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7 Attorney for Petitioner
8 EMILIANO TOMAS-LEIVA

9 UNITED STATE DISTRICT COURT
10 SOUTHER DISTRICT OF CALIFORNIA

11 EMILIANO TOMAS-LEIVA,

12 Plaintiff,

13 v.

14 CHRISTOPHER J. LAROSE, Senior
15 Warden, Otay Mesa Detention Center;
16 DANIEL A. BRIGHTMAN, San Diego
17 Field Office Director, Immigration and
18 Customs Enforcement and Removal
19 Operations ("ICE/ERO"); TODD M.
20 LYONS, Acting Director of Immigration
21 Customs Enforcement ("ICE"); U.S.
22 Immigration and Customs Enforcement;
23 KRISTI NOEM, Secretary of the
24 Department of Homeland Security
25 ("DHS"); U.S. Department of Homeland
26 Security; and PAMELA BONDI,
27 Attorney General of the United States,

28 Respondents.

CASE NO.: '25CV3776 CAB AHG

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR DECLARATORY
RELIEF**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief



1 Petitioner Emiliano Tomas-Leiva petitions this Court for a writ of habeas
2 corpus under 28 U.S.C. section 2241 to remedy Respondents' detaining him
3 unlawfully, and states as follows:

4 **INTRODUCTION**

- 5
- 6 1. Petitioner Emiliano Tomas-Leiva ("Petitioner" or "Mr. Tomas-Leiva") is a forty-
7 seven-year-old, Guatemalan, asylum seeker detained at Oaty Mesa Detention
8 Center in San Diego, California. He was persecuted in Guatemala including
9 threats of harm and violence because of his particular social group.
- 10
- 11 2. On or about December 22, 2018, Petitioner came to or near the port of entry at or
12 near San Luis, Arizona, to seek asylum. Respondents arrested and detained
13 Petitioner. On information and belief, based on the individualized facts of
14 Petitioner's case, Respondent DHS released Petitioner from its custody on an
15 Order of Release on Recognizance pursuant to 8 U.S.C. § 1226(a).
- 16
- 17 3. On or about March 1, 2019, Respondents initiated removal proceedings against
18 Petitioner under 8 U.S.C. §1229a.
- 19
- 20 4. Respondents alleged that Petitioner is an alien present in the United States
21 without being admitted or paroled, or who arrived in the United States at a time
22 or place other than as designated by the Attorney General pursuant to
23 212(a)(6)(A)(i) of the Immigration and Nationality Act.
- 24
- 25 5. Petitioner applied for asylum before the San Diego Immigration Court on October
26 25, 2019.
- 27
- 28 6. On July 17, 2023, Petitioner's removal proceedings were administratively closed.



- 1 7. On November 25, 2025, Mr. Tomas-Leiva was arrested and detained by
- 2 Immigration and Customs Enforcement (ICE) officers.
- 3 8. On November 25, 2025, an attempt was made to initiate removal proceedings
- 4 against Mr. Tomas-Leiva, alleging no new allegations, despite there being a
- 5 pending but administratively closed matter.
- 6
- 7 9. On December 1, 2025, the Department of Homeland Security (DHS) filed a motion
- 8 to re-calendar the administratively closed proceedings.
- 9
- 10 10. On December 16, 2025, the previously administratively closed proceedings were
- 11 reopened.
- 12 11. The newly initiated removal proceedings on the same basis as the pending
- 13 removal proceedings remain open but without any further action.
- 14
- 15 12. Immigration detention is civil in nature and it's permissible only to ensure a
- 16 noncitizen's appearance at immigration proceedings or to protect the community
- 17 from danger. DHS did not arrest or detain Mr. Tomas-Leiva for either of these
- 18 legitimate purposes as he plainly poses neither a flight risk nor a danger to the
- 19 community.
- 20

21 JURISDICTION

- 22 13. This action arises under the Constitution of the United States and the
- 23 Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
- 24
- 25 14. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),
- 26 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States
- 27 Constitution (Suspension Clause).
- 28

1 15. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et.
2 seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28
3 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).
4

5 **VENUE**

6 16. Venue is proper because Petitioner is in Respondents' custody in Otay Mesa,
7 California Venue is further proper because a substantial part of the events or
8 omissions giving rise to Petitioner's claims occurred in this District, where
9 Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).
10

11 17. Courts have long recognized the significance of the habeas statute in protecting
12 individuals from unlawful detention. The Great Writ has been referred to as
13 "perhaps the most important writ known to the constitutional law of England,
14 affording as it does a swift and imperative remedy in all cases of illegal restraint
15 or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).
16

17 18. Petitioner is "in custody" for the purpose of § 2241 because Petitioner was arrested
18 and is detained by Respondents.
19

20 **PARTIES**

21 19. Petitioner is a 47-year-old citizen of Guatemala. Petitioner is present within the
22 state of California at the time of the filing of this petition.
23

24 20. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa
25 Detention Center in San Diego, California, where Mr. Tomas-Leiva is detained.
26 LaRose is responsible for the day-to-day operations and confinement of noncitizens
27 detained at that facility. He acts at the direction of Respondents Brightman,
28

1 Lyons, and Noem. LaRose is a custodian of Mr. Tomas-Leiva, and is named in his
2 official capacity.

3 21. Respondent, Daniel A. Brightman, is the Field Office Director for the San Diego
4 Field Office, Immigration and Customs Enforcement and Removal Operations
5 (“ICE”). The San Diego Field Office is responsible for local custody decisions
6 relating to non-citizens charged with being removable from the United States,
7 including the arrest, detention, and custody status of noncitizens. The San Diego
8 Field Office’s area of responsibility includes San Diego and Imperial Counties in
9 California. Respondent Daniel Brightman is a legal custodian of Petitioner.
10
11

12 22. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs
13 Enforcement, and he has authority over the actions of respondent Daniel
14 Brightman and ICE in general. Respondent Daniel Brightman is a legal custodian
15 of Petitioner.
16

17 23. Respondent Kristi Noem is the Secretary of the Department of Homeland Security
18 (DHS) and has authority over the actions of all other DHS Respondents in this
19 case, as well as all operations of DHS. Respondent Noem is a legal custodian of
20 Petitioner and is charged with faithfully administering the immigration laws of
21 the United States.
22

23 24. Respondent Pamela Bondi is the Attorney General of the United States, and as
24 such has authority over the Department of Justice and is charged with faithfully
25 administering the immigration laws of the United States.
26
27
28

1 25. Respondent U.S. Immigration Customs Enforcement is the federal agency
2 responsible for custody decisions relating to non-citizens charged with being
3 removable from the United States, including the arrest, detention, and custody
4 status of non-citizens.
5

6 26. Respondent U.S. Department of Homeland Security is the federal agency that has
7 authority over the actions of ICE and all other DHS Respondents.
8

9 27. This action is commenced against all Respondents in their official capacities.
10

11 LEGAL FRAMEWORK

12 28. Immigration detention should not be used as a punishment and should only be
13 used when, under an individualized determination, a noncitizen is a flight risk
14 because they are unlikely to appear for immigration court or a danger to the
15 community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
16

17 29. Noncitizens in immigration proceedings are entitled to Due Process under the
18 Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
19 (1993).
20

21 30. The Immigration and Nationality Act (INA) sets the rules for detaining
22 noncitizens while the government decides whether they are removable. See 8
23 U.S.C. § 1226(a).
24

25 31. Custody determinations for individuals in 1229a removal proceedings are
26 governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he
27 does not present a danger to persons or property and is not a flight risk. *Zadvydas*
28 *v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

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— TRIAL ATTORNEYS —

1 32. Custody determinations under § 1226(a) are individualized and based on the facts
2 presented in those cases. Unlike § 1226(c), which can provide for categorical
3 determinations for detention regardless of flight risk or safety risks, § 1226(a)
4 requires a case-by-case review of the facts and circumstances.
5

6 33. Once a determination to release an individual from custody is made, the release
7 order may be revisited when the facts or circumstances warrant revocation or
8 reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody,
9 the Attorney General may take that individual back into custody by revoking the
10 individual's release when the facts and circumstances warrant it.
11

12 34. Revocation and return to custody is authorized only based on individualized facts
13 and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are
14 limited in nature and may only be made by certain authorized officials. 8 C.F.R. §
15 1236.1(c)(9).
16

17 **FACTUAL BACKGROUND**

18 35. Petitioner, Emiliano Tomas-Leiva, fled a fear of persecution in his home country of
19 Guatemala and entered the United States of America seeking protection as a
20 refugee under its asylum laws.
21

22 36. On or about December 26, 3018, Respondents, having conducted an individualized
23 assessment of Petitioner Tomas-Leiva particular circumstances, authorized his
24 release into the United States.
25

26 ///

27 ///



1 37. Respondents commenced removal proceedings against Petitioner in immigration
2 court, entitling Petitioner to present an asylum claim with the due process rights
3 under 8 U.S.C. § 1229a.

4 38. While released from ICE custody on his own recognizance on December 30, 2018,
5 he remained free for over seven years. During that time, Petitioner Tomas-Leiva
6 complied with every request, demand and requirement imposed by Respondents,
7 in addition to complying with all the court and legal timelines in pursuing
8 immigration relief.
9

10 39. ICE detained Mr. Tomas-Leiva for no reason or basis while he was on his way to
11 work. Mr. Tomas-Leiva has a valid work authorization.
12

13 40. Mr. Tomas-Leiva is being detained without explanation.
14

15 41. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant
16 petition for a writ of habeas corpus. Petitioner asks this Court to find that
17 Respondents' attempts to detain the Petitioner are arbitrary and capricious and in
18 violation of the law, and to immediately issue an order releasing Petitioner from
19 ICE custody.
20

21 **CLAIMS FOR RELIEF**

22 **COUNT ONE**

23 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**

24 **Abuse of Discretion**

25 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

26
27 42. Petitioner restates and realleges all paragraphs as if fully set forth here.
28

1 43. Under the APA, a court shall “hold unlawful and set aside agency action” that is
2 an abuse of discretion. 5 U.S.C. § 706(2)(A).

3 44. An action is an abuse of discretion if the agency “entirely failed to consider an
4 important aspect of the problem, offered an explanation for its decision that runs
5 counter to the evidence before the agency, or is so implausible that it could not be
6 ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of*
7 *Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle*
8 *Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

9
10
11 45. To survive an APA challenge, the agency must articulate “a satisfactory
12 explanation” for its action, “including a rational connection between the facts
13 found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569
14 (2019) (citation omitted).

15
16 46. By categorically revoking Petitioner’s release without consideration of his
17 individualized facts and circumstances, Respondents have violated the APA.

18
19 47. By detaining the Petitioner categorically, Respondents have further abused their
20 discretion because there have been no changes to his facts or circumstances since
21 the agency made its initial custody determinations that support the revocation of
22 his release from custody.

23
24 48. Respondents have already considered Petitioner’s facts and circumstances and
25 determined that he was not a flight risk or danger to the community. There have
26 been no changes to the facts that justify this revocation of his release on his own
27 recognizance.
28

1 49. The fact that Petitioner has already been granted release by Respondents under
2 the same facts and circumstances shows that Respondents do not consider him, on
3 an individualized basis, to be a danger to the community or a flight risk.

4
5 **COUNT TWO**

6 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**
7 **Not in Accordance with Law and in Excess of Statutory Authority**
8 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

9 50. Petitioner restates and realleges all paragraphs as if fully set forth here.

10 51. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in
11 accordance with law;” “contrary to constitutional right;” “in excess of statutory
12 jurisdiction, authority, or limitations;” or “without observance of procedure
13 required by law.” 5 U.S.C. §706(2)(A)-(D).

14 52. 8 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may revoke
15 a bond or parole authorized under [8 U.S.C. § 1226(a)]” and rearrest a noncitizen
16 under the initial warrant. In implementing this statutory provision, 8 C.F.R. §
17 1236.1(c)(9) clarifies that such revocations of release from custody may only be
18 carried out in the “discretion of the district director, acting district director,
19 deputy district director, assistant district director for investigations, assistant
20 district director for detention and deportation, or officer in charge (except
21 foreign).”

22 53. It is a well-established administrative principle that “agency action taken without
23 lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*,
24 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67,
25
26
27
28

1 79 (D.C. Cir. 2015); see also *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d
2 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by
3 unauthorized official).

4 54. On information and belief, Respondents have revoked or are revoking Petitioner's
5 prior custody determination as a result of a categorical policy prepared by and
6 implemented by unidentified government officials in Washington, not through the
7 individual exercise of discretion required by law or by the individuals enumerated
8 by regulation to do so.

9 55. Because Petitioner's revocation of release from custody has been made or will be
10 categorically directed by government officials not authorized by law to make this
11 determination, Respondents' detention of Petitioner is not in accordance with law
12 and in excess of statutory authority.

13 **COUNT THREE**

14 **Violation of Fifth Amendment Right to Due Process** 15 **Procedural Due Process**

16 56. Petitioner restates and realleges all paragraphs as if fully set forth here.

17 57. The Due Process Clause of the Fifth Amendment to the U.S. Constitution
18 prohibits the federal government from depriving any person of "life, liberty, or
19 property, without due process of law." U.S. Const. Amend. V. Due process protects
20 "all 'persons' within the United States, including [non-citizens], whether their
21 presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S.
22 at 693; accord *Flores*, 507 U.S. at 306. 62. Due process requires that government
23
24
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1 action be rational and non-arbitrary. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th
2 Cir. 2007).

3 58. While the government has discretion to detain individuals under 8 U.S.C. §1226(a)
4 and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not
5 “unlimited” and must comport with constitutional due process. See *Zadvydas*, 533
6 U.S. at 698.

7
8 59. Here, Respondents have chosen to revoke Petitioner’s release in an arbitrary
9 manner and not based on a rational and individualized determination of whether
10 he is a safety or flight risk, in violation of due process. Because no individualized
11 custody revocation has been made and no circumstances have changed to make
12 Petitioner a flight risk or a danger to the community, Respondents’ revocation of
13 Petitioner’s release violates his right to procedural due process.
14
15

16
17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Petitioner respectfully requests this Court to grant the following:

- 19 1. Assume jurisdiction over this matter;
20 2. Issue an Order to Show Cause ordering Respondents to show cause why this
21 Petition should not be granted within three days;
22 3. Declare that Petitioner’s detention without an individualized determination
23 violates the Due Process Clause of the Fifth Amendment;
24 4. Declare that Petitioner’s revocation of parole from custody was made in
25 violation of statute and regulation;
26 5. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner
27
28

1 from custody;

2 6. Award Petitioner attorney's fees and costs under the Equal Access to Justice
3 Act, and on any other basis justified under law; and

4 7. Grant any further relief this Court deems just and proper.
5

6
7 Date: 12/24/2025

STERGER LAW GROUP, P.C.

8
9 By: /s/ Richard S. Sterger
10 Richard S. Sterger, Esq.
11 Attorney for Petitioner
12 Emiliano Tomas-Leiva

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ATTORNEYS

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11 EMILIANO TOMAS-LEIVA,

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14 CHRISTOPHER J. LAROSE, Senior
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27 Attorney General of the United States,

28 Respondents.

CASE NO.: '25CV3776 CAB AHG

EXHIBIT LIST



EXHIBIT “A”



Report

Main Menu

Search Results: 1

EMILIANO TOMAS-LEIVA

Country of Birth : Guatemala

A-Number: [REDACTED]

Status : In ICE Custody

State: CA

Current Detention Facility: OTAY MESA DETENTION CENTER

** Click on the Detention Facility name to obtain facility contact information*

[BACK TO SEARCH >](#)

Related Information

- Helpful Info
 - Status of a Case
 - About the Detainee Locator
 - Brochure
 - ICE ERO Field Offices
 - ICE Detention Facilities
 - Privacy Notice

External Links

[Privacy - Terms](#)

Bureau of Prisons Inmate
Locator

of 17



DHS.govUSA.govOIGOpenFOIAMetrics No Site Site
Gov FearMapPolicies
Act &
Plug-
Ins

EXHIBIT “B”

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

ORDER OF RELEASE ON RECOGNIZANCE

Event Number: 

File No.: 

Date: December 26, 2018

Name: TOMAS-LEIVA, EMILIANO

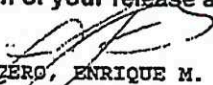
You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

- You must report for any hearing or interview as directed by Immigration and Customs Enforcement or the Executive Office for Immigration Review.
- You must surrender for removal from the United States if so ordered.
- You must report in (writing) (person) to Duty officer at See I-831 on 01/09/2019 09:00 as directed.

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

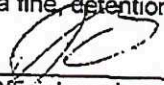

- You must not change your place of residence without first securing written permission from the officer listed above.
- You must not violate any local, State or Federal laws or ordinances.
- You must assist Immigration and Customs Enforcement in obtaining any necessary travel documents.
- Other: *Your release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the Department of Homeland Security. Electronic monitoring is a requirement and a curfew may be imposed. Failure to comply with the conditions of your release or the requirements of the ATD program may result in a redetermination of your release conditions or your arrest and detention.*
- See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by Immigration and Customs Enforcement.


LUCERO, ENRIQUE M.
ICE Official

Alien's Acknowledgement of Conditions of Release under an Order of Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the SPANISH language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

  12/26/2018
(Signature of ICE Official serving order) (Signature of Alien) Date

I hereby cancel this order of release because:

- The alien failed to comply with the conditions of release.
- The alien was taken into custody for removal.

(Signature of ICE Official canceling order) Date

FAMILY

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

ORDER OF RELEASE ON RECOGNIZANCE

Event Number: YUS1912000376

File No.: 

Date: December 26, 2018

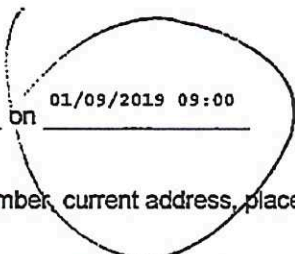
Name: TOMAS-LEIVA, EMILIANO

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

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You must not violate any local, State or Federal laws or ordinances.

You must assist Immigration and Customs Enforcement in obtaining any necessary travel documents.

Other: *Your release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the Department of Homeland Security. Electronic monitoring is a requirement and a curfew may be imposed. Failure to comply with the conditions of your release or the requirements of the ATD program may result in a redetermination of your release conditions or your arrest and detention.*

See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by Immigration and Customs Enforcement.


LUZERO, ENRIQUE M.
ICE Official

Alien's Acknowledgement of Conditions of Release under an Order of Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the SPANISH language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

  12/26/2018
(Signature of ICE Official serving order) (Signature of Alien) Date

I hereby cancel this order of release because:

The alien failed to comply with the conditions of release. The alien was taken into custody for removal.

(Signature of ICE Official canceling order) Date

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


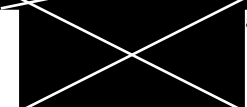
**ORDER OF RELEASE ON RECOGNIZANCE
ADDENDUM**

File No. 

Date: December 26, 2018

Name: TOMAS-LEIVA, EMILIANO

- That you do not associate with known gang members, criminal associates, or be associated with any such activity.
- That you register in a substance abuse program within 14 days and provide ICE with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a counselor.
- That you register in a sexual deviancy counseling program within 14 days and provide ICE with written proof of such within 30 days. You must provide ICE with the name of the program, the address of the program, duration and objectives of the program as well as the name of a counselor.
- That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency(s) and provide ICE with written proof of such within 10 days.
- That you do not commit any crimes while on this Order of Release on Recognizance.
- That you report to any parole or probation officer as required within 5 business days and provide ICE with written verification of the officer's name, address, telephone number, and reporting requirements.
- That you continue to follow any prescribed doctor's orders whether medical or psychological including taking prescribed medication.
- That you provide ICE with written copies of requests to Embassies or Consulates requesting the issuance of a travel document.
- That you provide ICE with written responses from the Embassy or Consulate regarding your request.
- Any violation of the above conditions will result in revocation of your employment authorization document.
- Any violation of these conditions may result in you being taken into ICE custody and you being criminally prosecuted.
- Other;

X  _____
 Alien's Signature

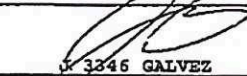
U.S. Department of Homeland Security

Continuation Page for Form I-220A

Alien's Name TOMAS-LEIVA, EMILIANO	File Number XXXXXXXXXX Event No: XXXXXXXXXX	Date 12/26/2018
--	---	---------------------------

LOCATION OF ICE OFFICE WHICH YOU REPORT TO

880 Front Street, Suite 2242
 San Diego, CA 92101
 (619)436-0410

Signature  J. GALVEZ	Title Deportation Officer
---	------------------------------

U.S. Department of Homeland Security

Continuation Page for Form I-220A

Alien's Name
TOMAS-LEIVA, EMILIANO

File Number

Event No:

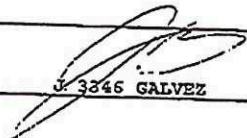
Date

12/26/2018

LOCATION OF ICE OFFICE WHICH YOU REPORT TO

880 Front Street, Suite 2242
San Diego, CA 92101
(619)436-0410

Signature



J. 3346 GALVEZ

Title

Deportation Officer

5 of 5 Pages

EXHIBIT “C”

U.S. Department of Homeland Security

Notice to Appear

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

Subject ID: [redacted] FINS: [redacted] File No: [redacted]
DOB: [redacted] Event No: [redacted]

In the Matter of:

Respondent: EMILIANO TOMAS-LEIVA currently residing at:
[redacted] (Number, street, city and ZIP code) [redacted] (Area code and phone number)

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

DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
MAR 01 2019
IMMIGRATION COURT
SAN DIEGO, CA

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 GUATEMALA and a citizen of GUATEMALA;
3. You arrived in the United States at or near SAN LUIS, AZ, on or about December 22, 2018;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

ORIGINAL

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:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who 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(f)(2) 8CFR 235.3(b)(5)(iv)

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

401 West A Street Suite 800 San Diego CA 92101. EOIR San Diego, CA

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

on April 17, 2019 at 1:00 PM to show why you should not be removed from the United States based on the charge(s) set forth above.

VICTOR DANIELS SDDO (Signature and Title of Issuing Officer)

Date: February 24, 2019 SAN DIEGO, CA (City and State)

This Notice to Appear Supersedes the Notice to Appear issued on December 25, 2018 (City and State)

See reverse for important information

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under 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 3.16. 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, which 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 and that you are inadmissible or removable on the charges contained in the Notice to Appear. 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 departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court 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 one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 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 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 Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

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 February 24, 2019, in the following manner and in compliance with section 239(a)(1)(F) 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 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.

(Signature of Respondent if Personally Served)

E04740 4740 WILCOX DEPORTATION OFFICER (Signature and Title of officer)

List of Pro Bono Legal Service Providers

Updated January 2019

<http://www.justice.gov/eoir/list-pro-bono-legal-service-providers>

San Diego Immigration Court

San Diego, California	
<p>ABA Immigration Justice Project*</p> <p>2727 Camino del Rio South, Suite 223 San Diego, CA 92108 Tel: (619) 255-8817 Fax: (619) 255-8792</p> <ul style="list-style-type: none"> • Services limited to San Diego, CA • Office is not open to the public. Please call for appointment. • Offer legal orientations to individuals in removal proceedings at the San Diego Immigration Court, Wednesdays 8:30 am - 10:00 am (English and Espanol). Call for more information. 	<p>Jewish Family Service of San Diego*</p> <p>8788 Balboa Avenue San Diego, CA 92123 Tel: (858) 637-3365 Fax: (858) 637-3011 immigration@jfssd.org http://www.jfssd.org/site/PageServer?pagename=programs_refugee_main</p> <ul style="list-style-type: none"> • Languages: Spanish, Arabic, multilingual interpretation may be available • Please call for appointment • Services include: Bond Hearings, Removal Defense, Cancellation of Removal, Asylum, Adjustment of Status
<p>Legal Aid Society of San Diego*</p> <p>110 South Euclid Avenue San Diego, CA 92114 Tel: (877) 534-2524 Fax: (619) 263-5697 www.lasdsd.org</p> <ul style="list-style-type: none"> • Walk-In Deportation Clinic Wednesdays 8-9:30 a.m. or call for appointment • Accept detained and non-detained cases • Languages: Spanish; can provide interpretation in most languages 	<p>Catholic Charities, Diocese of San Diego*</p> <p>4575-B Mission Gorge Place San Diego, CA 92103 Tel: (619) 287-1270 immhelp@ccdsd.org https://www.ccdsd.org/programs/immigrant-services/</p> <ul style="list-style-type: none"> • Mon-Fri 8am-5pm • Languages: Spanish, Arabic, Russian, Ukrainian, Laotian and Tagalog
<p>Casa Cornelia Law Center*</p> <p>2760 Fifth Avenue, Suite 200 San Diego, CA 92103 Tel: (619) 231-7788 Fax: (619) 231-7784 www.casacornelia.org LawCenter@CasaCornelia.org</p> <ul style="list-style-type: none"> • Asylum, unaccompanied minors, victims of serious crime 	

Disclaimer: As required by 8 C.F.R. § 1003.61, the Executive Office for Immigration Review (EOIR), Office of the Director, Office of Legal Access Programs maintains a list of organizations and attorneys qualified under the regulations who provide pro bono or free legal services. The information posted on this list is provided to EOIR by the Providers. EOIR does not endorse any of these organizations or attorneys. Additionally, EOIR does not participate in, nor is it responsible for, the representation decisions or performance of these organizations or attorneys.

Case Type is Removal

DHS Loc. : SND

Alien # : [REDACTED]

Name (L,F) : TOMAS LEIVA, EMILIANO

AKA (L,F) :

Lead A# [REDACTED]

NTA Date : 2/24/2019

Input Date : 2/24/2019 11:02:13 AM

Rec'd Date :

Entry Date : 12/21/2018

Natl'ty : GUATEMALA Lang. : SPANISH

Address : [REDACTED]

City [REDACTED]

State CA

Zip 92024

Phone [REDACTED]

Charges (1)

(212)(a)(06)(A)(i)()

Findings (S/N/W/O)

(I)n Person (M)ail : M

Base City : SND

Hearing Date : 4/17/2019

Location : SND

Time : 01:00

Battered Spouse (Y/N) : N

Correspondence Title : IMMIGRATION COURT

Hearing Location : SAN DIEGO, CALIFORNIA

Address : 401 WEST A STREET, SUITE #800

City : SAN DIEGO

State : CA

Zip : 92101

DHS Asylum Received Date : (Complete Applications ONLY)

Elapsed Number of Days at Entry : 0
Projected 180th Date:

Referred after interview

Expedited —

Not Expedited —

Clock has stopped Due to

No Show at Interview —

Failure to Pick-Up NTA —

Failure To Complete Biometrics —

No Clock

Asylum Rcvd prior 01/04/95 —

ABC Case —

Signature of DHS Official Forwarding Application

WilcoxEDHS

Date Entered in CASE : 2/24/2019

