No. 20-1173

In the Supreme Court of the United States

GLENDY YOCELIN PINEDA-SABILLON, PETITIONER

v.

MERRICK B. GARLAND, 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 Whether the removal order entered against petitioner in absentia should be rescinded on the ground that petitioner did not receive the written notice required under 8 U.S.C. 1229a(b)(5)(A).

2. 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 PROCEEDINGS

United States Court of Appeals (5th Cir.):

Pineda-Sabillon v. *Barr*, No. 19-60573 (Oct. 21, 2020)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-3) is not published in the Federal Reporter but is reprinted at 826 Fed. Appx. 420. The decisions of the Board of Immigration Appeals (Pet. App. 5-7) and the immigration judge (Pet. App. 11-15) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 21, 2020. The petition for a writ of certiorari was filed on February 18, 2021. 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 a noncitizen 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" (NTA). 8 C.F.R. 1003.13 (emphasis omitted). The regulations provide that an NTA that is filed with the immigration court 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 an NTA). The regulations further provide that, "[i]f that information is not contained in the [NTA], 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 a noncitizen 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 [Title 8] of the failure * * * 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. 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 [Title 8] has been provided * * * , does not attend a proceeding under this section, shall be ordered removed in absentia" if 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." 8 U.S.C. 1229a(b)(5)(A). "The written notice * * * shall be considered sufficient * * * if provided at the most recent address provided [by the noncitizen] under section 1229(a)(1)(F) of [Title 8]," *ibid.*, which requires the noncitizen to provide the government with a "written record" of his address and "any change of [his] address." 8 U.S.C. 1229(a)(1)(F)(i)-(ii); 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)]."). 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 Honduras. Pet. App. 1, 16. On an unknown date, petitioner entered the United States illegally, without inspection by an immigration officer. *Id.* at 17.

In September 2014, DHS served petitioner with an NTA. Pet. App. 16-22. The NTA charged that petitioner was subject to removal because she was "an alien present in the United States without being admitted or paroled." *Id.* at 17; see 8 U.S.C. 1182(a)(6)(A)(i). The NTA ordered petitioner to appear for removal proceedings on a date and at a time to be determined. Pet. App. 17. DHS later filed the NTA with the immigration court. Administrative Record (A.R.) 176.

In April 2015, the immigration court mailed a "Notice of Hearing" (NOH) to petitioner. A.R. 175. The NOH stated that the immigration court had scheduled her initial removal hearing for November 29, 2019, but that her "hearing will most likely be rescheduled." *Ibid.* After petitioner filed a change-of-address form with the immigration court, A.R. 173, the immigration court mailed an NOH to her new address, again stating that her initial removal hearing had been scheduled for November 29, 2019, but "will most likely be rescheduled," A.R. 172. In April 2017, the immigration court mailed another NOH to the address that petitioner had provided in the change-of-address form, specifying a new date and time of her initial removal hearing: July 11, 2017, at 10 a.m. A.R. 171. After that mailing was returned undelivered, A.R. 167, the immigration court mailed one more NOH to the address that petitioner had provided, again specifying the new date and time, A.R. 165.

Although that mailing was also returned undelivered, A.R. 164, petitioner appeared at her initial removal hearing on July 11, 2017, and requested a continuance,

Pet. App. 12. The immigration court granted the continuance and scheduled petitioner's next removal hearing for February 28, 2018, at 8:30 a.m. *Ibid.*; A.R. 159. The court clerk served petitioner in person with an NOH specifying the new date and time. Pet. App. 12; A.R. 159-160. The NOH stated that "[f]ailure to appear at [the] hearing except for exceptional circumstances may result" in the hearing being "held in [petitioner's] absence," in which case "[a]n order of removal" would be entered against petitioner if DHS established that she had "been provided this notice" and that she was "removable." A.R. 159. Petitioner was also "told (orally) that the next hearing would be February 28, 2018." Pet. App. 12.

On February 28, 2018, petitioner did not appear at her scheduled removal hearing, and the IJ ordered her removed in absentia. A.R. 155. The IJ determined that petitioner had been given "proper notice" of the hearing and that there was "[n]o good cause" for her "failure to appear." *Ibid.* The IJ then found petitioner removable as charged and ordered her removed to Honduras. *Ibid.*

3. Eight months later, in October 2018, petitioner filed a motion to reopen her removal proceedings. A.R. 80-92. In that motion, petitioner argued that her proceedings should be reopened "based on lack of proper notice." A.R. 84. Petitioner asserted that she "never received notice of the hearing" that had been scheduled for February 28, 2018, in response to her request for a continuance. A.R. 83. Relying on this Court's decision in *Pereira* v. *Sessions*, 138 S. Ct. 2105 (2018)—which was decided more than three months before she filed her motion to reopen, A.R. 83—petitioner further asserted that the NTA with which she had been served was "defective" because it did not specify the date or

time of her initial removal hearing. A.R. 85. Petitioner argued that, because of that alleged defect, "the Immigration Court never had subject matter jurisdiction over [her] proceedings." A.R. 81-82.

The IJ denied petitioner's motion to reopen. Pet. App. 11-15. The IJ found petitioner's assertion that she did not receive notice of the February 28, 2018 hearing to be "completely untrue." *Id.* at 12. The IJ found that petitioner attended her initial removal hearing on July 11, 2017, and that after she "asked for [a] continuance," she was both "handed" an NOH "showing the February 28, 2018 hearing date" and "told (orally) that the next hearing would be February 28, 2018." *Ibid.* The IJ also rejected petitioner's contention that the immigration court lacked jurisdiction over her proceedings. *Id.* at 13-15. The IJ explained that an NTA "that does not specify the time and place of an alien's initial removal hearing vests an [IJ] with jurisdiction over the removal proceedings," "so long as [an NOH] specifying this information is later sent to the alien, which did occur in this case." *Id.* at 14.

The Board of Immigration Appeals (Board) dismissed petitioner's appeal. Pet. App. 5-7. The Board affirmed the IJ's finding that, "[o]n July 11, 2017, a[n] NOH was served upon [petitioner] in order to place her on notice of her hearing on February 28, 2018." *Id.* at 6. And the Board held that, because an NOH specifying the date and time of her "initial hearing" was "sent to" petitioner, "the NTA was not defective and jurisdiction over these removal proceedings vested with the [IJ]." *Ibid.*

4. The court of appeals denied in relevant part petitioner's petition for review in an unpublished opinion. Pet. App. 1-3. In challenging the Board's decision, petitioner argued that "she was not provided with proper statutory notice of her hearing under 8 U.S.C. § 1229(a),

and that as a result, jurisdiction never vested with the Immigration Court." Pet. C.A. Br. 6; see Pet. C.A. Reply Br. 3 (arguing that "the Board erred in determining that the Immigration Court had jurisdiction over Petitioner's case"). The court of appeals determined that circuit precedent foreclosed petitioner's jurisdictional argument. Pet. App. 3 (citing *Pierre-Paul* v. *Barr*, 930 F.3d 684, 689-693 (5th Cir. 2019), cert. denied, 140 S. Ct. 2718 (2020), and *Mauricio-Benitez* v. *Sessions*, 908 F.3d 144, 148 n.1 (5th Cir. 2018), cert. denied, 139 S. Ct. 2767 (2019)). The court therefore held that petitioner had "failed to show that the [Board] committed legal error in dismissing her appeal." *Ibid.*

ARGUMENT

Petitioner contends (Pet. 5-11) that the removal order entered against her in absentia should be rescinded on the ground that she did not receive the notice required under 8 U.S.C. 1229a(b)(5)(A). Petitioner did not preserve that contention in the court of appeals, and the court did not address it. In any event, the contention lacks merit because, even assuming that the notice of petitioner's initial hearing was inadequate, petitioner received sufficient notice of the subsequent hearing at which her failure to appear allowed entry of an in absentia removal order.

Petitioner also contends (Pet. 11-13) that the immigration court lacked jurisdiction over her removal proceedings because the NTA 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 issue. This

Court has recently and repeatedly denied petitions for writs of certiorari raising the same issue, and the same result is warranted here.[1]

1. Petitioner contends (Pet. 5-11) that the in absentia removal order should be rescinded on the ground that she did not receive the notice required under Section 1229a(b)(5)(A). That contention does not warrant this Court's review.

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[1] See, *e.g.*, *Herrera-Fuentes* v. *United States*, 141 S. Ct. 1447 (2021) (No. 20-6962); *Rodriguez-Garcia* v. *United States*, 141 S. Ct. 1393 (2021) (No. 20-967); *Castruita-Escobedo* v. *United States*, 141 S. Ct. 1249 (2021) (No. 20-6462); *Moreno-Rodriguez* v. *United States*, 141 S. Ct. 1122 (2021) (No. 20-6464); *Avalos-Rivera* v. *United States*, 141 S. Ct. 1114 (2021) (No. 20-6362); *Zuniga* v. *United States*, 141 S. Ct. 934 (2020) (No. 20-6195); *Gomez* v. *United States*, 141 S. Ct. 838 (2020) (No. 20-5995); *Mendoza-Sanchez* v. *United States*, 141 S. Ct. 834 (2020) (No. 20-5925); *Lira-Ramirez* v. *United States*, 141 S. Ct. 830 (2020) (No. 20-5881); *Vana* v. *Barr*, 141 S. Ct. 819 (2020) (No. 20-369); *Fermin* v. *Barr*, 141 S. Ct. 664 (2020) (No. 20-53); *Bhai* v. *Barr*, 141 S. Ct. 620 (2020) (No. 20-22); *Milla-Perez* v. *Barr*, 141 S. Ct. 275 (2020) (No. 19-8296); *Castro-Chavez* v. *Barr*, 141 S. Ct. 237 (2020) (No. 19-1242); *Mayorga* v. *United States*, 141 S. Ct. 167 (2020) (No. 19-7996); *Cantu-Siguero* v. *United States*, 141 S. Ct. 166 (2020) (No. 19-7821); *Pineda-Fernandez* v. *United States*, 141 S. Ct. 166 (2020) (No. 19-7753); *Ferreira* v. *Barr*, 140 S. Ct. 2827 (2020) (No. 19-1044); *Ramos* v. *Barr*, 140 S. Ct. 2803 (2020) (No. 19-1048); *Pedroza-Rocha* v. *United States*, 140 S. Ct. 2769 (2020) (No. 19-6588); *Nkomo* v. *Barr*, 140 S. Ct. 2740 (2020) (No. 19-957); *Gonzalez-De Leon* v. *Barr*, 140 S. Ct. 2739 (2020) (No. 19-940); *Mora-Galindo* v. *United States*, 140 S. Ct. 2722 (2020) (No. 19-7410); *Callejas Rivera* v. *United States*, 140 S. Ct. 2721 (2020) (No. 19-7052); *Araujo Buleje* v. *Barr*, 140 S. Ct. 2720 (2020) (No. 19-908); *Pierre-Paul* v. *Barr*, 140 S. Ct. 2718 (2020) (No. 19-779); *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).

a. In her petition for review of the Board's decision, petitioner did not argue that she did not receive the notice required under Section 1229a(b)(5)(A). Rather, in challenging that decision in the court of appeals, petitioner made a different argument: that because the NTA did not specify the date and time of her initial removal hearing, "jurisdiction never vested with the Immigration Court" in the first place. Pet. C.A. Br. 6; see Pet. C.A. Reply Br. 3 (arguing that "the Board erred in determining that the Immigration Court had jurisdiction over Petitioner's case"). Indeed, her briefs in the court of appeals did not cite the INA's provisions pertaining to in absentia removal orders at all. See Pet. C.A. Br. 1-16; Pet. C.A. Reply Br. 3-11. Petitioner thus did not preserve the contention that she did not receive the notice required under those provisions, and the court of appeals did not address any such contention. See Pet. App. 3 (addressing only petitioner's "notice-and-jurisdictional" argument). For that reason alone, this Court's review is not warranted. See *Zobrest* v. *Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993) ("Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.") (citation omitted).

b. In any event, petitioner's contention that she did not receive the notice required under Section 1229a(b)(5)(A) lacks merit. Under Section 1229a(b)(5)(A), a noncitizen may be ordered removed in absentia only if she "does not attend" her removal hearing "after written notice required under paragraph (1) *or* (2) of section 1229(a) of [Title 8] has been provided to the alien or the alien's counsel of record." 8 U.S.C. 1229a(b)(5)(A) (emphasis added). Section 1229a(b)(5)(C), in turn, 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).

Here, petitioner attended her initial removal hearing on July 11, 2017, after DHS served her with an NTA and the immigration court mailed NOHs to the address that she had provided. Pet. App. 2, 12, 16-22; A.R. 165, 171, 173. After the immigration court granted petitioner's request for a continuance to a later date, petitioner was served in person with another NOH, as "required under paragraph * * * (2) of section 1229(a)." 8 U.S.C. 1229a(b)(5)(A); see Pet. App. 6, 12; A.R. 159-160. That NOH specified the "new time" of her removal hearing (February 28, 2018, at 8:30 a.m.) as well as the "consequences under section 1229a(b)(5)" of failing to appear at that hearing. 8 U.S.C. 1229(a)(2)(A)(i)-(ii); see A.R. 159.

It was only after petitioner "d[id] not attend" her hearing on February 28, 2018, that she was "ordered removed in absentia." 8 U.S.C. 1229a(b)(5)(A). And her failure to attend that hearing cannot be attributed to any lack of notice. Petitioner received an NOH specifying the date and time of that hearing, Pet. App. 6, 12; A.R. 159-160,[2] and the NOH constituted "written notice" of that hearing in accordance with "paragraph * * * (2) of section 1229(a)," 8 U.S.C. 1229a(b)(5)(A). Petitioner therefore cannot demonstrate that she was ordered removed in absentia without the notice required under Section 1229a(b)(5)(A). See 8 U.S.C. 1229a(b)(5)(C)(ii)

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[2] Although petitioner asserted in her motion to reopen that she "never received notice" of the February 28, 2018 hearing, A.R. 83, the Board and the IJ rejected that assertion, Pet. App. 6, 12, and petitioner now acknowledges (Pet. 3) that she "was advised that her next hearing was to be on February 28, 2018."

(placing the burden on the noncitizen to "demonstrate[]" a lack of notice).

Petitioner observes (Pet. 3) that the NTA itself did not specify the date or time of her *initial* removal hearing. But the absence of that information in the NTA was immaterial because she appeared at her initial hearing. Pet. App. 12. For purposes of Section 1229a(b)(5)(A), the relevant notice is that for the "proceeding" that the noncitizen "does not attend." 8 U.S.C. 1229a(b)(5)(A). Here, that is the notice for petitioner's February 28, 2018 hearing, not her initial hearing. That kind of notice—*i.e.*, notice of "any change or postponement in the time and place of [removal] proceedings"—is governed by paragraph (2), not paragraph (1), of Section 1229(a). 8 U.S.C. 1229(a)(2)(A). And as required under paragraph (2), petitioner received an NOH specifying that her next removal hearing had been scheduled for February 28, 2018, at 8:30 a.m. Pet. App. 6, 12; A.R. 159-160. Petitioner thus cannot demonstrate that she did not receive the notice required under Section 1229a(b)(5)(A), which may be satisfied by "written notice * * * under paragraph (1) *or* (*2*) of section 1229(a)." 8 U.S.C. 1229a(b)(5)(A) (emphasis added); see *In re Pena-Mejia*, 27 I. & N. Dec. 546, 548 (B.I.A. 2019) ("Because this statute uses the disjunctive term 'or' rather than the conjunctive 'and,' an in absentia order of removal may be entered if a written notice containing the time and place of the hearing was provided *either* in [an NTA] under section [1229(a)(1)] *or* in a subsequent notice of the time and place of the hearing pursuant to section [1229(a)(2)].").

This Court's decisions in *Pereira* v. *Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez* v. *Garland*, 141 S. Ct. 1474 (2021), are not to the contrary. Those decisions concerned the meaning of the phrase "a notice to appear" in the

stop-time rule, which is triggered "when the alien is served a notice to appear under section 1229(a)." 8 U.S.C. 1229b(d)(1). In *Pereira*, the Court held that "a notice to appear" must include the date and time of the noncitizen's initial removal hearing. 138 S. Ct. at 2114 (citation omitted). And in *Niz-Chavez*, the Court concluded that "a notice to appear" must be provided in a single document. 141 S. Ct. at 1480-1485 (citation omitted).

The INA provisions governing in absentia removal orders do not contain the phrase "a notice to appear." See 8 U.S.C. 1229a(b)(5). And unlike in *Pereira* and *Niz-Chavez*, notice under paragraph (1) of Section 1229(a) is not at issue here. Rather, because petitioner attended her initial removal hearing, the relevant question for purposes of her in absentia removal order is whether she received notice "under paragraph * * * (2) of section 1229(a)" of her subsequent hearing on February 28, 2018—the "proceeding" that she "d[id] not attend." 8 U.S.C. 1229a(b)(5)(A). And because petitioner received that notice, Pet. App. 6, 12; A.R. 159-160, she received the notice required under Section 1229a(b)(5)(A) as a predicate for proceeding in absentia after a failure to appear.

c. Petitioner does not allege that there is any disagreement in the courts of appeals about the first question presented. And she identifies no other court of appeals that would conclude that the notice she received was inadequate under Section 1229a(b)(5)(A). See *Santos-Santos* v. *Barr*, 917 F.3d 486, 492 (6th Cir. 2019) (explaining that "an alien who seeks to rescind [an] *in absentia* removal order[] bears the burden to prove that there was no notice under either paragraph (1) or paragraph (2) of section 1229(a)," and holding that an NOH "meets the requirements of paragraph (2)").

2. Petitioner also contends (Pet. 11-13) that the immigration court lacked jurisdiction over her removal proceedings because the NTA filed with the immigration court did not specify the date and time of her initial removal hearing. That contention likewise does not warrant this Court's review.

a. Petitioner's jurisdictional argument lacks merit, for three independent reasons. *First*, an NTA 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 an NTA. 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, an NTA need not specify the date and time of the initial removal hearing: the regulations specifically provide that the NTA 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 the date and time of the initial hearing from the list of information to be provided to the immigration court in an NTA).

Far from depriving the immigration court of jurisdiction when an NTA filed 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 the immigration court may schedule the hearing necessarily means that "[j]urisdiction [has] vest[ed]" and "proceedings [have] commence[d]." 8 C.F.R. 1003.14(a). Thus, an NTA "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 *In re 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 NTA alone did not suffice to "vest[]" "[j]urisdiction" in the immigration court, 8 C.F.R. 1003.14(a), the NTA together with the subsequent NOHs mailed to petitioner 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 [NTA]." 8 C.F.R. 1003.18(b). That is what the immigration court did here: it mailed NOHs to the address that petitioner had provided, informing her that her initial removal hearing had been scheduled for July 11, 2017, at 10 a.m. A.R. 165, 171, 173. 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 the immigration court sent NOHs to petitioner containing that information. See *Bermudez-Cota*, 27 I. & N. Dec. at 447.

Third, any requirement that the NTA 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 NTA by not raising that issue at her initial removal hearing. *Ortiz-Santiago* v. *Barr*, 924 F.3d 956, 963 (7th Cir. 2019). Although 8 C.F.R. 1003.14(a) uses the word "[j]urisdiction," this Court has recognized that it 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 *In re 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 on July 11, 2017, without raising any objection to the lack of date and time information in the NTA. Pet. App. 12. Given the absence of a timely objection, petitioner forfeited any contention that the NTA was

defective for the purpose of commencing proceedings in the immigration court. See *Pierre-Paul* v. *Barr*, 930 F.3d 684, 693 (5th Cir. 2019), cert. denied, 140 S. Ct. 2718 (2020); *Ortiz-Santiago*, 924 F.3d at 964-965. Moreover, even if petitioner had timely challenged the NTA as defective for that purpose, petitioner cannot show any prejudice from the lack of date and time information in the NTA, 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; Pet. App. 12.

b. This Court's decisions in *Pereira*, *supra*, and *Niz-Chavez*, *supra*, are not to the contrary. As explained above, see pp. 11-12, *supra*, those decisions concerned the operation of the stop-time rule, which is triggered "when the alien is served a notice to appear under section 1229(a)." 8 U.S.C. 1229b(d)(1). Those decisions do "not govern the jurisdictional question" that petitioner raises here, *Karingithi*, 913 F.3d at 1160 n.1, because that question does not depend on what qualifies as a "notice to appear under section 1229(a)," 8 U.S.C. 1229b(d)(1). 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, neither Section 1229(a) nor any other provision of the INA requires that the NTA even be filed with the immigration court. Rather, the INA 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) (emphasis added); 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 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 noncitizen, 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 an NTA, *ibid.*, and those regulations do not require that an NTA specify the date and time of the initial removal hearing in order to qualify as a "charging document" for the purpose of commencing 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), cert. denied, 140 S. Ct. 2740 (2020). Petitioner's reliance (Pet. 11-13) on *Pereira* and Section 1229(a) is therefore misplaced.

c. Petitioner does not allege that there is any disagreement in the courts of appeals about the second question presented. Like the Fifth Circuit, see Pet. App. 2, seven other courts of appeals have rejected arguments like petitioner's on the ground that an NTA "need not include time and date information to satisfy" the "regulatory requirements" and "vest[] jurisdiction" in the immigration court, at least where an NOH that contains that information is later sent to the noncitizen.

Karingithi, 913 F.3d at 1160 (9th Cir.); see *United States* v. *Mendoza*, 963 F.3d 158, 161-163 (1st Cir.), cert. denied, 141 S. Ct. 834 (2020); *Banegas Gomez* v. *Barr*, 922 F.3d 101, 110-112 (2d Cir. 2019), cert. denied, 140 S. Ct. 954 (2020); *Nkomo*, 930 F.3d at 132-134 (3d Cir.); *Cortez*, 930 F.3d at 362-364 (4th Cir.); *Santos-Santos*, 917 F.3d at 489-491 (6th Cir.); *Ali* v. *Barr*, 924 F.3d 983, 986 (8th Cir. 2019).

In addition, four other courts of appeals have recognized—as the Fifth Circuit has, see *Pierre-Paul*, 930 F.3d at 691-693—that any requirement that an NTA contain the date and time of the initial removal hearing is not a jurisdictional requirement, but rather a claim-processing rule. See *Cortez*, 930 F.3d at 358-362 (4th Cir.); *Ortiz-Santiago*, 924 F.3d at 962-965 (7th Cir.); *Lopez-Munoz* v. *Barr*, 941 F.3d 1013, 1015-1017 (10th Cir. 2019); *Perez-Sanchez* v. *U.S. Attorney Gen.*, 935 F.3d 1148, 1154-1157 (11th Cir. 2019). Each of those courts of appeals would have concluded that petitioner forfeited any objection to the lack of date and time information in the NTA. See pp. 15-16, *supra*. Thus, in every court of appeals that has addressed the second question presented, petitioner's jurisdictional challenge would have failed.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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