his mother had declined "for now" his teacher's recommendation to obtain counseling. *Ibid.*

The IJ found that petitioner provided "emotional and sometimes personal care" to M and visited him every weekend. Pet. App. 27a-28a. But the IJ also noted that petitioner had lived with M for only the first two years of the boy's life and later for three months in 2020 (when M was six years old), and thus that M had "lived without

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[2] Petitioner represents that the drug charges have since been dismissed. Pet. 10 & n.3.

[petitioner's] daily presence for most of his life." *Id.* at 28a; see *id.* at 13a. The IJ acknowledged that petitioner provided M's mother with $1200 per month for M's living expenses, in the absence of a formal or legal arrangement. *Id.* at 28a. But the IJ noted that petitioner had not presented any evidence indicating that he would be unable to find employment in Trinidad and Tobago or unable to support his family by sending them money. *Ibid.* Moreover, the IJ observed that M's mother "is * * * able to work" and that M's maternal grandmother could continue to help care for M. *Ibid.*

In sum, the IJ found that petitioner's removal would not "cause emotional hardship" or "financial hardship" "to his family beyond that which would normally be expected from the removal of a parent and provider." Pet. App. 28a-29a. Those effects therefore did not rise to the level of exceptional and extremely unusual hardship. *Id.* at 29a; see *In re Monreal*, 23 I. & N. Dec. 56, 62 (B.I.A. 2001) (en banc).

After denying petitioner's applications for cancellation of removal and other forms of relief and protection, the IJ ordered him removed. Pet. App. 54a-55a. Petitioner appealed and the Board affirmed without opinion. *Id.* at 5a-6a.

b. Petitioner sought review in the court of appeals, which dismissed his challenge to the agency's determination that he had failed to establish the requisite exceptional and extremely unusual hardship for cancellation of removal. Pet. App. 1a-4a. The court concluded that it lacked jurisdiction under Section 1252(a)(2)(B)(i) to review the merits of petitioner's claim because the agency's weighing of the facts in making a hardship "decision is discretionary." *Id.* at 3a (citing *Patel* v. *Gar-*

land, 142 S. Ct. 1614, 1622 (2022); *Hernandez-Morales* v. *Attorney Gen.*, 977 F.3d 247, 249 (3d Cir. 2020)).

DISCUSSION

Petitioner contends (Pet. 21-29) that the court of appeals erred in finding that it lacks jurisdiction to review his challenge to the agency's determination that he failed to show "exceptional and extremely unusual hardship" to his U.S.-citizen child. 8 U.S.C. 1229b(b)(1)(D). The court correctly held that it lacks jurisdiction over challenges, like this one, to the agency's weighing of a given set of facts in determining whether the hardship standard is satisfied. Nevertheless, as petitioner observes (Pet. 15-21, 29-33), the circuits are divided on the question presented, which is both important and frequently recurring. This case is a suitable vehicle to resolve that question. The Court should accordingly grant the petition for a writ of certiorari.

1. The court of appeals correctly concluded that it lacks jurisdiction to review petitioner's claim that his removal would cause exceptional and extremely unusual hardship to his U.S.-citizen child. See 8 U.S.C. 1229b(b)(1)(D). Section 1252(a)(2)(B)(i) bars review of "any judgment regarding the granting of relief under section * * * 1229b." 8 U.S.C. 1252(a)(2)(B)(i). This Court has explained that the provision's reference to "'judgment' means any authoritative decision," *Patel* v. *Garland*, 142 S. Ct. 1614, 1621 (2022), a category that undisputedly includes hardship determinations. Notwithstanding Section 1252(a)(2)(B)(i), however, subparagraph (D) preserves judicial review for "constitutional claims or questions of law," 8 U.S.C. 1252(a)(2)(D), including "the application of a legal standard to undisputed or established facts," *Guerrero-Lasprilla* v. *Barr*, 140 S. Ct. 1062, 1068, 1069 (2020).

Under that framework, a court of appeals could review the agency's use of an incorrect legal standard to make the hardship determination. For example, if the agency interpreted "exceptional and extremely unusual hardship," 8 U.S.C. 1229b(b)(1)(D), to mean "unconscionable" hardship, cf. *In re Monreal*, 23 I. & N. Dec. 56, 61 (B.I.A. 2001) (en banc), a noncitizen could challenge that construction under subparagraph (D)'s carveout for legal questions. See *Galeano-Romero* v. *Barr*, 968 F.3d 1176, 1184 (10th Cir. 2020). But subparagraph (D) does not authorize a court of appeals to reweigh the relevant factual considerations, see *ibid.*, as petitioner here requests, see Pet. C.A. Br. 14-21. That is an inherently fact-intensive, discretionary task allocated to the agency.

a. The text of the "exceptional and extremely unusual hardship" standard, 8 U.S.C. 1229b(b)(1)(D), contemplates a fact-intensive, discretionary inquiry. As the Board has explained, the term "hardship" "can have multiple manifestations and inherently introduces an element of subjectivity into this statutory phrase." *In re Monreal*, 23 I. & N. Dec. at 59. And "[t]here is no algorithm for determining when a hardship is 'exceptional and extremely unusual.'" *Galeano-Romero*, 968 F.3d at 1183 (citation omitted). Instead, the statutory language demands a "subjective" and "value-laden" assessment of the evidence, *Martinez* v. *Clark*, 36 F.4th 1219, 1227-1228 (9th Cir. 2022) (citations omitted), which "almost necessarily * * * depends on the 'identity' and the 'value judgment of the person or entity examining the issue,'" *Mendez-Castro* v. *Mukasey*, 552 F.3d 975, 980 (9th Cir. 2009) (citation omitted).

The Board has accordingly recognized that "although guidance as to" the "meaning" of the statutory standard

"can be provided, each case must be assessed and decided on its own facts" because "reasonable people" may "come to quite different conclusions as to [its] application in various factual situations." *In re Monreal*, 23 I. & N. Dec. at 59, 63. The Board has found that "[t]he approach of providing examples and discussion in published Board decisions in varying factual settings likely remains the best manner in which to provide content to the phrase." *Id.* at 61 n.2. At bottom, the hardship inquiry is not guided by a "'legal standard' that, if met, requires a certain outcome," but rather by "malleable guidance that steers the immigration judge's subjective assessment of the facts of a particular case." *Martinez*, 36 F.4th at 1229-1230.

The hardship standard is also highly "fact-intensive." *Martinez*, 36 F.4th at 1228 (citation omitted). Petitioner concedes that "[t]he agency's factual findings underlying the hardship determination are unreviewable." Pet. 4 (citing *Patel*, 142 S. Ct. at 1627). But his position that courts may "step into the IJ's shoes and reweigh the facts," *Mendez-Castro*, 552 F.3d at 980, would drain that rule of any significance. He offers no explanation for how the agency's conclusion that his removal would not "cause emotional" or "financial" "hardship to his family beyond that which would normally be expected from the removal of a parent and provider," Pet. App. 29a, is meaningfully different from other findings that petitioner characterizes as factual, such as the finding that M's asthma is a "'serious medical condition,'" Pet. 34 (quoting Pet. App. 27a). See, *e.g.*, *Tacuri-Tacuri* v. *Garland*, 998 F.3d 466, 471 (1st Cir. 2021) ("[W]e usually decline to review a determination of whether an applicant for cancellation of removal has satisfied the

hardship requirement because this is typically a purely factual inquiry.").

Petitioner's principal textual rejoinder is that the statute bifurcates supposedly non-discretionary eligibility determinations (such as hardship) from the ultimate, discretionary decision of whether to grant cancellation to an eligible noncitizen. Pet. 21 (citing *Jay* v. *Boyd*, 351 U.S. 345, 353-354 (1956)). But *Jay* did not address the scope of judicial review, and there is no indication that Congress, when it enacted the relevant provisions of Section 1252(a)(2) in 1996 and 2005, intended to replicate the distinction articulated in *Jay* by barring review of only the ultimate cancellation decision while permitting review of all underlying determinations. In *Patel*, this Court rejected the similar argument that "[e]verything * * * is reviewable" except the "decision whether to grant relief to an applicant eligible to receive it." 142 S. Ct. at 1622.

Petitioner also contends (Pet. 23) that "[t]here is no serious argument that courts lack jurisdiction to review" the "three other enumerated eligibility requirements" of physical presence, good moral character, and absence of qualifying criminal convictions. In his view, the hardship requirement should be construed in line with those other requirements. But the premise of petitioner's argument is false, since the requirement of "good moral character," 8 U.S.C. 1229b(b)(1)(B), *is* discretionary, as several courts of appeals have found. See, *e.g.*, *Restrepo* v. *Holder*, 676 F.3d 10, 15 (1st Cir. 2012) (holding that the good-moral-character criterion is discretionary, with the exception of specified per se categories); *Romero-Torres* v. *Ashcroft*, 327 F.3d 887, 890 (9th Cir. 2003) (same).

b. The history of the hardship criterion further demonstrates that it requires a fact-intensive, discretionary judgment. The predecessor to the INA's cancellation-of-removal provision authorized the Attorney General to "suspend" the removal of a noncitizen who, among other things, established that his removal "would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence." 8 U.S.C. 1254(a)(1) (1994).

When construing that standard, this Court observed that the words "'extreme hardship'" are "not self-explanatory, and reasonable men could easily differ as to their construction." *INS* v. *Jong Ha Wang*, 450 U.S. 139, 144 (1981) (per curiam). The Court emphasized that "the Act commits their definition in the first instance to the Attorney General and his delegates, and their construction and application of this standard should not be overturned by a reviewing court simply because it may prefer another interpretation." *Ibid.* In that case, the Court found that, by displacing the agency's judgment, the court of appeals had "extended its 'writ beyond its proper scope and deprived the Attorney General of a substantial portion of the discretion which [the statute] vests in him.'" *Id.* at 145 (citation omitted); see *INS* v. *Phinpathya*, 464 U.S. 183, 195 (1984) (noting the Court's rejection of an approach that would "impermissibly shift[] discretionary authority from [the agency] to the courts").

Petitioner observes (Pet. 24-25) that the present language of the cancellation provision, in contrast to the language of the predecessor provision, omits any express reference to the "opinion of the Attorney Gen-

eral." In petitioner's view, Congress's decision to excise that phrase in IIRIRA's cancellation provision suggests an intent to remove the hardship determination from the agency's discretion. But it is implausible that Congress implicitly intended to *expand* judicial review of cancellation decisions in a statute that expressly "narrowed the class of aliens who could qualify for" cancellation, *In re Monreal*, 23 I. & N. Dec. at 58, and had as its "theme" the "protect[ion of] the Executive's discretion from the courts," *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486 (1999) (citing Section 1252(a)(2)(B) as an example). The post-IIRIRA "absence of the 'in the opinion of' language does not change the essential, discretionary nature of the hardship decision." *Romero-Torres*, 327 F.3d at 891.

c. Petitioner also suggests that this Court's recent decision in *Guerrero-Lasprilla*, *supra*, changes the analysis. See, *e.g.*, Pet. 3. Before *Guerrero-Lasprilla*, every court of appeals to address the question had held that it lacked jurisdiction to review a hardship determination. See *Hasan* v. *Holder*, 673 F.3d 26, 32-33 (1st Cir. 2012); *Barco-Sandoval* v. *Gonzales*, 516 F.3d 35, 39-40, 42 (2d Cir. 2008); *Patel* v. *Attorney Gen.*, 619 F.3d 230, 232-233 (3d Cir. 2010); *Sattani* v. *Holder*, 749 F.3d 368, 372 (5th Cir. 2014) (per curiam); *Ettienne* v. *Holder*, 659 F.3d 513, 517-519 (6th Cir. 2011); *Martinez-Maldonado* v. *Gonzales*, 437 F.3d 679, 682 (7th Cir. 2006); *Garcia-Torres* v. *Holder*, 660 F.3d 333, 337-338 (8th Cir. 2011), cert. denied, 568 U.S. 814 (2012); *Martinez-Rosas* v. *Gonzales*, 424 F.3d 926, 929-930 (9th Cir. 2005); *Arambula-Medina* v. *Holder*, 572 F.3d 824, 828-829 (10th Cir. 2009), cert. denied, 559 U.S. 1067 (2010); *Alhuay* v. *U.S. Att'y Gen.*, 661 F.3d 534, 549-550 (11th

Cir. 2011) (per curiam); see also *Arredondo* v. *Lynch*, 639 Fed. Appx. 198, 199 (4th Cir. 2016) (per curiam).

In *Guerrero-Lasprilla*, this Court addressed whether "the statutory phrase 'questions of law'" in Section 1252(a)(2)(D) "includes the application of a legal standard to undisputed or established facts." 140 S. Ct. at 1068. The Court held that it does, rejecting the contention "that 'questions of law' refers only to 'pure' questions" and "exclude[s] from judicial review all mixed questions." *Id.* at 1069-1070.

That holding has nothing to do with the question presented here. *Guerrero-Lasprilla* did not dispute the existence of a discretionary category of decisions that are neither pure questions of law nor mixed questions of law and fact. Indeed, the entire function of Section 1252(a)(2)(B) is to protect discretionary decisions from judicial review. See 8 U.S.C. 1252(a)(2)(B)(ii) (barring review of any other decision "the authority for which is specified under this subchapter to be in the discretion of" the Executive Branch); see also *Kucana* v. *Holder*, 558 U.S. 233, 246-247 (2010). Nor did *Guerrero-Lasprilla* offer any guidance as to the content of that third category of decisions. The opinion therefore sheds no light on the arguments in this case.

2. Although the court of appeals correctly determined that it lacks jurisdiction over petitioner's challenge to the agency's weighing of the facts, the decision below implicates a circuit conflict that warrants resolution by this Court.

Since *Guerrero-Lasprilla*, three circuits have held that courts of appeals may review the application of law to undisputed facts in a hardship determination—including a challenge to the agency's factual weighing—on the view that it constitutes a mixed question of law

and fact. See *Gonzalez Galvan* v. *Garland*, 6 F.4th 552, 560 (4th Cir. 2021); *Singh* v. *Rosen*, 984 F.3d 1142, 1154 (6th Cir. 2021); *Arreola-Ochoa* v. *Garland*, 34 F.4th 603, 610 (7th Cir. 2022); see also Pet. 16-18.

Petitioner also categorizes (Pet. 17) the Eleventh Circuit as taking his side in the conflict. Although the case he cites, *Patel* v. *United States Attorney General*, 971 F.3d 1258 (11th Cir. 2020) (en banc), aff'd, 142 S. Ct. 1614 (2022), observed in dicta that "qualitative standards such as * * * 'exceptional and extremely unusual hardship' are not in themselves discretionary decisions," *id.* at 1278, the court later departed from that observation when it confronted the question directly. In *Flores-Alonso* v. *U.S. Attorney General*, 36 F.4th 1095 (11th Cir. 2022) (per curiam), the court found that it was "precluded from reweighing the hardship factors now since our review * * * is jurisdictionally limited to 'constitutional claims or questions of law.'" *Id.* at 1100 (quoting 8 U.S.C. 1252(a)(2)(D)); see *Ponce Flores* v. *U.S. Att'y Gen.*, 64 F.4th 1208, 1222 (11th Cir. 2023).

In addition to the Eleventh Circuit, six other circuits (including the court below) have held that a challenge to the agency's weighing of the facts in making the hardship determination is unreviewable. See *Tacuri-Tacuri*, 998 F.3d at 471 ("Although applying the wrong legal standard is indeed a legal issue, the evidentiary weight involved in a hardship determination is not."); *Hernandez-Morales* v. *Attorney Gen.*, 977 F.3d 247, 249 (3d Cir. 2020) (concluding that "a disagreement about weighing hardship factors is a discretionary judgment call, not a legal question," while acknowledging that the agency would commit reviewable legal error by applying "'an impermissible factor' at odds with § 1229b(b)(1)(D)") (citation omitted); *Castillo-Gutierrez*

v. *Garland*, 43 F.4th 477, 481 (5th Cir. 2022) (per curiam) (holding that hardship "is a discretionary and authoritative decision * * * barred by § 1252(a)(2)(B)(i), notwithstanding § 1252(a)(2)(D)"); *Gonzalez-Rivas* v. *Garland*, 53 F.4th 1129, 1132 (8th Cir. 2022) ("Even after *Guerrero Lasprilla*, the BIA's discretionary conclusion that the hardship to the children is not substantially beyond that typically caused by an alien's removal 'is precisely the discretionary determination that Congress shielded from our review.'") (citation omitted), petition for cert. pending, No. 22-1038 (filed Apr. 21, 2023); *Aguilar-Osorio* v. *Garland*, 991 F.3d 997, 999 (9th Cir. 2021) (per curiam) ("This court does not have jurisdiction to review the merits of the BIA's discretionary decision to deny cancellation of removal based on hardship.");[3] *Galeano-Romero*, 968 F.3d at 1184 (holding that the court lacks jurisdiction "to reweigh evidence and substitute our view in place of the Board's discretionary decision," but that it retains jurisdiction to review pure legal errors); see also *Lucero Pina* v. *Garland*, No. 20-3348, 2023 WL 545724, at *1 (2d Cir. Jan. 27, 2023) ("These arguments are, in essence, ones that the BIA improperly weighed the evidence and thus insufficient to establish jurisdiction.").

The cases in the circuit conflict have vetted the arguments in support of each position, including the implications of *Guerrero-Lasprilla*. And as petitioner explains (Pet. 29-33), the question presented is both important and frequently recurring, as illustrated by the number

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[3] The Ninth Circuit is presently considering a case en banc in which it may address the question presented. See *De La Rosa-Rodriguez* v. *Garland*, 62 F.4th 1232 (2023); see also 49 F.4th 1282 (9th Cir. 2022) (panel decision vacated by en banc order).

of court of appeals decisions to address it since this Court decided *Guerrero-Lasprilla*.

3. This case is a suitable vehicle to resolve the question presented. Petitioner preserved his arguments in the court of appeals, see Pet. C.A. Br. 10-14; the Third Circuit squarely resolved the question presented, see Pet. App. 3a; and there are no alternative holdings below that might impede resolution of that question, see *ibid.* Although the decision below is unpublished and discusses the jurisdictional issue only briefly, it relies on Third Circuit precedent that more thoroughly addresses the issue and cites both *Guerrero-Lasprilla* and other relevant circuit precedent. See *ibid.* (citing *Hernandez-Morales*, 977 F.3d at 249).

This case also presents a favorable vehicle in comparison to other petitions presenting the same question that are presently pending or might arise.[4] Petitioner challenges only the agency's weighing of the undisputed facts, see Pet. 34; Pet. C.A. Br. 14-21, without asserting any purely legal questions—which the government would have agreed were reviewable and might therefore have complicated the Court's consideration of the issue actually in dispute. Compare *Gonzalez-Rivas*, 53 F.4th at 1131-1132 (resolving pure questions of law in addition to petitioner's challenge to the agency's factual weighing).

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[4] The government is aware of three other pending petitions for writs of certiorari that present the same question. See *Gomez-Vargas* v. *Garland*, No. 22-734 (filed Feb. 2, 2023); *Ramirez-Hidrogo* v. *Garland*, No. 22-1026 (filed Apr. 19, 2023); *Gonzalez-Rivas* v. *Garland*, No. 22-1038 (filed Apr. 21, 2023).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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