

# United States Court of Appeals for the Fifth Circuit

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No. 22-60278  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

January 18, 2023

Lyle W. Cayce  
Clerk

JOEL DIAZ,

*Petitioner,*

*versus*

MERRICK GARLAND, *U.S. Attorney General,*

*Respondent.*

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Petition for Review of an Order of the  
Board of Immigration Appeals  
Agency No. A203 129 361

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Before BARKSDALE, HIGGINSON, and HO, *Circuit Judges.*

PER CURIAM:\*

Joel Diaz, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' (BIA) denying his motion to reopen. He contends the notice to appear (NTA) served upon him to initiate his removal proceedings was defective, rendering the immigration court (IC) without jurisdiction over him; and the BIA should have exercised its *sua sponte*

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\* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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authority to reopen his proceedings due to a fundamental development in applicable law.

Our court reviews the denial of a motion to reopen under an understandably “highly deferential abuse-of-discretion standard”. *Gonzalez-Cantu v. Sessions*, 866 F.3d 302, 304 (5th Cir. 2017) (citation omitted). This standard requires the BIA’s decision to stand, even if this court concludes that it is erroneous, provided “it is not capricious, racially invidious, utterly without foundation in the evidence, or otherwise so irrational that it is arbitrary rather than the result of any perceptible rational approach”. *Zhao v. Gonzales*, 404 F.3d 295, 304 (5th Cir. 2005) (citation omitted).

Diaz contends the IC lacked jurisdiction over him because his NTA was defective according to *Pereira v. Sessions*, 138 S. Ct. 2105 (2018) (holding NTA must specify time and place of removal hearing to trigger stop-time rule for cancellation of removal), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021) (holding required information for NTA must be provided in a single document). As he acknowledges, however, this contention is foreclosed under our court’s precedent. *E.g.*, *Maniar v. Garland*, 998 F.3d 235, 242 & n.2 (5th Cir. 2021) (*Pereira* and *Niz-Chavez* do not apply “outside the stop-time rule context” (citation omitted)). Diaz raises this issue solely to preserve it for possible further review.

“[W]e lack jurisdiction to review the BIA’s decision to decline *sua sponte* reopening”. *Hernandez-Castillo v. Sessions*, 875 F.3d 199, 206 (5th Cir. 2017). Although Diaz contends this jurisdictional rule is erroneous, we are required to follow it. *E.g.*, *Jacobs v. Nat’l Drug Intel. Ctr.*, 548 F.3d 375, 378 (5th Cir. 2008) (Under the rule of orderliness, “one panel of our court may not overturn another panel’s decision, absent an intervening change in the law”).

DISMISSED in part; DENIED in part.