No. 22-617

In the Supreme Court of the United States

FRANCISZEK KRAZSZTOF BYSTRON, PETITIONER

v.

MERRICK B. GARLAND, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
JOHN W. BLAKELEY
W. MANNING EVANS
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether courts of appeals have jurisdiction under 8 U.S.C. 1252(a)(2)(D) to review the agency's determination that a noncitizen seeking a waiver of inadmissibility pursuant to 8 U.S.C. 1182(h) failed to show extreme hardship.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is unreported but is available at 2022 WL 1639608. The decisions of the Board of Immigration Appeals (Pet. App. 11a-13a, 14a-19a) and the immigration judge (Pet. App. 20a-28a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 24, 2022 (Pet. App. 9a-10a). A petition for rehearing was denied on October 4, 2022 (Pet. App. 29a-30a). The petition for a writ of certiorari was filed on January 3, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

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

United States may seek adjustment of status to that of a lawful permanent resident. See 8 U.S.C. 1255.[1] An applicant must satisfy several prerequisites to qualify for adjustment, including that he be "admissible to the United States for permanent residence." 8 U.S.C. 1255(a)(2). If the applicant satisfies the eligibility criteria, then his status "may be adjusted by the Attorney General, in his discretion." 8 U.S.C. 1255.

A noncitizen convicted of a crime involving moral turpitude is not admissible for permanent residence and is therefore ineligible for adjustment of status. See 8 U.S.C. 1182(a)(2)(A)(i)(I). The Attorney General, however, enjoys the discretion, under certain conditions, to waive that ground of inadmissibility. 8 U.S.C. 1182(h). To establish eligibility for such a waiver, a noncitizen "who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence" must demonstrate "to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien." 8 U.S.C. 1182(h)(1)(B).

b. An immigration judge (IJ) has the authority to rule on an application for adjustment of status and related waiver of inadmissibility as part of determining whether a noncitizen is removable from the United States. See 8 C.F.R. 1003.10(b), 1240.1(a)(1)(i) and (ii), 1245.2(a)(1). A noncitizen may appeal an adverse decision to the Board of Immigration Appeals (Board), to which the Attorney General has delegated the authority

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

to consider appeals from IJ decisions. 8 C.F.R. 1003.1(a)(1) and (b), 1003.10(c). The Board's decision is subject to judicial review under statutorily prescribed standards and limitations. 8 U.S.C. 1252(a)(1).

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546, Congress sought to facilitate the prompt removal of noncitizens who are unlawfully present in the United States by, among other things, limiting the scope of judicial review of certain determinations made during removal proceedings. *Id.* § 306(a)(2), 110 Stat. 3009-607 to 3009-608; see, *e.g.*, *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484-487 (1999). As a result, 8 U.S.C. 1252(a)(2)(B) provides that "no court shall have jurisdiction to review * * * (i) any judgment regarding the granting of relief under section 1182(h) * * * of this title, or (ii) any other decision or action of the Attorney General * * * the authority for which is specified under this subchapter to be in the discretion of the Attorney General." A further bar appears in Section 1252(a)(2)(C), which prohibits review of removal orders issued to noncitizens who are "removable by reason of having committed [various] criminal offense[s]," including an aggravated felony. 8 U.S.C. 1252(a)(2)(C); see 8 U.S.C. 1227(a)(2)(A)(iii). As relevant here, the INA defines "aggravated felony" as including "an offense that * * * involves fraud or deceit in which the loss to the victim or victims exceeds $10,000." 8 U.S.C. 1101(a)(43)(M)(i).

In the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, § 106(a)(1)(A)(iii), 119 Stat. 310, Congress further amended Section 1252(a)(2) by adding a proviso in subparagraph (D). That proviso states that "[n]othing in

subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law." 8 U.S.C. 1252(a)(2)(D). This Court has interpreted the proviso in subparagraph (D) to encompass mixed questions involving "the application of a legal standard to undisputed or established facts." *Guerrero-Lasprilla* v. *Barr*, 140 S. Ct. 1062, 1068 (2020).

2. Petitioner is a native and citizen of Poland who arrived in the United States in 1999 at the age of 19 and adjusted his status to that of a lawful permanent resident in 2005. Pet. App. 14a, 23a. Petitioner's wife is also from Poland; she became a U.S. citizen in 2018. *Id.* at 22a. Together, they have two U.S.-citizen daughters: "VB," born in 2007, and "KB," born in 2012. *Ibid.*

In 2018, Petitioner was convicted of bank fraud, in violation of 18 U.S.C. 1344, that caused loss to his victims in excess of $10,000. See Administrative Record (A.R.) 100, 576-580, 641; see also A.R. 585-586 (describing offense conduct).[2] Petitioner was sentenced to 12 months and one day of incarceration, and ordered to pay $161,998 in restitution. A.R. 577-578.

a. Following petitioner's conviction, DHS charged him with being removable as an aggravated felon pursuant to 8 U.S.C. 1227(a)(2)(A)(iii) and 1101(a)(43)(M)(i). A.R. 572-573, 639-641. Petitioner conceded the charge but sought adjustment of status under 8 U.S.C. 1255(a). See A.R. 100-101. To that end, he requested a waiver of inadmissibility under 8 U.S.C. 1182(h). See Pet. App. 11a, 21a-22a.

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[2] Two administrative records were filed in the consolidated court of appeals cases. References here are to the one associated with C.A. Docket No. 21-1807.

The disputed issue before the agency was whether petitioner could "establish[] to the satisfaction of the Attorney General" that petitioner's removal "would result in extreme hardship" to his wife or two daughters. 8 U.S.C. 1182(h)(1)(B); see Pet. App. 15a, 21a. The IJ ruled that, were it not for the issue of hardship, he would grant petitioner's applications, Pet. App. 21a; but he found that petitioner had failed to show the requisite level of hardship, *id.* at 28a. The IJ accordingly denied the waiver of inadmissibility as well as the application for adjustment of status, and ordered that petitioner be removed to Poland. *Ibid.*

In assessing hardship, the IJ considered the relevant facts both individually and in the aggregate. Pet. App. 22a-28a. The IJ acknowledged that petitioner's wife suffers from advanced endometriosis. *Id.* at 22a. He noted the financial problems faced by petitioner's family since his conviction, incarceration, and immigration detention. *Id.* at 23a. The IJ also discussed the psychological difficulties that his family members would face if petitioner were removed to Poland and they accompanied him as intended—including the particular difficulties that petitioner's middle-school-aged daughter, VB, might have in transitioning to living in a foreign country. *Id.* at 26a-27a. The IJ also noted that petitioner and "his wife have considerable family remaining in Poland." *Id.* at 27a.

The IJ found that the hardship present in this case, in general, was not substantially different from that in *In re Pilch*, 21 I. & N. Dec. 627 (B.I.A. 1996) (en banc), where the Board had found an absence of "extreme hardship." Pet. App. 24a-25a, 28a. The IJ then focused on "two factors not directly addressed by *Pilch*": the medical condition of petitioner's wife and the educa-

tional concerns regarding VB. *Id.* at 25a. As to the first, the IJ noted that "the most significant invasive procedure" to address the wife's medical issue was done in Poland, and "that intervention was successful." *Ibid.* The IJ further observed that petitioner failed to present "sufficient evidence to establish that further treatment to ameliorate the ongoing condition * * * could not be performed in Poland." *Ibid.* As to the second consideration, the IJ found "that education would be available for both children in Poland." *Id.* at 26a-27a. The IJ observed that VB is a "very bright student" who "already speaks Polish," and noted the absence of evidence that VB "could not receive special assistance in making a transition from education in the English language to education in the Polish language." *Id.* at 27a.

b. The Board dismissed petitioner's appeal and denied his motion for remand. See Pet. App. 14a-19a. Petitioner argued that the IJ had overlooked various hardship considerations, such as the fact that his daughters were school-aged and not fluent in Polish. See *id.* at 16a. The Board pointed out that the IJ had, in fact, considered the daughters' situation. See *id.* at 16a-17a. And the Board further found that, "considering the hardship factors argued by [petitioner] on appeal, as well as the other hardships recognized by the [IJ]," the IJ had correctly concluded that petitioner "did not meet his burden of establishing extreme hardship to a qualifying relative." *Id.* at 17a. Petitioner also requested a remand, purportedly in light of new evidence, which the Board denied. See *id.* at 17a-18a.

Petitioner subsequently moved the Board to reopen proceedings, contending that VB's "mental health status" had "diminished substantially since the date that this matter was heard before the [IJ]." A.R. 12. The

Board denied the motion. Pet. App. 11a-13a. It expressed skepticism that some of the allegedly new evidence (the parents' decision to delay discussing the return to Poland with VB) was actually "new and previously unavailable." *Id.* at 12a-13a (citing 8 C.F.R. 1003.2(c)(1)). And it observed that the proffered evidence discussed "many of the factors [the Board] previously considered, including the children's educational opportunities in Poland, the economic changes that might occur, and the emotion[ ]al hardships of transitioning to a new culture." *Id.* at 12a.

c. The court of appeals dismissed the consolidated petitions for review of the Board's decisions dismissing petitioner's appeal and denying reopening. Pet. App. 1a-8a. The court held that two jurisdictional bars apply here: Section 1252(a)(2)(B)(i) precludes review of the waiver denial, and Section 1252(a)(2)(C) precludes review of the removal order because petitioner is an aggravated felon. *Id.* at 3a. But the court further recognized that, notwithstanding those bars, Section 1252(a)(2)(D) preserves review over constitutional claims and questions of law. *Id.* at 3a n.4.

As to the Board's dismissal of his appeal, the court observed that petitioner "does not claim that the BIA applied the wrong law or failed to consider relevant facts." Pet. App. 4a. Instead, it noted, "he is challenging *how* the BIA considered the facts." *Ibid.* The court held that "arguments that the BIA incorrectly weighed evidence or failed to consider evidence are not questions of law" and therefore are "not open to judicial review." *Id.* at 4a & n.7.

Nevertheless, the court of appeals further found that, "[t]o the extent [petitioner's] arguments can be construed to involve colorable constitutional or legal

questions, they lack merit." Pet. App. 4a. It rejected on the merits petitioner's claims that the Board violated his due process rights and failed to consider his ability to return lawfully to the United States in the future. *Id.* at 4a-5a. Petitioner also contended that the Board's "case law" interpreting the hardship standard "is inconsistent and erroneous," but the court rejected that argument as both meritless and unexhausted. *Id.* at 5a; see *id.* at 5a-6a & n.13.

The court of appeals also found that it lacked jurisdiction in part over petitioner's challenge to the denial of his motion to reopen, because "[c]hallenging the discretionary denial of relief through a motion to reopen does not change the jurisdictional analysis." Pet. App. 6a-7a. But it considered two constitutional claims—which invoked the Due Process Clause and petitioner's constitutional rights as a parent—and rejected them on the merits. *Id.* at 7a-8a.

The court of appeals denied petitioner's rehearing petition without recorded dissent. Pet. App. 29a-30a.

ARGUMENT

Petitioner contends (Pet. 12-16) that the court of appeals erred in dismissing for lack of jurisdiction his challenge to the agency's hardship determination. He also contends (Pet. 9-12) that the courts of appeals are divided over the question presented. But the decision below was correct and does not implicate any conflict in the circuits. In any event, this case would be a poor vehicle for further review. The Court should deny the petition for a writ of certiorari.

1. The exact nature of petitioner's argument is unclear. Regardless of how that argument is understood, however, it lacks merit.

a. At times, petitioner suggests that the court of appeals erred in refusing jurisdiction over the purely legal argument that "the Board applied the wrong legal standard when evaluating whether he met the extreme hardship standard." Pet. 13; see, *e.g.*, Pet. 14 (asserting that the court declined to review "the propriety of the legal framework used by the Board"). That contention rests on a false premise, because the court of appeals did *not* find that it lacks jurisdiction over petitioner's legal arguments. Instead, it found that those claims fail on the merits.

In particular, the court rejected petitioner's claim that the Board's "case law is inconsistent and erroneous because" it conflates the showing of "extreme hardship" necessary to obtain a waiver of inadmissibility and the showing of "exceptional and extremely unusual hardship" necessary to obtain cancellation of removal. Pet. App. 5a-6a & n.13. The court clarified the relationship between those two standards and found that, regardless, petitioner had forfeited the argument by failing to exhaust it before the Board. *Ibid.* Considered on their own terms, the court's holdings are correct and do not warrant further review. Petitioner does not contend otherwise.

b. At other times, petitioner suggests that the court of appeals erred in refusing jurisdiction over the agency's determination that the undisputed facts "did not meet the extreme hardship standard." Pet. 13; see, *e.g.*, Pet. 15 (arguing that Section 1252(a)(2)(D), as interpreted in *Guerrero-Lasprilla* v. *Barr*, 140 S. Ct. 1062 (2020), "permit[s] the exact type of review that the extreme hardship standard requires, namely the application of a legal standard to uncontested facts"). But the court's holding on that point is also correct, because the

hardship inquiry does not present a mixed question of law and fact under *Guerrero-Lasprilla*.

Instead, the hardship inquiry involves an inherently discretionary, fact-intensive balancing that falls outside the ambit of Section 1252(a)(2)(D). Arguments that the agency "incorrectly weighed evidence, failed to consider evidence or improperly weighed equitable factors are not questions of law." *Chiao Fang Ku* v. *Attorney Gen.*, 912 F.3d 133, 144 (3d Cir. 2019) (citation omitted). Rather, they "amount to nothing more than 'quarrels over the exercise of discretion and the correctness of the factual findings reached by the agency.'" *Cospito* v. *Attorney Gen.*, 539 F.3d 166, 170 (3d Cir. 2008) (per curiam) (quoting *Emokah* v. *Mukasey*, 523 F.3d 110, 119 (2d Cir. 2008)); see, *e.g.*, *Munis* v. *Holder*, 720 F.3d 1293, 1295 (10th Cir. 2013) (holding that "the hardship determination required for a waiver of inadmissibility under § 1182(h)(1)(B) is an unreviewable discretionary decision"); *Rodrígues-Nascimento* v. *Gonzáles*, 485 F.3d 60, 62 (1st Cir. 2007) (finding no jurisdiction over a challenge to "how much weight should be granted to the evidence" underlying a hardship determination).

The statute's requirement that a noncitizen establish extreme hardship "*to the satisfaction of the Attorney General*," 8 U.S.C. 1182(h)(1)(B) (emphasis added), confirms the discretionary character of the hardship standard. That language explicitly vests the hardship determination in the Attorney General's judgment, thereby insulating it from judicial review. See, *e.g.*, *Vasile* v. *Gonzales*, 417 F.3d 766, 768 (7th Cir. 2005) ("Permissive language that refers to demonstrating something to the agency's 'satisfaction' is inherently discretionary."); *Valenzuela-Alcantar* v. *INS*, 309 F.3d 946, 949 (6th Cir.

2002) (reaching same conclusion on similar statutory language).

Petitioner offers no counterargument to any of the above. Instead, he suggests (Pet. 12-13) that *Guerrero-Lasprilla* requires classifying hardship as a mixed question of fact and law that is reviewable under 8 U.S.C. 1252(a)(2)(D). In *Guerrero-Lasprilla*, this Court addressed whether "the statutory phrase 'questions of law'" in Section 1252(a)(2)(D) "includes the application of a legal standard to undisputed or established facts." 140 S. Ct. at 1068. The Court held that it does, rejecting the contention "that 'questions of law' refers only to 'pure' questions" and "exclude[s] from judicial review all mixed questions." *Id.* at 1069-1070.

That holding has nothing to do with the question presented in this case. *Guerrero-Lasprilla* did not cast any doubt on the existence of a discretionary category of decisions that are neither pure questions of law nor mixed questions of law and fact. Indeed, the entire function of Section 1252(a)(2)(B) is to protect discretionary decisions from judicial review. See 8 U.S.C. 1252(a)(2)(B)(ii) (barring review of any other decision "the authority for which is specified * * * to be in the discretion of" the Executive Branch); see also *Kucana* v. *Holder*, 558 U.S. 233, 246-247 (2010). Nor did *Guerrero-Lasprilla* offer any guidance as to the content of that third category of decisions. And it is particularly unlikely that *Guerrero-Lasprilla* changed the result under the Third Circuit's jurisprudence, since that court had already concluded that mixed questions are reviewable (consistent with *Guerrero-Lasprilla*) before it held that hardship determinations are unreviewable. See *Kamara* v. *Attorney Gen.*, 420 F.3d 202, 211 (3d Cir. 2005).

2. Petitioner contends that the circuits are in conflict over whether they "retain jurisdiction to review the Board's application of the legal standard for evaluating hardship to undisputed facts, under their authority to review questions of law, including mixed questions of law and fact." Pet. 11; see Pet. 10-12. Petitioner is mistaken.

Petitioner attempts to manufacture a circuit conflict by conflating cases about whether two different issues are "questions of law" under Section 1252(a)(2)(D): (1) determinations by the Board regarding "extreme hardship" for purposes of a waiver of inadmissibility under Section 1182(h)(1)(B); and (2) determinations regarding "exceptional and extremely unusual hardship" for purposes of cancellation of removal under Section 1229b(b)(1)(D). See Pet. 3-4 (referring generally to "statutory eligibility for relief requiring that requisite levels of hardship be satisfied" and specifically mentioning both hardship standards).

Although the two hardship standards employ similar language, they are sufficiently distinct that petitioner errs in categorizing them as part of a single circuit conflict. The relevant provisions impose distinct thresholds for hardship. See Pet. App. 6a & n.13 (explaining that "extreme hardship" is a lower standard than "exceptional and extremely unusual hardship"). And only Section 1182(h)(1)(B), not Section 1229b(b)(1)(D), expressly requires an applicant to establish hardship "to the satisfaction of the Attorney General." 8 U.S.C. 1182(h)(1)(B). Although that language is not dispositive in the government's view—because the discretionary nature of the "exceptional and extremely unusual hardship" standard is alone sufficient to insulate it from review—at least some courts of appeals have deemed it

significant that the cancellation statute does not explicitly vest the hardship determination in the Attorney General's discretion. See, *e.g.*, *Singh* v. *Rosen*, 984 F.3d 1142, 1152-1153 (6th Cir. 2021); but see *Romero-Torres* v. *Ashcroft*, 327 F.3d 887, 891 (9th Cir. 2003). The two provisions therefore should not be treated as interchangeable for purposes of establishing a circuit conflict.

The majority of decisions that petitioner cites (Pet. 11-13) as having adopted his position address whether jurisdiction exists to review the agency's "exceptional and extremely unusual hardship" finding in a case about cancellation of removal. 8 U.S.C. 1229b(b)(1)(D); see *Gonzalez Galvan* v. *Garland*, 6 F.4th 552, 558-560 (4th Cir. 2021); *Trejo* v. *Garland*, 3 F.4th 760, 767-774 (5th Cir. 2021), abrogated by *Castillo-Gutierrez* v. *Garland*, 43 F.4th 477, 481 (5th Cir. 2022) (per curiam); *Singh*, 984 F.3d at 1148-1154 (6th Cir.); *Gonzalez-Rivas* v. *Garland*, 53 F.4th 1129, 1131-1132 (8th Cir. 2022), petition for cert. pending, No. 22-1038 (filed Apr. 21, 2023); *De La Rosa-Rodriguez* v. *Garland*, 49 F.4th 1282, 1286-1291 (9th Cir. 2022), vacated on grant of reh'g en banc, 62 F.4th 1232 (9th Cir. 2023). The remaining two cases contain no holding at all regarding jurisdiction to review hardship findings. See *Williams* v. *Garland*, 59 F.4th 620, 627 (4th Cir. 2023) (discussing Section 1252(a)(2)(D) in connection with equitable tolling); *Patel* v. *United States Att'y Gen.*, 971 F.3d 1258, 1265 (11th Cir. 2020) (en banc) (addressing whether Section 1252(a)(2)(B)(i) applies to pure findings of fact in connection with different form of relief), aff'd, 142 S. Ct. 1614 (2022).[3]

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[3] Other pending petitions for writs of certiorari present a question about jurisdiction to review an exceptional and extremely unusual hardship determination. See *Wilkinson* v. *Garland*, No. 22-666

Many of the cases that petitioner cites are irrelevant for other reasons, too. The Fifth Circuit subsequently found that this Court's intervening decision in *Patel* v. *Garland*, 142 S. Ct. 1614 (2022), abrogated its holding in *Trejo*. See *Castillo-Gutierrez* v. *Garland*, 43 F.4th 477, 481 (2022) (per curiam). The Eighth Circuit in *Gonzalez-Rivas* actually held that Section 1252(a)(2)(D) does *not* permit review of whether the facts rise to the level of exceptional and extremely unusual hardship. See 53 F.4th at 1132. And the Ninth Circuit in *De La Rosa-Rodriguez* not only left the jurisdictional question undecided, see 49 F.4th at 1291, but subsequently vacated its decision upon granting rehearing en banc, see 62 F.4th 1232.

In short, petitioner does not identify a decision from any other court of appeals that, contrary to the decision below, has found jurisdiction under Section 1252(a)(2)(D) to review whether the facts rise to the level of "extreme hardship" for purposes of the waiver of inadmissibility under Section 1182(h)(1)(B) that would allow for an adjustment of status. Petitioner thus fails to show that he would have prevailed in any other circuit.

3. In any event, this case would be a poor vehicle to review the question presented. As discussed, petitioner does not specify whether he intends to challenge the

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(filed Jan. 17, 2023); *Gomez-Vargas* v. *Garland*, No. 22-734 (filed Feb. 2, 2023); *Ramirez-Hidrogo* v. *Garland*, No. 22-1026 (filed Apr. 19, 2023); *Gonzalez-Rivas* v. *Garland*, No. 22-1038 (filed Apr. 21, 2023); see also *Guillen-Perez* v. *Garland*, No. 22-683 (filed Nov. 9, 2022). The government has agreed that certiorari is appropriate in *Wilkinson*, in light of the well-developed circuit conflict on the question presented in that case. See Resp. Br., *Wilkinson*, *supra* (No. 22-666). Even if this Court grants review in *Wilkinson*, however, there would be no need to hold this case given the differences between the applicable hardship provisions.

agency's purely legal rulings, its application of law to undisputed fact, or both. See p. 9, *supra*; see also, *e.g.*, Pet. i. That lack of clarity would hamper this Court's ability to resolve the jurisdictional question. Because the court of appeals addressed petitioner's purely legal claims on the merits, re-raising those claims in this Court would distract from the jurisdictional question and divert the dispute to case-specific legal arguments that are not independently worthy of this Court's review.

In addition, petitioner failed to raise his jurisdictional arguments below. His briefs before the panel did not even mention jurisdiction over the waiver denial beyond a perfunctory statement of jurisdiction. See, *e.g.*, C.A. Doc. 10, at 2 (Dec. 21, 2020). And neither his briefs before the panel nor his petition for rehearing discussed whether application of the extreme hardship standard to the undisputed facts presents a mixed question of law and fact under Section 1252(a)(2)(D) and *Guerrero-Lasprilla*. Petitioner's failure to engage with the jurisdictional question in a meaningful way in the court below casts into further doubt the specific issue he seeks to present in this Court and counsels against this Court's consideration of petitioner's arguments in the first instance. Cf. *Cutter* v. *Wilkinson*, 544 U.S. 709, 719 n.7 (2005) (noting that this Court is "a court of review, not of first view").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
JOHN W. BLAKELEY
W. MANNING EVANS
Attorneys

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