No. 21-310

In the Supreme Court of the United States

ERICK ADRIAN ROMAN-VEGA, PETITIONER

v.

MERRICK B. GARLAND, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH 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 his initial removal hearing.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a-2a) is not published in the Federal Reporter but is available at 2021 WL 3887587. The decisions and orders of the Board of Immigration Appeals (Pet. App. 3a-5a) and the immigration judge (Pet. App. 6a-28a, 29a-30a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 1, 2021. The petition for a writ of certiorari was filed on August 27, 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 is removable from the United States. 8 U.S.C. 1229a(a)(1).[1] IJs "are attorneys whom the Attorney General appoints as administrative judges" to conduct removal proceedings. 8 C.F.R. 1003.10(a). Exercising authority vested in him by the INA, 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) and (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.").

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[1] This brief uses "noncitizen" as equivalent to the statutory term "alien." See *Barton* v. *Barr*, 140 S. Ct. 1442, 1446 n.2 (2020) (quoting 8 U.S.C. 1101(a)(3)).

b. The INA separately 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 [8 U.S.C.] 1229a(b)(5) * * * of the failure * * * to appear." 8 U.S.C. 1229(a)(1)(G)(i) and (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) and (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) * * * 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). 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 Mexico. Pet. App. 6a. In 1997, he was admitted to the United States as a temporary nonimmigrant visitor for six months. Administrative Record (A.R.) 919.

In August 2011, DHS served petitioner with an NTA. A.R. 921-922. The NTA charged that petitioner was subject to removal because he was a noncitizen present in the United States without being admitted or paroled. A.R. 921; see 8 U.S.C. 1182(a)(6)(A)(i). The NTA ordered petitioner to appear for removal proceedings on a "a date to be set at a time to be set." A.R. 921. DHS later filed the NTA with the immigration court. *Ibid.*; Pet. App. 7a.

On the same day that DHS filed the NTA, A.R. 921, the immigration court mailed a "Notice of Hearing" (NOH) to petitioner, A.R. 918. The NOH stated that the immigration court had scheduled his initial removal hearing for September 12, 2011, at 1 p.m. *Ibid.* Petitioner appeared at that hearing and denied the charge of removability set forth in the NTA, asserting that he had entered the United States lawfully. A.R. 108, 110; Pet. App. 7a. Petitioner also stated that he intended to seek adjustment of status based on his marriage to a U.S. citizen. A.R. 111.

The IJ continued the proceedings to allow petitioner to establish his time, place, and manner of entry. Pet. App. 7a. In the years that followed, respondent or his counsel appeared at numerous additional hearings, and the immigration court granted several further continuances. See *id.* at 7a-8a.

In July 2018, DHS amended the NTA, alleging a new charge of removability in lieu of the charge set forth in the original NTA. A.R. 919. The new charge alleged that petitioner was subject to removal because, after he was admitted as a nonimmigrant, he remained in the United States for a time longer than permitted. *Ibid.*; see 8 U.S.C. 1227(a)(1)(B).

In August 2018, petitioner filed a motion to terminate his removal proceedings. A.R. 851-855. Relying on this Court's decision in *Pereira* v. *Sessions*, 138 S. Ct. 2105 (2018), petitioner argued for the first time that because the original NTA did not specify the date and time of his initial removal hearing, he did not receive a "notice to appear as defined under the INA," and the immigration court "never had jurisdiction" over his removal proceedings. A.R. 855.[2]

In September 2018, an IJ denied petitioner's motion to terminate. Pet. App. 29a. Relying on *In re Bermudez-Cota*, 27 I. & N. Dec. 441 (B.I.A. 2018), the IJ explained that "an NTA 'that does not specify the time and place of the alien's initial removal hearing vests an [IJ] with jurisdiction over the removal proceedings * * * , so long as a notice of hearing specifying this information is later sent to the alien.'" Pet. App. 29a (citation omitted).

The IJ subsequently found petitioner removable as charged and denied his applications for adjustment of status and voluntary departure. Pet. App. 6a-28a. The IJ therefore ordered petitioner removed to Mexico. *Id.* at 28a.

3. The Board of Immigration Appeals (Board) dismissed petitioner's appeal. Pet. App. 3a-5a. The Board rejected petitioner's challenge to the jurisdiction of the immigration court. *Id.* at 3a-4a. The Board explained that both the Board and the Ninth Circuit, "in whose

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[2] Petitioner errs in asserting (Pet. 29) that the IJ "advised [his] counsel to file a motion to terminate based on *Pereira*." Rather, the IJ advised petitioner's counsel that "if [he was] going to file a motion to terminate," he had to do so by a particular date. A.R. 212; see Pet. App. 8a (IJ's own description, stating that the IJ "advised [petitioner's] counsel that he had until July 20, 2018, to file [a] motion to terminate based on *Pereira*").

jurisdiction this case arises, have held that jurisdiction properly vests with the Immigration Court when a [noncitizen] receives a separate hearing notice consistent with the regulation contained at 8 C.F.R. § 1003.18(b)." *Ibid.* The Board observed that, "subsequent to service of the [NTA], [petitioner] received a hearing notice that informed him of the date, time, and location of removal proceedings," and that petitioner "appeared in [the] immigration court." *Id.* at 4a. The Board therefore determined that "jurisdiction [wa]s proper" in petitioner's case. *Ibid.* The Board also affirmed the IJ's denial of adjustment of status and voluntary departure. *Ibid.*

4. The court of appeals dismissed in part and denied in part petitioner's petition for review in an unpublished order. Pet. App. 1a-2a. The court explained that circuit precedent "foreclosed" "[p]etitioner's contention that the [IJ] lacked jurisdiction over his proceedings." *Id.* at 1a (citing *Fermin* v. *Barr*, 958 F.3d 887, 895 (9th Cir.), cert. denied, 141 S. Ct. 664 (2020)). The court further explained that it "lack[ed] jurisdiction to review the discretionary denial of adjustment of status." *Ibid.*

5. After the time for filing a petition for rehearing expired, petitioner filed a motion asking the court of appeals to accept a late-filed rehearing petition. C.A. Doc. 33 (May 21, 2021). The court denied the motion. C.A. Doc. 41 (Nov. 8, 2021).

ARGUMENT

Petitioner contends (Pet. 5-24, 36-40) that the immigration court lacked jurisdiction over his removal proceedings because the NTA filed with the immigration court did not specify the date and time of his initial

removal hearing.[3] The court of appeals correctly rejected that contention. Its unpublished decision does not conflict with any decision of this Court, and petitioner has not identified any court of appeals in which the outcome of his case would have been different. The Court has recently and repeatedly denied petitions for writs of certiorari raising the same issue,[4] and the same result is warranted here.

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[3] Another pending petition for a writ of certiorari raises a similar issue. See *Garcia* v. *Garland*, No. 21-5928 (filed Oct. 1, 2021).

[4] See, *e.g.*, *Ambriz-Valdovinos* v. *United States*, No. 20-8465 (Oct. 4, 2021); *Uceda-Alvares* v. *Garland*, No. 20-1740 (Oct. 4, 2021); *Pineda-Sabillon* v. *Garland*, 141 S. Ct. 2852 (2021) (No. 20-1173); *Calleja* v. *Garland*, 141 S. Ct. 2791 (2021) (No. 20-842); *Agustin-Pineda* v. *United States*, 141 S. Ct. 2744 (2021) (No. 20-7969); *Aguilar-Molina* v. *Garland*, 141 S. Ct. 2723 (2021) (No. 20-1433); *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*

1. a. Petitioner contends (Pet. 5-24, 36-40) that the immigration court lacked jurisdiction over his removal proceedings because the NTA filed with the immigration court did not specify the date and time of his initial removal hearing. That contention lacks merit, for three independent reasons.

First, an NTA that is filed with the immigration court 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 initiates such a proceeding, an NTA need not specify the date and time of the initial removal hearing: the regulations specifically provide that the NTA filed with the immigration court 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) and (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).

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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).

Far from depriving the immigration court of jurisdiction when an NTA filed with 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, "the jurisdiction of the immigration court vests upon the filing of an NTA, even one that does not at that time inform the alien of the time, date, and location of the hearing." *United States* v. *Bastide-Hernandez*, 3 F.4th 1193, 1196 (9th Cir. 2021).

Second, even if the filing of the NTA alone did not suffice to "vest[]" "[j]urisdiction" in the immigration court, 8 C.F.R. 1003.14(a), the filing of the NTA together with the subsequent provision of the NOH 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 provided petitioner with an NOH informing him that his initial removal hearing had been scheduled for September 12, 2011, at 1 p.m. A.R. 918. 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 provided petitioner with an NOH containing that information. See *In re Arambula-Bravo*, 28 I. & N. Dec. 388, 389-392 (B.I.A. 2021).

Third, any requirement that an NTA filed with the immigration court 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 failed to preserve any contention that the NTA violated such a claim-processing rule by not raising the issue at his 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) (citation 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 his initial removal hearing on September 12, 2011, without raising any objection to the lack of date and time information in the NTA. A.R. 107-117; see Pet. 40-41. Petitioner did not raise

such an objection until 2018, after the immigration court had already held 19 hearings in his case. A.R. 851-855; see A.R. 107-213. And even then, petitioner challenged only the immigration court's "jurisdiction," A.R. 852; he did not contend that "his NTA violated the agency's claim-processing rules." *Perez-Sanchez* v. *U.S. Att'y Gen.*, 935 F.3d 1148, 1157 (11th Cir. 2019); see *Farah* v. *U.S. Att'y Gen.*, 12 F.4th 1312, 1322 (11th Cir. 2021) (explaining that whether an NTA "violated the agency's claim-processing rules is a separate issue from whether the immigration court lacked jurisdiction over [the] removal proceedings"); *Arambula-Bravo*, 28 I. & N. Dec. at 392 n.3 (similar). Petitioner therefore failed to preserve an objection to the violation of a claim-processing rule. See *Pierre-Paul* v. *Barr*, 930 F.3d 684, 693 (5th Cir. 2019), cert. denied, 140 S. Ct. 2718 (2020); *Mejia-Padilla* v. *Garland*, 2 F.4th 1026, 1032-1033 (7th Cir. 2021); *Perez-Sanchez*, 935 F.3d at 1157. And even if petitioner had timely raised such an objection, he cannot show any prejudice from the lack of date and time information in the NTA, because he had actual knowledge of the date and time of his initial removal hearing and appeared at that hearing. See *Rosales Vargas*, 27 I. & N. Dec. at 753-754; A.R. 107-117.

b. This Court's decisions in *Pereira* v. *Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez* v. *Garland*, 141 S. Ct. 1474 (2021), do not suggest any error in the decision below. *Pereira* and *Niz-Chavez* 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" under Section 1229(a) 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" under Section 1229(a) must be provided in a single document. 141 S. Ct. at 1480-1485 (citation omitted).

Pereira and *Niz-Chavez* do "not govern the jurisdictional question" that petitioner raises here, *Karingithi* v. *Whitaker*, 913 F.3d 1158, 1160 n.1 (9th Cir. 2019), cert. denied, 140 S. Ct. 1106 (2020), 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 *Niz-Chavez*, 141 S. Ct. at 1482 (explaining that "the aim" of "[a] notice to appear" under Section 1229(a) "is to supply *an affected party* with a single document highlighting certain salient features of the proceedings against him") (emphasis added); *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 with 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 to 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 filed with the immigration court specify the date and time of the initial removal hearing in order to qualify as a "charging document" for the purpose of initiating a proceeding before an IJ, 8 C.F.R. 1003.14(a). As a result, petitioner's reliance (Pet. 5-24, 36-40) on *Pereira*, *Niz-Chavez*, and Section 1229(a) is misplaced. See *United States* v. *Castillo-Martinez*, No. 19-1971, 2021 WL 4987623, at *3 n.3 (1st Cir. Oct. 27, 2021) (finding *Niz-Chavez* inapplicable to the issue of an immigration court's jurisdiction); *Chery* v. *Garland*, No. 18-1036, 2021 WL 4805217, at *5 (2d Cir. Oct. 15, 2021); *Maniar* v. *Garland*, 998 F.3d 235, 242 n.2 (5th Cir. 2021) (same); *Ramos Rafael* v. *Garland*, 15 F.4th 797, 800-801 (6th Cir. 2021) (same); *Tino* v. *Garland*, 13 F.4th 708, 709 n.2 (8th Cir. 2021) (per curiam) (same); *Arambula-Bravo*, 28 I. & N. Dec. at 391-392 (same).

2. a. Petitioner has not identified any court of appeals in which the outcome of his case would have been different. Like the Ninth Circuit, the First, Second, Third, Fourth, Fifth, Sixth, and Eighth Circuits 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 IJ," at least where the noncitizen is later provided with an NOH that contains that information. *Karingithi*, 913 F.3d at 1160; 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* v. *Attorney Gen.*, 930 F.3d 129, 132-134 (3d Cir. 2019), cert. denied, 140 S. Ct. 2740 (2020); *Perez Vasquez* v. *Garland*, 4 F.4th 213, 220 (4th Cir. 2021); *Maniar*, 998 F.3d at 242 (5th Cir.); *Santos-Santos* v. *Barr*, 917 F.3d 486, 492 (6th Cir. 2019); *Ali* v. *Barr*, 924 F.3d 983, 986 (8th Cir. 2019).

In addition, the Fourth, Fifth, Seventh, Tenth, and Eleventh Circuits have recognized 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.); *Pierre-Paul*, 930 F.3d at 691-693 (5th Cir.); *Ortiz-Santiago*, 924 F.3d at 962-965 (7th Cir.); *Martinez-Perez* v. *Barr*, 947 F.3d 1273, 1278-1279 (10th Cir. 2020); *Perez-Sanchez*, 935 F.3d at 1154-1157 (11th Cir.). As explained above, petitioner failed to preserve any objection to the violation of a claim-processing rule. See pp. 10-11, *supra*. And he cites no decision from any circuit granting relief to a noncitizen in circumstances similar to his.

b. Petitioner's assertions of various circuit conflicts do not suggest otherwise. Petitioner contends (Pet. 25-26) that, whereas some circuits have recognized that any requirement that an NTA contain the date and time of the initial removal hearing is simply a claim-processing rule, the First, Second, Third, 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 six circuits have repeated 8 C.F.R. 1003.14(a)'s use of the word "jurisdiction" in the course of determining that an NTA "need not

include time and date information" for the applicable "regulatory requirements" to be satisfied. *Karingithi*, 913 F.3d at 1160 (9th Cir.); see *Goncalves Pontes* v. *Barr*, 938 F.3d 1, 6-7 (1st Cir. 2019); *Banegas Gomez*, 922 F.3d at 111-112 (2d Cir.); *Nkomo*, 930 F.3d at 133 (3d 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"). Thus, "none of the courts of appeals treats" the omission of date and time information in the NTA "as a jurisdictional defect in a removal proceeding." *United States* v. *Calan-Montiel*, 4 F.4th 496, 497 (7th Cir. 2021).

Petitioner also asserts (Pet. 26) that, whereas the Second and Sixth Circuits have held that an NTA that lacks date and time information may "nevertheless confer[] jurisdiction so long as a hearing notice subsequently supplies the missing information," the First, Third, Eighth, and Ninth Circuits have held that a subsequent hearing notice is not required for jurisdiction to vest. That asserted conflict does not exist. The Sixth Circuit has held that "[n]o references to the time and

place of the hearing are required to vest jurisdiction under the regulation." *Santos-Santos*, 917 F.3d at 490. And the Second Circuit has not addressed whether a subsequent hearing notice is required; rather, it has held only that the combination of "an NTA that omits information regarding the time and date of the initial removal hearing" and "a notice of hearing specifying th[at] information" is "adequate to vest jurisdiction." *Banegas Gomez*, 922 F.3d at 112. In any event, even if the asserted conflict existed, it would not be implicated here, because petitioner was provided with both an NTA and an NOH. See p. 9, *supra*.

Finally, to the extent petitioner contends (Pet. 40-41) that the outcome of his case would have been different in those circuits that view any requirement that an NTA contain the date and time of the initial removal hearing as a claim-processing rule, that contention is mistaken. Petitioner has not preserved any objection to the violation of a claim-processing rule, see pp. 10-11, *supra*, and he identifies no precedent from any of those circuits suggesting otherwise. Petitioner asserts (Pet. 41) that "the state of the law was such that there was no indication that an objection regarding the defect in [his NTA] was warranted in 2011, when his proceedings were first initiated." But the Seventh Circuit has rejected that excuse for the lack of a timely objection, explaining that "there were signs that a meritorious argument could be raised" even before this Court's decision in *Pereira*. *Ortiz-Santiago*, 924 F.3d at 964; see *Mejia-Padilla*, 2 F.4th at 1031 (finding that "nothing prevented" a noncitizen from raising the same "defect in 2012"); *Chen* v. *Barr*, 960 F.3d 448, 451 (7th Cir. 2020) (explaining that "adverse precedent in a local court of appeals does not

excuse omitting a legal argument, unless it is one a knowledgeable lawyer could not have imagined").

Petitioner also notes (Pet. 41-42) that neither the IJ nor the Board concluded that he failed to make a timely objection to the violation of a claim-processing rule. But as explained above, petitioner did not claim that the NTA violated any claim-processing rule, so neither the IJ nor the Board had occasion to address the timeliness of such an objection. See p. 11, *supra*. In any event, even if petitioner had raised such an objection before the IJ and the Board, petitioner does not identify (Pet. 42) any circuit that would have "remanded for consideration of the timeliness of his objection." To the contrary, the Seventh Circuit has held that "failure to raise an issue properly before an agency is not the sort of matter that an agency must consider," and has denied a petition for review on the ground that the noncitizen did not "timely object[]" to the asserted "defect" at issue here, even though "the Board did not mention" that ground in denying relief. *Chen*, 960 F.3d at 451.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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