No. 20-239

In the Supreme Court of the United States

JUAN CARLOS SOLORZANO-GUERRERO, PETITIONER

v.

WILLIAM P. BARR, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the immigration court lacked authority to order petitioner removed in absentia because the government did not provide the written notice required under 8 U.S.C. 1229(a)(1) in a single document.

2. Whether a court of appeals may review claims of legal error raised in a petition for review of a decision by the Board of Immigration Appeals declining to exercise its discretionary authority to reopen removal proceedings *sua sponte*.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is not published in the Federal Reporter but is reprinted at 798 Fed. Appx. 972. The decisions of the Board of Immigration Appeals (Pet. App. 4a-10a) and the immigration judge (Pet. App. 11a-15a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 25, 2020. The petition for a writ of certiorari was filed on August 24, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, requires that an alien placed in

removal proceedings under 8 U.S.C. 1229a be given "written notice" of certain information. 8 U.S.C. 1229(a)(1). Paragraph (1) of Section 1229(a) provides that "written notice (in this section referred to as a 'notice to appear') shall be given * * * specifying," among other things, the "time and place at which the proceedings will be held," and the "consequences under section 1229a(b)(5) of [Title 8] of the failure * * * to appear at such proceedings." 8 U.S.C. 1229(a)(1)(G)(i)-(ii). Such written notice must also specify the "requirement that the alien must immediately provide * * * a written record of an address * * * at which the alien may be contacted respecting [removal] proceedings"—and "of any change of the alien's address"—to "the Attorney General," and the "consequences under section 1229a(b)(5)" of failure to do so. 8 U.S.C. 1229(a)(1)(F). Paragraph (2) of Section 1229(a) further provides that, "in the case of any change or postponement in the time and place of [the removal] proceedings," "a written notice shall be given" specifying "the new time or place of the proceedings," and the "consequences under section 1229a(b)(5)" of failing to attend. 8 U.S.C. 1229(a)(2)(A)(i)-(ii).

Section 1229a(b)(5), in turn, provides that "[a]ny alien who, after written notice required under paragraph (1) or (2) of section 1229(a) of [Title 8] has been provided * * * , does not attend a proceeding under this section, shall be ordered removed in absentia if the [Department of Homeland Security (DHS)] establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable." 8 U.S.C. 1229a(b)(5)(A). "The written notice * * * shall be considered sufficient for purposes of [Section 1229a(b)(5)(A)] if provided at the most recent address provided [by the alien] under section 1229(a)(1)(F)."

Ibid.; see 8 U.S.C. 1229(c) ("Service by mail under [Section 1229] shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with [Section 1229(a)(1)(F)].").

b. "An alien ordered to leave from the country has a statutory right to file a motion to reopen his removal proceedings." *Mata* v. *Lynch*, 567 U.S. 143, 144 (2015); see 8 U.S.C. 1229a(c)(7). Such a motion is known as a "statutory motion to reopen." *Mata*, 567 U.S. at 149. The INA limits the number of such motions an alien may file; in general, an alien may file only "one" statutory motion to reopen. 8 U.S.C. 1229a(c)(7)(A). The INA also places time limits on the filing of such motions. 8 U.S.C. 1229a(c)(7)(C). In general, a statutory motion to reopen must be "filed within 90 days of the date of entry of a final administrative order of removal." 8 U.S.C. 1229a(c)(7)(C)(i); see 8 C.F.R. 1003.2(c)(2). That 90-day time limit, however, does not apply to the filing of a statutory motion to reopen described in Section 1229a(b)(5)(C). 8 U.S.C. 1229a(c)(7)(C)(iii). As relevant here, that Section provides that a removal order entered in absentia "may be rescinded" upon "a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section 1229(a)." 8 U.S.C. 1229a(b)(5)(C)(ii).

In addition, regulations promulgated by the Attorney General provide that, "separate and apart from acting on" an alien's statutory motion to reopen, an immigration judge (IJ) and the Board or Immigration Appeals (Board) may reopen removal proceedings on their "'own motion'—or, in Latin, *sua sponte*—at any time." *Mata*, 576 U.S. at 145 (citation omitted); see 8 C.F.R. 1003.2(a), 1003.23(b)(1). The Board "invoke[s] [its] sua sponte authority sparingly, treating it not as a general

remedy for any hardships created by enforcement of the time and number limits [on statutory motions to reopen], but as an extraordinary remedy reserved for truly exceptional situations." *In re G-D-*, 22 I. & N. Dec. 1132, 1133-1134 (B.I.A. 1999) (en banc); see *In re J-J-*, 21 I. & N. Dec. 976, 984 (B.I.A. 1997) (en banc).

2. Petitioner is a native and citizen of Mexico. Pet. App. 16a. In 2007, he entered the United States illegally, without inspection by an immigration officer. *Id.* at 5a, 55a. In October 2010, the Department of Homeland Security (DHS) served petitioner with a "Notice to Appear" for removal proceedings on "a date to be set" and at "a time to be set." *Id.* at 54a-55a (emphases omitted); see *id.* at 59a. The Notice to Appear charged that petitioner was subject to removal because he was an alien present in the United States without being admitted or paroled. *Id.* at 55a; see 8 U.S.C. 1182(a)(6)(A)(i).

The Notice to Appear informed petitioner: "You are required to provide the DHS, in writing, with your full mailing address * * * . You must notify the Immigration Court immediately * * * whenever you change your address." Pet. App. 57a-58a; see 8 C.F.R. 1003.15(d)(1)-(2). The Notice to Appear further stated that "[n]otices of hearing will be mailed to this address," and that "the Government shall not be required to provide you with written notice of your hearing" if "you do not * * * provide an address at which you may be reached during proceedings." Pet. App. 58a. The Notice to Appear additionally explained that "[i]f you fail to attend the hearing * * * , a removal order may be made by the immigration judge in your absence." *Ibid.* Petitioner signed the Notice to Appear, Administrative Record (A.R.) 339, which listed his address as the White

Glove Hotel at 11430 West Kellogg Street in Wichita, Kansas, Pet. App. 54a; see A.R. 202, 269, 340.

DHS subsequently filed the Notice to Appear with the immigration court. A.R. 338. The INA's implementing regulations provide that "[t]he Immigration Court shall be responsible for scheduling cases and providing notice to the government and the alien of the time, place, and date of hearings." 8 C.F.R. 1003.18(a). The regulations further provide that if "the time, place and date of the initial removal hearing" "is not contained in the Notice to Appear, the Immigration Court shall be responsible for scheduling the initial removal hearing and providing notice to the government and the alien of the time, place, and date of hearing." 8 C.F.R. 1003.18(b).

On the same day that DHS filed the Notice to Appear, the immigration court sent petitioner a document labeled "Notice of Hearing" via regular mail to the West Kellogg Street address on the Notice to Appear. A.R. 336 (capitalization altered); see A.R. 335, 339. Petitioner had not provided, and the immigration court had not received, any notice of a different address. A.R. 15; Pet. App. 6a; Pet. 17. The Notice of Hearing stated that the immigration court had scheduled petitioner's removal hearing for March 17, 2011, at 9 a.m. in Kansas City, Missouri. A.R. 336. The Notice of Hearing was returned as undeliverable by the U.S. Postal Service. A.R. 335.

Petitioner failed to appear at the scheduled hearing, and the IJ ordered him removed in absentia. Pet. App. 48a-50a. The IJ determined that petitioner "had a reasonable opportunity to be present," and that "[n]o reasonable cause ha[d] been advanced as to why [he] was

absent." *Id.* at 48a. The IJ then found petitioner removable as charged and ordered him removed to Mexico. *Id.* at 49a.

3. a. In October 2014, petitioner filed a motion to reopen his removal proceedings so that he could seek protection under the Convention Against Torture. A.R. 307-312. An IJ denied the motion. Pet. App. 42a-47a. The IJ determined, among other things, that the motion was "untimely" because "it was filed more than three years after the *in absentia* order was entered," and because petitioner had "not allege[d] that the [Notice of Hearing] was not sent to the proper address." *Id.* at 44a. The IJ further determined that the "circumstances of th[e] case d[id] not warrant the exercise of [his] limited discretion to reopen *sua sponte*." *Id.* at 45a; see *id.* at 45a-46a. Petitioner did not appeal the IJ's decision to the Board. *Id.* at 17a.

b. In May 2017—six years after the removal order had been entered in absentia—petitioner filed a second motion to reopen, seeking to apply for asylum, withholding of removal under the INA, and protection under the Convention Against Torture. A.R. 191-200. An IJ denied the motion. Pet. App. 26a-41a. The IJ determined that petitioner's motion was "numerically barred because an alien cannot file more than one motion to reopen." *Id.* at 31a. The IJ also determined that petitioner's motion was "time barred." *Ibid.* The IJ then found that none of "the exceptions to the numeric and time bars" applied in petitioner's case. *Id.* at 34a; see *id.* at 34a-39a. In particular, the IJ found that petitioner had received "sufficient notice" of his removal hearing because the immigration court mailed the Notice of Hearing to "the address that [petitioner] gave to

DHS officers on the day they served him with the [Notice to Appear]," and because petitioner "never submitted a change of address to the [immigration court]." *Id.* at 34a-35a. The IJ also "decline[d] to exercise [his] power to reopen [petitioner's] case *sua sponte*." *Id.* at 39a.

The Board dismissed petitioner's appeal. Pet. App. 16a-25a. The Board affirmed the IJ's determinations that petitioner's motion was "time-barred" and "number-barred," and that no exception to those limitations applied. *Id.* at 17a-18a. The Board also found no "exceptional circumstances" to warrant reopening the proceedings *sua sponte*. *Id.* at 24a.

c. In March 2018, petitioner filed with the IJ a third motion to reopen. A.R. 34-37, 84-95. In that motion, petitioner argued for the first time that an immigration court may order an alien removed in absentia only if the government provides the "written notice required under paragraph (1) * * * of section 1229(a)," 8 U.S.C. 1229a(b)(5)(A), in a single document. A.R. 89-91. Petitioner asserted that the government had failed to do so in his case, because the government had provided written notice of the date and time of his removal hearing in a document separate from written notice of the rest of the information Section 1229(a)(1) specifies. A.R. 90-91. Petitioner thus argued that the immigration court lacked authority to order him removed in absentia and that his motion to reopen was timely under Section 1229a(b)(5)(C)(ii). A.R. 91. Petitioner further contended that the bar to filing more than one motion to reopen should be "equitably tolled" because circuit precedent at the time of his last motion foreclosed any argument that the government had to provide the written notice required under Section 1229(a)(1) in a single document. A.R. 92.

An IJ denied the motion to reopen. Pet. App. 11a-15a. The IJ explained that when an alien "has filed an appeal with the Board, any subsequent motion to reopen must also be filed with the Board unless the Board dismissed the appeal for lack of jurisdiction or remanded proceedings to the Immigration Court." *Id.* at 13a. The IJ concluded that because the Board had dismissed petitioner's last motion "on the merits," the IJ "lack[ed] jurisdiction to consider [petitioner's] present Motion." *Ibid.* The IJ stated, however, that "even if [he] had jurisdiction," he "would nevertheless deny [petitioner's] third motion to reopen as numerically barred" and "find that [petitioner] was properly notified about the missed hearing date." *Id.* at 14a.

Following the IJ's decision, petitioner filed with the Board a motion "to remand th[e] matter to the immigration court for the scheduling of a new hearing." A.R. 13. In that motion, petitioner repeated his argument that the immigration court lacked authority to order him removed in absentia because the government had not provided the written notice required under Section 1229(a)(1) in a single document. A.R. 16-17. Petitioner asserted, however, that his motion was not "a motion to rescind, reopen, or reconsider" subject to "the time and numerical bars." A.R. 17-18. Such a motion, petitioner argued, "presuppose[s] the existence of a jurisdictionally proper removal order." A.R. 17. Petitioner contended that "there was never a jurisdictionally valid removal order entered in his case, since the immigration judge lacked statutory authority to exercise his in absentia powers." *Ibid.* Petitioner thus argued that his motion to remand was a different kind of motion, which was not subject to "the time and numerical bars" at all. A.R. 17-18.

The Board denied the motion. Pet. App. 4a-10a. The Board concluded that petitioner's filing was an "untimely, number-barred motion to reopen." *Id.* at 7a. The Board thus found "no merit to [petitioner's] argument that his motion [wa]s not a motion to rescind, reopen or reconsider subject to the" time and number bars. *Ibid.* And it rejected petitioner's contention that "a Notice of Hearing may never cure a Notice to Appear if the Notice to Appear does not include an initial set time." *Id.* at 8a. The Board also found "no basis to exercise [its] discretionary sua sponte authority to rescind, reconsider and/or reopen proceedings." *Id.* at 9a.

4. The court of appeals denied petitioner's petition for review in an unpublished opinion. Pet. App. 1a-3a.

The court of appeals rejected petitioner's contention that "the time and numerical bars" did not apply to the motion he had filed with the Board. Pet. C.A. Br. 37; see Pet. App. 2a. The court determined that petitioner's motion was "the functional equivalent of a motion to reopen," to which those bars applied. Pet. App. 2a. And the court held that the Board "did not abuse its discretion in concluding that the motion was untimely and numerically barred." *Ibid.* The court therefore declined to address the merits of petitioner's argument that the immigration court "lacked the statutory authority to enter a 2011 order of removal in absentia." *Ibid.*

The court of appeals also determined that it "lack[ed] jurisdiction to review the [Board's] decision declining to sua sponte rescind, reconsider, or reopen the proceedings." Pet. App. 2a. In his brief before the court, petitioner had acknowledged that a court "[o]rdinarily" lacks jurisdiction to review such a "discretionary decision," but had argued that his case fell within "an excep-

tion allowing for the review of 'any colorable constitutional claim.'" Pet. C.A. Br. 37 (quoting *Tamenut* v. *Mukasey*, 521 F.3d 1000, 1005 (8th Cir. 2008) (en banc) (per curiam)). In particular, petitioner had contended that he had raised a colorable constitutional claim that the immigration court had violated his due process rights by "issu[ing] an *in absentia* removal order without the necessary statutory authority." *Id.* at 38. The court rejected that contention, finding that petitioner had "not raised a colorable constitutional claim." Pet. App. 2a.

ARGUMENT

Petitioner contends (Pet. 29-32) that the Board erred in denying his motion asserting that the immigration court lacked authority to order him removed in absentia. The court of appeals did not address the merits of that contention. Rather, it upheld the denial of petitioner's motion on an independent ground, which petitioner does not challenge here. This case would thus be a poor vehicle for this Court's review.

Petitioner also contends (Pet. 32-37) that a court of appeals may review claims of legal error raised in a petition for review of a decision by the Board declining to reopen removal proceedings *sua sponte*. That contention lacks merit and does not warrant this Court's review. Although a circuit conflict exists on the issue, this case would be a poor vehicle for further review because the issue was not raised or considered below. Moreover, the Board's authority to reopen proceedings *sua sponte* is the subject of a pending proposed rulemaking. The petition for a writ of certiorari should be denied.

1. Petitioner contends (Pet. 29-32) that the immigration court lacked authority to order him removed in ab-

sentia because the government did not provide the written notice required under Section 1229(a)(1) in a single document. That contention does not warrant this Court's review.

a. As petitioner acknowledges (Pet. 26), the court of appeals "never addressed" his contention that the immigration court lacked authority to order him removed in absentia. Petitioner had raised that contention in a motion filed with the Board. A.R. 16-17. But the court of appeals upheld the Board's determination that the motion "was untimely and numerically barred," without reaching the merits of whether the immigration court lacked authority to order petitioner removed in absentia. Pet. App. 2a. Because the court of appeals never addressed that issue, further review is not warranted. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (explaining that this Court is "a court of review, not of first view").

Moreover, petitioner no longer disputes that the INA's number and time limits apply to the motion he filed with the Board. Rather, he now accepts (Pet. 26) that his motion "exceeded both the number bar and the time bar."[1] Thus, there is no basis for this Court to review "the underlying merits of the motion," and the

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[1] Petitioner's motion plainly exceeded the number bar. The INA generally provides that an alien may file only "one" statutory motion to reopen. 8 U.S.C. 1229a(c)(7)(A); see 8 C.F.R. 1003.2(c)(2). Despite being labeled a "motion to remand," A.R. 12 (capitalization and emphasis omitted), petitioner's motion was "the functional equivalent of a motion to reopen," Pet. App. 2a, and he had already filed more than one such motion, see pp. 6-9, *supra*. Although Section 1229a(b)(5)(C)(ii) provides that an order of removal entered in absentia may be rescinded "upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section 1229(a)," 8 U.S.C.

Board's denial of his motion would still stand in any event. Pet. App. 2a.

b. No need exists to hold the petition for a writ of certiorari in this case pending this Court's decision in *Niz-Chavez* v. *Barr*, No. 19-863 (argued Nov. 9, 2020). The question presented in *Niz-Chavez* is whether the government must provide the written notice required to trigger the stop-time rule, 8 U.S.C. 1229b(d)(1)(A), in a single document. Regardless of this Court's resolution of that question, the outcome of this case would be the same, because petitioner does not challenge the court of appeals' decision to uphold the Board's denial of his motion as "untimely and numerically barred." Pet. App. 2a; see Pet. 26.

2. Petitioner also contends (Pet. 32-37) that a court of appeals may review claims of legal error raised in a petition for review of a decision by the Board declining to exercise its discretionary authority to reopen removal proceedings *sua sponte*. That contention likewise does not warrant this Court's review.

a. In the court of appeals, petitioner acknowledged that a court of appeals "generally lacks jurisdiction to review the denial of a request for *sua sponte* reopening." Pet. C.A. Br. 2. To the extent that he argued that there was an exception to that general rule, he argued only that there was "an exception allowing for the review of 'any colorable constitutional claim' raised in a petition for review of a Board decision denying *sua sponte* reopening." *Id.* at 37 (citation omitted).[2]

1229a(b)(5)(C)(ii), that provision does not permit an alien to file more than "one motion to reopen," 8 U.S.C. 1229a(c)(7)(A).

[2] The court of appeals determined that petitioner had "not raised a colorable constitutional claim" in his petition for review, Pet. App. 2a, and petitioner does not challenge that determination here.

Petitioner did not contend below, as he does now in his petition for a writ of certiorari (Pet. 32), that claims of "legal error" may also be reviewed. And the court of appeals did not consider any such contention in this case. See Pet. App. 2a-3a. Because the issue was not raised or considered below, no further review is warranted. See *Zobrest* v. *Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993) ("Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.") (citation omitted).

In any event, petitioner's contention that a court of appeals may review claims of legal error raised in a petition for review of a discretionary decision denying *sua sponte* reopening lacks merit. *Sua sponte* reopening—a procedure established by Board regulations, see 8 C.F.R. 1003.2(a), not the INA—is a matter "committed to agency discretion by law," 5 U.S.C. 701(a)(2). The procedure confers no privately enforceable rights on an alien. See *Gor* v. *Holder*, 607 F.3d 180, 195 (6th Cir. 2010) (Batchelder, C.J., concurring) (explaining that "[t]he power of the [Board] to reopen *sua sponte* arises only from its own regulations" and that "Congress has taken no steps to establish an individual right applicable to [aliens]"), cert. denied, 564 U.S. 1037 (2011). And no standard exists by which courts can assess the Board's exercise of its discretion in a particular circumstance. See *Lenis* v. *U.S. Att'y Gen.*, 525 F.3d 1291, 1293 (11th Cir. 2008) (explaining that the regulation that "expressly gives the [Board] discretion to *sua sponte* reopen cases * * * provides absolutely no standard to govern the [Board's] exercise of its discretion"). Accordingly, a discretionary determination not to reopen removal proceedings *sua sponte* is judicially unreviewable under

the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.* See 5 U.S.C. 701(a)(1) and (2), 702. And that is so regardless of the arguments the alien presents in requesting reopening, or the reasons (if any) the Board gives in denying the request. See *ICC* v. *Brotherhood of Locomotive Eng'rs*, 482 U.S. 270, 283 (1987) (rejecting the contention that, "if the agency gives a 'reviewable' reason for otherwise unreviewable action, the action becomes reviewable").

Title 8 U.S.C. 1252(a)(2)(D) is not to the contrary. Section 1252(a)(2)(D) merely states a rule of construction for the limits on judicial review specified elsewhere in the INA. It provides that "[n]othing" in any other provision of "this chapter"—*i.e.*, nothing in the INA, which is codified as Chapter 12 of Title 8 of the United States Code—"shall be construed as precluding review of * * * questions of law raised upon a petition for review." 8 U.S.C. 1252(a)(2)(D). That provision operates to restore judicial review of questions of law where the INA would otherwise preclude it. By its plain terms, however, Section 1252(a)(2)(D) does not address—let alone abrogate or override—any applicable limitations on judicial review *outside* the INA. And, as explained above, the APA precludes judicial review of the Board's exercise of its discretion not to reopen removal proceedings *sua sponte*.

b. As petitioner observes (Pet. 34-37), disagreement exists among the courts of appeals on the question whether a court may review legal issues that are raised in connection with the Board's determination not to reopen proceedings *sua sponte*. Several circuits have concluded that a court may review the denial of *sua sponte* reopening if the denial was based on an asserted legal error and that review is limited to correcting the legal

error and remanding to the agency for further consideration. See *Centurion* v. *Sessions*, 860 F.3d 69, 74 (2d Cir. 2017); *Pllumi* v. *Attorney Gen.*, 642 F.3d 155, 159-160 (3d Cir. 2011); *Fuller* v. *Whitaker*, 914 F.3d 514, 519 (7th Cir. 2019); *Bonilla* v. *Lynch*, 840 F.3d 575, 587-589 (9th Cir. 2016).[3] In contrast, the Eighth Circuit has held, in a different case, that asserted legal errors do not render a denial of *sua sponte* reopening reviewable, while stating that "'colorable' constitutional claims" may be reviewed. *Vue* v. *Barr*, 953 F.3d 1054, 1057 (2020) (citation omitted). The Eleventh Circuit has similarly concluded that asserted legal errors do not render a denial of *sua sponte* reopening reviewable, while reserving judgment on constitutional errors. See *Butka* v. *U.S. Att'y Gen.*, 827 F.3d 1278, 1285-1286 & n.7 (2016), cert. denied, 138 S. Ct. 299 (2017); see also *Bing Quan Lin* v. *U.S. Att'y Gen.*, 881 F.3d 860, 871 (2018). And the Sixth Circuit has held that neither claims of constitutional error nor claims of legal error render the denial of *sua sponte* reopening reviewable. See *Rais* v. *Holder*, 768 F.3d 453, 463-464 (2014).[4]

That disagreement, however, does not warrant review in this case. As explained above, see pp. 12-13, *supra*, the argument that a court of appeals may review claims of legal error raised in a petition for review of a denial

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[3] In *Salgado-Toribio* v. *Holder*, 713 F.3d 1267 (2013), the Tenth Circuit stated that it had "jurisdiction to review 'constitutional claims or questions of law' raised in a petition for review" of a Board decision denying *sua sponte* reopening, while finding that the alien in that particular case failed to "assert[] a non-frivolous constitutional claim sufficient to give [the court] jurisdiction." *Id.* at 1271 (quoting 8 U.S.C. 1252(a)(2)(D)).

[4] The Fourth Circuit has reserved judgment on whether asserted legal errors render a denial of *sua sponte* reopening reviewable. See *Lawrence* v. *Lynch*, 826 F.3d 198, 206-207 & n.5 (2016).

of *sua sponte* reopening was not raised or considered below. Indeed, by failing to raise the issue below, petitioner has forfeited any contention that the Board's denial of *sua sponte* reopening in his case was reviewable for legal (as distinguished from constitutional) error. See *United States* v. *Jones*, 565 U.S. 400, 413 (2012) (deeming forfeited an argument not raised or addressed below). This case would therefore not be an appropriate vehicle for further review.

Moreover, the Executive Office for Immigration Review recently issued a notice of proposed rulemaking that would amend the regulations governing IJs' and the Board's authority to reopen removal proceedings *sua sponte*. See 85 Fed. Reg. 52,491, 52,492 (Aug. 26, 2020). Should the proposed amendments go into effect, they would withdraw IJs' and the Board's authority to "*sua sponte* reopen a case or reconsider a decision, except in limited circumstances evincing a need to correct typographical errors or defective service." *Ibid.* Adoption of the proposed amendments could thus deprive the question presented of prospective significance. Further review is therefore unwarranted at this time.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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