United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 15, 2022
Lyle W. Cayce
Clerk

No. 20-60707

MARIA DEL CARMEN PLATERO-ROSALES,

Petitioner,

versus

MERRICK GARLAND, U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A098 891 258

Before RICHMAN, *Chief Judge*, and HO and ENGELHARDT, *Circuit Judges*.

JAMES C. HO, *Circuit Judge*:

A sovereign isn't a sovereign if it can't control its borders. That includes the power to remove aliens not lawfully entitled to enter or remain in the country. To ensure this power is used only against those with no legal right to be in the United States, federal law provides for notice and a hearing prior to removal. *See* 8 U.S.C. § 1229(a)(1). But to prevent abuse and evasion, federal law requires aliens to provide an address where notice should be sent—and authorizes removal in absentia if the alien fails to do so. *See* 8 U.S.C. § 1229a(b)(5)(A)–(B).

That's exactly what happened here. Petitioner is an illegal alien who was ordered removed in absentia. A decade and a half later, she moved to reopen her immigration proceedings on the ground that she never received notice of the time or location of her hearing. But it's undisputed that she never provided an address where she could be notified. So the United States was well within its authority to order her removal in absentia.

Petitioner complains that the United States informed her of her duty to provide address information where her notice to appear could be sent, but only in English, not Spanish. But the record indicates that she was warned in Spanish as well as English of the consequences of her failure to appear. And in any event, there is no legal authority to support her assertion that the United States is required to provide notice in any language other than English. Accordingly, we deny her petition for review.

I.

Maria Del Carmen Platero-Rosales entered the United States illegally from her native country of El Salvador in April 2005. Border officials immediately detained her and gave her written notice that she would be subject to removal proceedings. The notice required Platero-Rosales to appear before an immigration judge in Harlingen, Texas, at a date and time to be set. Platero-Rosales signed a certificate of service confirming that she was personally served with the notice.

The notice made clear that Platero-Rosales was required to provide border officials with her "full mailing address and telephone number" so that the United States could send her a notice of hearing. The notice further stated that, "[i]f you do not . . . provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing." Additionally, the notice

explained that, "[i]f you fail to attend the hearing . . . a removal order may be made by the immigration judge in your absence."

The Border Patrol agent who served Platero-Rosales later certified that he verbally explained to her in Spanish of "the consequences of failure to appear" at the removal hearing.

Platero-Rosales never provided a mailing address. On the date of her hearing, the immigration judge ordered her removal in absentia.

Fourteen years later, Platero-Rosales moved to reopen her removal proceedings. The immigration judge denied her motion. The Board of Immigration Appeals affirmed.

II.

When, as here, the BIA affirms an immigration judge's order without issuing a separate opinion, we review the immigration judge's order. *See Moin v. Ashcroft*, 335 F.3d 415, 418 (5th Cir. 2003). We review orders deciding whether to reopen removal proceedings "under a highly deferential abuse-of-discretion standard." *Zhao v. Gonzales*, 404 F.3d 295, 303 (5th Cir. 2005). We will not disturb the immigration judge's underlying factual findings "unless the evidence compels a contrary conclusion." *Gomez-Palacios v. Holder*, 560 F.3d 354, 358 (5th Cir. 2009).

III.

Before an alien may be subject to removal proceedings under 8 U.S.C. § 1229a—including in absentia removal proceedings under 8 U.S.C. § 1229a(b)(5)—the government must provide the alien with notice, known as a "notice to appear." The requirements of that notice are set forth in 8 U.S.C. § 1229(a)(1).

The notice must include, among other things, (A) "[t]he nature of the proceedings against the alien," (B) "[t]he legal authority under which the

proceedings are conducted," (C) "[t]he acts or conduct alleged to be in violation of law," (D) "[t]he charges against the alien and the statutory provisions alleged to have been violated," and (E) the fact that "[t]he alien may be represented by counsel." 8 U.S.C. § 1229(a)(1)(A)–(E). There is no dispute that these items were included here.

In addition, the notice must make clear that the alien must provide the government with her address information. 8 U.S.C. § 1229(a)(1)(F). Platero-Rosales does not dispute that the notice stated that she was "required" to provide the government with her "full mailing address." Nor does she deny that the notice explained that the consequence of failing to provide her address was that "the Government shall not be required to provide you with written notice of your [removal] hearing."

Finally, the notice must provide the time and place of the hearing. 8 U.S.C. § 1229(a)(1)(G)(i). It's undisputed that the notice here did not provide notice of the date and time of the hearing. Accordingly, Platero-Rosales challenges her in absentia removal on that basis.

We reject her challenge. Federal law makes clear that the United States may remove an alien in absentia, and without notice, if the alien never provides the government with her address information as required. *See* 8 U.S.C. § 1229a(b)(5)(B) ("No written notice shall be required under subparagraph (A) if the alien has failed to provide the address required under section 1229(a)(1)(F) of this title."). *See also Hernandez-Castillo v. Sessions*, 875 F.3d 199, 205 (5th Cir. 2017) ("When an alien fails to provide a viable mailing address to [the Department of Homeland Security], the government need not provide notice of the alien's hearing."); *Gomez-Palacios*, 560 F.3d at 360–61 ("[A]n alien's failure to receive actual notice of a removal hearing due to his neglect of his obligation to keep the immigration court apprised of

his current mailing address does not mean that the alien 'did not receive notice' under § 1229a(b)(5)(C)(ii).").

And for good reason: The government can't provide her with the required notice if she refuses to provide the government with her address. Platero-Rosales acknowledges that she never provided the government with her address. Accordingly, she "forfeits h[er] right to notice" and "cannot seek to reopen the removal proceedings and rescind the in absentia removal order for lack of notice." *Spagnol-Bastos v. Garland*, 19 F.4th 802, 806 (5th Cir. 2021). *See also Gudiel-Villatoro v. Garland*, 40 F.4th 247, 249 (5th Cir. 2022) (holding that the rule that "an alien may move . . . to reopen and rescind his in absentia removal order if the notice to appear did not include all of the information in 8 U.S.C. § 1229(a)(1), including the time and date of his removal hearing . . . . does not apply when the alien fails to provide an address where he can be reached").

Platero-Rosales counters that her notice was insufficient because it was provided only in English, not Spanish. But the immigration judge found that a Border Patrol agent also verbally explained her duty to appear at her removal hearing in Spanish. Platero-Rosales has not shown that the evidence "compels a contrary conclusion." *Gomez-Palacios*, 560 F.3d at 358.

Moreover, there is no legal basis to conclude that the United States was required to provide her with notice in Spanish. Nothing in the statute requires notice in any other language. *See* 8 U.S.C. § 1229(a). And "[d]ue process allows notice of a hearing to be given solely in English to a non-English speaker if the notice would put a reasonable recipient on notice that further inquiry is required." *Ojeda–Calderon v. Holder*, 726 F.3d 669, 675 (5th Cir. 2013). That condition is obviously met when an individual is presented with a document from a United States border official concerning her ability to enter and remain in the country.

We are not aware of any circuit that disagrees, and Platero-Rosales does not identify any. *See Lopez v. Garland*, 990 F.3d 1000, 1003 (6th Cir. 2021) (holding notice in English to a non-English speaker legally sufficient); *Lopes v. Gonzales*, 468 F.3d 81, 84–85 (2nd Cir. 2006) (same); *Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1155 n.4 (9th Cir. 2004) (same).

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"[T]he common, national language of the United States is English. Our laws are printed in English and our legislatures conduct their business in English." *Frontera v. Sindell*, 522 F.2d 1215, 1220 (6th Cir. 1975). *See also Soberal-Perez v. Heckler*, 717 F.2d 36, 42 (2nd Cir. 1983) ("English is the national language of the United States"); *United States v. Benmuhar*, 658 F.2d 14, 19–20 (1st Cir. 1981) (describing English as "the national language").

Platero-Rosales has no legal basis to complain that her notice to appear was in English. We deny the petition for review.

PRISCILLA RICHMAN, *Chief Judge*, concurring:

I concur in the panel's opinion. I write separately to offer my understanding of when "[n]o written notice shall be required" under 8 U.S.C. § 1229a(b)(5)(B) in removing an alien in absentia and, relatedly, why an alien can be validly notified in a written notice that is not "a 'notice to appear'" as defined in § 1229(a)(1), of the requirements in 8 U.S.C. §§ 1229(a)(1)(F)(i) and 1229(a)(1)(F)(ii) that an alien must "immediately" provide an address and any change of address at which he or she can be contacted regarding removal proceedings. I also write to address what to some might appear to be a conflict among this court's decisions.[1]

I

In denying Platero-Rosales's motion to reopen her removal proceedings, the Immigration Judge found that when immigration authorities apprehended and processed Platero-Rosales near the Texas-Mexico border, they gave her written notice that she must immediately provide the Attorney General with an address at which she could be notified regarding removal proceedings.[2] That notice also apprised Platero-Rosales of the consequences of failing to provide an address, which included removal in absentia. An immigration officer served that notice on Platero-Rosales personally while she was in custody, as evidenced by her signature and fingerprint. She did not provide an address before or after she was released from custody. Platero-Rosales was removed in absentia, without written notice of the date

[1] *Compare Gudiel-Villatoro v. Garland*, 40 F.4th 247 (5th Cir. 2022), *and Spagnol-Bastos v. Garland*, 19 F.4th 802 (5th Cir 2021), *with Rodriguez v. Garland*, 15 F.4th 351 (5th Cir. 2021).

[2] *See* 8 U.S.C. § 1229(a)(1)(F).

and time of the hearing since she failed to provide an address. Fourteen years later, she sought to reopen her removal proceedings.

The question we confront is whether the Government was permitted to remove Platero-Rosales in absentia based on 8 U.S.C. § 1229a(b)(5)(B), which provides "[n]o written notice shall be required . . . if the alien has failed to provide the address required under section 1229(a)(1)(F)."[3] The underlying question is whether the written notice Platero-Rosales received regarding her obligation to provide an address and the consequences of the failure to do so was inadequate because it failed to include the "time and place at which the [removal] proceedings will be held."[4] To put a finer point on it, does either 8 U.S.C. § 1229 or § 1229a say that only "a 'notice to appear'" as defined in § 1229(a)(1) will suffice to give notice of the "requirement" referenced in § 1229(a)(1)(F) to provide an address and of the consequences of the failure to provide an address.[5] The answer is no—providing the alien with a "notice to appear" that must necessarily include the time and place of a removal hearing, is not a prerequisite to the applicability of § 1229a(b)(5)(B).

The statutory provisions bearing the heading "Removal Proceedings" state in § 1229a(b)(5)(B) that "[n]o written notice shall be required under subparagraph (A) if the alien has failed to provide *the address* required under section 1229(a)(1)(F) of this title."[6] Importantly, this section *does not say* that a "notice to appear," with all of the requirements "specif[ied]" by

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[3] 8 U.S.C. § 1229a(b)(5)(B).

[4] 8 U.S.C. § 1229(a)(1)(G)(i).

[5] *See id.* § 1229(a)(1); *Niz-Chavez v. Garland*, 141 S.Ct. 1474, 1486 (2021) (holding that, with regard to the stop-time rule, "the phrase 'a notice to appear' . . . require[s] a single document" that includes the time and place of a removal hearing).

[6] 8 U.S.C. § 1229a(b)(5)(B) (emphasis added).

§ 1229(a)(1), which are contained in subsections (A) through (G) of § 1229(a)(1), must be given as a prerequisite to the operation of § 1229a(b)(5)(B). The latter subsection says that "if the alien has failed to provide the address required under section 1229(a)(1)(F)," *then no written notice* under § 1229a(b)(5)(A) is required. This statutory provision singles out § 1229(a)(1)(F) as setting forth the condition that relieves the Government of the obligation to provide a fully inclusive "notice to appear" before removing an alien in absentia. "No written notice shall be required under subparagraph (A) [which requires a "notice to appear" that would include the time and place of a hearing] if the alien has failed to provide the address required under section 1229(a)(1)(F) of this title."[7] Section 1229(a)(1)(F) requires the Government to notify the alien that he or she must provide an address[8] and any change of address,[9] and requires the Government to notify the alien of the consequences of the failure to provide an address,[10] which are spelled out in § 1229a(b)(5). Section 1229(a)(1)(F) does not require the Government to give notice of the time and place of a hearing in order for § 1229a(b)(5)(B) to apply.

The provisions in § 1229a(b)(5)(A) sharpen the clear import of (B) and its contrast with (A). Subsection (A) provides that if an alien has been provided "written notice required under paragraph (1) or (2) of section 1229(a)," which means a notice to appear with all its attendant requirements including the time and place of a hearing, and the alien does not attend a removal hearing, then the alien can be removed in absentia, if the immigration

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[7] *Id.*

[8] 8 U.S.C. § 1229(a)(1)(F)(i).

[9] *Id.* § 1229(a)(1)(F)(ii).

[10] *Id.* § 1229(a)(1)(F)(iii).

"[s]ervice" presents clear and convincing evidence that a written notice to appear was provided.[11] But (B) falls immediately on the heels of this subsection and says that if the alien failed to provide an address, then no notice under (A) is required to be provided before an alien can be removed in absentia.

This scheme makes perfect sense. A linchpin of the entire removal process is that the alien must "immediately" provide an address for notice purposes and that any change of address must be immediately provided to authorities. This is reflected in § 1229(a)(1)(F), which says that "an alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which an alien may be contacted respecting proceedings under 1229a of this title."[12] Similarly, "any change of the alien's address or telephone number" "must" be provided "immediately."[13] Because of the huge number of aliens who enter our country each day, there is often a lengthy delay between apprehension of an alien and the date of his or her removal hearing. Therefore, it may be difficult for authorities to notify an alien of the time and place of a hearing when the alien is released after initial apprehension. Congress contemplated that by requiring the alien to provide an address and notice of any change of address "immediately," a "notice to appear" could be provided at a date sometime after the alien's release pending a hearing. It would be nearly impossible, as a practical matter, to send a written "notice to appear" without an address. Accordingly, the statutes provide that the

[11] 8 U.S.C. § 1229a(b)(5)(A).

[12] 8 U.S.C. § 1229(a)(1)(F)(i).

[13] *Id.* § 1229(a)(F)(ii).

consequence of failing to provide an address is that the alien can be removed in absentia.

II

Our court's opinion in *Rodriguez v. Garland*[14] is not dispositive of the present case because *Rodriguez* did not analyze, apply or even mention 8 U.S.C. § 1229a(b)(5)(B). The alien in that case, Rodriguez, had provided his address to the Government while still living with his wife and had received a written notice regarding removal proceedings mailed to that address, though that notice did not give a place and time that removal proceedings would be held.[15] He later moved after separating from his wife and did not provide his new address to immigration authorities. Our court held that because the written notice Rodriguez received did not specify the date and time of a removal hearing, that notice did not meet the requirements of "a 'notice to appear'" within the meaning of 8 U.S.C. § 1229(a)(1), and Rodriguez's removal in absentia was therefore infirm.[16] The *Rodriguez* opinion's rationale was drawn from the Supreme Court's opinion in *Niz-Chavez v. Garland*, which held that the stop-time rule embodied in § 1229b(d)(1) "states that the stop-time rule is triggered 'when the alien is served a notice to appear under section 1229(a),'" and that "[i]n turn, § 1229(a)(1) explains that 'written notice (in this section referred to as a 'notice to appear') shall be given . . . to the alien . . . specifying' the time and place of his hearing and all the other items we noted above.'"[17]

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[14] 15 F.4th 351 (5th Cir. 2021).

[15] *Id*. at 353.

[16] *Id.* at 355-56.

[17] 141 S.Ct. at 1480; *see also id*. at 1479 (explaining that a written "notice to appear" as defined in 8 U.S.C. § 1229(a)(1) must include at least "the nature of the proceedings

The *Rodriguez* decision is not precedential with regard to the issue before our court because the record in *Rodriguez* reflects that the Board of Immigration Appeals did not rest its decision on, or even discuss, 8 U.S.C. § 1229a(b)(5)(B), which says that "[n]o written notice shall be required under subparagraph (A) if the alien has failed to provide the address required under section 1229(a)(1)(F) of this title."[18] The issue simply was not before our court in *Rodriguez*, and the *Rodriguez* decision did not consider the effect of § 1229a(b)(5)(B) or, as already noted, even cite to § 1229a(b)(5)(B).

By contrast, our court's decisions in *Spagnol-Bastos v. Garland*[19] and *Gudiel-Villatoro v. Garland*[20] do squarely address the issue we confront today. Accordingly, they are binding precedent, and they govern under our rule of orderliness.

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I fully concur in the panel's decision.

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against the alien, the legal authority for the proceedings, the charges against the alien, the fact that the alien may be represented by counsel, the time and place at which the proceedings will be held, and the consequences of failing to appear").

[18] 8 U.S.C. § 1229a(b)(5)(B).

[19] 19 F.4th 802 (5th Cir 2021).

[20] 40 F.4th 247 (5th Cir. 2022).