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NON-DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICWE OF THE IMMIGRATION JUDGE
NEW YORK, NEW YORK

In the matter of:	)	File No: 3
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	)	
In Removal Proceedings	)	

Immigration Judge

Next Hearing: July 26, 2018

MOTION TO TERMINATE REMOVAL HEARING

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MOTION TO TERMINATE REMOVAL HEARINGS

Respondent, ı , through undersigned counsel, moves this Court to terminate the instant removal proceedings, pursuant to the Supreme Court's holding in Pereira v. Sessions, 585 U.S. ---, 2018 WL 3058276 (2018) that a putative notice to appear that fails to list the "time and place at which the proceedings will be held" is not valid within the meaning of 8 U.S.C. § 1229(a)(1).[1]

I. STATEMENT OF FACTS

Ms. ı received her conditional green card on February 21, 2015, based on her marriage to a U.S. citizen.[2] She and her husband sought to remove the conditions in early 2017 but her repeated attempts were unsuccessful, first because a signature was missing and second because they used an expired Form I-751.[3] They submitted a third Form I-751 on December 28, 2017, along with an explanation for the lateness, owing to the cost of the application and Ms. s depression.[4] On January 19, 2018, U.S. Citizenship and Immigration Services

[1] Pereira v. Sessions 585 U.S. ---, 2018 WL 3058276, at *2 (2018).
[2] Exhibit E: I-751 Cover Letter (Dec. 28, 2017).
[3] Exhibit D: Notices of Action (Mar. 3, 2017 and Apr. 4, 2017).
[4] Exhibit F: Explanatory Letter of , Submitted with I-751 (Dec. 28, 2017).

extended Mrs. s conditional resident status for a year.[5] On January 26, 2018, the U.S. Department of Homeland Security ("DHS") sent Mrs. ı a Form I-862 "notice to appear" ("NTA") stating that Mrs. ı did not file a petition to remove conditions between November 21, 2016 and February 21, 2017.[6] The notice ordered her to appear on a date "To be set" and at a time "To be set."[7] On March 16, 2018, the Executive Office of Immigration Review ("EOIR") sent Mrs. ı a "Notice of Hearing in Removal Proceedings" which specified the date and time of her hearing.[8]

II. ARGUMENT

The putative NTA sent to Mrs. ı by DHS was insufficient to initiate removal proceedings or establish this Court's jurisdiction over her.[9] Therefore, these proceedings must be terminated.

a. Jurisdiction Never Vested With this Court Because the Charging Document Was Not Served Pursuant to 8 U.S.C. § 1229

Jurisdiction does not vest in this Court until the government files a charging document with the Court and serves the charging document on the opposing party.[10] A charging document is "the written document which initiated a proceeding before an Immigration Judge."[11] In order to initiate removal proceedings, the government must serve the noncitizen with a written "notice

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[5] Exhibit B: Notice of Action (Jan. 19, 2018)
[6] Exhibit A: Notice to Appear (Jan. 26, 2018) ("Ex. A, NTA").
[7] Ex. A, NTA.
[8] Exhibit C: Notice of Hearing in Removal Proceedings (Mar. 16, 2018) ("Ex. C: NOH")
[9] Pereira v. Sessions 585 U.S. at *2 (2018).
[10] 8 C.F.R. § 1003.14(a).
[11] 8 C.F.R. § 1003.13. In proceedings such as this one, which were initiated after April 1, 1997, "charging documents" must be a Notice to Appear, a Notice of Referral to Immigration Judge, or a Notice of Intention to Rescind and Request for Hearing by Alien. Id.

to appear" containing, among other things, "The time and place at which the proceedings will be held."[12]

The Supreme Court held in Pereira v. Sessions that a so-called "notice to appear" which does not include the time or place of the hearing does not qualify as a notice to appear under 8 U.S.C. § 1229.[13] Mr. Pereira is a Brazilian citizen who stayed in the U.S. after his temporary visa expired.[14] He was later served with a document labeled "Notice to Appear," which said that the date and time of his hearing were both "to be set."[15] Over a year later, the Immigration Court attempted to send Mr. Pereira a more specific notice, which was returned as undeliverable.[16] Because Mr. Pereira never received the notice, he did not go to his hearing and was ordered removed *in absentia*.[17] The Immigration Court reopened Mr. Pereira's case after he had been living in the U.S. for over ten years.[18] Mr. Pereira applied for cancellation of removal, claiming that the "notice to appear" DHS had first served him did not initiate removal proceedings or trigger the "stop-time rule" because it did not include the time and date of his hearing.[19] The Supreme Court agreed with Mr. Pereira and held that "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)'..."[20]

Similarly, DHS served Mrs. with a document labeled "notice to appear" which did not specify the date and time at which she must go to court.[21] This document is not an NTA

[12] 8 U.S.C. § 1229(a)(1); 8 C.F.R. § 1239.1(a)
[13] Pereira v. Sessions, 585 U.S. at *2 (2018).
[14] Id. at *5.
[15] Id. at *6.
[16] Id.
[17] Id.
[18] Id.
[19] Id. at *6-7.
[20] Id. at *9.
[21] Ex. A, NTA.

under 8 U.S.C. § 1229(a).[22] The document she received and which was filed with the Court was insufficient to initiate removal proceedings against Mrs. .[23] Since no charging document to initiate removal proceedings has been served on Mrs. or filed in Immigration Court, this Court does not have jurisdiction over Mrs. .[24] The Court must therefore terminate the proceedings.[25]

b. The Holding in Pereira Is Not Limited to the Issue of the "Stop-Time Rule"

The holding in Pereira is two-fold. First, a document which does not list the time or location of removal proceedings is not a "notice to appear under section 1229(a)."[26] Second, because the "stop-time rule" is only triggered by a "notice to appear under section 1229(a)," a document without the time or location of the hearing cannot trigger the stop-time rule.[27] There is nothing to suggest that the Court's analysis of section 1229(a) applies only in relation to section 1229b(d)(1)(A) (the "stop-time rule"). Rather, the majority stresses that in order to give meaning to the words "notice to appear" in section 1229(a), the government must at least inform the noncitizen when and where he or she must appear.[28] If an NTA without a specified hearing date is defective under section 1229(a) and *therefore* does not trigger the stop time rule,[29] it is defective under section 1229(a) for all other contexts. Mrs. s putative "notice to appear" did not state when she needed to appear for her hearing,[30] and was therefore defective under

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[22] See Pereira, 585 U.S. at *9.
[23] See 8 U.S.C. § 1229(a)(1).
[24] See 8 C.F.R. §§ 1003.13, 1003.14(a).
[25] See 8 U.S.C. § 1229(a)(1); 8 C.F.R. § 1239.1; Matter of Castro-Tum, 27 I&N Dec. 271, 289 (A.G. 2018) (noting that it is proper to terminate removal proceedings where notice was deficient).
[26] Pereira, 585 U.S. at *2.
[27] Id. See 8 U.S.C. § 1229b(d)(1)(A).
[28] See Pereira, 585 U.S. at *12.
[29] See id. at *2.
[30] Ex. A, NTA.

section 1229(a).[31] Thus, it was insufficient to initiate removal proceedings[32] or vest this Court with jurisdiction over Mrs. .[33]

c. Jurisdiction Did Not Vest With this Court When it Sent Mrs. ı a Notice of Hearing Because Only DHS Can Serve a Charging Document

The notice of hearing that Mrs. ı received, specifying the time and date of her hearing, did not vest this Court with Jurisdiction over her because it was sent by the Immigration Court.[34] "Jurisdiction vests...when a charging document is filed with the Immigration Court *by the Service.*"[35] EOIR cannot serve the charging document to give itself jurisdiction over a case; rather, the document must be filed with the Immigration Court by DHS (formerly "the Service").[36] Furthermore, a "notice of hearing in removal proceedings" is not one of the charging documents that may initiate proceedings under 8 C.F.R. § 1003.13.[37] The notice of hearing therefore cannot the cure the deficient "notice to appear" filed by DHS.

The EOIR notice of hearing does not perfect DHS's notice to appear, as Guamanrrigra v. Holder, 670 F.3d 404 (2d Cir. 2012) seems to suggest. In Guamanrrigra, the Second Circuit held that "service of the May 2000 Notice of Hearing perfected the notice required by [8 U.S.C. § 1229(a)(1)]."[38] However, a Notice of Hearing sent by EOIR, not DHS, is insufficient to initiate removal proceedings under 8 C.F.R §§ 1003.13, 1003.14(a). In Pereira the Supreme Court makes clear that a notice to appear must include the time, date, and location of the hearing, and cannot

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[31] See Pereira, 585 U.S. at *2.
[32] See 8 C.F.R. § 1239.1.
[33] See 8 C.F.R. § 1003.14.
[34] 8 C.F.R. § 1003.14(a); Ex C: NOH.
[35] Id. (emphasis added).
[36] Id.
[37] 8 C.F.R. § 1003.13 ("For proceedings initiates after April 1, 1997, [charging] documents include a Notice to Appear, a Notice of Referral to Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien.")
[38] Guamanrrigra v. Holder, ,670 F.3d 404, 409 (2d Cir. 2012).

be split into separate notices.[39] The Supreme Court stated that permitting the government to serve a paper labeled "notice to appear" without the date and time, and later serving a paper with the specific date and time, would make the section 1229(b)(1) right to securing counsel meaningless.[40] A "notice to appear" under section 1229(a)(1) must therefore list the date and time, in order to give section 1229(b)(1) meaning.[41]

EOIR sent Mrs. a "Notice of Hearing in Removal Proceedings" on March 16, 2018, which specified the time and date of her hearing.[42] This document is not one of the "charging documents" listed in 8 C.F.R. § 1003.13, was not filed or served by DHS, and cannot cure the deficiencies in the putative "notice to appear" which she received on or about January 26, 2018.[43]

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[39] Pereira, 585 U.S. at *11.
[40] Id. (noting that in order to plan accordingly and secure counsel, a recipient must know when their hearing is).
[41] See id. ("After all, 'it is a normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning.' Taniguchi v. Kan Pacific, Ltd., 566 U.S. 560, 571 (2012)").
[42] Ex. C: NOH
[43] See Pereira, 585 U.S. at *9, *11.

III. CONCLUSION

Because the document served on Mrs. ı and filed with the Court did not satisfy the conditions laid out in 8 U.S.C. § 1229(a), it did not initiate removal proceedings or give this Court jurisdiction over Mrs. . These proceedings must therefore be terminated.

Dated: July 25, 2018
Bronx, New York

Respectfully submitted,

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ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Motion to Terminate Removal Hearing, it is HEREBY ORDERED that the motion be ☐ GRANTED ☐ DENIED because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per_____.
- ☐ Other:

Deadlines:

- ☐ The application(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics instructions by_____.

_____ _____
Date Judge ;
Immigration Judge

Certificate of Service

This document was served by: [ ] Mail [ ] Personal Service
To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Alien's Atty/Rep [ ] DHS

Date: _____ By: Court Staff_____

CERTIFICATE OF SERVICE

I, Terry D. Lawson, hereby certify that a copy of the foregoing Motion to Terminate Removal Hearing has been served upon the Office of the Chief Counsel electronically on July 25, 2018.

Date: July 25, 2018

By: _____

Terry D. Lawson
Director, Family and Immigration Unit
Bronx Legal Services