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Attorney for Petitioner

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOAN ALBERTO MONSALVE ROJAS

Petitioner,

v.

J.L JAMISON,
et al

Respondents

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Civil Action No. 2:26-cv-1313

Petitioner's Response to the Government's Reply

Respondents' position, that Petitioner is detained pursuant to 8 USC § 1225(b)(1) as opposed to (b)(2), attempts to create a distinction that does not exist in order to justify Petitioner's detention.¹

As an initial matter, Petitioner notes that the Supreme Court has treated subsections (b)(1)

¹ As is noted in Respondents' opposition, "multiple district courts in this jurisdiction (including this Court) have rejected this argument. *See e.g. Talabadze v. Rose, et al.*, No. 26-cv-360 (E.D. Pa Jan. 30, 2026) (Perez, J.); *Seminario-Marcos v. Jamison, et al.*, No. 26-cv-421 (E.D. Pa Feb. 6, 2026) (Kearney, J.); *Vazquez-Diaz v. Rose, et al.*, No. 26-cv-342 (E.D. Pa Feb. 10, 2026) (Gallagher, J.); *Vargas- Quajada v. Jamison, et al.*, 26-cv-914 (E.D. Pa. Feb. 17, 2026 (McHugh, J.); *Nawab Ali v. Jamison, et al.*, No. 26-cv-729 (E.D. Pa. Feb. 19, 2026) (Quinones-Alejandro, J.); *Zavala Ulloa v. Jamison, et al.*, No. 26-cv-823 (E.D. Pa. Feb. 20, 2026) (Marston, J.); *Green v. Jamison, et al.*, No. 26-0773 (E.D. Pa. Feb. 26 2026) (Scott, J.)."

and (b)(2) as functionally equivalent authorizations for detention. As the court states in *Jennings*:

Read most naturally, §§1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. Section 1225(b)(1) aliens are detained for “further consideration of the application for asylum,” and §1225(b)(2) aliens are in turn detained for “[removal] proceeding[s].” ***Once those proceedings end, detention under §1225(b) must end as well.*** Until that point, however, nothing in the statutory text imposes any limit on the length of detention.

Jennings v. Rodriguez, 583 US 281, 297 (2018) (emphasis added).

Petitioner concedes that (b)(1) mandates detention through the credible fear process. That process was completed on May 11, 2023, when an asylum officer found Petitioner to have a credible fear of return to Colombia and was eligible for a full asylum hearing. Respondents seem to concede this as well - “Rather, § 1225(b)(1)(B)(iii)(IV) provides for mandatory detention of individuals during the credible fear review process and until removal from the United States. (“Any alien subject to the procedures under this clause *shall be detained* pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”) (emphasis added).” Respondents’ brief p. 4.

On the same day as the asylum officer’s credible fear decision – May 11, 2023 – a NTA (Original NTA) was served upon Petitioner in person, before he left DHS custody. *See* Exhibit C. The Original NTA, charges Petitioner as an alien who has not been admitted or paroled. The Original NTA appears to not have been filed on the Immigration Court, as there was another NTA (Second NTA) produced by Immigration on October 10, 2023 and served by mail on Petitioner. The Second NTA, which other than the date and manner of service is identical to the Original NTA, was served on the Immigration Court on October 10, 2023. *See* Petitioner’s Exhibit B and Respondents’ Exhibit 1. Petitioner subsequently filed an affirmative asylum application on November 27, 2023 with the Philadelphia Immigration Court, which remains

pending. *See* Exhibit D.

Even in the most favorable evaluation of Respondents' position, it compels the conclusion that Petitioner was not actively seeking admission at the time of his detention in March 2026. He was given no reason or notice for the detention as required by 8 C.F.R. § 212.5(e)(2)(i). Respondents argue that such notice is unnecessary because their argument presumes that the service of the Second NTA serves as a revocation of a parole, despite the fact that Petitioner had been served with the Original NTA on May 11, 2023 and then released from custody. He was present in the United States for nearly three years when he was detained. When an applicant for admission is apprehended after being present in the United States for years, like Petitioner here, they are not "actively 'seeking admission'" at the time of their arrest, so Section 1225(b) does not govern their detention. *Demirel*, 2025 WL 3218243, at *4; *see also, e.g., Kashranov*, 2025 WL 3188399, at *6; *Cantu-Cortes*, 2025 WL 3171639, at *2.

Even assuming he had been paroled², he received no explanation for the alleged revocation of his parole, much less the required written notice and opportunity to respond to a parole revocation required by 8 USC § 1226. There was also no individualized assessment of flight risk and danger to the community. As such, his detention is a violation of due process, and he should be ordered released immediately.

Dated: March 8, 2026

Respectfully submitted:

/s/ Kimberly A. Tomczak
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² The initial May 11, 2023 NTA at Petitioner's Exhibit B and the October 10, 2023 NTA at Petitioner's Exhibit C both state that Petitioner is an alien present without admission or parole.

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Attorney for Petitioner

LIST OF EXHIBITS

- C. Original Notice to Appear (NTA) served in person on Petitioner on May 11, 2023 prior to his release from detention.
- D. Stamped copy of page 1 of Petitioner's pending asylum application filed with the Philadelphia Immigration Court on November 27, 2023

VERIFICATION

I, /s/ Kimberly A. Tomczak, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Dated: March 8, 2026

CERTIFICATE OF SERVICE

I, Kimberly A. Tomczak, certify that on March 8, 2026 I electronically filed the attached the foregoing Petitioner's Response to Respondents' Reply with the Clerk of the Court for the United States District Court for the Eastern District of Pennsylvania using the CM/ECF system.

Dated: March 8, 2026

Respectfully submitted:

/s/ Kimberly A. Tomczak

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**DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR**

In removal proceedings under section 240 of the Immigration and Nationality Act
Subject ID: 384750017

FINB
DOB

File No.

In the Matter of

Respondent

currently residing at

(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 an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act.
2. You are not a citizen or national of the United States.
3. You are a native of Colombia, and citizen of Colombia.
4. On May 3, 2023 you illegally entered the United States at/near Tecate, California, and you were not inspected 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:

8(a)(1)(A)(i) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 214(a) of the Act.

- ☒ 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

26 Federal Plaza 12 Floor Room 1227 New York NY US 10278

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

on October 25, 2023 at 09:30 AM to show why you should not be removed from the United States based on the

(Date)

COCAINE

charge(s) set forth above.

Arranged Pursuant to 8CFR 208.30

JOHN A. LANE

Date: 2023 05 11 10:14:24 -0700

123456789012

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

Date: May 31, 2023

(City and State)

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) (Sign in ink)

BORDER PATROL AGENT

Date 05/11/2023

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

Certificate of Service

This Notice To Appear was served on the respondent by me on May 11, 2023, in the following manner and in compliance with section 239(a)(1) of the Act.

- ☒ in person ☐ by certified mail, return 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.

Juan Moncalu R

(Signature of Respondent if Personally Served) (Sign in ink)

RYAN A. COURTNEY
 RYAN A. COURTNEY, BORDER PATROL AGENT
 May 11, 2023 10:52:56 -07:00
 DELIA@ICE.DHS

(Signature and Title of officer) (Sign in ink)

Department of Homeland Security
U.S. Citizenship and Immigration Services

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

I-589, Application for Asylum and for Withholding of Removal

START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is no filing fee for this application.

NOTE: ☒ Check this box if you also want to apply for withholding of removal under the Convention Against Torture.

Part A.I. Information About You

1. Alien Registration Number(s) (A-Number) (if any) 		2. U.S. Social Security Number (if any) N-A		3. USCIS Online Account Number (if any) N-A	
4. Complete Last Name MONSALVE ROJAS		5. First Name JOAN		6. Middle Name ALBERTO	
7. What other names have you used (include maiden name and aliases)? N-A					
8. Residence in the U.S. (where you physically reside)					
Street Number and Name 				Apt. Number	
City UPPER DARBY		State PA		Zip Code 19067	
				Telephone Number ()	
(NOTE: You must be residing in the United States to submit this form.)					
9. Mailing Address in the U.S. (if different than the address in Item Number 8)					
In Care Of (if applicable): SAME AS ABOVE				Telephone Number ()	
Street Number and Name				Apt. Number	
City		State		Zip Code	
10. Gender: ☒ Male ☐ Female		11. Marital Status: ☒ Single ☐ Married ☐ Divorced ☐ Widowed			
12. Date of Birth (mm/dd/yyyy) 		13. City and Country of Birth COLOMBIA			
14. Present Nationality (Citizenship) COLOMBIAN		15. Nationality at Birth COLOMBIAN		16. Race, Ethnic, or Tribal Group HISPANIC	
				17. Religion CATHOLIC-CHRISTIAN	
18. Check the box, a through c, that applies: a. ☐ I have never been in Immigration Court proceedings. b. ☒ I am now in Immigration Court proceedings. c. ☐ I am not now in Immigration Court proceedings, but I have been in the past.					
19. Complete 19 a through c.					
a. When did you last leave your country? (mm/dd/yyyy) 05/02/2023 b. What is your current I-94 Number, if any? N-A					
c. List each entry into the U.S. beginning with your most recent entry. List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.)					
Date 05/03/2023		Place TECATE, CALIFORNIA		Status NO STATUS	
Date		Place		Status	
Date		Place		Status	
20. What country issued your last passport or travel document? COLOMBIA		21. Passport Number 		22. Expiration Date (mm/dd/yyyy) 06/14/2033	
		Travel Document Number N-A			
23. What is your native language (include dialect, if applicable)? SPANISH		24. Are you fluent in English? ☐ Yes ☒ No		25. What other languages do you speak fluently? SPANISH	
For EOIR use only.		For USCIS use only.		Decision:	
		Action: Interview Date: _____		Approval Date: _____	
		Asylum Officer ID No.: _____		Denial Date: _____	
				Referral Date: _____	

