

**SUPREME COURT
OF THE UNITED STATES**

IN THE SUPREME COURT OF THE UNITED STATES

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HUGO ABISAI MONSALVO VELAZQUEZ,)

 Petitioner,)

 v.) No. 23-929

MERRICK B. GARLAND,)

ATTORNEY GENERAL,)

 Respondent.)

Pages: 1 through 82
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4 Petitioner,)
5 v.) No. 23-929
6 MERRICK B. GARLAND,)
7 ATTORNEY GENERAL,)
8 Respondent.)
9 - - - - -

10
11 Washington, D.C.
12 Tuesday, November 12, 2024
13

14 The above-entitled matter came on for
15 oral argument before the Supreme Court of the
16 United States at 10:04 a.m.
17

18 APPEARANCES:
19 GERARD J. CEDRONE, ESQUIRE, Boston, Massachusetts; on
20 behalf of the Petitioner.
21 ANTHONY A. YANG, Assistant to the Solicitor General,
22 Department of Justice, Washington, D.C.; on behalf
23 of the Respondent.
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1 P R O C E E D I N G S

2 (10:04 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument first this morning in Case 23-929,
5 Velazquez versus Garland.

6 Mr. Cedrone.

7 ORAL ARGUMENT OF GERARD J. CEDRONE

8 ON BEHALF OF THE PETITIONER

9 MR. CEDRONE: Thank you, Mr. Chief
10 Justice, and may it please the Court:

11 The 60-day time period in the
12 voluntary departure statute works like any
13 routine legal time period. When the last day
14 falls on a weekend or holiday, the period
15 continues to run until the next business day.

16 Congress would have expected people to
17 read the statute this way. In 1996, common law
18 principles, case law, established rules and
19 regulations, and years of consistent practice
20 all pointed to that interpretation. If Congress
21 had meant to deviate from that traditional
22 understanding, it would have said so.

23 Even the government now acknowledges
24 that other deadlines in the same section of
25 IIRIRA follow the traditional rule in light of a

1 long-standing immigration regulation defining
2 the word "day." So the only way to adopt the
3 government's interpretation is to believe that
4 Congress used two different meanings of the word
5 "day" in the same section of the same statute.
6 There's simply no indication that Congress took
7 that kind of split approach.

8 The government's interpretation would
9 also spell chaos for regulatory definitions and
10 deadlines. In the government's view, even
11 though Section 1001.1(h) provides a single
12 definition for the word "day," that -- the
13 immigration regulations actually use that term
14 to mean different things throughout. And so the
15 only way to tell which deadline follows which
16 time calculation rule is to trace each
17 deadline's history back through earlier and
18 earlier versions of the code and Code of Federal
19 Regulations.

20 Answering a question as simple as does
21 my deadline fall on Saturday or Monday shouldn't
22 depend on this kind of complex historical
23 investigation, especially when deportation's on
24 the line. The default rule for weekends and
25 holidays exists precisely to avoid this kind of

1 case-by-case guesswork.

2 The government -- identifies no reason
3 and certainly no reason grounded in the text of
4 the statute to depart from that traditional
5 rule. The Court should read Section 1229c like
6 any other statute and follow the usual rule for
7 weekends and holidays.

8 I welcome the Court's questions.

9 JUSTICE THOMAS: 1252(a) speaks in
10 terms of a removal -- final removal order. Is
11 there one involved in this case?

12 MR. CEDRONE: There is, Your Honor.
13 And I would make two points.

14 First, as you point out, subsection
15 (a)(1) speaks in terms of judicial review of a
16 final order of removal. That's exactly what
17 we're seeking. If we win in this case, the
18 final order of removal that binds our client
19 will say one thing. If we lose, it will say
20 another.

21 And the second point is this Court has
22 long recognized that BIA decisions on reopening
23 and reconsideration are separate final orders
24 that require a separate petition and are
25 separately reviewable in the courts of appeals.

1 JUSTICE THOMAS: It seems that you're
2 saying that a collateral consequence to a ruling
3 on this is a part of the final order. How is
4 that?

5 MR. CEDRONE: So the voluntary --

6 JUSTICE THOMAS: The order itself is
7 not here, right?

8 MR. CEDRONE: I -- I disagree, Your
9 Honor, in two respects. So, one, as I just
10 pointed out, the Court has consistently
11 explained that a reconsideration or reopening
12 decision is --

13 JUSTICE THOMAS: I thought we were
14 talking about the 60 -- whether there are 60
15 days or 62 days to leave for -- voluntarily.

16 MR. CEDRONE: That's right, Your
17 Honor. And the voluntary departure order at
18 pages 42a and 43a of the Petition Appendix spell
19 out the consequences if, on the one hand, our
20 client files a timely motion to reopen or, on
21 the other hand, if our client fails to depart
22 the country or files an untimely motion.

23 There are two alternate orders of
24 removal waiting in the wings, one with harsh
25 penalties, one without, and this timeliness

1 determination directly affects which of those
2 alternate orders of removal will take effect.

3 CHIEF JUSTICE ROBERTS: You argue, and
4 just did, that this is a very simple question.
5 But a good part of your argument is taking
6 regulatory provisions and applying them to the
7 statute. You say that that is the appropriate
8 prism through which to read the statute.

9 The prism test doesn't sound very
10 straightforward and clear to me.

11 MR. CEDRONE: What you have in this
12 case is everything pointing in the same
13 direction. So start with the regulation.
14 Section 1001.1 provides a definition of "day"
15 that has governed since the creation of the INA
16 and that remained unchanged for a decade before
17 this particular provision passed.

18 And the government even acknowledges
19 now that other deadlines in the same section of
20 IIRIRA follow that definition. So somebody
21 picking up the statute in 1996 would have read
22 the statute in light of that definition.

23 But it's not just the regulation. As
24 we point out, that regulation codifies an
25 earlier practice that's reflected in Civil Rule

1 6(a), which this Court and the BIA have looked
2 to. That rule itself codifies earlier
3 decisions, like this Court's decision in Street,
4 that recognized a general principle that when a
5 power can be exercised up until a certain day --
6 if that day is a Sunday or holiday, it can be
7 exercised the next business day.

8 And those decisions recognized an
9 even -- or -- or encapsulated --

10 CHIEF JUSTICE ROBERTS: The --

11 MR. CEDRONE: -- an even --

12 CHIEF JUSTICE ROBERTS: I'm sorry, go
13 ahead.

14 MR. CEDRONE: Encapsulated an even
15 earlier common law principle. And so somebody
16 reading this statute in '96 would have had no
17 reason to deviate from all of those things,
18 pointing to the same interpretation.

19 CHIEF JUSTICE ROBERTS: But your
20 argument evolves, right? I mean, as I read your
21 brief anyway, the Sunday provision was pretty
22 clear early on, but then Saturday kind of crept
23 in there somewhere along the way. And so,
24 usually, we think of statutory -- timing
25 deadlines as not sort of flexible in that way.

1 MR. CEDRONE: Two points, Your Honor.

2 First, I -- I would just return to the
3 regulation and say that that definition, which
4 was in place for years before this statute
5 passed, encapsulated Saturday, and that's
6 codified --

7 CHIEF JUSTICE ROBERTS: Right, but
8 we're talking about the statute, so --

9 MR. CEDRONE: Right, and I think that
10 regulation encapsulates an earlier principle
11 that has not changed over time. So the way I
12 would frame the principle generally is that
13 there are certain days, you can call them --
14 certain legally recognized days of rest. You
15 can call them non-business days. You can use
16 the Latin term dies non juridicus. That
17 principle recognizes that when a deadline or
18 time period expires on one of those legally
19 recognized days of rest, it carries over to the
20 next day.

21 But the days that are legally
22 recognized days of rest can change over time.
23 And so, with respect to Saturday, of course,
24 there was a change in the 20th century as
25 Saturday came to be recognized as a day that's

1 akin to Sunday, on par with Sunday.

2 But the prin- -- the underlying
3 principle that --

4 JUSTICE SOTOMAYOR: Counsel, why are
5 you going so far? You don't need the common
6 law. Common law provides a background for what
7 Congress was doing when it passed this law,
8 correct?

9 MR. CEDRONE: Yes.

10 JUSTICE SOTOMAYOR: And your answer is
11 that when a word comes with old soil, you
12 transport the old soil.

13 MR. CEDRONE: That's right.

14 JUSTICE SOTOMAYOR: All right. And
15 the old soil here, even according to the
16 government, was that "day" was defined according
17 to the regulation.

18 MR. CEDRONE: That's right.

19 JUSTICE SOTOMAYOR: All right. Now
20 the question is do we follow the government's
21 new argument that there's somehow a difference
22 in how "day" is defined with respect to court
23 obligations or -- I -- I don't know where they
24 get the word "substantive" from -- or
25 substantive obligations, correct?

1 MR. CEDRONE: That's right.

2 JUSTICE SOTOMAYOR: But, if I look at
3 the old soil, why don't I look at the law
4 itself, the INA law, and when Congress wanted to
5 talk about calendar days, it used "calendar day"
6 instead of the word "day," correct? I'm looking
7 at 8 U.S.C. 1228(b)(3), which has to do with the
8 Attorney -- Attorney General not executing any
9 order for -- for expedited removal until 14
10 calendar days have passed, correct?

11 MR. CEDRONE: I confess I'm not
12 familiar with that particular provision, but our
13 position generally is that Congress can deviate
14 from this principle and it --

15 JUSTICE SOTOMAYOR: And something like
16 this would be a clear deviation?

17 MR. CEDRONE: I think it probably
18 would be.

19 JUSTICE SOTOMAYOR: All right. Now am
20 I -- I want to go back to the jurisdictional
21 question that Justice Thomas started with. The
22 government didn't raise a jurisdictional -- this
23 jurisdictional point before the Tenth Circuit,
24 did it?

25 MR. CEDRONE: It did not.

1 JUSTICE SOTOMAYOR: And it raised it
2 in its petition for opposition, but you didn't
3 reply to it until your reply, correct?

4 MR. CEDRONE: That's correct.

5 JUSTICE SOTOMAYOR: Has this
6 percolated among other courts yet?

7 MR. CEDRONE: I -- I don't believe
8 this particular issue -- well, I should say
9 this. I don't think it's really disputed that
10 there's jurisdiction --

11 JUSTICE SOTOMAYOR: I agree --

12 MR. CEDRONE: -- in this case, so no.

13 JUSTICE SOTOMAYOR: -- because, after
14 Mata, we said motions to reconsider have an
15 independent jurisdictional basis, correct?

16 MR. CEDRONE: That's right.

17 JUSTICE SOTOMAYOR: So hard to think
18 why anybody would think they didn't have
19 jurisdiction. But, if we were to accept the
20 government's ruling, do you know what other
21 consequences this would have?

22 MR. CEDRONE: I think, if you accept
23 the government's view of jurisdiction in this
24 case, it would be either a real sea change for
25 immigration law because it would mean that

1 reopening and reconsideration decisions aren't
2 separately reviewable, as this Court has
3 consistently pointed out in Reyes Mata, in
4 Kucana against Holder and other cases --

5 JUSTICE SOTOMAYOR: What --

6 MR. CEDRONE: -- or --

7 JUSTICE SOTOMAYOR: -- what other --
8 the government says this is a one-off case -- I
9 don't know whether we would have granted cert if
10 we knew it was one-off to start with -- that
11 everybody else appeals the order to remove, but
12 you didn't.

13 So I guess my question is, assuming we
14 rule the way the government wants us to, do we
15 know fully the consequences of that?

16 MR. CEDRONE: I think it would be a
17 lot of make-way arguments in the courts of
18 appeals. The government doesn't dispute, nor
19 could it, that courts of appeals have
20 jurisdiction to review --

21 JUSTICE SOTOMAYOR: Counsel, stop
22 going to the substance. I'm trying to ask you a
23 question. Given that this is a new issue before
24 us, isn't the best way to deal with it is to let
25 the court below address what consequences there

1 are --

2 MR. CEDRONE: I -- I --

3 JUSTICE SOTOMAYOR: -- to this
4 jurisdictional issue?

5 MR. CEDRONE: I agree, the Court
6 doesn't need to weigh into the jurisdictional
7 issue beyond recognizing that this case falls
8 within 1252(a)(1).

9 I -- I do think there would be
10 confusion if the Court were to side with the
11 government because the government doesn't
12 dispute that courts of appeals can review this
13 exact issue. It just thinks you have to bundle
14 it with other arguments.

15 There's nothing in the text of the
16 statute that requires it.

17 JUSTICE GORSUCH: Well, I think, as I
18 understood Justice Sotomayor, Mr. Cedrone, one
19 of -- what she was asking you to talk about was
20 what collateral consequences, errors that the
21 government might make in a reopening petition
22 that's denied that would be unreviewable.

23 I mean, one consequence here would be
24 say you were clearly within the 60 days, there
25 was no doubt about it, and the government said

1 you weren't. That would be unreviewable, I
2 think, on the government's jurisdictional theory
3 because it wouldn't affect the order of -- it
4 wouldn't affect the removability of your client,
5 even though it would impose a 10-year bar,
6 outside the country, erroneously.

7 Are there other such consequences like
8 that that you can think of?

9 MR. CEDRONE: I think there are all
10 sorts of things that get decided in reopening or
11 reconsideration decisions that are distinct from
12 removability but nevertheless go to the terms of
13 your final order of removal.

14 So people -- Congress contemplated
15 that people would seek reopening often years
16 after a final order of removal because of
17 changed factual circumstances or other things.
18 And under subsection (b)(9), the statute
19 contemplates that all of these things will get
20 funneled into a proceeding in the court of
21 appeals.

22 And so to say that there's -- that
23 this should have been raised differently doesn't
24 account for the fact that this is the proceeding
25 in which these issues should be raised.

1 Turning --

2 JUSTICE BARRETT: Mr. Cedrone --

3 MR. CEDRONE: Oh.

4 JUSTICE BARRETT: -- can I ask you one
5 question about jurisdiction and one question
6 about the merits.

7 On jurisdiction, Justice Sotomayor
8 pointed out that this seems to be a one-off
9 case. I just want to clarify with you -- and
10 the government can speak to this too if the
11 answer is different -- how often does it happen
12 that someone like your client simply challenges
13 the motion to reconsider and not the other --
14 the underlying order? Is -- is this very
15 unusual so that this jurisdictional question
16 wouldn't really frequently arise?

17 MR. CEDRONE: I -- I confess that I --
18 I don't have a sense of the -- the balance of
19 that, other than to say that, as I was just
20 describing, motions to reopen often come up
21 years after the final order of removal and may
22 involve questions of changed factual
23 circumstances or other things that entitle you
24 to relief from removal.

25 And so I think, on the government's

1 view, this case is a one-off, not in that the
2 government is taking the position that this
3 issue is never reviewable, just that you have to
4 bundle it in your petition with some sort of
5 challenge, however slight, to your removability
6 to seize the court of jurisdiction.

7 And I don't see any support for that
8 in the statute.

9 JUSTICE BARRETT: Okay. My question
10 on the merits -- most of the time when we think
11 about this, and as I understand the regulatory
12 backdrop, when we're thinking about filing
13 something, the reason why it gets bumped over
14 to, say, a Monday from a Saturday is that the
15 court's closed. But could your client have
16 departed on a Saturday?

17 It just -- that -- that strikes me as
18 the difference here, that this isn't governing
19 filing dates or something that you're doing.
20 It's just saying that your authorization to be
21 in the country expires, you know -- at that
22 60-day mark.

23 And it's not that the court was
24 closed. I mean, your client could have
25 departed, right?

1 MR. CEDRONE: That's true. I can't
2 dispute the factual premise that often somebody
3 can get on a plane or drive across the border on
4 a Saturday. This principle is deeper than that,
5 and there are several indications that this
6 principle is not just about court closures or
7 filings. I think the best evidence of that is
8 to go -- I'll start with the regulation and work
9 outwards.

10 So the regulatory definition of "day"
11 in Section 1001.1 says that definition of "day,"
12 which builds in the traditional rule, applies to
13 any action in immigration regulations.

14 Even on the government's theory of how
15 that deadline applies, that principle applies to
16 things like getting married to maintain your
17 visa status, regulatory deadlines for getting
18 fingerprinted after you enter the country,
19 regulatory deadlines for taking a citizenship
20 test. So these are all things that are not
21 filing, not court-related.

22 Working outward from there, Rule 6(a),
23 as we've pointed out, also applies to any
24 applicable statute and any court order. And so
25 that, of course, covers things like filing in

1 district court, but it also covers things -- we
2 give examples at page 18 of our reply brief --
3 of injunctions that a court might enter imposing
4 substantive obligations on a party.

5 So say you're a defendant in a trade
6 secrets suit. You're found liable. The court
7 might enter an order at the end of the case
8 saying: Defendant, you have 30 days to turn
9 over the misappropriated property. Under Rule
10 6(a), that 30-day deadline clearly follows the
11 traditional rule.

12 And then working even outward from
13 there, we have examples like -- at page 28 of
14 our brief, cases like the Aetna case applying
15 this traditional principle to deadlines under
16 ERISA, which binds private parties, private
17 plans, requires them to take all sorts of
18 actions vis-à-vis each other outside the context
19 of litigation.

20 And then this Court's decision in
21 Street, which applied this principle to a
22 statute that sets time limits on the President's
23 authority to take action, as we explain in the
24 brief, that statute in Street is parallel to
25 this statute. Section 1229c gives the Attorney

1 General the authority to grant voluntary
2 departure and then places a time limit on it.

3 The statute in Street worked
4 similarly. The Court applied the traditional
5 rule there. It should apply the traditional
6 rule here.

7 JUSTICE ALITO: Counsel, you --

8 JUSTICE KAGAN: Just for this --

9 JUSTICE ALITO: -- counsel, you have
10 an argument that there should be a rule that
11 applies in all situations, and it just causes a
12 lot of confusion if it's not uniform. I -- I
13 get that.

14 But put all of that aside. Can you
15 think of any practical reason why Congress would
16 have wanted to give a two-day extension when
17 what's involved is something that can be done
18 just as easily on a Saturday or a Sunday as a
19 Monday?

20 There were reasons for the rules about
21 filing, because courts were closed. Some of the
22 things that you mentioned are things that would
23 be more difficult perhaps to accomplish on a
24 weekend.

25 Originally, perhaps the rule for

1 Sunday was based on religion. You might argue
2 that it should be extended to Saturday if your
3 counsel -- if your -- your client has a -- if
4 that is that -- is -- is a holy day, a special
5 day for your particular client.

6 But I can't think of any practical
7 reason why there should be a rule -- a different
8 rule for departing the country.

9 MR. CEDRONE: Yeah. So I think
10 there's two -- two practical reasons, one more
11 substantive and one more procedural.

12 This traditional rule, in our view,
13 stems from a general principle that there are
14 certain legally set-aside days where
15 presumptively at least the government can't ask
16 people to do stuff. And so the persistence of
17 this rule, even in the face of 24/7 e-filing,
18 shows that this is a principle that's deeper
19 than just impracticability, and --

20 JUSTICE ALITO: Well, I mean,
21 that's -- that doesn't strike me as a practical
22 reason. Why can't they say: You've got to get
23 out of the country in 60 days? You can get out
24 of the country just as easily on a Saturday or a
25 Sunday as you can on a Monday.

1 MR. CEDRONE: I'll mention just as an
2 aside some of the amicus briefs go into the fact
3 that it -- it may well be more difficult to
4 travel on the weekends.

5 But I guess putting that aside, the
6 second practical reason, the procedural one, is
7 that we're talking about deadlines with severe
8 consequences. The question of how and when your
9 deadline runs should be easily understood and
10 easily calculated, especially when there are
11 severe consequences. And on the government's
12 view, you have to undertake a case-by-case
13 determination for each deadline in the
14 regulations and each deadline in the INA.

15 Maybe I could give an example. So
16 there's a 180-day deadline in the regulations,
17 Section 1003.23, a 180-day for seeking relief
18 from in absentia removal. That statutory
19 dead -- that regulatory deadline doesn't
20 cross-reference the statute. So you might
21 think, if you pick up the regulation and pick up
22 the definition, you know how it applies. But
23 the government --

24 JUSTICE ALITO: Well, but that --
25 that -- in seeking relief, that -- that's

1 requiring you to file some sort of a document.

2 MR. CEDRONE: That's true, although,
3 as my colloquy with Justice Barrett explained,
4 there are other deadlines in the regulations,
5 like things like getting married and getting
6 fingerprinted. And the point is that on the
7 government's view, even though that
8 regulation -- regulatory deadline is facially
9 clear, you need to go to the INA and see if
10 there's a statutory analogue for that 180-day
11 deadline, it turns out there is in
12 Section 1229a.

13 But even then you're not done. On the
14 government's view, now you have to construct a
15 family tree for the statutory deadline and the
16 regulatory deadline and see which one came
17 first. Only then can you figure out if your
18 deadline is on a Saturday or Monday.

19 JUSTICE ALITO: Right. I may
20 understand it. This is the argument for a
21 uniform rule. It makes things -- it makes
22 things simpler. So I -- I -- I get that. I get
23 that.

24 MR. CEDRONE: Yeah, and I think --

25 JUSTICE SOTOMAYOR: Counsel, it's not

1 only that it's simpler, but the INA is filled
2 with provisions like this where the individual's
3 activities are tied to the government's
4 activities, correct?

5 MR. CEDRONE: That's right.

6 JUSTICE SOTOMAYOR: And, here,
7 Section 1302, going back to Justice Barrett's
8 question in part, says that when someone's
9 visiting the United States, if they're going to
10 stay longer than 30 days, it says -- the
11 provision states that noncitizens who remain in
12 the U.S. for 30 days or longer must apply for
13 registration and be fingerprinted before the
14 expiration of such 30 days. So that's very
15 clear like our 60 days here.

16 Under the government's theory, I don't
17 know whether they can be -- fingerprinted by the
18 government on Saturday or Sunday. We'd have to
19 figure that out, correct?

20 MR. CEDRONE: Right.

21 JUSTICE SOTOMAYOR: We'd have to
22 figure out whether the agency is open for them
23 to register on Saturday and Sunday, correct?

24 MR. CEDRONE: Right.

25 JUSTICE SOTOMAYOR: So these are the

1 practical difficulties.

2 With respect to the issue here, yes,
3 there's a obligation on the alien to depart, but
4 there's also a responsibility tied to the motion
5 to reopen, correct --

6 MR. CEDRONE: That's exact --

7 JUSTICE SOTOMAYOR: -- which is a
8 court activity?

9 MR. CEDRONE: That's exactly right.

10 JUSTICE SOTOMAYOR: So it's not simply
11 an obligation that's tied only to the
12 individual. If the individual does something,
13 then the government has an obligation to -- to
14 dismiss their order of removal and give them
15 additional time, correct?

16 MR. CEDRONE: That's right. And I
17 think it's telling that the regulations tie this
18 departure deadline to a filing deadline. It
19 shows that in the government's view at least
20 before, these things maybe aren't that different
21 at all.

22 But the confusion, as your questioning
23 highlights, there are hundreds of instances of
24 the word "day" in Title 8 of the Code of Federal
25 Regulations and dozens, if not a couple hundred,

1 of instances in the INA.

2 And the government's view that for
3 each of those, not only -- that the statute and
4 regulations require somebody for each of those
5 to undertake this intricate analysis of
6 statutory and legislative history just doesn't
7 make sense, especially -- I mean, it does --
8 it's hard enough for lawyers to figure out in an
9 individual case an individual deadline under the
10 government's view, is it Saturday or Monday.

11 The idea that pro se noncitizens --

12 JUSTICE KAGAN: Do you know --

13 JUSTICE ALITO: Are you seriously --
14 oh, no, go ahead.

15 JUSTICE KAGAN: No, go ahead.

16 JUSTICE ALITO: Do you seriously think
17 that there are people in the position of your
18 client who rely on this -- well, this is really
19 important for me to get out of the country or --
20 or withdraw my -- my acquiescence in voluntary
21 departure within 60 days, but, wow, I read this,
22 so I've got another two days? I mean,
23 seriously?

24 MR. CEDRONE: Seriously. And let me
25 make three points.

1 (Laughter.)

2 MR. CEDRONE: So, first, there are
3 plenty of immigration organizations that provide
4 guidance to noncitizens about how deadlines
5 apply.

6 Secondly, that accords with --

7 JUSTICE ALITO: I mean, if you were
8 providing advice, would you say, okay, you know,
9 you've got the extra two days? Would you?

10 MR. CEDRONE: I -- I mean, if the
11 government's position is adopted in this case,
12 certainly not, but I think, in the absence of
13 that, everything points --

14 JUSTICE ALITO: Well, with how, you
15 know, the way things are -- were -- we at -- at
16 the time when -- when this came into play, would
17 you say, well, you've got the extra two days?

18 MR. CEDRONE: Yes, I would, and -- and
19 let me make two other points.

20 One is that for a noncitizen in
21 immigration proceedings, even on the
22 government's view, basically, every deadline up
23 until this final order follows the traditional
24 rule. So, if you're a noncitizen going through
25 immigration proceedings, you know my brief is

1 due on a Saturday; that means it's due on a
2 Monday. I need to file an appeal on a Saturday;
3 that means it's due on a Monday. It's only this
4 very last deadline that follows a different
5 rule. So I do think that would be a trap for
6 the unwary.

7 And the last point I would make is
8 that, yes, I think, when you have everything
9 consistently pointing in the same way not just
10 in the law, but the D.C. Circuit made this point
11 in Sherwood, this rule is not just a lawyerly
12 contrivance. It's also meant to capture the way
13 that things work out in the world, in business,
14 in society.

15 And so just one concrete example. The
16 motion that was filed in this case was sent by
17 FedEx priority overnight on a Friday. That
18 means it gets there Monday morning. And I'm not
19 suggesting that anything in our case turns on
20 the vagaries of FedEx's shipping policies. It's
21 just to say that even in business, overnight on
22 a Friday sometimes means Monday. This is a
23 principle that applies across the board.

24 JUSTICE KAGAN: Do you know whether
25 the government, in fact, applies this rollover

1 rule to anything that's not a filing deadline?
2 I mean, you mentioned fingerprinting. You
3 mentioned marriage. But what is the
4 government's policy as to anything that's not a
5 file -- filing deadline?

6 MR. CEDRONE: I think the AILA amicus
7 brief gets into this most clearly. It provides
8 examples of immigration judges applying this day
9 in and day out. I think the -- most of the
10 examples we've collected are actually in the
11 voluntary departure context, but I -- I think
12 there are other examples in that brief as well
13 of situations where this applies.

14 And I should point out this is -- in
15 the voluntary departure context, for example,
16 it's a 60-day statutory ceiling. So an
17 immigration judge in an individual case could,
18 for example, set the deadline earlier or set the
19 deadline on a date certain. This is just about
20 the rule that applies, absent another
21 indication.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Justice Thomas, anything further?

25 Justice Alito?

1 Justice Sotomayor?

2 Justice Gorsuch, anything? No?

3 Justice Kavanaugh?

4 Justice Barrett?

5 And Justice Jackson?

6 JUSTICE JACKSON: Can I just ask, so
7 it's a trap for the unwary because the filing
8 of the motion triggers the extension, is that
9 right?

10 MR. CEDRONE: In our view, the
11 departure deadline and the motion deadline move
12 together. So it's -- it's -- the 60-day
13 voluntary departure deadline?

14 JUSTICE JACKSON: Yeah.

15 MR. CEDRONE: On the government's
16 view, operates differently than every other
17 deadline that's --

18 JUSTICE JACKSON: Yeah. No, I
19 understand that, but I guess I was -- I was
20 trying to -- I -- I hear Justice Alito raising
21 the point that if a person is told they have 60
22 days to get out of the country, when we're
23 getting to day 58, 59, or whatever, they should
24 be ready to go. And so are they getting two
25 extra days or, like, what is happening?

1 And I guess your response is that the
2 way that the rules operate, if that person files
3 a motion, that motion then needs to be resolved
4 by the court and the person can stay until that
5 happens. So what's really the trap is that
6 ordinarily, when you file a motion, you get to
7 the following Monday if the deadline is over the
8 weekend, and that's the way it works in every
9 other scenario.

10 And yet, here, you'd be filing the
11 motion and it wouldn't.

12 MR. CEDRONE: That's exactly right. I
13 think that captures it, and that's what happened
14 to our client in this -- case with quite severe
15 consequences if the government's view is
16 adopted.

17 JUSTICE JACKSON: Thank you.

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.

20 Mr. Yang.

21 ORAL ARGUMENT OF ANTHONY A. YANG
22 ON BEHALF OF THE RESPONDENT

23 MR. YANG: Mr. Chief Justice, and may
24 it please the Court:

25 Section 1229c's maximum 60-day period

1 for voluntary departure is not extended when the
2 last day falls on a weekend or a holiday. The
3 requirement to arrange for travel and to depart
4 the United States involves primary conduct in
5 the real world. Nothing prevents departure on
6 weekends or holidays, when many prefer to
7 travel. And unlike contexts involving the
8 timing of litigation-based or administrative
9 acts before courts or agencies, no tradition by
10 rule or otherwise potentially exists for
11 extending statutory deadlines for primary
12 conduct.

13 But, first, statutory jurisdiction is
14 lacking in the highly atypical posture here.
15 Section 1252(a)(1) grants jurisdiction to review
16 final orders of removal. But, in Petitioner's
17 case, it does not involve review of a final
18 order of removal. It does not affect the
19 validity of a final order of removal. And it
20 does not even affect how you would implement a
21 final order of removal.

22 Moreover, Petitioner has other avenues
23 for judicial review of the timing issue here.
24 He could seek APA review after unsuccessfully
25 seeking DHS to return his voluntary departure

1 bond or to adjust his status in the country.

2 Now, on the merits, Section 1229c's
3 test reflects the default rule that the 60-day
4 statutory minimum means what it says. And
5 neither common law tradition nor the definition
6 of "day" for certain regulations supports a
7 contextual exception here in the context of
8 primary conduct.

9 Similarly, there are other statutes
10 governing similar primary conduct. The 90-day
11 period to depart after entering the United
12 States through the visa waiver program or on a K
13 visa to marry does not allow stays of 93 days.
14 The 29-day statutory period for a ship crewman
15 to temporarily land does not extend to 32 days.

16 And Petitioner identifies no examples
17 of extending statutory periods for engaging in
18 such primary conduct.

19 Now Section 12 -- the question whether
20 Section 1229c(d)'s penalties apply for failing
21 to depart timely is a distinct question. Those
22 sanctions apply only if this noncitizen
23 voluntarily fails to depart timely. But
24 Petitioner has not argued that his departure was
25 not non-voluntary or if it was non-voluntary,

1 and the 60-day period itself cannot be extended.

2 I welcome the Court's questions.

3 JUSTICE THOMAS: Mr. Yang, did you
4 raise the jurisdictional issue below?

5 MR. YANG: We raised a different one,
6 not this one. We raised this issue in our -- in
7 our Op, albeit abbreviated form, but we did in
8 our Op.

9 JUSTICE THOMAS: Petitioners argues
10 that this is, in fact, non-jurisdictional and
11 is -- that you waived it. Would you respond to
12 that?

13 MR. YANG: Yes. This is
14 jurisdictional. Section 1252(a)(1) provides for
15 review of a final order of removal, and that's
16 the jurisdictional provision because it applies
17 the Hobbs Act.

18 The Hobbs Act provision, the -- the
19 jurisdictional provision of the Hobbs Act is
20 Section 2342. It provides review in the court
21 of appeals of seven distinct types of orders but
22 not orders in the immigration context, only
23 orders from other agencies.

24 So the way, as Mata recognizes, the
25 way that there is jurisdiction here is

1 1252(a)(1) grants jurisdiction to review final
2 orders of removal and then just plugs that into
3 the Hobbs Act.

4 JUSTICE KAGAN: And -- and when you
5 say "final order of removal," what do you think
6 that encompasses?

7 MR. YANG: Yeah, I -- I think there's
8 a few things. And this is -- after the Court's
9 decision in *Nasrallah*, it is the following. It
10 is the final order of removal itself.

11 JUSTICE KAGAN: Now what -- what does
12 that mean, "the final order of removal itself"?

13 MR. YANG: That --

14 JUSTICE KAGAN: Is it --

15 MR. YANG: Yeah.

16 JUSTICE KAGAN: -- just the
17 determination that somebody ought to be removed,
18 or is it everything else that appears in the
19 final order?

20 MR. YANG: Not the latter. We made
21 that argument. It was rejected in *Nasrallah*.
22 The -- *Nasrallah* says the final order of removal
23 either finds the citizen deportable or orders
24 deportation. That's it.

25 JUSTICE GORSUCH: But it also says

1 anything that affects the validity of the final
2 order --

3 MR. YANG: That -- that's why
4 there's --

5 JUSTICE GORSUCH: -- doesn't it, Mr.
6 Yang?

7 MR. YANG: That's only the first
8 category of things. There are --

9 JUSTICE GORSUCH: And -- and -- and --

10 MR. YANG: -- issues that affect the
11 validity --

12 JUSTICE GORSUCH: If I might just
13 finish.

14 MR. YANG: Sure. Yeah.

15 JUSTICE GORSUCH: Thank -- thank you.

16 MR. YANG: Yeah.

17 JUSTICE GORSUCH: So one provision in
18 this particular final order is that you're going
19 to be barred for 10 years from seeking reentry
20 into the country after -- if -- if you don't
21 voluntarily remove yourself within 60 days.

22 That's actually written in the final
23 order. And where -- this -- this litigation
24 tests the validity of that, doesn't it?

25 MR. YANG: No. And --

1 JUSTICE GORSUCH: Okay. Why not?

2 MR. YANG: -- and I'll explain why.

3 These -- this is really important. Pages 42a

4 and --

5 JUSTICE GORSUCH: I agree with that.

6 MR. YANG: -- 43 -- 42a and 43a of the
7 appendix are what Petitioner relies upon. That
8 is the tail end of the BIA's decision on the
9 appeal. Not rehearing, not reconsideration, and
10 not reopening.

11 It says two orders: Order, appeal
12 dismissed; order, voluntary departure.

13 Then it has -- these are in bold, you
14 know, all caps.

15 JUSTICE GORSUCH: I've read it. It
16 says: Warning.

17 MR. YANG: But it says: Notice. It
18 says: Notice, if you fail to voluntarily
19 depart, there are civil penalties --

20 JUSTICE GORSUCH: Yeah.

21 MR. YANG: -- and you're ineligible.

22 JUSTICE GORSUCH: Yeah.

23 MR. YANG: That -- nothing's going to
24 change with that. That's true. If you fail to
25 voluntarily depart, that's -- those are -- there

1 are sanctions. It's just identifying --

2 JUSTICE KAGAN: But -- but the order
3 operates entirely differently under your view
4 versus under Mr. Cedrone's view. One might say
5 the order operates entirely differently
6 depending on whether one takes the view of the
7 original immigration judge or the later view of
8 the Board.

9 I mean, this rollover thing makes the
10 order into a different order with different
11 consequences.

12 MR. YANG: It -- it does not change
13 the order. The order -- the bottom line of the
14 order and the only thing that these orders
15 ultimately require here that wouldn't allow for
16 judicial review later is this alien --
17 noncitizen is deportable and shall be removed.
18 That's it, period.

19 There are collateral consequences,
20 but, as I noted in my intro, those collateral
21 consequences can be challenged separately. For
22 instance, on every noncitizen who's granted
23 voluntary departure, they must post a monetary
24 bond. We keep the bond. If they want the bond
25 back, they simply say: I want my bond back.

1 DHS will adjudicate.

2 Here, DHS has already said: You
3 violated your -- this is in Footnote 4 of our
4 brief. You violated the voluntary departure
5 period. Therefore, we're keeping your bond.
6 They can -- he could challenge -- I don't -- he
7 could challenge that before the agency's
8 administrative process and then seek APA review.

9 He could, while he's in the country,
10 for instance, seek to adjust status with DHS.
11 DHS would probably say: Can't adjust status,
12 you're barred. Then you get judicial review of
13 that through normal APA review.

14 What's happening here is a
15 jurisdictional provision that is designed to
16 review only final orders of removal is being
17 used to review something that has nothing to do
18 with a final order of removal.

19 JUSTICE JACKSON: But, Mr. Yang --
20 Mr. Yang, you -- you -- you, in making that
21 argument, seem to be relying on Nasrallah and
22 suggesting that only orders that relate to the
23 removability qualify as affecting the --
24 validity.

25 MR. YANG: Just --

1 JUSTICE JACKSON: Am I wrong about
2 that? No?

3 MR. YANG: I -- I haven't quite
4 finished the -- the categories of things --

5 JUSTICE JACKSON: Okay. Sorry.

6 MR. YANG: -- that were -- were
7 captured. There is the final order of
8 removal --

9 JUSTICE JACKSON: Okay.

10 MR. YANG: -- as Nasrallah explains.
11 There are things that affect its validity --

12 JUSTICE JACKSON: Okay.

13 MR. YANG: -- which then merge into
14 the final order.

15 JUSTICE JACKSON: Yeah.

16 MR. YANG: In addition, you can raise
17 issues together with the final order of removal.

18 And there's -- there's another
19 category which we think is included. Review of
20 a final order should include rulings that affect
21 how to implement the final order. For
22 instance --

23 JUSTICE GORSUCH: Oh, there we go.

24 MR. YANG: Right. How to implement
25 the final order.

1 JUSTICE GORSUCH: There we go. Yeah.
2 How are you going to implement this final order?
3 MR. YANG: This order --
4 JUSTICE GORSUCH: Is -- is the fellow
5 barred from the country for 10 years or not?
6 MR. YANG: That's not in the final
7 order.
8 JUSTICE GORSUCH: Oh, it says --
9 MR. YANG: It --
10 JUSTICE GORSUCH: -- it actually does
11 say "Warning." But, at any rate --
12 (Laughter.)
13 MR. YANG: Thank you. It -- it --
14 it --
15 JUSTICE GORSUCH: I --
16 MR. YANG: -- all that simply does --
17 the -- the final order says several warnings.
18 These are all --
19 JUSTICE GORSUCH: I -- I mean, where
20 do you get all this from 1252? I mean, I
21 thought you were a good textualist, Mr. Yang.
22 MR. YANG: Well, when I start --
23 JUSTICE GORSUCH: And it says that we
24 have -- we have authority -- the court of
25 appeals has authority to review final orders of

1 removal. It -- it -- that's it. That's what it
2 says.

3 MR. YANG: That's true. And it says
4 that judicial review of all other questions --
5 this is a zipper clause in (b)(9) -- are
6 available only in judicial review of the
7 final -- of a final order under this section.

8 JUSTICE GORSUCH: All right. If it's
9 so obvious, how come you didn't raise it below?

10 MR. YANG: That I -- I can't -- I
11 can't speak to.

12 JUSTICE GORSUCH: All right. Neither
13 can I.

14 JUSTICE JACKSON: I -- I guess --

15 JUSTICE GORSUCH: Can we hold -- wait.

16 MR. YANG: But this is jurisdictional.
17 It's not something that we --

18 JUSTICE GORSUCH: Why -- why -- why --
19 is it -- is it -- I mean, "jurisdictional," as
20 Justice Ginsburg used to love to say, is a word
21 of many -- too many meanings. Is -- is --

22 MR. YANG: This is the big "J"
23 jurisdictional meaning. This is -- because
24 1252(a)(1) only grants jurisdiction through the
25 Hobbs Act to review final orders of removal.

1 And we think you can expand that a little bit by
2 knowing the case has nothing to do with the
3 final order of removal. It is not -- the final
4 order, it does not affect its validity. It does
5 not --

6 JUSTICE GORSUCH: All right.

7 JUSTICE JACKSON: Mr. Yang, not only
8 did you not raise it, I thought you
9 affirmatively represented to the Tenth Circuit
10 that there was jurisdiction in this case.

11 MR. YANG: No. We said there wasn't
12 but for a different reason.

13 JUSTICE JACKSON: You said there
14 wasn't --

15 MR. YANG: Was not --

16 JUSTICE JACKSON: -- but for not --
17 not for this reason.

18 MR. YANG: -- for a statute --
19 statutory prohibition on --

20 JUSTICE JACKSON: All right. So
21 what -- what do you do about the fact that
22 Nasrallah itself recognized that evidentiary
23 rulings merge into final orders? I mean,
24 most --

25 MR. YANG: Because --

1 JUSTICE JACKSON: -- most evidentiary
2 rulings are going to be collateral in the sense
3 that you're talking about. So why -- why is it
4 that this is not?

5 MR. YANG: No, because an evidentiary
6 ruling that's -- I mean, if it were -- if the
7 judge admitted something and had said, well,
8 this is completely irrelevant, has nothing to do
9 with anything, maybe that would be the case,
10 but --

11 JUSTICE JACKSON: Well, this is not
12 completely irrelevant. I mean, this, as Justice
13 Gorsuch keeps emphasizing, has to -- imposes
14 serious consequences on -- on the defendant.

15 So what I'm saying is an evidentiary
16 ruling that doesn't go to directly whether or
17 not a person is removable under Nasrallah counts
18 because it's still a part of the final order for
19 the purpose of reviewability.

20 MR. YANG: The final order here is an
21 order of removal. It orders -- grants voluntary
22 departure. The only collateral consequences
23 that arise arise from the decision on reopening
24 and then reconsideration.

25 But Petitioner's not even seeking

1 reconsideration -- to challenge the reopening
2 decision. Only through --

3 JUSTICE JACKSON: So here -- here's
4 my --

5 JUSTICE BARRETT: So would it have
6 mattered if he -- would it matter if he had?

7 MR. YANG: Yes, because a reopening
8 decision, if -- if -- now you can't make a
9 frivolous claim. I mean, Bell versus Hood and
10 Steel Co. makes clear there's no jurisdiction
11 over frivolous claims.

12 But, if you have a good-faith claim
13 that you're challenging the motion to reopen,
14 you're move -- moving to reopen and that itself
15 will affect either the validity of the final
16 order or it could affect how the final order is
17 implemented.

18 JUSTICE BARRETT: So what if he had
19 done that here and not just --

20 MR. YANG: Well, then we would be
21 making --

22 JUSTICE BARRETT: -- not just appealed
23 his --

24 MR. YANG: -- we wouldn't be making
25 the jurisdictional argument because he would

1 have been arguing that it should have been
2 reopened, one, because I provided sufficient new
3 evidence, as required --

4 JUSTICE BARRETT: Right.

5 MR. YANG: -- and I'm not barred. And
6 both of those arguments would be teed up and --

7 JUSTICE BARRETT: Could he have
8 challenged the collateral consequences, as
9 Justice Gorsuch was talking about, through a
10 motion to reopen? Is that the government's
11 position?

12 MR. YANG: No.

13 JUSTICE BARRETT: No? Okay.

14 MR. YANG: No. The collateral
15 consequences come up later, right?

16 JUSTICE BARRETT: Okay.

17 MR. YANG: It comes up when you are
18 denied a benefit or when you don't get your
19 bond, and he can challenge those in those
20 contexts in the country.

21 JUSTICE BARRETT: Okay. Can he
22 make --

23 JUSTICE GORSUCH: So you can challenge
24 even things that are not having to do with
25 the -- your categories that you just gave me --

1 MR. YANG: Uh-huh.

2 JUSTICE GORSUCH: -- so long as you
3 have another challenge that does?

4 MR. YANG: Yeah. It's a normal APA
5 challenge, not a challenge to a final order of
6 removal --

7 JUSTICE GORSUCH: And so, once --

8 MR. YANG: -- because it would be a
9 DHS decision.

10 JUSTICE GORSUCH: -- so long -- if --
11 if he had brought this Niz-Perez challenge, he
12 could have also challenged this determination on
13 the 10 years even though it doesn't fall, in
14 your view, into any of your -- in any of the
15 buckets?

16 MR. YANG: No, it would because what
17 he would --

18 JUSTICE GORSUCH: Because I thought
19 your view is I only have jurisdiction to do
20 things that have to do with removability, and
21 this isn't one of them.

22 MR. YANG: It -- no, it would. When
23 he challenged -- if he had challenged the motion
24 to reopen by saying proceedings should have
25 reopening -- be reopened, which then has the

1 potential to affect the final order --

2 JUSTICE GORSUCH: Yeah. But, in --

3 in -- in -- in that litigation, a court might

4 say your Niz-Perez argument's no good.

5 MR. YANG: Sure.

6 JUSTICE GORSUCH: But you don't have

7 to wait 10 years.

8 MR. YANG: Sure. But the fact that

9 you --

10 JUSTICE GORSUCH: And I have

11 jurisdiction to do that.

12 MR. YANG: The fact that you lose,

13 might lose, doesn't mean there's not

14 jurisdiction --

15 JUSTICE GORSUCH: Mm-hmm.

16 MR. YANG: -- to -- to -- you know, to

17 seek review.

18 JUSTICE GORSUCH: Let me ask you

19 another question on the merits if I might, and

20 then I'll -- then I'll -- I'll let you go.

21 MR. YANG: Sure.

22 JUSTICE GORSUCH: Promise. Well,

23 maybe not.

24 (Laughter.)

25 MR. YANG: I'm happy to be here as

1 long as you'd like to be.

2 JUSTICE GORSUCH: I take the common
3 law point that it usually has to do with court
4 deadlines. But your regulation is clear. It
5 says all, any. And you've had this regulation
6 for a very long time, and, normally, the
7 government really likes its regulations. It
8 used to come up here and say we have to defer to
9 them. Now it comes up here and says we should
10 give them great respect when they're
11 contemporaneous and long-standing, which check
12 both those boxes here, right?

13 So you're -- you're running from your
14 regulations. I mean, it's sort of like garlic
15 in front of a vampire. You don't want to have
16 anything to do with them.

17 MR. YANG: Well, I don't know that
18 that's quite right. The regulation at issue
19 here is not a general definition of "day"
20 throughout the immigration context. It is
21 limited in -- textually in two specific ways.
22 One, it only -- applies only to regulations, not
23 statutes. Secondly, it applies only when the
24 period of action is provided in the regulation.

25 And we don't think that applies.

1 Section 1229c is a statutory provision, so
2 1221(a) -- or 1221 -- or, sorry, Section 1-1
3 would not apply. No regulatory antecedent to
4 which 1-1 would have applied exists. And the
5 implementing regulations -- and this is on page
6 8a of the appendix to our brief -- say that the
7 maximum is 60 days, as set forth in Section 240B
8 of the Act. It's not saying that the maximum is
9 set forth in the regulations. It's saying that
10 the Act is what sets forth the -- the maximum.

11 CHIEF JUSTICE ROBERTS: Counsel, you
12 began your argument by emphasizing the
13 distinction between this type of deadline and
14 general court deadlines.

15 MR. YANG: Mm-hmm.

16 CHIEF JUSTICE ROBERTS: I -- I -- I --
17 I don't quite understand that. I mean, this is
18 a deadline for the courts as well. The courts
19 can't exercise jurisdiction if the -- you know,
20 if the -- depending upon how we -- we rule. I
21 don't know how that's any different than our
22 deadline for -- for filing a cert petition. I
23 mean, it's -- it affects what the -- you know,
24 outside conduct, but it also binds the court.

25 MR. YANG: I -- I -- I don't -- it's

1 true that it can have legal consequences, but
2 when I make the distinction between primary
3 conduct in the real world and things that are
4 concerning actions in litigation, things like
5 filing deadlines or other things that are --
6 that's what I'm talking about. That's where --
7 you know, we disagree --

8 JUSTICE KAGAN: So I completely
9 understand the rationale for that, but that
10 appears no place in any statute or in any
11 regulation that you're talking to. So that's --
12 I mean -- I -- I mean, that would be an entirely
13 atextual limit on this regulation in particular.

14 MR. YANG: I -- I don't -- I don't
15 think so because the general rule, the default
16 rule, is the text, and the text, we think, is
17 clear. The question is whether to seek a
18 contextual exception from the text.

19 And our point is the exceptions, if
20 they apply, only apply in these other contexts,
21 not conducts -- contexts involving primary
22 conduct.

23 JUSTICE KAGAN: I -- I -- I guess I
24 don't understand this. I thought that we had
25 been talking about a general regulation that has

1 a rollover principle in it and that says that's
2 the way the agency is going to understand what
3 the word "day" means in this -- you know, when
4 it confronts 60-day periods or 30-day periods or
5 what have you.

6 And the argument that you are making,
7 sort of filing deadlines versus everything else
8 or things that are about primary conduct versus
9 things that are primarily about court conduct,
10 that just doesn't appear in the agency's own
11 regulation respecting this issue.

12 MR. YANG: That -- that's true. The
13 regulation, though, is itself limited only to,
14 one, regulations that use the word "day," and,
15 two, only those that set the time to take action
16 itself, not statutory times to take action. So,
17 if you're looking for an exception, it doesn't
18 lie there. That's our point.

19 And the statute says this period shall
20 not exceed 60 days. That's 60 days. I mean --

21 JUSTICE JACKSON: But, Mr. Yang --

22 MR. YANG: -- Sunday is a day.

23 JUSTICE JACKSON: -- can --

24 MR. YANG: Saturday is a day.

25 Holidays.

1 JUSTICE JACKSON: -- can I ask you,
2 it -- it -- the -- the period for departure may
3 not exceed 60 days, but where is the authority
4 that says that if you file a motion for
5 reopening or whatnot, you can stay until that
6 motion is -- is decided?

7 MR. YANG: Oh, no, that's not
8 necessarily the case.

9 JUSTICE JACKSON: That's not?

10 MR. YANG: No. So what happens is --
11 this all follows from Dada in 2008 and the
12 regulations that were enacted in response to
13 Dada. If you file a motion to reopen or a
14 motion to reconsider before --

15 JUSTICE JACKSON: The expiration.

16 MR. YANG: -- the voluntary departure
17 period ends --

18 JUSTICE JACKSON: Yeah.

19 MR. YANG: -- it withdraws your
20 request for voluntary departure. What happens
21 then is you are immediately subject to an order
22 of deportation.

23 JUSTICE JACKSON: I see.

24 MR. YANG: And we could remove you
25 from the country like that.

1 JUSTICE JACKSON: I see. So --

2 MR. YANG: We just don't with --

3 JUSTICE JACKSON: -- so I guess my

4 question is: Why isn't this then also

5 implicating the courts? Several of my

6 colleagues have sort of raised this. I mean, if

7 your filing of a particular motion --

8 MR. YANG: Mm-hmm.

9 JUSTICE JACKSON: -- has the

10 consequence of affecting a withdrawal and,

11 therefore, starting the process of actual

12 removal --

13 MR. YANG: Right.

14 JUSTICE JACKSON: -- why wouldn't the

15 deadlines that apply to filing motions --

16 MR. YANG: Uh-huh.

17 JUSTICE JACKSON: -- or the

18 regulations that apply to filing motions be

19 implicated?

20 MR. YANG: Because the voluntary

21 departure deadline exists regardless of whether

22 any filing is made.

23 JUSTICE JACKSON: That's the case of

24 anything.

25 MR. YANG: No, no, no.

1 JUSTICE JACKSON: That's -- that's --

2 MR. YANG: No, no, no, that's not,
3 because Congress says your time to voluntary
4 depart --

5 JUSTICE JACKSON: Mm-hmm.

6 MR. YANG: -- is 60 days, period. If
7 you do nothing, you've got to voluntarily depart
8 in 60 days. There's no filing. And the filing
9 deadline for a motion to reopen is 90 days.
10 It's timely if it's filed -- this motion to --
11 to file -- reopen was timely. It was within the
12 90 days.

13 The voluntary departure deadline is a
14 separate one governing primary conduct. The
15 fact that the -- the Petitioner wanted to get it
16 in, his motion in, before that separate deadline
17 expired doesn't convert that separate deadline
18 into a filing deadline.

19 JUSTICE KAGAN: Can -- can -- can I --
20 can I take you back to the jurisdictional
21 question and --

22 MR. YANG: Sure.

23 JUSTICE KAGAN: -- and make sure that
24 I understand your answer?

25 MR. YANG: Mm-hmm.

1 JUSTICE KAGAN: If this Petitioner had
2 wanted to challenge the view of timeliness
3 reflected in the denial of the motion to
4 reopen --

5 MR. YANG: Mm-hmm.

6 JUSTICE KAGAN: -- how would he have
7 done that? He should have taken that straight
8 to court, you're saying?

9 MR. YANG: Well, he could have done it
10 in -- in multiple ways. He could have -- if he
11 wanted to do it in the context of the removal
12 proceedings -- not going to the collateral
13 consequences, because, remember, he could
14 challenge the withholding of the bond or he
15 could now move DHS to adjust status and when
16 denied because he didn't --

17 JUSTICE KAGAN: I -- I -- I'm --

18 MR. YANG: -- that's separate.

19 JUSTICE KAGAN: This is a -- this is a
20 really simple question --

21 MR. YANG: Sure.

22 JUSTICE KAGAN: -- having to do with
23 this Petitioner --

24 MR. YANG: Yeah.

25 JUSTICE KAGAN: -- who has just found

1 out that with --

2 MR. YANG: Yeah.

3 JUSTICE KAGAN: -- very severe
4 consequences --

5 MR. YANG: Mm-hmm.

6 JUSTICE KAGAN: -- his understanding
7 of what counts as timely conduct is wrong. And
8 how does he challenge that determination?

9 MR. YANG: Yeah. So if -- he could
10 challenge the motion to reopen on judicial
11 review. He could have sought reconsideration
12 and then challenged both the motion to reopen
13 and the motion for reconsideration.

14 JUSTICE KAGAN: Okay. So let's stop
15 there.

16 MR. YANG: But it wouldn't have --
17 okay.

18 JUSTICE KAGAN: He could challenge --
19 he could challenge it in court, is the first
20 thing. And then you said the second thing is he
21 could challenge it as long as he included a
22 challenge to his removability. That was the
23 second thing.

24 And I guess what I want to say is, I
25 mean, this strikes me as a -- a very strange

1 rule that you're precluding him from doing what
2 actually seems, from the agency's own
3 perspective, the sensible thing. In other
4 words, he's seeking exhaustion of administrative
5 remedies. Before he goes to court, he wants to
6 make sure that the agency itself has thought
7 about this question sufficiently.

8 MR. YANG: Mm-hmm.

9 JUSTICE KAGAN: And then you say,
10 well, he has to attach it to a challenge about
11 removability. But he's saying he doesn't have a
12 challenge about removability. So you're asking
13 him to make up a completely meritless claim in
14 order to get jurisdiction.

15 And how do either one of those things
16 make sense? This is a man who's really trying
17 to, like, get the agency to focus on this
18 timeliness determination that has just arisen in
19 his -- in the denial of his motion to reopen.
20 He did what I would think the agency would want
21 him to do.

22 MR. YANG: Well, I will say that where
23 this comes from is the text; that is, there's
24 review only of a final order of removal. That's
25 1252(1) -- (a)(1). It then goes to Nasrallah,

1 which interpreted "final order of removal."

2 Now our argument in Nasrallah --

3 JUSTICE KAGAN: Okay. That's --
4 that's completely non-responsive to the question
5 that I just asked.

6 MR. YANG: No, why -- why -- our
7 position is following the text and this Court's
8 decisions.

9 JUSTICE KAGAN: Okay. Well, let me
10 ask you about the text then. Is this a question
11 of law and fact arising from any action taken or
12 proceeding brought to remove an alien from the
13 United States?

14 MR. YANG: It is. And the latter part
15 of that provision --

16 JUSTICE KAGAN: All right. It is.

17 MR. YANG: -- if you continue
18 reading --

19 JUSTICE KAGAN: And so what I'm
20 reading is 1252(b)(9) --

21 MR. YANG: Yeah.

22 JUSTICE KAGAN: -- otherwise known as
23 the zipper clause, and this clearly fits into
24 it. It is a question of law and fact arising
25 from an action taken or proceeding brought to

1 remove an alien.

2 And then it says: Any of those
3 questions shall be available only in judicial
4 review of a final order under this section.

5 Now wouldn't you read that to say that
6 all those other questions that fall into that
7 first part of the provision are, in fact,
8 reviewable --

9 MR. YANG: Not if there's not a final
10 order. If there's not review of the final order
11 of removal, it doesn't fall within that --
12 that -- that's what the text says. It's
13 available only in judicial review of a final
14 order. That's --

15 JUSTICE JACKSON: But didn't we in
16 Mata --

17 JUSTICE KAGAN: Well, it's -- judicial
18 review of a final order is understood to include
19 all of those questions.

20 MR. YANG: That was rejected by this
21 Court in Nasrallah. We argued that the final
22 order included --

23 JUSTICE JACKSON: But Nasrallah was
24 not -- was --

25 MR. YANG: No, no. We argued that all

1 rulings in the removal proceeding under the
2 zipper clause, that kind of thing goes into a
3 final order.

4 The Court rejected that. They said
5 no, no, no, that was under the fotee framework.
6 That all changed. Now we're going to apply the
7 definition in the INA. That definition means:
8 A final order of removal either finds a
9 noncitizen deportable or orders deportation.

10 There's another category, things that
11 affect the validity of that, that merge into the
12 final order.

13 JUSTICE JACKSON: Mr. -- Mr. Yang, you
14 keep skipping over Mata, and that's what I don't
15 understand. You -- you keep going to Nasrallah.
16 But, in Mata, I thought the Court made clear
17 that the INA's grant of jurisdiction over final
18 orders of removal encompasses review of
19 decisions refusing to reopen or reconsider such
20 orders.

21 MR. YANG: That's true.

22 JUSTICE JACKSON: Here, we have a
23 decision refusing to reconsider or reopen.
24 Nasrallah did not involve a decision refusing to
25 reconsider or reopen.

1 MR. YANG: Mm-hmm.

2 JUSTICE JACKSON: So why doesn't
3 Mata's determination that those kinds of
4 decisions actually do --

5 MR. YANG: Because Mata recognizes
6 that reopening and reconsideration can be
7 subject to review. It doesn't say everything.

8 So, for instance, take an alien who's
9 a -- a -- a soccer fan and says: I want -- I
10 move for reconsideration. I want you to include
11 in your opinion the statement: I'm as good of a
12 soccer player as Lionel Messi.

13 JUSTICE KAGAN: I don't think you
14 should trivialize this case, Mr. Yang.

15 JUSTICE JACKSON: No, this is
16 actually -- and -- and this is --

17 MR. YANG: No, no, no, no, because it
18 doesn't affect the final order of removal.

19 JUSTICE KAGAN: Well, it is --

20 JUSTICE JACKSON: But, Mr. Yang, Mata
21 says that there are certain categories of
22 orders, those that go to reopening and remove --
23 reconsideration that do count as final orders of
24 removal.

25 That seems to me to be a simple, clear

1 line that judges can apply when we determine
2 whether or not we have jurisdiction, and it's
3 one that makes sense.

4 You want us to drill down. Only
5 certain finals -- only certain orders of
6 reopening or reconsideration count.

7 MR. YANG: It -- it's hard to avoid
8 the "final order of removal" language because
9 that's where the only jurisdictional grant is.

10 JUSTICE JACKSON: I'm not avoiding it.
11 I'm saying Mata interpreted it.

12 MR. YANG: And the --

13 JUSTICE JACKSON: Mata interpreted
14 "final orders of removal" to "encompass review
15 of decisions refusing to reopen or reconsider
16 such orders." And we have --

17 MR. YANG: And we're not --

18 JUSTICE JACKSON: -- such a decision
19 in this case.

20 What I hear you saying is, yes, but
21 only certain decisions that refuse to reopen or
22 reconsider count, and you want us to look at the
23 extent to which the person, in their
24 application, made certain arguments.

25 It seems like a very technical way to

1 go about this when we have a case that already
2 interprets motions -- or -- or decisions that
3 encompass review of refusing to reopen or
4 reconsider as final orders of removal for this
5 purpose.

6 MR. YANG: Mata did not say that every
7 motion to reopen and every motion to reconsider,
8 regardless of what it concerns, is subject to
9 the jurisdictional provision.

10 And our point is most -- most are
11 included.

12 JUSTICE JACKSON: But why -- why
13 wouldn't it be? Why wouldn't it be?

14 We -- we are talking about the power
15 of the court --

16 MR. YANG: Mm-hmm.

17 JUSTICE JACKSON: -- to hear a
18 person's claim. We're not saying whether or not
19 his claim is meritorious, whether or not -- why
20 wouldn't the rule that makes sense, that
21 Congress intended --

22 MR. YANG: Mm-hmm.

23 JUSTICE JACKSON: -- when it was
24 talking about jurisdiction be that the final
25 order of removal and any subsequent attempts to

1 get the court to revisit or get the agency to
2 revisit through a motion for reopening or a
3 motion for reconsideration all fits in the
4 umbrella of things that the court would review?

5 MR. YANG: Because, when the issue
6 concerns a matter as collateral as this and, in
7 addition --

8 JUSTICE JACKSON: It's not collateral
9 because it relates to the final order of removal
10 in the way that Mata indicated.

11 MR. YANG: And, in addition, where you
12 have judicial review elsewhere, Congress would
13 have thought that those collateral consequences
14 could be pursued but in a different judicial
15 forum in a different way.

16 It's not unusual here, when -- we're
17 talking about removal proceedings, where it
18 doesn't affect the order of removal in any way.
19 It really doesn't. This is all collateral.
20 This order of removal is unchanged.

21 There's not a word on that page in,
22 what is it, 42 and 43a that would change.
23 Nothing. They say it would change. But, like,
24 how are you going to change it? "Notice: If
25 you fail to voluntarily depart, the following will

1 happen."

2 That's right, nothing's changing
3 there. The only collateral consequences arise
4 from the subsequent --

5 JUSTICE KAGAN: Well, but the meaning
6 of that provision has changed. I mean -- and
7 that provision is in the overall order of
8 removal.

9 You're insisting on saying that the
10 order of removal is just the -- the -- the
11 conclusion as to removability. But, in fact, it
12 has -- it makes reference to other matters,
13 including voluntary departure.

14 And the meaning of the voluntary
15 departure provision, how it's implemented, how
16 it operates on the ground, completely changes
17 depending on whose view of timeliness one
18 adopts.

19 MR. YANG: The order doesn't change.
20 It's no different than a sentence, a criminal
21 sentence. If the criminal sentence says: We're
22 going to impose supervised release, and if you
23 commit a federal crime while on supervised
24 release, it's a violation.

25 That judgment doesn't say you've

1 committed a -- another federal crime. You've
2 got to wait for a separate order about whether
3 or not you violated the terms of supervised
4 release. That's the same here.

5 This is simply saying: If the
6 following happens, these are consequences.
7 The -- the separate order that really addresses
8 whether they happened is the motion to reopen,
9 which they're not challenging, and a motion for
10 reconsideration, which they are. And that's the
11 only thing they're challenging, and it doesn't
12 affect the final order of removal.

13 I think it's also important to just
14 note the consequences or the penalty that's
15 imposed by c(d) of a monetary sanction or
16 ineligibility for certain relief, like
17 cancellation and adjustment of status, only
18 applies if the noncitizen voluntarily fails to
19 depart in the time period specified.

20 And the Board has interpreted that
21 provision in a case called Zmijewska. It's 21
22 I&N Decision 89. And the court -- the Board
23 said: You do not voluntarily to -- fail --
24 depart if, through no fault of your own, you're
25 unaware of the grant of voluntary departure or

1 you're physically unable to depart.

2 So my point by this discursion is to
3 explain that whether or not the noncitizen is
4 subject to these penalties is a separate
5 inquiry. If, for instance --

6 JUSTICE BARRETT: Mr. Yang, can I --
7 can I just interrupt --

8 MR. YANG: Sure.

9 JUSTICE BARRETT: -- and ask you a
10 question. So you didn't make this argument in
11 the Tenth Circuit. Have you -- has the
12 government made this in any court?

13 MR. YANG: This is the -- this is a
14 very rare case, rarely arises, so we've not made
15 it. And it's also a -- an argument that builds
16 from Nasrallah, which is very recent too.

17 So the combination of the two, this is
18 the first time that we made it in this case,
19 first in the very -- in a very summary way and
20 now more thoroughly here.

21 JUSTICE KAVANAUGH: Can we -- this was
22 not the question we granted cert on.

23 MR. YANG: Jurisdiction, you're
24 saying?

25 JUSTICE KAVANAUGH: Correct,

1 jurisdiction.

2 MR. YANG: Yeah. Yeah.

3 JUSTICE KAVANAUGH: And if it were

4 easy, then I can see just resolving it.

5 MR. YANG: Yeah.

6 JUSTICE KAVANAUGH: But the questions

7 reveal that maybe it's not so easy.

8 MR. YANG: Yeah.

9 JUSTICE KAVANAUGH: In that

10 circumstance, is the prudent thing to do to --

11 to vacate and send it back so that the Tenth

12 Circuit can consider the jurisdictional issue in

13 the first instance?

14 MR. YANG: Mm-hmm.

15 JUSTICE KAVANAUGH: To Justice

16 Barrett's question, it hasn't really --

17 MR. YANG: Yeah.

18 JUSTICE KAVANAUGH: -- and Justice

19 Sotomayor's earlier, it hasn't really percolated

20 this kind of jurisdictional question, so I'm

21 just trying to figure out what's sensible for us

22 to do.

23 MR. YANG: Yeah. We would not object

24 to that. We also -- we think it's sufficiently

25 clear ourselves as to --

1 JUSTICE KAVANAUGH: Right. But --

2 MR. YANG: -- but, if -- but, if the
3 Court wants to, there's no harm in sending it
4 back. You know, percolation --

5 JUSTICE KAVANAUGH: I just don't want
6 to make a mistake on something --

7 MR. YANG: -- percolation helps.

8 JUSTICE KAVANAUGH: -- that is
9 jurisdictional and could have ramifications that
10 are unforeseen.

11 MR. YANG: And we don't object to
12 that.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 MR. YANG: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice
17 Thomas, anything further?

18 JUSTICE THOMAS: Mr. Yang, you said
19 that Nasrallah was one of the reasons we have
20 this -- this -- this situation in this case now.
21 Would you explain what you mean by that?

22 MR. YANG: So our position in
23 Nasrallah was that all rulings in a removal
24 proceeding were within the ambit of the term
25 "final order of removal." And we were doing

1 that because there were exclusions of review of
2 final orders of removal.

3 And the court rejected that argument.
4 The court said: The term "final order of
5 removal" in 1252 is something more limited,
6 relying on the statutory definition. It is,
7 one, things that find -- rulings that find the
8 citizen -- noncitizen deportable or order
9 deportation. Those are -- that's it.

10 Now, in addition, Nasrallah says that
11 things that affect the validity of the final
12 order will merge in the final order.

13 And we would like to extend that to
14 some other things too. We think that if you
15 raise an issue together with, under (b)(9), the
16 zipper clause helps you, because it says you can
17 raise it in judicial review of a final order of
18 removal. But you still have to have a final
19 order of removal you're seeking review of. And
20 we think things like withholding of removal,
21 where it affects how you implement the final
22 order of removal, even though it doesn't affect
23 the validity of the final order of removal,
24 that's close enough because we need to know how
25 to implement the final order. That is part of

1 judicial review of the final order of removal
2 under the zipper clause.

3 So those are the things that we think
4 get covered, but all of them point back to
5 some -- a final order of removal, and the reason
6 is, is because the jurisdictional provision in
7 1252(a)(1) only grants jurisdiction over review
8 of a final order of removal. That's it.

9 CHIEF JUSTICE ROBERTS: Justice Alito,
10 anything further?

11 Justice Sotomayor?

12 JUSTICE SOTOMAYOR: I'd like to go to
13 agency practice.

14 MR. YANG: Mm-hmm.

15 JUSTICE SOTOMAYOR: Justice Gorsuch
16 was right that, most of the time, the agency
17 comes in to defend its practices. In this very
18 case, the immigration judge told Petitioner that
19 he had the extra two days. It -- the summary of
20 the March 5th oral ruling says "Respondent's
21 application for voluntary departure was granted
22 until May 6th." That's 62 days from March 5th.

23 I understand from the amicus brief
24 filed here that that was a consistent practice
25 by immigration judges.

1 MR. YANG: I'm not sure that's
2 correct, but I don't want to interrupt.

3 JUSTICE SOTOMAYOR: But some did.

4 MR. YANG: Some.

5 JUSTICE SOTOMAYOR: Okay. And --

6 MR. YANG: And -- and it's binding
7 precedent in the Ninth Circuit.

8 JUSTICE SOTOMAYOR: And when did the
9 agency correct that filing?

10 MR. YANG: Excuse me?

11 JUSTICE SOTOMAYOR: When did the BIA
12 issue an actual ruling that said they were
13 wrong?

14 MR. YANG: Well, it hasn't yet. In
15 2007, the BIA's decision in Meza-Vallejos, which
16 is the Ninth Circuit precedential decision on
17 the other side of this split, went the way we
18 said. In 2007, the Ninth Circuit disagreed and
19 agreed with the position -- with Petitioner,
20 although it's -- it's not quite the same
21 position, but bottom line is basically the same.

22 Then, in this case, we address it
23 again. And --

24 JUSTICE SOTOMAYOR: Thank you, Mr. --

25 MR. YANG: -- this is fairly rare --

1 JUSTICE SOTOMAYOR: Thank you,
2 Mr. Yang.
3 CHIEF JUSTICE ROBERTS: Justice Kagan?
4 Justice Gorsuch, anything?
5 Justice Kavanaugh?
6 JUSTICE KAVANAUGH: If we do address
7 the jurisdictional issue --
8 MR. YANG: Mm-hmm.
9 JUSTICE KAVANAUGH: -- and if you
10 lose --
11 MR. YANG: Mm-hmm.
12 JUSTICE KAVANAUGH: -- on that --
13 MR. YANG: Mm-hmm.
14 JUSTICE KAVANAUGH: -- what collateral
15 or additional consequences negative from your
16 perspective could ensue, and what language would
17 you want us to include in the opinion so that it
18 does not have those kinds of ripple effects?
19 MR. YANG: Well, it -- it's a little
20 hard to know. It will depend on how the Court
21 writes the opinion.
22 JUSTICE KAVANAUGH: That's why I'm
23 asking --
24 MR. YANG: So --
25 JUSTICE KAVANAUGH: -- how -- what you

1 think is --

2 MR. YANG: So I think --

3 JUSTICE KAVANAUGH: Maybe this just
4 reinforces my prior question that we shouldn't
5 be doing this, but assume we are doing this.

6 MR. YANG: Yeah.

7 JUSTICE KAVANAUGH: And assume you
8 lose.

9 MR. YANG: Yeah.

10 JUSTICE KAVANAUGH: Then what I don't
11 want to do is --

12 MR. YANG: Yeah.

13 JUSTICE KAVANAUGH: -- write an
14 opinion that has all sorts of ripple effects
15 that we haven't foreseen that you can tell us
16 now don't do that.

17 MR. YANG: Totally understand. So I
18 think you would restate the Nasrallah. Start
19 with Nasrallah, right? You can seek review of a
20 final order of removal that is -- finds the
21 citizen deportable, orders deportation.

22 Two, you can seek review of rulings
23 that merge into the final order, and the reason
24 they merge is because they affect the validity
25 of the final order of removal. And I think you

1 can also say that you can review things together
2 with the final order of removal under the zipper
3 clause, (b)(9), but, again, you still need to
4 explain how there's a final order of removal
5 being reviewed.

6 And then you can go even further and
7 say that rulings that affect how to implement
8 the final order, even if it doesn't reflect --
9 affect the validity of the final order -- so,
10 for instance, can you remove to this country?
11 Quintessential question about withholding or CAT
12 relief, right? Can you -- how do you implement
13 the final order? Those things could be reviewed
14 in and of themselves because they're close
15 enough to a final order.

16 Now, after you've said all that,
17 because we don't want to carve out these --
18 those are -- those are, like, important
19 categories. We -- we came to the conclusion
20 that, well, when you -- that's pretty generous,
21 but there's still this category of things that
22 just doesn't have a relevant relationship to a
23 final order of removal. Here, where you're
24 seeking to change some language, an opinion with
25 collateral consequences, I'm not sure how you

1 then square the circle and say: And that
2 somehow fits into those categories. But you'd
3 have to try to do that in some way, I think.

4 JUSTICE KAVANAUGH: Thank you.

5 CHIEF JUSTICE ROBERTS: Justice
6 Barrett?

7 Justice Jackson?

8 JUSTICE JACKSON: Would the ripple
9 effects be just to allow courts to review
10 challenges under circumstances that the
11 government would prefer not to have to defend
12 against? I mean, I don't understand, like --
13 Justice Kavanaugh says, well, if you lose, with
14 respect to jurisdiction --

15 MR. YANG: Mm-hmm.

16 JUSTICE JACKSON: -- I guess that
17 means that courts would just decide certain
18 kinds of questions that the government thinks
19 the court should not be able to, right?

20 MR. YANG: I guess it depends on what
21 the court says because we're not just talking
22 about this case. There are categories --

23 JUSTICE JACKSON: Right. I'm just
24 trying to understand the -- the scope, the blast
25 radius --

1 MR. YANG: Yeah.

2 JUSTICE JACKSON: -- of you losing in
3 this case. And it just seems to me that you'd
4 be in a situation in which there would be
5 certain kinds of arguments, like the one made
6 here --

7 MR. YANG: Mm-hmm.

8 JUSTICE JACKSON: -- about this --
9 what you say is a collateral consequence that
10 the court would consider under circumstances in
11 which the government thinks you shouldn't be --
12 the court should not be able to do so.

13 MR. YANG: Yeah. I think the
14 consequences really will flow from how the Court
15 decides what judicial review of a final order of
16 removal is in light of Nasrallah.

17 JUSTICE JACKSON: Thank you.

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.

20 Rebuttal, Mr. Cedrone?

21 REBUTTAL ARGUMENT OF GERARD J. CEDRONE
22 ON BEHALF OF THE PETITIONER

23 MR. CEDRONE: Thank you, Your Honor.
24 Let me say a few words about jurisdiction and
25 then a few words about the merits.

1 On jurisdiction, the question of
2 whether there's going to be a blast radius from
3 this decision, the government explains at page
4 18 of its brief that it sees the jurisdictional
5 question in this case as turning on two
6 idiosyncratic features of this case. What the
7 government has tried to do is construct a view
8 of jurisdiction that disposes of this case and
9 no other.

10 For the reasons we've explained, that
11 view of jurisdiction is wrong. The Court
12 doesn't have to do anything unprecedented to
13 recognize as much. It can start with the text
14 of the statute, which covers a final order of
15 removal. On the government's view, a final
16 order of removal is just the piece of the order
17 that says you are removable to this country. I
18 don't know where that comes from.

19 There is -- the only thing that's
20 unprecedented about jurisdiction is -- in this
21 case is the government's view, which appeared
22 for the first time in a brief in opposition and
23 has continued to evolve, including at the
24 lectern here today. I heard Mr. Yang say for
25 the first time that there's a voluntariness test

1 that needs to be adjudicated, and he cited a BIA
2 case that I don't believe was -- was in his
3 brief. The reason for that is this is a rule
4 that's crafted to dispose of this case. The
5 Court doesn't have to do anything different from
6 what it's already said in previous cases to
7 recognize jurisdiction.

8 I also heard Mr. Yang say on -- on
9 jurisdiction that jurisdiction is available in a
10 case where the question turns on how the removal
11 order is implemented. I don't know how to
12 credibly explain to a client that the one -- the
13 \$3,000 fine you get slapped with as you're
14 removed from the country and the 10-year bar on
15 return is not part of how the removal order is
16 implemented. So I think you can even rely on
17 Mr. Yang's words here today to recognize that
18 there is jurisdiction.

19 Turning to the merits, the
20 government's main argument is that there's a
21 distinction between statutes and regulations
22 governing private -- primary conduct and
23 statutes and regulations governing filings.

24 I also don't know where that comes
25 from. If you start with the regulation,

1 Section 1001.1, it says it applies to any
2 action. The government tries to read that in a
3 way that it only applies to regulatory deadlines
4 and not statutory deadlines.

5 What the government fails to grapple
6 with is that many statutory deadlines -- excuse
7 me, many regulatory deadlines simply parrot
8 statutory deadlines in Title 8 of the Code of
9 Federal Regulations and in plenty of other
10 regulatory schemes outside of immigration. We
11 cite examples at page 42 of our brief where
12 other agencies have adopted this same
13 traditional principle.

14 So, at the end of the day, I think the
15 question is, what would somebody picking up this
16 statute in 1996 have made of it? That person
17 would have had the immigration regulation we've
18 been talking about. They would have been --
19 they would have had Rule 6(a), which both this
20 Court and the BIA have looked to to understand
21 how deadlines work not only where the rule
22 directly applies but also in other cases.

23 That person would have had precedent
24 from this Court applying this traditional rule.
25 That -- that -- that person would have had the

1 common law principle that has applied even
2 before that. And there is nothing cutting in
3 the other direction, nothing that that person
4 would have looked to in 1996 to think that there
5 was a different definition, a different time
6 calculation rule that applied to this statute
7 and this statute only.

8 We ask the Court to reverse.

9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel. The case is submitted.

11 (Whereupon, at 11:12 a.m., the case
12 was submitted.)
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