No. 18-1055

In the Supreme Court of the United States

ROBERTO ENRIQUE MAURICIO-BENITEZ, PETITIONER

v.

WILLIAM P. BARR, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Board of Immigration Appeals abused its discretion under 8 U.S.C. 1229a(b)(5)(C)(ii) in declining to rescind a removal order entered in absentia, where the notice of hearing was allegedly not delivered to the alien because it was mailed to the address provided on the notice to appear and that address was incorrect.

2. Whether the government may provide the written notice required under 8 U.S.C. 1229(a) by first serving a notice to appear and then serving a notice of hearing.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-14) is reported at 908 F.3d 144. The decisions of the Board of Immigration Appeals (Pet. App. 15-19) and the immigration judge (Pet. App. 20-25, 26-27) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 8, 2018. The petition for a writ of certiorari was filed on February 6, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, 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: (A) the "nature of the proceedings against the alien"; (B) the "legal authority under which the proceedings are conducted"; (C) the "acts or conduct alleged to be in violation of law"; (D) the "charges against the alien" and their statutory basis; (E) the fact that the "alien may be represented by counsel" and "will be provided * * * a period of time to secure counsel"; (F) the "requirement that the alien must immediately provide * * * a written record of an address * * * at which the alien may be contacted," and "of any change of the alien's address," to the "Attorney General," and the consequences under 8 U.S.C. 1229a(b)(5) of failing to do so; and (G) 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). 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).

Under Section 1229a(b)(5), an alien who fails to appear at his removal proceedings "shall be ordered removed in absentia" if "clear, unequivocal, and convincing evidence" shows that the "written notice required under paragraph (1) or (2) of section 1229(a) of [Title 8] has been provided" and that the alien is removable. 8 U.S.C. 1229a(b)(5)(A). Section 1229a(b)(5)(A) provides that the "written notice * * * shall be considered sufficient * * * if provided at the most recent address provided [by the alien] under section 1229(a)(1)(F)."

Ibid.; see 8 U.S.C. 1229(c) ("Service by mail under [Section 1229] shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with [Section 1229(a)(1)(F)]."). Section 1229a(b)(5)(B) provides, however, that "if the alien has failed to provide the address required under section 1229(a)(1)(F)," "[n]o written notice shall be required" before the alien is ordered removed in absentia. 8 U.S.C. 1229a(b)(5)(B). A removal order entered in absentia "may be rescinded * * * upon a motion to reopen filed at any time 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. Petitioner is a native and citizen of El Salvador. Pet. App. 1. On June 13, 2004, petitioner was apprehended near the port of entry in Roma, Texas. Administrative Record (A.R.) 122. Petitioner admitted to immigration officers that he had entered the United States illegally "by wading across the Rio Grande River." A.R. 123. That same day, the Department of Homeland Security (DHS) personally served petitioner with a notice to appear for removal proceedings on "a date to be set at a time to be set." A.R. 127; see Pet. App. 2. The notice to appear charged that petitioner was subject to removal because he was "present in the United States without being admitted or paroled." A.R. 127; see 8 U.S.C. 1182(a)(6)(A)(i) (providing that such an alien is "inadmissible").

The notice to appear informed petitioner: "You are required to provide the [government], in writing, with your full mailing address * * * . You must notify the Immigration Court immediately * * * whenever you change your address." A.R. 128. The notice to appear further stated that "[n]otices of hearing will be mailed

to this address" and that "the Government shall not be required to provide you with written notice of your hearing" if "you do not * * * provide an address at which you may be reached during proceedings." *Ibid.* The notice to appear additionally explained that "[i]f you fail to attend the hearing * * * , a removal order may be made by the immigration judge in your absence." *Ibid.*

Petitioner signed the notice to appear, A.R. 128, which listed his address as "4010 West Belford Apt. 705 Houston Texas 77025," A.R. 127 (capitalization altered); see A.R. 123 (Form I-213 stating that petitioner "provided a U.S. address of 4010 West Belford Apt. 705 Houston, TX 77025"). The notice to appear advised petitioner that he was "required to carry [a copy of the notice to appear] with [him] at all times" as "evidence of [his] alien registration." A.R. 128.

DHS subsequently filed the notice to appear with the immigration court. See A.R. 127. The INA's implementing regulations provide that, "if the address on the * * * Notice to Appear is incorrect, the alien must provide to the Immigration Court * * * a written notice of an address * * * at which the alien can be contacted." 8 C.F.R. 1003.15(d)(1). The immigration court did not receive any correction to petitioner's address. See Pet. App. 3.

In July 2004, the immigration court sent a notice of hearing via regular mail to the West Belford address provided on the notice to appear. A.R. 126; see Pet. App. 3. The notice stated that a removal hearing had been scheduled before the court in Harlingen, Texas, on September 21, 2004, at 9 a.m. A.R. 126. The notice was not returned as undeliverable by the U.S. Postal Service. Pet. App. 12, 17.

Petitioner failed to appear at the September 2004 removal hearing, and the immigration judge (IJ) ordered petitioner removed in absentia. Pet. App. 26-27. The IJ determined that petitioner had been "provided written notification of the time, date and location of [his] removal hearing" and of the consequences of failing to appear. *Id.* at 26. The IJ then found petitioner removable as charged in the notice to appear and ordered him removed to El Salvador. *Id.* at 27. Like the earlier notice of hearing, the removal order was mailed to the West Belford address provided on the notice to appear and was not returned as undeliverable by the U.S. Postal Service. *Id.* at 17; see A.R. 119, 121.

3. a. In June 2017—nearly 13 years after the removal order had been entered in absentia—petitioner filed a motion to reopen the removal proceedings and rescind the removal order. Pet. App. 3. In a sworn statement appended to the motion, petitioner claimed that he had failed to appear at his removal hearing because the notice of hearing had been "mis-delivered to the wrong address." A.R. 87. Petitioner asserted that he had told the immigration officers in June 2004 that his address was "4010 West Belfort, Apt. 705, Houston, TX 77025," but that the officers had "misspelled" the street as "B-e-l-f-o-r-d, instead of B-e-l-f-o-r-t." *Ibid.* Petitioner claimed that during the "six months" he had lived at the "West Belfort" address, he did not "receive[] any notice of hearing from the court in the mail." *Ibid.* Petitioner further asserted that he did not discover that "Belfort" had been misspelled—or that the IJ had ordered him removed in absentia—until 2017, when his attorney obtained the records in his case pursuant to a request under the Freedom of Information Act (FOIA), 5 U.S.C. 552. A.R. 87-88; see Pet. App. 3.

b. An IJ denied petitioner's motion to reopen the removal proceedings. Pet. App. 20-25. The IJ found that petitioner "was provided with proper notice of his * * * removal hearing because there is proof of attempted delivery to the last address provided by [petitioner]"—namely, the West Belford address on the notice to appear. *Id.* at 22 (citing 8 U.S.C. 1229(a)(1)(F)). The IJ also found that petitioner "did not provide the [immigration court] with an address change, as required by the regulations, if he believed the [notice to appear] contained an incorrect address." *Ibid.* (citing, *inter alia*, 8 U.S.C. 1229a(b)(5)(B) and 8 C.F.R. 1003.15(d)(1)). The IJ reasoned that, because petitioner did not "attempt[] to correct his mailing address," the court "was only required to send the Notice of Hearing to the last known address on file"—the West Belford address. *Id.* at 23.

c. The Board of Immigration Appeals (Board) dismissed petitioner's appeal. Pet. App. 15-19. The Board rejected petitioner's contention that he "was denied notice of his hearing." *Id.* at 16. The Board observed that "[t]he Immigration Court mailed the Notice of Hearing to the address stated on the Notice to Appear, and the post office did not return it as undeliverable." *Ibid.* The Board therefore concluded that "the post office attempted to deliver the Notice of Hearing to the alien at the alien's last address provided in accordance with [Section 1229(a)(1)(F)]." *Ibid.* (citing 8 U.S.C. 1229a(b)(5)(A)).

The Board also found insufficient evidence that the notice of hearing was not properly delivered to petitioner. Pet. App. 16-17. The Board found that petitioner had failed to establish a number of facts—namely, that "he was actually residing" at the "West Belfort" address "at the time the Immigration Court

mailed the Notice of Hearing"; that immigration officers "incorrectly stated his address on the Notice to Appear"; that "there is a 'West Belford' address identical to the 'West Belfort' address he claims to have lived at"; and that "the post office would have failed to deliver the Notice of Hearing to the correct address ('West Belfort')." *Id.* at 17. The Board explained that "[t]he fact that neither the Notice of Hearing nor the in absentia order were returned as undeliverable strongly suggests that the post office was able to overlook the slight error." *Ibid.* The Board therefore concluded that petitioner had "not provided sufficient evidence to rebut the presumption of delivery of the Notice of Hearing." *Ibid.*

Finally, the Board determined that it was "incumbent on [petitioner] to provide the Immigration Court with his correct address if the address stated on the Notice to Appear was incorrect." Pet. App. 17 (citing 8 U.S.C. 1229a(b)(5)(B)). The Board emphasized that "DHS personally served [petitioner] with the Notice to Appear, which contains the address-reporting requirement." *Ibid.* The Board concluded that, because petitioner failed to comply with that requirement, he was "not entitled to actual notice of his hearing." *Id.* at 18.

4. The court of appeals denied petitioner's petition for review. Pet. App. 1-14.

a. The court of appeals rejected petitioner's contention that "the [notice to appear] and relevant regulations only required him to notify the immigration court of a *change* in address, not a correction to the address already on file." Pet. App. 6. The court explained that "an alien's statutory obligation to keep the immigration court apprised of his current mailing address includes an obligation to correct any errors in that address listed on the [notice to appear]." *Id.* at 8. The court observed

that petitioner in this case "was personally served with a [notice to appear] listing a mailing address that he contends was misspelled." *Id.* at 9. The court thus found that petitioner "had notice of the error in his address upon receipt of the [notice to appear] on June 13, 2004—more than a month before the [notice of hearing] was mailed to the misspelled address." *Ibid.* Emphasizing that the notice to appear "warned [petitioner] of the importance of maintaining an accurate address with the immigration court, the consequences of failing to appear at his removal hearing, and that he would not be entitled to receive notice of his hearing if he did not provide an address at which he could be reached," the court of appeals reasoned that, "[r]egardless of how the error in his address was introduced, [petitioner] had an obligation to correct that error with the immigration court." *Ibid.* Because petitioner "failed to do so," the court of appeals concluded that "he was not entitled to actual notice of his removal hearing." *Ibid.*

b. The court of appeals also concluded that, "[e]ven if [petitioner] had been entitled to actual notice of his removal hearing," the Board correctly determined that petitioner "has not presented sufficient evidence to rebut the presumption that the [notice of hearing] was properly delivered" to him. Pet. App. 10. The court explained that the Board's determination rested on "the absence of evidence in the record to prove" that petitioner "actually resided at the West Belfort address when the [notice of hearing] was mailed; that the immigration officers did in fact misspell his address; that a West Belford address identical to the claimed West Belfort address existed; or that the post office would not have delivered the [notice of hearing] to West Belfort despite the error." *Id.* at 11. The court also emphasized

the Board's reliance on the fact "that neither the [notice of hearing] nor the *in absentia* order was returned as undeliverable." *Ibid.*

The court of appeals then rejected petitioner's contention that the Board should have found the presumption of delivery rebutted by his sworn statement alone. Pet. App. 12. The court also rejected petitioner's contention that the Board relied on impermissible factors "such as his failure to corroborate his claims about living at the West Belfort address." *Ibid.* The court determined instead that the Board "considered permissible factors such as the fact that the [notice of hearing] was not returned undelivered and the credibility of the statements in [petitioner's] affidavit." *Id.* at 12-13 (citation omitted). The court also rejected petitioner's claims of due diligence based on "the fact that [he] sought counsel and filed his motion soon after discovering the *in absentia* order through a FOIA request." *Id.* at 13. The court explained that, "despite having been personally served with a [notice to appear] informing him that he would receive a notice setting a hearing date and time," petitioner "made no effort to correct his [notice to appear], update his mailing address with the [immigration] court when he moved six months after receiving the [notice to appear], or otherwise follow up on his immigration status for thirteen years." *Ibid.*

c. In a footnote, the court of appeals explained that its decision was unaffected by this Court's decision in *Pereira* v. *Sessions*, 138 S. Ct. 2105 (2018). Pet. App. 8 n.1. The court of appeals noted that "'the narrow question'" in *Pereira* was "whether a [notice to appear] that does not specify the time or place of the removal hearing triggers the 'stop-time rule' for purposes of a cancellation of removal." *Ibid.* (brackets and citation

omitted). The court reasoned that "cancellation and reopening are two entirely different proceedings," *ibid.*, and "[b]ecause the issues in this case pertain only to reopening," *Pereira* is "inapplicable," *id.* at 9 n.1.

ARGUMENT

Petitioner contends (Pet. 7-11) that the Board should have reopened his removal proceedings because the address listed on the notice to appear was incorrect and the subsequent notice of hearing was mailed to that address. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. This Court has previously denied a petition for a writ of certiorari raising the same question, see *Thompson* v. *Lynch*, 136 S. Ct. 795 (2016) (No. 15-289), and the same result is warranted here. In any event, this case would be a poor vehicle for this Court's review because petitioner does not challenge the court of appeals' alternative holding that the evidence was insufficient to show that the notice of hearing was not properly delivered to him.

Relying on this Court's decision in *Pereira* v. *Sessions*, 138 S. Ct. 2105 (2018), petitioner also contends (Pet. 11-18) that the government may not provide the notice required under 8 U.S.C. 1229(a)(1) by first serving a notice to appear and then serving a notice of hearing. The court of appeals correctly found *Pereira* inapplicable, and its decision does not conflict with the decision of another court of appeals. The petition for a writ of certiorari should be denied.

1. Petitioner contends (Pet. 7-11) that the Board should have reopened his removal proceedings because the notice of hearing was mailed to the address provided on the notice to appear—an address that petitioner now

claims was incorrect. That contention does not warrant this Court's review.

a. Section 1229a(b)(5)(C) provides that a removal order entered in absentia "may be rescinded * * * upon a motion to reopen filed at any time 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). Petitioner contends (Pet. 4) that he did not receive notice in accordance with those statutory provisions because the notice of hearing in his case was mailed to the wrong address.

Under the INA, however, "written notice * * * shall be considered sufficient" for purposes of ordering an alien removed in absentia if such notice is "provided at the most recent address provided [by the alien] under section 1229(a)(1)(F)." 8 U.S.C. 1229a(b)(5)(A); see 8 U.S.C. 1229(c) ("Service by mail under [Section 1229] shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with [Section 1229(a)(1)(F)]."). Section 1229(a)(1)(F), in turn, sets forth the "requirement[s]" that the alien must (i) "immediately provide (or have provided) the Attorney General with a *written record* of an address * * * at which the alien may be contacted respecting [removal] proceedings," and (ii) "provide the Attorney General immediately with a *written record* of any change of the alien's address." 8 U.S.C. 1229(a)(1)(F)(i)-(ii) (emphases added).

Petitioner provided the government with a written record of his address by signing the notice to appear and returning it to immigration officers. A.R. 127-128. Indeed, the notice to appear is the only document in this case that could have satisfied petitioner's statutory obligation to provide a "written record" of his address.

8 U.S.C. 1229(a)(1)(F)(i)-(ii). Had the notice to appear not been sufficient for that purpose, petitioner would have failed altogether to have "provide[d] the address required under section 1229(a)(1)(F)," and the government would have had no duty at all to provide "written notice" before ordering him removed in absentia. 8 U.S.C. 1229a(b)(5)(B). The West Belford address on the notice to appear was thus the only address that petitioner "provided under section 1229(a)(1)(F)." 8 U.S.C. 1229a(b)(5)(A). And because petitioner never provided any "written record" of a "change" in address, 8 U.S.C. 1229(a)(1)(F)(ii), it was "sufficient" for the notice of hearing to be mailed to that address, 8 U.S.C. 1229a(b)(5)(A); see 8 U.S.C. 1229(c).

Petitioner maintains (Pet. 4) that the only address he provided to immigration officers was the West Belfort address. But petitioner does not contend that he provided that address in writing; to the extent that he communicated that address at all, he did so only orally. See A.R. 87. Under the INA, any such address communicated orally cannot trump the address provided in writing—here, the West Belford address on the notice to appear that petitioner signed and returned. See 8 U.S.C. 1229(a)(1)(F)(i). By mailing the notice of hearing to that West Belford address, the government therefore satisfied its obligation to provide petitioner with "written notice" of the proceedings against him. 8 U.S.C. 1229a(b)(5)(A); see *Thompson* v. *Lynch*, 788 F.3d 638, 648 (6th Cir. 2015) ("By mailing a hearing notification to [the address provided on the notice to appear], the government fully satisfied its obligation to provide [the alien] with notice of the hearing against him."), cert. denied, 136 S. Ct. 795 (2016); Pet. App. 16 (rejecting petitioner's contention that "he was denied

notice of his hearing" because "[t]he Immigration Court mailed the Notice of Hearing to the address stated on the Notice to Appear," "the alien's last address provided in accordance with section [1229(a)(1)(F)]"); Pet. App. 22 (finding that petitioner was "provided with proper notice of his * * * removal hearing because there is proof of attempted delivery to the last address provided by [petitioner]").

In any event, petitioner has no valid basis to object to any lack of notice because, if the address on the notice to appear was materially incorrect, he failed to correct it. Under Section 1229a(b)(5)(B), "[n]o written notice shall be required" before ordering an alien removed in absentia "if the alien has failed to provide the address required under section 1229(a)(1)(F)." 8 U.S.C. 1229a(b)(5)(B). An alien fails to provide the address required under Section 1229(a)(1)(F) if, after having provided the government with a "written record" of the address at which he may be contacted regarding his removal proceedings, the alien fails to provide the government "immediately with a written record of any change of the alien's address." 8 U.S.C. 1229(a)(1)(F)(i)-(ii).

"[A]ny change of the alien's address" includes any correction to the alien's address on file. 8 U.S.C. 1229(a)(1)(F)(i)-(ii). The pertinent implementing regulation accordingly states that, "if the address on the * * * Notice to Appear is incorrect, the alien must provide to the Immigration Court * * * a written notice of an address * * * at which the alien can be contacted." 8 C.F.R. 1003.15(d)(1); see *In re G-Y-R-*, 23 I. & N. Dec. 181, 191 (B.I.A. 2001) (en banc) (explaining that the regulation "derive[s] from" and "track[s]" the "language of the statute").

Here, petitioner was personally served with a notice to appear that listed "West Belford" as his street address. A.R. 127 (capitalization altered). He signed the notice to appear and was advised to carry a copy of the notice with him "at all times." A.R. 128. If petitioner believed the West Belford address to be materially incorrect, Section 1229(a)(1)(F) and its implementing regulation required him to correct his address by submitting a "written record" of the "change." 8 U.S.C. 1229(a)(1)(F)(ii); see 8 C.F.R. 1003.15(d)(1). Because petitioner failed to do so, he failed to "provide the address required under section 1229(a)(1)(F)," and "[n]o written notice" was "required" before the IJ ordered him removed in absentia. 8 U.S.C. 1229a(b)(5)(B); see Pet. App. 9 (concluding that, because petitioner failed to "correct" the alleged error in his address on the notice to appear, "he was not entitled to actual notice of his removal hearing"); Pet. App. 17 (concluding that it was "incumbent on [petitioner] to provide the Immigration Court with his correct address if the address stated on the Notice to Appear was incorrect"); Pet. App. 22 (finding that petitioner "did not provide the Court with an address change, as required by the regulations, if he believed the [notice to appear] contained an incorrect address") (citing, *inter alia*, 8 C.F.R. 1003.15(d)(1)).

Petitioner contends (Pet. 10) that he "never received any notice of the obligation to correct his address." Petitioner, however, was personally served with a notice to appear that notified him of his address-reporting obligations under Section 1229(a)(1)(F). A.R. 128. The notice to appear informed petitioner that "the address on the [notice to appear], if not updated, will be used by the government for future immigration-related communications," *Thompson*, 788 F.3d at 645: "You will be

provided with a copy of this form. Notices of hearing will be mailed to this address." A.R. 128. The notice to appear also warned petitioner that if he failed to "provide an address at which [he] may be reached during proceedings, then the Government shall not be required to provide [him] with written notice of [his] hearing." *Ibid.* That obligation to provide an address at which he could be reached "necessarily included a duty to correct the address listed on the Notice to Appear, particularly since the Notice to Appear informed him that all future mailings would be sent to the address listed on the form." *Thompson*, 788 F.3d at 647; see *id.* at 649-650 (Sutton, J., concurring in part and concurring in the judgment) (tracing an alien's obligation to correct his address to the instructions on the notice to appear and Section 1229(a)(1)(F) itself).

b. Contrary to petitioner's contention (Pet. 7-11), the court of appeals' decision does not conflict with the Ninth Circuit's decision in *Velasquez-Escovar* v. *Holder*, 768 F.3d 1000 (2014). In that case, Velasquez-Escovar told immigration officers during an oral interview that she had "just moved" to an address in Van Nuys, California, and no longer lived at her prior address in Los Angeles. *Id.* at 1002. She was nevertheless served with a notice to appear that listed her prior Los Angeles address. *Ibid.* The immigration court later mailed a notice of hearing to that address and, when Velasquez-Escovar failed to appear at that hearing, the court ordered her removed in absentia. *Ibid.*

A divided panel of the Ninth Circuit concluded that the Board erred in declining to reopen the case for two reasons. First, the majority found no basis for the Board to "disbelieve[]" Velasquez-Escovar's claim that she gave her Van Nuys address to immigration officers.

Velasquez-Escovar, 768 F.3d at 1004. Second, the majority concluded that the Board erred in ruling that "the advisal included with [the notice to appear]" articulated a duty to ensure that the address listed on the notice to appear was correct. *Ibid.* The majority reasoned that the advisal "says only that 'You are required to provide the DHS, in writing, with your full mailing address and telephone number,'" and that "[n]othing in the advisal mentions or fairly implies any continuing duty, much less a continuing duty to correct the government. Once the alien provides an address and phone number, the alien's work is done." *Id.* at 1005.

The *Velasquez-Escovar* majority, however, indicated that its decision would not apply in future cases because the majority declined to address the legal issues that would normally govern such cases. First, although the majority recognized the dissenting judge's conclusion that Velasquez-Escovar "had an obligation to provide her address *in writing* to the agency," the majority declined to consider whether Velasquez-Escovar had satisfied that obligation because it deemed the issue waived. 768 F.3d at 1005 n.1. That case-specific reliance on waiver deprives the decision in *Velasquez-Escovar* of prospective significance because the INA's notice requirements are satisfied so long as written notice is mailed to the most recent address provided by the alien in writing. See Pet. App. 16, 22; pp. 11-13, *supra*.

Second, although the *Velasquez-Escovar* majority recognized that 8 C.F.R. 1003.15(d)(1)—"and common sense—put the burden on the alien to inform the immigration court" that the address on the notice to appear is incorrect, the majority declined to "rely on [that regulation] to affirm" because the Board had failed to invoke the regulation "either by its name or by its logic."

768 F.3d at 1005. The majority also expressed the view that the warnings on a notice to appear do not tell the alien that it is "your responsibility to notify the immigration court" of an incorrect address. *Id.* at 1005-1006. The majority stated that "this omission may preclude the government from relying on the regulation in cases like this," *id.* at 1006, but it was not squarely confronted with the question whether the denial of a motion to reopen could be upheld where, as here, the regulation is invoked, either by name or by logic, in concluding that the alien failed to provide the address required under Section 1229(a)(1)(F). See Pet. App. 6-9, 17-18, 22; pp. 13-15, *supra*.

Finally, the *Velasquez-Escovar* majority noted that the Ninth Circuit had previously stated that if an alien orally conveys "his correct address, and the government agents incorrectly transcribe[] what he said," the alien "would not be entitled to relief" if the alien "failed to correct the mistake when it was brought to his * * * attention." 768 F.3d at 1006 (quoting *Hamazaspyan* v. *Holder*, 590 F.3d 744, 746 n.3 (2009)). The majority reasoned, however, that because the Board in *Velasquez-Escovar* had not relied on *Hamazaspyan*, that decision could not "save the government." *Ibid.* The decision in *Velasquez-Escovar* therefore does not foreclose the possibility of a different outcome in a case in which the Board adopts different reasoning.

Because the Ninth Circuit based its decision in *Velasquez-Escovar* on case-specific factors that led the court to avoid resolving issues relevant to the question presented, its decision does not conflict with the decision below. Nor, in the years since *Velasquez-Escovar*, has the Ninth Circuit addressed the issues that its deci-

sion left open regarding the scope of an alien's obligation to provide the government with a "written record" of his address, 8 U.S.C. 1229(a)(1)(F)(i)-(ii), or to correct an "incorrect" address on a notice to appear, 8 C.F.R. 1003.15(d)(1). Given the absence of Ninth Circuit precedent resolving those issues, petitioner errs in asserting the existence of a circuit conflict.

Indeed, the Sixth Circuit is the only other court of appeals besides the Fifth Circuit to have squarely addressed the first question presented, and it reached the same conclusion as the decision below. See *Thompson*, 788 F.3d at 648 (holding that "the government fully satisfied its obligation to provide [an alien] with notice of the hearing against him" by "mailing a hearing notification" to the address on the notice to appear that the alien signed, and that the alien "was obligated to correct" any error in that address). This Court denied certiorari in *Thompson*, after *Velasquez-Escovar* had been decided, 136 S. Ct. 795, and the same disposition is warranted here.

c. In any event, this case would be a poor vehicle for further review because this Court's resolution of the first question presented would not affect the outcome of this case. In addition to upholding the Board's determination that petitioner "was not entitled to actual notice of his removal hearing," Pet. App. 9, the court of appeals upheld the Board's "determination that he has not presented sufficient evidence to rebut the presumption that the [notice of hearing] was properly delivered" to him, *id.* at 10. That determination was based on "the absence of evidence in the record to prove" that petitioner "actually resided at the West Belfort address when the [notice of hearing] was mailed; that the immigration officers did in fact misspell his address; that a West Belford

address identical to the claimed West Belfort address existed; or that the post office would not have delivered the [notice of hearing] to West Belfort despite the error." *Id.* at 11; see *id.* at 17. The Board also emphasized the fact "that neither the [notice of hearing] nor the *in absentia* order was returned as undeliverable." *Id.* at 11; see *id.* at 17.

Petitioner does not challenge the court of appeals' "alternative holding" regarding the insufficiency of the evidence to support his claim. Pet. App. 10 n.2. Thus, regardless of this Court's resolution of the first question presented, the outcome in this case would be the same: The Board's denial of the motion to reopen would be upheld, because petitioner would be unable to "demonstrate[] that [he] 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. Relying on this Court's decision in *Pereira*, *supra*, petitioner contends (Pet. 11-18) that he did not receive notice in accordance with Section 1229(a) because he was served with a notice to appear that did not specify the date and time of his removal hearing. Petitioner, however, did not raise that contention below. Before the court of appeals, petitioner cited *Pereira* only in a motion asking the court to hold its decision in abeyance pending the Board's disposition of a newly filed request to allow him to seek cancellation of removal. Pet. C.A. Mot. to Hold in Abeyance 2. In any event, the court correctly found *Pereira* "inapplicable" to the issues before it, Pet. App. 9 n.1, and its decision does not conflict with the decision of another court of appeals.

Section 1229(a) requires that the government serve an alien placed in removal proceedings with "written notice" specifying certain information, including "[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 such a date and time.

The Board and every court of appeals to have addressed the issue agrees. See *Guamanrrigra* v. *Holder*, 670 F.3d 404, 410 (2d Cir. 2012) (per curiam) ("Because these two notices, together, provided the specific notice required by [Section 1229(a)(1)], we hold that the statutory notice requirements were satisfied."); *Orozco-Velasquez* v. *Attorney Gen.*, 817 F.3d 78, 83 (3d Cir. 2016) (holding that the government may "convey[] the *complete* set of information prescribed by § 1229(a)(1)" through a "combination of notices, properly served on the alien charged as removable"); *Gomez-Palacios* v. *Holder*, 560 F.3d 354, 359 (5th Cir. 2009) (holding that the "specific time and date of a removal hearing" "may be provided in a subsequent [notice of hearing]" if it is not provided in a notice to appear); *Dababneh* v. *Gonzales*, 471 F.3d 806, 810 (7th Cir. 2006) ("Dababneh received an effective [notice to appear] that met the [Section 1229] requirements through receipt of both the [notice to appear] and the [notice of hearing]."); *Haider* v. *Gonzales*, 438 F.3d 902, 907 (8th Cir. 2006) ("[T]he [notice to appear] and the [notice of hearing] * * * combined to provide the requisite notice."); *Popa* v. *Holder*, 571 F.3d 890, 896 (9th Cir. 2009) ("[T]he [notice to appear] and the hearing notice combined provided Popa with the time and place of her hearing, as required by

8 U.S.C. § 1229(a)(1)(G)(i)."); *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").

This Court's decision in *Pereira* is not to the contrary. In *Pereira*, the Court was presented with the "narrow" question whether a notice to appear that does not specify the date and time of removal proceedings triggers the so-called "stop-time rule" governing the calculation of an alien's continuous physical presence in the United States for purposes of cancellation of removal. 138 S. Ct. at 2109-2110. The Court answered no. *Id.* at 2110. But it did not question Pereira's concession that if the government serves a notice to appear that does not specify a date and time, it can satisfy its notice obligations under Section 1229(a)—even for purposes of the stop-time rule—by later serving a notice of hearing that does specify a date and time. Pet. Reply Br. at 19, *Pereira*, *supra* (No. 17-459); Pet. Br. at 42, *Pereira*, *supra* (No. 17-459); see *Matter of Mendoza-Hernandez & Capula-Cortes*, 27 I. & N. Dec. at 535 (holding that "where a notice to appear does not specify the time and place of an alien's initial removal hearing, the subsequent service of a notice of hearing containing that information 'perfects' the deficient notice to appear, satisfies the notice requirements of section [1229(a)(1)] of the [INA], and triggers the 'stop-time' rule").

Because the notice to appear in this case did not specify the date and time of petitioner's removal hearing, that notice alone did not provide the "written notice" required under Section 1229(a). But even assuming that petitioner was entitled to such notice before he was ordered removed in absentia, see 8 U.S.C. 1229a(b)(5)(B)

(providing that "[n]o written notice shall be required * * * if the alien has failed to provide the address required under section 1229(a)(1)(F)"); pp. 13-15, *supra*, the government satisfied its notice obligations under Section 1229(a) when it subsequently mailed a notice of hearing to the address provided on the notice to appear, see pp. 11-13, 18-19, *supra*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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