**MOTION TO TERMINATE PURSUANT TO *PEREIRA* and *ORTIZ-SANTIAGO***

**Or**

**ALTERNATIVELY ACCEPT THE RESPONDENT’S REQUEST FOR**

**NON-LPR CANCELLATION OF REMOVAL.**

**UNITED STATES DEPARTMENT OF JUSTICE**

**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**CHICAGO, ILLINOIS**

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In the Matter of: )

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HO, Nhi Thao Thi ) A# 201 687 251

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In removal proceedings )

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NOW COMES, the Respondent by and through his attorney and submits this motion to terminate. In support the Respondent states as follows:

The Respondent in this matter has been served with what is purported to be a “notice to

appear”. In [*Pereira v. Sessions*](https://www.supremecourt.gov/opinions/17pdf/17-459_1o13.pdf), No. 17-459, --S. Ct - 2018 WL 3058276 (U.S. June 21, 2018) the Supreme Court stated that an NTA must at least state the date and time of a hearing. The question in *Pereira* was whether an NTA that does not state the time and place of the hearing triggers the stop-time rule. The Supreme Court held 8 to 1 that the plain language of the statute requires that an NTA specify where and when the hearing will take place.

In *Pereira*, the Respondent had been served with an NTA that only stated the date and time of the hearing were “to be determined.” During oral argument the U.S. government admitted that under current practice it fails to specify the time, date and location of the hearing on almost 100 percent of NTAs. Writing for the majority, Justice Sotomayor stated, “A notice that does not inform a noncitizen when and where to appear for removal proceedings is not a ‘notice to appear under [the statute]’ and therefore does not trigger the stop-time rule.”

The clear and unequivocal ruling of *Pereira* is that such an NTA does not vest the Immigration Court with jurisdiction over a matter. If the NTA is inherently defective, then any proceedings developing after it is defective. The Court simply has no jurisdiction over the subject matter and parties involved. This was further affirmed by the 7th Circuit court’s more recent ruling in *Ortiz-Santiago v. Barr*, where the court states that the client must show that he was prejudiced by the NTA.

In the present case, there is no doubt that the Respondent has been prejudiced by the NTA, as required by *Ortiz*. The NTA issued on March 1, 2019. As such, there can be no doubt that this Respondent was prejudiced by the faulty NTA and this case should be terminated.

Further, the Board of Immigration Appeals issued a decision claiming that a defective NTA can be cured by the issuance of a notice of hearing by the court which spells out the date, time and place from court immigration court jurisdiction. *Bermudez-Cota,* 27 I&N Dec. 441 (BIA 2018). However, this conclusion of the Board is fundamentally flawed. The Board is stating that the court itself can correct the jurisdictional failing of the Department of Homeland Security by sending out a notice of hearing. This is simply not the case. It is essentially putting the cart before the horse.

If the Court has no jurisdiction at the moment the NTA is filed, it has no jurisdiction to undertake any action on the matter at all. The Court has no authority to send out any notice whatsoever, because it has no jurisdiction based on the defective NTA. A simply principle of basic civil procedure is that a Court must have jurisdiction over a matter in order for the court to be able to do any function on that matter. The Board’s faulty decision in essence states that the immigration court can cure and correct a material defect dealing with its very jurisdiction, which it simply does not have if the NTA is faulty. Basically, the ruling in *Bermudez-Cota* defies law school 101. Finally, there can be no doubt that the Respondent was prejudiced by this NTA.

Based on this we would ask that the proceedings be terminated in this matter based on the defective NTA and Court’s lack of jurisdiction. Alternatively, if the government’s opinion is that the ruling in Pereira only applies to the stop time rule then we ask this Court to consider the respondent’s request for non-LPR cancellation of removal. Thus, based on the ruling in *Pereira* and the 7th Circuit’s subsequent ruling in *Ortiz-Santiago*, the Respondent meets the prima facie requirements for Non-LPR Cancellation of Removal.

WHEREFORE, the Respondent requests that this matter be terminated, or in the least, that the Respondent be found eligible to apply for non-LPR cancellation of removal.

Respectfully Submitted

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mykola Krys