No.

IN THE

Supreme Court of the United States

AGUSTO NIZ-CHAVEZ,

Petitioner,

v.

WILLIAM P. BARR, ATTORNEY GENERAL,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Attorney General can cancel removal of certain immigrants under 8 U.S.C. § 1229b(a) and (b). To be eligible for cancellation of removal, a non-permanent resident must have ten years of continuous presence in the United States, and a permanent resident must have seven years of continuous residence. *Id.* § 1229b(a)(2), (b)(1)(A). Under the "stop-time rule," the government can end those periods of continuous residence by serving "a notice to appear under section 1229(a)," which, in turn, defines "a 'notice to appear'" as "written notice . . . specifying" specific information related to the initiation of a removal proceeding. *Id.* §§ 1229b(d)(1), 1229(a)(1). In *Pereira v. Sessions*, 138 S. Ct. 2105, 2117 (2018), this Court held that only notice "in accordance with" section 1229(a)'s definition triggers the stop-time rule.

The question presented in this case is:

Whether, to serve notice in accordance with section 1229(a) and trigger the stop-time rule, the government must serve a specific document that includes all the information identified in section 1229(a), or whether the government can serve that information over the course of as many documents and as much time as it chooses.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Agusto Niz-Chavez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The decision of the court of appeals (Pet. App. 1a-15a) is reported at __ Fed. Appx. __, 2019 WL 5446002. The decisions of the Board of Immigration Appeals (Pet. App. 16a-25a) and the immigration judge (Pet. App. 26a-40a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 24, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

8 U.S.C. § 1229b(b)(1) provides in relevant part:

> The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien—
>
> > (A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application * * * * .

8 U.S.C. § 1229b(d)(1) provides in relevant part:

> For purposes of this section, any period of continuous residence or continuous physical pres-

ence in the United States shall be deemed to end * * * when the alien is served a notice to appear under section 1229(a) of this title * * *.

8 U.S.C. § 1229(a)(1) provides:

In removal proceedings under section 1229a of this title, written notice (in this section referred to as a "notice to appear") shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection (b)(2).

(F)

(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting

proceedings under section 1229a of this title.

(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

(iii) The consequences under section 1229a(b)(5) of this title of failure to provide address and telephone information pursuant to this subparagraph.

(G)

(i) The time and place at which the proceedings will be held.

(ii) The consequences under section 1229a(b)(5) of this title of the failure, except under exceptional circumstances, to appear at such proceedings.

The full text of Sections 1229 and 1229b, together with other relevant statutes and regulations, are reproduced in the Appendix, *infra*, at 43a-64a.

INTRODUCTION

This case concerns an acknowledged circuit conflict concerning the immigration stop-time rule. Particularly deserving immigrants who have been in the United States for specified periods of time can pursue cancellation of removal, a vital form of discretionary relief. The stop-time rule allows the government to stop immigrants from accruing additional time in the United States for purposes of eligibility for cancellation of removal, and potentially to cut them off from even asking for discretionary relief.

To stop the time, the statute requires the government to take a specific action: the government must "serve[] a notice to appear under section 1229(a)." 8 U.S.C. § 1229b(d)(1). That section, which governs the initiation of removal proceedings, defines the term "a 'notice to appear'": It is "written notice … specifying" a particular set of information related to the removal proceeding, including the "time and place at which the proceedings will be held." 8 U.S.C. § 1229(a)(1). The government resisted the notion that this statutory language defined a "notice to appear," but two Terms ago, this Court disagreed, calling it "quintessential definitional language." *Pereira v. Sessions*, 138 S. Ct. 2105, 2116 (2018).

The circuit conflict at issue arose because the government has consistently refused to do what section 1229(a) requires—but still seeks to invoke the stop-time rule to render immigrants ineligible for discretionary relief. Both the text and history of section 1229(a) show that section 1229(a) defines and requires a specific notice *document* that provides a noncitizen being placed in removal proceedings with *all* of the required information in one place. Indeed, in enacting section 1229(a), Congress explicitly *rejected* a prior statutory provision that allowed service of some of the required information—the time and place of proceedings—in a separate document. Thus, shortly after Congress enacted section 1229(a), the government recognized that section 1229(a) requires service of a specific *form* that provides *all* the specified information, including the time-and-place information. 62 Fed. Reg. 449 (Jan. 3, 1997). Inexplicably, however, the government has refused to do what it conceded the statute required, and almost never

includes the time and place of proceedings in serving notices to appear. *See Pereira*, 138 S. Ct. at 2111.

The government first attempted to avoid the stop-time consequences of this extra-statutory practice by arguing that it can trigger the stop-time rule by serving a document it *labels* a "notice to appear," regardless whether that document actually satisfies section 1229(a)'s definition of that term. The Board of Immigration Appeals ("BIA") accepted the government's position, and a majority of the courts of appeals deferred to the BIA's decision. *See Pereira*, 138 S. Ct. at 2112-13, 2114 n.4. This Court, however, granted certiorari and rejected the government's position, holding that the stop-time rule unambiguously requires notice "in accordance with" section 1229(a)'s substantive, definitional requirements. 138 S. Ct. at 2117.

After *Pereira*, the government came up with a new theory as to why its extra-statutory notice practice triggers the stop-time rule. It now claims—contrary to both its own and the BIA's prior position—that "a 'notice to appear'" in section 1229(a) is not actually a specific notice *document*, but is merely a collection of information that the government can provide in as many notices, and over as much time, as the government chooses.

That argument has led to an entrenched conflict in the courts of appeals. A closely divided BIA, in its first en banc opinion in a decade, accepted the government's position over a vigorous dissent. Three courts of appeals have since rejected that decision and held that section 1229(a) requires a specific notice *document*. Two courts of appeals, by contrast,

have accepted the government's and BIA majority's position.

This Court should grant certiorari to resolve this circuit conflict. Not only is the conflict entrenched, and not only does it involve deep-seated disagreement that cannot be resolved without this Court's intervention, but the question on which the courts are divided is incredibly important, as it could determine the fate of thousands of immigrant families—families like that of petitioner Agusto Niz-Chavez, who seeks to remain in the country to care for his three young, U.S.-citizen children, two of whom have significant medical issues. A question that arises with such frequency, and that has such dramatic implications, should not turn on the happenstance of the immigration court in which removal proceedings were brought.

STATEMENT

A. The government must serve notice "in accordance with" section 1229(a) to trigger the stop-time rule.

1. For more than a century, the immigration laws have given the Attorney General (or another official) discretion to allow deserving immigrants with U.S. family connections to remain as lawful permanent residents, even if they were otherwise inadmissible or removable. *See, e.g.*, Immigration Act of 1917, § 3, proviso 7, ch. 29, 39 Stat. 874, 878. As one Congressional report explained, such provisions are intended to protect "aliens of long residence and family ties in the United States," whose removal "would result in a serious economic detriment to the[ir] family." S. Rep. No. 81-1515, at 600 (1950).

The current statute gives the Attorney General the power to grant "cancellation of removal," and a green card, to eligible non-permanent residents when their removal would cause "exceptional and extremely unusual hardship" to a spouse, parent, or child who is a United States citizen or lawful permanent resident. 8 U.S.C. § 1229b(b). This discretionary relief is only available to those with "good moral character" who have not been convicted of specified criminal offenses. *Id.* The Attorney General can also cancel removal for permanent residents who have not been convicted of an aggravated felony when the equities favor allowing them to remain in the country. *Id.* § 1229b(a); *Matter of Sotelo-Sotelo*, 23 I. & N. Dec. 201, 203 (BIA 2001). Cancellation is one of the most important tools for keeping immigrant families united and allowing immigrants who have made positive contributions to their communities to remain in the country.

To be eligible, an applicant for cancellation of removal as a non-permanent resident must have "been physically present in the United States for a continuous period of not less than 10 years[.]" 8 U.S.C. § 1229b(b)(1). If the applicant is a lawful permanent resident, the required period is 7 years of continuous residence. *Id.* § 1229b(a)(2).[1]

2. Congress enacted the stop-time rule at issue in this case to address a very specific problem with earlier forms of discretionary relief. Before 1996, when eligibility for relief turned on a specified period of U.S. residence, that period continued to run during

[1] For simplicity, the term "continuous residence" is at times used in this petition to encompass both durational requirements.

the pendency of removal proceedings. *See Matter of Cisneros-Gonzalez*, 23 I. & N. Dec. 668, 671 (BIA 2004). Congress grew concerned that immigrants had an incentive to obstruct and slow removal proceedings to satisfy the residence requirement. *Id.*

In response, Congress enacted the "stop-time" rule as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208, Div. C, 110 Stat. 3009-546. Under this rule, "any period of continuous residence or continuous physical presence in the United States shall be deemed to end . . . when the alien is served a notice to appear under section 1229(a) of this title." 8 U.S.C. § 1229b(d)(1). In other words, Congress gave the government the power to end a non-citizen's accrual of continuous residence, but required that the government "serve[]" a specific document—"a notice to appear under section 1229(a)"—in order to do so. *See Pereira*, 138 S. Ct. at 2119 ("once a proper notice to appear is served, the stop-time rule is triggered").

3. The "notice to appear" was also created as part of IIRIRA. Prior to 1996, what were then called deportation proceedings were initiated with "an 'order to show cause.'" *See* 8 U.S.C. § 1252b(a)(1) (1994). The statute defined that document as "written notice … specifying" particular information about the proceeding, including information like the "acts or conduct alleged to be in violation of law," the "charges against the alien and the statutory provisions alleged to have been violated," and the fact that the "alien may be represented by counsel." *Id.* Notably, however, the "order to show cause" did *not* need to identify "the time and place at which the proceedings will be held"; that information could be provided "in the

order to show cause or otherwise." *Id.* § 1252b(a)(2)(A). This led to a two-step notice process, in which the government first served a noncitizen with an "order to show cause," and the immigration court subsequently sent the time and place of proceedings. *See* 8 C.F.R. § 242.1(b), 3.18 (1996).

In creating the "notice to appear" in IIRIRA, however, Congress rejected this flexibility and jettisoned the two-step notice process. Concerned that existing notice procedures led to unnecessary disputes about whether noncitizens received certain notices, *see* H.R. Rep. No. 104-469, pt. I, at 122, 159 (1996), IIRIRA abandoned the option of sending a hearing notice after the initial notice document, and *required* that the "time and place at which the proceedings will be held" be included in the "notice to appear" *itself*. *See* 8 U.S.C. § 1229(a)(1)(G)(i). The "notice to appear" definition was otherwise practically identical to the prior "order to show cause" definition. *Compare* 8 U.S.C. § 1252b(a)(1) (1994) *with* 8 U.S.C. § 1229(a)(1)(A)-(F).

The government initially recognized Congress's rejection of the two-step notice process. Shortly after IIRIRA was enacted, the Immigration and Naturalization Service ("INS") and the Executive Office for Immigration Review ("EOIR") jointly issued a proposed rule to implement the new "notice to appear" provision. A preamble to the regulations explained, in a section entitled "The Notice to Appear (Form I-862)," that the rule "implements the language of the amended Act indicating that the time and place of the hearing must be on the Notice to Appear," and recognized that the government would need "automated scheduling" to issue notices to appear with the

required time-and-place information. 62 Fed. Reg. 449. Consistent with that recognition, multiple BIA decisions subsequently explained that a "notice to appear" is a "single instrument," *Matter of Ordaz*, 26 I. & N. Dec. 637, 640 n.3 (BIA 2015), and that subsequent notices, like "notice[s] of hearing," are not "a constituent part of a notice to appear," *Matter of Camarillo*, 25 I. & N. Dec. 644, 648 (BIA 2011).

The government, however, explicitly refused to do what it conceded that section 1229(a) required. The regulations that INS and EOIR ultimately adopted—now codified at 8 C.F.R. § 1003.18—specifically *authorized* the very two-step process that IIRIRA *rejected*, stating that the "notice to appear" only needed to include "the time, place and date of the initial removal hearing[] *where practicable*" (emphasis added).[2]

This regulatory exception ultimately swallowed the statutory rule. Though the regulatory preambles show that the exception was only *intended* to apply in unusual circumstances like "power outages" or "computer crashes/downtime," *see* 62 Fed. Reg. 449, by 2017 the government had begun omitting the time-and-place information from "almost 100 percent" of its putative notices to appear. *See Pereira*, 138 S. Ct. at 2111.

4. Unwilling to accept the stop-time consequences of its conceded failure to comply with section

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[2] Notably, even this extra-statutory regulation suggests that the government viewed a "notice to appear" as a single document. After all, if it were not, this regulation would be unnecessary, as the time-and-place information would be "in the Notice to Appear," 8 C.F.R. § 1003.18(b), regardless when, and in what document, it was served.

1229(a)'s requirements, the government claimed that it could serve "a notice to appear under section 1229(a)," and hence trigger the stop-time rule, *see* 8 U.S.C. § 1229b(d)(1), even if the notice it served did *not* comply with section 1229(a). The BIA agreed with the government in *Camarillo*, concluding that the phrase "notice to appear" "merely specifies the document the DHS must serve on the alien to trigger the 'stop-time' rule," but does not impose any "substantive requirements" as to what must be in that document. 25 I. & N. Dec. at 647. The BIA thus concluded that a document *labeled* as a "notice to appear" triggered the stop-time rule regardless whether it included the time and place of proceedings. Seven of the eight courts of appeals to consider the question deferred to the BIA. *See Pereira*, 138 S. Ct. at 2113 & n.4.

In *Pereira*, however, this Court rejected the BIA's decision and held that the government must serve a notice to appear "in accordance with" section 1229(a)'s requirements in order to trigger the stop-time rule. 138 S. Ct. at 2117. Section 1229(a), this Court explained, uses "quintessential definitional language" to define what a notice to appear is—*i.e.*, "'written notice' that, as relevant here, 'specif[ies] … [t]he time and place at which the [removal] proceedings will be held.'" *Pereira*, 138 S. Ct. at 2116 (quoting 8 U.S.C. § 1229(a)(1)(G)(i)). Notice that does not meet those definitional requirements is not "a proper notice to appear," and does not trigger the stop-time rule. 138 S. Ct. at 2119-20. This Court therefore held that the only relevant notice the government had served on Mr. Pereira did not trigger the stop-time rule because it lacked the required time-and-place information.

Because the government did not serve a hearing notice on Mr. Pereira until after he accrued the U.S. presence required for cancellation, *Pereira* did not explicitly address whether the government triggers the stop-time rule when it *completes* its two-step notice process—in other words, when it serves *both* a putative "notice to appear" that lacks the time-and-place information and a subsequent hearing notice. But what *Pereira* definitively establishes is that such a two-step notice process only triggers the stop-time rule *if* it is "in accordance with" section 1229(a)'s definitional requirements. *Id.* at 2117.

B. The courts of appeals are divided concerning section 1229(a)'s requirements.

After *Pereira* established that the government must comply with section 1229(a) to trigger the stop-time rule, the government abruptly abandoned its post-IIRIRA recognition that section 1229(a) defines a specific notice document that must include the time and place of proceedings. The government now claims that section 1229(a) merely identifies information that the government must serve over the course of as many documents, and as much time, as the government chooses.

A sharply divided BIA, in its first en banc decision in a decade, endorsed the government's position, reversing its own prior position that a "notice to appear" is a "single instrument," *Ordaz*, 26 I. & N. Dec. at 640 n.3. *Matter of Mendoza-Hernandez*, 27 I. & N. Dec. 520 (BIA 2019). Unsurprisingly given the sharp dissent within the BIA, the courts of appeals are again divided. The Seventh, Ninth, and Eleventh Circuits have refused to defer to the BIA's position

and held that section 1229(a) does not permit a multi-step notice process. *Lopez v. Barr*, 925 F.3d 396, 402-05 (9th Cir. 2019); *Perez-Sanchez v. U.S. Attorney General*, 935 F.3d 1148, 1153-54 (11th Cir. 2019); *Ortiz-Santiago v. Barr*, 924 F.3d 956, 961-62 (7th Cir. 2019). The Fifth and Sixth Circuits have accepted the BIA's position. *Pierre-Paul v. Barr*, 930 F.3d 684, 690-91 (5th Cir. 2019); *Garcia-Romo v. Barr*, 940 F.3d 192, 199-205 (6th Cir. 2019).

1. The BIA's first post-*Pereira* discussion of section 1229(a) was in *Matter of Bermudez-Cota*, 27 I. & N. Dec. 441 (BIA 2018). That decision concerned a different issue raised by *Pereira*: whether a putative notice to appear that lacks time-and-place information could vest subject matter jurisdiction in the immigration court. The BIA held that nothing in the statute makes compliance with section 1229(a) a prerequisite for the immigration court's jurisdiction—a holding that is not at issue here. But the BIA also concluded in the alternative, with little analysis, that section 1229(a) does *not* define a specific form of notice, and that "a two-step notice process is [thus] sufficient to meet the statutory notice requirements in section [1229(a)]." *Id.* at 447.

The BIA reconsidered section 1229(a)'s requirements in its nine-to-six en banc decision in *Mendoza-Hernandez*, which addressed section 1229(a)'s requirements in the context of the stop-time rule. A slight majority of the BIA interpreted section 1229(a) to allow the government to serve *multiple* notices that, pieced together, provide all of the information required by section 1229(a)'s definition of "a 'notice to appear.'" *Id.* at 531. The BIA concluded that although the statute's reference to "a" notice to appear

"is in the singular," the statute nevertheless does not require that the notice come "in a single document." *Id.* Instead, "it may be provided in one or more documents—in a single or multiple mailings." *Id.* The BIA recognized that it had previously reached the opposite conclusion, but reversed course with the almost entirely unexplained statement that its previous analysis was "flawed." *Id.* at 525 & n.8.

Six Board Members dissented, concluding that the majority's position is irreconcilable with the statute's text and history. *Id.* at 536 (Guendelsberger, Board Member, dissenting). The dissent explained that "the statute contains no ambiguity or gap that would permit a 'combination' approach to trigger the stop time rule," as the "statute refers to a single document, 'a notice to appear[.]'" *Id.* Thus the plain language, even on its own, "leaves no room for the majority's conclusion that a subsequent notice of hearing can cure a notice to appear that fails to specify the time and place of the initial removal hearing." *Id.* at 545. Moreover, the majority's position flies in the face of IIRIRA, which explicitly *rejected* the two-step process, mandating instead "a one-step 'notice to appear.'" *Id.* at 539. The two-step process therefore cannot be "in accordance with" section 1229(a), and does not trigger the stop-time rule.

2. Three courts of appeals have already rejected the BIA majority's position as conflicting with section 1229(a)'s unambiguous command.

The Ninth Circuit, in *Lopez*, rejected the BIA's decision because section 1229(a) "speaks clearly" and requires "service of a single document—not multiple." 925 F.3d at 402. Section 1229(a) "*defines* what a notice to appear is," and that definition explicitly

"use[s] the singular" in referring to the notice required. *Id.* at 402-03. The court concluded that the BIA majority reached a contrary decision only by "ignor[ing] the plain text of the statute." *Id.* at 403. Moreover, as the court noted, nothing stopped the government from "issu[ing] a Notice that complies with the statute"—thus, any stop-time issues with this interpretation of section 1229(a) lie squarely with the government's refusal to adhere to the statute's commands. *Id.* at 404 (citing *Pereira*, 138 S. Ct. at 2111). Judge Callahan dissented. She argued primarily that, under the Dictionary Act, 1 U.S.C. § 1, the singular reference to "a" notice to appear can encompass several notices. *Id.* at 407 (Callahan, J., dissenting).[3]

The Eleventh Circuit reached the same conclusion in *Perez-Sanchez*, albeit in a slightly different context. The question in that case, like the BIA's decision in *Bermudez-Cota*, was whether the two-step notice process gives the immigration court jurisdiction over removal proceedings. *Perez-Sanchez*, 935 F.3d at 1152-53. The case therefore first raised the question of whether the two-step process complies with section 1229(a)—the precise question at issue in this case. And it also raised the question of whether, even if the two-step process does not comply with section 1229(a), that lack of compliance has jurisdictional implications.

In answering that first question, the Eleventh Circuit explicitly rejected the government's claim that a

[3] The government's petition for rehearing en banc in *Lopez* has been pending since August 7, 2019. On November 12, 2019, the panel called for supplemental briefing, which has been completed.

hearing notice can cure an otherwise-defective notice to appear. *Id.* at 1153. Like the Ninth Circuit, the Eleventh Circuit held that, under the statute's plain text, the relevant inquiry focuses on a single notice document. Thus, "a notice of hearing sent" after a defective "notice to appear" "does not render the original NTA non-deficient."[4] 935 F.3d at 1153-54.

In *Ortiz-Santiago*, the Seventh Circuit confronted the same question in the same posture and reached the same conclusion. The court refused to accept the government's argument that "the two-step procedure that the Board followed" was "compatible with the statute." 924 F.3d at 962. The court rejected the BIA majority's argument that the two-step process "achieves substantial compliance with" section 1229(a), explaining that the BIA majority's analysis "tracked the dissenting opinion [in *Pereira*] rather than that of the majority." *Id.* The court also found it "telling that Congress itself appears to have rejected the two-step approach when it passed IIRIRA." *Id.* The court noted that the BIA "took no note of this statutory evolution … nor did it explain how its decision complied with the present statutory language." *Id.*[5]

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[4] The Eleventh Circuit ultimately held that section 1229(a) establishes a "claim-processing rule" rather than a prerequisite to jurisdiction, and hence that the government's failure to follow section 1229(a) does not deprive the immigration court of jurisdiction. *Id.* at 1154-57.

[5] The Seventh Circuit rejected the argument that the government's "failure to comply was an error of jurisdictional significance," concluding, like the Eleventh Circuit, that section 1229(a) establishes a claim-processing, not jurisdictional, rule. *Id.* at 963-64.

3. Two courts of appeals have accepted the BIA's position that section 1229(a) merely establishes a list of information that the government can serve over as many notices, and as much time, as it chooses.

The Fifth Circuit's decision in *Pierre-Paul* was the first to accept the BIA's position.[6] That case, like the Seventh and Eleventh Circuit decisions, involved a challenge to the immigration court's jurisdiction. But like the Seventh and Eleventh Circuit decisions, the Fifth Circuit's decision squarely addressed section 1229(a)'s requirements. Unlike those decisions, however, the Fifth Circuit concluded that "[t]he two-step process comports with relevant statutory language." 930 F.3d at 691. Largely adopting the reasoning of Judge Callahan's dissent in *Lopez*, the court concluded that the singular nature of the statutory language nevertheless encompassed the concept of multiple notices. *Id.* The court also adopted the BIA majority's conception of the statute's purpose of "ensuring that aliens receive notice of the time and place of the proceedings."[7] *Id.*

The Sixth Circuit reached the same conclusion, in the cancellation context, in *Garcia-Romo*. The court found the Ninth Circuit's decision in *Lopez* "unpersuasive," adopting instead the BIA majority's decision in *Mendoza-Hernandez*. 940 F.3d at 203-05. The court rejected the argument that the statute "mandates service of *a* singular, compliant docu-

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[6] A petition for certiorari from the Fifth Circuit's decision is currently pending. *Pierre-Paul v. Barr*, No. 19-779 (filed Dec. 16, 2019).

[7] The court also concluded that, even if section 1229(a) requires a single notice document, the government's failure to comply with that requirement is not jurisdictional. *Id.* at 691-93.

ment," concluding that this gives too "cramped" a reading to "the indefinite article 'a.'" *Id.* at 201. Based on two colloquial examples—a teacher requiring "a paper" and a book editor asking an author for "a book"—the court concluded that "[w]hen the word 'a' precedes a noun such as 'notice,' describing a written communication, the customary meaning does not necessarily require that the notice be given in a single document." *Id.* Thus, section 1229(a) allows the government to provide the required information "in multiple components or installments."[8] *Id.*

Notably, a subsequent Sixth Circuit panel has already criticized *Garcia-Romo* for its "scant textual analysis," and noted that, "given the conflicts among the circuits, the time may be ripe for Supreme Court review." *Dable v. Barr*, __ Fed. Appx. __, 2019 WL 6824856, at *4 n.6 (6th Cir. Dec. 13, 2019).

C. Mr. Niz-Chavez's eligibility for cancellation of removal turns on this circuit conflict.

1. Petitioner Agusto Niz-Chavez is a native and citizen of Guatemala. Mr. Niz-Chavez and his family lived on land that they owned until around 2002. A that time, a land dispute arose between Mr. Niz-Chavez's family and villagers from Ixchiguan, a neighboring village. Pet. App. 2a. The Ixchiguan villagers first murdered Mr. Niz-Chavez's brother-in-law. Pet. App. 2a. Then fifty armed villagers arrived and threatened to kill Mr. Niz-Chavez and his family if they did not leave. Pet. App. 2a-3a. Mr. Niz-Chavez and his family fled and have not returned.

[8] A petition for rehearing en banc is currently pending in *Garcia-Romo*.

Pet. App. 3a. Nevertheless, Mr. Niz-Chavez's family continued to receive threats. Pet. App. 3a.

Mr. Niz-Chavez came to the United States in 2005. Pet. App. 3a. In 2007, he moved to Detroit, where he has lived ever since. Pet. App. 3a. He currently lives with and is the primary breadwinner for his long-time partner and their three young U.S.-citizen children, two of whom have significant health issues. Pet. App. 3a; A.R. 34-35. Since coming to the United States fourteen years ago, Mr. Niz-Chavez has no criminal history other than two misdemeanor convictions for driving without a license.

2. On March 26, 2013, DHS served Mr. Niz-Chavez with a document labeled "Notice to Appear." Pet. App. 3a; A.R. 425. That document, however, did not specify the time and place at which Mr. Niz-Chavez was required to appear, stating instead that the hearing would be held on "a date to be set at a time to be set." A.R. 425; Pet. App. 3a. On May 29, 2013, the immigration court sent Mr. Niz-Chavez a hearing notice scheduling his case for June 25, 2013. Pet. App. 3a. Mr. Niz-Chavez conceded removability but sought to apply for withholding of removal and relief under the Convention Against Torture. Pet. App. 3a. A merits hearing was ultimately held on September 13, 2017.

At his merits hearing, Mr. Niz-Chavez sought to apply for cancellation of removal given that he had been present in the United States for approximately twelve years. Pet. App. 42a. However, the immigration judge ("IJ") concluded, and Mr. Niz-Chavez was forced to concede, that under then-governing law, Mr. Niz-Chavez's continuous presence ended when he received the putative "Notice to Appear" in March

2013, even though that document did not comply with section 1229(a) because it lacked the required time-and-place information. *See Camarillo*, 25 I. & N. Dec. at 647; *Gonzales-Garcia v. Holder*, 770 F.3d 431 (6th Cir. 2014) (deferring to *Camarillo*).

The IJ ultimately denied Mr. Niz-Chavez's applications for relief, and Mr. Niz-Chavez appealed to the BIA. While his case was pending before the BIA, this Court decided *Pereira*. Mr. Niz-Chavez promptly filed a motion to remand to the IJ to consider his application for cancellation of removal in light of *Pereira*. Pet. App. 4a. The BIA affirmed the IJ's decision and denied the motion to remand, concluding that Mr. Niz-Chavez was not eligible for cancellation under *Pereira* because the combination of the putative notice to appear with the subsequent hearing notice triggered the stop-time rule in June 2013. Pet. App. 4a, 22a.

3. The Sixth Circuit denied the petition for review. As relevant here, the court acknowledged the conflict between the courts of appeals concerning whether "multiple documents [can] collectively satisfy the requirements of a notice to appear." Pet. App. 13a-14a. The court recognized, however, that the Sixth Circuit had "resolved the dispute" in *Garcia-Romo*. Pet. App. 14a-15a.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari to resolve the circuit conflict concerning whether section 1229(a)'s definition of "a 'notice to appear'" identifies a specific notice document or merely a collection of information that the government can provide over the course of as many documents, and as much time, as it chooses.

Given that, under *Pereira*, notice "in accordance with" section 1229(a) is necessary to trigger the stop-time rule, the proper interpretation of section 1229(a) is vitally important, as it determines whether thousands of immigrants are eligible for cancellation of removal and will have the chance to remain in the country with their U.S.-citizen families. Moreover, given the deep disagreement about the proper interpretation of section 1229(a)—including a three-to-two circuit conflict and sharp disagreement within circuits and within the en banc BIA—this Court's intervention is necessary to ensure uniform eligibility requirements for this vital form of relief.

Certiorari is particularly important because the BIA's reading of the statute conflicts so clearly with the statute's text and history. Not only does the statute's singular definitional language plainly require "a" specific notice document—not a collection of notice documents dispersed over time—but Congress amended the statute to *reject* the previously-authorized multi-step notice process the government now seeks to defend.

This case is an ideal vehicle to resolve the circuit conflict. Mr. Niz-Chavez has preserved the question presented throughout his proceedings. As the Sixth Circuit's decision makes clear, Mr. Niz-Chavez is otherwise eligible to apply for cancellation of removal. And Mr. Niz-Chavez has a strong case for cancellation on the merits: He is the primary breadwinner for his three young, U.S.-citizen children, two of whom rely on the U.S. health-care and educational systems to assist with significant medical and developmental issues.

I. The Court should grant certiorari to resolve a circuit conflict on an important and recurring issue concerning eligibility for cancellation of removal.

The acknowledged circuit conflict concerning the question presented in this case cannot be resolved without this Court's intervention—indeed, one court has explicitly called for this Court's review. *Dable*, 2019 WL 6824856, at *4 n.6. Given how frequently the question presented arises, the confusion it is currently causing across the country, and how important it is when it does arise, this Court should grant certiorari now to resolve the conflict.

1. There is a clear circuit conflict concerning whether section 1229(a) defines a specific notice document or a collection of information the government can serve whenever and in as many pieces as it wants. The Seventh, Ninth, and Eleventh Circuits have agreed with the six-Member BIA dissent and held that section 1229(a) defines a specific notice document, and hence that a two-step notice process does not comply with section 1229(a)'s requirements. Pp. 14-16, *supra*. The Fifth and Sixth Circuits, by contrast, have accepted the nine-Member BIA majority's view that section 1229(a) permits a multi-step notice process. Pp. 17-18, *supra*. The five circuits that have addressed this issue handle the vast majority—approximately 75%[9]—of petitions for review from the BIA.

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[9] *See* U.S. Courts, Judicial Business, Table B-3 (2018), available at http://www.uscourts.gov/sites/default/files/data_tables/jb_b3_0930.2018.pdf.

The fact that some of these courts interpreted section 1229(a) in the context of a jurisdictional rather than stop-time challenge does not minimize the circuit conflict. Under *Pereira*, the government must serve notice "in accordance with" section 1229(a) to trigger the stop-time rule. 138 S. Ct. at 2117. Thus, the question of whether section 1229(a) permits the government's multi-step notice process is determinative of the stop-time question *regardless* of the context in which that interpretive question arose. Moreover, the conflicting Sixth and Ninth Circuit opinions both interpreted section 1229(a) in the context of the stop-time rule.

This circuit conflict inevitably leads to deeply unfair results. If Mr. Niz-Chavez lived in California or Illinois, he could have applied for cancellation of removal and sought to stay in the United States to continue to care for his U.S.-citizen children. Indeed, given that venue in immigration cases depends on where the government initiates removal proceedings, 8 U.S.C. § 1252(b)(2); 8 C.F.R. § 1003.14(a), Mr. Niz-Chavez may have been able to apply for cancellation if he had been detained by DHS while on a road trip in Chicago, rather than at home in Detroit. Only this Court can alleviate the inevitable inequities caused by the disparate interpretations of the stop-time rule across the circuits.

2. This circuit conflict will not resolve without this Court's intervention. The Ninth Circuit rejected the BIA's position shortly after *Mendoza-Hernandez* was decided. *Lopez*, 925 F.3d at 402. The Seventh and Eleventh Circuits then reached the same conclusion. Pp. 14-16, *supra*. The Sixth Circuit's contrary decision expressly considered, and rejected, the

Ninth Circuit's reasoning, *Garcia-Romo*, 940 F.3d at 203-04, joining the Fifth Circuit in accepting the BIA's decision. Pp. 17-18, *supra*. Thus, in order for this circuit conflict to resolve, at least two courts of appeals would have to reverse their own, published decisions.

The likelihood that the circuit conflict would resolve is particularly unlikely given the depth of the disagreement on the question presented. The proper interpretation of section 1229(a) so deeply divided the agency that it led to the first en banc BIA decision in a decade—a decision that ultimately turned on the votes of two of its fifteen Members. There has also been disagreement within both the Ninth and Sixth Circuits, with Judge Callahan dissenting from the Ninth Circuit's decision in *Lopez*, *see* 925 F.3d at 405-10, and a subsequent Sixth Circuit panel criticizing *Garcia-Romo* and explicitly calling for this Court's review, *Dable*, 2019 WL 6824856, at *4 n.6. Given this disagreement, it is practically inevitable that this Court will, at some point, have to resolve the question presented in this case.

3. Prompt review of the question presented is vital given the frequency with which it arises and its importance when it does arise. In *any* case in which the government follows its multi-step notice practice, the question presented will determine cancellation eligibility so long as the cancellation applicant has no disqualifying criminal convictions and, absent the stop-time rule, satisfies the applicable ten- or seven-year presence or residence requirement. And, in recent years, the government has almost *never* provided any notice document that itself complies with section 1229(a). *Pereira*, 138 S. Ct. at 2111. Thus, even

the government has recognized that the question presented in this case "has profound ramifications for thousands of immigration cases." Pet. For Reh'g at 1, *Lopez v. Barr*, 925 F.3d 396 (9th Cir. 2019) (No. 15-72406). Prompt resolution of a circuit conflict that impacts so many cases is vital to prevent deep unfairness and prevent significant confusion concerning individuals' cancellation eligibility.

Moreover, when the question presented does determine cancellation eligibility, it will often determine whether families with U.S.-citizen spouses and children can remain intact. The immigrants affected by this rule are those who could obtain cancellation on the merits, if only they were found eligible—permanent residents who have made positive contributions to their community, and longtime non-permanent residents with good records, good character, and a spouse, parent, or child who is a citizen or lawful permanent resident. 8 U.S.C. § 1229b(a), (b)(1). By definition, rendering ineligible a non-permanent resident who would otherwise qualify would work "exceptional and extremely unusual hardship"—on children separated from a parent, on a husband or wife separated from a spouse. *Id.* § 1229b(b)(1)(D).

Only this Court can resolve the conflict on this frequently-recurring issue and prevent the conflicting circuit decisions from separating families arbitrarily—and erroneously.

4. The question this Court is currently considering in *Barton v. Barr*, No. 18-725, is unrelated to the question presented in this case, and provides no reason to delay review of the independent and vitally important question presented here. *Barton* concerns

a criminal bar to cancellation of removal, not its durational requirements. The question presented here warrants prompt review regardless how this Court decides *Barton*.

II. Certiorari is particularly important because the BIA majority's interpretation is wrong.

The circuit conflict at issue in this case is particularly pernicious because section 1229(a)'s text and history so plainly require a specific notice *document*. Moreover, the agency's decision was not a reasonable one—among other things, the BIA departed from its own prior recognition that section 1229(a) *does* require a single notice document without *any* meaningful explanation.

A. Section 1229(a)'s text and history unambiguously require a specific notice document, not service of the listed information however and whenever the government chooses.

The BIA majority's conclusion that the government's multi-step notice process is "in accordance with" section 1229(a)'s requirements is not a permissible interpretation of the statute, read using "traditional tools of statutory construction," *Chevron USA, Inc. v. Nat. Res. Defense Council, Inc.*, 467 U.S. 837, 842-43 & n.9 (1984), such as the statute's "text, structure, history, and purpose," *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019). The BIA's decision ignores the statute's text and flies in the face of Congressional amendments explicitly rejecting the very multi-step notice process the BIA endorsed.

1. As this Court held in *Pereira*, section 1229(a) uses "quintessential definitional language" to define what "a 'notice to appear'" *is*. *Pereira*, 138 S. Ct. at 2116. "[*A*] 'notice to appear'" is "written notice … specifying" the seven pieces of information listed in the statute, including, for instance, the "charges against the alien," the "acts or conduct alleged to be in violation of law," the "time and place at which" to appear to defend against those charges, and the right to be represented by counsel. 8 U.S.C. § 1229(a)(1) (emphasis added). Notice that does not provide the required information does not meet section 1229(a)'s definition, is not "in accordance with" section 1229(a), and does not trigger the stop-time rule.

Nothing in the statute suggests that different notices, served at different times, and even by different government agencies, can combine to create "*a* 'notice to appear.'" The statute does not simply state that the government shall provide written notice of the specified information. Nor does it state that "a 'notice to appear' is 'complete' when it specifies" the last piece of required information. *Pereira*, 138 S. Ct. at 2116. Instead, the statute uses "quintessential definitional language" to create a specific, singular statutory term—"*a* 'notice to appear'"—and *defines* that term as "written notice … specifying" the required information. Because "the use of the singular indicates that service of a single document—not multiple—triggers the stop-time rule," *Lopez*, 925 F.3d at 402, the "statute contains no ambiguity or gap that would permit a 'combination' approach to trigger the stop time rule," *Mendoza-Hernandez*, 27 I. & N. Dec. at 539 (Guendelsberger, Board Member, dissenting).

2. The history of section 1229(a) removes any possible doubt that the singular nature of the phrase "a 'notice to appear'" was intentional, identifying a specific notice document not a collection of information that the government can provide over as many documents, and as much time, as it chooses.

As discussed, pp. 8-10, *supra*, prior to 1996, what were then called deportation proceedings were initiated with "an 'order to show cause.'" 8 U.S.C. § 1252b(a)(1) (1994). The pre-1996 statute defined "an 'order to show cause'" in almost the exact same way that section 1229(a) currently defines "a 'notice to appear.'" The difference, however, was that the definition of "an 'order to show cause'" did *not* require notice of the "time and place" of proceedings; that information could be provided "in the order to show cause *or otherwise*." 8 U.S.C. § 1252b(a)(2)(A) (1994) (emphasis added).

The fact that the pre-1996 statute specified that the time-and-place information could be provided *either* "in the order to show cause" itself "or otherwise" plainly demonstrates that the "order to show cause" was a *single document*. After all, if the information in the "order to show cause" definition could be provided in as many different notices as the government chose, then the distinction between providing the time-and-place information "in the order to show cause" and providing that information in an "other[]" document would have been meaningless. The pre-1996 statute therefore plainly authorized *either* a one- or two-step notice process, but it did *not* authorize dividing "an 'order to show cause'" itself into multiple pieces.

Congress's 1996 amendments to the statute in IIRIRA—which moved the time-and-place information from an *optional* part of the "order to show cause" to a *required* part of the "notice to appear"—plainly rejected the two-step process and required a one-step process. First, given that "an 'order to show cause'" was a single document, and that section 1229(a) uses the same definitional structure as the pre-IIRIRA provision, a "notice to appear" must necessarily be a single notice document as well. Second, interpreting "a 'notice to appear'" to mean simply a collection of information would render meaningless IIRIRA's amendments making time-and-place information a required, not optional, part of the "notice to appear"—under the BIA's interpretation, that amendment did not change the government's service requirements *at all*. Unsurprisingly, then, in post-IIRIRA regulatory preambles, the government itself recognized that IIRIRA changed the statute to require a single notice document. Pp. 9-10, *supra*.

Notably, the *only* decisions to actually engage with this history have correctly understood it to require interpreting section 1229(a) as defining a single notice document. *Ortiz-Santiago*, 924 F.3d at 962; *Mendoza-Hernandez*, 27 I. & N. Dec. at 539 (Guendelsberger, Board Member, dissenting). Despite the prominent role this history played in the BIA dissent and Seventh Circuit decisions, *not one* of the opinions that have interpreted "a 'notice to appear'" to allow for a multi-step notice process—including even the BIA majority in *Mendoza-Hernandez*—has *even tried* to reconcile its interpretation with this history.

3. Rather than acknowledge section 1229(a)'s origins or engage with its text, the BIA majority in

Mendoza-Hernandez focused almost entirely on what it conceived to be section 1229(a)'s "fundamental purpose": to "create[] a reasonable expectation of the alien's appearance at the removal proceeding." *Mendoza-Hernandez*, 27 I. & N. Dec. at 531. But if *Pereira* stands for anything, it is that the agency cannot ignore Congress's instructions in favor of the agency's own conception of the statute's purpose—*i.e.*, the agency cannot substitute its own belief as to how the statute *should* work for how the statute *does* work.

Moreover, the BIA's conception of section 1229(a)'s "fundamental purpose" is transparently incomplete. Ensuring appearance is certainly *one* "essential function" of a "notice to appear." *Pereira*, 138 S. Ct. at 2115. But if that were its *only* purpose then its requirements would begin and end with telling an immigrant when and where to appear. The fact that the statute *also* requires information about the charges being brought and the nature of the proceeding shows that the purpose of "a 'notice to appear'" is not just to ensure *any* appearance, but a *meaningful* appearance in which a noncitizen can defend herself.

As to *that* purpose, the BIA majority's multi-step approach is deeply flawed. Because the information required by section 1229(a) all relates to the institution of a single removal proceeding, it only makes sense when it is received *together*. Allowing the government to serve that information in different notices, at vastly different times, will frustrate, not promote, noncitizens' appearance at and the efficiency of removal proceedings.

Concern about notices separated over time is not merely hypothetical. In both *Camarillo* and *Pereira*, the government initially served a putative notice to

appear that lacked time-and-place information, and then did *nothing* for *more than a year* (more than two years in *Camarillo*). *Pereira*, 138 S. Ct. at 2112; *Camarillo*, 25 I. & N. Dec. at 644-45 & n.1. The government then sent a notice document that provided *only* the time and place of a required appearance, without tying the required appearance to the prior charges. A noncitizen receiving a notice instructing her to appear in immigration court at a specific place and time would not necessarily connect that instruction to charges served more than a year earlier.

Indeed, the BIA's decision would allow for notice processes that are far more confusing even than that. For instance, it would allow the government to provide every noncitizen entering the country with a written overview of removal proceedings—including the fact that those in removal proceedings have a right to counsel, must provide the Attorney General with their address and telephone number, and suffer certain consequences if they do not appear at their proceedings, *see* 8 U.S.C. § 1229(a)(1)(E), (F)(i), (G)(ii)—and then omit that critical information from the notice it provides years later at the outset of an actual removal proceeding. That is plainly not what section 1229(a) envisions.

The multi-step notice practice also conflicts with the precise concern Congress identified when rejecting the two-step notice process in IIRIRA: avoiding disputes about proper service of multiple notice documents. H.R. Rep. No. 104-469, pt. I, at 122, 159; *see also Mendoza-Hernandez*, 27 I. & N. Dec. at 539 (Guendelsberger, Board Member, dissenting). This, too, is no hypothetical. In *Pereira*, for instance, though the government properly served the initial

notice (which lacked the time-and-place information), it mailed the subsequent hearing notice to the wrong address. 138 S. Ct. at 2112.

4. Unlike the BIA majority, the Sixth Circuit in *Garcia-Romo* did engage with the statute's text—though not its history. But, as a subsequent Sixth Circuit panel recognized, the court's "scant textual analysis" was deeply flawed. *Dable*, 2019 WL 6824856, at *4 n.6.

The Court's analysis turned almost entirely on two colloquial examples: a student submitting "a paper" by sending the introduction and body of the paper first, and sending a conclusion later; and a writer providing a publisher with "a book" by sending chapters sequentially. 940 F.3d at 201. According to the court, these examples show that "the use of the indefinite article 'a' before a word that describes written communication does not necessarily mean that delivery of the message must be in one transmission." *Id.*

Even on its own, colloquial terms, this analysis is questionable at best. No student required to submit "a paper"—where that phrase is defined to require an introduction, a body, and a conclusion—would think that the professor envisioned students submitting three separate documents, at different times, each with a different section of his or her paper. The Sixth Circuit effectively admitted as much, describing a student who "neglects" to submit a conclusion and only later "discovers" that it was missing. *Id.* A professor confronting such a neglectful student might not penalize the student for failing to submit the paper "in accordance with" her requirements. But, under *Pereira*, the statute is not so forgiving. If a pur-

ported "notice to appear" is not "in accordance with" section 1229(a), it does not trigger the stop time rule; there is no provision for curing defects. 138 S. Ct. at 2117. Congress's instruction that the government serve "*a* 'notice to appear'" plainly envisions service of a single notice, just as a professor's assignment of "a paper" plainly envisions students submitting a single document.

Moreover, even if the Sixth Circuit were right that in certain, colloquial contexts the word "a" before a written document could actually encompass multiple documents, that does not mean that such a reading would be permissible in this context. *Pereira*, 138 S. Ct. at 2117. There are numerous examples, even just in court rules, of documents that must contain certain information that plainly cannot be provided seriatim. For instance, this Court's Rule 24 requires that "[a] brief" include the information specified in paragraphs (a) through (j). No party could reasonably read this rule to allow the submission of each piece of required information in a separate document filed at a different time. The singular nature of the notice required by section 1229(a) is even clearer given the "quintessential definitional language" Congress used to define the singular term "a 'notice to appear.'" *Pereira*, 138 S. Ct. at 2116.

B. The agency's interpretation is not a reasonable one.

1. The BIA's decision in *Mendoza-Hernandez* also departs from the agency's prior position without adequate explanation. *See Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (agency position is "unlawful and receives no *Chevron* deference"

if it rests on an "unexplained inconsistency in agency policy").

Before *Pereira*, the BIA had rejected the argument that multiple documents could be considered together in analyzing whether the government had served "a 'notice to appear.'" For instance, in *Camarillo*, the BIA wrote that "[n]o authority … supports the contention that a notice of hearing issued by the Immigration Court is a constituent part of a notice to appear[.]" 25 I. & N. Dec. at 648. The BIA made the same point in *Ordaz*, concluding that "[t]he statute affords 'stop-time' effect to a *single instrument*—the notice to appear that is the subject of proceedings in which cancellation of removal is sought." 26 I. & N. Dec. at 640 n.3 (emphasis added).

The BIA majority in *Mendoza-Hernandez* recognized these holdings, but barely tried to justify its reversal. In a footnote, it characterized its prior decisions as "flawed" because, while a "*notice of hearing is not part of the notice to appear*," it is a "separate notice, served in conjunction with the notice to appear, that satisfies the requirements of section [1229(a)(1)(G)]." 27 I. & N. Dec. at 525 n.8 (emphasis added). If anything, this statement *undermines* the BIA's position, as it recognizes that a notice of hearing is *not* part of the notice to appear. Such an unjustified about-face is inherently unreasonable. *Encino Motorcars*, 136 S. Ct. at 2126.

2. The BIA's position is also not reasonable even putting aside its change of position. Not only does it conflict with the statute's text and history, pp. 26-33, *supra*, it is, like its prior decision in *Camarillo*, a barely-disguised attempt to find a way for the government to avoid the stop-time consequences of its

refusal to adhere to Congress's decision to jettison the two-step notice process. Rather than engage with the statute's text or history, the BIA majority—like the *Camarillo* panel—simply made up a statutory "purpose" that allowed the government to follow its extra-statutory regulation requiring time-and-place information in a "notice to appear" only "when practicable," 8 C.F.R. § 1003.18(b), without suffering any stop-time consequences. *Mendoza-Hernandez*, 27 I. & N. Dec. at 532; *Camarillo*, 25 I. & N. Dec. at 648. It is plainly not reasonable for an agency to twist the *statute's* language to allow the government to comply with a *regulation* that conflicts with the statute itself—making optional what the statute makes mandatory.

III. This case is an ideal vehicle to resolve the circuit conflict.

1. Throughout his removal proceedings, Mr. Niz-Chavez has preserved his argument that he is eligible for cancellation of removal. He tried to apply for cancellation before the IJ, but was forced to recognize, based on then-governing BIA and Sixth Circuit precedent, that the putative "Notice to Appear" he received in March 2013 triggered the stop-time rule even though it did not include the time and place at which he was required to appear. Pet. App. 42a; *Camarillo*, 25 I. & N. Dec. at 647; *Gonzales-Garcia*, 770 F.3d at 435.

This Court decided *Pereira* while Mr. Niz-Chavez's appeal was pending before the BIA. After this Court's decision, Mr. Niz-Chavez asked the BIA to remand to the IJ, arguing that he is, in fact, eligible for cancellation of removal under this Court's deci-

sion. Pet. App. 4a. The BIA denied that motion based on its conclusion that the combination of the putative "Notice to Appear" and subsequent hearing notice together constitute "a 'notice to appear'" in accordance with section 1229(a). Pet. App. 22a.[10] Mr. Niz-Chavez challenged this decision before the Sixth Circuit, which denied his petition for review on this issue entirely because the Sixth Circuit had adopted the BIA's approach in *Garcia-Romo*. Pet. App. 14a-15a.

2. The question whether the combination of the putative "Notice to Appear" and a subsequent hearing notice collectively constitute "a 'notice to appear'" that is in accordance with section 1229(a) is dispositive of Mr. Niz-Chavez's eligibility for cancellation of removal. It is undisputed that Mr. Niz-Chavez never received any single notice document that complies with section 1229(a)'s requirements. It is similarly undisputed that Mr. Niz-Chavez has three U.S. citizen children. *See id.* § 1229b(b)(1)(D); Pet. App. 3a. Mr. Niz-Chavez is a devoted father, and his removal would undoubtedly cause his children "exceptional and unusual hardship." *Id.* Mr. Niz-Chavez has no disqualifying criminal convictions under § 1229b(b)(1)(C)—indeed, he has no meaningful criminal history at all—and can demonstrate "good moral character," *see id.* § 1229(b)(1)(B).

3. Mr. Niz-Chavez has a strong case that the Attorney General should cancel his removal. Mr. Niz-

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[10] The BIA also wrote that Mr. Niz-Chavez "did not seek cancellation of removal before the Immigration Judge." Pet. App. 22a. That is simply not true—Mr. Niz-Chavez *did* seek to apply for cancellation, but was forced to recognize that his application was barred by then-controlling precedent. Pet. App. 42a.

Chavez is the breadwinner for his family, including his three U.S.-citizen children, who are one, five and six years old. Pet. App. 3a. His one-year-old daughter was born two months prematurely, spent months in the neonatal intensive care unit, and still requires significant respiratory support and regular medical attention.[11] His five-year-old daughter suffers from an eye muscle problem called Brown's Syndrome, as well as speech and language delays, for which she is receiving assistance through the Matrix Head Start program in Detroit. A.R. 36-37. Mr. Niz-Chavez could introduce significantly more evidence if granted the opportunity to apply for cancellation.

* * * * *

Had Mr. Niz-Chavez been brought into immigration court in Chicago, rather than Detroit, he could apply for cancellation of removal, and likely remain in the United States with his family. This Court should not allow such geographic happenstance to determine the fate of his family and families across the country.

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[11] Mr. Niz-Chavez's youngest daughter was born after the agency proceedings were complete, but evidence of her birth and medical issues are in the Sixth Circuit record. Niz-Chavez C.A. Mot. for Stay of Removal 4-5 & Ex. B.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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