



WEIL'S SCOTUS TERM IN REVIEW

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Supreme Court Resolves Two Circuit Splits Concerning Federal Courts' Jurisdiction to Review Certain Board of Immigration Decisions

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Today, in a 5-4 decision authored by Justice Alito, the Supreme Court in [*Riley v. Bond*](#) resolved circuit splits on two questions concerning federal courts' jurisdiction to hear petitions for review of decisions by the Board of Immigration (BIA) appeals. The Court held that (1) BIA orders denying deferral of removal in "withholding-only" proceedings are not "final order[s] of removal" under the Immigration and Nationality Act (INA), 8 U.S.C. §1252(b)(1), and (2) the 30-day filing deadline in § 1252(b)(1) for petition for judicial review of a "final order of removal" is a claims-processing rule, not a jurisdictional requirement. The Court's decision vacated the Fourth Circuit's ruling and remanded the case for further proceedings.

The case arose out of petitioner Pierre Riley's immigration removal proceedings. In January 2021, Riley received notice that the Department of Homeland Security declared him deportable to his home country of Jamaica. Riley challenged his removal in immigration court, expressing fear of being killed upon returning to Jamaica. An immigration judge initially granted withholding of removal relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). However, in late May 2022, the BIA reversed the decision and denied CAT relief. Riley petitioned the Fourth Circuit for review four days after the BIA's decision. Over the objection of both Riley and the U.S. government, the Fourth Circuit held that an order denying CAT relief is not a "final order of removal" within the meaning of the INA, 8 U.S.C. § 1252(b)(1), and dismissed Riley's appeal for lack of jurisdiction because he had not petitioned for review of the underlying final administrative removal order within 30 days of its issuance.

The Supreme Court vacated and remanded. In the first part of the opinion, Justice Alito, joined by Chief Justice Roberts as well as Justices Thomas, Kavanaugh, and Barrett, held that a BIA order denying deferral of removal is not a "final order of removal." As Justice Alito explained, the "statutory text speaks directly and clearly to this question" because, under the statutory scheme, an "order of removal" is deemed to refer to the "order of deportation," and the "order of deportation" is one that "conclud[es] that the alien is deportable or ordering deportation." Riley's final administrative removal order was the executive branch's determination that he was deportable, and it became final immediately upon issuance. Relying on

the Supreme Court's earlier decisions in *Nasrallah* and *Guzman Chavez*, Justice Alito reasoned that the BIA's subsequent denial of CAT relief "is not a final order of removal and does not affect the validity of a previously issued order of removal or render that order non-final." Justice Alito added that this interpretation of the statute was consistent with "the supposedly streamlined procedure" adopted by Congress through the Antiterrorism and Effective Death Penalty Act of 1996 to expedite the removal of noncitizens convicted of aggravated felonies.

In the second part of the opinion, the full Court majority held that its "pattern of recent decisions shows that we will not categorize a provision as 'jurisdictional' unless the signal is exceedingly strong." Here, Justice Alito observed that the Court's decisions over the past two decades support a conclusion this "demanding requirement is not met" in § 1252(b)(1) because that provision "imposed requirements on litigants, not the courts," and did not reference a court's jurisdiction or include any directive language for courts. Importantly, because the U.S. government declined in this case to seek to enforce the 30-day time limit for filing a petition for review, the Court's decision allows Riley's case to proceed on remand.

In a concurring opinion, Justice Thomas agreed with the majority in full but wrote separately to question whether the Fourth Circuit ever had jurisdiction over the suit initially.

In a partially dissenting opinion—echoing an *amicus* brief authored by Weil on behalf of several professors of Administrative Law in support of Riley—joined in substantial part by Justice Kagan, Justice Jackson, and Justice Gorsuch, Justice Sotomayor argued that Congress provided both for judicial review of orders denying CAT relief and their underlying removal

orders; the only way to properly review both is to hold that removal orders do not become final until withholding-only proceedings are complete. Justice Sotomayor further argued that the definition of finality is ambiguous and ordinary tools of statutory construction confirm that the finality of CAT orders and removal orders are tied together. Justice Sotomayor further asserted that the majority's holding breaks with the basic principles of finality and appellate review by stating that two orders that must be appealed together do not become final together.

Relevant to petitioners seeking relief from review of a denial of CAT relief, the case erects a potentially significant procedural barrier to securing such relief. Although the government declined in this case to seek to enforce the 30-day time limit for filing a petition for review, it may elect to do so in future cases. Petitioners will therefore need to file a preemptive petition for review upon receipt of an order of removal, and supplement that petition after administrative appeals for CAT relief are exhausted. This procedure is likely to frustrate many petitioners' efforts to obtain judicial relief from an adverse CAT order.

More broadly, this case represents another example of the Court's strict textualist statutory interpretation approach, even where the result appears contrary to clear congressional intent and is likely to lead to unworkable or unusual outcomes further down the line. It is also notable that while the Court has consistently pushed toward more aggressive judicial review of administrative action, in this case, the Court adopted a reading of the statute that is very likely to significantly narrow the scope of CAT orders reviewable in federal court.

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