

United States Court of Appeals
for the Fifth Circuit

No. 20-60262

United States Court of Appeals
Fifth Circuit

FILED

December 1, 2022

Lyle W. Cayce
Clerk

MORIS ESMELIS CAMPOS-CHAVES,

Petitioner,

versus

MERRICK GARLAND, *U.S. Attorney General,*

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency No. A098 793 655

Before SOUTHWICK, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:

The petition for rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc, the petition for rehearing en banc is DENIED. We withdraw our prior opinion, 43 F.4th 447, and issue the following in its place.

Moris Campos-Chaves petitions for review of a final order of removal issued by the Board of Immigration Appeals, dismissing his appeal from the decision of the immigration judge (“IJ”) to deny his motion to reopen. Petitioner is a native and citizen of El Salvador who illegally entered the

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United States on January 24, 2005, at Laredo, Texas. On February 10, 2005, the Government filed a Notice to Appear (“NTA”) in immigration court and charged petitioner as removable under 8 U.S.C. § 1182(a)(6)(A)(i). Petitioner did not appear and was ordered removed *in absentia*.

On September 18, 2018, petitioner filed a motion to reopen. He principally contended that the IJ lacked authority to conduct the removal proceedings because the NTA was defective. Petitioner submitted an affidavit in which he stated that he received the NTA but that it did not contain the date and time of his removal proceedings. Now he contends that we should remand the matter to the Board for reconsideration of his NTA challenge in light of *Rodriguez v. Garland*, 15 F.4th 351 (5th Cir. 2021).

We disagree. In *Rodriguez*, the alien received an undated NTA but did not receive a subsequent notice of hearing (“NOH”) because he moved. Here, by contrast, petitioner received the NTA and does not dispute that he also received the subsequent NOH. *See* Red Br. 9 n.3. The fact that petitioner received the NOH (or does not dispute receiving the NOH) makes *Rodriguez* distinguishable. *See Singh v. Garland*, 51 F.4th 371, 381 & n.5 (9th Cir. 2022) (Collins, J., dissenting from the denial of rehearing en banc).

The petition for review is DENIED. All pending motions are DENIED.