UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
100 MONTGOMERY ST., SUITE 800
SAN FRANCISCO, CA 94104

MARINA ALEXANDROVICH ESQ PLLC
Alexandrovich, Marina Nicole
405 W Southern Avenue
Suite 1-24
Tempe, AZ 85282

In the matter of [redacted] File [redacted] DATE: Aug 23, 2018

X Unable to forward - No address provided.
Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

__ Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
100 MONTGOMERY ST., SUITE 800
SAN FRANCISCO, CA 94104

__ Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.

__ Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

__ Other: _____

KRA
COURT CLERK
IMMIGRATION COURT FF

cc: GROSS, ELIZABETH A.
100 MONTGOMERY ST., SUITE 200
SAN FRANCISCO, CA, 94104

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

In the Matter of:	Date: AUG 23 2018
[redacted]	File No. [redacted]
Respondent	In Removal Proceedings

Charge: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at a time or place other than as designated by the Attorney General

Application: Motion to Terminate

On Behalf of Respondent:
Marina Alexandrovich
Attorney at Law
405 W. Southern Ave. Suite 1-24
Tempe, Arizona 85282

On Behalf of the DHS:
Shilpa Khagram
Acting Deputy Chief Counsel
Office of the Chief Counsel
100 Montgomery Street, Suite 200
San Francisco, California 94104

DECISION OF THE IMMIGRATION JUDGE

Respondent moves to terminate these proceedings on the grounds that the charging document filed by the Department of Homeland Security [DHS] does not provide statutorily required information (date and time of the hearing), and thus fails to meet the statutory requirements for a Notice to Appear [NTA], *see* INA § 239(a)(1), and is consequently insufficient to vest jurisdiction and commence proceedings with the Immigration Court. In response, DHS argues that: (1) the Supreme Court's decision in *Pereira v. Sessions*, ___ U.S. ____, 138 S.Ct. 2105 (2018), was limited to the stop-time rule and does not speak to the viability of an NTA for commencement of proceedings; (2) the NTA in this case is merely defective, and the failure to include the date and time of the hearing in the NTA was cured by issuance of a Notice of Hearing; and (3) the Court has no authority to terminate proceedings absent limited circumstances.

This Court's jurisdiction derives from a clear grant of statutory authority, supported by regulations promulgated by the Attorney General. INA §§ 103(g)(2), 240(a)(1), (b)(1); 8 C.F.R. § 1003.14(a). Jurisdiction vests with the Court when a charging document (either an NTA or an "Order to Show Cause") is filed by DHS. 8 C.F.R. § 1003.14(a). A review of the record in the instant matter reveals Respondent was served with a document titled "Notice to Appear" that

provided information related to statutory requirements in INA § 239(a)(1)(A)-(F), but failed to designate the time/date and place at which the proceedings would be held, as required by INA § 239(a)(1)(G). Exh. 1. Separate from the NTA, an initial Notice of Hearing was served on Respondent by mail to appear before the Court at a designated time, date, and place.

Although DHS is correct that the narrow question before the Court in *Pereira* was whether a document styled as a Notice to Appear stops time for purposes of cancellation of removal, the analysis in *Pereira* necessarily relied on whether a Notice to Appear is valid if it does not contain all the information required under section 239(a)(1). In its discussion and analysis of the stop-time rule, the Supreme Court determined that "[a] putative notice to appear that fails to designate a specific time or place of the noncitizen's removal proceedings is not a 'notice to appear under section [239(a) of the Act].'" *Id.* at 2114. Noting the clarity of the plain language of the statute, the Supreme Court highlighted the time-and-place criteria required by section 239(a)(1)(G)(i), stating that a notice to appear that fails to specify "integral information like the time and place of removal proceedings" deprives the notice to appear of its "essential character." *Id.* at 2116 (citations omitted). Accordingly, the document titled "Notice to Appear" that was filed with the Court in this case is not an NTA under section 239(a)(1). *See also id.* at 2116 (INA § 239(a)(1) "speak[s] in definitional terms, at least with respect to the 'time and place at which proceedings will be held'").

Prior to *Pereira*, many Circuits had determined that the failure to provide the time/date and place of the removal proceedings resulted in a "defective" or "flawed" NTA. *Popa v. Holder*, 571 F.3d 890 (9th Cir. 2009); *Dabebneh v. Gonzales*, 471 F.3d 806 (7th Cir. 2006); *Guamanrrigra v. Holder*, 670 F.3d 404 (2d Cir. 2012); *Haider v. Gonzales*, 438 F.3d 902 (8th Cir. 2006); *Ramos-Olivieri v. Att'y Gen.*, 624 F.3d. 622 (3d Cir. 2010). Under this line of cases, the NTA could be cured under a two-step procedure, often with a subsequently issued Notice of Hearing. A defective NTA, by its definition is an NTA, albeit an imperfect or flawed one. In *Pereira*, the Supreme Court held that a document lacking the time and place notification lacks its essential character and is not an NTA.[1] It is a legal impossibility to "cure" or "perfect" something that does not exist. Furthermore, although the regulations permit DHS to include in the NTA "the time, place and date of the initial removal hearing, *where practicable*," 8 C.F.R. § 1003.18 (emphasis added), the Supreme Court specifically found that these "practical considerations are meritless and do not justify departing from the statute's clear text." *Pereira*, 138 S.Ct. at 2111, 2118.

Finally, DHS argues that the Supreme Court does not give advisory opinions, that the Court did not address termination as a remedy, and that there is no legal authority to terminate. This Court disagrees with the logic presented in these arguments. The question of termination was not before the Supreme Court and therefore, the Court did not reach the issue, in compliance with its role to only address the issue before it. However, the Supreme Court's analysis and conclusion supports Respondent's argument that an "NTA" that does not include the date, time,

---

[1] "In the dissent's view, a defective notice to appear is still a "notice to appear" even if it is incomplete—much like a three-wheeled Chevy is still a car. *Post,* at 10–11. The statutory text proves otherwise. Section 1229(a)(1) does not say a "notice to appear" is "complete" when it specifies the time and place of the removal proceedings." *Pereira,* 138 S.Ct. at 2111, 2116.

and place of hearing is not an NTA and accordingly fails to vest jurisdiction with the immigration court. Indeed, the Supreme Court's analysis is not as narrowly drawn as the DHS suggests. *See Pereira*, 138 S.Ct. at 2113-14 ("[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 [INA § 239(a)],' *and so* does not trigger the stop-time rule") (emphasis added); *id.* at 2116 ("when the term 'notice to appear' is used elsewhere in the statutory section, *including* as the trigger for the stop-time rule, it carries with it the substantive time-and-place criteria required by [INA § 239(a)].") (emphasis added); *id.* at 2118 ("[a] document that fails to include such information is not a 'notice to appear under [INA § 239(a)] *and thus* does not trigger the stop-time rule") (emphasis added). Because the Court lacks jurisdiction, the only remedy would be the filing of a document which would independently comply with the statutory requirements under the INA. DHS has been provided the opportunity to respond to Respondent's Motion and has elected not to file such a document. Absent a statutorily-compliant charging document, this Court has no jurisdiction to move forward and must terminate the improvidently begun proceedings. Such termination is without prejudice, and does not preclude the Department from serving and filing a proper NTA.

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that Respondent's Motion to Terminate be GRANTED.

Elizabeth L. Young
U.S. Immigration Judge