

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.)
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Washington, D.C.

Tuesday, November 12, 2024

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

APPEARANCES:

GERARD J. CEDRONE, ESQUIRE, Boston, Massachusetts; on behalf of the Petitioner.

ANTHONY A. YANG, Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the Respondent.

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P R O C E E D I N G S

(10:04 a.m.)

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

Mr. Cedrone.

ORAL ARGUMENT OF GERARD J. CEDRONE

ON BEHALF OF THE PETITIONER

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

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

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

Even the government now acknowledges that other deadlines in the same section of 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 disagree, Your Honor,
9 in two respects. So, one, as I just pointed
10 out, the Court has consistently explained that a
11 reconsideration or reopening decision is --

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

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

22 There are two alternate orders of
23 removal waiting in the wings, one with harsh
24 penalties, one without, and this timeliness
25 determination directly affects which of those

1 alternate orders of removal will take effect.

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

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

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

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

22 But it's not just the regulation. As
23 we point out, that regulation codifies an
24 earlier practice that's reflected in Civil Rule
25 6(a), which this Court and the BIA have looked

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

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

9 CHIEF JUSTICE ROBERTS: The --

10 MR. CEDRONE: -- an even --

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

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

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

25 MR. CEDRONE: Two points, Your Honor.

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

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

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

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

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

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

8 MR. CEDRONE: Yes.

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

12 MR. CEDRONE: That's right.

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

17 MR. CEDRONE: That's right.

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

25 MR. CEDRONE: That's right.

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

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

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

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

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

24 MR. CEDRONE: It did not.

25 JUSTICE SOTOMAYOR: And it raised it

1 in its petition for opposition, but you didn't
2 reply to it until your reply, correct?

3 MR. CEDRONE: That's correct.

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

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

10 JUSTICE SOTOMAYOR: I agree --

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

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

15 MR. CEDRONE: That's right.

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

21 MR. CEDRONE: I think, if you accept
22 the government's view of jurisdiction in this
23 case, it would be either a real sea change for
24 immigration law because it would mean that
25 reopening and reconsideration decisions aren't

1 separately reviewable, as this Court has
2 consistently pointed out in Reyes Mata, in
3 Kucana against Holder and other cases --

4 JUSTICE SOTOMAYOR: What --

5 MR. CEDRONE: -- or --

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

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

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

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

1 MR. CEDRONE: I -- I --

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

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

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

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

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

22 I mean, one consequence here would be
23 say you were clearly within the 60 days, there
24 was no doubt about it, and the government said
25 you weren't. That would be unreviewable, I

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

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

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

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

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

25 Turning --

1 JUSTICE BARRETT: Mr. Cedrone --

2 MR. CEDRONE: Oh.

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

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

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

24 And so I think, on the government's
25 view, this case is a one-off, not in that the

1 government is taking the position that this
2 issue is never reviewable, just that you have to
3 bundle it in your petition with some sort of
4 challenge, however slight, to your removability
5 to seize the court of jurisdiction.

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

8 JUSTICE BARRETT: Okay. My question
9 on the merits.

10 Most of the time when we think about
11 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 60-day
22 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 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 bind 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, that's
21 -- that doesn't strike me as a practical reason.
22 Why can't they say: You've got to get out of
23 the country in 60 days? You can get out of the
24 country just as easily on a Saturday or a Sunday
25 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 dead
19 -- 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 regulation
8 -- regulatory deadline is facially clear, you
9 need to go to the INA and see if there's a
10 statutory analogue for that 180-day deadline, it
11 turns out there is in Section 1229a.

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

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

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

24 JUSTICE SOTOMAYOR: Counsel, it's not
25 only that it's simpler, but the INA is filled

1 with provisions like this where the individual's
2 activities are tied to the government's
3 activities, correct?

4 MR. CEDRONE: That's right.

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

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

19 MR. CEDRONE: Right.

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

23 MR. CEDRONE: Right.

24 JUSTICE SOTOMAYOR: So these are the
25 practical difficulties.

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

5 MR. CEDRONE: That's exact --

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

8 MR. CEDRONE: That's exactly right.

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

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

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

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

10 The idea that pro se noncitizens --

11 JUSTICE KAGAN: Do you know --

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

14 JUSTICE KAGAN: No, go ahead.

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

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

25 (Laughter.)

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

5 Secondly, that accords with --

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

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

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

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

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

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

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

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

23 JUSTICE KAGAN: Do you know whether
24 the government, in fact, applies this rollover
25 rule to anything that's not a filing deadline?

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

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

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

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 Justice Thomas, anything further?

24 Justice Alito?

25 Justice Sotomayor?

1 Justice Gorsuch, anything? No?

2 Justice Kavanaugh?

3 Justice Barrett?

4 Justice Jackson?

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

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

13 JUSTICE JACKSON: Yeah.

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

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

25 And I guess your response is that the

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

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

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

16 JUSTICE JACKSON: Thank you.

17 CHIEF JUSTICE ROBERTS: Thank you,
18 counsel.

19 Mr. Yang.

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

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

24 Section 1229c's maximum 60-day period
25 for voluntary departure is not extended when the

1 last day falls on a weekend or a holiday. The
2 requirement to arrange for travel and to depart
3 the United States involves primary conduct in
4 the real world. Nothing prevents departure on
5 weekends or holidays, when many prefer to
6 travel. And unlike contexts involving the
7 timing of litigation-based or administrative
8 acts before courts or agencies, no tradition by
9 rule or otherwise potentially exists for
10 extending statutory deadlines for primary
11 conduct.

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

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

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

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

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

18 Now Section 12 -- the question whether
19 Section 1229c(d)'s penalties apply for failing
20 to depart timely is a distinct question. Those
21 sanctions apply only if the noncitizen
22 voluntarily fails to depart timely. But
23 Petitioner has not argued that his departure was
24 not non-voluntary or if it was non-voluntary,
25 and the 60-day period itself cannot be extended.

1 I welcome the Court's questions.

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

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

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

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

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

22 So the way, as Mata recognizes, the
23 way that there is jurisdiction here is
24 1252(a)(1) grants jurisdiction to review final
25 orders of removal and then just plugs that into

1 the Hobbs Act.

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

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

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

11 MR. YANG: That --

12 JUSTICE KAGAN: Is it --

13 MR. YANG: Yeah.

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

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

23 JUSTICE GORSUCH: But it also says
24 anything that affects the validity of the final
25 order --

1 MR. YANG: That -- that's why
2 there's --

3 JUSTICE GORSUCH: -- doesn't it, Mr.
4 Yang?

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

7 JUSTICE GORSUCH: And -- and --

8 MR. YANG: -- issues that affect the
9 validity --

10 JUSTICE GORSUCH: If I might just
11 finish.

12 MR. YANG: Sure. Yeah.

13 JUSTICE GORSUCH: Thank you.

14 MR. YANG: Yeah.

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

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

23 MR. YANG: No. And --

24 JUSTICE GORSUCH: Okay. Why not?

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

1 These -- this is really important. Pages 42a
2 and --

3 JUSTICE GORSUCH: I agree with that.

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

9 It says two orders: Order, appeal
10 dismissed; order, voluntary departure.

11 Then it has -- these are in bold, you
12 know, all caps.

13 JUSTICE GORSUCH: I've read it. It
14 says: Warning.

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

18 JUSTICE GORSUCH: Yeah.

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

20 JUSTICE GORSUCH: Yeah.

21 MR. YANG: That -- nothing's going to
22 change with that. That's true. If you fail to
23 voluntarily depart, that's -- those are -- there
24 are sanctions. It's just identifying --

25 JUSTICE KAGAN: But the order operates

1 entirely differently under your view versus
2 under Mr. Cedrone's view. One might say the
3 order operates entirely differently depending on
4 whether one takes the view of the original
5 immigration judge or the later view of the
6 Board.

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

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

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

25 Here, DHS has already said: You

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

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

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

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

22 MR. YANG: Just --

23 JUSTICE JACKSON: Am I wrong about
24 that? No?

25 MR. YANG: I -- I haven't quite

1 finished the -- the categories of things --

2 JUSTICE JACKSON: Okay. Sorry.

3 MR. YANG: -- that were -- were
4 captured. There is the final order of
5 removal --

6 JUSTICE JACKSON: Okay.

7 MR. YANG: -- as Nasrallah explains.
8 There are things that affect its validity --

9 JUSTICE JACKSON: Okay.

10 MR. YANG: -- which then merge into
11 the final order.

12 JUSTICE JACKSON: Yeah.

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

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

20 JUSTICE GORSUCH: Oh, there we go.

21 MR. YANG: Right. How to implement
22 the final order.

23 JUSTICE GORSUCH: There we go. Yeah.
24 How are you going to implement this final order?

25 MR. YANG: This order --

1 JUSTICE GORSUCH: Is -- is the fellow
2 barred from the country for 10 years or not?

3 MR. YANG: That's not in the final
4 order.

5 JUSTICE GORSUCH: Oh, it says -- it
6 actually does say "Warning." But, at any
7 rate --

8 (Laughter.)

9 MR. YANG: Thank you. It -- it --
10 it -- all that simply does -- the -- the final
11 order says several warnings. These are all --

12 JUSTICE GORSUCH: I mean, where do you
13 get all this from 1252? I mean, I thought you
14 were a good textualist, Mr. Yang.

15 MR. YANG: Well, when I start --

16 JUSTICE GORSUCH: And it says that we
17 have -- we have authority -- the court of
18 appeals has authority to review final orders of
19 removal. It -- it -- that's it. That's what it
20 says.

21 MR. YANG: That's true. And it says
22 that judicial review of all other questions --
23 this is a zipper clause in (b)(9) -- are
24 available only in judicial review of the
25 final -- of a final order under this section.

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

3 MR. YANG: That I -- I can't -- I
4 can't speak to.

5 JUSTICE GORSUCH: All right. Neither
6 can I.

7 JUSTICE JACKSON: I guess --

8 JUSTICE GORSUCH: Can we hold -- wait.

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

11 JUSTICE GORSUCH: Why -- why -- why --
12 is it -- is it -- I mean, "jurisdictional," as
13 Justice Ginsburg used to love to say, is a word
14 of many -- too many meanings. Is -- is --

15 MR. YANG: This is the big "J"
16 jurisdictional meaning. This is -- because
17 1252(a)(1) only grants jurisdiction through the
18 Hobbs Act to review final orders of removal.
19 And we think you can expand that a little bit by
20 knowing the case has nothing to do with the
21 final order of removal. It is not -- the final
22 order, it does not affect its validity. It does
23 not --

24 JUSTICE GORSUCH: All right.

25 JUSTICE JACKSON: Mr. Yang, not only

1 did you not raise it, I thought you
2 affirmatively represented to the Tenth Circuit
3 that there was jurisdiction in this case.

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

6 JUSTICE JACKSON: You said there
7 wasn't --

8 MR. YANG: Was not --

9 JUSTICE JACKSON: -- but for not --
10 not for this reason.

11 MR. YANG: -- for a statute --
12 statutory prohibition on --

13 JUSTICE JACKSON: All right. So
14 what -- what do you do about the fact that
15 Nasrallah itself recognized that evidentiary
16 rulings merge into final orders? I mean,
17 most --

18 MR. YANG: Because --

19 JUSTICE JACKSON: -- most evidentiary
20 rulings are going to be collateral in the sense
21 that you're talking about. So why -- why is it
22 that this is not?

23 MR. YANG: No, because an evidentiary
24 ruling that's -- I mean, if it were -- if the
25 judge admitted something and had said, well,

1 this is completely irrelevant, has nothing to do
2 with anything, maybe that would be the case,
3 but --

4 JUSTICE JACKSON: Well, this is not
5 completely irrelevant. I mean, this, as Justice
6 Gorsuch keeps emphasizing, has to -- imposes
7 serious consequences on -- on the defendant.

8 So what I'm saying is an evidentiary
9 ruling that doesn't go to directly whether or
10 not a person is removable under Nasrallah counts
11 because it's still a part of the final order for
12 the purpose of reviewability.

13 MR. YANG: The final order here is an
14 order of removal. It orders -- grants voluntary
15 departure. The only collateral consequences
16 that arise arise from the decision on reopening
17 and then reconsideration.

18 But Petitioner's not even seeking
19 reconsideration -- to challenge the reopening
20 decision. Only through --

21 JUSTICE JACKSON: So here -- here's my
22 --

23 JUSTICE BARRETT: So would it have
24 mattered if he -- would it matter if he had?

25 MR. YANG: Yes, because a reopening

1 decision, if -- if -- now you can't make a
2 frivolous claim. I mean, Bell versus Hood and
3 Steel Co. makes clear there's no jurisdiction
4 over frivolous claims.

5 But, if you have a good-faith claim
6 that you're challenging the motion to reopen,
7 you're move -- moving to reopen and that itself
8 will affect either the validity of the final
9 order or it could affect how the final order is
10 implemented.

11 JUSTICE BARRETT: So what if he had
12 done that here and not just --

13 MR. YANG: Well, then we would be
14 making --

15 JUSTICE BARRETT: -- not just appealed
16 his --

17 MR. YANG: -- we wouldn't be making
18 the jurisdictional argument because he would
19 have been arguing that it should have been
20 reopened, one, because I provided sufficient new
21 evidence, as required --

22 JUSTICE BARRETT: Right.

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

25 JUSTICE BARRETT: Could he have

1 challenged the collateral consequences, as
2 Justice Gorsuch was talking about, through a
3 motion to reopen? Is that the government's
4 position?

5 MR. YANG: No.

6 JUSTICE BARRETT: No? Okay.

7 MR. YANG: No. The collateral
8 consequences come up later, right?

9 JUSTICE BARRETT: Okay.

10 MR. YANG: It comes up when you are
11 denied a benefit or when you don't get your
12 bond, and he can challenge those in those
13 contexts in the country.

14 JUSTICE BARRETT: Okay. Can he make
15 --

16 JUSTICE GORSUCH: So you can challenge
17 even things that are not having to do with your
18 categories that you just gave me --

19 MR. YANG: Uh-huh.

20 JUSTICE GORSUCH: -- so long as you
21 have another challenge that does?

22 MR. YANG: Yeah. It's a normal APA
23 challenge, not a challenge to a final order of
24 removal --

25 JUSTICE GORSUCH: And so, once --

1 MR. YANG: -- because it would be a
2 DHS decision.

3 JUSTICE GORSUCH: -- so long -- if he
4 had brought this Niz-Perez challenge, he could
5 have also challenged this determination on the
6 10 years even though it doesn't fall, in your
7 view, into any of your -- in any of the buckets?

8 MR. YANG: No, it would because what
9 he would --

10 JUSTICE GORSUCH: Because I thought
11 your view is I only have jurisdiction to do
12 things that have to do with removability, and
13 this isn't one of them.

14 MR. YANG: It -- no, it would. When
15 he challenged -- if he had challenged the motion
16 to reopen by saying proceedings should have
17 reopening -- be reopened, which then has the
18 potential to affect the final order --

19 JUSTICE GORSUCH: Yeah. But, in -- in
20 -- in -- in that litigation, a court might say
21 your Niz-Perez argument's no good.

22 MR. YANG: Sure.

23 JUSTICE GORSUCH: But you don't have
24 to wait 10 years.

25 MR. YANG: Sure. But the fact that

1 you --

2 JUSTICE GORSUCH: And I have
3 jurisdiction to do that.

4 MR. YANG: The fact that you lose,
5 might lose, doesn't mean there's not
6 jurisdiction to -- to -- you know, to seek
7 review.

8 JUSTICE GORSUCH: Let me ask you
9 another question on the merits if I might, and
10 then I'll -- then I'll -- I'll let you go.

11 MR. YANG: Sure.

12 JUSTICE GORSUCH: Promise. Well,
13 maybe not.

14 (Laughter.)

15 MR. YANG: I'm happy to be here as
16 long as you'd like to be.

17 JUSTICE GORSUCH: I take the common
18 law point that it usually has to do with court
19 deadlines. But your regulation is clear. It
20 says all, any. And you've had this regulation
21 for a very long time, and, normally, the
22 government really likes its regulations. It
23 used to come up here and say we have to defer to
24 them. Now it comes up here and says we should
25 give them great respect when they're

1 contemporaneous and long-standing, which check
2 both those boxes here, right?

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

7 MR. YANG: Well, I don't know that
8 that's quite right. The regulation at issue
9 here is not a general definition of "day"
10 throughout the immigration context. It is
11 limited in -- textually in two specific ways.
12 One, it only -- applies only to regulations, not
13 statutes. Secondly, it applies only when the
14 period of action is provided in the regulation.

15 And we don't think that applies.
16 Section 1229c is a statutory provision, so
17 1221(a) -- or 1221 -- or, sorry, Section 1-1
18 would not apply. No regulatory antecedent to
19 which 1-1 would have applied exists. And the
20 implementing regulations -- and this is on page
21 8a of the appendix to our brief -- say that the
22 maximum is 60 days, as set forth in Section 240B
23 of the Act. It's not saying that the maximum is
24 set forth in the regulations. It's saying that
25 the Act is what sets forth the -- the maximum.

1 CHIEF JUSTICE ROBERTS: Counsel, you
2 began your argument by emphasizing the
3 distinction between this type of deadline and
4 general court deadlines.

5 I -- I -- I don't quite understand
6 that. I mean, this is a deadline for the courts
7 as well. The courts can't exercise jurisdiction
8 if the -- you know, if the -- depending upon how
9 we -- we rule. I don't know how that's any
10 different than our deadline for -- for filing a
11 cert petition. I mean, it's -- it affects what
12 the -- you know, outside conduct, but it also
13 binds the court.

14 MR. YANG: I don't -- it's true that
15 it can have legal consequences, but when I make
16 the distinction between primary conduct in the
17 real world and things that are concerning
18 actions in litigation, things like filing
19 deadlines or other things that are -- that's
20 what I'm talking about. That's where -- you
21 know, we disagree --

22 JUSTICE KAGAN: So I completely
23 understand the rationale for that, but that
24 appears no place in any statute or in any
25 regulation that you're talking to. So that's --

1 I mean -- I mean, that would be an entirely
2 atextual limit on this regulation in particular.

3 MR. YANG: I don't -- I don't think so
4 because the general rule, the default rule, is
5 the text, and the text, we think, is clear. The
6 question is whether to seek a contextual
7 exception from the text.

8 And our point is the exceptions, if
9 they apply, only apply in these other contexts,
10 not conducts -- contexts involving primary
11 conduct.

12 JUSTICE KAGAN: I -- I -- I guess I
13 don't understand this. I thought that we had
14 been talking about a general regulation that has
15 a rollover principle in it and that says that's
16 the way the agency is going to understand what
17 the word "day" means in this -- you know, when
18 it confronts 60-day periods or 30-day periods or
19 what have you.

20 And the argument that you are making,
21 sort of filing deadlines versus everything else
22 or things that are about primary conduct versus
23 things that are primarily about court conduct,
24 that just doesn't appear in the agency's own
25 regulation respecting this issue.

1 MR. YANG: That's true. The
2 regulation, though, is itself limited only to,
3 one, regulations that use the word "day," and,
4 two, only those that set the time to take action
5 itself, not statutory times to take action. So,
6 if you're looking for an exception, it doesn't
7 lie there. That's our point.

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

10 JUSTICE JACKSON: But, Mr. Yang --

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

12 JUSTICE JACKSON: -- can --

13 MR. YANG: Saturday is a day.

14 Holidays.

15 JUSTICE JACKSON: -- can I ask you, it
16 -- it -- the period for departure may not exceed
17 60 days, but where is the authority that says
18 that if you file a motion for reopening or
19 whatnot, you can stay until that motion is -- is
20 decided?

21 MR. YANG: Oh, no, that's not
22 necessarily the case.

23 JUSTICE JACKSON: That's not?

24 MR. YANG: No. So what happens is --
25 this all follows from Dada in 2008 and the

1 regulations that were enacted in response to
2 Dada. If you file a motion to reopen or a
3 motion to reconsider before --

4 JUSTICE JACKSON: The expiration.

5 MR. YANG: -- the voluntary departure
6 period ends --

7 JUSTICE JACKSON: Yeah.

8 MR. YANG: -- it withdraws your
9 request for voluntary departure. What happens
10 then is you are immediately subject to an order
11 of deportation.

12 JUSTICE JACKSON: I see.

13 MR. YANG: And we could remove you
14 from the country like that.

15 JUSTICE JACKSON: I see. So --

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

17 JUSTICE JACKSON: -- so I guess my
18 question is: Why isn't this then also
19 implicating the courts? Several of my
20 colleagues have sort of raised this. I mean, if
21 your filing of a particular motion has the
22 consequence of affecting a withdrawal and,
23 therefore, starting the process of actual
24 removal --

25 MR. YANG: Right.

1 JUSTICE JACKSON: -- why wouldn't the
2 deadlines that apply to filing motions --

3 MR. YANG: Uh-huh.

4 JUSTICE JACKSON: -- or the
5 regulations that apply to filing motions be
6 implicated?

7 MR. YANG: Because the voluntary
8 departure deadline exists regardless of whether
9 any filing is made.

10 JUSTICE JACKSON: That's the case of
11 anything.

12 MR. YANG: No, no, no.

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

14 MR. YANG: No, no, no, that's not,
15 because Congress says your time to voluntary
16 depart --

17 JUSTICE JACKSON: Mm-hmm.

18 MR. YANG: -- is 60 days, period. If
19 you do nothing, you've got to voluntarily depart
20 in 60 days. There's no filing. And the filing
21 deadline for a motion to reopen is 90 days.
22 It's timely if it's filed -- this motion to --
23 to file -- reopen was timely. It was within the
24 90 days.

25 The voluntary departure deadline is a

1 separate one governing primary conduct. The
2 fact that the -- the Petitioner wanted to get it
3 in, his motion in, before that separate deadline
4 expired doesn't convert that separate deadline
5 into a filing deadline.

6 JUSTICE KAGAN: Can -- can -- can I --
7 can I take you back to the jurisdictional
8 question and --

9 MR. YANG: Sure.

10 JUSTICE KAGAN: -- and make sure that
11 I understand your answer?

12 MR. YANG: Mm-hmm.

13 JUSTICE KAGAN: If this Petitioner had
14 wanted to challenge the view of timeliness
15 reflected in the denial of the motion to
16 reopen --

17 MR. YANG: Mm-hmm.

18 JUSTICE KAGAN: -- how would he have
19 done that? He should have taken that straight
20 to court, you're saying?

21 MR. YANG: Well, he could have done it
22 in -- in multiple ways. He could have -- if he
23 wanted to do it in the context of the removal
24 proceedings -- not going to the collateral
25 consequences, because, remember, he could

1 challenge the withholding of the bond or he
2 could now move DHS to adjust status and when
3 denied because he didn't --

4 JUSTICE KAGAN: I -- I -- I'm --

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

6 JUSTICE KAGAN: This is a -- this is a
7 really simple question --

8 MR. YANG: Sure.

9 JUSTICE KAGAN: -- having to do with
10 this Petitioner --

11 MR. YANG: Yeah.

12 JUSTICE KAGAN: -- who has just found
13 out that with --

14 MR. YANG: Yeah.

15 JUSTICE KAGAN: -- very severe
16 consequences --

17 MR. YANG: Mm-hmm.

18 JUSTICE KAGAN: -- his understanding
19 of what counts as timely conduct is wrong. And
20 how does he challenge that determination?

21 MR. YANG: So if -- he could challenge
22 the motion to reopen on judicial review. He
23 could have sought reconsideration and then
24 challenged both the motion to reopen and the
25 motion for reconsideration.

1 JUSTICE KAGAN: Okay. So let's stop
2 there.

3 MR. YANG: But it wouldn't have --
4 okay.

5 JUSTICE KAGAN: He could challenge --
6 he could challenge it in court, is the first
7 thing. And then you said the second thing is he
8 could challenge it as long as he included a
9 challenge to his removability. That was the
10 second thing.

11 And I guess what I want to say is, I
12 mean, this strikes me as a -- a very strange
13 rule that you're precluding him from doing what
14 actually seems, from the agency's own
15 perspective, the sensible thing. In other
16 words, he's seeking exhaustion of administrative
17 remedies. Before he goes to court, he wants to
18 make sure that the agency itself has thought
19 about this question sufficiently.

20 And then you say, well, he has to
21 attach it to a challenge about removability.
22 But he's saying he doesn't have a challenge
23 about removability. So you're asking him to
24 make up a completely meritless claim in order to
25 get jurisdiction.

1 And how do either one of those things
2 make sense? This is a man who's really trying
3 to, like, get the agency to focus on this
4 timeliness determination that has just arisen in
5 his -- in the denial of his motion to reopen.
6 He did what I would think the agency would want
7 him to do.

8 MR. YANG: Well, I will say that where
9 this comes from is the text; that is, there's
10 review only of a final order of removal. That's
11 1252(a)(1). It then goes to Nasrallah, which
12 interpreted "final order of removal."

13 Now our argument in Nasrallah --

14 JUSTICE KAGAN: Okay. That's --
15 that's completely non-responsive to the question
16 that I just asked.

17 MR. YANG: But why -- our position is
18 following the text and this Court's decisions.

19 JUSTICE KAGAN: Okay. Well, let me
20 ask you about the text then. Is this a question
21 of law and fact arising from any action taken or
22 proceeding brought to remove an alien from the
23 United States?

24 MR. YANG: It is. And the latter part
25 of that provision --

1 JUSTICE KAGAN: All right. It is.

2 MR. YANG: -- if you continue
3 reading --

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

6 MR. YANG: Yeah.

7 JUSTICE KAGAN: -- otherwise known as
8 the zipper clause, and this clearly fits into
9 it. It is a question of law and fact arising
10 from an action taken or proceeding brought to
11 remove an alien.

12 And then it says: Any of those
13 questions shall be available only in judicial
14 review of a final order under this section.

15 Now wouldn't you read that to say that
16 all those other questions that fall into that
17 first part of the provision are, in fact,
18 reviewable --

19 MR. YANG: Not if there's not a final
20 order. If there's not review of the final order
21 of removal, it doesn't fall within that --
22 that's what the text says. It's available only
23 in judicial review of a final order. That's --

24 JUSTICE JACKSON: But didn't we in
25 Mata --

1 JUSTICE KAGAN: Well, it's -- judicial
2 review of a final order is understood to include
3 all of those questions.

4 MR. YANG: That was rejected by this
5 Court in Nasrallah. We argued that the final
6 order included --

7 JUSTICE JACKSON: But Nasrallah was
8 not -- was --

9 MR. YANG: No, no. We argued that all
10 rulings in the removal proceeding under the
11 zipper clause, that kind of thing goes into a
12 final order.

13 The Court rejected that. They said
14 no, no, no, that was under the fotee framework.
15 That all changed. Now we're going to apply the
16 definition in the INA. That definition means:
17 A final order of removal either finds a
18 noncitizen deportable or orders deportation.

19 There's another category, things that
20 affect the validity of that, that merge into the
21 final order.

22 JUSTICE JACKSON: Mr. -- Mr. Yang, you
23 keep skipping over Mata, and that's what I don't
24 understand. You -- you keep going to Nasrallah.
25 But, in Mata, I thought the Court made clear

1 that the INA's grant of jurisdiction over final
2 orders of removal encompasses review of
3 decisions refusing to reopen or reconsider such
4 orders.

5 MR. YANG: That's true.

6 JUSTICE JACKSON: Here, we have a
7 decision refusing to reconsider or reopen.
8 Nasrallah did not involve a decision refusing to
9 reconsider or reopen.

10 So why doesn't Mata's determination
11 that those kinds of decisions actually do --

12 MR. YANG: Because Mata recognizes
13 that reopening and reconsideration can be
14 subject to review. It doesn't say everything.

15 So, for instance, take an alien who's
16 a -- a -- a soccer fan and says: I want -- I
17 move for reconsideration. I want you to include
18 in your opinion the statement I'm as good of a
19 soccer player as Lionel Messi. Now it --

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

22 JUSTICE JACKSON: No, this is
23 actually -- and -- and this is --

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

1 JUSTICE KAGAN: Well, it is --

2 JUSTICE JACKSON: But, Mr. Yang, Mata
3 says that there are certain categories of
4 orders, those that go to reopening and remove --
5 reconsideration that do count as final orders of
6 removal.

7 That seems to me to be a simple, clear
8 line that judges can apply when we determine
9 whether or not we have jurisdiction, and it's
10 one that makes sense.

11 You want us to drill down. Only
12 certain finals -- only certain orders of
13 reopening or reconsideration count.

14 MR. YANG: It's hard to avoid the
15 "final order of removal" language because that's
16 where the only jurisdictional grant is.

17 JUSTICE JACKSON: I'm not avoiding it.
18 I'm saying Mata interpreted it.

19 MR. YANG: And the --

20 JUSTICE JACKSON: Mata interpreted
21 "final orders of removal" to "encompass review
22 of decisions refusing to reopen or reconsider
23 such orders." And we have --

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

25 JUSTICE JACKSON: -- such a decision

1 in this case.

2 What I hear you saying is, yes, but
3 only certain decisions that refuse to reopen or
4 reconsider count, and you want us to look at the
5 extent to which the person, in their
6 application, made certain arguments.

7 It seems like a very technical way to
8 go about this when we have a case that already
9 interprets motions -- or -- or decisions that
10 encompass review of refusing to reopen or
11 reconsider as final orders of removal for this
12 purpose.

13 MR. YANG: Mata did not say that every
14 motion to reopen and every motion to reconsider,
15 regardless of what it concerns, is subject to
16 the jurisdictional provision.

17 And our point is most -- most are
18 included.

19 JUSTICE JACKSON: But why -- why
20 wouldn't it be? Why wouldn't it be?

21 We -- we are talking about the power
22 of the court --

23 MR. YANG: Mm-hmm.

24 JUSTICE JACKSON: -- to hear a
25 person's claim. We're not saying whether or not

1 his claim is meritorious, whether or not -- why
2 wouldn't the rule that makes sense, that
3 Congress intended when it was talking about
4 jurisdiction be that the final order of removal
5 and any subsequent attempts to get the court to
6 revisit or get the agency to revisit through a
7 motion for reopening or a motion for
8 reconsideration all fits in the umbrella of
9 things that the court would review?

10 MR. YANG: Because, when the issue
11 concerns a matter as collateral as this and, in
12 addition --

13 JUSTICE JACKSON: It's not collateral
14 because it relates to the final order of removal
15 in the way that Mata indicated.

16 MR. YANG: And, in addition, where you
17 have judicial review elsewhere, Congress would
18 have thought that those collateral consequences
19 could be pursued but in a different judicial
20 forum in a different way.

21 It's not unusual here, when -- we're
22 talking about removal proceedings, where it
23 doesn't affect the order of removal in any way.
24 It really doesn't. This is all collateral.
25 This order of removal is unchanged.

1 There's not a word on that page in,
2 what is it, 42 and 43a that would change.
3 Nothing. They say it would change. But, like,
4 how are you going to change it? Notice: If you
5 fail to voluntarily depart, the following will
6 happen.

7 That's right, nothing's changing
8 there. The only collateral consequences arise
9 from the subsequent --

10 JUSTICE KAGAN: Well, but the meaning
11 of that provision has changed. I mean -- and
12 that provision is in the overall order of
13 removal.

14 You're insisting on saying that the
15 order of removal is just the -- the -- the
16 conclusion as to removability. But, in fact, it
17 has -- it makes reference to other matters,
18 including voluntary departure.

19 And the meaning of the voluntary
20 departure provision, how it's implemented, how
21 it operates on the ground, completely changes
22 depending on whose view of timeliness one
23 adopts.

24 MR. YANG: The order doesn't change.
25 It's no different than a sentence, a criminal

1 sentence. If the criminal sentence says: We're
2 going to impose supervised release, and if you
3 commit a federal crime while on supervised
4 release, it's a violation.

5 That judgment doesn't say you've
6 committed another federal crime. You've got to
7 wait for a separate order about whether or not
8 you violated the terms of supervised release.
9 That's the same here.

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

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

25 And the Board has interpreted that

1 provision in a case called Zmijewska. It's 21
2 I&N Decision 89. And the court -- the Board
3 said: You do not voluntarily fail to depart if,
4 through no fault of your own, you're unaware of
5 the grant of voluntary departure or you're
6 physically unable to depart.

7 So my point by this discursion is to
8 explain that whether or not the noncitizen is
9 subject to these penalties is a separate
10 inquiry. If, for instance --

11 JUSTICE BARRETT: Mr. Yang, can I --
12 can I just interrupt --

13 MR. YANG: Sure.

14 JUSTICE BARRETT: -- and ask you a
15 question. So you didn't make this argument in
16 the Tenth Circuit. Have you -- has the
17 government made this in any court?

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

22 So the combination of the two, this is
23 the first time that we made it in this case,
24 first in the very -- in a very summary way and
25 now more thoroughly here.

1 JUSTICE KAVANAUGH: Can we -- this was
2 not the question we granted cert on.

3 MR. YANG: Jurisdiction, you're
4 saying?

5 JUSTICE KAVANAUGH: Correct,
6 jurisdiction.

7 MR. YANG: Yeah. Yeah.

8 JUSTICE KAVANAUGH: And if it were
9 easy, then I can see just resolving it.

10 MR. YANG: Yeah.

11 JUSTICE KAVANAUGH: But the questions
12 reveal that maybe it's not so easy.

13 MR. YANG: Yeah.

14 JUSTICE KAVANAUGH: In that
15 circumstance, is the prudent thing to do to --
16 to vacate and send it back so that the Tenth
17 Circuit can consider the jurisdictional issue in
18 the first instance?

19 To Justice Barrett's question, it
20 hasn't really -- and Justice Sotomayor's
21 earlier, it hasn't really percolated this kind
22 of jurisdictional question, so I'm just trying
23 to figure out what's sensible for us to do.

24 MR. YANG: Yeah. We would not object
25 to that. We also -- we think it's sufficiently

1 clear ourselves as to --

2 JUSTICE KAVANAUGH: Right.

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

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

8 MR. YANG: -- percolation helps.

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

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

14 CHIEF JUSTICE ROBERTS: Thank you,
15 counsel.

16 MR. YANG: Thank you.

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

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

23 MR. YANG: So our position in
24 Nasrallah was that all rulings in a removal
25 proceeding were within the ambit of the term

1 "final order of removal." And we were doing
2 that because there were exclusions of review of
3 final orders of removal.

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

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

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

1 to implement the final order. That is part of
2 judicial review of the final order of removal
3 under the zipper clause.

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

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

12 Justice Sotomayor?

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

15 MR. YANG: Mm-hmm.

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

24 I understand from the amicus brief
25 filed here that that was a consistent practice

1 by immigration judges.

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

4 JUSTICE SOTOMAYOR: But some did.

5 MR. YANG: Some.

6 JUSTICE SOTOMAYOR: Okay. And --

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

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

11 MR. YANG: Excuse me?

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

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

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

25 JUSTICE SOTOMAYOR: Thank you, Mr. --

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

2 JUSTICE SOTOMAYOR: Thank you,

3 Mr. Yang.

4 CHIEF JUSTICE ROBERTS: Justice Kagan?

5 Justice Gorsuch, anything?

6 Justice Kavanaugh?

7 JUSTICE KAVANAUGH: If we do address

8 the jurisdictional issue --

9 MR. YANG: Mm-hmm.

10 JUSTICE KAVANAUGH: -- and if you

11 lose --

12 MR. YANG: Mm-hmm.

13 JUSTICE KAVANAUGH: -- on that --

14 MR. YANG: Mm-hmm.

15 JUSTICE KAVANAUGH: -- what collateral

16 or additional consequences negative from your

17 perspective could ensue, and what language would

18 you want us to include in the opinion so that it

19 does not have those kinds of ripple effects?

20 MR. YANG: Well, it -- it's a little

21 hard to know. It will depend on how the Court

22 writes the opinion.

23 JUSTICE KAVANAUGH: That's why I'm

24 asking --

25 MR. YANG: So --

1 JUSTICE KAVANAUGH: -- how -- what you
2 think is --

3 MR. YANG: So I think --

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

7 MR. YANG: Yeah.

8 JUSTICE KAVANAUGH: And assume you
9 lose.

10 MR. YANG: Yeah.

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

13 MR. YANG: Yeah.

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

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

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

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

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

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

1 collateral consequences, I'm not sure how you
2 then square the circle and say: And that
3 somehow fits into those categories. But you'd
4 have to try to do that in some way, I think.

5 JUSTICE KAVANAUGH: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Barrett?

8 Justice Jackson?

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

16 MR. YANG: Mm-hmm.

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

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

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

1 radius --

2 MR. YANG: Yeah.

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

8 MR. YANG: Mm-hmm.

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

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

18 JUSTICE JACKSON: Thank you.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 Rebuttal, Mr. Cedrone?

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

24 MR. CEDRONE: Thank you, Your Honor.

25 Let me say a few words about jurisdiction and

1 then a few words about the merits.

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

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

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

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

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

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

25 I also don't know where that comes

1 from. If you start with the regulation,
2 Section 1001.1, it says it applies to any
3 action. The government tries to read that in a
4 way that it only applies to regulatory deadlines
5 and not statutory deadlines.

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

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

24 That person would have had precedent
25 from this Court applying this traditional rule.

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

9 We ask the Court to reverse.

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

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

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Official - Subject to Final Review

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