No. 23-1270

IN THE

Supreme Court of the United States

PIERRE YASSUE NASHUN RILEY,

Petitioner,

v.

MERRICK GARLAND, ATTORNEY GENERAL,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER & NATIONAL IMMIGRATION LITIGATION ALLIANCE AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

TRINA REALMUTO
KRISTIN MACLEOD-BALL
NATIONAL IMMIGRATION LITIGATION ALLIANCE
10 Griggs Terrace
Brookline, MA 02446
(617) 819-4447

ELIZABETH WYDRA
BRIANNE J. GOROD*
SMITA GHOSH
ANA BUILES
CONSTITUTIONAL ACCOUNTABILITY CENTER
1200 18th St. NW, Ste. 501
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

Counsel for Amici Curiae

* Counsel of Record

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INTEREST OF *AMICI CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and to preserve the rights and freedoms it guarantees. CAC also has a strong interest in meaningful access to courts, in accordance with constitutional text and history, and thus has an interest in ensuring that statutory prerequisites to filing suit are treated as jurisdictional and mandatory only when Congress clearly requires that result.

The National Immigration Litigation Alliance (NILA) is a not-for-profit membership organization that seeks to realize systemic change in the immigrant rights arena through litigation—by engaging in impact litigation to eliminate systemic obstacles that noncitizens routinely face and by building the capacity of immigration attorneys to litigate in federal courts through its strategic assistance and co-counseling programs. NILA and its members have a direct interest in ensuring that noncitizens are not unduly prevented from obtaining judicial review of removal orders.

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[1] Under Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner Pierre Riley, who has lived in the United States for almost thirty years and has seven children here, seeks to defer his removal from the United States because he fears persecution and torture in his country of origin. Pet. 11-12. Because Riley was previously convicted of an aggravated felony, the Department of Homeland Security (DHS) issued a Final Administrative Removal Order against him in January 2021 under 8 U.S.C. § 1228(b). *Id*. at 11.

DHS subsequently referred Riley for an interview with an asylum officer due to Riley's fear that he would be tortured if returned to Jamaica. Although the asylum officer initially determined that Riley's fear was not reasonable, *id.* at 2a, an Immigration Judge (IJ) reversed, *id.* at 3a. Riley then filed a Convention Against Torture (CAT) claim for deferral of removal. *Id*. at 12. After an evidentiary hearing, the IJ found credible Riley's testimony that a former police officer with connections in the Jamaican government killed two of Riley's cousins and had threatened to murder him if he ever returned to Jamaica. For that reason, the IJ granted Riley CAT protection. *Id.*

The Board of Immigration Appeals (BIA) agreed that Riley's testimony was credible, but nevertheless reversed and vacated the IJ's decision for lack of corroboration in May 2022. *Id.* Riley promptly petitioned for review of the BIA's decision. Instead of addressing the merits of his petition, the court below dismissed for lack of jurisdiction. After holding that 8 U.S.C. § 1252(b)(1), which provides that a "petition for review must be filed not later than 30 days after the date of the final order of removal," is "mandatory and jurisdictional," *id*. at 4a, the court concluded that Riley had

not timely filed because, in its view, § 1252(b)(1)'s deadline for filing a petition for review commenced in January 2021 when DHS issued its Final Administrative Removal Order. Thus, according to the court below, it was irrelevant that Riley filed his petition for review within 30 days of the BIA's 2022 order vacating the IJ's grant of CAT protection—Riley's deadline for filing his petition of review expired well before the IJ even adjudicated his CAT claim. *Id.* at 4a-5a.

The lower court's treatment of § 1252(b)(1) as mandatory and jurisdictional conflicts with the last two decades of this Court's precedents, as well as the text and structure of § 1252(b)(1). This Court should reverse.

I. This case, like many before it, "concerns the distinction between two sometimes confused or conflated concepts: federal-court 'subject-matter' jurisdiction over a controversy; and the essential ingredients of a federal claim for relief." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 503 (2006). While "subject-matter jurisdiction" places "limits on the classes of cases a court may entertain," *Wilkins v. United States*, 598 U.S. 152, 157 (2023) (internal quotations omitted), claim-processing rules merely "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times," *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011).

To ensure courts "attend to the distinction between" jurisdictional bars and claim-processing rules, this Court has sought to "bring some discipline to the use of th[e] term 'jurisdictional.'" *Santos-Zacaria v. Garland*, 598 U.S. 411, 421 (2023) (internal quotations omitted). A provision is only jurisdictional if Congress "clearly states" that it "shall count as jurisdictional."

Arbaugh, 546 U.S. at 515. Indeed, just a year ago, this Court reiterated in *Santos-Zacaria v. Garland* that "jurisdiction . . . is a word of many, too many meanings, and courts have more than occasionally used it to describe rules beyond those governing a court's adjudicatory authority." 598 U.S. at 421 (internal citation omitted). To address this problem, this Court has instructed that "drive-by jurisdictional rulings . . . should be accorded no precedential effect." *Arbaugh*, 546 U.S. at 511 (internal citation omitted).

While this Court previously classified § 1252(b)(1)'s 30-day deadline as jurisdictional, *see Stone v. INS*, 514 U.S. 386, 406 (1995), both Petitioner and the government agree that this holding is untenable after *Santos-Zacaria*. In *Santos-Zacaria*, this Court held that § 1252(d)(1)'s exhaustion requirement is a nonjurisdictional claim-processing rule. It did so for two reasons: first, because exhaustion requirements are quintessential claim-processing rules and, second, because § 1252(d)(1) lacks the clear "jurisdictional language" that Congress included in neighboring provisions, which state explicitly that "no court shall have jurisdiction" to review certain matters. *See* 598 U.S. at 418, 419 n.5 (citing, for example, 8 U.S.C. § 1252(a)(2)(A), (a)(2)(B), (a)(2)(C), (b)(9), and (g)). Those same reasons apply here. Time limits like the one in § 1252(b)(1) are garden-variety claim-processing rules that stand in "linguistic contrast" to the explicitly jurisdictional provisions discussed in *Santos-Zacaria*, *see id.* at 419. *Santos-Zacaria* also rejected attempts to rely on *Stone v. INS*, which had previously categorized a predecessor of § 1252(d)(1) as a limit on subject-matter jurisdiction. *See id.* at 421 (noting that "*Stone* predates our cases . . . that 'bring

some discipline to the use of th[e] term' 'jurisdictional'" (quoting *Henderson*, 562 U.S. at 435)).

Because § 1252(b)(1) is nonjurisdictional, "it is subject to waiver and forfeiture." *Id.* at 423. Here, in addition to conceding that Riley's petition for review was timely filed, Resp. Br. 24 n.7, the government has also indicated it would waive any objection to the timeliness of Riley's petition, BIO 16. This Court should reverse.

II. This Court need not address whether § 1252(b)(1) is mandatory, and it should not address it because doing so would raise the question whether § 1252(b)(1) is subject to equitable tolling. *See Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17, 20 n.3 (2017) (noting that the Court has "reserved whether mandatory claim-processing rules may be subject to equitable exceptions"). But if it does reach the issue, this Court should conclude that equitable tolling is available under § 1252(b)(1). The doctrine of equitable tolling is "centuries old," *McQuiggin v. Perkins*, 569 U.S. 383, 409 (2013) (Scalia, J., dissenting), and has become a "traditional feature of American jurisprudence," *Boechler P.C. v. Comm'r*, 596 U.S. 199, 208-09 (2022). Tolling permits courts to extend a deadline "because of an event or circumstance that deprives the filer, through no fault of his own, of the full period accorded by the statute." *McQuiggin*, 569 U.S. at 409 (Scalia, J., dissenting). As this Court has recognized, equitable tolling is presumptively available in the context of all "statutory time limits." *Irwin v. Dep't of Veteran Affs.*, 498 U.S. 89, 95-96 (1990).

Consistent with this long history, § 1252(b)(1)'s 30-day time limit is subject to equitable tolling. "[N]onjurisdictional limitations periods are presumptively subject to equitable tolling," *Boechler*, 596 U.S.

at 208-09, and nothing in the text or structure of § 1252(b)(1) rebuts that presumption. Section 1252(b)(1) simply states that a "petition for review" must be filed "within thirty days after the date of the final order of removal," and other subsections of that provision emphasize that courts should weigh the equities of rigidly applying this time limit to noncitizens like Riley who fear removal to their country of origin.

In short, § 1252(b)(1) is a nonjurisdictional claim-processing rule, and the government has both conceded that Riley's petition was timely filed and indicated that it would waive any objection to the timeliness of his petition in any event. Thus, this Court need decide no other issue to resolve this case and reverse. If this Court nevertheless decides to address whether § 1252(b)(1) is subject to equitable tolling, it should be sure to leave courts the discretion to consider the equities of applying § 1252(b)(1)'s time limit to deny judicial review to noncitizens who face torture and persecution in their country of origin. "Created to avert the evils of archaic rigidity," equitable tolling has existed since the Founding to "relieve hardships which, from time to time, arise from a hard and fast adherence to more absolute rules." *Holland v. Florida*, 560 U.S. 631, 650 (2010) (internal citation omitted). It should be available here.

ARGUMENT

I. Under this Court's Precedents, § 1252(b)(1) Is a Claim-Processing Rule.

A. This Court has repeatedly "stressed the distinction between jurisdictional prescriptions and nonjurisdictional claim-processing rules." *Fort Bend County v. Davis*, 587 U.S. 541, 548 (2019). Subject-matter jurisdiction refers to "prescriptions delineating the classes

of cases a court may entertain," *id.*, and "the courts' statutory or constitutional power to adjudicate the case," *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) (emphasis omitted). Claim-processing rules are entirely different. They "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times." *Henderson*, 562 U.S. at 435. Though these rules are "important," this Court has repeatedly stated they "should not be given the jurisdictional brand." *Id.*

Requiring Congress to state clearly that a particular prerequisite is jurisdictional makes sense given the significant consequences that attach. *See id.* at 434 (calling a requirement jurisdictional "is not merely semantic but [a question] of considerable practical importance for judges and litigants"). Our justice system "relies chiefly on the *parties* to raise significant issues and present them to the courts in the appropriate manner at the appropriate time for adjudication." *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 356 (2006). And failure to "raise a claim for adjudication at the proper time" generally results in "forfeiture of that claim." *Id.* at 356-57. These "waiver and forfeiture rules . . . ensure that parties can determine when an issue is out of the case, and that litigation remains, to the extent possible, an orderly progression." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 487 n.6 (2008). Indeed, as this Court has noted, "harsh consequences" attend the jurisdictional label, *United States v. Kwai Fun Wong*, 575 U.S. 402, 409 (2015), precisely because "[b]randing a rule as going to a court's subject-matter jurisdiction alters the normal operation of our adversarial system," *Henderson*, 562 U.S. at 434. "Jurisdictional requirements cannot be waived or forfeited, must be raised by courts *sua sponte*, and . . . do not

allow for equitable exceptions." *Boechler*, 596 U.S. at 203.

The costs of departing from this "orderly progression," *Baker*, 554 U.S. at 487 n.6, are particularly severe for noncitizens in removal proceedings who frequently have limited English proficiency, "are not guaranteed legal representation[,] and are often subject to mandatory detention," *Moncrieffe v. Holder*, 569 U.S. 184, 201 (2013); Robert A. Katzmann, *Study Group on Immigrant Representation: The First Decade*, 87 Fordham L. Rev. 485, 486 (2018) (reporting that sixty-three percent of noncitizens in deportation proceedings lack representation). As this Court has recognized, the consequences of removal are "grave," *Bridges v. Wixon*, 326 U.S. 135, 165 (1945), and "severe," *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (internal citation omitted), because removal is a "drastic measure" that is "'the equivalent of banishment or exile,'" *id.* at 360, 373 (internal citation omitted). And for noncitizens, like Riley, with fear-based claims, judicial review may literally mean the difference between life in the United States and persecution, torture, or death abroad. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987) ("Deportation is always a harsh measure; it is all the more replete with danger when the [noncitizen] makes a claim that he or she will be subject to death or persecution if forced to return to his or her home country.").

B. To ensure that courts "attend to the distinction between" jurisdictional bars and claim-processing rules, this Court, "starting principally with *Arbaugh* in 2006," has sought to "bring some discipline to the use of th[e] term 'jurisdictional.'" *Santos-Zacaria*, 598 U.S. at 421 (internal quotations omitted). *Arbaugh* set out a "readily administrable bright line [test]": A

statutory limitation is not jurisdictional unless "the Legislature clearly states that . . . [it] shall count as jurisdictional." 546 U.S. at 515-16. The Court "adopted this clear-statement principle in *Arbaugh* 'to leave the ball in Congress' court,' ensuring that courts impose harsh jurisdictional consequences only when Congress unmistakably has so instructed." *Santos-Zacaria*, 598 U.S. at 416-17 (quoting *Arbaugh*, 546 U.S. at 515-16). By contrast, "[w]hen Congress does not rank a prescription as jurisdictional, courts should treat the restriction as nonjurisdictional in character." *Fort Bend*, 587 U.S. at 550 (internal citation and brackets omitted); *see also Boechler*, 142 U.S. at 206 ("[t]o satisfy the clear-statement rule, the jurisdictional condition must be just that: clear").

Applying the clear-statement rule, this Court has time and time again "made plain that most time bars are nonjurisdictional." *See Wong*, 575 U.S. at 410 (the Federal Tort Claims Act's statute of limitations is not jurisdictional); *Henderson*, 562 U.S. at 431 (the 120-day deadline for a veteran whose claim is denied to file an appeal to the United States Court of Appeals for Veterans Claims is not jurisdictional); *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 148 (2013) (deadline to "file an administrative appeal from the initial determination of the reimbursement due them for inpatient services rendered to Medicare beneficiaries" is not jurisdictional); *Hamer*, 583 U.S. at 27 (Federal Rule of Appellate Procedure 4(a)(5)(C)'s "30-day limitation on extensions of time to file a notice of appeal" is not jurisdictional); *Boechler*, 596 U.S. at 211 (the "30-day time limit to file a petition for review of a collection due process determination is an ordinary, nonjurisdictional deadline subject to equitable tolling"); *Harrow v. Dep't of Def.*, 601 U.S. 480, 483 (2024) (the

"60-day deadline to appeal" a claim denied by the Merit Systems Protection Board to the Federal Circuit is not jurisdictional).

In *Arbaugh*, this Court also sought to correct for past decisions that too lightly labeled statutory requirements jurisdictional. These "drive-by jurisdictional rulings," this Court said, "should be accorded no precedential effect on the question whether the federal court had authority to adjudicate the claim in suit." *Arbaugh*, 546 U.S. at 511 (internal citation omitted).

C. This case involves another drive-by jurisdictional ruling. Relying on *Stone v. INS*, a case predating *Arbaugh* where this Court labeled a predecessor of § 1252(b)(1) "jurisdictional," the court below categorized § 1252(b)(1)'s 30-day filing deadline as a limit on its subject-matter jurisdiction. *See Martinez v. Garland*, 86 F.4th 561, 567 (4th Cir. 2023) (quoting *Stone*, 514 U.S. at 405); *see also* Pet. App. 4a (relying on *Martinez*, 86 F.4th at 566). That ruling is untenable under two decades of this Court's precedents, including most recently *Santos-Zacaria*, as both Petitioner and the government agree.

In *Santos-Zacaria*, this Court held that § 1252(d)(1)'s exhaustion requirement was a claim-processing rule for two reasons, 598 U.S. at 417, both of which apply here.

First, "express language" is required to transform an exhaustion requirement, "a quintessential claim-processing rule," into a jurisdictional rule. *Id*. at 417-18. "When faced with a type of statutory requirement that ordinarily is not jurisdictional," the Court explained, "we naturally expect the ordinary case, not an exceptional one." *Id*. (internal citation omitted). Given this, "to be confident Congress took that

unexpected tack," the Court concluded, it "would need unmistakable evidence, on par with express language addressing the court's jurisdiction." *Id*. at 418.

The same is true here. "[M]ost time bars," even "emphatic" ones, *Kontrick v. Ryan*, 540 U.S. 443, 454 (2004), are "nonjurisdictional," *Harrow*, 601 U.S. at 484 (internal citation omitted); *see also Henderson*, 562 U.S. at 435-36 ("Filing deadlines . . . are quintessential claim-processing rules."). That includes deadlines to file a petition for review of an agency action. *See Boechler*, 596 U.S. at 202; *Harrow*, 601 U.S. at 485. To conclude that Congress meant for § 1252(b)(1) to be jurisdictional, there would need to be unmistakable evidence addressing the court's jurisdiction. Nothing of the sort appears in the statute—§ 1252(b)(1) simply states that a "petition for review must be filed not later than 30 days after the date of the final order of removal."

Second, § 1252(d)(1)'s "language differs substantially from more clearly jurisdictional language in related statutory provisions." *Santos-Zacaria*, 598 U.S. at 418. "Elsewhere in the laws governing immigration cases, Congress specified that 'no court shall have jurisdiction' to review certain matters." *Id*. at 418-19 (citing neighboring provisions including 8 U.S.C. § 1252(a)(2)(A), (a)(2)(B), (a)(2)(C), (b)(9), (g)). "The contrast between the text of § 1252(d)(1) and the unambiguous jurisdictional terms in related provisions show[s] that Congress would have spoken in clearer terms if it intended for § 1252(d)(1) to have similar jurisdictional force." *Id*. (internal citation omitted). The same is true of § 1252(b)(1).

In ignoring these principles, the court below largely relied on this Court's earlier decision in *Stone*. *See* Pet. App. 4a (relying on *Martinez*, 86 F.4th at 567

(finding that *Santos-Zacaria* is limited to § 1252(d)(1) and *Stone* is still binding precedent)). But in *Santos-Zacaria*, this Court made clear that *Stone* did not address "'jurisdictional' rules (as we understand them today)," and emphasized that it "predate[d]" cases, including *Arbaugh*, that sought to "bring some discipline to the use of th[e] term 'jurisdictional.'" *Santos-Zacaria*, 598 U.S. at 421 (internal quotations omitted); *Wilkins*, 598 U.S. at 159-60 ("[t]he mere fact that this Court previously described something 'without elaboration' as jurisdictional therefore does not end the inquiry"). *Stone*, then, "cannot be read to establish the predecessor exhaustion requirement," or the limit to file a petition for review, "as jurisdictional." *Santos-Zacaria*, 598 U.S. at 422.

* * *

Because § 1252(b)(1) is nonjurisdictional, "it is subject to waiver and forfeiture." *Id.* at 423. Here, the government has indicated it would waive any objection to the timeliness of Riley's petition, BIO 16, and regardless has conceded that Riley's petition for review was timely filed, Resp. Br. 24 n.7. This Court should therefore reverse. If, however, the Court decides to address whether § 1252(b)(1) is subject to equitable tolling, it should conclude that it is, as the next Section discusses.

II. Section 1252(b)(1)'s 30-day Deadline Is Subject to Equitable Tolling.

A. Originally at common law, "there was no limitation as to the time within which an action might be brought," although actions at tort were limited to the "duration of the life of either party." 1 H.G. Wood, *Statutes of Limitations* § 1, at 2-3 (2d ed. 1893); James John Wilkinson, *A Treatise on the Limitation of Action*

2 (1829) ("It was a maxim that a right never dies . . . ."). But over time, the "abuses from stale demands became so great as to be unendurable," 1 Wood, *supra*, § 2, at 6, and English legislators created statutes of limitations—statutory periods in which "certain rights may be enforced," *id.* § 1, at 1. When forming their legal systems, American colonists "founded" their own statutes of limitations using these English statutes as a guide. *Walden v. Heirs of Gratz*, 14 U.S. 292, 297 (1816).

On both sides of the Atlantic, courts and legislators developed a set of justifications for their decision to "abridge[] the common law" by setting limitations periods. Wilkinson, *supra*, at 12. Statutes of limitations "requir[ed] parties to settle their business matters within certain reasonable periods," 1 Wood, *supra*, § 4, at 8, "quiet[ed] men in the enjoyment of their estates and possessions," *Wall v. Robson*, 11 S.C.L. 498, 499 (S.C. Const. App. 1820), and punished the "indolence of those who [we]re dilatory in . . . claiming what is due to them," J.K. Agnell, *A Treatise on the Limitations of Actions at Law* 5 (2d ed. 1846). They also "guard[ed] against suspicious and ill-founded claims," *id.*, by "compel[ling] the settlement of claims . . . while the evidence . . . is yet fresh in the minds of the parties or their witnesses," 1 Wood, *supra*, § 5, at 7; *Sherwood v. Sutton*, 21 F. Cas. 1303, 1307 (C.C.D.N.H. 1828) (Story, J.) ("The statute of limitations was mainly intended to suppress fraud, by preventing fraudulent and unjust claims from starting up at great distances of time.").

Despite the justifications for these limitation periods, courts of equity quickly began permitting exceptions to them, even when those exceptions were not within "the letter" of the statute. *Id.* at 1308; 1 Wood,

supra, § 6, at 9. As an initial matter, when considering purely equitable matters, courts recognized that the "lapse of time, however long, [did] not deprive a party of his remedy thereon if there [wa]s a reasonable excuse for the delay." *Id.* § 59, at 146. And this was true even after "a considerable lapse of time." 1 Joseph Story, *Commentaries on Equity Jurisprudence* § 529, at 503 (1836). As Joseph Story instructed, "Courts of Equity [should] not refuse their aid in furtherance of the rights of the party," when there are "peculiar circumstances . . . excusing or justifying the delay." *Id.* at 503-04. Indeed, when a defendant raised a plaintiff's laches or delay as a defense to a claim, courts of equity considered factors specific to the plaintiff that might excuse the late filing, including a plaintiff's service in the army, 4 John Bouvier, *Institutes of American Law* 214 n.b (1851); an office fire, 1 Wood, *supra*, § 59, at 146 (citing *Johnson v. Diversey*, 82 Ill. 446 (1879)); and any other "reasonable excuse for the delay" that was put forward, *id.* at 146 n.2.

Moreover, when courts sitting in equity enforced statutes of limitation by "analogy"—that is, when those statutes would bar similar actions at law—they would still "interfere in many cases, to prevent the bar of the statutes, where it would be inequitable or unjust." 2 Story, *supra*, § 1521, at 906. In other words, despite a relevant statute of limitations, equity courts permitted plaintiffs to bring claims, however "long outstanding," when they "perceive[d] that a party ha[d] equitable rights." 1 Wood, *supra*, § 58, at 140. As long as a plaintiff could show "good faith[] and reasonable diligence," a court could still give relief. 2 Story, *supra*, § 896, at 210.

For example, courts tolled the statute of limitations when "inevitable necessity" prevented the

plaintiff from filing suit. *Wall*, 11 S.C.L. at 499. In *Wall*, a South Carolina court considered a British subject's claim against an American citizen for non-payment of debt. *Id.* In defense, the defendant raised the statute of limitations, which had clearly run, and the plaintiff responded that the limitations period should be tolled for the duration of the War of 1812 during which courts were "shut up against British creditors." *Id.* at 509.

The court concluded that the statute contained an implied exception for "act[s] of God," including "storms, tempests, earthquakes, and other casualties of nature," *id.* at 500, as well as the "declaration of war," *id.* at 505. According to the court, statutes of limitations were not intended to "prevent a man who had never been guilty of any wilful[l] laches or delay . . . from pursuing his just rights." *Id.* at 499. Tolling would enable the court to "preserve the plaintiff's right" in this extraordinary circumstance. *Id.* at 509; *see Braun v. Sauerwein*, 77 U.S. 218, 222-23 (1869) (noting that when "the creditor has been disabled to sue, by a superior power, without any default of his own," the "running of a statute of limitation may be suspended"); *Hanger v. Abbott*, 73 U.S. 532, 538-39 (1867) (concluding that tolling the limitations period during the Civil War would not "encourage laches or . . . promote negligence" and to do otherwise would make a "mockery" of the plaintiff's right to sue).

Similarly, courts suspended the application of statutes of limitations when the plaintiff did not recognize that he had a cause of action due to the defendant's "fraudulent concealment." *Sherwood*, 21 F. Cas. at 1303-05. In *Sherwood*, Justice Story, when riding circuit, considered a case involving a defendant who had defrauded the plaintiff when selling a ship, and

managed to conceal the fraud for several years after the sale. *Id.* The applicable statute of limitations had expired, but Justice Story invoked the equitable exception for cases of fraud and mistake. *Id.* at 1304-07. Adopting this exception would be, in Story's words, consistent with "legislative intention" because the statute of limitations was enacted to "suppress," and not encourage, fraud. *Id.* at 1307; *First Mass. Tpk. Corp. v. Field*, 3 Mass. 201, 207 (1807) (when the "delay of bringing the suit is owing to the fraud of the defendant," the statute could be tolled "until the plaintiff could obtain the knowledge that he had a cause of action"); *Clementson v. Williams*, 12 U.S. 72, 74 (1814) (noting that the defendant's belated "acknowledgement of a debt" could "take the case out of that statute of limitations").

Although the tolling doctrine originated in equity, courts later made clear that tolling is also available in actions at law. *See Sherwood*, 21 F. Cas. at 1308; *Bailey v. Glover*, 88 U.S. 342, 349 (1875) ("[T]he weight of judicial authority, both in this country and in England, is in favor of the application of the rule to suits at law as well as in equity."). In *Bailey*, the plaintiff sought to set aside an allegedly fraudulent conveyance that he had received from the defendant before the defendant's bankruptcy, and that the defendant had "kept secret and concealed." 88 U.S. at 348. The Bankruptcy Act required certain suits to be brought "within two years from the time [when] the cause of action accrued," *id.* at 344 (quoting Bankruptcy Act of Mar. 2, 1867, ch. 176, § 2, 14 Stat. 518), with no exception for fraudulent concealment. Nonetheless, this Court tolled the two-year period, relying on the principle that the period would not run when the "party injured by the fraud remains in ignorance of it without any fault

or want of diligence or care on his part." *Id.* at 348.

In more recent cases, this Court has reiterated that tolling is available in cases in which "hardships . . . arise from a hard and fast adherence to more absolute legal rules." *Holland*, 560 U.S. at 650 (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944)); *see, e.g.*, *id.* at 631 (tolling one-year limitation for filing application for writ of habeas corpus); *Young v. United States*, 535 U.S. 43, 50 (2002) (tolling three-year "lookback period" in bankruptcy proceedings); *Rotella v. Wood*, 528 U.S. 549 (2000) (tolling four-year period for filing civil suit under Racketeer Influenced and Corrupt Organizations Act); *Wong*, 575 U.S. at 405 (time limitations under the Federal Tort Claims Act are subject to equitable tolling).

In sum, there is a long history of courts recognizing that tolling is appropriate when situations beyond a plaintiff's control make it difficult or impossible to meet a statutory deadline, even with the exercise of due diligence, such that it would be "inequitable or unjust" for the "bar of the statute" to apply. 2 Story, *supra*, § 1521, at 738.

B. As this history demonstrates, the doctrine permitting tolling in equitable circumstances is "a traditional feature of American jurisprudence," *Boechler*, 596 U.S. at 208-09, against which Congress drafts statutory time limits. For that reason, "nonjurisdictional limitations periods are presumptively subject to equitable tolling." *Id.* at 209 (citing *Irwin*, 498 U.S. at 95); *see also Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946) (equitable tolling doctrine should be "read into every federal statute of limitation[s]").

For instance, in *Holmberg*, several creditors sued a shareholder of a land bank under the Federal Farm

Loan Act. 327 U.S. at 393. Anticipating the defendant's statute of limitations defense, the creditors alleged that they did not learn of the defendant's ownership of the stock until 1942 because his ownership had been "concealed" under another name. *Id.* This Court agreed with the creditors. Citing *Bailey* and *Sherwood*, it described the "old chancery rule" permitting tolling when "a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part." *Id.* at 397 (internal quotations omitted). Because that equitable doctrine "is read into every federal statute," this Court reasoned, it should apply to the Federal Farm Loan Act as well. *Id.*; *Sherwood*, 21 F. Cas. at 1307 (noting that the exception for fraud or mistake would have been "well known" to the lawmakers who framed the limitations period).

In *Irwin*, this Court extended the presumption of tolling to "suits against the United States." *Irwin*, 498 U.S. at 95-96. *Irwin* considered whether a 30-day period for filing suit against a federal agency under Title VII of the Civil Rights Act of 1964 was subject to equitable tolling. *Id.* at 94 (citing 42 U.S.C. § 2000e-16(c) (1988)). In deciding that the deadline was subject to tolling, this Court affirmed the "rebuttable presumption of equitable tolling" applicable to any "time requirements in lawsuits between private litigants," *id.* at 95, and concluded that "the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States," *id.* at 95-96.

This Court has explained that this presumption is doubly applicable to statutory deadlines contained in "humane and remedial Act[s]," *Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 427-28 (1965), that are

designed to "aid claimants," *Honda v. Clark*, 386 U.S. 484, 496 (1967). In *Honda*, claimants of property held under the Trading with the Enemy Act, which had permitted the seizure of assets from businesses owned by Japanese nationals during WWII, sought to toll the Act's 60-day deadline for appealing an administrative claim schedule. *Id.* at 493. This Court tolled the limitations period during the pendency of related litigation because it was consistent with the statutory scheme and equitable principles to do so. *Id.* at 501. Specifically, the statute "was intended to provide a method for the fair and equitable distribution of vested enemy assets," and the limitations period was "designed to further this end—to aid claimants by expediting a final distribution," rather than to act "primarily as a shield for the Government." *Id.* at 495-96. Further, this Court emphasized, tolling the limitations period for some claims would not affect the "amount of others' claims" because other claimants had no interest in "the time of proof." *Id.* at 497. Finally, the history of the statute made clear that "the overall congressional purpose"—to address the country's "moral obligation" to compensate Japanese nationals with "proper claims"—was consistent with the application of tolling. *Id.* at 501.

Similarly, in *Bowen v. City of New York*, plaintiffs challenging a Social Security policy sought to toll the 60-day deadline for appealing the Social Security administrator's denial of a claim for the period in which an allegedly illegal policy was "operative but undisclosed." 476 U.S. 467, 478 (1986). This Court held that the "application of a 'traditional equitable tolling principle'" to the deadline was "consistent with the overall congressional purpose" of the Social Security Act, *id.* at 480 (citing *Honda*, 386 U.S. at 501), to be "unusually

protective of claimants" seeking benefits, *id.* at 480 (internal quotation marks omitted).

And in *Boechler*, this Court held that the 30-day deadline for filing a petition to review the Internal Revenue Service's decision to seize and sell a taxpayer's property to pay off his tax debts can be equitably tolled. 596 U.S. at 209. Keeping in mind that "nonjurisdictional limitations periods are presumptively subject to equitable tolling," this Court found "nothing" in § 6330(d)(1) "to rebut that presumption" because the statute "does not expressly prohibit equitable tolling" and is contained in a section of the Tax Code that is "'unusually protective' of taxpayers and a scheme in which 'laymen, unassisted by trained lawyers,' often 'initiate the process.'" *Id.* (quoting *Sebelius*, 568 U.S. at 160).

C. Because "[e]quitable tolling is a traditional feature of American jurisprudence and a background principle against which Congress drafts limitations periods," this Court has recently reiterated that "nonjurisdictional limitations periods are presumptively subject to equitable tolling." *Id.* at 208-09. Section 1252(b)(1) does not rebut that presumption.

"Start with the text." *Arellano v. McDonough*, 598 U.S. 1, 8 (2023). Nothing in the text of § 1252(b)(1)—which simply states that noncitizens must file a "petition for review within thirty days after the date of the final order of removal"—suggests that Congress intended to preclude equitable exceptions. Section 1252(b)(1) "does not expressly prohibit equitable tolling, and its short, 30-day time limit is directed at" noncitizens, who are often uncounseled, rather than courts. *Boechler*, 596 U.S. at 209. Nor is it part of a "comprehensive scheme" of "detailed instructions" with many specific exceptions detailing when and for

whom the clock should be tolled. *Arellano*, 598 U.S. at 7-8. In each of these respects, § 1252(b)(1) is remarkably similar to the 30-day limit for filing a petition for review of an agency action at issue in *Boechler*, which this Court recently recognized is subject to equitable tolling. Moreover, the INA's subject matter, review of deportation orders, "pertains to an area of the law where equity finds a comfortable home." *Holland*, 560 U.S. at 647; *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 236 (2020) (§ 1252's "basic purpose [is] providing an adequate substitute for habeas review").

The structure of § 1252(b) further suggests that Congress meant for courts to take into consideration equitable principles. Once a noncitizen files a petition for review, he must file "a brief in connection with" that petition within 40 days of the government filing the administrative record. 8 U.S.C. § 1252(b)(3)(C). But that deadline can be extended "upon motion for good cause shown." *Id.*; *see* H.R. Rep. No. 104-828, at 219 (1996) (noting that § 1252(b)'s "deadlines may be extended for good cause"). Moreover, even though the statute requires a court to dismiss the appeal if a noncitizen files his petition for review late, the court need not dismiss the petition if "a *manifest injustice would result*." *Id.* (emphasis added). That is, even if a noncitizen fails to file a timely brief, Congress requires courts to weigh the equities of rigidly applying this filing deadline to someone who, like Riley, has expressed a fear of torture if removed. It would be odd, then, to read § 1252(b)(1) as *prohibiting* courts from ruling equitably when it is the initial petition for review that is not timely filed. Section 1252(b)(3)(C) thus demonstrates that § 1252(b) as a whole "incorporates traditional equitable principles." *Young*, 535 U.S. at 53; *cf. id.* (an "express tolling provision" in one limitations

period in a subsection supports conclusion that another provision in the same subsection allows equitable tolling, even though that provision does not contain an express tolling provision).

D. Nothing in this Court's prior cases requires a different result. In *Stone*, this Court described a portion of the INA that contained the predecessor of § 1252(b)(1)'s time limit as "mandatory," *Stone*, 514 U.S. at 405 (internal citation omitted), but that ruling predated *Irwin*'s presumption that statutory time provisions are subject to equitable tolling, *see Boechler*, 596 U.S. at 209 ("[N]onjurisdictional limitations periods are presumptively subject to equitable tolling."). *Stone* also predated this Court's cases clarifying the line between provisions that are jurisdictional and those that are not, *see supra* at 8-10, and thus concluded that a statutory provision specifying the timing for review from a final order of deportation was a jurisdictional provision. *See supra* at 9 (citing cases noting that equitable tolling was not available because the provision was jurisdictional). Perhaps most importantly, *Stone* predated the 1996 amendments to the INA that baked equitable considerations into § 1252(b). *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-608 (codified at 8 U.S.C. § 1252(b)(3)(C)); *supra* at 21.

More recently, in *Nutraceutical Corp. v. Lambert*, this Court concluded that the 14-day window to file a petition for interlocutory review of a district court's decision granting or denying class-action certification under Federal Rule of Civil Procedure 23(f) is not subject to equitable tolling. 586 U.S. 188, 192 (2019). Significantly, though, that case involved a Federal Rule of Civil Procedure—not a statutory time limit to which

the *Irwin* presumption applies. *See Irwin*, 498 U.S. at 95 (emphasizing the importance of "fidelity to the intent of Congress"). Indeed, even though the government raised *Nutraceutical* in *Boechler*, this Court did not rely on it at all in that decision. *Compare* Resp. Br. 40-41, *Boechler*, 596 U.S. 199 (No. 20-1472), *with Boechler*, 596 U.S. at 199.

And even in *Nutraceutical*, this Court made explicit that equitable tolling should be available unless the "pertinent rule or rules invoked show a *clear intent* to preclude tolling." 586 U.S. at 192 (emphasis added); *id.* at 193 (noting that the governing Rules "make clear" that equitable tolling is not available); *id.* (noting that the Rules "express a clear intent to compel rigorous enforcement of Rule 23(f)'s deadline"). Against that backdrop, this Court concluded that Rule 23(f) did not permit equitable tolling because the "Federal Rules of Appellate Procedure single out" that particular Rule "for inflexible treatment," *id.* at 193, but it did nothing to suggest that the *Irwin* presumption no longer applies to statutory deadlines more broadly. Indeed, earlier this year, this Court again reiterated that "nonjurisdictional timing rules"—in that case, the 60-day time limit to file a petition for review of an agency action to the Federal Circuit—"are presumptively subject to equitable tolling." *Harrow*, 601 U.S. at 489 (internal citation omitted). As this Court put it then, "'Because we do not understand Congress to alter' age-old procedural doctrines lightly, 'nonjurisdictional [timing rules] are presumptively subject to equitable tolling.'" *Id.* That same presumption applies here.

* * *

As this Court recently said, a rule "is jurisdictional only if Congress clearly states that it is." *Santos-*

Zacaria, 598 U.S. at 416 (internal citation omitted). Here, both Petitioner and the government agree that it has not done so, and they are right: § 1252(b)(1) is not jurisdictional. Because nonjurisdictional rules are "subject to waiver and forfeiture," the Court can stop there—the government has indicated it would waive any objection to the timeliness of Riley's petition and, regardless, both parties agree that Riley timely filed his petition. But if this Court chooses to address whether § 1252(b)(1) is mandatory, it should make clear that equitable tolling, a practice that has existed since the Founding to prevent the application of statutory deadlines when doing so "would be inequitable or unjust," 2 Story, *supra*, § 1521, at 738, applies here. Because of tolling's "long history," *Holland*, 560 U.S. at 651, the presumption that equitable tolling is available has become "hornbook law," *Young*, 535 U.S. at 49, and nothing in the text or structure of § 1252(b)(1) rebuts that presumption.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

ELIZABETH B. WYDRA
BRIANNE J. GOROD*
SMITA GHOSH
ANA BUILES
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

TRINA REALMUTO
KRISTIN MACLEOD-BALL
NATIONAL IMMIGRATION
LITIGATION ALLIANCE
10 Griggs Terrace
Brookline, MA 02446
(617) 819-4447

Counsel for Amici Curiae

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