From: (b)(6)
To: OPLA HQ Personnel; OPLA Field Personnel
Subject: Broadcast Message: Implementing Niz-Chavez v. Garland, 141 S. Ct. 1474 (2021)
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Disseminated on behalf of Ken Padilla and Adam V. Loiacono. . .

On April 29, 2021, the U.S. Supreme Court issued *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), holding that the two-step process whereby DHS serves a Notice to Appear (NTA) that does not include the time and/or place of a respondent's initial master calendar hearing, and EOIR later serves a notice of hearing (NOH) providing that information, does not trigger the stop-time rule for purposes of cancellation of removal under section 240A(d)(1) of the Immigration and Nationality Act (INA). The Court concluded that the language of the stop-time rule describes a single document, to wit, "*a* notice to appear," INA § 240A(d)(1) (emphasis added), that must contain *all* the information listed in INA § 239(a)(1). 141 S. Ct. at 1480-81.

The Court analyzed the statutory language at INA § 240A(d)(1), which provides that the stop-time rule is triggered when a noncitizen "is served a notice to appear" as defined in INA § 239(a)(1). Section 239(a)(1) in turn defines "a 'notice to appear'" as written notice that includes, *inter alia*, the time and place of the noncitizen's hearing. The Court found that Congress's use of the indefinite article "a" in both statutory provisions indicates that it intended that a single document, referred to as an NTA, trigger the stop-time rule. While the Court acknowledged the Government's policy argument regarding administrative inconvenience, it found that it did not justify departing from the statutory language.

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This message includes internal guidance provided for internal OPLA use only and is not intended for public disclosure. Please ensure that it is treated consistent with applicable guidance. If there are any legal questions about this guidance or *Niz-Chavez*, please do not hesitate to reach out to ILPD (Niz-Chavez Discussion Board, ILPD-E or ILPD-W), as appropriate.

Thank you,

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