U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

Office of the Chief Clerk
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September 25, 2023

Stephen M. Brown
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1300 Spring Street, Suite 500
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Re: [redacted]

Request to Appear and Amicus Brief in Amicus Invitation 23-01-08

Dear Counsel:

The Board of Immigration Appeals received on August 31, 2023, your request to file amicus curiae brief and the brief itself in the above referenced case currently pending at the Board.

Your brief has been accepted and placed in the record of proceedings. We thank you for your participation in this matter. However, please note that the acceptance of your brief does not signify that the Board will rely on its contents or analysis, nor does it guarantee that the authors of your brief will be specifically recognized in the Board's decision.

If the respondent, the respondent's counsel, or the Department of Homeland Security wishes to file a response to the amicus brief, it is due no later than **October 5, 2023**. A copy of the reply brief should be filed directly with the Board, along with proof of service on opposing counsel. Parties need not serve briefs on amicus curiae. Please see Chapter 4.6(h) and 4.7(a)(ii) of the Board's Practice Manual.

Respectfully,

Leysla Marquez
Information Management Team

cc: Ronald Lapid, Acting Chief
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Parties are served electronically.

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the matter of:	)	
[redacted]	)	**A #:** [redacted]
Respondent	)	

REQUEST TO APPEAR AS AMICI CURIAE
AND AMICI CURIAE BRIEF OF HIAS, THE FLORENCE IMMIGRANT & REFUGEE RIGHTS PROJECT, CATHOLIC LEGAL IMMIGRATION NETWORK, IMMIGRATION EQUALITY, AND OTHERS

AMICUS INVITATION No. 23-01-08

I. REQUEST TO APPEAR AS AMICI CURIAE

Amici Curiae submit this brief in response to the Board of Immigration Appeals' ("BIA") Amicus Invitation 23-01-08. At issue is whether an Immigration Judge should permit the Department of Homeland Security ("DHS") to remedy a noncompliant Notice to Appear ("NTA") which fails to state a date, time, or place of proceedings as required by INA § 239(a)(1)(G)(i). Because a noncompliant NTA violates a mandatory claims processing rule, upon timely motion by a Respondent, an Immigration Judge should dismiss removal proceedings without prejudice. Just as immigration courts strictly require respondents to comply with statutes, regulations, and the Immigration Court Practice Manual when filing motions and applications for relief, so too should the immigration courts hold DHS to the same standard; EOIR should reject non-compliant NTAs filed by DHS as insufficient.

Amicus HIAS Inc. was founded to support Jews fleeing pogroms in Central and Eastern Europe and is the oldest refugee-serving organization in the United States. After 100 years of protecting Jewish refugees, HIAS began assisting and advocating for refugees of all backgrounds in the 1980s. Today, HIAS provides services to refugees, asylum seekers and other forcibly displaced populations regardless of their national, ethnic, or religious background in more than 20 countries, including the United States. Although most of the people HIAS serves today are not Jewish, serving them is an expression of Jewish values such as *tikkun olam* (repairing the world) and welcoming and protecting the stranger. HIAS' interest in this case stems from its extensive work serving asylum seekers in removal proceedings. Through our Headquarters office, HIAS' immigration legal services team – through staff attorneys and volunteer attorneys that HIAS trains and mentors – represents hundreds of individuals residing in the New York City and the

Washington, D.C. metropolitan areas who are seeking asylum and other forms of humanitarian relief before our nation's immigration courts.

Amicus HIAS Pennsylvania is a non-profit immigration legal services and social services agency. They are one of the largest immigration legal services providers in the state of Pennsylvania and serve more than 5,000 low-income immigrants per year. In doing so, they have encountered several thousand noncompliant NTA's and are well aware of the disorder this creates for clients and for the immigration system. Their attorneys, who regularly and solely practice in immigration court and before federal immigration agencies, are interested in the orderly administration of our immigration laws and procedures.

Amicus The Florence Immigrant & Refugee Rights Project ("Florence Project") provides free legal and social services to adults and children detained in immigration custody in Arizona. Every year, the Florence Project provides free legal and social services to thousands of non-citizens facing removal in Arizona. Since their founding in 1989, the Florence Project has sought to ensure that all people facing removal have access to counsel, understand their rights, and are treated fairly and humanely. As such, the Florence Project has a direct interest in ensuring both that non-citizens receive adequate notice regarding their hearings and that the U.S. Government not be allowed to disregard their obligation to follow claims processing rules and regulations that are designed to ensure fairness for respondents facing removal.

Amicus Immigration Equality is a national nonprofit organization providing free legal services and advocacy for indigent lesbian, gay, bisexual, transgender, and queer ("LGBTQ") immigrants. Through its in-house attorneys and nationwide network of pro bono partners, Immigration Equality currently represents over six hundred LGBTQ and HIV-positive individuals in affirmative and defensive asylum, withholding of removal and Convention Against Torture

claims. In addition to providing direct representation to LGBTQ and HIV-positive asylum seekers, Immigration Equality offers assistance, support, and training to other attorneys, publishes a comprehensive manual on the preparation of asylum claims, and has provided training on the adjudication of LGBTQ asylum cases to Asylum Officers within the Department of Homeland Security. For these reasons, Immigration Equality has an urgent and direct interest in the outcome of this case.

Amicus The Capital Area Immigrants' Rights Coalition ("CAIR Coalition") is a nonprofit legal services organization that provides legal services to indigent noncitizens detained by the U.S. Department of Homeland Security ("DHS"). CAIR Coalition provides Know Your Rights presentations, conducts *pro se* workshops for unrepresented litigants, and offers legal advice and representation to detained noncitizens in immigration proceedings. The outcome in this case is central to CAIR Coalition's mission to advance the rights and dignity of all immigrants, particularly those who are at risk of immigration detention and removal from the United States. *Amicus* seeks to provide the Court with context regarding the prejudicial impact of allowing DHS to amend a noncompliant NTA.

Amicus The DC Volunteer Lawyers Project ("DCVLP") provides high quality, pro bono legal services to survivors of domestic violence, survivors of gender-based violence, and vulnerable children. Through its immigration practice, DCVLP assists clients with asylum claims, Violence Against Women Act (VAWA) self-petitions, battered spouse waivers, U-visas for victims of criminal activity, T-visas for victims of human trafficking, Special Immigrant Juvenile Status, Temporary Protected Status, work authorizations, and other forms of immigration relief. DCVLP's clients are directly affected by DHS continuing to be allowed to initiate proceedings using noncompliant NTAs. DCVLP represents clients who have experienced violence in their

home country and the current use of noncompliant NTAs prevents these clients, who are fleeing precarious living situations, from acquiring certainty about their immigration relief journey.

Amicus RAICES, formally known as the Refugee and Immigrant Center for Education and Legal Services, is a 501(c)3 not-for-profit organization that models a welcoming nation by fighting for the freedoms of immigrant, refugee, and asylum-seeking families. Founded in San Antonio in 1986, RAICES is now the largest immigration legal services provider in Texas, and pairs direct legal representation and social services case management with impact litigation and advocacy focused on expanding permanent protections for immigrants and changing the narrative around immigration in the U.S. In addition to San Antonio headquarters, RAICES maintains a presence in Austin, Corpus Christi, Dallas, Fort Worth, Houston, and Laredo — and makes immigration legal services accessible in rural communities throughout the state. Each year, the not-for-profit supports more than 700 parents and children through expansive refugee resettlement programming; provides legal rights presentations and screenings in a dozen-plus shelters and select emergency facilities for unaccompanied minors; and opens approximately 10,000 affirmative and removal defense direct representation cases, representing individuals in both detained and non-detained proceedings. The issue of noncompliant NTAs affects a number of RAICES' clients, and thus gives rise to the organization's interest in this matter.

Amicus The Tahirih Justice Center is the largest multi-city direct services and policy advocacy organization specializing in assisting immigrant survivors of gender-based violence. In five cities across the country, Tahirih offers legal and social services to immigrants fleeing all forms of gender-based violence, including human trafficking, forced labor, forced marriage, domestic violence, rape and sexual assault, and female genital mutilation/cutting ("FGM/C"). Since its beginning in 1997, Tahirih has provided free legal assistance to more than 32,000

individuals, many of whom have experienced the significant and ongoing psychological and neurobiological effects of trauma. Through direct legal and social services, policy advocacy, and training and education, Tahirih promotes a world where immigrant survivors can live in safety and with dignity.

Amicus Rocky Mountain Immigrant Advocacy Network ("RMIAN") is a 501(c)(3) nonprofit organization based in Westminster, Colorado, that seeks justice for adults and children in removal proceedings. RMIAN promotes knowledge of legal rights; provides zealous, no-cost legal representation in removal proceedings; elevates the importance of universal representation, given the critical consequences resulting from lack of access to counsel for under resourced people in removal proceedings; and advocates for a humane, functional, and efficient immigration system. RMIAN has a deep interest in ensuring immigration proceedings uphold fundamental fairness, which includes ensuring that litigants have all the information necessary to pursue their legal rights in one place, as required by statutes and regulations.

Amicus Legal Services NYC is one of the largest civil legal service providers in the country with over 600 staff that help over 100,000 low-income New Yorkers in a wide range of services, including immigration, housing, and education law. LSNYC represents many non-citizens in immigration court. LSNYC's staff and clients have a direct interest in orderly and fair immigration proceedings that do not leave non-citizens in limbo when DHS violates the law.

Amicus Catholic Legal Immigration Network, Inc. ("CLINIC") promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of immigration legal services and programs. Since its founding in 1988 with 17 programs, CLINIC's network has grown to more than 450 diocesan and community-based programs in 49 states and the District of Columbia. CLINIC is the largest nationwide network of nonprofit immigration programs, and

through its affiliates, CLINIC advocates for the just and humane treatment of noncitizens by providing legal services to low-income immigrants. CLINIC trains and supports the representatives in its affiliate network as they assist clients in many areas of immigration law, including cases before the immigration courts initiated by the issuance of NTAs.

Amicus The Advocates for Human Rights ("The Advocates") is a nonpartisan, nonprofit organization founded in 1983, which provides free legal services to low-income people in the Upper Midwest who are seeking asylum, are victims of human trafficking, are unaccompanied minors, or are in ICE detention. For more than 40 years, The Advocates has been dedicated to advocating for and changing the lives of refugees and immigrants, women, ethnic and religious minorities and other marginalized communities. Through our legal services programs, The Advocates serves hundreds of asylum seekers, trafficking victims, detained people and unaccompanied minors each year. Beyond its representation of individuals in immigration proceedings, The Advocates monitors immigration-related legislation in the United States and locally in the Upper Midwest, and advocates for policy changes and reform. As an organization with special consultative status at the United Nations, The Advocates also reports to the United Nations human rights and treaty bodies, including on the implementation of the Refugee Convention in the United States. The Advocates is committed to ensuring all individuals, regardless of immigration status or nationality, are provided due process of law. Noncompliant NTAs confuse individual applicants and risk missed hearings, resulting in loss of asylum protections and other harms. Moreover, noncompliant NTAs provide additional leverage used by traffickers who coerce individuals into forced labor and commercial sex by threats of immigration consequences. Finally, minors, who deserve extra protections, are uniquely vulnerable to harms

and confusion inherent when NTAs do not provide clear dates, times and locations for their hearings.

II. QUESTIONS PRESENTED:

a. Should an Immigration Judge (IJ) allow DHS to remedy a noncompliant Notice to Appear (NTA)?

b. To remedy a noncompliant NTA, is either (1) issuing an I-261, or (2) amending the NTA, permitted by the regulations, and would either comport with the single document requirement emphasized by the United States Supreme Court in *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021)? If not, how can DHS remedy a non-compliant NTA?

III. SUMMARY OF THE ARGUMENT

An Immigration Judge should not allow DHS to remedy a noncompliant NTA as it relates to date, time, and location of proceedings. The rule is a mandatory claims processing rule and exists to ensure the orderly progress of litigation. Under current practice, EOIR has allowed DHS to initiate a case before the Immigration Court through purported NTAs that lack actual notice of the date, time, and location of a respondent's next hearing. Permitting DHS to initiate proceedings using noncompliant NTAs creates an undue burden on respondents who are kept in perpetual limbo as to when they will be called in to court; for many of *amici*'s clients, this limbo lasts for years after the NTA is served on them. The Immigration Court should dismiss without prejudice cases with noncompliant NTAs, upon a respondent's timely motion, and should DHS wish to pursue removal proceedings, DHS may then serve and file a new, *compliant* NTA prior to the first scheduled hearing. A system whereby DHS can amend date, time, and location of an NTA after a case is initiated disregards the statutes and regulations which require that this information be in a

single document, and it creates a two-tiered system wherein some respondents receive more due process than others, which has no support in statutes or regulations.

The second question is moot because of the answer to the first.

IV. BACKGROUND

Under current practice, DHS regularly issues, serves, and files NTAs that lack the date, time, or location for the respondent's first hearing. DHS is statutorily required to include this information in the NTA. INA §239(a)(1); *see also* 8 U.S.C. §1229 (a)(1). After DHS serves an NTA on a respondent, DHS must then file that NTA with the Immigration Court. DHS is currently not time limited as to when they must file the NTA with the Court; in practice, a respondent will wait weeks, months, or often, years for DHS to file their NTA and formally initiate their case with the Immigration Court.

In the meantime, the respondent lacks an effective means to ensure that they actually receive notice of the time and date of their hearing. After docketing an NTA and initiating proceedings, EOIR will send a notice of hearing to the respondent's address of record, but if the respondent has moved between the time that DHS issued the initial NTA and the time DHS files the NTA with the Court, the Court may not have the respondent's current address to properly mail that notice to the respondent. EOIR will not accept a change of address form for a respondent whose case has not yet commenced with the Court. As a practical matter, this means that a respondent cannot move freely after DHS issues an NTA because without a proper time, date, and location on their NTA, they must rely upon the Court to provide them with notice of their hearing. If a respondent cannot notify the Court of their updated mailing address, the Court will inevitably mail the notice of the upcoming hearing to the respondent's old address, and the respondent will

not receive it; when the respondent does not appear for the hearing, they risk being ordered removed *in absentia*.

The U.S. Supreme Court has twice held – at least in the context of an application for immigration relief under INA §240A(b) – that an NTA is legally inadequate if it does not specify a date and time when a respondent must appear at an immigration court for removal proceedings. *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1479 (2021); *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). In the years since, immigration courts across the country have grappled with how to address a "noncompliant" NTA outside of the context of an application for relief under INA §240A(b). *See, e.g.*, *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018)*; Matter of Mendoza-Hernandez and Capula-Cortes*, 27 I&N Dec. 520 (BIA 2019). In *Matter of Fernandes*, the BIA clarified that a noncompliant NTA does not deprive an immigration court of jurisdiction in a removal proceeding; rather, a noncompliant NTA violates a mandatory claims processing rule. 28 I&N Dec. 605, 608 (BIA 2022). Pursuant to *Fernandes*, an Immigration Judge may use their discretion in adjudicating a motion to dismiss based on a noncompliant NTA. *Id*. at 616. The BIA now seeks to clarify whether an Immigration Judge should allow DHS to remedy a noncompliant NTA, and if so, how. For the reasons detailed below, and consistent with Supreme Court precedent, the only sensible answer to the first query is no. The second query is rendered moot.

V. ARGUMENT

a. The Immigration Judge should not allow DHS to amend an NTA as to date, time, and location of a respondent's hearing, and should instead dismiss proceedings without prejudice upon a respondent's timely motion.

The BIA in *Matter of Fernandes* confirmed that including the time, date, and location in an NTA is a claim-processing rule, much like a filing deadline. *United States v. Kwai Fun Wong*, 135 S. Ct. 1625, 1632 (2015) (finding that a filing deadline is a "quintessential" claim-processing

rule). Rules exist for a reason, even claim-processing rules like INA §239(a)(1), and when litigants neglect to follow rules, they face consequences. The Supreme Court noted as much in *Niz-Chavez*, raising the point that asylum seekers must complete "a 12-page form and comply with 14 single-spaced pages of instructions" to seek this protection from the immigration court, and if they fail to do so properly, they risk "having an application returned, losing any chance of relief, or even criminal penalties." *Niz-Chavez*, 141 S. Ct. at 1485. A respondent in removal proceedings (who is not provided an attorney and, in many cases, does not speak or read English) must comply with the Immigration Court Practice Manual by the letter, or they risk having their filing rejected by the court clerk. *See* Immigration Court Practice Manual, Ch. 3.1(d)(1) ("If an application, motion, brief, exhibit, or other submission is not properly filed, it is rejected by the immigration court with an explanation for the rejection."). DHS should be held to the same standard.

Amici urge the BIA to adopt a rule that holds DHS to its statutory burden and require that an NTA contain the date, time, and location for a respondent's first hearing. INA §239(a)(1). For future cases, clerks for the Executive Office for Immigration Review (EOIR) should reject any NTA that lacks this information and require DHS to correct that information, serve it on a respondent, and timely file a *compliant* NTA prior to the date of the hearing noted on the NTA. For existing cases, the BIA should hold that an Immigration Judge must dismiss removal proceedings without prejudice upon timely motion by a respondent as to an NTA lacking date, time, and location for removal proceedings. As *amici* lay out below, adopting such a rule encourages the orderly and equitable progress of litigation. Any process to allow DHS to amend an already-filed NTA as to date, time, and location of removal proceedings contravenes federal law.

The Seventh Circuit recognized that although a noncompliant NTA will not divest an immigration court of jurisdiction over a removal proceeding, "just as with every other claim-processing rule, failure to comply with that rule may be grounds for dismissal of the case." *Ortiz-Santiago v. Barr*, 924 F.3d 956, 963 (7th Cir. 2019) (referencing *Carlisle v. United States*, 517 U.S. 416 (1996), which upheld the denial of a motion for judgment of acquittal that was filed one day late upon the government's objection). The Board previously considered dismissal a less favorable remedy for a noncompliant NTA because "not allowing a complaint or information to be amended would cause a case to be dismissed and waste judicial and administrative resources." *Fernandes*, 28 I&N Dec. at 615. But the Board misses the essential point here: the waste of judicial and administrative resources is already happening because – in issuing NTAs without a date, time, or location in virtually 100% of cases – the agency is duplicating work by sending supplemental information to respondents that could have been provided just once, the first time. *See Pereira*, 138 S. Ct. at 2105 ("The Department of Homeland Security (DHS), at least in recent years, *almost always* serves noncitizens with notices that fail to specify the time, place, or date of initial removal hearings whenever the agency deems it impracticable to include such information.") (emphasis added).

b. Current practice places respondents in perpetual limbo, and EOIR should end it and bring certainty and stability to removal proceedings. Any process that allows for amendment of an NTA as to date, time, and location of proceedings, perpetuates the status quo.

The purpose of including the date, time, and location of removal proceedings on the NTA is to provide a respondent with clear information about exactly when and where they are expected to appear to defend themselves against administrative removal. An NTA that lacks date, time, and location leaves the respondent with great uncertainty as to when – if ever – they must report to court. In *amici's* experience, DHS commonly takes several years to file an NTA

with the Immigration Court; requests by respondents or counsel for DHS to file the NTA and initiate removal proceedings are often ignored. In the meantime, as described above, if a respondent who received a noncompliant NTA moves, they lack an adequate mechanism to ensure that they will eventually receive notice of the time, date, and location of their first hearing. As noted above, in *amici*'s experience, EOIR routinely rejects a change of address form filed by a respondent whose NTA has not yet been filed with the court. When DHS issues a noncompliant NTA, and neglects to timely file even that noncompliant NTA, a respondent has no actual or constructive notice of their hearing, and is left with tremendous uncertainty as to if, or when, they will ever receive notice of their hearing in the mail.

Continuing to allow DHS to file noncompliant NTAs with the Court also places an undue burden on already overtaxed legal services organizations (LSOs) such as *amici*. LSOs provide critical legal services to the indigent immigrant community and struggle to manage high caseloads; this case management is further complicated when clients, or potential clients, are issued noncompliant NTAs. LSOs like *amici* are often funded through federal and state grants, the terms of which require LSOs to report specific outcomes during specified time periods. For example, a grant may require that an LSO serve a certain number of respondents "in removal proceedings," or file a certain number of applications for asylum on behalf of respondents facing removal, during the course of a fiscal year. LSOs like *amici* face a "Catch-22" when consulting with potential clients to whom DHS issued noncompliant NTAs: either decline to take on the matter, because without certainty about if or when the respondent will need to appear for removal proceedings, the LSO cannot be sure that the matter can be served according to the requirements of the funder; or take on the matter, without the confidence that the matter will be covered by the terms of the grant, jeopardizing the trust of its funders, its staff capacity, or both.

The BIA should mandate an orderly process and ensure that a respondent and their attorney can reasonably rely on the notice of proceedings that an NTA is meant to provide, rather than relegate respondents and counsel to the perpetual limbo that the current practice creates. The Immigration Court should reject DHS' filing of any NTA that, in the first instance, does not contain the date, time, and location for the respondent's first hearing, and not allow DHS to amend this information.

c. Any process of allowing DHS to amend date, time, and location on an NTA only further fuels the limbo and disorder created by the status quo.

The BIA seeks suggestions as to how, if at all, DHS should be able to cure a noncompliant NTA that lacks date, time, and location. *Amici* note, however, that such a system is unnecessary because it needlessly ties up EOIR's time and resources and does not ensure the orderly and just progress of litigation that this claims-processing rule is meant to promote.

If the BIA allowed DHS to amend the date, time, and location of removal proceedings on a noncompliant NTA after it has been filed with EOIR, DHS would still need to serve that amended NTA on the respondent. Meanwhile, proceedings remain open, tying up the Court's resources, while the Court and respondent wait for DHS to comply with the rules that it should have complied with in the first place.

Amici propose a better way: upon a respondent's timely motion, the Immigration Judge should dismiss proceedings without prejudice. DHS may then draft and serve a new, compliant NTA on the respondent, and file that compliant NTA with the Court before the hearing date noted on the NTA. In this way, the Court's resources are not wasted attempting to preside over cases for respondents who may not have been apprised of their proceedings, and are likely not ready to proceed; instead, with respondents properly advised of their hearings, the Courts can have

confidence that the cases on their dockets are ready to go forward. DHS will not be prejudiced by this dismissal because it would not prevent DHS from initiating proceedings anew in the future, and because DHS would be required to amend and serve compliant NTAs anyway. Requiring DHS to abide by this procedure will ensure that EOIR and respondents are not prejudiced by the delay.

d. Any process that allows amendment of an NTA as to date, time, and location, encourages EOIR to continue to ignore the plain language of the law as to what is required to initiate removal proceedings. An NTA that lacks date, time, and location should not be accepted by EOIR clerks in the first instance.

Amici are cognizant that the question presented is about how immigration courts should deal with existing cases on their docket. However, in answering that question, the BIA should take care to not create a new process that 1) permits DHS and EOIR to ignore clear statutory requirements as to what is required to initiate removal proceedings, or 2) creates a system where one set of rules applies to one set of respondents (those whose cases are currently pending before EOIR) and another set of rules applies to a different set of respondents (future respondents), where no legal authority exists for such a two-track system.

The Supreme Court clearly found that an NTA which fails to indicate when a respondent should appear for their proceedings before the Immigration Court is not an NTA as envisioned by Congress and required by law:

> If the three words "notice to appear" mean anything in this context, they must mean that, at a minimum, the Government has to provide noncitizens "notice" of the information, i.e., the "time" and "place," that would enable them "to appear" at the removal hearing in the first place. Conveying such time-and-place information to a noncitizen is an essential function of a notice to appear, for without it, the Government cannot reasonably expect the noncitizen to appear for his removal proceedings.

Pereira at 138 S. Ct. at 2115. Justice Sotomayor highlighted how meaningless a noncompliant NTA is, and posited that allowing DHS to persist in filing noncompliant NTAs to place noncitizens in removal proceedings is akin to allowing DHS to "merely send[] noncitizens a barebones document labeled 'Notice to Appear,' with no mention of the time and place of the removal proceedings, even though such documents would do little if anything to facilitate appearance at those proceedings." *Id.* at 2115-16.

It is within this context that the BIA should weigh the options presented. One option the BIA may consider is to allow DHS to amend an NTA as to date, time, and location of the respondent's first scheduled court hearing. But under such a process, the BIA nullifies the plain language of the statute that says that to be an NTA, it must contain certain information in a single document, among which is the date, time, and location of the first scheduled hearing. An NTA's function is to initiate removal proceedings; proceedings under INA §240 may not commence unless and until an NTA is filed with EOIR. 8 C.F.R. §§ 1003.13, 1003.14. An NTA is not an NTA unless it complies with the requirements at INA §239(a)(1) in a single document. *Niz-Chavez,* 141 S. Ct. at 1474. If DHS is allowed to amend NTAs that lack date, time, and location after the fact, DHS will continue preparing and filing NTAs that lack this information. In other words, documents that are not actually NTAs will continue to initiate removal proceedings, which is contrary to the plain language of the statute.

To avoid this outcome, EOIR should find that DHS may <u>not</u> amend an NTA as to date, time, and location of removal proceedings, and instead, it should require that such information appear on the NTA when it is initially filed with EOIR; EOIR should reject the filing of any noncompliant NTA for failing to comply with the requirements for the initiation of removal proceedings. For proceedings already docketed, EOIR should permit such proceedings to be

dismissed upon timely motion by a respondent. By imposing such a rule, EOIR complies with Congressional mandate, ensures that respondents receive meaningful notice of proceedings, and guarantees that proceedings proceed more swiftly than under current practice.

Finally, *amici* note that DHS would not be prejudiced by a rule that provides for the dismissal of proceedings for a noncompliant NTA because DHS would likely have to prepare and serve a new amended NTA on the respondent regardless, as is current practice. Even if producing a compliant NTA seems like an "insurmountable chore" to DHS, the agency is not permitted to simply ignore this rule due to its inconvenience: "[w]e are no more entitled to denigrate this modest statutory promise as some empty formality than we might dismiss as pointless the rules and statutes governing the contents of civil complaints or criminal indictments." *Niz-Chavez*, 141 S. Ct. at 1485. Given that, it makes little sense to permit DHS to continue to violate clear federal law as to the requirements for an NTA.

e. The purpose of the date, time, and location of removal proceedings on an NTA is to provide notice to the respondent. By amending an NTA as to date, time, and location of removal proceedings after it has been filed, the BIA would circumvent this purpose of the NTA.

Finally, *amici* note that one central purpose of requiring the date, time, and location of removal proceedings on an NTA is to provide a respondent with meaningful notice of their first hearing. Requiring actual notice ensures that a respondent in removal proceedings can meaningfully participate in the litigation against them, including by taking critical steps in their defense prior to their hearing like retaining an attorney or preparing an application for relief. Amending the NTA after that first hearing has been held nullifies the intent of the statute to provide actual notice to a respondent. An amended NTA fails to provide this notice, especially where the amendment occurs as is envisioned here – where the first hearing has already been held. For this

reason, the BIA should not permit DHS to amend a noncompliant NTA, because it will not accomplish the purpose that the statute intended: to provide a respondent in removal proceedings with notice of the hearings to take place against them.

VI. CONCLUSION

Amici urge the BIA to bring order to the immigration court system by ending the current practice of allowing DHS to initiate removal proceedings by filing NTAs that lack date, time, and location of removal proceedings. Because allowing DHS to amend NTAs as to date, time, and location of removal proceedings would encourage DHS to continue initiating removal proceedings with documents that do not meet Congress's minimum requirements, the BIA should find that DHS may not later amend an NTA as to date, time, and location of removal proceedings. Instead, the BIA should find that an Immigration Judge maintains the authority to dismiss removal proceedings without prejudice, upon a respondent's timely motion or objection to an NTA lacking the date, time, and location of removal proceedings, and permit DHS, should they wish, to reinstitute proceedings by serving on the respondent and filing with the Immigration Court a compliant NTA before the hearing date noted on the NTA.

Respectfully submitted this 30th day of August, 2023,

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