

APPENDIX A

United States v. Pineda-Fernandez,
No. 19-50483 (5th Cir. Nov. 21, 2019)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-50483
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 21, 2019
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN RAMON PINEDA-FERNANDEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:18-CR-856-1

Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:*

Juan Ramon Pineda-Fernandez appeals his conviction of illegal reentry into the United States. He entered a conditional guilty plea to the indictment, reserving the right to challenge the district court's denial of his motion to dismiss the indictment.

Now, Pineda-Fernandez asserts, as he did in the district court, that his prior removal was invalid because the notice to appear which commenced the

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 19-50483

proceeding was defective for failing to specify a date and time for his removal hearing. He contends therefore that the removal order is void and that the Government cannot establish an essential element of the illegal reentry offense under 8 U.S.C. § 1326. He concedes that this challenge is foreclosed by *United States v. Pedroza-Rocha*, 933 F.3d 490 (5th Cir. 2019), but he wishes to preserve the issue for further review.

The Government has filed an unopposed motion for summary affirmance, agreeing that the issue is foreclosed under *Pedroza-Rocha*. Alternativley, the Government requests an extension of time to file its brief. Summary affirmance is appropriate if “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

Pedroza-Rocha concluded that the notice to appear was not deficient for failing to specify a date and time for the hearing, that any such alleged deficiency had not deprived the immigration court of jurisdiction, and that Pedroza-Rocha could not collaterally attack his notice to appear without first exhausting his administrative remedies. 933 F.3d at 496–98. Pineda-Fernandez’s arguments are, as he concedes, foreclosed by this case. *See id.* See also *Pierre-Paul v. Barr*, 930 F.3d 684, 688-90 (5th Cir. 2019). Accordingly, the Government’s motion for summary affirmance is GRANTED, the Government’s alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.

APPENDIX B

U.S. Const. amend. V (Due Process Clause)

8 U.S.C. § 1229

8 U.S.C. § 1326

8 C.F.R. § 1003.13

8 C.F.R. § 1003.14

8 C.F.R. § 1003.15

8 C.F.R. § 1003.18

United States Code Annotated
Constitution of the United States
Annotated

[Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings](#)

U.S.C.A. Const. Amend. V full text

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy;
Self-Incrimination; Due Process of Law; Takings without Just Compensation

[Currentness](#)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const. Amend. V--Grand Jury clause>

<USCA Const. Amend. V--Double Jeopardy clause>

<USCA Const. Amend. V--Self-Incrimination clause>

<USCA Const. [Amend. V](#)-- Due Process clause>

<USCA Const. Amend. V--Takings clause>

U.S.C.A. Const. Amend. V full text, USCA CONST Amend. V full text
Current through P.L. 116-66.



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Proposed Legislation

[United States Code Annotated](#)

[Title 8. Aliens and Nationality \(Refs & Annos\)](#)

[Chapter 12. Immigration and Nationality \(Refs & Annos\)](#)

[Subchapter II. Immigration](#)

[Part IV. Inspection, Apprehension, Examination, Exclusion, and Removal \(Refs & Annos\)](#)

8 U.S.C.A. § 1229

§ 1229. Initiation of removal proceedings

Effective: August 12, 2006

[Currentness](#)

(a) Notice to appear

(1) In general

In removal proceedings under [section 1229a](#) of this title, written notice (in this section referred to as a “notice to appear”) shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien’s counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection (b)(2).

(F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under [section 1229a](#) of this title.

(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

(iii) The consequences under [section 1229a\(b\)\(5\)](#) of this title of failure to provide address and telephone information pursuant to this subparagraph.

(G)(i) The time and place at which the proceedings will be held.

(ii) The consequences under [section 1229a\(b\)\(5\)](#) of this title of the failure, except under exceptional circumstances, to appear at such proceedings.

(2) Notice of change in time or place of proceedings

(A) In general

In removal proceedings under [section 1229a](#) of this title, in the case of any change or postponement in the time and place of such proceedings, subject to subparagraph (B) a written notice shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying--

(i) the new time or place of the proceedings, and

(ii) the consequences under [section 1229a\(b\)\(5\)](#) of this title of failing, except under exceptional circumstances, to attend such proceedings.

(B) Exception

In the case of an alien not in detention, a written notice shall not be required under this paragraph if the alien has failed to provide the address required under paragraph (1)(F).

(3) Central address files

The Attorney General shall create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under paragraph (1)(F).

(b) Securing of counsel

(1) In general

In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under [section 1229a](#) of this title, the hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear, unless the alien requests in writing an earlier hearing date.

(2) Current lists of counsel

The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in proceedings under [section 1229a](#) of this title. Such lists shall be provided under subsection (a)(1)(E) and otherwise made generally available.

(3) Rule of construction

Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien pursuant to [section 1229a](#) of this title if the time period described in paragraph (1) has elapsed and the alien has failed to secure counsel.

(c) Service by mail

Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F).

(d) Prompt initiation of removal

(1) In the case of an alien who is convicted of an offense which makes the alien deportable, the Attorney General shall begin any removal proceeding as expeditiously as possible after the date of the conviction.

(2) Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(e) Certification of compliance with restrictions on disclosure

(1) In general

In cases where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified in paragraph (2), the Notice to Appear shall include a statement that the provisions of [section 1367](#) of this title have been complied with.

(2) Locations

The locations specified in this paragraph are as follows:

(A) At a domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization.

(B) At a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in [subparagraph \(T\)](#) or [\(U\) of section 1101\(a\)\(15\)](#) of this title.

CREDIT(S)

(June 27, 1952, c. 477, Title II, § 239, as added [Pub.L. 104-208](#), Div. C, Title III, § 304(a)(3), Sept. 30, 1996, 110 Stat. 3009-587; amended [Pub.L. 109-162](#), Title VIII, § 825(c)(1), Jan. 5, 2006, 119 Stat. 3065; [Pub.L. 109-271](#), § 6(d), Aug. 12, 2006, 120 Stat. 763.)

[Notes of Decisions \(73\)](#)

8 U.S.C.A. § 1229, 8 USCA § 1229
Current through P.L. 116-5. Title 26 current through 116-7.

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Proposed Legislation

United States Code Annotated

Title 8. Aliens and Nationality (Refs & Annos)

Chapter 12. Immigration and Nationality (Refs & Annos)

Subchapter II. Immigration

Part VIII. General Penalty Provisions

8 U.S.C.A. § 1326

§ 1326. Reentry of removed aliens

Effective: September 30, 1996

[Currentness](#)

(a) In general

Subject to subsection (b), any alien who--

(1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be fined under Title 18, or imprisoned not more than 2 years, or both.

(b) Criminal penalties for reentry of certain removed aliens

Notwithstanding subsection (a), in the case of any alien described in such subsection--

(1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under Title 18, imprisoned not more than 10 years, or both;

(2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both;

(3) who has been excluded from the United States pursuant to [section 1225\(c\)](#) of this title because the alien was excludable under [section 1182\(a\)\(3\)\(B\)](#) of this title or who has been removed from the United States pursuant to the

provisions of subchapter V, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under Title 18 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.¹ or

(4) who was removed from the United States pursuant to [section 1231\(a\)\(4\)\(B\)](#) of this title who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under Title 18, imprisoned for not more than 10 years, or both.

For the purposes of this subsection, the term “removal” includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.

(c) Reentry of alien deported prior to completion of term of imprisonment

Any alien deported pursuant to [section 1252\(h\)\(2\)](#)² of this title who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.

(d) Limitation on collateral attack on underlying deportation order

In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that--

- (1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;
- (2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and
- (3) the entry of the order was fundamentally unfair.

CREDIT(S)

(June 27, 1952, c. 477, Title II, ch. 8, § 276, 66 Stat. 229; [Pub.L. 100-690, Title VII, § 7345\(a\)](#), Nov. 18, 1988, 102 Stat. 4471; [Pub.L. 101-649, Title V, § 543\(b\)\(3\)](#), Nov. 29, 1990, 104 Stat. 5059; [Pub.L. 103-322, Title XIII, § 130001\(b\)](#), Sept. 13, 1994, 108 Stat. 2023; [Pub.L. 104-132, Title IV, §§ 401\(c\)](#), 438(b), 441(a), Apr. 24, 1996, 110 Stat. 1267, 1276, 1279; [Pub.L. 104-208](#), Div. C, Title III, §§ 305(b), 308(d)(4)(J), (e)(1)(K), (14)(A), 324(a), (b), Sept. 30, 1996, 110 Stat. 3009-606, 3009-618 to 3009-620, 3009-629.)

[Notes of Decisions \(1300\)](#)

Footnotes

1 So in original. The period probably should be a semicolon.

2 So in original. [Section 1252](#) of this title, was amended by [Pub.L. 104-208](#), Div. C, Title III, § 306(a)(2), Sept. 30, 1996, 110 Stat. 3009-607, and as so amended, does not contain a subsec. (h); for provisions similar to those formerly contained in [section 1252\(h\)\(2\)](#) of this title, see [8 U.S.C.A. § 1231\(a\)\(4\)](#).

8 U.S.C.A. § 1326, 8 USCA § 1326

Current through P.L. 115-132.

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[Code of Federal Regulations](#)

[Title 8. Aliens and Nationality](#)

[Chapter V. Executive Office for Immigration Review, Department of Justice \(Refs & Annos\)](#)

[Subchapter A. General Provisions \(Refs & Annos\)](#)

[Part 1003. Executive Office for Immigration Review \(Refs & Annos\)](#)

[Subpart C. Immigration Court—Rules of Procedure \(Refs & Annos\)](#)

8 C.F.R. § 1003.13

§ 1003.13 Definitions.

[Currentness](#)

As used in this subpart:

Administrative control means custodial responsibility for the Record of Proceeding as specified in [§ 1003.11](#).

Charging document means the written instrument which initiates a proceeding before an Immigration Judge. For proceedings initiated prior to April 1, 1997, these documents include an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien. For proceedings initiated after April 1, 1997, these documents include a Notice to Appear, a Notice of Referral to Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien.

Filing means the actual receipt of a document by the appropriate Immigration Court.

Service means physically presenting or mailing a document to the appropriate party or parties; except that an Order to Show Cause or Notice of Deportation Hearing shall be served in person to the alien, or by certified mail to the alien or the alien's attorney and a Notice to Appear or Notice of Removal Hearing shall be served to the alien in person, or if personal service is not practicable, shall be served by regular mail to the alien or the alien's attorney of record.

Credits

[[57 FR 11571](#), April 6, 1992; [59 FR 1899](#), Jan. 13, 1994; [60 FR 34089](#), June 30, 1995; [62 FR 10332](#), March 6, 1997]

AUTHORITY: [5 U.S.C. 301](#); [6 U.S.C. 521](#); [8 U.S.C. 1101](#), [1103](#), [1154](#), [1155](#), [1158](#), [1182](#), [1226](#), [1229](#), [1229a](#), [1229b](#), [1229c](#), [1231](#), [1254a](#), [1255](#), [1324d](#), [1330](#), [1361](#), [1362](#); [28 U.S.C. 509](#), [510](#), [1746](#); sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; [section 203 of Pub.L. 105–100](#), [111 Stat. 2196–200](#); sections 1506 and 1510 of [Pub.L. 106–386](#), [114 Stat. 1527–29](#), [1531–32](#); [section 1505 of Pub.L. 106–554](#), [114 Stat. 2763A–326 to –328](#).

[Notes of Decisions \(7\)](#)

Current through March 14, 2019; 84 FR 9449.

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Code of Federal Regulations

Title 8. Aliens and Nationality

Chapter V. Executive Office for Immigration Review, Department of Justice (Refs & Annos)

Subchapter A. General Provisions (Refs & Annos)

Part 1003. Executive Office for Immigration Review (Refs & Annos)

Subpart C. Immigration Court—Rules of Procedure (Refs & Annos)

8 C.F.R. § 1003.14

§ 1003.14 Jurisdiction and commencement of proceedings.

Currentness

(a) Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service. The charging document must include a certificate showing service on the opposing party pursuant to § 1003.32 which indicates the Immigration Court in which the charging document is filed. However, no charging document is required to be filed with the Immigration Court to commence bond proceedings pursuant to §§ 1003.19, 1236.1(d) and 1240.2(b) of this chapter.

(b) When an Immigration Judge has jurisdiction over an underlying proceeding, sole jurisdiction over applications for asylum shall lie with the Immigration Judge.

(c) Immigration Judges have jurisdiction to administer the oath of allegiance in administrative naturalization ceremonies conducted by the Service in accordance with § 1337.2(b) of this chapter.

(d) The jurisdiction of, and procedures before, immigration judges in exclusion, deportation and removal, rescission, asylum-only, and any other proceedings shall remain in effect as it was in effect on February 28, 2003, until the regulations in this chapter are further modified by the Attorney General. Where a decision of an officer of the Immigration and Naturalization Service was, before March 1, 2003, appealable to the Board or an immigration judge, or an application denied could be renewed in proceedings before an immigration judge, the same authority and procedures shall be followed until further modified by the Attorney General.

Credits

[57 FR 11571, April 6, 1992; 59 FR 1899, Jan. 13, 1994; 60 FR 34089, June 30, 1995; 62 FR 10332, March 6, 1997; 68 FR 9832, Feb. 28, 2003; 68 FR 10350, March 5, 2003]

AUTHORITY: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b,

[1231](#), [1254a](#), [1255](#), [1324d](#), [1330](#), [1361](#), [1362](#); 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; [section 203 of Pub.L. 105–100](#), 111 Stat. 2196–200; sections 1506 and 1510 of [Pub.L. 106–386](#), 114 Stat. 1527–29, 1531–32; [section 1505 of Pub.L. 106–554](#), 114 Stat. 2763A–326 to –328.

[Notes of Decisions \(23\)](#)

Current through March 14, 2019; 84 FR 9449.

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Unconstitutional or PreemptedHeld Invalid [United States v. Chavez-Flores](#), W.D.Tex., Feb. 05, 2019

[Code of Federal Regulations](#)

[Title 8. Aliens and Nationality](#)

[Chapter V. Executive Office for Immigration Review, Department of Justice \(Refs & Annos\)](#)

[Subchapter A. General Provisions \(Refs & Annos\)](#)

[Part 1003. Executive Office for Immigration Review \(Refs & Annos\)](#)

[Subpart C. Immigration Court—Rules of Procedure \(Refs & Annos\)](#)

8 C.F.R. § 1003.15

§ 1003.15 Contents of the order to show cause and notice to appear and notification of change of address.

[Currentness](#)

(a) In the Order to Show Cause, the Service shall provide the following administrative information to the Executive Office for Immigration Review. Omission of any of these items shall not provide the alien with any substantive or procedural rights:

- (1) The alien's names and any known aliases;
- (2) The alien's address;
- (3) The alien's registration number, with any lead alien registration number with which the alien is associated;
- (4) The alien's alleged nationality and citizenship;
- (5) The language that the alien understands;

(b) The Order to Show Cause and Notice to Appear must also include the following information:

- (1) The nature of the proceedings against the alien;

(2) The legal authority under which the proceedings are conducted;

(3) The acts or conduct alleged to be in violation of law;

(4) The charges against the alien and the statutory provisions alleged to have been violated;

(5) Notice that the alien may be represented, at no cost to the government, by counsel or other representative authorized to appear pursuant to [8 CFR 1292.1](#);

(6) The address of the Immigration Court where the Service will file the Order to Show Cause and Notice to Appear; and

(7) A statement that the alien must advise the Immigration Court having administrative control over the Record of Proceeding of his or her current address and telephone number and a statement that failure to provide such information may result in an in absentia hearing in accordance with [§ 1003.26](#).

(c) Contents of the Notice to Appear for removal proceedings. In the Notice to Appear for removal proceedings, the Service shall provide the following administrative information to the Immigration Court. Failure to provide any of these items shall not be construed as affording the alien any substantive or procedural rights.

(1) The alien's names and any known aliases;

(2) The alien's address;

(3) The alien's registration number, with any lead alien registration number with which the alien is associated;

(4) The alien's alleged nationality and citizenship; and

(5) The language that the alien understands.

(d) Address and telephone number.

(1) If the alien's address is not provided on the Order to Show Cause or Notice to Appear, or if the address on the Order to Show Cause or Notice to Appear is incorrect, the alien must provide to the Immigration Court where the charging document has been filed, within five days of service of that document, a written notice of an address and telephone number at which the alien can be contacted. The alien may satisfy this requirement by completing and filing Form EOIR-33.

(2) Within five days of any change of address, the alien must provide written notice of the change of address on Form EOIR-33 to the Immigration Court where the charging document has been filed, or if venue has been changed, to the Immigration Court to which venue has been changed.

Credits

[[57 FR 11571](#), April 6, 1992; [59 FR 1899](#), Jan. 13, 1994; [60 FR 34089](#), June 30, 1995; [62 FR 10332](#), March 6, 1997; [68 FR 10350](#), March 5, 2003]

AUTHORITY: [5 U.S.C. 301](#); [6 U.S.C. 521](#); [8 U.S.C. 1101](#), [1103](#), [1154](#), [1155](#), [1158](#), [1182](#), [1226](#), [1229](#), [1229a](#), [1229b](#), [1229c](#), [1231](#), [1254a](#), [1255](#), [1324d](#), [1330](#), [1361](#), [1362](#); [28 U.S.C. 509](#), [510](#), [1746](#); sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949-1953 Comp., p. 1002; [section 203 of Pub.L. 105-100](#), [111 Stat. 2196-200](#); sections 1506 and 1510 of [Pub.L. 106-386](#), [114 Stat. 1527-29](#), [1531-32](#); [section 1505 of Pub.L. 106-554](#), [114 Stat. 2763A-326 to -328](#).

Notes of Decisions (13)

Current through March 14, 2019; 84 FR 9449.

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[Part 1003. Executive Office for Immigration Review \(Refs & Annos\)](#)

[Subpart C. Immigration Court—Rules of Procedure \(Refs & Annos\)](#)

8 C.F.R. § 1003.18

§ 1003.18 Scheduling of cases.

[Currentness](#)

<For statute(s) affecting validity, see: [8 USCA § 1229a](#), [1229b](#).>

(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) In removal proceedings pursuant to section 240 of the Act, the Service shall provide in the Notice to Appear, the time, place and date of the initial removal hearing, where practicable. If 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. In the case of any change or postponement in the time and place of such proceeding, the Immigration Court shall provide written notice to the alien specifying the new time and place of the proceeding and the consequences under section 240(b)(5) of the Act of failing, except under exceptional circumstances as defined in section 240(e)(1) of the Act, to attend such proceeding. No such notice shall be required for an alien not in detention if the alien has failed to provide the address required in section 239(a)(1)(F) of the Act.

Credits

[[57 FR 11571](#), April 6, 1992; [59 FR 1899](#), Jan. 13, 1994; [60 FR 34089](#), June 30, 1995; [62 FR 10332](#), March 6, 1997]

AUTHORITY: [5 U.S.C. 301](#); [6 U.S.C. 521](#); [8 U.S.C. 1101](#), [1103](#), [1154](#), [1155](#), [1158](#), [1182](#), [1226](#), [1229](#), [1229a](#), [1229b](#), [1229c](#), [1231](#), [1254a](#), [1255](#), [1324d](#), [1330](#), [1361](#), [1362](#); [28 U.S.C. 509](#), [510](#), [1746](#); sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; [section 203 of Pub.L. 105–100](#), [111 Stat. 2196–200](#); sections 1506 and 1510 of [Pub.L. 106–386](#), [114 Stat. 1527–29](#), [1531–32](#); [section 1505 of Pub.L. 106–554](#), [114 Stat. 2763A–326](#) to –328.

Notes of Decisions (2)

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