

FILED

JUN 28 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 22-1038

In the Supreme Court of the United States

HECTOR GONZALEZ-RIVAS

Petitioner,

v.

MERRICK GARLAND, U.S. Attorney General,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eighth Circuit**

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

Table of Authorities..... ii
Reply Brief for Petitioner.....1
Conclusion2

TABLE OF AUTHORITIES

Cases

Wilkinson v. Attorney Gen.,
2022 WL 4298337 (3d Cir. Sept. 19,
2022)1
Wilkinson v. Garland,
No. 22-666 (filed Jan. 17, 2023).....1

Statutes

8 U.S.C. § 1252(a)(2)(D)2

REPLY BRIEF FOR PETITIONER

The government concedes “that the question presented has divided the courts of appeals and is important and recurring,” and thus the government has acquiesced to a grant of certiorari in another pending matter. BIO 7. At a minimum, as the government agrees (BIO 7), this petition should be held pending the Court’s resolution of *Wilkinson v. Garland*, No. 22-666 (filed Jan. 17, 2023).

Petitioner respectfully submits, however, that the Court should consider granting certiorari in this matter in addition to or in lieu of *Wilkinson*.

First, this case presents a compelling vehicle for review. The decision below was published, and the court of appeals fully ventilated the factual and legal issues posed for review. Pet. App. 2a-4a. By contrast, in *Wilkinson*, the court of appeals addressed the salient issues in cursory fashion. *Wilkinson v. Attorney Gen.*, 2022 WL 4298337, at *1 (3d Cir. Sept. 19, 2022).

Second, petitioner here stands likely to obtain relief through a favorable exercise of discretion. The government’s claim to the contrary (BIO 8) is incorrect. In juxtaposition to *Wilkinson*, the BIA here found that petitioner “has a loving relationship with his children and supports his family financially through his work as a self-employed auto mechanic business owner,” “recognize[d] the importance of [petitioner’s] presence in his children’s daily lives,” and “acknowledge[d] that they will suffer significant emotional and financial hardship following his removal.” Pet. App. 6a-8a. *Compare Wilkinson* BIO 4-5 (observing that the child “lived without [petitioner’s] daily presence” and would not suffer “emotional hardship” or “financial hardship”). Indeed, these findings render

the hardship analysis uniquely important here, making this an especially attractive vehicle for review.

Third, the petition squarely presents the question of whether a reviewable “question of law” under Section 1252(a)(2)(D) includes the question of whether undisputed facts satisfy the “exceptional and extremely unusual hardship” standard. The court of appeals expressly determined that this “is precisely the discretionary determination that Congress shielded from *** review” (Pet. App. 4a)—and that is the question presented here. The petition does not, as the government contends, reassert “purely legal questions” that would “complicate” review. BIO 7-8. That much is clear because the government sources these supposedly “complicat[ing]” “legal questions” to a description of the decision below (Pet. 10) and an explanation of why this Court’s resolution of the question presented is likely to be outcome-determinative should the Court find in petitioner’s favor on the jurisdictional question (Pet. 19). Indeed, the government’s argument only highlights the suitability of the vehicle: Had the court of appeals reviewed the BIA’s application of the legal standard to the undisputed facts, it would likely conclude that petitioner satisfies the hardship standard.

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

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