

JULIO J. RAMOS (SBN. 189944)
LAW OFFICES OF JULIO J. RAMOS
35 Grove St, Suite 130
San Francisco, California 94102
Telephone: (415) 948-3015
Email: ramoslawgroup@yahoo.com

Attorneys for Petitioner/Plaintiff PEDRO JOAQUIN AVILES MENA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

PEDRO JOAQUIN AVILES-MENA,

Petitioner/Plaintiff,

vs.

POLLY KAISER, Acting Field Office Director
of the San Francisco Immigration and Customs
Enforcement Office; TODD LYONS, Acting
Director of United States Immigration and
Customs Enforcement; KRISTI NOEM,
Secretary of the United States Department
of Homeland Security, PAMELA BONDI,
Attorney General of the United States, acting
in their official capacities,

Respondent/Defendant

Case No.: 3:25-CV-06783(RFL)

**SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF TEMPORARY
RESTRAINING ORDER**

PLEASE TAKE NOTICE: Defendants have not contested that the I860 forms enabling expedited removal here are defective for incompleteness: the certificates of service are blank, the order sections lack signatures, and there is no evidence of supervisory concurrence.

A Form I-860 that is neither served nor signed in accordance with 8 C.F.R. § 235.3(b)(2)(i) is legally ineffective.ⁱ Pursuant to 8 C.F.R. §235.3(b)(2)(i), before a noncitizen may be removed under the expedited removal process, DHS is required to complete a formal and procedurally sound removal order that includes specific due process safeguards. The regulation

1 mandates that “[i]n every case in which the expedited removal provisions will be applied and
2 before removing an alien from the United States pursuant to this section, the examining
3 immigration officer shall create a record of the facts of the case and statements made by the
4 alien.” This record must be created using Form I-867AB, titled Record of Sworn Statement in
5 Proceedings under Section 235(b)(1) of the Act. The regulation further requires the examining
6 officer to read—or have read—to the noncitizen all information contained on Form I-867A.
7 After questioning, the officer must record the noncitizen’s responses to the questions on Form I-
8 867B. The noncitizen must then be given the opportunity to review the recorded statement, and
9 is required to sign and initial each page, including any corrections. Additionally, the officer must
10 inform the noncitizen of the charges against them using Form I-860, Notice and Order of
11 Expedited Removal. The noncitizen must be given an opportunity to respond to those charges as
12 part of the sworn statement process. Following supervisory review and concurrence under 8
13 C.F.R. § 235.3(b)(7), the examining immigration official shall serve the alien with Form I-860
14 and the alien shall sign the reverse of the form acknowledging receipt. 8 C.F.R. § 235.3(b)(2)(i)
15 These requirements must be satisfied before an expedited removal order can take legal effect.
16 The failure to complete and serve the I-860 in accordance with these requirements renders the
17 order procedurally deficient and legally invalid.
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21 *Petitioner Is Stripped of Asylee Status, Work Authorization and Liberty*

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23 Nevertheless, on August 8, 2025 DHS/USCIS stripped Petitioner (a citizen of
24 Nicaragua) of his liberty after a prior dismissal of his affirmative asylum application on the basis
25 of unserved and invalid expedited removal orders, thereby unlawfully depriving Petitioner of his
26 statutory right to seek asylum before USCIS and automatically losing authorized employment
27

status.¹ The only avenue available to seek asylum under such circumstances is the filing of an I589 Form directly with USCIS.² Upon USCIS dismissing his Asylum Application, Petitioner was denied a right to the access, benefit and protections of United States asylum law. The loss of asylee status also cripples Petitioner's fundamental right to daily sustenance and his ability to sustain a physical presence within this judicial district becomes unsustainable as a practical matter.

Petitioner's Last Uncontested Status Was Before USCIS Dismissal of Asylum

The Petitioner's last uncontested status was prior to the issuance of the Asylum dismissal letter of June 2025.³ The status quo requires Petitioner's restoration of asylee status and CO8 work authorization designation so as to sustain his ability to get answers to

¹ Any alien who is physically present in the United States...may apply for asylum." 8 U.S.C. § 1158(a)(1).

² Regulations require USCIS to adjudicate all complete asylum applications that are within the agency's jurisdiction, "USCIS shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of [8 C.F.R.] § 208.3(a)(2) or (c)(3), when applicable, and is within the jurisdiction of USCIS pursuant to [8 C.F.R.] § 208.2(a)." 8 C.F.R. § 208.9(a).

³ See *Lado v. Wolf*, 497 F. Supp. 3d 914, 925-926, 2020 U.S. Dist. LEXIS 203031, *18-19 (the last uncontested status of class members in this case exists at the point before the Asylum Ban went into effect on July 16, 2019, when DHS was still processing asylum seekers according to its previous and longstanding asylum eligibility requirements (See, e.g., *Regents of the Univ. of Calif. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011, 1046, 1048 n.20 (N.D. Cal. 2018), *aff'd*, 908 F.3d 476 (9th Cir. 2018) (enjoining DHS from rescinding the Deferred Action for Childhood Arrivals ("DACA") program and ordering it "to maintain the DACA program on a nationwide basis on the same terms and conditions as were in effect before the rescission," because that [*926] was "the status quo before which was that DACA was fully implemented"), *rev'd in part, vacated in part*, U.S. , 140 S.Ct. 1891, 207 L. Ed. 2d 353 (2020); *S.A. v. Trump*, No. 18-CV-03539-LB, 2019 U.S. Dist. LEXIS 33286, 2019 WL 990680, at *13 (N.D. Cal. Mar. 1, 2019) (finding, where plaintiffs sought a preliminary injunction requiring DHS to continue to process conditionally approved beneficiaries under the recently rescinded Central American Minors program, that the status quo ad litem was the point before DHS stopped processing those applications).

1 governmental actions that have prejudiced his capacity and others similarly situated to function
2 as dignified human beings while awaiting a decision on their plea for refuge.

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4 ***Petitioner Seeks Answers:***

- 5 a) whether DHS/USCIS acted unlawfully in dismissing Petitioner's asylum applications
6 under 8 C.F.R. § 208.30 based on incomplete expedited removal papers;
7 (b) whether DHS/USCIS dismissal of a properly filed Form I-589 application violated
8 the Immigration and Nationality Act and the Administrative Procedure Act (APA);
9 (c) whether the absence of valid service of Form I-860 renders DHS's actions
10 unlawful; and
11 (d) whether Plaintiffs are entitled to permanent injunctive and declaratory relief
12 restoring their eligibility for asylum adjudication and employment authorization.
13

14 ***The Court Should Protect Its Jurisdiction and the Status Quo***

15 The District Court has the "express authority under the All Writs Act to issue such
16 temporary injunctions as may be necessary to protect its own jurisdiction". *F.T.C. v. Dean*
17 *Foods Co.*, 384 U.S. 597, 604 (1966). *Dean Foods* authorizes issuance of a writ under the All
18 Writs Act if it is necessary to preserve a court's potential jurisdiction. *See Brown v. Vasquez*,
19 743 F. Supp. 729, 731, 1990 U.S. Dist. LEXIS 11806, *8-9. The writ of habeas corpus is the
20 fundamental instrument for safeguarding individual freedom against the type of arbitrary and
21 lawless state action that has severely damaged the Petitioner's fundamental right to life and
22 liberty. Its pre-eminent role is recognized by the admonition in the Constitution that: "The
23 Privilege of the Writ of Habeas Corpus shall not be suspended " U.S. Const., Art. I, § 9, cl. 2.
24 The scope and flexibility of the writ -- its capacity to reach all manner of illegal detention -- its
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ability to cut through barriers of form and procedural mazes -- have always been emphasized and jealously guarded by courts and lawmakers.

The Status Quo Is Necessary To Correct A Miscarriage Of Justice

The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected. *Harris v. Nelson*, 394 U.S. 286, 290-291, 89 S. Ct. 1082, 1086, 22 L. Ed. 2d 281, 286, 1969 U.S. LEXIS 2161, *9. *Al Otro Lado v. Wolf*, No. 17-cv-02366-BAS-KSC, 497 F. Supp. 3d 914, 2020 U.S. Dist. LEXIS 203031, 2020 WL 6384357, at *6 (S.D. Cal. Oct. 30, 2020) ("Actions required to reinstate the status quo ante litem do not convert prohibitive orders into mandatory relief.").

The scope of preliminary relief here should specify:

- a. Granting a Temporary Restraining Order and a preliminary injunction enjoining DHS and ICE from detaining or removing Plaintiff based on an erroneous removal order until his asylum applications is properly adjudicated;
- b. Granting a Temporary Restraining Order and a preliminary injunction requiring the reinstatement of Plaintiff's employment authorizations based on his pending I-589 application;
- c. Order USCIS to restore and adjudicate Plaintiffs' Form I-589 asylum applications in accordance with 8 C.F.R. § 208.9 and without reliance on unserved removal orders;
- d. Enjoin DHS and ICE from detaining or removing Plaintiffs based on a valid and properly served removal order until the asylum applications are properly adjudicated;
- e. Reinstate Plaintiffs' employment authorizations based on their pending I-589 forms;
- f. That DHS return Plaintiffs' Work Authorization and Passport; and

G. The Respondent Should Pay Petitioner's Attorney Fees

Respectfully submitted:

/s/ Julio J. Ramos
Attorney for Petitioner