No. 23-929

# In the Supreme Court of the United States

HUGO ABISAI MONSALVO VELÁZQUEZ, PETITIONER

*v.*

MERRICK B. GARLAND, ATTORNEY GENERAL

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE TENTH CIRCUIT*

**BRIEF FOR THE RESPONDENT**

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## QUESTION PRESENTED

Whether a 60-day period permitted for voluntary departure at the end of administrative removal proceedings extends beyond 60 days when the 60th day falls on a weekend or holiday, notwithstanding the statutory directive that "[p]ermission to depart voluntarily under this subsection shall not be valid for a period exceeding 60 days." 8 U.S.C. 1229c(b)(2).

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## OPINIONS BELOW

The revised opinion of the court of appeals (Pet. App. 3a-17a) is reported at 88 F.4th 1301. The prior opinion of the court of appeals (Pet. App. l8a-32a) is reported at 82 F.4th 909. The decisions of the Board of Immigration Appeals (Pet. App. 33a-35a, 36a-38a, 39a-43a) and of the immigration court (Pet. App. 44a-60a, 61a-76a) are not reported.

## JURISDICTION

The judgment of the court of appeals was entered on December 14, 2023. The petition for a writ of certiorari was filed on February 23, 2024, and granted on July 2, 2024. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

## STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent provisions are reproduced in the appendix to this brief. App., *infra*, 1a-9a.

## STATEMENT

This case concerns whether a 60-day period within which a noncitizen may voluntarily depart the United States at the end of his administrative removal proceedings extends to the next business day when the 60th day falls on a weekend or holiday. Petitioner was granted authorization to depart voluntarily from the United States within 60 days but failed to depart by the 60th day, a Saturday. The following Monday, petitioner moved to reopen his removal proceedings to allow him to apply for relief in the form of cancellation of removal. The Board of Immigration Appeals (Board) denied that motion on grounds that no new evidence warranted reopening and, in the alternative, that petitioner was ineligible for relief because he had failed to depart by day 60. Pet. App. 36a-38a. After petitioner moved for reconsideration on only the alternative ground, the Board denied reconsideration. *Id.* at 33a-35a. The court of appeals upheld the Board's decision. *Id.* at 3a-17a.

1. a. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, provides that a noncitizen who has been found removable in proceedings before an immigration judge (IJ) may in certain circumstances be granted authorization to depart the country voluntarily "in lieu of removal." 8 U.S.C. 1229c(b)(1); see *Dada* v. *Mukasey*, 554 U.S. 1, 8 (2008).[1] To be eligible for volun-

[1] This brief uses "noncitizen" as equivalent to the statutory term "alien." See *Barton* v. *Barr*, 590 U.S. 222, 226 n.2 (2020) (quoting 8 U.S.C. 1101(a)(3)).

tary departure at the conclusion of removal proceedings, the noncitizen must have been physically present for at least one year before service of the notice to appear; must have been a person of good moral character for at least five years immediately preceding the application for voluntary departure; and must not be deportable for aggravated-felony or security-related grounds. 8 U.S.C. 1229c(b)(1)(A)-(C). In addition, the noncitizen must "establish[] by clear and convincing evidence that [he] has the means to depart the United States and intends to do so." 8 U.S.C. 1229c(b)(1)(D). Finally, the noncitizen "shall be required to post a voluntary departure bond" to "ensure that [he] will depart." 8 U.S.C. 1229c(b)(3). That bond must be posted with a field office of the Department of Homeland Security (DHS) within five business days of the order granting voluntary departure. 8 C.F.R. 1240.26(c)(3)(i) and (4) (2020).[2]

When a noncitizen applies for, and the government grants, authorization for voluntary departure, they "agree upon a *quid pro quo*" designed to benefit both sides. *Dada*, 554 U.S. at 11. The government benefits because the noncitizen's "agreement to leave voluntarily expedites the departure process and avoids the expense of deportation." *Ibid.* And the noncitizen benefits because "[h]e or she avoids extended detention

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[2] In 2020, the Department of Justice adopted a final rule amending 8 C.F.R. 1240.26. See 85 Fed. Reg. 81,588 (Dec. 16, 2020). That rule's effective date was stayed, and employees of the Department of Justice are enjoined from implementing it. See *Centro Legal de la Raza* v. *Executive Office for Immigration Review*, 524 F. Supp. 3d 919 (N.D. Cal. 2021); see also *Catholic Legal Immigration Network, Inc.* v. *Executive Office for Immigration Review*, No. 21-94, 2021 WL 3609986 (D.D.C. Apr. 4, 2021). This case has accordingly been litigated under the pre-amendment version of Section 1240.26, and this brief's citations refer to 8 C.F.R. 1240.26 (2020).

pending completion of travel arrangements; is allowed to choose when to depart (subject to certain constraints)"; can "select the country of destination"; and is able to "sidestep some of the penalties attendant to deportation," thereby "facilitat[ing] the possibility of readmission." *Ibid.*; see *id.* at 11-12 (explaining that a noncitizen who is "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," while a noncitizen "who makes a timely departure under a grant of voluntary departure * * * is not subject to th[o]se restrictions"); see also 8 U.S.C. 1182(a)(9)(A)(i) and (ii).

In 1996, in order to ensure that the government would actually receive the benefits that voluntary departure is intended to produce, "Congress curtailed the period of time during which an alien may remain in the United States pending voluntary departure." *Dada*, 554 U.S. at 9; see Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, sec. 304(a)(3), § 240B(a)(3), 110 Stat. 3009-596 to -597. As relevant here, Congress specified that any "[p]ermission to depart voluntarily" at the conclusion of removal proceedings "shall not be valid for a period exceeding 60 days." 8 U.S.C. 1229c(b)(2).

The IJ or the Board has discretion to authorize a shorter period. See 8 C.F.R. 1240.26(e). An immigration official may later "extend the time to depart but only if the voluntary departure period is less than the statutory maximum in the first instance." *Dada*, 554 U.S. at 10. Thus, "[t]he voluntary departure period in no event may exceed 60 * * * days for [Section] 1229c(b) * * * departures." *Ibid.*; see 8 C.F.R. 1240.26(f) ("In no event can the total period of time, including any exten-

sion, exceed * * * 60 days as set forth in [8 U.S.C. 1229c].").

In general, a noncitizen who fails to depart within the voluntary-departure period is subject to involuntary removal and civil sanctions, including a ten-year period of ineligibility for cancellation of removal or adjustment of status and a penalty between $1000 and $5000. 8 U.S.C. 1229c(d)(1); see *Dada*, 554 U.S. at 18; Pet. App. 7a, 11a.

b. The INA provides that a noncitizen who has been found removable in administrative proceedings may file a motion to reopen "within 90 days of the date of entry of [the] final administrative order of removal." 8 U.S.C. 1229a(c)(7)(C)(i). "A motion to reopen is a form of procedural relief that 'asks the Board to change its decision in light of newly discovered evidence or a change in circumstances since the hearing.'" *Dada*, 554 U.S. at 12 (citation omitted).

Although Congress added the statutory authorization for motions to reopen in Section 1229a(c)(7) as part of IIRIRA at the same time that it imposed the 60-day limit on the period for voluntary departure under Section 1229c(b), "[n]owhere in § 1229c(b) or § 1229a(c)(7) did Congress discuss the impact of the statutory right to file a motion to reopen on a voluntary departure agreement." *Dada*, 554 U.S. at 14-15. This Court later determined that a noncitizen "must be permitted to withdraw, unilaterally, a voluntary departure request before expiration of the departure period." *Id.* at 21. That interpretation would "preserve the alien's right to pursue reopening while respecting the Government's interest in the *quid pro quo* of the voluntary departure arrangement." *Id.* at 19. A noncitizen who withdraws his voluntary-departure request may "remain in the United

States to pursue an administrative motion" to reopen without subjecting himself to the sanctions that would otherwise follow from failing to depart timely. *Id.* at 21. But the noncitizen thereby "gives up the possibility of readmission and becomes subject to the IJ's alternative order of removal," which may then be enforced "within 90 days, even if the motion to reopen has yet to be adjudicated," unless the noncitizen obtains a stay of removal. *Ibid.*

After *Dada*, the Executive Office for Immigration Review (EOIR) within the Department of Justice amended its regulations to address some of the concerns discussed by the Court. See 73 Fed. Reg. 76,927, 76,929 (Dec. 18, 2008). The regulations do not contemplate that a noncitizen may unilaterally withdraw from a grant of voluntary departure at any time for any reason. Instead, the amended regulations provide that when a noncitizen who has been granted voluntary departure files a motion to reopen *before* the end of the voluntary-departure period, that filing "automatically terminat[es] the grant of voluntary departure" (without triggering the penalties for failure to depart), which has the effect of making the alternate order of removal against the noncitizen effective immediately. 8 C.F.R. 1240.26(e)(1); see 8 C.F.R. 1240.26(i) (providing similar treatment for the filing of a petition for judicial review). But "[t]he filing of a motion to reopen * * * *after* the time allowed for voluntary departure has already expired does not in any way impact the period of time allowed for voluntary departure." 8 C.F.R. 1240.26(e)(2) (emphasis added).

2. a. Petitioner is a native and citizen of Mexico who unlawfully entered the United States in 2005. Pet. App. 4a. In 2011, DHS served on him a notice to appear that

did not designate the time or place to appear in immigration court. *Ibid.* After the time and place for his immigration proceedings were set, Administrative Record (A.R.) 706-707, 712, petitioner appeared at the scheduled hearing, A.R. 446-447, and, in 2013, petitioner conceded his removability, A.R. 454. See Pet. App. 4a. Petitioner applied for withholding of removal under 8 U.S.C. 1231(b)(3) and under the regulations implementing the United States' obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 113. See Pet. App. 4a-5a. In the alternative, petitioner sought voluntary departure. *Id.* at 5a.

After holding a hearing in March 2019, an IJ denied petitioner's applications for withholding of removal, Pet. App. 47a-50a, but granted "post-conclusion" voluntary departure and ordered petitioner to post a $500 voluntary-departure bond within five business days. *Id.* at 5a, 14a n.10, 50a-51a, 67a-69a; see Br. in Opp. 8. The order explained that if petitioner "fail[ed] to voluntarily depart the United States within the time frame specified," he would face a civil penalty of $3000 and "be[come] ineligible for a period of 10 years to receive cancellation of removal, adjustment of status, registry, voluntary departure, or a change in nonimmigrant status." *Id.* at 5a (citation omitted; brackets in original).

Petitioner appealed the IJ's denial of withholding of removal. Pet. App. 5a. On October 12, 2021, the Board upheld the IJ's decision and reinstated the privilege of voluntary departure, ordering that petitioner was "permitted to voluntary depart the United States * * * within 60 days from the date of this order." *Id.* at 42a.

The 60th calendar day after the Board's order was Saturday, December 11, 2021. *Id.* at 7a n.3. Petitioner did not depart the United States by the end of that day.

b. On Monday, December 13, 2021, petitioner filed a motion to reopen the administrative proceedings so that he could apply for cancellation of removal. Pet. App. 6a; see A.R. 22 (December 9 prepayment for reopening motion); A.R. 23-26 (counsel's motion dated December 10).

A motion to reopen must "state the new facts" that the movant intends to prove if reopening is granted. 8 U.S.C. 1229a(c)(7)(B). In an attempt to demonstrate new facts here, petitioner asserted that he was newly eligible for cancellation of removal under 8 U.S.C. 1229b(b) because he claimed he had accrued ten years of continuous presence in the United States based on the combination of this Court's decision in *Niz-Chavez* v. *Garland*, 593 U.S. 155 (2021), and the fact that petitioner had been served a deficient notice to appear in 2011. Pet. App. 6a, 37a. Petitioner accordingly asked the Board to reopen the proceedings to allow him to apply for cancellation of removal, notwithstanding his previous failures to request that relief. *Id.* at 37a.

The Board denied the motion to reopen on two independent grounds. Pet. App. 36a-38a. First, the Board rejected petitioner's motion to reopen on the ground that petitioner had failed to identify any new facts (or legal understandings) that could not have been raised at his original hearing. *Id.* at 37a-38a. It observed that "based on his October 15, 2005, entry date, [petitioner] already satisfied the 10 year period of continuous physical presence at the time of his previous hearing on March 5, 2019." *Id.* at 37a. "Therefore, the fact that [petitioner] satisfies the 10 year period of continuous physical presence is not a 'new fact' supported by 'new

evidence' that was not available and could not have been discovered or presented at the previous hearing." *Ibid.* (quoting 8 U.S.C. 1229a(c)(7)(B)).

Second, as an independent ground for its decision, the Board found that petitioner was no longer eligible for cancellation of removal because he had failed to depart within the voluntary-departure period. Pet. App. 38a. The Board explained that it had "reinstated the 60-day period" on October 12, 2021, and that the "period of voluntary departure terminated on December 11, 2021" —*i.e.*, 60 calendar days later. *Ibid.* Under Section 1229c(d)(1), petitioner's failure to depart within the authorized period rendered him "ineligible for certain forms of discretionary relief, including cancellation of removal." *Ibid.* And because petitioner did not file his motion to reopen until "December 13, 2021, after the 60-day period of voluntary departure [had] expired," the motion had no effect on the applicability of those "civil penalties for failure to depart." *Ibid.*

c. Petitioner filed a motion to reconsider, challenging only the second basis for the Board's denial of his motion to reopen—*i.e.*, the Board's alternative determination that petitioner is ineligible for cancellation of removal because he failed to depart or terminate the voluntary-departure grant during the 60-day period. See A.R. 7-9. After briefly acknowledging the Board's first basis, petitioner emphasized that he "[wa]s not asking the Board to grant [his] Motion to Reopen," but instead was seeking "only to correct the [assertedly] mistaken portion of [the Board's] decision" addressing, in the alternative, petitioner's "voluntary departure period." A.R. 9.

The Board denied petitioner's motion for reconsideration. Pet. App. 33a-35a. The Board found no error in

its voluntary-departure analysis. *Id.* at 34a-35a. The Board also explained that, "regardless of whether [that analysis] was in error," petitioner did not "address the first ground" for the Board's earlier decision and did "not argue that a different outcome was warranted for his motion to reopen." *Id.* at 34a.

3. Petitioner petitioned for judicial review of the Board's denial of his motion for reconsideration (but did not seek review of the denial of his motion to reopen)—again challenging only the Board's determination that he had failed to timely depart or timely terminate the voluntary-departure grant. Pet. App. 8a. The court of appeals denied the petition. *Id.* at 3a-17a.[3]

The court of appeals first held that it had jurisdiction to address petitioner's argument about compliance with the 60-day departure period. Pet. App. 9a-11a. The court acknowledged that because petitioner had not challenged the Board's other, independently sufficient ground for denying his motion to reopen, the court's decision on the petition for review "would not alter the outcome of [petitioner's] motion to reopen to apply for cancellation of removal." *Id.* at 10a. The court nevertheless concluded that its decision could "conceivably result in effectual relief to [petitioner]" because the Board's "conclusion that he untimely moved to reopen in violation of the conditions of his departure" meant that petitioner "faces a monetary fine and ineligibility for future immigration relief." *Id.* at 10a-11a.

On the merits, the court of appeals agreed with the Board that petitioner's motion to reopen, filed 62 calendar days after the Board's original decision, could not

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[3] The panel made "non-substantive changes" to its original opinion on rehearing. Pet. App. 2a. For simplicity, this brief cites the revised opinion. The original opinion appears at Pet. App. 18a-32a.

be "deemed to have been filed within the [60-day] statutory period." Pet. App. 12a; see *id.* at 12a-17a. The court explained that "construing a motion filed after the lapse of the voluntary departure period as 'timely' necessarily extends the time an alien has to depart, thus exceeding the scope of relief permitted by statute." *Id.* at 16a.

The court of appeals rejected petitioner's contention that it is necessary to extend the 60-day departure period in some circumstances to avoid "introduc[ing] inconsistency" with EOIR practice manuals about how to calculate filing deadlines that would otherwise fall on a weekend or legal holiday. Pet. App. 12a. The court determined that calculating time periods "in one manner when filing appeals, motions, or other documents in immigration court or with the [Board,] and another when interpreting a maximum time period [for departure] designated by statute, makes sense." *Id.* at 13a. The court explained that the "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." *Ibid.*

## SUMMARY OF ARGUMENT

I. The court of appeals lacked statutory jurisdiction to consider the petition for review because of the highly atypical procedural posture of this case.

"In the deportation context, a final 'order of removal' is a final order 'concluding that the alien is deportable or ordering deportation.'" *Nasrallah* v. *Barr*, 590 U.S. 573, 581 (2020). Courts of appeals have jurisdiction over challenges to "final order[s] of removal," 8 U.S.C. 1252(a)(1), and "rulings that affect the validity of the final order of removal," which "merge into the final or-

der" for "purposes of judicial review." *Nasrallah*, 590 U.S. at 582. Section 1252 also permits review of orders in removal proceedings that are presented "together with" a final order of removal. *Id.* at 583. None of those grounds for jurisdiction applies here.

Petitioner sought judicial review only of the Board's order denying his motion for reconsideration of its earlier decision denying his motion to reopen on two alternative grounds. But petitioner sought reconsideration on only one of those grounds, emphasizing that he was not asking the Board to grant reopening, but instead was requesting that it change its analysis addressing voluntary departure. The Board's denial of petitioner's motion for reconsideration therefore could not have "affect[ed] the validity of the final order of removal." *Nasrallah*, 590 U.S. at 582. And because petitioner did not seek review of the order denying reopening (which could have merged into the final order of removal), petitioner did not raise his challenge "together with" any other reviewable decision. See *id.* at 583. The court of appeals thus lacked jurisdiction to review the one decision petitioner challenged.

II. If this Court finds that jurisdiction was proper, it should affirm because the court of appeals correctly held that the statutory-maximum 60-day period for voluntary departure in 8 U.S.C. 1229c(b)(2) does not extend to 62 days when the 60th day is a Saturday.

A. The word "day" naturally includes all Saturdays, Sundays, and holidays. Statutory context confirms that the 60-day period is not subject to extension when it ends on a non-business day: Voluntary departure imposes a substantive burden to arrange for and depart the United States; the deadline, unlike procedural deadlines, cannot be equitably tolled; and Congress enacted

related provisions reinforcing that the maximum period is not subject to extension. Indeed, a different provision of IIRIRA enacted at the same time as Section 1229c(b)(2) expressly exempted Saturdays, Sundays, and holidays when calculating the period of another substantive immigration obligation—indicating that Congress intended otherwise for voluntary departure. 8 U.S.C. 1231(c)(3)(A)(ii)(III).

B. Common-law principles do not support any extension of the statutory-maximum period for voluntary departure.

1. Petitioner identifies a practice under which strictly judicial acts could not occur on a Sunday, which at common law was a *dies non juridicus* (a day not juridical). Certain actions requiring a judicial presence were thus allowed to be done on Monday because it was impossible to perform them on Sunday. But petitioner's obligation to depart the United States required no judicial act or presence. And nothing prevented him from departing on a Sunday, much less on the Saturday that was day 60 of his departure period.

2. Moreover, the *dies non juridicus* principle was not applied at common law to deadlines that were set by statute, rather than court order or rule. Thus, courts generally would not extend a statutory deadline when the last day for action fell on a Sunday.

3. Nor did courts apply the common law's Sunday-focused *dies non juridicus* principle to private actions taken outside the context of legal filings. Although courts enforced Sunday restrictions on private actions, and hence allowed some actions to be performed on Monday, they did so because of *statutory* restrictions that prohibited certain private conduct (particularly work) on Sundays. Here, no statute or other legal re-

quirement prohibited petitioner from voluntarily departing on weekend days. And even under nineteenth-century statutory restrictions on Sunday work, petitioner would have been permitted to travel out of the country, as required by federal law.

4. Even when the foregoing principles applied to actions to be taken on Sunday, they were not extended to holidays or Saturdays, making them further inapplicable to petitioner's circumstances.

5. Petitioner identifies no broader tradition extending statutory deadlines for private conduct. He highlights three decisions that purportedly reflect an entrenchment of the Sunday-based principles. But those decisions, which concern statutory filing deadlines or the timing of executive-branch statutory authority, are inapplicable and reflect no entrenched principle supporting petitioner. And the 1963 amendment to Federal Rule of Civil Procedure Rule 6(a), which excluded Saturday as the last day of a litigation deadline in district court, was a *change* in existing legal practice, which accordingly did not reflect any established principle that Congress can be presumed to have incorporated into its voluntary-departure deadline.

C. Petitioner separately contends that Congress should be presumed to have adopted a regulatory definition of "day" that existed when Congress enacted the 60-day voluntary-departure deadline. But that definition was expressly limited to "period[s] * * * provided in [immigration regulations]." 8 C.F.R. 1.1(h) (1996). Congress thus would not have understood it to apply to the voluntary-departure deadline that was newly created in the statute. Indeed, the regulations addressing voluntary departure make clear that the departure pe-

riod may not "exceed * * * 60 days *as set forth in* [*Section 1229c*]." 8 C.F.R. 1240.26(f) (emphasis added).

For other provisions, additional context might indicate that Congress intended to authorize authorities to apply a regulatory definition. But the context of Section 1229c(b)(2) points the other way. It governs the noncitizen's substantive obligation to depart, not a procedural filing deadline, and even extraordinary circumstances would not permit a one-day extension of the 60-day period. Congress would not have allowed two days to be automatically added based on the mere happenstance that day 60 falls on a Saturday—a day on which many prefer to travel and nothing prevents the noncitizen's departure.

D. Petitioner's policy arguments are unpersuasive. None provides a sound basis for extending beyond day 60 the limited period that a noncitizen has to discharge his substantive obligation to depart the United States.

## ARGUMENT

### I. THE COURT OF APPEALS LACKED STATUTORY JURISDICTION

Under 8 U.S.C. 1252, the court of appeals lacked statutory jurisdiction to consider the petition for review because of the highly atypical procedural posture of this case. See Br. in Opp. 22-23. Section 1252 grants the courts of appeals jurisdiction to consider petitions for review of "final order[s] of removal," 8 U.S.C. 1252(a)(1), and it provides that a petition for review "under this section" is the sole means of obtaining judicial review of "all questions of law and fact * * * arising from" removal proceedings. 8 U.S.C. 1252(b)(9). Here, petitioner did not file a petition for review of his final order of removal; he instead sought review of a Board order denying reconsideration. And while this Court has rec-

ognized that Section 1252 also permits review of decisions that "merge into the final order of removal," as well as orders that are presented "together with" a final removal order, *Nasrallah* v. *Barr*, 590 U.S. 573, 582-583 (2020), neither of those principles helps petitioner. The reconsideration order in this case cannot "merge into [his] final order of removal" because it does not—and could not—"affect the validity" of that order, *id.* at 582, and petitioner disavowed any attempt to challenge the reconsideration order "together with" any other reviewable decision, *id.* at 583.

### A. Section 1252(a)(1) Vests Courts Of Appeals With Jurisdiction To Review A "Final Order Of Removal"

1. Section 1252(a)(1) "authorizes noncitizens to obtain direct 'review of a final order of removal' in a court of appeals." *Nasrallah*, 590 U.S. at 579 (quoting 8 U.S.C. 1252(a)(1)). It does so by providing that "[j]udicial review of a final order of removal" is "governed * * * by chapter 158 of title 28," 8 U.S.C. 1252(a)(1), that is, by the Hobbs Administrative Orders Review Act of 1950 (Hobbs Act), 28 U.S.C. 2341 *et seq*. See *Stone* v. *INS*, 514 U.S. 386, 392 (1995). The Hobbs Act, in turn, grants statutory "jurisdiction" to the regional courts of appeals to review certain agency orders. 28 U.S.C. 2342. Thus, as this Court has concluded, Section 1252(a)(1), "in combination with" the Hobbs Act's jurisdictional grant, vests the courts of appeals with statutory "jurisdiction to review 'final orders of removal.'" *Mata* v. *Lynch*, 576 U.S. 143, 147 (2015) (quoting 8 U.S.C. 1252(a)(1)) (brackets omitted).

Direct review in a court of appeals under Section 1252 is "the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. 1252(a)(5). And "[j]udicial review of all questions of law and fact * * *

arising from any action taken or proceeding brought to remove an alien from the United States under [the INA]" is "available only in judicial review of a final order under [Section 1252]." 8 U.S.C. 1252(b)(9). As a result, "a noncitizen's various challenges arising from the removal proceeding must be 'consolidated in a petition for review and considered by the courts of appeals.'" *Nasrallah*, 590 U.S. at 580 (quoting *INS* v. *St. Cyr*, 533 U.S. 289, 313 n.37 (2001)).

2. A petition for review falls within Section 1252's exclusive jurisdictional grant where it challenges an order that constitutes a "final order of removal," 8 U.S.C. 1252(a)(1), or a decision that "merge[s] into" the final order of removal, *Nasrallah*, 590 U.S. at 581-582. "In the deportation context, a final 'order of removal' is a final order 'concluding that the alien is deportable or ordering deportation.'" *Id.* at 581 (quoting 8 U.S.C. 1101(a)(47)(A)); see 8 U.S.C. 1229a(c)(1)(A) and (e)(2). "[R]ulings that affect the validity of the final order of removal merge into the final order * * * for purposes of judicial review." *Nasrallah*, 590 U.S. at 582.

Section 1252 also provides jurisdiction to consider an order "'arising from any action taken or proceeding brought to remove an alien from the United States'" where that order is challenged "together with the final order of removal." *Nasrallah*, 590 U.S. at 583 (quoting 8 U.S.C. 1252(b)(9)). For example, a "CAT order may be reviewed together with [a] final order of removal," even though the "CAT order is distinct from a final order of removal and does not affect the validity of the final order of removal." *Ibid.*; see 8 U.S.C. 1252(a)(4).

Section 1252 therefore grants jurisdiction to review an order denying reconsideration where the decision to reconsider could "affect the validity of" a final re-

moval order or where it is challenged "together with" a qualifying order. *Nasrallah*, 590 U.S. at 582-583; see 8 U.S.C. 1252(b)(6). But Section 1252 does not authorize review of a reconsideration decision that could not affect the validity of the removal order and is not connected with a qualifying order.

### B. This Narrow Petition For Review Does Not Fall Within Section 1252's Jurisdictional Grant

Under the foregoing principles, the court of appeals lacked statutory jurisdiction over petitioner's extremely limited petition for review.

Petitioner sought judicial review of a single administrative order: "the Order of the Board of Immigration Appeals, entered on October 4, 2022, denying his Motion to Reconsider." C.A. Pet. for Review 2. That reconsideration order was not itself a final order of removal; it did not merge into a final order of removal; and it was not challenged "together with" a qualifying order. It therefore does not fall within Section 1252's jurisdictional grant.

The defect flows from two idiosyncratic features of petitioner's case. The first is the unusually narrow scope of petitioner's motion to reconsider. Such a motion typically asks the Board to reconsider its affirmance of a removal order or its refusal to reopen removal proceedings. Either way, the resulting order "affect[s] the validity of the final order of removal," *Nasrallah*, 590 U.S. at 582, by affirming the order itself or affirming that the proceedings underlying the removal order will not be reopened to permit petitioner to challenge or alter the outcome of the prior proceedings. A typical reconsideration order therefore "merge[s] into the final order of removal." *Ibid.*

That is not the case here. The decision petitioner asked the Board to reconsider (Pet. App. 36a-38a), which declined to reopen proceedings, rested on two fully independent grounds. *Id.* at 37a-38a; see pp. 8-9, *supra*. Petitioner's reconsideration motion (A.R. 7-9) challenged only the voluntary-departure ground. A.R. 8-9. He emphasized that he "[wa]s *not* asking the Board to grant the Motion to Reopen, only to correct the [purportedly] mistaken portion of its [prior] decision" regarding his "voluntary departure period." A.R. 9 (emphasis added). In its decision denying reconsideration, the Board likewise explained that "regardless of whether the second ground noted [in its earlier decision] was in error, [petitioner] does not argue that a different outcome was warranted for his motion to reopen." Pet. App. 34a.

The Board's decision on petitioner's reconsideration motion thus could not have resulted in the reopening of removal proceedings. As a result, that decision could not have affected the validity of the existing final order of removal against petitioner and could not have "merge[d] into" the final order of removal. *Nasrallah*, 590 U.S. at 582. All petitioner sought through reconsideration was to alter a nondispositive portion of the Board's reasoning in its prior decision declining to reopen proceedings. Petitioner himself then emphasized in the court of appeals that he was *not* seeking to "vacate the order of removal against him" and conceded that "grant[ing] his Petition [for review]" of the Board's denial of reconsideration "would have *no effect whatever* on his Motion to Reopen or *the underlying order of removal*." Pet. C.A. Reply Br. 5-6, 8 (emphases added).

This case's second idiosyncratic feature is that petitioner sought judicial review of only the Board's deci-

sion denying his unusual reconsideration motion. If petitioner had sought judicial review of the Board's earlier decision denying reopening, the court of appeals would have had jurisdiction under Section 1252(a)(1) because *that* Board decision could have "affect[ed] the validity of the final order of removal" against petitioner, *Nasrallah*, 590 U.S. at 582, by reopening the removal proceedings to allow petitioner to pursue his claim to cancellation of removal. Petitioner would then have been free to raise his current challenge "together with" the reopening decision that merged into his final order of removal. *Id.* at 583. But petitioner did not follow that course.

Accordingly, the court of appeals lacked statutory jurisdiction to review the only Board decision that petitioner challenged. This Court should therefore vacate the court of appeals' judgment and remand with instructions to dismiss this case.[4]

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[4] At the certiorari stage, in addition to raising the absence of statutory jurisdiction, the government noted "serious questions of * * * Article III justiciability" and questioned whether any opinion would be merely advisory. Br. in Opp. 22-23. We have, however, concluded that petitioner had Article III standing to seek judicial review. Even though appellate review would not alter the bottom-line disposition of a judgment or order, a decision in his favor could remedy a "prospective [adverse] effect" on him. *Camreta* v. *Greene*, 563 U.S. 692, 702-703, 709 n.7 (2011). Specifically, a decision that petitioner did not breach his voluntary-departure obligation would allow him to recover the departure bond, secured by a $500 money order, that he posted with DHS in March 2019. Pet. App. 51a, 67a-68a; A.R. 411-416. Although DHS issued notice to petitioner in August 2024 that it had canceled his bond, it has since issued notice that it was rescinding that cancellation as erroneous because petitioner had violated his bond terms by failing to depart on or before December 11, 2021. The government's continued retention of petitioner's bond security is an injury-in-fact fairly traceable to the Board's

## II. THE STATUTORY-MAXIMUM 60-DAY PERIOD FOR VOLUNTARY DEPARTURE DOES NOT PERMIT DEPARTURE WITHIN 62 DAYS

If this Court determines that the court of appeals possessed statutory jurisdiction, the Court should affirm. The court of appeals correctly concluded that the statutory-maximum 60-day period for voluntary departure in 8 U.S.C. 1229c(b)(2) does not extend to 62 days when the 60th day is a Saturday. Congress did not authorize such an extension, and nothing in the common law or in immigration regulations justifies reading Section 1229c(b)(2)'s text as permitting such an extension.

### A. The Statutory Text Sets A Maximum Period For Voluntary Departure Of 60 Calendar Days

Congress has specified that permission to depart voluntarily in lieu of removal at the conclusion of removal proceedings "shall not be valid for a period exceeding 60 days." 8 U.S.C. 1229c(b)(2).

When Congress enacted the 60-day maximum period in 1996, the word "day" carried the same relevant meaning that it does today: a "civil day," which is "a day adopted for time reckoning in civil affairs," "the mean solar day of 24 hours beginning at mean midnight," also known as a "calendar day." *Webster's New International Dictionary* 316, 413, 578 (1993) (capitalization omitted). And, as the words themselves reflect, a "[S]unday," "[S]aturday," and "holiday" are each themselves a "day." *Id.* at 1080, 2018, 2291. Accordingly, the most natural reading of Congress's requirement that a

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"binding" voluntary-departure decision that would likely be remedied by a favorable ruling on judicial review. See *Camreta*, 563 U.S. at 701, 709 n.7; 8 C.F.R. 103.10(b), 1003.1(g)(1) (Board decisions are "binding" on DHS officers).

grant of voluntary departure "shall not be valid for a period exceeding 60 days," 8 U.S.C. 1229c(b)(2), limits that period to 60 calendar days—including Sundays, Saturdays, and holidays. Indeed, this Court has observed that "[Section] 1229c(b)(2) contains no ambiguity: The period within which the alien may depart voluntarily 'shall not be valid for a period exceeding 60 days.'" *Dada* v. *Mukasey*, 554 U.S. 1, 15 (2008).

The statutory context reinforces that conclusion. Congress included Section 1229c(b)(2) within IIRIRA to "curtail[] the period of time during which an alien may remain in the United States pending voluntary departure." *Dada*, 554 U.S. at 9; see *id.* at 4-5. That period is unlike procedural requirements such as filing deadlines. As *Dada* explained, Section 1229c(b)(2) imposes a "substantive burden[]" on a noncitizen in the form of an "obligation to arrange for departure, and actually depart, within the 60-day period." *Id.* at 19. The Court implicitly distinguished that obligation from a procedural deadline, noting that such "substantive limitations are not subject to equitable tolling." *Ibid.* (citing *United States* v. *Brockamp*, 519 U.S. 347, 352 (1997)). And IIRIRA's voluntary-departure amendments did not incorporate the previous exemption from statutory penalties for failing to depart "because of exceptional circumstances." 8 U.S.C. 1252b(e)(2)(A) (1994) (repealed by IIRIRA, sec. 308(b)(6), 110 Stat. 3009-615).

Moreover, the Congress that enacted the 60-day deadline knew how to exclude weekends and holidays. Another provision of IIRIRA amended the INA to prescribe that a vessel or aircraft owner may be required to pay the costs for a period of detaining and maintaining a stowaway seeking asylum. The maximum

length of that period is "not to exceed 15 days (*excluding Saturdays, Sundays, and holidays*)." 8 U.S.C. 1231(c)(3)(A)(ii)(III) (emphasis added); see IIRIRA, sec. 305(a)(3), 110 Stat. 3009-603. It is to be presumed that "Congress act[ed] intentionally and purposely in the disparate inclusion or exclusion" of those days. *Russello* v. *United States*, 464 U.S. 16, 23 (1983) (citation omitted).

Related provisions within Section 1229c(b) reinforce that conclusion. A noncitizen may obtain permission for "voluntary departure in lieu of removal" only by establishing "by clear and convincing evidence" that he "has the means to depart the United States and intends to do so." 8 U.S.C. 1229c(b)(1)(D). Even then, he is "required to post a voluntary departure bond, in an amount necessary to ensure that [he] will depart." 8 U.S.C. 1229c(b)(3). Consistent with those stringent protections, Congress prescribed that any permission for voluntary departure could "not be valid" for a period "exceeding" 60 days, 8 U.S.C. 1229c(b)(2)—and thus could not be extendable to 62 days.

### B. Common-Law Principles Do Not Support Any Extension Of The Statutory-Maximum Period For Voluntary Departure

Petitioner primarily contends (Br. 16-34) that Section 1229c(b)(2)'s 60-day-maximum period incorporates a "timeworn common-law rule" under which "deadlines falling on weekends and legal holidays carry over to the next business day," Br. 16. Petitioner therefore argues (Br. 16-19) that Congress implicitly adopted that common-law principle. But no such common-law rule, timeworn or otherwise, exists. Petitioner has instead identified a narrower practice involving "strictly judicial act[s]" that "could [not] be performed" by a court

on a "Sunday," which at common law was a "*dies non juridicus*," *Danville* v. *Brown*, 128 U.S. 503, 505 (1888), meaning "a day not juridical," *Black's Law Dictionary* 571 (12th ed. 2024). That principle does not apply here because petitioner was required by statute to depart voluntarily by traveling out of the United States, and nothing prevented him from doing that on any day of the week.

***1. The common-law tradition reflecting that courts did not sit on Sunday is inapplicable***

The court-focused common-law principle that Sunday was a *dies non juridicus* does not apply to the statutory voluntary-departure period.

a. The *dies non juridicus* principle evolved from religious requirements for Sunday in civil law from the first millennium. See *Richardson* v. *Goddard*, 64 U.S. 28, 41-42 (1860); *Swann* v. *Broome*, 97 Eng. Rep. 999, 1001 (K.B. 1764) (Lord Mansfield, C.J.), aff'd, 2 Eng. Rep. 1115 (H.L. 1766); see also Angelo T. Freedley, *The Legal Effect of Sunday*, 28 Am. L. Reg. 137, 138-139 (1880). In eighteenth-century England, where courts no longer sat on Sundays, "'Sunday was not a dies juridicus for the awarding of any judicial process, nor for entering any judgment of record,'" because those are "judicial acts" and "therefore cannot be supposed to be done, but whilst the Court is actually sitting." *Swann*, 97 Eng. Rep. at 1002 (citation omitted). Even so, the courts recognized that, absent a statutory prohibition, "ministerial acts may be lawfully executed in the Sunday." *Ibid.* (quoting *Mackalley's Case*, 77 Eng. Rep. 828, 831 (K.B. 1611), which upheld a murder suspect's Sunday arrest). The common-law focus on actions that could "be done" only when "the Court is actually sitting," *ibid.*, carried over to certain actions by litigants

for which a judicial presence was considered necessary. See *ibid.* (returns of writs and notices to appear on Sundays were understood to refer to Monday).

By contrast, litigant actions that did not require the presence of the court itself had to be done without extending the period to act, even if the last day was a holiday. For example, when the four-day period to plead fell on a non-Sunday holiday, the party was required to file on or before that day because, even though the court did not actually sit on the holiday, its "offices [we]re open." *Mesure* v. *Britten*, 126 Eng. Rep. 736, 737 (C.P. 1796); see *id.* at 736 (counsel's argument). The same was true for the posting of bail. See *Braddeley* v. *Adams*, 101 Eng. Rep. 97, 97 (K.B. 1793) (explaining that litigants on such "a dies non juridicus" could conduct "such business as is transacted at the Judges' chambers"). Thus, as this Court has explained, English courts determined that, with the possible exception for "three [specific holi]days in the year" when court officials were absent, court offices should remain open to conduct court business on non-Sunday holidays. *Richardson*, 64 U.S. at 42-43; see, *e.g.*, *State* v. *Lewis*, 31 Wash. 515, 519 (1903) ("At the common law a holiday was not, as in the case of Sunday, *dies non juridicus*, and holidays have only the sanctity attached to them by statute."); *Houston, E. & W. Tex. Ry.* v. *Harding*, 63 Tex. 162, 163 (1885) (concluding that a statutory holiday is not "a *dies non juridicus*" unless the legislature designates it as such).

Even with respect to Sundays, this Court adopted a circumscribed understanding of the "strictly judicial act[s]" that should not occur on a "Sunday [as] *dies non juridicus*." *Danville*, 128 U.S. at 505. For instance, in *Stone* v. *United States*, 167 U.S. 178 (1897), a federal district court held proceedings on a Sunday in which it

instructed an already-deliberating jury to resolve specific questions; the jury reached and signed its special verdict; and the judge then accepted that verdict in "open court" but waited until the following Friday to enter its judgment. *Id.* at 194-195; see *id.* at 181. This Court rejected the losing party's contention that the Sunday jury instructions and receipt of the verdict were unlawful. *Id.* at 194-195. The Court emphasized that "no statute of the United States mak[es] Sunday *dies non juridicus*" and further concluded that "the common law" provided no basis for reversal. *Id.* at 195-196. Thus, the Court held that "the receiving and entering of a verdict cannot be questioned upon the ground that those things occurred on a Sunday." *Id.* at 196.

b. The common-law principle that Sunday was a *dies non juridicus* on which courts could not perform judicial acts is inapplicable here for multiple reasons. Petitioner's obligation to depart voluntarily did not involve any judicial act that could not, at common law, occur on a Sunday. Nor did it require any action before a court which, if the deadline fell on a Sunday when the court was not sitting, might be put over to Monday. Even the principle underlying those common-law practices is inapposite: No legal prohibition prevented petitioner from traveling to depart the United States on any day of the week, so there was no reason to extend his deadline to another day on which compliance would be equally possible.

In fact, the underlying common-law principle does not even obtain in the modern era of the federal judicial system. The common-law doctrine rests on the premise that a "[c]ourt could not sit on Sunday." *Swann*, 97 Eng. Rep. at 1003. But every federal district court and court of appeals "is *always open* for filing any paper,

issuing and returning process, making a motion, and entering an order." Fed. R. App. P. 45(a)(2) (emphasis added); see Fed. R. Civ. P. 77(a); Fed. R. Crim. P. 56(a). That has been the case in district courts since at least 1938. See Fed. R. Civ. P. 77(a) (1938) (28 U.S.C. App. 888 (Supp. V 1939)). This Court also may receive filings and enter orders on any day. The 1996 Congress therefore would have had no basis to incorporate the long-dormant *dies non juridicus* principle for Sunday court proceedings when it enacted a non-court-filing deadline for noncitizens to depart the United States.

***2. At common law, extensions of court-established deadlines falling on a Sunday did not apply to statutory deadlines***

Petitioner suggests (Br. 22) that courts in the United States borrowed the concept of *dies non juridicus* from England. Petitioner is correct that state courts generally followed the practice of extending a deadline that fell on a Sunday to the following Monday *if* the deadline was established by the courts themselves (whether by order or rule). That practice makes good sense. Inherent to a court's authority to establish a litigation deadline that is not specified by statute is the authority to specify how the court's own deadline should operate if its last day falls on a Sunday. Yet courts generally did not extend that practice to *statutory* deadlines.

a. English courts that followed the common-law practice of extending certain court deadlines to Monday did not extend that practice to statutory deadlines. See, *e.g.*, *Ex parte Simpkin*, 121 Eng. Rep. 148, 149 (K.B. 1859) ("[W]here the statute fixes a given number of days within which an act is to be done, and says nothing about excluding Sunday, Sunday is to be included, although it may be the last day."); *Peacock* v. *The Queen*, 140 Eng.

Rep. 1085, 1086 (C.P. 1858) (counting Sunday as last day of three-day statutory period to appeal).

In the United States, state courts largely adopted the same approach. "[T]he doctrine that *Sunday* is *dies non juridicus*, or not a judicial day," was "applie[d] only to the practice of the Courts, and the construction of [their] rules," not to "statutory time" periods. *Neal* v. *Crew*, 12 Ga. 93, 98 (1852). If a legislature specified a period of time to act and did not itself provide for an extension when the final day was a Sunday, courts routinely treated Sunday as the last day. See, *e.g.*, *Alderman* v. *Phelps*, 15 Mass. 225, 225 (1818) (finding "[no] reason why the last day of the [30-day period for a post-judgment lien set by statute] should be excluded because it happens to be Sunday"); *Ex parte Dodge*, 7 Cow. 147, 147 (N.Y. Sup. Ct. 1827) (applying same principle to statutory time to appeal); *Drake* v. *Andrews*, 2 Mich. 203, 205-206 (1851) (concluding that *Alderman's* approach "seems applicable to every statute" specifying one-week-or-longer periods to act); *Vailes* v. *Brown*, 27 P. 945, 946 (Colo. 1891) (statutory election-challenge period "cannot be extended merely on the ground that the last day happens to fall on Sunday"); *American Tobacco Co.* v. *Strickling*, 41 A. 1083, 1086 (Md. 1898) (finding "no valid reason for excluding the last Sunday" when a statutory bill-of-exception filing period "expire[s] on Sunday"). But see *In re Estate of Goswiler*, 3 Pen. & W. 200, 201 (Pa. 1831) (permitting action on Monday where deadline's "last day falls on Sunday"); *Harker* v. *Addis*, 4 Pa. 515, 516 (1846) (explaining that *Goswiler* reflects that "the law does not allow the act to be done" on Sunday).

b. Petitioner states (Br. 22) that *Cock* v. *Bunn*, 6 Johns. 326, 326 (N.Y. Sup. Ct. 1810) (per curiam), re-

flected New York's practice of excluding Sunday as the last day to satisfy a "rule to plead." But by 1827, the same New York high court rejected the contention that *Cock* applied to the calculation of a ten-day *statutory* period to appeal. *Dodge*, 7 Cow. at 147 (argument of counsel relying, *inter alia*, on "6 John. 326"). The court reasoned that the "cases referred to" applied only to court "rules of practice" and that "*Sunday* has, in no case, we believe, been excluded in the computation of statute time." *Id.* at 148. Thus, by 1851, it was the "universal custom" in New York that "Sunday is always counted * * * when the statute has declared that an act shall be performed within a given number of days." *Bissell* v. *Bissell*, 11 Barb. 96, 99 (N.Y. Gen. Term 1851).

Petitioner relies (Br. 22) on three other state courts that favorably cited *Cock*. But those decisions provide him little shelter. In *Bacon* v. *State*, 22 Fla. 46 (1886), for instance, Florida's Supreme Court interpreted a deadline set by court order based on an existing court rule that expressly excluded the final day from a period "'prescribed by the rule or practice of the courts'" if it fell on a Sunday. *Id.* at 47-48. The court then separately suggested its agreement with *Cock*—but it did so only with respect to the calculation of time set for "judicial action" in a court "order or rule." *Id.* at 48. And the Florida Supreme Court later explained that *Bacon* did not apply to statutory periods, holding instead that, when the relevant period to act is imposed by "a statutory requirement, Sunday will not be excluded." *Simmons* v. *Hanne*, 39 So. 77, 79-80 (Fla. 1905). That result, the court explained, reflected "[t]he great weight of authority" holding that if "the last day" of the period of "time within which an act required by any statute must

be done" "falls on a Sunday," "it cannot be excluded" and the act may not be "done on the Monday following." *Id.* at 80.[5]

Petitioner's remaining citations are similarly unhelpful. In *Barnes* v. *Eddy*, 12 R.I. 25 (1878), the Rhode Island Supreme Court concluded that a six-month period to file claims against an estate that was set "by [a] Court of Probate" should be extended to Monday where the last day fell on Sunday. *Id.* at 25-26. The court therefore had no occasion to resolve whether the same result would apply to statutory deadlines. Although the Oregon Supreme Court excluded the final day when a statutory appeal period ended on a Sunday, see *Carothers* v. *Wheeler*, 1 Or. 194 (1855), it did so by relying exclusively on *Cock*, without acknowledging that New York had decades earlier limited *Cock*'s application to deadlines set by courts and court rules. *Id.* at 196.

Given the weight of authority contradicting his position, petitioner provides no sound basis for concluding that any well-established common-law principles require that statutes be construed to extend statutory deadlines falling on Sunday (much less Saturday). At best, petitioner identifies decisions showing disagreement among state courts about the proper interpretation of statutory deadlines. But such disagreement cannot demonstrate an established common-law tradition that Congress should be presumed to have incorporated

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[5] More recently, the Florida Supreme Court appears to have retreated from *Simmons* by concluding, in a divided opinion, that it could exercise authority to modify a time-calculation rule for statutory periods, but it did so without invoking any common-law principle, let alone that of *dies non juridicus*. See *Dade County Planning Dep't* v. *Ransing*, 158 So. 2d 528, 529 (Fla. 1963).

when enacting Section 1229c(b)(2)'s maximum period for a noncitizen's voluntary departure.

#### *3. The common law's Sunday-based principles did not extend to private conduct*

Petitioner's common-law theory fails for yet another fundamental reason: Courts did not apply the Sunday-focused *dies non juridicus* principle to private actions outside of the context of legal submissions. Instead, legislatures separately imposed *statutory* restrictions on performing some private acts (especially work) on Sundays. Courts then enforced those statutory prohibitions in litigation by, for instance, construing private contracts setting performance deadlines that fell on a Sunday—when such action was statutorily prohibited—to the following Monday. But those decisions are inapplicable here because no law prohibited petitioner from departing the United States on Sunday (or Saturday).

a. "[T]he common law treated [acts on Sundays by private persons] as though done on any other day." Andrew J. King, *Sunday Law in the Nineteenth Century*, 64 Albany L. Rev. 675, 712-713 (2000) (*Sunday Law*); see *Story* v. *Elliot*, 8 Cow. 27, 30 (N.Y. Sup. Ct. 1827) ("All other acts [on Sunday besides those in judicial proceedings] are lawful unless prohibited by statute."). "[F]airs, markets, sports and pastimes[] were not unlawful to be holden and used on Sundays, at common law." *Swann*, 97 Eng. Rep. at 1002 (Lord Mansfield, C.J.). "[T]he common law" likewise did not consider "contracts * * * made on a Sunday" to be "void," nor did it prohibit activity like "a sale made on [a] Sunday." *Drury* v. *Defontaine*, 127 Eng. Rep. 781, 783-784 (C.P. 1808); see *Sunday Law* 712. This Court accordingly determined in 1860 that, in the absence of a statutory pro-

hibition, "contracts made on [Sunday were not] considered illegal or void." *Richardson*, 64 U.S. at 42.

English statutory law, on the other hand, prohibited certain private activities on Sundays. Most notably, in 1677, a statute of Charles II generally prohibited any person from "do[ing] or exercis[ing] any worldly Labour, Busines or Worke of their ordinary Callings upon the Lords day," excepting only "Workes of Necessity and Charity." 29 Car. 2, c. 7, 5 Stat. Realm 848.

The statute of Charles II significantly affected judicial enforcement of private contracts in England when the contracts involved actions to be taken by private parties on Sundays. As the Court of Common Pleas explained, "a contract" that required "any act that is forbidden" by the 1677 statute was "held void." *Drury*, 127 Eng. Rep. at 784. If, for instance, a contract was "wholly completed on [a] Sunday" in violation of "the Statute of [Charles II]," courts would dismiss an action on the contract on the theory that "a party [may not] profit by a contract in defiance of the law of the country." *Smith* v. *Sparrow*, 130 Eng. Rep. 700, 701-702 (C.P. 1827) (Best, C.J.). Thus, as this Court has recognized, "after the statute of [Charles II] forbidding labor on the Lord's day," English courts would "declar[e] void contracts" involving acts on Sundays on statutory, not common-law, grounds. *Philadelphia, Wilmington, & Baltimore R.R.* v. *Philadelphia & Havre de Grace Steam Towboat Co.*, 64 U.S. 209, 218 (1860) (*Steam Towboat Co.*).

In the United States, state legislatures also enacted statutes that prohibited work and other activities on Sundays. *Sunday Law* 713; see, *e.g.*, Robert O. Hancox, Comment, *Sunday Laws—Illegality of Sunday Contracts*, 45 Mich. L. Rev. 616, 617-619 (1947) (surveying

state laws). American courts often enforced those statutory provisions in suits between private parties. As relevant here, one feature of those state-law decisions was to construe contractual provisions that set a period for contract performance that happened to fall on a Sunday—when it was substantively illegal to take such action—as allowing performance on the following Monday. See pp. 33-34 & n.6, *infra*. But those decisions were never based on common law. Rather, they "depend[ed] on the peculiar legislation and customs of th[e] State, more than on any general principles of justice or law." *Steam Towboat Co.*, 64 U.S. at 218; see, *e.g.*, *Horacek* v. *Keebler*, 5 Neb. 355, 358 (1877) (distinguishing "the common law" from later English and American statutes that forbade "ordinary labor and business" on Sunday).

Petitioner, for instance, relies on a "leading 1816 decision" from Connecticut that interpreted a promissory note requiring the delivery of yarn "'in sixty days'" to allow performance on the next day when day 60 was a Sunday. Pet. Br. 23 (citing *Avery* v. *Stewart*, 2 Conn. 69, 72-73 (1816)). But that decision was not based on any common-law principles regarding Sunday court proceedings. Instead it reflected Connecticut's statute forbidding "all secular business upon the Lord's day, under a penalty." *Mumford* v. *Buel*, 1 Root 145 (Conn. Super. Ct. 1789). The *Avery* court thus reasoned that the contract would be "void" if the parties "intend[ed] to make it payable on *Sunday*." 2 Conn. at 73 (Swift, C.J.). But because no one "is bound to perform a contract before the time of payment," *Avery* construed a non-void contract as allowing payment on the following Monday whenever it was "unlawful * * * to tender payment on the last day" because it was a Sunday. *Id.* at 72-73. Each of the other contract-interpretation deci-

sions that petitioner invokes (Br. 23) had a similar statutory background.[6]

Those contract-interpretation decisions do not inform the proper disposition of this case because the legal premise on which they all rest—a statutory provision prohibiting relevant private acts on Sunday—is inapplicable. No statute or any other legal requirement prohibited petitioner from departing the United States on a Sunday, much less on a Saturday. And because individuals in the United States are free to travel on every day of the week, no basis exists for extending Congress's 60-day maximum statutory period to 62 days.

b. Indeed, even under the kind of state statutory restrictions underlying the nineteenth-century decisions that petitioner cites, petitioner would have been permitted to travel out of the country as required by federal law.

In its 1860 decision in *Steam Towboat Co.*, this Court considered a maritime tort action in which a towboat struck an underwater hazard caused by a railroad company while the towboat's crew worked on a Sunday between ports in Maryland. 64 U.S. at 215, 217. The Court rejected the railroad's attempt to preclude recovery based on the towboat crew's violation of Maryland's statute forbidding persons from "work" or "any bodily labor" on "the Lord's day," with "works of necessity * * * excepted." *Id.* at 217-218 (citation omitted). The

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[6] See *Hammond* v. *American Mut. Life Ins. Co.*, 76 Mass. 306, 310 (1858) (explaining that "[t]he statute law forbids" the "performance of contracts and doing secular business" on Sunday); *Post* v. *Garrow*, 26 N.W. 580, 580 (Neb. 1886) (following *Avery*); *Salter* v. *Burt*, 20 Wend. 205, 207 (N.Y. Sup. Ct. 1838) (same); see also *Horacek*, 5 Neb. at 358 (noting Nebraska statute prohibiting labor on Sundays); *Story*, 8 Cow. at 28 (noting similar New York statute).

Court reasoned that "[t]he [Maryland] law relating to the observance of Sunday defines a duty of a citizen to the State, and to the State only." *Id.* at 218. The Court further determined that "[c]ourts of justice have no power to add" to that duty by enforcing the prohibition in a dispute between non-state parties. *Ibid.* Because the steamboat "owner ha[d] committed no offence" against the railroad, allowing the railroad to benefit from the owner's violation against the State would erroneously "'work a confusion of relations.'" *Ibid.* (citation omitted).

Moreover, the Court determined that even under statutes prohibiting work on Sunday, the "sailing of vessels engaged in commerce, and even their lading and unlading, were classed among the works of necessity, which are exempted from the operation of such laws." *Steam Towboat Co.*, 64 U.S. at 219. Indeed, the Court emphasized that "all nations" exempted "commencing a voyage on that day." *Ibid.*; see *Richardson*, 64 U.S. at 42 (explaining that even in civil-law countries where religious holidays had "the sanction of both Church and State," those holidays "were not allowed to interfere with the necessities of commerce, or to extend to ships, or those who navigate them"). That exemption is particularly salient here, where petitioner's voluntary-departure obligation under Section 1229c(b) was to arrange his own travel. In the absence of any statute prohibiting such travel on Sunday, nothing in the law—even in the eighteenth and nineteenth centuries—would have suggested that petitioner could avoid his duty to depart the United States on a Sunday, much less a Saturday.

***4. No common-law principles restricted petitioner's conduct on Saturday or other non-Sunday holidays***

Petitioner's invocations of common law also fail to account for the fact that the principles discussed above applied only to actions taken on Sunday. They would not have extended to other holidays, let alone the Saturday that was the final day of petitioner's voluntary-departure period. See p. 25, *supra*.

This Court's 1860 decision in *Richardson* confirms as much. There, the barque *Tangier* performed a contract to deliver cargo to the Port of Boston by unloading the cargo on a Thursday that was a Massachusetts holiday. 64 U.S. at 37, 43. The cargo's owners were notified but failed to recover the cargo, which was destroyed in a fire the next day. *Id.* at 38. The Court rejected the owners' contention that the holiday delivery was not "at a proper time" under the contract, such that the shipowner should have safeguarded the cargo until the next day. *Id.* at 38-39. The Court explained that although "observance of the Lord's day is enforced by statute" in England and elsewhere (including Massachusetts), other fasts or festivals "have never been treated" "either by statute or usage" as "coming within the category of compulsory holidays" and, instead, are simply "treated as voluntary holidays" without legal effect. *Id.* at 42; see *ibid.* (observing that English courts treat "three days in the year" as court holidays during "which the courts do not sit," but "worldly labor was [not] prohibited on those days"); see *id.* at 40-41 (describing Massachusetts law).

It follows that Saturdays had the same status as weekdays at common law and were not treated differently unless the legislature had enacted statutory provisions requiring otherwise. See, *e.g.*, *Cousins* v. *Com-*

*monwealth*, 187 Va. 506, 509 (1948) (explaining that "[l]egal holidays have generally not been placed on the same basis in the transaction of business as Sunday" and that the state legislature had not vested Saturday with special legal significance); *Carey* v. *Reilly*, 46 N.Y.S. 449, 450 (N.Y. App. Div. 1897) (concluding that Saturday "is not dies non juridicus, and does not prevent courts from continuing their sessions, and performing any judicial business which may come before them"). Petitioner has thus identified no common-law principles that would apply here and warrant extending Congress's 60-day maximum period to 62 calendar days.

***5. Petitioner identifies no broader tradition of extending statutory deadlines for private conduct***

Petitioner emphasizes (Br. 24-29) three decisions between 1890 and 1949 and a provision of the Federal Rules of Civil Procedure. He contends (Br. 22) that they reflect a broader "entrench[ment]" of the "common-law rule" requiring statutory deadlines falling on a Sunday to be extended to Monday in light of "the *dies non* concept." But, even apart from the inapplicability of the underlying common-law rule, those decisions (which concern only the timing of executive-branch statutory authority or statutory filing deadlines), like the procedural rule, are simply inapplicable to a private person's substantive obligation to depart the United States.

a. In *Street* v. *United States*, 133 U.S. 299 (1890), the Court interpreted a post-Civil-War statute authorizing the President to reduce the size of the military. *Id.* at 305-307. Under that authority, the President directed that an officer (Street) be transferred out of the Army; the War Department implemented that direction in an order entered on January 2, 1871, *id.* at 302; and Street argued that the order came too late because the statute

imposed a deadline of January 1, 1871 (a Sunday), *id.* at 305. The Court initially observed in passing, and without citation, that "a power that may be exercised up to and including a given day of the month may generally, when that day happens to be a Sunday, be exercised on the succeeding day." *Id.* at 306. But the court did not rest its decision on that general observation about executive power, which preceded the Court's actual "consideration whether the [President's] power was not exercised within the very limits of time prescribed by the [A]ct" itself. *Ibid.*

Construing the statutory text, the Court concluded that "[S]ection 12" of the Act "place[d] no limitation on the time within which the President [wa]s authorized to [act]." *Street*, 133 U.S. at 306. Instead, by providing for officers' "voluntary resignation" by January 1, the statute was designed to obviate the need for presidential action, confirming that it did "no[t] require[] that the President should transfer" officers "before the close of the first of January." *Ibid.* The Court's next sentence stated: "*All these matters* justified the action of the President taken on the 2d of January, and if they do not establish that it was in full and literal compliance with the exact provisions of [S]ection 12," they left "so slight a departure as scarcely to be worthy of mention." *Id.* at 307 (emphasis added).

Petitioner suggests (Br. 24 n.5) that *Street*'s general observation about the timing of executive power is a "holding" because the Court stated that "[a]ll these matters" justified the President's action, *Street*, 133 U.S. at 307. But petitioner ignores the second half of that sentence, which as discussed above reflects that "th[ose] matters" were not the earlier *dies non* point, but the statutory analysis, which effectively showed

"full and literal compliance" with the "exact provisions of [S]ection 12." *Ibid.*

b. Petitioner also invokes (Br. 25-26) *Union National Bank* v. *Lamb*, 337 U.S. 38 (1949), which addressed the 90-day period for filing a petition for a writ of certiorari under 28 U.S.C. 2101(c) (Supp. II 1948), which had just been changed (from three months). 337 U.S. at 40; see 28 U.S.C. 350 (1946). The Court concluded that the certiorari petition in *Lamb*, which had been filed on the 91st day and would have been timely under the prior three-month deadline, was still timely because the 90th day fell on a Sunday. 337 U.S. at 40-41. The Court did not mention or rest its decision on the "common law," much less on established common-law principles.

*Lamb* instead began its analysis by acknowledging a "contrariety of views" about whether an action statutorily required "to be done within a stated period may be done a day later when the last day of the period falls on Sunday." 337 U.S. at 40 & n.5. The Court identified *Street* as one of those divergent decisions, *ibid.*, and described it as addressing a statute "authoriz[ing] the President [to act] on or before January 1, 1871" and "treating Sunday as a *dies non*" to "allow[] the action to be taken on the following day." *Ibid.* The Court added that it "th[ought] the policy of that decision" applied to Section 2101(c), but it did not apply such a policy based on common-law principles or *Street* itself. *Ibid.* The Court instead relied on Rule 6(a) of the Federal Rules of Civil Procedure, which provided that when "'any applicable statute'" prescribed a period to act and the last day of the period fell on "a Sunday or a legal holiday," the action could be performed on the next day. *Id.* at 40-41; see Fed. R. Civ. P. 6(a) (1946) (28 U.S.C. p. 3277

(1946)). The Court concluded that the method of computing time "express[ed] in Rule 6(a) [was] equally applicable to 28 U.S.C. § 2101(c)" because "the rule had [had] the concurrence of Congress" and because "no contrary policy is expressed in the statute governing this review." 337 U.S. at 41. But those considerations are entirely absent here, where the statute indicates a firm deadline that does not exclude holidays. See pp. 21-23, *supra*.

c. Petitioner also relies (Br. 24-25) on the D.C. Circuit's divided decision in *Sherwood Brothers* v. *District of Columbia*, 113 F.2d 162 (1940), and its statement that "the common-law rule" was that an act may be "done on the following Monday where the last day upon which it should have been done falls on a Sunday," *id.* at 163. This Court in *Lamb*, however, cited *Sherwood Brothers* as among the "contrariety of views" on the subject—which hardly reveals a well-established common-law tradition. 337 U.S. at 40 & n.5. Moreover, *Sherwood Brothers* cited only four decisions in a footnote for its assertion of a "common-law rule": *Street*, *supra*; *Monroe Cattle Co.* v. *Becker*, 147 U.S. 47 (1893); *Lamson* v. *Andrews*, 40 App. D.C. 39 (1913); and an Eighth Circuit decision about performance under a deed that even petitioner does not cite, *Pressed Steel Car Co.* v. *Eastern Ry.*, 121 F. 609, 619 (1903). None of those decisions reflected an established common-law practice that would be relevant here.

*Monroe Cattle* described as a "general rule" the principle that an act may occur on a Monday if the period for action ends on a Sunday, but that issue was irrelevant to the case and thus presumably not contested by

the parties. 147 U.S. at 55-56.[7] Furthermore, the Court based its description on sources that do not reflect that such a rule was established at common law. *Ibid.* (citing *Hammond*'s and *Salter*'s contract-interpretation decisions discussed at p. 34 n.6, *supra*, and a treatise reflecting a variety of contradictory views); see *Endlich on Statutes* § 393, at 551-552 & nn.(a), 216 (1888). *Lamson* interpreted a filing deadline set solely by court order, a matter over which courts have traditionally exercised considerable authority. See 40 App. D.C. at 41-42. And *Sherwood Brothers* itself reinforces the view that no principle favoring petitioner was established at common law. The divided three-judge D.C. Circuit panel there declined to follow contrary D.C. Circuit precedent decided just three years earlier in which five judges concluded that a statutory filing deadline was governed by the "general rule in the federal courts" that such deadlines falling on Sunday or a holiday cannot be satisfied on the following day, *Walker* v. *Hazen*, 90 F.2d 502, 503-504 (D.C. Cir.), cert. denied, 302 U.S. 723 (1937). See *Sherwood Bros.*, 113 F.2d at 164-165; see *id.* at 166 (dissenting opinion following *Hazen*).

d. Petitioner ultimately contends (Br. 28), incorrectly, that the 1963 amendment to Rule 6(a) and more recent decisions have further "extended the common-law *dies non* principle to Saturday deadlines." But this Court's amendment of Rule 6(a) to exclude Saturdays when they are the last day of a litigation deadline in dis-

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[7] The 90-day *prohibition* in *Monroe Cattle*, which was triggered by an August 28 filing, did not expire until *at least* Sunday, November 26 (the 90th day), and the potentially prohibited act on November 25 indisputably fell within that period. *Monroe Cattle*, 147 U.S. at 53, 55-56. The defendant argued instead that he had obviated the prohibition when he "withdr[e]w" his August 28 filing. *Id.* at 56.

trict court was necessary to *change* existing legal practice, not to reflect an established common-law principle. And whatever might be the merits of the more recent federal decisions petitioner cites (*ibid.*) addressing deadlines for agency action and administrative filing deadlines, they do not represent an evolution of the common law because "there is 'no federal general common law.'" *Rodriguez* v. *FDIC*, 589 U.S. 132, 136 (2020) (quoting *Erie R.R.* v. *Tompkins*, 304 U.S. 64, 78 (1938)). Congress therefore would have had no reason to conclude that it was incorporating an established common-law time-counting principle for either Saturdays or Sundays when it enacted the 60-day departure period.

### C. The Regulatory Definition Of "Day" Does Not Govern Section 1229c's Voluntary-Departure Deadline

Petitioner contends (Br. 34-44) that Congress should be presumed to have adopted the regulatory definition of "day" that existed in 1996 when it enacted the 60-day voluntary-departure deadline. But Congress would not have understood that definition, which applies only to deadlines established by regulations, to apply to the voluntary-departure period newly established by statute.

In 1996, the regulatory definition provided in pertinent part: "As used in this chapter"—the only chapter then within Title 8 of the Code of Federal Regulations—"(h) The term *day* when computing the period of time for taking any action provided in this chapter" 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." 8 C.F.R. 1.1(h) (1996); see 8 C.F.R. 1.2, 1001.1(h) (current versions). But that definition was limited in two significant ways.

First, it employed the phrase "[a]s used in this chapter" to apply to *regulations* in which the defined term appeared. 8 C.F.R. 1.1 (1996). Second, it was further restricted only to regulatory provisions in which "day" was used to define a "period of time for taking action *provided in this chapter*," *i.e.*, in the immigration regulations. 8 C.F.R. 1.1(h) (1996) (emphasis added).

If the definition, like many regulatory definitions, had applied generally to every use of "day" in the regulatory framework, Congress might well have legislated with it in mind. But because the definition expressly limited itself to "period[s] * * * provided in [immigration regulations]," 8 C.F.R. 1.1(h) (1996), Congress would not have understood it to apply to the voluntary-departure period that was newly provided *in a statute*. Where a substantive time period was provided in the INA, Section 1.1(h)'s definition of "day" would not typically apply without more. And that holds true for the 60-day voluntary-departure period. Indeed, the regulations that address voluntary departure make clear that "the total period of time" allowed at the conclusion of removal proceedings may not "exceed * * * 60 days *as set forth in section 240B* of the [INA, *i.e.*, Section 1229c]." 8 C.F.R. 1240.26(f) (emphasis added).

For certain statutory provisions, additional context might indicate that Congress intended to authorize DHS or the Attorney General to incorporate Section 1.1(h)'s definition of "day." For instance, in 1996, when Congress enacted time limits for reconsideration and reopening motions, 8 U.S.C. 1229a(c)(6)(B) and (7)(C)(i), it specifically "adopted the recommendations of the DOJ" and codified the *preexisting* 30- and 90-day deadlines that had then recently been established in immigration regulations. *Dada*, 554 U.S. at 13-14; see

61 Fed. Reg. 18,900, 18,904-18,905 (Apr. 29, 1996) (promulgating 8 C.F.R. 3.2(b)(2) and (c)(2)). By adopting the "period[s] of time for taking [the] action [originally] provided in [the regulations]" to which the regulatory definition of "day" had directly applied, 8 C.F.R. 1.1(h) (1996), Congress presumably intended to allow the government to continue to apply that definition to the parallel statutory periods.

It is also reasonable to conclude, for instance, that Congress generally intends that an agency exercise its authority to adopt regulations it considers "necessary for carrying out" its statutory responsibilities, 8 U.S.C. 1103(a)(3) and (g)(1), to govern the manner in which documents should be filed with the agency, including by clarifying associated filing deadlines. See *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 524 (1978) ("[T]he formulation of procedures [i]s basically to be left within the discretion of the agencies to which Congress had confided the responsibility for substantive judgments.").

But Section 1229c(b)(2)'s 60-day period is quite unlike a procedural filing deadline. A noncitizen's voluntary departure from the United States requires no further interaction with the Board or immigration courts. Moreover, a voluntary-departure agreement is a "substantive" statutory "obligation to arrange for departure, and actually depart [the United States], within the 60-day period"—the kind of limitation that is not even "subject to equitable tolling," *Dada*, 554 U.S. at 19, or an "exceptional circumstances" exception, see p. 22, *supra*.

Petitioner does not dispute (Br. 34) that equitable reasons cannot justify extension of the deadline here. But he fails to appreciate what that means: Even if a

noncitizen has been "'pursu[ing] his rights diligently'" and "'some extraordinary circumstance prevents him'" from complying with the "statutory time limit," *California Pub. Employees' Retirement Sys.* v. *ANZ Sec., Inc.*, 582 U.S. 497, 507 (2017) (citation omitted), the absence of equitable tolling means that the voluntary-departure deadline remains firm. If a one-day extension would be unavailable even in extraordinary circumstances, there is no reason to conclude that two days are automatically added based on the mere happenstance that day 60 falls on an ordinary Saturday, when many would prefer to travel and nothing prevents the noncitizen's departure.

**D. Petitioner's Policy Arguments Are Unpersuasive**

Finally, petitioner offers (Br. 44-48) a series of policy arguments, none of which is a sound basis to extend the statutory deadline from 60 to 62 days.

Petitioner suggests (Br. 44-45, 47-48) that adhering to the 60-day requirement will surprise unexpecting noncitizens. But it seems unlikely that non-lawyers would normally conclude that 60 days could mean 62 days simply because day 60 is a Saturday. And whether or not a noncitizen has counsel, this Court's decision will provide clear and unambiguous guidance on the duration of the maximum voluntary-departure period.

Petitioner contends (Br. 45-46) that noncitizens with religious obligations that preclude Saturday or Sunday travel will not have a full 60 days to depart if the final day falls on a weekend. But the same is true for somebody with a Friday sabbath or other religious holiday during the week. Similarly, someone who wants to take a flight that is scheduled only once a week may need to leave several days before day 60. And nothing suggests that Congress enacted the maximum *possible* period to ensure that a noncitizen could remain in the United

States for a full 60 days after an order of removal. It merely provided that permission would "*not* be valid for a period *exceeding* 60 days." 8 U.S.C. 1229c(b)(2) (emphases added).

Finally, petitioner states (Br. 46) that adhering to a 60-day maximum period for voluntary departure would burden noncitizens who wish to "seek reopening or reconsideration." But petitioner is wrong in assuming (*ibid.*) that "the law allows [noncitizens] until the end of the voluntary-departure period to" file such motions. A motion for reconsideration must be filed within 30 days, well before any 60-day calculation would end. 8 C.F.R. 1003.2(b)(2). And a noncitizen may take up to 90 days to seek reopening. 8 C.F.R. 1003.2(c)(2). But filing such a motion "after the time allowed for voluntary departure has already expired does not in any way impact the period of time allowed for voluntary departure." 8 C.F.R. 1240.26(e)(2). To avoid the statutory penalties for failing to depart timely, see 8 U.S.C. 1229c(d)(1), a noncitizen may terminate the voluntary-departure grant only by filing a motion to reopen (or for reconsideration) *before* the period expires, 8 C.F.R. 1240.26(e)(1).

Even if a noncitizen chooses to file a reopening motion on day 58 to terminate his agreement to depart, petitioner identifies no reason why that outcome is untoward. Petitioner's hypothetical (Br. 46) of a noncitizen who "uncovers new evidence" that would warrant reopening proceedings "late on Friday before a Sunday voluntary-departure deadline" is improbable. But late discovery of evidence can equally occur when the last day is a business day. And, as the court of appeals recognized, because there is no mailbox rule for paper submissions to the Board, noncitizens already know that

they may need to "prepare and dispatch documents well in advance of [the] deadline" to allow them to be delivered before it lapses. Pet. App. 13a n.8.

## CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded with instructions to dismiss for lack of jurisdiction. Alternatively, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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## APPENDIX

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## APPENDIX

1. 8 U.S.C. 1229c provides in pertinent part:

**Voluntary departure**

**(a) Certain conditions**

* * * * *

**(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.

**(3) Bond**

An alien permitted to depart voluntarily under this subsection shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified.

**(c) Aliens not eligible**

The Attorney General shall not permit an alien to depart voluntarily under this section if the alien was previously permitted to so depart after having been found inadmissible under section 1182(a)(6)(A) of this title.

**(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.

* * * * *

2. 8 U.S.C. 1231 provides in pertinent part:

**Detention and removal of aliens ordered removed**

* * * * *

**(c) Removal of aliens arriving at port of entry**

* * * * *

**(3) Costs of detention and maintenance pending removal**

**(A) In general**

Except as provided in subparagraph (B) and subsection (d),[4] an owner of a vessel or aircraft bringing an alien to the United States shall pay the costs of detaining and maintaining the alien—

(i) while the alien is detained under subsection (d)(1), and

(ii) in the case of an alien who is a stowaway, while the alien is being detained pursuant to—

* * * * *

(III) section 1225(b)(1)(B)(ii) of this title, for a period not to exceed 15 days (excluding Saturdays, Sundays, and holidays) commencing on the first such day which begins on the earlier of 72 hours after the time of the initial presentation of the stowaway for inspection or at the time the stowaway is determined to have a credible fear of persecution.

* * * * *

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[4] So in original. Probably should be subsection "(e),".

3. 8 U.S.C. 1252 provides in pertinent part:

**Judicial review of orders of removal**

**(a) Applicable provisions**

**(1) General orders of removal**

Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 1225(b)(1) of this title) is governed only by chapter 158 of title 28, except as provided in subsection (b) and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

* * * * *

**(4) Claims under the United Nations Convention**

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).

**(5) Exclusive means of review**

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accord-

ance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e). For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

**(b) Requirements for review of orders of removal**

With respect to review of an order of removal under subsection (a)(1), the following requirements apply:

* * * * *

**(6) Consolidation with review of motions to reopen or reconsider**

When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with the review of the order.

* * * * *

**(9) Consolidation of questions for judicial review**

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in

this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

* * * * *

4. 8 C.F.R. 1.1 (1996) provided in pertinent part:

**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.

* * * * *

5. 8 C.F.R. 1240.26 (2020) provides in pertinent part:

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

* * * * *

(d) *Alternate order of removal.* Upon granting a request made for voluntary departure either prior to the completion of proceedings or at the conclusion of pro-

ceedings, the immigration judge shall also enter an alternate order or removal.

(e) *Periods of time.* If voluntary departure is granted prior to the completion of removal proceedings, the immigration judge may grant a period not to exceed 120 days. 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 section 240B(d) of the Act 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 section 240B(d) of the Act 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.

(f) *Extension of time to depart*. Authority to extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is only within the jurisdiction of the district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs. An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making an application for voluntarily departure if reopening was granted prior to the expiration of the original period of voluntary departure. In no event can the total period of time, including any extension, exceed 120 days or 60 days as set forth in section 240B of the Act. The filing of a motion to reopen or reconsider does not toll, stay, or extend the period allowed for voluntary departure. The filing of a petition for review has the effect of automatically terminating the grant of voluntary departure, and accordingly also does not toll, stay, or extend the period allowed for voluntary departure.

* * * * *

(i) *Effect of filing a petition for review*. If, prior to departing the United States, the alien files a petition for review pursuant to section 242 of the Act (8 U.S.C. 1252) or any other judicial challenge to the administratively final order, any grant of voluntary departure shall terminate automatically upon the filing of the petition or other judicial challenge and the alternate order of removal entered pursuant to paragraph (d) of this section shall immediately take effect, except that an alien

granted the privilege of voluntary departure under 8 CFR 1240.26(c) will not be deemed to have departed under an order of removal if the alien departs the United States no later than 30 days following the filing of a petition for review, provides to DHS such evidence of his or her departure as the ICE Field Office Director may require, and provides evidence DHS deems sufficient that he or she remains outside of the United States. 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. The automatic termination of a grant of voluntary departure and the effectiveness of the alternative order of removal shall not affect, in any way, the date that the order of the immigration judge or the Board became administratively final, as determined under the provisions of the applicable regulations in this chapter. Since the grant of voluntary departure is terminated by the filing of the petition for review, the alien will be subject to the alternate order of removal, but the penalties for failure to depart voluntarily under section 240B(d) of the Act shall not apply to an alien who files a petition for review, and who remains in the United States while the petition for review is pending.

* * * * *