23-929

IN THE

Supreme Court of the United States

HUGO ABISAÍ MONSALVO VELÁZQUEZ,

Petitioner,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Federal immigration law allows the government to grant a "voluntary departure" period of up to 60 days to a noncitizen "of good moral character" who receives an adverse decision in removal proceedings. 8 U.S.C. §1229c(b). If the noncitizen fails to depart during that window, he or she is subject to a civil fine and is ineligible for various forms of immigration relief (like cancellation of removal or adjustment of status) for 10 years. §1229c(d)(1). If, however, the noncitizen "file[s] a post-decision motion to reopen or reconsider during the period allowed for voluntary departure," the penalties for failure to voluntarily depart do not apply. 8 C.F.R. §1240.26(b)(3)(iii).

The question presented is:

When a noncitizen's voluntary-departure period ends on a weekend or public holiday, is a motion to reopen filed the next business day sufficient to avoid the penalties for failure to depart?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Tenth Circuit:

Monsalvo Velázquez v. *Garland*, No. 22-9576 (Sept. 8, 2023)

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Hugo Abisaí Monsalvo Velázquez respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Tenth Circuit.

INTRODUCTION

The law routinely extends filing deadlines that fall on a weekend or public holiday to the next business day. The practice has ancient common-law roots, *see, e.g.*, *Careswell* v. *Vaughan*, 85 Eng. Rep. 585, 588-600 (K.B. 1668) (Kelynge, C.J.), and it endures in countless statutes and court rules today, *see, e.g.*, S. Ct. R. 30.1. In keeping with this tradition, federal regulations have long applied the same principle in immigration proceedings. *See* 8 C.F.R. §1001.1(h). But the courts of appeals are now divided over how this time-tested rule applies to a specific subset of noncitizens in immigration proceedings: those who have been allowed to voluntarily depart the country. This Court should grant certiorari to resolve the conflict and provide much-needed clarity on this important issue.

When a removable noncitizen possesses "good moral character" and meets other eligibility criteria, the government may grant the noncitizen up to 60 days to leave the United States at his or her own expense rather than face forcible removal. 8 U.S.C. §1229c(b)(1). A noncitizen who accepts such a voluntary-departure offer but then fails to leave during the allotted period is subject to strict penalties—including hefty fines and ineligibility for various forms of immigration relief for 10 years. §1229c(d)(1). Those penalties do not apply, however, if the noncitizen "files a post-decision motion to reopen or reconsider during the period allowed for voluntary departure." 8 C.F.R. §1240.26(b)(3)(iii).

The question presented in this case is how this exception applies when the final day of the voluntary-departure period falls on a weekend or holiday. The lower courts are squarely divided on that question. The Ninth Circuit has repeatedly held that a noncitizen in this situation may file a motion to reopen on the next business day and still avoid the strict penalties for failure to depart. *See Meza-Vallejos* v. *Holder*, 669 F.3d 920, 927 (2012). The Tenth Circuit, by contrast, has decided that someone who files the next business day is out of luck. *See* Pet. App. 1a-17a. Neither circuit shows any signs of changing its mind: the Ninth Circuit has adhered to its position for nearly two decades, and the Tenth Circuit weighed and rejected the Ninth Circuit's view in a considered (albeit incorrect) published opinion, and subsequently declined to reconsider the issue en banc. Only this Court can settle the dispute.

The question presented is not just academic or technical—it has real-world consequences for people like the petitioner. Hugo Monsalvo came to the United States nearly 20 years ago as a teenager; he lives in Colorado with his spouse and two U.S.-citizen children. On October 12, 2021, the Board of Immigration Appeals (BIA or Board) gave him 60 days to depart the United States. *See* Pet. App. 42a-43a. That 60-day deadline fell on a Saturday; the BIA received Mr. Monsalvo's motion to reopen in the mail the next business day. If Mr. Monsalvo's case had arisen in California, this motion would have been timely and Mr. Monsalvo would not be subject to further penalties. But because his case arose in Colorado, the court deemed his motion untimely and the government treats Mr. Monsalvo as having violated the conditions

of voluntary departure. There is no reason for the severe consequences that flow from this timeliness determination to turn on geographic happenstance.

The 1-1 nature of the current split does not undermine the need for this Court's review. The split creates uncertainty across the country about the relevant deadline. This Court can eliminate that uncertainty with a simple yes-or-no answer: either a next-business-day filing is timely, or it is not. *Either* answer will result in a bright-line rule that the public can follow. Further percolation, by contrast, will not offer any insight into the relative merits of those competing options—it will just yield more needless confusion.

While either answer will give noncitizens clear guidance, one answer is better. The Ninth Circuit's rule honors the text of the applicable statutory and regulatory provisions—not to mention longstanding tradition and settled expectations—while the Tenth Circuit's rule flouts text and history. Accordingly, the Court should grant the petition and reverse the judgment below.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 88 F.4th 1301. Its earlier, superseded opinion (Pet. App. 18a-32a) is reported at 82 F.4th 909. The opinions of the Board of Immigration Appeals (Pet. App. 33a-43a) and of the immigration court (Pet. App. 44a-76a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on September 8, 2023. The court of appeals granted rehearing in part, withdrew its prior opinion, and entered a revised opinion on December 14, 2023. The

jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Title 8 of the United States Code provides, in relevant part:

§1229c. Voluntary departure

(b) At conclusion of proceedings

(1) In general. The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense if, at the conclusion of a proceeding under section 1229a of this title, the immigration judge enters an order granting voluntary departure in lieu of removal and finds that—

(A) the alien has been physically present in the United States for a period of at least one year immediately preceding the date the notice to appear was served under section 1229(a) of this title;

(B) the alien is, and has been, a person of good moral character for at least 5 years immediately preceding the alien's application for voluntary departure;

(C) the alien is not deportable under section 1227(a)(2)(A)(iii) or section 1227(a)(4) of this title; and

(D) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so.

(2) Period. Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 60 days.

* * *

(d) Civil penalty for failure to depart

(1) In general. Subject to paragraph (2), if an alien is permitted to depart voluntarily under this section and voluntarily fails to depart the United States within the time period specified, the alien—

(A) shall be subject to a civil penalty of not less than $1,000 and not more than $5,000; and

(B) shall be ineligible, for a period of 10 years, to receive any further relief under this section and sections 1229b, 1255, 1258, and 1259 of this title.

Title 8 of the Code of Federal Regulations provides, in relevant part:

§1001.1. Definitions

As used in this chapter:

* * *

(h) The term *day* when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

* * *

§1240.26. Voluntary departure—authority of the Executive Office for Immigration Review

* * *

(b) * * * (3) *Conditions.* * * * (iii) If the alien files a post-decision motion to reopen or reconsider during the period allowed for voluntary departure, the grant of voluntary departure shall be terminated automatically, and the alternate order of removal will take effect immediately. The penalties for failure to depart voluntarily under [8 U.S.C. §1229c] shall not apply if the alien has filed a post-decision motion to reopen or reconsider during the period allowed for voluntary departure. Upon the granting of voluntary departure, the immigration judge shall advise the alien of the provisions of this paragraph (b)(3)(iii).

* * *

(e) *Periods of time.* * * * If voluntary departure is granted at the conclusion of proceedings, the immigration judge may grant a period not to exceed 60 days.

(1) *Motion to reopen or reconsider filed during the voluntary departure period.* The filing of a motion to reopen or reconsider prior to the expiration of the period allowed for voluntary departure has the effect of automatically terminating the grant of voluntary departure, and accordingly does not toll, stay, or extend the period allowed for voluntary departure under this section. See paragraphs (b)(3)(iii) and (c)(3)(ii) of this section. If the alien files a post-order motion to reopen or reconsider during the period allowed for voluntary departure, the penalties

> for failure to depart voluntarily under [8 U.S.C. §1229c] shall not apply. The Board shall advise the alien of the condition provided in this paragraph in writing if it reinstates the immigration judge's grant of voluntary departure.
>
> (2) *Motion to reopen or reconsider filed after the expiration of the period allowed for voluntary departure.* The filing of a motion to reopen or a motion to reconsider after the time allowed for voluntary departure has already expired does not in any way impact the period of time allowed for voluntary departure under this section. The granting of a motion to reopen or reconsider that was filed after the penalties under [8 U.S.C. §1229c] had already taken effect, as a consequence of the alien's prior failure voluntarily to depart within the time allowed, does not have the effect of vitiating or vacating those penalties, except as provided in section 240B(d)(2) of the Act.

The foregoing provisions are set forth in full in the Appendix, *infra*, at 77a-101a.

STATEMENT

A. Legal Background

This case involves the intersection of the rules governing voluntary departure, post-decision motions, and deadlines falling on weekends or holidays.

1. Voluntary Departure

"Voluntary departure is a discretionary form of relief that allows" noncitizens who meet certain criteria "to leave the country willingly" rather than face deportation. *Dada* v. *Mukasey*, 554 U.S. 1, 8 (2008).

"[O]riginally developed by administrative officers" as an ad hoc practice, Congress first codified the practice in 1940. *Id.* (quoting 6 C. Gordon et al., Immigration Law and Procedure §74.02[1], at 74-15 (rev. ed. 2007)). These rules now reside in section 240B of the Immigration and Nationality Act (INA), which allows the government to grant voluntary departure (1) "in lieu of being subject to [removal] proceedings" or "prior to the completion of such proceedings" and (2) "at the conclusion of [removal] proceeding[s]." 8 U.S.C. §1229c(a)(1), (b)(1).

This case involves post-conclusion voluntary departure. The government "may permit an alien voluntarily to depart the United States at the alien's own expense" at the conclusion of removal proceedings if an immigration judge finds that he or she (1) was "physically present in the United States" for at least one year before the start of removal proceedings, (2) has been "a person of good moral character for at least 5 years," (3) "is not deportable under" INA provisions covering aggravated felonies or terrorist activities, and (4) "has established by clear and convincing evidence that [he or she] has the means to depart the United States and intends to do so." 8 U.S.C. §1229c(b)(1); *see* 8 C.F.R. §1240.26(c). If the immigration judge authorizes voluntary departure, the noncitizen must post a bond. 8 U.S.C. §1229c(b)(3); *see* 8 C.F.R. §1240.26(c)(3)-(4). "Permission to depart voluntarily [after the conclusion of removal proceedings] shall not be valid for a period exceeding 60 days." 8 U.S.C. §1229c(b)(2); *see* 8 C.F.R. §1240.26(e).

This voluntary-departure framework is beneficial to both the government and the noncitizen. "From the Government's standpoint, the alien's agreement to

leave voluntarily expedites the departure process and avoids the expense of deportation—including procuring necessary documents and detaining the alien pending deportation." *Dada*, 554 U.S. at 11. "The Government also eliminates some of the costs and burdens associated with litigation over the departure." *Id.* The noncitizen, meanwhile, "avoids extended detention pending completion of travel arrangements; is allowed to choose when to depart (subject to certain constraints); and can select the country of destination." *Id.* "And, of great importance, by departing voluntarily the alien facilitates the possibility of readmission." *Id.* Ordinarily "an alien involuntarily removed from the United States is ineligible for readmission for a period of 5, 10, or 20 years, depending upon the circumstances of removal." *Id.* at 11-12. "An alien who makes a timely departure under a grant of voluntary departure . . . is not subject to these restrictions . . . ." *Id.* at 12.

The statute ensures the noncitizen's compliance with the voluntary-departure deadline by imposing harsh penalties on those who fail to depart within the appointed timeframe. Subject to certain exceptions not relevant here, if a noncitizen "voluntarily fails to depart the United States within the time period specified," he or she is (1) "subject to a civil penalty of not less than $1,000 and not more than $5,000," and (2) "ineligible, for a period of 10 years, to receive" various forms of discretionary relief, such as cancellation of removal, adjustment of status, and change of nonimmigrant classification. 8 U.S.C. §1229c(d)(1); *see* 8 C.F.R. §1240.26(*l*) (creating a "rebuttable presumption that the civil penalty . . . shall be set at $3,000").

2. Post-Decision Motions

The INA and its implementing regulations authorize two types of motion to challenge an otherwise-final decision. *See* 8 U.S.C. §1229a(c)(6)-(7). First, in certain circumstances a noncitizen may file a "motion to reconsider" to raise "errors of law or fact" in the immigration court's or BIA's decision. §1229a(c)(6)(C); *see* 8 C.F.R. §§1003.2(b), 1003.23(b)(2). Second, in certain circumstances a noncitizen may file a "motion to reopen" to "'ask[] the [immigration court or BIA] to change its decision in light of newly discovered evidence or a change in circumstances since the hearing.'" *Dada*, 554 U.S. at 12 (quoting 1 Gordon §3.05[8][c], at 3-76.32); *see* 8 U.S.C. 1229a(c)(7)(B) ("The motion to reopen shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material."); 8 C.F.R. §§1003.2(c)(1), 1003.23(b)(3).

Before this Court's decision in *Dada*, noncitizens faced a dilemma if they wished to pursue one of these motions after receiving permission to voluntarily depart the country. On the one hand, the noncitizen could "remain[] in the United States" to "pursue reopening," but he or she "risk[ed] expiration of the statutory [voluntary-departure] period and ineligibility for adjustment of status, the underlying relief sought." *Dada*, 554 U.S. at 18 (citing 8 U.S.C. §1229c(d)(1) (2000)). On the other hand, the noncitizen "c[ould] leave the United States in accordance with the voluntary departure order; but, pursuant to [the governing] regulation, [any pending] motion to reopen w[ould] be deemed withdrawn." *Id.* (citing 8 C.F.R. §1003.2(d) (2008)). The Court resolved this tension in *Dada*,

holding "that, to safeguard the right to pursue a motion to reopen for voluntary departure recipients, the alien must be permitted to withdraw, unilaterally, a voluntary departure request before expiration of the departure period." 554 U.S. at 21.

Applicable regulations now codify that framework. "Upon granting a request made for voluntary departure," the immigration judge simultaneously "enter[s] an alternate order of removal." 8 C.F.R. §1240.26(d). Then, "[i]f the alien files a post-decision motion to reopen or reconsider during the period allowed for voluntary departure, the grant of voluntary departure [is] terminated automatically, and the alternate order of removal [takes] effect immediately." §1240.26(b)(3)(iii); *see also* §1240.26(e)(1) ("The filing of a motion to reopen or reconsider prior to the expiration of the period allowed for voluntary departure has the effect of automatically terminating the grant of voluntary departure . . . .").

As a result of this procedure, "[t]he penalties for failure to depart voluntarily" set forth in 8 U.S.C. §1229c "[do] not apply if the alien has filed a post-decision motion to reopen or reconsider during the period allowed for voluntary departure." §1240.26(b)(3)(iii); *see also* §1240.26(e)(1) ("If the alien files a post-order motion to reopen or reconsider during the period allowed for voluntary departure, the penalties for failure to depart voluntarily under [8 U.S.C. §1229c] shall not apply."). By contrast, "[t]he filing of a motion to reopen or a motion to reconsider *after* the time allowed for voluntary departure has already expired does not in any way impact the period of time allowed for voluntary departure under this section." §1240.26(e)(2) (emphasis added).

3. Weekend and Holiday Deadlines in Removal Proceedings

The law has long recognized certain days on which a party is not required to take acts of legal significance. In England before the Founding, courts at common law consistently maintained that Sundays and public holidays were "*dies non juridicus*," meaning deadlines falling on those days would carry over to the next court day. *See, e.g.*, *See Careswell* v. *Vaughan*, 85 Eng. Rep. 585, 588-600 (K.B. 1668) (Kelynge, C.J.); *Davy* v. *Salter*, 87 Eng. Rep. 998, 999 (K.B. 1704) (Holt, C.J.); *Swann* v. *Broome*, 96 Eng. Rep. 305, 307 (K.B. 1764) (Mansfield, C.J.). That principle took early root in this country, *see, e.g.*, *Avery* v. *Stewart*, 2 Conn. 69, 73 (1816); *Salter* v. *Burt*, 20 Wend. 205, 206 (N.Y. Sup. Ct. 1838); *Street* v. *United States*, 133 U.S. 299, 306 (1890), and can now be found in numerous statutes and court rules, *see, e.g.*, 35 U.S.C. §21; Fed. R. Civ. P. 6(a). *See also infra*, at 31-33.

Federal immigration regulations are part of this unbroken tradition. The INA's very first set of implementing regulations, promulgated shortly after the statute's passage in 1952, provided that "the term 'day,' when computing the period of time provided in this chapter for the taking of any action, means any day other than a Sunday or a legal holiday." 17 Fed. Reg. 11,469, 11,470 (Dec. 19, 1952). Subject to various modifications over the years—including the eventual addition of Saturday to the list of excluded days, *see* 52 Fed. Reg. 2931, 2936 (Jan. 29, 1987)—this background rule has remained in place ever since.

The current incarnation of the rule resides in 8 C.F.R. §1001.1(h), which states:

> The term *day* when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

The "chapter" to which this definition applies—chapter V of title 8 of the Code of Federal Regulations—contains all of the regulations applicable to removal proceedings, including the regulations authorizing motions to reopen (§§1003.3 and 1003.23) and voluntary departure (§1240.26) discussed above. *See* 8 C.F.R. pts. 1001-1337; *supra*, at 7-11.

Although, as just discussed, §1001.1(h) resembles rules regarding weekend and holiday deadlines in other contexts, the availability of this rule in immigration proceedings is particularly important. The government does not allow electronic filing in the vast majority of removal cases,[1] and immigration courts do

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[1] The vast majority of noncitizens in immigration court proceed pro se. *See* I. Eagly et al., American Immigration Council, Access to Counsel in Immigration Court at 2 (2016), *available at* https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf ("[O]nly 37 percent of all immigrants secured legal representation in their removal cases."). The Department of Justice allows pro se litigants to e-file only a basic change-of-address form; they must file all other documents—including all substantive pleadings—on paper. *See* EOIR, Respondent Access, File EOIR Forms, https://respondentaccess.eoir.justice.gov/en/forms/ (last accessed February 22, 2024) (allowing noncitizens to file only Form EOIR-33).

not process paper filings on weekends or holidays. Nor do immigration courts follow the mailbox rule: instead, the timeliness of a filing turns on when the court *receives* the document. *See* Immigration Court Practice Manual §3.1(a)(3), at 37 (June 20, 2023), *available at* https://www.justice.gov/eoir/book/file/1528921/dl?inline ("An application . . . is not deemed 'filed' until it is received by the immigration court."). The upshot: without §1001.1(h), most noncitizens facing a weekend or holiday deadline would have to file *before* the relevant due date—effectively losing out on time otherwise afforded by the relevant statute or rules.

Even in the small fraction of situations where e-filing is available, the Department of Justice has chosen, as a matter of policy, not to require noncitizens to take action on Saturdays, Sundays, or legal holidays. For example, the Department has provided that "[i]f [the Department]'s electronic filing application is unavailable due to an unplanned system outage on the last day for filing in a specific case, then the filing deadline will be extended to the first day that the electronic filing application becomes accessible that is not a Saturday, Sunday, or legal holiday." 8 C.F.R. §§1003.2(g)(5), 1003.3(g)(2), 1003.31(b).

In counseled cases, meanwhile, the Department launched a limited e-filing pilot program in July 2018 and made e-filing mandatory in cases initiated on or after February 11, 2022. *See* Press Release, EOIR Launches Electronic Filing Pilot Program (July 19, 2018); 8 C.F.R. §§1001.1(cc), 1003.2(g)(4), 1003.3(g)(1), 1003.31(a). But attorneys still may not e-file in any removal proceeding initiated on paper. *See* 86 Fed. Reg. 70,708, 70,710 (Dec. 13, 2021).

B. Factual Background

Born in Mexico, petitioner Hugo Monsalvo[2] came to the United States a teenager in August 2004.[3] *See* Certified Administrative Record (A.R.) at 24, 28, 165-168. Since then, he has continuously lived in the United States, building strong family and community ties in this country.

After arriving in the United States, Mr. Monsalvo settled in the Denver area. He attended Cherry Creek High School, where he was a varsity soccer player. A.R. 29, 172. After graduating in 2008, he took classes at the Community College of Denver and held jobs at local businesses. A.R. 29, 200-204.

Mr. Monsalvo met his wife, Nataly, in 2009. A.R. 44. The couple married in 2013 and have two U.S.-citizen children—an eleven-year-old son and nine-year-old daughter. A.R. 28, 30, 44. They purchased a home in Aurora, Colorado, in 2016, and Mr. Monsalvo opened his own small business, an auto-detailing service, in 2021. A.R. 27, 29, 44.

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[2] Petitioner's given names are Hugo Abisaí and his family names are Monsalvo Velázquez; he goes by Hugo Monsalvo. *See* N. Cabrera, Denver Public Library, *Dos Apellidos: When Families Have Two Surnames* (Nov. 17, 2020), https://history.denverlibrary.org/news/genealogy/dos-apellidos-when-families-have-two-surnames.

[3] The charging document in Mr. Monsalvo's removal proceedings alleged that he arrived in the United States "on or about October 15, 2005." A.R. 713. The discrepancy is immaterial.

C. Procedural History

1. Immigration Court Proceedings

a. On September 19, 2011, the Department of Homeland Security sought to commence removal proceedings against Mr. Monsalvo. Pet. App. 62a. The Department asserted just one charge of removability: that Mr. Monsalvo is "an alien present in the United States who has not been admitted or paroled." A.R. 713; *see* 8 U.S.C. §1182(a)(6)(A)(i). Though labeled a "notice to appear," the government's charging document did not include the date and time of Mr. Monsalvo's removal proceeding as required by 8 U.S.C. §1229(a)(1)(G)(i). *See generally Niz-Chavez* v. *Garland*, 593 U.S. 155 (2021). Instead, the document stated that the proceedings would take place "on a date to be set at a time to be set." A.R. 713.

Mr. Monsalvo conceded removability but filed an application for withholding of removal and relief under the Convention Against Torture (CAT). Pet. App. 45a-46a; *see* 8 U.S.C. §1231(b)(3) & note; 8 C.F.R. §208.16(c); A.R. 681-690. Mr. Monsalvo's application documented his fear of suffering criminal violence if returned to Mexico. Pet. App. 47a-48a; *see* A.R. 526-590. In the alternative, Mr. Monsalvo requested voluntary departure. Pet. App. 46a. The Department of Homeland Security did not oppose this alternative request. Pet. App. 50a.

The immigration court denied Mr. Monsalvo's application for withholding of removal and request for CAT protection but found him statutorily eligible for voluntary departure. As the immigration court explained, Mr. Monsalvo "ha[d] been living in the United States for at least a year before" removal proceedings

began; he was "a person of good moral character"; he had the means and willingness to depart the United States at his own expense; and none of the statutory exclusion criteria applied. Pet. App. 50a. Thus, the immigration court "exercise[d] its discretion [to] grant him this minimal form of relief." Pet. App. 50a.

The immigration court's order—entered on March 5, 2019—stated that Mr. Monsalvo would have "60 calendar days from the date of service of this order" to depart the country. Pet. App. 51a. That 60-day deadline fell on May 4, a Saturday. Accordingly, the immigration judge's written order stated that Mr. Monsalvo's "application for voluntary departure was granted until *May 6, 2019*"—*i.e.*, the next business day. Pet. App. 70a; *see* Pet. App. 5a. The immigration court simultaneously entered an alternative order of removal to Mexico. *See* Pet. App. 68a.

b. Mr. Monsalvo filed a timely notice of appeal to the BIA on April 4, 2019. A.R. 404. On September 3, 2020—while Mr. Monsalvo's appeal was pending, and before the BIA had issued a briefing schedule—the BIA disbarred his attorney. A.R. 393-396; *see People* v. *Caldbeck*, 466 P.3d 1174 (Colo. O.P.D.J. 2020). Mr. Monsalvo thus proceeded pro se before the BIA. *See* Pet. App. 39 & n. 1.

On October 12, 2021, the BIA affirmed the immigration court's decision, concluding that Mr. Monsalvo had not established eligibility for withholding of removal or CAT relief. Pet. App. 39a-43a. The BIA reinstated Mr. Monsalvo's voluntary-departure period, "provid[ing] [him] with an additional 60 days to voluntarily depart this country." Pet. App. 40a; *see* Pet. App. 42a ("[Mr. Monsalvo is] permitted to voluntarily

depart the United States, without expense to the Government, within 60 days from the date of this order."). The 60th calendar day was December 11, 2022—again a Saturday. Pet. App. 34a.

c. Represented by new counsel, Mr. Monsalvo filed a motion to reopen and accompanying application for cancellation of removal and adjustment of status in the BIA. Pet. App. 6a, 34a; *see* A.R. 21-384. He served these papers on Friday, December 10; the BIA accepted them for filing the next business day—Monday, December 13. *See* A.R. 21, 381.

Mr. Monsalvo's motion to reopen argued that this Court's decision in *Niz-Chavez*—which the Court handed down while Mr. Monsalvo's BIA appeal was pending—provided new grounds for relief from removal. A.R. 24-25. Under *Niz-Chavez*, when the government serves a notice to appear that does not contain the time and date of removal proceedings, a noncitizen continues to accrue the physical presence in the United States necessary to apply for cancellation of removal until the government serves a compliant notice. A.R. 25; *see Niz-Chavez*, 141 S. Ct. at 1480-1486. Because Mr. Monsalvo received a deficient notice, his motion explained, "[this] Court's decision . . . made it clear that [he was] now eligible to apply for Cancellation of Removal." A.R. 25. In the accompanying application, Mr. Monsalvo explained that cancellation was appropriate because his removal would result in exceptional hardship for his two U.S.-citizen children. A.R. 27.

The BIA denied Mr. Monsalvo's motion on May 4, 2022. The Board reasoned that, in light of this Court's earlier decision in *Pereira* v. *Sessions*, 138 S. Ct. 2105

(2018), the decision in *Niz-Chavez* was not a significant enough change in the law to warrant reopening. *See* Pet. App. 37a-38a. The Board also ruled that Mr. Monsalvo was ineligible for cancellation of removal because his "motion to reopen was filed on December 13, 2021, after the 60-day period of voluntary departure expired." Pet. App. 38a.

d. Mr. Monsalvo filed a motion to reconsider, citing official BIA guidance that "[i]f . . . a deadline date falls on a weekend or a legal holiday, the deadline is construed to fall on the next business day." A.R. 8 (quoting BIA Practice Manual §3.1(b)(2) (Feb. 22, 2022)). The Board denied reconsideration, reasoning that the quoted portion of the BIA Practice Manual "govern[s] filing of appeals, motions, or other documents with the Immigration Court or the Board, and do[es] not govern the voluntary departure period." Pet. App. 35a.

2. Tenth Circuit Proceedings

a. Mr. Monsalvo petitioned for review of the BIA's decision in the Tenth Circuit, challenging the BIA's determination that he filed his motion to reopen too late and thus failed to comply with the deadline for voluntary departure. Pet. App. 3a. The court denied the petition for review, holding that it had jurisdiction to consider the petition[4] but rejecting Mr. Monsalvo's arguments on the merits.

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[4] The Tenth Circuit rejected the government's argument that it lacked jurisdiction under 8 U.S.C. §1252(a)(2)(B), which bars courts from reviewing "any judgment regarding the granting of relief under section . . . 1229c." Pet. App. 9a-10a. As the court explained, "Mr. [Monsalvo] does not challenge the BIA's award

In the court's view, "this case is governed by §1229c, which unambiguously states that while the Attorney General has the discretion to grant voluntary departure, in no event may the time allotted exceed 60 days." Pet. App. 13a-14a. The court also pointed to the "policy rationale" that "[b]y electing to remain in the country and pursue an administrative motion, Mr. [Monsalvo] chose to forgo the benefits of voluntary departure." Pet. App. 15a.

Mr. Monsalvo observed that the BIA's published guidelines for weekend and holiday deadlines suggested a different result, but the court disagreed. Pet. App. 12a-13a. According to the court, the fact "[t]hat [the term] 'day' is applied in one manner when filing appeals, motions, or other documents in immigration court or with the BIA and another when interpreting a maximum time period designated by statute, makes sense." Pet. App. 13a. The court reasoned that "the same restrictions that apply in the filing context—court or agency closures—do not prevent one from departing, by, for example, boarding a plane, or otherwise being transported to one's chosen destination." Pet. App. 13a.

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of voluntary departure"; instead, "[h]e seeks review of the denial of his motion to reconsider, a disposition categorically within [the court's] purview." Pet. App. 9a-10a (citing *Mata* v. *Lynch*, 576 U.S. 143, 148 (2015); 8 U.S.C. §1252(b)(6)). The court also rejected the government's argument that it lacked jurisdiction because Mr. Monsalvo did not challenge the BIA's ruling on the merits of the motion to reopen. Because the BIA's timeliness determination results in "a monetary fine and ineligibility for future immigration relief," the court explained, its resolution of that issue can "result in effectual relief"—*i.e.*, the parties have a live dispute with concrete consequences. Pet. App. 10a-11a.

The court acknowledged that the question presented was "an issue of first impression" in the Tenth Circuit—and that the "only . . . other circuit" to address the issue has reached the opposite conclusion. Pet. App. 8a, 15a-16a. Specifically, the Ninth Circuit has held for nearly two decades that, when a voluntary-departure period expires on a weekend or holiday, the deadline to voluntarily depart or to file motions related to the voluntary departure is continued to the next business days. *See Salvador-Calleros* v. *Ashcroft*, 389 F.3d 959, 965 (2004); *Barroso* v. *Gonzales*, 429 F.3d 1195, 1204 (2005), *abrogated on other grounds by Dada*, 554 U.S. 1; *Meza-Vallejos* v. *Holder*, 669 F.3d 920, 927 (2012). According to the Tenth Circuit, however, that rule impermissibly "reconfigure[s] the statute." Pet. App. 16a.

b. Mr. Monsalvo filed a timely request for rehearing and rehearing en banc. The panel issued a substituted opinion correcting one technical error but otherwise left its opinion unchanged. Pet. App. 1a-2a; *see* C.A. Reh'g Pet. 10 n. 2 (pointing out the panel's erroneous description of 8 C.F.R. §1240.26(i) in the initial opinion). The court denied the request for rehearing en banc. *See* Pet. App. 1a-2a.

REASONS FOR GRANTING THE WRIT

This case presents an acknowledged conflict on a straightforward question of law. The Court should answer that question now. Prompt review will supply the public with a bright-line rule that it can easily follow and apply; forgoing review will lead to needless confusion without any discernible benefit. The Court should grant certiorari and reverse.

A. Lower courts disagree about the deadline to file post-decision motions when a voluntary-departure period ends on a weekend or holiday.

1. The Ninth Circuit allows a noncitizen to file a post-decision motion the next business day.

The Ninth Circuit has long and consistently held that, when a noncitizen's deadline for voluntarily departing the country falls on a weekend or holiday, the noncitizen has until the next business day to file a post-decision motion to reopen or reconsider.

The Ninth Circuit first addressed this question in *Salvador-Calleros* v. *Ashcroft*, 389 F.3d 959 (2004). The noncitizen in that case was given thirty days from May 16, 2002—*i.e.*, until Saturday, June 15—to voluntarily depart the United States. *Id.* at 961-962. She filed both a petition for review and motion for stay of removal on Monday, June 17. *Id.* Looking to Federal Rule of Appellate Procedure 26(a), "which sets out the rules for . . . 'computing any period of time specified in these rules or in any local rule, court order, or applicable statute,'" the court held that the noncitizen's motion was timely. 389 F.3d at 964. Under Rule 26(a), if "the last day of a given period would otherwise fall on a weekend day," a court should "exclude that weekend day from [its] counting, which causes the period's last day to actually fall on the following Monday." 389 F.3d at 964. Applying that principle to the facts before it, the Ninth Circuit held that the noncitizen's "voluntary departure period . . . actually expire[d] the following Monday." *Id.* at 965.

The Ninth Circuit returned to this issue a year later in *Barroso* v. *Gonzales*, 429 F.3d 1195 (2005), *abrogated on other grounds by Dada* v. *Mukasey*, 554 U.S. 1 (2008). Once again, the deadline for the noncitizen to voluntarily depart the country (or to file any motion to reconsider) fell on a Saturday. *Id.* at 1202. Citing BIA precedent, the Ninth Circuit readily determined that "[the noncitizen]'s motion to reconsider was timely if it was filed on [the following] Monday." *Id.* Looking to *Salvador-Calleros*, the Ninth Circuit "conclude[d] that where the deadline for filing a motion to reconsider falls on the same day as the expiration of the voluntary departure period, the proper solution is to apply the same rule to both . . . periods." *Id.* at 1204.

The Ninth Circuit addressed these questions most recently in *Meza-Vallejos* v. *Holder*, 669 F.3d 920 (2012). The fact pattern is by now familiar. "[T]he BIA granted [the noncitizen] a sixty-day period of voluntary departure," and "[t]he sixtieth day fell on a Saturday." *Id.* at 921. The noncitizen "did not depart" but instead filed a motion to reopen "on the following business day—a Monday." *Id.* Citing *Salvador-Calleros* and *Barroso*, the Ninth Circuit held that the noncitizen's motion was timely. *Id.* at 926-927. More specifically, the court "h[e]ld that, where the last day of a period of voluntary departure falls on a day on which an immigrant cannot file a motion for affirmative relief with the BIA, that day does not count in the voluntary departure period if, as here, the immigrant files on the first available day a motion that would either have tolled, automatically withdrawn, or otherwise affected his request for voluntary departure." *Id.*

The court clarified that it was "not extending the voluntary departure period, but rather determining on which day the sixtieth day falls." *Id.*

2. The Tenth Circuit treats a motion filed the next business day as too late.

The description of the procedural history in *Meza-Vallejos* could double as a description of Mr. Monsalvo's circumstances: "the BIA granted [Mr. Monsalvo] a sixty-day period of voluntary departure"; "[t]he sixtieth day fell on a Saturday"; Mr. Monsalvo "did not depart"; and he filed a motion to reopen "on the following business day—a Monday." 669 F.3d at 921. And yet, despite nearly identical facts, the Tenth Circuit reached the opposite conclusion, holding that Mr. Monsalvo's motion was untimely. Pet. App. 4a.

In doing so, the Tenth Circuit expressly considered—and expressly rejected—the Ninth Circuit's reasoning in *Meza-Vallejos*. The panel below acknowledged that *Meza-Vallejos* involved "analogous facts." Pet. App. 15a. But the court consciously went a different direction. "To construe 'day' in the Ninth Circuit's and Mr. [Monsalvo]'s preferred manner," the Tenth Circuit reasoned, "would require" it to "reconfigure the statute." Pet. App. 16a.

In short, the rule that now controls in the Tenth Circuit is indisputably inconsistent with the rule that has prevailed in the Ninth Circuit for nearly two decades.

B. The Court should resolve this acknowledged split now.

1. The question presented is important and squarely presented.

a. While seemingly technical, the question presented matters, because a finding that a noncitizen missed his or her voluntary-departure deadline comes with a host of serious and often life-altering consequences.

For example, the determination that a noncitizen has failed to depart during the voluntary-departure window forecloses certain important forms of discretionary relief from removal. As discussed above, a noncitizen who fails to depart during the allotted time period is "ineligible, for a period of 10 years, to receive" cancellation of removal, adjustment of status, or change of nonimmigrant classification. 8 U.S.C. §1229c(d)(1); *see supra*, p. 9. These forms of discretionary relief from removal are critical safety-valves in the immigration system. The cancellation statute, for example, prevents the breakup of immigrant families and allows the most deserving noncitizens to remain in this country. *See, e.g.*, S. Rep. No. 81-1515, at 600 (1950) (explaining that these provisions protect "aliens of long residence and family ties in the United States" whose removal "would result in a serious economic detriment to the[ir] famil[ies]").

Confusion about the deadline to voluntarily depart the country can also jeopardize a noncitizen's "possibility of readmission." *Dada*, 554 U.S. at 11. Under the INA, "[a]n alien who makes a timely [voluntary] departure . . . is not subject to" lengthy bars to readmission that ordinarily apply to "alien[s] *involuntarily*

removed from the United States." *Id.* at 11-12 (emphasis added). But when a noncitizen misses that window, these bars spring back into place, limiting the noncitizen's ability to return to the United States in the future.

Finally, the penalty for failure to voluntarily depart includes a hefty fine—$1,000 at minimum, and usually $3,000. *See* 8 U.S.C. §1229c(d)(1); 8 C.F.R. §1240.26(*l*). That is a substantial sum, especially for noncitizens in removal proceedings, a large number of whom are indigent. *See* Migration Policy Institute, Profile of the Unauthorized Population: United States, https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US (last visited Feb. 22, 2024) (Migration Policy Institute Profile); *see also* A.R. 29-30, 44-45 (discussing petitioner's financial circumstances).

b. In light of these significant consequences for failure to voluntarily depart the United States, it is important to have clarity on the applicable deadlines. That is especially true given the challenges typically facing noncitizens in removal proceedings: many lack familiarity with the legal system and are not native English speakers, and most are proceeding pro se. *See* Migration Policy Institute Profile, *supra* (46% of the unauthorized population speaks English "not well" or "not at all" and only 44% percent has a high school diploma or higher education); *supra*, at 13 n. 1.

The Court can provide that clarity. The question presented is binary: either Mr. Monsalvo's motion to reopen was timely, or it was not. While there is a right answer to that question—it was timely, *see infra*, pp.

29-33—*either* answer to this purely procedural question will provide a bright-line rule that represented and unrepresented parties can follow in future cases.

c. This case is an ideal vehicle for the Court to resolve this split, because the issue on which the courts of appeals have parted ways is squarely presented. As the panel below acknowledged, the facts of this case are "analogous" to those at issue in the Ninth Circuit's *Meza-Vallejos* decision. Pet. App. 15a. Facing those analogous facts, the Tenth Circuit issued a published decision expressly considering—and expressly rejecting—the Ninth Circuit's position. There is nothing standing in the way of this Court's review.

2. The question presented arises frequently, and there is no reason to delay in resolving it.

The Court should resolve this split now. As the decisions in *Salvador-Calleros*, *Barroso*, *Meza-Vallejos*, and now this case make clear, this issue arises with some regularity. Indeed, these published appellate decisions likely understate the frequency with which this issue arises, because the BIA typically disposes of these timeliness questions in short, nonpublic decisions. *See, e.g.*, Pet. App. 33a-35a. There is no reason for the Court to wait to resolve this recurring question.

Further percolation will not meaningfully develop the legal arguments on either side—much less eliminate the split. The courts on either side of this split have fleshed out their views in published decisions. And neither court shows any indication of changing its position: the Ninth Circuit has continuously adhered to its view for nearly 20 years, *see supra*, at 22-

24, and the Tenth Circuit has declined to reconsider its position en banc, *see* Pet. App. 2a.

Technological advances also will not eliminate the split. The Ninth Circuit expressed its hope, more than 10 years ago, that the advent of e-filing might alleviate the practical issue that noncitizens face when they cannot file on a weekend or legal holiday. *See Meza-Vallejos*, 669 F.3d at 927 n. 6. As an initial matter, however, e-filing is available in only a fraction of cases: counseled cases that were initiated after the advent of e-filing. *See supra*, at 13, n. 1. More broadly, even if e-filing alleviates the *practical* problem that parties face when they are unable to submit paper filings on weekends or legal holidays, it does not address the relevant *legal* question: whether a party is expected to e-file on those days for its motion to be considered timely.

History shows that the ability to electronically file a document on a weekend or legal holiday does not automatically mean that a party is expected to do so. Even in immigration proceedings where e-filing is available, the Department of Justice's official practice manuals make clear that if there is "an unplanned outage" in the Department's e-filing system, "filing deadlines . . . will be extended until the first day of system availability that is not a Saturday, Sunday, or legal holiday." BIA Practice Manual §3.1(b)(5)(A), at 41; §4.5(b)(1), at 65; §5.6(e)(7), at 91; §5.7(f)(3), at 92 (June 1, 2023), *available at* https://www.justice.gov/eoir/book/file/1528926/dl?inline. Likewise, in federal court, where e-filing is universal, filing deadlines are still extended to the next available business day. *See* Fed. R. Civ. P. 6(a); Fed. R. App. P. 26(a); S. Ct. R. 30.1.

While further percolation will not eliminate the split or meaningfully assist this Court's review, it *will* lead to more confusion and disruption. Immigration practitioners and pro se litigants now face two competing regimes for what should be a clear-cut procedural question. In every circuit outside the Ninth and the Tenth, they must hazard a guess about which regime the relevant court of appeals might follow. There is no reason for that uncertainty to persist. Even within the Ninth and Tenth Circuits, the existence of disuniformity is pernicious. If Mr. Monsalvo's case had arisen in the Ninth Circuit, he would not be subject to the harsh penalties in §1229c(d)(1). Whether a noncitizen's motion to reopen is timely should not depend on whether it was filed in Denver or San Francisco.

C. The Tenth Circuit's decision is wrong.

This Court's review is particularly appropriate because the Tenth Circuit's decision is wrong on the merits.

a. A longstanding regulation—one that has existed in some form since immediately after the passage of the INA—expressly forecloses the Tenth Circuit's holding. *See supra*, at 12-14. Under 8 C.F.R. §1001.1(h), "when computing the period of time for taking *any action* provided in [8 C.F.R., chapter V]," if "the last day of the period . . . falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday" (emphasis added). Among the "action[s]" provided for in Chapter V are voluntary departure from the country, *see* §1240.26, and the filing of post-decision motions, *see* §§1003.2, 1003.23. Un-

der §1001.1(h), therefore, when the voluntary-departure deadline falls on a Saturday, Sunday or legal holiday, the period to voluntarily depart and/or file a post-decision motion "shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday." §1001.1(h).

The Department of Justice's official guidance documents take the same position. Practice manuals for both the immigration courts and the Board of Immigration Appeals provide that "[i]f [a filing] deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day." Immigration Court Practice Manual §3.1(c)(2)(A), at 41; *see* BIA Practice Manual §3.1(b)(2), at 41 (using the phrase "weekend or legal holiday").

Indeed, the immigration judge in this very case appeared to understand the applicable rules the way Mr. Monsalvo does. The immigration court handed down its original grant of voluntary departure to Mr. Monsalvo on March 5, 2019, meaning the 60-day deadline fell on May 4, a Saturday. Pet. App. 70a; *see supra*, at 17. In keeping with the usual rule for weekend and holiday deadlines, the immigration judge's written order stated that "[Mr. Monsalvo]'s application for voluntary departure was granted until *May 6, 2019*." Pet. App. 70a; *see supra*, at 17.[5]

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[5] The Tenth Circuit refused to grapple with this aspect of immigration judge's order because, it said, Mr. Monsalvo "waived" the issue by raising it in his reply brief. Pet. App. 14a n. 10. That misunderstands the nature of this argument: it is not a free-standing basis for relief, but support for the fact that the BIA's interpretation is inconsistent with the ordinary meaning of the relevant provisions. *See Lebron* v. *Nat'l R.R. Passenger Corp.*,

b. Section 1001.1(h) does not stand alone: it stems from an ancient tradition under which certain days are "*dies non juridicus*"—"*dies non*" for short—on which a party is not required to take acts of legal significance.

This principle first took root in England well before the Founding. In 1668, Chief Justice Kelynge explained that court sessions beginning on a Wednesday and "kept and continued by the space of six days" expired on Monday, "because Sunday is *dies non juridicus*." *See Careswell* v. *Vaughan*, 85 Eng. Rep. 585, 588-600 (K.B. 1668) ("[T]he intervention of Sunday does not discontinue the sessions, but they may be adjourned to Monday . . . ."). Nearly a century later, Lord Mansfield explained that, because "Sundays have been always settled to be no juridical days," the practice of "giving notices to appear, &c. on Sundays, . . . is known to signify only Monday." *Swann* v. *Broome*, 96 Eng. Rep. 305, 307 (K.B. 1764). The English courts extended this practice to public holidays as well. *See Davy* v. *Salter*, 87 Eng. Rep. 998, 999 (K.B. 1704) (Holt, C.J.) ("Some years ago Midsummer-Day happened to be on a *Wednesday*, which should have been the last day of the term; but being a *dies non*, upon great consideration the day following was kept.").

This principle has a long pedigree in this country, too. From the country's earliest days, courts have consistently held that deadlines falling on a Sunday or

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513 U.S. 374, 379 (1995) ("[O]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below. [Petitioner]'s contention . . . is in our view not a new claim . . . , but a new argument to support what has been his consistent claim . . . ." (citations omitted)).

public holiday should be deemed to fall on the following business day. *See, e.g.*, *Avery* v. *Stewart*, 2 Conn. 69, 73 (1816) (holding that, "if [a contract] be payable at a future day, which, by calculation, is found to be *Sunday*," it is appropriate to "permit the tender to be made on the succeeding day"); *Salter* v. *Burt*, 20 Wend. 205, 206-207 (N.Y. Sup. Ct. 1838) (holding that, when "the time for payment or performance specified in the contract falls on Sunday, the debtor may . . . discharge his obligation on the following Monday"); *Street* v. *United States*, 133 U.S. 299, 306 (1890) (explaining that, because "the first day of January was Sunday, that is, a *dies non*," the relevant power could "be exercised on the succeeding day"); *Lamson* v. *Andrews*, 40 App. D.C. 39, 42 (D.C. Cir. 1913) (explaining that the appellant did not need to take action "on . . . Sunday, or the next succeeding day, which happened to be a legal holiday, each being *dies non*"). As Saturday came to be regarded as a non-business day in the late 19th and early 20th centuries, legislation generally extended the principle to that day as well. *See, e.g.*, *Reynolds* v. *Palen*, 20 Abb. N. Cas. 11, 12 (N.Y. Sup. Ct. 1887) (applying statute treating Saturday as a half-holiday); *D'Andrea* v. *Commissioner*, 263 F.2d 904, 905 (D.C. Cir. 1959) (applying statute treating all of Saturday as a non-business day).

Today, these principles are codified in various statutes and court rules. Under Federal Rule of Civil Procedure 6(a)(1)(C), for example, "if the last day [of a given time period] is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday." Numerous other examples abound—including in this Court's own rules. *See, e.g.*, S. Ct. R. 30.1; 35 U.S.C. §21; Fed. R. App. P. 26(a).

This long and unbroken historical tradition refutes the Tenth Circuit's conclusion (Pet. App. 13a-14a) that the 60-day limitation on voluntary departure in 8 U.S.C. §1229c(b)(2) unambiguously compels the court's interpretation. "Congress is understood to legislate against a background of common-law adjudicatory principles." *Astoria Fed. Sav. & Loan Ass'n* v. *Solimino*, 501 U.S. 104, 108 (1991). "[W]here a common-law principle is well established, . . . the courts may take it as given that Congress has legislated with an expectation that the principle will apply except 'when a statutory purpose to the contrary is evident.'" *Id.* (quoting *Isbrandtsen Co.* v. *Johnson*, 343 U.S. 779, 783 (1952)). That familiar presumption applies here: Congress enacted §1229c(b)(2) against centuries of tradition relating to deadlines that fall on a *dies non*, and nothing in the text of the statute indicates that Congress sought to depart from that tradition.

In short, in holding that Mr. Monsalvo's motion was untimely, the Tenth Circuit contradicted not only the specific language of §1001.(h), but also a long history of extending deadlines that fall on a weekend or holiday to the next business day.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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