IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-00763

EDUIN VEGA CACERES,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field Office of U.S. Immigration and Customs Enforcement;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity as Secretary of U.S. Department of Homeland Security; and
PAMELA BONDI, in her official capacity as Attorney General of the United States.

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, EDUIN VEGA CACERES, by and through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

2. Caceres is currently detained at the Denver Contract Detention Facility in Aurora, Colorado, under the custody and control of Respondents.

3. An Immigration Judge has already determined that Caceres is eligible for release on bond and ordered his release upon payment of $ 5,000.00. *See Order of the Immigration Judge Granting Bond, dated January 13, 2026, attached hereto as Attachment D.* Despite that determination, Respondents invoked the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), preventing his release and continuing his detention without any new individualized finding of

flight risk or danger. *See DHS Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, dated January 28, 2026, attached hereto as Attachment E.*

4. As indicated in their appeal, Respondents maintain that Caceres is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A), notwithstanding that he has resided in the United States for 14 years and was not presently "seeking admission" within the meaning of the statute.

5. This case presents two intertwined questions: (1) whether the automatic stay permits continued detention in violation of the Fifth Amendment and the statutory framework of 8 U.S.C. § 1226(a); and (2) whether Respondents may lawfully subject Caceres to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

6. Caceres' continued detention lacks statutory authority and violates both procedural and substantive due process. Therefore, this Court should grant the Petition for Writ of Habeas Corpus and order Caceres' immediate release.

CUSTODY

7. Caceres has been in the custody of Respondents since December 10, 2025. He was arrested and detained in his home state of Florida and transferred to where he is currently detained at the Denver Contract Detention Facility in Aurora, Colorado, under Respondents' direct physical control and supervision.

JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § § 2201-02 (declaratory relief), and Article I, section 9, clause 2 of the U.S. Constitution (Suspension Clause), as Caceres

is in custody and challenges his custody in violation of the Constitution and laws of the United States.

9. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by individuals challenging the lawfulness of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 678 (2001).

10. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because Caceres is confined in this District, at least one Respondent is in this District, Caceres' immediate physical custodian is in this District, and a substantial part of the events giving rise to the claims in this action occurred in this District. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1005–06 (2025) (per curiam) ("For core habeas petitions, jurisdiction lies in only one district: the district of confinement" (internal quotation marks and citation omitted)).

NOTICE OF RELATED CASES

11. Pursuant to D.C.COLO.LCivR 3.2 and in the interest of judicial economy, Caceres provides notice that this action is related to numerous habeas petitions recently adjudicated in this District involving the same Respondents, the same detention facility, and the same legal question concerning the legality of the automatic stay provision and the scope of mandatory detention under 8 U.S.C. § 1225(b)(2)(A) as applied to long-term residents who are not presently seeking admission. *See Merchan-Pacheo v. Noem*, No. 1:25-cv-03860-SBP, 2026 WL 88526, at *1 (D. Colo. Jan. 12, 2026) (automatic stay provision) and *Balderas Rivas v. Baltazar*, No. 1:26-cv-00442-SKC (D. Colo. Feb. 17, 2026) (same); *Hernandez v. Baltazar*, No. 25-cv-03094-CNS, 2025 WL 2996643, at *3 (D. Colo. Oct. 24, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *6 (D. Colo. Oct. 22, 2025); *Mendoza Gutierrez v. Baltazar*, No. 25-cv-2720-RMR, 2025 WL 3251143 at *1 (D. Colo. Nov. 21, 2025); and *Garcia Cortes v. Noem*, No.

1:25-cv-02677-CNS, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (statutory detention framework).

12. In *Mendoza Gutierrez v. Baltazar* the Honorable Regina M. Rodriguez of this District conditionally certified a class of noncitizens subjected to detention under § 1225(b)(2)(A) pursuant to Respondents' new policy. *See Mendoza Gutierrez v. Baltazar*, No. 25-cv-2720-RMR, 2025 WL 3251143, at *1 (D. Colo. Nov. 21, 2025). A similar case was conditionally certified in *Bautista v. Noem*, --- F.R.D. ---, 2025 WL 3288403, at *1 (C.D. Cal. Nov. 25, 2025). Appeals in those matters are pending before the Tenth and Ninth Circuits, respectively.

13. Caceres was granted a custody redetermination pursuant to *Bautista* and an Immigration Judge ordered his release on bond. Respondents thereafter invoked the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), thereby preventing his release.

14. Accordingly, although Caceres has already obtained relief in the Immigration Court, the automatic stay has nullified that order and continued his detention. This case therefore presents the same procedural posture addressed in *Merchan-Pacheco v. Noem* and *Balderas Rivas v. Baltazar*.

15. In *Merchan-Pacheco*, Judge Prose was confronted with facts like those here, where an immigration judge found that the petitioner merited release upon posting a $25,000 bond. Although the petitioner's family paid the bond, DHS then invoked the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) so it could appeal the immigration judge's findings to the BIA. Judge Prose conducted a thorough analysis pursuant to *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), and concluded that the automatic stay provision violated the petitioner's procedural due process rights.

16. In *Balderas Rivas v. Baltazar*, Judge Krew relied on Judge Prose's analysis and specifically asked Respondents to show cause as to why Judge Prose's analysis should not be adopted in the case.

17. Each of these matters involves materially indistinguishable facts and the same core statutory question presented here. Caceres therefore requests that the Court order Respondents to show cause as to why Judges Prose's and Judge Krew's analysis and relief should not be adopted in this case.

HABEAS CORPUS

18. Challenges to immigration detention are properly brought directly through habeas. *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004). More specifically, 8 U.S.C. § 2241 "confers jurisdiction upon the federal courts to hear such cases." *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (citing 28 U.S.C. § 2241(c)(3)) (authorizing any person to claim in federal court that they are being held "in custody in violation of the Constitution or laws ... of the United States").

19. The fundamental purpose of § 2241 habeas proceeding is the same as that of § 2254 habeas and § 2255 proceedings: they are an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody. *McIntosh v. U.S. Parole Com'n*, 115 F.3d 809, 811 (10th Cir. 1997) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)).

PARTIES

A. Petitioner

20. Petitioner Eduin Vega Caceres was detained by Respondents on December 10, 2025, in Florida and was transferred to the Denver Contract Detention Facility in Aurora, Colorado, on or about that date. He is in the custody and direct control of Respondents and their agents.

B. Respondents

21. Respondent Juan Baltazar is the Warden of the Denver Contract Detention Facility, a private, for-profit detention facility that contracts with ICE to detain individuals suspected of civil immigration violations. Respondent Baltazar has immediate physical custody of Caceres and is sued in his official capacity.

22. Respondent Robert Hagan is the Field Office Director of the U.S. Immigration and Customs Enforcement Denver Field Office. In this capacity, he is responsible for the administration of immigration laws and the execution of immigration enforcement and detention policy within ICE's Denver Area of Responsibility, including the detention of Caceres. Respondent Hagan maintains an office and regularly conducts business in this district. Respondent Hagan is sued in his official capacity.

23. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in this District; and is legally responsible for any effort to detain and remove Caceres. Respondent Lyons is sued in his official capacity.

24. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security and has ultimate authority over DHS. In that capacity and through her agents, Respondent Noem has broad authority over and responsibility for the operation and enforcement of the immigration laws; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove Caceres. Respondent Noem is sued in her official capacity.

25. Respondent Pamela Bondi is the Attorney General of the United States and the most senior official of the U.S. Department of Justice (DOJ). In that capacity and through her agents, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. The Attorney General delegates this responsibility to the Executive Office for Immigration Review, which administers the immigration courts and the Board of Immigration Appeals. Respondent Bondi is sued in her official capacity.

FACTUAL ALLEGATIONS

26. Caceres is a 36-year-old male citizen and national of Honduras. He last entered the United States on October 19, 2012, over 14 years ago. Caceres resides in Lake Worth, Florida, with his wife and two U.S. citizen children. *See DHS Form I-213, Record of Deportable/Inadmissible Alien, dated December 13, 2025, attached hereto as Attachment C.* Caceres has no criminal history. *Id.*; *see also, No Criminal History Records from Colorado and Florida, dated December 2025, attached hereto as Attachment G.* His wife was approved I-601A waiver and will be adjusting her status once the visa bulletin is available. *See I-601A Approval Notice for Wife, Yessenia Sing Enamorado, dated August 5, 2025, attached hereto as Attachment H.* Following her adjustment of status, she will be able to petition for Caceres' residency. Caceres' U.S. citizen sponsor is his U.S. citizen sister-in-law. *See naturalization certificate and U.S. passport biographical page for U.S. citizen sister-in-law, attached hereto as Attachment H.* He is the sole financial provider for his wife and children through the business he owns, L&J Remodeling Pro LLC. *See L&J Remodeling Pro LLC Articles of Organization and 2025 Report, attached hereto as Attachment H.*

27. When Caceres last entered the United States 14 years ago, he was not encountered by immigration and had no contact with immigration authorities until his arrest on December 10,

2025, and was arrested pursuant to a warrant for his arrest. *See DHS Form I-200, Warrant for Arrest of Alien, dated December 13, 2025, attached hereto as Attachment B*. Following his arrest by Immigration and Customs Enforcement (ICE), he was subsequently transferred from Florida to Aurora, Colorado. *See Attachment C, attached hereto*.

28. On December 13, 2025, Respondents placed Caceres in removal proceedings pursuant to a Notice to Appear charging him as removable pursuant to INA § 212(a)(6)(A)(i) as "an alien present in the United States who has not been admitted or paroled." *See Attachment A, attached hereto*.

29. On December 31, 2025, Caceres requested a bond hearing before an IJ. On January 9, 2026, Caceres attended his bond hearing, and on January 13, 2026, he was granted bond in the amount of $ 5,000.00. *See Attachment D, attached hereto*. Despite that Order granting bond, Caceres has remained in custody since January 13, 2026.

30. On January 14, 2026, DHS filed a Notice of Intent to Appeal Custody Redetermination, and on January 28, 2026, perfected the automatic stay by filing an appeal with the Board of Immigration Appeals. *See DHS Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, dated January 28, 2026, attached hereto as Attachment E*.

31. DHS' stated reason for appealing was that the Immigration Judge erred in finding Caceres eligible for bond pursuant to 8 U.S.C. § 1226(a). *See Attachment E, attached hereto*.

32. Caceres remains in custody in contravention of the IJ's order. DHS's appeal to the BIA can take months. And as explained more fully below, even resolution of the appeal may not immediately end the automatic stay.

LEGAL FRAMEWORK

I. Constitutional Limits on Civil Immigration Detention

33. Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

34. Because immigration detention is civil rather than criminal, it must comply with both substantive and procedural due process limitations.

35. Substantive due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 531 (2003).

36. Detention that is not reasonably related to either of those purposes violates substantive due process.

37. Procedural due process requires adequate procedural protections that ensure the government's justification for a noncitizen's physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint. *Zadvydas*, 533 U.S. at 690.

38. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Pursuant to *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and

administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

II. Automatic and Discretionary Stay Regulations

39. When an Immigration Judge orders release on bond and the government appeals, the regulations provide two mechanisms to stay that custody order: a discretionary or automatic stay.

40. Under the discretionary stay mechanism, DHS must file a motion and persuade the BIA that a stay is warranted. 8 C.F.R. § 1003.19(i)(1). The BIA serves as a neutral adjudicator and weighs the merits of DHS's position. DHS did not use that mechanism here.

41. Instead, DHS invoked the automatic stay regulation. This mechanism involves no neutral adjudicator considering the merits, and instead, allows the prosecutor—who lost before the IJ—to unilaterally stay the IJ's decision. *See* 8 C.F.R. § 1003.6.

42. Regulations provide that DHS's automatic stay will lapse in 90 days on April 14, 2026, absent a BIA decision on the appeal. 8 C.F.R. § 1003.6(c)(4). But there are multiple avenues for extension. For example, if the BIA does not issue a decision in the 90-day window, DHS can then seek an additional discretionary stay from the BIA. 8 C.F.R. § 1003.6(c)(5). The automatic stay remains in effect for another 30 days while the BIA decides whether to grant a discretionary stay. *Id.*

43. Likewise, even if the BIA rules in favor of Caceres on appeal and authorizes his release on bond, that release is automatically stayed for five more business days to give DHS a chance to refer the case to the Attorney General. 8 C.F.R. § 1003.6(d). Then, if DHS refers the case to the Attorney General, the automatic stay is extended for another 15 days. *Id.* The Attorney General may then stay release for the pendency of the case. *Id.* There is no prescribed time limit

for final resolution of the custody determination, meaning an individual may remain in detention indefinitely.

44. In sum, Caceres has no way of knowing how long this automatic stay will last and has no opportunity to challenge the stay. In practice, the automatic stay regulation renders the IJ's custody decision ineffectual: if DHS disagrees with a custody decision, it can keep Caceres detained for a minimum of 90 days, without a truly discernable end point.

III. Statutory Detention Framework

45. The relevant detention statutes at issue here are 8 U.S.C. § 1225(b)(2), which requires mandatory detention "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted," and 8 U.S.C. § 1226(a), which states that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § § 1225, 1226.

46. 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.

47. 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) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

48. Thus, in the decades that followed their enactment in 1996, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered eligible for release on bond and received bond hearings before an IJ, unless their criminal history rendered them ineligible. 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)).

49. On July 8, 2025, ICE "in coordination with" the Department of Justice announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice.

50. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention 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.

51. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings. *Id.*

ARGUMENTS

I. THE AUTOMATIC STAY REGULATION VIOLATES CACERES' FIFTH AMENDMENT RIGHT TO DUE PROCESS.

52. Government detention violates the Due Process Clause unless in certain special and non-punitive circumstances "where a special justification, ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

53. Immigration detention is permissible only insofar as it reasonably serves the limited civil purposes of ensuring appearance at proceedings or protecting the community form danger. *Demore v. Kim*, 538 U.S. 510, 527-28 (2003).

54. Here, an Immigration Judge conducted an individualized bond hearing and determined that Caceres was neither a danger to the community nor a flight risk. That determination eliminated the only constitutionally permissible bases for continued civil detention.

55. The automatic stay regulation nevertheless allowed DHS—without any neutral adjudication—to nullify that reasoned decision and continue detention automatically.

56. When promulgated in October 2001, the Attorney General justified the automatic stay regulation as an emergency response to the September 11 terrorist attacks. The articulated bases for the necessity of the automatic stay provision were: (1) a concern that with the passage of time, there would be an increased risk that a dangerous alien may be released; (2) the need to avoid a case-by-case determination of whether a stay should be granted in cases in which DHS had already determined that the alien should be kept without bail or with bail in excess of $10,000; and, (3) a concern that the time difference between the east and west coast would permit the release of a dangerous alien after the BIA had closed for the day, effectively eliminating the opportunity

for an emergency appeal of the immigration judge's release order. *Executive Office of Immigration Review; Review of Custody Determination*, 66 Fed. Reg. 54909, 54910 (Oct. 31, 2001).

57. The concern was, therefore, to afford DHS the time necessary to ensure that potentially dangerous alien did not flee and to protect the public from an alien "that it believes is a threat to national security or the public safety." *Executive Office of Immigration Review; Review of Custody Determination*, 66 Fed. Reg. 54909, 54910 (Oct. 31, 2001).

58. Those justifications are absent here. An Immigration Judge has already determined—after an adversarial hearing—that Caceres poses no threat to public safety and no meaningful risk of flight.

59. The automatic stay thus authorizes continued detention without any current finding that detention serves a permissible civil purpose. Detention untethered to flight risk or dangerousness ceases to be regulatory and becomes punitive in effect.

60. Multiple courts have concluded that such unilateral detention after a neutral adjudicator has ordered release fails to satisfy substantive due process. *See Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004); *Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J. 2003); *Mayo Anicasio v. Kramer*, No. 4:25cv3158 (D. Neb. Aug. 14, 2025).

61. Because no "special justification" outweighs Caceres' fundamental liberty interest, his continued detention pursuant to the automatic stay violates substantive due process.

62. Even if continued detention could theoretically serve a permissible purpose, the procedures employed must satisfy constitutional requirements under *Mathews v. Eldridge* and here, each factor favors Caceres.

A. Private Interest

63. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana,* 504 U.S. 71, 80 (1992).

64. Despite not being accused of any crime, Caceres is being held in a detention facility that "strongly resemble[s] penal confinement," *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 940 (D. Colo. 2025). He is away from his family and is unable to maintain his employment.

65. Therefore, this factor strongly weighs in favor of Caceres.

B. The Risk of Erroneous Deprivation of Liberty is High

66. Under the second *Mathews* factor, the Court must assess whether the challenged procedure creates a risk of erroneous deprivation and whether additional safeguards would reduce that risk. *See Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *9 (D. Minn. May 21, 2025).

67. The automatic stay mechanism permits DHS to nullify a reasoned bond determination issued by an Immigration Judge without any neutral review at the time the stay is imposed. The unilateral override poses a substantial risk of erroneous deprivation.

68. Respondents appealed the IJ's determination that 8 U.S.C. § 1226 applies to Caceres in the first place. But this District has already rejected Respondents' interpretation of 8 U.S.C. § § 1225 and 1226 in numerous cases, *see supra* Notice of Related Cases. *See Attachment E, attached hereto*. Where the underlying legal question has already been repeatedly resolved against Respondents' position, the risk that continued detention rests on an incorrect statutory premise is heightened.

69. Respondents also contend that the IJ erred in assessing flight risk because Caceres did not yet have a pending application for relief. *See Attachment E, attached hereto*. However, that concern is mitigated by the very nature of Caceres' removal proceedings. Caceres appeared at a Master Calendar Hearing on February 24, 2026, entered pleadings as to the Notice to Appear, and was granted until March 9, 2026, to submit an EOIR-42B, Application for Non-LPR Cancellation of Removal. His proceedings are ongoing, and the Immigration Judge considered those facts when setting bond.

70. But even setting aside the particulars of Respondents' appeal, the constitutional problem of the automatic stay regulation is structural. The automatic stay authorizes continued detention without any neutral review at the moment liberty is withdrawn.

71. Only individuals who have prevailed at bond hearings are subject to automatic stay. *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *3 (W.D. Tex. Sept. 8, 2025). The regulation therefore applies exclusively to individuals whom a neutral adjudicator has already determined are appropriate candidates for release.

72. The regulation allows the prosecuting agency to override the IJ's decision without presenting evidence, demonstrating likelihood of success, or establishing irreparable harm. This structure collapses the roles of prosecutor and adjudicator, heightening the risk of error. *See Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955) (holding that the special inquiry officer adjudicating over an immigration case cannot also undertake the functions of prosecutor in the same matter).

73. Accordingly, this factor likewise weighs in favor of Caceres.

C. Respondents' Interest

74. Respondents' interest carries little weight in comparison. The Immigration Judge's bond redetermination already accounted for flight risk and public safety concerns.

75. If DHS believes the IJ erred, it can seek an emergency stay under 8 C.F.R. § 1003.19(i)(1), which requires a showing of likelihood of success and irreparable harm.

76. That mechanism fully protects Respondents' legitimate interests without authorizing unilateral detention.

77. The burden to Respondents, particularly where it does not necessitate the creation of an additional administrative framework, is minimal.

78. Thus, this factor also weighs in favor of Caceres.

* * *

79. All three *Mathews* factors clearly support a finding that Caceres' detention violated his due process rights.

80. The automatic stay regulation authorizes detention without an individualized determination that continued confinement serves a permissible civil purpose and without constitutionally adequate procedural safeguards.

81. Caceres is therefore detained in violation of the Fifth Amendment.

82. As remedy for this Constitutional violation, Caceres must be released immediately or upon posting of the $ 5,000.00 bond.

II. THE AUTOMATIC STAY REGULATION IS ULTRA VIRES AND THEREFORE INVALID.

83. To the extent the challenged regulation permitting an automatic stay goes beyond the authority of the statutory framework of 8 U.S.C. § 1226(a) by eliminating the discretionary authority of immigration judges to determine whether an individual maybe released, it is invalid.

See Romero v. INS, 39 F.3d 977, 980 (9th Cir. 1994) (holding that immigration regulation that is inconsistent with the statutory scheme is invalid).

84. The plain language of 8 U.S.C. § 1226(a) states that the determination as to whether an individual should be detained during removal proceedings is discretionary. Under subsection (a), Congress has vested the authority in the immigration court to, in the exercise of its discretion, determine whether release may be appropriate.

85. The automatic stay regulation disrupts the structure of the statute by allowing DHS to unilaterally stay an IJ's bond order simply by filing a notice of appeal, the regulation nullifies the exercise of discretion that § 1226(a) requires.

86. Although styled as a temporary procedural measure, the automatic stay operates in practice as mandatory detention. Once DHS files an appeal, detention continues automatically, without any showing of likelihood of success, irreparable harm, flight risk, or danger.

87. This mechanism converts what Congress designed as a discretionary custody scheme into a regime of de facto mandatory detention for a new class of individuals: those who prevailed at bond hearings but whose release DHS opposes. Congress did not authorize mandatory detention for that class.

88. An agency may not use regulation to accomplish indirectly what Congress chose not to authorize directly. By permitting DHS to override an Immigration Judge's discretionary bond determination and impose continued detention automatically, the regulation exceeds statutory authority.

89. Because the automatic stay regulation eliminates the meaningful operation of § 1226(a)'s discretionary release framework and effectively creates a new mandatory detention category not enacted by Congress, it is ultra vires and invalid.

90. In Caceres' case, DHS has invoked the automatic stay to override a lawful discretionary bond determination and impose continued detention without statutory basis. Congress did not authorize DHS to convert § 1226(a) discretion into mandatory detention. Where continued custody derives from an ultra vires regulation rather than an act of Congress, habeas relief is required.

III. THE PLAIN STATUTORY TEXT DEMONSTRATES CACERES IS DETAINED UNDER 8 U.S.C. § 1226(a), NOT § 1225(b)(2).

91. Respondents have taken the position that a noncitizen who entered the country without inspection is always an 'applicant for admission' and subject to mandatory detention under § 1225, no matter how long the noncitizen has been present in the country. *See Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *10-11 (D. Colo. Oct. 22, 2025).

92. Even if Caceres is an "applicant for admission," 8 U.S.C. § 1225(b)(2)(A) requires that he also be actively "seeking admission" for the mandatory detention provision to apply to him.

93. The weight of authority interpreting § 1225 has recognized that for § 1225(b)(2)(A) to even apply, several conditions must be met—in particular, an examining immigration officer must determine that the individual is: (1) an applicant for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted. *See Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *6 (D. Colo. Oct. 22, 2025) (*citing Martinez v. Hyde*, No. 25-cv-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025).

94. "Seeking" means "try[ing] to acquire or gain." And "admission" is defined in the INA as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Thus, the plain meaning of the phrase "seeking admission" requires that the applicant must be presently and actively seeking lawful entry into the United States. *Loa Caballero,* 2025 WL 2977650, at *6 (internal citations omitted).

95. Noncitizens in Caceres' position, who entered the United States many years ago, are not "seeking admission" to the United States but are instead "seeking to remain in the United States." *Lepe v. Andrews*, -- F. Supp. 3d --, 2025 WL 2716910, at *5 (E.D. Cal. Sept. 23, 2025).

96. Other indicia bolster Caceres' plain text reading of the statute. First, Respondents' proffered interpretation of § 1225 appears facially inconsistent with related implementing regulations. The implementing regulation for § 1225(b) states that "any *arriving alien* who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section 240 of the Act shall be detained in accordance with section 235(b) of the Act." 8 C.F.R. § 235(c)(1) (emphasis added).

97. In this way, "[t]he regulation appears to contemplate that applicants *seeking admission* are a subset of applicants 'roughly interchangeable' with 'arriving aliens.'" *Cordero Pelico v. Kaiser,* 2025 WL 2822876, at *11 (N.D. Cal. Oct. 3, 2025) (quoting *Martinez v. Hyde,* 2025 WL 2084238, at *6 (D. Mass. July 24, 2025)) (emphasis in original). An "arriving alien" is defined under the regulatory scheme as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. "This plainly does not describe petitioners," like Caceres, who already "reside in the United States." *Kaiser,* 2025 WL 28227876, at *11.

98. Second, in the Notice to Appear DHS issued commencing removal proceedings against Caceres, the issuing officer retained the option to designate him as (1) "an arriving alien"; (2) "an alien present in the United States who has not been admitted or paroled"; or (3) a person who "ha[s] been admitted to the United States, but [is] removable for the reasons stated below." In this case, the issuing officer chose the second—not the first—option to classify Caceres. *See Attachment A, attached hereto.*

99. Third, Caceres was arrested pursuant to a warrant for his arrest, DHS Form I-200, which states that the arrest was pursuant to "section 236 of the Immigration and Nationality Act." *See Attachment B, attached hereto.*

100. Caceres has been present in the United States since approximately 2012. Therefore, notwithstanding any lack of lawful status, Caceres was not seeking lawful entry into the United States at the time he was detained—he was already here. He was thus not "seeking admission" and is not subject to § 1225(b)(2)(A)'s mandatory detention provision. *See Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *16 (D. Colo. Oct. 22, 2025) (*citing Lepe v. Andrews*, F. Supp. 3d, 2025 WL 2716910, at *5 (E.D. Cal. Sept. 23, 2025) ("[P]etitioner is not actively 'seeking' 'lawful entry' because he already entered the United States—thirty-two years ago. If anything, petitioner is seeking to *remain* in the United States.").

101. Even if the BIA vacates the Immigration Judge's bond order in reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Caceres' continued detention would then rest on § 1225(b)(2)(A) and would remain unlawful. As demonstrated above, the plain statutory text forecloses application of § 1225(b)(2)(A) to noncitizens who are not actively "seeking admission." An agency interpretation cannot manufacture mandatory detention where the statute does not authorize it. Accordingly, vacatur of the bond order would not cure the illegality of Caceres' detention, and habeas relief would remain warranted.

CLAIMS FOR RELIEF

Count One
Violation of the Fifth Amendment – Substantive Due Process

102. Caceres realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

103. Civil immigration detention is constitutionally permissible only insofar as it reasonably serves the non-punitive purposes of preventing flight or protecting the community.

104. An Immigration Judge has determined that Caceres is neither a danger to the community nor a flight risk that cannot be mitigated by bond.

105. The automatic stay regulation nevertheless permits continued detention without any new individualized determination that detention serves a permissible civil purpose.

106. Continued detention under these circumstances is not narrowly tailored to any compelling governmental interest and is therefore punitive in effect.

107. Caceres' detention pursuant to the automatic stay violates substantive due process and warrants habeas relief.

Count Two
Violation of the Fifth Amendment – Procedural Due Process

108. Caceres realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

109. Due process requires the opportunity to be heard at a meaningful time and in a meaningful manner.

110. The automatic stay regulation permits continued detention without any neutral adjudicator reviewing whether detention remains justified, thereby creating a substantial risk of erroneous deprivation of liberty.

111. Under the balancing framework of *Mathews v. Eldridge*, Caceres' liberty interest is profound, the risk of erroneous deprivation under the automatic stay is significant, and the government's interests can be fully protected through existing discretionary stay procedures.

112. By authorizing unilateral continued detention after an Immigration Judge has ordered release on bond, the automatic stay regulation violates Caceres' procedural due process rights.

113. Caceres is therefore detained in violation of the Fifth Amendment and is entitled to habeas relief.

Count Three
Ultra Vires Agency Action

114. Caceres realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

115. Congress gave the Attorney General authority to detain or release aliens pending their removal proceedings, who in turn has delegated that authority to Immigration Judges.

116. The automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) exceeds the authority given to DHS by Congress by giving them unilateral authority to override the IJ's decision, making it unlawful and *ultra vires*.

117. Because Caceres' continued detention rests on an unauthorized regulatory expansion of statutory authority, it is unlawful.

Count Four
Violation of INA § 236(a), 8 U.S.C. § 1226(a)

118. Caceres realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

119. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Caceres who previously entered the country and has been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. He is subject to discretionary detention under § 1226(a).

120. The application of § 1225(b)(2) to Caceres is contrary to the plain statutory text and unlawfully mandates his continued detention.

121. His continued detention under the misapplied statutory provision violates the Immigration and Nationality Act and entitles him to habeas relief.

PRAYER FOR RELIEF

Petitioner EDUIN VEGA CACERES respectfully requests that this Court:

(1) Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241;

(2) Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243 directing Respondents to respond within three days as to why this Petition should not be granted;

(3) Grant the Petition for Writ of Habeas Corpus;

(4) Declare that Caceres' continued detention pursuant to the automatic stay regulation is unlawful;

(5) Declare that Caceres is not subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and permanently enjoin Respondents from re-detaining him under that provision;

(6) Order Respondents to immediately release Caceres from custody, or in the alternative, enforce the Immigration Judge's bond order and effectuate his release upon payment of the $ 5,000.00 bond previously set by the Immigration Judge;

(7) Order that Caceres remain in Respondents' temporary custody for the sole purpose of Respondents effectuating his return to Lake Worth, Florida, *see Lopez de Leon v. Baltazar*, No. 1:26-cv-00555-SKC-SBP, Document 17 (D. Colo. Feb. 20, 2026);

(8) Order Respondents to transport Caceres back to Lake Worth, Florida, at their own expense, within 36 hours of the date and time of the Court's Order, *see id.*;

(9) Enjoin Respondents from detaining Caceres pursuant to 8 U.S.C. § 1226(a) for a period of fourteen days to effectuate his return and restore the status quo ante;

(10) Award Caceres reasonable attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, upon the filing of a separate Motion with the Court; and

(11) Grant any further relief the Court deems just and proper.

Dated this 24th day of February 2026.

Respectfully submitted,

/s/ Skylar M. Larson

Skylar M. Larson, Esq.
8275 E. 11th Ave. # 200176
Denver, CO 80220
Tel: (970) 692-3156
Email: skylarmlarsonesq@gmail.com

ATTORNEY FOR PETITIONER

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner, Eduin Vega Caceres, because I am the attorney for Caceres. I have discussed with Caceres the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on February 24, 2026, at Fort Collins, Colorado.

/s/ Skylar M. Larson
Skylar M. Larson, Esq.

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing **Petition for Writ of Habeas Corpus and Attachments A-H** will be effectuated contemporaneously with the Court's issuance of an Order directing service pursuant to Federal Rule of Civil Procedure 4(i), at which time true and correct copies will be mailed to the following:

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility
3130 N Oakland Street
Aurora, CO 80010
Respondent

ROBERT HAGAN, Field Office Director, Denver ICE Field Office
12445 E. Caley Avenue
Centennial, CO 80111
Respondent

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement
245 Murray Lane, SW
Mail Stop 0485
Washington, DC 20528-0485
Respondent

KRISTI NOEM, Secretary of U.S. Department of Homeland Security
245 Murray Lane, SW
Mail Stop 0485
Washington, DC 20528-0485
Respondent

PAMELA BONDI, U.S. Attorney General, U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Respondent

KEVIN TRASKOS, Chief, Civil Division
U.S. Attorney's Office District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202
Attorney for Respondents

/s/ Skylar M. Larson
Skylar M. Larson, Esq.

ATTORNEY FOR PETITIONER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-00763

EDUIN VEGA CACERES,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility;
ROBERT HAGAN, in his official capacity as Field Office Director, Denver Field Office of U.S. Immigration and Customs Enforcement;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity as Secretary of U.S. Department of Homeland Security; and
PAMELA BONDI, in her official capacity as Attorney General of the United States.

Respondents.

ATTACHMENTS TO PETITION FOR WRIT OF HABEAS CORPUS

ATTACHMENT A.	Notice to Appear, dated December 13, 2025
ATTACHMENT B.	DHS Form I-200, Warrant for Arrest of Alien, dated December 13, 2025
ATTACHMENT C.	DHS Form I-213, Record of Deportable/Inadmissible Alien, dated December 13, 2025
ATTACHMENT D.	Order of the Immigration Judge Granting Bond, dated January 13, 2026
ATTACHMENT E.	DHS Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, dated January 28, 2026
ATTACHMENT F.	Board of Immigration Appeals, Filing Receipt for Appeal or Motion, dated February 4, 2026
ATTACHMENT G.	No Criminal History: Colorado Bureau of Investigations, No Record of Colorado Arrests, dated December 17, 2025, and Florida No Criminal History Results, dated December 31, 2025

ATTACHMENT H.	No Flight Risk: Birth Certificates for U.S. Citizen Children; L&J Remodeling Pro LLC Articles of Organization and 2025 Report; I-601A Approval Notice for Wife, Yessenia Sing Enamorado, dated August 5, 2025; Naturalization Certificate and U.S. Passport Biographical Page for U.S. Citizen Sister-In-Law Sponsor; Tax Returns 2021 - 2024

A

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] FIN [redacted] File No: [redacted]

In the Matter of:

Respondent: EDUIN NOE VEGA -CACERES 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 HONDURAS and a citizen of HONDURAS;

3. You entered the United States at or near Laredo, Texas on or about October 19, 2012;

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

on January 9, 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.

B 4851 DIEDERICH - SDDO
(Signature and Title of Issuing Officer)

Date: December 13, 2025

Aurora, Colorado
(City and State)

EOIR – 1 of 4

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.

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 13, 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.

_____ _____ FOR ☒ VORHAUER - Deportation Officer

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

EOIR – 2 of 4

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-soms. 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.

EOIR – 3 of 4

B

Uploaded on: 12/19/2025 at 09:33:26 AM (Mountain Standard Time) Base City: AUR

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

File No. [redacted]

Date: 12/13/2025

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 VEGA -CACERES, EDUIN NOE 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.

Ben Diederich
(Signature of Authorized Immigration Officer)

B 4851 DIEDERICH - 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, Colorado (Location)

on VEGA -CACERES, EDUIN NOE (Name of Alien) on December 13, 2025 (Date of Service), and the contents of this notice were read to him or her in the SPANISH (Language) language.

W 8079 VORHAUER
Deportation Officer
Name and Signature of Officer

Name or Number of Interpreter (if applicable)

EOIR – 4 of 4

Form I-200 (Rev. 09/16)

C

U.S. Department of Homeland Security Subject ID : [redacted] **Record of Deportable/Inadmissible Alien**

Family Name (CAPS)	First	Middle
VEGA -CACERES,	EDUIN	NOE

Sex	Hair	Eyes	Complxn
M	BLK	BRO	LBR

Country of Citizenship	Passport Number and Country of Issue	File Number
HONDURAS		[redacted]

Height	Weight	Occupation
66	194	Construction

U.S. Address: [redacted] LAKE WORTH, FLORIDA, 33467, UNITED STATES

Scars and Marks:

Date, Place, Time, and Manner of Last Entry: 10/19/2012 Unknown Time, LAR, WI-Without Inspection

Passenger Boarded at:

F.B.I. Number:

Marital Status: ☐ Single ☐ Divorced ☒ Married ☐ Widower ☐ Separated

Number, Street, City, Province (State) and Country of Permanent Residence: UNKNOWN COLONIA VALLE DE SULA SAN PEDRO SULA, HONDURAS

Method of Location/Apprehension: CA

Date of Birth	Date of Action	Location Code	At/Near	Date/Hour
[redacted] Age: 35	12/13/2025	GJC/DEN	See I-831	12/13/2025 11:32

City, Province (State) and Country of Birth: San Pedro Sula, HONDURAS

AR ☒ Form : (Type and No.) Lifted ☐ Not Lifted ☐

By: ADAM ELDER

NIV Issuing Post and NIV Number:

Social Security Account Name:

Status at Entry:

Status When Found:

Date Visa Issued:

Social Security Number:

Length of Time Illegally in U.S.:

Immigration Record: NEGATIVE

Criminal Record:

Name , Address, and Nationality of Spouse (Maiden Name, if Appropriate): [redacted], YESSENIA AUORA NATIONALITY: HONDURAS ADDRESS: [redacted] Lake Worth, FLORIDA, 33467, UNITED STATES

Number and Nationality of Minor Children: 2-UNITED STATES

Father's Name, Nationality, and Address, if Known: UNKNOWN, UNKNOWN NATIONALITY: HONDURAS

Mother's Present and Maiden Names, Nationality, and Address, if Known: [redacted] MARIA LUIS NATIONALITY: HONDURAS ADDRESS: UnknownHONDURAS

Monies Due/Property in U.S. Not in Immediate Possession: None Claimed

Fingerprinted? ☒ Yes ☐ No

Systems Checks:

Charge Code Words(s): See Narrative

Name and Address of (Last)(Current) U.S. Employer: See Narrative

Type of Employment: See Narrative

Salary / Hr:

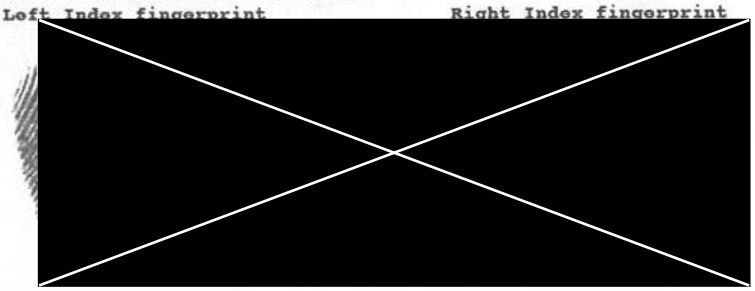
Employed from/to: 03/18/2023

Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)

FIN [redacted]

Left Index fingerprint

Right Index fingerprint



FAMILY INFORMATION

Father: UNKNOWN, UNKNOWN is a citizen of HONDURAS.
Mother: [redacted] MARIA is a citizen of HONDURAS.
Spouse: [redacted] YESSENIA has A# [redacted], is a citizen of HONDURAS.
Daughter: [redacted] is a citizen of UNITED STATES.
Son: [redacted] is a citizen of UNITED STATES.

SUBJECT HEALTH STATUS

...(CONTINUED ON I-831)

ADAM ELDER
Deportation Officer
(Signature and Title of Immigration Officer)

Alien has been advised of communication privileges _____ (Date/Initials)

Distribution:

Afile

Received: (Subject and Documents) (Report of Interview)

Officer: ADAM ELDER

on: December 13, 2025 (time)

Disposition: Warrant of Arrest/Notice to Appear

Examining Officer: DIEDERICH, B 4851

EOIR – 2 of 5

Form I-213 (Rev. 08/01/07)

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name	File Number	Date
VEGA -CACERES, EDUIN NOE	[redacted]	12/13/2025

The subject claims good health.

CURRENT ADMINISTRATIVE CHARGES

12/13/2025 - 212a6Ai - ALIEN PRESENT WITHOUT ADMISSION OR PAROLE - (PWAs)

NAME AND ADDRESS OF US EMPLOYER

L&J REMODELING PRO, [redacted] LAKE WORTH, FLORIDA, 33467, UNITED STATES

TYPE OF EMPLOYMENT

Operators, Fabricators, and Laborers

ARRESTED AT/NEAR

UNKNOWN, UNKNOWN, FLORIDA, 12345, UNITED STATES

RECORD OF DEPORTABLE/EXCLUDABLE ALIEN:

ENCOUNTER
On December 08, 2025, during a Florida Highway Patrol enforcement operation conducted in South Florida under Operation Sand Hill Sentinel, VEGAS ACERES EDUIN NOE was arrested BY ERO OFICER OREZZOLI, who contacted ICE to verify alienage and amenability. After ICE directed the ERO officer to apprehend the individual, whom was taken into custody without incident. Subject was arrested by ERO OREZZOLI Miami's office.

ENTRY
VEGA -CACERES claims to have entered the United States at or near Laredo, Texas on or about 10/19/2012, without inspection by U.S. Immigration Officers. This location was not designated as a port of entry by the Attorney General or the Secretary of the Department of Homeland Security.

IMMIGRATION HISTORY
VEGA -CACERES has no immigration history.

IMMIGRATION PETITIONS and APPLICATIONS
VEGA -CACERES has no petitions or applications.

CRIMINAL HISTORY
VEGA -CACERES has no criminal records nor wants and warrants.

CHARGES OF REMOVABILITY
VEGA -CACERES is inadmissible pursuant to section 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 who arrived in the United States at any time or place other than as designated by the Attorney General.

GANG AFFILIATION/PUBLIC SAFETY THREAT
VEGA -CACERES claims no gang association or affiliation.

FAMILY INFORMATION
VEGA -CACERES claims that his father and mother are citizens of Honduras currently residing in Honduras.
VEGA -CACERES has 2 children and is married.

Signature	Title
ADAM ELDER	Deportation Officer

EOIR - 3 of 5

Uploaded on: 02/23/2026 at 09:48:19 AM (Mountain Standard Time) Base City: AUR

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name	File Number	Date
VEGA -CACERES, EDUIN NOE	[redacted]	12/13/2025

U. S. MILITARY HISTORY / EDUCATION
VEGA -CACERES when asked, stated he nor any member of his immediate family have ever served in the United States military.

FOREIGN MILITARY HISTORY
VEGA -CACERES claims to have no foreign military history.

DISPOSITION:
VEGA -CACERES was advised of his right to speak to a consulate officer from Honduras.
VEGA -CACERES states he has fear of persecution or torture if removed to Honduras.
VEGA -CACERES was processed as a Notice to Appear.
VEGA -CACERES will be held in ICE custody pending removal from the United States.

OTHER IDENTIFYING NUMBERS

ALIEN-[redacted]

Signature	Title
ADAM ELDER	Deportation Officer

EOIR - 4 of 5

D

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

Respondent Name:
VEGA -CACERES, EDUIN NOE

To:
Alvarez Grajeda, Mildred Aneth
829 Main St.
Longmont, CO 80501

A-Number:
[redacted]

Riders:
In Custody Redetermination Proceedings

Date:
01/13/2026

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 $ 5,000.00
- ☐ other:

☐ Other:

Immigration Judge: Burgie, Brea 01/13/2026

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

Appeal Due: 02/13/2026

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 : VEGA -CACERES, EDUIN NOE | A-Number : [redacted]

Riders:

Date: 01/13/2026 By: GAINES, ANITA, Court Staff

E

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

OMB# 1125-0002

Notice of Appeal from a Decision of an Immigration Judge

Staple Check or Money Order Here. Include Name(s) and "A" Number(s) on the face of the check or money order.

1. List Name(s) and "A" Number(s) of all Respondent(s)/Applicant(s):

Vega-Caceres, Eduin Noe [redacted]

For Official Use Only

WARNING: Names and "A" Numbers of **everyone** appealing the Immigration Judge's decision must be written in item #1. The names and "A" numbers listed will be the only ones considered to be the subjects of the appeal.

2. I am ☐ the Respondent/Applicant ☑ DHS-ICE *(Mark only one box.)*

3. I am ☐ DETAINED ☐ NOT DETAINED *(Mark only one box.)*

4. My last hearing was at Auror aColorado *(Location, City, State)*

5. **What decision are you appealing?**

Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of Appeal (Form EOIR-26).

☐ I am filing an appeal from the Immigration Judge's decision *in **merits** proceedings* (example: removal, deportation, exclusion, asylum, etc.) dated _____.

☑ I am filing an appeal from the Immigration Judge's decision *in **bond** proceedings* dated 1/13/26. (For DHS use only: Did DHS invoke the automatic stay provision before the Immigration Court? ☑ Yes. ☐ No.)

☐ I am filing an appeal from the Immigration Judge's decision ***denying a motion to reopen or a motion to reconsider*** dated _____.

(Please attach a copy of the Immigration Judge's decision that you are appealing.)

Form EOIR-26
Rev. Nov. 2022
Exp. Jan. 2026

6. **State in detail the reason(s) for this appeal. Please refer to the General Instructions at item F for further guidance. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and "A" number(s) on every sheet.**

See attached continuation page, "ATTACHMENT TO FORM EOIR-26 AND MEMORANDUM OF LAW"

(Attach additional sheets if necessary)

WARNING: You must clearly explain the specific facts and law on which you base your appeal of the Immigration Judge's decision. The Board may summarily dismiss your appeal if it cannot tell from this Notice of Appeal, or any statements attached to this Notice of Appeal, why you are appealing.

7. Do you desire oral argument before the Board of Immigration Appeals? ☐ Yes ☑ No

8. Do you intend to file a separate written brief or statement after filing this Notice of Appeal? ☐ Yes ☑ No

9. If you are unrepresented, do you give consent to the BIA Pro Bono Project to have your case screened by the Project for potential placement with a free attorney or accredited representative, which may include sharing a summary of your case with potential attorneys and accredited representatives? *(There is no guarantee that your case will be accepted for placement or that an attorney or accredited representative will accept your case for representation)* ☐ Yes ☐ No

WARNING: If you mark "Yes" in item #7, you should also include in your statement above why you believe your case warrants review by a three-member panel. The Board ordinarily will not grant a request for oral argument unless you also file a brief.

If you mark "Yes" in item #8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within the time set in the briefing schedule.

10. **Print Name:** Stacey Kowalski

11. **Sign Here:** X _____ 1/28/26

Signature of Person Appealing *(or attorney or representative)* Date

12. **Mailing Address of Respondent(s)/Applicant(s)**

Eduin Noe Vega-Caceras
(Name)

[redacted]
(Street Address)

(Apartment or Room Number)

[redacted]
(City, State, Zip Code)

(Telephone Number)

11. **Mailing Address of Attorney or Representative for the Respondent(s)/Applicant(s)**

McKinley Law Group
(Name)

829 Main Street
(Street Address)

Suite 1
(Suite or Room Number)

Longmont, Colorado 80501
(City, State, Zip Code)

(Telephone Number)

NOTE: You must notify the Board within five (5) working days if you move to a new address or change your telephone number. You must use the Change of Address Form/Board of Immigration Appeals (Form EOIR-33/BIA).

NOTE: If an attorney or representative signs this appeal for you, he or she must file *with this appeal*, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

13. **PROOF OF SERVICE (You Must Complete This)**

I Stacey Kowalski (Name) mailed or delivered a copy of this Notice of Appeal

on 1/28/26 (Date) to Respondent/ Respondent's Counsel (Opposing Party)

at 3130 N. Oakland Street Aurora, Colorado 80010 / 829 Main Street Suite 1 Longmont, Colorado 80501
(Number and Street, City, State, Zip Code)

☐ No service needed. I electronically filed this document, and the opposing party is participating in ECAS.

SIGN HERE → X _____
Signature

NOTE: If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of DHS - ICE.

WARNING: If you do not complete this section properly, your appeal will be rejected or dismissed.

WARNING: If you do not attach the fee payment receipt, fee, or a completed Fee Waiver Request (Form EOIR-26A) to this appeal, your appeal may be rejected or dismissed.

HAVE YOU?

- ☐ Read all of the General Instructions.
- ☐ Provided all of the requested information.
- ☐ Completed this form in English.
- ☐ Provided a certified English translation for all non-English attachments.
- ☐ Signed the form.
- ☐ Served a copy of this form and all attachments on the opposing party, if applicable.
- ☐ Completed and signed the Proof of Service
- ☐ Attached the required fee payment receipt, fee, or Fee Waiver Request.
- ☐ If represented by attorney or representative, attach a completed and signed EOIR-27 for each respondent or applicant.

Form EOIR-26
Rev. Nov. 2022
Exp. Jan. 2026

Vega-Caceres, Eduin Noe

ATTACHMENT TO FORM EOIR-26 AND MEMORANDUM OF LAW

The Immigration Judge erred in ordering the respondent released from the custody of the Department of Homeland Security (DHS) pursuant to section 236(a) of the Immigration and Nationality Act (INA). Section 235 of the INA is the applicable immigration detention authority for all applicants for admission. Section 236 of the INA is the applicable detention authority for aliens who are already present in the United States after an admission and are deportable. *Id.* §§ 236, 237(a). The respondent, who is present in the United States without admission or parole (PWAP), is an applicant for admission in INA § 240 removal proceedings and is therefore detained pursuant to INA § 235(b)(2)(A). DHS requests that the Board of Immigration Appeals (Board) reverse the decision of the Immigration Judge in a precedent decision, as this case presents an issue that "arise[s] frequently in immigration cases," and given the "need to achieve, maintain, or restore national uniformity of interpretation of issues under the immigration laws or regulations." 8 C.F.R. § 1003.1(g)(3)(ii), (v).[1] The Immigration Judge further erred in granting the respondent's request for a change in custody status and setting bond in the amount of $5,000 because the respondent failed to meet his burden of establishing that he does not pose a risk of flight.

[1] This case presents substantive issues that would benefit from clarification from the Board in a precedential decision. Notably, the Executive Office for Immigration Review (EOIR) recently issued a policy memorandum acknowledging that "when conflicting Board precedents exist, Immigration Judges are uncertain as to which line of precedent they are obligated to follow." EOIR PM 25-34, *Conflicting Precedents of the Board of Immigration Appeals* § I, at 2 (July 3, 2025). That EOIR recognizes there are situations in which multiple lines of precedent may be in tension or conflict with one another underscores the need for Board precedent on this issue.

ISSUES PRESENTED

1. The Immigration Judge erred in ordering the respondent released from DHS custody pursuant to INA § 236(a), where the respondent is an applicant for admission and is thus subject to detention pursuant to INA § 235(b)(2)(A) and ineligible for release but for a release on parole by DHS pursuant to INA § 212(d)(5).

2. The Immigration Judge erred in finding that the respondent met his burden to establish he does not pose a risk of flight because the respondent has no relief applications pending before the Immigration Judge.

STANDARD OF REVIEW

The Board reviews questions of fact for clear error, 8 C.F.R. § 1003.1(d)(3)(i), and "questions of law, discretion, and judgment and all other issues in appeals from decisions of [I]mmigration [J]udges de novo," *id.* § 1003.1(d)(3)(ii). The statutory authority governing an alien PWAP's detention and whether such an alien is eligible for a custody redetermination hearing before an Immigration Judge is a question of law reviewed *de novo*. *See id.* Whether the respondent is a risk of flight is a question of judgment that is review *de novo*; however, the factual findings underlying that determination is reviewed for clear error. *Matter of Beltrand-Rodriguez*, 29 I&N Dec. 76, 77 (BIA 2025).

SUMMARY OF THE ARGUMENT

Section 235 of the INA is the applicable detention authority for all applicants for admission; specifically, INA § 235(b)(2)(A) provides the detention authority for aliens PWAP[2]

[2] The respondent in this case has not been granted parole. Nonetheless, it bears emphasis that as explained in Argument I.C. below, an alien granted parole remains an applicant for admission and therefore subject to detention under INA § 235. INA § 212(d)(5)(A) (permitting parole only for aliens "applying for admission" and requiring that the alien "continue to be dealt with in the same manner as that of any other applicant for admission to the United States" following parole); *see* 8 C.F.R. §§ 1.2 (providing that "[a]n arriving alien remains an arriving alien even if paroled pursuant to [INA §] 212(d)(5)"), 1001.1(q) (same). The Supreme Court and the Board have long recognized that aliens paroled into the United States are legally in the position of aliens standing at the border, regardless of the duration of their parole. *See Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958); *Matter of Abebe*, 16 I&N Dec. 171, 173 (BIA 1976) (citing, *inter alia*, *Leng May Ma*, 357 U.S. at 185; *Kaplan v. Tod*, 267 U.S. 228 (1925)); *Matter of*

placed in INA § 240 removal proceedings given such aliens are both applicants for admission under INA § 235(a)(1) and aliens seeking admission under INA § 235(b)(2)(A). Section 236 of the INA is the applicable detention authority for those aliens who have been admitted and are deportable. The respondent, who is an alien PWAP, is properly detained pursuant to INA § 235(b)(2)(A) such that the Immigration Judge lacked authority to redetermine the respondent's custody.

STATEMENT OF THE CASE

On or about October 19, 2012, the respondent, a native and citizen of Honduras, illegally entered the United States of America at a time and place other than designated by the Attorney General without being admitted or paroled. On December 8, 2025, the respondent was encountered by Florida Highway Patrol and taken into DHS custody. DHS initiated removal proceedings by filing a Notice to Appear dated December 13, 2025, charging the respondent as removable under INA § 212(a)(6)(A)(i).

Following a hearing for custody redetermination on January 9, 2026, the Immigration Judged granted the respondent's request for a change in custody status and set bond in the amount of $5,000 on January 13, 2026. This appeal follows.

ARGUMENT

I. APPLICANTS FOR ADMISSION ARE SUBJECT TO DETENTION UNDER INA § 235 AND ARE INELIGIBLE FOR RELEASE BY AN IMMIGRATION JUDGE

The Immigration Judge erred in ordering the respondent released pursuant to INA § 236(a), where the respondent is an applicant for admission in INA § 240 removal proceedings

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L-Y-Y-, 9 I&N Dec. 70 (BIA; A.G. 1960); *see also, e.g.*, *Duarte v. Mayorkas*, 27 F.4th 1044, 1059-60 (5th Cir. 2022); *Ibragimov v. Gonzales*, 476 F.3d 125, 134 (2d Cir. 2007). Accordingly, although this brief refers as shorthand to aliens PWAP, aliens who are present without admission but have been paroled likewise remain applicants for admission subject to detention under INA § 235.

and is thus subject to detention under INA § 235(b)(2)(A). Section 235 of the INA is the applicable detention authority for all applicants for admission—both arriving aliens and PWAPs alike—regardless of whether the alien was initially processed for expedited removal proceedings under INA § 235 or placed directly into removal proceedings under INA § 240.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 235 of the INA defines an "applicant for admission" as an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) . . . ." INA § 235(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) ("[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission."). Accordingly, by its very definition, the term "applicant for admission" includes two categories of aliens: (1) arriving aliens and (2) aliens PWAP. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing INA § 235(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . ."); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted" (citing INA § 235(a)(1))). An arriving alien is defined, in pertinent part, as "an applicant for admission coming or attempting to come into the United States at a [POE] . . . ." 8

C.F.R. §§ 1.2, 1001.1(q). Section 212(a) of the INA describes certain classes of aliens who are inadmissible, including aliens "present in the United States without being admitted or paroled[.]" INA § 212(a)(6)(A)(i).

All aliens who are applicants for admission "shall be inspected by immigration officers." *Id.* § 235(a)(3); *see also* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection . . . ."). An applicant for admission seeking admission at a United States POE "must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States." 8 C.F.R. § 235.1(f)(1); *see* INA § 240(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). "An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [INA § 212(a)] and to removal under [INA §] 235(b) or [INA §] 240." 8 C.F.R. § 235.1(f)(2).

Here, the respondent did not present himself at a POE but instead entered the United States on or about October 19, 2012, between POEs and without having been admitted or paroled after inspection by an immigration officer. The respondent is therefore an alien PWAP and, consequently, an applicant for admission.

Both arriving aliens and aliens PWAP, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal under INA § 235(b)(1)[3] or removal

[3] Section 235(b)(1) of the INA authorizes immigration officers to order certain inadmissible aliens "removed from the United States without further hearing or review" if the immigration officer finds that the alien, "who is arriving in the United States or is described in [INA § 235(b)(1)(A)(iii)] is inadmissible under section 212(a)(6)(C) or 212(a)(7)." INA § 235(b)(1)(A)(i); *see* 8 C.F.R. § 235.3(b)(2)(i). If DHS wishes to pursue inadmissibility charges

proceedings before an Immigration Judge under INA § 240. INA §§ 235(b)(1), (b)(2)(A), 240; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how "applicants for admission fall into one of two categories, those covered by [INA § 235(b)(1)] and those covered by [INA § 235(b)(2)]"). Immigration officers have discretion to apply expedited removal under INA § 235 or to initiate removal proceedings before an Immigration Judge under INA § 240. *E-R-M- & L-R-M-*, 25 I&N Dec. at 524; *see also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) ("DHS may place aliens arriving in the United States in either expedited removal proceedings under section 235(b)(1) of the INA, or full removal proceedings under section 240 of the INA" (citations omitted)).

A. Immigration Judges Do Not Have Authority to Redetermine the Custody Status of Applicants for Admission in Expedited Removal Proceedings Given They Are Detained Pursuant to INA § 235(b)(1).

Applicants for admission whom DHS places into expedited removal under INA § 235 are subject to detention under INA § 235(b)(1); such aliens (including those referred for INA § 240 removal proceedings after establishing a credible fear of persecution or torture) are ineligible for a bond hearing before an Immigration Judge. INA § 235(b)(1)(B)(ii) (providing for detention of any alien who is found to have established a credible fear of persecution in expedited removal proceedings for further consideration of their asylum application), (iii)(IV) ("Any alien subject to the procedures under [INA § 235(b)(1)(B)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed."); *see also* 8

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other than INA § 212(a)(6)(C) or (a)(7), DHS must place the alien in removal proceedings under INA § 240. 8 C.F.R. § 235.3(b)(3). Additionally, an alien PWAP "who establishes that he or she has been continuously physically present in the United States for the 2–year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with [INA § 235(b)(2)] for a proceeding under [INA § 240]." *Id.* § 235.3(b)(1)(ii); *id.* § 1235.6(a)(1)(i) (providing that an immigration officer will issue and serve an NTA to an alien "[i]f, in accordance with the provisions of [INA § 235(b)(2)(A)], the examining immigration officer detains an alien for a proceeding before an immigration judge under [INA § 240]").

C.F.R. § 235.3(b)(2)(iii) ("An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal."), (b)(4)(ii) ("Pending the credible fear determination by an asylum officer and any review of that determination by an [I]mmigration [J]udge, the alien shall be detained."); *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019) (holding that aliens PWAP placed in expedited removal and later transferred to INA § 240 removal proceedings after establishing a credible fear of persecution or torture are subject to detention under INA § 235(b)(1) and are ineligible for release under INA § 236).

The respondent, an applicant for admission, has never been subject to expedited removal proceedings and is therefore not subject to detention under INA § 235(b)(1). However, the respondent is an alien PWAP in INA § 240 removal proceedings and is therefore subject to detention under INA § 235(b)(2)(A).

B. Immigration Judges Do Not Have Authority to Redetermine the Custody Status of Applicants for Admission in INA § 240 Removal Proceedings Given They Are Detained Pursuant to INA § 235(b)(2)(A).

Applicants for admission whom DHS places in removal proceedings before an Immigration Judge under INA § 240 are similarly subject to detention and ineligible for a custody redetermination hearing before an Immigration Judge. Specifically, aliens PWAP placed in INA § 240 removal proceedings are both applicants for admission as defined in INA § 235(a)(1) *and* aliens "seeking admission," as contemplated in INA § 235(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 616 (BIA 2025). Such aliens are subject to detention under INA § 235(b)(2)(A) and thus ineligible for a bond redetermination hearing before the Immigration Judge.

i. Aliens PWAP whom DHS places in INA § 240 removal proceedings are subject to detention under INA § 235(b)(2)(A) and ineligible for a bond hearing before an Immigration Judge.

Section 235(b)(2)(A) of the INA "serves as a catchall provision that applies to all applicants for admission not covered by [INA § 235(b)(1)]." *Jennings*, 583 U.S. at 287; *see* INA § 235(b)(2)(A), (B). Under INA § 235(b)(2)(A), "an alien who is an applicant for admission" "*shall be detained* for a proceeding under [INA §] 240" "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." INA § 235(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into INA § 240 removal proceedings in lieu of expedited removal proceedings under INA § 235 "shall be detained" pursuant to INA § 235(b)(2)); 8 C.F.R. § 235.3(c) (providing that "any arriving alien . . . placed in removal proceedings pursuant to section 240 of the [INA] shall be detained in accordance with section 235(b) of the [INA]" unless paroled pursuant to INA § 212(d)(5)).

Thus, according to the plain language of INA § 235(b)(2)(A), applicants for admission in INA § 240 removal proceedings "*shall* be detained." INA § 235(b)(2)(A) (emphasis added). "The 'strong presumption' that the plain language of the statute expresses congressional intent is rebutted only in 'rare and exceptional circumstances,' . . . ." *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); *see Lamie*, 540 U.S. at 534 ("It is well established that when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." (quotation marks omitted)). As the Supreme Court observed in *Jennings*, nothing in INA § 235(b)(2)(A) "says anything whatsoever about bond hearings." 583 U.S. at 297. Further, there is no textual basis for arguing that INA § 235(b)(2)(A) applies only to

arriving aliens. The distinction the Attorney General drew in the 1997 Interim Rule (addressed in detail below) between "arriving aliens," *see* 8 C.F.R. §§ 1.2, 1001.1(q), and "aliens who are present without being admitted or paroled," Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997),[4] finds no purchase in the statutory text. No provision within INA § 235(b)(2) refers to "arriving aliens," or limits that paragraph to arriving aliens, as Congress intended for it to apply generally "in the case of an alien who is an applicant for admission." INA § 235(b)(2)(A). Where Congress means for a rule to apply only to "arriving aliens," it uses that specific term of art or similar phrasing. *See, e.g.*, *id.* §§ 212(a)(9)(A)(i), 235(c)(1).

Until recently, DHS and the Department of Justice (DOJ) interpreted INA § 236(a) to be an available detention authority for aliens PWAP placed directly in INA § 240 removal proceedings. *See, e.g.*, *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, legal developments have made clear that INA § 235 is the sole applicable immigration detention authority for *all* applicants for admission. In *Jennings*, the Supreme Court explained that INA § 235(b) applies to all applicants for admission, noting that the language of INA § 235(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303 (explaining that "the word 'shall'

[4] As discussed more below, the preamble language of the 1997 Interim Rule states that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10,323. However, preambular language is not binding and "should not be considered unless the regulation itself is ambiguous." *El Comite Para El Bienestar de Earlimart v. Warmerdam*, 539 F.3d 1062, 1070 (9th Cir. 2008); *see also Wards Cove Packing Corp. v. Nat'l Marine Fisheries Serv.*, 307 F.3d 1214, 1219 (9th Cir.2002) ("[T]he plain meaning of a regulation governs and deference to an agency's interpretation of its regulation is warranted only when the regulation's language is ambiguous." (citing *Christensen v. Harris County*, 529 U.S. 576, 588 (2000))).

usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))). Similarly, the Attorney General, in *Matter of M-S-*, unequivocally recognized that INA § 235 and INA § 236(a) do not overlap but describe "different classes of aliens." 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens PWAP placed into expedited removal proceedings are detained under INA § 235 even if later placed in INA § 240 removal proceedings. 27 I&N Dec. at 518-19. In *Matter of Q. Li*, the Board held that an alien who illegally crossed into the United States between POEs and was apprehended without a warrant while arriving is detained under INA § 235(b). 29 I&N Dec. at 71. This ongoing evolution of the law makes clear that all applicants for admission are subject to detention under INA § 235(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that "no amount of policy-talk can overcome a plain statutory command"); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that "the 1996 expansion of [INA § 235(b)] to include illegal border crossers would make little sense if DHS retained discretion to apply [INA § 236(a)] and release illegal border crossers whenever the agency saw fit").[5] *Florida's* conclusion "that [INA § 235(b)]'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

Given INA § 235 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens PWAP alike, regardless of whether the alien was initially

[5] Though not binding on the Board, *see Matter of Duarte-Gonzalez*, 28 I&N Dec. 688, 690 n.2 (BIA 2023); *Matter of K-S-*, 20 I&N Dec. 715, 718-19 (BIA 1993), the U.S. District Court for the Northern District of Florida's decision is instructive here. *Florida* held that INA § 235(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either INA §§ 235(b) or 236(a). 660 F. Supp. 3d at 1275. The court held that such discretion "would render mandatory detention under [INA § 235(b)] meaningless." *Id.*

processed for expedited removal proceedings under INA § 235 or placed directly into removal proceedings under INA § 240—and "[b]oth [INA § 235(b)(1) and (b)(2)] mandate detention" "throughout the completion of applicable proceedings," *Jennings*, 583 U.S. at 301–03, Immigration Judges do not have authority to redetermine the custody status of an alien PWAP.

Here, the respondent is an applicant for admission (specifically, an alien PWAP), placed directly into removal proceedings under INA § 240. He is therefore subject to detention pursuant to INA § 235(b)(2)(A) and ineligible for a custody redetermination hearing before an Immigration Judge. "It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA]." *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). "In the context of custody proceedings, an Immigration Judge's authority to redetermine conditions of custody is set forth in 8 C.F.R. § 1236.1(d) . . . ." *Id.* at 46. The regulation clearly states that "the [I]mmigration [J]udge is authorized to exercise the authority in section 236 of the [INA]." 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing Immigration Judges to review "[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236"); *see id.* § 1003.19(h)(2)(i)(B) ("[A]n [I]mmigration [J]udge may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [INA §] 212(d)(5)[.]"). "An Immigration Judge is without authority to disregard the regulations, which have the force and effect of law." *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018). Thus, the Immigration Judge erred in ordering the respondent released from custody pursuant to INA § 236(a) given he is an applicant for admission and is therefore subject to detention under INA § 235(b)(2)(A).

ii. Aliens PWAP in INA § 240 removal proceedings are both applicants for admission under INA § 235(a)(1) and aliens seeking admission under INA § 235(b)(2)(A).

As discussed above, aliens PWAP placed in removal proceedings under INA § 240 are applicants for admission as defined in INA § 235(a)(1), subject to detention under INA § 235(b)(2)(A), and thus ineligible for a bond redetermination hearing before the Immigration Judge. Such aliens are also considered "seeking admission," as contemplated in INA § 235(b)(2)(A). To be sure, "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Lemus*, 25 I&N Dec. at 743; *see Q. Li*, 29 I&N Dec. at 68 n.3; *see also Matter of Valenzuela-Felix*, 26 I&N Dec. 53, 56 (BIA 2012) (explaining that "an application for admission [i]s a continuing one").

In analyzing INA § 235(b)(2)(A), the Supreme Court in *Jennings* equated "applicants for admission" with aliens "seeking admission." *See Jennings*, 583 U.S. at 289. As noted above, the Supreme Court stated that INA § 235(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by [INA § 235(b)(1)]." *Id.* at 287. In doing so, it specifically cited INA § 235(b)(2)(A)—and thus did not appear to consider aliens "seeking admission" to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that "[a]liens who are instead covered by [INA § 235(b)(2)] are detained pursuant to a different process . . . [and] 'shall be detained for a [removal] proceeding' . . . ." *Id.* at 288 (quoting INA § 235(b)(2)(A)). The Supreme Court considered all aliens covered by INA § 235(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens. Moreover, *Jennings* found that INA § 235(b) "applies primarily to aliens *seeking entry* into the United States (*'applicants for admission' in the language of the statute*)." *Id.* at 297 (emphases added).

The Court therefore considered aliens seeking admission/entry and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission.

Indeed, the Supreme Court explicitly stated that aliens seeking admission are subject to INA § 235(b) detention: "In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under [INA §§ 235(b)(1) and (b)(2)]." *Id.* at 289. This was recently reiterated by the Board in *Matter of Q. Li*, which held that for aliens "seeking admission into the United States who are placed directly in full removal proceedings, [INA §] 235(b)(2)(A) . . . mandates detention 'until removal proceedings have concluded.'" 29 I&N Dec. at 68 (quoting *Jennings*, 583 U.S. at 299).

The structure of the statutory scheme prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) bolsters the understanding that under the current statutory scheme, all applicants for admission are subject to detention under INA § 235(b). The broad definition of applicants for admission was added to the INA in 1996. Before 1996, the INA only contemplated inspection of aliens arriving at POEs. *See* INA § 235(a) (1995) (discussing "aliens arriving at ports of the United States"); *id.* § 235(b) (1995) (discussing "the examining immigration officer at the port of arrival"). Relatedly, any alien who was "in the United States" and within certain listed classes of deportable aliens was deportable. *Id.* § 241(a) (1995). One such class of deportable aliens included those "who entered the United States without inspection or at any time or place other than as designated by the Attorney General." *Id.* § 241(a)(1)(B) (1995) (former deportation ground relating to entry without inspection). Aliens were excludable if they were "seeking admission" at a POE or had been paroled into the United States. *See id.* §§ 212(a), 235(a) (1995).

Deportation proceedings (conducted pursuant to former INA § 242(b) (1995)) and exclusion proceedings (conducted pursuant to former INA § 236(a) (1995)) differed and began with different charging documents. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 175 (1993) (explaining the "important distinction" between deportation and exclusion); *Matter of Casillas*, 22 I&N Dec. 154, 156 n.2 (BIA 1998) (noting the various forms commencing deportation, exclusion, or removal proceedings). The placement of an alien in exclusion or deportation proceedings depended on whether the alien had made an "entry" within the meaning of the INA. *See* INA § 101(a)(13) (1995) (defining "entry" as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession"); *see also Rosenberg v. Fleuti*, 374 U.S. 449, 462 (1963) (concluding that whether a lawful permanent resident has made an "entry" into the United States depends on whether, pursuant to the statutory definition, he or she has intended to make a "meaningfully interruptive" departure).

Former INA § 235 provided that aliens "seeking admission" at a POE who could not demonstrate entitlement to be admitted ("excludable" aliens) were subject to mandatory detention, with potential release solely by means of parole under INA § 212(d)(5) (1995). INA § 235(a)-(b) (1995). "Seeking admission" in former INA § 235 appears to have been understood to refer to aliens arriving at a POE.[6] *See id.* The INS regulations implementing former INA

[6] Given Congress's overhaul of the INA, including wholesale revision of the definition of which aliens are considered applying for or seeking admission, Congress clearly did not intend for the former understanding of "seeking admission" to be retained in the new removal scheme. Generally, "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates . . . the intent to incorporate its administrative and judicial interpretations as well." *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). However, the prior construction canon of statutory interpretation "is of little assistance here because, . . . this is not a case in which 'Congress re-enact[ed] a statute without change.'" *Public Citizen Inc. v. U.S. Dep't of Health and Human Servs.*, 332 F.3d 654, 668 (D.C. Cir. 2003) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66 (1982)). Rather, the presumption "of congressional ratification" of a prior statutory interpretation "applies only when Congress reenacts a statute without relevant change." *Holder v. Martinez Gutierrez*, 566 U.S. 583, 593 (2012) (citing *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 349 (2005)).

§ 235(b) provided that such arriving aliens had to be detained without parole if they had "no documentation or false documentation," 8 C.F.R. § 235.3(b) (1995), but could be paroled if they had valid documentation but were otherwise excludable, *id.* § 235.3(c) (1995). With regard to aliens who entered without inspection and were deportable under former INA § 241, such aliens were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See* INA §§ 241(a)(1)(B), 242(a)(1) (1995); 8 C.F.R. § 242.2(c)(1) (1995).

> As a result, "[aliens] who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings," while [aliens] who actually presented themselves to authorities for inspection were restrained by "more summary exclusion proceedings." To remedy this unintended and undesirable consequence, the IIRIRA substituted "admission" for "entry," and replaced deportation and exclusion proceedings with the more general "removal" proceeding.

Martinez v. Att'y Gen., 693 F.3d 408, 413 n.5 (3d Cir. 2012) (citation omitted) (quoting *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)). Consistent with this dichotomy, the INA, as amended by IIRIRA, defines *all* those who have not been admitted to the United States as "applicants for admission." IIRIRA § 302.

Moreover, Congress's use of the present participle—seeking—in INA § 235(b)(2)(A) should not be ignored. *United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). By using the present participle "seeking," INA § 235(b)(2)(A) "signal[s] present and continuing action." *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). The phrase "seeking admission" "does not include something in the past that has ended or something yet to come." *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (concluding that "having" is a present participle, which is "used to form a progressive tense" that "means presently and continuously" (citing Bryan A. Garner, *Garner's Modern American Usage* 1020 (4th ed. 2016))). The present

participle "expresses present action in relation to the time expressed by the finite verb in its clause," *Present Participle*, Merriam-Webster, http://www.merriam-webster.com/dictionary/present%20participle (last visited Aug. 7, 2025), with the finite verb in the same clause of INA § 235(b)(2)(A) being "determines." Thus, when pursuant to INA § 235(b)(2)(A) an "examining immigration officer determines" that an alien "is not clearly and beyond a doubt entitled to be admitted" the officer does so contemporaneously with the alien's present and ongoing action of seeking admission. Interpreting the present participle "seeking" as denoting an ongoing process is consistent with its ordinary usage. Accordingly, just as the respondent in *Samayoa* is not only an alien PWAP but also seeking to remain in the United States, the respondent in this case is not only an alien PWAP, and therefore an applicant for admission as defined in INA § 235(a)(1), *but also* an alien seeking admission under INA § 235(b)(2)(A).

Lastly, Congress's significant amendments to the immigration laws in IIRIRA supports DHS's position that such aliens are properly detained pursuant to INA § 235(b)—specifically, INA § 235(b)(2)(A). Congress, for example, eliminated certain anomalous provisions that favored aliens who illegally entered without inspection over aliens arriving at POEs. A rule that treated an alien who enters the country illegally, such as the respondent, more favorably than an alien detained after arriving at a POE would "create a perverse incentive to enter at an unlawful rather than a lawful location." *Gambino-Ruiz*, 91 F.4th at 990 (quoting *Thuraissigiam*, 591 U.S. at 140) (rejecting such a rule as propounded by the defendant). Such a rule reflects "the precise situation that Congress intended to do away with by enacting" IIRIRA. *Id.* "Congress intended to eliminate the anomaly 'under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a [POE]'" by enacting IIRIRA. *Ortega-Lopez v. Barr*,

978 F.3d 680, 682 (9th Cir. 2020) (quoting *Torres*, 976 F.3d at 928); *see also* H.R. Rep. No. 104-469, pt. 1, at 225–29 (1996).

During IIRIRA's legislative drafting process, Congress asserted the importance of controlling illegal immigration and securing the land borders of the United States. *See* H.R. Rep. 104-469, pt. 1, at 107 (noting a "crisis at the land border" allowing aliens to illegally enter the United States). As alluded to above, one goal of IIRIRA was to "reform the legal immigration system and facilitate legal entries into the United States . . . ." H.R. Rep. No. 104-828, at 1 (1996). Nevertheless, after the enactment of IIRIRA, the DOJ took the position—consistent with pre-IIRIRA law—that "despite being applicants for admission, aliens who are present without being admitted or paroled . . . will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10,323. Affording aliens PWAP, who have evaded immigration authorities and illegally entered the United States bond hearings before an Immigration Judge, but not affording such hearings to arriving aliens, who are attempting to comply with U.S. immigration law, is anomalous with and runs counter to that goal. *Cf.* H.R. Rep. No. 104-469, pt. 1, at 225 (noting that IIRIRA replaced the concept of "entry" with "admission," as aliens who illegally enter the United States "gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a [POE]").

Accordingly, for the reasons discussed above, the respondent, as an alien PWAP in INA § 240 removal proceedings, is an applicant for admission and an alien seeking admission and is therefore subject to detention under INA § 235(b)(2)(A) and ineligible for a bond redetermination hearing before an Immigration Judge.

C. Applicants for Admission May Only Be Released from Detention On an INA § 212(d)(5) Parole.

Importantly, applicants for admission may only be released from detention if DHS invokes its discretionary parole authority under INA § 212(d)(5). DHS has the exclusive authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." INA § 212(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that INA § 212(d)(5) is the specific provision that authorizes release from detention under INA § 235(b), at DHS's discretion. *Jennings*, 583 U.S. at 300. Specifically, the Supreme Court emphasized that "[r]egardless of which of those two sections authorizes . . . detention, [INA § 235(b)(1) or INA § 235(b)(2)(A)], applicants for admission may be temporarily released on parole . . . ." *Id.* at 288.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question of fact). The parole authority under INA § 212(d)(5) is "delegated solely to the Secretary of Homeland Security." *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, neither the Board nor Immigration Judges have authority to parole an alien into the United States under INA § 212(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that "parole authority [under INA § 212(d)(5)] is now exercised exclusively by the DHS" and "reference to the Attorney General in [INA § 212(d)(5)(A)] is thus deemed to refer to the Secretary of Homeland Security"); *Matter of Singh*, 21 I&N Dec. 427, 434 (BIA 1996) (providing that "neither the Immigration Judge nor th[e] Board has jurisdiction to exercise parole power"). Further, because DHS has exclusive jurisdiction to parole an alien into the United

States, the manner in which DHS exercises its parole authority may not be reviewed by an Immigration Judge or the Board. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the Board does not have authority to review the way DHS exercises its parole authority).

Importantly, parole does not constitute a lawful admission or a determination of admissibility, INA §§ 101(a)(13)(B), 212(d)(5)(A), and an alien granted parole remains an applicant for admission, *id.* § 212(d)(5)(A); *see* 8 C.F.R. §§ 1.2 (providing that "[a]n arriving alien remains an arriving alien even if paroled pursuant to [INA § 212(d)(5)], and even after any such parole is terminated or revoked"), 1001.1(q) (same). Parole does not place the alien "within the United States." *Leng May Ma*, 357 U.S. at 190. An alien who has been paroled into the United States under INA § 212(d)(5) "is not . . . 'in' this country for purposes of immigration law . . . ." *Abebe*, 16 I&N Dec. at 173 (citing, *inter alia*, *Leng May Ma*, 357 U.S. at 185; *Kaplan*, 267 U.S. at 228). Following parole, the alien "shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States," INA § 212(d)(5)(A), including that they remain subject to detention pursuant to INA § 235(b)(2).

D. Section 236 of the INA Does Not Impact the Detention Authority for Applicants for Admission.

Section 236(a) of the INA is the applicable detention authority for aliens who have been admitted and are deportable who are subject to removal proceedings under INA § 240, INA §§ 236, 237(a), 240, and does not impact the directive in INA § 235(b)(2)(A) that "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceedings under [INA

§ 240]," *id.* § 235(b)(2)(A).[7] As the Supreme Court explained, INA § 236(a) "applies to aliens already present in the United States" and "creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing INA § 236(a) as a "permissive" detention authority separate from the "mandatory" detention authority under INA § 235).[8]

Generally, such aliens may be released on bond or their own recognizance, also known as "conditional parole." INA § 236(a); *Jennings*, 583 U.S. at 303, 306. Section 236(a) of the INA does not, however, confer the *right* to release on bond; rather, both DHS and Immigration Judges have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R.

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[7] The specific mandatory language of INA § 235(b)(2)(A) governs over the general permissive language of INA § 236(a). "[I]t is a commonplace of statutory construction that the specific governs the general . . . ." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining that the general/specific canon is "most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission" and in order to "eliminate the contradiction, the specific provision is construed as an exception to the general one"); *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1075 (9th Cir. 2016) (discussing, in the context of asylum eligibility for aliens subject to reinstated removal orders, this canon and explaining that "[w]hen two statutes come into conflict, courts assume Congress intended specific provisions to prevail over more general ones"). Here, INA § 235(b)(2)(A) "does not negate [INA § 236(a)] entirely," which still applies to admitted aliens who are deportable, "but only in its application to the situation that [INA § 235(b)(2)(A)] covers." A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 185 (2012).

[8] Importantly, a warrant of arrest is not required in all cases. INA § 287(a). For example, an immigration officer has the authority "to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation" or "to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest . . . ." *Id.* § 287(a)(2); 8 C.F.R. § 287.3(a), (b) (recognizing the availability of warrantless arrests); *see Q. Li*, 29 I&N Dec. at 70 n.5. Moreover, DHS may issue a warrant of arrest within 48 hours (or an "additional reasonable period of time" given any emergency or other extraordinary circumstances), 8 C.F.R. § 287.3(d); doing so does not constitute "post-hoc issuance of a warrant," *Q. Li*, 29 I&N Dec. at 69 n.4. While the presence of an arrest warrant is a threshold consideration in determining whether an alien is subject to INA § 236(a) detention authority under a plain reading of INA § 236(a), there is nothing in *Jennings* that stands for the assertion that aliens processed for arrest under INA § 235 cannot have been arrested pursuant to a warrant. *See Jennings*, 583 U.S. at 302.

§§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Further, ICE must detain certain aliens due to their criminal history or national security concerns under INA § 236(c). *See* INA § 236(c)(1), (c)(2); 8 C.F.R. §§ 236.1(c)(1)(i), 1236.1(c)(1)(i); *see also id.* § 1003.19(h)(2)(i)(D). Release of such aliens is permitted only in very specific circumstances. *See* INA § 236(c)(2).

Notably, INA § 236(c) references certain grounds of inadmissibility, INA § 236(c)(1)(A), (D)-(E), and the Supreme Court in *Barton v. Barr*—after issuing its decision in *Jennings*—recognized the possibility that aliens charged with certain grounds of inadmissibility could be detained pursuant to INA § 236. 590 U.S. 222, 235 (2020); *see also Nielsen v. Preap*, 586 U.S. 392, 416-19 (2019) (recognizing that aliens who are inadmissible for engaging in terrorist activity are subject to INA § 236(c)). However, in interpreting provisions of the INA, the Board does not view the language of statutory provisions in isolation but instead "interpret[s] the statute as a symmetrical and coherent regulatory scheme and fit[s], if possible, all parts into an harmonious whole." *Matter of C-T-L-*, 25 I&N Dec. 341, 345 (BIA 2010) (internal quotation marks omitted) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). As the Supreme Court in *Barton* also noted, "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton*, 590 U.S. at 239. "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text . . . ." *Id.* The statutory language of INA § 236(c)—including the most recent amendment pursuant to the Laken Riley Act, *see* INA § 236(c)(1)(E), merely reflects a "congressional effort to be doubly sure" that certain aliens are detained, *Barton*, 590 U.S. at 239.

To reiterate, to interpret INA § 235(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded INA § 235(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. IIRIRA § 302. There would have been no need for Congress to make such a change if INA § 236 was meant to apply to aliens PWAP. Thus, INA § 236 does not have any controlling impact on the directive in INA § 235(b)(2)(A) that "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [INA § 240]." INA § 235(b)(2)(A).

II. ASSUMING, ARGUENDO, THAT THE IMMIGRATION JUDGE HAD AUTHORITY TO REDETERMINE THE RESPONDENT'S CUSTODY, THE RESPONDENT FAILED TO MEET HIS BURDEN TO SHOW THAT HE DOES NOT POSE A RISK OF FLIGHT

Even assuming, *arguendo*, that the Immigration Judge has authority to redetermine the respondent's custody, the Immigration Judge erred in setting bond in the amount of $5,000 because the respondent failed to show he is not a flight risk. *See R-A-V-P-*, 27 I&N Dec. at 804-07 (affirming that release on bond was not warranted where the respondent failed to demonstrate he did not pose a significant flight risk); *Matter of Fatahi*, 26 I&N Dec. 791, 793 (BIA 2016) (reaffirming noncitizens bear the burden to establish they are not a threat to national security, a danger to the community, or likely to abscond) (citing *Guerra*, 24 I&N Dec. at 39). An alien in a custody determination hearing pursuant to section 236(a) of the INA must establish that he or she does not present a risk of flight and is likely to attend future immigration proceedings. *R-A-V-P-*, 27 I&N Dec. at 804 (citing *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018); 8 C.F.R. § 1236.1(c)(8). In determining whether an alien is a flight risk, the Immigration Judge may consider "any 'probative and specific' evidence." *R-A-V-P-*, 27 I&N Dec. at 804 (citing *Guerra*,

24 I&N Dec. at 40-41). The Immigration Judge agreed that the respondent posed a flight risk but found the risk could be mitigated by setting a bond of $5,000.

An Immigration Judge has broad discretion in deciding the factors that he or she may consider in custody redeterminations. *Guerra,* 24 I&N Dec. at 40. An Immigration Judge may decide to give greater weight to one factor over others, but the decision must be reasonable. *Id.* Relevant considerations include, but are not limited to:

> (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's history of immigration violations; (7) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States. *Id.* The Immigration Judge should also consider the likelihood that relief from removal will be granted in determining whether the alien warrants bond.

R-A-V-P-, 27 I&N Dec. 803, 805 (BIA 2020). An Immigration Judge may also consider the likelihood of a grant of relief when considering whether to set a bond. *Id.* (citing *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987) (stating that an alien with a greater likelihood of being granted relief has a stronger motivation to appear for a hearing than one who has less potential to obtain relief).

In this case, the respondent, a citizen and native of Honduras, illegally entered the United States without inspection in 2012. He has remained here unlawfully since that entry. The respondent has two United States citizen children, ages 11 and 6. He has a fixed address in Florida and owns his own home. Though he is not married, his partner's sister will serve as his sponsor. Most importantly, though, the respondent has not filed any relief before the Immigration Judge. While he may appear prima facie eligible for cancellation of removal for certain nonpermanent residents, he has yet to file the relief application itself. Moreover, without the

application or any evidence to support it, the Immigration Judge cannot adequately assess the respondent's likelihood of success on the merits of the application. Without a strong claim to relief, the respondent lacks the motivation to appear for future hearings.

Though the respondent has ties to the United States, his ability to obtain relief from the Immigration Judge seriously increases his risk of flight. Thus, the evidence falls far short for the respondent to meet his burden to show he warrants release on bond. The Immigration Judge was therefore incorrect in concluding otherwise and failed to assess the respondent's risk of flight correctly under the applicable case law.

CONCLUSION

In sum, the respondent is subject to detention under INA § 235(b)(2)(A), and the Immigration Judge erred in ordering the respondent released from DHS custody pursuant to INA § 236(a). Alternatively, the Immigration Judge erred by ordering the respondent's release on bond in the amount of $5,000 because the respondent failed to meet his burden to show he does not pose a flight risk. DHS requests that the Board reverse the Immigration Judge's decision and vacate the order releasing the respondent from DHS custody.

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

Respondent Name:
VEGA -CACERES, EDUIN NOE

To:
Alvarez Grajeda, Mildred Aneth
829 Main St.
Longmont, CO 80501

A-Number:
[redacted]

Riders:
In Custody Redetermination Proceedings

Date:
01/13/2026

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 $ 5,000.00
- ☐ other:

☐ Other:

Immigration Judge: Burgie, Brea 01/13/2026

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

Appeal Due: 02/13/2026

Certificate of Service

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

Respondent Name : VEGA -CACERES, EDUIN NOE | A-Number : [redacted]

Riders:

Date: 01/13/2026 By: GAINES, ANITA, Court Staff

Immigration Judge: Burgie, Brea 01/13/2026

Appeal: Department of Homeland Security: ☐ waived ☑ reserved
Respondent: ☐ waived ☑ reserved
Appeal Due: 02/13/2026

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 : VEGA -CACERES, EDUIN NOE | A-Number : [redacted]
Riders:
Date: 01/13/2026 By: GAINES, ANITA, Court Staff

[redacted]

EOIR-43 Senior Legal Official Certification

I certify that I have approved the filing of the notice of appeal in this case according to review procedures established by U.S. Immigration and Customs Enforcement, Department of Homeland Security.

I further certify that I am satisfied that the evidentiary record supports the contentions justifying the continued detention of the alien and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent. Further, the legal argument, specifically warranted above, may be premised on the alien being subject to the prohibition from release from DHS custody pursuant to 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A).

January 23, 2026
Date

CHRISTOPHER T ST JOHN
Digitally signed by CHRISTOPHER T ST JOHN
Date: 2026.01.23 08:50:48 -07'00'

Christopher Tod St. John
Chief Counsel
U.S. Immigration & Customs Enforcement

F

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

VEGA -CACERES, EDUIN NOE
[redacted]
3130 N OAKLAND STREET
AURORA, CO 80010

DHS/ICE Office of Chief Counsel - AUR
12445 East Caley Avenue
Centennial, CO 80111-5663

Name:
VEGA -CACERES, EDUIN NOE [redacted]

Riders:

Date of Notice: 02/04/2026

FILING RECEIPT FOR APPEAL OR MOTION

The Board of Immigration Appeals (Board or BIA) acknowledges receipt of the appeal or motion and fee or fee waiver request (where applicable) on 01/28/2026 , in the above-referenced case, filed by the Department

Additional Comments
N/A

WARNING FOR APPEALS:

Departure. If you leave the United States after filing this appeal but before the Board issues a decision, your appeal may be considered withdrawn and the Immigration Judge's decision will become final as if no appeal had been taken (unless you are an "arriving alien" as defined in the regulations under 8 C.F.R. § 1001.1(q)).

Proof of posting voluntary departure bond. If you have been granted voluntary departure by the Immigration Judge, you must submit proof of having posted the voluntary departure bond set by the Immigration Judge to the Board. Your submission of proof must be provided to the Board within 30 days of filing this appeal. If you do not timely submit proof to the Board that the voluntary departure bond has been posted, the Board cannot reinstate the period of voluntary departure. 8 C.F.R. § 1240.2(c)(3)(ii).

Autostay Bond Appeals. Please note that the automatic stay will expire 90 days from the date of receipt of the DHS' appeal. 8 C.F.R. § 1003.6(c)(3). If the Board grants the respondent's request for additional briefing time, then the 90-day automatic stay period will be tolled for the same number of days. 8 C.F.R. § 1003.6(c)(4).

Form EOIR-27. If the appeal was filed by DHS and the respondent/applicant wishes to be represented by an attorney or accredited representative in these new proceedings, counsel must complete a new Form EOIR-27 (Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals). Unless a Form EOIR-27 is received from counsel, the respondent/applicant will be considered pro se before the Board and all future notices, including the Board's decision, will be sent directly to the respondent/applicant and not to counsel.

WARNING FOR MOTIONS:

Stay of removal. Filing a motion with the Board does not automatically stop the DHS from executing an order of removal. If the respondent/applicant is in DHS detention and is about to be removed, you may request the Board to stay the removal on an emergency basis. For more information, call the Clerk's Office at (703) 605-1007.

Form EOIR-27. If the motion was filed by DHS and the respondent/applicant wishes to be represented by an attorney or accredited representative in these new proceedings, counsel must complete a new Form EOIR-27 (Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals). Unless a Form EOIR-27 is received from counsel, the respondent/applicant will be considered pro se before the Board and all future notices, including the Board's decision, will be sent directly to the respondent/applicant and not to counsel.

FILING INSTRUCTIONS:

If you have any questions about how to file something at the Board, please review the Board's Practice Manual which is available on EOIR's website at www.justice.gov/eoir.

Accepted by: CrawforDa

CC

Mckinley law Group
829 Main Street
Suite 1
Longmont, COLORADO 80501

G

COLORADO
Bureau of Investigation
Department of Public Safety

Biometric Identification and Records Unit
690 Kipling Street, Suite 4000
Lakewood, CO 80215
303-239-4208

MCKINLEY LAW GROUP LLC
829 MAIN STREET UNIT 1
LONGMONT, CO 80501

Date: 12/17/2025 10:28:41(MT)

RE: VEGA-CACERES, EDUIN DOB: [redacted]

No Colorado Record of arrest has been located based on information provided.

The Colorado Bureau of Investigation's database contains detailed information of arrest records based upon fingerprints provided by Colorado law enforcement agencies. Arrests, which are not supported by fingerprints, will not be included in this database. On occasion the Colorado criminal history will contain disposition information provided by the Colorado Judicial system. Additionally, warrant information, sealed records (except those allowed per state statute 24-72-703), and juvenile records are not available to the public.

The results attached are based on a name search which may or may not be the subject of this inquiry. This search does not include a fingerprint comparison, which is the only means of positive identification. Since an arrest record may be established after this inquiry, an arrest record is only valid at the time of the current request. To ensure the most current available information in regards to subsequent arrest after an initial inquiry, it is recommended another query be made.

Falsifying or altering this document with the intent to misrepresent the contents of the record is prohibited by law, and may be punishable as a felony when done with intent to injure or defraud any person.

Sincerely,
Armando Saldate III, Director
Colorado Bureau of Investigation

Gmail

Mildred Alvarez <mildred@mckinleylegal.com>

FDLE Criminal History Search Results for VEGA, EDUIN

1 message

ApplicantChecks@fdle.state.fl.us <ApplicantChecks@fdle.state.fl.us> Wed, Dec 31, 2025 at 1:45 PM
To: mildred@mckinleylegal.com

The following is your search criteria:
Tran ID: [redacted]
Name: VEGA, EDUIN
Maiden Name/Alias:
Maiden Name/Alias 2:
SSN:
DOB: [redacted]
Age:
Race: W
Sex: M

Search conducted: 12/31/2025 03:45:06 PM

BASED ON THE INFORMATION PROVIDED, THE CUSTOMER DETERMINED THAT NONE OF THE SEARCH RESULTS APPEAR TO BE THE INDIVIDUAL SOUGHT BY THE INQUIRY; THEREFORE NO RELEVANT CRIMINAL RECORDS WERE SELECTED.

This record (or statement that there is not a record) is based on a request from a member of the public. This customer used the FDLE Internet system to search for the Florida record. FDLE is providing this to respond to the customer's request.