No. 22-674

IN THE
Supreme Court of the United States

MORIS ESMELIS CAMPOS-CHAVES,
Petitioner,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL,
Respondent.

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

RESPONSE BRIEF OF PETITIONER MORIS ESMELIS CAMPOS-CHAVES

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QUESTION PRESENTED

The Immigration and Nationality Act provides that a noncitizen may move to rescind an in absentia removal order and reopen removal proceedings if the noncitizen "did not receive notice in accordance with paragraph (1) or (2) of section 1229(a)." 8 U.S.C. § 1229a(b)(5)(C)(ii). Paragraph (1) of Section 1229(a) requires the government to provide—in all removal proceedings—"a 'notice to appear'" ("NTA") that contains information about the proceedings, including the "time and place at which [they] will be held." *Id.* § 1229(a)(1)(G)(i). Paragraph (2) of Section 1229(a), in turn, requires the government to provide an additional notice "in the case of any change or postponement in the time and place of such proceedings[.]" *Id.* § 1229(a)(2)(A).

The question presented is:

Whether a noncitizen "did not receive notice in accordance with paragraph (1) or (2) of section 1229(a)," where the government provided a purported NTA lacking the "time and place" of proceedings and later provided an additional document containing that information but lacking other information required by paragraph (1), such that the noncitizen may move to rescind an in absentia removal order and to reopen removal proceedings under Section 1229a(b)(5)(C)(ii).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes, Regulations, and Rules

Other Authorities

INTRODUCTION

Before the Department of Homeland Security ("DHS") may take the drastic measure of removing a noncitizen from this country, it must follow statutory requirements to initiate and prosecute the removal proceedings. To begin, DHS must serve "a 'notice to appear'" ("NTA") containing information about the proceedings, including the "time and place at which [they] will be held." 8 U.S.C. § 1229(a)(1)(G)(i).

For years, however, DHS refused to follow that straightforward congressional command. Rather than include time-and-place information in the NTA, DHS relied on the immigration court to supply that information in a separate notice, at times years later.

This Court's decisions in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), made clear that DHS's noncompliance with the statute's notice requirements has important consequences. In those cases, the Court held that DHS could not trigger the "stop-time rule," relevant to a form of relief called cancellation of removal, unless it provides the noncitizen with a compliant NTA—defined as a single document that includes all the critical information that Section 1229(a)(1) requires.

This case "represents the latest chapter in the Government's ongoing efforts to dig itself out of a hole it placed itself in." *Estrada-Cardona v. Garland*, 44 F.4th 1275, 1282 (10th Cir. 2022). The government contends that its "two-step" notice practice, rejected in the stop-time context, nevertheless permits DHS to obtain an in absentia removal order and prevents a noncitizen from rescinding the order for lack of compliant notice. Again here, the statute says no.

An immigration court may enter a removal order in absentia if a noncitizen does not attend the removal proceedings. See 8 U.S.C. § 1229a(b)(5)(A). But the court may do so only if the government provided the noncitizen "written notice required under paragraph (1) or (2) of section 1229(a)." *Id.* The noncitizen may, in turn, seek rescission of the order "at any time" if he can demonstrate that he "did not receive notice in accordance with paragraph (1) or (2) of section 1229(a)." *Id.* § 1229a(b)(5)(C)(ii).

In this case, DHS employed the two-step notice practice and obtained an in absentia removal order against Petitioner Moris Esmelis Campos-Chaves, which the immigration court declined to rescind for lack of statutorily compliant notice. *Campos-Chaves* Pet. App. 12a-14a. That was error. It is undisputed that Mr. Campos-Chaves did not receive notice in accordance with paragraph (1), as he never received a compliant NTA with the date and time of his removal proceedings. Gov't Br. at 5-6. He also did not receive notice in accordance with paragraph (2). That is because such a notice may only follow a statutorily compliant NTA, as the plain text of paragraph (2), the overall statutory scheme, and the relevant statutory history demonstrate. He may therefore move to rescind for lack of notice in accordance with paragraph (2). But in any event, Mr. Campos-Chaves may *also* seek rescission under the statute based on the noncompliant NTA alone.

For the reasons provided herein, the Court should reverse the judgment of the Fifth Circuit below.

STATEMENT

A. Statutory Background.

1. To "commenc[e]" the "grave legal proceeding" to remove a noncitizen from the United States, federal immigration law requires the government to serve the noncitizen with a written "notice to appear." *Niz-Chavez*, 141 S. Ct. at 1482. Congress defined the precise requirements for that "case-initiating pleading[]" in paragraph (1) of 8 U.S.C. Section 1229(a). *Id.* Paragraph (1) requires that the NTA be a single document that includes, as relevant here, the "time and place at which the proceedings will be held." 8 U.S.C. § 1229(a)(1)(G)(i).

The removal proceedings may go on as planned at the time and place set in the NTA, but if "logistics require a change" to "the time and place of an alien's hearing," paragraph (2) of Section 1229(a) requires the government to send another notice alerting the noncitizen of the change. *Niz-Chavez*, 141 S. Ct. at 1485 (discussing 8 U.S.C. § 1229(a)(2)). Paragraph (2) is titled "[n]otice of change in time or place of proceedings" ("notice of change") and states, "in the case of any change or postponement in the time and place of … proceedings, … a written notice shall be given … to the alien … specifying … (i) the new time or place of proceedings, and (ii) the consequences … of failing … to attend such proceedings."[1] 8 U.S.C. § 1229(a)(2)(A).

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[1] In accordance with the statutory text, this brief uses the phrase "notice of change" to refer to a notice under paragraph (2) of Section 1229(a). See 8 U.S.C. § 1229(a)(2). The government's description, "Notice of Hearing," or "NOH," see Gov't Br. at 4, comes from the title of an immigration court form and appears nowhere in the statute.

2. The consequences of failing to appear are set out in Section 1229a(b)(5), which provides that:

> Any alien who, after written notice required under paragraph (1) or (2) of section 1229(a) of this title has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed in absentia if [DHS] establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable.

Id. § 1229a(b)(5)(A). Section 1229a(b)(5)(C)(ii) then provides that a removal order entered in absentia "may be rescinded … upon a motion to reopen filed at any time 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." *Id.* § 1229a(b)(5)(C)(ii).

B. The Government's Two-Step Notice Practice.

1. Congress enacted the notice requirements of Section 1229(a) as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Pub. L. 104-208, Div. C, 110 Stat. 3009-546. Before IIRIRA, the statute permitted a two-step notice process in which the case-initiating charging document—then called the "order to show cause"—did not need to contain the time and place of the removal proceedings. 8 U.S.C. § 1252b(a)(1) (repealed 1996). The statute permitted the government to provide that information "in the order to show cause *or otherwise*." *Id.* § 1252b(a)(1), (a)(2)(A) (emphasis added). In creating the "notice to appear" in IIRIRA, Congress eliminated that two-step notice process and required

that the "time and place at which the proceedings will be held" be included in the "notice to appear" itself. 8 U.S.C. § 1229(a)(1)(G)(i).

When implementing this change in statutory text through rulemaking the following year, the government acknowledged that Congress abandoned the two-step notice process and now "the time and place of the hearing must be on the Notice to Appear." *Niz-Chavez*, 141 S. Ct. at 1484 (emphasis omitted) (quoting 62 Fed. Reg. 449 (1997)). Nevertheless, for decades, the government continued to engage in that same notice-by-installment practice. Indeed, by 2017, DHS omitted the time or place of the proceedings from "almost 100 percent" of its putative NTAs. *Pereira*, 138 S. Ct. at 2111. Instead, the putative NTAs would "state that the times, places, or dates of the initial hearings are 'to be determined.'" *Id.* DHS would rely on the immigration court, at some later date, to send the noncitizen the first notice of the time and place of the proceedings in a document that the immigration court labels a "Notice of Hearing." See Gov't Br. at 4, 6, 9, 13.

2. In *Pereira*, the Court considered the implications of the government's two-step notice practice on the "stop-time rule," which affects eligibility for a form of relief known as cancellation of removal. 138 S. Ct. at 2109-10. Under that rule, a noncitizen stops accruing time towards the presence requirements for cancellation of removal "when the alien is served a notice to appear under section 1229(a)." 8 U.S.C. § 1229b(d)(1). The government argued that DHS could trigger the stop-time rule by serving a document labeled "notice to appear," even if that document did not comply with Section 1229(a) (or, more specifically, Section 1229(a)(1)) because it

failed to provide time-and-place information. The Court rejected that position, explaining that a putative "notice to appear" that lacks the time and place of the proceedings is not notice "under," or "in accordance with," Section 1229(a)(1). *Pereira*, 138 S. Ct. at 2117.

Following *Pereira*, the government maintained that it could comply with Section 1229(a)(1) by serving *multiple* documents that, in combination, included all the information specified in Section 1229(a)(1). In *Niz-Chavez*, the Court rejected this "notice-by-installment theory" and held that, for the purposes of the stop-time rule, Section 1229(a)(1) requires "a single notice—rather than 2 or 20 documents." 141 S. Ct. at 1479, 1486.

C. Factual and Procedural Background.

1. Petitioner Moris Esmelis Campos-Chaves is a native and citizen of El Salvador. He arrived in the United States without inspection in January 2005 and lives with his wife and two U.S.-born children, a daughter and son who are now thirteen and eighteen, respectively. J.A. 58, 60. Since his arrival, he has worked consistently as a gardener, *id.* at 60, and filed income tax returns every year. He has no criminal history.

On January 27, 2005, DHS served Mr. Campos-Chaves with a noncompliant NTA that did not provide the date and time at which his removal proceedings would be held. Instead, it stated that he was ordered to appear "on a date to be set at a time to be set." *Id.* at 53-54. Four months later, the immigration court mailed a document to Mr. Campos-Chaves that, for the first time, set the date and time of his removal proceedings. *Id.* at 50. Mr. Campos-Chaves did not

appear at the proceeding, and he was ordered removed in absentia. *Campos-Chaves* Pet. App. 15a-17a.

2. In September 2018, Mr. Campos-Chaves moved the immigration court to rescind his removal order and reopen his removal proceedings under Section 1229a(b)(5)(C)(ii). He argued that, under this Court's decision in *Pereira*, he did not receive proper statutory notice, warranting rescission and reopening. J.A. 61. He also argued that he could make out a prima facie case of eligibility for cancellation of removal based on the exceptional hardship his two adolescent U.S.-citizen children would face if he were unable to support them financially from El Salvador or, alternatively, if they were forced to accompany him to a dangerous country in which his children had never lived. See *id.* at 60-61; 8 U.S.C. § 1229b(b)(1)(D).

The immigration judge denied the motion. *Campos-Chaves* Pet. App. 12a-14a. In the judge's view, *Pereira* was limited to the stop-time context and had no impact on the notice requirements for in absentia proceedings. *Id.* The Board of Immigration Appeals ("Board" or "BIA") agreed and dismissed the appeal. *Id.* at 10a-11a. Relying on its precedential case *Matter of Pena-Mejia*, 27 I. & N. Dec. 546 (BIA 2019), the Board held that the government complied with the statute's notice requirements when DHS provided a putative notice to appear lacking date-and-time information followed by the immigration court's subsequent mailing of a notice containing that information. *Campos-Chaves* Pet. App. 7a-8a.[2]

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[2] The Board also concluded that Mr. Campos-Chaves failed to establish prima facie eligibility for cancellation of removal, but

3. Mr. Campos-Chaves petitioned the Fifth Circuit for review. While that petition was pending, two relevant cases were decided. First, this Court decided *Niz-Chavez*, holding that the government's two-step notice practice does not satisfy the notice requirements of Section 1229(a)(1) for the purposes of cancellation of removal. See *supra* p. 6.

Second, the Fifth Circuit decided *Rodriguez v. Garland*, which applied *Niz-Chavez* to hold that a subsequent notice from the immigration court with the date and time of proceedings does not cure a noncompliant NTA for purposes of in absentia removal. 15 F.4th 351, 355-56 (5th Cir. 2021). In that case, DHS had served Mr. Rodriguez—like Mr. Campos-Chaves—with a putative NTA that did not contain date-and-time information, but the immigration court subsequently sent him a notice setting the date and time. In granting Mr. Rodriguez's petition for review, the Fifth Circuit held that this Court's "interpretation of the § 1229(a) notice requirements … applies in the in absentia context" and permits rescission of an in absentia removal order when DHS does not comply with Section 1229(a)(1). *Id.* at 355.

Niz-Chavez and *Rodriguez* made it so clear that Mr. Campos-Chaves should prevail that the *government* filed an unopposed motion to grant the petition and remand to the agency. But rather than grant the government's motion, or even set the case for argument, the Fifth Circuit issued a published, three-paragraph per curiam opinion denying the

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only on the ground that this Court subsequently rejected in *Niz-Chaves*, 141 S. Ct. at 1485, that the second notice the immigration court sent him had triggered the stop-time rule, *Campos-Chaves* Pet. App. 9a-10a.

government's remand motion and denying the petition for review. *Campos-Chaves* Pet. App. 3a-4a.

4. On rehearing, the Fifth Circuit again denied the petition for review. In a modified opinion, the Fifth Circuit's substantive discussion—in its entirety—consists of the following three sentences:

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

Id. at 2a (internal citation omitted).

Mr. Campos-Chaves petitioned this Court. The Court granted certiorari and consolidated his case with two other cases, *Garland v. Singh* and *Garland v. Mendez-Colín*.

SUMMARY OF ARGUMENT

A noncitizen may move to rescind an in absentia removal order if the noncitizen did not receive "notice in accordance with paragraph (1) or (2) of [8 U.S.C.] section 1229(a)." 8 U.S.C. § 1229a(b)(5)(C)(ii). Where, as here, a noncitizen has not received notice in accordance with paragraph (1)—a statutorily compliant NTA with the "time and place" of his removal proceedings, 8 U.S.C. § 1229(a)(1)(G)(i)—Section 1229a(b)(5)(C)(ii) permits rescission on two independent grounds. First, the noncitizen also will not have received notice in accordance with paragraph (2)—a "[n]otice of change in time and place of proceedings"—because such a notice only exists following a compliant NTA. *Id.* § 1229(a)(2); see Part I. Second, the statute also allows rescission based on the noncompliant NTA alone. See Part II. Those conclusions are compelled by the statute's plain text, structure, and history. But even if any lingering ambiguity remained, established principles of interpretation counsel resolving it in Mr. Campos-Chaves's favor. See Part III(A). In any event, the Board's interpretation is unreasonable and does not merit *Chevron* deference. See Part III(B).

1. The plain text of Section 1229(a)(2) establishes that the document the immigration court mailed to Mr. Campos-Chaves, which for the first time notified him of the date and time of his removal proceedings, was not "notice in accordance with paragraph … (2) of section 1229(a)." 8 U.S.C. § 1229a(b)(5)(C)(ii). That is because a notice of change under paragraph (2) plainly presumes the NTA set the initial date and time. Section 1229(a)(2) provides that "in the case of any *change* or postponement in the time and place of [removal] proceedings," the government must provide

the noncitizen notice of the "*new*" time or place. *Id.* § 1229(a)(2)(A) (emphasis added).

a. In ordinary English usage, to "change" something, it must exist in the first place. See Part I(A)(1)(a). Especially when acting on the object here—a time or place of an event—the word "change" embodies that ordinary meaning. For example, no reasonable person intending to make an annual doctor's appointment would call the office to "change" the time of an appointment they had not yet made. Likewise, Congress could not have intended for the government to inform noncitizens of a "change" in the time or place of removal proceedings if a time and place had not already been set. "Otherwise," as this Court recognized in *Pereira*, "there would be no time or place to 'change or postpon[e].'" 138 S. Ct. at 2114.

The requirement that a notice of change specify the "*new*" time or place, 8 U.S.C. § 1229(a)(2)(A)(i) (emphasis added), reinforces that the NTA must have included an *old* time or place. See Part I(A)(1)(b). Read in the context of Section 1229(a)(2), the word "new" most naturally means "taking the place of what has already existed." *New*, Webster's New World Dictionary of the American Language (1st ed. 1951) (def. 4.b). That is, "[b]y allowing for a 'change or postponement' of the proceedings to a '*new* time or place,' paragraph (2) presumes that the Government has already served a 'notice to appear under section 1229(a)' that specified a time and place." *Pereira*, 138 S. Ct. at 2114 (emphasis added).

None of the government's arguments regarding "change" and "new" warrant deviation from those words' ordinary meanings. See Part I(A)(1)(c). The government, in effect, reads the word "change" out of Section 1229(a)(2) and adopts a broad definition of

"new" that operates in a contextual vacuum. Likewise, it promotes a meaning of "change" that encompasses a "change from something that was not yet determined to something specific." Gov't Br. at 31. But in doing so, it ignores the statutory context.

b. The overall statutory scheme confirms Mr. Campos-Chaves's straightforward reading of the plain text of Section 1229(a)(2). See Part I(B). To start, Section 1229(a) sets forth the notice requirements that DHS must comply with in *every* case to initiate removal proceedings. Section 1229(a)(1) describes the case-initiating NTA, a single document that must include the time and place of the removal proceedings. Then, as the Court explained in *Niz-Chavez*, "*once* the government serves a *compliant* notice to appear, IIRIRA permits it to send a supplemental notice *amending* the time and place of an alien's hearing if logistics require a change." 141 S. Ct. at 1485 (emphasis added). Construing paragraph (2) as providing a mechanism for the government to set, in the first instance, a time and place of the proceedings *before* it sets an initial time and place in the NTA turns this statutorily mandated process on its head. See Part I(B)(1).

Section 1229(b)(1) further supports this view. It states that the first "hearing shall not be scheduled earlier than 10 days after the service of the *notice to appear*" so the noncitizen may "be permitted the opportunity to secure counsel before the *first hearing date*." 8 U.S.C. § 1229(b)(1) (emphasis added). Section 1229(b)(1) thus reiterates that Congress intended DHS to specify the "first hearing date" in the notice to appear, not in some subsequent document. See Part I(B)(2).

Section 1229a(b)(5) also supports this position. See Part I(B)(2). Before an in absentia order of removal may issue, the government must provide "written notice required under paragraph (1) or (2)." 8 U.S.C. § 1229a(b)(5)(A). A "written notice" is "*required under* paragraph (1)," *id.* (emphasis added), in *all*, not some, "removal proceedings under section 1229a." *Id.* § 1229(a)(1). In contrast, "written notice" is only "*required under* paragraph … (2)," *id.* § 1229a(b)(5)(A) (emphasis added), "in the case of any change or postponement in the time and place of [the] proceedings" (and if the noncitizen has complied with Section 1229(a)(1)(F)'s address requirements), *id.* § 1229(a)(2)(A)-(B). Again here, the statute presumes a compliant NTA will be issued in every case.

The government's argument that the disjunctive nature of "or" in Section 1229a(b)(5)(A) creates two separate forms of notice, each independently justifying in absentia removal, contravenes the statutory context. Moreover, it leads to anomalies, like where DHS could secure an in absentia removal order without ever issuing an NTA. See Part I(B)(3).

c. Indeed, the statutory history reveals that Congress crafted IIRIRA's notice and in absentia removal provisions to remove the government's ability to obtain an in absentia removal order based on a notice of hearing alone. See Part I(C).

2. In any event, regardless of whether the document the immigration court provided to Mr. Campos-Chaves constituted a paragraph (2) notice, the statute authorizes rescission based on the noncompliant NTA alone. See Part II. It permits a motion to reopen if the noncitizen "did not receive notice in accordance with paragraph (1) *or* (2) of

section 1229(a)." 8 U.S.C. § 1229a(b)(5)(C)(ii) (emphasis added). In this context, the negation ("not") operates outside the scope of the word "or," such that a noncitizen may demonstrate *either* that he did not receive notice in accordance with paragraph (1) *or* that he did not receive notice in accordance with paragraph (2). The government's contrary reading—that eligibility to seek rescission of an in absentia removal order "depends on whether the noncitizen received whichever form of notice is relevant to the proceeding the noncitizen did not attend," Gov't Br. at 33—has no basis in the text and leads to results that contravene Congress's intent.

3. The statute's plain text, structure, and history compel Mr. Campos-Chaves's interpretation. If the Court finds any lingering ambiguity, however, two interrelated principles resolve it in Mr. Campos-Chaves's favor. See Part III(A). First, the Court has endorsed narrow interpretations of the INA where (like here) the result "does not mean" noncitizens will necessarily "escap[e] deportation." *Moncrieffe v. Holder*, 569 U.S. 184, 204 (2013). Second, given the severe consequences of removal, lingering statutory ambiguities must be resolved in the noncitizen's favor.

In the end, even if *genuine* ambiguity remains, the Board's decisions are unreasonable and merit no deference. See Part III(B). The Board exceeded the "outer bounds of permissible interpretation," *Kisor v. Wilkie*, 139 S. Ct. 2400, 2416 (2019), and its view "depart[ed] so sharply from the statute's text and history that it cannot be considered a permissible reading," *Mellouli v. Lynch*, 575 U.S. 798, 813 (2015).

The Fifth Circuit's judgment should be reversed.

ARGUMENT

I. Mr. Campos-Chaves May Move to Reopen Because He Never Received a Notice of Change in Accordance with Section 1229(a)(2).

Section 1229a(b)(5)(C)(ii) provides that a noncitizen may move to rescind an in absentia order of removal and reopen proceedings if he "did not receive notice in accordance with paragraph (1) or (2) of section 1229(a)." 8 U.S.C. § 1229a(b)(5)(C)(ii). The government does not, and cannot, dispute that Mr. Campos-Chaves "did not receive notice in accordance with paragraph (1)," because DHS never provided him with a single, case-initiating notice document—an NTA—that included the date and time at which his proceedings would be held. See Gov't Br. at 5-6; see *Niz-Chavez*, 141 S. Ct. at 1486 (interpreting a notice to appear as "a single notice"). Mr. Campos-Chaves also did not receive "notice in accordance with paragraph … (2)," because—as the plain text of Section 1229(a)(2), the overall statutory scheme, and the relevant statutory history demonstrate—a notice of change under paragraph (2) does not exist absent a statutorily compliant NTA.

A. The Plain Text of Section 1229(a)(2) Presupposes That the Notice to Appear Included Time and Place Information.

"As in any statutory construction case, '[this Court] start[s], of course, with the statutory text.'" *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013). Here, under its plain terms, a paragraph (2) notice only comes into being "in the case of any *change or postponement* in the time and place of [removal] proceedings." 8 U.S.C. § 1229(a)(2)(A) (emphasis added). In the case of any

such change or postponement, the notice of change must specify the "*new*" time or place. *Id.* § 1229(a)(2)(A)(i) (emphasis added). Considering the ordinary meaning of the terms "change" and "new," a notice under paragraph (2) cannot specify a new time or place of the proceedings if the NTA did not include that information in the first instance.[3] The notice document that the immigration court mailed to Mr. Campos-Chaves—setting for the first time the date and time of the proceedings—plainly was not a notice of change in accordance with Section 1229(a)(2).

1. Section 1229(a)(2) does not define the terms "change" or "new," so the Court must look to their ordinary meanings. See *Sebelius*, 569 U.S. at 376. Here, the ordinary meanings of "change" and "new" demonstrate that a paragraph (2) notice only serves to modify a previously set time or place for the noncitizen's removal proceedings.

a. In ordinary English usage, the word "change" in the transitive context, where it operates on a direct object—here, a time or place—is understood to mean "the action of replacing something with something else of the same kind or with something that serves as

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[3] Although the ordinary meaning of "postponement" in Section 1229(a)(2) may overlap with the word "change" to some extent, use of both words reflects historical agency practice. The word "change" logically provides for an immigration court's occasional need to change the time of a previously scheduled hearing to a different time—whether later or earlier. See *infra* pp. 22-23; see also *Niz-Chavez*, 141 S. Ct. at 1485. An immigration judge's authority to "postpone" a removal proceeding until a later time, however, has long been invoked by a party for "good cause shown." 8 C.F.R. § 1240.6. The distinction is immaterial to the question presented in this case.

a substitute: substitution."[4] *Change*, Webster's Third New International Dictionary (1993) (def. 3). In other words, the ordinary meaning of the word "change" presupposes the existence of that which is being altered.

"Change" carries this ordinary meaning particularly when it comes to the alteration of the *time* or *place* of an event. For example, no reasonable person intending to make an annual doctor's appointment would call the office to "change" the date and time of an appointment they had not yet made. Nor would a party host notify guests of a "change" in the time or place of the party if no time or place for the event had been previously communicated. A musical performer would not announce a "change" in the date or venue of a concert if the show had never been set. And here, one does not ordinarily think to "change" or "postpone" the time or place of a removal proceeding that has not previously been scheduled.

Indeed, in its decisions in *Pereira* and *Niz-Chavez,* the Court recognized that the ordinary meaning of "change" within Section 1229(a)(2) presupposes the existence of the object (time or place) being altered. In *Pereira*, the Court explained: "By allowing for a 'change or postponement' of the proceedings to a new 'time or place,' paragraph (2) presumes that the

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[4] Indeed, several dictionaries in use when Congress enacted IIRIRA in 1996 defined "change" as "an alteration or modification" and "the substitution of one thing for another; an exchange." *Change*, Concise Oxford Dictionary of Current English (8th ed. 1990) (def. 1.b, 4.a); see also, *e.g.*, 3 Oxford English Dictionary (2d ed. 1989) (def. 1.a); *id.* (defining "change" in the transitive verb form as, "[t]o put or take another (or others) instead of; to substitute another (or others) for, replace by another (or others); to give up in exchange for something else").

Government has already served a 'notice to appear under section 1229(a)' that specified a time and place as required by § 1229(a)(1)(G)(i). *Otherwise, there would be no time or place to 'change or postpon[e].*'" 138 S. Ct. at 2114 (emphasis added). Notably, the dissent in *Pereira* agreed with that presumption, stating that "[p]aragraph (2) undoubtedly assumes that notices to appear will state the 'time and place' of the removal proceeding as required by § 1229(a)(1)[.]" *Id.* at 2127 (Alito, J., dissenting). *Pereira* thus "necessarily reads 'change' in § 1229(a)(2) to refer to 'the substitution of one thing for another' or 'the succession of one thing in place of another.'" *Laparra-Deleon v. Garland,* 52 F.4th 514, 520 (1st Cir. 2022) (quoting 3 Oxford English Dictionary (2d ed. 1989) (def. 1.a)); see also *Niz-Chavez*, 141 S. Ct. at 1485 (reading "change" as "amend[ing]" previously set time and place information, rather than providing that information in the first place).

b. In the same vein, Congress's requirement that a notice of change specify the "*new* time or place of the proceedings," 8 U.S.C. § 1229(a)(2)(A)(i) (emphasis added), reinforces that the notice of change must follow a statutorily compliant NTA.

Like the word change, the word new has "many dictionary definitions and must draw its meaning from its context." *Kucana v. Holder*, 558 U.S. 233, 245 (2010) (citation omitted). When used in the context of paragraph (2), the word "new" describes the time and place to which the proceedings have been changed. That is, it most naturally means "taking the place of what has existed." *New*, Webster's New World Dictionary of the American Language (1st ed. 1951) (def. 4.b); see also 10 Oxford English Dictionary (2d ed. 1989) (def. 4.a) (defining "new" as "[o]ther than the

former or old; different from that previously existing, known, or used). Importantly, the Court in *Pereira* understood the word "new" in this way too, reasoning that, "[b]y allowing for a 'change or postponement' of the proceedings to a '*new* time or place,' paragraph (2) presumes that the Government has already served a 'notice to appear under section 1229(a)' that specified a time and place as required by § 1229(a)(1)(G)(i)." 138 S. Ct. at 2114 (emphasis added).

c. None of the government's arguments regarding the terms "change" and "new" warrant deviation from those words' ordinary meanings.

First, the government effectively reads the word "change" out of the statute altogether. Gov't Br. at 28. It argues that a notice under Section 1229(a)(2), which Congress titled "[n]otice *of change*," 8 U.S.C. § 1229(a)(2) (emphasis added), need not, in fact, "contain" information of any *change*. Gov't Br. at 28. As the government sees it, a paragraph (2) notice is defined by only two decontextualized pieces of information: "the new time or place of proceedings" and "the consequences … of failing … to attend such proceedings." See *id.* But that reading ignores key statutory text. Congress expressly provided that a notice of change would be deployed only "*in the case of any change* or postponement in the time and place of [removal] proceedings." 8 U.S.C. § 1229(a)(2)(A) (emphasis added). A paragraph (2) notice means little, if anything, absent a "change."

In turn, the government's reading of the word "new" as "something that has 'originated or occurred lately,' … or is 'recently manifested, recognized, or experienced,'" *i.e.*, "'NOVEL,'" Gov't Br. at 30 n.3 (quoting Webster's Third New International Dictionary (1993) (def. 1, 2.a)), only would make sense

if it is unhinged from any connection to a "change." *Id.* at 28. Giving full meaning to the statutory context, "new" more naturally means "taking the place of what has existed." *New*, Webster's New World Dictionary of the American Language (1st ed. 1951) (def. 4.b).

The government next argues that, even if a notice of change must indeed be tied to a change in time or place, the word "change" may encompass "a change from something that was not yet determined to something specific." Gov't Br. at 31. In other words, according to the government, the notice the immigration court sent to Mr. Campos-Chaves satisfies paragraph (2) because it "changed the time from 'To Be Set' or 'TBD' to a specific time." *Id.* at 28. Not so. Even if, in theory, "a definition is broad enough to encompass one sense of a word," and "change" could in some circumstances include a change from nothing to something, that "does not establish that the word is *ordinarily* understood in that sense." *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 568 (2012). As explained, *supra*, one does not ordinarily think of "changing" the time and place of an *event* that has not previously been scheduled. As such, the government's proffered definition "does not control unless the context in which the word appears indicates that it does." *Id.* at 569. Here, if Congress really meant for the word "change" to encompass the identification of time-and-place information in the first instance, it could have indicated as much by not requiring inclusion of time and place in the NTA. Then, the government could simply provide a paragraph (2) notice "chang[ing]" the nonexistent time or place to an actual time or place.

The government's examples are, in that sense, readily distinguishable. In all of them, the context

shows that—unlike here, because the NTA must provide a time and place—the object being changed *can* initially *not* exist. With respect to the sex offender registry statute, see Gov't Br. at 30, the initial disclosure provision does not *require* that the individual be an employee anywhere. Rather, it requires the individual to report employee status if the individual is or will be employed. 34 U.S.C. §§ 20913(b), 20914(a)(4). Any "change of … employment," *id.* § 20913(c), therefore, encompasses changes to the *status* of employment, including from being unemployed to being employed somewhere. Likewise, this Court's corporate-disclosure rule expressly requires a party to state in an initial disclosure that it has "*no* parent or publicly held company owning 10% or more of the corporation's stock." Sup. Ct. R. 29.6 (emphasis added). It is unremarkable that a "change" to that disclosure would thus include a change from no parent to the identification of a parent. See Gov't Br. at 29. Here, in contrast, the NTA must provide a specific time and place of proceedings. *Niz-Chavez*, 141 S. Ct. at 1486. A "change" in the context of Section 1229(a)(2), therefore, could never contemplate "a change from something that was not yet determined to something specific." Gov't Br. at 31.

The government's analogies to 8 U.S.C. Section 1229(a)(1)(F)(i) and 1229(a)(1)(F)(ii) fail for similar reasons. *Id.* at 30-31. As the government notes, the statute requires the NTA to instruct the noncitizen to "immediately provide" the government with an "address and telephone number (*if any*)," and thus expressly acknowledges that the noncitizen may initially—or "immediately"—have no address or telephone information to provide. 8 U.S.C.

§ 1229(a)(1)(F)(i) (emphasis added). A separate provision requires the noncitizen to report "any change" to that "address or telephone number." *Id.* § 1229(a)(1)(F)(ii). Like in the sex offender registration statute and this Court's corporate-disclosure rule, the context of Section 1229(a)(1)(F)(i) and (ii) make clear that the word "change" encompasses a change from no address to a specific address. In contrast, the NTA's time-and-place provision has no similar textual hook, like "(if any)," see *id.* § 1229(a)(1)(G)(i), that would counsel deviating from the ordinary meaning of the word "change" when used to modify the time and place of an event.

The government's reliance on the word "any" in Section 1229(a)(2)(A) does not alter the ordinary meaning of the word "change." Gov't Br. at 30. Because an NTA must include the time and place of proceedings, see *Niz-Chavez*, 141 S. Ct. at 1486, the word "any" simply identifies the type of change that could arise with respect to that previously set time or place. In other words, paragraph (2) applies equally to a change that moves the date in the NTA to an earlier date, moves the venue identified in the NTA to another, or changes the time in the NTA from the afternoon to the morning. "Any" of these changes to the time or place in the NTA require the issuance of a paragraph (2) notice of change, which must then provide the "new" time or place of the proceedings.[5] 8 U.S.C. § 1229(a)(2)(A)(i).

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[5] The government argues that even if the first notice with time-and-place information immediately following a putative NTA lacking those details does not constitute a paragraph (2) notice, any subsequent notices with new time-and-place information *do*. Gov't Br. at 31-32. That view contravenes the statutory

B. The Statutory Structure Confirms That a Notice of Change Exists Only Following a Compliant Notice to Appear.

A look at the "overall statutory scheme" confirms Mr. Campos-Chaves's straightforward reading of the plain text of Section 1229(a)(2). *West Virginia v. EPA,* 142 S. Ct. 2587, 2607 (2022) (quoting *Davis v. Mich. Dep't of Treasury,* 489 U.S. 803, 809 (1989)). The Immigration and Nationality Act, 8 U.S.C. § 1101, establishes an adversarial adjudicatory system—removal proceedings—for "deciding the inadmissibility or deportability of an alien." 8 U.S.C. § 1229a(a)(1). Mr. Campos-Chaves's plain-text interpretation of Section 1229(a)(2) harmonizes relevant sections of the INA and effectuates the fair, impartial adjudicatory system that Congress intended to create.

1. Section 1229 Demonstrates That a Notice of Change Must Follow a Compliant Notice to Appear.

a. Read "with a view to [its] place in the overall statutory scheme," *EPA*, 142 S. Ct. at 2607, a paragraph (2) notice of change is necessarily dependent on an earlier paragraph (1) notice to appear. Section 1229(a) provides the notice requirements applicable to *all* removal proceedings under Section 1229a. Quite logically, Section 1229(a)

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structure, which provides that the NTA, a single document, must state the time and place for the removal proceedings in the first instance and in all cases. See *infra* Part I(B); *Niz-Chavez*, 141 S. Ct. at 1486. But in any event, if the Court finds the government's distinction dispositive for purposes of Respondents Singh or Mendez-Colín, Mr. Campos-Chaves should still prevail under a plain reading of the statutory text, as he received only a single purported notice of change. J.A. 50-52.

begins by requiring that the process commence with a charging document—the NTA—that contains information critical to the proceedings, including the time and place at which the noncitizen must appear. *Pereira*, 138 S. Ct. at 2110; *Niz-Chavez*, 141 S. Ct. at 1482 n.2, 1486. The statute then provides that "*once* the government serves a *compliant* notice to appear, … [it may] send a supplemental notice *amending* the time and place of an alien's hearing if logistics require a change." *Niz-Chavez*, 141 S. Ct. at 1485 (emphasis added). That is where Section 1229(a)(2) kicks in: "in the case of any change or postponement in the time and place of [the] proceedings." In that circumstance, Section 1229(a)(2) requires that the government provide the noncitizen with notice of the "new time or place of the proceedings." 8 U.S.C. § 1229(a)(2)(A)(i).

As is evident from this statutory scheme, paragraph (2) *necessarily* depends on paragraph (1); it does not come into play absent a compliant NTA. Indeed, *Niz-Chavez* unequivocally recognized this statutory structure, noting that, while "the government can change the time and place [of proceedings] if it must," its ability to do so does not relieve it of its obligation to *first* provide time-and-place information in the NTA. 141 S. Ct. at 1485.

b. Section 1229(b) similarly confirms that a notice of change necessarily must follow a statutorily compliant NTA. Section 1229(b)(1) requires that a noncitizen "be permitted the opportunity to secure counsel before the *first hearing date*." 8 U.S.C. § 1229(b)(1) (emphasis added). To effectuate that right, which is also specifically enumerated in Section 1229a(b)(4)(A), the statute instructs that this first "hearing shall not be scheduled earlier than 10 days after the service of the *notice to appear*." *Id.* (emphasis

added). Because the notice to appear must include specific time-and-place information, *Pereira*, 138 S. Ct. at 2110; *Niz-Chavez*, 141 S. Ct. at 1482 n.2, 1486, Section 1229(b)(1) reiterates that the notice to appear, and not a purported notice of change, must set the "first hearing date." If, instead, a notice to appear could provide a mere placeholder, any first hearing that takes place based on a putative notice of change alone (like the hearing scheduled in Mr. Campos-Chaves's case) would not comply with Section 1229(b)(1). Such a hearing would not have been "scheduled earlier than 10 days after the service of the notice to appear." 8 U.S.C. § 1229(b)(1).

The only way to read Section 1229(b)(1) otherwise would require the Court to construe the term "notice to appear" to have different meanings throughout the statute. For purposes of the right-to-counsel provision in Section 1229(b)(1), a "notice to appear" would not need to include time information; but for purposes of the stop-time rule, a "notice to appear" would need to include time information, *Pereira*, 138 S. Ct. at 2110; *Niz-Chavez*, 141 S. Ct. at 1482 n.2, 1486. That is plainly not how this Court reads statutes. See *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 568 (1995) ("adopt[ing] the premise that [a statutory] term should be construed, if possible, to give it a consistent meaning throughout the Act," and noting "[t]hat principle follows from [the Court's] duty to construe statutes, not isolated provisions").

2. Section 1229a Similarly Confirms That a Notice of Change Cannot Precede a Compliant Notice to Appear.

a. Mr. Campos-Chaves's interpretation of the plain text of Section 1229(a)(2) also gives full effect to

every word Congress deliberately chose in the in absentia removal provision, namely, the words "required under" in Section 1229a(b)(5)(A). *SAS Inst., Inc. v. Iancu,* 138 S. Ct. 1348, 1355 (2018) (explaining that Congress's word choice in a statute is presumed to be deliberate, as are its structural choices). Section 1229a(b)(5)(A) states that, before an in absentia order of removal may issue, the government must provide the noncitizen "written notice *required under* paragraph (1) or (2)." As noted, *supra*, "written notice" is "*required under* paragraph (1)," 8 U.S.C. § 1229a(b)(5)(A) (emphasis added), in *all*, not some, "removal proceedings under section 1229a," *id.* § 1229(a)(1) ("In removal proceedings under section 1229a … a 'notice to appear' … *shall* be given" (emphasis added)). In contrast, "written notice" is only "*required under* paragraph … (2)," *id.* § 1229a(b)(5)(A), "in the case of any change or postponement in the time and place of such proceedings" (and if the noncitizen has complied with the address requirements of Section 1229(a)(1)(F)), *id.* § 1229(a)(2)(A)-(B). Under Mr. Campos-Chaves's interpretation, then, DHS must issue the "required" paragraph (1) notice in *every* case, not just in some unspecified number of cases.

In that sense, the in absentia removal provision thus parallels the structure of Section 1229(a) itself. Section 1229a(b)(5)(A) presumes the noncitizen subject to an in absentia removal proceeding will have been provided written notice under Section 1229(a)(1) (the NTA), because it is required in every case. It then contemplates that some noncitizens (but not all) also will have been provided notice required under Section 1229(a)(2) (the notice of change), informing them of a change to the time or place previously provided. See

id. § 1229a(b)(5)(A). Only then, after all "required" notice has been provided, and the government has met its burden of proof, is the immigration court able to enter an in absentia order of removal. *Id.*

b. Contrary to that straightforward reading of the statute, the government argues that the word "or" in Section 1229a(b)(5)(A) means that, at least in some cases, Congress intended to allow the government to send notices setting the time and place of proceedings without *ever* having sent an NTA with the requisite time-and-place information. Gov't Br. at 26 (noting Mr. Campos-Chaves's interpretation "fails to give effect … to the disjunctive word 'or' in § 1229a(b)(5)"). This argument is unavailing on multiple fronts.

First, that "'or' is 'almost always disjunctive,'" *id.* at 27 (quoting *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1141 (2018)), is simply beside the point when the government has not satisfied either requirement. To be sure, Section 1229a(b)(5)(A) requires that the government provide the noncitizen with "written notice required under paragraph (1) *or* (2)." 8 U.S.C. § 1229a(b)(5)(A) (emphasis added). But here the government provided neither. The government concedes, as it must, that it did not provide notice required under paragraph (1). Gov't Br. at 5-6 ("The NTA ordered Campos-Chaves to appear for removal proceedings … at a time 'to be set.'"). And, as discussed, it did not provide notice "required under … paragraph (2)," 8 U.S.C. § 1229a(b)(5)(A), because a paragraph (2) notice of change is only required, if at all, "*after* [the government] has served a notice to appear specifying the time and place of the removal proceedings." *Pereira*, 138 S. Ct. at 2119 (emphasis added); see *supra* Parts I(A) and I(B)(1).

Second, the government's reading of the word "or," as creating "two distinct forms of notice" that each *independently* justify in absentia removal, Gov't Br. at 18, cannot reflect Congress's intent. At the outset, it would produce "positively absurd" results like those the Court rejected in *Pereira* and *Niz-Chavez*. *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 69 (1994). After all, if a purported notice of change simply containing time-and-place information for the proceedings were sufficient to justify an in absentia removal order, see Gov't Br. at 28, nothing in the statute would preclude the government from simply forgoing NTAs altogether, or providing an NTA only if a noncitizen shows up to a hearing. Especially in light of the harsh consequences of an in absentia removal order, "[a]cceptance of the Government's … reading … 'would produce an absurd and unjust result which Congress could not have intended.'" *Clinton v. City of New York*, 524 U.S. 417, 429 (1998) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 574 (1982)).

Interestingly enough, the government explained to this Court in *Niz-Chavez* that IIRIRA's requirement that the "initial hearing information" (*i.e.*, time-and-place information) be included in the paragraph (1) "notice to appear" "ensured that in absentia removal would be ordered only if an alien had been served with notice of the full panoply of information that Congress deemed requisite" in Section 1229(a)(1). Gov't Br. in *Niz-Chavez* at 39; see also *infra* Part I(C) (discussing statutory history). The government now dismisses that prior position as "not address[ing] the question here." Gov't Br. at 54 n.6. But it does not reconcile its prior position with the implications of its present argument. Rather than require that the government provide "the full panoply of information," including

the "*initial* hearing information," Gov't Br. in *Niz-Chavez* at 39 (emphasis added), in a paragraph (1) NTA before it may obtain an in absentia removal order, the government's current interpretation would authorize such an order even when the government provided *none* of that information.

Perhaps recognizing the potentially serious consequences of its position, the government casts them aside as a "speculative concern [that] is unfounded" in light of regulations that presently require the "NTA [to] list the charges against the noncitizen," among other information. Gov't Br. at 53 (citing 8 C.F.R. §§ 1003.15(b)(4), 1003.18(b)). But the government can always amend its regulations to suit its present needs, and "this Court has long made plain … [that] self-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). And, even so, the regulations do not resolve concerns about *when* the government must provide charging information. As noted, *supra*, under the government's reading, it could send a notice of change and then provide an NTA only if the noncitizen shows up to the hearing. If the individual does not attend, the immigration court could order the noncitizen removed in absentia based on the notice of change alone.

In the end, a much simpler way to understand Congress's use of the word "or" in Section 1229a(b)(5)(A) is that it accounts for the fact that the government need not always provide a paragraph (2) notice of change. If the government issues a valid NTA, it is possible that there will be no "change or postponement in the time and place of [the] proceedings." 8 U.S.C. § 1229(a)(2)(A). Then, no "written notice [is] *required* under … paragraph

… (2)," and the government will have satisfied its burden by "provid[ing] written notice required under paragraph (1)." *Id.* § 1229a(b)(5)(A) (emphasis added).

3. The Government's Remaining Arguments Misconstrue the Statute.

The government's remaining structural arguments do not save it from the consequences of its longstanding misinterpretation of Section 1229(a).

First, the government is incorrect that Mr. Campos-Chaves's interpretation creates a "profound mismatch between the government's ability to obtain in absentia removal orders"—governed by Section 1229a(b)(5)(A)—"and noncitizens' ability to get them rescinded"—governed by Section 1229a(b)(5)(C)(ii). Gov't Br. at 40. To the contrary, Mr. Campos-Chaves's reading adheres to congressional intent and ensures consistency and predictability.

To begin, absent a statutorily compliant NTA, DHS should not be able to obtain an in absentia order of removal under Section 1229a(b)(5)(A), so there would be nothing for a noncitizen to rescind under Section 1229a(b)(5)(C)(ii) in those circumstances. Beyond that, Congress recognized that, even though the government must prove that it provided "written notice required under paragraph (1) or (2) of section 1229(a)," 8 U.S.C. § 1229a(b)(5)(A), there will be circumstances in which the noncitizen in fact does "not *receive* notice in accordance with paragraph (1) or (2)," *id.* § 1229a(b)(5)(C)(ii) (emphasis added)—whether that be because the noncitizen did not actually receive notice or did not receive compliant

notice in accordance with those provisions.[6] The statute thus provides a remedy to rescind an in absentia removal order for precisely those kinds of circumstances. And understandably so, considering the due process concerns at stake. "It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings," *Reno v. Flores*, 507 U.S. 292, 306 (1993), including "a meaningful opportunity to be heard," *Cabrera-Perez v. Gonzales*, 456 F.3d 109, 115 (3d Cir. 2006). The in absentia removal provision creates a limited exception to the right to be heard, but, as the rescission provision guarantees, only if the government diligently follows notice requirements.

Second, the government's claim, that a noncitizen's alleged "fault" in failing to appear bears on the statutory analysis, fails for at least two reasons. At the outset, the government's argument proceeds from the mistaken assumption that, so long as the noncitizen at some point "had notice"—via a purported paragraph (2) notice—of "a specific hearing" that he "fails to attend," the noncitizen is necessarily "at fault" for not attending. Gov't Br. at 41-42. As the Court recognized in *Pereira*, however, it is "confus[ing] and "confound[ing]" to a noncitizen

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[6] In this regard, Mr. Campos-Chaves's circumstances are indistinguishable from Respondent Singh's and from the noncitizen's in the Fifth Circuit case *Rodriguez* that the Court of Appeals relied on in denying Mr. Campos-Chaves relief below. See *Rodriguez*, 15 F.4th 351; *supra* pp. 8-9 (discussing the Fifth Circuit's reference to *Rodriguez* in Mr. Campos-Chaves's case). Like Mr. Pereira, who received a notice called a notice to appear but did not receive "a notice to appear under section 1229(a)," *Pereira*, 138 S. Ct. at 2110, 2112-13, Mr. Campos-Chaves did not receive a notice "in accordance with paragraph (1) or (2) of section 1229(a)." 8 U.S.C. § 1229a(b)(5)(C)(ii).

when the government "serve[s] notices [to appear] that lack any information about the time and place of the removal proceedings." 138 S. Ct. at 2119. *Niz-Chavez* also rejected the premise that the government should "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 … [that] the individual alien would have to save and compile in order to prepare for a removal hearing." 141 S. Ct. at 1485. Thus, this Court has already recognized that a subsequent notice (sent weeks, months, or maybe years after the initial, invalid NTA), which provides only a time and place of proceedings, may not only fail to remedy the noncitizen's confusion, but may *add* to it. Under those circumstances, it is difficult to see how the noncitizen would categorically be "at fault."

In any event, the rescission statute in Section 1229a(b)(5)(C) emphasizes the government's responsibility to provide notice in accordance with the statute over any consideration of the noncitizens' intent in failing to appear. As the government highlights, other than for lack of notice (or being in custody), Section 1229a(b)(5)(C) places a 180-day deadline on any motion to rescind an in absentia order of removal. See Gov't Br. at 41. Motions to reopen based on lack of notice, however, are not so limited. They may be filed *at any time*. 8 U.S.C. § 1229a(b)(5)(C)(ii). If anything, then, the fact that a motion to rescind can be filed at any time based on lack of notice highlights the importance Congress assigned to the government's duty to provide it.

Third, and finally, the government's focus on the address provision in Section 1229a(b)(5)(B), Gov't Br. at 42-43, is misplaced. That provision does nothing

more than effectuate what should be the uncontroversial proposition that if the noncitizen fails to provide an address where notice can be sent, then the government should be absolved of any responsibility to provide it. That is a separate issue from whether, if a noncitizen *has* provided an address, the noncitizen received notice "*in accordance with paragraph (1) or (2)* of Section 1229(a)." 8 U.S.C. § 1229a(b)(5)(C)(ii) (emphasis added). The government's argument—that, because "rescission is unavailable when the noncitizen did not update his address and therefore *did not even receive notice* … , it is exceedingly improbable that Congress intended rescission to be available to a noncitizen who *did* receive notice," Gov't Br. at 43—is a false dichotomy.

C. The Statutory History Reveals That a Notice of Change Requires a Compliant Notice to Appear.

1. IIRIRA's history confirms what IIRIRA's text makes plain: a notice of change under Section 1229(a)(2) must necessarily follow a statutorily compliant NTA and only changes a previously set time and place of removal proceedings.

Like IIRIRA, the statute preceding it recognized the distinction between an initial notice scheduling the removal proceedings and a supplemental notice changing the time and place of those previously scheduled proceedings. The pre-IIRIRA statute specifically distinguished between two notice documents: (1) "written notice … of the time and place at which the proceedings will be held," which could be provided "in the order to show cause or otherwise," 8 U.S.C. § 1252b(a)(2)(A) (repealed 1996); and (2) "in the case of any change or postponement in the time

and place of such proceedings, written notice … of … the new time or place of the proceedings," *id.* § 1252b(a)(2)(B). Congress thus understood that notice of a "change or postponement" of proceedings did not encompass notice of the *initial* time or place of proceedings.

In IIRIRA, Congress simply moved the first type of notice (*i.e.*, the initial notice setting the "time and place at which the proceedings will be held") into the notice to appear, while retaining the separate provision regarding a supplemental notice "in the case of any change or postponement in the time and place of such proceedings." Compare *id.* § 1252b(a)(2)(A) (repealed 1996), with *id.* § 1229(a)(1)(G); compare *id.* § 1252b(a)(2)(B) (repealed 1996), with *id.* § 1229(a)(2)(A). The statute thus retains the distinction between an initial notice that *schedules* the proceedings and a supplemental notice that *changes* the time and place of those proceedings. Only now, the first type of notice must be included in the case-initiating document (the notice to appear), rather than in a separate standalone hearing notice.

And, importantly, that change was material to in absentia removal. Under the pre-IIRIRA statute, the government could obtain an in absentia removal order based on a hearing notice alone. That is because it was authorized to send the hearing notice separately from the order to show cause, and, in turn, the in absentia removal provision depended only on the provision of the hearing notice, without regard to whether the individual was *also* provided the order to show cause. See 8 U.S.C. § 1252b(a)(2), (c)(1) (repealed 1996) (permitting the government to provide time-and-place information "in the order to show cause *or otherwise*" (emphasis added)). Mandating that the hearing time

and place be included in the NTA thus ensured that no noncitizen could face in absentia removal based on a hearing notice alone.

The congressional record shows that Congress was, in fact, concerned about the effect that lack of proper notice had on in absentia removal proceedings. The prior notice provisions complicated in absentia proceedings because of "protracted disputes concerning whether an alien has been provided proper notice of a proceeding." H.R. Rep. No. 104-469, pt. I, at 159 (1996) [hereinafter "House Report"]. In response, Congress sought to "simplify procedures for initiating removal proceedings," *id.*, by requiring the initial time-and-place information be provided in the case-initiating document (which IIRIRA renamed from an "order to show cause" to a "notice to appear"). Then, if applicable, the government could send a subsequent notice of change. Only if the government complied with those notice requirements could a noncitizen's failure to attend a hearing trigger an in absentia removal order.

The government's interpretations would undo these fixes. Instead of following Congress's instruction that the government provide the initial time-and-place information in the case-initiating notice (NTA), the government's interpretation reintroduces the problems that Congress sought to eliminate in IIRIRA. In absentia orders of removal could again issue simply based on a hearing notice.

2. The government's claim that Congress adopted IIRIRA to "make it easier" to obtain in absentia removal orders, Gov't Br. at 46-49, 51, is beside the point and, if anything, supports Mr. Campos-Chaves. As noted, it was disputes about notice that "impair[ed] the ability of the government to secure in absentia

deportation orders." House Report at 159. The in absentia removal process was made easier, therefore, only because Congress chose to *strengthen* the notice requirements the government must follow to obtain such orders. Far from being at "odds" with Mr. Campos-Chaves's interpretation of the statute, Gov't Br. at 49, these statutory changes demonstrate that Congress thought that strong notice requirements were critical to the government's ability to secure in absentia removal orders reliably.

II. Mr. Campos-Chaves May Move to Reopen Because He Never Received a Notice to Appear in Accordance with Section 1229(a)(1), Regardless of Whether He Received a Valid Notice of Change.

For the reasons discussed in Part I, Mr. Campos-Chaves received neither a notice in accordance with paragraph (1) nor a notice in accordance with paragraph (2) of Section 1229(a), and he may therefore move to reopen proceedings under Section 1229a(b)(5)(C)(ii). But, even assuming the "notice of hearing" that the immigration court provided (for the first time specifying the date and time of the proceedings) *does* qualify as a valid paragraph (2) notice for purposes of Section 1229a(b)(5)(A), Mr. Campos-Chaves still may move to reopen proceedings under Section 1229a(b)(5)(C)(ii) based on the noncompliant NTA alone.

The statute permits a motion to reopen if the noncitizen did not "receive notice in accordance with paragraph (1) *or* (2) of section 1229(a)." 8 U.S.C. § 1229a(b)(5)(C)(ii) (emphasis added). When read in context of the statutory structure, that provision reveals that a noncitizen may move to reopen

proceedings if he demonstrates that he did not receive notice in accordance with paragraph (1) *or* did not receive notice in accordance with paragraph (2). It follows that, because Mr. Campos-Chaves did not receive notice in accordance with paragraph (1), he may move to reopen proceedings regardless of whether he received a valid paragraph (2) notice of change.

1. The government (rightly) does not even argue, see Gov't Br. at 24, 32-33, that the word "not" in Section 1229a(b)(5)(C)(ii) has scope over the phrase "paragraph (1) or (2)" and therefore results in an interpretation that can be paraphrased equivalently as, "the noncitizen both did not receive notice in accordance with paragraph (1) and did not receive notice in accordance with paragraph (2)," using one of what are known as DeMorgan's theorems. See, *e.g.*, Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 119-21 (2012); *Lazo-Gavidia v. Garland*, 73 F.4th 244, 255 (4th Cir. 2023) (Rushing, J., dissenting). That is because that certainly cannot be what Congress intended.

Consider the following scenario. The government provides and a noncitizen receives a *valid* notice to appear under paragraph (1), setting a hearing date for August 2, 2023. The immigration court then changes the date of the proceeding by moving it forward seven months to January 4, 2023. But the immigration court mails the paragraph (2) notice of change to the wrong address and it is returned as undeliverable. Cf. *Pereira*, 138 S. Ct. at 2112. The noncitizen shows up at the original time, only to learn that he had missed the rescheduled removal proceedings and the immigration judge had ordered him removed in absentia. Construing the "not" to have scope over the

"or" in Section 1229a(b)(5)(C)(ii) in this context would mean that the noncitizen has no avenue to seek rescission of the in absentia order and reopen the removal proceedings—even though he undisputedly did not receive the notice of change. He could not file a motion to reopen based on the lack of receipt of the paragraph (2) notice, because he could not prove that he also did not receive notice in accordance with paragraph (1). As even the government seems to understand, Gov't Br. at 32-33, Congress cannot have intended such an absurd result. See *Clinton*, 524 U.S. at 429.

Ultimately, in determining the meaning of a statute, context is key. See, *e.g.*, Scalia & Garner, *Reading Law* 122-25. Specifically, to ensure that the "and/or rule … avoid[s] injustice or anomaly," courts should apply an interpretation that "does reasonable justice to the purpose of the statute and to our everyday sense of fairness." Lawrence M. Solan, *The Language of Judges* 53 (1993). Following that principle here, interpreting Section 1229a(b)(5)(C)(ii) as Mr. Campos-Chaves suggests better serves the statute's purposes and avoids anomalies like the one described above and other situations where a noncitizen received an invalid notice in the process of removal.

2. Instead of applying its plain text, the government, in effect, advocates that the Court rewrite Section 1229a(b)(5)(C)(ii) and declare that eligibility to seek rescission of a removal order "depends on whether the noncitizen received whichever form of notice is relevant to the proceeding the noncitizen did not attend." Gov't Br. at 32-33. That is plainly not the statute Congress wrote.

Had Congress wanted to limit motions to reopen in the manner the government suggests, it could have drafted Section 1229a(b)(5)(C)(ii) to apply only if the noncitizen demonstrates that he "did not receive notice *of the hearing that the noncitizen failed to attend*." Rather, Congress defined the precise type of notice that the noncitizen must demonstrate he did not receive: "notice *in accordance with paragraph (1) or (2) of Section 1229(a)*." 8 U.S.C. § 1229a(b)(5)(C)(ii) (emphasis added). The Court should give effect to those words, so as not to "transcend[] the judicial function" by supplying additional language. *Iselin v. United States*, 270 U.S. 245, 251 (1926).

Again here, the government's interpretation would create anomalies resulting in a non-rescindable in absentia order of removal, even where the government fails to include the charging information in the NTA, and, for example, simply states the charges at the hearing. So long as the government sends a notice of change that states a hearing date and time, the noncitizen is subject to removal without being appraised of the charges against him in writing and in advance.

Mr. Campos-Chaves's reading of the statute, in contrast, is true to the text *and* it promotes a system of removal that is both fair to the noncitizen and protects the government's interests. On the one hand, the government can obtain an in absentia removal order if it complies with the statutory notice requirements—that is, if it provides a valid NTA and, in the case of any change or postponement in the time or place of removal proceedings, provides a valid notice of change. On the other hand, if the noncitizen shows that he, in fact, did not receive a valid NTA *or*, where applicable, did not receive a valid notice of

change, he may move to reopen. Contrary to the government's view that this would allow noncitizens to "routinely" rescind in absentia orders, Gov't Br. at 41, that would only be true where the government "routinely" fails to provide the required notice in the first place. Mr. Campos-Chaves's interpretation ensures that noncitizens do not bear the harsh consequences of the government's failure to comply with plain statutory requirements.

III. Established Interpretive Principles Favor Mr. Campos-Chaves and the Court Should Not Defer to the Board.

A. Two Interpretive Principles Resolve Any Lingering Ambiguity.

Although "the textual and structural clues" described above—buttressed by statutory history—"resolve the interpretive question" here, *Niz-Chavez*, 141 S. Ct. at 1480 (internal quotation marks and citations omitted), two interrelated principles resolve any lingering ambiguity in Mr. Campos-Chaves's favor.

1. First, the Court has endorsed narrow interpretations of the INA where the result does not necessarily mean noncitizens will "escap[e] deportation." *Moncrieffe*, 569 U.S. at 204. In *Moncrieffe v. Holder*, for example, the Court reached an interpretation that the government claimed (as it does here) would significantly undermine its ability to remove noncitizens. *Id.* at 206 (concluding that a conviction under a Georgia statute that criminalized simple possession of marijuana with intent to distribute without remuneration was not an "aggravated felony" for "illicit trafficking in a controlled substance" under 8 U.S.C.

§ 1101(a)(43)(B)). Rejecting the government's doomsday predictions, the Court stressed that its holding would result in noncitizens avoiding "*mandatory* removal," but that other forms of relief from removal were still subject to the government's discretion. *Id.* at 203-04 (emphasis added).

The same considerations animating *Moncrieffe*'s rejection of the government's policy arguments apply here. Reading the statute as Mr. Campos-Chaves suggests neither entitles him to any relief nor guarantees that he will, in fact, be permitted to remain in this country. Rather, it simply permits him to move to reopen his case, have his day in court, and seek any discretionary forms of relief for which he may be eligible.

The discretionary and limited nature of most forms of relief protects against the government's hyperbolic suggestion that potentially "hundreds of thousands of noncitizens" would obtain rescission of an in absentia order of removal. Gov't Br. at 50. Not so. Noncitizens without prima facie eligibility for discretionary forms of relief from removal—such as cancellation of removal or asylum—would have little incentive to seek rescission of their in absentia removal orders. And even those who have such an incentive and are successful in rescinding their removal order still must meet their burden of proving that they are eligible for relief from removal in reopened proceedings and that they merit such relief as a matter of discretion.[7]

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[7] To the extent the Court is concerned that some noncitizens, who appeared at removal proceedings and never contested proper notice, will benefit from a ruling that allows for rescission because of an invalid NTA, see Gov't Br. at 31-32, that is not

2. In a similar vein, the "longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien" also supports Mr. Campos-Chaves's interpretation. *INS* v. *St. Cyr*, 533 U.S. 289, 320 (2001) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987)). That "accepted principle[] of statutory construction," *Costello v. INS*, 376 U.S. 120, 128 (1964), is premised on this Court's repeated and longstanding "recogni[tion] that deportation is a particularly severe 'penalty,'" and that preserving the opportunity to remain in the United States may be "more important" to a noncitizen than even a deprivation of liberty or other criminal sanction, *Padilla* v. *Kentucky*, 559 U.S. 356, 364-65, 368 (2010) (quoting *Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893)). Therefore, any "doubt should be resolved in favor of the alien, … because deportation is a drastic measure and at times the equivalent of banishment or exile." *INS v. Errico*, 385 U.S. 214, 225 (1966) (quoting *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948)).

Importantly, the two aforementioned interpretive principles resolve any ambiguity *before* the Court concludes that the statute is "*genuinely* ambiguous," triggering any deference framework. *Kisor*, 139 S. Ct. at 2414 (emphasis added). In *INS v. St. Cyr*, for example, the Court applied the principle of construing ambiguities in the noncitizen's favor to conclude that "there [was], for *Chevron* purposes, no ambiguity … for [the Board] to resolve." 533 U.S. at

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Mr. Campos-Chaves's case. If the Court were to impose some form of extra-statutory guardrail, Mr. Campos-Chaves should still prevail as neither he nor his counsel appeared at any hearing or otherwise treated the notices the government provided as valid.

320 n.45. The same is true here, such that the Court should resolve any remaining ambiguity in Mr. Campos-Chaves's favor before *Chevron* even enters "the stage." See *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1630 (2018).

B. The Board's Unreasonable Interpretation Does Not Merit Deference.

For the reasons stated, "the Court need not resort to *Chevron* deference, … for Congress has supplied a clear and unambiguous answer to the interpretive question at hand." *Pereira*, 138 S. Ct. at 2113. Should the Court disagree, deference to the Board's interpretation of the statute is unwarranted.[8]

Even within the *Chevron* framework, the Board's interpretation is unreasonable and not entitled to deference. "The text, structure, [and] history" of

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[8] Application of the *Chevron* framework may be inappropriate for the additional reason that the Court is considering this Term whether to "overrule *Chevron*" or narrow its scope in cases involving statutory silence. Petition for Writ of Certiorari at i-ii, *Loper Bright Enters. v. Raimondo* (No. 22-451), *cert. granted*, 143 S. Ct. 2429 (2023); Petition for a Writ of Certiorari at i, *Relentless, Inc. v. U.S. Dep't of Commerce* (No. 22-1219), *cert. granted*, 2023 WL 6780370 (2023). With respect to the issues of statutory construction here, the Board is not better situated than a court to interpret the plain text of the in absentia removal provisions, including the structure of Section 1229a(b)(5) and the meaning of words it incorporates (such as "change" and "new" in Section 1229(a)(2)). Those "interpretive issues … fall more naturally into a judge's bailiwick." *Kisor*, 139 S. Ct. at 2417; see *Da Silva v. Att'y Gen.*, 948 F.3d 629, 635 (3d Cir. 2020) (questioning whether *Chevron* should apply to the Board's resolution of "a pure question of statutory construction"). Even if there is genuine ambiguity in the statute here, the Court, not the Board, is best suited to "interpret the law." *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1152-53 (10th Cir. 2016) (Gorsuch, J., concurring).

IIRIRA "establish the outer bounds of permissible interpretation." *Kisor*, 139 S. Ct. at 2416. The Board exceeded those bounds and conspicuously disregarded key aspects of *Pereira* and *Niz-Chavez*. It also improperly relied on regulations *Niz-Chavez* rejected as contrary to the statute's plain text.

1. In the case *Matter of Pena-Mejia*, its first precedential decision on whether a noncitizen may seek to rescind an in absentia removal order on the basis of an invalid NTA, the Board erroneously held that the government's extra-statutory, two-step notice process fulfills the statutory prerequisites under Section 1229a(b)(5)(A). 27 I. & N. Dec. at 548. The Board hardly engaged with that provision's actual text, and it flat out ignored the text of Section 1229(a)(2). *Id.* The Board's scant statutory analysis was limited to a mere sixty-one words, stating, in full:

> Because [Section 1229a(b)(5)(A)] uses the disjunctive term "or" rather than the conjunctive "and," an in absentia order of removal may be entered if a written notice containing the time and place of the hearing was provided *either* in a notice to appear under section [1229(a)(1)] *or* in a subsequent notice of the time and place of the hearing pursuant to section [1229(a)(2)].

Id.

The Board's "interpretation departs so sharply from the statute's text and history that it cannot be considered a permissible reading." *Mellouli v. Lynch*, 575 U.S. 798, 813 (2015). For the reasons discussed in Part I, the Board incorrectly concluded that Section 1229a(b)(5)(A) simply requires "written notice containing the time and place." *Matter of Pena-Mejia*,

27 I. & N. Dec. at 548; see *Rodriguez v. Garland*, 31 F.4th 935, 936-37 (5th Cir. 2022) (per curiam) (denying rehearing en banc) (Duncan, J., concurring in denial of rehearing en banc) ("The *in absentia* provision doesn't merely demand 'notice' or 'sufficient notice,' but 'notice *in accordance with* [§ 1229(a)(1) or (2)].' That's not 'notice' in some fuzzy 'noncountable sense.'" (citations omitted) (alterations and emphasis in original)). In reaching that decision, the Board did not even mention, let alone analyze, the key statutory terms "change" and "new" in Section 1229(a)(2) that define what constitutes a notice under that section, nor did it apply *Pereira*'s understanding of the ordinary meaning of those words. See *Matter of Pena-Mejia*, 27 I. & N. Dec. at 548. Moreover, the Board simply ignored the language in Section 1229a(b)(5)(C)(ii), which (as discussed *supra* Part II) permits rescission if a noncitizen "did not receive notice in accordance with paragraph (1)" or "did not receive notice in accordance with paragraph … (2)." 8 U.S.C. § 1229a(b)(5)(C)(ii). The Board's interpretation is therefore "[un]reasonable in light of the text," *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 277 (2016), and "does not merit deference," *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 321 (2014).

After *Niz-Chavez*, the Board had an opportunity to correct course, but instead it doubled down on its unreasonable interpretation of Section 1229a(b)(5). In *Matter of Laparra-DeLeon*, the Board again held that rescission was not permitted when the government provides a purported NTA without time-and-place information, contrary to what Section 1229(a)(1) requires, so long as the immigration court later provides the noncitizen "with a statutorily compliant notice of hearing under section [1229(a)(2)]." 28 I. &

N. Dec. 425, 433-34 (BIA 2022), *vacated in part*, *Laparra-Deleon*, 52 F.4th 514. But the Board, again, did not grapple with the statutory text defining a notice of change as applying only "in the case of any change" in the time and place of proceedings. 8 U.S.C. § 1229(a)(2). And, further flouting *Pereira* and *Niz-Chavez*, the Board failed to engage with the Court's consideration of Section 1229(a)(2) in those cases. See *Pereira*, 138 S. Ct. at 2114 ("By allowing for a 'change or postponement' of the proceedings to a 'new time or place,' paragraph (2) *presumes* that the Government has already served a 'notice to appear under section 1229(a)' that specified a time and place as required by § 1229(a)(1)(G)(i)." (emphasis added)); *Niz-Chavez*, 141 S. Ct. at 1485 ("[O]nce the government serves a compliant notice to appear, IIRIRA permits it to send a supplemental notice amending the time and place of an alien's hearing if logistics require a change.").

2. The Board's interpretation is also unreasonable in light of the statute's history. *Kisor*, 139 S. Ct. at 2416. In *Matter of Laparra-DeLeon*, the Board relied on post-IIRIRA regulations that, contrary to Section 1229(a)(1), required the government to provide the time and place of the removal proceedings only "where practicable" and allowed the immigration court to later provide that information. 28 I. & N. Dec. at 435 (citing 8 C.F.R. § 1003.18(b)). As *Niz-Chavez* held, however, that regulation is plainly contrary to the statute. 141 S. Ct. at 1485-86. Section 1229(a)(1) requires *every* NTA to include the time and date of the proceedings. The Board, therefore, cannot continue to credit regulations that "rewrite" Section 1229(a)(1) "to suit its own sense of how the statute should operate," and hence its "interpretation was impermissible under *Chevron*." *Util. Air Regul. Grp.*, 573 U.S. at 328.

CONCLUSION

The judgment of the Court of Appeals for the Fifth Circuit should be reversed.

Respectfully submitted,

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