Justices' Removal Ruling Presents Hurdles, But Offers Clarity


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By **Devin Connolly** (June 27, 2024, 5:52 PM EDT)

On June 14, the U.S. Supreme Court delivered a landmark decision in the immigration-related case of *Campos-Chaves v. Garland*.[1] The central question was whether a notice to appear, or NTA, issued pursuant to Title 8 of the U.S. Code, Section 1229(a)(1), is legally valid even if it does not contain all the required information.

In a 5-4 decision, the court held that noncitizens can be ordered removed in absentia, even if their NTA does not provide adequate information — including the time or place of a removal hearing — so long as a subsequent notice with such information was sent and received.

This decision will have a detrimental impact on noncitizens residing in the U.S. by decreasing the requirements that must be met to properly initiate removal proceedings and greatly degrading the rights of such individuals who are actively trying, to the best of their ability, to comply with the U.S. legal system.

Effective immediately, legal practitioners and immigrants need to take extraordinary measures to ensure they are informed of, and comply with, any NTAs.

Key Facts of *Campos-Chaves v. Garland*

The case surrounds Moris Esmelis Campos-Chaves, a citizen of El Salvador who in 2005 entered the U.S. without inspection at Laredo, Texas. Shortly after entry, Campos-Chaves was served an NTA, which initiated removal proceedings and charged him with being removable from the U.S. under Title 8 of the U.S. Code, Section 1182(a)(6)(A)(i). The NTA specified the address of the immigration court where his hearing would be held, but also stated that the hearing would be held on "a date to be set" and at "a time to be set."

Several months later, Campos-Chaves was sent a second notice — a notice of hearing, or NOH, under Title 8 of the U.S. Code, Section 1229(a)(2), which notified him that his hearing was scheduled for Sept. 20, 2005, at 9:00 a.m. Campos-Chaves did not appear for his hearing, and the immigration judge ordered him to be removed in absentia.

In 2018, Campos-Chaves filed a motion to reopen his removal proceeding,[2] relying on the precedent set by the Supreme Court's 2018 decision in *Pereira v. Sessions.*[3]

Pereira v. Sessions asked whether the stop-time rule for cancellation of removal under Section 1229b was triggered when an NTA failed to designate the specific time or place of a noncitizen's removal proceeding. The court held that an NTA that failed to state the time or place of the hearing was legally inadequate under Section 1229(a), rendering the aforementioned stop-time rule inapplicable.

Campos-Chaves' motion to reopen argued that, as an extension of *Pereira v. Sessions*, his in absentia order of removal should be rescinded, and that his case should be reopened since he never received a legally sufficient NTA under Section 1229(a). An in absentia order of removal may be rescinded upon a motion to reopen filed at any time, if the noncitizen demonstrates that they did not receive notice in accordance with Section 1229, paragraphs (1) or (2).[4]

The immigration judge denied Campos-Chaves' motion, and his subsequent appeal of this decision was dismissed by the Board of Immigration Appeals.

Campos-Chaves' appeal filed in the U.S. Court of Appeals for the Fifth Circuit was denied in 2022, on the grounds that he was given proper notice of his hearing since a second notice, the NOH, was sent to him.

In January, the Supreme Court heard oral arguments in Campos-Chaves, which had been consolidated with two other cases, *Garland v. Varinder Singh*[5] and *Garland v. Raul Daniel Mendez-Colin*.[6]

Singh and Mendez-Colín had similarly requested that in absentia orders of removal be rescinded on the grounds that their NTAs did not provide sufficient details — specifically, their NTAs did not specify the time and place of their removal hearings.

While the Fifth Circuit had previously denied Campos-Chaves' appeal, the U.S. Court of Appeals for the Ninth Circuit granted the relief sought by Singh and Mendez-Colin.

On June 14, the Supreme Court affirmed the Fifth Circuit's decision in *Campos-Chaves*, reversed the Ninth Circuit's ruling in Mendez-Colin, and vacated and remanded Singh.

Justice Alito delivered the opinion of the court. The ruling sets a nationwide precedent that a noncitizen can be ordered removed in absentia, even if they are served with an NTA that fails to state the time and place of their hearing.

Implications

Unfortunately, the experiences of Campos-Chaves, Singh and Mendez-Colín are not isolated. Countless immigrants through the years have received NTAs that did not state the time and place of their hearing.

Removal proceedings, commonly referred to as deportation proceedings, are initiated when the U.S. Department of Homeland Security issues an NTA. The form for an NTA provides a space for the DHS to state the complete address of the immigration court, including a room number, and the date and time of the hearing.

However, perhaps for reasons of convenience or scheduling issues, NTAs often fail to provide a specific time and date for the initial hearing. Rather, the NTA states merely that the hearing will be conducted on "a date to be set" at "a time to be set." The specific immigration court that will be hearing the case thereafter sends the noncitizen an NOH, which contains the exact date and time of the initial hearing.

This practice, which became the subject of intense legal challenges in 2018, had essentially gone unchallenged for many years. *Campos-Chaves v. Garland* and others challenged the legality of this accepted and common practice.

The Supreme Court's 2018 *Pereira* decision, while specifically dealing with a narrower issue that was dependent on the validity of an NTA, prompted numerous follow-up questions from immigration lawyers.

If the stop-time rule for cancellation of removal was not triggered since the NTA did not contain the time and/or place of the hearing, was the NTA itself invalid? If so, are the accompanying removal proceedings inappropriate if they are predicated on an invalid NTA?

Should pending removal proceedings be terminated if they were initiated by the issuance of a defective NTA?

What about noncitizens who have previously been ordered removed — and potentially actually removed to their native country — do they have a basis to reopen their court cases and potentially have a path to return to the U.S.?

Are there time limits on seeking to have an in absentia order of removal rescinded based on an incomplete NTA?

These were just some of the many questions raised by immigration lawyers and their clients over the last several years, giving rise to a split among the federal courts over how to deal with the issue.

While disagreements between federal circuit courts over legal issues are not unheard of, it has been challenging for everyone to keep up with this issue, as there were many conflicting decisions from different courts and the Board of Immigration Appeals.

The *Campos-Chaves* decision provides highly sought clarity for practitioners and clients alike.

In most cases, noncitizens who have been placed in removal proceedings are actively trying to resolve their cases and are willing to attend hearings. However, they depend on thorough and compliant notices and documentation to inform them of the proper timeline and other information necessary for them to appear as requested.

Important Considerations for Legal Practitioners

Legal practitioners need to be mindful that the court's decision makes it unlikely that a person can successfully request an in absentia order of removal to be rescinded, solely on the basis that the NTA failed to state the time and date of the hearing.

Of course, the immigration court still has a legal obligation to notify noncitizens about the time and date of their hearings. However, the Supreme Court's decision makes it clear that later providing the noncitizen with an NOH that includes the time, date, etc., is sufficient to satisfy that obligation. As such, practitioners can no longer try to reopen a client's court proceedings solely based on an allegedly defective NTA.

Important Considerations for Clients

After receiving an NTA, noncitizens need to be conscious of the fact that they may receive a subsequent NOH at any time while their case is pending. To help ensure they receive any such notices, they must be sure to keep the immigration court informed of their current address.
An incomplete NTA may give some recipients a false sense of security, especially if the recipient is only familiar with the previous cases, or anecdotal tales of someone getting their case reopened.
Practitioners should tell their noncitizen clients to inform them immediately of any notice they receive.

Conclusion

With the continued rise in migrants crossing the U.S.-Mexico border, there may be people who wonder whether the court's recent decision was made in an attempt to help regulate the overwhelmed immigration court system and protect it against a potential rise in reopened cases should the decision have gone the other way.

However, unless we have substantial evidence of this, we should operate under the assumption that the court's decision was based on the facts of the cases considered and legal concepts such as statutory construction, rather than political ideologies.

Regardless, the decision, while unfavorable for many noncitizens, highlights the need for a more efficient and effective immigration processing system in which properly issued notices and court documents contain ample information, including translations.

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[1] *Campos-Chaves v. Garland*, 602 U.S. ___ (2024).

[2] *Campos-Chaves v. Garland*, 54 F.4th 314, 315 (5th Cir. 2022).

[3] *Pereira v. Sessions*, 585 U.S. 198 (2018).

[4] 8 U.S.C. § 1229a(b)(5)(C)(ii).

[5] *Singh v. Garland*, 24 F.4th 1315 (9th Cir. 2022).

[6] *Mendez-Colin v. Garland*, 50 F.4th 942 (2022).