

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT
for the DISTRICT OF RHODE ISLAND
RHODE ISLAND

ERICK OMAR GARCIA

Petitioner v.

Patricia Hyde, Boston Field Office Director, Immigration
and Customs Enforcement and Removal Operations
("ICE/ERO"); TODD LYONS, Acting Director of
Immigration Customs Enforcement ("ICE"); U.S.
IMMIGRATION AND CUSTOMS ENFORCEMENT;
KRISTI NOEM, Secretary of the Department of Homeland
Security ("DHS"); U.S. DEPARTMENT OF HOMELAND
SECURITY; and PAMELA BONDI, Attorney General of
the United States,

Case No. _____
(Supplied by Clerk of Court)

Respondent

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Erick Omar Garcia
(b) Other names you have used: _____
2. Place of confinement:
(a) Name of institution: IMMIGRATION CUSTOMS AND ENFORCEMENT, WYATT DETENTION CENTER
(b) Address: 950 HIGH STREET, CENTRAL FALLS, RHODE ISLAND, 02863
(c) Your identification number: _____
3. Are you currently being held on orders by:
 Federal authorities State authorities Other - explain:
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
4. Are you currently:
 A pretrial detainee (waiting for trial on criminal charges)
 Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: _____
(b) Docket number of criminal case: _____
(c) Date of sentencing: _____
- * Being held on an immigration charge yes
 Other (explain): _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:
 How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

- Pretrial detention
- Immigration detention
- Detainer
- The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- Disciplinary proceedings
- Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: U.S. DEPT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR), 150 APOLLO DRIVE, SUITE 100, CHELMSFORD, MA 01824

(b) Docket number, case number, or opinion number: _____

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

DECISION TO DENY BOND AND RELEASE FROM CUSTODY

(d) Date of the decision or action: OCTOBER 23, 2025 AND AUGUST 28, 2025

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: EOIR

(2) Date of filing: AUGUST 28, 2025 AND OCTOBER 23, 2025

(3) Docket number, case number, or opinion number _____

(4) Result: DENIED

(5) Date of result: OCTOBER 23, 2025 AND AUGUST 28, 2025

(6) Issues raised: Whether petitioner should be released from Immigration and Customs Enforcement custody when there is (a) no criminal arrest warrant, (b) no removal order, (c) a pending immediate relative petition filed for him with US Citizenship and Immigration Service (USCIS) by his U.S. citizen spouse, and (d) a pending application with USCIS for his adjustment of status to permanent resident?

(b) If you answered "No," explain why you did not appeal: EOIR has adjourned case several times to give USCIS time to adjudicate his pending immediate relative petition.

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

8. **Second appeal** *N/A*
After the first appeal, did you file a second appeal to a higher authority, agency, or court?
 Yes No

- (a) If "Yes," provide:
- (1) Name of the authority, agency, or court: _____
 - (2) Date of filing: _____
 - (3) Docket number, case number, or opinion number: _____
 - (4) Result: _____
 - (5) Date of result: _____
 - (6) Issues raised: _____
- _____

- (b) If you answered "No," explain why you did not file a second appeal: _____
- _____

9. **Third appeal** *N/A*
After the second appeal, did you file a third appeal to a higher authority, agency, or court?
 Yes No

- (a) If "Yes," provide:
- (1) Name of the authority, agency, or court: _____
 - (2) Date of filing: _____
 - (3) Docket number, case number, or opinion number: _____
 - (4) Result: _____
 - (5) Date of result: _____
 - (6) Issues raised: _____
- _____

- (b) If you answered "No," explain why you did not file a third appeal: _____
- _____

10. **Motion under 28 U.S.C. § 2255** *N/A*
In this petition, are you challenging the validity of your conviction or sentence as imposed?
 Yes No

- If "Yes," answer the following:
- (a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

Yes No

If "Yes," provide:

(a) Date you were taken into immigration custody: August 14, 2025

(b) Date of the removal or reinstatement order: None

(c) Did you file an appeal with the Board of Immigration Appeals? No

Yes No

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

If "Yes," provide:

- (1) Date of filing: _____
- (2) Case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

Yes No

If "Yes," provide:

- (1) Name of court: _____
- (2) Date of filing: _____
- (3) Case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes No

If "Yes," provide:

- (a) Kind of petition, motion, or application: _____
- (b) Name of the authority, agency, or court: _____
- (c) Date of filing: _____
- (d) Docket number, case number, or opinion number: _____
- (e) Result: _____
- (f) Date of result: _____
- (g) Issues raised: _____

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Petitioner is not a flight risk. There is no outstanding warrant for his arrest. He is eligible to apply for adjustment of status, and his incarceration will interfere with that relief because he may be removed before the adjudication of said application because USCIS has not approved his immediate relative petition a pre-requisite to obtaining adjustment of status.

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Petitioner's U.S. citizen spouse filed with USCIS on July 15, 2022, an immediate relative petition. Petitioner filed with USCIS an application for adjustment of status on August 25, 2025. Since Petitioner last entered with a nonimmigrant visa on May 29, 2014 he is statutorily eligible to adjust his status to lawful permanent resident.

(b) Did you present Ground One in all appeals that were available to you?

Yes No

GROUND TWO: _____

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Two in all appeals that were available to you?

Yes No

GROUND THREE: _____

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(b) Did you present Ground Three in all appeals that were available to you?

Yes No

GROUND FOUR:

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Four in all appeals that were available to you?

Yes No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Release Petitioner from custody.

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

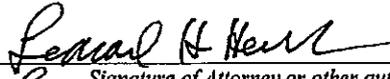
Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: November 3, 2025

Signature of Petitioner


Signature of Attorney or other authorized person, if any

LEONARD H. HECHT
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NEW YORK, NEW YORK
917-613-2543
FAX: 212-956-7432
Leonard.hecht@hechtlaw.com

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Memorandum of Law

Erick Omar Garcia ("Petitioner"), who entered the United States with a B1/B2 visa on May 29, 2014 and is married to a U.S. citizen, has the statutory right to have his application for adjustment of status to lawful permanent resident adjudicated before the Department of Homeland Security, U.S. Citizenship and Immigration Service ("USCIS") rather than the Department of Justice, Executive Office for Immigration Review ("EOIR"). EOIR and Department of Homeland Security, Immigration Customs Enforcement ("ICE") has refused to release him from custody claiming he is a flight risk. See, 8 U.S. Code § 1255(a).

Notwithstanding Petitioner's custody and lack of criminal record, he is an arriving alien. Only USCIS has the statutory power to adjudicate his immediate relative petition which is the prerequisite to adjudication of his adjustment of status application. Succar v. Ashcroft, 394 F.3d 8 (1st Cir. 2005). Prior to his ICE arrest, USCIS received the immediate relative petition his U.S. citizen wife had filed for him. While in custody, Petitioner filed an adjustment application, and, assuming USCIS acts with regularity, USCIS should be adjudicating the immediate relative petition. USCIS has the power to determine whether an applicant qualifies as an immediate relative and adjustment of status. See, Matter of Acevedo, 28 I&N Dec. 648 (A.G. 2022). Acevedo provides that where USCIS has the power to adjudicate a relief application, EOIR must remand the application to USCIS for adjudication and close its proceedings. As a matter of regulatory and federal law, EOIR has no legal basis to pre-judge another agency's

power and no power to violate federal statutes and regulations. At any rate, if USCIS ultimately denies in the first instance the immediate relative petition and/or the adjustment of status application, USCIS, consistent with its enforcement priorities at the time, may refer the person for removal. 78 FR at 554; 81 FR at 50259. Petitioner seeks consideration of his legitimate and authorized pursuit of an existing process *before* the government exercises its right to remove. Calderon v. Sessions, 330 F.Supp.3d 944, 955-59 (S.D.N.Y. 2018). Under United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 266, 268 (1954), when a government agency promulgates "[r]egulations with force and effect of law," they supplement the bare bones "of federal statutes; the government agency must follow its own "existing valid regulations." The Accardi doctrine applies with particular force when "the rights of individuals are affected." Matter of Ruiz, 415 U.S. 199, 232 (1974). Accordingly, under Accardi, when the government promulgates a regulatory process for obtaining relief, a "right to seek relief" is created, even when there is no "right to the relief itself." Arevalo v. Ashcroft, 344 F.3d 1, 15 (1st Cir. 2003) (citing Accardi, 347 U.S. at 268).

Without limiting the broader "right to seek relief" held in the above federal court decisions, the BIA's Matter of Acevedo, 28 I&N Dec. 648 (A.G. 2022), cuts off the government's anticipated argument of "speculation" because the case directly solves the conundrum where court proceedings conflict with a Petitioner's avenue for relief by enabling a Petitioner to seek a regulatory process to obtain relief. The BIA empowers the IJ to make a rational decision as to whether to

grant termination or dismissal of removal proceedings in certain types of limited circumstances where the pendency of removal proceedings causes adverse immigration consequences for a Petitioner who must travel abroad to obtain a visa, or where termination is necessary for the Petitioner to be eligible to seek immigration relief before United States Citizenship and Immigration Services. Based on the federal decisions cited above and Acevedo, the law requires this Court to enable Petitioner to apply for adjustment before the USCIS.

In addition, although the I-213 (Record of Deportable /Inadmissible Alien [Exhibit A]) alleges that Petitioner is the subject of an Interpol warrant based on a criminal investigation in Guatemala, ICE and this Court lack the authority to detain him. First, ICE Directive 15006.1 "Interpol Red Notices and Wanted Persons Diffusions" dated August 15, 2023 and effective date September 30, 2023 states the policy: "A Red Notice or Wanted Persons Diffusion is not an international arrest warrant and conveys no legal authority to arrest, detain, or remove a person. Therefore, ICE personnel will not rely exclusively on Red Notices or Wanted Persons Diffusions to justify enforcement actions or during immigration proceedings." Second, this month, the First Circuit in Maurice v. Bondi, No. 21-1395 (1st Cir. Oct. 2, 2025), affirmed In re Arreguin de Rodriguez, 21 I&N Dec. 38 (BIA 1995), which would consider the Interpol warrant "hearsay" and not actionable because the conduct on which it is based lacks "corroboration." Although hearsay police reports can be considered if reliable and not fundamentally unfair, the agency may not assign "substantial weight" to such reports absent corroborating

evidence—and the BIA’s decision must reflect consideration of that requirement. Id. at 42. “Just as we will not go behind a record of conviction to determine the guilt or innocence of an alien, so we are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein. Here, the applicant conceded that the arrest took place but admitted to no wrongdoing. Considering that prosecution was declined and that there is no corroboration, from the applicant or otherwise, we give the apprehension report little weight.” Id.

For these reasons, there being no justification to detain Petitioner, the Court must release Petitioner.

November 2, 2025


Leonard H. Hecht

Attorney for Petitioner

Thomas T. Hecht, P.C.

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New York, New York 10019

212-245-5556

Fax 212-956-7432

leonard.hecht@hechtlaw.com

U.S. Department of Homeland Security Subject ID : -- Record of Deportable/Inadmissible Alien

Family Name (CAPS) GARCIA-MONROY, ERICK OMAR		First	Middle	Sex M	Hair BLK	Eyes BRO	Complexion MBR
Country of Citizenship GUATEMALA	Passport Number and Country of Issue GUATEMALA	File Number		Height 70	Weight 220	Occupation Unemployed	
U.S. Address NORWALK, CONNECTICUT, 06851,				Scars and Marks			
Date, Place, Time, and Manner of Last Entry B1-Visitor For Business			Passenger Boarded at		F.B.I. Number [REDACTED]		
Number, Street, City, Province (State) and Country of Permanent Residence GUATEMALA				Method of Location/Apprehension NCA			
Date of Birth :	Age: 41	Date of Action 08/14/2025	Location Code HAR/BOS	AU/Near See I-831		Date/Hour 08/14/2025 16:04	
City, Province (State) and Country of Birth GUATEMALA		AR <input checked="" type="checkbox"/> Form: (Type and No.) Lifted <input type="checkbox"/> Not Lifted <input type="checkbox"/>		By See Narrative			
NIV Issuing Post and NIV Number		Social Security Account Name		Status at Entry		Status When Found	
Date Visa Issued		Social Security Number		Length of Time Illegally in U.S.			
Immigration Record NEGATIVE			Criminal Record See Narrative				
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate) GARCIA CERRON, EVELIN ELENA				Number and Nationality of Minor Children None			
Father's Name, Nationality, and Address, if Known GARCIA-ALFARO, ERIC ESPUARDO NATIONALITY: GUATEMALA ADDRESS: 6TA Calle B 2-83 Zona 8 Res Villas Del Amanecer, GUATEMALA			Mother's Present and Maiden Names, Nationality, and Address, if Known MONROY-SOTO, ENMA JUDITH NATIONALITY: GUATEMALA ADDRESS: 6TA Calle B 2-83 Zona 8 Res Villas Del Amanecer, GUATEMALA				
Monies Due/Property in U.S. Not in Immediate Possession None Claimed		Fingerprinted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Systems Checks See Narrative		Charge Code Words(s) See Narrative	
Name and Address of (Last)(Current) U.S. Employer			Type of Employment Unemployed or Retired		Salary HR		Employed from/to
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.) FIN: Left Index fingerprint Right Index fingerprint							
							
Subject Health Status ----- The subject claims good health.							
Current Administrative Charges ----- 08/14/2025 - 237a1B - NONIMMIGRANT OVERSTAY							
Previous Criminal History ... (CONTINUED ON I-831)							
Allien has been advised of communication privileges _____ (Date/Initials)				Date: 2025.08.15 14:40:30 -04'00' N 8197 UCCELLO Deportation Officer <i>[Signature]</i>			
Distribution: A-File				Received: (Subject and Documents) (Report of Interview) Officer: N 8197 UCCELLO on: August 14, 2025 (time) Disposition: Warrant of Arrest/Notice to Appear Examining Officer: HARTNEY, T 7252 T 7252 Hartney			

EOLP 1 of 4

Alien's Name GARCIA-MONROY, ERICK OMAR	File Number Event No:	Date 08/14/2025
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No Crimes selected for inclusion on the I-213.

RECORDS CHECKED

IAFIS Pos
TECS Pos
CLAIM Unk
NCIC Unk
CIS Pos

ARRESTING AGENTS

ANIKA BEAUMONT
N 8197 UCCELLO
JBB# 4071 BURGESS

AT/NEAR

Norwalk, CT

Record of Deportable/Excludable Alien:

ENCOUNTER:

Erick Omar GARCIA-Monroy came to the attention of the Hartford ERO Fugitive Operations Unit as a referral from the U.S. Department of Justice INTERPOL Unit. On October 25, 2014, Garcia was charged by the government of Guatemala with Suppression of Marital Status & Ideological Falsehood. As a result of these charges, an active arrest warrant has been issued for Garcia and the government of Guatemala has contacted the U.S. government, in an attempt to obtain custody of Garcia.

ARREST:

On August 14, 2025, at approximately 0730, Deportation Officer Uccello N, Deportation Officer Beaumont A, Deportation Officer Burgess J, DEA Special Agent Lowndes D, ATF Special Agent Rettig C, and Deputy U.S. Marshal Laurenzi S, observed GARCIA on Lockwood Lane, Norwalk, Connecticut, operating a black Volkswagen Jetta, which was bearing Connecticut registration plate BM13255, which was registered to GARCIA. Officers initiated a motor vehicle stop using the emergency equipment in their government vehicles. GARCIA's vehicle came to a stop in front of 43 Lockwood Lane, Norwalk, Connecticut. Officers approached GARCIA's vehicle on foot while wearing identifiers of Police/ICE/DEA/ATF/USMS. Officers ordered GARCIA out of the car and he complied. Officers handcuffed GARCIA with his hands behind his back, which were checked for proper fit and double locked. GARCIA was then placed in full restraints and transported to Hartford ERO for processing.

ALIENAGE:

Subject claims to be a citizen of Guatemala and claims to have been born in Guatemala.

DERIVATIVE ISSUES:

Subject does not appear to derive United States Citizenship. The subject is not eligible to derive United States citizenship because his presence in the United States is neither lawful nor permanent.

ENTRY DATA:

Signature N 8197 UCCELLO		Date: 2025.08.15 14:43:10 -04'00'	Title Deportation Officer
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Alien's Name GARCIA-MONROY, ERICK OMAR	File Number : Event No:	Date 08/14/2025
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On May 29, 2014, at Atlanta, Georgia, U.S. Custom and Border Protection admitted GARCIA to the U.S. as a visitor for business (B-1), with authorization to remain in the United States for a temporary period not to exceed November 28, 2014. A review of ICE indices does not indicate the subject ever applied for an extension or adjustment of status.

PURPOSE OF ENTRY/ IMMIGRATION DOCUMENTS:

Subject claims to have entered the U.S. to negotiate a motor vehicle purchase and return to Guatemala with the vehicle. It appears the subject lied to a federal officer at the time of inspection due his continued presence in the U.S. Subject was admitted to the U.S. with Guatemalan passport bearing number

IMMIGRATION HISTORY:

On November 7, 2013, GARCIA applied for a B1/B2 visa.

On November 28, 2013, U.S. Customs and Border Protection admitted GARCIA to the U.S. as a B1, visitor for business, at Atlanta, Georgia. GARCIA departed the U.S. on an unknown date.

On January 16, 2014, U.S. Customs and Border Protection admitted GARCIA to the U.S. as a B1, visitor for business. GARCIA departed the U.S. on an unknown date.

On February 14, 2014, U.S. Customs and Border Protection admitted GARCIA to the U.S. as a B1, visitor for business, at Orlando, Florida. GARCIA departed the U.S. on an unknown date.

On April 22, 2014, U.S. Customs and Border Protection admitted GARCIA to the U.S. as a B2, visitor for pleasure, at Atlanta, Georgia. GARCIA departed the U.S. on an unknown date.

On May 29, 2014, at Atlanta, Georgia, U.S. Custom and Border Protection admitted GARCIA to the U.S. as a visitor for business (B-1), with authorization to remain in the United States for a temporary period not to exceed November 28, 2014.

CRIMINAL HISTORY:

FBI Number: None
State ID Number: None

On October 25, 2014, the Government of Guatemala charged GARCIA with Suppression of Marital Status and Ideological Falsehood. These charges are pending.

GANG/ TERRORIST AFFILIATION:

GARCIA is not suspected of having any gang ties.

FEAR:

GARCIA did not claim fear of returning to Guatemala.

MILITARY SERVICE:

GARCIA did not serve in the U.S. military.

CHILD CARE/ CUSTODY ISSUE:

GARCIA claims to have two USC children with are currently in the care and custody of their mother. GARCIA also claims to have one child currently in Guatemala.

MEDICAL HISTORY:

GARCIA claimed to have no medical issues.

RECOMMENDATION / DISPOSTION:

The subject appears amenable to removal from the United States pursuant to Section 237(a)(1)(B) of the INA, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, has remained in the United States for a time longer than permitted, in violation

Signature N 8197 UCCELLO 	Date: 2025.08.15 14:46:05 -04'00'	Title Deportation Officer
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Alien's Name GARCIA-MONROY, ERICK OMAR	File Number Event No:	Date 08/14/2025
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of the Act.

It is recommended a Notice to Appear and Warrant of Arrest be issued. Based on the subject's pending criminal charges in Guatemala and active foreign arrest warrant, the subject is considered a flight risk and it is recommended the subject be held in custody until the conclusion of his removal proceedings.

Other Identifying Numbers

ALIEN-
Arrival-Departure Record-

Signature N 8197 UCCELLO 	Date: 2025.08.15 14:48:07 -04'00'	Title Deportation Officer
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