

Nos. 22-674 & 22-884

In the Supreme Court of the United States

MORIS ESMELIS CAMPOS-CHAVES,
Petitioner,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL,
Respondent.

MERRICK B. GARLAND, ATTORNEY GENERAL,
Petitioner,

v.

VARINDER SINGH,
Respondent.

**On Writs of Certiorari to the United States Courts
of Appeals for the Fifth and Ninth Circuits**

**BRIEF FOR *AMICI CURIAE* LUCAS
CHAMPOLLION, BRANDON WALDON, MASOUD
JASBI, WILLOW PARKS, AND CLEO CONDORAVDI
IN SUPPORT OF NONCITIZENS CAMPOS-
CHAVES, SINGH, AND MENDEZ-COLÍN**

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INTEREST OF AMICI CURIAE¹

Amici are professors and students in the fields of linguistics — the science of language — who specialize in the analysis of the ordinary meaning of language. We file our brief on behalf of ourselves as individuals, not as representatives of any institution. We believe our expertise can help inform the Court’s assessment of empirical claims made in lower court opinions on the ordinary meaning of negative disjunction as found in 8 U.S.C. § 1229a(b)(5)(C)(ii).

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¹ None of the parties to this case nor their counsel authored this brief in whole or in part. No person or entity made a monetary contribution specifically for the preparation or submission of this brief.

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INTRODUCTION

This brief is concerned with the language and interpretation of what we call the **rescission condition** in 8 U.S.C. § 1229a(b)(5)(C)(ii), under which an order of removal entered in absentia “may be rescinded.” The statute allows such an order to be rescinded “if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of Section 1229(a) of this title.”

At issue is the interpretation of the negative disjunctive clause “the alien did not receive notice in accordance with paragraph (1) or (2).” At its surface linguistic level, this clause can be represented as “*not* A *or* B,” where A stands for “the alien received notice in accordance with paragraph (1),” and B stands for

“the alien received notice in accordance with paragraph (2).”

From a linguistic standpoint, the negative disjunction “*not A or B*” is ambiguous between two literal semantic interpretations. First, it can be interpreted as [neither A nor B]. We will call this the **neither-nor** interpretation. (Sometimes the neither-nor interpretation is referred to as the conjunctive reading, because it can be paraphrased as [not A **and** not B] using a conjunction.) Second, the negative disjunction “*not A or B*” can be interpreted as [either not A or not B]. Here we refer to this interpretation as the **either-or** interpretation.

We demonstrate the existence of the ambiguity between these two interpretations by presenting a broad array of linguistic evidence, including data sourced from legal and ordinary-language corpora of American English. We draw particular attention to the either-or interpretation because it is overlooked by a prominent canon of statutory interpretation. Our data further highlights the vital role that context plays in disambiguating negative disjunction. In this regard, logical laws (e.g., de Morgan’s law) cannot substitute for linguistic context.

We then provide a theoretically grounded account of how context can, in principle, disambiguate the rescission condition in favor of either of the two literal interpretations. We also demonstrate that the Government’s understanding of the rescission condition is inconsistent with one interpretation and not necessarily implied by the other, suggesting that the Government’s understanding goes substantially

beyond the condition's plain meaning on either interpretation. Finally, we note that if a noncitizen can demonstrate he did not receive notice in accordance with paragraph 1 of Section 1229(a), then he has met the rescission condition on the literal either-or reading of the condition.

SUMMARY OF ARGUMENT

Section 1229a(b)(5)(C)(ii), which describes a condition under which an in absentia order of noncitizen removal may be rescinded, has two literal semantic interpretations and is hence ambiguous. Context — including lawmaker intent — determines the relative plausibility of each interpretation. Linguistic theory supports the notion that different assumptions regarding lawmaker intent support different interpretive outcomes.

Moreover, the Government's understanding of Section 1229a(b)(5)(C)(ii) is inconsistent with one literal interpretation and does not follow logically from the other. Thus, regardless of how the rescission condition is disambiguated, the plain text of the condition provides insufficient support for the Government's understanding of the condition.

ARGUMENT

I. Out of context, the rescission condition is ambiguous between a neither-nor and an either-or interpretation.

It is an established fact in linguistic semantics and philosophy of language that a negative disjunction in natural (i.e., human) language is ambiguous and receives the two literal interpretations discussed

above: neither-nor and either-or. In the next subsections, we provide evidence from four different sources to support our argument and show that the either-or interpretation is plausible in many contexts. First, we show that a basic analysis of English confirms the ambiguity of negative disjunction (Section I.A.). Second, we provide naturally occurring examples from English corpora for which the either-or interpretation is preferred (Section I.B.). Third, we show that elsewhere in American law, negative disjunction has received the either-or interpretation (Section I.C.). Finally, we argue that logical laws cannot resolve this ambiguity; the ambiguity must be resolved by appealing to context (Section I.D.).

A. Linguistic analysis shows that negative disjunction is ambiguous as a matter of literal semantic meaning.

The ambiguity of negative disjunction in natural language is established beyond a doubt in the linguistic profession. In linguistics, negative disjunction is a textbook example of **scopal ambiguity**.² This type of ambiguity is present whenever the meaning of two expressions can be combined with each other in two different ways even though on the surface, the order of the words does not change. It is rather the way the meanings are composed that gives rise to the ambiguity.

The ambiguity in the rescission condition relates to how the meaning of the negative word *not* and the

² Hans Kamp & Uwe Reyle, *From Discourse to Logic: Introduction to Modeltheoretic Semantics of Natural Language, Formal Logic and Discourse Representation Theory* 300 (1993).

meaning of the disjunction word *or* in “*not A or B*” are combined with A and B. First, we can combine A and B with *or*, yielding [A or B], which in turn combines with *not* to create [not [A or B]], where negation takes scope over the whole disjunction. This scope relation looks very similar to how the phrase “not A or B” appears “on the surface” (hence its name, “surface scope”). This relation gives us the neither-nor interpretation. Alternatively, A and B can be combined with the word *not* to yield [not A, not B], and then each negative clause can be combined with the word *or*, yielding [[not A] or [not B]]. This scope relation (called “inverse scope”) gives us the either-or interpretation.

To summarize, “*not A or B*”:

- [not [A or B]] (neither-nor, surface scope);
- [[not A] or [not B]] (either-or, inverse scope).

This ambiguity is well-attested within the linguistics literature. Consider this widely cited authoritative English reference grammar, which gives the example “He wasn’t at work on Monday or Tuesday” and states the following:

The salient interpretation is “He wasn’t at work on Monday and he wasn’t at work on Tuesday”, but it can also be read as “On Monday or

Tuesday (I can't remember precisely which day it was) he wasn't at work.”³

Often, the surrounding context can disambiguate a sentence by making one of its interpretations more plausible:

1. “The man did not receive the book or the pen.”

(a)... “I forget which one he did not receive.”
(either-or interpretation)

(b)... “I forgot to send them to him.”
(neither-nor interpretation)

The negative disjunctive sentence in (1) above is ambiguous between the “either-or” and the “neither-nor” interpretations. The continuations in (1a) and (1b) disambiguate the original sentence in (1) to receive the either-or and neither-nor interpretations respectively.

Linguistic textbooks, reference grammars, and scholarly articles are replete with examples of scopal ambiguity. For example, a recent peer-reviewed article focuses on sentences involving disjunction and negation, and its opening is as follows:⁴

Sentences like [Mary didn't invite John or Suzi to the party], with the simple disjunction *or* in

³ Rodney Huddleston & Geoffrey K. Pullum, *The Cambridge Grammar of the English Language* 1299 (2002).

⁴ Oana Lungu, Anamaria Fălăuş, & Francesca Panzeri, *Disjunction in Negative Contexts: A Cross-Linguistic Experimental Study*, 38 J. Semantics 221, 221-22 (2021) (footnotes omitted).

the immediate scope of negation, are typically ambiguous between a *narrow scope* [surface scope] interpretation of disjunction [It is not the case that Mary invited John and it is not the case that Mary invited Suzi to the party] according to which none of the disjuncts is true, and a *wide scope* [inverse scope] interpretation [It is either John or Suzi that Mary didn't invite to the party] compatible with the truth of one of the disjuncts. The former reading corresponds to inverse scope of *or* with respect to negation, the latter corresponds to surface scope of *or* with respect to negation[.]

Part 3 of Appendix 1 of the article lists over a dozen analogous examples of ambiguous sentences containing *or* and *not*.⁵

⁵ Lungu, Fălăuș, & Panzeri, *supra* note 4, at 238-40. To be sure, we do not claim that the inverse scope reading is preferred in every negative disjunction; it is easy to find examples in which the most natural interpretation is the surface scope reading. Nor do we claim that the inverse scope reading is the default reading of a negative disjunction when it is read in isolation, i.e., out of context. Experimental evidence suggests that when read out of context, many negative disjunctions default to a surface scope reading. See Masoud Jasbi et al., *Default Biases in the Interpretation of English Negation, Conjunction, and Disjunction*, 2 Proceedings of ELM 129 (2023); Kevin Tobia et al., *Triangulating Ordinary Meaning*, 112 Geo. L.J. Online 23 (2023); Brief of Amici Curiae Professors Thomas R. Lee, Kevin Tobia, and Jesse Egbert in Support of Neither Party, *Pulsifer v. United States*, No. 22-340 (U.S. May 26, 2023). However, as emphasized by Lawrence M. Solan, *The Language of Judges* (1993), context is key; given that the rescission condition is *in principle* ambiguous between an inverse scope and a surface scope reading, the relevant question is not which of these readings is the default one *out of context* but which is the preferred one *in context*.

Given these examples, one would expect that the rescission condition in 8 U.S.C. § 1229a(b)(5)(C)(ii) — *if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2)* — can similarly be understood on an inverse scope (either-or) interpretation. And it is easy to think of contexts in which use of a similar phrase would be interpreted that way.

Suppose John receives an email from his employer that includes the following sentence: “If you don’t receive your pay slip or your W-2, get in touch with human resources immediately.” Here John would get in touch with human resources if he either did not receive his pay slip or did not receive his W-2 (schematically, [[not PAYSALIP] or [not W-2]]); in other words, he gets in touch with human resources if at least one document is missing. This is the inverse scope (either-or) interpretation.

The surface scope (neither-nor) interpretation would be: “if you receive neither your pay slip nor your W-2, get in touch with human resources.” (schematically, [not [PAYSALIP or W-2]]). On this interpretation, if John received one of these documents but not the other, he does not need to get in touch with human resources. This interpretation is possible but seems less likely than the inverse scope interpretation in this particular context because it does not seem reasonable for human resources to want John to sit on his hands if he is missing an important document.

The central claim of this section — that negative disjunction is compatible with two possible literal

semantic interpretations — is in tension with a prominent legal canon of statutory interpretation, the conjunctive/disjunctive canon. According to this canon, the preferred reading of negative disjunction is the surface scope, neither-nor reading; that is, “not A, B, *or* C” means ‘not A, not B, *and* not C.’” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 119 (2012).⁶ However, as the examples discussed in this section demonstrate, there is no single meaning of negative disjunction: broader context determines the relative plausibility of the phrase’s two literal interpretations. In the following two sections, we demonstrate that the inverse scope reading — the reading overlooked by the conjunctive/disjunctive canon — is not only hypothetically possible but well-attested in both ordinary and legal American English usage.

B. Naturally occurring examples in linguistic corpora show that the either-or interpretation is preferred in many contexts.

The conclusion that an either-or interpretation is available — indeed, preferred in some contexts — is supported by evidence of actual usage. To find examples of word strings in which *or* appears in the vicinity of *not*, we queried COCA (the Corpus of Contemporary American English), the only large, genre-balanced corpus of American English and one of

⁶ We return to this canon in Section I.D. In that section, we show that supposedly “logical” arguments for this canon demonstrate a fundamentally flawed misapplication of formal logic to human language.

the corpora most often used in statutory interpretation.⁷ The results show that language similar to that used in the rescission condition often is used and understood with the either-or interpretation. More particularly, we have found sentences in which the relevant language and its surrounding context make it likely that *or* is understood and intended as taking inverse scope over *not*. A few of these examples are reproduced below (emphasis ours). The first example is from a Craigslist ad:

We are open to all types of people. We're steadily employed, reliable, and have no desire for drama. We are reasonable, flexible, and emphasize open communication to solve problems and avoid future ones. If you enjoy creating or being in the middle of drama; if you can not pick up after yourself and keep the communal spaces clean; if you can not help with the chores; if you are not flexible or reasonable or honest, then please do not apply. Outside cigarette smoking only.

In this example, we would most naturally understand that anyone who is either unflexible or unreasonable or dishonest should refrain from applying. This is the inverse scope interpretation. The surface scope interpretation would allow such people

⁷ See Corrected Brief of Neal Goldfarb, as Amicus Curiae in Support of Respondent, Responding to the Amicus Brief of Pro-Life Utah, Planned Parenthood Ass'n of Utah v. Utah, No. 20220969-SC (Utah Feb. 3, 2023), at 8; see also Mark Davies, *The 385+ Million Word Corpus of Contemporary American English (1990–2008+): Design, Architecture, and Linguistic Insights*, 14 Int'l J. Corpus Linguistics 159, 161-63 (2009).

to apply as long as they are not simultaneously inflexible, unreasonable, and dishonest.

The second example is from an online article posted on SchoolBook.org:

How can you have an accurate evaluation if you aren't measuring quantitative results? There's no perfect system, and a number of factors go into a good education, but if you can't read or do math, not much else matters.

In this example, we would most naturally understand that both reading and math are crucial components to an education and, hence, failing at either one is fatal. This is the inverse scope interpretation. The surface scope interpretation would only say that failing simultaneously at reading and at math is fatal. This is unlikely because compromising on either reading or math would go counter to the rhetorical purpose of the passage.

The third example is from an academic article:

In both computer and telephone groups, interruptions or distractions at home can inhibit participation. Trust can be harder to develop in telephone and computer groups, and it can be difficult to create a sense of vitality when members cannot see or hear each other. Confidentiality can also be threatened because nonparticipants might be able to gain access to the telephone or the computer linkages.⁸

⁸ Maeda J. Galinsky et al., *Connecting Group Members Through Telephone and Computer Groups*, 22 *Health & Soc. Work* 181 (1997).

In this example, we would most naturally understand that vitality and trust can suffer in group telecommunications as soon as members either cannot see or cannot hear each other. This is the inverse scope interpretation. The surface scope interpretation would say that such problems can arise only when members both cannot see and cannot hear each other. This interpretation is exceedingly unlikely because when that is the case, the connection is cut altogether, and questions of trust and vitality do not arise.

C. There are examples of negative disjunction in American law that have received the *either not A or not B* interpretation.

In this section, we shift attention away from a “plain language” American English corpus and towards an authoritative source of “legal” American English, the United States Code. Our conclusion remains the same: the inverse scope (either-or) interpretation of negative disjunctions is clearly preferred in some contexts. This conclusion is supported by considering the textual context surrounding instances of negative disjunction as well as by case law which favors this reading over the alternative.

We conducted a computer-assisted search for negative disjunctions in a recently developed text corpus of the 2021 United States Code.⁹ After

⁹ Tobia et al., *Triangulating Ordinary Meaning*, *supra* note 5. To facilitate this search, we employed widely-used computational linguistic tools which “parse” — that is, syntactically analyze — natural language sentences. These include the Stanford Stanza

manually reviewing these results to verify search accuracy, we identified instances of negative disjunction that strongly favored an either-or reading in context. We then searched for text matching those instances in the most recent version of the United States Code accessible online.¹⁰ The two examples discussed in this section appear in the United States Code at the time of writing.

The below example appears in 50 U.S.C. § 1806(g). For ease of exposition, we have numbered the two sentences of the passage (emphasis ours):

[1] “If the United States district court pursuant to subsection (f) determines that the surveillance was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. [2] If the court determines that the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.”

library, see Peng Qi et al., *Stanza: A Python Natural Language Processing Toolkit for Many Human Languages*, Proceedings of the 58th Annual Meeting of the Association for Computational Linguistics: System Demonstration (July 2020), and the Natural Language Toolkit (NLTK), see Steven Bird et al., *Natural Language Processing with Python* (2009).

¹⁰ Accessed via Office of the Law Revision Counsel, *United States Code*, U.S. House of Reps., <https://uscode.house.gov/>.

Sentence [2] provides strong contextual evidence that the negative disjunction in sentence [1] is intended to express the either-or interpretation. On this reading, sentence [1] speaks to what the district court shall do (namely, suppress evidence) in three of four logically possible scenarios: (i) if the surveillance was not lawfully authorized; (ii) if it was not lawfully conducted; (iii) if it was neither lawfully authorized nor lawfully conducted. On this reading, sentence [1] leaves open what the court's obligations are in the one remaining possible scenario: namely, (iv) if the surveillance is both lawfully authorized and lawfully conducted. Sentence [2] settles this open question: it says that in such cases, the court shall deny the motion.

Had Congress intended sentence [1] to have a neither-nor interpretation, then sentence [1] would speak only to the district court's obligations in scenario (iii), viz., if the surveillance was neither lawfully authorized nor lawfully conducted. Taken together, sentence [1] (understood on this neither-nor reading) and sentence [2] would thus leave open the court's obligations when the surveillance was lawfully authorized (but not lawfully conducted) and when the surveillance was not lawfully authorized (but lawfully conducted). It is implausible that Congress intended to remain silent on the court's obligations in such situations; therefore, context and common sense strongly favor the either-or reading whereby Congress expresses the court's obligations under all four possible circumstances.

The either-or interpretation of the phrase "not lawfully authorized or conducted" in 50 U.S.C.

§ 1806(g) has been adopted by many courts. In cases where courts have denied a defendant's motion to suppress evidence obtained or derived through electronic surveillance conducted pursuant to the Foreign Intelligence Surveillance Act of 1978, courts consider whether the electronic surveillance was both lawfully authorized and lawfully conducted, rather than resting denial of the motion on one or the other. *See, e.g., United States v. Campa*, 529 F.3d 980, 993-94 (11th Cir. 2008) (affirming the denial of motions to suppress because reviews of the applications showed they were lawfully obtained and defendants presented no evidence to question whether the surveillance was lawfully conducted); *United States v. Rahim*, No. 3:17-CR-0169-B, 2019 WL 1595682, at *1 (N.D. Tex. Apr. 15, 2019) (discussing the elements the court must consider in assessing whether the surveillance was lawfully authorized and conducted including evaluation of the application and minimization procedures); *United States v. Chi Ping Ho*, No. 17 CR. 779 (LAP), 2018 WL 5777025, at *5 (S.D.N.Y. Nov. 2, 2018) (describing the analysis under a 50 U.S.C. § 1806(g) motion to suppress including evaluation of the application for necessary requirements and probable cause and reviewing whether minimization procedures were implemented).

Thus, context, common sense, and case law support a reading of 50 U.S.C. § 1806(g) as inverse scope, *either not A or not B*.

Our second example illustrates the same point by drawing on 33 U.S.C. § 1345(d)(3), which involves the disposal or use of sewage sludge. The statute requires the EPA to set numerical limits on safe concentrations

of toxic substances for a variety of uses of sludge, including disposal in landfills. It then states (emphasis ours):

“For purposes of this subsection, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (2), the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the Administrator’s judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant.”

Here, context again makes it more plausible that Congress intended the inverse scope, *either not A or not B* reading of the negative disjunction (“...not feasible to prescribe or enforce a numerical limitation...”). On this reading, the statute provides three situations in which the Administrator may flout the requirement to impose numerical limits on harmful toxins: (i) when such a limit cannot be prescribed, (ii) when such a limit cannot be enforced, and (iii) when such a limit can be neither prescribed nor enforced. By contrast, on the surface scope reading (*neither A nor B*), the statute provides only one such situation; the Administrator has permission to deviate from the statute’s “numerical limitation” requirement only in the last of these three possible scenarios. This is an implausible interpretation: Congress almost certainly did not intend to require the Administrator to impose limits which are impossible to prescribe or impossible to enforce.

Indeed, case law demonstrates that the EPA understands the negative disjunction in this way. “Of importance to this case, the Agency concluded that numeric limits for toxins in co-disposed sludge were not feasible to prescribe, and that the design and operation standards for municipal landfills contained in the new regulations would sufficiently protect public health and the environment.” *Sierra Club v. E.P.A.*, 992 F.2d 337, 340 (D.C. Cir. 1993). The Natural Resources Defense Council challenged the Agency’s decision that it was not feasible to prescribe the numerical limitation, but the court found that the Agency supported its decision with scientific assessments and adequately set forth its reasoning. At no time did any party suggest that the Agency had to also establish that it was not feasible to enforce a numerical limitation before deciding to promulgate design standards as a workaround.

D. No law of logic can resolve the ambiguity of negative disjunction in natural language.

Norms of legal interpretation (“canons”) sometimes make reference to logical “laws” which describe equivalencies between statements of formal mathematical logic. One such example is the conjunctive/disjunctive canon identified in Scalia and Garner’s seminal text, *Reading Law*, which states in part:

[W]ith *Don’t drink or drive*, you cannot do either one: Each possibility is negated. This singular-negation effect, forbidding doing *anything* listed, occurs when the disjunctive *or* is used

after a word such as *not* or *without*. (The disjunctive prohibition includes the conjunctive prohibition: Since you may not do any of the prohibited things, you necessarily must not do them all.) The principle that “not A, B, or C” means “not A, not B, and not C” is part of what is called *DeMorgan’s theorem*.¹¹

De Morgan’s laws characterize a relationship between logical negation (\neg), disjunction (\vee), and conjunction ($\&$), including the following equivalence between two logical statements: $\neg(A \vee B) = \neg A \& \neg B$.¹²

Importantly, statements of formal logic are — by design — completely unambiguous. This makes formal logic unlike natural language, which is inherently rife with ambiguity. Disambiguating natural language is a necessary step before it can be

¹¹ Scalia & Garner, *supra*, at 119. This conjunctive/disjunctive canon is of special import to the present case because the Government brief relies on it in its attempt to establish its preferred reading of Section 1229a: “The plain language of Section 1229a thus creates two alternative avenues under which the government may seek in absentia removal: It may show that the noncitizen failed to attend a hearing after receiving notice of that hearing under paragraph (1), or it may show that the noncitizen failed to attend a hearing after receiving notice of that hearing under paragraph (2). See Antonin Scalia & Bryan A. Garner, *Reading Law* 116 (2012) (“[W]ith the disjunctive list, at least one of the three [A, B, or C] is required, but any one (or more) of the three satisfies the requirement.”) Att’y Gen.’s Br. 27.

¹² There is, in fact, a second de Morgan’s law: $\neg(A\&B) = \neg A \vee \neg B$. In what follows, however, we will restrict our focus to the law stated in the main body of the brief and refer to that law as “de Morgan’s law.”

translated into formal logic. For linguists, formal logic is useful insofar as it helps to rigorously specify the range of interpretations consistent with a statement of natural language. One possible interpretation of the natural language expression “*not A or B*,” for example, is the surface scope interpretation, which can be paraphrased as [neither A nor B] and formalized as $[\neg[A \vee B]]$. De Morgan’s law accurately characterizes the fact that this interpretation can be equivalently restated as [not A and not B], formalized as $[\neg A \ \& \ \neg B]$. This de Morgan’s law is irrelevant to the inverse scope interpretation [not A or not B], which would receive a different formalization, namely $[\neg A \vee \neg B]$.¹³

Thus, de Morgan’s law and other theorems of formal logic can be applied to ambiguous natural language text only *after* this language has been disambiguated. When lawyers and jurists attempt to apply logical laws directly to ambiguous natural language text, they commit a category error. No logical law (including de Morgan’s law) provides any guidance on how to disambiguate natural language. As discussed above, the disambiguation of natural language relies on context; it cannot rely on logical laws. To the extent that canons of construction erroneously equate natural language with formal logic, they threaten to obscure the vital role that context plays in linguistic interpretation.

¹³ The second de Morgan’s law does apply to the inverse scope interpretation and characterizes the fact that it can be equivalently restated as “not both A and B,” formalized as $\neg(A \ \& \ B)$.

In their presentation of the conjunctive/disjunctive canon, Scalia and Garner rely on a number of examples of legal statutes containing negative disjunctions whose most plausible interpretation in context is the neither-nor (surface scope) interpretation. Scalia and Garner correctly observe that such readings exist, and that they can be paraphrased as [not A and not B], corresponding to De Morgan's law. But they fail to acknowledge what our brief has focused on—viz., the ambiguity of negative disjunctions in general and the existence of negated disjunctions whose most plausible interpretation in context is the inverse scope reading “not A or not B.” In effect, Scalia and Garner presuppose that negative disjunctions *always*, rather than merely *sometimes*, receive a surface scope interpretation. They state that undesirable interpretive outcomes can be explained by the interpreter having “neglected to apply DeMorgan's theorem [law].” Scalia & Garner, *supra*, at 121.

This canon draws a false equivalence between natural language and formal logic, one which erroneously presupposes that “not A or B” must always receive a surface scope interpretation. Thus, the canon is clearly too brittle to account for the numerous legal and plain language examples of inverse scope “not A or B” we have identified in this brief. Scalia and Garner discuss two cases that supposedly speak to the validity of the canon, but both cases are simply ones in which statutory text of the form “*not A or B*” can plausibly receive a surface scope interpretation in context.

The first case considered by Scalia and Garner is a hypothetical:

Suppose the statute says: “To be eligible for citizenship, you must prove that you have not (1) been convicted of murder; (2) been convicted of manslaughter; or (3) been convicted of embezzlement.”

Id. at 120. Scalia and Garner write: “Is the requirement that he not have done one of these things, or that he have done none? (He must have done none.)” *Id.* The most natural reading of this statute is indeed the surface scope interpretation: to be eligible for citizenship, one must prove that $\neg(1 \vee 2 \vee 3)$. De Morgan’s Law accurately characterizes one logical implication of this most natural reading, namely that one must prove that $\neg 1 \ \& \ \neg 2 \ \& \ \neg 3$ to qualify. But the surface scope interpretation is simply the most plausible disambiguation in context: whether an applicant has committed *any* serious crime is plausibly germane to decision-making under the statute; it is much less plausible that the relevant consideration is whether the applicant has committed *all three* crimes, which would favor the alternative scopal reading of the disjunction $\neg 1 \ \vee \ \neg 2 \ \vee \ \neg 3$.

The second case Scalia and Garner consider is *United States v. One 1973 Rolls Royce*, 43 F.3d 794 (3d Cir. 1994). The statutory language at issue there prohibited forfeiture of a vehicle used in a drug crime “by reason of any act or omission established by that owner to have been committed or omitted without the knowledge, consent, *or* willful blindness of the owner.” Scalia & Garner, *supra*, at 120 (emphasis added). The Third Circuit was faced with two options for how to interpret the statute. The Government contended that the condition must receive a surface scope interpretation; the inverse scope interpretation

“would lead to an absurd result that would allow every post-illegal-act transferee to escape the forfeiture statute by merely claiming lack of consent, regardless of his knowledge at the time of the illegal act or at the time of the transfer.” *Id.* at 120-21. But the Third Circuit rejected the Government’s argument, concluding forfeiture was prohibited even if the owner had knowledge, so long as he did not consent. Scalia and Garner assail this ruling as a failure to “apply” de Morgan’s law. *Id.* at 121.

However, multiple courts have interpreted other, similar statutory provisions and reached conclusions like the Third Circuit’s in *One 1973 Rolls Royce*. Prior to the enactment of the Civil Asset Forfeiture Reform Act of 2000, 21 U.S.C. § 881(a)(7) provided for an innocent-owner defense to forfeiture: “[N]o property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.” Several courts interpreted this provision as allowing for a defense where an owner established either a lack of knowledge or a lack of consent, rejecting the Government’s argument that the defense was only available to owners who lacked both knowledge and consent. *See, e.g., United States v. Cleckler*, 270 F.3d 1331, 1335 (11th Cir. 2001); *United States v. 141st Street Corp.*, 911 F.2d 870, 878 (2d Cir. 1990); *United States v. 6109 Grubb Road*, 886 F.2d 618, 626 (3d Cir. 1989).

Contra the Government's contention in *One 1973 Rolls Royce*, these courts found that the inverse scope interpretation is not necessarily "absurd." For example, in *141st Street Corp.*, the Second Circuit concluded that "[r]equiring a claimant to disprove both knowledge **and** consent ignores Congress' desire to preserve the property of innocent owners," particularly owners who may have known about but not consented to the use of their property in illicit acts. 911 F.2d at 878 (emphasis added).

These cases demonstrate that there are multiple a priori plausible interpretations of "without knowledge or consent." As linguists, we refrain from offering a "correct" interpretation of this construction in any of the aforementioned cases; rather, "linguist[ic] analysis of the textual ambiguity . . . provides significant guidance toward identifying the sources of the ambiguity." Clark D. Cunningham et al., *Review: Plain Meaning and Hard Cases*, 103 Yale L.J. 1561, 1562-63 (1994) (reviewing Lawrence M. Solan, *The Language of Judges* (1993)). The source of the ambiguity in the case of "without knowledge or consent" is scopal ambiguity, the same ambiguity observed in 8 USC § 1229a(b)(5)(C)(ii). Logical laws simply cannot help resolve this sort of linguistic ambiguity.

II. Linguistic analysis elucidates how context helps resolve the ambiguity in the rescission condition, as well as the extent to which an understanding of the rescission condition is supported by literal semantic meaning.

It is uncontroversial, as a general matter, that “context matters” when reading legal statutes. Stephen M. Rice, *Leveraging Logical Form in Legal Argument: The Inherent Ambiguity in Logical Disjunction and Its Implication in Legal Argument*, 40 Okla. City U. L.R. 551, 589 (2015) (quoting *Schane v. Int’l Bhd. of Teamsters Union Local No. 710 Pension Fund Pension Plan*, 760 F.3d 585, 589–90 (7th Cir. 2014)). Unlike legal scholarship, linguistics provides a framework for using context to resolve ambiguities in language. In linguistic theory, context is not an amorphous concept; its properties are well understood. This section provides a sound linguistic underpinning of the way context helps resolve ambiguities by highlighting the relevance of certain distinctions. By describing the way linguists think about context, we hope to clarify the nature of the interaction between ambiguous statutes and their surrounding context.

First, we present one particularly prominent theoretical linguistic model of the process by which context influences the way ambiguities of the relevant kind, i.e., scopal ambiguities, are resolved (Section II.A). In our presentation of the model, we summarize theoretical and empirical arguments which speak in support of it.

Next, we apply this model to the rescission condition (Section II.B). We show that for present purposes, an important part of context is lawmaker intent. Actually determining lawmaker intent is beyond the scope of this brief. Instead, we show how — given various assumptions about lawmaker intent — different readings of the rescission condition are in principle plausible.

Finally, we demonstrate that the plain text of 8 U.S.C. § 1229a(b)(5)(C)(ii) cannot support the Government’s understanding of the rescission condition without substantially departing from — or enriching — the condition’s literal meaning (Section II.C). As we discuss, this result holds regardless of how the condition is disambiguated between its two literal semantic interpretations.

A. Linguistic theory explains how ordinary speakers of English resolve scopally ambiguous sentences based on contextually relevant distinctions.

Statutory provisions do not exist in a vacuum and must be read within the context of the statute “as a whole.” *Guam v. United States*, 141 S. Ct. 1608, 1613 (2021) (quotation omitted). Theoretical and experimental linguistic research strongly support the notion that context plays an important role in determining the most likely interpretation of ambiguous sentences. In the case of the rescission condition, this amounts to determining whether the most likely interpretation is the neither-nor interpretation or the either-or interpretation.

Relevance is a key concept in the process by which ordinary speakers of English resolve ambiguities in ordinary language. Linguistic research shows that sentences are understood as answers to implicit distinctions or questions made relevant by surrounding context. When a sentence is ambiguous, the preferred interpretation is the one that makes it relevant.¹⁴

In the present context, the ambiguous sentence in question is the rescission condition in 8 U.S.C. § 1229a(b)(5)(C)(ii), and the context encapsulates the distinctions that are relevant to lawmakers. Crucially, these distinctions can be determined independently of the ambiguous sentence; in the case at hand, they can be determined by considering overarching lawmaker intent independently of the rescission condition.

To demonstrate, note that the sentence *Every pizza wasn't delivered* is scopally ambiguous: it can mean either *No pizza was delivered* (the surface scope reading) or *Not every pizza was delivered* (the inverse scope reading). Linguistic theory correctly predicts that participants in a dialogue — we will name them Alice and Bob for the sake of illustration — can use and interpret this ambiguous sentence without risk of

¹⁴ In this section, we draw on a simplified presentation of the linguistic framework known as *Question under Discussion (QUD) theory*. This theory was developed originally by Craige Roberts, *Information Structure in Discourse: Towards an Integrated Formal Theory of Pragmatics*, 49 OSU Working Papers in Linguistics 91 (1996), and was subsequently adopted by many other theoretical and experimental linguists. The version we use follows Gualmini et al., *The Question-Answer Requirement for Scope Assignment*, 16 Natural Language Semantics 205 (2008).

confusion, so long as context and common sense make it clear which questions are relevant to Alice and Bob in the background of their conversation.

For example, if Alice and Bob care about whether at least one pizza is delivered, a relevant question might be whether any of the pizzas were delivered. The surface scope reading of the sentence is the plausible one in this context because it addresses this relevant question. If all Alice and Bob care about is whether the order is complete, a more relevant question might be whether all of the pizzas were delivered (thus making the inverse scope reading more plausible).

In describing these facts, we do not rely merely on our own intuitions as speakers of English. Testing the idea that context resolves ambiguities in ordinary language, linguists have conducted experiments to ascertain how English speakers disambiguate sentences of the same kind as *Every pizza wasn't delivered*. The experimenters showed participants a video of a dialogue in which one character makes a certain distinction relevant by explicitly asking a question like *Did they deliver any of the pizzas?* or *Did they deliver all of the pizzas?* In either case, the other character answered with an ambiguous sentence like *Every pizza wasn't delivered*. The experimenters then probed the English speakers' understanding of this answer. As it turned out, English speakers in effect disambiguated this kind of sentence in different ways depending on the question that preceded it. See Gualmini et al., *supra* note 14.

To be sure, many other contextual factors can and do influence the way in which English speakers disambiguate ordinary language. We focus on relevance because it brings linguistic evidence and theory to bear on the question before this Court, and because it is an important general linguistic principle that underpins the way context and common sense help disambiguate ambiguous language, such as the rescission condition.

1. In the present case, lawmaker intent disambiguates the rescission condition.

The example we have described is similar to the situation of laws containing an ambiguous formulation. In the case of the rescission condition, it is useful to distinguish between no-notice, incomplete-notice, and complete-notice scenarios, depending on whether the Government provided none, some, or all of the notices it was required to provide. No-notice scenarios are those in which neither a §1 notice nor a §2 notice is provided; an example of an incomplete-notice scenario is a one in which the Government was required to provide both notices but provided only one of them; and so on.

In terms of these scenarios, we can understand the ambiguity of the rescission condition as follows: a “neither §1 nor §2” interpretation is true only in no-notice scenarios, and an “either not-§1 or not-§2” interpretation is true both in no-notice and incomplete-notice scenarios.

To consider the effect of context on this case, we need to determine Congressional intent in formulating the rescission condition. Since the rescission condition

is meant to apply in some cases but not others, Congress intended to draw a line between two kinds of scenarios. Both readings of the rescission condition have in common that they place no-notice scenarios on one side of this line and complete-notice scenarios on the other. What is under dispute is how the line is drawn with respect to incomplete-notice scenarios.

The framework described here lays out the two possible alternatives for determining lawmaker intent.

One alternative is that Congress intended to draw a line between no-notice scenarios and all other scenarios. This corresponds to the case where Alice and Bob only care about whether at least one pizza arrived, and the corresponding question is *Were any of the pizzas delivered?* In that case, the ambiguous sentence *Every pizza wasn't delivered* is interpreted as *No pizza was delivered*, which is true only in no-delivery scenarios; correspondingly, the ambiguous rescission condition is interpreted as *neither §1 nor §2*, which is true only in no-notice scenarios and false in incomplete-notice and complete-notice scenarios.

The other alternative is that Congress intended to draw a line between complete-notice scenarios and all other scenarios. This corresponds to the case where Alice and Bob only care about whether the order was complete; the corresponding question is *Were all of the pizzas delivered?* In that case, the ambiguous sentence *Every pizza wasn't delivered* is interpreted as *Not every pizza was delivered*, which is true in no-delivery and incomplete-delivery scenarios and false only in complete-delivery scenarios; correspondingly, the

ambiguous rescission condition is interpreted as *either not-§1 or not-§2*, which is true in no-notice and incomplete-notice scenarios and false only in complete-notice scenarios.

We stress that our account does not seek to determine Congress' intent; for our purposes, it is sufficient to assume that Congress intended for the rescission condition to make *some* distinction between three possible scenarios: no-notice scenarios, incomplete-notice scenarios, and complete-notice scenarios. Should it be determined that the relevant line is between complete-notice scenarios on the one hand, and incomplete-notice and no-notice scenarios on the other, linguistic theory predicts that the rescission condition is disambiguated as *either not-§1 or not-§2*. It is also possible, in principle, to draw the line between no-notice scenarios and the other two possibilities. Given this distinction, linguistic theory predicts disambiguation in the other direction.

2. The Government's interpretation is not faithful to either literal semantic interpretation.

The rescission condition, as we have shown, has two literal semantic interpretations: the inverse scope reading and the surface scope reading. The Government is not faithful to either semantic interpretation. On the Government's understanding of the statute, the rescission condition applies if the noncitizen demonstrates that **(a)** he either did not receive paragraph 1 notice or did not receive paragraph 2 notice; and **(b)** the missing notice would

have notified the noncitizen of a hearing he failed to attend.¹⁵

This understanding is inconsistent with the surface scope (neither-nor) reading of the rescission condition. On this understanding, the rescission condition applies if the noncitizen receives paragraph 1 notice but can demonstrate that:

He did not receive paragraph 2 notice (satisfying part **(a)** above); and

The missing paragraph 2 notice would have notified him about the hearing he failed to attend (satisfying part **(b)**).

On the surface scope reading, the rescission condition would not apply in these cases (because the noncitizen receives paragraph 1 notice).

By contrast, the Government's understanding is logically consistent with the inverse scope reading of the rescission condition. In fact, part **(a)** simply reproduces that reading. The inclusion of **(b)**, however, shows that the Government's understanding goes *beyond* the literal meaning of the rescission condition on its inverse scope reading, adding an extra condition for rescission that the plain text of the

¹⁵ “[T]he critical inquiry under Section 1229a(b)(5)(C)(ii) is clear: Did the noncitizen ‘receive notice in accordance with paragraph (1) or (2) of section 1229(a)’—whichever form of notice applies—**before the “proceeding” that he “d[id] not attend”?** 8 U.S.C. 1229a(b)(5)(A). If so, then the in absentia removal order is not subject to rescission for lack of notice. But if no notice was received, then the removal order ‘may be rescinded’ on that ground. 8 U.S.C. 1229a(b)(5)(C).” Att’y Gen.’s Br. 24 (emphasis added).

statute does not convey. “[Linguistic] analysis narrows the field of possible interpretations in ways that are both linguistically and intuitively sensible.” Cunningham et al., *supra*, at 1563. That is, linguistic analysis helps to reveal the extent to which the Government’s understanding stretches beyond the literal semantic interpretation of the rescission condition.

CONCLUSION

We show that out of context, a negative disjunction of the form “*not A or B*” is ambiguous between two literal semantic interpretations. A wealth of linguistic evidence demonstrates that both interpretations are not only possible but well-attested in legal contexts and in ordinary language. Our data show that one can only ascertain the relative plausibility of the two interpretations by examining the phrase in context. Moreover, a well-known model of linguistic interpretation makes precise the role of context in disambiguation.

When applied to the rescission condition, this model makes predictions which depend on contextual assumptions regarding lawmaker intent. To disambiguate the rescission condition, one must first establish whether Congress intended to assimilate situations in which the noncitizen received some but not all required notices to situations in which they received all required notices, or to situations in which they received none.

We evaluate the Government’s understanding of the rescission condition in light of our semantic analysis. We find that regardless of how the negative

disjunction is disambiguated, it is not the case that the Government's understanding follows from the condition's literal semantic meaning. However, there *is* a literal interpretation of the condition (the inverse scope interpretation) that supports rescinding a deportation order for a noncitizen who can demonstrate that he did not receive notice in accordance with paragraph 1 of Section 1229(a).



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