



U.S. Department of Justice

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Western District of New York*

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December 2, 2025

The Honorable Meredith A. Vacca
United States District Judge
Kenneth B. Keating Federal Building
100 State Street
Rochester, New York 14614

**Re: De La Cruz v. Freden
25-CV-06699-MAV**

Dear Judge Vacca:

De La Cruz alleges in his Petition that he is being detained subject to the *Hurtado* framework under which all aliens who unlawfully entered without admission or inspection and parole are detained under 8 U.S.C. § 1225(b)(2).

De La Cruz actually is detained pursuant to 8 U.S.C. § 1225(b)(1)(A)(iii) as a certain other alien who is subject to expedited removal because he was encountered within 14 days of entering the United States and 100 miles of the border. Enclosed is a Notice to Appear showing that De La Cruz was subject to expedited removal, but that he raised a credible fear of removal and thus the order was vacated and he was transferred to regular removal proceedings for the determination of his application for asylum under 8 U.S.C. § 1229a, pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii). That section also mandates De La Cruz's detention while his application for asylum is considered, and thus he is detained pursuant to § 1225(b)(1) and not § 1225(b)(2) under the *Hurtado* framework.¹

Given these facts, De La Cruz is considered akin to a true arriving alien, and has only those due process rights which Congress has established. A motion to dismiss the Petition will be forthcoming.

¹ De La Cruz was also granted parole of one year in 2023. Parole is only available to aliens detained pursuant to 8 U.S.C. § 1225, and thus he cannot be detained under any other statute. His parole expired in 2024.

Respectfully submitted,

MICHAEL DIGIACOMO
United States Attorney
Western District of New York

BY: /s/ Adam A. Khalil
Assistant United States Attorney

Encl. – Notice to Appear (3 pages), Interim Notice Authorizing Parole (2 pages), Notice of Custody Determination (1 page)

DEPARTMENT OF HOMELAND SECURITY

Allegations: Admits All; | Charges: concede; withdraw 212(a)(7) by DHS

Designated Country: DOMINICAN REPUBLIC |

NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

File No: A 

In the Matter of:

Respondent: FRANCO-DE LA CRUZ, Jose Altagracia currently residing at:

Laredo Detention Center, 4702 E Saunders Street, Laredo, TX 78041

(Number, street, city, state and ZIP code)

(Area code and phone number)

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

- 1) You are not a citizen or national of the United States;
- 2) You are a native of Dominican Republic and citizen of Dominican Republic;
- 3) You entered the United States at an unknown location on or about 9/26/2022;
- 4) You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document;
- 5) You were not then admitted or paroled after inspection by an immigration officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

Section 212(a)(6)(A)(i) of the Act, as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than as designated by the Attorney General.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

Laredo EOIR, 1406 Jacaman Road, Suite B, Laredo, TX 78041

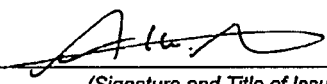
(Complete Address of Immigration Court, including Room Number, if any)

on December 6, 2022 at 9:00 AM to show why you should not be removed from the United States based on the

(Date)

(Time)

charge(s) set forth above.



Supervisory Asylum Officer

(Signature and Title of Issuing Officer)

Date: November 13, 2022

Houston, TX

(City and State)

EOIR - 1 of 3

All evidence you make may be used against you in removal proceedings.

Designated Country: DOMINICAN REPUBLIC
Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the Immigration Judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent)

Date: _____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on 11/13/2022, in the following manner and in compliance with section 239(a)(1) of the Act.

in person by certified mail, returned receipt # _____ requested by regular mail

- Attached is a credible fear worksheet.
- Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the ENGLISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

SERVED BY MAIL

(Signature of Respondent if Personally Served)

Gayle Legal Administrative Specialist
(Signature and Title of officer)

EOIR - 2 of 3

Allegations: Admits All; | Charges: concede; withdraw 212(a)(7) by DHS

Des. Authority: Country: DOMINICAN REPUBLIC |

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.


For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

Date: 11/17/2022

In Reference to: A # 

Name: Franco-De La Cruz, Jose Altagracia

INTERIM NOTICE AUTHORIZING PAROLE

This letter is to inform you that U.S. Immigration and Customs Enforcement (ICE) has decided to parole you from its custody pursuant to its authority under section 212(d)(5)(A) of the Immigration and Nationality Act. This notice is being issued to you in lieu of Form I-94, *Arrival-Departure Record*, see 8 C.F.R. § 235.1(h)(2), and you should maintain a copy of this letter in your possession at all times.

Your parole authorization is valid for one year beginning from the date on this notice and will automatically terminate upon your departure or removal from the United States or at the end of the one-year period unless ICE provides you with an extension at its discretion. ICE may also terminate parole on notice prior to the automatic termination date. Parole is entirely within the discretion of ICE and can be terminated at any time and for any reason. Your parole is not valid for work authorization and is not an admission in lawful status.

Parole is conditioned on you complying with the terms and conditions of your release. You must notify ICE and the immigration judge of any address correction or address change. You must report for every scheduled hearing before the immigration court and every appointment as directed by ICE (including for removal from the United States should you become subject to a final removal order). You must not violate any local, State or Federal laws or ordinances. You must comply with any other specified conditions if identified separately.

I certify that I received a copy of this notice.

Franco-De La Cruz, Jose Altagracia
Alien Name


Alien Signature

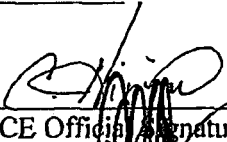
11/17/2022
Date

CERTIFICATE OF SERVICE

I certify that on today's date, I served the respondent a copy of this parole notice by the following method (as checked):

In person Other: _____

C. Hinojosa
ICE Official Name


ICE Official Signature

11/17/2022
Date

A. Gonzalez SDDO
Deciding Official Name

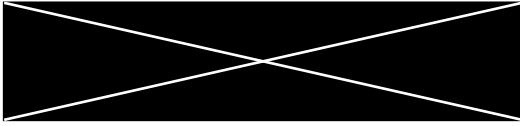

Deciding Official Signature

11/17/2022
Date

Notice Authorizing Parole
Page 2

Continuation Page for Interim Notice Authorizing Parole

To: Franco-De La Cruz, Jose Altagracia



Date: 11/17/2022

File: A#



Bond: (Parole with Reporting Requirements)

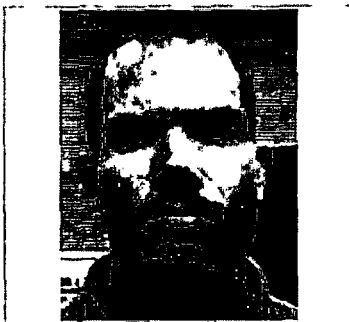
You have been released from service custody pending a final decision in your exclusion/deportation hearing. It is understood that you will be residing at the above address. As stated on the previous page, you are required to notify the Immigration Judge (at the address shown below) of any address correction or address change. When doing so, be sure to include your name and the File Number shown above in your written communication. The attached form, EOIR-33 can be used for this purpose.

Court Address
Office of the Immigration Judge

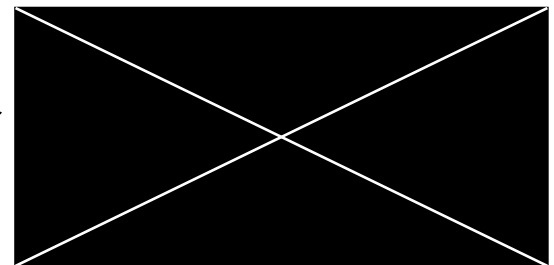
You must report in person to: Non-Detained Office/ATD Office phone: (816) 880-5000

At: 11125 N Ambassador Dr., Suite 100
Kansas City, MO 64153

On: January 18, 2023 at 9:00am



PHOTO



RIGHT INDEX

DEPARTMENT OF HOMELAND SECURITY
NOTICE OF CUSTODY DETERMINATION

Alien's Name: JOSE ALTAGRACIA FRANCO-DE LA CR

A-File Number [REDACTED]

Date: 11/16/2022

Event ID: [REDACTED]

Subject ID: [REDACTED]

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be:

- Detained by the Department of Homeland Security.
- Released (check all that apply):
 - Under bond in the amount of \$ _____
 - On your own recognizance
 - Under other conditions. [Additional document(s) will be provided.]

A 6173 GONZALEZ JR
Name and Signature of Authorized Officer

SDDO
Title

11/16/2022 15:02
Date and Time of Custody Determination
ERG Laredo Sub Office
4602 East Saunders
LAREDO TX 78041
Office Location/Address

You may request a review of this custody determination by an immigration judge.

- I acknowledge receipt of this notification, and
 - I do request an immigration judge review of this custody determination.
 - I do not request an immigration judge review of this custody determination.

[Signature]
Signature of Alien

Date

The contents of this notice were read to JOSE ALTAGRACIA FRANCO-DE LA CR in the SPANISH language.
(Name of Alien) (Name of Language)

C 0657 HINOJOSA
Name and Signature of Officer

Deportation Officer
Title

N/A
Name or Number of Interpreter (if applicable)