Matter of Ifeanyi Emmanuel DIJI, Respondent

Decided September 3, 2026

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

(1) When mailing a notice to appear by regular mail, the Department of Homeland Security can rely on the most recent address the alien has provided.

(2) For purposes of an in absentia removal proceeding, written notice of the proceedings is sufficient if mailed to the most recent address the alien provided, which includes an address the alien provided before the issuance of the notice to appear. *Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001) (en banc), overruled.

FOR THE RESPONDENT: Joy J. Al-Jazrawi, Esquire, Houston, Texas

FOR THE DEPARTMENT OF HOMELAND SECURITY: Peter Yoon, Counsel

BEFORE: Board En Banc: MALPHRUS, Chief Appellate Immigration Judge; GORMAN and RADICS, Deputy Chief Appellate Immigration Judges; CREPPY, HUNSUCKER, GOODWIN, MONTANTE, MAHTABFAR, GALLOW, VOLKERT, CHABAN, and HANSELL, Appellate Immigration Judges. Dissenting Opinions: MULLANE, Appellate Immigration Judge; GEMOETS, Appellate Immigration Judge.

GORMAN, Deputy Chief Appellate Immigration Judge:

The respondent appeals the Immigration Judge's June 18, 2025, decision denying the respondent's motion to reopen and rescind an April 7, 2023, in absentia order of removal. The respondent has also filed a motion for emergency stay pending appeal. The Department of Homeland Security ("DHS") opposes the appeal. The Board requested and received supplemental briefs from both parties. We will dismiss the appeal and deny the motion as moot.

I. FACTUAL AND PROCEDURAL HISTORY

On April 29, 2019, DHS served the respondent a notice to appear ("NTA") by regular mail alleging that he is removable as a visa-overstay pursuant to section 237(a)(1)(B) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(1)(B) (2018). Approximately six notice of hearing forms were later mailed to the respondent, with only one of those notices being returned as undeliverable. The final notice of hearing, dated November 3, 2022, informed the respondent of a master calendar hearing on

April 6, 2023. That notice was not returned as undeliverable. The respondent failed to appear for the hearing and was ordered removed in absentia.

On June 10, 2025, the respondent filed a motion to reopen and rescind his in absentia order of removal. However, he did not attach any evidence to his motion; instead, he only submitted arguments from counsel. *See Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980) (noting that "[c]ounsel's arguments are not evidence"). Specifically, counsel argued that the respondent's NTA was mailed approximately 1 year after the respondent last sought benefits from United States Citizenship and Immigration Services ("USCIS"). The respondent claims that he moved after USCIS denied his benefit requests. According to his motion, no further communication was necessary once he was advised to depart the country due to the expiration of his status.

The Immigration Judge denied the respondent's motion to reopen, concluding that the respondent had not overcome the presumption of effective service. The Immigration Judge determined that the respondent's motion was untimely and there was no basis for the assertion that the respondent lacked notice. *See* INA § 240(b)(5)(C)(ii), 8 U.S.C. § 1229a(b)(5)(C)(ii) (2024); 8 C.F.R. § 1003.23(b)(4)(ii) (2026). The Immigration Judge denied the respondent's alternative request to reopen proceedings sua sponte.

On appeal, the respondent contends the Immigration Judge erred in denying the motion to reopen because he did not receive either his notice to appear or his notice of hearing. *See* INA § 239(a)(1)-(2), 8 U.S.C. § 1229(a)(1)-(2) (2024). The respondent claims that DHS mailed his NTA to an address he had previously provided to USCIS. The respondent explains that, in January 2019, he moved to a new address and that he first become aware of his removal proceedings when he appeared for his adjustment of status interview with USCIS on June 3, 2025.[1]

The respondent's arguments in support of reopening directly implicate our holding in *Matter of G-Y-R-*, 23 I&N Dec. 181, 183 (BIA 2001) (en banc), where a divided Board held that the INA precludes "the entry of an in absentia order of removal when the alien has not received the Notice to

[1] The respondent has submitted additional evidence on appeal concerning his marriage to a United States citizen and his desire to adjust status. Since we decline to disturb the Immigration Judge's decision, the respondent is ineligible for adjustment of status due to his in absentia order of removal. *See* INA § 240(b)(7), 8 U.S.C. § 1229a(b)(7) (2024). Accordingly, we need not discuss this proffered evidence further.

Appear and thus does not know of the particular address obligations associated with removal proceedings." However, over the years, this practice has vindicated the position of the dissent, which described the majority's holding as being "at odds with the plain language of the statute and incompatible with any effort to create an effective immigration court system." *Id.* at 194 (Jones, dissenting). As *Matter of G-Y-R-* is plainly inconsistent with the language, structure, and purpose of the INA, we now overrule it.

II. DISCUSSION

A. Statutory Language

As with all statutory interpretation issues, we start with the plain language of the statute itself. *Matter of Forjoe*, 29 I&N Dec. 463, 467 (BIA 2026) (citing *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009)). Section 239 of the INA, 8 U.S.C. § 1229, governs the initiation of removal proceedings. Subsection (a)(1) of that provision, 8 U.S.C. § 1229(a)(1), provides that "written notice" in the form of a notice to appear "shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any)." An NTA must specify, among other matters:

> (i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 240.
> (ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.
> (iii) The consequences under section 240(b)(5) of failure to provide address and telephone information pursuant to this subparagraph.

INA § 239(a)(1)(F), 8 U.S.C. § 1229(a)(1)(F).[2] Section 239(c) of the INA, 8 U.S.C. § 1229(c) (2024), provides that "[s]ervice by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F)."

Congress has also set forth the established procedures for in absentia removal proceedings. Section § 240(b)(5)(A) of the INA, 8 U.S.C. § 1229a(b)(5)(A) (2024), provides:

[2] Although the statute still references the Attorney General, the functions of the former Immigration and Naturalization Service were transferred to DHS on March 1, 2003, pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296, § 402, 116 Stat. 2135, 2177-78 (Nov. 25, 2002).

> Any alien who, after written notice required under paragraph (1) or (2) of section 239(a) has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable (as defined in subsection (e)(2)). The written notice by the Attorney General shall be considered sufficient for purposes of this subparagraph if provided at the most recent address provided under section 239(a)(1)(F).

The relevant regulation further provides that an alien shall be ordered removed in absentia if, inter alia, it is established that he or she received "written notice of the time and place of proceedings and written notice of the consequences of failure to appear." 8 C.F.R. § 1003.26(c)(2) (2026); *see also Matter of Laurent Castro*, 29 I&N Dec. 419, 420–421 (BIA 2026) (holding that, where an alien did not appear at a hearing after having been properly served with notice of the missed hearing, and DHS provided evidence of the alien's removability, the Immigration Judge erred in continuing removal proceedings rather than entering an in absentia removal order).

The INA provides two methods by which an in absentia removal order may be rescinded: (1) if the alien files a motion to reopen within 180 days of the order, demonstrating that his or her failure to appear was because of exceptional circumstances; or (2) if the alien files, at any time, a motion to reopen demonstrating that he or she did not receive notice *or* that he or she was in Federal or State custody and failed to appear through no fault of his or her own. INA § 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) (2018); 8 C.F.R. § 1003.23(b)(4)(ii). "Because the respondent's motion to reopen was untimely and he was not in custody, he must show that he 'did not receive notice' of the hearing." *Matter of Nivelo Cardenas*, 28 I&N Dec. 68, 70 (BIA 2020) (quoting INA § 240(b)(5)(C)(ii), 8 U.S.C. § 1229a(b)(5)(C)(ii)).

B. *Matter of G-Y-R-*

In *Matter of G-Y-R-*, the alien entered the United States without inspection and later applied for asylum. 23 I&N Dec. at 182. She then submitted an Alien Address Report Card, Form I-104, updating her address with the Immigration and Naturalization Service ("INS"). *Id.* After failing to appear for her asylum interview, the INS mailed her NTA via certified mail. As argued by the INS, the respondent did not receive her NTA because it was returned by the Postal Service as undeliverable.

The respondent failed to appear for her hearing in Immigration Court. The INS declined to agree to administrative closure of the proceedings and moved to proceed with a hearing in absentia. The Immigration Judge terminated proceedings without prejudice after expressing concerns that the alien was not aware of her removal proceedings.

On appeal, a divided Board sitting en banc held that sections 239(a) and (c) and 240(b)(5) of the INA, 8 U.S.C. §§ 1229(a), (c), 1229a(b)(5), collectively "preclude the entry of an in absentia order of removal when the alien has not received the Notice to Appear and thus does not know of the particular address obligations associated with removal proceedings." *Id.* at 183.

In its analysis, the majority attempted to define what it characterized as a "section 239(a)(1)(F) address." *See* INA § 239(c), 8 U.S.C. § 1229(c) (2024) (stating that "[s]ervice by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F)"); INA § 240(b)(5)(A), 8 U.S.C. § 1229a(b)(5)(A) ("The written notice by the Attorney General shall be considered sufficient for [the in absentia] purposes of this subparagraph if provided at the most recent address provided under section 239(a)(1)(F)."). The majority stated that an "alien will 'have provided' an address at which he or she can be 'contacted respecting proceedings' if any earlier provided address was effective for receiving the Notice to Appear and the alien has not provided any written record of an address change." *Matter of G-Y-R-*, 23 I&N Dec. at 186 (citing INA § 239(a)(1)(F)(i), 8 U.S.C. § 1229(a)(1)(F)(i)).

However, the majority then went on to distinguish "constructive notice in the form of *undelivered* written notice." *Id.*

> The statute allows a hearing to be conducted in absentia, but only when the alien was sent written notice "at the most recent address provided under section 239(a)(1)(F)." Section 240(b)(5)(A) of the Act. The literal language of this provision requires that the address be one provided both by the alien and "under section 239(a)(1)(F)." *Id.* As we understand the in absentia provisions in section 240(b)(5)(A), when read in light of section 239(a)(1)(F) itself, the alien cannot provide a "section 239(a)(1)(F)" address (or "have provided" it and therefore not need to change it) unless the alien has been advised to do so.
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> In this regard, it is section 239(a)(1)(F) itself that requires the Notice to Appear to inform the alien of the particular address obligations associated with removal proceedings. Section 239(a)(1)(F)(i) of the Act. Section 239(a)(1)(F) mandates that the Notice to Appear also inform the alien of the in absentia consequences of failing to comply with those address requirements. Section 239(a)(1)(F)(iii) of the Act. Together, these provisions lead to the conclusion that an address does not become a section 239(a)(1)(F) address *unless* the alien receives the warnings and advisals contained in the Notice to Appear. This conclusion is reinforced by the parallel

> language of section 239(c), which permits service by mail when the address used is "provided by the alien in accordance with subsection (a)(1)(F)." Section 239(c) of the Act. Simply put, an alien cannot be expected to provide an address "under" or "in accordance with" section 239(a)(1)(F) until the alien has been informed of the particular address obligations contained in section 239(a)(1)(F) itself.
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> Accordingly, we find that an address can be a section 239(a)(1)(F) address *only* if the alien has first been informed of the particular statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address. Because that information is first communicated in the Notice to Appear, the alien must receive the Notice to Appear before he or she can "provide" an address in accordance with section 239(a)(1)(F) of the Act. In cases where the Service uses the mail to deliver the Notice to Appear to the alien, the "last address" or the "most recent address" provided by the alien "in accordance with subsection (a)(1)(F)" will necessarily be an address arising from the alien's receipt of the advisals contained in the Notice to Appear.

Id. at 187–88 (footnote omitted).

The majority further stated:

> If . . . we know that the alien did not receive the Notice to Appear and the notice of hearing it contains, then the alien cannot be on notice of either removal proceedings or the address obligations particular to removal proceedings. In that instance, the address used by the Service cannot qualify as a section 239(a)(1)(F) address, and the entry of an in absentia order is precluded.

Id. at 190. The majority also dismissed the INA's registration requirements for nearly all aliens, including the requirement that aliens promptly update their addresses, reasoning that an in absentia order of removal is not one of the listed penalties for failure to comply with these requirements. *Id.* at 190; *see* INA §§ 262, 265, 8 U.S.C. §§ 1302, 1305 (2024).

Two Board members dissented. Expressly noting Congress' use of "have provided" in section 239(a)(1)(F), they observed the majority's paradoxical reasoning, where an alien cannot "'have provided' an address to the Immigration Court *before* he or she has been told to provide one." *Id.* at 194 (Jones, dissenting). The dissent further emphasized that "we must 'give effect, if possible, to every clause and word of a statute.'" *Id.* at 193 (Jones, dissenting) (quoting *United States v. Menasche*, 348 U.S. 528, 538–39 (1955)).

Noting that the majority's holding would effectively eliminate the ability to provide notice by regular mail, the dissent found "that the statute permits—even intends—that removal proceedings be initiated through the mailing of a Notice to Appear by regular mail." *Id.* at 194 (Jones, dissenting).

"Once the Service mails the Notice to Appear to the 'most recent address' provided by the alien, under section 239(a)(1)(F) of the Act, an Immigration Judge can order an alien removed in absentia." *Id.* (quoting INA § 240(b)(5), 8 U.S.C. § 1229a(b)(5)). "If the last address provided by the alien is inadequate, it is incumbent on the alien to provide a better one or forfeit the right to notice." *Id.*

C. The Flawed Reasoning of *Matter of G-Y-R-*

The majority's reasoning in *Matter of G-Y-R-* is inconsistent with the INA's clear text, structure, and operation. *See Tuan Anh Nguyen v. INS*, 533 U.S. 53, 67–68 (2001) ("We ascertain the purpose of a statute by drawing logical conclusions from its text, structure, and operation."). Applying the majority's holding across the INA leads to an absurd result that is patently contrary to Congress' intent.

While the majority attempted to carefully construct what they styled as the "section 239(a)(1)(F) address," its application thwarts Congress' clear intent that NTAs may be served by mail. The majority focused on the INA's in absentia provisions containing the terms "address provided under section 239(a)(1)(F)" and "address required under section 239(a)(1)(F)." INA § 240(b)(5)(A), (B), 8 U.S.C. § 1229a(b)(5)(A), (B). They mentioned a functionally identical phrase in the INA's provision discussing service by mail: "in accordance with subsection 239(a)(1)(F)." INA § 239(c), 8 U.S.C. § 1229(c); *see also Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 530 (2013) ("The word 'under' can mean '[i]n accordance with.'") (quoting 18 Oxford English Dictionary 950 (2d ed.1989)).

It is well-established that "identical words used in different parts of the same act are intended to have the same meaning." *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) (quoting *Sorenson v. Sec'y of Treasury*, 475 U.S. 851, 860 (1986)). Applying the same meaning has particular force here, as the provisions are related. One provision addresses how an NTA in removal proceedings can be served on an alien. The other addresses a consequence of an alien failing to appear at those removal proceedings.

According to the majority in *Matter of G-Y-R-*, "an address can be a section 239(a)(1)(F) address *only* if the alien has first been informed of the particular statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address." 23 I&N

Dec. at 187. Yet this conclusion is fundamentally inconsistent with the INA's express provision that an NTA may be served by regular mail.[3]

The majority's holding creates what amounts to an inconceivable paradox. If an address does not become a section 239(a)(1)(F) address unless the alien receives the warnings and advisals contained in the NTA, by this logic, DHS could never serve an NTA by mail under section 239(c) of the INA, 8 U.S.C. § 1229(c), which references section 239(a)(1)(F) addresses. An NTA is a "case-initiating" document, *Niz-Chavez v. Garland*, 593 U.S. 155, 164 (2021), and if we took *Matter of G-Y-R-*'s reasoning to its logical conclusion, DHS could never serve its case-initiating document by mail because the respondent would not have been informed of the 239(a)(1)(F) requirements that must be included in the notice to appear itself. Such a patently absurd result would be contrary to the clear Congressional mandate in section 239(a)(1) of the INA, 8 U.S.C. § 1229(a)(1), that an NTA can be served by regular mail (as opposed to the earlier procedures of certified mail or reasonable notice).

Reinforcing this conclusion is the INA's statutory language that an alien can "have provided" an address in section 239(a)(1)(F)(i) of the INA, 8 U.S.C. § 1229(a)(1)(F)(i). This present perfect tense links a past event to present circumstances. *See Barrett v. United States*, 423 U.S. 212, 216 (1976) (stating that the present perfect tense denotes "an act that has been completed"). Under the Dictionary Act, 1 U.S.C. § 1, "words used in the present tense include the future as well as the present." "By implication, then, the Dictionary Act instructs that the present tense generally does not

[3] Before 1992, the INA stated that "the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him [or her] and of the time and place at which the proceedings will be held." Former section 242(b)(1) of the INA, 8 U.S.C. § 1252(b)(1) (1988). Congress later amended the INA (taking effect in 1992) by adding former section 242B of the INA, 8 U.S.C. § 1252b (Supp. II 1990), which stated that "written notice shall be given in person to the alien (or, if personal service is not practicable, such notice shall be given by certified mail to the alien or to the alien's counsel of record, if any)." The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, Div. C, § 304, 110 Stat. 3009-546, 3009-587, which is presently controlling, states that "written notice . . . shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any)." INA § 239(a)(1), 8 U.S.C. § 1229(a)(1). Congress further established that "[s]ervice by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F)." INA § 239(c), 8 U.S.C. § 1229(c); *see also Matter of M-R-A-*, 24 I&N Dec. 665, 667 n.1 (BIA 2008) ("Congress set forth the new procedures allowing notice through service by regular mail when it enacted section 304(a)(3) of [IIRIRA].").

include the past." *Carr v. United States*, 560 U.S. 438, 448 (2010). In this context, the past event is the alien providing an address before the NTA is issued.[4]

Additionally, the majority in *Matter of G-Y-R-* erred in stating "that the legislative history behind sections 239 and 240 of the Act does not provide meaningful guidance here because the explanatory material simply paraphrases the language that appears in the statute today." 23 I&N Dec. at 194 n.3. In describing service under section 239 of the INA, 8 U.S.C. § 1229, the House Conference Report states "[s]ervice is sufficient if there is proof of mailing to the last address provided by the alien." H.R. Rep. No. 104-828, at 211 (1996) (Conf. Rep.). Regarding in absentia proceedings, the Conference Report states that "an alien who fails to appear for a hearing may be ordered removed if the Service establishes by clear, unequivocal, and convincing evidence that notice under section 239 was provided and that the alien is inadmissible or deportable." *Id.* at 212. Contrary to the majority's reasoning, this legislative history plainly states that notice can be sent to the last address provided by the alien and that in absentia proceedings can commence upon proof that "notice under section 239" was provided.[5] *Id.* The legislative history does not support the majority's holding.

D. Overruling *Matter of G-Y-R-*

We therefore hold that DHS may serve a notice to appear via regular mail "to the last address provided by the alien." INA § 239(c), 8 U.S.C. § 1229(c). Such an address is "in accordance with subsection (a)(1)(F)" because the alien will "have provided" the address previously. INA § 239(a)(1)(F)(i), (c), 8 U.S.C. § 1229(a)(1)(F)(i), (c). This holding also applies to section 240(b)(5)(A) of the INA, 8 U.S.C. § 1229a(b)(5)(A), which uses similar language in the absentia context. Thus, for purposes of an in absentia

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4 The dissent in *Matter of G-Y-R-* rightly asked how an alien can "have provided" an address before being told to provide one. *Matter of G-Y-R-*, 23 I&N Dec. at 194 (Jones, dissenting). "The only way the alien can provide an address to the Immigration Court prior to proceedings is by providing an address to the Service, with the Service in turn providing it to the Immigration Court via the Notice to Appear." *Id.* This interpretation is more consistent with the INA's text.

5 The legislative history does state that "[t]here is no requirement to provide written notice if the alien has failed to provide the address required under section 239(a)(1)(F)." *Id.* However, the more relevant provisions are not so specific and cross-reference each other. In other words, the legislative history indicates that service under section 239 is sufficient upon proof of mailing to the last address provided by the alien, and in absentia proceedings can commence upon a showing that notice under section 239 was provided.

removal proceeding, written notice of the proceedings is sufficient if mailed to the most recent address the alien provided, which includes an address the alien provided before the issuance of the NTA. INA § 240(b)(5)(A), 8 U.S.C. § 1229a(b)(5)(A). This interpretation results in a consistent, coherent result that gives effect to each relevant INA provision. It also is consistent with IIRIRA's legislative history.

It is unremarkable that aliens "have provided" DHS with their addresses because sections 262 and 265 of the INA, 8 U.S.C. §§ 1302, 1305, require almost all aliens 14 years of age and older to register and update DHS with their addresses. *See Matter of G-Y-R-*, 23 I&N Dec. at 190 ("Virtually every alien in the United States is under an affirmative obligation to report address changes to the Attorney General, regardless of immigration status or circumstances."); *see also* 8 C.F.R. § 265.1 (2026). The majority in *Matter of G-Y-R-* dismissed this statutory requirement, stating that the entry of an in absentia order of removal is not an express penalty for failing to comply with section 265 of the INA, 8 U.S.C. § 1305. 23 I&N Dec. at 190.

While this may be true, it is not dispositive. An alien may or may not have provided an address to DHS. But when an alien does provide an address, and does not update it (as required by the INA), he or she runs the risk of correspondence (including an NTA) being sent to a stale address. There are several procedural and substantive gates to pass through from when an alien fails to update an address to when an Immigration Judge later issues an in absentia order of removal. These include (but are not limited to) DHS making a determination that the alien is inadmissible or deportable, DHS then electing in its sole prosecutorial discretion to institute removal proceedings, DHS mailing the NTA to the last address provided by the alien, the alien not appearing in Immigration Court, and DHS sustaining its burden in the in absentia context. An alien in this context can avoid an in absentia removal order by complying with the INA and promptly updating DHS with any address changes. Put more plainly, our decision today does not make an in absentia removal order the penalty for an alien's failure to update his or her address.

Moreover, sections 262 and 265 of the INA, 8 U.S.C. §§ 1302, 1305, clearly reflect Congress' longstanding concern that aliens must register with the appropriate authorities and update those authorities about any address changes. The initiation of removal proceedings and in absentia removal proceedings must be viewed within this broader statutory context. It is therefore expected that an alien will "have provided" an address. INA § 239(a)(1)(F)(i), 8 U.S.C. § 1229(a)(1)(F)(i). Consistent with the INA, DHS may rely on that address in initiating removal proceedings, and an

Immigration Judge may also do so when deciding whether to proceed in absentia. *See Matter of G-Y-R-*, 23 I&N Dec. at 194 (Jones, dissenting) (noting the alien's burden to provide a current address or "forfeit the right to notice"). Thus, our textual analysis is underpinned by the larger structure and purpose of the INA.

Our consistent result herein stands in contrast to the process of *Matter of G-Y-R-*, which is riddled with uncertainty. Under the majority's reasoning, DHS can mail an NTA to an address that is *not yet* a so-called section 239(a)(1)(F) address, as "an address can be a section 239(a)(1)(F) address *only* if the alien has first been informed of the particular statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address." *Matter of G-Y-R-*, 23 I&N Dec. at 187. DHS thus might not know if the address it used pursuant to section 239(c) of the INA, 8 U.S.C. § 1239(c), is actually a so-called section 239(a)(1)(F) address until the alien appears in Immigration Court. However, an alien might be charged with constructive notice if "the Notice to Appear reaches the correct address but does not reach the alien through some failure in the internal workings of the household." *Matter of G-Y-R-*, 23 I&N Dec. at 189. This leads to an absurd result where neither party to litigation is in fact aware that an ordinary address has been transformed by law into a "section 239(a)(1)(F) address."

The criticisms that the dissenting opinion makes in this case are largely extraneous and ultimately unpersuasive. We acknowledge that the majority in *Matter of G-Y-R-* purported to conduct a textual analysis, but that analysis was ultimately flawed. Fundamentally, we have two statutory provisions containing functionally equivalent language. *Compare* INA § 239(c), 8 U.S.C. § 1229(c) ("Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien *in accordance with subsection (a)(1)(F)*.") (emphasis added) *with* INA § 240(b)(5)(A), 8 U.S.C. § 1229a(b)(5)(A) ("The written notice by the Attorney General shall be considered sufficient for purposes of this subparagraph if provided at the most recent address provided *under section 239(a)(1)(F)*.") (emphasis added). Section 239(a)(1)(F) of the INA, 8 U.S.C. § 1229(a)(1)(F), in turn expressly contemplates that aliens "have provided" their addresses.

Our holding is that, when mailing a notice to appear by regular mail, DHS can rely on the most recent address the alien has provided. An Immigration Judge similarly can order aliens removed in absentia upon a showing, inter alia, that written notice was provided at the most recent address that aliens "have provided." This is a more logical textual analysis than the then-majority provided in *Matter of G-Y-R-* precisely because it hews to the INA's explicit language and assigns a consistent interpretation to functionally equivalent statutory language. Contrary to the dissent's misguided view, the statutory provisions at issue are not "general" or "specific." They are functionally equivalent and must be interpreted as such.[6]

We do not disregard the dissent's stated policy concerns, such as DHS' possible cost-benefit analyses and the number of in absentia removal orders issued over time. However, the most these concerns show is the unremarkable reality that policy concerns may pull in different directions. Hence, our analysis focuses instead on the text and structure of the INA, and we give the same meaning to two functionally equivalent statutory phrases. Ultimately, such "policy concerns cannot trump the best interpretation of the statutory text." *Patel v. Garland*, 596 U.S. 328, 346 (2022).

Thus, we overrule *Matter of G-Y-R-*.[7] We have previously discussed our considerations for reevaluating prior precedent, including our governing regulations. *See Matter of Forjoe*, 29 I&N Dec. at 466 (citing 8 C.F.R. § 1003.1(g)(3)(ii)–(v) (2026)). "The Board has a duty to ensure that its precedent follows current law." *Id.* "Stare decisis is not an 'inexorable command.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 407 (2024) (quoting *Payne v. Tennessee*, 501 U. S. 808, 828 (1991)). *Matter of G-Y-R-* has proved to be "fundamentally misguided" and "unworkable" for the reasons foreseen by the two dissenting Board members and explained further in this decision. *Id.*

[6] The dissent points out that DHS has not explicitly asked us to overrule *Matter of G-Y-R-*. We exercise our independent judgment. 8 C.F.R. § 1003.1(d)(1)(ii) (2026). We must also "provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the Act and its implementing regulations." 8 C.F.R. § 1003.1(d)(1). We are doing so here.

[7] We also overrule citation to *Matter of Anyelo*, 25 I&N Dec. 337 (BIA 2010), which applied *Matter of G-Y-R-* to cases arising in the United States Court of Appeals for the Eleventh Circuit. In that case, the Board declined to follow *Dominguez v. U.S. Att'y Gen.*, 284 F.3d 1258, 1260 (11th Cir. 2002) (per curiam), which was then-existing adverse precedent to *Matter of G-Y-R-*, which the Board did not follow primarily because *Dominguez* did not allude to *Matter of G-Y-R-* or "consider[its] holding." *See Matter of Anyelo*, 25 I&N Dec. at 338–339. The Board, however, did not have the authority to decline to follow *Dominguez* in the Eleventh Circuit as it was controlling precedent at that time. The Board must follow and apply the law of the circuit in all cases arising in that jurisdiction. *See Matter of U. Singh*, 25 I&N Dec. 670, 672 (BIA 2012).

We also acknowledge that "[c]onsiderations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done." *Hohn v. United States*, 524 U.S. 236, 251 (1998) (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 172–173, (1989)). However, this principle is not and cannot be an absolute bar to overruling prior decisions interpreting statutes. As noted, we are controlled by regulations established by the Attorney General, and we have a duty to uniformly and correctly interpret the INA. *Matter of G-Y-R-* did neither.

In so deciding, we assume that there was some reliance on *Matter of G-Y-R-*. *See Loper Bright Enters.*, 603 U.S. at 410 (considering reliance on the decision as a factor in a stare decisis analysis). Even if parties have relied on that case, such reliance does not diminish DHS' authority to institute removal proceedings and serve an NTA by regular mail. That reliance also does change an alien's duty to provide prompt address updates. Our decision gives effect to those provisions and applies a consistent definition across the INA. *Cf. Matter of G-Y-R-*, 23 I&N Dec. at 194 ("Narrowly applying the in absentia provisions to this class of cases undermines the very efficacy of those provisions.") (Jones, dissenting).

E. The Respondent's Claim

Under this framework, the respondent has not established that he "did not receive[] notice" within the meaning of the INA. INA § 240(b)(5)(C)(ii), 8 U.S.C. § 1229a(b)(5)(C)(ii). As an initial matter, his motion contains only statements by counsel, which are not evidence. *See* 8 C.F.R. § 1003.23(b)(3) (2026) (stating a motion to reopen "*shall* be supported by affidavits and other evidentiary material") (emphasis added).

The Immigration Judge did not clearly err in finding that the NTA was properly served on the respondent by mail, as evidenced in the certificate of service dated April 29, 2019. *See* INA § 239(c), 8 U.S.C. § 1229(c). The NTA and relevant notice of hearing were mailed to the respondent's last known address, and there is no indication that the final notice of hearing was not received. The respondent acknowledged in his motion to reopen that after his request for a change of status was denied in December 2018, he did not inform USCIS of his change of address "because his case had been denied and no more communication was necessary and he was told to leave the country in 180 days." However, the respondent did not leave the United States, and he failed to inform USCIS of his purported change of address in January 2019.

The Immigration Judge also correctly determined that the respondent did not overcome the presumption of receipt of the notice of hearing. *See Matter of M-R-A-*, 24 I&N Dec. at 674–75 (setting forth the factors to be considered in determining whether an alien has presented sufficient evidence to overcome the weaker presumption of delivery when a notice has been sent by regular mail); *see also Navarrete-Lopez v. Barr*, 919 F.3d 951, 954 (5th Cir. 2019) (finding the alien failed to overcome weaker presumption of effective service of notice of removal hearing via regular mail). "[A]n alien's statement in an affidavit that is without evidentiary flaw may be sufficient to rebut the presumption of effective service." *Hernandez v. Lynch*, 825 F.3d 266, 269 (5th Cir. 2016). However, when the respondent filed his motion to reopen, he did not submit his own affidavit, nor affidavits from family members or other individuals who are knowledgeable about the facts relevant to whether notice was received. *See Matter of M-R-A-*, 24 I&N Dec. at 674 (listing affidavits from the alien and others as factors to consider).

Furthermore, when a notice of hearing reaches the correct address but does not reach the respondent through some failure in the internal workings of the household, the respondent can be charged with receiving proper notice. *Ojeda-Calderon v. Holder*, 726 F.3d 669, 673 (5th Cir. 2013). The last notice of hearing dated November 3, 2022, rescheduled the respondent's hearing to April 6, 2023. The notice of hearing was not returned as undeliverable, and the respondent's lack of due diligence weighs in favor of the presumption of receipt by the respondent. *Navarrete-Lopez*, 919 F.3d at 955. The respondent has remained in the United States since July 5, 2018, without permission from DHS, which supports the Immigration Judge's finding that the respondent did not have an incentive to appear for his hearing. Therefore, based on all the circumstances, we agree with the Immigration Judge that the respondent failed to overcome the presumption of delivery of the NTA and the notice of hearing.

Finally, we find no basis for exercising our sua sponte authority to reopen proceedings in this case. *See* 8 C.F.R. § 1003.2(a) (2026); *see also Matter of G-D-*, 22 I&N Dec. 1132, 1133–34 (BIA 1999) (expressing that sua sponte reopening is not a general remedy for hardship created by enforcing regulations); *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997) (stating that the Board's power to reopen cases sua sponte is limited to exceptional circumstances and is not meant to cure filing defects or circumvent the regulations).

III. CONCLUSION

Based on the foregoing, we affirm the decision of the Immigration Judge denying the respondent's motion to reopen. Accordingly, the following orders are entered.

ORDER: The appeal is dismissed.

FURTHER ORDER: The emergency motion to stay removal is denied as moot.

NOTICE: If a respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by DHS, or conspires to or takes any action designed to prevent or hamper the respondent's departure pursuant to the order of removal, the respondent shall be subject to a civil monetary penalty of up to $998 for each day the respondent is in violation. *See* section 274D of the INA, 8 U.S.C. § 1324d (2024); 8 C.F.R. § 280.53(b)(14) (2026). Further, any respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than 2 years, or both. *See* INA § 276(a), 8 U.S.C. § 1326(a) (2024).

DISSENTING OPINION: Hugh G. Mullane, Appellate Immigration Judge

The majority fails to provide persuasive reasons to overturn *Matter of G-Y-R-,* 23 I&N Dec. 181 (BIA 2001), and so I dissent.

A little more background is helpful because *Matter of G-Y-R-* should not be read in isolation. After *Matter of G-Y-R-,* the Board decided two other cases: *Matter of M-D-*, 23 I&N Dec. 540 (BIA 2002), and *Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008). In *Matter of M-D-*, we made clear that a respondent cannot "defeat service by neglecting or refusing to collect his mail." 23 I&N Dec. at 547. In that case, we concluded that an in absentia order was appropriate (and dismissed respondent's appeal) even though the "certified mail receipt sent to the respondent's current address was not signed and was returned to the Service" because respondent had not rebutted the presumption of adequate notice. *Id.* In *Matter of M-R-A-,* we held that there was a presumption of delivery when a notice to appear was served by regular mail (albeit a weaker presumption than service by certified mail). 24 I&N Dec. at 673. These three cases—taken together—set forth the general rules for in absentia orders.

It is also important to focus on how the Department of Homeland Security ("DHS") is expected to initiate a case against a respondent. The statutorily preferred method of service is personal service—"written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien." Section 239(a)(1) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229(a)(1). When service is made this way, then all of the majority's objections and concerns disappear. It is only when "personal service is not practicable" that DHS is permitted to effectuate service by mail. *Id*. Not surprisingly, the majority does not want to focus on this point, because it undermines any possible argument that the system is "unworkable." When personal service is rendered, a respondent has an opportunity and obligation to provide an address. Moreover, because the warning referenced in section 239(a)(1)(F) of the INA, 8 U.S.C. § 1229(a)(1)(F), is part of the notice to appear, a respondent who fails to appear at a hearing because he did not update the immigration court about his address will have no way to avoid an in absentia order (at least on the lack of notice ground).

The majority's real complaint is that when DHS invokes the permissible (but less preferred) method of service—by mail—the language in sections 239(a)(1)(F) and 240(b)(5) of the INA, 8 U.S.C. §§ 1229(a)(1)(F), 1229a(b)(5), is potentially problematic because it is conceivable that DHS will mail a notice to appear to a respondent using an outdated address (because respondent did not update DHS regarding his address) and this amounts to an "inconceivable paradox." The problem—as the majority sees it—is that "DHS could never serve its case-initiating document by mail because the respondent would not have been informed of the 239(a)(1)(F) requirements that must be included in the notice to appear itself."

The majority has not identified a textual interpretative error in *Matter of G-Y-R-*, despite its claim. At best, the majority has established the unremarkable proposition that how DHS effectuates service of the notice to appear *may* have consequences for whether or not an immigration judge may enter an in absentia order of removal (or whether a case will need to be reopened). There are several points to make in response to this claim.

First, the majority is wrong to assert that *Matter of G-Y-R-* is "fundamentally inconsistent with the INA's express provision that [a notice to appear] may be served by regular mail." This is not a textual reason for a different interpretation for sections 239(a)(1)(F) and 240(b)(5) of the INA, 8 U.S.C. §§ 1229(a)(1)(F), 1229a(b)(5); it is a results-based reason. The majority's analysis—by its own admission—only achieves this result by taking "*Matter of G-Y-R-*'s reasoning to its logical conclusion." Nothing in *Matter of G-Y-R-* prohibits DHS from serving a notice to appear by mail. *Matter of G-Y-R-* expressly rebuts the majority's shaky reading:

> An alien can, in certain circumstances, be properly charged with receiving notice, even though he or she did not personally see the mailed document. If, for example, the Notice to Appear reaches the correct address but does not reach the alien through some failure in the internal workings of the household, the alien can be charged with receiving proper notice, and proper service will have been effected.

23 I&N Dec. at 189. Moreover, as discussed above, *Matter of M-D-* and *Matter of M-R-A-* also foreclose the majority's misreading of our precedent. *Matter of M-D-* does so because it prohibits a respondent from defeating service through neglect or refusal to collect mail. 23 I&N Dec. at 547. *Matter of M-R-A-* does so because it provides for a presumption of delivery for regular mail. 24 I&N Dec. at 672. The majority is simply wrong that *Matter of G-Y-R-* prevents DHS from serving a notice to appear by mail.

Second, the majority overlooks an important cannon of statutory construction—"the specific governs the general." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). Here the general provision is section 239(a)(1) of the INA, 8 U.S.C. § 1229(a)(1), and its authorization to serve by mail. The specific provisions are sections 239(a)(1)(F) and 240(b)(5) of the INA, 8 U.S.C. §§ 1229(a)(1)(F), 1229a(b)(5), that set forth the specific rules for in absentia orders. "The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank,* 566 U.S. 639, 645 (2012). Thus, *Matter of G-Y-R-*'s construction is faithful to the plain language of the statute for this reason. Moreover, its interpretative focus on sections 239(a)(1)(F) and 240(b)(5) of the INA, 8 U.S.C. §§ 1229(a)(1)(F), 1229a(b)(5), is proper in this situation because the question presented relates to an in absentia order (not to a general question about service by mail).

Third, the majority is wrong that *Matter of G-Y-R-* has created an "inconceivable paradox." If DHS wants to ensure that every notice to appear will withstand a *Matter of G-Y-R-* type of challenge, then it can serve every notice to appear in person. If DHS does not want to undertake this obligation (remember, the statute says service by mail is permitted when personal service is not practicable), then it can use certified mail or some other highly reliable delivery mechanism to effectuate service. While the statute permits regular mail, it certainly does not preclude other forms of service. [1] This is a cost-benefit analysis for DHS to make—not a paradox.

The majority's policy argument on this point *might* be stronger if DHS advocated for overturning *Matter of G-Y-R-*. Notably, the Board sought supplemental briefing in this case and specifically asked the parties whether we should modify or reverse *Matter of G-Y-R-*. DHS did not argue (or even suggest) that *Matter of G-Y-R-* should be modified or reversed. Instead, DHS argued that respondent cannot prevail under *Matter of G-Y-R-, Matter of M-D-,* and *Matter of M-R-A-*. This undermines the majority's assertion *Matter of G-Y-R-* is "unworkable" or "fundamentally misguided" and further weakens its case for overturning our precedent.

Fourth, the historical statistics regarding in absentia orders are a problem for the majority. Given its claim that *Matter of G-Y-R-* is "unworkable," one would expect that in absentia orders would be a rare bird. That is not the case. The Executive Office for Immigration Review has produced a chart regarding in absentia statistics that shows increases for in absentia orders from year to year (albeit with a dip during COVID-19). Executive Office for Immigration Review, Adjudication Statistics: *In Absentia* Removal Orders (July 24, 2026), https://www.justice.gov/eoir/media/1344881/dl?inline. The chart shows that in absentia orders in 2016 totaled 34,330. In 2023, in absentia orders totaled 160,504. In 2025, in absentia orders totaled 311,130. The increase undermines any serious claim to unworkability.

Finally, overturning *Matter of G-Y-R-,* after nearly 25 years, is complicated for another reason. Many courts of appeals have come to the same (or a similar) legal conclusion regarding sections 239(a)(1)(F) and 240(b)(5) of the INA, 8 U.S.C. §§ 1229(a)(1)(F), 1229a(b)(5), as set forth in *Matter of G-Y-R-*. *See, e.g.*, *Hamazaspyan v. Holder*, 590 F.3d 744 (9th Cir. 2009); *Kozak v. Gonzales*, 502 F.3d 34 (1st Cir. 2007); *Joshi v. Ashcroft*, 389 F.3d 732 (7th Cir. 2004); *Meyers v. U.S. Att'y Gen.*, No. 20-14721, 2024 WL 1928360 (11th Cir. May 2, 2024) (unpublished).[2] Overturning *Matter of*

[1] The notice to appear in this case (like every other notice to appear) has a printed certificate of service that includes "by certified mail, returned receipt requested" as a service option.

[2] The Court of Appeals for the Eleventh Circuit is particularly problematic for the majority because we refrained from applying *Matter of G-Y-R-* in that Circuit until we decided *Matter of Anyelo,* 25 I&N Dec. 337 (BIA 2010). While the majority also overturns

G-Y-R- does not modify or overturn binding precedent from the courts of appeals. The majority thus creates more uncertainty by overturning *Matter of G-Y-R-,* as parties and the immigration courts try to figure out what law applies.

Appellate Immigration Judge Marcos Gemoets dissents without opinion.

Matter of Anyelo (without any briefing), it cannot so easily modify the case law for the Court of Appeals for the Eleventh Circuit.