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**Non-Detained**

**UNITED STATES DEPARTMENT OF JUSTICE**  
**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**  
**IMMIGRATION COURT**  
100 Montgomery St., Suite 800  
San Francisco, CA 94104

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**In the Matter of** )  
 )  
**Vanes Cesar Macedo de Oliveira** ) **File No. A. 226-083-449**  
 )  
**In Removal Proceedings** )  
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Immigration Judge: **Visiting Judge 12**      Next Hearing Date: **September 7, 2027 at 1:00 PM**

**RESPONDENT'S MOTION TO TERMINATE**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
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100 Montgomery St., Suite 800  
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**RESPONDENT'S MOTION TO TERMINATE**

Respondent Vanes Cesar Macedo de Oliveira, by and through undersigned counsel, hereby moves this Honorable Court to terminate removal proceedings pursuant to 8 C.F.R. § 1240.12(c). Respondent submits that the removal proceedings initiated against him are fundamentally defective because the oral notice provided at the time of service of the Notice to Appear was delivered exclusively in Spanish, a language the Respondent does not understand, in violation of the standards of fundamental fairness that govern immigration proceedings, and to his material prejudice. In support thereof, Respondent states as follows:

1. The Department of Homeland Security (DHS) charged the Respondent as removable under Section § 212(a)(6)(A)(i) of the INA as an alien present in the United States without having been admitted or paroled. *See* Exhibit 1 (Notice to Appear, dated June 4, 2024).

2. Upon review of the Notice to Appear, the **Certificate of Service expressly states** that oral notice of the time and place of the hearing and of the consequences of failure to appear was provided in the **Spanish** language, which confirms that the only notice provided was in a language he does not understand.

3. The Respondent is a native and citizen of Brazil whose sole native language is PORTUGUESE. The Respondent does not speak, read, or understand Spanish. Accordingly, the oral notice provided at the time of service was entirely incomprehensible to him.

4. It is well established that removal proceedings must be conducted in accordance with standards of fundamental fairness. *Matter of Y-S-L-C-*, 26 I&N Dec. 688, 690-91 (BIA 2015); *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000) (recognizing that a competent translation is essential to a full and fair hearing); *see also Matter of D-R-*, 25 I&N Dec. 445, 461 (BIA 2011) ("a competent translation is fundamental to a full and fair hearing."). Fundamental fairness requires, at a minimum, that a respondent have a meaningful opportunity to understand the nature of the proceedings initiated against him, the charges he faces, and the consequences of failing to participate. Where the government's conduct deprives a respondent of that meaningful opportunity, the integrity of the proceedings is compromised from the outset. Where the government serves oral notice in a language the respondent does not understand, the notice cannot be considered "reasonably calculated" to apprise him of the proceedings or afford him a meaningful opportunity to respond. *See Khan v. Ashcroft*, 374 F.3d 825, 829 (9th Cir. 2004); *see also Urbina-Osejo v. INS*, 124 F.3d 1314, 1317-18 (9th Cir. 1997).

5. In the present case, the Respondent was apprehended and served with the Notice to Appear while in custody, without access to interpretation services or any meaningful opportunity to seek assistance in understanding the oral notice being provided. The notice was delivered orally in Spanish, a language the Respondent does not understand, during a custodial encounter that afforded him no realistic opportunity to seek clarification or translation. As a result, the Respondent did not comprehend the charges against him, the nature of the removal proceedings, his procedural obligations, or the consequences of failing to appear.

6. This case is factually and legally distinguishable from *Urquia-Yanez v. Blanche*, No. 25-1136 (9th Cir. May 8, 2026), in which the Ninth Circuit held that the Due Process Clause does not require DHS to translate a written Notice to Appear into the alien's native language. In *Urquia-Yanez*, the petitioner, a Honduran national and native Spanish speaker, remained in DHS custody for several days and received the written English-language Notice to Appear upon her release, after which she had the

opportunity to seek translation assistance before any hearing obligation arose. The court reasoned that a written English-language notice "typically satisfies due process because it puts the alien on notice that further inquiry is needed, leaving the alien to seek help from someone who can overcome the language barrier." *Id.*, slip op. at 12 (quoting *Lopez v. Garland*, 990 F.3d 1000, 1003 (6th Cir. 2021)). Critically, the record in *Urquia-Yanez* reflected that the oral notice component was provided in Spanish — the petitioner's native language. *Id.* at n.2. Every component of the notice in that case was therefore consistent with the petitioner's actual linguistic profile.

7. The circumstances here are materially different, because in this case the government misidentified the Respondent's language at the outset and every component of the notice failed as a result. The Notice to Appear itself records, on its face, DHS's erroneous determination: "Upon information and belief, the language that the alien understands is SPANISH." *See* Exhibit 1. The Respondent, however, is a Brazilian national whose native and only language is Portuguese; he does not speak, read, or understand Spanish. Proceeding from that mistaken premise, the arresting officers delivered the oral notice of the time and place of the hearing and of the consequences of failure to appear exclusively in Spanish — a language the Respondent does not understand — while he was in custody, with no realistic opportunity to seek clarification or translation. The Respondent acknowledges that he was also personally served with the written English-language Form I-862. But unlike in *Urquia-Yanez*, where the oral notice was comprehensible and the written notice reached a petitioner who was released with ample time to act on it, here neither component of the notice was reasonably calculated to inform this Respondent: the oral notice was delivered in the wrong language because of the government's own misidentification, and the written notice was in a language he likewise cannot read, received during a custodial encounter predicated on that same error. An oral notice delivered in an incomprehensible language communicates nothing at all, and it cannot place a reasonable person on notice that further inquiry into an equally incomprehensible document is required. Moreover, the *Urquia-Yanez* panel expressly declined to decide whether the oral notice requirements of 8 U.S.C. § 1229a(b)(7) were satisfied in that case, as the ten-year bar was not at issue. *Id.* at n.2. The precise question presented here — the legal sufficiency of oral notice delivered in a language the government itself incorrectly attributed to the respondent — was therefore expressly left unresolved, and the reasoning of

*Urquia-Yanez* does not control it.

8. Congress has itself recognized the critical importance of language comprehension in the context of removal proceedings. INA § 240(b)(7), 8 U.S.C. § 1229a(b)(7), provides that certain statutory consequences, including bars to discretionary relief, attach only when oral notice of those consequences is given “in the alien’s native language or in another language the alien understands.” While this provision governs a distinct procedural context, it reflects a congressional judgment that oral notice of consequences delivered in a language the alien does not understand is legally insufficient to serve its intended purpose. That judgment informs the fundamental fairness analysis applicable here.

9. The Respondent has suffered material prejudice as a direct result of the deficient notice. Because the oral notice at the time of service was delivered in a language he does not understand, the Respondent did not comprehend the nature or urgency of the proceedings initiated against him. He was consequently unable to take timely steps to seek legal representation and understand his rights. Most significantly, the Respondent’s failure to understand the proceedings caused him to miss the one-year filing deadline for asylum under INA § 208(a)(2)(B). The Respondent entered the United States on or about June 2, 2024, and the statutory one-year deadline for filing an asylum application accordingly expired on or about June 2, 2025.

10. The Respondent did not obtain legal counsel or file an asylum application within that period. Asylum is the Respondent’s primary and most viable form of relief. The loss of the ability to file a timely asylum application constitutes concrete, demonstrable prejudice flowing directly from the fundamentally deficient notice provided at the outset of these proceedings.

11. Where the government’s conduct in initiating removal proceedings fails to comport with the standards of fundamental fairness and causes material prejudice to the respondent, termination of proceedings is the appropriate remedy. *See* 8 C.F.R. § 1240.12(c) (authorizing an Immigration Judge to terminate removal proceedings). Permitting these proceedings to continue in their current posture, initiated through a fundamentally deficient notice that the Respondent could not comprehend and that caused him to forfeit his primary avenue for relief, would compound rather than remedy the harm caused by the government’s failure.

12. For the foregoing reasons, the Respondent respectfully moves this Court to terminate removal proceedings against him.

WHEREFORE, Respondent Vanes Cesar respectfully requests that this Honorable Court grant this Motion to Terminate removal proceedings.

Respectfully Submitted,



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**Guilherme Castilho Zaia (SBN 334469)**  
**Attorney at Law**  
**11810 Grand Park Ave**  
**North Bethesda, MD 20852**  
*Counsel for Respondent*

# Exhibit list

Exhibits:

Pages:

**Exhibit 1: Notice to Appear**

Respondent's Notice to Appear

1-3

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# **Exhibit 1: Notice to Appear**

DEPARTMENT OF HOMELAND SECURITY  
**NOTICE TO APPEAR**

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

**Subject ID:** 394270931

**FINS #:** 1362358590

**File No:** A226 083 449

**DOB:** 08/06/1978

**Event No:** BLV2406000015

**In the Matter of:**

**Respondent:**

VANES CESAR MACEDO DE OLIVEIRA

currently residing at:

263 WELLINGTON AVE DALY CITY, CALIFORNIA, 94014-1127

+1 (415) 374-4044

(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 BRAZIL and a citizen of BRAZIL ;
3. You arrived in the United States at or near TECATE, CA , on or about June 2, 2024 ;
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:

100 MONTGOMERY ST., SUITE 800 SAN FRANCISCO CA 94104

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

on March 17, 2026 at 09:00 AM to show why you should not be removed from the United States based on the  
(Date) (Time)

charge(s) set forth above.

PAUL D CARR  
Date: 2024.06.04 02:20:00-07:00  
0718659508.CBP



Acting/Patrol Agent in Charge  
(Signature and Title of Issuing Officer)

Date: June 04, 2024

San Diego, California  
(City and State)

**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](http://www.uscis.gov/i-589). Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

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

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

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

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

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

**Request for Prompt Hearing**

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

Before:

\_\_\_\_\_  
(Signature of Respondent)

Date: \_\_\_\_\_

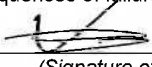
\_\_\_\_\_  
(Signature and Title of Immigration Officer)

**Certificate of Service**

This Notice To Appear was served on the respondent by me on **June 4, 2024**, 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.

  
\_\_\_\_\_  
(Signature of Respondent if Personally Served)

NGOC T KENNY  
Date: 2024.06.04 02:32:47-07:00  
0414562381.CBP.1



**Border Patrol Agent**  
\_\_\_\_\_  
(Signature and Title of officer)

**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-sorn>. 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.

**Proof of Service**

On this day, I, Guilherme Castilho Zaia, served a copy of the following documents:

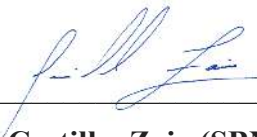
**RESPONDENT'S MOTION TO TERMINATE**

To the following:

<b>Office Location:</b>  Office of the Principal Legal Advisor Department of Homeland Security 100 Montgomery Street, Suite 200 San Francisco, CA 94104	<b>Mailing Address:</b>  US Immigration and Customs Enforcement US Department of Homeland Security Office of the Chief Counsel P.O. Box 26449 San Francisco, CA 94126-644
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by:

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



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**Guilherme Castilho Zaia (SBN 334469)**  
Attorney at Law  
11810 Grand Park Ave  
North Bethesda, MD 20852  
*Counsel for Respondent*