INTRODUCTION TO THE PRACTICE OF IMMIGRATION LAW

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OVERVIEW

- The Where, and What of Immigration Law
- A Day in the Life of an Immigration Attorney
- Common Struggles of the Practice

THE WHERE

Homeland Security Act of 2002.

- There is no more INS!!!!

The US Department of Homeland Security

- United States Citizenship and Immigration Services ("USCIS")
- Administrative Appeals Office
- U.S. Immigration and Customs Enforcement's ("ICE")

The US Department of Justice

- The Executive Office for Immigration Review ("EOIR")
  - Immigration Courts
  - Board of Appeals

The Department of State

- US Consulates

THE WHAT

Immigration Naturalization Act (8 U.S. Code Chapter 12)

INA sec. 101 (8 U.S. Code § 1101)

- Definitions

Types of Immigration Practice

- Family
  - Ex. Marriage Based Permanent Residence
- Naturalization
- Humanitarian
  - Ex. Asylum
- Removal
- Employment
  - Ex. H-1B

A DAY IN THE LIFE OF AN IMMIGRATION ATTORNEY

My Practice

- Naturalization
  - Medical Waivers
- Permanent Residence
  - Family Based
  - Refugees
  - Asylees
- Removal
- Other
  - Nonimmigrant Visas
  - Employment Visas

A DAY IN THE LIFE OF AN IMMIGRATION ATTORNEY

EVERY DAY IS DIFFERENT

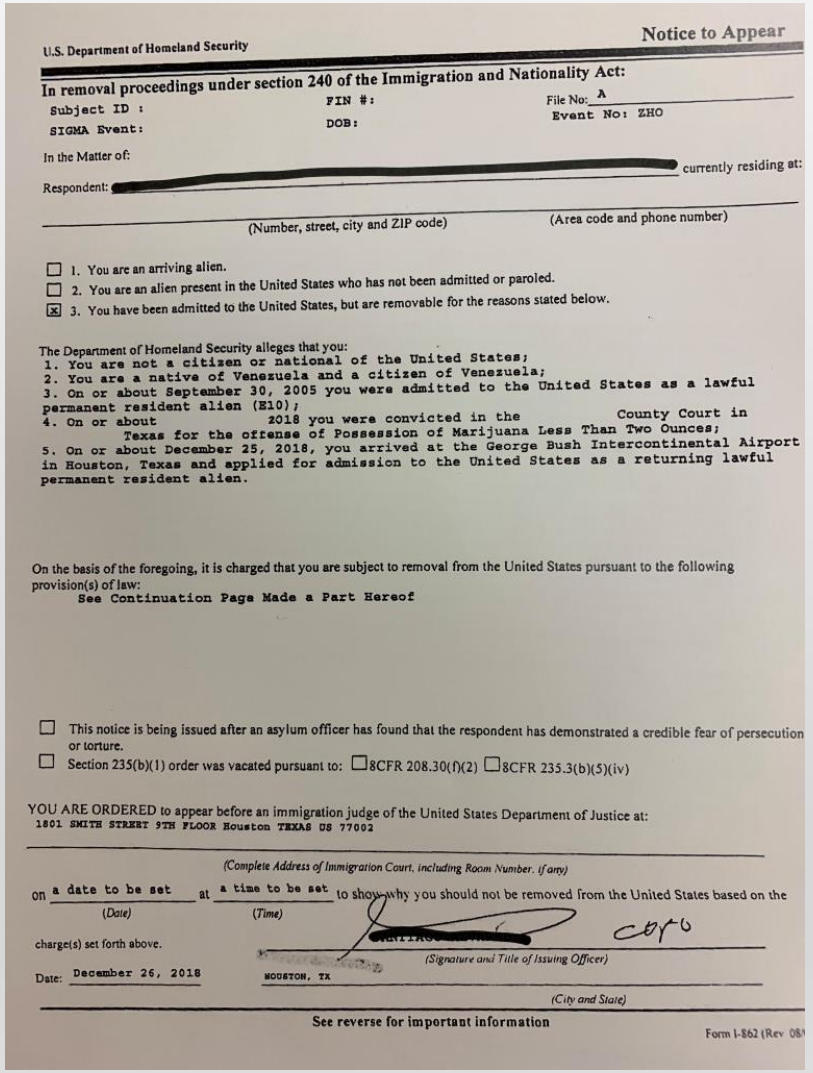
- **Consultations**
- **EOIR**
  - Removal Hearings
    - Master
    - Individual
  - Preparing Applications
    - Research
    - Evidence Collection
    - Client preparation
- **USCIS**
  - Application Preparation
  - Interviews
  - Replying to RFEs
- **Consular Processing**
  - Submitting applications
    - DS-160
    - DS-260
  - Submitting Fees
  - Submitting documents
  - Contacting National Visa Center
  - Contacting Consulate
  - Research
  - Client Preparation

COMMON STRUGGLES IN THE PRACTICE

- Constant Change
- Pricing & Collection
- Heavy Discretion
- Administrative Practice
  - Rule of Evidence "kind of" apply
  - Neutral Decision Makers
- Article III Courts

EXAMPLE: NIZ-CHAVEZ V. GARLAND, 593 U.S. ___ (2021).

- Due Process Requirements
  - 5th Amendment
  - 14th Amendment
  - Notice, the opportunity to be heard, and a decision by a neutral decision-maker
- Notice to Appear
  - Notice of Hearing
- Cancellation of Removal
- Stop Time Rule



U.S. Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID :
SIGMA Event:
FIN #:
DOB:
File No: A
Event No: ZHO

In the Matter of:

Respondent: [redacted] currently residing at:

(Number, street, city and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☐ 2. You are an alien present in the United States who has not been admitted or paroled.
☒ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:
1. You are not a citizen or national of the United States;
2. You are a native of Venezuela and a citizen of Venezuela;
3. On or about September 30, 2005 you were admitted to the United States as a lawful permanent resident alien (E10);
4. On or about 2018 you were convicted in the County Court in Texas for the offense of Possession of Marijuana Less Than Two Ounces;
5. On or about December 25, 2018, you arrived at the George Bush Intercontinental Airport in Houston, Texas and applied for admission to the United States as a returning lawful permanent resident alien.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:
See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
1801 SMITH STREET 9TH FLOOR Houston TEXAS US 77002

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set (Date) at a time to be set (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

[redacted] corp

(Signature and Title of Issuing Officer)

Date: December 26, 2018

HOUSTON, TX

(City and State)

See reverse for important information

Form I-862 (Rev 08/

INA § 239-INITIATION OF REMOVAL PROCEEDINGS (8 U.S. CODE § 1229)

(a) Notice to Appear

(1) In general.-In removal proceedings under section 240 , written notice (in this section referred to as a "notice to appear") shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

…

(G) (i) The time and place at which the proceedings will be held.

NIZ-CHAVEZ V. GARLAND (CONTINUED)

- Pereira v. Sessions, 138 S. Ct. 2105 (2018).
  - 8 C.F.R. § 1003.14(a), which states that "[j]urisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by [DHS]." Practitioners argued that an NTA—the "charging document," see 8 C.F.R. § 1003.13—that lacks time or place information "is not a 'notice to appear under section 1229(a),'" Pereira, 138 S. Ct. at 2110, and thus does not vest jurisdiction in the immigration court pursuant to 8 C.F.R. § 1003.14(a).
- If the NTA is not valid then proceedings were not initiated, right?
- The BIA disagreed.

MATTER OF MENDOZA-HERNANDEZ & CAPULA CORTEZ, 27 I&N DEC. 520 (BIA 2019).

- "We conclude that in cases where a notice to appear does not specify the time or place of an alien's initial removal hearing, the subsequent service of a notice of hearing containing that information perfects the deficient notice to appear, triggers the "stop-time" rule, and ends the alien's period of continuous residence or physical presence in the United States."
- Circuit Split
  - Third and Tenth Circuits ruling that only a statutorily compliant NTA could stop time
  - Fifth and Sixth Circuits agreeing with the BIA

NIZ-CHAVEZ V. GARLAND (CONTINUED)

- Holding: A notice to appear sufficient to trigger the IIRIRA's stop-time rule is a single document containing all the information about an individual's removal hearing specified in §1229(a)(1).
- Termination
- Motion to Reopen
- "Fake" Hearing dates
- Still "To be determined"
- Application differs by IJ

RESOURCES

- American Immigration Lawyers Association
  - AILA.org
- American Immigration Council
  - https://www.americanimmigrationcouncil.org/
- EOIR Immigration Court Online Resource
  - https://icor.eoir.justice.gov/en/model-hearing-program/
- Immigration Justice Campaign
  - https://immigrationjustice.us/
- CENTER FOR GENDER AND REFUGEE STUDIES
  - https://cgrs.uchastings.edu/

CONTACT INFORMATION

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8 USC 1229: Initiation of removal proceedings
Text contains those laws in effect on December 8, 2022

From Title 8-ALIENS AND NATIONALITY
CHAPTER 12-IMMIGRATION AND NATIONALITY
SUBCHAPTER II-IMMIGRATION
Part IV-Inspection, Apprehension, Examination, Exclusion, and Removal

Jump To:

§1229. Initiation of removal proceedings

(a) Notice to appear

(1) In general

In removal proceedings under section 1229a of this title, written notice (in this section referred to as a "notice to appear") shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection (b)(2).

(F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 1229a of this title.

(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

(iii) The consequences under section 1229a(b)(5) of this title of failure to provide address and telephone information pursuant to this subparagraph.

(G)(i) The time and place at which the proceedings will be held.

(ii) The consequences under section 1229a(b)(5) of this title of the failure, except under exceptional circumstances, to appear at such proceedings.

(2) Notice of change in time or place of proceedings

(A) In general

In removal proceedings under section 1229a of this title, in the case of any change or postponement in the time and place of such proceedings, subject to subparagraph (B) a written notice shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying-

(i) the new time or place of the proceedings, and

(ii) the consequences under section 1229a(b)(5) of this title of failing, except under exceptional circumstances, to attend such proceedings.

(B) Exception

In the case of an alien not in detention, a written notice shall not be required under this paragraph if the alien has failed to provide the address required under paragraph (1)(F).

(3) Central address files

The Attorney General shall create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under paragraph (1)(F).

(b) Securing of counsel

(1) In general

In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 1229a of this title, the hearing date shall not be scheduled earlier than 10 days after the service of the

notice to appear, unless the alien requests in writing an earlier hearing date.

(2) Current lists of counsel

The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in proceedings under section 1229a of this title. Such lists shall be provided under subsection (a)(1)(E) and otherwise made generally available.

(3) Rule of construction

Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien pursuant to section 1229a of this title if the time period described in paragraph (1) has elapsed and the alien has failed to secure counsel.

(c) Service by mail

Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F).

(d) Prompt initiation of removal

(1) In the case of an alien who is convicted of an offense which makes the alien deportable, the Attorney General shall begin any removal proceeding as expeditiously as possible after the date of the conviction.

(2) Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(e) Certification of compliance with restrictions on disclosure

(1) In general

In cases where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified in paragraph (2), the Notice to Appear shall include a statement that the provisions of section 1367 of this title have been complied with.

(2) Locations

The locations specified in this paragraph are as follows:

(A) At a domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization.

(B) At a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 1101(a)(15) of this title.

(June 27, 1952, ch. 477, title II, ch. 4, §239, as added Pub. L. 104–208, div. C, title III, §304(a)(3), Sept. 30, 1996, 110 Stat. 3009–587 ; amended Pub. L. 109–162, title VIII, §825(c)(1), Jan. 5, 2006, 119 Stat. 3065 ; Pub. L. 109–271, §6(d), Aug. 12, 2006, 120 Stat. 763 .)

Editorial Notes

Prior Provisions

A prior section 1229, act June 27, 1952, ch. 477, title II, ch. 4, §239, 66 Stat. 203 , as amended, which related to designation of ports of entry for aliens arriving by aircraft, was renumbered section 234 of act June 27, 1952, by Pub. L. 104–208, div. C, title III, §304(a)(1), Sept. 30, 1996, 110 Stat. 3009–587 , and was transferred to section 1224 of this title.

Amendments

2006-Subsec. (e). Pub. L. 109–162 added subsec. (e).

Subsec. (e)(2)(B). Pub. L. 109–271 substituted "(U)" for "(V)".

Effective Date of 2006 Amendment

Pub. L. 109–162, title VIII, §825(c)(2), Jan. 5, 2006, 119 Stat. 3065 , provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the date that is 30 days after the date of the enactment of this Act [Jan. 5, 2006] and shall apply to apprehensions occurring on or after such date."

Statutory Notes and Related Subsidiaries

Effective Date

Section effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104–208, set out as an Effective Date of

1996 Amendments note under section 1101 of this title.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

Consideration of Military Service in Removal Determinations

Pub. L. 116–92, div. A, title V, §570B(b), Dec. 20, 2019, 133 Stat. 1399 , provided that:

"(1) In general.-With regards to an individual, an immigration officer shall take into consideration evidence of military service by that individual in determining whether-

"(A) to issue to that individual a notice to appear in removal proceedings, an administrative order of removal, or a reinstatement of a final removal order; and

"(B) to execute a final order of removal regarding that individual.

"(2) Definitions.-In this subsection:

"(A) The term 'evidence of service' means evidence that an individual served as a member of the Armed Forces, and the characterization of each period of service of that individual in the Armed Forces.

"(B) The term 'immigration officer' has the meaning given that term in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)."

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NIZ-CHAVEZ *v.* GARLAND, ATTORNEY GENERAL

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 19–863. Argued November 9, 2020—Decided April 29, 2021

Nonpermanent resident aliens ordered removed from the United States under federal immigration law may be eligible for discretionary relief if, among other things, they can establish their continuous presence in the country for at least 10 years. 8 U. S. C. §1229b(b)(1). But the so-called stop-time rule included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides that the period of continuous presence "shall be deemed to end . . . when the alien is served a notice to appear" in a removal proceeding under §1229a. §1229b(d)(1). The term "notice to appear" is defined as "written notice . . . specifying" certain information, such as the charges against the alien and the time and place at which the removal proceedings will be held. §1229(a)(1). A notice that omits any of this statutorily required information does not trigger the stop-time rule. See *Pereira* v. *Sessions*, 585 U. S. ___. Here, the government ordered the removal of petitioner Agusto Niz-Chavez and sent him a document containing the charges against him. Two months later, it sent a second document, providing Mr. Niz-Chavez with the time and place of his hearing. The government contends that because the two documents collectively specified all statutorily required information for "a notice to appear," Mr. Niz-Chavez's continuous presence in the country stopped when he was served with the second document.

Held: A notice to appear sufficient to trigger the IIRIRA's stop-time rule is a single document containing all the information about an individual's removal hearing specified in §1229(a)(1). Pp. 4–12.

(a) Section 1229b(d)(1) states that the stop-time rule is triggered by serving "a notice," and §1229(a)(1) explains that "written notice" is "referred to as a 'notice to appear.'" Congress's decision to use the indefinite article "a" suggests it envisioned "a" single notice provided at a

Syllabus

discrete time rather than a series of notices that collectively provide the required information. While the indefinite article "a" can sometimes be read to permit multiple installments (such as "a manuscript" delivered over months), that is not true for words like "notice" that can refer to either a countable object ("a notice") or a noncountable abstraction ("sufficient notice"). The inclusion of an indefinite article suggests Congress used "notice" in its countable sense. More broadly, Congress has used indefinite articles to describe other case-initiating pleadings—such as an indictment, an information, or a civil complaint, see, *e.g.,* Fed. Rules Crim. Proc. 7(a), (c)(1), (e); Fed. Rule Civ. Proc. 3—and none suggest those documents might be delivered by installment. Nor does the Dictionary Act aid the government, as that provision merely tells readers of the U. S. Code to assume "words importing the singular include and apply to several persons, parties, or things." 1 U. S. C. §1. That provision means only that terms describing a single thing ("a notice") can apply to more than one of that thing ("ten notices"). While it certainly allows the government to send multiple notices to appear to multiple people, it does not mean a notice to appear can consist of multiple documents. Pp. 4–9.

(b) The IIRIRA's structure and history support requiring the government to issue a single notice containing all the required information. Two related provisions, §§1229(e)(1) and 1229a(b)(7), both use a definite article with a singular noun ("the notice") when referring to the government's charging document—a combination that again suggests a discrete document. Another provision, §1229(a)(2)(A), requires "a written notice" when the government wishes to change an alien's hearing date. The government does not argue that this provision contemplates providing "the new time or place of the proceedings" and the "consequences . . . of failing . . . to attend such proceedings" in separate documents. Yet the government fails to explain why "a notice to appear" should operate differently. Finally, the predecessor to today's "notice to appear" required the government to specify the place and time for the alien's hearing "in the order to show cause or otherwise." §1252(a)(2)(A). The phrase "or otherwise" has since disappeared, further suggesting that the required details must be included upfront to invoke the stop-time rule. Indeed, that is how the government itself initially read the statute. The year after Congress adopted IIRIRA, in the preamble to a proposed rule implementing these provisions, the government acknowledged that "the language of the amended Act indicat[es] that the time and place of the hearing must be on the Notice to Appear." 62 Fed. Reg. 449 (1997). Pp. 9–13.

(c) The government claims that not knowing hearing officers' availability when it initiates removal proceedings makes it difficult to pro-

duce compliant notices. It also claims that it makes little sense to require time and place information in a notice to appear when that information may be later changed. Besides, the government stresses, its own administrative regulations have always authorized its current practice. But on the government's account, it would be free to send a person who is not from this country—someone who may be unfamiliar with English and the habits of American bureaucracies—a series of letters over the course of weeks, months, maybe years, each containing a new morsel of vital information. Congress could reasonably have wished to foreclose that possibility. And ultimately, pleas of administrative inconvenience never "justify departing from the statute's clear text." *Pereira*, 585 U. S., at ___. The modest threshold Congress provided to invoke the stop-time rule is clear from the text and must be complied with here. Pp. 13–16.

789 Fed. Appx. 523, reversed.

GORSUCH, J., delivered the opinion of the Court, in which THOMAS, BREYER, SOTOMAYOR, KAGAN, and BARRETT, JJ., joined. KAVANAUGH, J., filed a dissenting opinion, in which ROBERTS, C. J., and ALITO, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 19–863

AGUSTO NIZ-CHAVEZ, PETITIONER *v.* MERRICK B. GARLAND, ATTORNEY GENERAL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[April 29, 2021]

JUSTICE GORSUCH delivered the opinion of the Court.

Anyone who has applied for a passport, filed for Social Security benefits, or sought a license understands the government's affinity for forms. Make a mistake or skip a page? Go back and try again, sometimes with a penalty for the trouble. But it turns out the federal government finds some of its forms frustrating too. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–546, requires the government to serve "a notice to appear" on individuals it wishes to remove from this country. At first blush, a notice to appear might seem to be just that—a single document containing all the information an individual needs to know about his removal hearing. But, the government says, supplying so much information in a single form is too taxing. It needs more flexibility, allowing its officials to provide information in separate mailings (as many as they wish) over time (as long as they find convenient). The question for us is whether the law Congress adopted tolerates the government's preferred practice.

I

For more than a century, Congress has afforded the Attorney General (or other executive officials) discretion to allow otherwise removable aliens to remain in the country. An alien seeking to establish his eligibility for that kind of discretionary relief, however, must demonstrate a number of things. A nonpermanent resident, for example, must show that his removal would cause an "exceptional and extremely unusual hardship" to close relatives who are U. S. citizens or lawful permanent residents; that he is of good moral character; that he has not been convicted of certain crimes; and that he has been continuously present in the country for at least 10 years. 8 U. S. C. §1229b(b)(1).

The last item on this list lies at the crux of this case. Originally, an alien continued to accrue time toward the presence requirement during the pendency of his removal proceedings. With time, though, some came to question this practice, arguing that it gave immigrants an undue incentive to delay things. See, *e.g.*, *In re Cisneros-Gonzales*, 23 I. & N. Dec. 668, 670–671 (BIA 2004). In IIRIRA, Congress responded to these concerns with a new "stop-time" rule. Under the statute's terms, "any period of continuous . . . presence in the United States shall be deemed to end . . . when the alien is served a notice to appear." §1229b(d)(1).

All of which invites the question: What qualifies as a notice to appear sufficient to trigger the stop-time rule? IIRIRA defines a notice to appear as "written notice . . . specifying" several things. §1229(a)(1). These include the nature of the proceedings 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. See *ibid*.

This seemingly simple rule has generated outsized controversy. Initially, the dispute focused on the government's

practice of issuing documents labeled notices to appear that failed to include the time and place for the alien's removal hearing. The government argued these documents were sufficient to trigger the stop-time rule. It insisted that proceeding this way served an important governmental interest too: If it waited to issue notices until the calendars of its hearing officers became clear, aliens would accrue too much time toward the presence requirement. Ultimately, however, this Court rejected the government's practice in *Pereira* v. *Sessions*, 585 U. S. ___ (2018). We explained that, in IIRIRA, Congress took pains to describe exactly what the government had to include in a notice to appear, and that the time and place of the hearing were among them. *Id.*, at ___. The government was not free to short-circuit the stop-time rule by sending notices to appear that omitted statutorily required information. *Id.*, at ___.

Today's case represents the next chapter in the same story. Perhaps the government could have responded to *Pereira* by issuing notices to appear with all the information §1229(a)(1) requires—and then amending the time or place information if circumstances required it. After all, in the very next statutory subsection, §1229(a)(2), Congress expressly contemplated that possibility. But, at least in cases like ours, it seems the government has chosen instead to continue down the same old path. Here, the government sent Mr. Niz-Chavez one document containing the charges against him. Then, two months later, it sent a second document with the time and place of his hearing. In light of *Pereira*, the government now concedes the first document isn't enough to trigger the stop-time rule. Still, the government submits, the second document does the trick. On its view, a "notice to appear" is complete and the stop-time rule kicks in whenever it finishes delivering all the statutorily prescribed information. The government says it needs this kind of flexibility to send information piecemeal. It even

suggests it should be allowed to spread the statutorily mandated information over as many documents and as much time as it wishes.

Some circuits have accepted the government's notice-by-installment theory. Others, however, have held that the government must issue a single and comprehensive notice before it can trigger the stop-time rule. We agreed to hear this case, *Niz-Chavez* v. *Barr*, 789 Fed. Appx. 523 (CA6 2019), to resolve the conflict, 590 U. S. ___ (2020).

II

When called on to resolve a dispute over a statute's meaning, this Court normally seeks to afford the law's terms their ordinary meaning at the time Congress adopted them. See, *e.g.*, *Wisconsin Central Ltd.* v. *United States*, 585 U. S. ___, ___ (2018). The people who come before us are entitled, as well, to have independent judges exhaust "all the textual and structural clues" bearing on that meaning. *Id.*, at ___ (slip op., at 8). When exhausting those clues enables us to resolve the interpretive question put to us, our "sole function" is to apply the law as we find it, *Lamie* v. *United States Trustee*, 540 U. S. 526, 534 (2004) (internal quotation marks omitted), not defer to some conflicting reading the government might advance.

A

In this case, our interpretive task begins with two statutory provisions we have already touched on. The first, §1229b(d)(1), states that the stop-time rule is triggered "when the alien is served a notice to appear under section 1229(a)." In 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. Almost immediately, these provisions pose the government with a problem. To trigger the stop-time rule, the government

must serve "a" notice containing all the information Congress has specified. To an ordinary reader—both in 1996 and today—"a" notice would seem to suggest just that: "a" single document containing the required information, not a mishmash of pieces with some assembly required.

Nor is the government's response (echoed by the dissent) entirely satisfying. The government submits that §1229(a)(1) defines the term "notice to appear" as "written notice"—and then says it's obvious "written notice" can come by means of one document or many. See *post,* at 6–7 (opinion of KAVANAUGH, J.). But this argument doesn't quite track. Section 1229(a)(1) says that "written notice" is "referred to as a 'notice to appear.'" The singular article "a" thus falls outside the defined term ("notice to appear") and modifies the entire definition. So even if we were to do exactly as the government suggests and substitute "written notice" for "notice to appear," the law would still stubbornly require "a" written notice containing all the required information.

Admittedly, a lot here turns on a small word. In the view of some, too much. The dissent urges us to overlook the fact Congress placed the singular article "a" *outside* the defined term in §1229(a)(1). On its view, we should read the statute as if the article came *inside* the defined term. *Post*, at 7–8. But that's not how the law is written, and the dissent never explains what authority might allow us to undertake the statutory rearranging it advocates.[1] Nor does any of this

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[1] The closest the dissent comes is when it alludes to *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.*, 508 U. S. 439 (1993). But that "unusual" case turned on the "scrivener's error" doctrine, *id.*, at 462, which applies only in exceptional circumstances to obvious technical drafting errors. See, *e.g., Lamie* v. *United States Trustee*, 540 U. S. 526, 538 (2004); A. Scalia & B. Garner, Reading Law 237–238 (2012). Nobody (the dissent included) contends the conditions required for that doctrine's application exist here.

help when it comes to §1229b(d)(1), the provision that actually creates the stop-time rule, for that statute separately speaks of "a" notice to appear. Not once but twice it seems Congress contemplated "a" single document.

Perhaps recognizing this much, the government and dissent pivot and focus their efforts in a different direction. Now, they remind us that "[t]he indefinite article 'a' is often used to refer to something that may be provided in more than one installment." Brief in Opposition 10; see also *post*, at 10–11. The government observes, for example, that a writer can publish "a" story serially, or an author may deliver "a" manuscript chapter by chapter. Brief in Opposition 10. The dissent offers its own illustrations, highlighting that "a job application" and "a contract" also can be prepared in parts. *Post,* at 10. So even if IIRIRA speaks repeatedly of "a" notice to appear, the government and dissent contend, it remains possible that Congress meant to allow that notice to come over time and in pieces.

The trouble with this response is that everyone admits language doesn't always work this way. To build on an illustration we used in *Pereira*, someone who agrees to buy "a car" would hardly expect to receive the chassis today, wheels next week, and an engine to follow. 585 U. S., at ___ (slip op., at 14); see *post*, at 10. At best, then, all of the competing examples the government and dissent supply do no more than demonstrate context matters. And here at least, it turns out that context does little to alter first impressions.

Start with customary usage. Normally, indefinite articles (like "a" or "an") precede *countable* nouns. The examples above illustrate the point: While you might say "she wrote a manuscript" or "he sent three job applications," no one would say "she wrote manuscript" or "he sent job application." See The Chicago Manual of Style §5.7, p. 227 (17th ed. 2017); see also R. Huddleston & G. Pullum, The Cambridge Grammar of the English Language §3.1, p. 334

(2002). By contrast, *noncountable* nouns—including abstractions like "cowardice" or "fun"—"almost never take indefinite articles." The Chicago Manual of Style §5.7, at 227; see also Huddleston, *supra*, §3.1, at 334. After all, few would speak of "a cowardice" or "three funs."

These customs matter because the key term before us (notice) can refer to *either* a countable object ("a notice," "three notices") *or* a noncountable abstraction ("sufficient notice," "proper notice"). Congress's decision to use the indefinite article "a" thus supplies some evidence that it used the term in the first of these senses—as a discrete, countable thing. All of which suggests that the government must issue a single statutorily compliant document to trigger the stop-time rule. If IIRIRA had meant to endow the government with the flexibility it supposes, we would have expected the law to use "notice" in its noncountable sense. A statute like that would have said the stop-time rule applies after the government provides "notice" (or perhaps "sufficient notice") of the mandated information—indicating an indifference about whether notice should come all at once or by installment.

Of course this is just a clue. Sometimes Congress's statutes stray a good way from ordinary English. Sometimes, too, Congress chooses to endow seemingly familiar words with specialized definitions. But until and unless someone points to evidence suggesting otherwise, affected individuals and courts alike are entitled to assume statutory terms bear their ordinary meaning. And when it comes to discerning the ordinary meaning of words, there are perhaps few better places to start than the rules governing their usage.

Nor is this the only contextual clue before us. A notice to appear serves as the basis for commencing a grave legal proceeding. As the government has acknowledged, it is "like an indictment in a criminal case [or] a complaint in a civil case." Tr. of Oral Arg. in *Pereira* v. *Sessions*, O. T. 2017, No. 17–459, p. 39. The rules Congress has adopted to describe those other case-initiating pleadings often use the

indefinite article to refer to a single document—an indictment, an information, or a civil complaint. See, *e.g.*, Fed. Rules Crim. Proc. 7(a), (c)(1), (e); Fed. Rule Civ. Proc. 3. In each case, the aim is to supply an affected party with a single document highlighting certain salient features of the proceedings against him. No one contends those documents may be shattered into bits, so that the government might, for example, charge a defendant in "an indictment" issued piece by piece over months or years. And it is unclear why we should suppose Congress meant for *this* case-initiating document to be different.[2]

The government resists this conclusion by invoking the Dictionary Act. When reading the U. S. Code, that Act tells us to assume "words importing the singular include and apply to several persons, parties, or things," unless statutory context indicates otherwise. 1 U. S. C. §1. But this instruction has no application here. The Dictionary Act does not transform every use of the singular "a" into the plural "several." Instead, it tells us only that a statute using the singular "a" can apply to multiple persons, parties, or things. So the Act allows the government to send multiple notices to appear to multiple people, but it does not mean a notice to appear can consist of multiple documents.

Think of the problem this way: Suppose a statute made it a crime to vandalize "a" bank. Under the Dictionary Act, someone who vandalizes five banks could not avoid prosecution on the ground that he vandalized more than one. Now take a hypothetical closer to this case—a person who

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[2]The question is not, as the dissent seems to think, whether certain other charging documents do or do not require "calendaring" information. *Post,* at 11. Instead, our point is that each case-initiating document must contain the catalogue of information Congress has said the defendant or respondent is entitled to receive in that document—and no one thinks this information may be provided by installment. Nor does anyone dispute that Congress has said *this* case-initiating document must include (among other things) "[t]he time and place at which the proceedings will be held." 8 U. S. C. §1229(a)(1)(G)(i).

vandalizes some constituent part of a not-yet-completed bank (say, a stack of blocks on a construction site). Did he vandalize "a" bank? Answering that question depends on whether Congress defined "bank" to include its constituent parts, not on what the Dictionary Act says about the word "a."

B

To the extent any doubt remains about the meaning of the two specific statutes before us, we believe a wider look at IIRIRA's statutory structure and history enough to resolve it.

Take 8 U. S. C. §1229(e)(1). That nearby provision sets forth special rules the government must follow when it seizes an alien at a sensitive location like a domestic violence shelter. In circumstances like these, Congress has instructed, "*the* Notice to Appear shall include a statement that" the government has complied with certain special requirements. *Ibid.* (emphasis added). Here again we encounter an article coupled with a singular noun ("the Notice"), a combination that once more seems to suggest a discrete document. Nor would the rest of §1229(e)(1)'s terms make much sense on the government's account. If a notice to appear were a collection of information rather than a single written instrument, Congress would have had no need to insist on "includ[ing]" a particular statement in "the Notice to Appear." *Ibid.* More simply, it could have required the government to provide the information, full stop.

Once more, too, the government's response is less than satisfying. It suggests that the "Notice to Appear" discussed in §1229(e)(1) isn't the same "notice to appear" described in §1229(a)(1). No, the government says, by using capital letters in §1229(e)(1) Congress sought to prescribe only what must be included in a Department of Homeland Security form entitled "Notice to Appear." But that much

is hard to see. Section 1229(e)(1)'s discussion about what must be included in a notice to appear resides just a couple doors down from the provisions at issue before us, and it seems pretty clearly to modify those provisions in certain special circumstances. Meanwhile, the Department of Homeland Security form exists only by regulation and the department can change that regulation any time. Maybe, too, there is another explanation for the capital letters. Maybe they simply reflect how clear it was by the time Congress added §1229(e)(1) in 2006—a decade after IIRIRA's adoption—that a notice to appear *is* a specific document in which the government can (and must) "include" the required certification.[3]

Next comes §1229a(b)(7). It states that an alien who fails to appear for his removal proceedings is typically ineligible for relief if, "at the time of the notice described in paragraph (1) or (2) of section 1229(a)," the government supplies oral as well as written notice of the time and place of the removal proceedings and the consequences of failing to appear. §1229a(b)(7). Again, the law seems to speak of the charging document as a discrete thing, using a definite article with a singular noun ("the notice"). And by speaking of "the notice" being served at a particular "time" the statute seems to equate service with a discrete moment, not an ongoing endeavor. To be sure, one could reply (as the government and dissent do) that "the time of the notice" refers to the moment when the final installment arrives. See *post,* at 13–14. But if that's what Congress meant, this was

[3] Even the dissent declines to endorse the government's interpretation of §1229(e)(1). Instead, it merely repeats the anodyne point that singular articles are sometimes used "with a thing delivered in constituent installments." *Post*, at 14. But that observation cuts little ice in this context for reasons we've already explored in Part II–A, *supra*. The dissent also fails to explain why Congress would have gone to the trouble of insisting in §1229(e)(1) that "the Notice to Appear" contain additional information if it really meant only to require the government to provide that information whenever and however it pleases.

surely an awkward way of saying so.

Section 1229(a)(2) adds to the government's growing list of problems. That provision applies when officials wish to change the alien's hearing date. It requires the government to serve "*a* written notice" specifying "the new time or place of the proceedings" and the "consequences . . . of failing . . . to attend such proceedings." §1229(a)(2)(A) (emphasis added). The government does not argue *this* statute contemplates multiple documents. And if that's the case—if §1229(a)(2) anticipates a single document—it's not exactly obvious why the phrase "a notice to appear" found next door in §1229(a)(1) should operate differently.[4]

Finally, there is the statute's history and the government's initial response to it. Before IIRIRA, the government began removal proceedings by issuing an "order to show cause"—the predecessor of today's "notice to appear." Back then, the law expressly authorized the government to specify the place and time for an alien's hearing "in the order to show cause *or otherwise*." §1252b(a)(2)(A) (1994 ed.) (emphasis added). IIRIRA changed all that. It changed the name of the charging document—and it changed the rules governing the document's contents. Now time and place information must be included in a notice to appear, not "or otherwise." Nor was the alteration an insensible one. Recall that IIRIRA *also* created the stop-time rule and pegged it to the service of a notice to appear. A rational Congress easily could have thought that measuring an alien's period of residence against the service date of a discrete document

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[4] The dissent seeks to raise the cudgel on the government's behalf, arguing that §1229(a)(2) *does* permit multiple documents. *Post*, at 14-15. But on the dissent's reading, the statute would authorize the government to (1) hand an alien one document with a new time for his hearing, (2) follow up at its leisure with a second document containing the new hearing date, and (3) add a third document later still explaining the consequences of failing to appear. To state the theory may be enough to explain why the government declines to press it.

was preferable to trying to measure it against a constellation of moving pieces.

Notably, too, the year after Congress adopted IIRIRA the government proposed a rule to create "the Notice to Appear, Form I–862, replacing the Order to Show Cause, Form I–221." See 62 Fed. Reg. 449 (1997). In the preamble to its proposed rule, the government expressly acknowledged that "the language of the amended Act indicat[es] that *the time and place of the hearing must be on the Notice to Appear*." *Ibid.* (emphasis added). We don't mention this, as the dissent supposes, in support of some argument that "post-enactment regulatory history" should overcome "the otherwise-best interpretation of the statute." *Post*, at 16. Rather, we mention it only to observe that even the party now urging otherwise once read the statute just as we do. To the extent that dissent accuses us of being "literalists," it seems the literalists once infiltrated the Executive Branch too. *Post,* at 10.[5]

Perhaps, though, what's really going on here has nothing to do with labels like that. Perhaps there's a simpler explanation. Perhaps when Congress adopted IIRIRA everyone understood that it required a single fully compliant document to trigger the stop-time rule. Perhaps the government has resisted the law's demands only because they leave its officials with less flexibility than they once had. Regardless, when interpreting this or any statute, we do not aim for "literal" interpretations, but neither do we seek to indulge efforts to endow the Executive Branch with maximum bureaucratic flexibility. We simply seek the law's ordinary meaning. Today, a long parade of textual and contextual clues persuade us of this statute's ordinary

[5] It makes no difference either that the Executive Branch tempered its candor by promising later in its proposed rule to provide a single notice only "where practicable." *Post,* at 16. That the government let slip (at least once) that it understood the plain import of IIRIRA's revisions remains telling.

meaning. If, in the process of discerning that meaning, we happen to consult grammar and dictionary definitions—along with statutory structure and history—we do so because the rules that govern language often inform how ordinary people understand the rules that govern them.

III

Ultimately, the government is forced to abandon any pretense of interpreting the statute's terms and retreat to policy arguments and pleas for deference. The government admits that producing compliant notices has proved taxing over time. It may not know the availability of hearing officers' schedules at the time it would prefer to initiate proceedings against aliens. Nor, the government contends, does it make sense to include time and place information in a notice to appear when the statute allows it to amend the time and place by serving a supplemental notice. Beyond all that, the government stresses, its own (current) regulations authorize its practice. The dissent expands on all these points at length. *Post,* at 17–21. But as this Court has long made plain, pleas of administrative inconvenience and self-serving regulations never "justify departing from the statute's clear text." *Pereira*, 585 U. S., at ___ (slip op., at 18).

Besides, even viewed in isolation the government's policy arguments are hardly unassailable. If the government finds filling out forms a chore, it has good company. The world is awash in forms, and rarely do agencies afford individuals the same latitude in completing them that the government seeks for itself today. Take this example: Asylum applicants must use a 12-page form and comply with 14 single-spaced pages of instructions. Failure to do so properly risks having an application returned, losing any chance of relief, or even criminal penalties. DHS, I–589, Application for Asylum and for Withholding of Removal: Instructions, pp. 5, 14; DHS, I–589 Form. Nor is it obvious

the government faces an insurmountable chore here. As we have seen, once the government serves a compliant notice to appear, IIRIRA permits it to send a supplemental notice amending the time and place of an alien's hearing if logistics require a change. See 8 U. S. C. §1229(a)(2).

To be sure, the government seeks to leverage this statutory feature to its further advantage. Because it may issue a supplemental notice changing the time and place of the alien's hearing, the government reasons, requiring an initial and fully compliant notice serves no meaningful purpose. But that much does not follow. True, the government can change the time and place if it must. As written, though, the statute allows the government to invoke the stop-time rule only if it furnishes the alien with a single complaint document explaining what it intends to do and when. We are no more entitled to denigrate this modest statutory promise as some empty formality than we might dismiss as pointless the rules and statutes governing the contents of civil complaints or criminal indictments.

Just consider the alternative. On the government's account, it would be free to send a person who is not from this country—someone who may be unfamiliar with English and the habits of American bureaucracies—a series of letters. These might trail in over the course of weeks, months, maybe years, each containing a new morsel of vital information. All of which the individual alien would have to save and compile in order to prepare for a removal hearing. And as soon as the last letter arrives, the alien's ability to accrue time toward the residency requirement would be suspended indefinitely. Nor is this a wild hypothetical. At oral argument the government contended "[t]here's nothing that textually limits us" from proceeding in just this fashion. Tr. of Oral Arg. 47.

The dissent's policy arguments stretch even further than the government's. It suggests that the best way to help aliens is to rule against the alien before us. *Post*, at 4–5, 17–

21. Unsurprisingly, however, neither Mr. Niz-Chavez nor any of the immigration policy advocates who have filed *amicus* briefs in this Court share that assessment. And how does the dissent arrive at its judgment anyway? It speculates the government might respond to our decision by disadvantaging aliens in one of two ways. First, it might ambush aliens with last-minute notices. See *post*, at 19. Alternatively, it might issue compliant notices that trigger the stop-time rule as early as possible, only to amend the time-and-place information shortly before the hearing date. *Ibid.* But the dissent's preferred construction does nothing to foreclose either of these possibilities. And even the dissent seems to think another outcome is more likely yet: It says the government may continue serving notices without time and place information in the first instance, only to trigger the stop-time rule later by providing fully compliant notices with time and place information once a hearing date is available. *Post*, at 18. Nor does the dissent question that this result would help—and certainly not hurt—most aliens.

In the end, though, all this speculation is beside the point. The dissent tries to predict how the government will react to a ruling that requires it to follow the law and then proceeds to assess the resulting "costs" and "benefits." *Post*, at 17, 20–21. But that kind of raw consequentialist calculation plays no role in our decision. Instead, when it comes to the policy arguments championed by the parties and the dissent alike, our points are simple: As usual, there are (at least) two sides to the policy questions before us; a rational Congress could reach the policy judgment the statutory text suggests it did; and no amount of policy-talk can overcome a plain statutory command. Our only job today is to give the law's terms their ordinary meaning and, in that small way, ensure the federal government does not exceed its statutory license. Interpreting the phrase "a notice to ap-

pear" to require a single notice—rather than 2 or 20 documents—does just that.

*

At one level, today's dispute may seem semantic, focused on a single word, a small one at that. But words are how the law constrains power. In this case, the law's terms ensure that, when the federal government seeks a procedural advantage against an individual, it will at least supply him with a single and reasonably comprehensive statement of the nature of the proceedings against him. If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.

The judgment of the Court of Appeals for the Sixth Circuit is

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 19–863

AGUSTO NIZ-CHAVEZ, PETITIONER *v.* MERRICK B. GARLAND, ATTORNEY GENERAL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[April 29, 2021]

JUSTICE KAVANAUGH, with whom THE CHIEF JUSTICE and JUSTICE ALITO join, dissenting.

Agusto Niz-Chavez is a native and citizen of Guatemala. In 2005, Niz-Chavez unlawfully entered the United States through the southern border and eventually settled in Detroit. In 2013, the Government initiated removal proceedings against Niz-Chavez. After the removal hearings, an Immigration Judge ordered Niz-Chavez to either voluntarily depart from the United States within 30 days or else be removed to Guatemala.

The Court today casts aside the Immigration Judge's order and allows Niz-Chavez to go back to immigration court to seek cancellation of removal. Why? The Court says that Niz-Chavez did not receive proper notice of his removal proceedings because he received notice in two documents rather than one. The Court so holds even though Niz-Chavez (i) received all the statutorily required information about his removal proceedings, including the time and place of the removal hearing; (ii) was not prejudiced in any way by receiving notice in two documents rather than one; and (iii) in fact appeared with counsel at his scheduled removal hearing.

The Court's decision contravenes Congress's detailed requirements for a noncitizen to obtain cancellation of removal. When the Government seeks to remove a noncitizen

such as Niz-Chavez who is unlawfully in the country, it begins the process by sending the noncitizen a notice to appear for removal proceedings. 8 U. S. C. §1229(a)(1). In the subsequent removal proceedings before an immigration judge, the noncitizen may contest the grounds for removal and may also ask the immigration judge to grant various forms of relief, including discretionary cancellation of removal. §§1229b(a), (b)(1).

A noncitizen's eligibility for cancellation of removal depends in part on when the noncitizen received notice of the removal proceeding. To be eligible, a noncitizen who is a nonpermanent resident must have been continuously present in the United States for at least 10 years. §1229b(b)(1)(A). The 10-year clock stops, however, when the noncitizen is served "a notice to appear" for the removal proceeding. §1229b(d)(1).

Because service of a notice to appear stops the 10-year clock and may make the noncitizen ineligible for cancellation of removal, noncitizens who want to apply for cancellation of removal (and courts) must know what constitutes a notice to appear. Federal immigration law answers that question. The relevant statute defines a notice to appear as "written notice," which must be served in person or by mail and which provides certain required information, such as the alleged grounds for removal and the time and place of the removal hearing. §1229(a)(1); see *Pereira* v. *Sessions*, 585 U. S. ___, ___–___ (2018) (slip op., at 13–14) (§1229(a)(1) provides the definition of a notice to appear for purposes of the 10-year clock).

In this case, the United States commenced removal proceedings against Niz-Chavez in 2013—eight years after he entered the United States. The Government served two documents on Niz-Chavez. In March 2013, Niz-Chavez received the first document, which notified him that he was being charged as removable because he was unlawfully in the country. It explained that he would have to appear for

a removal hearing at the immigration court in Detroit at a time to be set in the future. Two months later, he received the second document, which notified him that the removal hearing would occur at the immigration court in Detroit on June 25, 2013, at 8:30 a.m. The two documents together included all the statutorily required information. See §1229(a)(1). Niz-Chavez appeared with counsel at the scheduled hearing on June 25, 2013.

At the hearing, Niz-Chavez conceded that he was removable because he was unlawfully in the country. Moreover, Niz-Chavez did not request cancellation of removal or suggest that he was eligible for cancellation of removal, presumably because he received the notice to appear long before he had accrued 10 years of continuous presence in the United States. After further hearings, an Immigration Judge found Niz-Chavez removable as charged and ordered Niz-Chavez to either voluntarily depart from the United States within 30 days or else be removed to Guatemala.

Niz-Chavez now argues that he in fact should be eligible for cancellation of removal. He emphasizes that the continuous-presence clock stops upon service of "*a* notice to appear." §1229b(d)(1). That language, according to Niz-Chavez, means that, to stop the 10-year clock, the Government must provide all the required information *in one document*, rather than two. The Government responds that the statute includes no such requirement and that the Government may serve a notice to appear *in two documents*, with the time and place of the hearing coming in the second document and the 10-year clock stopping then.

The Court today agrees with Niz-Chavez that, in order to stop the 10-year clock, the Government must provide written notice in one document, not two. I find the Court's conclusion rather perplexing as a matter of statutory interpretation and common sense. I therefore respectfully dissent.

I

A

This is not the Court's first case involving a notice to appear for removal proceedings. In *Pereira* v. *Sessions*, the Court held that a notice that does not provide the time and place of the hearing does not stop the 10-year continuous-presence clock. 585 U. S. ___, ___ (2018) (slip op., at 2). Before *Pereira*, the Government (in some Circuits) could send two documents as it did in this case and stop the clock when it served the first, incomplete document. See *id.*, at ___–___, and n. 4 (slip op., at 7–8, and n. 4). In the wake of *Pereira*, however, service of the first document no longer stops the clock. The clock does not stop until the Government also provides the time and place of the hearing.

In *Pereira*, the Court did not address the distinct question whether the Government may serve a notice to appear in two documents instead of one, with the time and place of the hearing coming in the second document and the clock then stopping upon service of the second document. We must decide that question here.

After *Pereira*, why would the Government still provide notice in two documents instead of one comprehensive document? Simple. When the Government wants to inform the noncitizen that it is initiating removal proceedings, the Government may not yet know exactly when the hearing will occur. So the Government sometimes will first inform the noncitizen of the charges, and only later provide the exact time and place of the hearing.

After *Pereira*, the Government gains no advantage by providing notice in two documents, because the 10-year continuous-presence clock does not stop until the noncitizen has also been served the statutorily required time and place information. See *id.*, at ___ (slip op., at 2). If anyone gains an advantage from two-document notice after *Pereira*, it is noncitizens. They can learn of the removal proceedings and begin preparing a defense even before they receive notice of

the time and place of the hearing. So receiving notice in two documents can benefit noncitizens.

Even though receiving notice in two documents would benefit noncitizens as a group by giving them more time to prepare for hearings, Niz-Chavez understandably seeks to advance his own interests in not having the 10-year clock stopped in his individual case. Niz-Chavez says that to stop the 10-year clock, the Government must provide a single document with all the statutorily required information, because the statute requires "*a* notice to appear."

B

The Court agrees with Niz-Chavez, resting its conclusion almost entirely on the word "a" in the statutory phrase "a notice to appear." As the Court notes, Congress provided that the 10-year continuous-presence clock stops when the noncitizen is served "a notice to appear" for removal proceedings. 8 U. S. C. §1229b(d)(1).[1] The Court says that the article "a" means that the 10-year continuous-presence clock stops only if the Government serves a single document with all the required information to initiate the removal proceedings, not two documents with all the required information. In my respectful view, the Court's textual interpretation contains two independent flaws, either of which suffices to defeat the Court's conclusion.

First, the Court's analysis disregards the statutory definition of a notice to appear.

When a statute defines a term, we ordinarily follow the statutory definition. *Digital Realty Trust, Inc.* v. *Somers*, 583 U. S. ___, ___ (2018) (slip op., at 9); *Burgess* v. *United States*, 553 U. S. 124, 129–130 (2008). Here, the statute defines a notice to appear in a somewhat oddly worded way.

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[1] As relevant here, the statute provides: "For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end . . . when the alien is served a notice to appear under section 1229(a) of this title." §1229b(d)(1).

The definition is located in the statutory provision that specifies how the Government must initiate removal proceedings. That provision states: "*written notice (in this section referred to as a 'notice to appear')* shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying" 10 categories of information relevant to the removal proceedings. §1229(a)(1) (emphasis added); see also *Pereira*, 585 U. S., at ___–___ (slip op., at 13–14) (§1229(a)(1) provides the definition of a notice to appear for purposes of the 10-year clock).[2]

In other words, the statute provides that the 10-year con-

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[2] Section 1229(a)(1) provides: "In removal proceedings under section 1229a of this title, written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

"(A) The nature of the proceedings against the alien.

"(B) The legal authority under which the proceedings are conducted.

"(C) The acts or conduct alleged to be in violation of law.

"(D) The charges against the alien and the statutory provisions alleged to have been violated.

"(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection (b)(2).

"(F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 1229a of this title.

"(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

"(iii) The consequences under section 1229a(b)(5) of this title of failure to provide address and telephone information pursuant to this subparagraph.

"(G)(i) The time and place at which the proceedings will be held.

"(ii) The consequences under section 1229a(b)(5) of this title of the failure, except under exceptional circumstances, to appear at such proceedings."

tinuous-presence clock stops upon service of "a notice to appear," and then goes on to define a notice to appear as "written notice." The statute nowhere says that written notice must be provided in a single document. Rather, the statute lists three essential requirements for the Government to notify a noncitizen of removal proceedings: (i) the notice must be "written notice"; (ii) it must be "given in person," if practicable, or else by mail; and (iii) the notice must include the required information, such as the grounds for removal and the time and place of the hearing. §1229(a)(1). Nothing more. But the Court today nonetheless imposes a fourth, atextual single-document requirement for the notice to stop the 10-year clock.

If Congress actually wanted to require a single document to stop the 10-year clock, Congress easily could have (and surely would have) said so. After all, the statute supplies comprehensive and detailed instructions about how the Government must serve a notice to appear and what information must be included. But the statute never says that all the required information must appear in a single document.

Notice delivered in two installments can readily satisfy all the requirements of a notice to appear. Consider the notice served on Niz-Chavez in this case. It was written notice. It was properly served. It contained all the statutorily required information, including the time and place of the hearing. The statute contemplates nothing more of a notice to appear.

Instead of applying that clear statutory definition of a notice to appear as written notice, the Court dismisses the definition's relevance on a novel basis not raised by Niz-Chavez, not advanced by any *amicus* brief, and not adopted by any lower courts—the placement of a quotation mark. The Court reasons that the quotation marks in the statutory definition appear around only the words "notice to ap-

pear," rather than around "*a* notice to appear." On that basis, the Court insists that the phrase "written notice" defines only the three words "notice to appear"—without the "a." And substituting "written notice" for "notice to appear" in the statutory provision addressing the 10-year clock would still require "a" written notice, which the Court interprets to mean a single document.

According to the Court, Congress thus imposed a single-document requirement for stopping the 10-year clock not by actually saying that a single document is required, but rather by placing quotation marks around the words *a "notice to appear"* rather than *"a notice to appear"* in the statutory definition. There is a good reason that Niz-Chavez did not raise this argument, that no *amicus* brief advanced this argument, and that no court has adopted it. The Court's theory is mistaken and implausible. If Congress wanted to require a single document in order to stop the 10-year clock, it is hard to imagine a more obscure way of doing so. Although "the meaning of a statute will typically heed the commands of its punctuation," "a purported plain-meaning analysis based only on punctuation is necessarily incomplete and runs the risk of distorting a statute's true meaning." *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.*, 508 U. S. 439, 454 (1993). The Court has declined to rely on "the deployment of quotation marks" when "all of the other evidence from the statute points the other way." *Id.,* at 455.

So it is here. The Court's quotation-mark theory contravenes the statutory text and structure. The text and structure make clear that the notice that initiates removal proceedings is the same notice that stops the 10-year clock. See §§1229(a)(1), 1229b(d)(1). But the Court's interpretation treats them as different by imposing different requirements for a notice that stops the 10-year clock and for a notice that initiates removal proceedings. To reiterate, to initiate removal proceedings, the Government must provide the

noncitizen with "written notice." The Court does not dispute (and cannot dispute) that the Government can initiate removal proceedings by providing written notice in more than one document, so long as the notice encompasses all the statutorily required information. Nonetheless, for that written notice to also stop the 10-year clock, the Court says that the written notice must be provided in a single document rather than two documents because the 10-year clock provision requires "*a* notice to appear." Stated otherwise, under the Court's novel theory, the Government may use two documents to initiate removal proceedings, but the Government must use a single document if it also wants to stop the continuous-presence clock—even though Congress explicitly linked the notice that stops the clock to the notice that initiates removal proceedings. Put simply, the Court's argument based on the placement of a quotation mark contravenes the straightforward statutory structure and makes little sense.

The Court's novel interpretation also creates another inconsistency. Section 1229a(b)(5) explains that a noncitizen who fails to attend a removal hearing may be removed in absentia if he had previously been provided with "written notice" under §1229(a)(1). Under the Court's interpretation, it is hard to see why such notice would need to be provided in a single document—there are no dangling uses of "a" to latch onto in that provision. It makes no sense that two-document notice could justify removal in absentia but could not stop the continuous-presence clock.

In sum, the Court's theory for disregarding the statutory definition is both novel and unpersuasive. The Court's quotation-mark argument fails because it distorts the "statute's true meaning." *United States Nat. Bank of Ore.*, 508 U. S., at 454. When the statutory definition of a notice to appear as "written notice" is correctly applied, instead of sidestepped, it readily resolves what should have been a very simple statutory case.

Second, even if there were no definition in this statute and we therefore had to focus solely on the term "a notice to appear" in isolation, the Court's interpretation of that phrase would still fail.

Ordinary meaning and literal meaning are two different things. And judges interpreting statutes should follow ordinary meaning, not literal meaning. See, *e.g., McBoyle* v. *United States*, 283 U. S. 25, 26 (1931) (in ordinary speech, "vehicle" does not cover an aircraft, even though "etymologically it is possible to use the word" that way); see also A. Scalia, A Matter of Interpretation 24 (1997) (a "good textualist is not a literalist"). The Court here, however, relies heavily on literal meaning: The Court interprets the word "a" in the phrase "a notice to appear" to literally require the Government to serve one (and only one) document. In the Court's words, "a notice" requires "'a' single document containing the required information." *Ante,* at 5.

As a matter of ordinary parlance, however, the word "a" is not a one-size-fits-all word. As relevant here, the word "a" is sometimes used to modify a single thing that must be delivered in one package, but it is sometimes used to modify a single thing that can be delivered in multiple installments, rather than in one installment. Context is critical to determine the proper meaning of "a" in a particular phrase. Consider some examples. A car dealership that promises to ship "a car" to a customer has not fulfilled its obligation if it sends the customer one car part at a time. By contrast, it is common to submit "a job application" by sending a resume first and then references as they are available. When the final reference arrives, the applicant has submitted "a job application." Similarly, an author might submit chapters of a novel to an editor one at a time, as they are ready. Upon submission of the final chapter, the author undoubtedly has submitted "a manuscript." "A contract" likewise can be "established by multiple documents." *Secretary of U. S. Air Force* v. *Commemorative Air*

Force, 585 F. 3d 895, 901 (CA6 2009). The list goes on.

As those examples demonstrate, and as the Court acknowledges, the article "a" can be perfectly consistent with delivery in installments. And in this case, the better reading of the article "a" is that it does not require delivery in only one installment. A notice to appear for a removal hearing is more like a job application, a manuscript, and a contract than it is like a car. A notice to appear conveys information, like a job application, a manuscript, and a contract. And unlike a car, a notice to appear is easy for the recipient to assemble from its constituent installments.

The Court prefers a different analogy. To buttress its interpretation, the Court analogizes the notice to appear to legal documents that initiate criminal cases, like indictments. The Court reasons that "an indictment" traditionally provides all the required information in a single document, so "a notice to appear" must do so as well. *Ante,* at 7–8.

But that analogy is misplaced. An indictment generally provides charging information. By contrast, a notice to appear provides charging information *and* logistical calendaring information that is not always knowable at the time of charging. As the Court said in *Pereira*, a notice to appear is more than just a charging document because it serves "another equally integral function: telling a noncitizen when and where to appear." See 585 U. S., at ___, n. 7 (slip op., at 13, n. 7). In other words, a notice to appear is akin to a charging document *plus* a calendaring document. It is therefore easy to understand why a notice to appear might require two installments while an indictment requires only one. The analogy to an indictment actually cuts strongly *against* the Court's interpretation.

In addition, interpreting "a notice to appear" to allow delivery in two documents makes much more sense in context here because it allows the Government to alert the noncitizen of the charges well before a time and place have been

set for the hearing. That affords the noncitizen more time to prepare a defense. And a noncitizen suffers no prejudice from receiving notice in two documents rather than one, as Niz-Chavez's case amply demonstrates. In short, a noncitizen gains something and loses nothing meaningful from receiving all the information in two documents. (The same cannot be said for receiving a car in two installments, for example.)

The Court's interpretation, by contrast, spawns a litany of absurdities. For example, under the Court's interpretation, the 10-year clock does not stop if the noncitizen receives the two separate documents *on the same day but in different envelopes*. But the clock does stop if the noncitizen receives the two documents in one envelope. What sense does that make? Moreover, if a noncitizen receives a first document without a time and place and a second document with only the time and place, that does not stop the clock under the Court's rule. But if a noncitizen receives a first document with all the information including the time and place and then a second document with all the information and a *new* time and place, that first document does stop the clock under the Court's rule. What sense does that make?

Indeed, the Court deems Niz-Chavez to have never received proper notice of the hearing even though he received all the statutorily required information and *actually appeared with counsel at the hearing*. Again, what sense does that make?

The Court blames those absurdities on Congress and says that Congress would have chosen to omit the article "a" if it wanted to allow two documents. The Court's apparent theory is that Congress deliberately employed the word "a" to obliquely impose an additional procedural obligation on the Government when the Government initiates removal proceedings against a noncitizen and wants to stop the 10-year clock. That theory is no more plausible than the Court's

first theory that Congress used the placement of a quotation mark to impose a new procedural obligation. Once again, if Congress wanted to require the Government to send a notice to appear in one document rather than two documents in order to stop the 10-year clock, Congress easily could have said so, and undoubtedly would have said so. But it did not. The bottom line is that this new single-document requirement comes from this Court, not Congress. The Court's attempt to deflect blame is unpersuasive.

In sum, the Court's interpretation of the statutory text is wrong for two independent reasons, either of which suffices to defeat the Court's conclusion. First, the statutory definition of a notice to appear as "written notice" establishes that "a notice to appear" can be delivered in two installments. Second, even if there were no statutory definition, the best reading of "a notice to appear" in this context is that the notice can be provided in two installments.

C

The Court seeks to support its textual analysis with additional arguments based on structure, statutory history, and post-enactment regulatory history. Those arguments do not help.

First, start with structure. The Court says that three other statutory provisions—§§1229(e)(1), 1229a(b)(7), and 1229(a)(2)—imply that a notice to appear is a single document. *Ante*, at 9–11. But none of the three provisions actually requires the Government to serve a notice to appear in a single document. Moreover, the language in all three provisions is consistent with a two-document notice to appear.

The first provision, §1229(e)(1), addresses the Government's notice obligations when it seizes a noncitizen at a domestic violence shelter or other location as a precursor to removal proceedings. In those cases, §1229(e)(1) says that "the Notice to Appear shall include" a statement that the

Government has complied with certain protections for noncitizens. The Court says that the phrase "the Notice" implies a single document because it pairs an article with a singular noun. *Ante*, at 9–10. But the reference in §1229(e)(1) to "the Notice to Appear" does not require or even contemplate a single document. Like the article "a," the article "the" can be used with a thing delivered in constituent installments—consider "the job application," "the manuscript," or "the contract." Section 1229(e)(1) simply requires the Government to include the necessary statement of compliance in one of the documents constituting the notice to appear.

The second provision, §1229a(b)(7), concerns noncitizens who fail to appear at removal proceedings and are ordered removed in absentia. Section 1229a(b)(7) says that a noncitizen in that situation is ineligible for certain kinds of relief from removal for 10 years if the noncitizen was provided oral notice "at the time of" the written notice to appear. §1229a(b)(7). The Court argues that the provision's reference to "the time of" the written notice implies that the written notice is necessarily delivered at one particular moment, and therefore in one single document. *Ante*, at 10–11. On the contrary, the reference in §1229a(b)(7) to "the time of" the written notice is entirely consistent with two-document notice. Notice qualifies as "a notice to appear" only when it includes the time and place of the removal hearing. *Pereira*, 585 U. S., at ___, ___ (slip op., at 2, 9). So when the Government uses two documents to serve a notice to appear, "the time of" the written notice is the time when the noncitizen is served the second installment that provides the time and place of the hearing.

The third provision, §1229(a)(2), supplies a procedure for changing the time or place of a removal hearing. It requires the Government to give a noncitizen "a written notice" of the new time and place. The Court concludes that the reference to "*a* written notice" requires a single document, and

so "*a* notice to appear" must as well. *Ante,* at 11. As a practical matter, the Government may need only one document to change the time or place of the hearing. But the word "a" in the phrase "a written notice" does not *require* the Government to use a single document, just as the word "a" in the phrase "a notice to appear" does not. Section 1229(a)(2), like the other two provisions, is entirely consistent with the Government's reading of the statute.

Second, the Court also invokes statutory history to support its interpretation. But the statutory history does not advance the Court's argument. Before 1996, the immigration statute required the Government to serve an "order to show cause" rather than a notice to appear. 8 U. S. C. §1252b(a)(1) (1994 ed.). Back then, the statute allowed the Government to notify a noncitizen of the time and place of the removal hearing either "in the order to show cause or otherwise." §1252b(a)(2)(A) (1994 ed.). The pre-1996 statute similarly defined an order to show cause as "written notice"—a broad term that does not require one document. §1252b(a)(1) (1994 ed.). In 1996, Congress made some significant changes. Congress replaced suspension of deportation with cancellation of removal. Illegal Immigration Reform and Immigrant Responsibility Act, §§304(a), 308(b)(7), 110 Stat. 3009–587, 3009–615 (codified at 8 U. S. C. §1229b). Congress extended the continuous-presence requirement to 10 years for nonpermanent residents. 110 Stat. 3009–594 (codified at §1229b(b)(1)(A)). Congress also changed the order to show cause to a notice to appear, and required the Government to provide the time and place information in that notice to appear. 110 Stat. 3009–588 (codified at §1229(a)(1)(G)(i)). And Congress also provided for the first time that service of the notice to appear would stop the continuous-presence clock. 110 Stat. 3009–595 (codified at §1229b(d)(1)).

But amid all those changes, Congress never required that a notice to appear include all the required information in a

single document. The Court nonetheless speculates that a "rational Congress easily could have thought" it sensible to peg the end of the continuous-presence clock to a single document. *Ante*, at 11. Maybe so. But a rational Congress also could have declined to impose a single-document requirement. What matters is that the *actual* Congress declined to impose a single-document requirement in 1996, just as it had declined to do before 1996.

Third, the Court turns to post-enactment regulatory history. According to the Court, language in the preamble to a 1997 notice of proposed rulemaking issued jointly by the Immigration and Naturalization Service and the Executive Office for Immigration Review suggests that those agencies once believed that a single document was required. *Ante,* at 12; see 62 Fed. Reg. 449. Even assuming that this executive agency interpretation (found in a preamble to a notice of proposed rulemaking) could alter the otherwise-best interpretation of the statute, the proposed rule that follows the preamble undercuts the Court's characterization of the agencies' 1997 position. The 1997 proposed rule stated that the Government would include the time and place of the removal hearing in the initial charging document "*where practicable*." *Id.,* at 457 (emphasis added). And the proposed rule gave alternative instructions for when time and place information "is not contained" in the initial document. *Ibid.* That formulation does not reflect a single-document interpretation of the statute. So post-enactment regulatory history does not help the Court any more than statutory history; indeed, the post-enactment regulatory history appears in significant tension with the Court's reading.

In the end, the Court's arguments based on structure and history all fail to answer a very simple question: If Congress wanted all the information to be included in one document in order to stop the 10-year clock, why did Congress not say that all the information must be included in one document?

II

The Court concludes its opinion by suggesting that its decision will rein in the Federal Government and produce policy benefits for noncitizens. But the Court's decision will not meaningfully benefit noncitizens going forward, and it will ultimately benefit few if any noncitizens who have already been notified of their removal proceedings. Meanwhile, the Court's decision will impose significant costs on the immigration system, which of course means more backlog for *other noncitizens* involved in other immigration cases.

To be clear, demonstrating that the Court is wrong to predict policy benefits from its decision is not ignoring a "statutory command" in favor of policy views. *Ante,* at 15. Rather, the point here is that the Court's opinion both errs as a matter of statutory interpretation *and* will not meaningfully help noncitizens, contrary to the Court's prediction.

Start with the supposed policy benefit that the Court identifies: The Court suggests that its decision will help noncitizens by stopping the Government from sending numerous documents (more than two) to noncitizens over a period of months or even years, perhaps in an effort to confuse them. But the Court does not point to any examples of the Government *actually* serving a notice to appear in more than two documents, or over a period of years. After all, why would the Government do so, absent a need to reschedule a hearing? It would make no sense. Under the statute as interpreted in *Pereira*, the Government cannot stop the continuous-presence clock until it provides the time and place of the removal hearing. And the immigration court cannot commence the removal hearing until the Government does so. So wasting years and sending multiple documents to serve a notice to appear would only work to the Government's disadvantage because it would delay the hearing. The supposed "benefit" of the Court's decision,

then, is simply to prevent the Government from doing something that it has no incentive to do in the first place. The Court's opinion cures a problem of its own imagination.

In fact, the Court's decision will not alter the delivery of notice in any meaningful way. Going forward, when the Government wants to initiate the process of removing a noncitizen before it knows with certainty the time and place of the noncitizen's initial removal hearing, the Government can comply with today's decision in one of three ways. None of the three alternatives provides meaningful benefits for noncitizens as compared to the Government's current practice of sometimes using two documents, and two of the options are worse for noncitizens.

The first way that the Government can comply with today's decision is simply to do what it did in Niz-Chavez's case, with one minor change. The Government can still send an initial document that informs the noncitizen of all relevant information except the time and place of the hearing, and then a second document that supplies the time and place of the hearing. All that the Government needs to do to comply with today's decision and still stop the 10-year clock is to repeat all the information from the first document in the second document, or alternatively to provide a copy of the first document when it serves the second. Delivered together, the two attachments will form a single, complete notice to appear even under the Court's strained interpretation, and therefore will stop the 10-year clock. (Counsel for Niz-Chavez forthrightly conceded all of this at oral argument. Tr. of Oral Arg. 24.) The Court insists that this change in practice will still help noncitizens, but it fails to explain how. The first document sent to Niz-Chavez in this case informed him that he was required to carry the document with him at all times. Especially in light of that obligation, it is hard to see any meaningful benefit in the Government's resending the same initial document to a noncitizen once the hearing has been scheduled.

But even if that first possible method of complying with today's decision would benefit noncitizens in some minimal way, it is not clear that the Government will actually choose that option. Instead, the Government can comply with today's decision in other ways that will leave noncitizens *worse off*. As a second option, for example, the Government may stop sending the first document at all and just wait until it can provide all the information in one comprehensive document—necessarily closer to the date of the hearing. That would indisputably comply with today's decision but would disadvantage noncitizens by affording them less time to prepare for removal hearings.

The third possible option is no better for noncitizens. When the Government is ready to initiate removal proceedings but does not know the time and place of a hearing, it could comply with the Court's decision by sending a document with a placeholder time and place of the hearing and then later serve a second document with the actual time and place of the hearing. As counsel for Niz-Chavez conceded at oral argument, doing so would comply with the statute and allow the Government to stop the continuous-presence clock upon service of the *initial* document rather than the second document. *Id.,* at 15. That option would give noncitizens *less* time to accrue continuous presence than when the Government includes the time and place only in the second document. Moreover, that approach—sending the noncitizen two different times or places—is a recipe for confusion.

In short, the Court's conclusion today will not necessarily help noncitizens or constrain the Government going forward.[3]

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[3] The Court says that the immigration policy advocates who filed *amicus* briefs in support of Niz-Chavez disagree with that assessment of the consequences of today's decision. But those briefs are especially concerned with the Government stopping the clock with a notice that has a

But *looking backwards*, will the Court's decision at least supply a benefit to some noncitizens such as Niz-Chavez who *previously* received a notice to appear in two documents? To begin with, any noncitizen who becomes eligible for cancellation of removal notwithstanding the noncitizen's receipt of all the required information in writing before 10 years of continuous presence would receive a windfall based on the thinnest of technicalities. Consider Niz-Chavez himself. He received all the required information before the 10-year clock had run, he showed up at the hearing with counsel, and he suffered zero prejudice from receiving notice in two documents rather than one.

But in any event, that eligibility windfall is unlikely to translate to any real-world benefit for many noncitizens in Niz-Chavez's position. To be sure, today's decision means that some noncitizens in Niz-Chavez's position will now become *eligible* for cancellation of removal. But that does not mean that those noncitizens will actually *receive* cancellation of removal as a result of today's decision. Cancellation of removal is discretionary. §§1229b(a), (b)(1). In other words, today's decision means only that immigration judges have discretion to grant cancellation of removal for some noncitizens who received notice in two documents.

And there is another apparent catch. Subject to a few exceptions not relevant here, the number of noncitizens who may receive cancellation of removal is capped by statute at only 4,000 per year. §1229b(e)(1). Those 4,000 spots are "coveted and scarce"—so scarce, in fact, that in recent years, "according to the Executive Office for Immigration

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placeholder date and then sending a later document with the actual date. See, *e.g.,* Brief for American Immigration Lawyers Association et al. as *Amici Curiae* 15–19; Brief for Thirty-Three Former Immigration Judges and Members of the Board of Immigration Appeals as *Amici Curiae* 18–23. Yet as counsel for Niz-Chavez forthrightly conceded at oral argument, the approach adopted by the Court today will still allow that practice going forward. See Tr. of Oral Arg. 15.

Review, 3,500 cancellation of removal slots have been filled on the first day" of the year. *Matter of Castillo-Perez*, 27 I. & N. Dec. 664, 669 (Atty. Gen. 2019). "The other 500 slots are set aside to be granted to detained aliens throughout the year." *Ibid.* Perhaps a small handful of the noncitizens who receive an eligibility windfall as a result of today's decision will ultimately also receive cancellation of removal. But that is far from clear.

Meanwhile, the Court's decision will impose substantial costs and burdens on the immigration system, as the Government has detailed. Tr. of Oral Arg. 52–54. Because today's decision means that many more people who have been in removal proceedings may be eligible for cancellation of removal, presumably many more people will apply. And processing all of those extra applications for cancellation of removal will impose costs on the immigration system and create backlogs and delays for other noncitizens trying to get their day in court. More than 1.2 million cases are currently inching their way through the immigration courts. Dept. of Justice, Executive Office for Immigration Review Adjudication Statistics, Pending Cases, New Cases, and Total Completions (Jan. 7, 2021). If even a small portion of the noncitizens with pending removal cases become eligible for cancellation of removal solely because of today's decision, and then apply for cancellation of removal, the immigration courts will need to expend substantial resources to timely consider those applications for relief, even though many of them are likely to be denied.

In sum, the Court's statutory conclusion in this case will not necessarily help noncitizens. The Court's statutory interpretation is not likely to create meaningful benefits for many noncitizens going forward, and it is not likely to create benefits for many noncitizens looking backwards. And it will impose serious administrative burdens on an immigration system that is already overburdened, thereby harming other noncitizens.

* * *

As a matter of policy, one may reasonably debate the circumstances under which a noncitizen who is unlawfully in the country should be removed and should be eligible for cancellation of removal. But those policy choices are for the political branches. Our job is to follow the law passed by Congress and signed by the President.

The statute here requires the Government to serve the noncitizen with written notice of the charges and other required information, including the time and place of the hearing. In this case, Niz-Chavez received written notice of the charges and all the required information, including the time and place of his hearing. Niz-Chavez appeared with counsel at his hearing in Detroit on June 25, 2013. Because he received written notice to appear before he had accumulated 10 years of continuous physical presence, he is not eligible for cancellation of removal. I respectfully dissent.

No. 17-459
SUPREME COURT OF THE UNITED STATES

Pereira v. Sessions

138 S. Ct. 2105 (2018) · 201 L. Ed. 2d 433
Decided Jun 21, 2018

No. 17–459.

06-21-2018

Wescley Fonseca PEREIRA, Petitioner v. Jefferson B. SESSIONS, III, Attorney General.

David J. Zimmer, Boston, MA, for Petitioner. Frederick Liu, for Respondent. David J. Zimmer, Alexandra Lu, Goodwin Procter LLP, Jeffrey B. Rubin, Todd C. Pomerleau, Rubin Pomerleau PC, Boston, MA, William M. Jay, Goodwin Procter LLP, Washington, DC, for Petitioner. Noel J. Francisco, Solicitor General, Chad A. Readler, Acting Assistant Attorney General, Edwin S. Kneedler, Deputy Solicitor General, Jonathan C. Bond, Assistant to the Solicitor General, Donald E. Keener, John W. Blakeley, Patrick J. Glen, Attorneys, Department of Justice, Washington, D.C., for Respondent.

Justice SOTOMAYOR delivered the opinion of the Court.

David J. Zimmer, Boston, MA, for Petitioner.

Frederick Liu, for Respondent.

David J. Zimmer, Alexandra Lu, Goodwin Procter LLP, Jeffrey B. Rubin, Todd C. Pomerleau, Rubin Pomerleau PC, Boston, MA, William M. Jay, Goodwin Procter LLP, Washington, DC, for Petitioner.

Noel J. Francisco, Solicitor General, Chad A. Readler, Acting Assistant Attorney General, Edwin S. Kneedler, Deputy Solicitor General, Jonathan C. Bond, Assistant to the Solicitor General, Donald E. Keener, John W. Blakeley, Patrick J. Glen, Attorneys, Department of Justice, Washington, D.C., for Respondent.

Justice SOTOMAYOR delivered the opinion of the Court.

Nonpermanent residents, like petitioner here, who are subject to removal proceedings and have accrued 10 years of continuous physical presence in the United States, may be eligible for a form of discretionary relief known as cancellation of removal. 8 U.S.C. § 1229b(b)(1). Under the so-called "stop-time rule" set forth in § 1229b(d)(1)(A), however, that period of continuous physical presence is "deemed to end ... when the alien is served a notice to appear under section 1229(a)." Section 1229(a), in turn, provides that the Government shall serve noncitizens in removal proceedings with "written notice (in this section referred to as a 'notice to appear') ... specifying" several required pieces of information, including "
2110 [t]he time and *2110 place at which the [removal] proceedings will be held." § 1229(a)(1)(G)(i).[1]

[1] The Court uses the term "noncitizen" throughout this opinion to refer to any person who is not a citizen or national of the United States. See 8 U.S.C. § 1101(a)(3).

The narrow question in this case lies at the intersection of those statutory provisions. If the Government serves a noncitizen with a document that is labeled "notice to appear," but the document fails to specify either the time or place of the removal proceedings, does it trigger the

stop-time rule? The answer is as obvious as it seems: No. A notice that does not inform a noncitizen when and where to appear for removal proceedings is not a "notice to appear under section 1229(a)" and therefore does not trigger the stop-time rule. The plain text, the statutory context, and common sense all lead inescapably and unambiguously to that conclusion.

I

A

Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–546, the Attorney General of the United States has discretion to "cancel removal" and adjust the status of certain nonpermanent residents. § 1229b(b). To be eligible for such relief, a nonpermanent resident must meet certain enumerated criteria, the relevant one here being that the noncitizen must have "been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of [an] application" for cancellation of removal. § 1229b(b)(1)(A).[2]

[2] Lawful permanent residents also may be eligible for cancellation of removal if, *inter alia,* they have continuously resided in the United States for at least seven years. § 1229b(a)(2).

IIRIRA also established the stop-time rule at issue in this case. Under that rule, "any period of ... continuous physical presence in the United States shall be deemed to end ... when the alien is served a notice to appear under section 1229(a) of this title."[3] § 1229b(d)(1)(A). Section 1229(a), in turn, provides that "written notice (in this section referred to as a 'notice to appear') shall be given ... to the alien ... specifying":

[3] The period of continuous physical presence also stops if and when "the alien has committed" certain enumerated offenses that would constitute grounds for removal or inadmissibility. § 1229b(d)(1)(B). That provision is not at issue here.

"(A) The nature of the proceedings against the alien.

"(B) The legal authority under which the proceedings are conducted.

"(C) The acts or conduct alleged to be in violation of law.

"(D) The charges against the alien and the statutory provisions alleged to have been violated.

"(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) of this section and (ii) a current list of counsel prepared under subsection (b)(2) of this section.

"(F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 1229a of this title.

"(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any

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> change of the alien's address or telephone number.
>
> "(iii) The consequences under section 1229a(b)(5) of this title of failure to provide address and telephone information pursuant to this subparagraph.
>
> "**(G)(i) The time and place at which the [removal] proceedings will be held.**
>
> "(ii) The consequences under section 1229a(b)(5) of this title of the failure, except under exceptional circumstances, to appear at such proceedings." § 1229(a)(1) (boldface added).

The statute also enables the Government to "change or postpon[e] ... the time and place of [the removal] proceedings." § 1229(a)(2)(A). To do so, the Government must give the noncitizen "a written notice ... specifying ... the new time or place of the proceedings" and "the consequences ... of failing, except under exceptional circumstances, to attend such proceedings." *Ibid.* The Government is not required to provide written notice of the change in time or place of the proceedings if the noncitizen is "not in detention" and "has failed to provide [his] address" to the Government. § 1229(a)(2)(B).

The consequences of a noncitizen's failure to appear at a removal proceeding can be quite severe. If a noncitizen who has been properly served with the "written notice required under paragraph (1) or (2) of section 1229(a)" fails to appear at a removal proceeding, he "shall be ordered removed in absentia" if the Government "establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable." § 1229a(b)(5)(A). Absent "exceptional circumstances," a noncitizen subject to an in absentia removal order is ineligible for some forms of discretionary relief for 10 years if, "at the time of the notice described in paragraph (1) or (2) of section 1229(a)," he "was provided oral notice ... of the time and place of the proceedings and of the consequences" of failing to appear. § 1229a(b)(7). In certain limited circumstances, however, a removal order entered in absentia may be rescinded—*e.g.,* when the noncitizen "demonstrates that [he] did not receive notice in accordance with paragraph (1) or (2) of section 1229(a)." § 1229a(b)(5)(C)(ii).

B

In 1997, shortly after Congress passed IIRIRA, the Attorney General promulgated a regulation stating that a "notice to appear" served on a noncitizen need only provide "the time, place and date of the initial removal hearing, where practicable. " 62 Fed.Reg. 10332 (1997). Per that regulation, the Department of Homeland Security (DHS), at least in recent years, almost always serves noncitizens with notices that fail to specify the time, place, or date of initial removal hearings whenever the agency deems it impracticable to include such information. See Brief for Petitioner 14; Brief for Respondent 48–49; Tr. of Oral Arg. 52–53 (Government's admission that "almost 100 percent" of "notices to appear omit the time and date of the proceeding over the last three years"). Instead, these notices state that the times, places, or dates of the initial hearings are "to be determined." Brief for Petitioner 14.

In *Matter of Camarillo,* 25 I. & N. Dec. 644 (2011), the Board of Immigration Appeals (BIA) addressed whether such notices trigger the stop-time rule even if they do not specify the time and date of the removal proceedings. The BIA concluded that they do. *Id.,* at 651. It reasoned that the statutory phrase "notice to appear 'under section [1229](a)' " in the stop-time rule "merely specifies the document the DHS must serve on the
2112 alien to trigger the *2112 'stop-time' rule," but otherwise imposes no "substantive requirements" as to what information that document must include to trigger the stop-time rule. *Id.,* at 647.

C

Petitioner Wescley Fonseca Pereira is a native and citizen of Brazil. In 2000, at age 19, he was admitted to the United States as a temporary "non-immigrant visitor." App. to Pet. for Cert. 3a. After his visa expired, he remained in the United States. Pereira is married and has two young daughters, both of whom are United States citizens. He works as a handyman and, according to submissions before the Immigration Court, is a well-respected member of his community.

In 2006, Pereira was arrested in Massachusetts for operating a vehicle while under the influence of alcohol. On May 31, 2006, while Pereira was detained, DHS served him (in person) with a document labeled "Notice to Appear." App. 7–13. That putative notice charged Pereira as removable for overstaying his visa, informed him that "removal proceedings" were being initiated against him, and provided him with information about the "[c]onduct of the hearing" and the consequences for failing to appear. *Id.,* at 7, 10–12. Critical here, the notice did not specify the date and time of Pereira's removal hearing. Instead, it ordered him to appear before an Immigration Judge in Boston "on a date to be set at a time to be set." *Id.,* at 9 (underlining in original).

More than a year later, on August 9, 2007, DHS filed the 2006 notice with the Boston Immigration Court. The Immigration Court thereafter attempted to mail Pereira a more specific notice setting the date and time for his initial removal hearing for October 31, 2007, at 9:30 a.m. But that second notice was sent to Pereira's street address rather than his post office box (which he had provided to DHS), so it was returned as undeliverable. Because Pereira never received notice of the time and date of his removal hearing, he failed to appear, and the Immigration Court ordered him removed in absentia. Unaware of that removal order, Pereira remained in the United States.

In 2013, after Pereira had been in the country for more than 10 years, he was arrested for a minor motor vehicle violation (driving without his headlights on) and was subsequently detained by DHS. The Immigration Court reopened the removal proceedings after Pereira demonstrated that he never received the Immigration Court's 2007 notice setting out the specific date and time of his hearing. Pereira then applied for cancellation of removal, arguing that the stop-time rule was not triggered by DHS' initial 2006 notice because the document lacked information about the time and date of his removal hearing.

The Immigration Court disagreed, finding the law "quite settled that DHS need not put a date certain on the Notice to Appear in order to make that document effective." App. to Pet. for Cert. 23a. The Immigration Court therefore concluded that Pereira could not meet the 10–year physical-presence requirement under § 1229b(b), thereby rendering him statutorily ineligible for cancellation of removal, and ordered Pereira removed from the country. The BIA dismissed Pereira's appeal. Adhering to its precedent in *Camarillo,* the BIA agreed with the Immigration Court that the 2006 notice triggered the stop-time rule and that Pereira thus failed to satisfy the 10–year physical-presence requirement and was ineligible for cancellation of removal.

The Court of Appeals for the First Circuit denied Pereira's petition for review of the BIA's order. 866 F.3d 1 (2017). Applying the framework set forth in *Chevron*

2113 *2113

U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), the Court of Appeals first found that the stop-time rule in § 1229b(d)(1) is ambiguous because it "does not explicitly state that the date and time of the hearing must be included in a notice to appear in order to cut off an alien's period of continuous physical presence." 866 F.3d, at 5. Then, after reviewing the statutory text and

structure, the administrative context, and pertinent legislative history, the Court of Appeals held that the BIA's interpretation of the stop-time rule was a permissible reading of the statute. *Id.,* at 6–8.

II

A

The Court granted certiorari in this case, 583 U.S. ——, 138 S.Ct. 735, 199 L.Ed.2d 602 (2018), to resolve division among the Courts of Appeals on a simple, but important, question of statutory interpretation: Does service of a document styled as a "notice to appear" that fails to specify "the items listed" in § 1229(a)(1) trigger the stop-time rule?[4] Pet. for Cert. i.

[4] Compare *Orozco–Velasquez v. Attorney General United States,* 817 F.3d 78, 83–84 (C.A.3 2016) (holding that the stop-time rule unambiguously requires service of a "notice to appear" that meets § 1229(a)(1)'s requirements), with *Moscoso–Castellanos v. Lynch,* 803 F.3d 1079, 1083 (C.A.9 2015) (finding the statute ambiguous and deferring to the BIA's interpretation); *O'Garro v. United States Atty. Gen.,* 605 Fed.Appx. 951, 953 (C.A.11 2015) (*per curiam*) (same); *Guaman–Yuqui v. Lynch,* 786 F.3d 235, 239–240 (C.A.2 2015) (*per curiam*) (same); *Gonzalez–Garcia v. Holder,* 770 F.3d 431, 434–435 (C.A.6 2014) (same); *Yi Di Wang v. Holder,* 759 F.3d 670, 674–675 (C.A.7 2014) (same); *Urbina v. Holder,* 745 F.3d 736, 740 (C.A.4 2014) (same).

As a threshold matter, the Court notes that the question presented by Pereira, which focuses on all "items listed" in § 1229(a)(1), sweeps more broadly than necessary to resolve the particular case before us. Although the time-and-place information in a notice to appear will vary from case to case, the Government acknowledges that "[m]uch of the information Section 1229(a)(1) calls for does not" change and is therefore "included in standardized language on the I–862 notice-to-appear form." Brief for Respondent 36 (referencing 8 U.S.C. §§ 1229(a)(1)(A)-(B), (E)-(F), and (G)(ii)). In fact, the Government's 2006 notice to Pereira included all of the information required by § 1229(a)(1), except it failed to specify the date and time of Pereira's removal proceedings. See App. 10–12. Accordingly, the dispositive question in this case is much narrower, but no less vital: Does a "notice to appear" that does not specify the "time and place at which the proceedings will be held," as required by § 1229(a)(1)(G)(i), trigger the stop-time rule?[5]

[5] The Court leaves for another day whether a putative notice to appear that omits any of the other categories of information enumerated in § 1229(a)(1) triggers the stop-time rule. Contrary to the dissent's assertion, this exercise of judicial restraint is by no means "tantamount to admitting" that the Government's (and dissent's) atextual interpretation is a permissible construction of the statute. *Post,* at 2126 (opinion of ALITO, J.).

In addressing that narrower question, the Court need not resort to *Chevron* deference, as some lower courts have done, for Congress has supplied a clear and unambiguous answer to the interpretive question at hand. See 467 U.S., at 842–843, 104 S.Ct. 2778 ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of
2114 Congress"). A putative *2114 notice to appear that fails to designate the specific time or place of the noncitizen's removal proceedings is not a "notice to appear under section 1229(a)," and so does not trigger the stop-time rule.

B

The statutory text alone is enough to resolve this case. Under the stop-time rule, "any period of ... continuous physical presence" is "deemed to end ... when the alien is served a notice to appear under section 1229(a)." 8 U.S.C. § 1229b(d)(1).

By expressly referencing § 1229(a), the statute specifies where to look to find out what "notice to appear" means. Section 1229(a), in turn, clarifies that the type of notice "referred to as a 'notice to appear' " throughout the statutory section is a "written notice ... specifying," as relevant here, " [t]he time and place at which the [removal] proceedings will be held." § 1229(a)(1)(G)(i). Thus, based on the plain text of the statute, it is clear that to trigger the stop-time rule, the Government must serve a notice to appear that, at the very least, "specif[ies]" the "time and place" of the removal proceedings.

It is true, as the Government and dissent point out, that the stop-time rule makes broad reference to a notice to appear under " section 1229(a)," which includes paragraph (1), as well as paragraphs (2) and (3). See Brief for Respondent 27–28; *post,* at 2123 – 2124 (opinion of ALITO, J.). But the broad reference to § 1229(a) is of no consequence, because, as even the Government concedes, only paragraph (1) bears on the meaning of a "notice to appear." Brief for Respondent 27. By contrast, paragraph (2) governs the "[n]otice of change in time or place of proceedings," and paragraph (3) provides for a system to record noncitizens' addresses and phone numbers. Nowhere else within § 1229(a) does the statute purport to delineate the requirements of a "notice to appear." In fact, the term "notice to appear" appears only in paragraph (1) of § 1229(a).

If anything, paragraph (2) of § 1229(a) actually bolsters the Court's interpretation of the statute. Paragraph (2) provides that, "in the case of any change or postponement in the time and place of [removal] proceedings," the Government shall give the noncitizen "written notice ... specifying ... the new time or place of the proceedings." § 1229(a)(2)(A)(i). By allowing for a "change or postponement" of the proceedings to a "new time or place," paragraph (2) presumes that the Government has already served a "notice to appear under section 1229(a)" that specified a time and place as required by § 1229(a)(1)(G)(i). Otherwise, there would be no time or place to "change or postpon[e]." § 1229(a)(2). Notably, the dissent concedes that paragraph (2) confirms that a notice to appear must "state the 'time and place' of the removal proceeding as required by § 1229(a)(1).' " *Post,* at 2116. The dissent nevertheless retorts that this point is "entirely irrelevant." *Ibid.* Not so. Paragraph (2) clearly reinforces the conclusion that "a notice to appear under section 1229(a)," § 1229b(d)(1), must include at least the time and place of the removal proceedings to trigger the stop-time rule.

Another neighboring statutory provision lends further contextual support for the view that a "notice to appear" must include the time and place of the removal proceedings to trigger the stop-time rule. Section 1229(b)(1) gives a noncitizen "the opportunity to secure counsel before the first [removal] hearing date" by mandating that such "hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear." For § 1229(b)(1) to have any meaning, the "notice
2115 to appear" *2115 must specify the time and place that the noncitizen, and his counsel, must appear at the removal hearing. Otherwise, the Government could serve a document labeled "notice to appear" without listing the time and location of the hearing and then, years down the line, provide that information a day before the removal hearing when it becomes available. Under that view of the statute, a noncitizen theoretically would have had the "opportunity to secure counsel," but that opportunity will not be meaningful if, given the absence of a specified time and place, the noncitizen has minimal time and incentive to plan accordingly, and his counsel, in turn, receives limited notice and time to prepare adequately. It therefore follows that, if a "notice to appear" for purposes of § 1229(b)(1) must include the time-and-place information, a "notice to appear" for purposes of the stop-time rule under § 1229b(d)(1) must as well. After all, "it is a normal rule of statutory construction that identical words used in different parts of the same act are intended to have

the same meaning." *Taniguchi v. Kan Pacific Saipan, Ltd.,* 566 U.S. 560, 571, 132 S.Ct. 1997, 182 L.Ed.2d 903 (2012) (internal quotation marks omitted).[6]

[6] The dissent argues that, if a notice to appear must furnish time-and-place information, the Government "may be forced by the Court's interpretation to guess that the hearing will take place far in the future, only to learn shortly afterwards that the hearing is in fact imminent." *Post,* at 2128. In such a scenario, the dissent hypothesizes, a noncitizen would be "lulled into a false sense of security" and thus would have little meaningful opportunity to secure counsel and prepare adequately. *Ibid.* But nothing in our interpretation of the statute "force[s]" the Government to guess when and where a hearing will take place, *ibid.,* nor does our interpretation prevent DHS and the Immigration Courts from working together to streamline the scheduling of removal proceedings, see *infra,* at 2119. Far from "lull[ing]" noncitizens into a false sense of security, *post,* at 2128, our reading (unlike the Government's and the dissent's) still gives meaning to a noncitizen's "opportunity to secure counsel before the first [removal] hearing date," § 1229(b)(1), by informing the noncitizen that the Government is committed to moving forward with removal proceedings at a specific time and place. Equipped with that knowledge, a noncitizen has an incentive to obtain counsel and prepare for his hearing.

Finally, common sense compels the conclusion that a notice that does not specify when and where to appear for a removal proceeding is not a "notice to appear" that triggers the stop-time rule. If the three words "notice to appear" mean anything in this context, they must mean that, at a minimum, the Government has to provide noncitizens "notice" of the information, *i.e.,* the "time" and "place," that would enable them "to appear" at the removal hearing in the first place. Conveying such time-and-place information to a noncitizen is an essential function of a notice to appear, for without it, the Government cannot reasonably expect the noncitizen to appear for his removal proceedings. To hold otherwise would empower the Government to trigger the stop-time rule merely by sending noncitizens a barebones document labeled "Notice to Appear," with no mention of the time and place of the removal proceedings, even though such documents would do little if anything to facilitate appearance at those proceedings.[7] " 'We are not willing *2116 to impute to Congress ... such [a] contradictory and absurd purpose,' " *United States v. Bryan,* 339 U.S. 323, 342, 70 S.Ct. 724, 94 L.Ed. 884 (1950), particularly where doing so has no basis in the statutory text.

[7] At oral argument, the Government conceded that a blank piece of paper would not suffice to trigger the stop-time rule because (in its view) such a hypothetical notice would fail to specify the charges against the noncitizen. Tr. of Oral Arg. 39–40 (arguing that notice to appear must "tell the alien what proceedings he must appear for and why he must appear for them"). The dissent also endorses the view that a notice to appear "can also be understood to serve primarily as a charging document." *Post,* at 2128. But neither the Government nor the dissent offers any convincing basis, much less one rooted in the statutory text, for treating time-and-place information as any less crucial than charging information for purposes of triggering the stop-time rule. Furthermore, there is no reason why a notice to appear should have only one essential function. Even if a notice to appear functions as a "charging document," that is not mutually exclusive with the conclusion that a notice to appear serves another equally integral function: telling a noncitizen when and where to appear. At bottom, the Government's self-serving position that a notice to appear must specify charging information, but not the

time-and-place information, reveals the arbitrariness inherent in its atextual approach to the stop-time rule.

III

Straining to inject ambiguity into the statute, the Government and the dissent advance several overlapping arguments. None is persuasive.

A

First, the Government posits that § 1229(a)"is not worded in the form of a definition" and thus cannot circumscribe what type of notice counts as a "notice to appear" for purposes of the stop-time rule. Brief for Respondent 32. Section 1229(a), however, does speak in definitional terms, at least with respect to the "time and place at which the proceedings will be held": It specifically provides that the notice described under paragraph (1) is "referred to as a 'notice to appear,' " which in context is quintessential definitional language.[8] It then defines that term as a "written notice" that, as relevant here, "specif[ies] ... [t]he time and place at which the [removal] proceedings will be held." § 1229(a)(1)(G)(i). Thus, when the term "notice to appear" is used elsewhere in the statutory section, including as the trigger for the stop-time rule, it carries with it the substantive time-and-place criteria required by § 1229(a).

[8] Congress has employed similar definitional language in other statutory schemes. See, *e.g.,* 21 U.S.C. § 356(b)(1) (creating new class of "fast track product[s]" by setting out drug requirements and providing: "In this section, such a drug is referred to as a 'fast track product' "); § 356(a)(1) ("In this section, such a drug is referred to as a 'breakthrough therapy' "); 38 U.S.C. § 7451(a)(2) ("hereinafter in this section referred to as 'covered positions' "); 42 U.S.C. § 285g–4(b) ("hereafter in this section referred to as 'medical rehabilitation' ").

Resisting this straightforward understanding of the text, the dissent posits that " § 1229(a)(1)'s language can be understood to define what makes a notice to appear *complete* ." *Post,* at 2126 (emphasis in original). In the dissent's view, a defective notice to appear is still a "notice to appear" even if it is incomplete—much like a three-wheeled Chevy is still a car. *Post,* at 2126 – 2127. The statutory text proves otherwise. Section 1229(a)(1) does not say a "notice to appear" is "complete" when it specifies the time and place of the removal proceedings. Rather, it defines a "notice to appear" as a "written notice" that "specif[ies]," at a minimum, the time and place of the removal proceedings. § 1229(a)(1)(G)(i). Moreover, the omission of time-and-place information is not, as the dissent asserts, some trivial, ministerial defect, akin to an unsigned notice of appeal. Cf. *Becker v. Montgomery,* 532 U.S. 757, 763, 768, 121 S.Ct. 1801, 149 L.Ed.2d 983 (2001). Failing to specify integral information like the time and place of removal proceedings unquestionably would "deprive [the notice to 2117 appear] of its essential *2117 character." *Post,* at 2127, n. 5; see *supra,* at 2115 – 2116, n. 7.[9]

[9] The dissent maintains that Congress' decision to make the stop-time rule retroactive to certain pre-IIRIRA "orders to show cause" "sheds considerable light on the question presented" because orders to show cause did not necessarily include time-and-place information. *Post,* at 2123 – 2124. That argument compares apples to oranges. Even if the stop-time rule sometimes applies retroactively to an order to show cause, that provides scant support for the dissent's view that, under the new post-IIRIRA statutory regime, an entirely different document called a "notice to appear," which, by statute, must specify the time and place of removal proceedings, see § 1229(a)(1)(G)(i), need not include such information to trigger the stop-time rule.

B

The Government and the dissent next contend that Congress' use of the word "under" in the stop-time rule renders the statute ambiguous. Brief for Respondent 22–23; *post,* at 2122 – 2123. Recall that the stop-time rule provides that "any period of ... continuous physical presence" is "deemed to end ... when the alien is served a notice to appear under section 1229(a)." § 1229b(d)(1)(A). According to the Government, the word "under" in that provision means "subject to," "governed by," or "issued under the authority of." Brief for Respondent 24. The dissent offers yet another alternative, insisting that "under" can also mean "authorized by." *Post,* at 2122. Those definitions, the Government and dissent maintain, support the BIA's view that the stop-time rule applies so long as DHS serves a notice that is "authorized by," or "subject to or governed by, or issued under the authority of" § 1229(a), even if the notice bears none of the time-and-place information required by that provision. See Brief for Respondent 24; *post,* at 2122 – 2123.

We disagree. It is, of course, true that "[t]he word 'under' is [a] chameleon" that " 'must draw its meaning from its context.' " *Kucana v. Holder,* 558 U.S. 233, 245, 130 S.Ct. 827, 175 L.Ed.2d 694 (2010) (quoting *Ardestani v. INS,* 502 U.S. 129, 135, 112 S.Ct. 515, 116 L.Ed.2d 496 (1991)). But nothing in the text or context here supports either the Government's or the dissent's preferred definition of "under." Based on the plain language and statutory context discussed above, we think it obvious that the word "under," as used in the stop-time rule, can only mean "in accordance with" or "according to," for it connects the stop-time trigger in § 1229b(d)(1) to a "notice to appear" that contains the enumerated time-and-place information described in § 1229(a)(1)(G)(i). See 18 Oxford English Dictionary 950 (2d ed. 1989) (defining "under" as "[i]n accordance with"); Black's Law Dictionary 1525 (6th ed. 1990) (defining "under" as "according to"). So construed, the stop-time rule applies only if the Government serves a "notice to appear" "[i]n accordance with" or "according to" the substantive time-and-place requirements set forth in § 1229(a). See *Kirtsaeng v. John Wiley & Sons, Inc.,* 568 U.S. 519, 530, 133 S.Ct. 1351, 185 L.Ed.2d 392 (2013) (internal quotation marks omitted). Far from generating any "degree of ambiguity," *post,* at 2122, the word "under" provides the glue that bonds the stop-time rule to the substantive time-and-place requirements mandated by § 1229(a).

C

The Government argues that surrounding statutory provisions reinforce its preferred reading. See Brief for Respondent 25–27. It points, for instance, to two separate provisions relating to in absentia removal orders: § 1229a(b)(5)(A), which provides that a noncitizen may be removed in
2118 *2118 absentia if the Government has provided "written notice required under paragraph (1) or (2) of section 1229(a)"; and § 1229a(b)(5)(C)(ii), which provides that, once an in absentia removal order has been entered, the noncitizen may seek to reopen the proceeding if, *inter alia,* he "demonstrates that [he] did not receive notice in accordance with paragraph (1) or (2) of section 1229(a)." According to the Government, those two provisions use the distinct phrases "required under" and "in accordance with" as shorthand for a notice that satisfies § 1229(a)(1)'s requirements, whereas the stop-time rule uses the phrase "under section 1229(a)" to encompass a different type of notice that does not necessarily include the information outlined in § 1229(a)(1). See Brief for Respondent 25–26. That logic is unsound. The Government essentially argues that phrase 1 ("written notice required under paragraph (1) ... of section 1229(a)") and phrase 2 ("notice in accordance with paragraph (1) ... of section 1229(a)") can refer to the same type of notice even though they use entirely different words, but that phrase 3 ("notice to appear under section 1229(a)") cannot refer to that same type of notice because it uses words different from phrases 1 and 2. But the Government offers no convincing reason why that is so. The far simpler explanation,

and the one that comports with the actual statutory language and context, is that each of these three phrases refers to notice satisfying, at a minimum, the time-and-place criteria defined in § 1229(a)(1).

Equally unavailing is the Government's invocation of § 1229a(b)(7). Brief for Respondent 26–27. Under that provision, a noncitizen who is ordered removed in absentia is ineligible for various forms of discretionary relief for a 10–year period if the noncitizen, "at the time of the notice described in paragraph (1) or (2) of section 1229(a) of [Title 8], was provided oral notice ... of the time and place of the proceedings" and "of the consequences ... of failing, other than because of exceptional circumstances," to appear. § 1229a(b)(7). The Government argues that the express reference to "the time and place of the proceedings" in § 1229a(b)(7) shows that, when Congress wants to attach substantive significance to whether a noncitizen is given information about the specific "time and place" of a removal proceeding, it knows exactly how to do so. Brief for Respondent 26–27. But even if § 1229a(b)(7) may impose harsher consequences on noncitizens who fail to appear at removal proceedings after having specifically received oral notice of the time and place of such proceedings, that reveals nothing about the distinct question here—*i.e.,* whether Congress intended the stop-time rule to apply when the Government fails to provide written notice of the time and place of removal proceedings. As to that question, the statute makes clear that Congress fully intended to attach substantive significance to the requirement that noncitizens be given notice of at least the time and place of their removal proceedings. A document that fails to include such information is not a "notice to appear under section 1229(a)" and thus does not trigger the stop-time rule.

D

Unable to find sure footing in the statutory text, the Government and the dissent pivot away from the plain language and raise a number of practical concerns. These practical considerations are meritless and do not justify departing from the statute's clear text. See *Burrage v. United States,* 571 U.S. 204, 218, 134 S.Ct. 881, 187 L.Ed.2d 715 (2014).

The Government, for its part, argues that the 2119 "administrative realities of *2119 removal proceedings" render it difficult to guarantee each noncitizen a specific time, date, and place for his removal proceedings. See Brief for Respondent 48. That contention rests on the misguided premise that the time-and-place information specified in the notice to appear must be etched in stone. That is incorrect. As noted above, § 1229(a)(2) expressly vests the Government with power to change the time or place of a noncitizen's removal proceedings so long as it provides "written notice ... specifying ... the new time or place of the proceedings" and the consequences of failing to appear. See § 1229(a)(2) ; Tr. of Oral Arg. 16–19. Nothing in our decision today inhibits the Government's ability to exercise that statutory authority after it has served a notice to appear specifying the time and place of the removal proceedings.

The dissent raises a similar practical concern, which is similarly misplaced. The dissent worries that requiring the Government to specify the time and place of removal proceedings, while allowing the Government to change that information, might encourage DHS to provide "arbitrary dates and times that are likely to confuse and confound all who receive them." *Post,* at 2125. The dissent's argument wrongly assumes that the Government is utterly incapable of specifying an accurate date and time on a notice to appear and will instead engage in "arbitrary" behavior. See *ibid.* The Court does not embrace those unsupported assumptions. As the Government concedes, "a scheduling system previously enabled DHS and the immigration court to coordinate in setting hearing dates in some cases." Brief for Respondent 50, n. 15; Brief for National Immigrant Justice Center as *Amicus Curiae* 30–

31. Given today's advanced software capabilities, it is hard to imagine why DHS and immigration courts could not again work together to schedule hearings before sending notices to appear.

Finally, the dissent's related contention that including a changeable date would "mislead" and "prejudice" noncitizens is unfounded. *Post,* at 2124. As already explained, if the Government changes the date of the removal proceedings, it must provide written notice to the noncitizen, § 1229(a)(2). This notice requirement mitigates any potential confusion that may arise from altering the hearing date. In reality, it is the dissent's interpretation of the statute that would "confuse and confound" noncitizens, *post,* at 2124, by authorizing the Government to serve notices that lack any information about the time and place of the removal proceedings.

E

In a last ditch effort to salvage its atextual interpretation, the Government invokes the alleged purpose and legislative history of the stop-time rule. Brief for Respondent 37–40. Even for those who consider statutory purpose and legislative history, however, neither supports the Government's atextual position that Congress intended the stop-time rule to apply when a noncitizen has been deprived notice of the time and place of his removal proceedings. By the Government's own account, Congress enacted the stop-time rule to prevent noncitizens from exploiting administrative delays to "buy time" during which they accumulate periods of continuous presence. *Id.,* at 37–38 (citing H.R. Rep. No. 104–469, pt. 1, p. 122 (1996)). Requiring the Government to furnish time-and-place information in a notice to appear, however, is entirely consistent with that objective because, once a proper notice to appear is served, the stop-time rule is triggered, and a noncitizen would be unable to manipulate or delay removal proceedings to "buy time." At the end of the day, given the clarity of the plain language, we "apply the statute as it is written." *Burrage,* 571 U.S., at 218, 134 S.Ct. 881.

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IV

For the foregoing reasons, the judgment of the Court of Appeals for the First Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice KENNEDY, concurring.

I agree with the Court's opinion and join it in full.

This separate writing is to note my concern with the way in which the Court's opinion in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984), has come to be understood and applied. The application of that precedent to the question presented here by various Courts of Appeals illustrates one aspect of the problem.

The first Courts of Appeals to encounter the question concluded or assumed that the notice necessary to trigger the stop-time rule found in 8 U.S.C. § 1229b(d)(1) was not "perfected" until the immigrant received all the information listed in § 1229(a)(1). *Guamanrrigra v. Holder,* 670 F.3d 404, 410 (C.A.2 2012) (*per curiam*); see also *Dababneh v. Gonzales,* 471 F.3d 806, 809 (C.A.7 2006) ; *Garcia–Ramirez v. Gonzales,* 423 F.3d 935, 937, n. 3 (C.A.9 2005) (*per curiam*).

That emerging consensus abruptly dissolved not long after the Board of Immigration Appeals (BIA) reached a contrary interpretation of § 1229b(d)(1) in *Matter of Camarillo,* 25 I. & N. Dec. 644 (2011). After that administrative ruling, in addition to the decision under review here, at least six Courts of Appeals, citing *Chevron,* concluded that § 1229b(d)(1) was ambiguous and then held that the BIA's interpretation was reasonable. See *Moscoso–Castellanos v. Lynch,* 803 F.3d 1079, 1083 (C.A.9 2015) ; *O'Garro v. United States Atty. Gen.,* 605 Fed.Appx. 951, 953

(C.A.11 2015) (*per curiam*); *Guaman–Yuqui v. Lynch,* 786 F.3d 235, 239–240 (C.A.2 2015) (*per curiam*); *Gonzalez–Garcia v. Holder,* 770 F.3d 431, 434–435 (C.A.6 2014) ; *Yi Di Wang v. Holder,* 759 F.3d 670, 674–675 (C.A.7 2014) ; *Urbina v. Holder,* 745 F.3d 736, 740 (C.A.4 2014). But see *Orozco–Velasquez v. Attorney General United States,* 817 F.3d 78, 81–82 (C.A.3 2016). The Court correctly concludes today that those holdings were wrong because the BIA's interpretation finds little support in the statute's text.

In according *Chevron* deference to the BIA's interpretation, some Courts of Appeals engaged in cursory analysis of the questions whether, applying the ordinary tools of statutory construction, Congress' intent could be discerned, 467 U.S., at 843, n. 9, 104 S.Ct. 2778, and whether the BIA's interpretation was reasonable, *id.,* at 845, 104 S.Ct. 2778. In *Urbina v. Holder,* for example, the court stated, without any further elaboration, that "we agree with the BIA that the relevant statutory provision is ambiguous." 745 F.3d, at 740. It then deemed reasonable the BIA's interpretation of the statute, "for the reasons the BIA gave in that case." *Ibid* . This analysis suggests an abdication of the Judiciary's proper role in interpreting federal statutes.

The type of reflexive deference exhibited in some of these cases is troubling. And when deference is applied to other questions of statutory interpretation, such as an agency's interpretation of the statutory provisions that concern the scope of its own authority, it is more troubling still. *2121 See *Arlington v. FCC,* 569 U.S. 290, 327, 133 S.Ct. 1863, 185 L.Ed.2d 941 (2013) (ROBERTS, C.J., dissenting) ("We do not leave it to the agency to decide when it is in charge"). Given the concerns raised by some Members of this Court, see, *e.g., id.,* at 312–328, 133 S.Ct. 1863 ; *Michigan v. EPA,* 576 U.S. ——, ——, 135 S.Ct. 2699, 2712–2714, 192 L.Ed.2d 674 (2015) (THOMAS, J., concurring); *Gutierrez–Brizuela v. Lynch,* 834 F.3d 1142, 1149–1158 (C.A.10 2016) (Gorsuch, J., concurring), it seems necessary and appropriate to reconsider, in an appropriate case, the premises that underlie *Chevron* and how courts have implemented that decision. The proper rules for interpreting statutes and determining agency jurisdiction and substantive agency powers should accord with constitutional separation-of-powers principles and the function and province of the Judiciary. See, *e.g., Arlington, supra,* at 312–316, 133 S.Ct. 1863 (ROBERTS, C.J., dissenting).

Justice ALITO, dissenting.

Although this case presents a narrow and technical issue of immigration law, the Court's decision implicates the status of an important, frequently invoked, once celebrated, and now increasingly maligned precedent, namely, *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Under that decision, if a federal statute is ambiguous and the agency that is authorized to implement it offers a reasonable interpretation, then a court is supposed to accept that interpretation. Here, a straightforward application of *Chevron* requires us to accept the Government's construction of the provision at issue. But the Court rejects the Government's interpretation in favor of one that it regards as the best reading of the statute. I can only conclude that the Court, for whatever reason, is simply ignoring *Chevron* .

I

As amended, the Immigration and Nationality Act generally requires the Government to remove nonpermanent resident aliens who overstay the terms of their admission into this country. See 8 U.S.C. §§ 1227(a)(1)(B)-(C). But under certain circumstances, the Government may decide to cancel their removal instead. See § 1229b. To be eligible for such relief, an alien must demonstrate that he or she "has been physically present in the United States for a continuous period of not less than 10 years." § 1229b(b)(1)(A). "For purposes of" that rule, however, "any period of ... continuous physical presence in the United States

shall be deemed to end ... when the alien is served a notice to appear under section 1229(a) of this title." § 1229b(d)(1). That language acts as a stop-time rule, preventing the continuous-presence clock from continuing to run once an alien is served with a notice to appear.

The question presented by this case is whether the stop-time rule is triggered by service of a notice to appear that is incomplete in some way. A provision of the amended Immigration and Nationality Act requires that the Government serve an alien who it seeks to remove with a notice to appear "specifying" a list of things, including " [t]he nature of the proceedings against the alien," " [t]he legal authority under which the proceedings are conducted," "[t]he acts or conduct alleged to be in violation of law," "[t]he charges against the alien and the statutory provisions alleged to have been violated," and (what is relevant here) "[t]he time and place at which the proceedings will be held." §§ 1229(a)(1)(A), (B), (C), (D), (G)(i).

Petitioner Wescley Pereira is a Brazilian citizen 2122 who entered the United States lawfully *2122 in 2000 but then illegally overstayed his nonimmigrant visa. In 2006, the Government caused him to be served in person with a document styled as a notice to appear for removal proceedings. Pereira concedes that he overstayed his visa and is thus removable, but he argues that he is nonetheless eligible for cancellation of removal because he has now been in the country continuously for more than 10 years. He contends that the notice served on him in 2006 did not qualify as a notice to appear because it lacked one piece of information that such a notice is supposed to contain, namely, the time at which his removal proceedings were to be held. Thus, Pereira contends, that notice did not trigger the stop-time rule, and the clock continued to run.

The Board of Immigration Appeals (BIA) has rejected this interpretation of the stop-time rule in the past. It has held that "[a]n equally plausible reading" is that the stop-time rule "merely specifies the document the [Government] must serve on the alien to trigger the 'stop-time' rule and does not impose substantive requirements for a notice to appear to be effective in order for that trigger to occur." *In re Camarillo,* 25 I. & N. Dec. 644, 647 (2011). It therefore held in this case that Pereira is ineligible for cancellation of removal.

II

A

Pereira, on one side, and the Government and the BIA, on the other, have a quasi-metaphysical disagreement about the meaning of the concept of a notice to appear. Is a notice to appear a document that contains certain essential characteristics, namely, all the information required by § 1229(a)(1), so that any notice that omits any of that information is not a "notice to appear" at all? Or is a notice to appear a document that is conventionally called by that name, so that a notice that omits some of the information required by § 1229(a)(1) may still be regarded as a "notice to appear"?

Picking the better of these two interpretations might have been a challenge in the first instance. But the Court did not need to decide that question, for under *Chevron* we are obligated to defer to a Government agency's interpretation of the statute that it administers so long as that interpretation is a " 'permissible' " one. *INS v. Aguirre–Aguirre,* 526 U.S. 415, 424, 119 S.Ct. 1439, 143 L.Ed.2d 590 (1999). All that is required is that the Government's view be "reasonable"; it need not be "the only possible interpretation, nor even the interpretation deemed *most* reasonable by the courts." *Entergy Corp. v. Riverkeeper, Inc.,* 556 U.S. 208, 218, 129 S.Ct. 1498, 173 L.Ed.2d 369 (2009). Moreover, deference to the Government's interpretation "is especially appropriate in the immigration context" because of the potential foreign-policy implications. *Aguirre–Aguirre, supra,* at 425, 119 S.Ct. 1439. In light of the relevant text, context, statutory history, and

statutory purpose, there is no doubt that the Government's interpretation of the stop-time rule is indeed permissible under *Chevron* .

B

By its terms, the stop-time rule is consistent with the Government's interpretation. As noted, the stop-time rule provides that "any period of ... continuous physical presence in the United States shall be deemed to end ... when the alien is served a notice to appear under section 1229(a) of this title." § 1229b(d)(1). A degree of ambiguity arises from Congress's use of the word "under," for as the Court recognizes, " '[t]he word "under" is [a] chameleon,' " *ante,* at 2117, having " 'many
2123 dictionary definitions' " and no "uniform, *2123 consistent meaning," *Kirtsaeng v. John Wiley & Sons, Inc.,* 568 U.S. 519, 531, 133 S.Ct. 1351, 185 L.Ed.2d 392 (2013). Everyone agrees, however, that "under" is often used to mean "authorized by." See, *e.g.,* Webster's New World College Dictionary 1453 (3d ed. 1997) ("authorized ... by"); American Heritage Dictionary 1945 (3d ed. 1992) ("With the authorization of"); see also Brief for Respondent 24 (agreeing that "under" can mean "subject to," "governed by," or "issued under the authority of"); Brief for Petitioner 28. And when the term is used in this way, it does not necessarily mean that the act done pursuant to that authorization was done in strict compliance with the terms of the authorization. For example, one might refer to a litigant's disclosure "under" Rule 26(a) of the Federal Rules of Civil Procedure even if that disclosure did not comply with Rule 26(a) in every respect. Or one might refer to regulations promulgated "under" a statute even if a court later found those regulations inconsistent with the statute's text.

That use of the word "under" perfectly fits the Government's interpretation of the stop-time rule. The Government served Pereira with a notice to appear "under" § 1229(a) in the sense that the notice was "authorized by" that provision, which states that a notice to appear "shall be given" to an alien in a removal proceeding and outlines several rules governing such notices. On that reasonable reading, the phrase "under section 1229(a)" acts as shorthand for the type of document governed by § 1229(a).

C

That interpretation is bolstered by the stop-time rule's cross-reference to " section 1229(a)." § 1229b(d)(1). Pereira interprets that cross-reference as picking up every substantive requirement that applies to notices to appear. But those substantive requirements are found only in § 1229(a)*(1)* . Thus, the cross-reference to " section 1229(a)," as opposed to " section 1229(a)(1)," tends to undermine Pereira's interpretation, because if Congress had meant for the stop-time rule to incorporate the substantive requirements located in § 1229(a)(1), it presumably would have referred specifically to that provision and not more generally to " section 1229(a)." We normally presume that "[w]hen Congress want[s] to refer only to a particular subsection or paragraph, it [says] so," *NLRB v. SW General, Inc.,* 580 U.S. ——, ——, 137 S.Ct. 929, 939, 197 L.Ed.2d 263 (2017), and it is instructive that neighboring statutory provisions in this case are absolutely riddled with such specific cross-references.[1] In the stop-time rule, however, Congress chose to insert a broader cross-reference, one that refers to the general process of serving notices to appear as a whole. See § 1229(a). Thus, Pereira essentially "wants to cherry pick from the material covered by the statutory cross-reference. But if Congress had intended to refer to the definition in [§ 1229(a)(1)] alone, it presumably would have done so." *Cyan, Inc. v. Beaver County Employees Retirement Fund,* 583 U.S. ——, ——, 138 S.Ct.
2124 1061, 1070, 200 L.Ed.2d 332 (2018).[2] *2124 D

[1] See, *e.g.,* § 1229a(b)(5)(A) ("paragraph (1) ... of section 1229(a)"); § 1229a(b)(5)(C)(ii) (same); § 1229a(b)(7) (same); § 1229a(b)(5)(B) ("address required under

section 1229(a)(1)(F)"); see also § 1229a(b)(7) (referring to § 1229(a)(1)(G)(i)'s "time and place" requirement).

[2] According to the Court, "the broad reference to § 1229(a) is of no consequence, because, as even the Government concedes, only paragraph (1) bears on the meaning of a 'notice to appear.' " *Ante,* at 2114. But that is precisely the point: If "only paragraph (1) bears on the meaning of a 'notice to appear,' " then Congress's decision to refer to § 1229(a) more broadly indicates that it meant to do something *other* than to pick up the substantive requirements of § 1229(a)(1).

Statutory history also strongly supports the Government's argument that a notice to appear should trigger the stop-time rule even if it fails to include the date and time of the alien's removal proceeding. When Congress enacted the stop-time rule, it decreed that the rule should "apply to notices to appear issued before, on, or after the date of the enactment of this Act." Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 309(c)(5), 110 Stat. 3009–627. This created a problem: Up until that point, there was no such thing as a "notice to appear," so the reference to "notices to appear issued before ... this Act" made little sense. When Congress became aware of the problem, it responded by clarifying that the stop-time rule should apply not only to notices to appear, but also "to orders to show cause ... issued before, on, or after the date" of the clarifying amendment's enactment. Nicaraguan Adjustment and Central American Relief Act, § 203(1), 111 Stat. 2196, as amended 8 U.S.C. § 1101 note. That clarification sheds considerable light on the question presented here because orders to show cause did not necessarily include the date or location of proceedings (even if they otherwise served a function similar to that now served by notices to appear). See 8 U.S.C. § 1252b(a)(2)(A) (1994 ed.).

That statutory history supports the Government's interpretation twice over. First, it demonstrates that when it comes to triggering the stop-time rule, Congress attached no particular significance to the presence (or absence) of information about the date and time of a removal proceeding. Congress was more than happy for the stop-time rule to be activated either by notices to appear or by orders to show cause, even though the latter often lacked any information about the date and time of proceedings.

Second, and even more important, the statutory history also shows that Congress clearly thought of orders to show cause as the functional equivalent of notices to appear for purposes of the stop-time rule. After an initially confusing reference to "notices to appear" issued before the creation of the stop-time rule, Congress clarified that it had meant to refer to "orders to show cause." By equating orders to show cause with notices to appear, Congress indicated that when the stop-time rule refers to "a notice to appear," it is referring to a category of documents that do not necessarily provide the date and time of a future removal proceeding.[3]

[3] Although the Court charges me with "compar[ing] apples to oranges," *ante,* at 2117, n. 9, Congress was the one that equated orders to show cause and notices to appear for purposes of the stop-time rule. By ignoring that decision, the Court rewrites the statute to *its* taste.

E

Finally, Pereira's contrary interpretation leads to consequences that clash with any conceivable statutory purpose. Pereira's interpretation would require the Government to include a date and time on every notice to appear that it issues. But at the moment, the Government lacks the ability to do that with any degree of accuracy. The Department of Homeland Security sends out the initial notice to appear, but the removal proceedings themselves are scheduled by the Immigration Court, which is

part of the Department of Justice. See 8 C.F.R. § 1003.18(a) (2018). The Department of Homeland Security cannot dictate the scheduling of a matter
2125 on the *2125 docket of the Immigration Court, and at present, the Department of Homeland Security generally cannot even access the Immigration Court's calendar. *In re Camarillo,* 25 I. & N. Dec., at 648 ; Tr. of Oral Arg. 52–53. The Department of Homeland Security may thus be hard pressed to include on initial notices to appear a hearing date that is anything more than a rough estimate subject to considerable change. See § 1229(a)(2) ; see also *ante,* at 2119 (disclaiming any effect on the Government's ability to change initial hearing dates).

Including an estimated and changeable date, however, may do much more harm than good. See *Gonzalez–Garcia v. Holder,* 770 F.3d 431, 434–435 (C.A.6 2014). It is likely to mislead many recipients and to prejudice those who make preparations on the assumption that the initial date is firm. And it forces the Government to go through the pointless exercise of first including a date that it knows may very well be altered and then changing it once the real date becomes clear. Such a system serves nobody's interests.

Statutory interpretation is meant to be "a holistic endeavor," and sometimes language "that may seem ambiguous in isolation" becomes clear because "only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd.,* 484 U.S. 365, 371, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988). The real-world effects produced by Pereira's interpretation—arbitrary dates and times that are likely to confuse and confound all who receive them—illustrate starkly the merits of the Government's alternative construction.

III

Based on the relevant text, context, statutory history, and statutory purpose, the Government makes a convincing case that the stop-time rule can be triggered even by a notice to appear that omits the date and time of a removal proceeding. But the Court holds instead that in order "to trigger the stop-time rule, the Government must serve a notice to appear that, at the very least, 'specif[ies]' the 'time and place' of the removal proceedings." *Ante,* at 2113. According to the Court, that conclusion is compelled by the statutory text, the statutory context, and "common sense." *Ante,* at 2115. While the Court's interpretation may be reasonable, the Court goes much too far in saying that it is the *only* reasonable construction.

A

Start with the text. As noted, the stop-time rule provides that "any period of ... continuous physical presence in the United States shall be deemed to end ... when the alien is served a notice to appear under section 1229(a)." § 1229b(d)(1). The Court does not dispute that it is entirely consistent with standard English usage to read this language as the Government and I do. See *ante,* at 2117. It therefore follows that the stop-time rule itself does not foreclose the Government's interpretation.

That leaves only § 1229(a)(1), which specifies the information that a notice to appear must contain. The Court's treatment of this provision contradicts itself. On the one hand, the Court insists that this provision is "definitional" and that it sets out the essential characteristics without which a notice is not a notice to appear. *Ante,* at 2116. But on the other hand, the Court states that it "leaves for another day whether a putative notice to appear that omits any of the other categories of information enumerated in § 1229(a)(1) triggers the stop-time rule." *Ante,* at 2113, n. 5. The Court
2126 cannot have *2126 it both ways. If § 1229(a)(1) is definitional and sets out the essential characteristics of a notice to appear, then the omission of any required item of information makes a putative notice to appear a nullity. So if the Court means what it says—that its

interpretation of § 1229(a)(1)' s language leaves open the consequences of omitting other categories of information—that is tantamount to admitting that § 1229(a)(1) itself cannot foreclose the Government's interpretation.[4]

[4] Nor can the Court get away with labeling its self-contradictions as "judicial restraint." *Ante,* at 2113, n. 5. Either § 1229(a)(1) sets out the essential characteristics of a notice to appear or it does not; the Court cannot stop at a halfway point unsupported by either text or logic while maintaining that its resting place is "clear" in light of the statutory text. *Ante,* at 2113.

In any event, the Government's interpretation can easily be squared with the text of § 1229(a)(1). That provision states that a "written notice (*in this section referred to as a 'notice to appear'*) shall be given in person to the alien ... specifying" 10 categories of information, including the "time and place" of the removal proceeding. § 1229(a)(1) (emphasis added). According to Pereira, that language cinches the case against the Government's interpretation: By equating a "notice to appear" with a "written notice ... [that] specif[ies]" the relevant categories of information, § 1229(a)(1) establishes that a notice lacking any of those 10 pieces of information cannot qualify as a "notice to appear" and thus cannot trigger the stop-time rule. In Pereira's eyes, § 1229(a)(1) defines what a notice to appear is, and most of the Court's opinion is to the same effect.

This may be a plausible interpretation of § 1229(a)(1)'s language, but it is not the only one. It is at least as reasonable to read that language as simply giving a name to the new type of notice to which that provision refers. Or to put the point another way, § 1229(a)(1)'s language can be understood to define what makes a notice to appear *complete* . See *In re Camarillo, supra,* at 647. Under that interpretation, a notice that omits some of the information required by § 1229(a)(1) might still be a "notice to appear."

We often use language in this way. In everyday life, a person who sees an old Chevy with three wheels in a junkyard would still call it a car. Language is often used the same way in the law. Consider the example of a notice of appeal. Much like a notice to appear, a notice of appeal must meet several substantive requirements; all notices of appeal, for example, "must be signed." Fed. Rule Civ. Proc. 11(a). So what happens if a notice of appeal is incomplete in some way—say, because it is unsigned but otherwise impeccable? If a court clerk wanted to point out the lack of a signature to an attorney, the clerk is far more likely to say, "there is a problem with your notice of appeal," than to say, "there is a problem with this document you filed; it's not signed and therefore I don't know what to call it, but I can't call it a notice of appeal because it is unsigned."

Furthermore, just because a legal document is incomplete, it does not necessarily follow that it is without legal effect. Consider again the notice of appeal. As a general matter, an appeal "may be taken" in a civil case "only by filing a notice of appeal" "within 30 days after entry of the judgment or order appealed from." Fed. Rules App. Proc. 3(a), 4(a)(1)(A). While an unsigned notice of appeal does not meet the substantive
2127 requirements set out in Rule 11, in *2127 *Becker v. Montgomery,* 532 U.S. 757, 763, 768, 121 S.Ct. 1801, 149 L.Ed.2d 983 (2001), this Court unanimously held that a litigant who filed a timely but unsigned notice of appeal still beat the 30–day clock for filing appeals. As we explained, "imperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment, to which appellate court." *Id.,* at 767, 121 S.Ct. 1801.

If Rule 11 of the Federal Rules of Civil Procedure can be read in this way, it is not unreasonable to do the same with § 1229(a)(1). And in trying to distinguish an empty signature line on a notice of appeal as a "trivial, ministerial defect," *ante,* at 2116, the Court gives the game away by once again assuming its own conclusion. Whether the

omission of the date and time certain on a notice to appear is essential for present purposes is the central issue in this case, and the Court gives no textually based reason to think that it is. The Government could reasonably conclude that a notice to appear that omits the date and time of a proceeding is still a notice to appear (albeit a defective one), much in the same way that a complaint without the e-mail address of the signer is still a complaint (albeit a defective one, see Rule 11(a)), or a clock missing the number "8" is still a clock (albeit a defective one).

Pereira and the Court are right that § 1229(a)(1) sets out the substantive requirements for notices to appear, but that fact alone does not control whether an incomplete notice to appear triggers the stop-time rule.[5]

[5] Of course, courts should still demand that the Government justify why whatever is left off a notice to appear does not deprive it of its essential character as a "notice to appear." As the Government rightly concedes, for example, a blank sheet of paper would not constitute a "notice to appear." Tr. of Oral Arg. 39; see Brief for Respondent 35–36. But for all the reasons the Government gives, omission of the date and time of a future removal proceeding is not, by itself, enough to turn a notice to appear into something else.

B

With the text of both the stop-time rule and § 1229(a)(1) irreducibly ambiguous, the Court must next look to two neighboring provisions to support its conclusion that its interpretation is the only reasonable one. Neither provision is sufficient.

The Court first observes that the second paragraph of § 1229(a) allows the Government to move or reschedule a removal proceeding unilaterally and then to inform the alien of "the new time or place of the proceedings." § 1229(a)(2)(A)(i). "By allowing for a 'change or postponement' of the proceedings to a 'new time or place,' " the Court reasons, "paragraph (2) presumes that the Government has already served a 'notice to appear ...' that specified a time and place as required." *Ante,* at 2114.

That is entirely correct—and entirely irrelevant. No one doubts that § 1229(a)(1) requires that a notice to appear include the "time and place" of the removal proceeding. See § 1229(a)(1)(G)(i). Indeed, that is common ground between the two parties. See Brief for Petitioner 10–11; Brief for Respondent 3. Paragraph (2) undoubtedly assumes that notices to appear will state the "time and place" of the removal proceeding as required by § 1229(a)(1), but it has nothing to say about whether the failure to include that information affects the operation of the stop-time rule. By suggesting otherwise, the Court is merely reasoning backwards from its conclusion.

The other provision cited by the Court, § 1229(b)(1), is no more helpful. As the Court explains, § 1229(b)(1) generally precludes the Government from scheduling a hearing date " 'earlier than 10 2128 days *2128 after the service of the notice to appear' " in order to give the alien " 'the opportunity to secure counsel.' " *Ante,* at 2114. Unless a notice to appear includes the time and place of the hearing, the Court frets, "the Government could serve a document labeled 'notice to appear' without listing the time and location of the hearing and then, years down the line, provide that information a day before the removal hearing when it becomes available." *Ibid.* But that remote and speculative possibility depends entirely on the Immigration Court's allowing a removal proceeding to go forward only one day after an alien (and the Government) receives word of a hearing date. See 8 C.F.R. § 1003.18(a). Even assuming that such an unlikely event were to come to pass, the court's decision would surely be subject to review on appeal. See generally 8 C.F.R. § 1003.1, 8 U.S.C. § 1252. Regardless, the Court's interpretation of the stop-time rule would not prevent a similar type of problem from arising. When the Government

sends an initial notice to appear from now on, it may be forced by the Court's interpretation to guess that the hearing will take place far in the future, only to learn shortly afterwards that the hearing is in fact imminent. An alien lulled into a false sense of security by that initial notice to appear will have as little meaningful " 'opportunity to secure counsel' " and "time to prepare adequately," *ante,* at 2114, as one who initially received a notice to appear without any hearing date.

C

Finally, the Court turns to "common sense" to support its preferred reading of the text. According to the Court, it should be "obvious" to anyone that "a notice that does not specify when and where to appear for a removal proceeding is not a 'notice to appear.' " *Ante,* at 2110, 2115. But what the Court finds so obvious somehow managed to elude every Court of Appeals to consider the question save one. See *Moscoso–Castellanos v. Lynch,* 803 F.3d 1079, 1083 (C.A.9 2015) ; *O'Garro v. U.S. Attorney General,* 605 Fed.Appx. 951, 953 (C.A.11 2015) (*per curiam*); *Guaman–Yuqui v. Lynch,* 786 F.3d 235, 240 (C.A.2 2015) (*per curiam*); *Gonzalez–Garcia v. Holder,* 770 F.3d 431, 434–435 (C.A.6 2014) ; *Yi Di Wang v. Holder,* 759 F.3d 670, 675 (C.A.7 2014) ; *Urbina v. Holder,* 745 F.3d 736, 740 (C.A.4 2014).

That is likely because the Court's "common sense" depends on a very specific understanding of the purpose of a notice to appear. In the Court's eyes, notices to appear serve primarily as a vehicle for communicating to aliens when and where they should appear for their removal hearings. That is certainly a reasonable interpretation with some intuitive force behind it. But that is not the only possible understanding or even necessarily the best one. As the Government reasonably explains, a notice to appear can also be understood to serve primarily as a charging document. See Tr. of Oral Arg. 39–45. Indeed, much of § 1229(a)(1) reinforces that view through the informational requirements it imposes on notices to appear. See, *e.g.,* § 1229(a)(1)(A) ("nature of the proceedings"); § 1229(a)(1)(B) ("legal authority" for "the proceedings"); § 1229(a)(1)(C) ("acts or conduct alleged"); § 1229(a)(1)(D) ("charges against the alien"); *ibid.* ("statutory provisions alleged to have been violated"). Interpreted in this way, a notice to appear hardly runs afoul of "common sense" by simply omitting the date and 2129 time of a future removal proceeding.[6] *2129

Today's decision appears even less commonsensical once its likely consequences are taken into account. As already noted, going forward the Government will be forced to include an arbitrary date and time on every notice to appear that it issues. See *supra,* at 2124 – 2125. Such a system will only serve to confuse everyone involved, and the Court offers no explanation as to why it believes otherwise. Although the Court expresses surprise at the idea that its opinion will " 'forc[e] the Government' to guess when and where a hearing will take place," *ante,* at 2115, n. 6, it is undisputed that the Government currently lacks the capability to do anything other than speculate about the likely date and time of future removal proceedings. See Tr. of Oral Arg. 47–49, 52–53. At most, we can hope that the Government develops a system in the coming years that allows it to determine likely dates and times before it sends out initial notices to appear. But nothing in either today's decision or the statute can guarantee such an outcome, so the Court is left crossing its fingers and hoping for the best. *Ante,* at 2115, n. 6, 2118 – 2119.

[6] The Court responds to this point in two ways. First, it faults me for failing to offer a reason "rooted in the statutory tex[t] for treating time-and-place information as any less crucial than charging information for purposes of triggering the stop-time rule." *Ante,* at 2116, n. 7. But exactly the same criticism can be leveled against the Court's own reading, which noticeably fails to offer any reason "rooted in the statutory text" why time-and-place information

should be treated as any *more* crucial than charging information for purposes of triggering the stop-time rule. Second, the Court also observes misleadingly that "there is no reason why a notice to appear should have only one essential function," and that a notice to appear might thus serve the dual purpose of both presenting charges and informing an alien "when and where to appear." *Ibid.* Of course it might, but it is also equally reasonable to interpret a notice to appear as serving only one of those functions. Under *Chevron,* it was the Government—not this Court—that was supposed to make that interpretive call.

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* * *

Once the errors and false leads are stripped away, the most that remains of the Court's argument is a textually permissible interpretation consistent with the Court's view of "common sense." That is not enough to show that the Government's contrary interpretation is unreasonable. Choosing between these competing interpretations might have been difficult in the first instance. But under *Chevron,* that choice was not ours to make. Under *Chevron,* this Court was obliged to defer to the Government's interpretation.

In recent years, several Members of this Court have questioned *Chevron* 's foundations. See, *e.g., ante,* at 2120 – 2121 (KENNEDY, J., concurring); *Michigan v. EPA,* 576 U.S. ——, —— – ——, 135 S.Ct. 2699, 2712–2714, 192 L.Ed.2d 674 (2015) (THOMAS, J., concurring); *Gutierrez–Brizuela v. Lynch,* 834 F.3d 1142, 1149 (C.A.10 2016) (Gorsuch, J., concurring). But unless the Court has overruled *Chevron* in a secret decision that has somehow escaped my attention, it remains good law.

I respectfully dissent.

Matter of Silvestre MENDOZA-HERNANDEZ, Respondent
Matter of Rufina CAPULA-CORTES, Respondent

Decided May 1, 2019

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

A deficient notice to appear that does not include the time and place of an alien's initial removal hearing is perfected by the subsequent service of a notice of hearing specifying that missing information, which satisfies the notice requirements of section 239(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a) (2012), and triggers the "stop-time" rule of section 240A(d)(1)(A) of the Act, 8 U.S.C. § 1229b(d)(1)(A) (2012). *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), distinguished; *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018), followed.

FOR RESPONDENTS: Terence S. Coonan, Esquire, Tallahassee, Florida

FOR THE DEPARTMENT OF HOMELAND SECURITY: Donald W. Cassidy, Associate Legal Advisor

BEFORE: Board En Banc: NEAL, Chairman; MALPHRUS, WENDTLAND, MULLANE, GREER, MANN, O'CONNOR, LIEBOWITZ, and KELLY, Board Members. Dissenting Opinion: GUENDELSBERGER, joined by ADKINS-BLANCH, Vice Chairman; COLE, GRANT, CREPPY, KENDALL CLARK, Board Members.

GREER, Board Member:

In a decision dated August 14, 2017, an Immigration Judge found the respondents removable under section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i) (2012), as aliens present in the United States without being admitted or paroled. She also denied their applications for cancellation of removal under section 240A(b)(1) of the Act, 8 U.S.C. § 1229b(b)(1) (2012), finding that they lacked the requisite period of continuous physical presence. The respondents have appealed from that decision, arguing that they are not foreclosed from establishing continuous physical presence pursuant to *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). The record will be remanded to the Immigration Judge for further proceedings.

I. FACTUAL AND PROCEDURAL HISTORY

The respondents, a husband and wife, are both natives and citizens of Mexico. On October 11, 2010, the Department of Homeland Security ("DHS") served the respondents with notices to appear charging them with removability. The notices to appear did not specify the time or place at which the respondents' initial removal hearing would be held. The DHS commenced removal proceedings on November 22, 2010, by filing the notices to appear with the Immigration Court. On December 8, 2010, the Immigration Court mailed notices of hearing to the respondents, which stated that their initial removal hearing was scheduled for 9:00 a.m. on January 6, 2011, in Miami. The respondents appeared at this and several subsequent hearings. Their attorney entered a notice of appearance on March 24, 2011.

The respondents filed applications for cancellation of removal, which the Immigration Judge denied, finding that they did not demonstrate they had been physically present in the United States for a continuous period of 10 years prior to the October 2010 service of the notice to appear, as required by section 240A(b)(1)(A) of the Act and the "stop-time" rule in section 240A(d)(1)(A).[1] In her decision, the Immigration Judge found that the respondents submitted documentary evidence establishing physical presence since 2005, but she determined that they did not adequately demonstrate presence since October 2000.[2] On September 5, 2017, the respondents filed a motion to reopen with the Immigration Court, seeking to submit additional evidence relating to their physical presence before 2005. The respondents also filed a notice of appeal with the Board on September 11, 2017.[3]

While their appeal was pending, the respondents filed another motion to remand based on *Pereira*. In that case, the Supreme Court rejected our

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[1] The "stop-time" rule in section 240A(d)(1)(A) of the Act states, in pertinent part, that "any period of continuous residence or continuous physical presence in the United States shall be deemed to end . . . when the alien is served a notice to appear under section 239(a)." As relevant to this decision, section 239(a)(1) of the Act provides:

> In removal proceedings under section 240 [of the Act, 8 U.S.C. § 1229a (2012)], written notice (in this section referred to as a "notice to appear") shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:
>
> . . . .
>
> (G)(i) The time and place at which the proceedings will be held.

[2] The Immigration Judge determined that the respondents had otherwise established eligibility for relief, which is not in dispute on appeal.

[3] Because the respondents filed their notice of appeal before the Immigration Judge issued a decision on the pending motion, jurisdiction over the motion vested with the Board. The motion is now before us as a motion to remand. *See* 8 C.F.R. § 1003.2(c)(4) (2018).

decision in *Matter of Camarillo*, 25 I&N Dec. 644, 651 (BIA 2011), where we held that "service of a notice to appear triggers the 'stop-time' rule, regardless of whether the date and time of the hearing have been included in the document." Instead, the Court held that a notice to appear that does not specify the time and place of an alien's removal proceedings "is not a 'notice to appear under section [239(a) of the Act, 8 U.S.C. § 1229(a) (2012)]' and therefore does not trigger the stop-time rule." *Pereira*, 138 S. Ct. at 2110 (quoting section 240A(d)(1)(A) of the Act). Citing *Pereira*, the respondents argue that the service of their notices to appear was insufficient to trigger the "stop-time" rule and that the proceedings should be remanded for service of new "legally sufficient" notices to appear.

We requested supplemental briefing from the parties. In response to one of our inquiries, the respondents argue that the Immigration Court's subsequent service of a notice of hearing that conveyed time and place information did not trigger the "stop-time" rule because "jurisdiction has never vested" with the Immigration Court. They further assert that subject matter jurisdiction cannot be waived by their personal appearance before the Immigration Court and that their continuous physical presence will continue to accrue until the DHS issues notices to appear that include the time and place of their removal hearing.

In its supplemental brief, the DHS contends that the respondents' notices to appear, in combination with the notices of hearing specifying the time and place of their proceedings, provided the necessary written notice required by section 239(a)(1) of the Act to trigger the "stop-time" rule. The DHS further argues that the respondents are ineligible for cancellation of removal because they did not establish 10 years of continuous physical presence prior to service of the notices of hearing that contained information regarding the time and place of their initial hearing.

II. ISSUE

The issue before us is whether the "stop-time" rule, which provides for termination of continuous residence and physical presence in the United States, is triggered when an alien who was served with a notice to appear that did not specify the time and place of the initial removal hearing is subsequently served with a notice of hearing that includes that essential information.

III. ANALYSIS

A. Jurisdiction

As an initial matter, we conclude that the respondents' jurisdictional arguments are foreclosed by *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018). In that case, we held that "a notice to appear that does not specify the time and place of an alien's initial removal hearing vests an Immigration Judge with jurisdiction over the removal proceedings and meets the requirements of section 239(a) of the Act, so long as a notice of hearing specifying this information is later sent to the alien." *Id.* at 447.

To date, the United States Courts of Appeals for the Second, Sixth, and Ninth Circuits have considered and deferred to *Bermudez-Cota* in precedential decisions. *See Banegas Gomez v. Barr*, No. 15-3269, 2019 WL 1768914, at *6–8 (2d Cir. Apr. 23, 2019) (holding that jurisdiction vests with the Immigration Court when the initial notice to appear does not specify the time and place of the proceedings, but notices of hearing served later include that information); *Karingithi v. Whitaker*, 913 F.3d 1158, 1159–62 (9th Cir. 2019) (same); *Hernandez-Perez v. Whitaker*, 911 F.3d 305, 312–15 (6th Cir. 2018) (same).[4]

Additionally, the Eleventh Circuit, in whose jurisdiction this case arises, recently rejected an alien's argument that she did not receive notice of her removal hearing because the notice to appear did not include the date and time of the hearing. *See Molina-Guillen v. U.S. Att'y Gen.*, 758 F. App'x 893, 898 (11th Cir. 2019) (per curiam). The court held that the deficient notice to appear and the subsequent notice of hearing supplying the missing information "[t]ogether . . . fulfilled the notice requirements in [section 239(a)(1)]." *Id.* at 898–99. The Eleventh Circuit therefore determined that the Immigration Judge "was authorized to enter the removal order in [the alien's] absence when she failed to appear at the hearing." *Id.* (citing section 240(b)(5)(A) of the Act, 8 U.S.C. § 1229a(b)(5)(A) (2012)).[5]

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[4] The Sixth Circuit recently followed *Hernandez-Perez* and *Karingithi* in holding that an Immigration Judge properly exercised jurisdiction where information regarding the time and place of the hearing, which was missing from the notice to appear, was provided in a notice of hearing that was subsequently issued, notwithstanding the alien's claim that he did not receive the notice of hearing. *See Santos-Santos v. Barr*, 917 F.3d 486, 491–92 (6th Cir. 2019). The court did not mention *Matter of Bermudez-Cota* in its decision.

[5] Section 240(b)(5)(A) of the Act provides in pertinent part:

> Any alien who, after written notice required under paragraph (1) or (2) of section 239(a) has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed in absentia if the [DHS]

In this case, the respondents were properly served with notices of hearing providing time and place information, and they attended all their scheduled removal hearings. We therefore find no jurisdictional defect in their proceedings that would warrant termination or remand on this basis. *See Matter of Bermudez-Cota*, 27 I&N Dec. at 447.

B. Case Law Regarding the "Stop-Time" Rule

Prior case law governing this issue is instructive and sheds light on the narrow character of the holding in *Pereira*. Before the Supreme Court decided *Pereira*, several circuit courts and the Board had addressed the question whether the notice requirements of section 239(a)(1) of the Act are satisfied by service of a notice to appear stating that the time and place of a hearing are to be set, followed by service of a separate notice of hearing that specifies that information.[6]

In *Dababneh v. Gonzales*, 471 F.3d 806, 808–09 (7th Cir. 2006), the Seventh Circuit rejected the alien's argument that the Immigration Judge did not have jurisdiction to initiate his removal proceedings because the notice to appear did not specify the date and time of his initial hearing. The court concluded that "[t]he fact that the government fulfilled its obligations under [section] 239(a) in two documents—rather than one—did not deprive the [Immigration Judge] of jurisdiction to initiate removal proceedings." *Id.* at 809. Regarding whether the "defective" notice to appear cut off the alien's accrual of physical presence, the Seventh Circuit held that once the DHS served the notice to appear and the notice of hearing, the alien received notice "that met the [section] 239 requirements through receipt of both" documents, and the "stop-time" rule cut off his accrual of physical presence. *Id.* at 810. In *Matter of Bermudez-Cota*, 27 I&N Dec. at 446–47, we cited with approval this two-part process, pursuant to which jurisdiction vested and the "stop-time" rule was triggered once the alien received *both* the notice to appear and the notice of hearing.

In *Matter of Camarillo*, 25 I&N Dec. at 645, we addressed the Immigration Judge's ruling that the alien was eligible for cancellation of removal under section 240A(a)(2) of the Act because her continuous

> establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable . . . .

[6] We note that some decisions discussing the issue of proper notice refer to the "date and time" of the hearing. However, section 239(a)(1)(G) of the Act requires inclusion of the "time and place" of the hearing in the notice to appear. We will therefore otherwise refer to the required "time and place" in this decision.

residence did not end with the service of a notice to appear that lacked the date and time of her initial removal hearing.[7] According to the Immigration Judge, the alien's residence only terminated when the Immigration Court issued a notice of hearing that included the required information. The DHS appealed, arguing that the alien's residence ended when the notice to appear was served, even though it did not include the date and time of the hearing.

We concluded that the relevant statutory language of the "stop-time" rule at section 240A(d)(1)(A) of the Act is ambiguous and found the competing readings of the statute to be "equally plausible." *Id.* at 647, 651. However, we ultimately agreed with the DHS's position that its "service of a notice to appear triggers the 'stop-time' rule, regardless of whether the date and time of the hearing have been included in the document." *Id.* at 651. In this regard, we stated that "[n]o authority . . . supports the contention that a notice of hearing issued by the Immigration Court is a constituent part of a notice to appear, the charging document issued only by the DHS." *Id.* at 648. We further noted that "another reason an Immigration Court's notification of a hearing date does not 'serve' a notice to appear is that neither the Immigration Court nor the Immigration Judge has been delegated the authority to serve a notice to appear." *Id.* at 650 (citations omitted).[8]

Shortly after we issued our decision in *Matter of Camarillo*, the Second Circuit decided *Guamanrrigra v. Holder*, 670 F.3d 404 (2d Cir. 2012) (per curiam). In that case, the alien was served with a notice to appear before an Immigration Judge in Boston at a date and time to be set, followed later by a notice of hearing indicating the date and time of his initial removal hearing, which the alien and his counsel received by mail. The alien was ordered removed in absentia. His proceedings were later reopened based on lack of notice, but the Immigration Judge and Board denied the alien's application for cancellation of removal, reasoning that the "stop-time" rule was triggered by the service of the notice to appear.

Adopting the rationale articulated by the Seventh Circuit in *Dababneh* but without mentioning *Matter of Camarillo*, the Second Circuit held that "the stop-time rule is triggered upon service of a Notice to Appear that (*alone or in combination with a subsequent notice*) provides the notice required by [section] 239(a)(1)" of the Act. *Id.* at 409–10 (emphasis added). Because

[7] The "stop-time" rule at section 240A(d)(1)(A) of the Act is also applicable to determine eligibility for relief under section 240A(a)(2), which requires 7 years of *continuous residence* in the United States after having been admitted in any status.

[8] We now consider that analysis to be flawed. A notice of hearing is not part of the notice to appear, which is not "served" by the Immigration Courts. Instead, the notice of hearing is a separate notice, served in conjunction with the notice to appear, that satisfies the requirements of section 239(a)(1)(G) of the Act by providing the essential information regarding the time and place of the hearing.

service of the notice of hearing "perfected the notice required by section 239(a)(1)," the alien did not accrue the requisite 10 years of continuous physical presence and was ineligible for cancellation of removal. *Id.* at 410–11.

A number of circuit courts subsequently agreed with our decision in *Matter of Camarillo* and concluded that it was entitled to deference under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *Moscoso-Castellanos v. Lynch*, 803 F.3d 1079, 1083 (9th Cir. 2015); *O'Garro v. U.S. Att'y Gen.*, 605 F. App'x 951, 953 (11th Cir. 2015) (per curiam); *Guaman-Yuqui v. Lynch*, 786 F.3d 235, 239–40 (2d Cir. 2015) (per curiam); *Gonzalez-Garcia v. Holder*, 770 F.3d 431, 434–35 (6th Cir. 2014); *Yi Di Wang v. Holder*, 759 F.3d 670, 674–75 (7th Cir. 2014); *Urbina v. Holder*, 745 F.3d 736, 740 (4th Cir. 2014). The Third Circuit, however, found no ambiguity in the "stop-time" rule and declined to defer to our decision. *Orozco-Velasquez v. Att'y Gen. U.S.*, 817 F.3d 78, 81–82 (3d Cir. 2016).

The alien in *Orozco-Velasquez* was served with a notice to appear ordering him to appear before an Immigration Judge in Elizabeth, New Jersey, at a date and time "to be set." *Orozco-Velasquez*, 817 F.3d at 79. Nearly 2 years later, in April 2010, the DHS mailed him "an otherwise identical" notice to appear correcting the address of the Immigration Court and, within a week, he received a notice of hearing containing the date and time of the removal proceedings. The Third Circuit held that "an initial [notice to appear] that fails to satisfy [section 239(a)(1)'s] various requirements will not stop the continuous residency clock until the combination of notices, properly served on the alien charged as removable, conveys the *complete* set of information prescribed by [section 239(a)(1)]." *Id.* at 83. Applying that reasoning, the court further determined that the Government only complied with section 239(a)(1) in April 2010, when the alien received both a notice to appear correcting the address of the Immigration Court and a notice of hearing establishing the date and time of removal proceedings. *Id.* at 84.

The First Circuit then addressed this issue in *Pereira v. Sessions*, 866 F.3d 1 (1st Cir. 2017), *rev'd*, 138 S. Ct. 2105. The alien there was admitted to the United States as a nonimmigrant visitor in 2000. In May 2006, he was served with a notice to appear that did not specify the date and time of his initial removal hearing. More than a year later, in August 2007, the DHS filed the notice to appear with the Immigration Court, which then mailed the alien a notice of hearing setting the date and time for his initial removal hearing. However, it was sent to the wrong address and was returned as undeliverable. The alien did not appear at his hearing and was ordered removed in absentia. In 2013, after he demonstrated that he did not receive the 2007 notice of

hearing, his removal proceedings were reopened and he applied for cancellation of removal.

In regard to the "stop-time" rule, the alien claimed that he had continued to accrue time until he received a notice of the hearing after his case was reopened in 2013. He agreed that the notice required by section 239(a)(1) of the Act "need not be provided in the same document," and that "two or more documents that together contain" all the information, such as the notice to appear served on him in 2006 and the hearing notice he received in 2013, could, "in combination," trigger the "stop-time" rule. *Id.* at 4. However, the Immigration Judge determined that the 2006 notice to appear alone triggered the "stop-time" rule, so the alien could not satisfy the 10-year continuous physical presence requirement. We agreed and dismissed the alien's appeal.

The First Circuit concluded that the language in section 240A(d)(1)(A) of the Act is ambiguous, and it gave deference under *Chevron* to our interpretation in *Matter of Camarillo* that the DHS's service of a notice to appear triggers the "stop-time" rule, regardless of whether the date and time of the hearing have been included in the notice. *Id.* at 2, 7–8. It denied the alien's petition for review, and the Supreme Court granted certiorari.

C. *Pereira v. Sessions*

The Supreme Court's analysis in *Pereira* focused on the plain language of the statute, specifically, "the intersection" of the "stop-time" rule in section 240A(d)(1)(A) of the Act, which terminates continuous residence or physical presence "when the alien is served a notice to appear under section 239(a)," and the notice requirements in section 239(a)(1) of the Act, which provides that a notice to appear must specify certain information, including the "time and place at which the proceedings will be held." *Pereira*, 138 S. Ct. at 2110. Based on the "plain text, the statutory context, and common sense," the Court held that a notice to appear that does not specify the time and place of the proceedings does not trigger the "stop-time" rule. *Id.* Because the Court found the language of the "stop-time" rule to be unambiguous, it did not need to consider *Chevron* deference. *Id.* at 2113, 2117. Furthermore, the Court did not address the propriety of the two-part notice process applied by several circuit courts because the alien had accrued the required 10 years of physical presence before he received notice of his hearing in the reopened removal proceedings. *See Pereira*, 138 S. Ct. at 2112 (noting that the proceedings were reopened in 2013).

To summarize the development of the case law on the question before us, the circuit courts initially ruled that if a notice to appear lacks information regarding the time and place of the hearing, the notice requirements of section 239(a)(1) of the Act are only satisfied, and the "stop-time" rule is

triggered, once the defective notice is perfected by the alien's receipt of a subsequent notice of hearing specifying the hearing's time and place. *See, e.g.*, *Guamanrrigra*, 670 F.3d at 409–10; *Dababneh*, 471 F.3d at 808–10. However, we rejected the application of such a two-step process in *Matter of Camarillo*, holding that the "stop-time" rule is triggered by service of a notice to appear alone, regardless of whether that notice contains time and place information. Several circuits then retreated from the initial trend of recognizing the two-step process and, instead, deferred to our holding in *Matter of Camarillo*.

This was followed by the Third Circuit's issuance of *Orozco-Velasquez*, which disapproved of *Matter of Camarillo* but did not disagree with the circuit courts that had previously recognized a two-step process. In fact, *Orozco-Velasquez* explicitly stated that the "stop-time" rule is triggered upon the service of the "combination" of the notice to appear and a subsequent notice of hearing that supplies the missing time and place information. *Orozco-Velasquez*, 817 F.3d at 83–84.

According to the Supreme Court's majority opinion in *Pereira*, certiorari was granted to resolve the division regarding the "stop-time" rule between the Third Circuit, which had rejected *Matter of Camarillo* as contrary to the plain language of the statute, and other circuits that had deferred to it. *Pereira*, 138 S. Ct. at 2113. While the Court majority abrogated *Matter of Camarillo* and the circuit court cases deferring to our decision, it did not disturb the Third Circuit's decision. Thus, although the Court was clearly aware of the circuit split, which it resolved in favor of the Third Circuit, it did not reject the portion of the holding in *Orozco-Velasquez* that recognized a two-step process under which a notice of hearing could perfect a notice to appear that had omitted the requisite time and place information.

Furthermore, since the alien in *Pereira* received only a deficient notice to appear, with no subsequent notice of hearing containing the time and place of his initial removal hearing until after he accrued 10 years of physical presence, the Supreme Court had no need to address either how the "stop-time" rule operates once such information has been properly conveyed or at what point the alien's period of continuous physical presence stops accruing. Consequently, we do not read the majority decision in *Pereira* as invalidating the two-step notice process, under which a subsequently issued notice of hearing "cures" or "perfects" a deficient notice to appear.

Thus, no court has adopted the view of our dissenting colleagues in this case that the deficiency in a notice to appear that is missing the time and place of the initial removal proceeding cannot be remedied by a notice of hearing that includes that information. The result of the dissent's approach is that there can be no way to perfect a notice to appear that is insufficient under section 239(a) in order to invoke the "stop-time" rule, which we do not

find to be persuasive, given the Supreme Court's decision and the circuit court cases issued both before and after it that support a two-step notice process.

D. Two-Step Process

We conclude that in cases where a notice to appear does not specify the time or place of an alien's initial removal hearing, the subsequent service of a notice of hearing containing that information perfects the deficient notice to appear, triggers the "stop-time" rule, and ends the alien's period of continuous residence or physical presence in the United States. Therefore, although the notices to appear served on the respondents on October 11, 2010, did not trigger the "stop-time" rule under *Pereira*, 138 S. Ct. at 2110, we hold that their continuous physical presence ended on December 8, 2010, when the Immigration Court sent them notices of hearing that specified the time and place of their initial removal hearing.

This rule is consistent with the Supreme Court's narrow mandate and "common sense" observation that "the Government has to provide noncitizens 'notice' of the information, *i.e.*, the 'time' and 'place,' that would enable them 'to appear' at the removal hearing in the first place." *Id.* at 2115. It is also consistent with the plain language of the statute, *Matter of Bermudez-Cota*, and the circuit court law that, prior to *Pereira*, held that the "stop-time" rule is triggered by a two-part process where an alien is served with a notice to appear in combination with a subsequent notice of hearing that provides the information required by section 239(a)(1) of the Act.[9] *See Orozco-Velasquez*, 817 F.3d at 83; *Guamanrriga*, 670 F.3d at 410; *Dababneh*, 471 F.3d at 810.

As the respondents have argued, *Pereira* can be interpreted more broadly and read in a literal sense to reach a different result, because the opinion includes language stating that a notice lacking the specific time and place of the removal proceedings does not equate to a notice to appear under section

[9] Our interpretation is also consistent with the congressional intent behind the "stop-time" rule. As we have stated, "By enacting the rule, Congress intended to prevent aliens from being able 'to "buy time," during which they could acquire a period of continuous presence that would qualify them for forms of relief that were unavailable to them when proceedings were initiated.'" *Matter of Camarillo*, 25 I&N Dec. at 649 (quoting *Matter of Cisneros*, 23 I&N Dec. 668, 670 (BIA 2004) (quoting Report of the Committee on the Judiciary, House of Representatives, H.R. Rep. 104-469 (1996))). If a notice of hearing cannot cure or perfect a deficient notice to appear, then the DHS would be required to re-serve a "corrected" notice to appear in proceedings once a cancellation of removal application is filed in order to trigger the "stop-time" rule. In many cases this could be after the alien has appeared at multiple hearings over a number of years. Such an outcome would defeat the reason for enacting the "stop-time" rule in the first place.

239(a)(1) of the Act. *Pereira*, 138 S. Ct. at 2110, 2113–14. But we did not elect that path in *Matter of Bermudez-Cota* and we do not do so here, particularly given the legal landscape underlying the circuit split addressed in *Pereira*. Rather, we understand *Pereira* as directing us to respond to the substantive concerns of fundamental fairness inherent in procedural due process and to applicants' settled expectations about eligibility for relief, which the Supreme Court explained were not met in *Pereira*.

We disagree with the dissent to the extent it argues that we are ignoring the Supreme Court's broader holding that "based on the plain text of the statute, it is clear that to trigger the stop-time rule, the Government must serve a notice to appear that, at the very least, 'specif[ies]' the 'time and place' of the removal proceedings." *Id.* at 2114. To the contrary, we are applying that holding by concluding that the notices to appear initially served on the respondents did not trigger the "stop-time" rule because they lacked the requisite information about the time and place of the hearing. However, the Court's holding does not preclude a "perfected" notice to appear from stopping time, because that issue was not before the Court in *Pereira*.

Importantly, the Supreme Court repeatedly emphasized in *Pereira* that the question before it was "narrow." *Id.* at 2110, 2113; *see also Banegas Gomez*, 2019 WL 1768914, at *7 (noting "the care taken by the *Pereira* Court to emphasize the narrow scope of its holding"); *Karingithi*, 913 F.3d at 1161 (observing that the Court "emphasiz[ed] multiple times the narrowness of its ruling"); *Hernandez-Perez*, 911 F.3d at 314 (discussing "*Pereira*'s emphatically 'narrow' framing" (quoting *Pereira*, 138 S. Ct. at 2110, 2113)); *see also Matter of Bermudez-Cota*, 27 I&N Dec. at 443 (noting that the Court "specifically stated multiple times that the issue before it was 'narrow'" (quoting *Pereira*, 138 S. Ct. at 2110, 2113)). In this regard, the Court observed that the question presented by the alien—whether service of a "notice to appear" that fails to specify all of "the items listed" in section 239(a)(1) triggers the "stop-time" rule—"sweeps more broadly than necessary to resolve" the case.[10] *Id.* at 2113. The Court further stated that the "dispositive question" is "much narrower," namely, "Does a 'notice to appear' that does not specify the 'time and place at which the proceedings will be held' . . . trigger the stop-time rule?" *Id.* (quoting section 239(a)(1)(G)(i) of the Act). In a footnote, the Court stated that it left "for another day whether a putative notice to appear that omits any of the other categories of information enumerated in [section 239(a)(1)] triggers the stop-time rule." *Id.* at 2113 n.5.

[10] Section 239(a)(1) of the Act requires that the "written notice" given to an alien must specify several things, only one of which is "[t]he time and place at which the proceedings will be held" in section 239(a)(1)(G)(i). *Pereira*, 138 S. Ct. at 2109–10.

As we observed in *Matter of Bermudez-Cota*, 27 I&N Dec. at 443, "*Pereira* involved a distinct set of facts." Because the alien in *Pereira* "never received notice of the time and date of his [initial] removal hearing, he failed to appear" and was ordered removed in absentia. *Pereira*, 138 S. Ct. at 2112. The respondents, like the alien in *Matter of Bermudez-Cota*, were properly served with notices to appear, followed by notices of hearing setting forth the time and place of their initial removal hearings. *Matter of Bermudez-Cota*, 27 I&N Dec. at 441, 443. The notices of hearing were served on the respondents in December 2010, approximately 2 months after they were served with their notices to appear. The respondents appeared at their initial removal hearing on January 6, 2011, and at every subsequent hearing. In addition, since they have been represented in these proceedings since March 2011, they had the opportunity to secure counsel and to adequately prepare.

We are also mindful of *Pereira*'s invocation of "common sense" in concluding that a notice that does not specify when and where to appear for removal proceedings is not a "notice to appear" that triggers the "stop-time" rule. *Id.* at 2110, 2115. The Supreme Court explained that

> common sense compels the conclusion that a notice that does not specify when and where to appear for a removal proceeding is not a "notice to appear" that triggers the "stop-time" rule. If the three words "notice to appear" mean anything in this context, they must mean that, at a minimum, the Government has to provide noncitizens "notice" of the information, *i.e.*, the "time" and "place," that would enable them "to appear" at the removal hearing in the first place. Conveying such time and place information to a noncitizen is an essential function of a notice to appear, for without it, the Government cannot reasonably expect the noncitizen to appear for his removal proceedings.

Id. at 2115. In short, the Court explained that the fundamental purpose of notice is to convey essential information to the alien, such that the notice creates a reasonable expectation of the alien's appearance at the removal proceeding, which is consistent with the statutory text and the judicial precedent that departed from *Matter of Camarillo*.

This purpose can be satisfied by a combination of documents that jointly provide the notice required by statute. Although the provision in section 239(a)(1) of the Act stating that "a 'notice to appear'" must be given to the alien is in the singular, we do not read the statute as requiring that the "written notice" be in a single document. Rather, it may be provided in one or more documents—in a single or multiple mailings. And it may be served personally, by mail, or by a combination of both, so long as the essential information is conveyed in writing and fairly informs the alien of the time and place of the proceedings.

Pereira teaches that the "essential function of a notice to appear" is paramount, not the form of the notice. *Id.* at 2115 (noting that "a barebones document labelled 'Notice to Appear,' with no mention of the time and place of the removal proceedings . . . would do little if anything to facilitate appearance at those proceedings"). A notice to appear that does not contain the requisite information cannot form the basis of a reasonable expectation of the alien's appearance at the removal hearing.

Moreover, under the regulations, "the [DHS] shall provide in the Notice to Appear, the time, place and date of the initial removal hearing, where practicable." 8 C.F.R. § 1003.18(b) (2018). But if time, place, and date information "is not contained in the Notice to Appear, the Immigration Court shall be responsible for scheduling the initial removal hearing and providing notice to the government and the alien of the time, place, and date of hearing." *Id.* Here, too, the focus is on the contents of the notice and facilitating the alien's appearance, not the title affixed to the document. *See Orozco-Velasquez*, 817 F.3d at 84 (stating that the purpose of a notice to appear "is to provide an alien with notice—of the charges against him and the basic contours of the proceedings to come").

The dissent relies heavily on *Pereira*'s discussion of section 239(a)(2) of the Act, which is entitled, "Notice of Change in Time or Place of Proceedings." In *Pereira*, the Government and the dissent observed that the "stop-time" rule makes "broad reference" to a notice to appear "under section 239(a)," which includes paragraphs (2) and (3), as well as paragraph (1). But the majority of the Court found that "only paragraph (1) bears on the meaning of a 'notice to appear.'"[11] *Pereira*, 138 S. Ct. at 2114. The Court further

[11] Section 239(a)(2) of the Act governs the notice of change in time and place of proceedings, and paragraph (3) provides for a system to record aliens' addresses and phone numbers. The dissent asserts that "[t]he Government argued in *Pereira* that, because the 'stop-time' rule refers to section 239(a) as a whole, the 'stop-time' rule was not limited to service of a section 239(a)(1) notice to appear but could be triggered by the service of other documents referenced in section 239(a)(2) that provide the time and place of hearing." *Matter of Mendoza-Hernandez & Capula-Cortes*, 27 I&N Dec. 520, 538 (BIA 2019) (Guendelsberger, dissenting). More accurately, the Supreme Court noted the point made by the Government and the dissent that the "stop-time" rule makes broad reference to a notice to appear under section 239(a) of the Act, which includes paragraphs (1) through (3). *Pereira*, 138 S. Ct. at 2114.

Justice Alito's dissent asserts that the "stop-time" rule's cross-reference to section 239(a)—without limiting it to paragraph (1)—indicates that "Congress chose to insert a broader cross-reference, one that refers to the general process of serving notices to appear as a whole." *Id.* at 2123 (Alito, J., dissenting). There is no reference in *Pereira* to an argument by the Government or the dissent that the "stop-time" rule could be triggered by the service of other documents, such as a subsequent notice of hearing. The facts of *Pereira* would not support such an argument being made because the only document that could

found that section 239(a)(2) "bolsters" its interpretation of the "stop-time" statute because "[b]y allowing for a 'change or postponement' of the proceedings to a 'new time or place,' paragraph (2) presumes that the Government has already served a 'notice to appear under section [239(a)]' that specified a time and place as required by [section 239(a)(1)(G)(i)]." *Id.* That section 239(a)(2) of the Act "presumes" that the time and place of the proceedings was already specified in a notice to appear does not preclude the possibility of a two-step process that allows a notice of hearing containing time and place information to perfect, or cure, a deficient notice to appear. The *Pereira* Court was not presented with that question.

On this point, we again find *Orozco-Velasquez* instructive. The dissent reads the Third Circuit as having "relied on section 239(a)(2) to permit an Immigration Court's notice of hearing to trigger the 'stop-time' rule" and finds that "its rationale directly conflicts with *Pereira*'s reading of that statutory provision." *Matter of Mendoza-Hernandez & Capula-Cortes*, 27 I&N Dec. 520, 542 (BIA 2019) (Guendelsberger, dissenting). Yet the court explicitly rejected any argument of ambiguity in the "stop-time" rule, concluding that the statute's incorporation of additional provisions, including section 239(a)(2), "does nothing to diminish the clear-cut command" in section 239(a)(1) that notice must specify the time and place at which the proceedings will be held. *Orozco-Velasquez*, 817 F.3d at 82–83.

After concluding that the plain language of the statute states that time stops only when the Government serves a notice to appear in conformance with section 239(a) of the Act, the Third Circuit continued:

> Moreover, in requiring that an "alien [be] served a notice to appear under section [239(a)]" to suspend the alien's accrual of continuous residency, [section 240A(d)(1)] simultaneously compels government compliance with each of [section 239(a)(1)'s notice to appear] requirements and accommodates a "change or postponement in the time and place of [removal] proceedings" when the government provides written notice of such changes to the alien. Congress's incorporation of [section 239(a)] in its entirety conveys a clear intent: that the government may freely amend and generally supplement its initial [notice to appear]; but to cut off an alien's

have stopped time before the alien accrued 10 years of continuous physical presence was the notice to appear, given that the initial hearing notice was sent to an incorrect address. And the dissent in *Pereira* concluded that *Chevron* deference should be given to our interpretation of the "stop-time" rule in *Matter of Camarillo*, where we held that a notice to appear alone triggers the "stop-time" rule, even if it does not include the time and place of the initial hearing. *Id.* at 2122, 2129. Therefore, we disagree with the dissent in this case to the extent it is suggesting that the Supreme Court has already addressed and resolved the question whether the "stop-time" rule can be triggered by the subsequent service of other documents, such as a notice of hearing, that provide the time and place of hearing.

> eligibility for cancellation of removal, it must do so within the ten years of continuous residence identified in [section 240A(b)(1)(A)] (one of three cancellation-of-removal provisions the "stop-time" rule exists to explicate). Thus, an initial [notice to appear] that fails to satisfy [section 239(a)(1)'s] various requirements will not stop the continuous residency clock until the combination of notices, properly served on the alien charged as removable, conveys the *complete* set of information prescribed by [section 239(a)(1)] within the alien's first ten years of continuous residence.

Id. (first and fifth alterations in original). This analysis supports our conclusion that although a notice to appear that omits time and place information does not stop time, a notice to appear perfected by a notice of hearing that does include such information can stop time in accordance with section 240A(d)(1)(A)'s reference to "section 239(a)" of the Act.

Lastly, the dissent concludes that neither the service of the notices to appear nor the subsequent notices of hearing in this case triggered the "stop-time" rule. But it does not provide a clear answer as to how the "stop-time" rules operates in this situation under its interpretation of *Pereira*, absent a break in physical presence or the commission of a disqualifying crime. It simply posits alternative ending points, including service of a new notice to appear specifying the time and place of the hearing or the entry of a final order of removal. *See* sections 240A(d)(1)–(2) of the Act.

IV. CONCLUSION

Until *Matter of Camarillo*, there was an "emerging consensus" among the courts of appeals that "the notice necessary to trigger the stop-time rule found in [section 240A(d)(1)] was not 'perfected' until the immigrant received all the information listed in [section 239(a)(1)]." *Pereira*, 138 S. Ct. at 2120 (Kennedy, J., concurring) (quoting *Guamanrriga*, 670 F.3d at 410); *Dababneh*, 471 F.3d at 810. In *Matter of Camarillo*, we rejected that interpretation. After *Matter of Camarillo*, the Third Circuit in turn rejected our conclusion that section 240A(d)(1)(A) of the Act is ambiguous and specified that under the statute's plain language, the "stop-time" rule unambiguously requires service of a notice to appear that meets the requirements of section 239(a)(1). *Orozco-Velasquez*, 817 F.3d at 83–84.

The majority opinion in *Pereira* recognized the split in the circuits and cited this aspect of *Orozco-Velasquez*'s holding without discussing or expressing disapproval of the Third Circuit's further holding that "the combination of notices" conveying all the information prescribed by section 239(a)(1) of the Act triggers the "stop-time" rule. *Orozco-Velasquez*, 817 F.3d at 83; *see also Pereira*, 138 S. Ct. at 2113 n.4. None of the courts involved in the circuit split had held that service of a subsequent notice of

hearing that included time and place information was insufficient to perfect the notice to appear. And the majority in *Pereira* did not indicate it was adopting that approach.

In his concurring opinion, Justice Kennedy criticized the circuits that granted *Chevron* deference to *Matter of Camarillo* after previously ruling that notice was not "perfected" until all the requirements of section 239(a)(1) of the Act were met. *Pereira*, 138 S. Ct. at 2120 (Kennedy, J., concurring). Neither the majority nor the concurrence, however, expressed disagreement with the aspects of those previous rulings that had held that the service of a notice of hearing containing time and place information indeed perfects a notice to appear that had omitted that information, such that the "stop-time" rule is invoked.

Accordingly, in light of the jurisprudence that preceded *Pereira*, which explained that the notice necessary to trigger the "stop-time" rule is "perfected" when an alien is served with a notice of hearing containing the time and place information required by section 239(a)(1) of the Act, and the Supreme Court's resolution of the circuit court split in favor of a plain language rejection of *Matter of Camarillo*, which we read as consistent with the analysis and holding in *Orozco-Velasquez*, we now adopt the "equally plausible" view advocated by the respondents in *Matter of Camarillo*, 25 I&N Dec. at 647.

We therefore hold that where a notice to appear does not specify the time and place of an alien's initial removal hearing, the subsequent service of a notice of hearing containing that information "perfects" the deficient notice to appear, satisfies the notice requirements of section 239(a)(1) of the Act, and triggers the "stop-time" rule of section 240A(d)(1)(A) of the Act. *Pereira* did not reach this issue because the alien was not properly served with a notice of hearing providing the time and place information and so did not appear at his initial removal hearing. Because the respondents in this case appeared at their initial removal hearing after they received notices of hearing with proper notice of the time and place of their proceedings, we will deny their motion to remand based on *Pereira*.

We further conclude that the respondents' period of continuous physical presence ended on December 8, 2010, when they were served with notices of hearing scheduling their initial removal hearing on January 6, 2011. Accordingly, it is the respondents' burden to demonstrate 10 years of continuous physical presence in the United States measured backward from service of the notices of hearing. *See* section 240A(b)(1)(A) of the Act.

The record will be remanded for the Immigration Judge to consider whether the aliens have met this burden, upon consideration of the entire record, including testimony and corroborative evidence. The parties may supplement the record with additional evidence relevant to continuous

physical presence on remand, including the new evidence proffered with the respondents' motion to remand.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

DISSENTING OPINION: John W. Guendelsberger, Board Member, in which Charles K. Adkins-Blanch, Vice Chairman; Patricia A. Cole, Edward R. Grant, Michael J. Creppy, and Molly Kendall Clark, Board Members, joined

We respectfully dissent from the majority's determination that an Immigration Court's service of a notice of the initial hearing date in removal proceedings triggers the "stop-time" rule to end the period of continuous physical presence required for cancellation of removal.[1] The United States Supreme Court's decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), governs this case and compels us to find that the service of a "notice of hearing" by an Immigration Court does not meet the definition of a "notice to appear" under section 239(a)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a) (2012), and therefore does not trigger the "stop-time" rule when a "notice to appear" from the Department of Homeland Security ("DHS") fails to specify the time of the initial proceedings.

I. STOP-TIME RULE

To qualify for cancellation of removal under section 240A(b)(1) of the Act, 8 U.S.C. § 1229b(b)(1) (2012), an applicant must demonstrate 10 years of continuous physical presence in the United States. Under the "stop-time" rule in section 240A(d)(1)(A) of the Act, "any period of . . . continuous physical presence" is "deemed to end when the alien is served a notice to appear under section 239(a)." The Supreme Court in *Pereira* directly addressed the statutory text of the "stop-time" rule and the definition of "notice to appear" in section 239(a)(1) of the Act.[2] The Court found that the

[1] We agree with the majority decision insofar as it denies the respondent's request for termination of proceedings.

[2] The provisions for cancellation of removal, including the "stop-time" rule, as well as the "notice to appear" provisions of section 239(a) of the Act were enacted by section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-587 to 3009-597. Cancellation of removal replaced the "suspension of deportation" provisions in former section 244(a) of the Act, 8 U.S.C. § 1254 (1994). Applicants for suspension of deportation could continue to accrue time to meet the physical presence requirement during the course of deportation

"plain text, the statutory context, and common sense all lead inescapably and unambiguously" to the conclusion that the time and place of hearing must be designated in a section 239(a)(1) notice to appear to trigger the "stop-time" rule. *Id.* at 2110.

In so finding, the Court overruled the Board's decision in *Matter of Camarillo*, 25 I&N Dec. 644, 648 (BIA 2011), that service of a notice to appear cut off accrual of the time required for cancellation of removal, even if it did not specify the time and place of hearing. The Board reasoned in *Camarillo* that the "stop-time" rule "merely specifies the document the DHS must serve on the alien to trigger the 'stop-time' rule and does not impose substantive requirements for a notice to appear to be effective in order for that trigger to occur." *Id.* at 647. As to the significance of a notice of hearing later issued by an Immigration Court, the Board stated that "[n]o authority . . . supports the contention that a notice of hearing is a constituent part of a notice to appear, the charging document issued only by the DHS." *Id.* at 648.

The Court in *Pereira* framed the issue before it as whether "a 'notice to appear' that does not specify the 'time and place at which the proceedings will be held,' as required by [section 239(a)(1)(G)(i)], trigger[s] the 'stop-time' rule." *Pereira*, 138 S. Ct. at 2113. The Court found that Congress had provided a "clear and unambiguous" answer to this question, namely, that a "putative notice to appear that fails to designate the specific time or place of the noncitizen's removal proceedings is not a 'notice to appear under section [239(a)],' and so does not trigger the 'stop-time' rule." *Id.* at 2113–14.

In *Pereira*, the DHS failed to specify a time of hearing in the notice to appear, and the notice of the initial hearing date was sent by the Immigration Court after the respondent had accumulated the requisite 10 years of physical presence. In the case now before us, the DHS served a notice to appear that failed to specify a time of hearing, and the Immigration Court later served notice of the initial hearing date before the respondent had accrued 10 years of continuous physical presence.[3]

The legal issue in this case is whether the issuance of a notice of hearing by an Immigration Court triggers the "stop time" rule when the notice to appear issued by the DHS did not specify the time of hearing. The Court in *Pereira* answers this question, stating that "based on the plain text of the statute, it is clear that to trigger the stop-time rule, the Government must

proceedings until the entry of a final order of deportation. *See, e.g.*, *Matter of Castro*, 19 I&N Dec. 692, 693–94 (BIA 1988); *Matter of Chang*, 10 I&N Dec. 14, 16 (BIA 1962).

[3] The notice to appear issued by the DHS to the alien in *Pereira* did not set a date and time for the initial hearing in removal proceedings. An incorrectly addressed notice of hearing was later mailed by the Immigration Court to the alien. When he failed to appear at his hearing, he was ordered removed in absentia.

serve a notice to appear that, at the very least, 'specif[ies]' the 'time and place' of the removal proceedings." *Pereira*, 138 S. Ct. at 2114. Under this holding, and the Court's underlying reasoning, a "notice of hearing" sent by an Immigration Court is not a "notice to appear" under section 239(a)(1) of the Act, as required by the "stop-time" rule.

A. Plain Language

The reasoning of the Court in *Pereira* indicates that the event that triggers the "stop-time" rule is the service of a "notice to appear" that provides the essential information required by section 239(a)(1), including the time and place at which the hearing will be held. The Government argued in *Pereira* that, because the "stop-time" rule refers to section 239(a) as a whole, the "stop-time" rule was not limited to service of a section 239(a)(1) notice to appear but could be triggered by the service of other documents referenced in section 239(a)(2) that provide the time and place of hearing. *Pereira*, 138 S. Ct. at 2114. The Court rejected this argument, stating that "the broad reference to [section 239(a)] is of no consequence, because, as even the Government concedes, only paragraph (1) bears on the meaning of a 'notice to appear.'" *Id.* The Court reasoned that "[n]owhere else within [section 239(a)] does the statute purport to delineate the requirements of a 'notice to appear.' In fact, the term 'notice to appear' appears only in paragraph (1) of [section 239(a)]." *Id*.

The Court found that the plain language of section 239(a)(2) "bolsters" its interpretation of the statute that the notice of the date and time of the hearing must be included in a section 239(a)(1) notice to appear in order to trigger the "stop-time" rule. *Id.* As the Court explained:

> Paragraph (2) [of section 239(a)] provides that, "in the case of any change or postponement in the time and place of [removal] proceedings," the Government shall give the noncitizen "written notice . . . specifying . . . the new time or place of the proceedings." [Section 239(a)(2)(A)(i) of the Act.] By allowing for a "change or postponement" of the proceedings to a "new time or place," paragraph (2) presumes that the Government has already served a "notice to appear under [section 239(a)]" that specified a time and place as required by [section 239(a)(1)(G)(i)]. Otherwise, there would be no time or place to "change or postpon[e]." [Section 239(a)(2) of the Act.]

Id. (second alteration in original).

Under the Court's reasoning in *Pereira*, Congress provided clear and unambiguous language identifying the event that triggers the "stop-time" rule—that is, service by the DHS of a "notice to appear" under section 239(a)(1) that specifies the time and place of the hearing as required by

section 239(a)(1)(G), along with other essential information required by sections 239(a)(1)(A) through (G). A subsequent "notice of hearing" generated by the Immigration Court is not a section 239(a)(1) "notice to appear" and, therefore, does not trigger the "stop-time" rule.

A subsequent "notice of hearing" also cannot complete or cure a deficient "notice to appear." First, neither notice would meet, on its own, the definition of "a notice to appear" under section 239(a)(1). Second, the statute contains no ambiguity or gap that would permit a "combination" approach to trigger the stop time rule under the plain text roadmap provided by the Supreme Court in *Pereira*. The statute refers to a single document, "a notice to appear" issued by the DHS. *Pereira* makes clear that a section 239(a)(1) "notice to appear" must include the date and time of hearing in order to trigger the "stop-time" rule.

Prior to enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546 ("IIRIRA"), the initiation of deportation proceedings involved a two-step process beginning with a charging document known as an "order to show cause" that was served by the former Immigration and Naturalization Service that was then followed up by a notice of hearing date issued by the Immigration Court. *See* former sections 242B(a)(1)(A)–(F) of the Act, 8 U.S.C. § 1252b(a)(1)(A)–(F) (Supp. V 1993) (describing the essential elements of an order to show cause without reference to inclusion of the date and time of hearing). In the IIRIRA, Congress added section 239(a) to the Act in an effort to simplify the process for initiating removal proceedings. H.R. Rep. 104-469(I), 1996 WL 168955, at 159 (1996). In so doing, Congress moved from the two-step process for initiating deportation proceedings to a one-step "notice to appear" that specifies the time and place of hearing as an essential element of a section 239(a)(1) notice to appear.

The Supreme Court in *Pereira* found no ambiguity in the statute and concluded its opinion by stating that, "[a]t the end of the day, given the clarity of the plain language, we 'apply the statute as it is written.'" *Id*. at 2119–20 (citation omitted). We must do the same.

B. A Notice of Hearing Cannot Cure a Defective Notice to Appear

The Court in *Pereira* directly addressed whether the language of section 239(a)(1) "can be understood to define what makes a notice to appear *complete*." *Pereira*, 138 S. Ct. at 2116 (quoting *id.* at 2126, Alito, J., dissenting). The Court responded that

> [s]ection [239(a)(1)] does not say a "notice to appear" is "complete" when it specifies the time and place of the removal proceedings. Rather, it defines a "notice to appear"

> as a "written notice" that "specif[ies]," at a minimum, the time and place of the removal proceedings.

Id. (quoting section 239(a)(1)(G) of the Act) (third alteration in original). The Court emphasized that "the omission of time-and-place information is not, as the dissent asserts, some trivial, ministerial defect, akin to an unsigned notice of appeal." *Id.* Rather, such an omission would "deprive [the notice to appear] of its essential character." *Id*. at 2116–17 (alteration in original) (quoting *id.* at 2127 n.5 (Alito, J., dissenting)). The Court's analysis establishes that the plain text of the "stop-time" rule requires the DHS to include the notice of time and place of hearing in the section 239(a)(1) notice to appear in order to trigger the "stop-time" rule.

Other aspects of the Court's analysis indicate that its holding applies to all cases involving the "stop-time" rule in which the DHS does not include the time or place of hearing in its notice to appear. For example, in response to the Government's concerns that the DHS would have difficulty coordinating scheduling of hearings in the Immigration Courts if required to set initial hearing dates in notices to appear in order to trigger the "stop-time" rule, the Court responded that the DHS had previously established such an arrangement with the courts and that "[g]iven today's advanced software capabilities, it is hard to imagine why DHS and immigration courts could not again work together to schedule hearings before sending notices to appear." *Id.* at 2119.

The Court also responded to concerns that "[r]equiring the Government to furnish time and place information in a notice to appear" would impede the statute's objective of preventing administrative delays by noting that "once a proper notice to appear is served, the stop-time rule is triggered, and a noncitizen would be unable to manipulate or delay removal proceedings to 'buy time.'" *Id.*

Justice Alito's dissenting opinion confirms that the "stop-time rule" is triggered when the DHS "serve[s] a notice to appear that, at the very least, 'specif[ies]' the 'time and place' of the removal proceedings." *Id.* at 2125 (Alito, J., dissenting) (quoting *id.* at 2113 (majority opinion)). In Justice Alito's view, the Court's holding means that, "going forward the Government will be forced to include an arbitrary date and time on every notice to appear that it issues." *Id.* at 2129. Justice Sotomayor, writing for the majority, responds that it trusts the Government will not "engage in [such] 'arbitrary' behavior." *Id.* at 2119.

The reasoning of the Supreme Court in *Pereira*, when considered in its entirety, leaves little room for doubt that the Court's decision requires us to follow the plain language of the Act that the DHS must serve a section 239(a)(1) "notice to appear" that includes the date, time, and place of hearing

in order to trigger the "stop-time" rule.[4] The Court in *Pereira* repeatedly emphasized the "plain text" of the "stop-time" rule and left no room for agency gap-filling as to whether an Immigration Court can "complete" or "cure" a putative "notice to appear" by subsequent issuance of a "notice of hearing" that would trigger the "stop-time" rule on the date of that event. Quite simply, under the Act and implementing regulations designating the DHS as the agency responsible for issuing a "notice to appear," a "notice of hearing" is not a "notice to appear" and, therefore, it does not satisfy the requirement that the DHS serve a section 239(a)(1) "notice to appear" that specifies the date and time of hearing, in order to trigger the "stop-time" rule. *See* 8 C.F.R. § 239.1 (2018) (designating the DHS officials authorized to issue a "notice to appear").

II. MAJORITY'S APPROACH

The majority decision essentially adopts the approach taken by the United States Court of Appeals for the Third Circuit in *Orozco-Velazquez v. Att'y Gen. U.S.*, 817 F.3d 78 (3d Cir. 2016), to hold that a notice of hearing issued by an Immigration Court may trigger the "stop-time" rule when the DHS has not specified a hearing date in the notice to appear.[5] In its analysis of the "stop-time" rule, *Orozco-Velazquez* relied on section 239(a)(2) to conclude that "Congress's incorporation of [section 239(a)] in its entirety conveys a clear intent: that the government may freely amend and generally supplement its initial [notice to appear]." *Id.* at 83. Since the decision in *Orozco-Velazquez* was issued prior to *Pereira*, its reasoning does not take into account the Supreme Court's determination that the "stop-time" rule

[4] The Court in *Pereira*, 138 S. Ct. at 2115 n.7, reasoned that

> neither the Government nor the dissent offers any convincing basis, much less one rooted in the statutory text, for treating time-and-place information as any less crucial than charging information for purposes of triggering the "stop-time" rule. . . . At bottom, the Government's self-serving position that a notice to appear must specify charging information, but not the time-and-place information, reveals the arbitrariness inherent in its atextual approach to the "stop-time" rule.

[5] The majority reads *Pereira*, which refers to various circuit court decisions, as favorably endorsing *Orozco-Velazquez.* However, the Supreme Court's reference to *Orozco-Velazquez* is limited to a parenthetical explanation of that decision, which describes the case as "holding that the stop-time rule unambiguously requires service of a 'notice to appear' that meets [section 239(a)(1)'s] requirements." *Pereira*, 138 S. Ct. at 2113 n.4. The Court does not refer to or endorse the part of the *Orozco-Velazquez* decision that finds that service of a hearing notice by an Immigration Court can be an event that triggers the stop-time rule.

contains plain and unambiguous language in its description of the event that triggers the "stop-time" rule, namely, the service of a section 239(a)(1) notice to appear.[6]

To the extent that *Orozco-Velazquez* relied on section 239(a)(2) to permit an Immigration Court's notice of hearing to trigger the "stop-time" rule, its rationale directly conflicts with *Pereira*'s reading of that statutory provision. As discussed above, the Court in *Pereira* explicitly rejected reliance on section 239(a)(2) as the underpinning for an approach that would excuse the DHS from the requirement that it specify the time and place of hearing in its notice to appear in order to trigger the "stop-time" rule. The Court in *Pereira* found that, "[b]y allowing for a 'change or postponement' of the proceedings to a 'new time or place,' paragraph (2) presumes that the Government has already served a 'notice to appear under section [239(a)]' that specified a time and place as required by [section 239(a)(1)(G)(i)]." *Pereira*, 138 S. Ct. at 2114. Otherwise, as the Court explained, there would be no time or place to change or postpone.

In reaching its result, the majority conflates an Immigration Court's service of a "notice of hearing" with the DHS's service of a "notice to appear." The majority essentially amends Congress' plain language description of the triggering event in the "stop-time" rule (DHS service of the "notice to appear") by adding an additional triggering event (Immigration Court service of a "notice of hearing"), so that the "stop-time" rule can be triggered by either event, whichever occurs first. The distinction between a "notice to appear" issued by the DHS and a "notice of hearing" issued by an Immigration Court is well understood. An Immigration Court does not serve a "notice to appear" because neither the Immigration Court nor an Immigration Judge has been delegated such authority. *See* 8 C.F.R. § 239.1 (designating the DHS officials authorized to serve a "notice to appear" in accordance with section 239(a) of the Act).

The majority reasons that because a notice of hearing sent by an Immigration Court resolves concerns about adequate notice and also provides a benchmark for stopping accrual of physical presence, the purposes of the "stop-time" rule would be met under their approach. This may be true, but such an approach does not take into account the plain text analysis of the "stop-time" rule outlined by the Supreme Court in *Pereira*, and it ignores the Court's recognition that the "stop-time" rule is triggered by service of a

[6] A section 239(a)(1) notice to appear is the charging document issued by the DHS on a Form I-862 (Notice to Appear). The Form I-862 provides all of the information required by section 239(a)(1) of the Act, and it leaves blank space for specification of the charges against the alien and the time and place of the hearing. Under the "stop-time" statute, the DHS may amend and reissue its initial notice to appear, and the DHS's service of a reissued notice to appear specifying the date of hearing may trigger the "stop-time" rule.

section 239(a)(1) "notice to appear" that specifies the time and place of hearing as an essential part of the charging document. It also ignores the implementing regulations that recognize that only the DHS can issue a "notice to appear" in accordance with section 239(a) of the Act. 8 C.F.R. § 239.1. Because the Act provides an explicit definition of a section 239(a)(1) "notice to appear" and the "stop-time" rule explicitly refers to that definition, the plain language of the statute controls.

According to this plain language, an Immigration Court's service of a notice of hearing cannot trigger the "stop-time" rule. However, the Court's decision in *Pereira* does not preclude the DHS from serving a new notice to appear that meets the requirements of the "stop-time" rule. *See, e.g.*, *Moscoso-Castellanos v. Lynch*, 803 F.3d 1079, 1082 (9th Cir. 2015) (noting that when the initial notice to appear did not specify a date of hearing, "accrual of physical presence did not stop until [the alien] was served a second [notice to appear] that included the missing hearing information" (citing *Garcia-Ramirez v. Gonzalez*, 423 F.3d 935, 937 n.3 (9th Cir. 2005))).[7]

Additionally, proof of 10 years of continuous physical presence is just one among many eligibility requirements for cancellation of removal. The applicant must also demonstrate that (1) removal would cause "exceptional and extremely unusual hardship" to a citizen or lawful permanent resident spouse, child, or parent; (2) the applicant has "good moral character"; (3) the applicant was not inadmissible or removable for specified criminal offenses; and (4) relief from removal should be granted in the exercise of discretion. Sections 240A(b)(1)(B)–(D) of the Act.

Entry of a final order of removal is also relevant to accrual of continuous physical presence. *See, e.g.*, *Matter of Cerna*, 20 I&N Dec. 399, 400–01 (BIA 1991) (holding that the residence requirement for a waiver of deportation under former section 212(c) of the Act, 8 U.S.C. § 1182(c) (1988), ends upon entry of a final order of removal); *Matter of Chang*, 10 I&N Dec. 14, 16 (BIA 1962) (same with regard to the physical presence requirement for suspension of deportation under former section 244(a) of the Act, 8 U.S.C. § 1254(a) (1958)). The entry of an in absentia order of removal after notice of the consequences of failure to appear for removal proceedings also renders an alien ineligible for cancellation of removal for 10 years after the date of the final order of removal. Section 240(b)(7) of the Act, 8 U.S.C. § 1229a(b)(7) (2012).

[7] Of course, the Court in *Pereira* abrogated *Moscoso-Castellanos* insofar as the Ninth Circuit deferred to the Board's decision in *Matter of Camarillo*. The Ninth Circuit's approach prior to *Camarillo* presents an aspect of the circuit court conflict referred to in *Pereira*, as well as an approach that is fully consistent with the Court's holding and reasoning there.

III. JURISDICTION

In *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (2018), the Board held that a section 239(a)(1) notice to appear that does not specify the time and place of an alien's initial removal hearing vests an Immigration Judge with jurisdiction over the removal proceedings and meets the requirements of section 239(a) of the Act, so long as a notice of hearing specifying this information is later sent to the alien. In so holding, we distinguished *Pereira*, noting that "the Court did not hold that proceedings initiated by a notice to appear that fails to specify a time, date, and place for the initial hearing should be terminated." *Id.* at 444. Application of the "stop-time" provision affects eligibility for cancellation of removal, a discretionary form of relief, while determination of Immigration Court jurisdiction involves termination of proceedings. Different statutory and regulatory frameworks govern each of these distinct issues.

The Second, Sixth, and Ninth Circuits, in decisions addressing Immigration Court jurisdiction, have recently approved the Board's reasoning and holding in *Bermudez-Cota*, while emphasizing that the "stop-time" issue addressed in *Pereira* involves a distinct and separate issue. *See Banegas Gomez v. Barr*, No. 15-3269, 2019 WL 1768914, at *6–8 (2d Cir. Apr. 23, 2019); *Karingithi v. Whitaker*, 913 F.3d 1158, 1160–62 (9th Cir. 2019); *Hernandez-Perez v. Whitaker*, 911 F.3d 305, 312–15 (6th Cir. 2018).

As the Sixth Circuit explained, "The issue in *Pereira* required the Court to begin by looking to the plain text of the stop-time statute, which provides that the period of continuous physical presence necessary to qualify for cancellation of removal ends 'when the alien is served a notice to appear under section [239(a)].'" *Hernandez-Perez*, 911 F.3d at 313. The court pointed out that "based on the plain text of the statute, it is clear that to trigger the stop-time rule, the Government must serve a notice to appear that, at the very least, 'specif[ies]' the 'time and place' of the removal proceedings." *Id.* (alteration in original) (quoting *Pereira*, 138 S. Ct. at 2114). The court acknowledged that there is "some common-sense discomfort in adopting the position that a single document labeled 'Notice to Appear' must comply with a certain set of requirements for some purposes, like triggering the stop-time rule, but with a different set of requirements for others, like vesting jurisdiction with the immigration court." *Id.* at 314. However, referring to the breadth of *Pereira*'s holding on the "stop-time" rule, the court noted that the importation of that approach into the jurisdictional context "would have unusually broad implications." *Id.*

In *Karingithi*, the Ninth Circuit noted that "*Pereira* was not in any way concerned with the Immigration Court's jurisdiction." *Karingithi*, 913 F.3d at 1159. Rather, the court emphasized that "*Pereira*'s analysis hinges on 'the intersection' of two statutory provisions: [section 240A(d)(1)'s] stop-time rule and [section 239(a)'s] definition of a notice to appear." *Id.* at 1161 (quoting *Pereira*, 138 S. Ct. at 2110). The court noted that the "stop-time rule is not triggered by *any* 'notice to appear'—it requires a 'notice to appear *under* section [239(a)].'" *Id*. (quoting section 240A(d)(1) of the Act). The court concluded that "*Pereira* treats this statutory cross-reference as crucial: 'the word "under" provides the glue that bonds the stop-time rule to the substantive time-and-place requirements mandated by [section 239(a)].'" *Id*. (quoting *Pereira*, 138 S. Ct. at 2117); *see also Banegas Gomez*, 2019 WL 1768914, at *7 ("The result in *Pereira* was based on the intersection of *two* statutory provisions, one of which, addressing the stop time rule, is not relevant to [the alien's] proceeding at all.").

IV. CONCLUSION

Congress, in section 240A(d)(1)(A) of the Act defined the event that triggers the "stop-time" rule as "service of a notice to appear under section 239(a)." The Court in *Pereira*, 138 S. Ct. at 2114–15, held that Congress' reference to "service of a notice to appear under section 239(a)," means a "notice to appear" as defined in section 239(a)(1) of the Act. The Court also held that, "[b]ased on the plain language of the statute, it is clear that to trigger the stop-time rule, the Government must serve a notice to appear that, at the very least, 'specif[ies]' the 'time and place' of the removal proceedings." *Id.* at 2114 (alteration in original) (quoting section 239(a)(1) of the Act). As the Court concluded, "At the end of the day, given the clarity of the plain language, we 'apply the statute as it is written.'" *Id.* at 2119–20. The plain language of the Act leaves no room for the majority's conclusion that a subsequent notice of hearing can cure a notice to appear that fails to specify the time and place of the initial removal hearing.

For these reasons, neither the service of the notice to appear nor the subsequent service of a notice of hearing on the respondents triggered the "stop-time" rule for purposes of cancellation of removal under section 240A of the Act. We therefore respectfully dissent.