No. 24-753

In the Supreme Court of the United States

SILVIA TAPIA CORIA, PETITIONER

v.

PAMELA BONDI, 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

SARAH M. HARRIS
Acting Solicitor General
Counsel of Record
YAAKOV M. ROTH
Acting Assistant Attorney General
JOHN W. BLAKELEY
MELISSA NEIMAN-KELTING
SPENCER S. SHUCARD
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, bars judicial review of "any final order of removal against an alien who is removable by reason of having committed a criminal offense" specified in certain statutes. 8 U.S.C. 1252(a)(2)(C). Petitioner is an alien with a conviction for a specified offense who was ordered removed by an immigration judge. The Board of Immigration Appeals (Board) denied her appeal of the removal order and her requests to administratively close or remand the removal proceedings to allow time for the processing of a recently filed visa application. Petitioner filed a petition for review asking the court of appeals to review the agency's denial of her requests to administratively close or remand her removal proceedings.

The question presented is whether the court of appeals correctly determined that Section 1252(a)(2)(C) bars judicial review of the factual findings underlying the denial of the administrative closure and remand requests because the Board's denial merged into petitioner's final and unreviewable order of removal.

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Statement 2
Argument 6
Conclusion 10

TABLE OF AUTHORITIES

Cases:

Avetisyan, In re, 25 I. & N. Dec. 688 (B.I.A 2012) 2, 4
Gonzalez v. *Garland*, 16 F.4th 131 (4th Cir. 2021) 2
Gonzalez-Caraveo v. *Sessions*,
882 F.3d 885 (9th Cir. 2018) 2
Guerrero-Lasprilla v. *Barr*, 589 U.S. 221 (2020) 9, 10
Nasrallah v. *Barr*, 590 U.S. 573 (2020) 4, 7, 9
Reyes Mata v. *Lynch*, 576 U.S. 143 (2015) 9
Williams v. *Garland*, 59 F.4th 620 (4th Cir. 2023) 5, 8, 10

Statutes and regulations:

Immigration and Nationality Act,
8 U.S.C. 1101 *et seq.* 2
8 U.S.C. 1182(a)(2) 2
8 U.S.C. 1182(a)(2)(A)(i)(II) 3
8 U.S.C. 1182(a)(2)(C)(i) 3
8 U.S.C. 1229a(a)(1) 2, 9
8 U.S.C. 1229a(c)(5) 2
8 U.S.C. 1252 2
8 U.S.C. 1252(a) 2
8 U.S.C. 1252(a)(2)(C) 2, 4-6, 8, 9
8 U.S.C. 1252(a)(2)(D) 2, 5, 7, 9

Regulations—Continued: Page

8 C.F.R.:

Section 1003.1(d)(1)(ii) 2
Section 1003.1(d)(3) 2
Section 1003.38(a) 2

In the Supreme Court of the United States

No. 24-753

SILVIA TAPIA CORIA, PETITIONER

v.

PAMELA BONDI, 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

OPINIONS BELOW

The order and opinion of the court of appeals (Pet. App. 1a-34a) is published at 114 F.4th 994, amending a prior opinion published at 96 F.4th 1192. The decisions of the Board of Immigration Appeals (Pet. App. 35a-48a) and the immigration judge (Pet. App. 49a-56a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 19, 2024 (Pet. App. 2a). The court of appeals denied a petition for rehearing en banc, but amended the decision, on August 16, 2024 (Pet. App. 3a). On November 4, 2024, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including January 13, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, removability is generally determined by an immigration judge (IJ). 8 U.S.C. 1229a(a)(1). If an IJ "orders the alien to be removed, the judge shall inform the alien of the right to appeal that decision." 8 U.S.C. 1229a(c)(5). Administrative appeals of removal orders are heard by the Board of Immigration Appeals (Board). 8 C.F.R. 1003.38(a). Regulations contemplate that the Board may order administrative closure, 8 C.F.R. 1003.1(d)(1)(ii), an agency-created docket-management tool that effectively stays removal proceedings, generally to permit the completion of outside proceedings that might affect the removal proceedings' outcome. See Pet. App. 12a-13a (citing *Gonzalez-Caraveo* v. *Sessions*, 882 F.3d 885, 889 (9th Cir. 2018)); Pet. App. 47a (citing *In re Avetisyan*, 25 I. & N. Dec. 688 (B.I.A. 2012)). The Board may also grant a motion to remand proceedings to the IJ. See 8 C.F.R. 1003.1(d)(3); see also, *e.g.*, *Gonzalez* v. *Garland*, 16 F.4th 131, 145-146 (4th Cir. 2021).

Judicial review of a "final order of removal" is governed by 8 U.S.C. 1252. See 8 U.S.C. 1252(a). As most relevant here, the so-called "criminal alien bar" provides that "no court shall have jurisdiction to review any final order of removal against an alien who is removable" for having committed a crime covered by (inter alia) Section 1182(a)(2). 8 U.S.C. 1252(a)(2)(C). There is a limited exception to that jurisdictional bar for "constitutional claims or questions of law raised" on a petition for review of a final order of removal. 8 U.S.C. 1252(a)(2)(D).

2. Petitioner is a native and citizen of Mexico. Pet. App. 5a. She became a lawful permanent resident of the

United States in 1990 and was convicted of possession for sale of methamphetamine under California law in 1999. *Ibid.* In 2015, she was charged with being removable as an inadmissible alien under 8 U.S.C. 1182(a)(2)(A)(i)(II) because of her conviction for violating a controlled-substance law, and under 8 U.S.C. 1182(a)(2)(C)(i) because there was reason to believe she was a controlled-substance trafficker. Pet. App. 5a. The IJ sustained the charges of removability and denied petitioner's requests for relief and protection from removal. *Id.* at 6a. The Board affirmed. *Id.* at 6a-7a & n.1.; see *id.* at 37a-42a.

Petitioner's appeal to the Board also asked for a remand to the IJ because she was newly listed as the derivative beneficiary of a U-visa application filed by her husband, and she had recently applied for a visa on that basis, as well as for a waiver of inadmissibility, which would be necessary for her to obtain such a visa. Pet. App. 6a-7a. While the appeal was pending before the Board, petitioner also moved for administrative closure of her removal proceedings based on the U-visa and waiver applications. *Ibid.* The Board denied both requests due to "the uncertainty concerning when relief will become available," observing that petitioner's need for a waiver of inadmissibility "diminished" her "likelihood of success." *Id.* at 46a.

3. Petitioner filed a petition for review with the court of appeals that challenged only the denial of her administrative closure and remand requests. Pet. App. 7a. The court dismissed the petition for lack of jurisdiction. *Id.* at 3a-34a.[1] It held that the judicial-review bar

---

[1] The court of appeals issued an initial decision in March 2024, 96 F.4th 1192, and then issued an amended and superseding decision upon denial of rehearing en banc in August 2024. Pet. App. 2a-3a.

in Section 1252(a)(2)(C) prohibited review of petitioner's factual challenges to the denial of her motions to administratively close or remand her removal proceedings. *Ibid.*

The court of appeals first observed that "it is undisputed that [petitioner's] conviction for methamphetamine possession * * * triggers [Section] 1252(a)(2)(C)," Pet. App. 8a, which bars judicial review of "any final order of removal against an alien who is removable by reason of having committed" certain "criminal offense[s]," 8 U.S.C. 1252(a)(2)(C). The question, therefore, was whether petitioner's challenge to the denial of her motions for administrative closure or remand constituted a challenge to a "final order of removal." Pet. App. 9a. The court found that it did based on this Court's decision in *Nasrallah* v. *Barr*, 590 U.S. 573 (2020), which explained that an agency decision "merges into the final order of removal when it 'affect[s] the validity of the final order of removal' or 'disturb[s] the final order of removal.'" Pet. App. 11a (quoting *Nasrallah*, 590 U.S. at 582) (brackets in original).

The court of appeals determined that, if granted, the motions for administrative closure or remand would have "'affect[ed]'" or "disturb[ed]" petitioner's final order of removal. Pet. App. 12a (citation omitted). The court explained that "the grant of administrative closure would eliminate the immediate possibility of removal because the agency would 'temporarily remove the case from [the IJ's] active calendar' and 'close removal proceedings.'" *Id.* at 13a (quoting *In re Avetisyan*, 25 I. & N. Dec. at 692, 696). And the court found

---

The minor changes to the decision clarified that it did not disturb the validity of a prior Ninth Circuit decision, *ibid.*, and are not relevant to the petition for a writ of certiorari.

that a "remand would have a similar result" because it would reopen the removal proceedings to allow for the "U visa process to run its course," thereby "preventing an alien's removal." *Id.* at 13a. The court also noted that its decision was reinforced by its longstanding precedents recognizing that the denial of a motion to reconsider or reopen is covered by Section 1252(a)(2)(C)'s judicial-review bar, *id.* at 14a, and the court "respectfully disagree[d]" with a recent Fourth Circuit decision, *Williams* v. *Garland*, 59 F.4th 620 (2023), holding that such motions are not always subject to the review bar. Pet. App. 15a.

The court of appeals then considered whether the petition for review fell within an exception to Section 1252(a)(2)(C)'s judicial-review bar. Pet. App. 17a-34a. The court observed that Section 1252(a)(2)(D) creates an express exception permitting judicial review of constitutional claims and questions of law, but it found the exception inapplicable because petitioner presented a "factual challenge." *Id.* at 18a. The court then acknowledged that circuit precedent recognized a second "on the merits" exception to Section 1252(a)(2)(C) for cases in which an alien brings a factual challenge to a denial of relief that was premised on "reasons other than 'the crime underlying [petitioner's] removability.'" *Id.* at 19a (citation omitted; brackets in original). The court found that petitioner's challenge would fall within the contours of the "on the merits" exception established by circuit precedent, *id.* at 25a-27a, but the court declined to apply the exception because it found it was "clearly irreconcilable with *Nasrallah*," *id.* at 28a.

The court of appeals explained that, under *Nasrallah*, if an order counts as a "final order of removal"—including because it is an order that affects the validity

of the final order of removal and therefore "merge[s] into" it—"the court of appeals may not review *factual* challenges" to that order. Pet. App. 29a (citations omitted). The court found that such reasoning could not be squared with its prior "on the merits" exception, which permitted review of "certain factual challenges to orders that [the court has] treated as within the ambit of [Section] 1252(a)(2)(C)'s 'final order of removal.'" *Ibid.* (citation omitted). The court therefore held that the "exception should no longer apply," *id.* at 33a, and it dismissed the petition for review for lack of jurisdiction.

ARGUMENT

Petitioner contends (Pet. 16-19) that the court of appeals erred in determining that 8 U.S.C. 1252(a)(2)(C) bars judicial review of factual challenges to the Board's denial of her requests to administratively close or remand her removal proceedings. The court of appeals' decision is correct and does not implicate any division in the circuits that warrants the Court's consideration at this time. The petition for a writ of certiorari should therefore be denied.

1. The court of appeals correctly determined that Section 1252(a)(2)(C) bars judicial review of the factual findings underlying the Board's denial of petitioner's motions for administrative closure and remand. Pet. App. 4a. Section 1252(a)(2)(C) provides that "[n]otwithstanding any other provision of law," "no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a [specified] criminal offense." 8 U.S.C. 1252(a)(2)(C). Here, there is no dispute that petitioner has a qualifying conviction and that she brings a factual challenge, such that the exception allowing for the re-

view of "constitutional claims or questions of law," 8 U.S.C. 1252(a)(2)(D), does not apply.

Petitioner contends (Pet. 16-19), however, that her challenge to the Board's administrative closure and remand decisions does not constitute a challenge to a "final order of removal." That is incorrect. In *Nasrallah* v. *Barr*, 590 U.S. 573 (2020), this Court held that the term "final order of removal" encompasses "the rulings made by the [IJ] or [Board] that affect the validity of the final order of removal" because "rulings that affect the validity of the final order of removal merge into the final order of removal for purposes of judicial review." *Id.* at 582. As the court of appeals explained in this case, both the administrative closure and remand decisions "affect the validity" of petitioner's final order of removal. Pet. App. 13a-15a. If either request were granted, the removal order would no longer be in force, and petitioner's removal proceedings would either be temporarily taken off the docket or remanded to remain pending before the IJ while petitioner's U-visa application and waiver request are processed.

Petitioner's only response (Pet. 19) is that the Board's resolution of her motions does not affect the validity of her order of removal because she does not contest that her conviction makes her removable; she merely seeks postponement of a decision on removability. But petitioner has already been ordered removed, so granting the motions would mean her removal order would no longer be in force, which necessarily "affect[s]" its "validity." And the very purpose of petitioner's motions was to give her time to secure a U-visa that would prevent her removal altogether. The court of appeals was therefore correct in finding that the Board's denial of the motions merges into the final order of removal

and is subject to Section 1252(a)(2)(C)'s judicial review bar.

2. Petitioner asserts (Pet. 11-14) that this Court's intervention is warranted because the decision below conflicts with the Fourth Circuit's recent decision in *Williams* v. *Garland*, 59 F.4th 620 (2023). Petitioner is correct that the court below "respectfully disagree[d]" with the Fourth Circuit's determination that some factual findings underlying the denial of a motion to reopen or reconsider a removal order are reviewable even when the removal order itself is subject to Section 1252(a)(2)(C)'s judicial review bar. Pet. 11 (citation omitted; brackets in original). But there is no square conflict because *Williams* involved a motion to reconsider and the Fourth Circuit relied on, among other things, the purportedly "[l]ongstanding exercise of judicial review of the Board's reconsideration decisions" and "the history of the relevant statutory provisions" regarding reconsideration and reopening. 59 F.4th at 629. This case, by contrast, involves the denial of motions for administrative closure and remand—distinct motions that are creatures of regulations and Board practice rather than statute. Moreover, the decision below observed that the two cases were "factually distinguishable" because in *Williams* the government did not dispute that—if the motion for reconsideration was granted—the petitioner "would succeed on it." Pet. App. 17a n.2 (citation omitted). The government has made no such concession in petitioner's case.

In any event, the decision in *Williams* appears to be incorrect, which significantly reduces the chances that the Fourth Circuit would be willing to extend its reasoning to circumstances like the ones presented in this case. *Williams* concluded that Section 1252(a)(2)(C)'s

judicial-review bar does not prohibit the review of the denial of a motion to reconsider a final order of removal that would be subject to the review bar if the alien challenges factual findings that are unrelated to the merits of the removal order. That result cannot be squared with this Court's precedents. The Court has long held that "jurisdiction to review 'final order[s] of removal'" under Section 1252(a)(1) "encompasses review of decisions refusing to reopen or reconsider such orders." *Reyes Mata* v. *Lynch*, 576 U.S. 143, 147 (2015) (citation omitted). By the same token, Section 1252(a)(2)(C)'s bar on judicial review of a criminal alien's "final order of removal" should similarly bar review of a motion to reopen or reconsider that order. And *Nasrallah* reinforces the point because it explains that agency decisions that "affect the validity" of a removal order merge into it. 590 U.S. at 582. A motion to reopen or reconsider necessarily "affect[s] the validity" of the underlying removal order because the very purpose of such a motion is to revisit the propriety of the prior order.

Further support comes from *Guerrero-Lasprilla* v. *Barr*, 589 U.S. 221 (2020). In that case, this Court considered whether Section 1252(a)(2)(D)'s exception to Section 1252(a)(2)(C)'s judicial-review bar covered a mixed question of law and fact presented in a petition for review of a motion to reconsider a criminal alien's final order of removal. The premise of the question presented was that Section 1252(a)(2)(C) *would* bar review of the challenge to the motion to reconsider if Section 1252(a)(2)(D)'s exception for constitutional claims and questions of law did not apply. See *id.* at 224-225. And this Court expressly held that, while the mixed questions at stake in *Guerero Lasprilla* were reviewable because they fell within Section 1252(a)(2)(D), Section

1252(a)(2)(C) would "still forbid appeals of factual determinations." *Id.* at 235.

Judge Rushing emphasized many of the foregoing points in her dissent from the panel's decision in *Williams*, 59 F.4th at 645-649, and the Fourth Circuit has not applied this aspect of *Williams* in any subsequent cases. If the issue reoccurs in circumstances more directly akin to those presented here, the Fourth Circuit may decline to extend *Williams* or even revisit the case en banc. If it does not, the Court's intervention may become necessary, but it would be premature at this time.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General
YAAKOV M. ROTH
Acting Assistant Attorney General
JOHN W. BLAKELEY
MELISSA NEIMAN-KELTING
SPENCER S. SHUCARD
Attorneys

MARCH 2025