No. 19-1048

In the Supreme Court of the United States

BLANCA L. RAMOS, PETITIONER

v.

WILLIAM P. BARR, ATTORNEY GENERAL

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the immigration court lacked jurisdiction over petitioner's removal proceedings because the notice to appear filed with the immigration court did not specify the date and time of her initial removal hearing.

ADDITIONAL RELATED PROCEEDING

United States Court of Appeals (11th Cir.):

Ramos v. *U.S. Attorney Gen.*, No. 19-11777 (Feb. 13, 2020)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-5a) is unreported but is available at 2020 WL 733045. The decision of the Board of Immigration Appeals (Pet. App. 6a-7a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 13, 2020. The petition for a writ of certiorari was filed on February 20, 2020. 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. 1103(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 (emphasis omitted). 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 separately requires that an alien placed in removal proceedings be given "written notice" of certain information. 8 U.S.C. 1229(a)(1). Paragraph (1) of Section 1229(a) provides that "written notice (in this

section referred to as a 'notice to appear') shall be given * * * specifying," 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)-(ii). 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," "a 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)(i)-(ii).

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. Petitioner is a native and citizen of Honduras. Administrative Record (A.R.) 182. In 2000, she was admitted to the United States as a temporary nonimmigrant visitor for six months. *Ibid.*

In 2009, DHS served petitioner with a notice to appear for removal proceedings "on a date to be set at a time to be set." A.R. 182. The notice to appear charged that she was subject to removal because she had re-

mained in the United States for a time longer than permitted. *Ibid.*; see 8 U.S.C. 1227(a)(1)(B). DHS filed the notice to appear with the immigration court. A.R. 182.

The immigration court later provided petitioner with a notice of hearing, informing her that it had scheduled her removal hearing for April 13, 2010, at 9 a.m. A.R. 181. Petitioner appeared at that hearing and subsequent hearings before an IJ. A.R. 87-89, 91-94, 96-123; see A.R. 177, 180 (providing petitioner with notice of the time, place, and date of subsequent hearings).

The IJ found petitioner removable as charged, A.R. 74-75, and denied her applications for asylum, withholding of removal, and related protection, A.R. 79-83. The IJ therefore ordered petitioner removed to Honduras. A.R. 83. In 2012, the Board of Immigration Appeals (Board) dismissed petitioner's appeal, finding no basis to disturb the IJ's decision. A.R. 20-22. Petitioner did not file a petition for review of the Board's decision.

3. Six years later, 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)(A). 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*, petitioner filed with the Board a motion to reopen her removal

proceedings. A.R. 8-11. In her motion, petitioner argued for the first time that because the notice to appear in her case did not specify the date and time of her initial removal hearing, A.R. 9, the notice to appear was defective and therefore did not vest the immigration court with jurisdiction over the removal proceedings, A.R. 11. Petitioner argued that the proceedings should be reopened and terminated for lack of jurisdiction. *Ibid.*

The Board denied petitioner's motion to reopen. Pet. App. 6a-7a. The Board explained that in *Matter of Bermudez-Cota*, 27 I. & N. Dec. 441 (B.I.A. 2018), it had held that when a notice to appear does not contain the date and time of the initial removal hearing, "jurisdiction properly vests with the Immigration Court when [the alien] receives a separate hearing notice consistent with" 8 C.F.R. 1003.18(b). Pet. App. 7a. The Board observed that "[t]he record reflects that, subsequent to service of the Notice to Appear, [petitioner] received a hearing notice that informed her of the date, time, and location of her removal hearings." *Ibid.* The Board therefore concluded that "jurisdiction was proper in this case." *Ibid.*

4. The court of appeals denied petitioner's petition for review of the Board's denial of her motion to reopen. Pet. App. 1a-5a. The court rejected petitioner's "claim that the IJ lacked jurisdiction over her removal proceedings." *Id.* at 5a. The court stated that the notice to appear in her case was "defective" under 8 U.S.C. 1229(a) because it "fail[ed] to specify the time and date of her removal hearing." Pet. App. 5a; see *id.* at 4a (stating that a notice to appear that "omits the time and date of the hearing" is "deficient under § 1229(a)"). The court explained, however, that in *Perez-Sanchez* v. *U.S.*

Attorney General, 935 F.3d 1148 (11th Cir. 2019), it had held that neither Section 1229(a) nor 8 C.F.R. 1003.14 sets forth a "jurisdictional" rule; rather, each sets forth simply a "claim-processing" rule. Pet. App. 4a (citation omitted). The court therefore concluded that the "defective" notice to appear in petitioner's case did not deprive the immigration court of "jurisdiction over her proceedings." *Id.* at 5a. The court further noted that petitioner had "not raised a claim-processing claim before the [Board] or this Court." *Ibid.*

ARGUMENT

Petitioner contends (Pet. 9-12) that the immigration court lacked jurisdiction over her removal proceedings because the notice to appear filed with the immigration court did not specify the date and time of her initial removal hearing. The court of appeals correctly rejected that contention. Its unpublished decision does not conflict with any decision of this Court, and the outcome of this case would not have been different in any other court of appeals that has addressed the question presented. In any event, this case would be a poor vehicle for this Court's review, because petitioner challenges only one of the three independent reasons that her jurisdictional argument fails. The Court has recently and repeatedly denied petitions for writs of certiorari raising the same issue, see *Karingithi* v. *Barr*, 140 S. Ct. 1106 (2020) (No. 19-475); *Kadria* v. *Barr*, 140 S. Ct. 955 (2020) (No. 19-534); *Banegas Gomez* v. *Barr*, 140 S. Ct. 954 (2020) (No. 19-510); *Perez-Cazun* v. *Barr*, 140 S. Ct. 908 (2020) (No. 19-358); *Deocampo* v. *Barr*, 140 S. Ct. 858 (2020) (No. 19-44), and the same result is warranted here.[1]

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[1] Other pending petitions for writs of certiorari raise similar issues. See, *e.g.*, *Pedroza-Rocha* v. *United States*, No. 19-6588 (filed

1. a. Petitioner contends (Pet. 9-12) that the immigration court lacked jurisdiction over her removal proceedings because the notice to appear filed with the immigration court did not specify the date and time of her initial removal hearing. That 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[]" in the immigration court 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.* The regulations further provide that 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 (emphasis omitted). And the regulations make clear that, in order to serve as a charging document that commences removal proceedings, a "Notice to Appear" need not specify the date and time of the initial removal hearing: 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").

Nov. 6, 2019); *Pierre-Paul* v. *Barr*, No. 19-779 (filed Dec. 16, 2019); *Callejas Rivera* v. *United States*, No. 19-7052 (filed Dec. 19, 2019); *Araujo Buleje* v. *Barr*, No. 19-908 (filed Jan. 17, 2020); *Mora-Galindo* v. *United States*, No. 19-7410 (filed Jan. 21, 2020); *Gonzalez-De Leon* v. *Barr*, No. 19-940 (filed Jan. 22, 2020); *Nkomo* v. *Barr*, No. 19-957 (filed Jan. 28, 2020); *Ferreira* v. *Barr*, No. 19-1044 (filed Feb. 18, 2020).

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 instead expressly authorize the immigration court to schedule the hearing and to provide "notice to the government and the alien of the time, place, and date of [the] hearing." 8 C.F.R. 1003.18(b). That provision for the immigration court to schedule a hearing necessarily means that the immigration court has jurisdiction and proceedings have commenced. 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), cert. denied, 140 S. Ct. 1106 (2020); 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 notice to appear alone did not suffice to "vest[]" "[j]urisdiction" in the immigration court, 8 C.F.R. 1003.14(a), the notice 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 provided petitioner with a notice of hearing informing her that her initial removal hearing had been scheduled for April 13, 2010, at 9 a.m. A.R. 181. 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 petitioner was provided 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 notice to appear contain the date and time of the initial removal hearing is not a strictly "jurisdictional" requirement, but rather is simply a "claim-processing rule"; accordingly, petitioner forfeited any objection to the contents of the notice to appear by not raising that issue before the IJ. *Ortiz-Santiago* v. *Barr*, 924 F.3d 956, 963 (7th Cir. 2019); see Pet. App. 4a-5a. Although 8 C.F.R. 1003.14(a) uses the word "[j]urisdiction," this Court has recognized that "[j]urisdiction" is "a word of many, too many, meanings." *Fort Bend County* v. *Davis*, 139 S. Ct. 1843, 1848 (2019) (citations omitted). And here, context makes clear that Section 1003.14(a) does not use the term in its strict sense. See *Matter of Rosales Vargas & Rosales Rosales*, 27 I. & N. Dec. 745, 753 (B.I.A. 2020) (explaining that Section 1003.14(a) is "an internal docketing or claim-processing rule and does not serve to limit subject matter jurisdiction"). 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* 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, petitioner appeared at her initial removal hearing before the IJ on April 13, 2010, without raising any objection to the lack of date-and-time information in the notice to appear. A.R. 87-89. Petitioner likewise did not raise any such objection at any subsequent hearing, see A.R. 91-94, 96-123, or on appeal before the Board, see Pet. App. 5a; Pet. 2, 5-6. Given the absence of a timely objection, petitioner forfeited any contention that the notice to appear was defective. See Pet. App. 5a; *Pierre-Paul* v. *Barr*, 930 F.3d 684, 693 (5th Cir. 2019), petition for cert. pending, No. 19-779 (filed Dec. 16, 2019); *Ortiz-Santiago*, 924 F.3d at 964-965. Moreover, even if petitioner had timely challenged the notice to appear as defective, petitioner cannot show any prejudice from the lack of date-and-time information in the notice to appear, because she had actual knowledge of the date and time of her initial removal hearing and appeared at that hearing. See *Rosales Vargas*, 27 I. &. N. Dec. at 753-754; A.R. 87-89, 181.

b. This Court's decision in *Pereira* v. *Sessions*, 138 S. Ct. 2105 (2018), does not suggest any error in the decision below. 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 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 * * * 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 issue of what must be filed in the immigration court for proceedings there to commence (or for "[j]urisdiction" there to "vest[]") 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 (emphasis omitted), 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 those regulations do not require that

such a notice specify the date and time of the initial removal hearing in order to qualify as a "charging document" filed with the immigration court to commence proceedings, 8 C.F.R. 1003.14(a). See *Nkomo* v. *Attorney Gen.*, 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") (citations omitted), petition for cert. pending, No. 19-957 (filed Jan. 28, 2020). Petitioner's reliance (Pet. 4) on *Pereira* and Section 1229(a) therefore is misplaced.

In any event, petitioner was 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 the alien's removal proceedings, it can complete the "written notice" required under Section 1229(a) by later providing 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 petitioner with a notice to appear providing all of the specified information except the date and time of her initial removal hearing, the immigration court

provided petitioner with a notice of hearing containing the date and time, A.R. 181, and petitioner appeared at that hearing, A.R. 87-89.

2. a. Petitioner has not identified any court of appeals in which the outcome of her case would have been different. Like the Eleventh Circuit in this case, Pet. App. 4a-5a, four other courts of appeals have recognized that any requirement that a notice to appear contain the date and time of the initial removal hearing is not a jurisdictional requirement, but is simply a 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*, 941 F.3d 1013, 1015-1017 (10th Cir. 2019). Each of those courts of appeals would have rejected petitioner's challenge to her removal proceedings on the ground that she forfeited any reliance on such a claim-processing rule. See pp. 9-10, *supra*.

Eight courts of appeals have rejected arguments like petitioner's 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 provided with a notice of hearing that contains 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), cert. denied, 140 S. Ct. 954 (2020); *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). Because petitioner in this case was provided with a notice of hearing that contained the date and time of her initial

removal hearing, A.R. 181, each of those courts of appeals would have rejected her jurisdictional challenge on the ground that the applicable regulatory requirements had been satisfied. Thus, in every court of appeals that has addressed the question presented, petitioner's challenge would have failed.

b. Petitioner contends (Pet. 6-8) that, whereas some circuits have recognized that any requirement that a notice to appear contain the date and time of the initial removal hearing is simply a claim-processing rule, the Second, Sixth, Eighth, and Ninth Circuits have deemed any such requirement to be "jurisdictional" in the strict sense of the term. That contention is incorrect. Those four circuits have repeated 8 C.F.R. 1003.14(a)'s use of the word "jurisdiction" in the course of determining that a "notice to appear need not include time and date information" for the applicable "regulatory requirements" to be satisfied. *Karingithi*, 913 F.3d at 1160 (9th Cir.); see *Banegas Gomez*, 922 F.3d at 111-112 (2d Cir.); *Santos-Santos*, 917 F.3d at 490-491 (6th Cir.); *Hernandez-Perez* v. *Whitaker*, 911 F.3d 305, 313-315 (6th Cir. 2018); *Ali*, 924 F.3d at 986 (8th Cir.). But because each of those circuits found those requirements satisfied, none had occasion to address whether the regulations set forth a strictly jurisdictional, as opposed to a claim-processing, rule. See, *e.g.*, *Goncalves Pontes*, 938 F.3d at 7 n.3 (1st Cir.) (declining to address whether the regulations "must be understood as claim-processing rules" after determining that the notice to appear "was not defective under the regulations"); *Pierre-Paul*, 930 F.3d at 691 n.4 (5th Cir.) (explaining that other circuits that have "concluded that the notices to appear omitting the time, date, or place are not defective" have not "needed to address whether 8 C.F.R. § 1003.14 was

jurisdictional"). Petitioner's asserted conflict therefore does not exist.[2]

Moreover, as explained above, the Second, Sixth, Eighth, and Ninth Circuits would have rejected petitioner's jurisdictional challenge on the ground that the applicable regulatory requirements were satisfied here. See pp. 13-14, *supra*. Thus, the outcome of this case would have been the same in every court of appeals that has addressed the question presented.

3. In any event, this case would be a poor vehicle for this Court's review, because petitioner challenges only one of the three independent reasons that her jurisdictional argument fails. See pp. 7-10, *supra*. Petitioner states (Pet. 2) that "the *only* issue presented here is whether the filing of a valid notice to appear is a jurisdictional prerequisite in removal proceedings before an [IJ]." See Pet. 3 n.2 (stating that other issues are "not presented here"). But that issue captures only the third of the independent reasons discussed above. This Court's review would therefore have limited practical importance. Even if the applicable regulatory requirements set forth a strictly jurisdictional, as opposed to a claim-processing, rule, there would be no violation of that rule if the applicable regulations do not require

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[2] Petitioner asserts that "[t]hese courts also have noted the [Board's] conclusion in [*Bermudez-Cota*] that 'a notice to appear * * * vests an [IJ] with jurisdiction over the removal proceedings.'" Pet. 7 (citation omitted). But like those courts, the Board in *Bermudez-Cota* merely repeated 8 C.F.R. 1003.14(a)'s use of the word "jurisdiction," without deciding whether the regulation set forth a strictly jurisdictional, as opposed to claim-processing, rule. Indeed, the Board subsequently decided that question in *Rosales Vargas*, holding that Section 1003.14(a) is "an internal docketing or claim-processing rule and does not serve to limit subject matter jurisdiction." 27 I. & N. Dec. at 753.

that a notice to appear specify the date and time for jurisdiction to vest, or if they permit that information to be provided in a subsequent notice of hearing for jurisdiction to vest. See pp. 7-9, *supra*. Thus, even if this Court ruled in petitioner's favor on the narrow issue she has presented, that decision would not resolve whether an immigration court lacks jurisdiction over an alien's removal proceedings when the notice to appear filed with the immigration court does not specify the date and time of the alien's initial removal hearing.[3]

Indeed, contrary to petitioner's contention (Pet. 2), this Court's review of the narrow issue she has presented would not even be outcome-determinative in her own case. Petitioner contends (Pet. 3) that the court of appeals in *Perez-Sanchez* v. *U.S. Attorney General*, 935 F.3d 1148 (11th Cir. 2019), "held that a 'notice to appear' under 8 C.F.R. 1003.13 and 1003.14(a) is one and the same with the 'notice to appear' required by 8 U.S.C. 1229(a)(1)." The court in *Perez-Sanchez*, however, expressly stated that it was "not decid[ing] th[at] issue." 935 F.3d at 1156 n.5; see *ibid.* (stating that "we do not decide * * * today" whether "the [notice to appear] in 8 C.F.R. §§ 1003.13-1003.15, 1003.18, and the [notice to appear] in 8 U.S.C. § 1229(a) are one and the same").[4] Thus, although the court in *Perez-Sanchez*

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[3] Petitioner's assertion (Pet. 1-2) that all other related questions are "logically subsequent" to the issue she has presented here is incorrect. As the decisions of various courts of appeals and the Board demonstrate, there is no particular order in which the independent grounds discussed above must be addressed. See pp. 14-15 & n.2, *supra*.

[4] Even with respect to the purported deficiency it found under the statute, the court of appeals in *Perez-Sanchez* left open the possibility that "a notice of hearing sent later might be relevant to a harmlessness inquiry." 935 F.3d at 1154.

concluded that a notice to appear that does not specify the date and time would, in the absence of any additional notifications, be "deficient *under the statute*," *id.* at 1153 (emphasis added), the court declined to decide whether such a notice to appear, by itself, would be "deficient *under the regulations*," *id.* at 1156 (emphasis added). And as petitioner herself acknowledges, "the INA 'says nothing about the Immigration Court's jurisdiction'"; only the regulations do. Pet. 9 (citation omitted); see Pet. 9-10; pp. 10-12, *supra*.

Thus, because the court in *Perez-Sanchez* did not address whether a notice to appear that does not specify the date and time would be "deficient under the regulations," 935 F.3d at 1156, the court in that case did not reject either of the first two reasons petitioner's jurisdictional challenge fails, discussed above. See pp. 7-9, *supra*. And because the court in this case simply relied on its prior decision in *Perez-Sanchez*, it likewise did not reject either of those reasons. See Pet. App. 4a (explaining that the court in *Perez-Sanchez* found a "*statutory* defect" in the notice to appear) (emphasis added). Rather, the court in this case found that petitioner's jurisdictional challenge fails for an independent reason, without addressing the Board's determination that "jurisdiction was proper" because, "subsequent to service of the Notice to Appear, [petitioner] received a hearing notice that informed her of the date, time, and location of her removal hearings." *Id.* at 7a. Petitioner thus errs in asserting (Pet. 12) that she "prevailed on th[at] issue below." Because petitioner seeks review of only one of the three independent reasons that her jurisdictional challenge fails, this Court's review would not be outcome-determinative.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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