

No. 17-1050

In the Supreme Court of the United States

NOEL ARCENIO SALDANA CASTILLO, PETITIONER

v.

JEFFERSON B. SESSIONS III, ATTORNEY GENERAL

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

MEMORANDUM FOR THE RESPONDENT

NOEL J. FRANCISCO
*Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

In the Supreme Court of the United States

No. 17-1050

NOEL ARCENIO SALDANA CASTILLO, PETITIONER

v.

JEFFERSON B. SESSIONS III, ATTORNEY GENERAL

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

MEMORANDUM FOR THE RESPONDENT

Petitioner contends (Pet. 12-13) that the court of appeals erred in concluding that he is ineligible for cancellation of removal under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.* To be eligible for cancellation of removal, an alien who has not been admitted for permanent residence must establish, among other things, that he “has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of [his cancellation] application.” 8 U.S.C. 1229b(b)(1)(A). Under the INA’s “stop-time rule,” an alien’s period of continuous physical presence is “deemed to end * * * when the alien is served a notice to appear under section 1229(a)” of the INA, notifying him that removal proceedings are being initiated against him. 8 U.S.C. 1229b(d)(1). Petitioner was served with a notice to appear in August 2009—less than ten years since he last entered the country—charging him with overstaying his tourist visa. Pet. 9-10;

see Pet. App. 10a. Petitioner contends (Pet. 12-13) that the court of appeals erred in concluding—in accordance with the decision of the Board of Immigration Appeals—that the August 2009 notice to appear stopped his period of continuous physical presence, thus rendering him ineligible for cancellation of removal, “because [the notice] did not ‘specify’ the ‘time and place at which the [removal] proceedings will be held.’” Pet. 13 (quoting 8 U.S.C. 1229(a)(1)) (brackets omitted); see Pet. App. 2a-3a, 10a.

As petitioner observes (Pet. 2-3, 13), on January 12, 2018, this Court granted certiorari in *Pereira v. Sessions*, No. 17-459, in which the petitioner also contends that the service on an alien of a notice to appear that does not specify a date and time certain for the alien’s initial removal hearing does not stop the alien’s period of continuous physical presence for purposes of 8 U.S.C. 1229b(b)(1)(A). See Pet. Br. at 24-55, *Pereira v. Sessions*, *supra*. Because the proper disposition of the petition for a writ of certiorari in this case may be affected by the Court’s resolution of *Pereira*, the petition should be held pending the decision in *Pereira*, and then disposed of as appropriate in light of that decision.*

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

FEBRUARY 2018

* The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.