

No. 19-7821

IN THE SUPREME COURT OF THE UNITED STATES

JUAN ALBERTO CANTU-SIGUERO, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. Petitioners contend (Pet. 5-7) that the immigration court lacked jurisdiction over their removal proceedings because the initial notices to appear filed with the immigration court did not specify the date and time of their removal hearings.¹ This Court has recently and repeatedly denied petitions for writs of certiorari raising the same issue, see Ferreira v. Barr, No. 19-1044 (June 1, 2020); Ramos v. Barr, No. 19-1048 (May 26, 2020);

¹ Pursuant to this Court's Rule 12.4, petitioners are Juan Alberto Cantu-Siguero, Jose Gomez-Lopez, Horacio Gutierrez-Murillo, Eduardo Hernandez Castellanos, Pedro Palacios Guevara, Odwar Geovany Palomeque-Ramos, Jose Antonio Vargas Castro, Margarito Zarate-Hernandez, and Juan de Dios Trevino-Villarreal, who received separate judgments from the same court of appeals presenting closely related questions. See Pet. ii.

Pedroza-Rocha v. United States, No. 19-6588 (May 18, 2020); Nkomo v. Barr, No. 19-957 (May 4, 2020); Gonzalez-De Leon v. Barr, No. 19-940 (May 4, 2020); Mora-Galindo v. United States, No. 19-7410 (Apr. 27, 2020); Callejas Rivera v. United States, No. 19-7052 (Apr. 27, 2020); Araujo Buleje v. Barr, No. 19-908 (Apr. 27, 2020); Pierre-Paul v. Barr, No. 19-779 (Apr. 27, 2020); 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.²

For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in Callejas Rivera v. United States, supra, the court of appeals correctly rejected petitioners' jurisdictional challenges, for two independent reasons. See Br. in Opp. at 14-19, Callejas Rivera, supra (No. 19-7052).³ First, a notice to appear need not specify the date and time of the initial removal hearing in order for "[j]urisdiction" to "vest[]" under the pertinent regulations,

² Other pending petitions for writs of certiorari raise similar issues. See, e.g., Milla-Perez v. Barr, No. 19-8296 (filed Feb. 15, 2020); Pineda-Fernandez v. United States, No. 19-7753 (filed Feb. 19, 2020); Mayorga v. United States, No. 19-7996 (filed Mar. 11, 2020); Castro-Chavez v. Barr, No. 19-1242 (filed Apr. 18, 2020).

³ We have served petitioners with a copy of the government's brief in opposition in Callejas Rivera.

8 C.F.R. 1003.14(a). Second, any requirement that the notice to appear contain the date and time of the initial removal hearing is not a “jurisdictional” requirement, but rather is simply a “claim-processing rule.” Br. in Opp. at 16, Callejas Rivera, supra (No. 19-7052) (citation omitted).⁴ Accordingly, petitioners forfeited any objection to the contents of the notice to appear by not raising that issue before the immigration judge or the Board of Immigration Appeals. See 19-cr-78 D. Ct. Doc. 12-2, at 4 (Mar. 13, 2019) (Cantu-Siguero); Pet. App. K2-K6 (Gomez-Lopez); Pet. App. L2, L8-L9 (Gutierrez-Murillo); Pet. App. M2 (Hernandez Castellanos); Pet. App. N3, N11 (Palacios Guevara); Pet. App. O1 (Palomeque-Ramos); Pet. App. P1-P2 (Vargas Castro); Pet. App. Q3 (Zarate-Hernandez); Pet. App. R1-R3 (Trevino-Villarreal).⁵

Petitioners have not identified any court of appeals in which the outcome of their cases would have been different. As discussed

⁴ In Vargas Castro’s case, the court of appeals correctly rejected his jurisdictional challenge for an additional reason. 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 Vargas Castro was provided with a notice of hearing containing that information. See 18-cr-570 D. Ct. Doc. 17, at 3 (Dec. 13, 2018).

⁵ Petitioners contend (Pet. 6) that a transitional provision in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546, supports their entitlement to relief. That transitional provision is inapposite. For the reasons stated in United States v. Lira-Ramirez, 951 F.3d 1258 (10th Cir. 2020), the provision does not suggest that 8 U.S.C. 1229(a) speaks to an immigration court’s “jurisdiction” or that the filing of a notice to appear with the immigration court is a “jurisdictional” requirement in the strict sense of the term. 951 F.3d at 1262-1263.

in the government's brief in opposition in Callejas Rivera, no precedent in any court of appeals that has addressed the question presented would authorize relief on a claim like petitioners'. See Br. in Opp. at 19-20, Callejas Rivera, supra (No. 19-7052). For the reasons explained there, see id. at 20-23, petitioners err in asserting that some circuits have deemed a requirement that a notice to appear contain the date and time of the initial removal hearing to be "jurisdictional" in the strict sense of the term (Pet. 9-10), and that the outcome of their cases would have been different in the Seventh or Eleventh Circuits (Pet. 8).

2. Petitioners additionally contend (Pet. 10-12) that 8 U.S.C. 1326(d) violates due process if it precludes them from collaterally attacking their removal orders. For the reasons stated in the government's brief in opposition in Callejas Rivera, that contention likewise lacks merit and does not warrant this Court's review. See Br. in Opp. at 23-25, Callejas Rivera, supra (No. 19-7052). Furthermore, these cases would be poor vehicles for addressing whether Section 1326(d) violates due process, because the courts below did not address the constitutionality of Section 1326(d). See Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005) (explaining that this Court is "a court of review, not of first view"). This Court has recently denied review of similar issues in other cases. See Mora-Galindo, supra (No. 19-7410);

Callejas Rivera, supra (No. 19-7052).⁶ It should follow the same course here.

3. In any event, these cases would be unsuitable vehicles for addressing the questions presented because neither question presented alone is outcome-determinative. Petitioners would have to prevail on both questions presented in order to be entitled to dismissal of the indictments. These cases therefore do not present either question cleanly.

The petition for a writ of certiorari should be denied.⁷

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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⁶ Other pending petitions for writs of certiorari raise similar issues. See, e.g., Pineda-Fernandez, supra (No. 19-7753); Mayorga, supra (No. 19-7996).

⁷ The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.