US Supreme Court

Case: *Niz-Chavez v. Garland*, US 2021 (Slip Op)
Date: April 29, 2021
Votes: 6-3 (Gorsuch, Barrett, Breyer, Sotomayor, Kagan, Thomas) / (Kavanaugh, Roberts, Alito)

Opinion: Gorsuch **Dissent:** Kavanaugh (with Alito & C.J. Roberts)

Tags: Immigration, IIRIRA, deferred removal, stop-time rule, NTA, plain language, "a"

Question(s) Presented: Does the IIRIRA tolerate the government's preferred practice of providing information to immigrants on separate mailings spread out over time?

Procedural History:
- **6th Circuit:** for the government.
- **Circuit Split** as to whether gov't is allowed to split up the NTA.

Holdings: Reversed. "A" means "a": a single NTA with all the info.

Rationale: "As written, . . . the statute allows the government to invoke the stop-time rule only if it furnishes the alien with a single complaint document explaining what it intends to do and when." Slip op., at 14.

Facts: DHS sent Niz-Chavez one charging document, then two months later a document with the time and place of his hearing. First document isn't enough to trigger stop-time rule under *Pereira*.

Attorneys' Arguments:
- Government:
  - NTAs without time and place are sufficient to trigger the stop-time rule.
  - "If it waited to issue notices until the calendars of its hearing officers became clear, aliens would accrue too much time toward the presence requirement." Slip op., at 3.
  - Statute defines "notice to appear" as "written notice," "which could come by means of one document or many." Slip op., at 5.
  - Also, "a" could designate something that could be prepared in parts.

Appeals to Statute & Precedent:
- **IIRIRA (1996):** Deferred removal; stop-time rule
- ***In re Cisneros-Gonzales*, 23 I. & N. Dec. 668 (BIA 2004):** stopping the clock on 10-year rule
- ***Pereira v. Sessions*, 585 U.S. ___ (2018):** NTA has to have time, date, and place on it.

Relevant U.S. History:

- **Removability:** at the discretion of AG & other executive officials.
  - Establish eligibility:
    - Removal would cause "exceptional and extremely unusual hardship" to close relatives who are U.S. citizens or LPRs
    - Good moral character
    - No convictions of certain crimes
    - Continuously present for 10 years. **8 U.S.C. §1229b(b)(1)**
  - Stop-time rule: the NTA **8 U.S.C. §1229b(d)(1)**
    - "any period of continuous . . . presence in the U.S. shall be deemed to end . . . when the alien is served a notice to appear."
  - **Notice To Appear:**
    - Written notice with nature of proceedings, legal authority, charges, right to counsel, time and place, consequences of failing to appear. **8 U.S.C. §1229(a)(1)**

Discussion:

"At first blush, a notice to appear might seem to be just that—a single document containing all the information an individual needs to know about his removal hearing." (Slip op., at 1)

"All of which invites the question: What qualifies as a notice to appear sufficient to trigger the stop-time rule?" Slip op., at 2

"This seemingly simple rule has generated outsized controversy." Slip op., at 2

"Today's case represents the next chapter in the same story. Perhaps the government could have responded to *Pereira* by issuing notices to appear with all the information §1229(a)(1) requires—and then amending the time or place information if circumstances required it. After all, in the very next statutory subsection, §1229(a)(2), Congress expressly contemplated that possibility. But, at least in cases like ours, it seems the government has chosen instead to continue down the same old path." Slip op., at 3.

"The government says it needs this kind of flexibility to send information piecemeal." Slip op., at 3.

"To trigger the stop-time rule, the government must serve 'a' notice containing all the information Congress has specified. To an ordinary reader—both in 1996 and today—'a' notice would seem to suggest just that: 'a" single document containing the required information, not a mishmash of pieces with some assembly required." Slip op., at 5.

Re. gov't's argument that "written notice" could be one document or many:
"Section 1229(a)(1) says that 'written notice' is 'referred to as a "notice to appear."' The singular article 'a' thus falls outside the defined term ('notice to appear') and modifies the entire definition. So even if we were to do exactly as the government suggests and substitute 'written notice' for 'notice to appear,'

the law would still stubbornly require 'a' written notice containing all the required information." Slip op., at 5.

"Admittedly, a lot here turns on a small word. In the view of some, too much." Slip op., at 5.

Re. Gov't's contention that "a" NTA could be prepared in parts:
"The trouble with this response is that everyone admits language doesn't always work this way. To build on an illustration we used in *Pereira*, someone who agrees to buy 'a car' would hardly expect to receive the chassis today, wheels next week, and an engine to follow. At best, then, all of the competing examples the government and dissent supply do no more than demonstrate context matters. And here at least, it tuns out that context does little to alter first impressions." Slip op., at 6.

"a" is used for countable nouns (we don't say "a cowardice").
"Congress's decision to use the indefinite article 'a' thus supplies some evidence that it used the term in the first of these sense—as a discrete, countable thing. All of which suggests that the government must issue a single statutorily compliant document to trigger the stop-time rule." Slip op., at 7.

"Of course, this is just a clue. Sometimes Congress's statutes stray a good way from ordinary English." Slip op. at 7

Hypo:
Robbing "a" bank (robbing 5 banks? Robbing a bank construction site?)

IIRIRA's statutory structure & history:
Evidence of single document

Section 1229(e)(1)'s discussion about what must be included in a notice to appear resides just a couple doors down from the provisions at issue before us, and it seems pretty clearly to modify those provisions in certain special circumstances." Slip op., at 10.

"A rational Congress easily could have thought that measuring an alien's period of residence against the service date of a discrete document was preferable to trying to measure it against a constellation of moving pieces." Slip op., at 11-12.

Govt's own rules about the NTA presuppose a single notice to appear: "we mention it only to observe that even the party now urging otherwise once read the statute just as we do. To the extent that dissent accuses us of being 'literalists,' it seems the literalists once infiltrated the Executive Branch too." Slip op., at 12.

"when interpreting this or any statute, we do not aim for 'literal' interpretations, but neither do we seek to indulge efforts to endow the Executive Branch with maximum bureaucratic flexibility." Slip op., at 12.

"To state the theory may be enough to explain why the government declines to press it." Slip op. at 11 n.4.

"Ultimately, the government is forced to abandon any pretense of interpreting the statute's terms and retreat to policy arguments and pleas for deference." Slip op., at 13.

"even viewed in isolation the government's policy arguments are hardly unassailable. If the government finds filling out forms a chore, it has good company. The world is awash in forms, and rarely do agencies afford individuals the same latitude in completing them that the government seeks for itself today." Slip op., at 13.

"At one level, today's dispute may seem semantic, focused on a single word, a small one at that. But words are how the law constrains power. In this case, the law's terms ensure that, when the federal government seeks a procedural advantage against an individual, it will at least supply him with a single and reasonably comprehensive statement of the nature of the proceedings against him. If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them." Slip op., at 16.

Dissent: Kavanaugh