

University of Texas School of Law
CLE
Immigration and Nationality Law Conference

November 2, 2023

Non-Compliant and Knotty NTAs
Simon M Azar-Farr

1

(a) Notice to appear

(1) In general

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**

2

Pereira v. Sessions, 138 S. Ct. 2105 (2018).

If the NTA omitted information as to the hearing's time and place, the DHS had not provided a statutorily compliant NTA, and the stop-time rule consequently did not apply

INA 240A, 8 U.S.C. 1229b(d)

(d) Special rules relating to continuous residence or physical presence

(1) Termination of continuous period

“For purposes of this section, 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”

This is known as the “Stop Time Rule”

The BIA's Reaction was swift:

1. Confining *Pereira* to its facts, refusing to apply it outside of the context of cancellation of removal
2. Concocting the rule that even in the cancelation context if the immigration court later sent a notice of hearing stating the date and time of proceedings, any defect in the NTA is "cured".
3. This is known as the "two-step method"

Niz-Chavez v. Garland, 141 S. Ct. 1474 (2021).

The Court held that the two-step approach violated § 239(a) because § 239(a) requires a singular notice containing all the specified information, including the time and place of the hearing. The stop-time rule could not be triggered by a noncompliant NTA even if that information was later supplied by an NOH.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Matter of Fernandes: Non-Compliant and Knotty NTAs

Also available as part of the eCourse

[2023 eConference on Immigration and Nationality Law](#)

First appeared as part of the conference materials for the
47th Annual Conference on Immigration and Nationality Law session
"*Matter of Fernandes*: Non-Compliant and Knotty NTAs"