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SUPREME COURT OF THE UNITED STATES

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PEREIRA *v.* SESSIONS, ATTORNEY GENERALCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

No. 17–459. Argued April 23, 2018—Decided June 21, 2018

Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), nonpermanent residents who are subject to removal proceedings may be eligible for cancellation of removal if, among other things, they have “been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of [an] application” for cancellation. 8 U. S. C. §1229(b)(1)(A). Under the stop-time rule, however, the period of continuous presence is “deemed to end . . . when the alien is served a notice to appear under section 1229(a).” §1229(d)(1)(A). Section 1229(a), in turn, provides that the Government shall serve noncitizens in removal proceedings with a written “notice to appear,” specifying, among other things, “[t]he time and place at which the [removal] proceedings will be held.” §1229(a)(1)(G)(i). Per a 1997 regulation stating that a “notice to appear” served on a noncitizen need only provide “the time, place and date of the initial removal hearing, where practicable,” 62 Fed. Reg. 10332, the Department of Homeland Security (DHS), at least in recent years, almost always serves noncitizens with notices that fail to specify the time, place, or date of initial removal hearings whenever the agency deems it impracticable to include such information. The Board of Immigration Appeals (BIA) has held that such notices trigger the stop-time rule even if they do not specify the time and date of the removal proceedings.

Petitioner Wesley Fonseca Pereira is a native and citizen of Brazil who came to the United States in 2000 and remained after his visa expired. Following a 2006 arrest for operating a vehicle while under the influence of alcohol, DHS served Pereira with a document titled “notice to appear” that did not specify the date and time of his initial

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removal hearing, instead ordering him to appear at a time and date to be set in the future. More than a year later, in 2007, the Immigration Court mailed Pereira a more specific notice setting the date and time for his initial hearing, but the notice was sent to the wrong address and was returned as undeliverable. As a result, Pereira failed to appear, and the Immigration Court ordered him removed in absentia.

In 2013, Pereira was arrested for a minor motor vehicle violation and detained by DHS. The Immigration Court reopened the removal proceedings after Pereira demonstrated that he never received the 2007 notice. Pereira then applied for cancellation of removal, arguing that he had been continuously present in the United States for more than 10 years and that the stop-time rule was not triggered by DHS' initial 2006 notice because the document lacked information about the time and date of his removal hearing. The Immigration Court disagreed and ordered Pereira removed. The BIA agreed with the Immigration Court that the 2006 notice triggered the stop-time rule, even though it failed to specify the time and date of Pereira's initial removal hearing. The Court of Appeals for the First Circuit denied Pereira's petition for review of the BIA's order. Applying the framework set forth in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, it held that the stop-time rule is ambiguous and that the BIA's interpretation of the rule was a permissible reading of the statute.

Held: A putative notice to appear that fails to designate the specific time or place of the noncitizen's removal proceedings is not a "notice to appear under §1229(a)," and so does not trigger the stop-time rule. Pp. 7–20.

(a) The Court need not resort to *Chevron* deference, for the unambiguous statutory text alone is enough to resolve this case. Under the stop-time rule, "any period of . . . continuous physical presence" is "deemed to end . . . when the alien is served a notice to appear under section 1229(a)." 8 U. S. C. §1229b(d)(1). By expressly referencing §1229(a), the statute specifies where to look to find out what "notice to appear" means. Section 1229(a), in turn, clarifies that the type of notice "referred to as a 'notice to appear'" throughout the statutory section is a "written notice . . . specifying," as relevant here, "[t]he time and place at which the [removal] proceedings will be held." §1229(a)(1)(G)(i). Thus, to trigger the stop-time rule, the Government must serve a notice to appear that, at the very least, "specif[ies]" the "time and place" of the removal hearing.

The Government and dissent point out that the stop-time rule refers broadly to a notice to appear under "§1229(a)"—which includes paragraph (1), as well as paragraphs (2) and (3). But that does not

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matter, because only paragraph (1) bears on the meaning of a “notice to appear.” If anything, paragraph (2), which allows for a “change or postponement” of the proceedings to a “new time and place,” §1229(a)(2)(A)(i), bolsters the Court’s interpretation of the statute because the provision presumes that the Government has already served a “notice to appear” that specified a time and place as required by §1229(a)(1)(G)(i). Another neighboring provision, §1229(b)(1), lends further support for the view that a “notice to appear” must specify the time and place of removal proceedings to trigger the stop-time rule. Section 1229(b)(1) gives a noncitizen “the opportunity to secure counsel before the first [removal] hearing date” by mandating that such “hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear.” For that provision to have any meaning, the “notice to appear” must specify the time and place that the noncitizen, and his counsel, must appear at the removal proceedings. Finally, common sense reinforces the conclusion that a notice that does not specify when and where to appear for a removal proceeding is not a “notice to appear” that triggers the stop-time rule. After all, an essential function of a “notice to appear” is to provide noncitizens “notice” of the information (*i.e.*, the “time” and “place”) that would enable them “to appear” at the removal hearing in the first place. Without conveying such information, the Government cannot reasonably expect noncitizens to appear for their removal proceedings. Pp. 7–13.

(b) The Government and the dissent advance a litany of counterarguments, all of which are unpersuasive. To begin, the Government mistakenly argues that §1229(a) is not definitional. That is wrong. Section 1229(a) speaks in definitional terms, requiring that a notice to appear specify, among other things, the “time and place at which the proceedings will be held.” As such, the dissent is misguided in arguing that a defective notice to appear, which fails to specify time-and-place information, is still a notice to appear for purposes of the stop-time rule. Equally unavailing is the Government’s (and the dissent’s) attempt to generate ambiguity in the statute based on the word “under.” In light of the plain language and statutory context, the word “under,” as used in the stop-time rule, clearly means “in accordance with” or “according to” because it connects the stop-time trigger in §1229b(d)(1) to a “notice to appear” that specifies the enumerated time-and-place information. The Government fares no better in arguing that surrounding statutory provisions reinforce its preferred reading of the stop-time rule, as none of those provisions supports its atextual interpretation. Unable to root its reading in the statutory text, the Government and dissent raise a number of practical concerns, but those concerns are meritless and do not justify de-

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parting from the statute's clear text. In a final attempt to salvage its atextual interpretation, the Government turns to the alleged statutory purpose and legislative history of the stop-time rule. Even for those who consider statutory purpose and legislative history, however, neither supports the Government's position. Requiring the Government to furnish time-and-place information in a notice to appear is entirely consistent with Congress' stated objective of preventing noncitizens from exploiting administrative delays to accumulate lengthier periods of continuous precedent. Pp. 13–20.

866 F. 3d 1, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, BREYER, KAGAN, and GORSUCH, JJ., joined. KENNEDY, J., filed a concurring opinion. ALITO, J., filed a dissenting opinion.

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 17–459

**WESCLEY FONSECA PEREIRA, PETITIONER *v.*
JEFFERSON B. SESSIONS, III, ATTORNEY GENERAL**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT**

[June 21, 2018]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Nonpermanent residents, like petitioner here, who are subject to removal proceedings and have accrued 10 years of continuous physical presence in the United States, may be eligible for a form of discretionary relief known as cancellation of removal. 8 U. S. C. §1229b(b)(1). Under the so-called “stop-time rule” set forth in §1229b(d)(1)(A), however, that period of continuous physical presence is “deemed to end . . . when the alien is served a notice to appear under section 1229(a).” Section 1229(a), in turn, provides that the Government shall serve noncitizens in removal proceedings with “written notice (in this section referred to as a ‘notice to appear’) . . . specifying” several required pieces of information, including “[t]he time and place at which the [removal] proceedings will be held.” §1229(a)(1)(G)(i).¹

The narrow question in this case lies at the intersection

¹The Court uses the term “noncitizen” throughout this opinion to refer to any person who is not a citizen or national of the United States. See 8 U. S. C. §1101(a)(3).

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