No. 19-358

In the Supreme Court of the United States

LESBIA NINETH PEREZ-CAZUN, ET AL., PETITIONERS

v.

WILLIAM P. BARR, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the immigration court lacked jurisdiction over petitioners' removal proceedings because the notices to appear filed with the immigration court did not specify the date and time of their initial removal hearing.

2. Whether the court of appeals deprived petitioners of due process in upholding the Board of Immigration Appeals' determination that the expert declaration that petitioners had offered in support of their motion to reopen their removal proceedings was not new evidence.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-5) is not published in the Federal Reporter but is reprinted at 763 Fed. Appx. 591. The decisions of the Board of Immigration Appeals (Pet. App. 6-10, 11-17) and the immigration judge (Pet. App. 18-58) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 19, 2019. A petition for rehearing was denied on June 21, 2019 (Pet. App. 59). The petition for a writ of certiorari was filed on September 13, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, provides for a removal proceeding before an immigration judge (IJ) to determine whether

an alien should be removed from the United States. 8 U.S.C. 1229a(a)(1). IJs "are attorneys whom the Attorney General appoints as administrative judges" to conduct removal proceedings. 8 C.F.R. 1003.10(a). Pursuant to authority vested in him by the INA, see 8 U.S.C. 1101(g), the Attorney General has promulgated regulations "to assist in the expeditious, fair, and proper resolution of matters coming before [IJs]," 8 C.F.R. 1003.12.

The Attorney General's regulations provide that "[j]urisdiction vests, and proceedings before an [IJ] commence, when a charging document is filed with the Immigration Court." 8 C.F.R. 1003.14(a). Under the regulations, a "[c]harging document means the written instrument which initiates a proceeding before an [IJ]," such as "a Notice to Appear." 8 C.F.R. 1003.13. The regulations provide that "the Notice to Appear" shall contain "the time, place and date of the initial removal hearing, where practicable." 8 C.F.R. 1003.18(b); see 8 C.F.R. 1003.15(b)-(c) (listing the information to be provided to the immigration court in a "Notice to Appear"). The regulations further provide that, "[i]f that information is not contained in the Notice to Appear, the Immigration Court shall be responsible for scheduling the initial removal hearing and providing notice to the government and the alien of the time, place, and date of hearing." 8 C.F.R. 1003.18(b); see 8 C.F.R. 1003.18(a) ("The Immigration Court shall be responsible for scheduling cases and providing notice to the government and the alien of the time, place, and date of hearings.").

b. The INA independently requires that an alien placed in removal proceedings be served with "written

notice" of certain information. 8 U.S.C. 1229(a)(1). Section 1229 refers to that "written notice" as a "'notice to appear.'" *Ibid.* Under paragraph (1) of Section 1229(a), such written notice must specify, among other things, the "time and place at which the proceedings will be held," and the consequences under Section 1229a(b)(5) of failing to appear. 8 U.S.C. 1229(a)(1)(G)(i). Paragraph (2) of Section 1229(a) provides that, "in the case of any change or postponement in the time and place of [the removal] proceedings," "written notice shall be given" specifying "the new time or place of the proceedings," and the consequences under Section 1229a(b)(5) of failing to attend such proceedings. 8 U.S.C. 1229(a)(2)(A).

Section 1229a(b)(5), in turn, provides that "[a]ny alien who, after written notice required under paragraph (1) or (2) of section 1229(a) of this title has been provided * * * does not attend a proceeding under this section, shall be ordered removed in absentia." 8 U.S.C. 1229a(b)(5)(A). An alien may not be removed in absentia, however, unless the Department of Homeland Security (DHS) "establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable." *Ibid.* An order of removal entered in absentia may be rescinded "if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section 1229(a)." 8 U.S.C. 1229a(b)(5)(C)(ii).

2. Petitioners Lesbia Nineth Perez-Cazun and her minor son, F.J.M.P., are natives and citizens of Guatemala. Administrative Record (A.R.) 641, 752; Pet. App. 11 n.1. In 2015, petitioners illegally entered the United States by crossing the border with Mexico without inspection or admission by an immigration officer and without visas or other required documentation. A.R.

606, 641, 728-729, 752. DHS apprehended petitioners and placed them in expedited removal proceedings. A.R. 606, 608, 728-729. Perez-Cazun claimed a fear of persecution in Guatemala. A.R. 591, 596-602. After interviewing Perez-Cazun, an asylum officer determined that there was a significant possibility that she could establish eligibility for asylum in full removal proceedings before an IJ. A.R. 591; see 8 U.S.C. 1225(b)(1)(B)(ii) and (v), 1229a.

DHS served petitioners with notices to appear for full removal proceedings before an IJ on a date "to be determined" and at a time "to be determined." A.R. 641, 752 (capitalization omitted); see 8 C.F.R. 208.30(f). The notices to appear charged that petitioners were subject to removal because they were not in possession of valid visas or other required documentation. A.R. 641, 752; see 8 U.S.C. 1182(a)(7)(A)(i)(I). DHS filed the notices to appear with the immigration court. See A.R. 641, 752.

The immigration court later served petitioners with a notice of hearing, informing them that it had scheduled their removal hearing for October 15, 2015, at 10 a.m. A.R. 751. Perez-Cazun appeared at that hearing and subsequent hearings before the IJ. A.R. 230; see *ibid.* (waiving the need for Perez-Cazun's minor son to appear); A.R. 745-746, 748, 750 (providing petitioners notices of the date and time of each subsequent hearing). Petitioners conceded their removability, Pet. App. 19, and applied for asylum, withholding of removal, and other protection, *id.* at 18, 20. In support of those applications, Perez-Cazun testified that she feared returning to Guatemala because of alleged threats from a former partner and two gang members. *Id.* at 20-24.

The IJ denied the applications and ordered petitioners removed to Guatemala. Pet. App. 18-58. The IJ found Perez-Cazun "not credible," *id.* at 34, because of "serious inconsistencies in [her] testimony" regarding the identity of one of the gang members who had allegedly threatened her, the content of that alleged threat, and the nature of her fears of her former partner, *id.* at 31; see *id.* at 31-34. The IJ further determined that, even accepting Perez-Cazun's testimony as credible, Perez-Cazun had not established that the harm she feared constituted harm on account of a protected ground, such as membership in a particular social group. *Id.* at 40 n.5, 45 n.6, 48-49, 51.

The Board of Immigration Appeals (Board) dismissed petitioners' appeal. Pet. App. 11-17. The Board determined that the IJ's adverse credibility finding was not clearly erroneous. *Id.* at 12. The Board further determined that, even if Perez-Cazun were credible, it would affirm the IJ's decision on the ground that "she did not meet her burden to establish that she was persecuted, or has a well-founded fear of persecution, in Guatemala on account of one of the protected grounds." *Id.* at 13; see *id.* at 13-16.

3. Petitioners did not file a petition for review of the Board's decision. Pet. App. 3 n.2. Rather, petitioners filed a motion asking the Board to reconsider and rescind their removal orders or, in the alternative, to reopen their removal proceedings. A.R. 21-71; see 8 U.S.C. 1229a(c)(6) (authorizing an alien to file one motion to reconsider within 30 days of a final order of removal); 8 U.S.C. 1229a(c)(7) (authorizing an alien to file one motion to reopen within 90 days of a final order of removal).

The Board denied the motion. Pet. App. 6-10. In denying reconsideration, the Board held that petitioners had "not identified any material error of fact or law in [the Board's] prior decision." *Id.* at 7. "Rather," the Board concluded, the motion to reconsider "reargue[d]" points that petitioners had raised previously. *Ibid.*

In denying reopening, the Board held that petitioners had not sought to offer evidence that "is material and was not available and could not have been discovered or presented at the former hearing." Pet. App. 8 (quoting 8 C.F.R. 1003.2(c)(1)). The Board noted that petitioners had sought to offer an "expert declaration on trauma and asylum seekers." *Id.* at 9. But the Board determined that the declaration was "not new evidence" and that petitioners had "not shown why the declaration was not previously presented to the [IJ]." *Ibid.* The Board also noted that petitioners had sought to offer a "Guatemala 2017 Crime and Safety Report issued by the Department of State." *Ibid.* But the Board determined that the 2017 report did "not present materially new evidence." *Ibid.* "Rather," the Board found, "the evidence in the 2017 report describe[d] violence and crime similar to the status of violence and crime in Guatemala at the time of the hearing in 2016." *Ibid.*

4. Petitioners filed a petition for review of the Board's denial of their motion to reconsider or reopen. Pet. App. 3. After petitioners filed their opening brief in the court of appeals, this Court issued its decision in *Pereira* v. *Sessions*, 138 S. Ct. 2105 (2018). In *Pereira*, the Court was presented with the "narrow question," *id.* at 2110, whether a notice to appear that does not specify the time or place of an alien's removal proceedings is a "notice to appear under section 1229(a)" that triggers the so-called stop-time rule governing the calculation of

the alien's continuous physical presence in the United States for purposes of cancellation of removal, 8 U.S.C. 1229b(d)(1). The Court answered no, holding that "[a] notice that does not inform a noncitizen when and where to appear for removal proceedings is not a 'notice to appear under section 1229(a)' and therefore does not trigger the stop-time rule." *Pereira*, 138 S. Ct. at 2110.

Following this Court's decision in *Pereira*, petitioners argued for the first time in their reply brief in the court of appeals that the immigration court lacked jurisdiction over their removal proceedings because the notices to appear filed with the immigration court did not specify the date and time of their initial removal hearing. Pet. C.A. Reply Br. 4-10. The court of appeals directed the parties to file supplemental briefs addressing the issue. C.A. Order (Nov. 21, 2018). In its supplemental brief, the government argued that the immigration court had jurisdiction. Gov't C.A. Supp. Br. 5-20. The government also argued that, although the immigration court's jurisdiction could affect the "scope" of the court of appeals' review, it did "not implicate" the court of appeals' own "subject-matter jurisdiction, which is defined by 8 U.S.C. § 1252(a)." *Id.* at 4.

5. The court of appeals denied the petition for review in an unpublished opinion. Pet. App. 1-5. The court held that the Board did not abuse its discretion in finding that the motion to reconsider "presented nothing new for it to consider." *Id.* at 4. The court further held that the Board did not abuse its discretion in denying the motion to reopen. *Id.* at 4-5. The court determined that the 2017 State Department report "would have added little to the record" because "the record already contained a similar, earlier report describing the

conditions in Guatemala." *Id.* at 4. And the court explained that, although the expert declaration "was created after the [IJ's] decision," "it relied on studies that were published years earlier—before [petitioners] requested relief—and could have been discovered previously." *Id.* at 5.

In a footnote, the court of appeals noted that, "[f]or the first time in their reply brief, and later in supplemental briefing, [petitioners] raised what they claimed was a jurisdictional problem." Pet. App. 2 n.1. The court then stated that, "[a]fter considering the matter carefully," it was "confident that [it] ha[d] jurisdiction to decide their petition for review." *Ibid.* In support of that conclusion, the court cited 8 U.S.C. 1252. Pet. App. 2 n.1.

6. The court of appeals denied rehearing en banc. Pet. App. 59.

ARGUMENT

Petitioners contend (Pet. 30-37) that the immigration court lacked jurisdiction over their removal proceedings because the notices to appear filed with the immigration court did not specify the date and time of their initial removal hearing. That contention lacks merit and would be rejected in every court of appeals that has addressed the question. In any event, this case would not be a suitable vehicle for this Court's consideration of that question, because the court of appeals in this case did not squarely address the immigration court's jurisdiction.[*]

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[*] Other pending petitions for writs of certiorari raise similar issues. See *Deocampo* v. *Barr*, No. 19-44 (filed July 3, 2019); *Karingithi* v. *Barr*, No. 19-475 (filed Oct. 7, 2019); *Banegas Gomez* v. *Barr*, No. 19-510 (filed Oct. 16, 2019); *Kadria* v. *Barr*, No. 19-534 (filed Oct. 21, 2019).

Petitioners also assert (Pet. i) that the court of appeals denied them "due process of law by concluding that a newly published expert declaration was not 'new' evidence." That contention likewise lacks merit, and the court of appeals' decision upholding the Board's denial of petitioners' motion to reopen does not conflict with any decision of this Court or another court of appeals. The petition for a writ of certiorari should be denied.

1. a. Petitioners err in contending (Pet. 30-37) that the immigration court lacked jurisdiction over their removal proceedings because the notices to appear filed with the immigration court did not specify the date and time of their initial removal hearing.

i. Petitioners' contention lacks merit, for three independent reasons. First, a notice to appear need not specify the date and time of the initial removal hearing in order for "[j]urisdiction" to "vest[]" under the pertinent regulations, 8 C.F.R. 1003.14(a). The regulations provide that "[j]urisdiction vests, and proceedings before an [IJ] commence, when a charging document is filed with the Immigration Court." *Ibid.* A "[c]harging document means the written instrument which initiates a proceeding before an [IJ]," such as "a Notice to Appear." 8 C.F.R. 1003.13. And the regulations make clear that "a Notice to Appear" need not specify the date and time of the removal proceedings in order to serve as a "[c]harging document" that commences removal proceedings. *Ibid.* Indeed, the regulations specifically provide that "the Notice to Appear" shall contain "the time, place and date of the initial removal hearing" only "where practicable." 8 C.F.R. 1003.18(b); see 8 C.F.R. 1003.15(b)-(c) (omitting date and time information from the list of information to be provided to the

immigration court in a "Notice to Appear"). And far from depriving the immigration court of jurisdiction when a "Notice to Appear" filed by DHS in the immigration court does not contain "the time, place and date of the initial removal hearing," the regulations expressly authorize the immigration court to provide that information to the government and the alien when the hearing is scheduled. 8 C.F.R. 1003.18(b). Thus, a "notice to appear need not include time and date information to satisfy" the "regulatory requirements" and "vest[] jurisdiction in the IJ." *Karingithi* v. *Whitaker*, 913 F.3d 1158, 1160 (9th Cir. 2019), petition for cert. pending, No. 19-475 (filed Oct. 7, 2019); see *Matter of Bermudez-Cota*, 27 I. & N. Dec. 441, 445 (B.I.A. 2018) (explaining that 8 C.F.R. 1003.14(a) "does not specify what information must be contained in a 'charging document' at the time it is filed with an Immigration Court, nor does it mandate that the document specify the time and date of the initial hearing before jurisdiction will vest").

Second, even if the notices to appear alone did not suffice to "vest[]" "[j]urisdiction" in the immigration court, 8 C.F.R. 1003.14(a), the notices to appear together with the subsequent notice of hearing did. As noted, the regulations expressly authorize the immigration court to "provid[e] notice to the government and the alien of the time, place, and date of hearing" when "that information is not contained in the Notice to Appear." 8 C.F.R. 1003.18(b). That is what the immigration court did here: It served petitioners with a notice of hearing informing them that their initial removal hearing was scheduled for October 15, 2015, at 10 a.m. A.R. 751. Thus, even if the regulations required notice of the date and time of the hearing for "[j]urisdiction" to "vest[]," 8 C.F.R. 1003.14(a), that requirement was

satisfied when petitioners were served with a notice of hearing containing that information. See *Bermudez-Cota*, 27 I. & N. Dec. at 447 ("Because the [alien] received proper notice of the time and place of his proceeding when he received the notice of hearing, his notice to appear was not defective.").

Third, any requirement that the notices to appear contain the date and time of the initial removal hearing is not a strictly "jurisdictional" requirement, but a mere "claim-processing rule," reliance on which petitioners forfeited by not raising any error before the IJ. *Ortiz-Santiago* v. *Barr*, 924 F.3d 956, 963 (7th Cir. 2019). To be sure, 8 C.F.R. 1003.14(a) speaks in terms of the immigration court's "[j]urisdiction." But "[j]urisdiction" is "a word of many, too many, meanings." *Fort Bend County* v. *Davis*, 139 S. Ct. 1843, 1848 (2019) (citation omitted). And here, context makes clear that Section 1003.14(a) does not use the term in its strict sense. As 8 C.F.R. 1003.12 confirms, the Attorney General promulgated Section 1003.14(a) "to assist in the expeditious, fair, and proper resolution of matters coming before [IJs]," 8 C.F.R. 1003.12—the very description of a claim-processing rule. See *Henderson ex rel. Henderson* v. *Shinseki*, 562 U.S. 428, 435 (2011) (explaining that "claim-processing rules" are "rules that seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times"). Thus, "as with every other claim-processing rule," failure to comply with Section 1003.14(a) may be "waived or forfeited." *Ortiz-Santiago*, 924 F.3d at 963. Here, Perez-Cazun appeared at the initial removal hearing before the IJ on October 15, 2015, at 10 a.m., without raising any objection to the lack of date and time information in the notice to appear. A.R.

226-249. Given the absence of a timely objection, petitioners forfeited any contention that the notices to appear were defective. See *Pierre-Paul* v. *Barr*, 930 F.3d 684, 693 (5th Cir. 2019); *Ortiz-Santiago*, 924 F.3d at 964-965.

ii. This Court's decision in *Pereira* v. *Sessions*, 138 S. Ct. 2105 (2018), is not to the contrary. In *Pereira*, the Court held that "[a] notice that does not inform a noncitizen when and where to appear for removal proceedings is not a 'notice to appear under section 1229(a)' and therefore does not trigger the stop-time rule" governing the calculation of the alien's continuous physical presence in the United States for purposes of cancellation of removal. *Id.* at 2110. "*Pereira*'s narrow holding," however, "does not govern the jurisdictional question" presented here. *Karingithi*, 913 F.3d at 1160 n.1. That is because, unlike in *Pereira*, the question presented here does not depend on what qualifies as a "notice to appear under section 1229(a)." 138 S. Ct. at 2110; cf. 8 U.S.C. 1229b(d)(1)(A). The INA, including Section 1229(a), "is silent as to the jurisdiction of the Immigration Court." *Karingithi*, 913 F.3d at 1160; see *Ortiz-Santiago*, 924 F.3d at 963 (explaining that the statute "says nothing about the agency's jurisdiction"). Indeed, the statute does not even require that the notice to appear be filed with the immigration court. Rather, it requires only that "written notice" of certain information—"referred to as a 'notice to appear'"—"be given in person to the alien." 8 U.S.C. 1229(a)(1); see *United States* v. *Cortez*, 930 F.3d 350, 366 (4th Cir. 2019) (explaining that "the regulations in question and § 1229(a) speak to different issues—filings in the immigration court to initiate proceedings, on the one hand, and notice to noncitizens of removal hearings, on the other").

To the extent that the commencement of proceedings in (or the "[j]urisdiction" of) the immigration court is addressed at all, it is addressed only by the Attorney General's regulations. 8 C.F.R. 1003.14(a). And in describing the various "[c]harging document[s]" that may "initiate[] a proceeding before an [IJ]," 8 C.F.R. 1003.13, the regulations make no cross-reference to Section 1229(a) or its list of information to be given to the alien, see 8 C.F.R. 1003.15, 1003.18. Rather, the regulations specify their own lists of information to be provided to the immigration court in a "Notice to Appear," *ibid.*, and the regulations do not require that a notice to appear specify the date and time of the initial removal hearing in order to qualify as a "charging document" filed with the immigration court, 8 C.F.R. 1003.14(a); see *Nkomo* v. *Attorney Gen. of the U.S.*, 930 F.3d 129, 134 (3d Cir. 2019) (explaining that the fact that Section 1003.14(a) "describes the relevant filing as a 'charging document' * * * suggests § 1003.14's filing requirement serves a different purpose than the 'notice to appear under section 1229(a)' in the stop-time rule"). Petitioners' reliance (Pet. 21, 37) on *Pereira* and Section 1229(a) therefore is misplaced.

In any event, petitioners were given the notice required under Section 1229(a) in this case. Section 1229(a) requires that an alien placed in removal proceedings be given "written notice" containing, among other information, "[t]he time * * * at which the proceedings will be held." 8 U.S.C. 1229(a)(1)(G)(i). Section 1229(a), however, does not mandate service of all the specified information in a single document. Thus, if the government serves an alien with a notice to appear that does not specify the date and time of his removal

proceedings, it can complete the "written notice" required under Section 1229(a) by later serving the alien with a notice of hearing that does specify the date and time. 8 U.S.C. 1229(a)(1); see *Matter of Mendoza-Hernandez & Capula-Cortes*, 27 I. & N. Dec. 520, 531 (B.I.A. 2019) (en banc) (holding that the "'written notice'" required under Section 1229(a)(1) "may be provided in one or more documents"). The government did that here. After DHS served petitioners with notices to appear providing all of the specified information except the date and time of their removal proceedings, the immigration court served petitioners with a notice of hearing providing the date and time, A.R. 751, and Perez-Cazun appeared at that hearing, A.R. 226-249.

b. Petitioners have not identified any court of appeals in which they would have prevailed on their challenge to the immigration court's jurisdiction. Eight courts of appeals have rejected arguments like petitioners' on the ground that a "notice to appear need not include time and date information to satisfy" the "regulatory requirements" and "vest[] jurisdiction in the IJ," at least where the alien is later served with a notice of hearing that provides that information. *Karingithi*, 913 F.3d at 1160 (9th Cir.); see *Goncalves Pontes* v. *Barr*, 938 F.3d 1, 3-7 (1st Cir. 2019); *Banegas Gomez* v. *Barr*, 922 F.3d 101, 110-112 (2d Cir. 2019), petition for cert. pending, No. 19-510 (filed Oct. 16, 2019); *Nkomo*, 930 F.3d at 132-134 (3d Cir.); *Cortez*, 930 F.3d at 362-364 (4th Cir.); *Pierre-Paul*, 930 F.3d at 689-691 (5th Cir.); *Santos-Santos* v. *Barr*, 917 F.3d 486, 489-491 (6th Cir. 2019); *Ali* v. *Barr*, 924 F.3d 983, 986 (8th Cir. 2019).

Five courts of appeals have rejected arguments like petitioners' on the ground that any requirement that a notice to appear contain the date and time of the initial

removal hearing is not a jurisdictional requirement, but a mere claim-processing rule. See *Cortez*, 930 F.3d at 358-362 (4th Cir.); *Pierre-Paul*, 930 F.3d at 691-693 (5th Cir.); *Ortiz-Santiago*, 924 F.3d at 962-965 (7th Cir.); *Lopez-Munoz* v. *Barr*, No. 19-9510, 2019 WL 5691870, at *1-*4 (10th Cir. Nov. 4, 2019); *Perez-Sanchez* v. *United States Att'y Gen.*, 935 F.3d 1148, 1154-1157 (11th Cir. 2019). In its decision adopting that reasoning, the Seventh Circuit stated that a notice to appear that does not specify the date and time of the hearing is "defective," *Ortiz-Santiago*, 924 F.3d at 961, and that it was "not so sure" that the government could complete the required notice by later serving a notice of hearing, *id.* at 962. But because the Seventh Circuit held that any defect in the notice to appear was not "an error of jurisdictional significance," *ibid.*, but rather an error that could be "waived or forfeited," *id.* at 963, it would have found any error forfeited here. See pp. 11-12, *supra*. Thus, in every court of appeals that has addressed the question presented, petitioners' challenge to the jurisdiction of the immigration court would have failed.

c. In any event, this case would not be a suitable vehicle for this Court to consider whether the immigration court lacked jurisdiction. Although petitioners raised the issue in their reply brief in the court of appeals, and although the court of appeals requested supplemental briefing on the issue, the court of appeals did not squarely address the jurisdiction of the immigration court in its opinion. See pp. 7-8, *supra*. The only jurisdictional question the court of appeals squarely addressed was the question of its own "jurisdiction to decide the[] petition for review." Pet. App. 2 n.1. And, consistent with the government's submission, Gov't

C.A. Supp. Br. 4, the court concluded that it had jurisdiction under 8 U.S.C. 1252—which governs judicial review of final orders of removal. Pet. App. 2 n.1. Because the court of appeals did not squarely address the distinct question of the immigration court's jurisdiction, this case would not be a suitable vehicle for consideration of that question. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view.").

2. Petitioners also briefly contend (Pet. i, 37-38) that the court of appeals denied them "due process of law by concluding that a newly published expert declaration was not 'new' evidence." That contention lacks merit. The court of appeals correctly determined that the Board did not "abuse its discretion in concluding that the declaration was not 'new.'" Pet. App. 5. And in making that determination, the court did not "fail[] to meaningfully engage" with petitioners' arguments. Pet. 38. Rather, the court explained that, although "the declaration was created after the [IJ's] decision," it "relied on studies that were published years earlier—before [petitioners] requested relief—and could have been discovered previously." Pet. App. 5. The court therefore correctly upheld the Board's denial of petitioners' motion to reopen. *Ibid.* The court's decision does not conflict with any decision of this Court or another court of appeals, and it likewise does not warrant this Court's exercise of its "supervisory power," Pet. 38.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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