No. 17-459

IN THE
Supreme Court of the United States

WESCLEY FONSECA PEREIRA,
Petitioner,

v.

JEFFERSON B. SESSIONS, III, ATTORNEY GENERAL,
Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the First Circuit

REPLY BRIEF FOR PETITIONER

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The stop-time rule states that an immigrant's qualifying residence is "deemed to end" when the government serves "a notice to appear under section 1229(a)." 8 U.S.C. § 1229b(d)(1). Section 1229(a), in turn, defines a "notice to appear": Using standard definitional language that appears throughout the U.S. Code, section 1229(a) specifies that the document "in this section referred to as a 'notice to appear'" is "written notice . . . specifying" particular information. Notice that does not tell the immigrant where and when to appear is not the type of notice that is "referred to as a 'notice to appear'" in section 1229(a), and does not trigger the stop-time rule.

Neither of the government's two attempts to avoid the statute's straightforward text is defensible. First, the government asserts (at 31-32) that section 1229(a) does not define a "notice to appear" at all. But the government cannot explain what "referred to as a 'notice to appear'" could be *other than* a definition of that phrase. Congress has itself described identical language as definitional, and even the government admits (at 32) that "notice to appear" is a "shorthand label" for "the written notice to be given," which includes *all* the information specified in section 1229(a). Second, the government claims (at 22-24) that "under" could mean "governed by." But in this context, "under" unambiguously connects the defined phrase to the provision that defines it—it thus takes on its ordinary meaning of "in accordance with" or "according to." The government's interpretation would deprive the stop-time trigger of any substantive meaning: It would allow

the government to trigger the stop-time rule by serving a notice that includes no information at all.

In reality, the government's position, like the BIA's decision, is based not on the statute's text, but on the government's desire to avoid stop-time consequences from its refusal to accept section 1229(a)'s requirement that a "notice to appear" must specify the "time and place" of proceedings. The government tries to minimize its noncompliance by characterizing "time and place" information as a "ministerial detail[]" (at 41), and a "technical, immaterial omission" (at 39). But while the government might consider the omitted information "immaterial," the statute does not. The statute requires "time and place" information on the same terms as the other required information, and the government does not, and could not contend that *all* information required by section 1229(a) is "immaterial." Indeed, even the phrase "notice *to appear*" implies notice of, at the very least, *when and where to appear*. Requiring "time and place" information in the stop-time trigger is particularly important given the rule's purpose of preventing immigrants from avoiding or delaying proceedings: Before an actual hearing is scheduled, there is nothing to avoid or delay.

The government also complains (at 48) that "administrative realities" make it hard to include "time and place" information in the "notice to appear." But Congress, fully aware of these realities, both defined a "notice to appear" to require information about when and where to appear, and triggered the stop-time rule on service of that "notice to appear." Congress's faith that executive agencies could coordinate scheduling hearings was understandable. Municipal

governments include the date and time of the initial hearing on *traffic tickets*. NIJC Br. 31-32 & n.9. And such coordination would have benefits far beyond the stop-time rule. BIA Chairman Schmidt Br. 2-6. The government thus complains of problems of its own making, problems that IIRIRA told it to solve. The BIA cannot, and this Court should not, interpret the stop-time rule simply to avoid the consequences of the government's stubborn refusal to follow the statute.

I. "Notice To Appear Under Section 1229(a)" Unambiguously Means Notice That Satisfies Section 1229(a)'s Definition Of A "Notice To Appear"

A. The Text Is Unambiguous

The government's attempts to avoid the statute's plain meaning cannot be squared with the statute's text: Section 1229(a) defines a "notice to appear," and section 1229b(d)(1) triggers the stop-time rule on service of that statutorily-defined document. That interpretation is supported by other uses of similar language in the removal provisions.

1. Section 1229(a) defines the phrase "notice to appear": Notice "in this section referred to as a 'notice to appear'" is "written notice . . . specifying" the information listed in the statute. By its own terms, that is definitional language. When section 1229(a) "refer[s] to" a "notice to appear," it refers to a notice that includes the specified information, and not to a paper that does not.

The government's assertion (at 32) that "[s]ection 1229(a) is not worded in the form of a definition" is

simply wrong. Indeed, the government, after contesting that section 1229(a) is definitional, concedes that the statute makes the phrase "notice to appear" a "shorthand label for the written notice to be given." But of course, the "written notice to be given" is *all* the information the statute requires. *See* Gov't Br. 3 (acknowledging that "[a] notice to appear must specify" all the information in section 1229(a)(1)). The statute thus defines "notice to appear" as notice that provides all the required information, not notice of whatever subset of that information the government deigns to provide.

Congress has explicitly recognized that a parenthetical "referred to as" establishes a definition. In one particularly clear example, Congress created a new class of drugs by identifying the criteria those drugs must meet, and then stated (parenthetically) that "[i]n this section, such a drug is referred to as a 'fast track product.'" Food and Drug Administration Modernization Act of 1997, Pub. L. 105-115, § 112(a), 111 Stat. 2309 (21 U.S.C. § 356(a)). Then, in the next subsection, Congress ordered the "Secretary of Health and Human Services [to] issue guidance for fast track products (*as defined in* [the preceding subsection])." § 112(b), 111 Stat. 2310 (emphasis added). Consistent with Congress's recognition that this language is definitional, statutes routinely identify certain criteria, explain that those criteria are collectively "referred to" using a specific term or phrase, and then use that defined term or phrase to mean the criteria previously identified. *E.g.*, 26 U.S.C. § 6038A(a)(1) ("reporting corporation"); 21 U.S.C. § 356(a) ("breakthrough therapy"); 38 U.S.C. § 7451(a)(2) ("covered positions"); 42 U.S.C. § 285g-4(b) ("medical rehabilitation"). Section 1229(a) de-

fines a "notice to appear" in precisely this standard way: It describes written notice specifying particular information, defines this notice as a "notice to appear," and then uses the phrase "notice to appear" to mean notice of the specified information.

2. By triggering the stop-time rule on service of a "notice to appear under section 1229(a)," the statute unambiguously invokes the defined term "notice to appear" as the stop-time trigger. The government argues that this provision is ambiguous because "under" can mean "governed by." But a word is not ambiguous simply because it has multiple dictionary definitions. "Ambiguity is a creature not of definitional possibilities but of statutory context," *Brown v. Gardner*, 513 U.S. 115, 118 (1994), and the word "under" "draw[s] its meaning from its context," *Ardestani v. INS*, 502 U.S. 129, 135 (1991). *See also Deal v. United States*, 508 U.S. 129, 132 (1993) (although the statute used a word with multiple potential meanings, the statute was "unambiguous" because the word's meaning was clear "from the context in which it is used").

In this context, "under" unambiguously connects the reference to a "notice to appear" with the statutory provision that defines that term. It thus means "in accordance with" or "according to," standard definitions of "under," as this Court has recognized. *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617, 630 (2018); *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 530 (2013) (citing 18 *Oxford English Dictionary* 950 (2d ed. 1989)); *see also Black's Law Dictionary* 1525 (6th ed. 1990) (defining "under" as "according to" in the version in circulation at the time of IIRIRA); *Niang v. Holder*, 762 F.3d 251, 253-54 (2d

Cir. 2014) (requirement that alien be provided "notice under paragraph (4)(A)" "plainly states" that alien must receive the substantive information required by that paragraph). The statute unambiguously triggers the stop-time rule on service of a "notice to appear" "in accordance with" section 1229(a)'s definition of that term.

Interpreting "under" to mean "governed by" would not help the government, because on the government's interpretation section 1229(a) would not actually "govern" the notice to appear. Section 1229(a) governs a "notice to appear" by specifying what it must contain; if the government were correct that a document *with or without* those contents can be a notice to appear for purposes of the stop-time rule, then that document would not be "governed by" section 1229(a) in any real sense. It is neither coherent nor permissible to interpret the word "under" to deprive the phrase "notice to appear under section 1229(a)" of any substantive meaning.

None of the cases on which the government relies interprets a statute remotely similar to this one—*i.e.*, a statute that refers to a statutory term "under" another provision that defines that term. For instance, this Court's decision earlier this Term in *National Association of Manufacturers* involved the question whether a particular regulation was "promulgated . . . under section 1311" of Title 33 of the U.S. Code. 138 S. Ct. at 629-31. Far from finding the word "under" inherently ambiguous, this Court found it "clear" given that "statutory context" that "under" meant "pursuant to" or "by reason of the authority of." *Id.* at 630. Just as the (very different) context in that case "ma[d]e clear" that the statute referred to a

regulation promulgated under the authority of the referenced section, the context of the stop-time rule "makes clear" that the statute refers to a "notice to appear" according to section 1229(a)'s definition of that term.[1]

3. Other related statutory provisions support interpreting a "notice to appear under section 1229(a)" as notice with the content specified in the statute, not just a particular label.

a. Section 1229 ensures the "opportunity to secure counsel before the first hearing date" by requiring that date be at least "10 days after the service of the notice to appear." 8 U.S.C. § 1229(b)(1); *see* Pet. Br. 29. The government would render this opportunity illusory. According to the government (at 35), section 1229(b)(1) requires only that the hearing be set "at least ten days after the *original* notice is served" (emphasis added), regardless of whether the "notice" served is one that satisfies all, or any, of the elements of section 1229(a)'s "notice to appear" definition. Thus, the government could serve notice that did not inform the immigrant of the hearing date, the relevant charges, or even the right to counsel, and then, years later, provide that information hours before the hearing. While that might theoretically allow an immigrant to retain counsel, it does not allow an immigrant to secure counsel who could prepare for, or even show up at, the hearing.

b. The in absentia provision's references to "written notice required under paragraph (1) or (2) of sec-

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[1] The government's reliance (at 24) on Fed. R. Civ. P. 26(e)(1) is similarly misplaced, as that Rule also does not use the word "under" to connect a defined term to the provision defining it.

tion 1229(a)," 8 U.S.C. § 1229a(b)(5)(A), and "notice in accordance with paragraph (1) or (2) of section 1229(a)," *id.* § 1229a(b)(5)(C)(ii), do not support the government's position. *See* Gov't Br. 25-26. The government concedes that these phrases require notice of *all* information listed in section 1229(a)'s "notice to appear" definition. But the government argues that because the stop-time rule uses a third, similar phrase—"notice to appear under section 1229(a)"—it must encompass notice that does *not* provide that information.

As an initial matter, this argument fails on its own terms. The government claims (at 25-26) that Congress necessarily intends different language to have different meanings, but then recognizes (at 26) that Congress used *different* phrases—"written notice required under" and "notice in accordance with"—to mean *exactly the same thing* in *the same paragraph* of section 1229a(b). It is therefore unremarkable that the stop-time rule—which appears in a different section altogether—describes notice that satisfies section 1229(a)'s definition of a "notice to appear" using distinct, but similar language. *See Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 156 (2013) (characterizing the idea that different text generally has different meaning as a "rule of thumb" that the statute's text and context can rebut).

Further, Congress had good reason to use slightly different language in the in absentia provision, which requires compliance with *two* notice requirements. While "notice to appear" is a defined term encompassing the notice required under paragraph (1) of section 1229(a), there is no defined term encompassing the notice required under paragraph (2).

Thus, while Congress could have referred to the notice required under both provisions as "a notice to appear under paragraph (1) or notice required under [or in accordance with] paragraph (2)," it was far simpler to refer to "notice required under [or in accordance with] paragraph (1) or (2)." Both phrases unambiguously encompass notice that meets both statutory notice requirements, and Congress understandably decided to use the simpler phrasing. In the stop-time rule, Congress described compliant notice as "notice to appear under section 1229(a)" not due to a "mistake in draftsmanship" (*see* Gov't Br. 26), but because the stop-time rule requires compliance *only* with the "notice to appear" definition in paragraph (1). *See Clay v. United States*, 537 U.S. 522, 530-31 (2003) ("one can readily comprehend why Congress might have" used different language to convey the same meaning given the different "context"). Indeed, the similarity of the language in the in absentia and stop-time provisions suggests that only notice meeting section 1229(a)'s "notice to appear" definition triggers the stop-time rule. *See* Pet. Br. 29-30.

c. The government notes (at 26-27) that immigrants face *additional* negative consequences for failing to appear at a hearing after receiving *oral* notice of the hearing date in a "language the alien understands." 8 U.S.C. § 1229a(b)(7). That provision recognizes an immigrant's increased culpability for failing to appear when it is *certain* the immigrant knew the hearing date—*i.e.*, where there is no risk the immigrant did not receive mailed notice, or does not understand English. It does not suggest, as the government would have it, that if Congress cared about

providing notice of a hearing time and place it would have required oral notice.

4. The government misreads this Court's decisions in *Becker v. Montgomery*, 532 U.S. 757 (2001), *Scarborough v. Principi*, 541 U.S. 401, 416 (2004), and *Edelman v. Lynchburg College*, 535 U.S. 106, 116 (2002). *See* Gov't Br. 32-34. Each of those cases turned on the specific provision at issue, not a general rule that courts or agencies can ignore statutory requirements that they deem unimportant. *Becker* held that a *pro se* litigant's failure to manually sign a notice of appeal could be corrected because the rules allow such correction. 532 U.S. at 764. *Edelman* upheld a regulation allowing a verification to be filed after the charges it verified because the statute did not require that "the charge must be verified when filed." 535 U.S. at 112. And *Scarborough* held that the statute allowed a required allegation that the government's position was "not substantially justified" to relate back to an earlier attorney's fee application under Federal Rule of Civil Procedure 15(c). 541 U.S. at 417-19. These decisions shed no light on the meaning of the entirely different and unrelated provision at issue in this case.

Even if these cases suggest that courts can, at times, excuse accidental "technical defects" (Gov't Br. 33), the omission of where and when to appear from a "notice to appear" is no "technical, immaterial omission" (Gov't Br. 39). The government cannot explain how its systematic refusal to inform a noncitizen when and where to appear in its initial notice is analogous to a *pro se* litigant's unintentional failure to manually sign a notice of appeal in *Becker*, or the unintentional failure to include the required verifica-

tions in *Scarborough* and *Edelman*. Indeed, IIRIRA's history suggests that Congress believed the time and place of an actual hearing was a particularly important piece of information—IIRIRA amended the INA to make such information *mandatory* in the "notice to appear," when it had previously been optional in an "order to show cause." *See* Pet. Br. 9-12.

The government's sole attempt to link this case to *Becker*, *Scarborough* and *Edelman* is its claim (at 33-34) that an "alien does not need to know the specific hearing date to appreciate that the government intends to seek her removal." But the statute requires more than an indication of intent to trigger the stop-time rule. The stop-time trigger is service of a "notice to appear under section 1229(a)," and section 1229(a) defines a "notice to appear" as notice that informs a noncitizen of specific information, including when and where to appear and *why* the government seeks her removal. 8 U.S.C. §§ 1229b(d)(1), 1229(a)(1). Nothing in this Court's cases allows the government to ignore these substantive requirements because the government deems them unnecessary in light of its self-serving conception of the statute's purpose—a conception that, in any event, has no basis in the statute's text or history. *See* pp. 18-19, *infra*; Pet. Br. 41-43; AILA Br. 22-25.

B. Traditional Interpretive Tools Confirm The Statute's Plain Meaning

1. The statutory structure supports interpreting a "notice to appear under section 1229(a)" as notice satisfying section 1229(a)'s definition of that term—not any document DHS labels as a "notice to appear."

a. Section 1229(a) does not distinguish among the seven categories of information a "notice to appear" must contain; all are required. Pet. Br. 31-34. The government does not, and could not, dispute that the statute treats all these categories identically. Pet. Br. 31-34; Gov't Br. 35-36. Thus, if any are optional, as the BIA held, they all are optional, as the BIA admitted: It described its interpretation of the statute as one that "does not impose substantive requirements for a notice to appear" to trigger the stop-time rule. *Matter of Camarillo*, 25 I. & N. Dec. 644, 647 (BIA 2011). On the BIA's reading, the government could treat as an effective "notice to appear" a document that does not even inform the respondent why the government seeks to remove her from the country.

The government urges this Court to simply dodge this issue because nothing beyond the "time and place" information was omitted in this case. Gov't Br. 36. Naturally the government would prefer not to confront the consequences of its reading until some future case. But the BIA has already let that other shoe drop, holding that the statute does not impose *any* "substantive requirements" on a qualifying notice to appear. *Camarillo*, 25 I. & N. Dec. at 647. And the government identifies no way to read the statute to make one requirement optional and the rest mandatory.

The government also asserts (at 36) that it has "no reason to omit" anything beyond "time and place" information. But if this Court holds that the government can trigger the stop-time rule by serving notice that does not comply with section 1229(a) in any respect, it is impossible to know what reason the gov-

ernment may later find to serve notices that lack, for instance, the "charges against the alien," or the alien's right to counsel. Such a reason could be as simple as a desire to restrict access to a form of relief the government does not like by serving notices before the government determines why (or if) the noncitizen is removable. This Court does not generally trust that the unacceptable consequences of a proposed statutory interpretation will simply not come to pass. *E.g.*, *Kirtsaeng*, 568 U.S. at 543-45.

The government's claim (at 36) that it would be "futile" to omit the "charges against the alien" also makes no sense. The government notes that current regulations require it to file the "notice to appear" with the immigration court. *See* 8 C.F.R. § 1239.1(a). But that filing can occur *years* after service on the immigrant. *See Camarillo*, 25 I. & N. Dec. at 644-45. And the government does not explain why it could not file such a notice while charges are still being determined. Regulations also allow service of "additional or substituted charges" of removal at "any time during the proceeding," 8 C.F.R. § 1240.10(e), and the government could simply use that power to provide charges after its immigration court filing—just as it provides "time and place" information after that filing.[2]

b. The government finds it "improbable" (at 28-30) that the "time and place" information is required to trigger the stop-time rule because such information can be "change[d]" under 8 U.S.C.

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[2] Even if the government needs to provide charges when it files a notice with the immigration court, the government could identify the charges shortly before its filing, which often occurs *years* after the initial notice is served on the immigrant.

§ 1229(a)(2). But other information on the "notice to appear" can also be changed, including the asserted charges. 8 C.F.R. § 1240.10(e). The fact that the statute allows the government to update information on the "notice to appear" does not mean the government can trigger the stop-time rule without providing that information at all. To the contrary, the statute allows for a "change" precisely because it requires that there already *be* a hearing date in the "notice to appear." Pet. Br. 35.

c. The government argues (at 27-28) that the stop-time rule's reference to "a notice to appear under section 1229(a)," rather than "section 1229(a)(1)," somehow implies that the government can trigger the stop-time rule by serving notice that does not satisfy section 1229(a)(1)'s definition of a "notice to appear." Nothing in section 1229(a) *outside* paragraph (1) changes the meaning of the cross-reference; as the government acknowledges (at 27), the "notice to appear" is discussed only in paragraph (1). A "notice to appear under section 1229(a)" thus necessarily is a notice to appear "under section 1229(a)*(1)*." *See* Pet. Br. 34-35.

The government notes (at 27-28) that the in absentia provision refers to specific paragraphs. *See* 8 U.S.C. § 1229a(b)(5)(A), (C)(ii)). But those provisions reference the particular paragraphs because there is no defined term for the notice under paragraph (2). *See* pp. 8-9, *supra*. The stop-time rule refers *only* to a "notice to appear," a term defined *only* in paragraph (1). That is a much more natural explanation for the difference in wording than the strained inference the government tries to draw.

This Court's decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 138 S. Ct. 1061 (2018), interpreted a very different provision. *See* Gov't Br. 27. *Cyan* held that the phrase "except as provided in section 77p of this title with respect to covered class actions" excepts *all* relevant provisions in section 77p, not just those in the "covered class actions" definition in § 77p(f)(2). *Id.* at 1069-71. But where the cross-reference is for the *location* of the statutory definition, there are no other relevant provisions. Thus, if the statute in *Cyan* had referred to a "covered class action under section 77p(f)," that would clearly mean a class action that satisfies the definition in section 77p(f)(2). So too here: A "notice to appear under section 1229(a)" is a notice to appear that satisfies the definition in section 1229(a)(1).

d. The fact that the stop-time rule is only one of many *eligibility* requirements for *discretionary* relief provides further structural support for interpreting the stop-time rule to mean what it says. *See* Pet. Br. 36-38; *Moncrieffe v. Holder*¸ 569 U.S. 184, 204 (2013). Even an immigrant who accrues the required residence will only receive cancellation if she meets the other, rigorous eligibility requirements *and* is deemed worthy of discretionary relief.

The government agrees (at 46) that only the "most deserving immigrants" can ultimately obtain cancellation; the government argues, though, that those who benefit from interpreting a "notice to appear under section 1229(a)" as notice of the information required by that section are somehow less deserving. But anyone deemed cancellation-eligible under petitioner's interpretation who does *not* deserve relief

will either fail another eligibility requirement, or be denied relief as a matter of discretion.

2. IIRIRA's history supports interpreting the stop-time rule to end continuous residence only upon written notice of all of the information required by section 1229(a).

a. The fact that IIRIRA simultaneously created the "notice to appear," defined it, *and* made it the touchstone of the stop-time rule strongly undermines the government's interpretation of the statute. Pet. Br. 38-41; AILA Br. 8-11. If the Congress that enacted IIRIRA had wanted to trigger the stop-time rule on service of a general "kind of document" that included whatever information the government chose to provide (Gov't Br. 22), it would not have based the trigger on the same term it had just defined as notice of specific information—and, for good measure, cross-referenced the provision that includes that definition.

The government's only response (at 42-43) is that the "notice to appear" definition was "largely" copied from, and "nearly" identical to, the pre-IIRIRA definition of an "order to show cause." But the difference is important: Congress did not thoughtlessly copy the existing term or the existing definition, but adopted the new term "notice to appear" and defined it to require information that the former statute had not.

The change Congress made highlights the importance Congress placed on providing "time and place" information. The government repeatedly tries to marginalize the initial hearing date—characterizing it as a "procedural detail" (at 46), a "ministerial detail[]" (at 41), and a "technical, imma-

terial omission" (at 39). But *Congress* thought the information sufficiently important to warrant revising the statute to ensure that the information be included in a "notice to appear." Indeed, even Congress's decision to rename the document a "notice *to appear*"—not, for instance, a "notice of intent to seek removal"—shows the importance Congress placed on including *when and where to appear* in a qualifying notice.

Congress's decision that the stop-time rule could sometimes apply retroactively to pre-IIRIRA "orders to show cause" does not diminish the importance of "time and place" information. *See* Gov't Br. 44-45 (citing Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, Tit. II, sec. 203(1), § 309(c)(5)(A), 111 Stat. 2196 ("NACARA")). NACARA made retroactive application of the stop-time rule both broader and narrower than its prospective application—sometimes the stop-time rule was triggered by an order to show cause, sometimes the rule did not apply at all. *See* NACARA § 203(1), 111 Stat. 2196-98. NACARA's legislative history recognizes as much, noting that the stop-time rule is triggered prospectively by "receipt of a 'notice to appear,' the new document [IIRIRA] created," but applies retroactively, if at all, to the *different* document called an "order to show cause." 143 Cong. Rec. S12265, S12266 (daily ed. Nov. 9, 1997).

b. IIRIRA's legislative history shows that Congress enacted the stop-time rule to ensure that immigrants could not gain qualifying time by "seeking to delay proceedings" or by "fail[ing] to appear for their deportation proceedings" and later seeking to reopen them. Pet. Br. 41-42; H.R. Rep. No. 104-469,

pt. I, at 121-22 (1996). Consistent with that purpose, Congress triggered the stop-time rule, and ended accrual of qualifying residence, when the government provided notice of and about an *actual* proceeding that the immigrant could try to delay or avoid. Triggering the stop-time rule before a removal proceeding has even been scheduled disqualifies otherwise-deserving cancellation applicants without doing *anything* to further Congress's expressed objectives.

The government cannot seriously dispute this point. Its discussion of the legislative history only identifies Congressional concerns about delays caused by *immigrants*, not the government. Gov't Br. 38. Even though governmental delay extended an immigrant's qualifying residence before IIRIRA—including delays between serving the "order to show cause" and the subsequent hearing notice—*nothing* in the legislative history suggests Congressional concern about such *governmental* delays.

With no support in the actual legislative history, the government simply invents its own, broader "core objective" of the stop-time rule: preventing immigrants from accruing qualifying time "after being notified that the government intends to remove them." Gov't Br. 39. The government cites, quite literally, nothing to support this supposed purpose—it is entirely made up to support the government's position. The government notes that a statute's *text* can have effects not discussed in the legislative history. *See* Gov't Br. 41 (citing *Pittston Coal Grp. v. Sebben*, 488 U.S. 105, 115 (1988)). But to make a *non*-textual argument based on the statute's purpose, the government must have *some* evidence supporting its char-

acterization of that purpose. The government has none.

The government also asserts (at 41-42), without any explanation, that an immigrant could seek to avoid or delay proceedings even before the government schedules, and serves notice of, an actual hearing. This makes no sense. The government can, whenever it wants, stop an immigrant from accruing time by serving notice of the information specified in section 1229(a). Even if the government omits service of the "time and place" information from its initial notice, there is nothing an immigrant could do to delay service of notice that provides such information. An immigrant also cannot *avoid* such service because the government need only mail it to "the last address provided by the alien." 8 U.S.C. § 1229(c); *see also id.* §§ 1229(a)(2)(B), 1229a(b)(5)(B).

A plain-text interpretation of the statute thus gives the government full power to end an immigrant's qualifying residence by providing the statutorily-required notice. There is no evidence—in the statute, in the legislative history, or anywhere else—that Congress sought to prevent residence from accruing while the *government* delayed in providing the required notice.

3. To the extent any slight ambiguities "linger[]" after considering the statute's text, structure, and history, the "longstanding principle of construing [such] ambiguities in deportation statutes in favor of the alien" resolves them. *INS v. St. Cyr*, 533 U.S. 289, 320 & n.45 (2001); Pet. Br. 44-48. The government disputes neither this established rule of construction, nor that "normal tools of statutory interpretation" apply at *Chevron*'s first step. *Esquivel-*

Quintana v. Sessions, 137 S. Ct. 1562, 1569, 1572 (2017). The government also admits (at 51) that this Court applied this precise rule in *St. Cyr* in finding no ambiguity under *Chevron*'s first step.

The government's only argument (at 50-51) is that this interpretive canon is not "dispositive" in a case governed by *Chevron*. But the question is not whether the canon is independently "dispositive," but whether it plays a role, along with other interpretive canons, at *Chevron*'s first step. This Court already held in *St. Cyr* that it *does* play such a role. 533 U.S. at 320 & n.45. That does not mean that when there is deep, unresolvable ambiguity, the principle that deportation provisions should be construed favorably to noncitizens trumps agency deference. *See* Gov't Br. 50; Pet. Br. 47 n.8. But when, as in this case, there are strong textual, structural, and historical arguments that the statute precludes the agency's interpretation, then the principle that removal provisions should be construed in favor of noncitizens can "buttress[]" those arguments and resolve, for *Chevron* purposes, any "lingering" ambiguities, as it did in *St. Cyr*. 533 U.S. at 320.

II. The BIA's Interpretation Is Unreasonable

1. Aside from its flawed textual, historical, and structural arguments, the BIA's justification for its statutory interpretation rested on its desire to allow the government to avoid the stop-time consequences of its systematic failure to follow IIRIRA's command that the "time and place" of the hearing be included in a "notice to appear." 8 U.S.C. § 1229(a)(1); 8 C.F.R. § 1003.18(b); Pet. Br. 49-52. But it is a "core administrative-law principle that an agency may not

rewrite clear statutory terms to suit its own sense of how the statute should operate." *Utility Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2446 (2014). The government's disagreement with the statute's instruction that a "notice to appear" must include "time and place" information cannot be the basis for concluding that the stop-time rule does not require such information.

The government cannot seriously contend that providing such information in the "notice to appear" is impossible. Congress certainly did not think it impossible: Knowing full well the "practical administrative realities" the government invokes (at 48), Congress nevertheless instructed that the government must include the "time and place at which the proceedings will be held" in a "notice to appear." 8 U.S.C. § 1229(a)(1)(G)(i). Congress's belief that executive agencies could coordinate scheduling hearings was understandable. The government admits (at 50 n.15) that it built a "scheduling system" that allowed for such coordination, but then abandoned that system for no apparent reason. *See also* NIJC Br. 30-32; BIA Chairman Schmidt Br. 6-8. Such an integrated system would create administrative efficiencies that stretch far beyond the stop-time rule. BIA Chairman Schmidt Br. 2-6. And as *amicus* notes, municipal governments are able to provide the date and time of an initial hearing on *traffic tickets*.[3] NIJC Br. 31-32.

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[3] Private companies also sell technology for integrating law enforcement and court calendaring. *E.g.*, Tyler Technologies, *Odyssey Integrated Courts & Justice Solution*, https://www.tylertech.com/solutions-products/odyssey-product-suite/odyssey-integrated-justice.

In reality, therefore, the government simply has not bothered to do what IIRIRA instructs. The BIA cannot reasonably twist the statute's text to avoid stop-time consequences from the government's refusal to follow the statute.

2. The BIA's decision in *Matter of Ordaz*, 26 I. & N. Dec. 637 (BIA 2015), which held that a notice the government never files in immigration court does not trigger the stop-time rule, exposes the unreasonableness of the BIA's earlier decision in *Camarillo*. Pet. Br. 52-55. The government is simply wrong (at 52) that triggering the stop-time rule on notice that does not satisfy section 1229(a)'s definition "leads to none of the concerns *Ordaz* addressed." *Ordaz* recognized the unfairness of triggering the stop-time rule on a "charging document that was . . . insufficient to support a removal charge *as issued*." 26 I. & N. Dec. at 640 (emphasis added). *Camarillo guarantees* that such an insufficient charging document will be a stop-time trigger, as the government admits (at 52-53) that notice lacking the "time and place" information *cannot* support a removal charge.

The government does not dispute that *Ordaz* and *Camarillo* make the stop-time trigger turn on "the fortuity of an individual official's decision." *Judulang v. Holder*, 565 U.S. 42, 58 (2011); Pet. Br. 53-55. According to the BIA, whether notice that lacks required information triggers the stop-time rule depends on the label the government later uses to provide the missing information—if the government serves a new "notice to appear," only that new notice triggers the stop-time rule under *Ordaz*; if it serves notice that includes only the missing information,

then the prior, incomplete notice triggers the stop-time rule under *Camarillo*.

It is the BIA's unwillingness to follow the statute's text that causes this incoherence. *Camarillo*'s atextual holding that the government triggers the stop-time rule by serving notice that lacks hearing information risks unfairness because it allows the government to trigger the stop-time rule by serving notice of a hearing the government *never* schedules. To avoid this unfairness, *Ordaz* adopted a *further* atextual interpretation of the statute, focusing on whether the government files the notice with the immigration court—an event referenced nowhere in the statute. The statute itself avoids these problems: Under the statute's plain text, service of a notice like that in *Ordaz*—which stated that the hearing would be "at a date, time, and location to be determined," 26 I. & N. Dec. at 637—does not trigger the stop-time rule until (and unless) the government schedules, and provides notice of, an actual removal hearing.

This Court should return the inquiry to what the *statute* requires, and hold that only notice that satisfies section 1229(a)'s definition of a "notice to appear" triggers the stop-time rule as a "notice to appear under section 1229(a)."

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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