

Third Circuit Court

Case: *Nkomo v. A.G.*, 930 F.3d 129 (3d Cir. 2019)

Date: April 1, 2019

Panel: Chagares, Hardiman, Siler

Opinion: Hardiman

Dissents:

Tags: Immigration, jurisdiction, IJ, defective NTA

Question(s) Presented: Does a defective NTA deprive an IJ of jurisdiction over the removal proceedings?

Holdings: No, a defective NTA does not affect an IJ's jurisdiction.

Rationale: No mention of jurisdiction in the NTA statute, and “we do not believe *Pereira*'s interpretation of ‘notice to appear’ implicates the IJ's authority to adjudicate.” 134

Facts: LPR and citizen of Zimbabwe convicted in 2017 of conspiracy to commit wire fraud, an aggravated felony/particularly serious crime [WH]. Removable and ineligible for most relief.

Appeals to Statute & Precedent:

- ***Pereira v. Sessions*, 138 S. Ct. 2105 (2018):** An NTA that lacks date/time/place is not an NTA for purposes of the stop-time rule in cancellation cases.
- **8 U.S.C. § 1229a:** NTA statute
- **8 U.S.C. § 1229b(b)(1):** cancellation of removal statute with stop-time rule (5 years for LPR, 10 for non-LPR)

Discussion:

- “The argument Nkomo makes here has been made to seven of our sister courts in the past two years and it has been rejected each time.” 133
- “*First*, unlike the stop-time rule, which is explicitly tied to the list of elements in § 1229(a), . . . the jurisdiction-vesting regulation upon which Nkomo relies does not cross-reference that section.” 133
- “*Second*, *Pereira* did not purport to resolve issues beyond the § 1229b(d)(1)(A) stop-time rule context, and the Supreme Court repeatedly emphasized the narrowness of its holding.” 133
- **DISTINCTION:** “Filing a notice to appear commences removal proceedings—and serving it stops the accrual of time for an alien's ‘ten years of continuous presence’ if it complies with § 1229(a). By contrast, reopening and remand are available only when proceedings before the IJ [134] have been completed.” [\[note: also post-conclusion voluntary departure, § 1229c\]](#)
- NTA is not just a charging document—it also informs noncitizen about their hearing.