No. 15-450

In the Supreme Court of the United States

NIKOLAY IVANOV ANGOV, PETITIONER

v.

LORETTA E. LYNCH, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the immigration judge permissibly relied on a Department of State investigation report in finding that petitioner submitted fraudulent foreign documents in support of his asylum application.

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OPINIONS BELOW

The amended opinion of the court of appeals (Pet. App. 1a-45a) is reported at 788 F.3d 893. An earlier opinion of the court of appeals (Pet. App. 46a-93a) is reported at 736 F.3d 1263. The decisions of the Board of Immigration Appeals (Pet. App. 94a-97a) and the immigration judge (Pet. App. 98a-134a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 8, 2015. A petition for rehearing was denied that same day (Pet. App. 3a). On August 27, 2015, Justice Kennedy extended the time within which to file a petition for a writ of certiorari to and including October 8, 2015, and the petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, provides that the Secretary of Homeland Security or the Attorney General may, in his or her discretion, grant asylum to an alien who demonstrates that he is a "refugee." 8 U.S.C. 1158(b)(1)(A).[1] The INA defines a "refugee" as an alien "who is unable or unwilling to" return to his country of nationality "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. 1101(a)(42)(A); see *INS* v. *Elias-Zacarias*, 502 U.S. 478, 481 (1992).

An applicant bears the burden of establishing that he is a refugee eligible for asylum and warrants a favorable exercise of discretion. 8 U.S.C. 1158(b)(1)(B)(i); see 8 C.F.R. 208.13(a), 1208.13(a). The applicant may show that he is eligible for asylum by establishing a well-founded fear of future persecution. 8 C.F.R. 208.13(b), 1208.13(b); see *INS* v. *Cardo-*

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[1] Congress vested the Secretary of Homeland Security with the authority to make asylum determinations for aliens who are not in removal proceedings (or who are unaccompanied children in removal proceedings, 8 U.S.C. 1158(b)(3)(C)). See Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*; see also 6 U.S.C. 271(b)(3); 8 C.F.R. 208.2(a), 208.4(b), 208.9(a). In general, if an alien is unsuccessful in applying for asylum from the Department of Homeland Security (DHS) and is not in a valid immigration status, his case is referred for institution of removal proceedings before an immigration court under 8 U.S.C. 1229a. 8 C.F.R. 208.14(c). The Attorney General is responsible for conducting proceedings under 8 U.S.C. 1229a against an alien charged by DHS with being removable. 8 U.S.C. 1103(a)(1), 1229a(a)(1). As part of that responsibility, the Attorney General adjudicates asylum applications filed by aliens in such removal proceedings. 8 U.S.C. 1158(b)(1)(A) and (d)(1).

za-Fonseca, 480 U.S. 421, 428 (1987); *INS* v. *Stevic*, 467 U.S. 407, 430 (1984). A rebuttable presumption of the necessary risk of future persecution arises when an applicant establishes past persecution. 8 C.F.R. 208.13(b)(1), 1208.13(b)(1).

The testimony of the applicant, if credible, may be sufficient to sustain his burden of proof. See 8 C.F.R. 208.13(a), 1208.13(a); see also *In re Dass*, 20 I. & N. Dec. 120, 124 (B.I.A. 1989) ("[A]n alien's own testimony may in some cases be the only evidence available, and it can suffice where the testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for his alleged fear."). But corroborating evidence, while not necessary, should be presented when available, particularly when doubts have been raised as to the alien's credibility. See *Dass*, 20 I. & N. Dec. at 124-125; *In re S-M-J-*, 21 I. & N. Dec. 722, 725-726 (B.I.A. 1997). When an alien's proffered corroborating evidence consists of foreign documents, immigration authorities may request that Department of Homeland Security (DHS) or State Department officials attempt to verify the authenticity of those documents. See Pet. App. 135a, 147a (2001 memorandum providing "guidance of general applicability" to officials of the former Immigration and Naturalization Service (INS) "who perform such investigations"); cf. 8 C.F.R. 1208.11(a) (authority for immigration judges adjudicating asylum claims to request "specific comments * * * or other information" from the State Department).

An alien may obtain judicial review of a final decision to deny asylum or related forms of protection through a petition for review in the court of appeals of a final order of removal. See 8 U.S.C. 1252(a). Judi-

cial review, however, is deferential: a determination by the Board of Immigration Appeals (Board) can be reversed only if the evidence is such that a reasonable factfinder would be compelled to reach the opposite conclusion. 8 U.S.C. 1252(b)(4)(B); *Elias-Zacarias*, 502 U.S. at 481 n.1.

2. a. Petitioner, a native and citizen of Bulgaria, attempted to enter the United States on December 19, 2002, without a valid visa or other entry document. Pet. App. 99a. The INS charged petitioner with being inadmissible under 8 U.S.C. 1182(a)(7)(A)(i)(I), and instituted removal proceedings against him in California. Pet App. 99a. At a hearing before an immigration judge, petitioner admitted through counsel that he was inadmissible as charged and, in July 2003, he filed an application for asylum, withholding of removal, and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, S. Treaty Doc. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85 (Convention Against Torture). Pet. App. 99a-100a.

b. Petitioner based his application for asylum on allegations that he had been repeatedly arrested and mistreated by Bulgarian police because of his Roma (gypsy) ethnicity, itself a fact in dispute.[2] Petitioner

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[2] Petitioner had no documentation to establish his Roma ethnicity, allegedly because Bulgarian identity documents do not list ethnicity. Pet. App. 120a; Administrative Record (A.R.) 221-222. During cross-examination and questioning by the IJ, petitioner also was unable to answer numerous questions regarding Roma customs, traditions, and beliefs. Pet. App. 115a-121a; see A.R. 221 (Immigration Judge tells petitioner: "I'll be honest with you, sir. I don't believe you're gypsy").

testified in support of his claim at hearings held on January 28, 2004, and February 17, 2004. Pet. App. 100a; see Administrative Record (A.R.) 115-149, 165-250. He alleged that he had been falsely arrested three times—twice in 1999, when he was accused of participating in burglary and theft offenses, and again in 2002, when he attempted to sign a petition informing the visiting Pope of the hardships affecting the Roma in Bulgaria. Pet. App. 4a, 109a-112a. Petitioner claimed that he was beaten during each of the detentions, that he was called "dirty gypsy" and other derogatory names, and that, after the 2002 arrest, he was interrogated about the group sponsoring the petition to the Pope. *Id.* at 109a-112a.

Petitioner also testified that, in March 2001, he and his family were evicted from their home at Number 9, 3005 Street in Sofia, Bulgaria. Pet. App. 101a, 112a-113a. According to petitioner, he and his family were moved to trailers located at 175 Evropa Boulevard to make room for a supermarket. *Id.* at 112a. When petitioner's family did not complete its move by the deadline, a demolition crew arrived, accompanied by police officers, to destroy the building. *Id.* at 112a-113a. Petitioner testified that masked men arrived in a bus with tinted windows, began beating those who had not yet left their homes, and knocked petitioner unconscious. *Id.* at 113a. He was briefly hospitalized following the altercation and was later warned by the officers not to take any legal action. *Ibid.*

c. Petitioner proffered several documents in support of his testimony, including two subpoenas that ordered him to appear for questioning, on different dates, at rooms in the Fifth Police District in Sofia: Room 4 on Floor 2, and Room 5 on Floor 1. Pet. App.

100a; see A.R. 605, 608. DHS, successor to the former INS, requested that the State Department attempt to authenticate the subpoenas. Pet. App. 100a. The Embassy in Sofia, Bulgaria then conducted an investigation regarding the documents. The State Department reported the results of the investigation to DHS in an April 2004 letter from Cynthia Bunton, then the Director of the Office of Country Reports and Asylum Affairs in the State Department's Bureau of Democracy, Human Rights, and Labor. *Ibid.* The letter, which the court below called the "Bunton Letter," stated that the Embassy had "contacted an official in the Archive Department at the Fifth Police District in" Sofia to request authentication of petitioner's subpoenas. *Id.* at 100a-101a; see *id.* at 148a-149a (reproducing the letter). The letter then summarized the response received from the police official:

> The Bulgarian official stated that the 5th Police District never issued the documents and that she believed they were forged. She stated that officers Captain Donkov, Lieutenant Slavkov, and Investigator Vutov have never worked for the 5th Police District. She also told the Embassy that the case numbers on the subpoenas were not correct, there was no room 4 on the second floor and no room 5 on the first floor, and that the telephone numbers on the subpoenas were incorrect. The Embassy also obtained an imprint of the 5th Police District's official seal, which is much larger than the one on these two subpoenas.

Id. at 149a.

The Bunton Letter further explained that the Embassy had been unable to verify or locate the addresses petitioner had given for his residence in Sofia and

the location to which he said his family had been relocated after the alleged eviction. Pet. App. 149a. Attached to the letter were five photographs of the places that the investigator had visited in trying to verify the addresses. *Id.* at 5a; A.R. 485-486.

Petitioner submitted evidence in rebuttal to the Bunton Letter, including photographs that he asserted were of the locations to which he had previously testified and a letter purportedly from a Bulgarian human rights organization. Pet. App. 102a; see *id.* at 34a (letter from Daniela Mihaylova). He further argued that the Bunton Letter should not be admitted unless he had an opportunity to cross-examine the Embassy official who had conducted the investigation. *Id.* at 102a-103a. DHS inquired about the possibility of receiving additional information from the State Department, which declined that request in a June 2005 letter from the new Director of the Office of Country Reports and Asylum Affairs, Nadia Tongour. *Id.* at 103a-104a. She explained that, pursuant to State Department policy, her office "generally does not provide additional information or follow-up inquiries to DHS officers or immigration judges regarding the results of an investigation. Such additional demands are further burdens on Consular Officers in the performance of their regular responsibilities and are particularly onerous for [foreign service nationals] who may be subject to local reprisal." *Id.* at 151a.

3. On March 20, 2006, the Immigration Judge (IJ) issued a written decision denying petitioner's application for asylum. Pet. App. 98a-134a. The IJ concluded that there were "[s]ignificant credibility problems" with petitioner's claim, specifically arising from his proffer of the two subpoenas that the government

contended were fraudulent. *Id.* at 124a-125a.[3] After reviewing the evidence, the IJ concluded that the subpoenas were in fact fraudulent, and that the "fraud goes to the heart of [petitioner's] claim because it concerns his alleged past persecution." *Id.* at 128a, 130a. The IJ rejected petitioner's arguments that the Bunton Letter should be disregarded because it purportedly did not conform to procedures in the State Department's *Foreign Affairs Manual* or because the government had not attempted to authenticate the subpoenas through official channels with the Bulgarian Ministry of the Interior. *Id.* at 128a-129a. The judge reasoned that the official from the Fifth Police District consulted by the State Department had "pointed to a variety of glaring mistakes in the subpoenas," and that petitioner had "not provided any explanation for th[o]se mistakes." *Id.* at 129a. There was, the IJ thus concluded, "no reason to doubt the veracity of * * * the fraud findings related to the subpoenas" set forth in the letter. *Ibid.* The IJ also ruled that the government's failure to produce "the Bulgarian investigator" for cross-examination did not violate petitioner's statutory right to a "reasonable" opportunity to confront the evidence against him. *Id.* at 128a, 130a.

Finally, the IJ found that petitioner's credibility was further undermined by the contradictory evidence regarding his prior addresses, including the location

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[3] Because petitioner filed his asylum application before May 11, 2005, the provisions of the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B., 119 Stat. 302—including those governing credibility and corroboration, 8 U.S.C. 1158(b)(1)(B)—did not apply to petitioner's application. See, *e.g.*, *In re S-B-*, 24 I. & N. Dec. 42, 43 (B.I.A. 2006).

to which he and his family were allegedly forcibly relocated after the destruction of their homes in 2001. Pet. App. 131a. The IJ accordingly concluded that petitioner was not credible, and denied his applications for asylum on that basis. *Id.* at 131a-132a.[4]

4. The Board dismissed petitioner's administrative appeal (A.R. 9-18), adopting and affirming the decision of the IJ. Pet. App. 94a-97a. The Board held that admission of the Bunton Letter "did not deprive [petitioner] of his right to a full and fair hearing." *Id.* at 95a. It also concluded that petitioner had not offered an "adequate basis to disturb the [IJ's] finding that the Bunton [L]etter calls into question the legitimacy of the subpoenas" that petitioner submitted as evidence of past persecution. *Id.* at 96a. According to the Board, the submission of those fraudulent documents addressed "a material element" of petitioner's claim and was sufficient to "support an adverse credibility finding." *Ibid.*

The Board noted that the IJ had relied on "discrepancies" between petitioner's former addresses in Sofia and the State Department investigation, which could not confirm those locations. Pet. App. 96a. The Board stated that "[t]he record [wa]s unclear as to whether the locations cited in the Bunton [L]etter and shown in [petitioner's] exhibits are actually the same areas." *Ibid.* But the Board concluded that, even if it "accept[ed] as true [petitioner's] version of events" regarding his prior addresses, that "truthful testimo-

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[4] The IJ also denied petitioner's related requests for withholding of removal and protection under the Convention Against Torture. Pet. App. 132a-133a. Petitioner does not separately address those forms of protection in this Court, Pet. 5 n.2, and we do not discuss them further.

ny is not sufficient to overcome the indicia of incredibility stemming from the fraudulent" subpoenas he proffered. *Id.* at 96a-97a. The Board therefore determined that, "[o]n this record," petitioner "did not present credible testimony or meet his burden of proof to support a claim for asylum." *Id.* at 97a.

5. Petitioner sought judicial review of the Board's decision. He alleged various violations of procedural due process and statutory rights stemming from the admission of the Bunton Letter, including that he was denied an opportunity to examine the evidence against him and his statutory right to cross-examine witnesses, see Pet. C.A. Br. 17-23, and that the letter constituted unreliable hearsay under Ninth Circuit precedent, *id.* at 23-28.

On December 4, 2013, a divided panel of the court of appeals denied the petition for review. Pet. App. 46a-93a. The majority concluded, in relevant part, that admission of the State Department report was fundamentally fair and did not violate petitioner's right to due process, and that the discrepancies between that letter and petitioner's documentary and testimonial evidence constituted substantial evidence supporting the IJ's adverse-credibility determination. *Id.* at 51a-80a. Judge Thomas dissented. *Id.* at 83a-93a. He would have resolved the case by holding that the Bunton Letter did not amount to substantial evidence but, "forced to decide" the constitutional question, concluded that the IJ's reliance on the letter also violated petitioner's right to due process. *Id.* at 89a n.2 (Thomas, J., dissenting).

6. On June 8, 2015, the court of appeals denied petitioner's petition for rehearing and issued amended majority and dissenting opinions denying the petition

for judicial review. Pet. App. 1a-45a. The court held that the IJ's reliance on the letter detailing the results of the "State Department investigation" did not violate any due process or statutory rights that petitioner had, and that the letter was sufficiently reliable to constitute substantial evidence supporting the IJ's adverse-credibility determination. *Id.* at 3a-33a.[5]

a. The court of appeals held, as a threshold matter, that the IJ's admission of and reliance on the Bunton Letter did not violate due process or petitioner's statutory rights. Pet. App. 8a-11a. The court held that reliance on the letter could not violate due process because, as "an alien who has never formally entered the United States," petitioner has no "constitutional right to procedural due process." *Id.* at 8a. Rather, for an alien in petitioner's position, "procedural due process is simply '[w]hatever the procedure authorized by Congress' happens to be." *Ibid.* (brackets in original) (quoting *Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), and citing, *inter alia*, *Landon* v. *Plasencia*, 459 U.S. 21, 32 (1982)). The court recognized that four courts of appeals had held that an IJ's reliance on documents similar to the State Department letter at issue violates due process. *Id.* at 9a n.3 (citing *Banat* v. *Holder*, 557 F.3d 886, 892-893 (8th Cir. 2009); *Anim* v. *Mukasey*, 535 F.3d 243, 256-258 (4th Cir. 2008); *Alexandrov* v. *Gonzales*, 442 F.3d 395, 407 (6th Cir. 2006); *Ezeagwuna* v. *Ash-*

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[5] The court of appeals also rejected petitioner's contention—not renewed in this Court—that the Board erred in denying his motion to remand proceedings to take into account an intervening decision of the Sixth Circuit regarding alleged improprieties by the U.S. Consulate in Sofia, Bulgaria. Pet. App. 6a-7a; see *Alexandrov* v. *Gonzales*, 442 F.3d 395 (6th Cir. 2006).

croft, 325 F.3d 396, 405-408 (3d Cir. 2003)). But the court explained that it did not need to resolve either that question (because petitioner had no "constitutional right to procedural due process"), or whether asylum applicants are entitled to "certain 'minimum due process' rights" (because petitioner "was clearly given fair access to all his statutory rights"). *Ibid.* (quoting *Marincas* v. *Lewis*, 92 F.3d 195, 204 (3d Cir. 1996)).

The court of appeals also rejected the contention that admission of the Bunton Letter denied petitioner his statutory "right to examine evidence against him." Pet. App. 9a (citing 8 U.S.C. 1229a(b)(4)(B)). The record, the court explained, instead showed that petitioner "was allowed to examine the Bunton Letter, and given ample time to produce substantial evidence to rebut it." *Ibid.* And, although petitioner claimed a right to cross-examine the witnesses against him, the court concluded that the government had no obligation to produce the foreign police official whose statements were included in the letter and had appropriately declined to produce the State Department official who signed the letter "pursuant to a coordinate department's reasonable policy governing the secrecy and safety of its officers." *Id.* at 10a-11a.

b. Having rejected petitioner's claims of constitutional and statutory error, the court of appeals explained that its review was "limited to whether the IJ's adverse credibility finding was supported by substantial evidence." Pet. App. 11a. The court held that it was. The court explained that the Bunton Letter "is not an unsupported assertion that [petitioner] is a liar," but instead "gives specific reasons for doubting the authenticity of the addresses and points to

several problems with the subpoenas" that petitioner proffered. *Id.* at 30a; see *id.* at 18a-19a. The court therefore concluded, "on this record[,] that the IJ acted within his discretion when he admitted" and relied on the Bunton Letter to find that the subpoenas "were fraudulent," and that IJ's "adverse credibility finding based on the fraudulent subpoenas was supported by substantial evidence." *Id.* at 32a.

In reaching that conclusion, the court of appeals stated that it was "depart[ing]" from what it understood to be the Second Circuit's "categorical[]" view that State Department reports lacking certain specific indicia of reliability "cannot support [an] adverse credibility finding." Pet. App. 12a (quoting *Lin* v. *United States Dep't of Justice*, 459 F.3d 255, 272 (2d Cir. 2006)). The court believed that the standard set forth in *Lin* undermined the ability of immigration officials to root out fraud in the asylum system, *id.* at 16a-17a, and that it was contrary to the nature of substantial-evidence review. *Id.* at 12a (explaining that such review "requires an appellate court to consider the reasonableness of an agency's conclusions; it does not empower [the courts] to craft quasi-statutory criteria governing the admissibility of evidence in agency proceedings"). The court emphasized, however, that it was not holding that reports similar to the Bunton Letter "will always lead to adverse credibility findings," but was "simply disclaim[ing] the conclusion that [such reports] must be excluded from an immigration judge's consideration." *Id.* at 17a. And given the "extremely deferential" standard of review and petitioner's "burden of proving his eligibility for asylum," the court concluded that the IJ's decision "to

credit the letter" was "permissible." *Id.* at 17a-18a (citation and emphasis omitted).

c. Chief Judge Thomas dissented. Pet. App. 35a-45a. He concluded that, because the Bunton Letter "lacks the indicia of reliability set forth" by the Second Circuit in *Lin*, "the agency could not have relied on it under the substantial evidence standard." *Id.* at 40a. Chief Judge Thomas would also have held that the government did not make a reasonable effort to produce a witness from the State Department, thereby violating petitioner's statutory right to examine the evidence against him. *Id.* at 40a-42a.

ARGUMENT

Petitioner contends (Pet. 14-34) that (1) the court of appeals erred in upholding an adverse-credibility finding that the IJ based on an allegedly unreliable consular investigation report, and (2) this Court's review is warranted to resolve a circuit conflict over whether consular investigation reports similar to the State Department letter in this case can form the basis for such a finding. Those contentions lack merit and do not warrant further review.

The court of appeals' conclusion that the IJ permissibly relied on the Bunton Letter is correct and does not conflict with any decision of this Court. Moreover, petitioner overstates the extent and the prospective significance of the circuit conflict that he (and the court below) identified. In particular, it is not clear that the narrow disagreement will lead to disparate outcomes, both because recent decisions indicate that consular investigation reports more current than the 11-year-old report in this case regularly contain the kind of information that renders them admissible under the law of every circuit, and because the deci-

sion below does not require immigration courts to consider consular investigation reports that they deem unreliable. This Court recently denied a petition for a writ of certiorari raising a similar challenge to the admission of hearsay evidence in immigration proceedings, see *Garcia-Reyes* v. *Holder*, 134 S. Ct. 2133 (2014) (No. 13-680), and the same result is appropriate here.

1. The court of appeals correctly concluded that the IJ acted within "his discretion" in crediting the Bunton Letter as evidence that petitioner submitted fraudulent documents in support of his asylum application. Pet. App. 17a-18a, 32a. Under the INA's codification of the substantial evidence standard of review, an IJ's "findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. 1252(b)(4)(B); see *INS* v. *Elias-Zacarias*, 502 U.S. 478, 481 & n.1, 483-484 (1992). Here, at the very least, any reasonable adjudicator would not be "compelled" to conclude that petitioner's account was credible, and that he had carried his burden of establishing eligibility for asylum, despite the numerous flaws in the documents identified in the Bunton Letter.

a. The court of appeals upheld the IJ's adverse-credibility finding by applying a settled legal framework, many aspects of which petitioner does not dispute.[6] Petitioner agrees at the outset that the IJ's

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[6] Petitioner does not include in the question presented a challenge to the court of appeals' holding (Pet. App. 8a-9a) that reliance on the Bunton Letter did not violate due process, and that issue therefore is not before the Court. Petitioner does take issue in passing with the court of appeals' "rationale" for rejecting his due process claim, suggesting that the rationale "was incorrect."

finding need be supported only by "substantial evidence." Pet. 4 (citation omitted). That deferential standard is satisfied by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 477 (1951) (internal citation omitted); see 8 U.S.C. 1252(b)(4)(B) (standard is whether contrary conclusion is compelled); *Dickinson* v. *Zurko*, 527 U.S. 150, 162 (1999) (substantial-evidence standard is even more deferential than review for clear error). Petitioner does not dispute (Pet. 24), moreover, that the Federal Rules of Evidence are inapplicable in civil immigration proceedings, see Fed. R. Evid. 101(a), 1101; cf. *FTC* v. *Cement Inst.*, 333 U.S. 683, 705-706 (1948) ("administrative agencies * * * have never been restricted by the rigid rules of evidence"), and that the substantial evidence supporting an adverse-credibility finding may therefore consist of hearsay, so long as that hearsay evidence is "material" and its admission is fundamentally fair. *Richardson* v. *Perales*, 402 U.S. 389, 398, 410 (1971) (cited at Pet. 24-25) (upholding under the substantial-evidence standard the Social Security Administration's denial of disabil-

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Pet. 19 n.5. Even if the issue were properly raised, however, this Court reviews judgments, not rationales. See *Black* v. *Cutter Labs.*, 351 U.S. 292, 297 (1956). And the court of appeal's conclusion followed directly from this Court's precedents, which have long held that an arriving alien still legally at the border has no due process right to procedural protections beyond what Congress provides by statute. See *Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); see also *Jama* v. *Immigration & Customs Enforcement*, 543 U.S. 335, 349 (2005) ("Our immigration laws historically distinguished between aliens who have 'entered' the United States and aliens still seeking to enter (whether or not they are physically on American soil).").

ity benefits based on "uncorroborated hearsay" reports that were "directly contradicted by the testimony of live medical witnesses and by the claimant in person").

b. Under those standards, the court of appeals correctly upheld the IJ's reliance on the Bunton Letter. The letter was material to the central issue in the case—whether petitioner had suffered past persecution based on his ethnicity and therefore presumptively possessed a well-founded fear of future persecution if removed to Bulgaria. See 8 U.S.C. 1101(a)(42) (defining "refugee"), 1158(b)(1)(A) (eligibility for asylum dependent on establishing alien is a "refugee"). It was also probative on that issue. Petitioner sought to corroborate his claim of past police abuse with subpoenas that, he contended, confirmed that he made two appearances at a specific Bulgarian police station. But the factual assertions in the Bunton Letter called the entirety of petitioner's account "into question" by providing information from which the IJ could reasonably conclude that the subpoenas were fraudulent. Pet. App. 96a. Specifically, the letter asserted that the police officers listed in the subpoenas had never worked at that station, the room numbers where petitioner was supposedly interrogated did not exist, the case and telephone numbers were incorrect, and the seal on the subpoenas did not match an imprint of the official seal. *Id.* at 18a-19a, 101a, 129a, 149a.

Multiple indicia of reliability underscored the "probative value" of the Bunton Letter. See *Richardson*, 402 U.S. at 407-408; see *Black's Law Dictionary* 677 (10th ed. 2014) (evidence is "probative" when it "tends to prove or disprove a point in issue"). The letter was "not an unsupported assertion that [petitioner] is a

liar." Pet. App. 30a. To the contrary, it set forth the specific factual statements described above, and explained that the individual noting those "glaring mistakes" in the document (*id.* at 129a) was "an official in the Archive Department" of the police department that allegedly had issued the subpoenas. *Id.* at 148a-149a. The letter indicated, moreover, that the Embassy had not rested solely on the word of a foreign police official, but had conducted its own legwork—both by "obtain[ing] an imprint" of the police department's seal to compare to those on the subpoenas, and by attempting to physically verify two addresses that petitioner had provided. *Id.* at 149a. The latter attempts were further reflected in five photographs attached to the letter and depicting "places the investigator had visited while trying to verify the addresses." *Id.* at 5a; see A.R. 486-487.

For similar reasons, the IJ's reliance on the Bunton Letter was fundamentally fair. See *Richardson*, 402 U.S. at 401, 410. Because each of the statements in the letter "describes facts in the real world," petitioner had the opportunity "to rebut [them] by presenting proof that those facts are not as the Bunton Letter describes them." Pet. App. 19a. As the court of appeals explained, petitioner "did precisely that with respect to" the letter's statement that two addresses petitioner had provided to support his claim could not be confirmed, *ibid.*, which the IJ found to have "further undermined" petitioner's credibility, *id.* at 131a. Petitioner submitted additional documentary evidence to the IJ to support his account concerning the addresses. *Id.* at 102a; A.R. 450, 458-476. The Board observed that as a result the record was "unclear" on the issue, but concluded that even if it accepted peti-

tioner's account of the addresses as true, that did not "overcome the indicia of incredibility stemming from the fraudulent documents." Pet. App. 96a-97a.

Petitioner thus had the case-specific opportunity for rebuttal that this Court has deemed sufficient to address reliability concerns even in settings where litigants (unlike petitioner) are entitled to heightened constitutional protections. See *Perry* v. *New Hampshire*, 132 S. Ct. 716, 723 (2012) (explaining that, in criminal cases, "[t]he Constitution * * * protects a defendant against a conviction based on evidence of questionable reliability, not by prohibiting introduction of the evidence, but by affording the defendant means to persuade the jury that the evidence should be discounted as unworthy of credit"); cf. *Gailius* v. *INS*, 147 F.3d 34, 46 n.7 (1st Cir. 1998) (stating, in the context of a non-arriving alien, that "[a]sylum applicants do have a right under the Due Process Clause to an opportunity to rebut the opinions of the State Department, but this right is satisfied by giving the applicant an opportunity to present expert testimony or reports of non-governmental organizations").

Consideration of the Bunton Letter was especially appropriate in light of the governing burdens of proof and the limited purpose for which the letter was offered. As the court of appeals emphasized (Pet. App. 17a, 20a), the government never had any burden of proof in this case. Petitioner bore the burden of establishing both his admissibility to the United States as an arriving alien, see 8 U.S.C. 1229a(c)(2)(A), and his eligibility for asylum, see 8 U.S.C. 1158(b)(1)(B); 8 C.F.R. 1208.13(a). When the government presented the Bunton Letter, petitioner had already conceded inadmissibility, p. 4, *supra*, and the question for the IJ

was whether petitioner had established his eligibility for asylum. The context of the letter's admission is thus important: it was admitted not to establish an element of the government's own case, but to impeach petitioner's testimony and documentary evidence with respect to an issue on which he bore the burden of proof. Cf. *Bridges* v. *Wixon*, 326 U.S. 135, 153-154 (1945) (pre-*Richardson* decision rejecting the admission of certain hearsay statements when offered to establish the alien's deportability, but "assum[ing]" that the statements could have been admitted "for purposes of impeachment"). Given the limited purpose that admission of the letter served and the "extremely deferential" standard of review, the court of appeals correctly held that the immigration courts "could reasonably conclude that the Bunton Letter is at least sufficient to cast doubt on [petitioner's] evidence and force him to come up with more solid proof to support his claim." Pet. App. 17a (citation and internal quotation marks omitted); see *id.* at 32a.

c. Petitioner's contrary contentions lack merit.

i. Petitioner contends (Pet. 24) that the Bunton Letter is the kind of "[m]ere uncorroborated hearsay" that "does not constitute substantial evidence" sufficient to support an agency's factual findings. *Richardson*, 402 U.S. at 407 (quoting *Consolidated Edison Co.* v. *NLRB*, 305 U.S. 197, 230 (1938)). But *Richardson* itself makes clear that the quoted statement from *Consolidated Edison* was "not a blanket rejection by the Court of administrative reliance on hearsay irrespective of reliability and probative value." *Id.* at 407-408; see *EchoStar Comm. Corp.* v. *FCC*, 292 F.3d 749, 753 (D.C. Cir. 2002). Indeed, as explained above, pp. 16-17, *supra*, the Court in *Richardson* upheld an

agency's denial of disability benefits based on hearsay medical reports that stood "alone" and were contradicted by live medical evidence and the claimant's own testimony. 402 U.S. at 399.

This case falls well within the bounds established in *Richardson*. While petitioner points (Pet. 25-26) to aspects of the Bunton Letter that potentially detract from its reliability, the IJ could—and here did—consider those arguments in deciding "how much weight * * * to give" the letter. A.R. 328. The IJ could also reasonably conclude that the asserted flaws did not outweigh the multiple indicia of reliability evident from the face of the letter, see pp. 17-18, *supra*, including the concrete nature of its factual statements and the fact that it was the product of a United States government investigation.[7] Moreover, despite

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[7] Petitioner criticizes (Pet. 27-29) the court of appeals for applying to the Bunton Letter the presumption of regularity that applies "to many functions performed by government officials." Pet. App. 22a. This Court, however, has applied the presumption to similar documents that are the ultimate result of internal government production. See, *e.g.*, *United States Dep't of State* v. *Ray*, 502 U.S. 164, 179 (1991) ("We generally accord Government records and official conduct a presumption of legitimacy."). And petitioner's reasons for resisting application of the presumption here are speculative. See *Doumbia* v. *Gonzales*, 472 F.3d 957, 963 (7th Cir. 2007) ("Unsubstantiated generalizations without more are not enough for us to question the reliability of evidence—especially when that evidence consists of official U.S. Government reports."). He suggests that the letter may have been unreliable because the investigator interviewed an official "from the same police precinct accused of persecuting petitioner," who would "have powerful incentives to be less than candid." Pet. 28 (quoting *Anim* v. *Mukasey*, 535 F.3d 243, 257 (4th Cir. 2008)). But that assumes, contrary to the text of the Bunton Letter, that the investigator revealed petitioner's allegations of mistreatment to the police

responding to the separate points regarding his proffered addresses in Bulgaria, petitioner did not seek to explain, let alone contradict, the "glaring mistakes" (Pet. App. 129a) that the letter identified in the subpoenas. See *id.* at 19a (explaining that petitioner "did none of" the series of things that he could have done "to undermine" the letter's statements, "perhaps because he knew that the subpoenas were forged"). Under those circumstances, the letter was sufficiently reliable and probative for consideration by the IJ (and the Board). See *Richardson*, 402 U.S. at 408.

ii. Petitioner also asserts (Pet. 25-27) that the Bunton Letter cannot constitute substantial evidence because it was not prepared in accordance with the government's own internal "policy" and "procedures," as set forth in the State Department's *Foreign Affairs Manual* (FAM) and a 2001 memorandum from Bo Cooper (Pet. App. 135a-147a) (Cooper Memorandum), then the General Counsel of the former INS. The cited FAM provision appears in a chapter specifically governing the furnishing of records and information from visa files for court proceedings, and in any event states only that "[o]ral statements" supplied to DHS "must, *whenever possible*, be reduced to writing and sworn to before a consular officer." 9 FAM 40.4 N10.3 (2009) (emphasis added); see Pet. App. 128a (IJ's conclusion that the FAM provision "is not a mandate that the U.S. Department of State's investigations be written and sworn to"). For its part, the Cooper Memorandum "provide[d] guidance of general applicability to assist" INS (now DHS) officials who

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official. See Pet. App. 148a (confirming that the Embassy "did not reveal or imply the existence of an asylum application on the part of the applicant").

conduct overseas document verification investigations. Pet. App. 147a.

Both the FAM and the Cooper Memorandum serve the important end of providing procedural regularity for the agencies' conduct of relevant operations in international settings. Cf. *Town of Castle Rock* v. *Gonzales*, 545 U.S. 748, 765 (2005) ("Making the actions of government employees obligatory can serve various legitimate ends other than the conferral of a benefit on a specific class of people."). As "internal" rules of practice and procedure for conducting investigations, however, neither document prescribes rules for the admissibility or weighing of investigative reports in separate agency adjudicating proceedings. See *Schweiker* v. *Hansen*, 450 U.S. 785, 789 (1981) (per curiam) (agency not estopped in court by failure to comply with terms of an internal handbook used "by thousands of [its] employees"); *United States* v. *Caceres*, 440 U.S. 741, 754-756 (1979) (no exclusionary remedy in judicial proceedings for violation of an agency regulation). Accordingly, any deviation from those internal procedures does not preclude the Bunton Letter from serving as substantial evidence supporting the IJ's factual findings, as sustained by the Board and the court of appeals.

iii. Finally, although petitioner does not identify the issue as a question presented, he briefly asserts (Pet. 29-30) that the Bunton Letter was admitted without affording him "a reasonable opportunity * * * to cross-examine witnesses presented by the [g]overnment" in the removal proceeding. 8 U.S.C. 1229a(b)(4)(B); see Pet. App. 40a-42a (Thomas, C.J., dissenting). But petitioner does not challenge the IJ's determination that this statutory provision did not

require the presence of the consular officials who carried out the investigation in Bulgaria, which would have been infeasible and was not the usual practice. See Pet. App. 130a. And while petitioner complains (Pet. 30) that the government invoked "a blanket policy" in declining to produce the State Department official who had signed the letter, he does not explain how examining Bunton (who by then had left her former post, see Pet. App. 150a-152a) or her successor (who might have been unfamiliar with the matter) would have "ameliorate[d]" the reliability concerns he raises or altered the letter's hearsay character. *Id.* at 10a; see *Vladimirov* v. *Lynch*, No. 13-9595, 2015 WL 6903447, at *4 (10th Cir. Nov. 10, 2015) ("where the absence of the witness from the hearing 'was legitimate and not contrived,' the 'alien must establish not only error, but prejudice'") (citation omitted); cf. 8 C.F.R. 1208.12(b) (regulations allowing IJs to seek and rely on the views of the State Department do not "entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of" the State Department). Any limitation on petitioner's ability to cross-examine an agency official therefore did not vitiate the IJ's reliance on the Bunton Letter.

2. Petitioner contends (Pet. 14-23) that this Court's review is necessary because the decision below creates a conflict in the circuits over whether consular investigation reports with the characteristics of the Bunton Letter can "constitute substantial evidence sufficient to support an adverse credibility finding." Pet. 15 (capitalization altered). Petitioner emphasizes (Pet. 2, 15) the court of appeals' statement that it was "depart[ing]" from the views of the Second Circuit and asserts, as did the dissenting judge below (Pet. App.

35a-40a), that the court's opinion is also in tension with due process holdings in four other circuits. As explained below, however, both the court of appeals and petitioner overstate the extent and nature of any disagreement among the courts of appeals, none of which has adopted a categorical rule barring (or requiring) the admission of consular investigation reports in asylum proceedings.

a. Petitioner principally contends (Pet. 15) that review is warranted because the court below disagreed with the Second Circuit on whether a report "of the sort at issue in this case" can constitute substantial evidence supporting an IJ's adverse-credibility finding. That asserted conflict is, by its terms, narrow and fact-specific. Petitioner does not suggest, for example, that the court below applied a different legal standard than does the Second Circuit. Compare *Lin* v. *United States Dep't of Justice*, 459 F.3d 255, 268-269 (2006) (assessing whether report was reliable and its admission fundamentally fair), with Pet. App. 17a-20a (similar). Nor does petitioner argue that the Ninth Circuit required admission (much less crediting) of *all* consular investigation reports without regard to their reliability. See *id.* at 17a (making clear that the decision below "simply disclaim[s] the conclusion that" reports analogous to the Bunton Letter "must be excluded from an immigration judge's consideration," and does not "conclude that such letters will always lead to adverse credibility findings").

Petitioner's claim of a conflict instead rests on the premise that the Second Circuit in *Lin* articulated a rule "categorically" excluding from immigration proceedings consular investigation reports that do not "reveal the qualifications of the investigator, the ex-

tent of the investigation or the methods used to verify the information." Pet. App. 12a. *Lin*, however, did not announce such a categorical rule. The court there held that a particular consular investigation report communicating the Chinese government's assessment that an applicant's prison-release certificate had been fabricated was "highly unreliable and therefore insufficient to satisfy the substantial evidence requirement." 459 F.3d at 269. In reaching that conclusion, the court began by explaining that it had "declined in the past to set rigid requirements for the contents of government reports on the authenticity of document[s]." *Id.* at 270. The court then stated that "there are some standards," *ibid.*, looked for guidance in the Cooper Memorandum directed to officials of the former INS, and "distilled" three "useful"—but "non-exhaustive"—"factors" from that document. *Id.* at 271 (listing the identity of the investigator, details regarding the objectives of the investigation, and information about the methods used to obtain the information as relevant factors); see *Fu Li Lian* v. *United States Dep't of Homeland Sec.*, 235 Fed. Appx. 821, 822 (2007) (stating that the Second Circuit takes the three factors from *Lin* "into account" when "assessing the reliability of an investigative report"). "Using th[o]se factors as a guide," the court found the report before it "to be woefully insufficient" to support the Board's conclusion that the prison-release certificate at issue was "a forgery." *Lin*, 459 F.3d at 271.[8]

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[8] Petitioner places great weight (Pet. 2, 15, 19, 26) on the Second Circuit's concluding statement "that the Consular Report is inherently unreliable." *Lin*, 459 F.3d at 272. But that was clearly a description of the report in *Lin*, not a reference to the category of consular investigation reports as a whole.

The Bunton Letter, however, contains much of the information found lacking in *Lin* and the Second Circuit's subsequent decision in *Balachova* v. *Mukasey*, 547 F.3d 374, 383 (2008). The letter begins with a paragraph detailing the purposes and objectives of the investigation—to "authenticat[e]" two subpoenas and "verif[y]" addresses submitted by petitioner to support his claim for asylum. Pet. App. 148a-149a. It describes the methods used to verify petitioner's submissions (*i.e.*, visiting the locations provided by petitioner, interviewing a police official, and comparing the seal on the proffered subpoenas against a sample from the police station). *Ibid.*; A.R. 486-487 (photographs). It conveys not a foreign official's barebones conclusion that the proffered document was fraudulent, but four specific flaws that the official identified, as well as the Embassy's assessment of a discrepancy regarding the official seal. Cf. *Balachova*, 547 F.3d at 383 (diplomatic note left it unclear "in what respects" a submitted birth certificate "varied from the original," including whether inconsistences were "major" or "minor technical" ones). And, although the letter does not contain the name or qualifications of the investigator, it lists the position of the foreign police official consulted ("an official in the Archive Department" of the relevant police precinct) and was submitted to the IJ under the signature of a named State Department official. Pet. App. 148a-149a. Contrary to petitioner's suggestion (Pet. 18), it is thus far from clear that the Bunton Letter "would have been disregarded as unreliable in the Second Circuit."

That is especially true because the Bunton Letter does not implicate a central and threshold concern of the court in *Lin*—namely, that the consular officials

who sought to verify the authenticity of the prison-release certificate had violated the confidentiality requirements of the immigration laws, 8 C.F.R. 208.6, by sharing the certificate with Chinese officials. 459 F.3d at 262-268. As a result of that breach, the court expressed concern that the foreign officials responding to the agencies' inquiry would have been aware of the reason for the investigation and would have had reason to be less than truthful. *Id.* at 269-270 (agreeing with the IJ "that the Consular Report is entirely based on the opinions of Chinese government officials who appear to have powerful incentives to be less than candid on the subject of their government's persecution of political dissidents"). By contrast, the Bunton Letter confirms that the investigators were aware of and complied with the confidentiality requirements. Pet. App. 148a. And because there is no evidence that the police official with whom investigators spoke knew of the purpose of the investigation or of petitioner's allegations of mistreatment, see *id.* at 6a-7a, this case does not implicate the fundamental concern of the court in *Lin*. See *Corovic* v. *Mukasey*, 519 F.3d 90, 95-96 (2d Cir. 2008) (characterizing *Lin*'s holding as tied to the breach of confidentiality); see also *Jing Shou Jiang* v. *Gonzales*, 221 Fed. Appx. 69, 71 (2d Cir. 2007) (upholding reliance on consular investigation report where there was no indication that confidentiality was breached).

b. Petitioner argues (Pet. 19) that the court of appeals' decision is also "irreconcilable" with decisions in four other circuits rejecting, on constitutional grounds, the immigration courts' reliance on particular consular investigation reports. Pet. 20-23 (citing *Banat* v. *Holder*, 557 F.3d 886, 889-893 (8th Cir. 2009);

Anim v. *Mukasey*, 535 F.3d 243, 248-258 (4th Cir. 2008); *Alexandrov* v. *Gonzales*, 442 F.3d 395, 407 (6th Cir. 2006); *Ezeagwuna* v. *Ashcroft*, 325 F.3d 396, 405-408 (3d Cir. 2003)). Petitioner is correct (Pet. 23) that the constitutional analysis conducted in those decisions is similar to the statutory analysis conducted in this case and *Lin*. Compare, *e.g.*, *Anim*, 535 F.3d at 256-258, with *Lin*, 459 F.3d at 269-272. Nevertheless, there is no square conflict because all of petitioner's cited decisions addressed due process challenges—which are not the basis for petitioner's contentions here—rather than the substantial evidence standard of review that petitioner invokes, Pet. App. 11a, 32a.

Moreover, petitioner errs in suggesting (Pet. 22) that the Bunton Letter is "indistinguishable" from the reports in his cited decisions and would necessarily be held to violate due process in four other circuits. For example, as was true in *Lin*, the Fourth Circuit's decision in *Anim* involved a threshold determination that consular officials had breached confidentiality requirements. 535 F.3d at 253-256; see *id.* at 257 (emphasizing, in light of the breach, that the foreign official would have had strong incentive to lie and could have "been improperly influenced by his self-interest as an official" of the accused government). As explained above, pp. 27-28, *supra*, there was no such breach in this case. Pet. App. 8a-9a, 148a.

The circumstances addressed by the Third and Sixth Circuits also differ in significant respects from those of this case. In *Alexandrov*, the government had moved to terminate the alien's asylum status and thus bore the burden of establishing that the alien had submitted fraudulent documents. 442 F.3d at 397-398; see 8 C.F.R. 1208.24(f) (setting forth standard of proof

for agency to terminate prior grant of asylum). The Sixth Circuit there and the Third Circuit in *Ezeagwuna* ultimately applied a totality-of-the-circumstances analysis that placed substantial weight on the fact that, in both cases, immigration authorities had not disclosed the reports until the day of (or shortly before) the hearing, thus depriving the aliens of a meaningful opportunity to respond. See *Alexandrov*, 442 F.3d at 400, 407; *Ezeagwuna*, 325 F.3d at 402, 406. Both courts have since distinguished those precedents and approved reliance on consular investigation reports that were disclosed in advance of the hearing and that—as here, A.R. 269-401, 413-424 (additional evidentiary proffer and hearing testimony)—provided a chance for rebuttal. See *Min Huang* v. *Attorney Gen. of the U.S.*, 376 Fed. Appx. 253, 256 (3d Cir. 2010); *Lici* v. *Mukasey*, 258 Fed. Appx. 845, 848-849 (6th Cir. 2007). It is therefore unclear that the IJ's reliance on the Bunton Letter would be held to violate due process in any (much less all) of the courts of appeals cited by petitioner.

3. This Court's intervention is not warranted at this time for the additional reason that any disagreement concerns an issue that petitioner has not shown to be of ongoing practical importance.

In particular, the decisions disapproving reliance on consular investigation reports that petitioner cites all addressed reports that were prepared before—and in some instances long before—the Second Circuit's August 2006 decision in *Lin*, *supra*. See Pet. App. 148a-149a (Bunton Letter dated April 2004); *Balachova*, 547 F.3d at 383 (2d Cir.) (November 1999); *Lin*, 459 F.3d at 260 (2d Cir.) (June 2000); *Ezeagwuna*, 325 F.3d at 401-402 (3d Cir.) (June and August 2000);

Anim, 535 F.3d at 250 (4th Cir.) (July 2004); *Alexandrov*, 442 F.3d at 399-400 (6th Cir.) (February and September 1998); *Banat*, 557 F.3d at 889 (8th Cir.) (March 2006). Many of those reports predated even the June 2001 Cooper Memorandum (Pet. App. 135a, 145a-146a), which provided internal guidance for officials of the former INS conducting overseas verification investigations and which the Second Circuit first cited in *Lin*, 459 F.3d at 271.

More recent decisions suggest that consular investigation reports submitted to (and relied on) by the immigration courts since 2006 have routinely contained the type of information deemed important in *Lin* and petitioner's other cited decisions. Indeed, petitioner himself points out (Pet. 34) that the Second Circuit and other courts of appeals have regularly rejected challenges to adverse-credibility findings that were based on reports of more recent vintage. See, *e.g.*, Resp. Br. at 9-10, *Huang* v. *Holder*, 493 Fed. Appx. 220 (2d Cir. 2012) (No. 12-194) (October 2006); *Min Huang*, 376 Fed. Appx. at 255-256 (3d Cir.) (report disclosed to alien in June 2007); see also *Lyashchynska* v. *U.S. Att'y Gen.*, 676 F.3d 962, 965 (11th Cir. 2012) (October 2007); *Karim* v. *Holder*, 596 F.3d 893, 895 (8th Cir. 2010) (noting that the IJ had relied on a consular investigation report submitted by government in 2007, but resolving appeal on different grounds) (cited at Pet. 34). Accordingly, insofar as current consular investigation reports generally reflect the "non-exhaustive" factors that *Lin* deemed relevant to establishing their reliability, 459 F.3d at 271, those reports will be admissible—and can serve as substantial evidence—in every circuit. And similarly situated asylum applicants will not be "treated

differently" (Pet. 14) based on whether their case arises in the Second or the Ninth Circuits.

The risk of conflicting outcomes is further minimized because, as the court below emphasized, its decision does not require that IJs admit consular investigation reports analogous to the Bunton Letter, much less dictate that such reports "will always lead to adverse credibility findings." Pet. App. 17a-18a. To the contrary, if a particular report omits information relevant to establishing its reliability, an asylum applicant in the Ninth Circuit will have the opportunity to "convince the trier of fact" to give the report little weight or "to disregard" it altogether. *Id.* at 18a; see *Vladimirov*, 2015 WL 6903447, at *5 (explaining that the hearsay nature of evidence does not bar its admission in immigration proceedings, but may "affect[] the weight it is accorded") (internal citation omitted).

In sum, because it is not clear that any disagreement concerning reliance on the specific type of document at issue in this case will lead to materially different outcomes and is of prospective importance, this Court's review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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