No. 15-289

In the Supreme Court of the United States

ANTHONY THOMPSON, PETITIONER

v.

LORETTA E. LYNCH, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a hearing notice is sufficient to support entry of an *in absentia* order of removal when the notice is mailed to the alien at the address written on the notice to appear in removal proceedings that the alien signed, when the alien later claims that the address is incorrect but the alien failed to inform the government of that error and failed otherwise to provide the government with a "written record" of the address at which he could be contacted regarding removal proceedings, 8 U.S.C. 1229(a)(1)(F).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes and regulations:

Regulations—Continued: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 788 F.3d 638. The decisions of the Board of Immigration Appeals (Pet. App. 22a-28a) and immigration judge (Pet. App. 29a-35a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 12, 2015. The petition for a writ of certiorari was filed on September 8, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In 1999, petitioner was personally served with, and signed, a notice to appear (NTA) in removal proceedings. Pet. App. 46a-47a. Later that year, after petitioner failed to appear at those proceedings, an immigration judge (IJ) ordered petitioner to be removed from the United States *in absentia*. *Id.* at 41a-42a. In

2014, more than 14 years later, petitioner filed a motion to reopen the administrative removal proceedings based on his contention that he never received notice of his 1999 hearing because the hearing notice was mailed to the wrong address. *Id.* at 24a-25a. This case concerns the responsibility of an alien who has been personally served with an NTA to provide the government with a written record of an address at which the alien may be contacted during the removal proceedings.

1. In March 1999, local police arrested petitioner in Cleveland, Ohio because petitioner was present during a controlled drug delivery to a house. Pet. App. 2a. Petitioner was placed under an immigration detainer. *Ibid.* On March 9, 1999, the Immigration and Naturalization Service (INS) personally served petitioner with an NTA. *Id.* at 46a-47a. The NTA charged that petitioner was a Jamaican national who was unlawfully present in the United States and "ORDERED [him] to appear before an immigration judge" in removal proceedings to answer the specified charge at a date "to be set" later. *Id.* at 46a.

The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, requires that an NTA specify the requirement that the alien must "immediately provide (or have provided) the Attorney General with a written record of an address * * * at which the alien may be contacted respecting [the removal] proceedings," 8 U.S.C. 1229(a)(1)(F)(i), and must "immediately" provide the Attorney General with "a written record of any change of the alien's address," 8 U.S.C. 1229(a)(1)(F)(ii). The NTA must also specify the consequences of failing to provide such an address and of

failing to appear at removal proceedings. 8 U.S.C. 1229(a)(1)(F)(iii) and (G)(ii).

The Attorney General has delegated his adjudicatory authority under the INA to the Board of Immigration Appeals (Board or BIA) and to IJs assigned to regional Immigration Courts. 8 C.F.R. 1003.1(a)(1), 1003.10(a); see 8 C.F.R. 1003.9(d). Immigration enforcement officials will normally include "[t]he alien's address" on the NTA submitted "to the Immigration Court." 8 C.F.R. 1003.15(c)(2). The Immigration Court will then provide the alien with notice of the date, time, and place of future proceedings. 8 C.F.R. 1003.18(b). The INA's implementing regulations accordingly state that, "if the [alien's] address on the * * * [NTA] is incorrect, the alien must provide to the Immigration Court * * * , within five days of service of [the NTA], a written notice of an address * * * at which the alien can be contacted." 8 C.F.R. 1003.15(d)(1).

If an alien fails to appear during his removal proceedings, the INA provides that the alien "shall be ordered removed in absentia" if "clear, unequivocal, and convincing evidence" shows both that he was given written notice of the hearing and that he is removable as charged. 8 U.S.C. 1229a(b)(5)(A). A written notice is deemed sufficient if it is "provided at the most recent address provided [by the alien] under [8 U.S.C.] 1229(a)(1)(F)." 8 U.S.C. 1229a(b)(5)(A); see 8 U.S.C. 1229(c) (Service of removal-proceeding documents on an alien by mail is sufficient if delivery is attempted "to the last address provided by the alien in accordance with [8 U.S.C. 1229](a)(1)(F)."). "No written notice shall be required" before entry of an *in absentia* order "if the alien has failed to provide the

address required under [8 U.S.C.] 1229(a)(1)(F)." 8 U.S.C. 1229a(b)(5)(B).

The NTA in this case informed petitioner that "[y]ou are required to carry [this copy of the NTA] with you at all times" while the removal proceedings were pending. Pet. App. 47a. The NTA further informed petitioner: "You are required to provide the [government], in writing, with your full mailing address" and must "notify the Immigration Court immediately * * * whenever you change your address." *Ibid.* The NTA added 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" unless you "provide an address at which you may be reached during proceedings." *Ibid.* The NTA also explained that "[i]f you fail to attend the hearing * * * , a removal order may be made by the immigration judge in your absence." *Ibid.*

2. In April 1999, a hearing notice specifying the date of petitioner's removal hearing was mailed to petitioner at the Cleveland address written on the NTA that had been filed with the Immigration Court: 2761 East 126th Street. Pet. App. 43a; see *id.* at 46a. That hearing notice was not returned as undeliverable by the Postal Service. *Id.* at 24a, 27a. Petitioner thereafter failed to appear at petitioner's December 1999 removal hearing. *Id.* at 41a. At the conclusion of that hearing, the IJ ordered petitioner to be removed *in absentia* from the United States to Jamaica. *Id.* at 41a-42a. The removal order, like the April 1999 hearing notice, was mailed to the East 126th Street address listed on the NTA, and it was not subsequently

returned as undeliverable by the Postal Service. *Id.* at 24a.

3. a. Although petitioner "knew he had been placed in removal proceedings when he signed the [NTA] in 1999," petitioner failed to "take any action to resolve his immigration status" for more than 14 years. Pet. App. 4a (quoting *id.* at 25a-26a); see *id.* at 28a.

In March 2014, petitioner moved to reopen the removal proceedings and rescind the 1999 removal order. Pet. App. 24a. Petitioner's affidavit accompanying his motion states that petitioner "never lived at [the] 2761 E. 126 Street" address listed on the NTA, and that he never received the April 1999 hearing notice mailed to that address. *Id.* at 37a-38a. The affidavit states that when an immigration officer interviewed petitioner a few days after his 1999 arrest, petitioner allegedly told the officer that he lived at the house on Colfax Road at which petitioner had been arrested. *Id.* at 37a. According to petitioner, the officer suggested that he "stay somewhere else because [his] house was a 'drug house'" but that petitioner told the officer that he had nowhere else to stay. *Ibid.* Petitioner states that he then told the officer that he had a female friend "who lived at 2761 E. 126 Street" (the address listed on the NTA); that the officer "suggested that [petitioner] stay[] there instead of the 'drug house' on Colfax Road"; and that petitioner told the officer that he "would ask the lady." *Ibid.* The affidavit states that petitioner never told the officer that he was "guaranteed" a room at the East 126th Street address written on the NTA and that his lady friend ultimately declined his request to live there. *Id.* at 37a-38a.

b. An IJ denied petitioner's motion to reopen the removal proceedings. Pet. App. 29a-35a. The IJ held that petitioner did "not rebut[] the presumption of proper delivery" of the April 1999 hearing notice, because petitioner failed to show that his alleged "failure to receive notice was not due to his [own] failure to provide an address where he could receive mail." *Id.* at 34a. Even if petitioner did not actually receive that notice, the IJ explained, petitioner had constructive notice of it because the "hearing notice was sent" to the address specified in his NTA, petitioner was "personally served [that] NTA," and petitioner "was therefore aware of his obligation to provide the Court with an address under INA § 237(a)(1)(F)." *Ibid.*[1] Given that "[petitioner] had notice of his obligation to provide the Immigration Court with an address at which he could receive mail but failed to provide the Court with the Colfax Road address after learning that he could not live at the E. 126 Street address," the IJ concluded that the 1999 entry of an *in absentia* removal order had been appropriate based on petitioner's constructive notice of the hearing. *Id.* at 34a-35a.

c. The BIA dismissed petitioner's appeal. Pet. App. 22a-28a. Like the IJ, the Board explained that the April 1999 "hearing notice was mailed to the address listed for [petitioner] in the [NTA]"; the NTA "contained information about [petitioner's] responsibility to report any address changes"; and "[petitioner] has conceded that he received personal service of the [NTA]." *Id.* at 27a. In light of those facts, the

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[1] The IJ presumably meant to refer to INA Section 239(a)(1)(F), 8 U.S.C. 1229(a)(1)(F). Cf. Pet. App. 32a (discussing this provision).

Board concluded, "[i]f [petitioner] was not living at the E. 126 Street address listed in the [NTA], then it was his responsibility to immediately notify immigration authorities of his correct address, and not wait until 2014 to file a motion to reopen." *Id.* at 27a-28a. The Board further determined that "a hearing notice was not required under * * * 8 U.S.C. § 1229a(b)(5)(B)" "[b]ecause [petitioner] did not fulfill his obligation to report his address." *Id.* at 28a. Finally, the Board noted that petitioner had failed either to address, or to explain, "what actions, if any, he initiated * * * to resolve his immigration status" between "when he signed the [NTA] in 1999, and when he filed [his reopening] motion in 2014." *Ibid.*

4. a. The court of appeals denied petitioner's petition for review. Pet. App. 1a-19a. The court concluded that the Board's denial of reopening was not an abuse of its discretion, because "the government fully satisfied its obligation to provide [petitioner] with notice of the hearing against him" "[b]y mailing [the] hearing notification to th[e] address" that was written as petitioner's address on the NTA. *Id.* at 19a.

The court of appeals explained that service by mail of a hearing notice is "sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with [Section] 1229(a)(1)(F)." Pet. App. 6a. "Section 1229(a)(1)(F), in turn, requires that the N[TA] inform the alien of his affirmative duty to provide 'the Attorney General' with a written record of (1) 'an address and telephone number (if any) at which the alien may be contacted,' and (2) 'any [subsequent] change of the alien's address or telephone number.'" *Ibid.* (second set of brackets in original) (quoting 8 U.S.C. 1229(a)(1)(F)). Petitioner argued

that "he did not violate the requirements of [Section] 1229(a)(1)(F)(ii) because he gave his [then-]current address [on Colfax Road] to the immigration official[]" who conducted his oral interview and "never *changed* his residence prior to the court's mailing of his hearing notice." *Id.* at 9a. In petitioner's view, the address written on the NTA "was not the 'last address provided by' [petitioner], as required by 8 U.S.C. § 1229(a)," because it merely reflected "*an* address that [petitioner] told the immigration officer" belonged to "a woman he knew," while the actual "last address" that petitioner orally reported was on Colfax Road. *Ibid.* (citation omitted). The court assumed *arguendo* "[petitioner's] version of the relevant events," *id.* at 19a, and rejected petitioner's contention. *Id.* at 9a-19a.

The court of appeals explained that a governing immigration regulation provides that "the alien must provide to the Immigration Court . . . a written notice of an address . . . at which the alien can be contacted" if, as alleged here, "the address on the . . . [NTA] is incorrect." Pet. App. 11a (quoting 8 C.F.R. 1003.15(d)(1)). "Although the BIA failed to cite the relevant regulation" in its decision, the court of appeals determined that "the BIA's reliance on [Section] 1003.15(d)(1) is clear from its determination" that "'it was [petitioner's] responsibility to immediately notify immigration authorities of his correct address'" if he "'was not living at the E. 126 Street address'" written on the NTA. *Id.* at 14a (quoting *id.* at 27a-28a). The court further determined that the NTA "warns aliens that the address on the NTA, if not updated, will be used by the government for future immigration-related communications" by warning that

"'[n]otices of hearing will be mailed to this address.'" *Id.* at 15a (quoting NTA).

The court of appeals thus concluded that petitioner had "a duty to correct the address listed on the [NTA], particularly since the [NTA] informed him that all future mailings would be sent to the address listed on the form." Pet. App. 15a-16a. Even if petitioner "were to argue" that the NTA's warning was insufficiently clear, the court added, "ignorance of the law is no defense." *Id.* at 16a. As a result, and assuming *arguendo* that "the [NTA] was filled out in error" as petitioner contends, the court concluded that petitioner "failed to comply with 8 C.F.R. § 1003.15(d)(1) by not correcting that mistake" and, as a result, the government was "entitled to rely on the accuracy of the last address provided by [the] alien" on the NTA that "[petitioner] signed." *Id.* at 18a-19a.

The court of appeals added that it "respectfully disagree[d] with the outcome" in *Velasquez-Escovar* v. *Holder*, 768 F.3d 1000 (9th Cir. 2014), which the court found to be "factual[ly] similar[]" and not "materially distinct" from this case. Pet. App. 12a-13a (emphasis and citation omitted); see *id.* at 9a-15a. The court stated that it disagreed with the *Velasquez-Escovar* court's decision not to consider 8 C.F.R. 1003.15(d)(1) in its analysis "because the BIA's decision [in that case] failed to invoke [Section] 1003.15(d)(1), either by its name or by its logic." Pet. App. 13a-14a (quoting *Velasquez-Escovar*, 768 F.3d at 1005). "Here," the court reasoned, "the BIA's reliance on [Section] 1003.15(d)(1) is clear." *Id.* at 14a. The court also stated that it disagreed with *Velasquez-Escovar* about whether the NTA failed "to explicitly alert aliens that they have an obligation under [that regulation] to

correct any government errors made on that form." *Id.* at 15a. The court thus added that, in its view, there exists a "conflict between this case and *Velasquez*[*-Escovar*]." *Id.* at 12a.

b. Judge Sutton concurred in part and concurred in the judgment. Pet. App. 19a-21a. Judge Sutton concluded that *Velasquez-Escovar* involved circumstances "materially distinct" from those here and that the decision of the court of appeals in this case was not "in tension with the Ninth Circuit's opinion" in *Velasquez-Escovar*. *Id.* at 19a-20a. He also concluded that the majority had "needlessly implicate[d]" the principle in *SEC* v. *Chenery Corp.*, 332 U.S. 194 (1947), by disagreeing with *Velasquez-Escovar* about whether 8 C.F.R. 1003.15(d)(1) should be considered in the analysis here, where the agency "appear[s] to have relied exclusively on 8 U.S.C. § 1229(a)(1)(F)." Pet. App. 20a. The warnings on the NTA, Judge Sutton explained, "derive from [Section] 1229(a)(1)(F), which required [petitioner] to inform the government in writing of his address and any change in his address." *Id.* at 21a. That statutory duty, he concluded, provides a "sensible ground for decision" without relying on the regulation. *Ibid.*

ARGUMENT

Petitioner contends (Pet. 10-17) that he was never notified of his obligation to correct the allegedly incorrect address that was recorded on the NTA that he signed and, because his removal-hearing notice was mailed to that address, his removal proceedings should be reopened. The judgment of the court of appeals is correct, and its decision does not conflict with any decision of this Court or any other court of appeals. No further review is warranted.

1. The court of appeals correctly concluded that the BIA did not abuse its discretion in denying petitioner's motion to reopen his removal proceedings. The INA requires an alien placed in removal proceedings to provide the government with a "written record" specifying the address at which he can be contacted during those proceedings and to provide a "written record" of any change in that reported address. 8 U.S.C. 1229(a)(1)(F)(i) and (ii). The NTA specifically warned petitioner of those obligations to provide and update his full mailing address "in writing" and explained that hearing notices would be mailed to that address. Pet. App. 47a. Petitioner failed to comply with those obligations.

Section 1229(a)(1)(F) requires that each NTA specify the requirements that the alien must "immediately provide (or have provided) the Attorney General with a *written record* of an address * * * at which the alien may be contacted respecting [the removal] proceedings" and "immediately" provide the Attorney General with "a *written record* of any change of the alien's address." 8 U.S.C. 1229(a)(1)(F)(i) and (ii) (emphases added). As petitioner's case illustrates, the alien's submission of a written record specifying the address at which he may be contacted during removal proceedings can be quite important. A written record reduces the risks of error inherent in non-written communication and helps ensure that government officials will be able to send removal-hearing notices to an address at which the alien will receive them.

The NTA in this case appropriately notified petitioner of his address-reporting duties under Section 1229(a)(1)(F). The NTA explained that petitioner was "required to provide the INS, *in writing*, with [his]

full mailing address" and to "notify the Immigration Court immediately by using [a particular written form] whenever [he] change[d] [his] address * * * during the course of [his removal] proceeding." Pet. App. 47a (emphasis added). The NTA also explained the importance of that ongoing duty to provide the government with a written record of a current mailing address by explaining that "[n]otices of hearing will be mailed to this address" and failing to attend such a hearing can lead to entry of "a removal order * * * in [petitioner's] absence." *Ibid.*

Under the INA, an alien has been sufficiently served with notice of a hearing date if the hearing notice is mailed "to the last address provided by the alien in accordance with [8 U.S.C. 1229](a)(1)(F)." 8 U.S.C. 1229(c); see 8 U.S.C. 1229a(b)(5)(A) (notice of the time and place of removal hearing is sufficient when sent to "the most recent address provided under [8 U.S.C.] 1229(a)(1)(F)"). Petitioner has argued that the 1999 hearing notice in this case was insufficient because the "last address" he provided during his March 1999 interview with an immigration officer was a Colfax Road address (and not the East 126th Street address on the NTA to which his hearing notice was mailed). Pet. App. 9a (quoting petitioner's brief). But such an oral communication standing alone does not satisfy petitioner's obligation to provide the government with a "written record" of the address at which he could be contacted respecting his removal proceedings. 8 U.S.C. 1229(a)(1)(F).

If an NTA that the alien has signed and returned to the government includes the alien's address, that NTA can satisfy the alien's duty under Section 1229(a)(1)(F) to provide the government with a "written record" of

the address at which he can be contacted about his removal proceedings. If that written record incorrectly reports the alien's address, however, the alien runs the risk of not receiving hearing notices delivered to the reported address. The regulation that the court of appeals invoked in this case—Section 1003.15(d)(1)—accordingly states that, "if the address on the * * * [NTA] is incorrect, the alien must provide to the Immigration Court * * * , within five days of service of that document, a written notice of an address * * * at which the alien can be contacted." 8 C.F.R. 1003.15(d)(1).

The BIA has concluded that that regulation "derive[s] from and * * * track[s] the language of the statute." *In re G-Y-R-*, 23 I. & N. Dec. 181, 191 (B.I.A. 2001) (en banc). Indeed, as noted above, Section 1229(a)(1)(F) requires that after the alien has provided the government with a "written record" of the address at which he may be contacted regarding his removal proceedings, the alien must "immediately" report "any change of the alien's address" by submitting a "written record" of that change. 8 U.S.C. 1229(a)(1)(F)(i) and (ii). When the address on the NTA is not the right address for contacting the alien, the regulation reflects the alien's statutory duty to disclose the "change of the alien's address" from the address reported on that "written record" to the proper address for contacting the alien.

But even assuming *arguendo* that petitioner was not required to report such a change to the address reported on the NTA, petitioner's challenge to his order of removal would still fail. The NTA is the only document in the record of this case that could satisfy petitioner's obligation under Section 1229(a)(1)(F) to

provide the government with a "written record" of the address at which he could be contacted during removal proceedings. Because petitioner never corrected the address on his NTA, it was sufficient to mail the hearing notice to that "last address provided by the alien in accordance with [8 U.S.C. 1229](a)(1)(F)," 8 U.S.C. 1229(c), see 8 U.S.C. 1229a(b)(5)(A)—that is, to the address on the NTA. And if petitioner's NTA could not serve to discharge his duty to submit a "written record" of his address under Section 1229(a)(1)(F), petitioner would have failed to satisfy that duty, thereby releasing the government of any subsequent obligation to provide him with a notice specifying his hearing date. 8 U.S.C. 1229a(b)(5)(B).[2]

Petitioner contends (Pet. 10-13) that the BIA's decision in *G-Y-R-* supports his position. That is incorrect. In *G-Y-R-*, the Board concluded that an order directing the removal of an alien *in absentia* cannot be properly entered "when the alien has not received the [NTA] and thus does not know of the particular address obligations associated with removal proceedings." 23 I. & N. Dec. at 183. The Board in *G-Y-R-* did not address circumstances like those presented here, where the alien has been personally served with the NTA. Nothing in *G-Y-R-* suggests that the warn-

[2] The Department of Homeland Security has informed this Office that, on the same day that petitioner signed and returned his NTA, petitioner also signed and returned a Notice of Custody Determination that explained that petitioner had been released on his own recognizance and that included the same address for petitioner listed on the NTA. That notice, however, is not in the record and would not directly affect the legal analysis or alter the proper resolution of this case because it reflects the same address for petitioner as the NTA. We have provided a copy of that notice to petitioner's counsel with this brief.

ings printed on NTAs are insufficient to convey the alien's address-reporting obligations under Section 1229(a)(1)(F).

2. Petitioner argues (Pet. 10-16) that the court of appeals' decision "squarely conflicts" with the Ninth Circuit's divided decision in *Velasquez-Escovar* v. *Holder*, 768 F.3d 1000 (2014). See Pet. 10-11, 16. Although the court of appeals stated that it disagreed with "the outcome in *Velasquez*[*-Escovar*]" and would "arguably be obliged to grant [petitioner's] petition if *Velasquez*[*-Escovar*] were a binding precedent in [the Sixth C]ircuit," Pet. App. 13a (emphasis omitted), *Velasquez-Escovar* does not reflect a conflict of authority on the question presented, much less a square conflict on an issue of prospective importance that might merit review. To be sure, *Velasquez-Escovar* granted an alien's petition for review on facts arguably analogous to those here, but the Ninth Circuit based its ruling on case-specific factors that led the court to avoid deciding relevant legal questions governing this and other future cases.

In *Velasquez-Escovar*, Velasquez-Escovar told immigration officials during an oral interview that she had "just moved" to an address in Van Nuys, California and no longer lived at her prior address in Los Angeles. 768 F.3d at 1002. The NTA that was issued, however, incorrectly listed her Los Angeles address. *Ibid.* Velasquez-Escovar spent "roughly six months regularly visiting an attorney's office to check on the status of her case," but eventually gave up and assumed the case had been closed because no hearing notice had been issued. *Ibid.* A notice setting the date for the hearing was mailed to the incorrect Los Angeles address about two years after Velasquez-

Escovar's original detention and, when she failed to appear, she was ordered removed *in absentia*. *Ibid.*

The Ninth Circuit concluded that the BIA erred in refusing to reopen the case for two reasons. First, the court found no basis for the BIA's conclusion that Velasquez-Escovar "'did not' provide her current address" in Van Nuys to officials during her interview. *Velasquez-Escovar*, 768 F.3d at 1004. Second, the court concluded that the BIA erred in ruling that "the advisal included with [the NTA]" articulated a duty to ensure that the address listed on the NTA was correct. *Ibid.* The court reasoned that the NTA's warning "says only that 'You are required to provide the [Department of Homeland Security], in writing, with your full mailing address and telephone number,'" and that nothing in that warning "mentions or fairly implies any continuing duty, much less a continuing duty to correct the government. Once the alien provides an address and phone number, the alien's work is done." *Id.* at 1005.

The *Velasquez-Escovar* majority, however, indicated that its decision would not apply in future cases because the majority declined to address the legal issues that would normally govern such cases. First, the majority recognized the dissenting judge's conclusion that an alien's obligation is "to provide her address *in writing* to the agency" and that Velasquez-Escovar rested her case on an oral communication of her address; but the majority declined to consider the INA's written-record requirement because it deemed the issue waived by the government on appeal and not specifically addressed during agency proceedings. 768 F.3d at 1005 n.1. That analytical omission deprives the analysis in *Velasquez-Escovar* of prospective sig-

nificance because the relevant statutory and regulatory regime—including the regulatory requirement that an alien must promptly correct in writing an erroneous address written on the NTA—rests on the requirement that the alien both provide the government with a "written record" of his proper mailing address and then correct that record in writing as warranted. See pp. 11-13, *supra*.

Second, the *Velasquez-Escovar* majority recognized that "the regulation [at 8 C.F.R. 1003.15(d)(1)]—and common sense—put the burden on the alien to inform the immigration court" of an "incorrect address" written on the NTA. 768 F.3d at 1005. The majority nevertheless concluded that it could not "rely on [that regulation] to affirm" because "the BIA's decision failed to invoke [Section] 1003.15(d)(1)." *Ibid.* The majority also stated that the NTA's warning did not track the regulation's text, noted that "this omission may preclude the government from relying on the regulation in cases like this," and observed that the logic of the Board's decision in *G-Y-R-* suggested that an alien could not be held to the specific duty imposed by the regulation to correct an erroneous address on the NTA unless she had notice thereof. *Id.* at 1005-1006. At the same time, however, the court noted that the Board not only failed to rely on the regulation by name but also failed to rely on "its logic," noting that "common sense" in addition to the regulation put the burden on the alien to correct an erroneous address on the NTA. *Id.* at 1005. For that reason, and because as the Board noted in *G-Y-R-*, the regulatory duty derives from the language of the statute, see 23 I. & N. Dec. at 191; see also pp. 12-13, *supra*, the Ninth Circuit's decision in *Velasquez-Escovar* does

not appear to foreclose reliance on the logic of the regulation in a future case.

Finally, the *Velasquez-Escovar* majority noted that the Ninth Circuit had previously concluded that if an alien orally conveys "his correct address, and the government agents incorrectly transcribe[] what he said," the alien would not be "entitled to relief" if the alien "failed to correct the mistake when it was brought to his * * * attention." 768 F.3d at 1006 (quoting *Hamazaspyan* v. *Holder*, 590 F.3d 744, 746 n.3 (9th Cir. 2009)). But because "the BIA did not rely on *Hamazaspyan*," the majority concluded that the decision could not "save the government" in *Velasquez-Escovar*. *Ibid*.

The self-limited analysis in *Velasquez-Escovar* deprives the decision of prospective importance. Since *Velasquez-Escovar*, the Ninth Circuit has yet to analyze an alien's obligation to provide a "written record" of his address and to update that record address as appropriate during removal proceedings. Nor has the Ninth Circuit either analyzed how the regulatory requirement in Section 1003.15(d)(1) relates to the alien's "written record" obligation or definitively resolved whether the regulation is an independent ground for decision in cases like this. As such, *Velasquez-Escovar* does not reflect a division of authority on the question presented, namely, "[w]hether an alien who fails to correct an address erroneously recorded by the government on [an NTA], and who is subsequently ordered removed in absentia, may reopen his removal order." Pet. i. No further review is warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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