No. _____

IN THE

# Supreme Court of the United States

JUAN ANTONIO GONZALEZ-URENA,

*Petitioner*,

v.

UNITED STATES OF AMERICA,

*Respondent*.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

## PETITION FOR A WRIT OF CERTIORARI

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## Question Presented

When a notice to appear fails to include information required by statute and/or regulation, does the immigration court lack jurisdiction over the matter?

## Related Proceedings

United States District Court (C.D. Cal.):

*United States v. Gonzalez-Urena*, Case No. CR-18-00519-DSF (February 14, 2020).

United States Court of Appeals (9th Cir.):

*United States v. Gonzalez-Urena*, Case No. 20-50044 (June 14, 2021).

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## Petition for a Writ of Certiorari

Petitioner Juan Antonio Gonzalez-Urena respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

## Opinions Below

The decision of the United States Court of Appeals for the Ninth Circuit (App. 1a-3a) is unpublished but is available at 850 Fed. Appx. 528. A substantive order issued by the Ninth Circuit (App. 4a) is unpublished. The district court's order denying a motion to dismiss (App. 5a-32a) was not published.

## Jurisdiction

The court of appeals entered its judgment on June 14, 2021. App. 1a. It denied a timely petition for panel rehearing / rehearing en banc on August 24, 2021. App. 33a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## Constitutional and Statutory Provisions Involved

An appendix to this petition includes 8 U.S.C. § 1229(a), 8 U.S.C. § 1326(d), 8 C.F.R. § 1003.13, 8 C.F.R. § 1003.14(a), 8 C.F.R. § 1003.15(a) & (b), and 8 C.F.R. § 1003.18. App. 34a-40a.

## Statement of the Case

### A. Legal Background.

Under 8 U.S.C. § 1229, removal proceedings are initiated via a notice to appear (NTA). The statute provides that the NTA "shall" include, among other things, the "time and place at which the proceedings will be held." 8 U.S.C. § 1229(a)(1)(G)(i). Thereafter, a *change* in the time or place of the proceedings may be conveyed to the alien via a subsequent notice of hearing (NOH). 8 U.S.C. § 1229(a)(2)(A).

Regulations provide that "[j]urisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service." 8 C.F.R. § 1003.14(a). "Charging document means the written instrument which initiates a proceeding before an Immigration Judge[,]" including an NTA. 8 C.F.R. § 1003.13. Another regulation enumerates the mandatory contents of an NTA. *See* 8 C.F.R. § 1003.15. Among other things, an NTA "must" include the "address of the Immigration Court where the Service will file the Order to Show Cause and Notice to Appear[.]" 8 C.F.R. § 1003.15(b)(6). Similarly, the regulation concerning when jurisdiction vests states unequivocally that the "charging document must include a certificate showing service on the opposing party . . . which indicates the Immigration Court in which the charging document is filed." 8 C.F.R. § 1003.14(a). A separate provision requires the NTA to include "the time, place and date of the initial removal hearing, where practicable." 8 C.F.R. § 1003.18(b). When that information is not contained in the NTA, the

regulation allows the immigration court to "schedul[e] the initial removal hearing and provid[e] notice to the government and the alien of the time, place, and date of hearing." 8 C.F.R. § 1003.18(b). Thus, the immigration court where the NTA will be filed and the place where the hearing will be held are distinct concepts.

Under 8 U.S.C. § 1326(a)(2), it is a crime for an alien to be found in the United States without permission following deportation. Allowing a prosecution under § 1326 "for reentry after *any* deportation, regardless of how violative of the rights of the alien the deportation proceeding may have been," would "not comport with the constitutional requirement of due process." *United States v. Mendoza-Lopez*, 481 U.S. 828, 837-38 (1987) (emphasis in original). Therefore, § 1326(d) allows a defendant to challenge the underlying deportation order by showing that entry of the order was fundamentally unfair, he exhausted any administrative remedies available to challenge the order, and the deportation proceedings improperly deprived him of the opportunity for judicial review.

**B. Factual Background and Proceedings Below.**

Juan Antonio Gonzalez-Urena was charged with violating § 1326(a)(2). ER 29-31.[1] He filed a § 1326(d) motion to dismiss that charge, challenging his removal

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[1] The following abbreviations refer to documents filed in the Ninth Circuit: "ER" refers to the appellant's excerpts of record (docket nos. 12-3 & 13). "AOB" refers to the appellant's opening brief (docket nos. 12-2 & 24). "GAB" refers to the government's answering brief (docket nos. 26-2 & 35). "ARB" refers to appellant's

orders as fundamentally unfair. ER 32-79, 466-89, 497-502. In response, the government defended only a removal order from 2013. App. 6a n.1, 10a n.3; ER 424, 436 n.5, 517. In those proceedings, Gonzalez was served with an NTA that did not set the time or place of his removal hearing; rather, the address of the immigration court where the hearing would occur was "to be determined" and the date and time of the proceedings were "to be set." ER 159-60. A separate notice issued four days later provided that hearing information. ER 448. But neither document, and certainly not the NTA, identified the immigration court where the NTA was filed. ER 159-60, 448. Gonzalez therefore argued in his motion to dismiss that his removal was unlawful because the immigration court lacked jurisdiction due to the defective charging document. ER 56-63, 473-79, 498-502. He also raised other arguments not relevant to this petition.

The district court denied Gonzalez's motion in a written order. App. 5a-32a. It rejected the jurisdictional argument as contrary to Ninth Circuit precedent. App. 11a-18a. Thereafter, Gonzalez entered a conditional guilty plea that allowed him to appeal the denial of his motion. ER 530-76.

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reply brief (docket nos. 44-2 & 45). (There are two versions of each brief—one under seal and one redacted—but the redactions are irrelevant to the issues presented in this petition.) "LET" refers to a Fed. R. App. P. 28(j) letter filed by appellant (docket no. 54). "PFR" refers to appellant's petition for panel rehearing / rehearing en banc (docket no. 69).

On appeal, Gonzalez's primary argument was that the district court erroneously found that he did not have plausible grounds for Convention Against Torture (CAT) relief, but he also argued in the alternative that the immigration court lacked jurisdiction due to the defects in the NTA. AOB 25-66; ARB 1-23. Gonzalez preserved this alternative argument while acknowledging that it had been rejected by the Ninth Circuit in *Aguilar Fermin v. Barr*, 958 F.3d 887 (9th Cir.), *cert. denied*, 141 S. Ct. 664 (2020). AOB 65; ARB 1 n.1. The government also argued that *Aguilar Fermin* foreclosed the jurisdictional claim. GAB 61. But Gonzalez later explained that *Aguilar Fermin* and the cases on which it relied had been effectively overruled by this Court's recent decision in *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021). LET 1-2.

The Ninth Circuit affirmed Gonzalez's conviction in a memorandum decision. App. 1a-3a. It did not address the jurisdiction issue in that decision, but it issued an order on the same day stating that, "contrary to Gonzalez-Urena's assertion, *Niz-Chavez* did not overrule *Aguilar Fermin*[.]" App. 4a. Gonzalez filed a petition asking for panel rehearing / rehearing en banc on the jurisdiction issue. PFR 1-20. The Ninth Circuit denied it. App. 33a.

## Reasons for Granting the Writ

Over the past few years, the Court has twice addressed the consequences of a defective notice to appear (NTA) in immigration cases. Review is necessary here to

consider an important question that follows from those cases—whether such an NTA fails to vest jurisdiction in the immigration court.

1. In *Pereira v. Sessions*, the Court considered the so-called "stop-time rule" for cancellation of removal, under which the accrual of continuous physical presence in the United States ends when the alien is served an NTA "under section 1229(a)." 138 S. Ct. 2105, 2109 (2018) (citing 8 U.S.C. § 1229b(d)(1)(A)). That statute provides that the NTA "shall" include, among other things, the time and place at which the proceedings will be held. *Id*. at 2109-11 (citing 8 U.S.C. § 1229(a)(1)(G)(i)). It also allows the government to subsequently change the time or place of the proceedings by serving the alien a notice of hearing (NOH). *Id*. at 2111 (citing 8 U.S.C. § 1229(a)(2)(A)). "By allowing for a change or postponement of the proceedings to a new time or place" via an NOH, the statute "presumes that the Government has already served a 'notice to appear under section 1229(a)' that specified a time and place as required by § 1229(a)(1)(G)(i)." *Id*. at 2114 (quotation marks omitted). Given the text of § 1229 and the statutory scheme as a whole, the Court held that a purported NTA that does not specify the time and place at which the proceedings will be held does not trigger the stop-time rule. *Id*. at 2113-20. It rejected the view that "a defective notice to appear is still a 'notice to appear' even if it is incomplete—much like a three-wheeled Chevy is still a car." *Id*. at 2116.

2. Courts of appeal adopted an unreasonably narrow interpretation of *Pereira* as limited to the stop-time rule and having no jurisdictional implications. *See*, *e.g.*,

*Pierre-Paul v. Barr*, 930 F.3d 684, 689-93 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 2718 (2020); *Ortiz-Santiago v. Barr*, 924 F.3d 956, 959-64 (7th Cir. 2019); *Ali v. Barr*, 924 F.3d 983, 985-86 (8th Cir. 2019); *Banegas Gomez v. Barr*, 922 F.3d 101, 110-12 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 954 (2020); *Santos-Santos v. Barr*, 917 F.3d 486, 489-91 (6th Cir. 2019).

For example, in *Karingithi v. Whitaker*, the Ninth Circuit considered the case of an alien who was served with an NTA that specified the location of the removal hearing but stated that the date and time of the hearing were "to be set." 913 F.3d 1158, 1159 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 1106 (2020). It distinguished § 1229(a), which requires the date and time of the hearing to appear in the NTA, from *regulations* providing that: jurisdiction vests in the immigration court when a charging document is filed (8 C.F.R. § 1003.14(a)); charging document means the written instrument (including an NTA) that initiates immigration-court proceedings (8 C.F.R. § 1003.13); an NTA must include, among other things, the "address of the Immigration Court where the Service will file the Order to Show Cause and Notice to Appear" (8 C.F.R. § 1003.15(b)(6)); and the NTA must include "the time, place and date of the initial removal hearing, *where practicable*," but can provide that information later otherwise (8 C.F.R. § 1003.18(b) (emphasis added)). *Id.* at 1158-60. The Ninth Circuit then held that "the regulations, not § 1229(a), define when jurisdiction vests." *Id.* at 1160. Therefore, it concluded, "Karingithi's notice to appear met the regulatory requirements and therefore vested jurisdiction in the"

immigration court. *Id*. The Ninth Circuit found *Pereira* to be inapplicable because it involved § 1229(a) and did not address jurisdictional issues. *Id*. at 1160-61. It also noted that the Board of Immigration Appeals (BIA) had reached the same conclusion. *Id*. at 1161-62 (discussing *Matter of Bermudez-Cota*, 27 I. & N. Dec. 441 (BIA 2018)).

The Ninth Circuit subsequently decided *Aguilar Fermin v. Barr*, which considered an NTA that did not include the date and time of the hearing or the address of the immigration court, but a separate notice served three months later included the date, time, and location of the hearing. 958 F.3d 887, 890 (9th Cir.), *cert. denied*, 141 S. Ct. 664 (2020). It reaffirmed *Karingithi*'s holding that "immigration court jurisdiction is defined by DOJ regulation[.]" *Id*. at 893. The Ninth Circuit noted that, unlike in *Karingithi*, Aguilar's NTA was not only missing the time and the date, but also the address of the immigration court, which is specifically required by § 1003.15(b)(6). *Id*. at 893-94. It then deferred to a BIA decision concluding that § 1003.15(b)(6) and the similar provision in § 1003.14(a) are not jurisdictional requirements, so that information can be provided subsequent to service of the NTA. *Id*. at 894-95 & n.4 (discussing *Matter of Rosales Vargas*, 27 I. & N. Dec. 745 (BIA 2020)). "We acknowledge that § 1003.15(b)(6) appears to be a clear statement that a notice to appear must include the address of the Immigration Court," the Ninth Circuit wrote, "but the BIA has carefully explained why that provision does not deprive an immigration court of jurisdiction." *Id*. at 895.

Notably, it did so without recognizing that the BIA decision conflicts with *Karingithi*'s jurisdictional holding. *See Rosales Vargas*, 27 I. & N. Dec. at 751 (recognizing that "*Karingithi* court labelled 8 C.F.R. § 1003.14 'jurisdictional'" whereas BIA concluded that it is "a claim-processing rule, not a rule implicating subject matter jurisdiction."). Furthermore, in asserting that § 1003.18(b) "expressly state[s] that the omission of an address from an NTA may be fixed by a later hearing notice," the Ninth Circuit ignored the significant difference between the place where the hearing will be held (which is covered by that regulation) and the address of the immigration court where the NTA will be filed (which is covered by § 1003.14(a) and § 1003.15(b)(6)). *Aguilar Fermin*, 958 F.3d at 895. Accordingly, it did not apply *Pereira*'s single-NTA rule to that particular requirement.

3. Earlier this year, the Court revisited the stop-time rule and NTAs in *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021). In particular, it considered and rejected "the government's notice-by-installment theory" whereby it sends an alien "one document containing the charges against him" and later sends "a second document with the time and place of his hearing." *Id*. at 1479. "To trigger the stop-time rule," the Court wrote, "the government must serve 'a' notice containing all the information Congress has specified [in § 1229(a)(1)]. To an ordinary reader—both in 1996 and today—'a' notice would seem to suggest just that: 'a' single document containing the required information, not a mishmash of pieces with some assembly required." *Id*. at 1480. Referring to the illustration used in *Pereira*, the Court noted

that "someone who agrees to buy 'a car' would hardly expect to receive the chassis today, wheels next week, and an engine to follow." *Id*. at 1481. It also acknowledged that § 1229 replaced a prior statute that had "expressly authorized the government to specify the place and time for an alien's hearing 'in the order to show cause or otherwise'" such that "*[n]ow* time and place information *must* be included in a notice to appear, *not 'or otherwise*.'" *Id*. at 1484 (emphasis added). Thus, "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." *Id*. at 1486.

4. Courts of appeal have minimized the significance of *Niz-Chavez* and refused to reconsider their post-*Pereira* authority in light of that case. *See*, *e.g.*, *Chery v. Garland*, __ F.4th __, 2021 WL 4805217, *5-6 (2d Cir. Oct. 15, 2021); *Ramos Rafael v. Garland*, __ F.4th __, 2021 WL 4344954, *2 (6th Cir. Sept. 24, 2021); *Tino v. Garland*, 13 F.4th 708, 709 & n.2 (8th Cir. 2021); *De La Rosa v. Garland*, 2 F.4th 685, 686-88 (7th Cir. 2021); *Maniar v. Garland*, 998 F.3d 235, 242 & n.2 (5th Cir. 2021); *but see Rodriguez v. Garland*, 15 F.4th 351, 354-56 (5th Cir. 2021) ("Under *Niz-Chavez*'s interpretation of § 1229(a), we therefore require a single document containing the required information *in the in absentia context*.") (emphasis added).

Again using the Ninth Circuit as an example, it ordered supplemental briefing on *Niz-Chavez* in conjunction with a pending petition for rehearing in *United States v. Bastide-Hernandez*, but then issued an amended decision that did not mention that case. 3 F.4th 1193 (9th Cir. 2021). It acknowledged that "that *Karingithi* and *Aguilar Fermin* have created some confusion as to when jurisdiction actually vests," so it tried to clarify the matter:

> The only logical way to interpret and apply *Karingithi* and *Aguilar Fermin* is that the jurisdiction of the immigration court vests upon the filing of an NTA, even one that does not at that time inform the alien of the time, date, and location of the hearing. If this were not the case, upon the filing of an NTA jurisdiction would vest, but then would unvest if the NTA lacked required time, date, and location information, only to once again revest if a subsequent curative NOH provided that missing information. Jurisdiction is not so malleable. Jurisdiction, for all its subtle complexities, is not ephemeral. It either exists or it does not. Under *Karingithi* and *Aguilar Fermin*, we now hold that when an NTA is filed, jurisdiction exists and vests with the immigration court.

*Id*. at 1196. In his partial concurrence, Judge Smith concluded that *Karingithi* and *Aguilar Fermin* compelled the conclusion that the immigration court lacked jurisdiction to issue a removal order because it never cured the omission of the date and time of the hearing from Bastide-Hernandez's NTA. *Id*. at 1198 (M. Smith, CJ,

concurring in judgment). In doing so, he recognized that (unlike for the time and place of the hearing) there's no "exception for impracticability with respect to the requirement that the NTA include 'the address of the Immigration Court where the Service will file the Order to Show Cause and Notice to Appear.'" *Id.* at 1199 (quoting 8 C.F.R. § 1003.15(b)(6)). "The address of the court where the NTA will be filed may or may not be the same as the place where the hearing will be held; the two regulations thus refer to different information." *Id.* "When applied to the separate question of the address where the NTA will be filed," Judge Smith concluded, "*Karingithi*'s analysis dictates that jurisdiction does not vest in the immigration court if the NTA excludes the address." *Id.* To the extent *Aguilar Fermin* came out the other way, it and *Karingithi* are "in tension, stemming from treating 'place of the hearing' and 'address of the immigration court where the NTA will be filed' as interchangeable terms despite their clearly different meanings and location in different subsections of the regulations." *Id.* In Judge Smith's opinion, "the relevant case is *Karingithi*[.] *Id.* He explained:

> In my view, the majority opinion represents a clear rejection of our binding precedent. Under the majority's view, filing any document that purports to be a Notice to Appear with the Immigration Court is enough to vest jurisdiction with the IJ, even if that document does not comply with the regulatory requirements for an NTA, and those deficiencies are never cured. This interpretation ignores *Karingithi*'s

> holding that the regulations—and specifically the regulatory requirements for an NTA—control when jurisdiction vests.

*Id*. at 1200.

Judge Smith was correct that tension remains in the Ninth Circuit's NTA cases despite the *Bastide-Hernandez* majority's attempt to explain away the confusion created by *Karingithi* and *Aguilar Fermin*. Among other things, as noted above, *Aguilar Fermin* ignored that the BIA decision on which it relied directly conflicts with *Karingithi*'s jurisdictional holding. Furthermore, as Judge Smith observed, *Aguilar Fermin* failed to acknowledge the significant difference between the immigration court where the NTA will be filed and the place where the hearing will be held. *Bastide-Hernandez*, 3 F.4th at 1199 (M. Smith, CJ, concurring in judgment).

In petitioner's case, the Ninth Circuit affirmed based on *Aguilar Fermin*, rejecting his claim that *Niz-Chavez* effectively overruled that case. App. 4a; LET 1-2. It also refused to at least hold his case pending the resolution of ongoing en banc activity in *Bastide-Hernandez*. App. 4a, 33a; PET 19.[2]

5. The Ninth Circuit failed to grapple with the problem of an agency purporting to define something that Congress has already defined. After all, an agency has

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[2] As of the filing of this certiorari petition, a petition for rehearing en banc has been pending in *Bastide-Hernandez* since July. *See* 9th Cir. Case No. 19-30006, Docket Nos. 72-74.

rulemaking authority only as to matters on which Congress has not already spoken. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984). Where Congress has done so, "that is the end of the matter[.]" *Id.* "[N]o principle of administrative law" permits an agency to "rewrite clear statutory terms to suit its own sense of how the statute should operate." *Utility Air Regulatory Group v. E.P.A.*, 573 U.S. 302, 328 & n.8 (2014); *United States v. Larionoff*, 431 U.S. 864, 873 (1977) (regulations "must be consistent with the statute under which they are promulgated.").

This not a case of congressional silence. As the Court said in *Pereira*, Congress—in a manner "clear and unambiguous"—defined the requirements for an NTA. 138 S. Ct. at 2113-14; *see also id.* at 2115 n.7. Once it did so, all that was left was for the agency to "give effect to the unambiguously expressed intent of Congress[.]" *Id.* at 2113 (quotation marks omitted). Initially, the agency was of the same view. In a preamble to the proposed rule to create the NTA form, the agency "expressly acknowledged that 'the language of the amended Act indicates that *the time and place of the hearing must be on the Notice to Appear*.'" *Niz-Chavez*, 141 S. Ct. at 1484 (quoting 62 Fed. Reg. 444-01, 449 (1997)) (emphasis in original). When enacting the regulations, however, the agency strayed from the statutory text, issuing regulations that conflict with that text and set a lower bar than Congress did for what must be included in an NTA. *Contrast* 8 U.S.C. § 1229(a)(1) *with* 8 C.F.R. § 1003.15(b) and § 1003.18(b). Given that the statute specifically

addressed NTA requirements, the agency had no authority to override Congress's choices on the matter.

Lower court authority was in significant tension with these agency principles before, but it is untenable after *Niz-Chavez*, which made clear that the statutory NTA requirements are not limited to the cancellation-of-removal context. Instead, the NTA is the "case-initiating document" that "serves as the basis for commencing a grave legal proceeding." 141 S. Ct. at 1482. In that sense, it is "a specific document," analogous to an indictment, that cannot be "shattered into bits" and issued "piece by piece over months or years." *Id*. at 1482-83. And importantly, its status as a singular document that must contain all the information required by statute is consistent across statutory provisions. *Id*. at 1482-85.

After *Niz-Chavez*, it cannot be maintained that there are two definitions of an NTA, one statutory and one regulatory, each controlling within their respective realms. Indeed, in *Niz-Chavez*, the government—in language that echoes the Ninth Circuit's *Karingithi* opinion—asserted that there were two separate sets of requirements for an NTA, those required by the statutory definition and those required under the regulation. In particular, it urged the Court to reject the petitioner's argument that the statute required a unitary NTA, arguing that "[i]t is instead regulations that define what constitutes agency charging documents" and set the standard for what must be included in the NTA. *See* Brief for the Respondent, *Niz-Chavez v. Garland*, 2020 WL 5763867, *20-21 (Sept. 2020)

(hereinafter *Niz-Chavez Brief*). The Court rejected that reading: "[S]elf-serving regulations never 'justify departing from the statute's clear text.'" *Niz-Chavez*, 141 S. Ct at 1485 (quoting *Pereira*, 138 S. Ct. at 2118). By requiring the time and date to appear in the NTA, the statutory scheme left officials "with less flexibility than they once had" to issue NTAs without such information, and so the agency "resisted the law's demands[.]" *Id*. at 1484.

The self-serving regulation requiring the NTA to include the time and place of the hearing only "where practicable" and to allow that information to be conveyed in a subsequent NOH otherwise (*see* 8 C.F.R. § 1003.18(b)) is the "notice-by-installment" practice rejected in *Niz-Chavez* as contrary to statute. 141 S. Ct. at 1479. Therefore, the lower courts' reasoning that the regulation can control over the statute can no longer stand, if it ever could.

Indeed, the BIA itself recently invited interested members of the public to file amicus curiae briefs on this issue: "Whether, and if so to what extent, *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), impacts the jurisdiction of an Immigration Court where the Notice to Appear fails to satisfy the statutory requirements of section 239(a) of the Act, 8 U.S.C. § 1229(a)[.]" *See* Board of Immigration Appeals, *Amicus Invitation* (July 20, 2021).[3] That even the BIA considers this an important question strongly supports the conclusion that it merits consideration by this Court.

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[3] https://www.justice.gov/eoir/page/file/1413376/download (visited Nov. 3, 2021).

6. Granting review will also allow the Court to delve into the related issue of whether courts have gone astray in deferring to BIA decisions in this area. *See*, *e.g.*, *Bastide-Hernandez*, 3 F.4th at 1199 (M. Smith, CJ, concurring in judgment) (questioning deference to BIA decision in *Aguilar Fermin* "treating 'place of the hearing' and 'address of the immigration court where the NTA will be filed' as interchangeable terms despite their clearly different meanings and location in different subsections of the regulations."). Again, a prerequisite for so-called *Chevron* deference to an agency's interpretation of a statute is that the statute be "silent or ambiguous with respect to the specific issue[.]" 467 U.S. at 842-43. In *Niz-Chavez*, the government argued that statutory ambiguity permitted a BIA interpretation endorsing its notice-by-installment practice. *See Niz-Chavez Brief* at 43-48. The Court nevertheless honored its duty to "apply the law as [it] find[s] it" rather than "defer to some conflicting reading the government might advance" in "self-serving regulations[.]" 141 S. Ct at 1480, 1485. And even deference to an agency's interpretation of its own ambiguous regulations requires, among other things, that it reflect "fair and considered judgment" rather than "post hoc rationalization advanced to defend past agency action against attack." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2417 (2019) (quotation marks omitted). Considering the proper limits of agency deference is particularly important where, as here, the issue is what is required for an NTA that "serves as the basis for commencing a grave legal proceeding." *Niz-Chavez*, 141 S. Ct. at 1482.

7. In conclusion, this petition presents a cluster of related issues concerning the requirements for an NTA and whether a defective NTA affects the immigration court's jurisdiction. The flaws in the Ninth Circuit's opinions on this matter are emblematic of a problem throughout the courts of appeal—the refusal to accept the jurisdictional consequences of *Pereira* and *Niz-Chavez*, which recognize that immigration proceedings are properly initiated only with a single NTA including all of the information required by § 1229(a), including the "the time and place at which the proceedings will be held." 8 U.S.C. § 1229(a)(1)(G)(i). For example, the Ninth Circuit held in *Karingithi* that "the regulations, not § 1229(a), define when jurisdiction vests." 913 F.3d at 1160. That conclusion cannot be reconciled with the reasoning of *Pereira* and *Niz-Chavez*, even though the Court did not use the word "jurisdiction." Addressing the jurisdictional question could impact a multitude of aliens in immigration proceedings, not to mention many (like the petitioner) who are later charged with reentering the United States after having been removed. The Court should therefore grant this petition to write "the next chapter in the same story." *Niz-Chavez*, 141 S. Ct. at 1479.

## Conclusion

For the foregoing reasons, the petitioner respectfully requests that this Court grant his petition for a writ of certiorari.

November 4, 2021

Respectfully submitted,

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