

Decoding Deportation: Scopal Ambiguity in the Supreme Court

Handout for Semantics Group special session 01/08/2024

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Docket with all briefs and other documents: <http://tinyurl.com/22-674-docket>

Our amicus brief: <http://tinyurl.com/linguists-brief>

The statute in question (8 U.S.C. 1229a): <http://tinyurl.com/8usc1229a>

Blog post: <http://tinyurl.com/amicus-brief-post>

Estimated schedule of the oral argument:

10am: Court business

10:05am: Government argument -- 25 minutes freeform questioning, then seriatim

10:50am: Noncitizens' argument -- 25 minutes freeform questioning, then seriatim

11:45am: Government's rebuttal

11:50am: End

Summary of the case:

When a noncitizen does not attend a removal (deportation) hearing, a removal order is entered against him. One of the only paths to rescinding that order is through a law which allows rescission (i.e. cancellation of the order) if the noncitizen can show that he “did not receive notice in accordance with paragraph (1) or (2)”.

For nearly 20 years, the Government consistently failed to provide “notice in accordance with paragraph (1)” to noncitizens, because the notices it sent omitted the date and time of the removal proceedings. Because of a previous court decision (*Niz-Chavez v. Garland*, 6-3, authored by Justice Gorsuch, which incidentally focused on the meaning of the word “a”), everyone agrees

that the noncitizens—and many other noncitizens—did not receive “notice in accordance with paragraph (1).”

Rescission does not necessarily mean that a noncitizen can remain in the United States. It simply means that he gets another hearing—one at which he can attempt to prove his case against being deported. Noncitizens who are not supposed to be in the US will still be deported even if they are able to rescind their removal order.

The relevant passages of 8 USC §1229a) and the relevant questions:

Paragraph **A1**: “written notice” shall be given to noncitizens placed in removal proceedings. This “**paragraph (1) notice**”, also called “Notice to Appear” (NTA), must specify certain information including the “time and place at which the removal proceedings will be held”.

Paragraph **A2**: “in the case of any change or postponement in the time and place of such proceedings”, “a written notice” shall be given. This “**paragraph (2) notice**”, also called “Notice of Change”, must specify, among others, “the new time or place of the proceedings”.

- Does setting a time previously listed as “TBD” count as a “change” in time?
- Does the time count as a “new” time?

Paragraph **B5A**: a noncitizen may be removed in absentia (without a hearing) when he “does not attend a [removal] proceeding ... after written notice required under paragraph (1) or (2) ... has been provided ... if the Service establishes ... that the written notice was so provided”.

- Does the word “the” presuppose uniqueness here?

Paragraph **B5C2**: even if an order of removal may be entered, it “may be rescinded ... if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2)”.

- Does this mean “received neither notice” or “did not receive both notices”?

Question presented (i.e. what the court has been asked to rule on):

“If the government serves an initial notice document that does not include the “time and place” of proceedings, followed by an additional document containing that information, has the government provided notice “required under” and “in accordance with paragraph (1) or (2) of section 1229(a)” such that an immigration court must enter a removal order in absentia and deny a noncitizen’s request to rescind that order?”

So the question is: does failure to receive a “paragraph (1) notice” precludes Document 2 from counting as a paragraph (2) notice; and if it counts, may the order of removal still be rescinded?

The noncitizens are making two arguments in the present case:

1. The noncitizens did not receive “notice in accordance with paragraph (2),” either, because a paragraph (2) notice, that informs of a “change” in the time or place, depends on the paragraph (1) notice having provided a date and time in the first place.
2. The phrase “did not receive notice in accordance with paragraph (1) or (2)” is ambiguous. The better reading for the defense is that a noncitizen who shows he “did not receive notice in accordance with paragraph (1)” is eligible for rescission, even if he received “notice in accordance with paragraph (2).”

Summary of our amicus brief:

The rescission condition is linguistically ambiguous, and can be interpreted as either a “neither-nor” or an “either-or” scenario. The first part of the brief establishes ambiguity:

1. **Linguistic Ambiguity:** Linguistic analysis shows that negative disjunctions (e.g. “he did not receive notice A or notice B” as in Section **B5C2**) are inherently ambiguous.
2. **Common Usage:** Empirical evidence from linguistic corpora suggests that in everyday language, the “either not A or not B” interpretation is common.

3. **Legal Precedent:** There are instances in American law where negative disjunction has been interpreted as "either not A or not B."
4. **Logic Does Not Help:** The ambiguity inherent cannot be resolved by any law of logic.

The second part discusses how context and linguistic analysis can resolve the ambiguity:

1. **Contextual Clarification:** Context helps resolve the ambiguity in the rescission condition, and QUD theory shows how people use context to understand scopally ambiguous sentences.
2. **Lawmaker Intent:** In legal contexts, the intent of the lawmakers disambiguates conditions like the one in question.
3. **Government Interpretation:** The government's interpretation of the rescission condition does not align with either of the possible literal semantic interpretations.

Other questions that are relevant to the case:

- Does the word "the" indicate uniqueness?
- Should courts consider lawmaker intent when they interpret statutory texts ("purposivism") or only the actual words in their ordinary meaning ("textualism")?

Supreme Court justices with textualist leanings (my take):

- Samuel Alito, Amy Coney Barrett, Neil Gorsuch, Brett Kavanaugh, Clarence Thomas

Supreme Court justices with purposivist leanings (my take):

- Ketanji Brown Jackson, Elena Kagan, John Roberts?, Sonia Sotomayor