ICE UN-DOCUMENTED: HOW *CAMPOS-CHAVES* ALLOWS ICE TO DISOBEY CONGRESS WITH DEFECTIVE NOTICES TO APPEAR

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ABSTRACT

The issuance of defective Notices to Appear ("NTA"), the charging document in immigration court, has become a recurrent and systemic failure in the contemporary U.S. immigration system. Under INA § 239(a)(1)(G)(i), an NTA must specify the time and place *of removal proceedings. Despite clear statutory language, ICE routinely issues NTAs that omit one or both of these critical details, and thereby undermines the procedural protections Congress intended NTAs to contain as the charging and case-initiating documents for noncitizens in removal proceedings. Courts have recognized that the absence of a statutorily compliant NTA can jeopardize noncitizens' ability to attend immigration court proceedings. This ICE malfeasance exposes noncitizens to "*in absentia*" removal orders, which effectively deprive them of notice, due process, and rights guaranteed under federal law and in immigration court. ICE's practices have generated considerable litigation, including three U.S. Supreme Court decisions in* Pereira *(2018),* Niz-Chavez *(2021), and* Campos-Chaves *(2024). This article examines the consequences of ICE's failure to comply with the statutory notice requirements mandated by INA § 239, including illustrative case examples from Hofstra Law School's Deportation Defense Clinic, demonstrating how defective NTAs prejudice noncitizens. One clinic client is "Maria," whose story was previously described in* The ICE Trap: Deportation Without Due Process*, published in the UCLA Law Review. Another clinic client, "Oscar," is introduced in this article. Oscar's case was described in an amicus brief filed with the U.S. Supreme Court in* Campos-Chaves*. This article concludes with proposed solutions to address the pervasive problem of ICE disobeying Congress by issuing defective NTAs.*

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INTRODUCTION

> "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."

– Justice Neil Gorsuch, writing for the majority of the U.S. Supreme Court in *Niz-Chavez v. Garland*

A. *The Government's Obligation of Fairness and the Purpose of Notice*

Notwithstanding assumptions made by some in the media, government, and public, immigrants show up to court.[1] This is understandable given the gravity of failing to do so. A noncitizen[2] who does not attend immigration court receives an *in absentia* removal order, or is ordered deported in one's absence, once the government meets its burden to establish the noncitizen is removable.[3] This framework presupposes that the government has provided proper notice of the proceedings in accordance with Congress's statutory requirements. Congress envisioned that, prior to immigration court proceedings commencing, a noncitizen would be served with a Notice to Appear

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1. Ingrid Eagly & Steven Shafer, *Measuring In Absentia Removal in Immigration Court*, AM. IMMIGR. COUNCIL (Jan. 2021), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/measuring_in_absentia_in_immigration_court.pdf [https://perma.cc/6VZD-WD6Q]; *contra* Ximena Bustillo & Rahul Mukherjee, *NPR Analysis Shows Skyrocketing Number of "No-Shows" in Immigration Court*, NPR (Dec. 22, 2025), https://www.npr.org/2025/12/22/nx-s1-5583971/trump-ice-immigration-arrests-deportation-no-shows [https://perma.cc/554R-NU5R]. However, recent ICE arrests of those appearing in immigration court may be creating a trend of increased absenteeism in immigration court during the second Trump Administration. *See* Bustillo & Mukherjee, *supra*.

2. The term "noncitizen" is used in this article to avoid use of the statutory term "alien" found in the Immigration and Nationality Act ("INA"), which is dehumanizing. *See Think Immigration: From "Alien" to "Noncitizen": The Subtle Power of Language in U.S. Appellate Courts*, AM. IMMIGR. LAWS. ASS'N (Sept. 10, 2024), https://www.aila.org/library/think-immigration-from-alien-to-noncitizen-the-subtle-power-of-language-in-u-s-appellate-courts [https://perma.cc/D7HB-ZBUE]. Noncitizen is also more precise and broadly defined than words like "undocumented," which may be used more colloquially but often do not accurately reflect the case status of individuals, such as those with Deferred Action for Childhood Arrivals ("DACA"), who have documentation like deferred action and employment authorization, but do not have temporary or permanent immigration status. The terms "immigrant" and "nonimmigrant" are also inaccurate since "immigrant" implies intent to remain in the U.S. and "nonimmigrant" implies the intent to remain in the U.S. for only a temporary visit. *See* 8 U.S.C. § 1101.

3. 8 U.S.C. § 1229a(b)(5); *see also* Matter of Laurent Castro, 29 I&N Dec. 419 (B.I.A. 2026) (holding *in absentia* removal order shall be issued, instead of continuing removal proceedings, where respondent was served with notice to appear, DHS established removability, and respondent failed to appear).

("NTA"), which is the charging document in immigration court.[4] An[5] NTA is a formal legal notice that, once filed in immigration court by the Department of Homeland Security ("DHS"), initiates removal[6] proceedings against a noncitizen.[7] Upon filing, the immigration court where the NTA is filed obtains jurisdiction over the case, and removal proceedings determining whether the individual is permitted to remain in the United States have begun.[8] The following DHS agencies have the authority to issue an NTA: (1) U.S. Citizenship and Immigration Services ("USCIS"), (2) U.S. Immigration and Customs Enforcement ("ICE"), and (3) Customs and Border Protection ("CBP").[9] This article analyzes problems that result when ICE files defective NTAs in immigration court removal proceedings.

B. *INA § 239 and Its Requirements*

When issuing an NTA, DHS is required to provide all of the information required under Section 239 of the Immigration and Nationality Act ("INA").[10] First, the NTA assigns or lists a unique File Number (or "A-number" for alien number), which is located on the upper right-hand corner of the document.[11] Second, the NTA provides the respondent's information, such as their name, date of birth, address, and phone number.[12] Third, the NTA must indicate what type of proceeding is being initiated, which will be one of three scenarios: (1) arriving noncitizen (typically at a land border or airport); (2) noncitizen present without admission or parole (those who entered the U.S. without being legally admitted); or (3) admitted but removable (legally entered the U.S. but may be subject to removal).[13] Fourth, the NTA must make allegations, and/or provide a list of facts that the DHS alleges make the respondent (i.e., the noncitizen responding to the NTA) subject to removal from the U.S.[14] Fifth, the NTA must provide a charge of removability, or the specific provisions under the INA that purportedly justify the noncitizen's

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4. 8 CFR § 1003.13; *4.2 - Commencement of Removal Proceedings*, U.S. DEP'T OF JUST., https://www.justice.gov/eoir/reference-materials/ic/chapter-4/2 [https://perma.cc/MP4C-T467] (last visited Nov. 17, 2025).

5. For readability, this article refers to "an NTA" throughout to refer to "a notice to appear" rather than "a NTA." Similarly, readability led the authors to exclude "the" preceding some references to government agencies like "DHS" or "EOIR" in some instances.

6. Removal is the statutory term of art for deportation under the INA. 8 U.S.C. §§ 1229a–1229c.

7. *4.2 - Commencement of Removal Proceedings, supra* note 5.

8. *Id.*

9. *Id.*

10. *See generally* INA § 239 (outlining the initiation of removal proceedings). Please also note that the INA is codified under 8 U.S. Code ("U.S.C."), and INA citations are often listed as 8 U.S.C. citations online, e.g., INA § 239 is listed as 8 U.S.C. § 1229. While it is the same law, the INA is cited in Immigration Court, and 8 U.S.C. is cited in Federal Court.

11. Mehedi Hasan, *What is the Notice to Appear (NTA) in U.S. Immigration Proceedings*?, FAYAD LAW (Aug. 13, 2024), https://fayadlaw.com/2024/08/13/what-is-the-notice-to-appear-nta-in-u-s-immigration-proceedings/ [https://perma.cc/P9B4-M97Q].

12. *Id.*

13. *Id*; 8 U.S.C. § 1229(a)(1)(A).

14. 8 U.S.C. § 1229(a)(1)(C).

removal.[15] Sixth, per INA § 239, the DHS must include the immigration court hearing information, which includes the address of the immigration court, and the date and time of the respondent's first hearing.[16] If the NTA is (1) properly served, (2) DHS meets its burden to establish alienage, and (3) the noncitizen fails to appear for the immigration court hearing, the immigration judge ("IJ") can – and typically does – order removal *in absentia*.[17] Faced with the serious consequence of receiving an *in absentia* removal order, noncitizens make extraordinary efforts to appear at their hearings.[18]

C. *Putative[19] NTAs and the Myth of Noncitizen Nonappearance Rates*

Because the NTA operates as the statutory mechanism that both commences removal proceedings and furnishes noncitizens with the requisite notice of their legal obligations, its issuance by the DHS constitutes a necessary precondition to securing their appearance before the immigration court. Yet, notwithstanding this statutory scheme, senior government officials have at times advanced misleading characterizations regarding the rates with which noncitizens appear for their proceedings. Former Vice President Mike Pence falsely claimed that "90 percent of [immigrants] don't show up [for their hearing]."[20] The Department of Justice ("DOJ") echoed this falsity, claiming in 2019 that 44% of non-detained immigrants missed their hearings.[21] This misleading data is gathered using an unusual calculation offered by the Executive Office for Immigration Review ("EOIR"), in which annual *in absentia* rates are calculated by dividing the number of removal orders by the number of immigration judges' initial decisions resolving cases.[22] EOIR's data reflects decided cases, and does not account for pending matters, in

15. *Id*. § 1229(a)(1)(D).
16. *Id*. § 1229(a)(1)(G)(i).
17. *Id*. § 1229a(b)(5).
18. Eagly & Shafer, *supra* note 2.
19. Justice Sotomayor, writing for the majority of the U.S. Supreme Court in Pereira v. Sessions, describes notices to appear that lack the time or place as "putative." 585 U.S. 198, 206 (2018). Scholars and advocates also refer to defective NTAs as 'putative.' *See* Dan Kessel Brenner et al., *Practice Advisory: Challenging the Validity of Notices to Appear Lacking Time-and-Place Information*, NAT'L IMMIGR. PROJECT OF THE NAT'L LAWS. GUILD & IMMIGR. DEF. PROJECT, at 4 n.2 (July 16, 2018), https://www.immigrantdefenseproject.org/wp-content/uploads/FINAL_Pereira_Advisory_updated_July_16th_2018.pdf [https://perma.cc/WD7F-BFTC] ("We use the descriptor 'putative' to distinguish a document that DHS styles as a Notice to Appear and uses to initiate removal proceedings but that is deficient, from a properly completed Notice to Appear that has full legal effect under the INA.").
20. Salvador Rizzo, *How Many Migrants Show up for Immigration Court Hearings?*, WASH. POST (July 26, 2019), https://www.washingtonpost.com/politics/2019/06/26/how-many-migrants-show-up-immigration-court-hearings/ [https://perma.cc/34UG-MCL4].
21. *Id*. The DOJ's 44 percent figure is incorrect because it relies on EOIR's method of dividing *in absentia* removal orders by completed case decisions in a given year—rather than by the total number of scheduled hearings—thereby excluding pending cases and failing to account for defective NTAs or lack of proper notice, which significantly inflates the apparent rate of nonappearance. *See* Eagly & Shafer, *supra* note 2, at 9.
22. Eagly & Shafer, *supra* note 2, at 7.

which hearing appearances may or may not have been made.[23] Flawed EOIR statistics, rather than the raw data, have been relied upon by lawmakers to expand immigration detention policy.[24] Scholars[25] and the U.S. Government Accountability Office, which provides nonpartisan analysis to Congress concerning legislative decisions, agree that the EOIR's data collection practices are concerning and misrepresentative.[26] EOIR's data also does not account for cases involving defective NTAs, in which a noncitizen receives an NTA devoid of specific and statutorily mandated information, such as the time and place of the proceedings, that would enable them to appear in court.[27]

Properly collected data concerning noncitizen appearance rates in immigration hearings demonstrates the reality of what occurs at these proceedings. From 2008 to 2018, 83% of noncitizens who are not detained and who have cases in removal proceedings that are completed or pending attended *all* of their hearings.[28] Access to legal counsel increases attendance compliance, as 96% of non-detained noncitizens who were represented by a lawyer attended all their hearings in the same ten-year timeframe.[29]

This level of attendance exists in spite of the persistent and widespread governmental noncompliance with the time and place requirements of INA § 239. In fact, in 2018, the DHS admitted to leaving out the date, time, and place of the initial hearing in "almost 100 percent" of the NTAs issued in removal proceedings initiated by the government.[30] Despite the government's clear and unambiguous obligations to provide this basic information in a single document on an NTA,[31] the Supreme Court held in *Campos-Chaves v. Garland* that a noncitizen cannot rescind an *in absentia* removal order when the initial NTA lacked the time and place information.[32] The Court held that it was permissible for the time and place information to be noted as "to be determined" as long as a noncitizen thereafter received a subsequent notice from the EOIR immigration court providing that information.[33] The Court imposed no deadline, however, governing when such follow-up notice

23. *Id.* at 9; *see also* TRAC Reports, *Immigration Court Quick Facts*, https://tracreports.org/immigration/quickfacts [https://perma.cc/J4JP-EPMR] (at the end of August 2025, 3,432,519 active cases were pending before the Immigration Court) (last visited Nov. 13, 2025).

24. Eagly & Shafer, *supra* note 2, at 6.

25. *Id.* at 18–19.

26. U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-106867, IMMIGRATION COURTS: ACTIONS NEEDED TO TRACK AND REPORT NONCITIZENS' HEARING APPEARANCES (Dec. 19, 2024), https://www.gao.gov/products/gao-25-106867 [https://perma.cc/A3U4-CB97].

27. Eagly & Shafer, *supra* note 2, at 11.

28. *Id.* at 4.

29. *Id.* at 19; *see generally Why Immigrants Need Access to Legal Counsel*, NAT'L IMMIGRANT JUST. CTR., https://immigrantjustice.org/issues/immigrants-need-access-to-counsel/ [https://perma.cc/PX4R-5TGN] (noting other benefits to access to counsel) (last visited Nov. 13, 2025).

30. Pereira v. Sessions, 585 U.S. 198, 205 (2018) (explaining that at oral argument in *Pereira*, counsel for the government acknowledged that "almost 100 percent" of NTAs issued over the past three years had left the date, time, and place of the proceeding "to be determined").

31. *See* 8 U.S.C. § 1229; Niz-Chavez v. Garland, 593 U.S. 155, 161, 170 (2021) (holding that the statute requires "a single and comprehensive notice" rather than a series of fragmented documents).

32. Campos-Chaves v. Garland, 602 U.S. 447, 465 (2024).

33. *Id.* at 461–62.

must issue and did not examine whether such corrective notices are consistently or promptly provided in practice.[34] The entrenched practice by the DHS of issuing defective NTAs—now permitted by the Supreme Court notwithstanding the statute's plain text—illustrates that the government faces little accountability for issuing substantively defective NTAs, while noncitizens are foreclosed in many cases from reopening *in absentia* removal orders that arise from such defects.

It is unsurprising that noncitizens attend their immigration proceedings given what is at stake. As previously discussed, if a noncitizen fails to appear in removal proceedings, a judge will order the noncitizen's removal *in absentia*.[35] The finality of an *in absentia* removal order is especially troubling in the context of defective NTAs. With the DHS's demonstrated history of issuing NTAs without a hearing date, time, or place, such omissions often result in noncitizens having no awareness of when or where to appear in immigration court to defend themselves from deportation.[36] Putative NTAs further complicate an immigration system that arriving noncitizens often have very little knowledge about and already have difficulty navigating.[37] This dynamic defies the plain and unambiguous statutory language of INA § 239, and implicates serious concerns regarding due process for noncitizens in the U.S. immigration court system.[38]

This article explores the consequences of the DHS's failure to comply with the basic notice requirements Congress mandated in INA § 239. ICE's failure to comply with INA § 239 has resulted in three landmark U.S. Supreme Court cases.[39] Each case grapples with the meaning of INA § 239 and its impact on immigration enforcement, noncitizens, and removal proceedings generally.[40] Part I of this article analyzes INA § 239, including its statutory structure, interpretation, and meaning. A summary of relevant case law and a literature review is also provided. Despite the clear language and intent of this Congressional statute, ICE has boldly flouted INA § 239's requirements, causing noncitizens to miss their hearings.

Part II provides representative case examples drawn from the Maurice A. Deane School of Law at Hofstra University's Deportation Defense Clinic,

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34. *See id.* at 464–65; 8 U.S.C. § 1229(a)(2) (requiring written notice of the time and place of proceedings but not prescribing a timeframe within which such notice must be provided).

35. 8 U.S.C. § 1229a(b)(5).

36. *See* Jeremy McKinney, *Think Immigration: BIA Hands Immigration Judges the Whiteout to "Fix" Defective NTAs*, AM. IMMIGR. LAWS. ASS'N (Sept. 12, 2024), https://www.aila.org/think-immigration-bia-hands-immigration-judges-the-whiteout-to-fix-defective-ntas [https://perma.cc/E263-4LFJ].

37. *See id.*; *see also* Lugo-Resendez v. Lynch, 831 F.3d 337, 345 (5th Cir. 2016) (noting the courts "should give due consideration to the reality that many departed aliens are poor, uneducated, unskilled in the English language, and effectively unable to follow developments in the American legal system—much less read and digest complicated legal decisions").

38. McKinney, *supra* note 37.

39. *See* Pereira v. Sessions, 585 U.S. 198 (2018); Niz-Chavez v. Garland, 593 U.S. 155 (2021); Campos-Chaves v. Garland, 602 U.S. 447 (2024).

40. *See* Campos-Chaves v. Garland, 602 U.S. 447 (2024).

illustrating how ICE's issuance of defective NTAs creates a demonstrably unfair process for noncitizens in removal proceedings. Part III analyzes the recent Supreme Court decision in *Campos-Chaves v. Garland*, which sought to address the DHS's continued practice of issuing defective NTAs. Instead of confirming the clear and simple notice requirements under INA § 239, the Court effectively authorizes ICE to continue disregarding the law.[41] Part IV proposes a path forward to restore due process, notice, U.S. Supreme Court precedent, compliance with INA § 239, and fundamental fairness.

Again, while the plain language of INA § 239 is clear, after *Campos-Chaves*, further Congressional action may be needed to require single-document NTAs and provide a remedy for the rescission of *in absentia* removal orders after the DHS issuance of putative NTAs. What should be the most basic and fundamental guarantee of a noncitizen's due process when facing removal from the United States – notification of when and where one can appear to contest removal – has become unnecessarily perplexing, unjust, and harmful.

I. DHS'S REFUSAL TO LIST DATE AND TIME DESPITE INA § 239'S MANDATE

A. *Statutory Shifts and the Institutional Facilitation of the DHS's Noncompliance*

The government bears a statutory and constitutional obligation to provide litigants with proper notice of immigration court proceedings. Per INA § 239, NTAs "shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the [noncitizen] or to the [noncitizen's] counsel of record, if any)."[42] INA § 239 lists what a valid NTA must contain, including: (1) the nature of the proceedings,[43] (2) the legal authority under which the proceedings are conducted,[44] (3) the acts or conduct alleged to be in violation of law,[45] (4) the charges against the individual,[46] and (5) the time and place at which the proceedings will be held.[47] Congress required the DHS to provide this information on the NTA, as the charging document, so that basic procedural safeguards exist to ensure respondents receive fair notice and an opportunity to be heard.[48]

In codifying INA § 239, Congress sought to establish clear procedures for initiating removal proceedings against noncitizens.[49] Doing so reflects a

41. *Id.*
42. 8 U.S.C. § 1229(a)(1).
43. *Id.* § 1229(a)(1)(A).
44. *Id.* § 1229(a)(1)(B).
45. *Id.* § 1229(a)(1)(C).
46. *Id.* § 1229(a)(1)(D).
47. *Id.* § 1229(a)(1)(G)(i).
48. 62 Fed. Reg. 10332 (Mar. 6, 1997), as amended by 86 Fed. Reg. 70722 (Dec. 13, 2021) (implementing Congress's transition from the former exclusion and deportation system to unified removal proceedings commenced by a Notice to Appear, the statutory charging document under the amended INA).
49. *Id.*

balance between efficiently enforcing immigration law while safeguarding a noncitizen's opportunity to be notified and heard in proceedings.[50] The guarantees that notice requires time and location of hearings pursuant to INA § 239(a)(1)(G)(i) reinforce fairness amid the prospect of *in absentia* removal orders—ensuring that proper notice serves to provide information so that noncitizens can appear and to prevent the issuance of removal orders without the noncitizen's knowledge.[51] The alternative, or providing no notice, or notice without this required information, is inherently unjust, effectively depriving noncitizens of any meaningful chance to defend themselves before removal.[52] Congress recognized that if noncitizens do not have knowledge of the time and place of their proceedings, there is a serious risk they will not appear for their hearings, and thus, *in absentia* removal orders would result without any semblance of a process that noncitizens could meaningfully participate in, apply for relief, or defend themselves from removal.[53] Moreover, absent adequate notice, noncitizens face a substantial risk of failing to secure legal representation in a timely fashion.[54] With this backdrop, the fifth element of INA § 239 that requires the time and place of proceedings to be provided on the NTA is consistent with Congressional intent to afford noncitizens the opportunity to be heard.[55]

To better illustrate the reasonableness of the fifth element, let us consider two hypotheticals. First, imagine someone receives a parking violation in the mail. The document does not provide them with details regarding when or how to challenge it. A reasonable person would not have sufficient information to understand when they are required to respond to the charge and would risk missing the hearing and possibly the only opportunity to contest the allegation(s). The ticket may be expensive, and the individual may be concerned about how to afford payment if liability is found. Confronted with such a limited set of information, particularly in the absence of guidance on how to contest the alleged violation, this type of notice and procedure would be manifestly unfair.

For the second hypothetical,[56] the stakes are higher. Marta lives in a rent-stabilized apartment in Brooklyn. She has lived there for eight years. She works nights, speaks limited English, and does not have a lawyer. Her

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50. H.R. Rep. No. 104-469, pt. 1, at 529 (Mar. 4, 1996), https://www.congress.gov/committee-report/104th-congress/house-report/469/1?outputFormat=pdf [https://perma.cc/WH7A-GEZN] (explaining that the amendment "strike a far more appropriate balance between the need to screen out truly frivolous claims and to afford applicants due process").

51. *Supreme Court Allows Deportations Without Adequate Notice, Backtracking on Previous Rulings*, AM. IMMIGR. COUNCIL (June 24, 2024), https://www.americanimmigrationcouncil.org/blog/supreme-court-allows-deportations-without-notice-backtracking-previous-rulings/ [https://perma.cc/3YQW-NLR6].

52. *Id.*

53. McKinney, *supra* note 37.

54. *Id.*

55. 62 Fed. Reg. at 10332, as amended by 86 Fed. Reg. at 70722. Congress changed the process from "Order to Show Cause" to "Notice to Appear," including the section mandating time and place of proceedings. *See id.*

56. This hypothetical was provided by Hofstra Professor G. Alex Sinha and is included here with gratitude.

landlord files a petition in Housing Court alleging nonpayment of rent. Under state law, Marta must receive proper service of the petition and notice of the court date before the court can adjudicate her case. The landlord's process server claims that service was completed by affixing papers to her door and mailing a copy—a method known as "nail and mail." But Marta never receives the papers.

Unbeknownst to her, the landlord has developed a pattern: he files cases in bulk, uses the same process server repeatedly, and relies on "nail and mail" service in buildings where he or his agents have access to tenants' mail areas. Tenants later report missing court notices. In some cases, neighbors say they saw building staff remove papers from doors. Marta does not appear in court because she does not know there is a court date. The landlord appears alone. He presents the affidavit of service. The court, seeing no tenant present, enters a default judgment. A warrant of eviction is issued. Weeks later, Marta comes home to find a marshal's notice taped to her door. She learns—for the first time—that she has a case in Housing Court and that she has already lost.

To vacate the default, she must now take even more time off work, likely retain an attorney, file a motion, and persuade the court both that she had a reasonable excuse for not appearing and that she has a meritorious defense. The burden has shifted to her.

These hypotheticals are analogous to the DHS's issuance of putative NTAs to noncitizens facing removal proceedings. DHS's failure to notify noncitizen respondents of the time and place of their removal proceedings undermines the very purpose of having court proceedings at all. Immigration courts cannot fairly adjudicate cases, provide due process, or protect noncitizen rights if the respondents whose cases are before the court are not aware of where or when to appear. Unsurprisingly, this structural breakdown in notice has not gone unnoticed by scholars and practitioners. Some commentators have described immigration court as a "traffic court for death penalty cases."[57] This characterization reflects the fact that, unlike in criminal court, respondents have no right to government-appointed counsel, and procedural and due process protections are comparatively limited.[58] Nevertheless, the proceedings involve matters of the highest consequence, including cases—such as those involving applications for asylum—where individuals may face persecution or death upon deportation.[59]

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57. *Death Penalty Cases in Traffic Court Setting*, IMMIGRANT L. CTR. OF MINN. (Mar. 31, 2020), https://www.ilcm.org/latest-news/death-penalty-cases-in-traffic-court-setting/ [https://perma.cc/5KNJ-C26R].

58. *Id.*

59. Karolina Walters, *Supreme Court Rejects Government Practice of 'Notice-by-Installment in* Niz-Chavez v. Garland, IMMIGR. IMPACT (Apr. 30, 2021), https://immigrationimpact.com/2021/04/30/notice-to-appear-niz-chavez-supremecourt-ruling/#.YTuOWC1h1hA [https://perma.cc/SGP2-YNUF]; *see also* ASYLUM SEEKER ADVOC. PROJECT & CATHOLIC LEGAL IMMIGR. NETWORK, DENIED A DAY IN COURT: THE GOVERNMENT'S USE OF IN ABSENTIA REMOVAL ORDERS AGAINST FAMILIES SEEKING ASYLUM 20–21 (2019), https://asylumadvocacy.org/wp-content/uploads/2018/04/Denied-a-Day-in-Court-2019-Update.pdf [https://perma.cc/8NH7-QNPC].

This article focuses primarily on the DHS's repeated flouting of the fifth element: providing the time and place that removal proceedings will be held. Despite the plain language of INA § 239(a)(1)(G), ICE has continually issued NTAs that omit this required information.[60] As noted previously, the issuance of an NTA provides a noncitizen with basic but vital information to protect from an unjust *in absentia* removal order.[61] When DHS files an NTA with EOIR, removal proceedings begin.[62] The DHS's failure to comply with INA § 239 has resulted in many consequences, one of which is litigation.[63] Despite ICE's repeated violations of the straightforward requirements set forth in INA § 239, the Court in *Campos-Chaves* curtailed the remedial force of the *Niz-Chavez* decision, discussed below, by holding that the government's failure to include statutorily mandated information in an NTA does not permit noncitizens to reopen *in absentia* removal orders.[64]

INA § 239 was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), the sweeping immigration reform legislation signed into law by President Clinton.[65] Although the statute repeatedly references the "Attorney General" as the official charged with issuing and serving NTAs, subsequent administrative restructuring transferred this authority to the DHS.[66] Courts have recognized this delegation in analyzing how statutory references to the attorney general in Section 239 should be understood in light of the DHS's current responsibilities to draft, serve, and file NTAs.[67] This delegation also has implications for the statutory requirements imposed on noncitizens, particularly the obligation to update their address with the appropriate government entity, which shifts depending on whether an NTA has been filed with the immigration court and which agency—the DHS or EOIR—exercises control over the case at that stage. In practice, the DHS exercises exclusive control over a noncitizen's case prior to the filing of an NTA, after which jurisdiction vests with the immigration courts under the EOIR, where DHS assumes the role of the noncitizen's adversary.[68]

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60. Pereira v. Sessions, 585 U.S. 198, 204–05 (2018) (explaining that at oral argument in *Pereira*, counsel for the government acknowledged that "almost 100 percent" of NTAs issued over the past three years had left the date, time, and place of the proceeding "to be determined").

61. DENIED A DAY IN COURT: THE GOVERNMENT'S USE OF IN ABSENTIA REMOVAL ORDERS AGAINST FAMILIES SEEKING ASYLUM, *supra* note 60 at 20–21.

62. 8 CFR § 1003.13.

63. Persistent noncompliance with INA § 239's statutory mandates has prompted considerable Supreme Court jurisprudence. *See* Pereira v. Sessions, 585 U.S. 198 (2018); Niz-Chavez v. Garland, 593 U.S. 155 (2021); Campos-Chaves v. Garland, 602 U.S. 447 (2024).

64. *See* Campos-Chaves, 602 U.S. 447.

65. Illegal Immigration Reform and Immigration Responsibility Act of 1996 Pub. L. No. 104–208, 110 Stat. 3009-546 (codified as scattered sections of 8 U.S.C.).

66. *See generally* Fuentes-Pena v. Barr, 917 F.3d 827 (5th Cir. 2019) (recognizing that although INA § 239 refers to the "Attorney General" as responsible for issuing and serving Notices to Appear, those functions were transferred to the Department of Homeland Security following the creation of DHS in 2002).

67. *Id.*

68. *See generally* Matter of Avetisyan, 25 I. & N. Dec. 688 (B.I.A. 2012) (explaining the Department of Homeland Security's exclusive control over a noncitizen's case prior to the filing of a Notice to

INA § 239 provides four mechanisms for changing an NTA. An NTA can be changed with successive documents by (1) correcting clerical errors, (2) changing charges or grounds for removal, (3) reissuing notice if the original document was legally defective, or (4) changing the time and place of the hearing.[69] "Notice of change in time or place of proceedings" under INA § 239(a)(2), as written by Congress, seems to only permit a change after the NTA has already provided time and location information in the first instance, and when the government seeks to change that information.[70] In theory, if a noncitizen does not receive notice in accordance with either INA § 239(a)(1) or INA § 239(a)(2), and subsequently does not appear for their hearing, the noncitizen should be able to request rescission of an *in absentia* removal order due to procedural deficiencies causing a lack of notice and justifying reopening under INA § 240(b)(5)(C)(ii).[71]

Defective NTAs that omit the statutorily required date and time, or time and place, of the hearing function only as putative notices. Within the statutory framework, cancellation of removal under Section 240A of the INA illustrates how narrowly circumscribed relief from removal is. These provisions often operate as limited exceptions rather than broad protections.

ICE's practice of issuing putative NTAs raised a consequential issue: whether a document that fails to comply with statutory notice requirements is nevertheless sufficient to trigger the "stop-time rule" for cancellation of removal. The stop-time rule governs eligibility for cancellation of removal by stopping the accrual of a noncitizen's period of continuous residence or physical presence once a statutorily compliant notice to appear is served.[72] Because cancellation relief requires a specified period of continuous residence, or ten years for non-LPR[73]

Appear, and the shift in jurisdiction to immigration courts under the Executive Office for Immigration Review, where DHS becomes the adversary).

69. *See* 8 U.S.C. § 1229(a) (governing the contents of a Notice to Appear); 8 C.F.R. § 1003.15 (specifying required information in the NTA); 8 C.F.R. § 1003.18(b) (providing for notice of the time and place of hearing); 8 C.F.R. § 1003.30 (permitting additional or substituted charges during removal proceedings); 8 C.F.R. § 239.2(a) (authorizing cancellation of an NTA prior to jurisdiction vesting); *see also Practice Advisory: THE NOTICE TO APPEAR (NTA)*, IMMIGRANT LEGAL RES. CTR. (July 2020), https://www.ilrc.org/sites/default/files/resources/nta_practice_advisory.pdf [https://perma.cc/WH75-5HE2]; *see* INA § 239(a)(2)(A), 8 U.S.C. § 1229(a)(2)(A) ("[I]n the case of any change or postponement in the time and place of such proceedings . . . a written notice shall be given . . . specifying . . . the new time or place of the proceedings."). Additionally, 8 C.F.R. § 239.2(a) authorizes an immigration officer to cancel—and, implicitly, reissue—a Notice to Appear prior to jurisdiction vesting for reasons such as amended or erroneous charges or improvident issuance.

70. 8 U.S.C. § 1229(a)(2)(A)(i) ("[T]he time and place of the proceedings.").

71. *But see* Campos-Chaves v. Garland, 602 U.S. 447, 465 (2024); *see also* Kristin Macleod-Ball, *Practice Advisory: IN ABSENTIA ORDERS*, NAT'L IMMIGR. LITIG. ALL. (June 21, 2024), https://immigrationlitigation.org/wp-content/uploads/2024/06/24.06.21-In-Absentia-PA-updated-FINAL.pdf [https://perma.cc/KLG9-67XV].

72. 8 U.S.C. § 1229b(d)(1) (providing 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 1229(a)"); *see also* Pereira v. Sessions, 585 U.S. 198, 203 (2018) (holding that a document that fails to specify the time and place of removal proceedings is not a "notice to appear under section 1229(a)" and therefore does not trigger the stop-time rule).

73. Non-LPR cancellation of removal, codified at INA § 240A(b), provides relief for certain non-permanent residents who meet statutory eligibility requirements. To qualify, the applicant must have at least ten years of continuous physical presence, demonstrate good moral character during that period, and establish that removal would result in exceptional and extremely unusual hardship to a qualifying U.S.

cancellation and seven years after admission for certain lawful permanent residents, the precise moment at which time stops accruing is often dispositive.

If a defective NTA is sufficient to trigger the stop-time rule, a noncitizen's accrual of qualifying residence ends—even though the government has not provided the notice Congress required to commence proceedings. In practical terms, this means that eligibility for relief can be extinguished before the individual ever receives legally sufficient notice of the hearing that places their status at risk.

In *Pereira v. Sessions*, the Supreme Court held in 2018 that an NTA lacking time and place information does not trigger the stop-time rule under INA § 240A(b).[74] The Court reasoned that Congress expressly required this information as a part of the INA's statutory scheme. In an eight-to-one decision, authored by Justice Sonia Sotomayor, the Court held 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 1229(a) [INA 239(a)],' and so does not trigger the stop-time rule."[75] In the majority's view, the DHS's issuance of putative NTAs with basic information, like the time and place of proceedings, labeled as "to be determined" was inconsistent with Congressional intent.[76] Justice Sotomayor wrote:

> [C]onveying 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. . .[t]o 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.[77]

The Court's analysis of INA § 239 was thus explicitly concerned with the provision of notice to noncitizen respondents in removal proceedings.

Justice Alito was the lone dissenter. Despite having a record of vocal skepticism of *Chevron* deference,[78] Alito displayed a rare acceptance of the

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citizen or lawful permanent resident spouse, parent, or child. The relief is discretionary, and immigration judges consider both statutory eligibility and equitable factors in deciding whether to grant cancellation. LPR cancellation of removal, codified at INA § 240A(a) (8 U.S.C. § 1229b(a)), provides relief for lawful permanent residents who have accrued at least seven years of continuous residence after admission and five years as an LPR, have maintained good moral character, and have not been convicted of disqualifying offenses, including aggravated felonies. Unlike non-LPR cancellation, it does not require a hardship showing. The relief is discretionary, and immigration judges weigh statutory and equitable considerations in determining eligibility.

74. 8 U.S.C. § 1229b(d)(1)(A).

75. *Pereira*, 585 U.S. at 199.

76. *Id*. at 208, 212.

77. *Id*. at 212.

78. Robin Bravender, *Alito Snubs* Chevron*, Obama EPA's 'Eraser'*, POLITICO (Nov. 17, 2016), https://www.eenews.net/articles/alito-snubs-chevron-obama-epas-eraser/ [https://perma.cc/FG54-BPEE] (claiming *Chevron* "usurp[s] Congress' lawmaking authority.").

framework, claiming that the *Pereira* Court was "simply ignoring *Chevron*"[79] and that the Board of Immigration Appeals' ("BIA")[80] interpretation of the statutory scheme is entitled to strong deference.[81]

The Court in *Pereria* affirmed the basic procedural safeguards under INA § 239 that require the government to provide notice of where and when one's first removal hearing will occur. Despite the Court acknowledging the "contradictory and absurd purpose" of allowing noncompliance with INA § 239,[82] ICE has persisted in issuing defective, putative NTAs.[83]

In cases following the *Pereira* decision, the BIA grappled with the DHS's continued practice of issuing NTAs devoid of the time and place of removal proceedings. The BIA had to address the implications of *Pereira* and did so with a series of precedential decisions interpreting *Pereira* narrowly and permitting immigration courts and judges to remedy NTAs for the DHS by providing a subsequent document—called a notice of hearing—that contained the required time and place information for noncitizens.

In *German Bermudez-Cota*, just months after the *Pereira* decision, the BIA held that a defective NTA could be supplemented by a subsequent hearing notice to cure the defect and allow proceedings to move forward.[84] According to the BIA, an NTA lacking the time and date of proceedings nonetheless vests an immigration court with jurisdiction over proceedings and meets the requirements of INA § 239 so long as it is followed by a notice

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79. Pereira v. Sessions, 585 U.S. 198, 222 (2018) (Alito, J., dissenting); *See generally* Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984) with Justice Alito voting with the 6-2 majority).

80. The Board of Immigration Appeals ("BIA") is the highest administrative tribunal within the EOIR, an agency housed in the U.S. Department of Justice. Unlike Article III courts, the BIA is part of the executive branch. Its members are appointed by the attorney general and serve as career administrative adjudicators rather than life-tenured judges. The Board is composed of a Chairman, Vice Chairmen, and a number of Board Members (currently in the mid-twenties). The BIA reviews appeals from immigration judge decisions nationwide as well as certain decisions of the Department of Homeland Security. Most cases are resolved by single-member decisions; a three-member panel is convened in cases presenting novel, complex, or precedential issues. The Board may also issue precedential decisions that bind immigration judges and DHS officers nationwide unless overruled by the attorney general or a federal court. *See Board of Immigration Appeals*, EXEC. OFF. OF IMMIGR. REV., https://www.justice.gov/eoir/board-of-immigration-appeals [https://perma.cc/J76V-3NB3] (last visited Mar. 1, 2026).

81. In the aftermath of *Pereira v. Sessions*, practitioners quickly recognized that many NTAs issued by the DHS were defective because they failed to include the time and place of removal proceedings, raising the question of whether an NTA had ever been "filed" in accordance with INA § 239(a)(1). Practitioners responded by filing motions to terminate removal proceedings, arguing that, under *Pereira*, a procedurally defective NTA could not trigger the start of a removal case and therefore the immigration court lacked jurisdiction. These arguments often cited the Supreme Court's reasoning that proper notice is a prerequisite for the lawful commencement of proceedings, making termination an appropriate remedy. As a result, many motions to terminate were granted by EOIR, effectively dismissing cases where the DHS had attempted to proceed on NTAs that did not comply with statutory requirements. This wave of litigation illustrated both the practical impact of *Pereira* and the judiciary's willingness to enforce the statutory notice requirements Congress had established, reinforcing the principle that noncitizens cannot be subjected to removal without meaningful and complete notice. *See* Brenner et al., *Practice Advisory*, *supra* note 19.

82. Pereira v. Sessions, 585 U.S. 198, 212 (2018).

83. *Featured Issue: The* Pereira *Ruling and Resulting Fake NTAs*, AM. IMMIGR. LAWS. ASS'N (Aug. 13, 2020), https://www.aila.org/library/the-pereira-ruling [https://perma.cc/C6XP-3H3K].

84. In re Bermudez-Cota, 27 I&N Dec. 441 (B.I.A. 2018).

of hearing, properly mailed to the respondent, that includes the time and date of the initial hearing.[85]

By deeming a later hearing notice sufficient to cure the initial defect, these BIA decisions dilute the notice requirement that underpins the respondent's opportunity to be heard—a core component of due process under the Fifth Amendment. When EOIR, the adjudicating agency, itself supplies the missing notice that DHS failed to provide, the line between neutral arbiter and prosecutor blurs, creating a structural bias that offends basic principles of fair procedure.

In *Mendoza-Hernandez*, the BIA largely reaffirmed *Bermudez-Cota*'s holding, distinguishing *Periera*.[86] The BIA held that a deficient NTA that does not include the time and place of a noncitizen's initial removal hearing is perfected by the subsequent service of a notice of hearing specifying that missing information, and thereby satisfying the notice requirements of INA § 239.[87] The recency of *Pereira* and its discussion of noncompliant NTAs being putative had no impact on the BIA's assessment in the matter.

In the wake of *Pereira*, the BIA significantly narrowed the scope of the Supreme Court's holding by interpreting it as applicable solely to the stop-time rule, while declining to extend its reasoning to questions of jurisdiction, notice, or the broader implications of what a *putative* NTA signifies as the document that initiates removal proceedings.[88] By sidestepping this broader inquiry, the BIA effectively permitted the DHS to continue issuing defective, or putative, NTAs—documents that do not satisfy the statutory requirements of INA § 239(a)—thereby leaving unresolved fundamental questions about the legal sufficiency of such notices.[89] This interpretive stance allowed the DHS and ICE to persist in practices that flout the statutory framework and, in doing so, preserved conditions ripe for recurring litigation and future doctrinal uncertainty. While the BIA played a significant role in narrowing holdings of the Court, recently, EOIR proposed a regulation that will substantially narrow the BIA's appellate review by making merits review discretionary, shortening appeal deadlines, and establishing summary dismissal as the default disposition.[90] This guidance will accelerate the finality of removal orders.[91]

Three years after *Pereira*, the U.S. Supreme Court again analyzed whether the government must serve noncitizens with a single NTA with all the statutorily required information under INA § 239, or whether it is legally sufficient, for purposes of the stop-time rule, for the DHS to serve notice over the course of multiple documents. Mr. Agusto Niz-Chavez was served two separate

85. *Id.*
86. Matter of Mendoza-Hernandez, 27 I&N Dec. 520, 531 (B.I.A. 2019).
87. *Id.* at 535.
88. *See* Bermudez-Cota, 27 I&N Dec. 441; Mendoza-Hernandez, 27 I&N Dec. 520.
89. *See* Bermudez-Cota, 27 I&N Dec. 441; Mendoza-Hernandez, 27 I&N Dec. 520.
90. Appellate Procedures for the Board of Immigration Appeals, 91 Fed. Reg. 5267 (Feb. 6, 2026) (to be codified at 8 C.F.R. pts. 1003, 1208, & 1240).
91. *Id.*

documents related to his removal hearing. The first document notified him of the proceedings, and the second, received two months later, provided the details of the hearing, including the time and place. Mr. Niz-Chavez argued that his NTA was improperly served as it was not a single document, which he argued was required under the IIRIRA.

In a 6-3 opinion,[92] authored by Justice Gorsuch, the Court agreed with Mr. Niz-Chavez and held that an NTA sufficient to trigger IIRIRA's stop-time rule must be a single document that contains all the statutorily mandated requirements set forth in INA § 239, such as the place and time of the proceeding. When Mr. Niz-Chavez received his first notice, which was defective, the stop-time rule should not have commenced. The Court analogized the DHS's practice of issuing legally deficient NTAs, followed by a subsequent and valid NTA, to buying a car. As the majority noted, "someone who agrees to buy [a car] would hardly expect to receive the chassis today, wheels next week, and an engine to follow."[93] This illustration comports with the reality of receiving defective NTAs from DHS. Taken alone, an initial and defective NTA, devoid of the time and place of proceedings, does not represent anything resembling the final product. In the majority opinion, the Court criticized the procedural advantage that the DHS's scheme had over noncitizens:

> [T]oday'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.[94]

The Court's invocation of the principle of "turn[ing] square corners" highlights the asymmetry between the state and the individual, particularly noncitizens navigating a complex and opaque removal system.[95] The Court made clear that, because noncitizens already face significant obstacles in understanding and complying with procedural requirements, the government must adhere strictly to Congress's directive to provide a single, comprehensive Notice to Appear, thereby ensuring that proper notice is provided and

92. In Niz-Chavez v. Garland, 593 U.S. 155 (2021), the majority opinion was issued by Justice Gorsuch and joined by Justices Thomas, Breyer, Sotomayor, Kagan, and Barrett. The dissent was authored by Justice Alito and joined by Justices Roberts and Kavanaugh. Since *Niz-Chavez*, the composition of the Court has changed, with Justice Breyer retiring and Justice Jackson joining the bench.

93. *Niz-Chavez*, 593 U.S. at 162.

94. *Id*. at 172.

95. *Id*. at 169 ("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.").

increasing the likelihood that the immigration court process is accessible and fundamentally fair.[96]

Niz-Chavez underscores the significance of a single word—"a"—in statutory interpretation. In Justice Gorsuch's view, the ordinary meaning of the indefinite article "a" connotes "one" notice, not "two or more in combination."[97] This seemingly modest textual point carried profound consequences: because the government had long relied on two-step notices omitting critical information such as the time and place of the hearing, many noncitizens had been deprived of notice and the procedural clarity Congress prescribed.[98] By grounding his reasoning in the ordinary usage of language, Justice Gorsuch emphasized both Congress's prerogative to set procedural rules and the judiciary's duty to enforce those rules as written. This legislative clarity is paramount in an immigration system that is often already very confusing to noncitizens facing removal.[99] Justice Gorsuch's opinion reads as a love letter to grammar, which is how Professor Holtzman teaches the case in Hofstra's Deportation Defense Clinic.

Following *Niz-Chavez*, ICE's violations of INA § 239 persisted, and the BIA was forced to continue to grapple once again with the DHS issuing statutorily noncompliant NTAs. The BIA maintained that a defective NTA, followed by a subsequent, properly served, and statutorily compliant notice, could still lead to an *in absentia* removal order if the subsequent notice is not heeded by a noncitizen.[100] The BIA also considered the time and place requirement in INA § 239(a)(1) to be a claim-processing rule, not a jurisdictional requirement.[101] Moreover, the BIA held that an objection to a noncompliant notice is generally considered timely if raised prior to the close of pleadings before the immigration judge, which typically takes place during the first court appearance or beginning of proceedings. Federal circuit courts then reached different conclusions regarding whether noncitizens should be permitted to rescind *in absentia* removal orders and reopen proceedings based on defective notices to appear.[102] For instance, the Fifth Circuit stated that the *in absentia* provision demands "notice in accordance with [INA § 239(a)(1) or (2)]."[103] This circuit split created fertile ground for doctrinal confusion and protracted litigation.[104]

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96. *Id*. at 170.
97. *Id*. at 156.
98. *Id*. at 172.
99. *See* Lugo-Resendez v Lynch, 831 F.3d 337, 345 (5th Cir. 2016) (noting the courts "should give due consideration to the reality that many departed aliens are poor, uneducated, unskilled in the English language, and effectively unable to follow developments in the American legal system—much less read and digest complicated legal decisions.").
100. In re Laparra, 28 I&N 425 (B.I.A. 2022); In re Laparra, 29 I&N Dec. 389 (B.I.A. 2026).
101. In re Fernandes, 28 I&N Dec. 605 (B.I.A. 2022).
102. *See* Singh v. Garland, 24 F.4th 1315, 1319 (9th Cir. 2022); Laparra-Deleon v. Garland, 52 F.4th 514, 523 (1st Cir. 2022); *contra* Santos-Santos v. Barr, 917 F.3d 486, 491–92 (6th Cir. 2019); Dacostagomez-Aguilar v. U.S. Att'y Gen., 40 F.4th 1312, 1317 (11th Cir. 2022).
103. Rodriguez v. Garland, 31 F.4th 935, 936 (5th Cir. 2022) (Duncan, J., concurring) (noting that a motion to reopen an *in absentia* removal order is available "if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section 1229(a) of this title," and that the order must be supported by written notice under INA § 239(a)(1) or (2) before an in absentia order may be issued).
104. In re Laparra, 28 I&N 425 (B.I.A. 2022); In re Laparra, 29 I&N Dec. 389 (B.I.A. 2026).

Prior to 2024, the law regarding NTAs was unsettled and deeply contested. In *Pereira*, the Supreme Court held that an NTA lacking the statutorily required time and place information did not trigger the stop-time rule, signaling that incomplete NTAs were legally defective.[105] *Niz-Chavez* went further, clarifying that the statutory scheme required the DHS to provide all required information in a single document, not through piecemeal notices.[106] Together, these cases fueled a wave of litigation in which practitioners argued—with mixed success in the immigration courts and some circuits—that defective NTAs deprived EOIR of jurisdiction, required termination of proceedings, or rendered *in absentia* removal orders invalid and thus subject to rescission and the reopening of removal proceedings.[107]

However, during this period, the BIA cabined the reach of these cases. In decisions such as *Bermudez-Cota* and *Arambula-Bravo*, the BIA interpreted *Pereira* and *Niz-Chavez* narrowly, limiting their holdings to the stop-time rule while rejecting broader arguments about jurisdiction and notice.[108] This created a patchwork landscape: some immigration courts and circuits entertained termination or rescission arguments based on defective NTAs, while others deferred to the BIA's narrow reading. The result was a period of doctrinal instability in which the statutory clarity of INA § 239 stood in tension with administrative practices that continued to rely on defective NTAs.

The DHS's continued practice of issuing putative NTAs set the stage for *Campos-Chaves v. Garland*. As will be discussed in Part II, the U.S. Supreme Court eased the DHS's procedural responsibilities, allowing the U.S. government to maintain a litigation advantage over noncitizens in their removal proceedings.

B. *Literature Review*

Legal scholarship on immigration enforcement has increasingly focused on the challenges posed by the DHS's issuance of putative NTAs. Scholars highlight how these procedural deficiencies undermine statutory guarantees and constitutional protections. For example, Juliana M. Lopez interprets the Supreme Court's decision in *Pereira* as a judicial reaffirmation of statutory safeguards that had, over time, been neglected or weakened through the exercise

105. Pereira v. Sessions, 585 U.S. 198, 208–09 (2018).

106. Niz-Chavez v. Garland, 593 U.S. 155, 171 (2021).

107. Pierre-Paul v. Barr, 930 F.3d 684, 690–93 (5th Cir. 2019) (holding that a defective NTA without time and place of proceedings does not deprive the immigration court of jurisdiction and the regulation, not statute, governs jurisdiction); Hernandez-Perez v. Whitaker, 911 F.3d 305, 313–14 (6th Cir. 2018) (finding that time and place defect does not prevent jurisdiction; regulation requires only a charging document); Ortiz-Santiago v. Barr, 924 F.3d 956, 962–64 (7th Cir. 2019) (ruling that defective NTA is a claim-processing error, not jurisdictional); Karingithi v. Whitaker, 913 F.3d 1158, 1160–62 (9th Cir. 2019) (holding that jurisdiction vests with filing of NTA even if time/place omitted, as long as later notice supplies it).

108. In re Bermudez-Cota, 27 I&N Dec. 441 (B.I.A. 2018); Matter of Josefina Arambula-Bravo, 28 I&N Dec. 388 (B.I.A. 2021).

of agency discretion.[109] She argues for Congressional intervention due to the continued lack of clarity in the courts, proposing the enactment of a law that only supplies IJs with jurisdiction over removal proceedings when an NTA is served with all of its statutory requirements, including the time and place of proceedings.[110]

Patrick J. Glen and Alanna R. Kennedy expose the risks to due process embedded in the government's longstanding practice of issuing NTAs that omit the statutorily required time and place of removal proceedings. As they recount, defective NTAs do more than create technical pleading irregularities: they deprive noncitizens of the basic notice necessary to prepare for and attend hearings, thereby facilitating *in absentia* removal orders entered without meaningful advance warning.[111] Glen and Kennedy further trace the systemic fallout: thousands of terminated proceedings, jurisdictional challenges destabilizing immigration dockets, and even dismissed illegal reentry indictments premised on removal orders allegedly entered without proper notice.[112] The harms they identify are fundamentally procedural due process violations: when the government initiates removal, extinguishes statutory eligibility for relief, and secures removal orders without first providing the notice Congress expressly required, it undermines structural fairness that is supposed to anchor the immigration court adjudication system.[113]

Professor Jennifer Lee Koh's critique in *Removal in the Shadows of Immigration Court* situates contemporary deportation practices within a broader structural transformation of immigration adjudication, arguing that mainstream critiques of immigration court dysfunction are incomplete because they overlook the reality that "the vast majority of persons ordered removed never step foot inside a courtroom."[114] Koh demonstrates that removal increasingly occurs through what she terms the "shadows of immigration court"—expedited removal, reinstatement of prior orders, administrative removal, stipulated removal, and *in absentia* orders—mechanisms that either bypass immigration judges altogether or reduce adjudication to a formalistic exercise devoid of merits review.[115] Although each shadow mechanism is authorized by statute, Koh contends that they amplify the very deficiencies critics identify in traditional immigration court proceedings, including the coercive effects of detention, the absence of appointed counsel, severe limitations on administrative and judicial review, and sharply constrained access to discretionary relief.[116]

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109. Juliana M. Lopez, *The Cost of Cutting Corners: Jurisdictional Implications Flowing from Removal Proceedings Commenced by a Defective Notice to Appear*, 88 BROOK. L. REV. 347 (2022).

110. *Id.*

111. Patrick J. Glen & Alanna R. Kennedy, *The Strange and Unexpected Afterlife of* Pereira v. Sessions, 34 Geo. Immigr. L.J. 1 (2019).

112. *Id.*

113. *Id.*

114. Jennifer Lee Koh, *Removal in the Shadows of Immigration Court*, 90 S. CAL. L. REV. 181, 181 (2017).

115. *Id.* at 182–86, 193.

116. *Id.* at 220–31.

Particularly salient is her analysis of *in absentia* removal, where "missing even one court hearing 'shall' result in the person receiving a final order of removal,"[117] rendering the failure to appear an automatic and often irreversible loss regardless of the underlying merits of the case. In Koh's account, these shadow proceedings normalize a system in which removability determinations are simplified, procedural safeguards are attenuated, and enforcement priorities eclipse adjudicative fairness, thereby "casting deeper doubt upon the integrity of the system than previously acknowledged."[118]

Shalini Bhargava Ray notes due process issues within the broader framework of political accountability and administrative law.[119] Ray calls for clearer statutory and administrative guidance capable of structuring executive discretion and preventing arbitrary enforcement practices. Ray also advocates for the implementation of institutional safeguards capable of constraining executive discretion and ensuring compliance with constitutional norms.[120]

A growing body of scholarship further explores the broader consequences of issuing putative NTAs. These analyses reveal how ICE's routine procedural shortcuts, such as incomplete or improperly served NTAs, pose systemic threats to the integrity and legality of immigration proceedings. One compelling contribution, *The ICE Trap: Deportation Without Due Process*, offers a comprehensive critique of ICE's operational failures, documented patterns of neglect, abuse of prosecutorial discretion, and disregard for statutory requirements.[121] This article also partially profiles "Maria," a client of Hofstra Law School's Deportation Defense Clinic, whose case is discussed below.[122]

Collectively, these scholarly works converge on the argument that the deficiencies in ICE's issuance of NTAs are not isolated procedural anomalies but rather manifestations of a deeper institutional disregard for statutory mandates and constitutional due process. Scholarship on the topic is generally skeptical and reform-oriented—treating defective NTAs as symptomatic of deeper institutional and legal problems rather than isolated clerical mistakes. They expose an agency culture in which efficiency and enforcement priorities routinely eclipse legal compliance, procedural precision, and fundamental fairness. This body of scholarship describes defective NTAs not merely as bureaucratic or claim-processing errors, but as symptomatic of an entrenched imbalance between governmental discretion and the rule of law in the immigration system.

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117. *Id.* at 218.
118. *Id.* at 187.
119. Shalini Ray, *Immigration Law's Arbitrariness Problem*, 121 COLUM. L. REV. 2049 (2021).
120. *Id.*
121. Kathleen H. Pierre, Jennifer Aronsohn, Brandon Slotkin, & John Donley, *The Ice Trap: Deportation Without Due Process*, 70 UCLA L. REV. DISCOURSE 136 (2022).
122. *Id.*

II. CASE EXAMPLES FROM HOFSTRA LAW SCHOOL'S DEPORTATION DEFENSE CLINIC: ICE MALFEASANCE THAT CAUSES REMOVAL ORDERS[123]

Following the Supreme Court's decision in *Niz-Chavez v. Garland* in 2021, the law concerning putative NTAs was clarified in a way that significantly limits the government's ability to rely on piecemeal charging documents. In *Niz-Chavez*, the Court held that an NTA sufficient to trigger the "stop-time" rule for cancellation of removal must be a single document containing all required information, including the time and place of the hearing.[124] This ruling built upon *Pereira v. Sessions* in 2018, rejecting the DHS's practice of issuing bare-bones NTAs followed by later hearing notices issued by EOIR purporting to satisfy the statutory mandate.[125] In the wake of *Niz-Chavez*, putative NTAs—documents labeled as NTAs but lacking essential information—are legally insufficient for certain purposes, such as when service of that document would typically halt for the accrual of continuous presence (i.e., stop-time).[126] Despite the Court's insistence that a single NTA is required, the DHS continued to issue, serve on noncitizens, and file in immigration courts putative NTAs that lacked that information.[127]

The DHS's rampant disregard of the notice requirements under INA § 239 is not a hypothetical problem, but rather routinely manifests in harm to noncitizens facing removal proceedings. Whether strategic or otherwise, issuing putative NTAs results in harm by shifting the procedural burden to noncitizens, as defective NTAs often require respondents to track down and/or try to determine when and where their removal proceedings have begun and sometimes to file motions to terminate or reopen. Thus, noncitizens disproportionally bear the cost, time, legal burden, and risks of delay or *in absentia* removal order. Additionally, the DHS's disregard for INA § 239's time and place requirements further obfuscates an already-opaque system of immigration law that noncitizens must understand rapidly to avoid removal.

Hofstra Law School's Deportation Defense Clinic[128] represents individuals negatively impacted by ICE's issuance of defective NTAs. Recent cases provide concrete examples of how the DHS's continued malfeasance heavily disadvantages noncitizens, especially when their initial NTA does not include time and place information. Without receiving an NTA, a noncitizen may be completely unaware that the government has initiated removal proceedings

123. For best practices in using client case examples in scholarship, *see generally* Theodor S. Liebmann & Stefan H. Krieger, *The Elephant in the Room in Clinical Scholarship: Ethical Guardrails and Case Histories* 29 CLINICAL L. REV. 1 (2022).

124. Niz-Chavez v. Garland, 593 U.S. 155, 171 (2021).

125. Pereira v. Sessions, 585 U.S. 198, 208 (2018).

126. *Niz-Chavez,* 593 U.S. at 161–62.

127. *See* Lopez, *supra* note 110, at 351–52 (noting that after *Pereira*, "[c]ontrary to statute and common sense, the [DHS] . . . admitted to issuing almost all NTAs without the accurate date, time, and place of the initial proceeding").

128. Professor Alexander T. Holtzman, Esq., is the Director of Hofstra's Deportation Defense Clinic. David Sizer is currently a 3L at the Maurice A. Deane School of Law at Hofstra University and continues to work for the Clinic.

against them or that they must appear in immigration court. Noncitizens must be served with an NTA, but the DHS is not required to inform respondents when it files the NTA with EOIR—and only the DHS filing the NTA with EOIR (not service on a noncitizen) initiates removal proceedings.[129] In Maria's case, a Hofstra Clinic client, service of the NTA occurred nearly two years *before* the DHS filed it in immigration court to formally initiate removal proceedings. Respondents are not notified when DHS files NTAs in immigration court. Noncitizens might only receive notice with the assistance of quality legal representation, which again they are not entitled to at government expense.[130] Otherwise, the only way for noncitizens to know about their proceedings is to monitor every week the EOIR's automated system—either online or via EOIR's 800 number[131]—using their assigned A-number and country of origin.[132] Failure to do so may result in noncitizens being unaware of immigration court, missing their first hearing, and being ordered removed *in absentia*.

Moreover, as noted previously, receiving multiple documents – first an NTA, then a hearing notice – with different information can create confusion and result in dire consequences for noncitizens. Hofstra's clients' experiences are illustrative of these challenges and this reality. In a proceeding where the stakes (such as removal from the United States) are incredibly high, such confusion surrounding INA § 239's basic requirements is inconsistent with standards of justice and can lead to unjust results. The stories described below are representative cases borne out of Hofstra's Deportation Defense Clinic's client representation, but client identities are anonymized.

A. *Matter of "Oscar": Illustrating How the DHS's Defective Notice Practices Lead to Unjust Removal Orders and Confusion*

Oscar received an *in absentia* removal order after failing to attend an immigration court hearing. The facts surrounding Oscar's case are as follows. In the fall of 2018, Oscar entered the United States near the border of Arizona and Mexico, where he and his young daughter were promptly detained by the DHS. Two days later, officials served Oscar with a putative

129. 8 C.F.R. §§ 1003.13, 1003.14, 1003.15(b) (providing that proceedings commence only when the charging document, or NTA, is both served on the noncitizen and filed with immigration court).

130. Erica Bryant, *Immigrants Facing Deportation Do Not Have the Right to a Publicly Funded Attorney. Here's How to Change That*, VERA INST. OF JUST. (Feb. 9, 2021), https://www.vera.org/news/immigrants-facing-deportation-do-not-have-the-right-to-a-publicly-funded-attorney-heres-how-to-change-that [https://perma.cc/H4XA-L5ZX].

131. As of February 25, 2026, the EOIR hotline number is 1-800-898-7180. *Contact EOIR*, EXEC. OFF. FOR IMMIGR. REV., https://www.justice.gov/eoir/contact-eoir [https://perma.cc/9NK5-8YKJ] (last visited Feb. 28, 2026).

132. An A-Number is a unique 7, 8, or 9-digit identification number, starting with the letter "A," assigned by U.S. immigration officials to non-U.S. citizens. It is used to track immigration records and identify individuals, serving a similar function to a Social Security Number for U.S. citizens. *See Annual Asylum Fee Questionnaire*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://my.uscis.gov/accounts/annual-asylum-fee/questionnaire [https://perma.cc/B8RS-A62X] (last visited Nov. 16, 2025).

NTA and stated that the paper meant he eventually had to appear in front of a judge. However, this document listed no location, date, or time for the first immigration court hearing. Instead, it simply stated that the hearing would be in "a place to be set," at "a date to be set," and at "a time to be set." His order of release, issued in the fall of 2018 by ICE, required Oscar to report to an officer for his first ICE check-in meeting. The client temporarily resided at a church, where he still volunteers, and where he has strong social ties with fellow worshippers.

Later that month, Oscar attended his first ICE check-in meeting and informed the officer that he had changed addresses. Following the officer's instructions, Oscar wrote his address on a piece of paper and provided it to the officer at this meeting. This comports with the address change requirements under INA § 239(a)(1)(F). As of that first check-in meeting with ICE, DHS had not yet filed Oscar's putative NTA to initiate removal proceedings against him.

Four months later, in the winter of 2019, DHS filed his putative NTA in immigration court, and that document lacked both the time and date of his first master calendar hearing.[133] Moreover, the putative NTA listed the first address Oscar provided to ICE (the church) despite the DHS being on written notice that he no longer lived at that address. The immigration court then mailed his hearing notice to the outdated address, which Oscar did not receive. Oscar continued complying with his ICE check-in requirements.

Months later, now in the spring of 2019, Oscar went to his second ICE check-in meeting, where ICE officials were surprised to see Oscar because by this point, he had already missed his first immigration court hearing, and the judge had issued an *in absentia* removal order against him. By the second ICE check-in meeting, Oscar had never received nor was made aware of the order against him since the court also mailed it to his old address. ICE gave Oscar an Intensive Supervision Appearance Program ("ISAP") card and required him to go to the ISAP office that same day.[134] He was required to wear an ankle monitor and to comply with new, more onerous monthly check-ins. ICE also took Oscar's passport from him in preparation for his deportation. Oscar, at this juncture, was unrepresented and did not realize that

133. Master calendar hearings are preliminary immigration court dates, often with many noncitizens present to appear on different cases. An individual hearing, in contrast, is an immigration court hearing for a particular case or respondent and is often a trial or hearing on the merits of an issue in dispute, relief, or the entire case. *See Explainer: Immigration Removal Proceedings and Expanded Mandatory Detention in the U.S.*, NAT'L IMMGR. F., https://forumtogether.org/wp-content/uploads/2025/07/Explainer-Immigration-Removal-Proceedings-and-Expanded-Mandatory-Detention-2.pdf [https://perma.cc/RCM6-39FB] (last visited Mar. 2, 2026).

134. The Intensive Supervision Appearance Program is a program run by ICE through its Enforcement and Removal Operations division. It is designed as an "alternative to detention" (i.e., "ATD") for certain noncitizens who are in immigration proceedings but are not held in physical custody. *See* U.S. DEP'T OF HOMELAND SEC. & U.S. IMMIGR. & CUSTOMS ENF'T, INTENSIVE SUPERVISION APPEARANCE PROGRAM (ISAP), FYs 2017-2020 (Apr. 11, 2022), https://www.dhs.gov/sites/default/files/2022-06/ICE%20-%20Intensive%20Supervision%20Appearance%20Program%2C%20FYs%202017%20-%202020.pdf [https://perma.cc/F7DT-X69Y].

there was a difference between attending ICE and ISAP check-ins and attending immigration court. Oscar's confusion is understandable since ICE's check-in office in Manhattan is in the same building, but on different floors of 26 Federal Plaza, where the immigration court with venue over his case sits. Oscar's confusion is not a rarity, as many noncitizens are not given clear guidance regarding the significance of appearing for their numerous appointments with different government agencies when facing deportation.[135]

A few months later, a secretary from the church where Oscar first resided informed him that Oscar had received mail and sent him an envelope that contained his *in absentia* removal order, which was issued by the immigration judge months before Oscar learned about it. He then sought to obtain an attorney as soon as possible to represent him and his daughter and to reopen his case. He was extremely worried about what would happen to his young daughter, who depends solely on him for financial and emotional support, if he were to be deported. After being unable to afford the private immigration attorneys that he consulted with, he retained Hofstra's Youth Advocacy Clinic to represent his daughter in her application for special immigrant juvenile status ("SIJS"), which was eventually granted along with deferred action in late 2022.

Oscar retained Hofstra's Deportation Defense Clinic, which first had to file requests for his immigration documents in the fall of 2021. Having not received his case file for many months, the Clinic filed a request for his Record of Proceeding ("ROP") and Digital Audio Recording ("DAR") with EOIR in the spring of 2022. The Clinic eventually received his ROP in the fall of 2022 after filing numerous requests with the EOIR. The Clinic also filed several Freedom of Information Act ("FOIA") requests with relevant government agencies. In the spring of 2022, the Clinic filed a Prosecutorial Discretion ("PD") Request with ICE, asking to reopen the case because Oscar did not receive proper notice of the hearing. Nearly a full year later, however, the DHS informed the Clinic that it was denying the PD request.

Thereafter, the Clinic, on behalf of Oscar, submitted a motion to rescind his *in absentia* order and reopen his removal proceedings under INA § 240(b)(5)(C). The Clinic argued that his case should be reopened based on his lack of notice of the hearing. EOIR sent his putative NTA to an outdated address, despite him updating his address with the DHS *before* the DHS had filed it in court to begin his proceedings. A respondent satisfies the requirement to notify the attorney general of an address change when he updates his address with the DHS before the DHS files the NTA in immigration court, which Oscar had done.[136]At the time he notified ICE of his address change in writing his putative NTA had not yet been filed. Hence, the EOIR immigration court did not yet have jurisdiction

135. Hurubie Meko, *Migrants Encounter 'Chaos and Confusion' in New York Immigration Courts,* N. Y. LEGAL ASSISTANCE GRP. (Nov. 3, 2022), https://nylag.org/migrants-encounter-chaos-and-confusion-in-new-york-immigration-courts-2/ [https://perma.cc/39RG-DV3X].

136. *See, e.g.*, Fuentes-Pena v. Barr, 917 F.3d 827 (5th Cir. 2019).

over his case. If Oscar had tried to file a change of address form with the EOIR, it would have been rejected because Oscar had no case in immigration court at that time. Thus, he was not at fault and had no duty or ability to notify EOIR of his updated address.

Oscar did the only thing he could and was required to do: update the DHS in writing with his change of address. The DHS thereafter failed to provide the court and immigration judge with the updated address, despite being notified in writing prior to filing the putative NTA with the immigration court. Since Oscar did not receive notice, rescission of his *in absentia* order was requested. Oscar had received an *in absentia* order even after complying with his responsibilities with the DHS and under INA § 239, such as prompt notification of address change. This breakdown illustrates a deeper bureaucratic failure—where administrative miscommunication and procedural neglect, rather than individual noncompliance, produce grave consequences for due process and the integrity of immigration court adjudication.

The Clinic also argued that since Oscar's putative NTA did not include the time and date of his hearing, it did not constitute notice in accordance with INA § 239. As previously noted, the Supreme Court had held that "[a] notice that does not inform a noncitizen when and where to appear for removal proceedings is not a 'notice to appear under [INA § 239].'"[137] Further, in *Niz-Chavez*, the Court explained that an NTA "stubbornly" requires a "written notice containing all the required information" and must be a single document.[138] The notice must also be "reasonably calculated" to apprise the party of "the pendency of the action and afford [him] an opportunity to present [his] objections."[139] At the time of Oscar's case, many circuit courts agreed that reopening an *in absentia* removal order was appropriate when the removal order was issued based on an NTA without a date or time.[140] For instance, the Fifth Circuit stated that the *in absentia* provision demands "notice in accordance with [§ 239(a)(1) or (2)]."[141]

In Oscar's case, his putative NTA did not include the date, time, or place of his first removal proceeding. The NTA instead indicated that the information would be determined later. After his putative NTA was served in the fall of 2018, Oscar never received a notice informing him of the missing information – namely, where and when (date/time) to appear for his first immigration court hearing. Thus, Oscar's putative NTA violated INA § 239(a)(1) and was legally deficient under the statute and case law at that time.

The Clinic argued that notice under INA § 239(a)(2) is only permitted when the NTA has time and place information and then the government seeks

137. Pereira v. Sessions, 585 U.S. 198, 202 (2018).
138. Niz-Chavez v. Garland, 593 U.S. 155, 161 (2021).
139. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).
140. *See* Singh v. Garland, 24 F.4th 1315, 1319 (9th Cir. 2022); Laparra-Deleon v. Garland, 52 F.4th 512 (1st Cir. 2022); *but see* Matter of Laparra-Deleon, 29 I&N Dec. 389, 390 (B.I.A. 2026) (noting that *Laparra-Deleon* has been "effectively overruled" by Campos-Chaves v. Garland, 602 U.S. 447 (2024)).
141. Rodriguez v. Garland, 31 F.4th 935, 936 (5th Cir. 2022) (Duncan, J., concurring).

to change that information. If the individual never received notice with time and place information, then providing that initial information later is not a *change* of time and place since neither had ever been set. Since Oscar's putative NTA had no time, place, or date of proceedings, no change could be made. Hence, Oscar did not receive notice in accordance with either INA §§ 239(a)(1) or 239(a)(2), and his *in absentia* order should have been rescinded due to this error. This argument later became a central issue in *Campos-Chaves*, where Oscar's case was described in an amicus brief filed in that case.

The Clinic also argued that the putative NTA constituted a claim-processing violation. The BIA had held that a respondent forfeits their objection to missing information on an NTA if raised for the first time in a motion to reopen.[142] However, the Clinic argued that the legal authority for this conclusion was wrongly decided since it violates due process and notice requirements established in case law and the INA, preventing respondents from objecting to improper notice. The Clinic stated that the appropriate remedy for this violation would be to reopen Oscar's removal proceedings so he could present his objections for the first time since Oscar missed his hearing through no fault of his own.[143]

Further, the Clinic stated that the 180-day deadline to file a Motion to Reopen based on exceptional circumstances under INA § 240(b)(5)(C)(i) should be equitably tolled given Oscar's diligence and the extraordinary circumstances that prevented filing the motion within the deadline.[144] In addition to Oscar's NTA missing the location, time, and place information, DHS also failed to update Oscar's address on his putative NTA prior to filing it with the immigration court, which was another reason why Oscar did not receive notice of his hearing, his resulting *in absentia* removal order, and why he could not file within the 180-day deadline for a timely motion to reopen. Thus, equitably tolling that deadline was warranted, particularly since the DHS was on notice of Oscar's change of address. These circumstances were beyond Oscar's control, as described in INA § 240(e)(1), and constituted exceptional circumstances justifying reopening proceedings under INA § 240(b)(5)(C)(i). Oscar also continued to comply with and attend ICE check-in meetings before and for many months after the removal order, demonstrating he was diligently complying with his legal responsibilities and that he would have attended the immigration court hearing if he had had notice.

Moreover, the DHS has exclusive discretion regarding whether to initiate removal proceedings in immigration court. Once served with an NTA, the

142. Matter of Nchifor, 28 I&N Dec. 585 (B.I.A. 2022).

143. Matter of Fernandes, 28 I&N Dec. 605 (B.I.A. 2022); *see also* 8 U.S.C. § 1229a(e)(1) ("exceptional circumstances . . . beyond the control of the alien.").

144. Iavorski v. U.S. I.N.S., 232 F.3d 124, 127 (2d Cir. 2000); 8 C.F.R §1003.23 (b)(4)(iii)(A)(1) ("beyond the control of the alien."). Oscar's case arose in the Second Circuit, where Justice Sotomayor had previously decided in *Iavorski* "that the filing deadline for motions to reopen may be equitably tolled." 232 F.3d at 127.

respondent must inform the DHS of changes of address; and once the DHS files the NTA with EOIR, then the respondent must provide notification of address changes to both DHS and EOIR.[145] ICE has the responsibility to serve a statutorily compliant NTA. For Oscar, until the NTA was filed in immigration court in the winter of 2019, he was not required to, nor could he have, updated his address with the court.[146] ICE retained exclusive authority over the matter, and the immigration court lacked jurisdiction.[147] The Clinic argued that the reopening of his removal proceedings was warranted based on the previously described exceptional circumstances.

In the fall of 2023, the immigration court reopened Oscar's removal proceedings. About four months later, in 2024, the Clinic again requested that ICE exercise prosecutorial discretion, this time to join in a motion to dismiss proceedings. Oscar was still not a DHS enforcement priority at that time, lacked any criminal history, and there were several mitigating factors in his case, such as being the sole caregiver for his daughter with Special Immigrant Juvenile Status and assisting his local community and congregation through volunteer work. The DHS reviewed the case and determined that the circumstances after the issuance of the NTA had changed to such an extent that the continuation of the case was no longer in the best interest of the government.[148] About a month later, the DHS and the Clinic filed a joint motion to dismiss the removal proceedings without prejudice. Weeks later, the IJ granted the joint motion and dismissed proceedings.

Despite the eventual positive result for Oscar, his case illustrates the dynamic that is unnecessarily created by ICE when it issues defective NTAs that do not specify the time and place of the hearing. Oscar's case is illustrative of the reality that noncitizens who follow the rules (i.e., attend many ICE check-in meetings and update address changes as required) and procedures in the U.S. immigration system are nonetheless at risk of receiving unjust *in absentia* removal orders.

Oscar's case is compelling not because of its procedural complexity, but because of its simplicity. The core defect was the issuance of a statutorily noncompliant NTA followed by the government's failure to ensure that notice was sent to the correct address, despite Oscar's timely communication of his change of address to the government. The remaining details—the

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145. 8 U.S.C. 1229(a)(1)(F)(i); *see also id.* §§ 1305(a), 1306(b). Noncitizens may file changes of address via Form AR-11 (with DHS) and Form E-33 (with EOIR). *Alien's Change of Address Card*, DEP'T OF HOMELAND SEC., https://www.uscis.gov/sites/default/files/document/forms/ar-11.pdf [https://perma.cc/8JB8-JHXF] (last visited Feb. 28, 2026); *Change of Address/Contact Information Form*, EXEC. OFF. FOR IMMGR. REV., https://www.justice.gov/eoir/file/639921/dl? [https://perma.cc/NL7A-4UUY] (last visited Feb. 28, 2026).

146. 8 C.F.R. § 1003.15(d)(2).

147. 8 C.F.R. § 1003.14(a); Arenas-Yepes v. Gonzales, 421 F.3d 111, 116 (2d Cir. 2005) ("[I]t has never been the case, under either the current IIRIRA regulations or the pre-IIRIRA regulations, that the mere issuance or service on an alien of a charging document 'commenced' immigration proceedings against the alien.").

148. 8 C.F.R. § 239.2(a)(7).

delays in obtaining records, the denial of prosecutorial discretion, the burdens of ISAP supervision, and the protracted motion practice—are not incidental, but illustrative of the broader institutional dynamics scholars have identified: a system in which administrative opacity, fragmented communication between DHS and EOIR, and enforcement-driven incentives can convert minor procedural defects into cascading and dire consequences. While Oscar's additional facts underscore the systemic concerns documented in the literature, the dispositive issue here remains narrow and statutory: an NTA that fails to comply with INA § 239 should not serve as the lawful foundation for an *in absentia* removal order because the omission of the time and place of hearing deprives the respondent of the notice necessary to appear in the first instance. That defect is not cured by later administrative actions—particularly where ICE fails to update or use a respondent's correct address—because subsequent notices cannot retroactively supply the statutorily required notice that Congress mandated at the outset. Oscar's case thus distills the defective NTA problem to its essence: notice that is legally deficient at issuance cannot be transformed into lawful notice through later administrative patchwork.

B. *Matter of "Maria": Despite Consistent Compliance with ICE Requirements, an Unjust* In Absentia *Removal Order Resulted from Confusing Systemic Obligations Compounded by DHS's Failure to List Maria's Correct Address on Her NTA*

Even when ICE includes the time and place of the first immigration court hearing on the NTA and the respondent dutifully complies with DHS mandates, ICE malfeasance can nonetheless lead to *in absentia* removal orders and years-long litigation. The facts concerning Hofstra Law's Deportation Defense Clinic's client, Maria, are as follows. In early 2017, a border patrol agent encountered Maria and her young son near the Texas border and alleged that they had entered the United States from Mexico. The family was taken into custody at a border patrol station in Texas. When they were released ten days later, ICE personally served an NTA on Maria. Despite speaking Quiche as her primary language, the NTA was given to her in English, and purportedly read to her in Spanish, Maria's second language and one she did not understand with fluency.

Between the winter of 2017 and the fall of 2019, the family diligently reported to check-in meetings with ICE as required. During her first year under supervision, Maria checked in with ICE every month and wore an ankle monitor that tracked her location by GPS. As the number of check-ins decreased after the first year of supervision, the family continued attending meetings with ICE. Maria informed[149] ICE officers at her in-person check-in meetings when her address or phone number had changed. She and her son,

149. ICE officers did not request that she provide them with her updated addresses in writing or provide her with an official form for doing so, even though that form exists via DHS Form AR-11. Maria was *pro se* at this time.

who resides with her, changed addresses twice, and she promptly informed ICE officers of the change each time.

In Manhattan, New York, the building where the family reported for ICE check-in meetings is the same building where the immigration court is located, as explained above. Our client believed that when she was attending the ICE check-in meetings, she was attending immigration court, as she had a limited understanding of the different government agencies and faced a language barrier. ICE officers did not explain to her that attending ICE check-in meetings, under the DHS, was not the same as attending immigration court with the EOIR under the DOJ, even though both government agencies were in the same building, albeit on different floors. In other words, Maria assumed that ICE and the immigration court were the same, and ICE did not inform her that meetings with ICE on one floor of the building constituted a separate immigration process from attending court on a different floor of the very same building.

In the fall of 2018, twenty-two months after service of the initial NTA, ICE filed the family's NTAs with the immigration court to vest jurisdiction and initiate removal proceedings in immigration court for the first time. Despite being on notice of respondents' latest address change, ICE did not file NTAs for our client and her son with the same address for each.[150] Our client's NTA contained the address she provided to DHS when she was first encountered at the border. Her son's NTA erroneously listed part of the former address and part of the current address, despite ICE filing the NTAs at the same time. One or both of their NTAs were likely altered by ICE *after* being served on our client in 2017 but before being filed with EOIR. ICE also filed a separate Form I-830 Notice of Alien Address document for Maria and her son with the immigration court, both listing the outdated address.

In the fall of 2018, the immigration court mailed the family a hearing notice to the outdated address, indicating that their hearing was scheduled for the winter of 2018. This document was the only notice with the information about the hearing, and it was sent to an incorrect, outdated address. ICE filed the NTA with the incorrect address despite being previously notified of the correct address, resulting in EOIR mailing the hearing notice to the wrong location. In winter 2018, the IJ ordered the family removed *in absentia* when they failed to appear for their master calendar hearing. Maria and her young

150. Recent immigrants, particularly those newly arrived and navigating the challenges of resettlement, often experience housing instability and may change addresses multiple times before establishing a stable residence. Frequently moving is often not an act of evasion but rather reflects broader socioeconomic realities—limited financial resources, temporary employment, developing familial or community relationships, and reliance on informal housing networks. Yet the immigration system's rigid notice framework presumes a fixed address and places the burden of updating contact information on respondents, which sometimes can penalize poverty and transience through missed notices and *in absentia* orders. *See* Mekonnen F. Ayano, *Tenants without Rights: Immigrants' Experiences in the U.S. Low-Income Housing Market*, 28 Geo. J. Poverty L. & Pol'y 159 (2021).

son did not receive notice of the hearing or the court decision ordering the family removed.

The family only discovered that they had been ordered removed at their check-in meeting with ICE in the fall of 2019. The ICE officer then informed them that they were ordered removed nine months earlier. Maria was given only fifteen days to buy plane tickets to return to Mexico. Shortly thereafter, in the fall of 2019, the family filed a *pro se* emergency motion to rescind the *in absentia* removal orders and reopen removal proceedings. They also filed Change of Address Forms E-33 with EOIR, listing their current and previous addresses.

Despite the DHS not filing opposition to the motion to rescind the removal orders and reopen the proceedings, in the winter of 2019, the IJ denied the family's *pro se* motion. In a few short sentences, the IJ stated that the family had not demonstrated that they failed to appear due to lack of notice and did not "clearly" explain why they waited ten months to file their motion despite there being no time limit to file such a motion under INA § 240(b)(5)(C)(ii). Also, the IJ claimed, without explanation, that they did not demonstrate exceptional circumstances for failing to attend their hearing.

In early 2020, the family filed a timely appeal of the IJ's decision with the BIA. Now represented by *pro bono* legal counsel, the family filed a brief in support of the appeal. The DHS again did not file an opposition to the appeal. But in 2021, the BIA affirmed the IJ's decision denying the motion to reopen this family's removal proceedings.[151]

The BIA denied the family's lack of notice claim because they did not update their address with the immigration court. However, legal counsel argued that it was not possible for the family to do so until ICE commenced removal proceedings in 2018, once jurisdiction vested with the immigration court for the first time. Before 2018, the family had informed ICE of their changes in address—the only agency they had an obligation to inform at that time. Until the NTAs were filed in immigration court, the family could not and was not required to update their address with the court.[152] Moreover, immigration courts have no system for tracking address changes if an immigrant tries to submit a Change of Address E-33 form with EOIR before the NTA is filed. Thus, attempting to file a change-of-address form before an NTA has been filed would be unsuccessful.[153]

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151. *See DOJ "Reassigns" Pre-Trump BIA Judges*, IMMIGR. POL'Y TRACKING PROJECT (June 9, 2020), https://immpolicytracking.org/policies/doj-reassigns-pre-trump-bia-judges/ [https://perma.cc/AC48-L97Y] (explaining that DOJ reassigned several sitting Board members and altered the Board's composition, contributing to a significant shift in the adjudicatory landscape during 2019–2020).

152. 8 C.F.R. § 1003.15(d)(2) ("Within five days of any change of address, the alien must provide written notice of the change of address on Form EOIR-33 to the Immigration Court where the charging document has been filed, or if venue has been changed, to the Immigration Court to which venue has been changed.").

153. Brief for Thirty-Three Former Immigration Judges and Members of BIA as Amici Curiae at 9–10, Niz-Chavez v. Garland, 593 U.S. 155 (2021) (No. 19-863).

ICE's practice of issuing incomplete NTAs—either omitting hearing information or listing so-called "dummy dates"—has been widely criticized for generating confusion and *in absentia* removal orders, even when noncitizens attempt to comply with agency requirements. In the aftermath of *Pereira* and *Niz-Chavez*, DHS frequently issued NTAs listing placeholder hearing dates, some of which were later revealed to correspond to actual scheduled hearings. This practice created widespread uncertainty, leading some respondents—sometimes even on counsel's advice—to miss proceedings and receive *in absentia* removal orders. As a result, the prevailing defensive strategy became to treat all listed dates as real and appear whenever possible.

But the problem extends beyond facially deficient NTAs. Even when ICE includes a time, date, and location on the NTA—as it did in Maria's case—its subsequent practices can still defeat meaningful notice. Here, ICE failed to update the family's address despite being on notice of the change, altered or refiled charging documents without re-serving them, and filed documents with EOIR listing an outdated address. These actions prevented Maria and her son from receiving proper notice of their hearing and ultimately resulted in *in absentia* removal orders through no fault of their own.

The BIA also concluded that the family had not shown extraordinary circumstances sufficient to toll the 180-day deadline to move to reopen due to exceptional circumstances because the family purportedly received proper notice of the hearing and failed to appear. The BIA had previously found, in unpublished cases, extraordinary circumstances where the respondent reported to the DHS regularly and failed to appear at a hearing due to a mistake, rather than to avoid proceedings.[154] In Maria's case, exceptional circumstances prevented them from being aware of their hearing in immigration court due to her lack of familiarity with the immigration system, the language barrier, and the lack of information or clarification from ICE at their check-ins. The failure to attend the hearing was clearly a mistake, as demonstrated by the family's compliance with the DHS check-in requirements and the family's stated fear of returning to their home country, which gave them an incentive to appear in court to pursue humanitarian relief rather than risk receiving a removal order *in absentia*.

Maria's *pro bono* legal counsel also argued that the family merited equitable tolling by acting with due diligence.[155] The family filed their motion in the fall of 2019, shortly after learning of their removal orders at their check-in with ICE that fall. The BIA denied the family's motion to reopen, including their claims of multiple due process violations, including the immigration judge failing to consider an entire argument raised in the motion, ignoring the family's request to supplement their motion with documents important to

154. *See, e.g.*, Jose Israel Quinonez-Leyva, A038-838-933 (B.I.A Apr. 27, 2018) (Index of Unpublished Decisions of The Board of Immigration Appeals (2026), available at https://www.irac.net/unpublished/index-2/ [https://perma.cc/3D2A-FMQD]).

155. Iavorski v. INS, 232 F.3d 124 (2d Cir. 2000).

their case recently obtained by their Freedom of Information Act ("FOIA") request, ICE's failure to translate the NTA to Quiche, and ICE's failure to inform the family of immigration court and to update their address. The BIA thus affirmed the immigration judge's denial of the family's motion, foreclosing their opportunity to present their claims and raising serious concerns about fundamental fairness and due process. Serious constitutional due process concerns are raised by allowing the government to proceed against a respondent who either never received a statutorily compliant NTA, as Oscar did not, or received an NTA with errors caused by the government, as exemplified in Maria's case, with her outdated address being listed. These same or related issues are implicated in *Campos-Chaves v. Garland* as described below.

In the spring of 2021, within thirty days of the BIA's decision, the family timely appealed via a petition for review with the United States Court of Appeals for the Second Circuit. The family argued that the BIA erred when it denied the family's motion to rescind for lack of notice. Maria had informed ICE of her family's address changes before ICE filed their NTAs in immigration court. In *Shogunle v. Holder*, a noncitizen fulfilled his statutory obligation to update his address by notifying the DHS and did not have to file Form E-33 with EOIR.[156] In that case, ICE failed to update the family's address and used an outdated address for their NTAs.[157] That family complied with their obligations to update their address, and thus did not receive proper notice and were justified in seeking rescission and reopening, which the Fourth Circuit Court of Appeals granted.[158]

As stated previously, Maria and her son filed their motion to rescind immediately after learning of their removal orders at an ICE check-in, where ICE finally clarified that they had not been attending court and had missed their hearing date. Despite the BIA being required to consider "the evidence and argument that a party presents,"[159] it disregarded Maria's justifiable confusion and mistake given the complexity of the immigration system and different governmental agency requirements, as well as the same location of the agencies, and despite regularly attending ICE check-ins in the same building as the immigration court. Additionally, the BIA ignored evidence that the family did not receive a copy of their removal order because ICE inexplicably provided the court with an outdated address. In denying respondent's appeal, the BIA found that Maria's facts and legal arguments boiled down to a "misunderstanding."

Moreover, Maria argued that her family's right to due process was violated. Notice must be "reasonably calculated" to each affected party, and the government must serve notice at an address that is "reasonably

156. Shogunle v. Holder, 336 F. App'x 322, 324–25 (4d Cir. 2009); *see also* Fuentes-Pena v. Barr, 917 F.3d 827 (5th Cir. 2019).

157. 8 U.S.C. § 1229a(b)(5)(C)(ii). A removal order can be rescinded "if the alien demonstrates that the alien did not receive notice . . . or the alien was in Federal or State custody and the failure to appear was through no fault of the alien." *Id.*

158. Shogunle, 336 F. App'x at 324–25.

159. Chen v. Gonzales, 417 F.3d 268, 272 (2d Cir. 2005).

ascertainable."[160] The governmental agencies failed to meet this standard. The family was unable to present their claims because of ICE's malfeasance: failing to update the family's address on their NTAs and I-830 forms, and not explaining the difference between meetings with ICE and EOIR immigration court to Maria during more than two years of regular check-ins. The IJ violated their right to due process by denying their motion without allowing the family to supplement the record with important documents, which the family had access to only after obtaining the results of a FOIA request.

In the spring of 2022, after an Office of Immigration Litigation ("OIL") attorney[161] was apprised of the family's pending Petition for Review before the U.S. Court of Appeals for the Second Circuit, the DHS thereafter agreed to join in a motion to reopen and rescind the *in absentia* removal orders for this family and that the proceedings should be remanded to the IJ. OIL agreed to, and the federal court granted, a stipulated remand. On remand, the Clinic filed a Prosecutorial Discretion with ICE to request that DHS join in a motion to dismiss the removal proceedings. ICE agreed to join the motion to dismiss, which was filed in late 2022. In early 2023, the IJ granted the motion for good cause and dismissed Maria and her son's removal proceedings.

Maria's case demonstrates that, even when a noncitizen receives an NTA with the time and place of the first hearing and despite considerable compliance on the part of a noncitizen, ICE malfeasance may still prevent respondents from successfully attending and navigating removal proceedings *pro se*. Moreover, Maria's story reflects the importance of quality legal counsel when facing removal. If it were not for an entire legal team consisting of several nonprofit organizations, the numerous DHS errors and agency malfeasance could have caused this family's deportation. Maria's case differs from Oscar's in one important respect. Oscar's case centered on the DHS's issuance and filing of a putative NTA that omitted the time and place of proceedings and was filed after he had already updated his address, such that proceedings were initiated based on a statutorily noncompliant charging document that never provided proper notice at inception. Maria's case, by contrast, involved an NTA with an outdated address that DHS was notified about prior to filing it with EOIR, but which ICE filed nonetheless, resulting in hearing notices being mailed to the outdated address and thereby replicating the deprivation of meaningful notice through administrative mismanagement rather than solely through omission of time-and-place information. These errors reveal that even after removal proceedings are properly commenced, DHS neglect or malfeasance in maintaining accurate address records and properly serving notice to noncitizens can recreate the very breakdown in statutory notice that *Pereira* and *Niz-Chavez* sought to correct.

160. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 800 (1983).

161. This office represents DHS in federal circuit court petition for review appeals. *See* OFFICE OF IMMIGRATION LITIGATION CIVIL DIVISION, https://www.justice.gov/civil/office-immigration-litigation [https://perma.cc/Y3T8-RM4Z] (last visited Mar. 23, 2026).

The DHS malfeasance in issuing the NTA may differ—by omitting the time-and-place or by erroneously listing the respondent's address —but the possible damage is identical: adjudication without meaningful notice. An NTA that omits time and place is deficient because it withholds essential information necessary for participation; an NTA filed with an address the government knows to be outdated produces the same deprivation. In both scenarios, removal proceedings move forward while the respondent remains unaware. An *in absentia* removal order results without the opportunity to appear and defend oneself in court.

Maria's eventual success does not dilute that critique. It instead highlights how correction of these errors often depends on extraordinary intervention—pro bono counsel, appellate litigation, and discretionary agency reconsideration—rather than on built-in procedural protections and the ability of respondents to safeguard their rights. Absent such intervention, the default consequence of these notice failures is losing one's case and receiving an *in absentia* removal order.

When viewed in tandem, Oscar's and Maria's cases demonstrate that the defective NTA problem is not confined to the formal inclusion of time and place in a single document. It reflects a broader institutional pattern in which the government initiates and advances removal proceedings often without ensuring that notice, in a practical and statutory sense, has been effectuated. The line between technical noncompliance and structural unfairness thus collapses: whether through omission of hearing information or disregard of updated address data, the result is the same—procedural burdens fall on the respondent to correct errors the government created.

III. *CAMPOS-CHAVES*: A REWRITING OF THE RULES FOR NTAS

Judicial review concerning putative NTAs has not impacted the DHS's behavior, even after the U.S. Supreme Court decisions in *Pereira* and *Niz-Chavez*. Instead, immigration courts, the BIA, and federal courts continued to grapple with ICE's persistent practice of not including time and place on NTAs as required under INA § 239. Once again, the highest court in the United States addressed situations in which INA § 239(a)(1) was violated by ICE and how to balance administrative errors with due process concerns. In 2024, the U.S. Supreme Court in *Campos-Chaves v. Garland* decided whether the DHS complies with its statutory obligations under INA § 239 when it sends an initial, defective NTA with a date and location "to be determined," followed by the EOIR immigration court sending a subsequent hearing notice with the requisite information specified.[162]

Case law after *Niz-Chavez*, most notably *Campos-Chaves*, has narrowed the practical reach of *Niz-Chavez* by holding that a later hearing notice can satisfy the statutory notice requirement for *in absentia* removal orders, even if the original NTA was defective. As a result, while *Niz-Chavez* remains a potent tool in litigation regarding non-LPR cancellation of removal and the

162. Campos-Chaves v. Garland, 602 U.S. 447, 461 (2024).

stop-time rule, arguments for the termination of removal proceedings, or continues to stand for the proposition that the NTA must nonetheless be a single document, its impact on rescission arguments has been substantially constrained.[163]

Campos-Chaves involved a noncitizen challenging the validity of an NTA issued by the DHS, which lacked the time and place of the removal hearing.[164] The central issue before the Supreme Court was whether such a defective NTA satisfied the statutory requirements of INA § 239(a) and whether the NTA's flaws permitted rescission of an *in absentia* removal order after a respondent failed to appear for the first immigration court hearing.[165] The case also raised the broader question of whether the DHS could continue issuing "putative" NTAs without fully complying with INA § 239(a)'s notice requirements and the precedential decisions in *Pereira* and *Niz-Chavez*.

A. *Stacked Against the Noncitizen: How the Record Unfolded*

Mr. Moris Esmelis Campos-Chaves, a national of El Salvador, entered the United States without legal authorization on January 24, 2005.[166] Following his entry, the DHS served him with a putative NTA and initiated removal proceedings by filing the NTA with EOIR. Mr. Campos-Chaves' putative NTA did not specify the time or location of his immigration hearing.[167] Later, the EOIR immigration court sent Mr. Campos-Chaves a hearing notice that included the missing details, which he received.[168] This fact is distinguishable from Hofstra's Deportation Defense Clinic clients, who did not receive their initial hearing notices. Mr. Campos-Chaves did not attend the scheduled hearing and was subsequently ordered removed *in absentia*.[169]

In 2018, Mr. Campos-Chaves filed a motion to reopen his case. Invoking the holding in *Pereria*, Mr. Campos-Chaves argued that the original NTA was deficient and, therefore, the removal order should be vacated.[170] His motion was denied by an immigration judge, a decision that was upheld by the BIA.[171] The Fifth Circuit Court of Appeals also denied his petition for review.[172] Mr. Campos-Chaves then sought review by the U.S. Supreme Court, which agreed to hear the case by granting certiorari on

163. Matter of Fernandes, 28 I&N Dec. 605, 616 (B.I.A. 2022).
164. *Campos-Chaves*, 602 U.S. at 453 (2024).
165. *Id.* at 450.
166. *Id.* at 452.
167. *Id.* at 452–53.
168. *Id.* at 453.
169. *Id.*
170. *Id.*
171. *Id.* The Fifth Circuit rejected Campos-Chaves's jurisdictional challenge because any defect in the initial NTA was cured by the subsequent Notice of Hearing, which he received and did not contest. In the court's view, where a noncitizen receives actual notice of the time and place of proceedings through a subsequent Notice of Hearing, the statutory notice requirements are satisfied, and an *in absentia* removal order may stand. *Id.*
172. *Id.*

June 30, 2023. In a 5-4 decision[173] authored by Justice Samuel Alito, the Court affirmed.[174]

Campos-Chaves v. Garland was consolidated with *Garland v. Singh* and *Mendez-Colín* because all three cases presented the same core statutory question: whether a noncitizen may rescind an *in absentia* removal order when DHS issued an initial, statutorily defective Notice to Appear omitting the time and place of proceedings, but the government later provided a separate notice of hearing supplying that information.[175] The Court consolidated the cases to resolve a circuit split and to consider whether a noncitizen is entitled to seek rescission of an in *absentia removal* order premised solely on a deficient NTA and to provide uniform guidance on the extent to which later-issued notices can "cure" defects in the original NTA.[176] By deciding them together, the Court underscored that the interpretive question—how to construe the statutory term "change" under Section 239(a)(2)—implicates not just one litigant, but a systemic practice that affects thousands of noncitizens facing removal.[177]

B. *Faulty Logic, Flawed Law*

In his opinion, Justice Alito explains that INA § 239 creates two distinct categories of notices. Under Justice Alito's interpretation of the statute, the first category, outlined in paragraph one, refers to the initial NTA, which may lack certain details.[178] The second category, found in paragraph two, allows the government to provide supplemental information—such as the time and location of the hearing—at a later date.[179] This interpretation contrasts with the Supreme Court's ruling in *Niz-Chavez*, which held that the first notice must contain all required information and that subsequent documents can only clarify or update what was already included in the original single document NTA.[180]

Justice Alito's interpretation also conflicts with the plain language of INA § 239(a)(1), which says that "written notice (in this section referred to as a 'notice to appear) shall be given. . .specifying the following: . . . [(G)(i)] The time and place at which the proceedings will be held." In *Pereira*, the Court emphasized the clear statutory language requiring the initial NTA to include specific details, i.e., time and place of the first hearing, reinforcing the idea that a deficient first notice cannot be cured by later notices.[181] In contrast, the

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173. Justice Alito wrote the majority opinion, joined by Justices Roberts, Thomas, Kavanaugh, and Barrett. Justice Ketanji Brown Jackson authored the dissenting opinion, in which Justices Sotomayor, Kagan, and Gorsuch joined.

174. *Id.* at 447.

175. *Id.* at 452.

176. *Id.*

177. *See id.* at 451–52.

178. *Id.* at 451.

179. *Id.*

180. *See* Niz-Chavez v. Garland, 593 U.S. 155, 161–65 (2021).

181. *See generally* Pereira v. Sessions, 585 U.S. 198, 202, 208–09 (2018) ("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).'").

Court's decision in *Campos-Chaves* departs from this precedent by finding the statute ambiguous, marking a shift from earlier rulings that treated the notice requirements as clear, explicit, and mandatory.

Justice Alito's analysis focused on the phrase, "in the case of any change or postponement in the time and place of such proceedings" under INA § 239 (a)(2). Counsel for Mr. Campos-Chaves argued that receiving a defective NTA, lacking the place and time requirements, then subsequently receiving this information, does not constitute a "change."[182] This is because a change presupposes that a date or location was provided in the first instance. As petitioners contended, providing a purported notice that does not notify a respondent of where or when to appear, and then another government agency subsequently providing a hearing notice with the statutorily mandated details that were supposed to be "specif[ied]" in the NTA, does not mark a "change" because there was no modification or alteration of the hearing's time and place since one had never been set in the first instance. Rather than changing a prior date and time set on the NTA, the hearing notice schedules that date and time for the first time. Justice Alito disagreed with Mr. Campos-Chaves's contention, writing in part:

> The aliens take too narrow a reading of the term "change." In their telling, "change" means "substitution," and substitution presupposes that there was a date before. But to "change" can also mean "to replace with another or others of the same kind or class," "to switch to another," to "alter," or to "modify." What happened here fits under any of those definitions. The notice of hearing Campos-Chaves received "changed"—that is, "replaced," "switched," or "substituted"—a "date to be set" and a "time to be set" to "Sep 20, 2005," and "9:00 A.M.," respectively. . . . The aliens' cramped reading of "change" is out of place here, especially given that the statute refers to "*any* change."[183]

Here, the Court rejects the petitioners' narrow reading of "change" as limited to "substitution." Drawing on dictionary definitions, Justice Alito explains that "change" encompasses replacing, switching, altering, or modifying. Under this broader interpretation, each notice of hearing "changed" prior placeholders or indeterminate terms into concrete dates and times, consistent with the statute's use of the expansive phrase "any change."[184]

Understanding Justice Alito's argument, made by a purported textualist, can perhaps be best explained through analogy. Suppose two individuals agree to dine together at a restaurant, and one undertakes responsibility for securing the reservation for a specific date. Suppose then that the individual neglects to make the reservation. Remembering this failure, the individual

182. *Campos-Chaves*, 602 U.S. at 462–65.
183. *Id.* at 462–63 (internal citations omitted).
184. *Id.*

calls the restaurant prior to the date and successfully obtains a reservation. In such circumstances, the individual would not plausibly declare, "I am calling to change my reservation," for no reservation existed to begin with. Rather, the phone call constituted the creation of the first and only reservation, not the alteration or modification of a preexisting one.[185] In *Campos-Chaves*, of course, ICE is the one reserving a date with EOIR (i.e., the restaurant) and the other diner is the respondent. To take the analogy a step further, the diner that does not set the reservation would have difficulty attending the date at all if their initial invitation was made in writing months or years prior and did not contain the time or place, and if the restaurant's subsequent notice with that information was sent only to an outdated address.

Justice Alito argues further on the basis of ordinary language usage—claiming that a "new" time or place does not necessarily presuppose an "old" one.[186] In the context of the DHS's issuance of putative NTAs, followed by the issuance of legally compliant Notices of Hearing, he reasons that "new" can describe something that arises for the first time, not merely a replacement for something that already existed.[187] Justice Alito reasons:

> The aliens' argument that a "new" time or place requires an "old" time or place fares no better. In fact, it runs against how that word is ordinarily used. No one thinks that congratulating a couple on having a "new" baby implies that the couple is replacing an "old" baby. The word "new" describes something that has "originated or occurred lately," Webster's Third New International Dictionary, at 1522, or is "novel," ibid. The times provided by the aliens' notices of hearing were all those things. The first occasion on which Campos-Chaves, Singh, and Mendez-Colín were informed of the time of the particular hearing was when they received their hearing notices. Nonetheless, they failed to show up at those hearings, and in their absence, they were ordered removed. They received a "notice in accordance with" paragraph (2), and thus cannot seek rescission under §1229a(b)(5)(C)(ii).[188]

The Court's analogy to a "new baby" misapprehends the statutory framework, which conditions valid notice on the initial issuance of a single, statutorily compliant NTA under § 239(a).[189] By treating a later hearing notice as a "new" notice sufficient to cure a defective NTA, the Court collapses Congress's deliberate distinction between the charging document and subsequent rescheduling communications. This reasoning not only ignores the statutory text but also undermines due process by allowing the government to initiate removal

185. Thank you to Hofstra Deportation Defense Clinic alumnus, Najelie Smith-Ortiz, for coming up with this analogy.
186. *Campos-Chaves,* 602 U.S. at 463.
187. *Id.*
188. *Id.*
189. *See* Pereira v. Sessions, 585 U.S. 198 (2018); Niz-Chavez v. Garland, 593 U.S. 155 (2021).

proceedings based on deficient notices to appear that do not notify respondents when or where to appear.[190]

Justice Alito's arguments interpreting the words "change," "new," and "old" are purportedly made on the grounds of conventional language usage. However, multiple issues exist with this analysis. First, it is not necessarily common parlance to unveil to friends and family that you have a "*new* baby." Rather, the word "new" in that context often presupposes an existing familial category (i.e., children) of which the baby is the latest addition, underscoring that "new" often carries a relational meaning tied to something already established. If the child is the family's first baby, they might report the birth of their "first child" or a "new addition to the family," with the familial category then being defined more broadly to include adults. Second, it is not a suitable comparison to analogize time and place requirements to childbirth. The former relates to an event, while the latter relates to a person. The ordinary usage for "new" as it pertains to time or an event is usually relational to a former time or event.

An apt analogy is to a flight itinerary: if an airline emails you to say your flight now has a new departure time, the natural understanding is that there was an old departure time already set, and that the airline is changing it. If, instead, the airline never gave you any departure time at all, it would be odd—if not misleading—for them to later announce that you have a "new" departure time. Instead, the airline has now scheduled your flight time, not changed a prior time. In the same way, saying there is a "new" time or place for a hearing presupposes that the government had already provided an earlier time or place to be replaced, rather than filling in a blank that had not "be[en] determined" the first time.

Campos-Chaves has significant implications for noncitizens in removal proceedings. First, *Campos-Chaves* upholds ICE's problematic practice of issuing incomplete NTAs—ones that lack the date and time of the hearing. However, this practice may now be accepted as long as EOIR later sends a follow-up notice with those details. This creates an environment where the likelihood of *in absentia* removal orders will increase. As exhibited in Oscar and Maria's stories, the Court's allowance of a bifurcated notice regime increases the practical consequences of initial statutory noncompliance and shifts the risk of breakdowns in communication onto respondents rather than the government. While *Niz-Chavez* remains precedential in requiring a single, statutorily compliant Notice to Appear, and *Fernandes* preserves a respondent's ability to object to defective NTAs before pleadings close, neither decision squarely resolves the question of remedy. *Campos-Chaves*,

190. *Pereira*, 585 U.S. at 211–212 ("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.").

however, significantly constrains the availability of respondents to rescind removal orders and reopen proceedings, and thereby narrows the practical avenues for remedy and ability to pursue relief that earlier cases seemed to preserve.

In its reasoning in *Campos-Chaves*, the Court undermined but did not overrule the precedent set forth in *Pereira* and *Niz-Chavez*. Both cases emphasized that one single, complete, and fully compliant NTA triggers removal proceedings and related consequences. However, the Court in *Campos-Chaves* undermined these previous holdings, and in doing so, provided the DHS/ICE with a procedural advantage in removal proceedings. Justice Sotomayor correctly identified the incentive structure that *Campos-Chaves*'s ruling creates, noting "if we rule in [the government's] favor, we [are] giving [the DHS] an incentive to continue [the] practice [of issuing legally deficient NTAs] because you can do it continuously. . .[without] attention to the statute."[191]

Oral argument provided another compelling analogy to the DHS's NTA scheme.[192] Likening the government's scheme to voter registration, if someone incorrectly fills out a voter registration form and this person is not legally registered to vote, but subsequently fills out a change of party affiliation form, the person may still not be allowed to vote.[193] The change in party affiliation form does not cure the initial, legally invalid document. Rather, despite submitting the subsequent document, this person may still be ineligible to vote. This characterization underscores that Congress intended a narrow safety valve for inadvertent clerical errors, not a mechanism for the government to cure structural defects in its own charging documents. By interpreting the statute to allow broader post-hoc correction, the Court effectively transforms a limited remedial provision into a tool that consolidates procedural control within the government.

C. *The Implications of* Campos-Chaves*: Allowing Defects in an Already Arduous Immigration System*

Governmental agencies, litigants, and the public look to the U.S. Supreme Court to clarify legal disputes and say what the law is. In *Campos-Chaves*, the Court took a clear statute and made it ambiguous. The implications are wide-ranging, and the impact on noncitizen litigants in removal proceedings is considerable.

The Court's decision in *Campos-Chaves* carries significant implications for both statutory interpretation and immigration adjudication. By embracing an expansive reading of the term "change," the Court affirmed the government's authority to cure otherwise incomplete Notices to Appear issued by DHS through subsequent hearing notices issued by a different government

191. Transcript of Oral Argument at 24, Campos-Chaves v. Garland, 602 U.S. 447 (2024) (No. 22-674).
192. *Id.* at 68.
193. *Id.*

agency, EOIR. At a doctrinal level, the decision is an example of the Court giving more credence to ordinary meaning and dictionary definitions over narrower, technical readings of statutory language, while emphasizing the breadth conferred by modifiers such as "any."[194] Practically, the ruling consolidates agency flexibility in administering the immigration docket—allowing DHS and EOIR greater leeway to coordinate scheduling and notice procedures—but it also raises concerns about adequate notice, fairness, due process, and the erosion of procedural protections for respondents who may be disadvantaged by shifting dates and times. In this respect, *Campos-Chaves* illustrates the tension between administrative efficiency and due process, a theme likely to reverberate in future challenges to the structure and operation of immigration adjudication.

1. *Lack of Notice Implicates Due Process*

The lack of proper notice in removal proceedings directly implicates the Due Process Clause of the Fifth Amendment, which guarantees that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law."[195] Removal proceedings unquestionably implicate a noncitizen's liberty and property interests, as they may result in physical expulsion from the United States, separation from family, and the loss of livelihood and property. Whatever contemporary debates exist about constitutional rights beyond our borders, the Supreme Court has reminded us that noncitizens physically present in the United States are protected by the Fifth Amendment's Due Process Clause.[196] At its core, due process requires meaningful notice and an opportunity to be heard before the government takes action affecting one's interests.[197] By serving defective NTAs that omit essential information—such as the time and place of the hearing—the government deprives (or could deprive) noncitizens of a fair opportunity to present their claims. In this respect, inadequate notice does not merely create a statutory claim-processing defect under the Immigration and Nationality Act; it impacts the constitutional guarantee of due process.

The Supreme Court's decision in *Mathews v. Eldridge* provides the governing framework for assessing what process is due, i.e., procedural due process.[198] Under Mathews, courts must weigh: (1) the private interest affected, (2) the risk of erroneous deprivation and the value of additional safeguards, and (3) the government's interest.[199] Applying that test here, the private interest—avoiding removal from the country—is among the most significant recognized by law.[200]

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194. *Id.* at 61–62.

195. U.S. CONST. amend. V.

196. Trump v. J. G. G., 604 U.S. 670, 673 (2025) (per curiam) ("'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

197. *See, e.g.*, Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

198. Mathews v. Eldridge, 424 U.S. 319 (1976).

199. *Id.* at 335.

200. Padilla v. Kentucky, 559 U.S. 356, 365 (2010) (observing that the Court "ha[s] long recognized that deportation is a particularly severe 'penalty[]'").

The risk of erroneous deprivation is acute where a noncitizen never receives accurate or any information about when and where to appear. No safeguard can be meaningful without proper notice. Finally, the government's interest in efficiency cannot outweigh the fundamental fairness of providing constitutionally adequate notice. Thus, under Mathews, the failure to serve a valid NTA is not a trivial defect but a constitutional infirmity that undermines the legitimacy of the removal proceeding itself.

2. *Adversarial Imbalance in the "Curing" of Putative NTA Defects*

After *Campos-Chaves v. Garland*, a sharp procedural imbalance emerged in the way defects in charging documents are treated. The Court sanctioned a system where the DHS may cure statutory deficiencies in Notices to Appear through later-issued hearing notices by EOIR, even when the original NTA failed to meet the requirements of INA § 239. By contrast, noncitizens are held to an exacting standard: a missed hearing, even if traceable to government error, will almost certainly trigger an *in absentia* removal order with only narrow statutory avenues for rescission.[201] The imbalance is magnified by the reality that noncitizens are often also subject to strict supervision and obligations, including mandatory check-ins with ICE and the constant risk of detention, conditions for which DHS and EOIR have very little tolerance for procedural error.[202] This disparate treatment raises serious concerns under the Fifth Amendment's guarantee of due process.[203]

The result is a system in which immigration courts are effectively tasked with "bailing out" the DHS, routinely overlooking defective NTAs and treating subsequent hearing notices as curative, thereby preserving the government's cases.[204] Meanwhile, noncitizens face far harsher consequences: failure to update an address, attend a hearing, or comply with burdensome supervision conditions can end their case or lead to their detention or deportation, often without meaningful recourse. Under INA § 239, Congress assigned the duty to *serve and file* a Notice to Appear squarely to DHS, yet Justice Alito's reasoning in *Campos-Chaves* effectively permits EOIR—the neutral adjudicator—to assume DHS's prosecutorial role under subsection (a)(2) by 'curing' a defective NTA through the immigration court's own hearing notice. This inversion not only blurs the statutory division of responsibilities but also erodes the adversarial structure Congress designed. In this adversarial setting, one party—the government—is granted flexibility, while the other—the noncitizen—operates under a heightened, unforgiving standard. This structural inequity not only departs from the textual commands of Congress in INA § 239 and U.S. Supreme Court decisions in *Pereira*

201. *See* 8 U.S.C. § 1229a(b)(5)(C).
202. *See* 8 C.F.R. § 236.1(c)(8).
203. U.S. CONST. amend. V.
204. *See, e.g.,* Pierre-Paul v. Barr, 930 F.3d 684, 692 (5th Cir. 2019) (upholding jurisdiction despite defective NTAs).

v. Sessions and *Niz-Chavez v. Garland*, but also undermines the fairness and legitimacy of immigration adjudication.[205] Noncitizens are not themselves offered such latitude. For example, if a noncitizen files an asylum application that does not fully articulate the claim, but files in order to comply with the one-year filing deadline for asylum, and then seeks to amend the application with vital information, the immigration judge might find that the amended application is a new asylum application requiring separate compliance with the filing deadline or its exceptions.[206] Neither could noncitizen respondents depend on the immigration judge to assist them in serving the DHS with the asylum application if respondents neglected to do so. Immigration judges do, however, assist ICE in completing its service of the missing date, time, and location information when the court mails hearing notices that purportedly cure ICE's putative NTA so that *in absentia* removal orders may be issued.

3. *More* In Absentia *Orders, More Injustice*

The adversarial imbalance and structural inequities furthered by *Campos-Chaves* will likely increase *in absentia* removal orders. Previously, prior to *Campos-Chaves,* noncitizens who had been ordered removed *in absentia* based on an incomplete NTA might successfully move to reopen their cases by citing the legal defect of lacking time and place of proceedings.[207] By holding that subsequent hearing notices may "change" or fill in previously blank or indeterminate fields on an NTA, the Court effectively sanctioned a practice that blurs the line between proper notice and after-the-fact correction. For noncitizens facing the severe consequence of removal, the guarantee of due process has long been tied to receiving timely, accurate, and complete information about the government's charges and the time and place of their hearing.[208] Allowing the government to treat a later-issued notice as a permissible "change" normalizes deficiencies in NTAs. This creates a structural imbalance, where the government's interest in administrative efficiency and docket management is privileged over an individual's right to clear and reliable notice of proceedings in which their liberty and livelihood are at stake.[209]

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205. Pereira v. Sessions, 585 U.S. 198, 209–11 (2018); Niz-Chavez v. Garland, 593 U.S. 155, 160–65 (2021).

206. *Matter of M-A-F-*, 26 I&N Dec. 651, 651 (B.I.A. 2015) ("A subsequent asylum application is properly viewed as a new application if it presents a previously unraised basis for relief or is predicated on a new or substantially different factual basis.").

207. *Pereira*, 585 U.S. at 202 (holding that a notice to appear that omits the time or place of the hearing is not a "notice to appear" under § 1229(a)); *Niz-Chavez*, 593 U.S. at 161 (2021) (emphasizing that the statute requires a single, comprehensive notice to appear, not a patchwork of documents); Ortiz-Santiago v. Barr, 924 F.3d 956, 963–64 (7th Cir. 2019) (recognizing defective NTAs as claim-processing violations and allowing motions to reopen in certain cases).

208. Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950) (due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action"); Lozada v. INS, 857 F.2d 10, 13 (1st Cir. 1988) (due process in deportation proceedings requires that notice be reasonably calculated to inform the noncitizen of the proceedings).

209. Mathews v. Eldridge, 424 U.S. 319, 334–35 (1976) (reasoning that due process requires balancing the government's interests against the private interest and the risk of erroneous deprivation).

If the statutory scheme tolerates filling in placeholders like "TBD" or "date to be set" through subsequent notices, one might ask whether repeated alterations or rescheduling—potentially on short notice—could similarly be justified as "changes" under INA § 239. Such elasticity leaves noncitizens vulnerable to confusion, and increases the likelihood of missed hearings resulting in *in absentia* removal orders.[210] Particularly for respondents who lack counsel, rely on translations and interpreters, or face barriers in accessing legal resources, the risk of an *in absentia* removal order is heightened after *Campos-Chaves*.[211] While the Court framed its interpretation as consistent with ordinary meaning, the decision portends a broader erosion of procedural safeguards, raising difficult questions about how much flexibility is compatible with the Constitution's guarantee of fair process in removal adjudications.[212]

The practical effect of *Campos-Chaves v. Garland* is that it increases the likelihood of noncitizens missing their hearings, primarily because it legitimizes the DHS's practice of issuing defective NTAs that lack the time and place of proceedings.[213] Under *Pereira* and *Niz-Chavez*, such omissions were understood to be legally significant defects, as Congress required complete information in order to prevent precisely this problem—removal orders issued without proper notice. But by allowing the government to "cure" an incomplete NTA through a later notice, *Campos-Chaves* creates a fragmented system of notice where critical information is spread across multiple documents.[214] For respondents, particularly those without legal counsel, with limited English proficiency, or with unstable housing or mailing addresses, this fragmentation makes it easier to miss or misunderstand when and where their hearing will occur.

The consequence of this doctrinal shift is that immigration judges will likely issue *in absentia* removal orders—where a noncitizen is ordered removed for failure to appear—at higher rates. A single, statutorily compliant NTA provides a clear, single-document notice; multiple, staggered notices increase the risk that one may be lost in the mail, delivered to the wrong address, or otherwise overlooked or misunderstood. Moreover, *Campos-Chaves* diminishes incentives for the DHS to ensure accuracy and completeness on NTAs at the outset, since the agency now enjoys judicial approval to remedy omissions later. The result is a notice system tilted toward administrative convenience, and one that undermines

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210. Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 49–53 (2015) (finding that lack of counsel greatly increases risk of *in absentia* removal and decreases ability to navigate procedural hurdles).

211. *Id.*

212. Similarly, respondents' statutory rights in removal proceedings may also be violated if they are unable to appear for a hearing. *See* 8 U.S.C. § 1229a(b)(4)(B) ("[T]he alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government.").

213. Eagly & Shafer, *supra* note 212, at 49–53 (finding that lack of counsel greatly increases risk of *in absentia* removal and decreases ability to navigate procedural hurdles).

214. Pereira v. Sessions, 585 U.S. 198, 233 (2018) (Alito, J. dissenting) ("No one doubts that § 1229 (a)(1) requires that a notice to appear include the 'time and place' of the removal proceeding."); *contra* Campos-Chaves v. Garland, 602 U.S. 447, 463 ("They received a 'notice in accordance with' paragraph (2) [under § 1229], and thus cannot seek rescission under §1229a(b)(5)(C)(ii).").

the stability and reliability Congress intended, thereby heightening the risk that noncitizens—despite their best efforts—may miss hearings and be unjustly removed.

Campos-Chaves muddies already dirty water, especially for noncitizens who may not fully understand the fragmented notice process. As exemplified in Hofstra Law's Deportation Defense Clinic's cases, even maximum and diligent efforts by noncitizens to comply with their legal obligations can nonetheless result in being ordered removed *in absentia* and nearly (or in other cases actually) being deported.

Campos-Chaves shifts the legal landscape in favor of the government, making it easier for removal orders to be issued and harder for noncitizens to challenge them based on notice defects. It narrows the protective scope of *Pereira* and *Niz-Chavez*, reduces opportunities for relief, and increases the burden on noncitizens to monitor, organize, and comply with fragmented procedural notices. Indeed, Justice Gorsuch expressed this very concern in *Niz-Chavez*.[215]

Despite the INA's clear statutory language requiring the NTA to specify the time and place of the hearing, the U.S. Supreme Court's holding in *Campos-Chaves* effectively validated the DHS's operational approach, with the result that DHS's fragmented notice practice has continued.

The Supreme Court's decision in *Campos-Chaves v. Garland* highlights and exacerbates the asymmetrical allocation of power between the DHS and noncitizens in removal proceedings. By endorsing the DHS's ability to issue skeletal NTAs that omit critical information and later "cure" those omissions through supplemental hearing notices, the Court has effectively sanctioned a regime in which the DHS controls the procedural playing field. This results in diminished statutory safeguards, which Congress intended when it mandated that NTAs specify essential details upfront, and instead, the DHS is afforded broad discretion to dictate the manner and timing in which notice obligations are fulfilled. In practical terms, the DHS can issue deficient charging documents without consequence, secure jurisdiction over a noncitizen, and later supply the missing details at its convenience, all while insulating its practices from meaningful judicial scrutiny. In fact, the DHS even relies on immigration judges to serve the hearing notice that purports to cure the NTA, under INA § 239(a)(2), by providing the time and place of proceedings. This process not only undermines the precision and accountability that due process requires but also entrenches the DHS as both architect of the notice regime and its effective arbiter, insofar as it determines when proceedings are

215. Niz-Chavez v. Garland, 593 U.S. 155, 170 (2021) ("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.").

initiated, what information is initially disclosed, and often whether to proceed with a case despite statutory defects that have practical consequences.

This concentration of authority in the DHS raises profound concerns about fairness and structural bias within the immigration system.[216] Unlike criminal defendants, noncitizens in removal proceedings lack many procedural protections, including the right to government-appointed counsel, and are often left to navigate complex statutory schemes on their own.[217] When the DHS enjoys near-plenary authority to define what counts as adequate notice, it compounds these disadvantages by leaving respondents vulnerable to uncertainty and surprise.[218] The statutory phrase "any change" has now become a vessel for expansive agency power, permitting the DHS to transform omissions into later modifications without meaningful limits.[219] Such discretion risks fostering arbitrary practices, enabling the DHS to manipulate scheduling in ways that strain respondents' ability to appear, prepare, and defend themselves.[220] In this light, *Campos-Chaves* not only interprets statutory text but also shifts the balance of power further toward the government, raising questions about whether administrative efficiency has eclipsed the fundamental commitment to fairness that due process demands.[221]

Supporters of the majority's decision in *Campos-Chaves* might argue that, in siding with the DHS's continued practice of issuing defective NTAs, the Court showed pragmatic deference to how immigration enforcement operates. First, supporters might argue that noncitizens who are served with NTAs should know that they have immigration court and should be vigilant in monitoring when their first hearing is scheduled, and that any noncitizen who *is* notified of a hearing should not be able to miss the hearing and then move to reopen proceedings based solely on a flawed charging document. Second, supporters might note that *Campos-Chaves* is a recognition of the volume and complexity of matters put before immigration judges and the BIA, and that this holding allows the government to maintain flexibility in scheduling and notice procedures. In *Campos-Chaves*, the Court rejected the strict textualist position garnered from *Pereria* and *Niz-Chavez*. The Court

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216. Shoba Sivaprasad Wadhia, *Immigration Prosecutorial Discretion: The Shifting Sands*, 38 FORDHAM URB. L.J. 427, 430–31 (2010) (examining executive control over immigration enforcement and fairness concerns).

217. Turner v. Rogers, 564 U.S. 431, 447–48 (2011) (contrasting immigration with criminal proceedings regarding right to appointed counsel).

218. Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.").

219. Jill E. Family, *A Broader View of the Immigration Adjudication Problem*, 23 GEO. IMMIGR. L.J. 595, 602–03 (2009) (discussing risk of unchecked agency discretion in immigration adjudication).

220. Denise Gilman, *To Loose the Bands of Wickedness: Immigration Detention and the Fifth Amendment*, 98 IOWA L. REV. 1839, 1880–81 (2013) (arguing immigration system structurally favors government efficiency over fairness).

221. Kevin R. Johnson, *The Struggle for Civil Rights in Immigration Law*, 55 HASTINGS L.J. 963, 971–72 (2004) (arguing systemic inequities place immigrants at a structural disadvantage in removal proceedings).

departed from that strict textualism and deferred to the government's broader reading that later notices can cure defects in the original NTA, even if the first was statutorily incomplete. Perhaps the result in *Campos-Chaves* can be justified on purpose-driven or outcome-oriented grounds to avoid the problem articulated by supporters, but the decision is hard to square based on the statute's plain text or the canons of statutory interpretation. These arguments, however, shift the statutory burden away from the government and onto the noncitizen. Congress did not design § 239 to require respondents to investigate when the government might later perfect its notice; it required the government, at the outset, to provide specific information—including the time and place of the hearing—in the NTA. Nor does administrative convenience authorize deviation from statutory command. As the Court has repeatedly stated in analogous contexts, practical difficulty cannot override clear procedural requirements imposed by Congress.

Congress was clear in INA § 239 that the government must provide a litigant (i.e., noncitizen or respondent) with the most basic of details, such as the time and place of the first hearing in which the fate of their removal (i.e., deportation), and oftentimes, their personal well-being, will be decided. To return once again to Justice Gorsuch's decision in *Niz-Chavez*, "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."[222] Noncitizens deserve proper notice of their first removal proceeding. The DHS's failure to comply with its statutory obligation to provide that notice in an NTA—compounded by the U.S. Supreme Court's decision in *Campos-Chaves*—will result in more noncitizens being ordered removed *in absentia*.

IV. PROPOSED SOLUTIONS

A. *Federal Courts Can and Should Distinguish* Campos-Chaves *Factually*

Federal courts should resist reading *Campos-Chaves v. Garland* as an extension or logical culmination of *Pereira v. Sessions* and *Niz-Chavez v. Garland* and might instead distinguish it on factual grounds. Both *Pereira* and *Niz-Chavez* emphasized Congress's deliberate choice to require a single, statutorily compliant Notice to Appear under INA § 239. Those cases arose in contexts where the statutory text compelled the conclusion that piecemeal notice was insufficient, which implicitly reinforces that due process depends on the government delivering a document that provides clear, comprehensive notice.[223] By contrast, *Campos-Chaves* involved subsequent hearing notices that attempted to cure earlier defects, raising a different factual scenario not

222. Niz-Chavez v. Garland, 593 U.S. 155, 170 (2021).
223. Pereira v. Sessions, 585 U.S. 198, 207-09 (2018); *Niz-Chavez*, 593 U.S. at 161–63.

contemplated in the earlier cases.[224] Recognizing that distinction would allow courts to preserve the textual fidelity of the statute, and *Pereira* and *Niz-Chavez*, while limiting the reach of *Campos-Chaves* to its facts. Specifically, the factual scenario is of a noncitizen who actually receives a subsequent hearing notice providing the time and place of the first hearing before it occurs.

Such a factual distinction is not merely formalism; it is critical to protecting noncitizens' procedural rights. Doing so will more faithfully preserve the principle that NTAs must contain all statutorily required information at the outset—ensuring that noncitizens are given clear and reliable notice of proceedings, as Congress intended, and would comply with the canon of constitutional avoidance of the due process and notice issues implicated by the DHS's malfeasance. This approach avoids the inequitable outcome where the DHS may cure its own defective filings while noncitizens are subject to immediate, often irrevocable, consequences for far less significant errors.[225] In short, distinguishing *Campos-Chaves* factually from the earlier Supreme Court precedents harmonizes the case law while safeguarding the due process rights of those facing the severe consequence of removal from the United States. One day, the U.S. Supreme Court might overrule *Campos-Chaves*, and thereby eliminate a precedent that distorts the statutory scheme for NTAs and undermines both administrative clarity and fairness to noncitizens.

B. *Clearer Congressional Mandates*

Congress could not have been much clearer in drafting INA § 239. However, due to the statutory interpretation conducted in subsequent case law, additional amendments may now be necessary.

Congress could amend INA § 239(a) to explicitly state that all required information must appear in one single notice, that subsequent documents under INA § 239(a)(2) cannot cure a deficient initial NTA, and that a motion to reopen under INA § 240(b)(5)(C) is available to noncitizens who do not receive a compliant NTA. Amending the statute thusly would effectively overturn *Campos-Chaves*.

Congress could also prohibit *in absentia* removal orders if the initial NTA is not compliant with INA § 239(a), for example, if the NTA omits the time and place of the first hearing. A proposed amendment could be as follows: "An order of removal entered *in absentia* shall not be issued, or will be

224. Campos-Chaves v. Garland, No. 22-674, slip op. at 11–12 (5th Cir. June 14, 2024) (interpreting "any change" in § 1229(a)(2) to encompass initial omissions).

225. *See* Matter of Nivelo Cardenas, 28 I&N Dec. 68, 69–70 (B.I.A. 2020) ("[Respondent] claimed that he did not receive the notice of hearing because the town to which it was addressed was incorrectly spelled as 'Patcbogue,' rather than 'Patchogue.' . . . We agree with the Immigration Judge that the respondent failed to demonstrate that he did not receive proper notice."); Matter of M-A-F-, 26 I&N Dec. 651, 651, 657 (B.I.A. 2015) ("A subsequent asylum application is properly viewed as a new application if it presents a previously unraised basis for relief or is predicated on a new or substantially different factual basis. . . . Because that application was submitted almost 6 years after the respondent's arrival in the United States, it was not timely filed unless he can establish an exception to the 1-year filing requirement.").

automatically cancelled by operation of law, if that order was issued in a case initiated by a notice to appear (or document purporting to be a notice to appear) that lacked any information listed under INA § 239(a), regardless of any notice or information provided subsequently."

Congress might amend INA § 239 to include language substantially similar to the following:

> A notice to appear shall be a single document at the time of service and must contain all information specified in INA § 239(a). The failure to include the date, time, and location of the hearing in the initial notice to appear shall render the notice invalid for purposes of commencing removal proceedings or triggering the stop-time rule. Any noncitizen who is served with an invalid notice to appear and is ordered removed shall have the right to seek the reopening of proceedings under INA § 240(b)(5)(C) without any numerical or time limitations.

This amendment would effectively codify the U.S. Supreme Court's decisions in *Pereira* and *Niz-Chavez*, and overturn *Campos-Chaves*.

In the wake of *Campos-Chaves*, Congress might also clarify the term central to Justice Alito's majority opinion: "change." Congress could amend INA § 239 (a)(2) to clarify the meaning of "change," to cabin any remaining interpretive latitude, and to prohibit stretching the term beyond its natural limits. As *Campos-Chaves* illustrates, leaving "change" undefined enabled a majority of the U.S. Supreme Court to exercise judicial deference to the government's expansive construction and continued malfeasance through the insertion of an *initial* time or place into an NTA devoid of that information as a permissible "change" of the time and location, which had never previously been set. This purported ambiguity undermines the statute's core notice function and erodes confidence in the fairness of removal proceedings by tipping the adversarial scale toward the government and raising questions about whether immigration judges are neutral arbiters while they supply and effect service of vital information on the DHS's charging and case-initiating document via hearing notices. A narrowly tailored amendment—specifying that "change" applies only to the alteration or modification of information previously provided, rather than the initial provision of omitted details—would realign the statute with Congress's intent to guarantee adequate and complete notice at the outset of proceedings. Such precision would not only protect respondents' due process rights but also promote uniformity, predictability, and judicial economy by significantly reducing or eliminating the litigation incentives that flourish in the current doctrinal vacuum.

C. *Charting a Path Forward for Practitioners*

In the wake of *Campos-Chaves v. Garland*, practitioners representing noncitizens must adopt strategies that both preserve their clients' rights and account for the procedural asymmetries entrenched by the decision. Because

the Court permitted the DHS to cure defective NTAs with subsequent hearing notices, practitioners can no longer rely solely on a defective NTA for a motion to reopen proceedings after the issuance of an *in absentia* removal order.[226] Instead, legal advocates should try to factually distinguish cases from *Campos-Chaves*. For example, by arguing, if possible, that the noncitizen did not actually receive the hearing notice supplying the information that INA § 239(a)(2) purportedly permits be changed. That circumstance would be distinguishable from the cases at issue in *Campos-Chaves*. Advocates might also foreground due process arguments that stress prejudice resulting from confusion or miscommunication and preserve objections, for appeal if necessary, to defective charging documents as claim-processing violations under *Fernandes*.[227] Filing motions to terminate or rescind removal orders may still be appropriate in certain jurisdictions, but effective advocacy now demands coupling such motions with clear objections to claim-processing violations and consideration of broader constitutional claims demonstrating how deficient notice undermines the fundamental fairness and due process of the entire proceeding.[228]

This shift in strategy is particularly important given the strictures applied to noncitizens and their counsel in contrast to the latitude often afforded to the government. While the DHS may correct its errors post hoc, immigration attorneys face far stricter requirements: even minor mistakes on applications for relief—such as incomplete asylum forms or missing any corroborating evidence—can result in categorical denials.[229] The unforgiving nature of these requirements underscores that counsel must exercise extraordinary

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226. *See generally,* Laparra-Deleon v. Garland, 52 F.4th 514 (1st Cir. 2022); *see also* Matter of Laparra-Deleon, 29 I&N Dec. 389, 391 (B.I.A. 2026) (noting that *Laparra-Deleon* has been "effectively overruled" by *Campos-Chaves,* 602 U.S. 447 (2024)).

227. Matter of Fernandes, 28 I&N Dec. 605 (B.I.A. 2022); Lata v. INS, 204 F.3d 1241, 1246 (9th Cir. 2000) ("To prevail on a due process challenge . . . [an alien] must show error and substantial prejudice."); EOIR PRACTICE MANUAL, CH. 3.1(b)(ii), U.S. DEP'T OF JUST., EXEC. OFF. FOR IMMIGR. REV. (2026) (counsel must timely raise objections before IJs to preserve them for appeal); *see also* Matter of Aguilar Hernandez, 28 I&N Dec. 774 (B.I.A. 2024) (noting that DHS cannot remedy a notice to appear that lacks the date and time of the initial hearing before the Immigration Judge by filing a Form I-261 because this remedy is contrary to the plain text of 8 C.F.R. § 1003.30 and inconsistent with the Supreme Court's decision in Niz-Chavez v. Garland, 593 U.S. 155 (2021)); *contra* Matter of R-T-P-, 28 I&N Dec. 828 (B.I.A. 2024) (finding that written amendments made by an immigration judge, upon the motion of the DHS, to the time and place of the hearing on the notice to appear may satisfy the requirements for a proper remedy to a noncompliant notice to appear.).

228. Am. Immigr. Council & Nat'l Immigr. Project Of The Nat'l Lawyers Guild*, Strategies and Considerations in the Wake of Niz-Chavez v. Garland: Practice Advisory*, AM. IMMIGR. COUNCIL (July 29, 2024), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/practice_advisory_strategies_and_considerations_in_the_wake_of_niz-chavez_v._garland.pdf [https://perma.cc/7T9L-Z6QM] (recommending that practitioners combine motions to terminate/rescind with timely claim-processing objections and alternative constitutional due-process arguments).

229. *See* 8 C.F.R. § 208.3(c)(3); Matter of C-A-R-R-, 29 I&N Dec. 13, 15 (B.I.A. 2025) ("However, even where a Form I-589 is submitted to the Immigration Judge within the time permitted, the Immigration Judge is not required to consider it on the merits if it is incomplete."); Matter of H-A-A-V-, 29 I&N Dec. 233, 238 (B.I.A. 2025) ("However, if the factual allegations underlying a claim for asylum, withholding of removal, or protection under the CAT, viewed in the light most favorable to the respondent, do not establish prima facie eligibility for relief or protection, an Immigration Judge may pretermit the applications without a full evidentiary hearing on the merits of the claim."); *see also* Matter of

diligence in ensuring accuracy and completeness, as most or all defects are imputed to the applicant/respondent (i.e., noncitizen) rather than subject to later cure. This disparity illustrates the systemic imbalance exacerbated by *Campos-Chaves*: the government's procedural missteps are judicially excused, while the noncitizen's errors are disqualifying.

Practitioners should also respond by developing robust client counseling practices that anticipate and mitigate the risks posed by the decision. This includes ensuring that clients understand the critical importance of attending every hearing,[230] even where initial NTAs appear defective; teaching how to monitor the EOIR hotline and EOIR automated system weekly to try to mitigate the risk of receiving *in absentia* removal orders; closely monitoring EOIR communications to avoid missed dates;[231] and proactively supplementing the record with evidence of prejudice if confusion arises from deficient notice.[232] Moreover, attorneys should create appellate records that spotlight the disparity between the government's leniency and the noncitizen's unforgiving burden, preserving arguments for eventual reconsideration by higher courts, and possibly also legislative reform.[233] In short, while *Campos-Chaves* constrains certain defensive strategies, it simultaneously elevates the role of advocates as safeguards against the procedural inequities now endemic to removal proceedings.[234]

CONCLUSION

ICE's persistent issuance of defective Notices to Appear and the judiciary's increasingly permissive interpretations of INA § 239 expose a deep and unresolved tension between administrative efficiency and procedural fairness. In *Campos-Chaves v. Garland*, the Supreme Court narrowed protections that Congress expressly embedded in the statute, limiting respondents' ability to challenge removal orders predicated on legally deficient notice. The decision reflects a broader doctrinal shift that privileges agency convenience over statutory fidelity and due process—often with devastating consequences for noncitizens and their families. Absent meaningful intervention, the harms suffered by Oscar and Maria's families will not remain exceptional but instead will persist as everyday injustices. Fairness in our immigration system is essential,

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Lozada, 19 I&N Dec. 637 (B.I.A. 1988) (describing ineffective assistance of counsel and requirement to file a disciplinary complaint in order to file motion to reopen).

230. 8 U.S.C. § 1229a(b)(5)(A) (authorizing *in absentia* removal orders when a noncitizen fails to appear after written notice); *see also* Matter of Laurent Castro, 29 I&N Dec. 419 (B.I.A. 2026) (holding *in absentia* removal order shall be issued, instead of continuing removal proceedings, where respondent was served with NTA appear, DHS established removability, and respondent failed to appear).

231. EOIR PRACTICE MANUAL CH. 4.15(b), U.S. DEP'T OF JUST., EXEC. OFF. FOR IMMIGR. REV. (2026) (requiring attorneys to keep current contact information and monitor hearing notices).

232. *Lata,* 204 F.3d at 1246 (to prevail on a due process claim, a noncitizen must show prejudice).

233. Santos-Zacaria v. Garland, 598 U.S. 411, 419–20 (2023) (reaffirming importance of exhausting claims before EOIR to preserve them for judicial review).

234. Shoba Sivaprasad Wadhia, *The Role of Prosecutorial Discretion in Immigration Law*, 9 CONN. PUB. INT. L.J. 243, 246 (2010) (arguing that agency discretion in enforcement magnifies inequities that lawyers must help counterbalance).

especially where the stakes include permanent family separation, loss of livelihood, and, in some cases, exposure to persecution or death.

Part I demonstrated that INA § 239 establishes clear, mandatory requirements for notices to appear, including the obligation to specify the time and place of removal proceedings. These requirements are not technical formalities; they are core statutory safeguards designed to ensure meaningful notice and prevent unjust *in absentia* removal orders. Congress's insistence on specifying time and place reflects a deliberate balance between enforcement interests and the fundamental right to be heard—a balance that collapses when the government initiates proceedings with incomplete or indeterminate notices.

Part II illustrated how defective NTAs operate in practice, using the cases of Oscar and Maria to show how omissions of time and place information, or incorrect addresses, undermine the fairness of already complex and adversarial proceedings. For noncitizens—who lack a right to appointed counsel and must navigate dense and varied legal requirements—deficient notice magnifies structural inequities and increases the risk of removal through no fault of their own. These cases underscore that defective NTAs do not merely inconvenience respondents; they distort the adjudicatory process and heighten the likelihood of erroneous and irreversible outcomes.

Part III analyzed *Campos-Chaves* and its departure from *Pereira* and *Niz-Chavez*. By holding that a later hearing notice may "cure" an initially defective NTA, the Court sanctioned a fragmented notice regime that Congress did not authorize. The majority's expansive reading of "change" under INA § 239(a)(2) collapses the distinction between omission and modification, effectively permitting the government to initiate proceedings without providing the very notice the statute requires. This approach entrenches agency noncompliance, weakens judicial oversight, increases removal orders, and erodes the statutory protections Congress sought to guarantee.

Finally, Part IV argued that *Campos-Chaves* demands a legislative response. By deferring to agency practice rather than statutory text, the Court has incentivized the continued issuance of incomplete NTAs and constrained the ability of noncitizens to seek reopening, even where notice was plainly deficient. Congress can and should correct this imbalance by amending INA § 239 to require a single, complete NTA and by clarifying that "change" applies only to modifications of information previously provided—not to the belated insertion of essential details. Such reforms would restore statutory clarity, reinforce due process, and ensure that "notice to appear" functions as genuine notice.

If noncitizens must turn square corners in their dealings with the government, it is not too much to demand that the government do the same.[235] Requiring ICE to include the time and place of proceedings in the initial notice to appear is not an onerous administrative burden—it is the minimum Congress required, and the least the rule of law demands.

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235. Niz-Chavez v. Garland, 593 U.S. 155, 172 (2021).