

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. **2025 CV 04187 - SBP**

OLIVER GRIJALVA ESQUIVEL, Petitioner/Applicant,

v.

JUAN BALTASAR, Warden,
Aurora ICE Processing Center, Et al.

MOTION TO SUPPLEMENT TO PETITION FOR WRIT OF HABEAS
CORPUS

Petitioner through counsel respectfully moves to supplement his application for a writ of habeas corpus.

On page 11, paragraph 23 of the habeas application the petitioner refers to the "attached [bond] Order of the Immigration Judge." But counsel for the petitioner did not attach the IJ's Order.

Attached here is the IJ's Order to properly supplement the habeas petition.

Although opposing counsel has not yet entered an appearance, Attorney Kevin Traskos from the United States Attorney's Office in Denver has already contacted counsel today to request the IJ's attached order, and he has been emailed a copy.

Dated January, 1 2026

s/Jim Salvator

Attorney for Petitioner
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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
AURORA IMMIGRATION COURT

Respondent Name:

GRIJALVA-ESQUIVEL, OLIVER

To:

Lopez Lugo, Eddie
PO BOX 4885
Alpharetta, GA 30023

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

04/14/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

Denied, because

- Granted. It is ordered that Respondent be:
 - released from custody on his own recognizance.
 - released from custody under bond of \$
 - other:

Other:

The Court determines that it does not have jurisdiction over the Respondent's custody redetermination proceedings because the Respondent is subject to mandatory detention pursuant to section 235(b) of the Immigration and Nationality Act (INA).

The INA provides for the classes of noncitizens subject to expedited removal. INA § 235(b)(1). The INA further sets forth procedures for referring those noncitizens who indicate a fear of persecution to an asylum officer for a credible fear interview. If the noncitizen is determined to have a credible fear of persecution, they are referred to the immigration court for removal proceedings under section 240. Id. The INA mandates detention for all noncitizens subject to this process through the conclusion of their proceedings. Id.; Jennings v. Rodriguez, 583 US 281, 287 (2018); Matter of M-S-, 27 I&N Dec. 509 (A.G. 2019) (holding that a noncitizen transferred from expedited removal proceedings to full removal proceedings must be detained until their removal proceedings conclude, unless DHS grants them parole).

Notably, the Department of Homeland Security (the Department) has prosecutorial discretion to place eligible applicants for admission into expedited removal proceedings rendering them subject to the credible fear procedures as described above OR place them directly into removal proceedings under section 240. Matter of E-R-M- & L-R-M-, 25 I&N Dec. 520 (BIA 2011). Here, the Department elected to place the Respondent in expedited removal proceedings. Upon claiming a fear of persecution, the Respondent was referred to an asylum officer who then issued a Notice to Appear, thereby transferring the Respondent to full removal proceedings. 8 C.F.R. § 208.30(b) (stating that an asylum officer may refer a noncitizen for removal proceedings without making a credible fear determination). Here, Respondent argues that he should not have been processed under the expedited removal provisions because he had been continuously physically present in the United States for more than two years immediately prior to the determination of inadmissibility.

Nonetheless, if it were to be reasoned that the Respondent is not subject to section 235(b)(1) of the INA, as argued by the respondent, the Court would determine that Respondent is instead subject to mandatory detention under section 235(b)(2). In this case, the respondent had been continuously physically present in the United States for more than two years when apprehended near the border by immigration officials. Pursuant to 8 C.F.R. § 235.3(b)(1)(ii), an alien who was not inspected and admitted or paroled into the United States but who establishes that he has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act. Under 8 C.F.R. 235.3(d), the Department will assume custody of any alien subject to detention under paragraphs (b) or (c) of this section and shall be considered detained for a proceeding within the meaning of section 235(b) of the Act.

As a noncitizen present in the United States who has not been admitted, Respondent qualifies under the INA as an “applicant for admission.” See INA § 235(a)(1) (“An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) shall be deemed for the purposes of this Act an applicant for admission.”); Jennings, 583 US at 287 (“[A]n alien who “arrives in the United States,” or “is present” in this country but “has not been admitted,” is treated as “an applicant for admission.” (quoting INA § [235](a)(1)). While section 235(b)(1) covers applicants for admission subject to expedited removal, (b)(2) covers applicants for admission who are initially placed directly into section 240 removal proceedings. See Jennings, 583 US at 287. (“[A]pplicants for admission fall into one of two categories, those covered by § [235](b)(1) and those covered by § [235](b)(2). . . . Section [235](b)(2) is broader. It serves as a catchall provision that applies to all applicants for admission not covered by § [235](b)(1).”). Thus, if the Respondent were determined not subject to section 235(b)(1) as the Court found above, then he is instead subject to 235(b)(2) and the mandatory detention provisions therein. Alternatively, even if the Court were to properly have jurisdiction over these custody proceedings, the Court finds that the Respondent has not established he is not a danger to the community.

Tyh

Immigration Judge: Tyler Wood 04/14/2025

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved

Appeal Due: 05/14/2025

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Respondent Name : GRIJALVA-ESQUIVEL, OLIVER | A-Number : 

Riders:

Date: 04/14/2025 By: JONES, ROCHELLE, Court Staff