

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.

Respondents.

TRAVERSE: REPLY TO GOVERNMENT RESPONSE (ECF 10)

THIS COURT IS THE RIGHT FORUM:

The government states that the factual questions of petitioner's two class memberships are so complex that this Court is the wrong forum to resolve them. ECF 10, pp. 2, 7. Instead, the government believes that only the class-action courts themselves can resolve questions about petitioner's class membership. *Id.* Then the government changes direction and purports to resolve all the complexities by itself, declaring that petitioner meets the statutory definition of an "applicant for admission" and is subject

to mandatory detention. ECF 10, p. 2. However, the government's conclusion is refuted by its own evidence as supplied by the Declaration of Deportation Officer Gary Zolock. ECF 10-1. All the relevant facts pertaining to both class memberships were set forth by Officer Zolock, making resolution of both class memberships transparent.

First, regarding *Maldonado Bautista* class membership, Officer Zolock confirms that in 2016 petitioner entered the United States without inspection and afterward was arrested by immigration authorities. ECF 10-1, p. 2, 6.

Second, Officer Zolock shows that in 2016 petitioner was not charged as an arriving alien nor placed in expedited removal proceedings. *Id.*, 7.

Third, Officer Zolock shows that petitioner's initial custody determination in 2016 was not based on criminal activity, arrival, or post-order detention. *Id.*

Fourth, Officer Zolock states that the government's initial custody determination was to release petitioner to his mother because he had been *designated* an unaccompanied minor (not designated an "applicant for admission"). *Id.*, 8.

Therefore, according to the facts recited by Officer Zolock, Mr. Grijalva is plainly a member of the *nationwide* Bond Eligible Class certified

in *Maldonado Bautista*. ECF 10, p. 7 (describing *Maldonado Bautista* class membership criteria, the "Bond Eligible Class").

Petitioner has filed his habeas application in the correct forum because (as the government also admits) he is detained by respondents in the jurisdiction of this Court. ECF 10-1, p. 5, 23. The government suggests that the 2016 arrest was not "clear" because Mr. Grijalva was arrested "after he illegally crossed the border." ECF 10, p. 7. But the word "after" is supremely clear. It does not mean "during" or "while" petitioner crossed the border. That was exactly the point made by Officer Zolock: The 2016 arrest was made *after* petitioner crossed the border. ECF 10-1, p. 1, 6. And since petitioner was arrested in 2016 *after* he crossed the border, petitioner was never designated an "applicant for admission" held in mandatory detention. He was released to his mother because he was designated an unaccompanied minor. *Id.*

In 2016 petitioner was never an "applicant for admission." He was never designated as such by any immigration officer, either then or now. There is no great complexity about petitioner's 2016 entry. This Court can easily apply the facts set out by Officer Zolock to the criteria for membership in the *Maldonado Bautista* class. ECF 10, p. 7 (Bond Eligible Class).

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Officer Zolacks's declaration further shows that after petitioner's initial arrest in 2016 over eight (8) years passed. Then in 2023 petitioner was arrested again *inside* the United States. ECF 10-1, p. 3, 13. This was his most recent arrest. Class membership in the Colorado-specific *Mendoza Gutierrez* class focuses on the "most recent arrest." ECF 10-4, p. 3.

Officer Zolock shows that in 2023 petitioner was not apprehended upon arrival to the U.S. His most recent arrest did not occur at the border while arriving. He was arrested *inside* the United States while illegally transporting migrants. He was not an "applicant for admission" when arrested in 2023.

But Officer Zolock's declaration shows that petitioner was erroneously processed as a person arriving at the border and subject to expedited removal under 8 U.S.C. § 1225(b)(1). ECF 10-1, p. 4, 17. Petitioner was misclassified to shoehorn him into mandatory detention under § 1225 when § 1226(a) was the proper authority. This was the same procedure that likely violated federal law under *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *8 (D. Colo. Oct. 17, 2025).

The government's contention that this Court is the wrong forum lacks merit. Given the uncontested facts set out by Officer Zolock, class

membership in either or both classes is not too complex for this Court to discern. This Court is the right forum.

THE PRECLUSIVE EFFECT OF *MALDONADO BAUTISTA*:

The government also argues that *Maldonado Bautista's* declaratory judgment cannot have a preclusive effect on petitioner's claim because it is geographically limited. ECF 10, p. 8. But the government overlooks that *Maldonado Bautista* was not a habeas claim.

It was brought under the Administrative Procedure Act (APA). ECF 10-3, p. 20, n. 13. Unlike a habeas claim, the declaratory judgment in *Maldonado Bautista* is not limited geographically to the Central District of California. It currently applies nationwide to the Bond Eligible Class without geographic limitation. It specifically applies to ***all noncitizens in the United States without lawful status who*** are eligible, including Mr. Grijalva. ECF 10, p. 7 (citing the Bond Eligible Class).

The *Maldonado Bautista* court explicitly rejected limiting relief to the Central District of California, noting that to certify a class that is not nationwide in scope might result in the application of unlawful practices based solely on geographic location, a piecemeal situation that would lead to arbitrary results. "With this in mind, the Court finds a nationwide Bond Eligible Class is appropriate." ECF 10-3, p. 46.

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The government next argues that *Calderon v. Ashmus* controls in petitioner's case and holds that declaratory judgment actions cannot be used to obtain an advance ruling in anticipation of future litigation. ECF 10, p. 9. However, in *Calderon*, the Court emphasized that the underlying controversy was "whether respondent is entitled to federal habeas relief setting aside his sentence or conviction," but "no such final or conclusive determination was sought." *Calderon v Ashmus*, 523 U.S. 740, 746 (1998). There, the respondent had "carved out of that claim only the question whether, when he sought habeas relief, California would be governed by Chapter 153 or by Chapter 154" *Id.* In contrast, *Maldonado Bautista* involved the complete resolution of a statutory interpretation controversy regarding bond hearings for detained immigrants. ECF 3, p. 20. There, the Central District Court granted final judgment on class certification after determining through summary judgment that the government's bond policy violated both statutory and constitutional requirements. *Id.* The court noted that "the MSJ Order already determined that Respondents' interpretation of the INA cannot be squared with the statutory text and statutory scheme." *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *11 (C.D. Cal. Nov. 25, 2025). This

holding represents conclusive relief resolving the entire legal controversy, not a partial determination for future litigation advantage.

The Supreme Court in *Calderon* specifically distinguished *Steffel v. Thompson*, 415 U.S. 452 (1974), noting it "falls within the traditional scope of declaratory judgment actions because it completely resolved a concrete controversy susceptible to conclusive judicial determination." *Calderon*, 523 U.S., at 745-749. The *Maldonado Bautista* case fits squarely within this framework as it provided complete resolution of the immigration detention policy controversy. It is *Steffel* and not *Calderon* that therefore controls this situation.

Most significantly, the Central District Court in California explicitly distinguished *Calderon* in its December 18, 2025 amended opinion. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *30 (C.D. Cal. Dec. 18, 2025), judgment entered sub nom. *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The Court acknowledged that *Calderon* "found that suits that piecemeal determinations of collateral issues are improper" and that *Calderon's* concerns were "peculiarly great when the underlying claim must be adjudicated in a federal habeas proceeding." *Id.* at 31. However, the court identified "[t]wo pertinent features of this action

are distinguishable from how Respondents seek to apply *Calderon*." *Id.* First, "Petitioners need not adjudicate all their claims in a federal habeas proceeding." *Id.* Second, "even *Calderon* recognizes that in some instances, Article III 'allows a declaratory judgment action to prevent interference with federal rights'" *Id.* This direct judicial distinction provides authoritative support for the argument that *Calderon* does not apply to the immigration detention context presented in *Maldonado Bautista*. Its declaratory judgment is therefore applicable to both petitioner and respondents in this case as binding authority.

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Respondents also argue that the *Maldonado Bautista* declaratory judgment should not have preclusive effect outside the Central District of California because the judgment is on appeal. ECF 10, p. 11. This is plainly contrary to law. The U.S. government has appealed many orders that still go into effect. Unless stayed, vacated, or reversed by an appellate court, a declaratory judgment is final for purposes of res judicata. See 18 Moore's Federal Practice – Civil § 131.30[2][c][ii] (2025); *United Tchr. Assocs. Ins. Co. v. Union Lab. Life Ins. Co.*, 414 F.3d 558, 570–72 (5th Cir. 2005) (surveying cases). Moreover, there is no indication that appellants requested a stay of the *Maldonado Bautista* declaration.

THE COLORADO-SPECIFIC CLASS:

The government states this Court should not defer to the holdings in *Mendoza Gutierrez*. ECF 10, pp. 12-13. Above in this traverse, the Colorado class definition was applied to the facts declared by Officer Zolock. The Colorado class definition focuses on petitioner's most recent arrest, which was in 2023. ECF 10-1, p. 3, 13. A class member can not have been paroled. Petitioner was not paroled. *Id.* A class member could not have been arrested at the border while they were arriving. The government admits that petitioner was not arriving at the border in 2023. *Id.* A class member must be currently detained pursuant to § 1225(b)(2)(A). Here the immigration judge ordered petitioner's mandatory detention pursuant to §§ 1225(b)(1) & (b)(2). ECF 10-2, pp. 1, 2.

The government admits all the facts that qualify Mr. Grijalva for class membership under *Mendoza-Gutierrez*, which also stated that denying a bond hearing to class members on jurisdictional grounds likely violates federal law. *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *8 (D. Colo. Oct. 17, 2025).

Still, the government argues that this *Mendoza Gutierrez* holding cannot be squared with the Supreme Court's decision in *Jennings*. ECF 10, pp. 13-14. The *Jennings* argument was considered in *Mendoza Gutierrez*

where the court stated it was "further convinced that § 1225 was intended for noncitizens inspected upon entry to the United States or who have lived in the United States for less than two years, and § 1226(a) is intended for the apprehension and detention of aliens 'already in the country.' *Jennings*, 583 U.S. at 281." *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *7 (D. Colo. Oct. 17, 2025). The government points to no decision in this Circuit that has disagreed with the *Mendoza Gutierrez* analysis. ECF 10, p. 13, n. 2.

Finally, the government revisits the legislative history analysis that was unsuccessful in *Mendoza Gutierrez*: "Respondents argue that the legislative history weighs in favor of Respondents' interpretation of Sections 1225 and 1226.' . . . However, this Court disagrees and instead agrees with the district courts that have found the Government's argument unpersuasive." *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *8 (D. Colo. Oct. 17, 2025).

AGENCY BOND JURISDICTION: ECF 10-2

The government argues that Mr. Grijalva should seek another bond hearing before the immigration judge. ECF 10, p. 18. But there is no indication that the judge or respondents have changed their view. The immigration judge already held he did not have jurisdiction to consider

petitioner's flight risk or danger to the community because petitioner was detained under 8 U.S.C. § 1225(b): "The Court determines that it does not have jurisdiction over [Mr. Grijalva's] custody redetermination proceedings because [he] is subject to mandatory detention pursuant to [8 U.S.C. § 1225(b)]." ECF 10-2, p. 1.

In the final sentence of his decision, the IJ *speculated* about what he would do *if* he had jurisdiction under § 1226(a). His speculation was not a decision on the merits. He had already stated he had no jurisdiction to consider the merits of flight risk or danger to the community. Petitioner did not "effectively" have a bond hearing. Speculation without jurisdiction amounts to nothing. "Jurisdiction is based on actuality, not prophecy...." *Dermody v. Smith*, 88 F. Supp. 620, 622 (N.D. Ind. 1949).

Seeking another agency bond hearing would be futile so long as the immigration court insists it has no jurisdiction to consider flight risk or danger to the community under § 1226(a).

PETITIONER'S MOTION TO REMAND

Officer Zolock mentions petitioner's motion to remand at the Board of Immigration Appeals and states in a footnote: "It is often the case that visa priority dates retrogress." ECF 10-1, p. 8, 44, n. 3. But petitioner's priority date has *not been retrogressed*. The government admits that petitioner

currently (as of this filing) has an approved Special Immigrant Visa (category EB4) with a priority date of December 23, 2019. ECF 10-1, p. 3, 9. That is why petitioner filed a motion to remand. *He is now at the front of the line.*

All approved EB4 category visas with priority dates before January 1, 2020 are currently available for the beneficiary to adjust (unlawful) status to lawful permanent residency (to obtain a "green card").¹

Mr. Grijalva's eligibility for a green card materialized during his appeal that is pending at the Board of Immigration Appeals. He can adjust status before an immigration judge or before the agency, yet the Board is not responding to his motion to remand, thereby prolonging his unlawful detention solely on account of its backlog of appeals. As of this filing, Mr. Grijalva has already been detained without bond for twenty-two (22) months.

CONCLUSION

Wherefore, Petitioner Oliver Grijalva Esquivel respectfully submits this traverse, replying to the government's Response to Order to Show Cause (ECF 10). He respectfully requests that his application for writ of habeas corpus (ECF 1) be granted.

¹ See attached visa bulletin for January 2026.

Dated January 9, 2026.

s/Jim Salvator

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Visa Bulletin

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Immigrant Numbers for January 2026

A. Statutory Numbers for Preference Immigrant Visas

This bulletin summarizes the availability of immigrant numbers during January for “Final Action Dates” and “Dates for Filing Applications,” indicating when immigrant visa applicants should be notified to assemble and submit required documentation to the National Visa Center.

Unless otherwise indicated on the U.S. Citizenship and Immigration Services (USCIS) website at www.uscis.gov/visabulletininfo, individuals seeking to file applications for adjustment of status with USCIS must use the “Final Action Dates” charts below for determining when they can file such applications. When USCIS determines that there are more immigrant visas available for the fiscal year than there are known applicants for such visas, USCIS will state on its website that applicants may instead use the “Dates for Filing Visa Applications” charts in this Bulletin.

1. **Procedures for determining dates.** Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; USCIS reports applicants for adjustment of status. Allocations in the charts below were made, to the extent possible, in chronological order of reported priority dates, for demand received by December 2nd. If all reported demand could not be satisfied, the category or foreign state in which demand was excessive was deemed oversubscribed. The final action date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. If it becomes necessary during the monthly allocation process to retrogress a final action date, supplemental requests for numbers will be honored only if the priority date falls within the new final action date announced in this bulletin. If at any time an annual limit were reached, it would be necessary to immediately make the preference category “unavailable”, and no further requests for numbers would be honored.
2. The fiscal year 2026 limit for family-sponsored preference immigrants determined in accordance with Section 201 of the Immigration and Nationality Act (INA) is 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.
3. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition on behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa issuances will exceed the per-country limit. These provisions apply at present to the following



oversubscribed chargeability areas: CHINA-mainland born, INDIA, MEXICO, and PHILIPPINES.

- 4. Section 203(a) of the INA prescribes preference classes for allotment of Family-sponsored immigrant visas as follows:

Family-Sponsored Preferences

First: (F1) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers:

- A. **(F2A)** Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit.
- B. **(F2B)** Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

Third: (F3) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: (F4) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

A. Final Action Dates for Family-Sponsored Preference Class

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	08NOV16	08NOV16	08NOV16	01SEP06	01MAR13
F2A	01FEB24	01FEB24	01FEB24	01FEB23	01FEB24
F2B	01DEC16	01DEC16	01DEC16	15NOV08	22DEC12
F3	08SEP11	08SEP11	08SEP11	01MAY01	01MAR05
F4	08JAN08	08JAN08	01NOV06	08APR01	22JUL06

For January, F2A numbers EXEMPT from per-country limit are authorized for issuance to applicants from all countries with priority dates earlier than 01FEB23. F2A numbers SUBJECT to per-country limit are authorized for issuance to applicants chargeable to all countries EXCEPT MEXICO, with priority dates



beginning 01FEB23 and earlier than 01FEB24. All F2A numbers provided for MEXICO are exempt from the per-country limit.

B. Dates for Filing Family-Sponsored Visa Applications

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart below may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file applications, regardless of priority date.

A "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 4.A.) this month for filing applications for adjustment of status with USCIS.

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01SEP17	01SEP17	01SEP17	01SEP07	22APR15
F2A	22DEC25	22DEC25	22DEC25	22DEC25	22DEC25
F2B	15MAR17	15MAR17	15MAR17	15NOV09	01OCT13
F3	22JUL12	22JUL12	22JUL12	01JUL01	01FEB06
F4	01MAR09	01MAR09	15DEC06	30APR01	15JAN08

- Section 203(b) of the INA prescribes preference classes for allotment of Employment-based immigrant visas as follows:

Employment-Based Preferences

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.



Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, of which not more than 10,000 may be provided to "*Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, of which 32% are reserved as follows: 20% reserved for qualified immigrants who invest in a rural area; 10% reserved for qualified immigrants who invest in a high unemployment area; and 2% reserved for qualified immigrants who invest in infrastructure projects. The remaining 68% are unreserved and are allotted for all other qualified immigrants.

A. Final Action Dates for Employment-Based Preference Cases

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01FEB23	01FEB23	C	C
2nd	01APR24	01SEP21	15JUL13	01APR24	01APR24
3rd	22APR23	01MAY21	15NOV13	22APR23	22APR23
Other Workers	01SEP21	08DEC18	15NOV13	01SEP21	01SEP21
4th	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21
Certain Religious Workers	01JAN21	01JAN21	01JAN21	01JAN21	01JAN21
5th Unreserved <i>(including C5, T5, I5, R5, NU, RU)</i>	C	15AUG16	01MAY22	C	C
5th Set Aside: Rural (20%) <i>(including NR, RR)</i>	C	C	C	C	C
5th Set Aside: High Unemployment (10%) <i>(including NH, RH)</i>	C	C	C	C	C



5th Set Aside: Infrastructure (2%) (including RI)	C	C	C	C	C
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*Employment Third Preference Other Workers Category: Section 203(e) of the Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW final action date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002. For Fiscal Year 2026 this reduction will be limited to approximately 150.

B. Dates for Filing of Employment-Based Visa Applications

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 5.A.) this month for filing applications for adjustment of status with USCIS.

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	01AUG23	01AUG23	C	C
2nd	15OCT24	01JAN22	01DEC13	15OCT24	15OCT24
3rd	01JUL23	01JAN22	15AUG14	01JUL23	01JUL23
Other Workers	01DEC21	01OCT19	15AUG14	01DEC21	01DEC21
4th	15MAR21	15MAR21	15MAR21	15MAR21	15MAR21



Certain Religious Workers	15MAR21	15MAR21	15MAR21	15MAR21	15MAR21
5th Unreserved <i>(including C5, T5, I5, R5, NU, RU)</i>	C	22AUG16	01MAY24	C	C
5th Set Aside: Rural (20%) <i>(including NR, RR)</i>	C	C	C	C	C
5th Set Aside: High Unemployment (10%) <i>(including NH, RH)</i>	C	C	C	C	C
5th Set Aside: Infrastructure (2%) <i>(including RI)</i>	C	C	C	C	C

B. Diversity Immigrant (DV) Category for the Month of January

Section 203(c) of the INA provides up to 55,000 immigrant visas each fiscal year to permit additional immigration opportunities for persons from countries with low admissions during the previous five years. The NACARA stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually allocated diversity visas will be made available for use under the NACARA program. Visa numbers made available to NACARA applicants in FY 2025 will result in reduction of the DV-2026 annual limit to approximately 54,850. Section 5104 of the National Defense Authorization Act (NDAA) for Fiscal Year 2024 amended the NACARA's provisions on the DV program such that the number of visas made available under the NDAA each fiscal year will be deducted from the 55,000 DVs annually allocated. These amendments will further reduce the DV-2026 annual limit to approximately 52,000. DVs are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For January, immigrant numbers in the DV category are available to qualified DV-2026 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately			
AFRICA	35,000	Except:	Algeria	20,000
			Egypt	16,000
ASIA	15,000	Except:	Nepal	6,000



EUROPE	8,500	
NORTH AMERICA (BAHAMAS)	20	
OCEANIA	1,100	
SOUTH AMERICA, and the CARIBBEAN	1,850	

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2026 program ends as of September 30, 2026. DVs may not be issued to DV-2026 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2026 principals are only entitled to derivative DV status until September 30, 2026. DV availability through the end of FY-2026 cannot be taken for granted. Numbers could be exhausted prior to September 30.

C. Diversity (DV) Immigrant Category Rank Cut-Offs Which Will Apply in February

For February, immigrant numbers in the DV category are available to qualified DV-2026 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All DV Chargeability Areas Except Those Listed Separately	
AFRICA	45,000	Except: Algeria 37,000 Egypt 21,000
ASIA	30,000	Except: Nepal 6,500
EUROPE	11,000	
NORTH AMERICA (BAHAMAS)	25	
OCEANIA	1,175	
SOUTH AMERICA, and the CARIBBEAN	2,000	

D. Scheduled Expiration of the Employment Fourth Preference Certain Religious Workers (SR) Category

H.R. 5371, signed on November 12, 2025, extends the Employment Fourth Preference Certain Religious Workers (SR) category until January 30, 2026. No SR visas may be issued overseas, or final action taken on adjustment of status cases, after midnight January 29, 2026, as the law requires individuals issued SR visas must be admitted to the United States before the program expiration date. Visas issued prior to that date will be valid only until January 29, 2026, and all individuals seeking admission in the non-minister special



immigrant category must be admitted (repeat admitted) into the United States no later than midnight January 29, 2026.

The SR category is available and subject to the same final action dates as the other Employment Fourth Preference categories per applicable foreign state of chargeability for January. In the event there is no legislative action extending the category beyond January 30, 2026, the category will immediately become “Unavailable” as of January 30, 2026. In the event there is legislative action extending the category beyond January 30, the published dates will continue to be in effect for the remainder of January.

E. U.S. Government Employee Special Immigrant Visas (SIVs)

The National Defense Authorization Act (NDAA) for Fiscal Year 2024, signed into law on December 22, 2023, may affect certain current and former employees of the U.S. Government abroad, as well as certain surviving spouses and children of deceased employees of the U.S. government abroad, applying for SIVs or adjustment of status, as described in section 101(a)(27)(D) of the INA. This does not affect certain Iraqis and Afghans applying for SQ and SI SIVs. Applicants should contact the consular section at which they filed their Form DS-1884 for further information on the impact of that law on their case.

For the latest information on visa processing at U.S. embassies and consulates, please visit the Bureau of Consular Affairs website at travel.state.gov.

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