

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

United States Court of Appeals
Fifth Circuit

FILED

May 28, 2020

Lyle W. Cayce
Clerk

No. 19-60012
Summary Calendar

MARIA BUSTAMANTE, also known as Maria Bustamante Salgado,

Petitioner

v.

WILLIAM P. BARR, U.S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A077 270 630

Before HIGGINBOTHAM, HO, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Maria Bustamante, a native and citizen of Mexico, petitions this court for review of a decision of the Board of Immigration Appeals (BIA) denying her motion to reopen her removal proceedings. Bustamante filed a motion to reopen and to terminate the removal proceedings arguing that, under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), her original notice to appear, which lacked a date and a time for her removal hearings, was defective and deprived the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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immigration court of jurisdiction. The BIA denied reopening, concluding that *Pereira* did not apply to Bustamante's proceedings.

To the extent that Bustamante seeks review of the BIA's denial of sua sponte reopening, we lack jurisdiction to review that discretionary decision. *See Hernandez-Castillo v. Sessions*, 875 F.3d 199, 206 (5th Cir. 2017). We review Bustamante's challenge to the BIA's denial of reopening on statutory grounds under a deferential abuse of discretion standard. *See Ramos-Portillo v. Barr*, 919 F.3d 955, 958 (5th Cir. 2019). We have rejected extending *Pereira* beyond its narrow application in the context of cancellation of removal. *See Martinez-Lopez v. Barr*, 943 F.3d 766, 770 (5th Cir. 2019); *Pierre-Paul v. Barr*, 930 F.3d 684, 689-90 (5th Cir. 2019), *petition for cert. filed* (U.S. Dec. 16, 2019) (No. 19-779); *Mauricio-Benitez v. Sessions*, 908 F.3d 144, 148 n.1 (5th Cir. 2018), *cert. denied*, 139 S. Ct. 2767 (2019). Bustamante, therefore, fails to show that the BIA reached an erroneous legal conclusion as to the impact of *Pereira* on her motion to reopen. *See Ramos-Portillo*, 919 F.3d at 958. Moreover, because the notice to appear did not deprive the immigration court of jurisdiction, Bustamante cannot show a due process violation in her removal proceedings on that premise. *See Pierre-Paul*, 930 F.3d at 690.

The petition for review is DISMISSED IN PART for lack of jurisdiction to consider Bustamante's challenge to the denial of sua sponte reopening and DENIED IN PART as to Bustamante's *Pereira* challenge based on the notice to appear.