1
2
3 UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

4 DIEGO JOSE PENA GONZALEZ,

5 Petitioner,

v.

6
KELEI WALKER, Field Office Director of Enforcement and Removal Operations,
7 DENVER Field Office, Immigration and Customs Enforcement;
8 KRISTI NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY;
9 PAMELA BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
1 DAWN CEJA Warden of Aurora ICE Processing Center,

0 Respondents.

Case No. 1:26-cv-00154

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1
1
1
2
1
3
1

INTRODUCTION

1. Petitioner, Diego Jose Pena Gonzalez, is in the physical custody of Respondents at the AURORA ICE DETENTION CENTER. He now faces unlawful detention because the Department of Homeland Security (DHS), in direct collaboration with the adjudicative body with jurisdiction over immigrants (the Executive Office of Immigration Review) (EOIR) have concluded Petitioner is subject to mandatory detention.

2. Petitioner is prima facie eligible for and in the process of obtaining Special Immigrant Juvenile Status ("SIJS") by the Department of Homeland Security ("DHS"). The Initial Status Conference to seek a predicate order is scheduled for January 21, 2026. Being awarded this benefit, as Congress intended, permits the Petitioner's presence in the United States for the purpose of adjustment of status to lawful permanent residence.

3. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

4. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

7. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

8. More importantly, the Government itself has made an abrupt about-face on this issue. Respondents should be judicially estopped from asserting their current interpretation of 8 U.S.C. § 1225(b)(2)(A), because they previously prevailed in litigation after asserting the opposite interpretation. As explained in *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies when a party assumes a position in a legal proceeding, succeeds in maintaining that position, and then adopts a contrary position in a subsequent proceeding to gain an unfair advantage. Here, Respondents previously, and successfully, argued that individuals who entered the United States without inspection were subject to detention under § 1226(a), and not § 1225(b)(2)(A), and courts accepted that position. Respondents now reverse course and assert that such individuals are subject to mandatory detention under § 1225(b)(2)(A), thereby denying them bond hearings. This shift in legal position undermines the integrity of the judicial process

1 2 3 4 5 6 7 8 9 1 0 1 1 1 2 1 3 1

and imposes an unfair detriment on Petitioners who relied on the prior interpretation. Accordingly, Respondents should be estopped from asserting this inconsistent position.

9. Petitioner's initial bond redetermination request was denied on November 25, 2025, based on the immigration judge's determination of lack of jurisdiction, pursuant to *Matter of Yajure Hurtado*. A subsequent bond redetermination request was made after the nationwide class-action case, *Maldonado Bautista v. DHS,* issued partial summary judgment setting aside *Yajure Hurtado*. The immigration judge denied it on December 8, 2025, reasoning that "Respondent has not established materially changed circumstances since the prior custody hearing. While the District Court in the Bautista litigation granted class certification and partial summary judgment for the plaintiffs in that case, it did not issue a class-wide declaratory judgment. Nor did the District Court issue a class-wide injunction. Until and unless the District Court issues a class-wide declaratory judgment or injunction, the District Court's order and partial grant of summary judgment does not constitute a judgment. See Fed. R. Civ. P. 54(b). Accordingly, the District Court's order in the Bautista litigation does not currently apply to the respondent in the instant matter because there is currently no declaratory relief for other cases filed by individuals who are now Bautista class members. As such, the Bautista litigation does not impact the Board of Immigration Appeal's application of its precedential decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). The *Maldonado Bautista* court issued a final judgment and declaratory ruling on December 18, 2025, and Petitioner's Motion to Reconsider Bond Redetermination was denied on January 13, 2026.

10. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days.

JURISDICTION

11. Petitioner is in the physical custody of Respondents. Petitioner is detained at the AURORA ICE DETENTION CENTER in AURORA, COLORADO.

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

14. 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 District of Colorado , the judicial district in which Petitioner currently is detained.

15. 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 District of Colorado

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

17. 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14

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

18. Petitioner, Diego Jose Pena Gonzalez, is a citizen of Venezuela who has been in immigration detention since the 9th of November, 2025. Petitioner complied with an ICE check-in appointment and was deceived by an ICE agent, who told him that his affirmative asylum application was denied and that either he or his mother or brother needed to be detained. The Petitioner volunteered to be detained so that his family members could remain free. After issuing an administrative warrant arresting Petitioner at an ICE check-in appointment, ICE did not respond to a humanitarian parole request (*See* Parole Request, Exhibit 1), and Petitioner has been unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Due to this erroneous decision, Petitioner requests the intervention of this honorable Court.

19. Respondent KELEI WALKER is the Director of the Denver Field Office of ICE's Enforcement and Removal Operations division; however, on information and belief, the DHS is rotating their Field Office Director without publishing a schedule of rotation. As such, KELEI WALKER or her unknown, unannounced provisional replacement is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She or her acting counterpart is named in his or her official capacity.

1
2
3
4
5
6
7
8
9
1
0
1
1
1
2
1
3
1

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

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

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

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

24. Respondent, Warden Dawn Ceja, is employed by the private, for-profit detention corporation contracted by the Government as an agent to confine immigrants at GEO Aurora Detention Center, where Petitioner is detained. She has immediate physical custody of Petitioner. She is sued in her official capacity.

LEGAL FRAMEWORK

25. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are

1 2 3 4 5 6 7 8 9 1 0 1 1 1 2 1 3 1

generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

27. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

28. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

29. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

30. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

31. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

32. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not

1 deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer.
2 *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996)
3 (noting that § 1226(a) simply "restates" the detention authority previously found at §
1252(a)).

4 33. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly
5 acknowledged that individuals who have already entered the United States and are not
6 apprehended within 100 miles of the border or within 14 days of entry are subject to
discretionary detention under 8 U.S.C. § 1226(a), not mandatory detention under §
7 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian
8 Gershengorn stated: "If they are not detained within 100 miles of the border or within 14
days… then they are under 1226(a) and not 1226(c)" and further clarified, in response to
9 a question concerning "an alien who has come into the United States illegally without
10 being admitted [and] who takes up residence 50 miles from the border," the Government
responded, "The answer is they are held under 1226(a) and that they get a bond
hearing…" Transcript of Oral Argument at 7–8, *Jennings v. Rodriguez*, 583 U.S. ___
11 (2018) (No. 15-1204). DHS reiterated that such individuals "would be held under
1226(a)" and cited the administrative record to support that position. *Id.* These statements
12 reflect DHS's prior litigation stance that § 1226(a) governs detention for noncitizens who
have entered and are residing in the United States, a position directly contrary to the
agency's current interpretation applying § 1225(b)(2)(A) to such individuals. Having
13 prevailed in *Jennings* after taking this position, they should be estopped from taking the
contrary position now simply because their political or litigation interests have changed.
Estoppel in this case is necessary to preserve the predictability inherent in the rule of law

1 and due process under the Fifth Amendment, as well as to protect the integrity of the
2 judicial system.

3 34. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of
4 practice.

5 35. The new policy, entitled "Interim Guidance Regarding Detention Authority for
6 Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under §
7 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

8
9 36. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the
10 United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

11 37. Since Respondents adopted their new policies, several federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected
12 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

13 38. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S.
14 District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not

[1] *Available at*
https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

1 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F.
2 Supp. 3d 1239 (W.D. Wash. 2025).

3 39. A growing number of federal courts have rejected ICE and EOIR's expanded
4 interpretation of the Immigration and Nationality Act's detention provisions. These courts
5 have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority
6 applicable in these cases. For example, courts in Massachusetts, Arizona, New York,
7 Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v. Hyde*,
8 No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157
9 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937
10 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE
11 (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19,
12 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025);
13 *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

40. These decisions reflect a clear judicial consensus that the government's reliance on § 1225(b)(2) is misplaced in cases involving those whose immigration status lawfully falls under § 1226(a).

41. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

42. The U.S. District Court of Colorado also agrees with those district courts that have "join[ed] the numerous other district courts that have rejected the government's recent interpretation of the relationship between § 1225 and § 1226" after the BIA's decision in

1 2 3 4 5 6 7 8 9 10 11 12 13 1

Yajure Hurtado. *Ortiz Donis v. Chestnut, et. al.*, No. 1:25-CV-01228 JLT SAB, 2025 WL 2879514, at *11 (E.D. Cal. Oct. 9, 2025); see also *Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496, at *5 (D.N.J. Sept. 26, 2025) (finding that the plain language of § 1225 does not apply to petitioner who entered the United States without inspection 23 years ago and that her mandatory detention violates the INA and the Due Process Clause of the Fifth Amendment). *See Mendoza Gutierrez v Baltasar,* 25-CV-2720-RMR at 14 (D. Colo., October 17, 2025). Additionally, the Court agrees with the analysis in *Ortiz Donis*, addressing the BIA's argument in Yajure Hurtado that if the § 1225(b)(2) catchall provision did not apply to noncitizens who have lived for years within the United States, then it is meaningless and does not apply to anyone. 2025 WL 2879514, at *11. Thus, the Court agrees with Petitioner that § 1225(b)(2) only applies to noncitizens "seeking admission" and inspected while trying to enter the country, and not to noncitizens who have lived in the United States continuously for over two years. Id. at 15-16. Citing the *Jennings* case, the U.S. District Court of Colorado is 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." Id. at 18. The Court goes further and considers the legislative history, past practice, and irreparable harm before concluding that Petitioner is likely to succeed on the merits that he is unlawfully detained under 8 U.S.C. § 1225 and that § 1226 actually did and should have governed Petitioner's detention from the outset, and that his detention without a bond hearing violates the INA and his procedural due process rights. Id. at 19-23.

1
2
3
4
5
6
7
8
9
1
0
1
1
1
2
1
3
1

43. The *Mendoza Gutierrez v Baltasar* case is certified as a class action. Respondent should be considered a class member. He entered without inspection, was briefly detained and released the same day, October 18, 2023, and has been present and residing in the country for more than two years.

44. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

45. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

46. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

47. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States and were not free to mingle with the general population after being free from official restraint. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory

1 2 3 4 5 6 7 8 9 1 0 1 1 1 2 1 3 1

detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

48. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who were encountered at the border and briefly detained. The Government's own issuance of an I-220A placing Petitioner in custody under 8 U.S.C. § 1226(a) reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b)(2)(A). *See* 220(A) (Exhibit 2). This quasi-judicial decision was made by DHS at the outset of proceedings, based on the facts available to both parties and Petitioner's own admissions. In fact, Petitioner's Notice to Appear was subsequently terminated, which allowed him to apply for affirmative asylum, instead of defensive asylum. Critically, DHS itself alleged in the Notice to Appear that Petitioner "entered the United States without inspection and without parole or lawful admission," a factual assertion that squarely contradicts the Government's current position—adopted wholesale by the Board of Immigration Appeals—that Petitioner is ineligible to apply for bond before EOIR. This reversal undermines the integrity of the adjudicative process and triggers the principles of issue preclusion recognized in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138 (2015), which require courts to respect agency determinations when the ordinary elements of preclusion are met.

49. Most recently, on December 18, 2025, the *Bautista et. al v Noem* court issued a final judgment. The Court observes that "the core holding of *Yajure Hurtado* cannot be squared with the MSJ Order. *See Yajure-Hurtado*, 29 I. & N. Dec. at 220–28 (subjecting noncitizens present in the United States without inspection to § 1225 and denying them

bond hearings for lack of jurisdiction). In spite of *Yajure Hurtado*, this Court determined that Petitioners and those similarly situated are not "applicants for admission," and therefore not subject to mandatory detention under § 1225. [MSJ Order at 12–17]. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 398–99 (2024) (requiring courts "to ignore, not follow, 'the reading the court would have reached' had it exercised its independent judgment). Although the MSJ Order does not grant vacatur of *Yajure Hurtado* under the APA, Yajure Hurtado is no longer controlling; the legal conclusion underlying the decision is no longer tenable." See *Order Granting in Part and Denying in Part Petitioners' Ex Parte Application*, 5:25-cv-01873 at 6 (C. D. Cal. 2025).

50. The *Bautista et al. v Noem* Court declared the following in its Final Judgment: 1. that the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2); 2. that, pursuant to Defendants' regulations, see 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a), are not subject to mandatory detention under § 1225(b)(2), and are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge. See *Final Judgment,* 5:25-cv-01873 at 2 (C. D. Cal. 2025). It vacated the Department of Homeland Security policy described in the July 8, 2025, "Interim Guidance Regarding Detention Authority for Applicants for Admission" under the Administrative Procedure Act as not in accordance with law. 5 U.S.C. § 706(2)(A). Finally, it granted final judgment as to Claims I, II, and III of the Amended Class Complaint. Id.

51.

1
2
3
4
5
6
7
8
9
10
11
12
13
14

52. It has been the settled practice for decades for immigration officials to issue an I-220A, or an Order of Release on Recognizance, to those who encounter immigration officials at or near the border. The issuance of an I-220A under § 236 is not a ministerial act but a formal adjudication of custody status, reflecting DHS's determination that the individual falls under the discretionary detention framework of § 236 rather than the mandatory detention provisions of § 235(b). The Supreme Court has "long favored application of the common law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those determinations of administrative bodies that have attained finality." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991) (citing *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)). As the Court explained in *Utah Construction*, "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose." 384 U.S. at 422. This presumption applies because "Congress is understood to legislate against a background of common-law adjudicatory principles." *Astoria*, 501 U.S. at 108 (citing *Briscoe v. LaHue*, 460 U.S. 325 (1983); *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952)). Accordingly, DHS's prior § 236 determination—memorialized in the I-220A—constitutes a binding judgment for purposes of collateral estoppel and cannot be disturbed absent materially changed circumstances or new facts.

FACTS

53. Petitioner has resided in the United States in Denver, Colorado since October of 2023, and currently resides physically in Aurora, Colorado, where he is detained.

1
2
3
4
5
6
7
8
9
10
11
12
13
14

54. Upon his entry into the United States, the DHS released respondent into the country with an I-220A form *Order of Release on Recognizance*, or "OREC," which found that Respondent was detained and released under INA 236, formally documenting that he was arrested, placed in removal proceedings, and released pursuant to INA § 236. The OREC expressly states that respondent's release was conditioned on compliance with § 236 and related regulations.

55. The DHS filed a Notice to Appear with EOIR alleging that Petitioner entered the United States without inspection. *See* Notice to Appear (Exhibit 3).

56. On or about the 9th of November, 2025, Petitioner complied with an ICE check-in appointment and was deceived by an ICE agent, who told him that his affirmative asylum application was denied and that either he or his mother or brother needed to be detained. The Petitioner volunteered to be detained so that his family members could remain free.

57. DHS placed Petitioner in removal proceedings before the Aurora Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. 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.

58. Diego Jose Pena Gonzalez's detention has inflicted profound harm on his family, particularly his mother and twin brother, who have never before been apart from him, and who are experiencing emotional and financial hardship in his absence. Petitioner helped to support his family with his work permit.

1
2
3
4
5
6
7
8
9
10
11
12
13

59. Following Petitioner's arrest and transfer to AURORA DETENTION CENTER, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

60. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider Petitioner's bond request, and his unlawful detention cannot be litigated before that body, who collaborated with the DHS – who is a party to these contested proceedings – to adopt the DHS position wholesale, because such efforts would be futile.

61. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community while his SIJS I-360 application is pending.

62. Lamentably, on January 12, 2026, DHS filed a Motion to Pretermit, requesting that Petitioner's asylum claim be barred and alleging that he is eligible for an Asylum Cooperative Agreement with Ecuador, Honduras, Guatemala and Uganda. *See* Motion to Pretermit (Exhibit 4). The Petitioner, a young man, has no family in any of these countries, and if the Immigration Court were to grant this motion, the Petitioner could be separated from his family indefinitely in a foreign country with no experience of living alone or fending for himself.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

63. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

64. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of

inadmissibility. As relevant here, it does not apply to those who received an I-220A and who were subsequently accused by DHS of having "entered" the United States. Those actions by DHS, followed by the Petitioner's concession to those charges before EOIR, represent a quasi-judicial determination by an agency which precludes further litigation of the issue unless new, material, and previously unavailable facts emerge. Such noncitizens continue to be detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

65. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II
Violation of the Bond Regulations

66. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

67. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

1
2
3
4
5
6
7
8
9
1
0
1
1
1
2
1
3
1

68. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

69. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT III
Violation of Due Process

70. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

71. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

72. Petitioner has a fundamental interest in liberty and being free from official restraint.

73. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates [his/her/their] right to due process.

Judicial Estoppel

74. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

75. The Government is judicially estopped from asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). In prior litigation, including *Jennings v. Rodriguez*, the Government successfully argued that individuals who entered without inspection and were not apprehended near the border or within 14 days were subject to discretionary detention under § 1226(a), not mandatory detention

1 2 3 4 5 6 7 8 9 1 0 1 1 1 2 1 3 1

under § 1225(b)(2)(A). See *Jennings v. Rodriguez*, No. 15-1204, Tr. of Oral Arg. at 7–8 (Nov. 30, 2016). Courts accepted that position. Now, the Government reverses course and asserts the opposite interpretation to deny bond hearings. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), judicial estoppel applies where a party assumes a position, prevails, and then adopts a contrary position to gain an unfair advantage. The Government's reversal undermines the integrity of the judicial process and prejudices Petitioners who relied on the prior interpretation.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the District of Colorado while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e. Declare that Petitioner's detention is unlawful;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

1 DATED this14th day of January, 2026.

2 /s/ Ciara Faber, Esq.

Ciara Faber, Esq.
Colorado Bar No. 44299
3 Monarch Legal Movement LLC
3917 E 26th Ave. Pkwy.
4 Denver, CO 80205
Telephone: (909) 240-7447
Email: ciaraffaber@gmail.com
5

6 *Attorney for Petitioner*

7

8

9

1

0

1

1

1

2

1

3

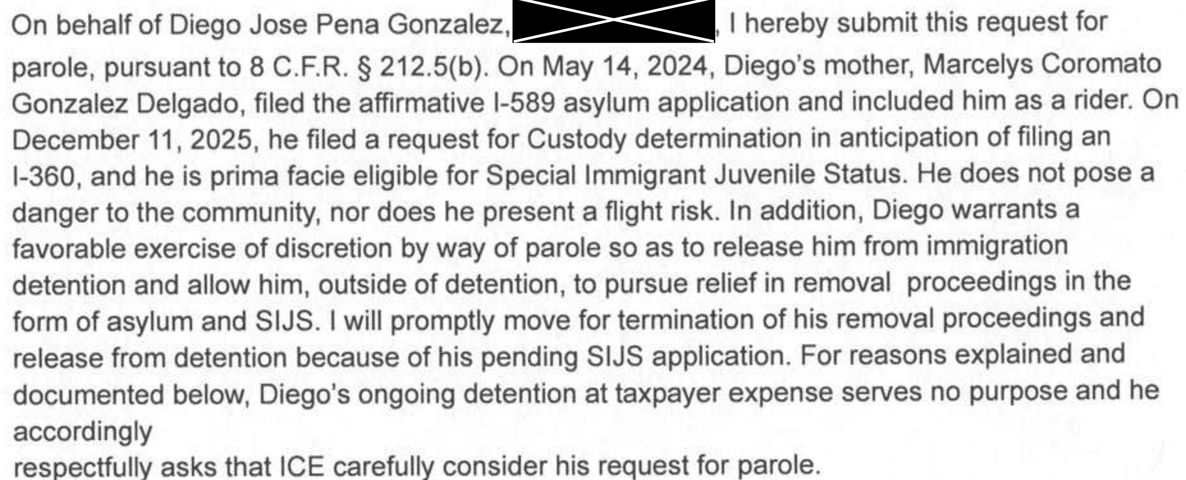
1

EXHIBIT 1

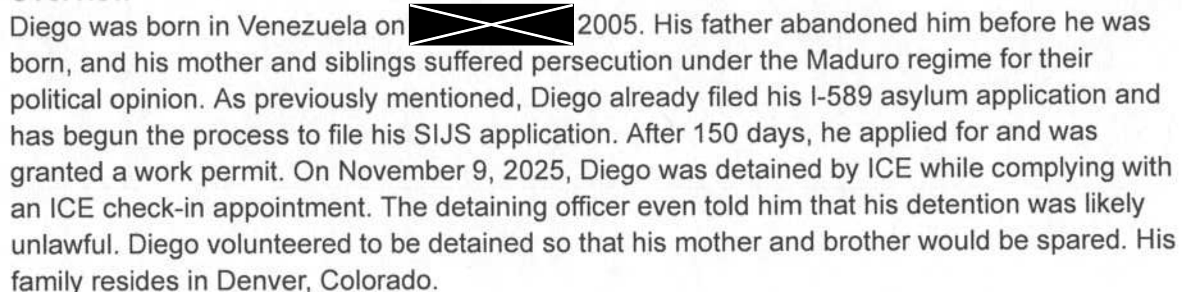
December 15, 2025
DEPORTATION OFFICER WHOM IT MAY CONCERN
ICE ERO
Aurora, Colorado

RE: Parole Request for Diego Jose Pena Gonzalez, A

Dear Officer:


On behalf of Diego Jose Pena Gonzalez, , I hereby submit this request for parole, pursuant to 8 C.F.R. § 212.5(b). On May 14, 2024, Diego's mother, Marcelys Coromato Gonzalez Delgado, filed the affirmative I-589 asylum application and included him as a rider. On December 11, 2025, he filed a request for Custody determination in anticipation of filing an I-360, and he is prima facie eligible for Special Immigrant Juvenile Status. He does not pose a danger to the community, nor does he present a flight risk. In addition, Diego warrants a favorable exercise of discretion by way of parole so as to release him from immigration detention and allow him, outside of detention, to pursue relief in removal proceedings in the form of asylum and SIJS. I will promptly move for termination of his removal proceedings and release from detention because of his pending SIJS application. For reasons explained and documented below, Diego's ongoing detention at taxpayer expense serves no purpose and he accordingly
respectfully asks that ICE carefully consider his request for parole.

Overview


Diego was born in Venezuela on 2005. His father abandoned him before he was born, and his mother and siblings suffered persecution under the Maduro regime for their political opinion. As previously mentioned, Diego already filed his I-589 asylum application and has begun the process to file his SIJS application. After 150 days, he applied for and was granted a work permit. On November 9, 2025, Diego was detained by ICE while complying with an ICE check-in appointment. The detaining officer even told him that his detention was likely unlawful. Diego volunteered to be detained so that his mother and brother would be spared. His family resides in Denver, Colorado.

Eligibility for Asylum

Diego is likely eligible for asylum because his family suffered persecution by government officials, and, thus, is entitled to a presumption of future persecution. More importantly, he is eligible for Special Immigrant Juvenile Status.

DHS Has discretion to approve parole requests

DHS should review parole requests on a case-by-case basis where the applicant's release would significantly benefit the public. See id.; see also 8 C.F.R. §§ 212.5(b); 235.3.
In granting parole requests, ICE considers proof of identity, whether the applicant is a flight risk, whether the applicant presents a danger to the community, and the reasons the

EXHIBIT 1

applicant merits parole. See U.S. Customs and Immigration Enforcement Directive 11002.1, "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture" (Dec. 8, 2009).

Identity
Diego reports that ICE has a copy of his identification and his work permit, issued by USCIS. These forms of identification provide sufficient proof of his identity.

Flight Risk
Diego does not present a flight risk. He would not do anything to jeopardize his SIJS eligibility. Additionally, he has a support system in Colorado and will be able to attend all of his future immigration hearings, as he has diligently complied with USCIS and the immigration court's imposed requirements. He was detained while complying with an ICE check-in.

Danger to the Community
Diego is not a danger to the community. He is a young man who dreams of joining the US military to serve and protect the country. He can demonstrate he has not committed any violent crimes nor been involved in any activities that are contrary to U.S. national security interests.

Release on Parole in Public Interest
Diego's release is in the public interest. He is a survivor of persecution and has a strong support system in the United States. The persecution he experienced in his home country has left him in fear of his life, and his continued detention has already had a detrimental impact on his well-being. He has never before been separated from his mother or twin brother. At 20 years of age, his mental health is very fragile, and his susceptibility to harm by other people at the detention facility imposes high risks. His release will facilitate access to the support he needs to recover from his trauma, facilitate his access to counsel and greatly increase his likelihood of success as he pursues relief in removal proceedings in the form of SIJS and asylum.

In conclusion, Diego is a strong candidate for release because he has a pending SIJS application, he is not a flight risk, nor is he a danger to the community. Diego warrants a favorable exercise of discretion and merits parole so that he may pursue asylum and SIJS outside of detention. Diego respectfully requests that he be released from ICE custody as soon as possible, and further detention at taxpayer expense is not warranted, given that he has a pending SIJS application, which will soon provide him with lawful status . As set forth in the Department's directive, applicants for parole and counsel should receive "written notifications of parole decisions... within seven days" of the interview for parole or submission of parole request "absent reasonable justification for delay in providing such notification." U.S. Customs and Immigration Enforcement Directive 11002.1, "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture" (Dec. 8, 2009) at 6. Accordingly, we look forward to your prompt response to this request.

Thank you in advance for your time in considering this request. Please do not hesitate to

EXHIBIT 1

contact me should you require any additional documentation to assist you in rendering a favorable decision regarding Diego Jose Pena Gonzalez's request for parole.

Sincerely,

Ciara Faber

Ciara Faber
Monarch Legal Movement LLC
3917 E 26th Ave. Pkwy.
Denver, CO 80205
(909)-240-7447
ciaraffaber@gmail.com

Please See the Following Attached Documents:

1. I-589 Asylum Application

EXHIBIT 2

U.S. Department of Homeland Security

Order of Release on Recognizance

File No: [redacted]
Date: October 18, 2023
Event No: [redacted]

Name: DIEGO JOSE PENA GONZALEZ

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 the Department of Homeland Security 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 ______ (Name and Title of Case Officer)

at As indicated on the attached orec g-56 (Location of DHS Office) on ______ (Day of each week or month) at ______ (Time)

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 immigration officer listed above.
☒ You must not violate any local, State, or Federal laws or ordinances.
☒ You must assist the Department of Homeland Security in obtaining any necessary travel documents.
☒ Other: Employment not authorized

☐ 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 the Department of Homeland Security.

GEORGE GOMEZ JR
Date: 2023.10.18 15:49:24 -06:00
0809180042.CBP.I
(Signature of DHS Official)

GEORGE GOMEZ JR
Acting/Patrol Agent in Charge
(Printed Name and Title of Official)

Alien's Acknowledgment of Conditions of Release on Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the SPANISH language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Department of Homeland Security may revoke my release without further notice.

RAUL RAMIREZ-JR — RAUL RAMIREZ Date: 2023.10.18 [illegible] -06:00 0485321066.CBP
(Signature of Immigration Officer Serving Order)

[signature]
(Signature of Alien)

10/18/2023
(Date)

Cancellation of Order

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 Immigration Officer Canceling Order) (Date)

Form I-220A (Rev. 08/01/07) N

Uploaded on: 11/14/2025 at 08:35:47 AM (Mountain Standard Time) Base City: AUR

EXHIBIT 3

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

DOB: [redacted]/2005

Event No: [redacted]

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

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

In the Matter of:

Respondent: DIEGO JOSE PENA GONZALEZ currently residing at:

3130 Oakland St Aurora, COLORADO 800101502 (303) 361-6612

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☒ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of VENEZUELA and a citizen of VENEZUELA;
3. You entered the United States at or near El Paso, TX, on October 18, 2023;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

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

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 ☐ 8CFR 235.3(b)(5)(iv)

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

3130 N. Oakland Street, Aurora, CO 80010. 8:00 am

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

on November 25, 2025 at 8:00 am to show why you should not be removed from the United States based on the
(Date) *(Time)*

charge(s) set forth above.

A 9147 HALL - SDDO

(Signature and Title of Issuing Officer)

Date: November 14, 2025 Aurora, CO

(City and State)

EOIR — 1 of 4

EXHIBIT 3

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 in removal proceedings. You are required to carry it with you at all times.

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

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

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

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

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

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

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

Upon information and belief, the language that the alien understands is SPANISH

Request for Prompt Hearing

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

Before: ______________________ *(Signature of Respondent)*

Date: ______________________

______________________ *(Signature and Title of Immigration Officer)*

Certificate of Service

This Notice To Appear was served on the respondent by me on November 14, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

☐ in person ☐ by certified mail, returned receipt # ______ requested ☒ by regular mail

☐ Attached is a credible fear worksheet.

☒ Attached is a list of organization and attorneys which provide free legal services.

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

Served via Detainee Mail — *(Signature of Respondent if Personally Served)*

D 05552 BARGIEL-ALLEN - Deportation Officer — *(Signature and Title of officer)*

EXHIBIT 3

Privacy Act Statement

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

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

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

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

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

EXHIBIT 3

U.S. DEPARTMENT OF HOMELAND SECURITY **Warrant for Arrest of Alien**

File No. [redacted]

Date: 11/09/2025

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that PENA GONZALEZ, DIEGO is removable from the United States. This determination is based upon:

☒ the execution of a charging document to initiate removal proceedings against the subject;

☐ the pendency of ongoing removal proceedings against the subject;

☒ the failure to establish admissibility subsequent to deferred inspection;

☒ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

☒ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer) For,

R D02401 GARCIA - SDDO
(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at Centennial, CO (Location)

on PENA GONZALEZ, DIEGO (Name of Alien) on November 9, 2025 (Date of Service), and the contents of this

notice were read to him or her in the SPANISH (Language) language.

JCFSO9547 FIORDALIS
Special Agent
Name and Signature of Officer

See I-831
Name or Number of Interpreter (if applicable)

EOIR - 4 of 4

Form I-200 (Rev. 09/16)

EXHIBIT 4

Christopher Tod St. John
Chief Counsel
Sunika Pawar
Deputy Chief Counsel
Randall Meyers
Assistant Chief Counsel
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
12445 East Caley Avenue
Centennial, CO 80111-6432
(303) 784-6560

DETAINED

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
AURORA, COLORADO**

In the Matter of:

PENA GONZALEZ, DIEGO

In Removal Proceedings

File No.

**THE DEPARTMENT OF HOMELAND SECURITY'S
MOTION TO PRETERMIT THE RESPONDENT'S PROTECTION APPLICATIONS
TO: ECUADOR**

The Department of Homeland Security (DHS) moves the Immigration Judge to pretermit 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(s) 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 they are subject to the Asylum Cooperative

EXHIBIT 4

Agreement(s) (ACA) with [Ecuador, *see Agreement Between the Government of the United States of America and the Government of the Republic of Ecuador Relating to the Transfer of Third-Country Nationals to Ecuador*, 90 Fed. Reg. 51,376 (Nov. 17, 2025) (U.S.-Ecuador ACA)] [Guatemala, *see Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala Relating to the Transfer of Nationals of Central American Countries to Guatemala*, 90 Fed. Reg. 31,670 (July 15, 2025) (U.S.-Guatemala ACA)] [Honduras, *see Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Requests*, 90 Fed. Reg. 30,076 (July 8, 2025) (U.S.-Honduras ACA)] [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) (U.S.-Uganda ACA)].

STATEMENT OF FACTS AND ARGUMENT

On July 24, 2023, the respondent, a native and citizen of Colombia entered the U.S. without inspection. DHS initiated removal proceedings by filing a Notice to Appear dated July 25, 2023, charging the respondent as removable under INA § 212(a)(6)(A)(i) of the Immigration and Nationality Act. Respondent filed their form I-589 on April 15, 2025.

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

EXHIBIT 4

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 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]

---

[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.

[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

EXHIBIT 4

[On November 17, 2025, the ACA between the United States and Ecuador was published in the Federal Register. *See* 90 Fed. Reg. at 51,376. The U.S.-Ecuador ACA applies to any alien 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. It does not apply to nationals of Ecuador or unaccompanied minors. 90 Fed. Reg. at 51,377, 51,379. The respondent entered the United States after November 19, 2019. Moreover, the respondent is not a national of Ecuador and, is not an unaccompanied minor. Thus, the U.S.-Ecuador ACA applies to them. 8 C.F.R. § 1240.11(h)(2)(i). Additionally, the respondent failed to establish that they qualify for an exception under 8 C.F.R. § 1240.11(h)(3) or the Federal Register notice for the U.S.-Ecuador ACA. 8 C.F.R. § 1240.11(h)(2). Indeed, at this time, the respondent has not expressed a fear of return to Ecuador, let alone demonstrated that it is more likely than not they will be persecuted on account of a protected ground or tortured in Ecuador. 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 pretermitting such applications. INA § 208(a)(2)(A); 8 C.F.R. § 1240.11(h).]

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/she may be eligible or permitting the respondent to withdraw or modify his/her 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

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).

EXHIBIT 4

(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 Ecuador and in the alternative, Honduras, where the respondent can pursue his/her protection application, pursuant to the [U.S.-Ecuador ACA] [U.S.-Guatemala ACA] [U.S.-Honduras 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]").

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

Respectfully submitted this 12th day of January 2026.

/s/ Randall R. Meyers
Assistant Chief Counsel

[4] If the respondent files written notice indicating that [he/she] does not intend to seek any additional relief, the Immigration Judge may enter an order of removal to [Ecuador] [or in the alternative] [Guatemala] [Honduras] [Uganda] without further hearings. If the respondent decides to withdraw [his/her] protection request and is not eligible for any other form of relief, the Immigration Judge should enter an order of removal to [country of citizenship or, if stateless, country of last habitual residence]. *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).

EXHIBIT 4

CERTIFICATE OF SERVICE

On January 12, 2026, I, Randall R. Meyers served a copy of this **Department of Homeland Security Motion to Pretermit the Respondent's Protection Applications** to [respondent's] address of record:

by placing in the detainee mailbox at 3130 N. Oakland St., Aurora, CO 80010.

☐ by first-class mail, postage pre-paid by placing into my office's receptacle designated for official "out-going" first class mail.

☐ by personally delivering a true copy thereof to the person set forth above.

☐ by electronic service, with prior consent, at the following e-mail address: [email address of party served].

☐ by eService pursuant to the Terms and Conditions agreed to between the parties.

X through the EOIR Courts and Appeals System (ECAS), which will automatically send service notifications to both parties that a new document has been filed.

/s/ Randall R. Meyers
Assistant Chief Counsel

EXHIBIT 5

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

Respondent Name:
PENA GONZALEZ, DIEGO

To:
Faber, Ciara Fernandez
3917 E 26th Avenue Pkwy
Denver, CO 80205

A-Number:

Riders:
In Custody Redetermination Proceedings

Date:
01/13/2026

ORDER OF THE IMMIGRATION JUDGE

☑ Respondent ☐ The Department of Homeland Security has filed the following motion in these proceedings:
Motion for subsequent custody redetermination based on changed circumstance.

After considering the facts and circumstances, the motion is ☐ granted ☑ denied for the following reason(s):
Respondent has not established a material change in circumstances since the prior custody hearing. Based on the record, the respondent does not appear to be a Bautista class member as he was apprehended upon arrival to the United States. See I-213 at 3. The respondent has not provided any other authority that impacts the application of Matter of Hurtado, 29 I&N Dec. 216 (BIA 2025) to this matter.

EXHIBIT 5

Immigration Judge: Tyler Wood 01/13/2026

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

Appeal Due:

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [ ] Alien | [ ] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : PENA GONZALEZ, DIEGO | A-Number :

Riders:

Date: 01/13/2026 By: Medelez, MaryAnn, Court Staff