

3:26-cv-00139-BAS-DEB Forreste v. Divver et al

Cynthia Bashant, presiding

Daniel E. Butcher, referral

Date filed: 01/09/2026

Date of last filing: 01/21/2026

History

Doc. No.	Dates	Description
<u>1</u>	<i>Filed & Entered:</i> 01/09/2026	 Petition for Writ of Habeas Corpus
<u>2</u>	<i>Filed & Entered:</i> 01/12/2026	 Supplemental Document
<u>3</u>	<i>Filed & Entered:</i> 01/14/2026	 Set Deadlines/Hearings
<u>4</u>	<i>Filed & Entered:</i> 01/16/2026	 Notice of Appearance
<u>5</u>	<i>Filed & Entered:</i> 01/21/2026	 Reply - Other

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6 **Varrio Foreste**

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10 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

11 Vario Forreste,

12
13 Petitioner,

14 v.

15 Patrick Divver, Field Office Director of
Enforcement and Removal Operations, San
Diego Field Office, Immigration and Customs
16 Enforcement; Kristi NOEM, Secretary, U.S.
Department of Homeland Security; U.S.
17 DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S. Attorney
18 General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Christopher J.
19 LaRose, Warden of Otay Mesa Detention
Center,

20 Respondents.
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Case No. **'26CV0139 BAS DEB**

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1
2 1. Petitioner Varrio Foreste is a native and citizen of Haiti (A-No. A )
3 who has been detained by U.S. Immigration and Customs Enforcement (ICE) at the Otay Mesa
4 Detention Center since February 21, 2025. Petitioner is a beneficiary of Temporary Protected
5 Status (TPS) with USCIS notices reflecting TPS valid through February 3, 2026 (Exhibit A).
6 Petitioner has minimal risk of flight, no known criminal history, and U.S. family ties, including a
7 U.S.-citizen child.

8 2. Petitioner was detained after an inadvertent, brief border crossing the morning of
9 February 21, 2025. Petitioner's current detention has extended many months without a
10 foreseeable removal to his country of nationality or any other country willing to accept him
11 imminently. The government has filed a Motion to Pretermitt protection applications based on a
12 U.S.-Uganda Asylum Cooperative Agreement (ACA) recently published in the Federal Register,
13 but the record contains no concrete evidence that Uganda has agreed to accept Petitioner or that
14 an imminent transfer to Uganda is planned.

15 3. For the reasons stated below, Petitioner's continued custody is unlawful:
16 detention untethered to a reasonably foreseeable removal timeline violates the Fifth Amendment
17 and may be set aside by habeas corpus under 28 U.S.C. § 2241. *Zadvydas v. Davis*, 533 U.S. 678
18 (2001); see also *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022) (district courts must
19 evaluate individual due-process claims arising from prolonged immigration detention).

JURISDICTION

20
21 4. Petitioner is in the physical custody of Respondents. Petitioner is detained at the
22 Otay Mesa Detention Center in San Diego, California.
23
24

5. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question). *Zadvydas* confirms that § 2241 is available to challenge continued immigration custody as unlawful.

6. The Due Process Clause of the Fifth Amendment protects “persons,” including noncitizens, from deprivation of liberty without due process of law.

VENUE

7. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District, the judicial district in which Petitioner currently is detained.

8. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District.

REQUIREMENTS OF 28 U.S.C. § 2243

9. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

10. Petitioner, Mr. Forrester, is a citizen of Haiti who has been in immigration detention since February 21, 2025.

1 11. Respondent, Patrick Divver, is the Director of the San Diego Field Office of
2 ICE's Enforcement and Removal Operations division. As such, Patrick Divver is Petitioner's
3 immediate custodian and is responsible for Petitioner's detention and removal. He is named in
4 his official capacity.

5 12. Respondent Kristi Noem is the Secretary of the Department of Homeland
6 Security. She is responsible for the implementation and enforcement of the Immigration and
7 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.
8 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

9 13. Respondent Department of Homeland Security (DHS) is the federal agency
10 responsible for implementing and enforcing the INA, including the detention and removal of
11 noncitizens.

12 14. Respondent Pamela Bondi is the Attorney General of the United States. She is
13 responsible for the Department of Justice, of which the Executive Office for Immigration Review
14 and the immigration court system it operates is a component agency. She is sued in her official
15 capacity.

16 15. Respondent Executive Office for Immigration Review (EOIR) is the federal
17 agency responsible for implementing and enforcing the INA in removal proceedings, including
18 for custody redeterminations in bond hearings.

19 16. Respondent Christopher J. LaRose is employed by CoreCivic as Warden of the
20 Otay Mesa Detention Center, where Petitioner is detained. He has immediate physical custody of
21 Petitioner. He is sued in his official capacity.

CLAIMS FOR RELIEF

17. Claim One: Petitioner's Prolonged Detention Violates the Due Process Clause of the Fifth Amendment.

- a. The Fifth Amendment guarantees that no "person" shall be deprived of liberty without due process of law. *Rodriguez Diaz*, 53 F.4th at 1195; *Reno v. Flores*, 507 U.S. 292, 306 (1993) (as quoted in *Rodriguez Diaz*).
- b. Due process protections are especially important where the liberty interest is "freedom from imprisonment." *Rodriguez Diaz*, 53 F.4th at 1195 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)).
- c. The Supreme Court has made clear that civil detention violates due process outside "certain special and narrow nonpunitive circumstances." *Zadvydas*, 533 U.S. at 690.
- d. Under Ninth Circuit due process principles applied to prolonged immigration detention, once detention has reached a prolonged duration (including after six months), due process requires an individualized bond hearing at which the Government must justify continued detention by clear and convincing evidence.
- e. Petitioner's prolonged detention, without adequate procedural safeguards, violates the Fifth Amendment.

18. Claim Two: Continued Detention Is Unlawful Under the INA as Construed in Light of the Constitution.

- a. The Supreme Court has held that post-order detention authority must be construed to contain an implicit "reasonable time" limitation; where removal is not reasonably foreseeable, continued detention is unreasonable and no longer authorized. *Zadvydas*, 533 U.S. at 699–701.
- b. As *Zadvydas* explains, federal courts must review whether detention "exceeds a period reasonably necessary to secure removal."

- 1 c. Here, continued detention has exceeded a reasonable period necessary to
2 accomplish removal and is therefore unlawful.

3 19. Claim Three: Detention Without Meaningful Process Is Arbitrary and Capricious
4 (APA) and Constitutionally Problematic.

- 5 a. Deportation proceedings and related deprivations of liberty are subject to
6 procedural constraints; the Supreme Court has recognized that certain procedural
7 protections apply in removal contexts, including those reflected in administrative
8 law principles. See *Wong Yang Sung v. McGrath*, 339 U.S. 33, 50–51 (1950) (as
9 discussed in Congress’s Constitution Annotated materials).
10 b. Detention that becomes arbitrary—untethered to an actual, reasonably foreseeable
11 removal process—raises serious constitutional concerns and warrants habeas
12 relief. *Zadvydas*, 533 U.S. at 690–701.

13 20. Claim Four: Petitioner’s Continued Detention Shocks the Conscience.

- 14 a. Detention that is prolonged, unsupported by adequate process, and untethered to a
15 realistic removal timeline is fundamentally unfair and violates due
16 process. *Rodriguez Diaz*, 53 F.4th at 1195; *Zadvydas*, 533 U.S. at 690.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 19 a. Assume jurisdiction over this matter;
20 b. Issue a writ of habeas corpus requiring that within one day, Respondents release
21 Petitioner;
22 c. Issue a writ of habeas corpus ordering Respondents to provide Petitioner a bond
23 hearing within seven (7) days, at which the Government bears the burden to
24 justify continued detention by clear and convincing evidence, consistent with due
process principles recognized by the Ninth Circuit for prolonged detention;

- 1 d. Enjoin Respondents from removing Petitioner to Uganda absent (1) written
2 evidence that Uganda has agreed to accept Petitioner and (2) adequate procedural
3 protections to adjudicate any protection claim in that third country;
4 e. Grant any other and further relief that this Court deems just and proper.
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6 DATED this January 09, 2026.

7 /s/ Jose Torres

8 Jose Torres

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

UNITED STATES DISTRICT COURT

for the
Southern District of California

Varrio

Forreste

Petitioner

v.

Case No. '26CV0139 BAS DEB

(Supplied by Clerk of Court)

Patrick Divver, Field Office Director of Enforcement and
Removal Operations, San Diego Field Office,
Immigration and Customs Enforcement, et al.

Respondent

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

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

Personal Information

1. (a) Your full name: Varrio Forreste
(b) Other names you have used: N/A
2. Place of confinement:
(a) Name of institution: Otay Mesa Detention Center
(b) Address: 7488 Calzada De La Fuente, San Diego, California 92154
3. (c) Your identification number: A [REDACTED]
Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain:
ICE Detainee
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: _____
(b) Docket number of criminal case: _____
(c) Date of sentencing: _____
☒ Being held on an immigration charge
☐ Other (explain): _____

Decision or Action You Are Challenging

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

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

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

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

(a) Name and location of the agency or court: Department of Homeland Security / ICE Enforcement and Removal Operations; Executive Office for Immigration Review (Immigration Court).

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

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

Continued civil immigration detention without a bond hearing or adequate procedural safeguards.

(d) Date of the decision or action: 02/21/2025

Your Earlier Challenges of the Decision or Action

7. **First appeal**

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

☐ Yes ☒ No

(a) If "Yes," provide:

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

(2) Date of filing: _____

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

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not appeal: Petitioner challenges the legality and constitutional of prolonged immigration detention, which is not subject to meaningful administrative exhaustion and is properly raised through a petition for writ of habeas corpus under 28 U.S.C. § 2241.

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☐ No

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(a) If "Yes," provide:

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

(2) Date of filing: _____

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

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☐ No

(a) If "Yes," provide:

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

(2) Date of filing: _____

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

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes

☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes

☐ No

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If "Yes," provide:

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

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

☐ Yes ☐ No

If "Yes," provide:

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

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

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☒ Yes ☐ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: 02/21/2025
- (b) Date of the removal or reinstatement order: _____
- (c) Did you file an appeal with the Board of Immigration Appeals?
☐ Yes ☒ No

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If "Yes," provide:

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

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

☐ Yes ☒ No

If "Yes," provide:

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

12. **Other appeals**

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

☐ Yes ☒ No

If "Yes," provide:

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

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

Grounds for Your Challenge in This Petition

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

GROUND ONE: Petitioner's Prolonged Detention Violates the Due Process Clause of the Fifth Amendment.

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

Petitioner has been in immigration detention since February 21, 2025. He has remained continuously detained for an extended period without receiving a bond hearing or any individualized custody determination. During this time, the government has not made a finding that Petitioner poses a danger to the community or a flight risk. Petitioner's detention has continued solely due to the pendency of immigration proceedings, with no meaningful opportunity for release or review of the necessity of continued confinement.

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

☐ Yes

☒ No

GROUND TWO: Continued Detention Is Unlawful Under the INA as Construed in Light of the Constitution.

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

Petitioner is a lawful beneficiary of Temporary Protected Status and does not have a criminal record. He was taken into immigration custody on February 21, 2025, and has remained detained for an extended period. During this time, the government has continued to detain Petitioner without identifying a clear timeline for removal. Petitioner's detention has persisted even though removal has not occurred and remains uncertain, and no individualized determination has been made that continued detention is necessary.

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

☐ Yes

☒ No

GROUND THREE: Detention Without Meaningful Process Is Arbitrary and Capricious (APA) and Constitutionally Problematic.

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

Petitioner has remained in immigration detention since February 21, 2025, without receiving a meaningful opportunity to challenge the necessity of his continued confinement. He has not been provided a bond hearing or other individualized custody review. Decisions regarding his continued detention have occurred without a clear explanation, timeline, or procedural mechanism to obtain release. As a result, Petitioner remains confined without a meaningful process to assess whether continued detention is warranted.

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

☐ Yes

☒ No

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

GROUND FOUR: Petitioner's Continued Detention Shocks the Conscience.

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

Petitioner has been detained in immigration custody since February 21, 2025, despite having no criminal history and significant family and community ties in the United States. His detention resulted from an accidental and brief border crossing and has continued for an extended period without individualized review. The length and circumstances of Petitioner's confinement have caused significant hardship and distress and are grossly disproportionate to the events that led to his detention.

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

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: Petitioner did not present these grounds in prior appeals because there is no adequate administrative or appellate process to challenge prolonged immigration detention without a bond hearing. The issues raised concern the legality and constitutionality of Petitioner's continued detention, which can only be addressed through a petition for writ of habeas corpus in federal court.

Request for Relief

15. State exactly what you want the court to do: Order my immediate release from immigration detention, or in the alternative, order the government to provide me with a bond hearing within seven days. Grant any other and further relief that this Court deems just and proper.

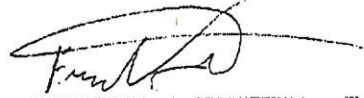
AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

Declaration Under Penalty Of Perjury

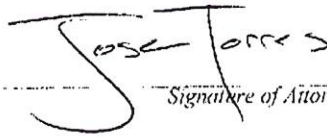
If you are incarcerated, on what date did you place this petition in the prison mail system:

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

Date: 12/13/2025



Signature of Petitioner



Signature of Attorney or other authorized person, if any

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

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

Event No: [REDACTED]

Subject ID : [REDACTED]

SIGMA Event: [REDACTED]

File No: [REDACTED]

In the Matter of: FORESTE, VARRIO

Respondent: FORESTE, Varrio

currently residing at:

[REDACTED], CALIFORNIA 92116, UNITED STATES OF AMERICA

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

[REDACTED]
(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 Haiti and a citizen of Haiti;
3. You applied for admission on February 15, 2023 at the San Ysidro Port of Entry;
4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act;

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:

See Continuation Page Made a Part Hereof

- ☐ 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:

880 FRONT STREET SUITE 4240,
San Diego, CA, US 92101

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

on March 30, 2023 at 08:30 AM to show why you should not be removed from the United States based on the
(Date) (Time) MANUEL, Warren C

charge(s) set forth above.

CBP OFFICER

(Signature and Title of Issuing Officer) (Sign in ink)

Date: February 15, 2023

SAN YSIDRO, CALIFORNIA

(City and State)

JASON B. AGUILAR
Chief Counsel
DAVID ORLAND
Deputy Chief Counsel
KELLY FOSTER
Assistant Chief Counsel
Office of the Principal Legal Advisor, San Diego
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
880 Front Street, Ste. 2246
San Diego, California 92102

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
OTAY MESA, CALIFORNIA

In the Matter of:

Varrio Foreste

In Removal Proceedings

)
)
)
)
)
)
)

File No. A 

THE DEPARTMENT OF HOMELAND SECURITY’S
MOTION TO PRETERMIT THE RESPONDENT’S PROTECTION APPLICATIONS

The Department of Homeland Security (DHS) moves the Immigration Judge to pretermite the respondent's applications for asylum under section 208 of the Immigration and Nationality Act (INA), statutory withholding of removal under INA § 241(b)(3), and protection under the regulations implementing the U.S. obligations under Article 3 of the Convention Against Torture (CAT). The respondent is barred from applying for such forms of protection under INA § 208(a)(2)(A) and 8 C.F.R. § 1240.11(h)(2), because he is subject to the Asylum Cooperative Agreements (ACA) with Uganda. *See Agreement Between the Government of the United States of America and the Government of the Republic of Uganda for Cooperation in the Examination of Protection Requests*, 90 Fed. Reg. 42,597 (Sept. 3, 2025).

STATEMENT OF FACTS AND ARGUMENT

On or about February 21, 2025, the respondent, a native and citizen of Haiti applied for admission at the San Ysidro Port of Entry. Exh 1. DHS initiated removal proceedings by filing a Notice to Appear dated March 6, 2025 charging the respondent as removable under INA § 212(a)(7)(A)(i)(I). On March 28, 2025, United States Citizenship and Immigration Services (USCIS) filed an I-589 (I-589) application for asylum and related relief into ECAS from the respondent which was previously filed by him with USCIS when the respondent was previously in the U.S. On April 15, 2025, the Immigration Judge found the Department met its burden and sustained the charge of removability and designated Haiti at the request of the Department. On August 12, 2025, the respondent submitted an I-589 application for asylum and related relief from Haiti. On October 7, 2025, the Department filed notice that it would seek Mexico as an alternative

country of removal. On October 27, 2025, the respondent submitted an I-589 application for Mexico.

Under INA § 208(a)(2)(A), an alien is ineligible to apply for asylum in the United States if the alien may be removed, pursuant to a bilateral or multilateral agreement, i.e., an ACA, to a country where the alien's life or freedom would not be threatened on account of a protected ground and the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent protection. Under the regulations,¹ an alien subject to the terms of an ACA who arrived at a U.S. port of entry or entered or attempted to enter the United States between ports of entry, on or after November 19, 2019, is ineligible to apply for asylum, statutory withholding of removal, and CAT protection. 8 C.F.R. § 1240.11(h)(2); *see also Implementing Bilateral and Multilateral Asylum Cooperation Agreements under the Immigration and Nationality Act*, 84 Fed. Reg. 63,994 (Nov. 19, 2019). Instead, an Immigration Judge "shall" order the alien removed to the ACA country to pursue his or her protection claim in that country. 8 C.F.R. § 1240.11(h)(4).

Immigration Judges have "limited" authority to determine whether a particular ACA applies to an alien in removal proceedings. *See Matter of C-I-G-M- & L-V-S-G-*, 28 I&N Dec. 291, 294 (BIA 2025);² 8 C.F.R. § 1240.11(h)(1). An alien subject to an ACA is ineligible to apply for protection, and the Immigration Judge must order the alien removed to the ACA country for the alien to pursue protection in that country unless the Immigration Judge determines, by a preponderance of the evidence, that: (1) the relevant ACA does not apply to the alien; (2) the alien

¹ The pertinent regulations apply to all ACAs in force between the United States and countries other than Canada. *See* 84 Fed. Reg. at 63,994. The ACAs, including the terms of their applicability and their exceptions, are published in the Federal Register.

² Immigration Judges are not authorized to render a decision on the "access to a full and fair procedure" element under INA § 208(a)(2)(A). *See C-I-G-M- & L-V-S-G-*, 29 I&N Dec. at 294–95, 298–99. Immigration Judges are also not authorized to issue a "public interest" waiver under 8 C.F.R. § 1240.11(h)(3). *See C-I-G-M- & L-V-S-G-*, 29 I&N Dec. at 294–95, 298–99.

qualifies for an exception under 8 C.F.R. § 1240.11(h)(3) and/or any Federal Register notice for the relevant ACA; or (3) the alien has demonstrated that it is more likely than not that he or she would be persecuted on account of a protected ground or tortured in the relevant ACA country. *See* 8 C.F.R. § 1240.11(h)(1)-(3).³

On September 3, 2025, the ACA between the United States and Uganda was published in the Federal Register. *See* 90 Fed. Reg. at 42,597; Attached Tab A. The U.S.-Uganda ACA applies to any alien who is not a national of Uganda and who arrived at a U.S. port of entry, or entered, or attempted to enter the United States between ports of entry on or after November 19, 2019. The respondent entered the United States after November 19, 2019. Moreover, the respondent is not a citizen or national of Uganda. Thus, the U.S.-Uganda ACA applies to him. 8 C.F.R. § 1240.11(h)(2)(i). Additionally, the respondent failed to establish that he qualifies for an exception under 8 C.F.R. § 1240.11(h)(3) or the Federal Register notice for the U.S.-Uganda ACA. 8 C.F.R. § 1240.11(h)(2). Moreover, at this time, the respondent has not expressed a fear of return to Uganda, let alone demonstrated that it is more likely than not he will be persecuted on account of a protected ground or tortured in Uganda. Accordingly, the respondent is barred from applying for asylum, statutory withholding of removal, and CAT protection in the United States, and the Immigration Judge should enter an order premitting such applications. INA § 208(a)(2)(A); 8 C.F.R. § 1240.11(h).

³ To the extent that the respondent “must have a reasonable opportunity to satisfy his or her burden to show by a preponderance of the evidence that . . . he or she will more likely than not be persecuted or tortured in the relevant [ACA] country,” absent a substantial connection to the relevant third country, “evaluating a respondent’s claim of future persecution or torture in the third country ‘is more straightforward’ than undertaking ‘a complex assessment’ of an asylum applicant’s fear of persecution in his or her home country.” *C-I-G-M-*, 29 I&N Dec. at 295–96 (citing 84 Fed. Reg. at 64,004). As such, the Immigration Judge “should typically be able to resolve” the applicability of the relevant ACA “without conducting a full evidentiary hearing.” *Id.* at 296. Accordingly, the “reasonable opportunity” afforded to the respondent should be commensurate with the straightforward nature of the analysis, *id.* at 295, and should not result in an “[u]njustified” continuance that provides “an illegitimate form of de facto relief from removal,” *Matter of L-A-B-R-*, 27 I&N Dec. 405, 411 (A.G. 2018).

DHS further requests that the Immigration Judge schedule this matter for an expedited master calendar hearing, which may take place immediately before the individual hearing, to resolve any outstanding issues, such as allowing the respondent to apply for any other forms of relief for which he may be eligible or permitting the respondent to withdraw or modify his request for protection. 8 C.F.R. § 1240.11(h)(4); *see C-I-G-M- & L-V-S-G-*, 29 I&N Dec. at 296 (providing that the resolution of the applicability of an ACA does not require a “full evidentiary hearing,” rather, the issue can be “typically” resolved at an “abbreviated hearing . . . in a master calendar setting”). Absent any such applications,⁴ the Immigration Judge should enter an order of removal to Uganda where the respondent can pursue his protection application, pursuant to the U.S.-Uganda ACA. 8 C.F.R. § 1240.11(h)(4)[; *see also* 8 C.F.R. § 1240.11(h)(1) (“If more than one agreement applies to the alien and the alien is ordered removed, the immigration judge shall enter alternate orders of removal to each relevant country.”) “Immigration Judges may not require DHS to demonstrate that an ACA country of removal is willing to accept a respondent who is subject to the terms of an ACA.” *C-I-G-M- & L-V-S-G-*, 29 I&N Dec. at 295 n.4; 8 C.F.R. § 241.15(d) (2025); *see also Matter of A-S-M-*, 28 I&N Dec. 282, 285 (BIA 2021) (recognizing that “[n]either the Immigration Judges nor [the BIA] has jurisdiction to review DHS’s discretionary determination [as to the country of removal]”).

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⁴ If the respondent files written notice indicating that he does not intend to seek any additional relief, the Immigration Judge may enter an order of removal to Uganda without further hearings. If the respondent decides to withdraw his protection request and is not eligible for any other form of relief, the Immigration Judge should enter an order of removal to Haiti. *See* 84 Fed. Reg. at 63,998 (noting that aliens subject to an ACA may voluntarily abandon his or her asylum claim prior to removal to the ACA country); *cf.* 8 C.F.R. § 208.30(e)(7)(i)(B).

Accordingly, DHS requests that the Immigration Judge enter an order pretermittting the respondent's applications for asylum, statutory withholding, and CAT protection, and expeditiously schedule this matter for a master calendar hearing.

Respectfully submitted,

Kelly Foster

December 15, 2025

Kelly Foster
Assistant Chief Counsel

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however, specified 72 COLREGS provisions are not applicable to a vessel of special construction or purpose if the Coast Guard determines that the vessel cannot comply fully with those requirements without interfering with the special function of the vessel.¹

The owner, builder, operator, or agent of a special construction or purpose vessel may apply to the Coast Guard District Office in which the vessel is being built or operated for a determination that compliance with alternative requirements is justified,² and the Chief of the Prevention Division would then issue the applicant a certificate of alternative compliance (COAC) if he or she determines that the vessel cannot comply fully with 72 COLREGS light, shape, and sound signal provisions without interference with the vessel's special function.³ If the Coast Guard issues a COAC, it must publish notice of this action in the *Federal Register*.⁴

¹ 33 U.S.C. 1605.

² 33 CFR 81.5.

³ 33 CFR 81.9.

⁴ 33 U.S.C. 1605(c) and 33 CFR 81.18.

The Chief of Prevention Division, Southeast District, U.S. Coast Guard, certifies that the M/V ISLA DEL ENCANTO (O.N. 1345510) is a vessel of special construction or purpose, and that, with respect to the positions of the forward and aft masthead lights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS, without interfering with the normal operation, construction, or design of the vessel's car deck. The Chief of Prevention Division, Southeast District, U.S. Coast Guard, further finds and certifies that the lights are configured in closest possible compliance with the applicable provisions of the 72 COLREGS.⁵

This notice is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.18.

Dated: August 20, 2025.

Sarah J. Geoffrion,

Captain, U.S. Coast Guard, Chief, Prevention Division, Southeast Coast Guard District.

[FR Doc. 2025-16842 Filed 9-2-25; 8:45 am]

BILLING CODE 9110-04-P

⁵ 33 U.S.C. 1605(a); 33 CFR 81.9.

DEPARTMENT OF HOMELAND SECURITY

Agreement Between the Government of the United States of America and the Government of the Republic of Uganda for Cooperation in the Examination of Protection Requests

AGENCY: Department of Homeland Security.

ACTION: Notice of Agreement.

SUMMARY: The Department of Homeland Security is publishing the Agreement Between the Government of the United States of America and the Government of the Republic of Uganda for Cooperation in the Examination of Protection Requests, signed at Kampala on July 29, 2025 (the "Agreement"). The text of the Agreement is set out below.

Joseph N. Mazzara,

Acting General Counsel, U.S. Department of Homeland Security.

BILLING CODE 9110-09-M-P

42598

Federal Register / Vol. 90, No. 168 / Wednesday, September 3, 2025 / Notices



THE REPUBLIC OF UGANDA

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF
AMERICA
AND
THE GOVERNMENT OF THE REPUBLIC OF UGANDA
FOR
COOPERATION IN THE EXAMINATION OF PROTECTION
REQUESTS**



THE REPUBLIC OF UGANDA

The Government of the United States of America and the Government of the Republic of Uganda, hereinafter referred to individually as a Party or collectively as the Parties,

DESIRING TO ensure the dignified, safe, and timely transfer from the United States of America to the Republic of Uganda of third country nationals present in the United States of America who may seek protection against return to their home country or country of former habitual residence.

AGREE as follows:

ARTICLE 1

1. The Government of the United States of America shall in its complete discretion propose to the Government of the Republic of Uganda the transfer of third-country nationals present in the United States of America who may seek protection against return to their home country or country of former habitual residence.
2. The Government of the Republic of Uganda shall in its complete discretion consider accepting in whole or in part a proposal made by the Government of the United States of America in accordance with paragraph 1.

ARTICLE 2

Both Parties' actions under this Agreement shall be in accordance with their obligations under the Convention Relating to the Status of Refugees, done at Geneva on July 28, 1951; the Protocol Relating to the Status of Refugees, done at New York on January 31, 1967; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on December 10, 1984; and any other respective international obligations, national constitutions, laws, regulations, and immigration and visa policies of the Parties, including consideration by the Government of the Republic of Uganda of requests by these third country nationals for asylum, refugee protection, or equivalent temporary protection.



THE REPUBLIC OF UGANDA

ARTICLE 3

1. The Government of the Republic of Uganda agrees not to return any person transferred to the Republic of Uganda by the Government of the United States of America to their home country or country of former habitual residence until a final decision has been made regarding any pending protection claims.
2. The Government of the Republic of Uganda shall determine a procedure, consistent with its relevant obligations, to resolve the status of those who may abandon pending claims or fail to seek protection.
3. The Government of the United States of America shall not transfer unaccompanied minors pursuant to this Agreement.

ARTICLE 4

1. The Parties shall develop operating procedures to assist with the implementation of this Agreement.
2. In the event of a conflict of interpretation or implementation, the Parties commit to resolve such matters through dialogue or diplomatic channels.

ARTICLE 5

1. This Agreement shall enter into force upon signature.
2. Either Party may terminate or suspend this Agreement at any time by notifying the other Party in writing.
3. The Parties may agree in writing to any amendments to this Agreement, and such amendments shall constitute an integral part of this Agreement, consistent with any applicable legal requirements.
4. Nothing set forth in this Agreement shall be interpreted in such a way that commits the disbursement or allocation of funds by the Parties. The implementation of this Agreement shall be subject to the availability of funds and technical capacity of each Party.



THE REPUBLIC OF UGANDA

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective governments, have signed this Agreement in duplicate in the English language.

DONE at KAMPALA on this.....29th..... day of July, 2025.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF THE
REPUBLIC OF UGANDA

Handwritten signature of William L. Ryp, representing the United States of America.

Handwritten signature of Chipsera, representing the Republic of Uganda.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
OTAY MESA, CALIFORNIA

In the Matter of: Varrio Forste

A-Number:



ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the **Department of Homeland Security Motion to Pretermit the Respondents' Protection Applications**, it is HEREBY ORDERED that the motion be:

☐ **GRANTED.**

☐ **DENIED**, because:

Date

Immigration Judge

CERTIFICATE OF SERVICE

This document was served by: ☐ M ☐ Mail; ☐ P ☐ Personal Service; ☐ O ☐ O

To: ☐ Alien; ☐ Alien c/o Custodial Officer; ☐ Alien's Atty/Rep.; ☐ DHS

Date:

By:

CERTIFICATE OF SERVICE

On December 15, 2025, I, Kelly Foster, DHS Assistant Chief Counsel, served a copy of this DHS filing and any attached pages to the respondents' counsel via EOIR ECAS

A 

Kelly Foster

Kelly Foster
DHS

JASON AGUILAR
 Chief Counsel
 SYDNEY POMYKATA
 Deputy Chief Counsel
 JEFFREY LINDBLAD
 Assistant Chief Counsel
 Office of Chief Counsel
 U.S. Immigration and Customs Enforcement
 U.S. Department of Homeland Security
 P.O. Box 438150
 San Diego, Ca 92143
 (619) 557-5578

UNITED STATES DEPARTMENT OF JUSTICE
 EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
 IMMIGRATION COURT OTAY MESA, CA

In the Matter of:	)	
	)	
	)	A 
	)	
FORESTE, VARRIO	)	
	)	
	)	
Respondent.	)	
	)	March 18, 2025, at 1pm
In removal proceedings	)	
	)	IJ APA

DHS Submission

DHS Submission

A. I-213.....1

Respectfully submitted,
JEFFREY R LINDBLAD
Digitally signed by
JEFFREY R LINDBLAD
Date: 2025.03.04
12:42:43 -08'00'

Jeff Lindblad
Assistant Chief Counsel

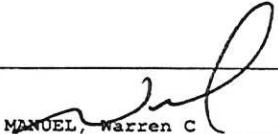
March 4, 2025

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

Family Name (CA/S) FORESTE, VARRIO		First	Middle
Country of Citizenship HAITI	Passport Number and Country of Issue  HAITI		
U.S. Address See Narrative			
Date, Place, Time, and Manner of Last Entry 02/15/2023, 2504 - SYS, 07:00, AFOOT		Passenger Boarded at SAN DIEGO	
Number, Street, City, Province (State) and Country of Permanent Residence			
Date of Birth 	Age: 28	Date of Action 02/15/2023	Location Code 2504 - SYS
City, Province (State) and Country of Birth GRANV GOAVE, HAITI	AR ☐	Form : (Type and No.) Lifted ☐ Not Lifted ☐ NONE	
NIV Issuing Post and NIV Number None	Social Security Account Name None		
Date Visa Issued None	Social Security Number None		
Immigration Record NEGATIVE		Criminal Record None Known	
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate) NONE		Number and Nationality of Minor Children 0	
Father's Name, Nationality, and Address, if Known FORESTE, ESTEKEER NATIONALITY: HAITI		Mother's Present and Maiden Names, Nationality, and Address, if Known CAJUSTE, Dieumersi NATIONALITY: HAITI	
Monies Due/Property in U.S. Not in Immediate Possession See Narrative	Fingerprinted? ☒ Yes ☐ No	Systems Checks See Narrative	Charge Code Words(s) See Narrative
Name and Address of (Last)(Current) U.S. Employer NONE	Type of Employment NONE	Salary 0.0 USD	Employed from/to 0/0/00 - 0/0/00
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.) FINS: 			
Left Index Finger		Right Index Finger	
  			
STATUS AT ENTRY ----- T42 Exception processing US ADDRESS ----- 3295MEADE AVENUEDE SANDIEGOCALIFORNIA, ... (CONTINUED ON I-831)			
Alien has been advised of communication privileges 02/15/2023		MANUEL, Warren C CBP OFFICER (Signature and Title of Immigration Officer)	
Distribution: A-FILE		Received: (Subject and Documents) (Report of Interview) MANUEL, Warren C - CBP OFFICER Officer: on: February 15, 2023 (time) Disposition: NOTICE TO APPEAR (NTA) Examining Officer: ROJO, Melissa M - SUPERVISORY CBP OFFICER	

U.S. Department of Homeland Security

Continuation Page for Form 1213

Alien's Name FORESTE, VARRIO	File Number SIGMA Eve Event No:	Date February 15, 2023
SANDIEGO, CALIFORNIA, UNITED STATES OF AMERICA 92116		
CLAIMED DOCUMENTS ----- Passport -  Refugee Per 		
RECORDS CHECKED ----- ATS-P Neg TECS Neg NCIC Neg CIS Neg CLAIM Neg CCD Neg IAFIS Neg EARM Neg		
SECTION CODES ----- Sec212(a)(7)(A)(i)(I) 8 USC 1182-ALIEN INADMISSIBILITY UNDER SEC 212(a)		
Narrative: ----- On February 13, 2023, at approximately 0730 hours, FORESTE, Varrío (DOB:  COB: Haiti; COC: Haiti) applied for admission to enter the United States via the San Ysidro Port of Entry (SYS POE) pedestrian lanes without valid entry documents. FORESTE was not able to present any valid entry documentation to the primary officer. FORESTE presented his Haitina passport as identification documents. The primary officer received a negative customs declaration. FORESTE claimed he had no serious medical issues or conditions. System queries nothing derogatory for FORESTE. A list of free legal services was given to FORESTE, and another copy was placed in their A-files. FORESTE voluntarily submitted a DNA sample on DNA Sample collector (Batch#  POC in the United States: 		
DISPOSITION: FORESTE, Varrío is inadmissible to the United States pursuant to sections 212(a)(7)(A)(i)(I) of the INA, as amended. Subject were served with an I-862 (Notice to Appear) and paroled into the United States pending a hearing with an Immigration Judge.		
Signature  MANUEL, Warren C	Title CBP OFFICER	

2 of 2 Pages

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the Department of Homeland Security's: **DHS Submission** by placing into the Office of Chief Counsel system for delivery to counsel via ECAS.

JEFFREY R
LINDBLAD

Digitally signed by
JEFFREY R LINDBLAD
Date: 2025.03.04
12:43:14 -08'00'

Date March 4, 2025

Jeffrey Lindblad
Assistant Chief Counsel
San Diego, California