UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

UBERNAI LAINEZ-ORTIZ,

Petitioner,

v.

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

Petitioners.

Case No. 1:26-cv-00635

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

INTRODUCTION

1. Petitioner, Ubernai Lainez Ortiz, is in the physical custody of Petitioners 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 a native and citizen of Guatemala. Petitioner entered the United States on or about October 11, 2016, at or near San Ysidro, California.

3. Petitioner was detained near Miami, Florida following a traffic stop by DHS-contracted officers in collaboration with local law enforcement, on or about November 13, 2025, and was then transferred to the Aurora ICE Detention Center, where an Arrest Warrant was subsequently issued on December 12, 2025. *See* Arrest Warrant, Exhibit 1. The agents were targeting construction workers based on a racial basis.

4. Petitioner's detention following a traffic stop is a direct violation of the Order issued by the U.S. District Court of Colorado in *Ramirez Ovando v Noem*, which precludes warrantless arrests in this District unless, pre-arrest, the arresting officer has probable cause to believe that the individual is in the United States in violation of United States immigration laws and probable cause that the person being arrested is likely to escape before a warrant can be obtained, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(2). *See Ramirez Ovando, et al. v Noem*, 1:25-cv-03183-RBJ, "Order", Document 49 at 61, (D. Colo., November 25, 2025).

5. At the time of the Petitioner's detention, he was employed by Upper Keys Marine Construction, where he had worked as a construction worker since April 23, 2018.

6. The Petitioner is prima facie eligible for asylum and withholding of removal. His application was filed with U.S. Citizenship and Immigration Services ("USCIS") and has been pending since September 24, 2017. *See* Asylum Application and Receipt, Exhibit 2.

7. In addition, the Petitioner is prima facie eligible for U Nonimmigrant Status. The Petitioner is married to Glenda Isabel Mejía, the biological mother of [redacted], who is the Petitioner''s stepson and whom the Petitioner has raised since a very young age. A[redacted] was the victim of an aggravated battery with a deadly weapon on March 13, 2025, at his school, Summerset Oaks Academy, in Homestead, Florida. The U-visa petition was mailed to USCIS on November 12, 2015. *See* U-Visa Applications, Exhibit 3.

8. Petitioner is not subject to mandatory detention under INA § 236(c)(1) based on criminal grounds. He has no criminal record in the United States or in her country of origin. He has never been charged with, arrested for, or convicted of any offense enumerated under INA § 236(c)(1)(E)(ii) ("Laken Riley Act"), including burglary, theft, larceny, shoplifting, assault of a law enforcement officer, or any crime resulting in death or serious bodily injury to another person. Petitioner has never admitted to committing such offenses or to engaging in conduct that constitute the essential elements of such offenses as defined by the laws of any state. In Matter of Guerra, 25 I&N Dec. 37, 40 (BIA 2006), the Court set forth a series of factors that Immigration Judges could look to when considering whether to release a noncitizen from custody including: (1) whether the [noncitizen] has a fixed address in the United States; (2) the [noncitizen's] length of residence in the United States; (3) the [noncitizen's] family ties in the United States, and whether they may entitle the [noncitizen] to reside permanently in the United States in the future; (4) the [noncitizen's] employment history; (5) the [noncitizen's] record of appearance in court; (6) the [noncitizen's] criminal record, including the extensiveness of criminal activity, the

recency of such activity, and the seriousness of the offenses; (7) the [noncitizen's] history of immigration violations; (8) any attempts by the [noncitizen] to flee prosecution or otherwise escape from the authorities; and (9) the [noncitizen's] manner of entry to the United States.

9. Petitioner satisfies each factor identified in Matter of Guerra, 25 I&N Dec. 37, 40 (BIA 2006). First, Petitioner currently resides at 3742 Northeast 23rd Court, Homestead, Florida 33033, where he lives with his wife, Glenda Mejia, and their two minor children, [redacted] and [redacted]. Petitioner is the primary financial provider for his household and plays an indispensable role in maintaining the stability and well-being of his family. Second, since entering the United States as a minor, Petitioner has established deep, stable, and meaningful ties to his community. He has consistently filed taxes, maintained long□term employment, and lived within a strong and supportive family network. These facts demonstrate long-term residence, integration, and reliability. Petitioner is also a dedicated member of Ministerio Internacional El Rey, a Christian church based in Miami, Florida, where he has been an active congregant since 2018. He regularly volunteers as a member of the church's band, contributing his time and talents in service to the community. His involvement reflects moral character, accountability, and community engagement. In addition, Petitioner has a consistent and exemplary employment history with Upper Keys Marine Construction, where he has been continuously employed since April 23, 2018. He is widely regarded as a reliable, hardworking, and highly respected employee. The company's owner, Adam Allen Folley, has described Petitioner as exceptional and has offered to sponsor him, citing RPetitioner's strong work ethic and good moral character. This long-standing employment further demonstrates stability and responsibility. Petitioner has never failed to appear for any immigration appointment or proceeding and has demonstrated full compliance with all requirements to date. He has no

criminal history whatsoever in the United States or abroad-no arrests, charges, or convictions-and no conduct suggesting he poses a danger to the community. His only immigration violation is his initial entry as a minor.

10. 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).

11. Based on this allegation in Petitioner's removal proceedings, Petitioner was informed that DHS would deny 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. Thus, Petitioner withdrew his request for Bond. *See* Bond Order, Exhibit 4.

12. 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.

13. 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.

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

15. More importantly, the Government itself has made an abrupt about-face on this issue. Defendants 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, Defendants 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. Defendants 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 and imposes an unfair detriment on immigrant detainees who relied on the prior interpretation. Accordingly, Defendants should be estopped from asserting this inconsistent position.

JURISDICTION

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

17. 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).

18. 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

19. 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.

20. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Petitioners 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

21. The Court must grant the petition for writ of habeas corpus or order Defendants 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, Defendants must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

22. 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

23. Petitioner, Ubernai Lainez Ortiz, is a citizen of Guatemala who has been in immigration detention since the 12th of December, 2025. 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 and due to Petitioner's unlawful arrest, Petitioner requests the intervention of this honorable Court.

24. Defendant, 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.

25. Defendant, 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.

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

27. Defendant, 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.

28. Defendant, 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.

29. Defendant, 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.

30. Defendant, Peter McNeilly, is the U.S. Attorney for the District of Colorado, and, thus, responsible for responding to this Writ on behalf of the Government Petitioners. He is sued in his official capacity.

LEGAL FRAMEWORK

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

32. 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 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).

33. 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).

34. 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).

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

36. 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).

37. 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).

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

39. In *Jennings v. Rodriguez*, the Department of Homeland Security (DHS) explicitly acknowledged that individuals who have already entered the United States and are not

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 § 1225(b). During oral argument on November 30, 2016, then–Solicitor General Ian 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 a question concerning "an alien who has come into the United States illegally without 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. ___ (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 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 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 and due process under the Fifth Amendment, as well as to protect the integrity of the judicial system.

40. 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 practice.

41. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 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.

42. 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 United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

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

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

45. A growing number of federal courts have rejected ICE and EOIR's expanded interpretation of the Immigration and Nationality Act's detention provisions. These courts have consistently held that § 1226(a), not § 1225(b)(2), governs the detention authority

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

applicable in these cases. For example, courts in Massachusetts, Arizona, New York, Minnesota, California, and Nebraska have reached this conclusion. See: *Gomes v. Hyde*, No. 1:25-CV-11571-JEK (D. Mass. July 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB) (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH) (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM (D. Mass. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF (N.D. Cal. Aug. 21, 2025); *Palma Perez v. Berg*, No. 8:25CV494 (D. Neb. Sept. 3, 2025).

46. 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).

47. 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.

48. 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 *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.

49. The *Mendoza Gutierrez v Baltasar* case is certified as a class action. Petitioner should be considered a class member. He entered without inspection, was detained on February 23, 2019, and released on February 27, 2019, and has been present and residing in the country for more than two years.

50. 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]."

51. 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.

52. 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.

53. 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 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).

54. 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). 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. A subsequent Notice to Appear was issued on December 12, 2025. 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.

55. 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).

56. 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.

FACTS

57. Petitioner has resided in the United States in Homestead, Florida since 2016, and currently resides physically in Aurora, Colorado, where he was transferred shortly after he was detained.

58. Upon his entry into the United States, the DHS released Petitioner, a minor, into the country with a Notice to Appear which found that Petitioner was detained and released under INA 236, formally documenting that he was arrested, placed in removal proceedings, and released pursuant to INA § 236.

59. The DHS filed a subsequent Notice to Appear with EOIR alleging that Petitioner entered the United States without inspection. *See* Notices to Appear, Exhibit 5.

60. On or about the 13th of November, 2025, Petitioner was detained by DHS-contracted agents following a traffic stop, which has been ruled an unlawful arrest in the U.S. District of Colorado.

61. 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.

62. Petitioner's detention has inflicted profound harm on his family, particularly his wife and children, who are experiencing extreme emotional and financial hardship in his absence.

63. Following Petitioner's arrest and transfer to AURORA DETENTION CENTER, the immigration court will not issue a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

64. Pursuant to *Matter of Yajure Hurtado*, the immigration judge will not consider Petitioner's bond request, because his unlawful detention can not 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.

65. 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.

CLAIMS FOR RELIEF

COUNT I
Violation of the INA

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

67. 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. 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.

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

COUNT II
Violation of the Bond Regulations

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

70. 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.

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

72. 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

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

74. 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).

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

76. 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 right to due process. Notably, Petitioner was detained after a warrantless arrest by ICE-contracted agents and without probable cause he was a flight risk, which is a violation of due process.

Judicial Estoppel

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

78. 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 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 Defendants to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Defendants 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.

DATED this 17th day of February, 2026.

/s/ Ciara Faber, **Esq.**

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

Attorney for Petitioner

LIST OF EXHIBITS

Exhibit 1: Arrest Warrant

Exhibit 2: I-589 Asylum Application and Receipt

Exhibit 3: U-Visa Applications

Exhibit 4: Bond Order

Exhibit 5: Notices to Appear

EXHIBIT 1

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

File No. [redacted]

Date: 12/12/2025

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 LAINEZ ORTIZ, UBERNAI 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)

A 9347 HALL - 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 Aurora, CO (Location)

on LAINEZ ORTIZ, UBERNAI (Name of Alien) on December 12, 2025 (Date of Service), and the contents of this notice were read to him or her in the SPANISH (Language) language.

S 9012 BLEA
Deportation Officer
Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)

EXHIBIT 1

Non-Profit Organization
Federal Agency
Private Attorney

List of Pro Bono Legal Service Providers

Updated October 2025

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

Aurora Immigration Court

Aurora, Colorado

ABA Commission on Immigration Detention Information Hotline**

1050 Connecticut Avenue, NW (Unit 400)
Washington, DC 20036
immcenter@americanbar.org
www.americanbar.org/groups/public_interest/immigration/

- Pro se case assistance for detained respondents only
- Respondents detained at Immigration and Customs Enforcement (ICE) or Bureau of Prisons (BOP) facilities should contact our speed dial at 2150# or by calling (202) 442-3363
- To contact on behalf of an individual detained by ICE or BOP, email immcenter@americanbar.org
- Respondents detained at Department of Defense (DOD) military facilities (including Guantanamo) should contact our toll-free hotline at 1 (855) 641-6081

Rocky Mountain Immigrant Advocacy Network (RMIAN)*

7301 Federal Blvd., Suite 300
Westminster, CO 80030
Tel: (303) 433-2812
Fax: (303) 433-2823
webforms@rmian.org
www.rmian.org

- Representation and pro se assistance for individuals in immigration detention
- To contact RMIAN on behalf of someone who is detained, please call (303) 866-9308
- For individuals appearing before the Denver court, please call (720) 543-8898

Connect Immigration*

305 McGregor Drive
Gypsum, CO 81637
Tel: (720) 674-1919
immigration@connectchurchcolorado.com
www.connectchurchcolorado.com/immigration

- Please call for an appointment
- Languages: Spanish and English

EXHIBIT 2

DETAINED

Trujillo & Associates, P.A.
11455 SW 40th ST, No. 198
Miami, FL 33165
(786) 879-2510 Landline
(305) 359-1707 Mobile
(305) 222-2223 Fax
annabellatrujilloattorney@gmail.com

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
AURORA, COLORADO

In the Matter of:	
LAINEZ ORTIZ, Ubernai Ony Respondent	**Alien No.:** [redacted]
In removal proceedings	

NOTICE OF FILING ASYLUM APPLICATION

Immigration Judge: Kane, Alison R.

Master Hearing
Date: Feb. 5, 2026
Time: 9:00 A.M.

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EXHIBIT 2 **DETAINED**

UNITED STATES DEPARTMENT OF HOMELAND SECURITY
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
AURORA, COLORADO

In the Matter of:	)	
LAINEZ ORTIZ, Ubernai Ony	)	**Alien No.:** [redacted]
Respondent	)	
In removal proceedings	)	

NOTICE OF FILING ASYLUM APPLICATION

NOW COMES Respondent, Ubernai Ony Lainez Ortiz, by and through undersigned counsel, and hereby provides notice to this Honorable Court of the filing of the Form I-589, Application for Asylum and for Withholding of Removal, with the Immigration Court.

This filing is submitted in accordance with EOIR procedures. A copy of the completed and signed Form I-589, along with supporting documentation, is hereto being submitted to the Court and served upon the U.S. Department of Homeland Security, Office of Chief Counsel.

The Respondent respectfully requests that this Court acknowledge receipt of the asylum application and that it be made part of the official record in the above-captioned proceedings.

Respectfully submitted,

Melissa C. Rodriguez, Esq.
Florida Bar No.: 0684961
EOIR No.: EE169799

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EXHIBIT 2

DETAINED

TABLE OF CONTENTS

EXHIBIT 2

DETAINED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE OF FILING ASYLUM APPLICATION**, and all attached pages, has been filed via the EOIR Electronic Court Access System, this 4th day of February 2026.

Melissa C. Rodriguez, Esq.
Florida Bar No.: 0684961
EOIR No.: EE169799
Trujillo & Associates, P.A.
11455 SW 40th ST, No. 198
Miami, FL 33165
(786) 879-2510 Landline
(305) 359-1707 Mobile
(305) 222-2223 Fax
annabellatrujilloattorney@gmail.com

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

Respondent Name:
LAINEZ ORTIZ, UBERNAI

To:
Trujillo, Annabella
11455 SW 40 Street
Box 198
Miami, FL 33165

A-Number:
[redacted]

Riders:
In Custody Redetermination Proceedings

Date:
12/23/2025

ORDER OF THE IMMIGRATION JUDGE

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

☐ Denied, because

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

☑ Other:
Bond request withdrawn.

Immigration Judge: Gardzelewski, Ivan 12/23/2025

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 : LAINEZ ORTIZ, UBERNAI | A-Number : [redacted]
Riders:
Date: 12/23/2025 By: GUTHRIE, KIMBERLY, Court Staff

EXHIBIT 5

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [redacted]

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 UBERNAI ONI LAINEZ ORTIZ currently residing at

[redacted]

(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 GUATEMALA and a citizen of GUATEMALA;

3. You entered the United States at or near SAN YSIDRO, CA, on or about October 17, 2016;

4. You were not then admitted or paroled after inspection by an Immigration Officer.

5. 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 See Continuation Page Made a Part Hereof

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:

3130 N OAKLAND ST, AURORA, COLORADO 80010, AURORA IMMIGRATION COURT
(Complete Address of Immigration Court, including Room Number, if any)

on January 7, 2026 *(Date)* at 8:00 am *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

A 9347 HALL • SDDO
(Signature and Title of Issuing Officer)

Date: December 12, 2025

Aurora, CO
(City and State)

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DHS Form I-862 (6/22)
Exh. 1 -

001

EXHIBIT 5 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 December 12, 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.

S. PRIGELSON - Refugee Officer

_____ _____

(Signature of Respondent if Personally Served) *(Signature and Title of officer)*

002

EXHIBIT 5 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 5

U.S. Department of Homeland Security — Continuation Page for Form I-862

Alien's Name	File Number	Date
LAINEZ ORTIZ, UBERNAI ONI	[redacted] Event No: [redacted]	12/12/2025

THE SERVICE ALLEGES THAT YOU:

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:

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.

212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

Signature	Title
A 9347 HALL	SDDO

4 of 4 Pages

Form I-831 Continuation Page (Rev. 08/01/07)

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Exh. 1 -

004

EXHIBIT 5

COPY JUVENILE-UAC

U.S. Department of Homeland Security

Notice to Appear

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

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

DOB: [redacted] Event No: [redacted]

In the Matter of:

Respondent: UBERNAI ONI LAINES-ORTIZ currently residing at:

IN DHS CUSTODY

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

☐ 1. You are an arriving alien.

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

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

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of GUATEMALA and a citizen of GUATEMALA ;
3. You arrived in the United States at or near OTAY MESA, CALIFORNIA, on or about October 11, 2016;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
DEC 06 2016
FILED WITH
IMMIGRATION COURT
SAN DIEGO, CA

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

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐8CFR 208.30(f)(2) ☐8CFR 235.3(b)(5)(iv)

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

A PLACE TO BE SET

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

on a date to be set *(Date)* at a time to be set *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

WATCH COMMANDER

(Signature and Title of Issuing Officer)

Date: October 11, 2016 SAN DIEGO, CALIFORNIA

(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07) N

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EXHIBIT 5

Notice to Respondent

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

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

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

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.ice.gov/about/dro/contact.htm. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

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

Before: _____

(Signature of Respondent)

BOA

(Signature and Title of Immigration Officer)

Date: 10/11/16

Certificate of Service

This Notice To Appear was served on the respondent by me on October 11, 2016, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

[X] in person [ ] by certified mail, returned receipt requested [ ] by regular mail

[ ] Attached is a credible fear worksheet.

[X] Attached is a list of organizations 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.

Bobuclar, BPS Swk [redacted] BORDER PATROL AGENT

(Signature of Respondent if Personally Served)

(Signature and Title of officer)

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