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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
970 Broad Street, Room 1200
Newark, NJ 07102

In the Matter of	
Hector Javier Gualli-Guaminga	**File No. A 241-147-606**
In Removal Proceedings	

Immigration Judge: Ryan, Dennis

Next Hearing Date: December 7, 2026 at 9:00 AM.

RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE AND BRIEF IN OPPOSITION TO PRETERMISSION

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I. INTRODUCTION AND FACTS

Respondent, Hector Javier Gualli Guaminga, a native and citizen of Ecuador and a member of the Indigenous Kichwa people, respectfully submits this brief in response to the Court's Order to Show Cause dated [DATE] and requests that the Court decline to pretermit his Form I-589, filed on March 4, 2026, and schedule an individual hearing on his claims for asylum, withholding of removal, and protection under the Convention Against Torture.

Beginning in November 2022, Lorena Garzón, a non-Indigenous Ecuadorian woman with local political influence and president of the San Francisco de Tixán Civic Front, sought to take land belonging to Respondent's family. *See* Evidence, Respondent's Declaration, ¶¶ 8 to 10. Because his parents speak primarily Kichwa, Respondent became the family's principal defender of the property. *See* Evidence, Respondent's Declaration, ¶ 9. When the family refused to surrender the land, a group connected to Ms. Garzón broke through the family's fence while police officers stood by and watched. *See* Evidence, Credible Fear Packet, EOIR 20, 23. Ms. Garzón and those connected to her subjected Respondent to ethnic slurs, and Ms. Garzón herself told him, "listen to me indian, you are dead." *See* Evidence, Respondent's Declaration, ¶ 11; Evidence, Credible Fear Packet, EOIR 20.

In July 2023, a masked assailant attempted to stab Respondent "for being involved." *See* Evidence, Respondent's Declaration, ¶ 15; Evidence, Credible Fear Packet, EOIR 22. Days later, his dogs were killed and left at his door with a note warning that he would be next, followed by a message written in blood stating, "we are coming for you." *See* Evidence, Respondent's Declaration, ¶¶ 19 to 20. Respondent fled Ecuador on July 28, 2023, and the threats against him continue. *See* Evidence, Respondent's Declaration, ¶¶ 21 and 37.

Under *Matter of H-A-A-V-*, 29 I&N Dec. 233 (BIA 2025), pretermission is appropriate only where the facts alleged, accepted as true, fail to establish prima facie eligibility. *Matter of G-R-B-*, 30 I&N Dec. 102 (BIA 2026), leaves that standard unchanged. The record, including the Department's own credible fear documentation, sets forth harm that went well beyond threats, a protected ground that was at least one central reason for that harm, and the government's failure to protect him.

In 2023, an asylum officer found Respondent credible and concluded that there was a reasonable possibility he would be tortured with the acquiescence of the Ecuadorian police. *See* Evidence, Credible Fear Packet, EOIR 29, 30. Any questions of credibility or weight must be resolved through testimony, not on the papers. Respondent's claims for withholding of removal and protection under the Convention Against Torture are not subject to the one-year deadline and independently foreclose pretermission.

As to asylum, although Respondent filed his application more than one year after his arrival, he was in parole status under INA § 212(d)(5)(A) when the deadline expired, an extraordinary circumstance under 8 C.F.R. § 1208.4(a)(5)(iv). *See* Exhibit 1, Interim Notice Authorizing Parole. Whether he thereafter filed within a reasonable period, in light of his subsequent detention, transfers between facilities, and hospitalization, turns on facts that cannot be resolved without his testimony. *See* Evidence, Respondent's Declaration, ¶¶ 30 to 35.

II. PROCEDURAL BACKGROUND AND RECORD

Respondent entered the United States without inspection near Lukeville, Arizona, on August 27, 2023, and was encountered by U.S. Border Patrol and taken into custody that same day. *See* I-213, Record of Deportable / Inadmissible Alien. On August 29, 2023, the Department of Homeland Security ("DHS") processed Respondent for expedited removal under INA § 235(b)(1) and issued a Form I-860 determining him inadmissible

under INA § 212(a)(7)(A)(i)(I). *See* Evidence, Credible Fear Packet, EOIR 33. During that processing, Respondent stated that he feared persecution or torture if returned to Ecuador, and he was referred for a credible fear interview. *Id.*

On September 19, 2023, while detained at the Adams County Correctional Center in Natchez, Mississippi, Respondent was interviewed by telephone by an asylum officer through a Spanish interpreter. *See* Evidence, Credible Fear Packet, EOIR 4 to 39. The officer found his testimony "consistent, detailed, and plausible" and therefore credible. *Id.* Applying the then-operative condition on asylum eligibility at 8 C.F.R. § 208.33(a), the officer screened Respondent's claims under the reasonable possibility standard and concluded that he had established a reasonable possibility of torture. *Id.*

In reaching that conclusion, the officer found that the Ecuadorian police had engaged in willful blindness: they stood by while community members broke down the family's fences and destroyed its crops, and they later demanded evidence of physical violence before they would act on Respondent's complaints. *Id.* On September 21, 2023, following that determination, DHS issued a Notice to Appear directing Respondent to appear before the Boston Immigration Court on February 24, 2026. *See* Exhibit 2, Notice to Appear dated September 21, 2023.

On October 19, 2023, U.S. Immigration and Customs Enforcement ("ICE") released Respondent from custody on parole under INA § 212(d)(5)(A). It issued him an Interim Notice Authorizing Parole, valid for one year, in lieu of a Form I-94. *See* Exhibit 1, Interim Notice Authorizing Parole; Evidence, Respondent's Declaration, ¶ 25.

At the time of his release, Respondent understood only that he had a hearing scheduled in 2026 and believed he was to wait until that date to present his case. *See* Evidence, Respondent's Declaration, ¶ 26. When he sought help from an immigration consultant approximately two months later, he was told that his case did not appear in the system and that nothing could be done. *See* Evidence, Respondent's Declaration, ¶ 29.

On July 13, 2025, ICE detained Respondent in Buffalo, New York, and took him to the Buffalo Federal Detention Facility in Batavia, New York. *See* Evidence, Respondent's Declaration, ¶¶ 30 to 31. On August 13, 2025, DHS issued a new Notice to Appear charging Respondent as removable under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) and filed it with the Immigration Court, together with the credible fear packet, thereby commencing the proceedings now before this Court. *See* Record of

Proceedings, Notice to Appear dated August 13, 2025; Evidence, Credible Fear Packet.

While detained at Batavia, Respondent became seriously ill and was hospitalized from August 17 to August 23, 2025. *See* Evidence, Respondent's Declaration, ¶ 31. At his first master calendar hearing, in August 2025, he learned for the first time that he needed to file an asylum application and began completing the form on his own. *See* Evidence, Respondent's Declaration, ¶ 32.

In September 2025, ICE transferred Respondent from Batavia to a facility in Arizona and then to the Mesa Verde ICE Processing Center in Bakersfield, California, after which his case was heard by the Adelanto Immigration Court. *See* Record of Proceedings, Forms I-830 dated September 11 and 13, 2025.

During these transfers, Respondent lost pages of the Form I-589 he had begun to prepare. *See* Evidence, Respondent's Declaration, ¶ 33. At a master calendar hearing on December 4, 2025, pleadings were taken. Respondent admitted factual allegations one through three and conceded the charge under INA § 212(a)(6)(A)(i). The Court sustained allegation four and held allegation five and the charge under INA § 212(a)(7)(A)(i)(I) in abeyance. *See* Record of Proceedings, Notice to Appear dated August 13, 2025. Respondent retained counsel on January 14, 2026. *See* Record of Proceedings, Form EOIR-28 dated January 14, 2026.

On February 6, 2026, after Respondent petitioned for a writ of habeas corpus, the United States District Court for the Eastern District of California ordered his release, and ICE released him on his own recognizance. *See* Exhibit 3, Order of Release on Recognizance; Evidence, Respondent's Declaration, ¶ 35; Record of Proceedings, Form I-830 dated February 6, 2026. ICE thereafter notified this Court of Respondent's release. *See* Record of Proceedings, Form I-830 dated February 10, 2026.

On March 4, 2026, within the deadline set by the Court, Respondent filed his Form I-589 together with his sworn declaration in Spanish and a certified English translation, and paid the filing fee. *See* Record of Proceedings, Payment Receipt dated March 4, 2026; Evidence, Respondent's Declaration. On March 19, 2026, Respondent supplemented the record with country conditions evidence. *See* Evidence 1, Country Conditions Reports.

On September 27, 2026, DHS filed the Form I-213 prepared at the time of Respondent's 2023 entry. *See* I-213, Record of Deportable / Inadmissible Alien. At the

master calendar hearing on September 30, 2026, the Court stated that it would issue an Order to Show Cause directing Respondent to file, within ten days, a brief opposing pretermission of his application. The Court set a further master calendar hearing for December 7, 2026. *See* Record of Proceedings, Notice of In-Person Hearing dated September 30, 2026. The Court issued the Order to Show Cause on [DATE]. *See* Order to Show Cause.

III. ARGUMENT

An Immigration Judge may pretermit an application for asylum and withholding of removal without an evidentiary hearing only where the application and supporting evidence fail to set forth a prima facie claim for relief. *See Matter of H-A-A-V-*, 29 I&N Dec. 233, 234–36, 238 (BIA 2025). In making that threshold determination, the Court takes the facts alleged as true and views them in the light most favorable to the applicant; the question is not whether the applicant will ultimately prevail, but whether the facts he has set forth, if established at a hearing, would satisfy the statutory requirements. *Id.* A hearing is unnecessary only where there is no genuine and substantial issue of fact in the record. *See Matter of G-R-B-*, 30 I&N Dec. 102, 103 (BIA 2026) (citing *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620–21 (1973)).

Matter of G-R-B- confirms that the Court may conduct this inquiry without a motion from the Department of Homeland Security, but it leaves the governing standard unchanged. *Id.* at 103–04. Measured against that standard, Respondent's application, declaration, and supporting evidence, together with the credible fear record that the Department itself placed before the Court, set forth each element of his claims, as shown below.

A. The Record Establishes Past Persecution and a Well-Founded Fear of Future Persecution

Persecution denotes extreme conduct, and it encompasses threats to life. *See Fatin v. INS*, 12 F.3d 1233, 1240 & n.10 (3d Cir. 1993). In the Third Circuit, threats are not evaluated in isolation but as part of the cumulative effect of the applicant's experiences. A threat constitutes persecution when it is "concrete and menacing," meaning that "the aggregate effect of a petitioner's experiences, including or culminating in the threat in question, placed a petitioner's life in peril or created an atmosphere of fear so oppressive that it severely curtailed the petitioner's liberty." *Herrera-Reyes v. Att'y Gen.*, 952 F.3d 101, 106–08 (3d Cir. 2020).

A threat is concrete when it is corroborated by credible evidence and menacing when it shows an intention to inflict harm. The inquiry turns not on the imminence of the threat but on the likelihood that the threatened harm will be carried out. *Id.* at 108. Physical injury to the applicant is not a prerequisite: a threat may be substantiated by harm to the applicant's property, his family, or those close to him. *Id.* at 110–11.

The Board has likewise held that death threats rise to the level of persecution where they are objectively credible and issued by persons with the immediate ability to carry them out, an inquiry that looks to the objective conduct of the persecutor and must account for the totality of the applicant's mistreatment. *See Matter of E-M-F-S-*, 29 I&N Dec. 379, 384–85 (BIA 2026). The harm described in this record satisfies both formulations.

Beginning in November 2022, Lorena Garzón sought to take land belonging to Respondent's family, claiming that a previous owner had promised to donate part of it for a parking project. *See* Evidence, Respondent's Declaration, ¶¶ 8 to 10. When the family refused, a group of fifty to sixty people broke down the family's fence and trampled its crops while police officers stood by and watched. *See* Evidence, Credible Fear Packet, EOIR 20, 23. A person connected to Ms. Garzón drove a car at Respondent's mother. *See* Evidence, Respondent's Declaration, ¶ 13.

Because Respondent, who speaks Spanish, had taken charge of the family's legal defense of the property, he became the principal target. Ms. Garzón and two men connected to her threatened him and told him that he should be dead. *See* Evidence, Respondent's Declaration, ¶¶ 9 and 14; Evidence, Credible Fear Packet, EOIR 21.

In June 2023, as recorded in the asylum officer's notes, Ms. Garzón confronted Respondent as he was returning home and threatened him, stating that he was going to die and that she would neither forget nor forgive what he had done to her. *See* Evidence, Credible Fear Packet, EOIR 20.

The threat was then carried into action. In July 2023, a masked man approached Respondent near his home, drew a knife, said "for being involved," and tried to stab him; Respondent escaped only because his dogs attacked the assailant. *See* Evidence, Respondent's Declaration, ¶ 15; Evidence, Credible Fear Packet, EOIR 22. In the days that followed, people were seen around the family's home at night, and a man came to the family's store to ask Respondent's younger sister whether he was at home, whether the

family had dogs, and whether there were security cameras. *See* Evidence, Respondent's Declaration, ¶¶ 17 to 18; Evidence, Credible Fear Packet, EOIR 23. On July 25, 2023, the two dogs that had defended Respondent were killed and left at the door of his home with a note warning that he would be next and that hiding would be useless. *See* Evidence, Respondent's Declaration, ¶ 19; Evidence, Credible Fear Packet, EOIR 23. On July 27, 2023, a second message, written in blood, was left under the door: "we are coming for you." *See* Evidence, Respondent's Declaration, ¶ 20. Respondent fled Ecuador the following day. *See* Evidence, Respondent's Declaration, ¶ 21.

This is not a case of threats alone. In *Matter of E-M-F-S-*, the respondents received two anonymous written threats and offered no evidence about who sent them or whether those persons could carry them out. 29 I&N Dec. at 385. Similarly, the threats in *Li v. Attorney General*, 400 F.3d 157, 164–65 (3d Cir. 2005), were uncorroborated by any harm to the petitioner or those close to him, which the Third Circuit later identified as dispositive. *See Herrera-Reyes*, 952 F.3d at 107–08.

Here, by contrast, the principal threat was delivered in person by an identified persecutor, Ms. Garzón herself, and each threat was matched by conduct demonstrating both the will and the capacity to carry it out: a) The invasion of the family's land in the presence of the police showed that Ms. Garzón could mobilize dozens of people and act without consequence; b) The attempted stabbing, which the assailant tied to Respondent's role in the dispute, was an effort to execute the death threat she had made weeks earlier; c) The surveillance of the home and the questions about dogs and cameras were preparations for a further attack; and d) The killing of the dogs destroyed the only protection that had saved Respondent's life and delivered an explicit warning that he was next.

By the time the message in blood arrived, Respondent's persecutors had already attempted to kill him, had located his home, and had shown that they could reach his door. The threats were therefore objectively credible and anything but hollow, and they came from persons who had demonstrated the immediate ability to carry them out. *See E-M-F-S-*, 29 I&N Dec. at 384–85. They were also concrete and menacing: corroborated by an attempt on Respondent's life and the destruction of his property, they placed his life in peril. *See Herrera-Reyes*, 952 F.3d at 108, 111.

The asylum officer who interviewed Respondent in 2023 reached the same conclusion about the nature of the harm, identifying it as "death threats, killed animals,

attempted stabbing," and found his account consistent, detailed, and plausible. *See* Evidence, Credible Fear Packet, EOIR 29. Considered cumulatively, this campaign rises to the level of persecution.

Because the record establishes past persecution, Respondent is entitled to a presumption of a well-founded fear of future persecution, and the burden shifts to the Department to show, by a preponderance of the evidence, a fundamental change in circumstances or that Respondent could reasonably relocate within Ecuador. 8 C.F.R. § 1208.13(b)(1); *Herrera-Reyes*, 952 F.3d at 112. Nothing in the record suggests a change in circumstances. Respondent's family reports that Ms. Garzón continues to pursue the land, that the legal dispute over the property remains ongoing, and that she continues to ask about Respondent and has said she will kill him if she sees him. *See* Evidence, Respondent's Declaration, ¶ 37.

His parents no longer live full-time on the property because of the continuing harassment. *See* Evidence, Respondent's Declaration, ¶ 36. Independent of the presumption, these facts would lead a reasonable person in Respondent's circumstances to fear persecution. *See Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987); 8 C.F.R. § 1208.13(b)(2). That his parents have not been physically harmed does not diminish that fear, since the record shows that Respondent, not his parents, was singled out as the obstacle to Ms. Garzón's efforts because he had taken charge of the legal process. *See* Evidence, Respondent's Declaration, ¶ 14; Evidence, Credible Fear Packet, EOIR 21.

B. Respondent's Indigenous Kichwa Ethnicity Is at Least One Central Reason for the Harm

To establish nexus, an applicant must show that a protected ground "was or will be at least one central reason" for the persecution. 8 U.S.C. § 1158(b)(1)(B)(i). The protected ground need not be the sole motive; persecutors may act for more than one reason, and the requirement is satisfied so long as the protected ground is not incidental, tangential, superficial, or subordinate to another reason for the harm. *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007); *Ndayshimiye v. Att'y Gen.*, 557 F.3d 124, 129–31 (3d Cir. 2009).

The persecutor's motive may be established by direct or circumstantial evidence. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). Race and nationality are enumerated grounds, and Respondent's identity as a member of the Indigenous Kichwa people is precisely the kind of innate characteristic they protect. Race and nationality are enumerated

grounds, and Respondent's identity as a member of the Indigenous Kichwa people is precisely the kind of innate characteristic they protect. *See* INA § 101(a)(42)(A); *see also Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985). The record contains both direct and circumstantial evidence that this identity was at least one central reason for the harm described in Section A.

The most direct evidence of motive comes from the persecutors themselves. When Ms. Garzón told Respondent that he was going to die, she specifically referred to him based on his ethnicity, calling him an Indigenous person. *See* Evidence, Credible Fear Packet, EOIR 20.

Ms. Garzón and the two men acting with her told Respondent that "for being indian" he should leave the place and should be dead. See Evidence, Credible Fear Packet, EOIR 21. The insults that accompanied the threats were likewise directed at Respondent's Indigenous identity. They called him "Indian," "fool," "dummy," and "donkey," mocked his parents for not having gone to school, told him to go back to "the woods where [he] came from," and said he was "only good for taking care of animals." *See* Evidence, Credible Fear Packet, EOIR 21; Evidence, Respondent's Declaration, ¶ 11. A persecutor who couples a death threat with an ethnic slur, and who tells her victim that he deserves to die "for being indian," has stated her motive in her own words.

The circumstantial evidence points the same way. Ms. Garzón, a non-Indigenous woman with local political influence, selected a Kichwa family whose parents speak primarily Kichwa, have little formal schooling, and cannot read the documents on which their ownership depends. *See* Evidence, Respondent's Declaration, ¶¶ 2, 8 to 9.

Respondent explained that she believed his parents were unable to advocate for themselves because they were illiterate and that, because the family is Indigenous and his parents lack formal education, she believed she could take advantage of them. *See* Evidence, Credible Fear Packet, EOIR 21; Evidence, Respondent's Habeas Declaration, ¶ 4.

This reflects a broader pattern in which Indigenous families lose their land because they cannot read Spanish or understand the documents presented to them. *See* Evidence, Respondent's Declaration, ¶ 7. The insults mirrored the stereotypes that make such families targets: uneducated, belonging in the mountains, fit only for tending animals. *See* Evidence, Respondent's Declaration, ¶ 11; *see also* Evidence 1, Country Conditions

Reports, CC 12 (describing the structural exclusion of Indigenous peoples in Ecuador, including their marginal access to education).

The hostility also extended beyond the land itself. After the dispute began, members of the community involved in the attempt to seize the property refused to sell Respondent goods and told him to leave. *See* Evidence, Credible Fear Packet, EOIR 21. That the insults intensified once Respondent began defending the property confirms that the dispute sharpened a pre-existing ethnic hostility rather than replacing it. *Id.*

That Ms. Garzón also wanted the land does not defeat nexus. A persecutor's interest in property and her animus toward a protected group can coexist, and the statute requires only that the protected ground be one central reason, not the only one. *See J-B-N- & S-M-*, 24 I&N Dec. at 214.

This case is unlike *Matter of M-R-M-S-*, 28 I&N Dec. 757 (BIA 2023), where the Board held that a protected characteristic is not a central reason when the persecutor targets the applicant merely as a means to an unrelated end. Respondent's ethnicity was not an incidental means of reaching the land. It was the reason Ms. Garzón believed this family could be dispossessed, it framed the threats she and her associates made, and it was the stated basis for their view that Respondent deserved to die. A persecutor who wanted only the property would have had no reason to tell Respondent that he should be dead "for being indian."

Nor is nexus defeated by Respondent's statement at his credible fear interview that he did not believe Ms. Garzón targeted his family as such, "it was the location of the property." *See* Evidence, Credible Fear Packet, EOIR 20. That statement identifies the object Ms. Garzón sought, which is consistent with a mixed-motive case. It does not speak to why she believed she could seize it from this family, or why she and her associates threatened Respondent in ethnic terms. Because the statute makes the persecutor's motive critical, the applicant must provide some evidence of that motive, direct or circumstantial. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). Here, the same interview records direct evidence of it: the persecutors' own statements that Respondent should be dead "for being indian." *See* Evidence, Credible Fear Packet, EOIR 20, 21. A persecutor's actual motive is a question of fact for the Immigration Judge. *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011); *J-B-N- & S-M-*, 24 I&N Dec. at 214. At most, Respondent's statement bears on the weight of the evidence, which must be resolved at a hearing, for the reasons

set forth in Section H.

Respondent's application also invokes membership in a particular social group and political opinion. *See* Form I-589, Part B. In accordance with *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018), Respondent delineates the following particular social groups: (1) *"Indigenous Kichwa landowners in Ecuador"*; and (2) *"Indigenous Kichwa individuals in Ecuador who have opposed, through legal and institutional channels, efforts by non-Indigenous persons to seize their family's land."* Both groups are defined by characteristics their members cannot change or should not be required to change.

Kichwa ethnicity is innate, and land ownership and a shared past experience are among the characteristics recognized as capable of defining a particular social group. *See Fatin*, 12 F.3d at 1239–40 (quoting *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985)). Respondent belongs to both groups: his family owns the land Ms. Garzón sought, and he took charge of its legal defense by organizing the family's documents, consulting a lawyer, opening a case against those who invaded the property, and bringing the matter to the police and the prosecutor's office. *See* Evidence, Respondent's Declaration, ¶¶ 9 and 12; Evidence, Credible Fear Packet, EOIR 20, 21, 22.

The record also reflects that land and territory defenders in Ecuador are subjected to retaliation by private actors. *See* Evidence 1, Country Conditions Reports, CC 5. Whether a proposed group is cognizable "is a fact-based inquiry made on a case-by-case basis," and membership and nexus are "inherently factual" questions. *See Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. at 191 (quoting *Matter of L-E-A-*, 27 I&N Dec. 40, 42 (BIA 2017)). These are not questions that can be resolved without a hearing.

The same conduct supports a claim based on actual or imputed political opinion. The Board has recognized that bringing abuses to the attention of the authorities may constitute the expression of a political opinion or give a persecutor reason to impute one. *See Matter of N-M-*, 25 I&N Dec. 528, at 528. Respondent challenged the attempt of a politically influential local leader to seize his family's land by taking the matter to the police and the prosecutor's office, and the police stood by while her associates invaded the property. *See* Evidence, Respondent's Declaration, ¶ 8; Evidence, Credible Fear Packet, EOIR 20, 22, 23. Ms. Garzón's warning that she would not "forget and forgive" what Respondent had done to her, and the assailant's declaration that he was attacking

Respondent "for being involved," indicate that his persecutors viewed him as a challenge to her authority in the community. *See* Evidence, Credible Fear Packet, EOIR 20, 22.

Whether they perceived him as a political challenger or merely as an obstacle is a factual determination the Board has assigned to the Immigration Judge. *See Matter of N-M-*, 25 I&N Dec. 528, at 532–34. These grounds are presented in the alternative; Respondent's ethnicity alone suffices to establish nexus at this stage.

C. The Ecuadorian Government Is Unable or Unwilling to Protect Respondent

To establish past persecution by a private actor, an applicant must show that the harm was "committed by the government or forces the government is either unable or unwilling to control." *See Herrera-Reyes*, 952 F.3d at 105 (quoting *Sheriff v. Att'y Gen.*, 587 F.3d 584, 589 (3d Cir. 2009)); see also *E-M-F-S-*, 29 I&N Dec. at 380–81. An applicant need not have reported every incident to the authorities where the record shows that doing so would have been futile or dangerous. *See Matter of C-G-T-*, 28 I&N Dec. 740, 743 (BIA 2023). This record shows that Respondent's family sought the protection of the Ecuadorian authorities repeatedly and through every available channel, and that the authorities not only failed to protect them but stood by while they were harmed.

The police were present when the group connected to Ms. Garzón broke through the family's fence. Respondent described the officers as standing immediately behind the group and watching passively as it destroyed the family's crops. *See* Evidence, Credible Fear Packet, EOIR 20, 23. When the family went to the police afterward, the officers made clear that they did not want to become involved, even though they had witnessed what happened. *Id.* at EOIR 20. The family then turned to the prosecutor's office, which confirmed that the land belonged to Respondent's father but took no further action. A lawyer advised the family that a lawsuit against Ms. Garzón would take years and that they should simply tell people they were the owners. *See* Evidence, Credible Fear Packet, EOIR 22. When the prosecutor's office required a police report, the police reacted with anger, complaining that the family was going to get them in trouble. *Id.*

When Respondent reported the racist insults directed at him, the police told him they would not get involved because there had been no physical harm. *Id.* The family's report that a person connected to Ms. Garzón had driven a car at Respondent's mother met the same response: the police said there was nothing they could do and treated the matter as unimportant. *See* Evidence, Respondent's Declaration, ¶ 13.

This is not a case of police who tried and failed to stop a crime. The authorities watched the invasion of the family's property without intervening. They refused to act on a complaint of ethnic harassment until there was physical injury, and they responded to a request for a report with hostility. Even after the prosecutor's office confirmed the family's ownership, nothing was done to protect them from the person who sought to take the land by force.

Against that background, Respondent's decision not to report the death threat and the later attack to the same police was not a failure to seek protection. It reflected his experience that the police would not act and had already shown resentment at being asked. Respondent explained exactly that when asked why he had not reported Ms. Garzón's threat: he did not do so "for the same reason." *See* Evidence, Credible Fear Packet, EOIR 22. Ms. Garzón's local political influence helps explain why. *See* Evidence, Respondent's Declaration, ¶ 8.

The country conditions evidence confirms that the family's experience was not an isolated failure, but reflects the documented condition of Ecuador's protective institutions, particularly with respect to Indigenous people. Human Rights Watch reports that Ecuador's democratic institutions, especially the judicial system, remain fragile, "plagued by allegations of corruption and weak capacity to combat impunity," and that judges and prosecutors themselves are at risk and lack adequate protection, with at least fifteen killed since 2022. *See* Evidence 1, Country Conditions Reports, CC 2.

The International Work Group for Indigenous Affairs reports that the government has used successive states of exception to repress and criminalize specific groups, and that Indigenous communities, as historically marginalized groups, "are more vulnerable to an abuse of power." *See* Evidence 1, Country Conditions Reports, CC 4. The same report relays the warning of the Confederation of Indigenous Nationalities of Ecuador that the police and armed forces perpetuate a cycle of violence that disproportionately affects vulnerable communities, marked by abuse of power and racial discrimination. *Id.*

Amnesty International likewise reports that arrests by security forces may be disproportionately directed against persons of Indigenous origin. It also reports that land, territory, and environmental defenders have been subjected to unfounded criminal proceedings, which they view as a tactic generally pursued by private actors. *See* Evidence 1, Country Conditions Reports, CC 5.

United Nations experts have expressed concern about a serious deterioration of the rights of Indigenous Peoples in Ecuador, including the State's use of disproportionate force in response to Indigenous-led protests. *See* Evidence 1, Country Conditions Reports, CC 6. The Ecuadorian government itself has acknowledged persistent inequality "caused by the ethnic divide" between Indigenous peoples and the white and mestizo populations. *See* Evidence 1, Country Conditions Reports, CC 12.

Against this backdrop, a Kichwa family complaining that a politically influential non-Indigenous woman was seizing its land by force had no reasonable expectation that the same institutions would protect it. The indifference and hostility the family actually encountered are consistent with that documented pattern, and they confirm that further reports would have been futile.

The Department's own asylum officer reached the same conclusion. Relying on Respondent's testimony that the police stood by while the family's fences were torn down and its crops destroyed, that they were angry when he made a report, and that they later demanded evidence of physical violence before they would help, the officer found that "the police engaged in willful blindness." *See* Evidence, Credible Fear Packet, EOIR 30.

Under any formulation of the governing standard, the record, including both Respondent's own experience and the country conditions evidence, establishes that the Ecuadorian government was unable or unwilling to control Ms. Garzón and those acting with her. At a minimum, the extent of the protection available to Respondent is a factual question that requires a hearing.

D. Internal Relocation Does Not Provide a Basis for Pretermission

Because the record establishes past persecution, it is presumed that internal relocation would not be reasonable, and the Department bears the burden of demonstrating, by a preponderance of the evidence, that Respondent could avoid future persecution by relocating to another part of Ecuador and that it would be reasonable to expect him to do so. 8 C.F.R. § 1208.13(b)(1)(i)(B), (b)(1)(ii), (b)(3)(ii); *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 31, 35 (BIA 2012). In assessing reasonableness, the Court considers, among other factors, whether the applicant would face other serious harm in the place of suggested relocation, any ongoing civil strife, the country's administrative, economic, and judicial infrastructure, and social and cultural constraints such as social and familial ties. 8 C.F.R. § 1208.13(b)(3); *M-Z-M-R-*, 26 I&N Dec. at 34–35. These factors are evaluated in light of all

the circumstances of the case, and no single factor is necessarily determinative. *Id.*

The analysis proceeds in two steps: whether the applicant could avoid future persecution by relocating and, if so, whether it would be reasonable under all the circumstances to expect him to do so. *See M-Z-M-R-*, 26 I&N Dec. at 32. At the first step, where the applicant has established past persecution, the Department "must demonstrate that there is a specific area of the country where the risk of persecution to the respondent falls below the well-founded fear level." *Id.* at 33–34. That area must present circumstances "substantially better than those giving rise to a well-founded fear of persecution on the basis of the original claim," because the relocation rule does not require an applicant "to stay one step ahead of persecution." *Id.* at 33. If the evidence indicates that the proposed area may not be practically, safely, and legally accessible, the Department also bears the burden of showing that it is or could be made accessible. *Id.* at 34. These are questions on which the Immigration Judge must make findings of fact. *Id.*

The Department has not filed a motion to pretermit and has offered no evidence identifying a place in Ecuador where Respondent could live safely. It has not proposed a specific area, let alone shown that conditions there are substantially better or that the area is accessible to Respondent. The question of relocation therefore cannot be resolved against Respondent on this record, because doing so would require the Court to make findings on an issue on which the Department bears the burden of proof and has presented nothing.

In any event, the record affirmatively shows that relocation would be neither safe nor reasonable.

Respondent's persecutors know his family, his community, and the places where he lived and worked. *See* Evidence, Respondent's Declaration, ¶ 39. Respondent explained that he left Ecuador precisely because he feared that, wherever he went, his family's visits would reveal his location. His mother told him she would rather have a son far away than a dead son. *See* Evidence, Credible Fear Packet, EOIR 24.

Respondent is a Kichwa man from a rural farming community who has rarely traveled outside his town, whose first language is Kichwa, and whose family ties are rooted in Tixán. *See* Evidence, Respondent's Declaration, ¶¶ 2 to 4; Evidence, Credible Fear Packet, EOIR 24. He testified that Indigenous people are mistreated throughout the country. *See* Evidence, Credible Fear Packet, EOIR 24. The record corroborates the

structural exclusion that Indigenous Ecuadorians face outside their communities. *See* Evidence 1, Country Conditions Reports, CC 7, CC 12.

Relocation would expose Respondent to serious harm of a different kind. Ecuador's government has declared an "internal armed conflict" against criminal groups, and 2025 was the most violent year in the country's history. *See* Evidence 1, Country Conditions Reports, CC 2, CC 10.

The record gives no reason to believe that police elsewhere would offer protection that the police in Tixán refused, and Respondent has stated that he does not trust the authorities to protect him anywhere in the country. *See* Evidence, Respondent's Declaration, ¶ 39; Evidence, Credible Fear Packet, EOIR 24. As discussed in Section C, the weakness of Ecuador's institutions in combating impunity, and the particular vulnerability of Indigenous people to abuse of power, are documented nationally, not merely in Tixán. *See* Evidence 1, Country Conditions Reports, CC 2, CC 4.

Even if Respondent bore the burden on this issue, these facts would establish a prima facie showing that relocation is not a reasonable alternative. Whether a safe and reasonable relocation option exists is, in any case, a fact-intensive question that cannot be resolved without a hearing.

E. Respondent States an Independent Prima Facie Claim for Withholding of Removal

Withholding of removal is mandatory. The Attorney General may not remove an alien to a country where his "life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." INA § 241(b)(3)(A). An applicant who establishes that it is more likely than not that he would face such a threat is entitled to withholding of removal. *See Li*, 400 F.3d at 162; *INS v. Stevic*, 467 U.S. 407, 430 (1984).

The applicant's testimony, if credible, may be sufficient to sustain that burden without corroboration. 8 C.F.R. § 1208.16(b). Unlike asylum, withholding of removal is not a discretionary form of relief, and it is not subject to the one-year filing deadline, which by its terms applies only to applications for asylum. See INA § 208(a)(2)(B). Whatever the Court may ultimately conclude about the Respondent's asylum application, his claim for withholding of removal must be adjudicated on its own merits.

The record establishes that claim prima facie. Where an applicant has suffered

past persecution on account of a protected ground, it is presumed that his life or freedom would be threatened in the future on the basis of the original claim. 8 C.F.R. § 1208.16(b)(1)(i).

The presumption may be rebutted only if the Department establishes, by a preponderance of the evidence, a fundamental change in circumstances or that the applicant could avoid the threat by relocating within the country and that it would be reasonable to expect him to do so. 8 C.F.R. § 1208.16(b)(1)(i)(A)–(B), (b)(1)(ii). This framework operates in a manner parallel to the one governing asylum. *See M-Z-M-R-*, 26 I&N Dec. at 31 n.3.

For the reasons set forth in Section A, the record establishes past persecution, which triggers the presumption. For the reasons set forth in Section D, the Department has made no showing that could rebut it.

The nexus requirement is likewise satisfied. In the Third Circuit, an applicant for withholding of removal must show that a protected ground was at least one central reason for the threatened harm. *See Gonzalez-Posadas v. Att'y Gen.*, 781 F.3d 677, 684–85 & n.6 (3d Cir. 2015); *see also Matter of C-T-L-*, 25 I&N Dec. 341, 344–46 (BIA 2010). As shown in Section B, Respondent's Indigenous Kichwa ethnicity meets that standard. It was not incidental to the harm: it was the reason his persecutors believed his family could be dispossessed and the stated basis for their view that he should be dead "for being indian." *See* Evidence, Credible Fear Packet, EOIR 20, 21.

Because Respondent has set forth a prima facie claim for withholding of removal that does not depend on the timeliness of his asylum application, pretermission of the application as a whole would be improper even if the Court were to resolve every asylum-specific question against him. Whether the Department can rebut the presumption of a future threat is a question of fact that, as with asylum, can be resolved only at a hearing.

F. Respondent States an Independent Prima Facie Claim for Protection Under the Convention Against Torture

To qualify for protection under the Convention Against Torture, an applicant must establish that it is more likely than not that he would be tortured if removed to the proposed country of removal. *See* 8 C.F.R. § 1208.16(c)(2) (2025). Torture is "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a

person" for purposes that include punishment, intimidation, or "any reason based on discrimination of any kind," when inflicted "by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity." 8 C.F.R. § 1208.18(a)(1) (2020).

Acquiescence requires that the official, prior to the activity, have awareness of it and thereafter breach his legal responsibility to intervene. 8 C.F.R. § 1208.18(a)(7). The CAT does not require an alien to establish that the government approves of or consents to torture; rather, evidence demonstrating that the government is willfully blind to such conduct satisfies that standard. *See Silva-Rengifo v. Atty. Gen. of U.S.*, 473 F.3d 58, 65 (3rd Cir. 2007) (citing *Zheng v. Ashcroft*, 332 F.3d 1186, 1194 (9th Cir. 2003)). The Court must also consider how officials are likely to respond to the threatened harm and whether that response amounts to acquiescence. *See Myrie v. Att'y Gen.*, 855 F.3d 509, 516–18 (3d Cir. 2017); *see also Herrera-Reyes*, 952 F.3d at 112 n.5. All evidence relevant to the possibility of future torture must be considered, including past harm, the possibility of relocation, and country conditions. 8 C.F.R. § 1208.16(c)(3).

Protection under the Convention Against Torture does not depend on any protected ground, is not subject to the one-year filing deadline, and is not discretionary. See 8 C.F.R. §§ 1208.16(c)(4), 1208.17(a). It is therefore a wholly independent basis for relief. If Respondent sets forth a prima facie claim for this protection, his application cannot be pretermitted in its entirety, whatever the Court concludes about asylum or withholding of removal.

The record satisfies each element. As to the harm Respondent fears, Ms. Garzón told him that he was dead, a masked man then tried to stab him "for being involved," and the killing of his dogs and the message in blood announced that he would be next. *See* Section A; Evidence, Credible Fear Packet, EOIR 20, 22, 23. An attack with a knife intended to kill satisfies the requirement of severe pain or suffering intentionally inflicted. That harm was intended both to punish Respondent for defending his family's land and to intimidate him and his family into surrendering it, and it was accompanied by ethnic slurs reflecting discrimination against him as an Indigenous person. *See* Section B.

Each of those purposes falls within the regulatory definition. 8 C.F.R. § 1208.18(a)(1). The threat continues: Ms. Garzón is still pursuing the land and has said that she will kill Respondent if she sees him. *See* Evidence, Respondent's Declaration, ¶ 37. As

shown in Section D, the record does not identify any place in Ecuador where Respondent could avoid that harm.

As to acquiescence, this is not a case in which the police were merely ineffective in preventing a crime. As set forth in Section C, police officers stood by and watched while a group connected to Ms. Garzón broke into the family's land and destroyed its crops. They responded with anger when the family sought a report, and they refused to act on Respondent's complaint of ethnic harassment absent physical injury. *See* Evidence, Credible Fear Packet, EOIR 20, 22, 23.

The officials were aware of the threat to Respondent and his family and chose not to intervene. That is the awareness and breach of duty the regulation describes. 8 C.F.R. § 1208.18(a)(7). The country conditions evidence confirms that Ecuador's institutions have a weak capacity to combat impunity, and that Indigenous people are particularly vulnerable to abuse of power by security forces. *See* Evidence 1, Country Conditions Reports, CC 2, CC 4.

The Department's own asylum officer reached that conclusion in 2023. After finding Respondent credible, the officer determined that he had established a reasonable possibility of torture. *See* Evidence, Credible Fear Packet, EOIR 8. The officer explained that the harm Respondent fears, death, "would be inflicted with the consent or acquiescence of a public official," because the police stood by while the family's fences were broken down and crops destroyed, were angry when Respondent made a report, and later demanded evidence of physical violence before they would help. Under the officer's own analysis, "the police engaged in wilfull blindness." *See* Evidence, Credible Fear Packet, EOIR 30.

Although the standard at a merits hearing is higher, that determination confirms that the record presents, at a minimum, a substantial factual question about the likelihood of torture with official acquiescence. Under *Matter of H-A-A-V-* and *Matter of G-R-B-*, that question cannot be resolved without a hearing.

G. Neither the One-Year Filing Deadline Nor the Circumvention of Lawful Pathways Rule Warrants Pretermission of the Asylum Claim

1. The exception to the one-year deadline presents questions of fact that require a hearing

An application for asylum must ordinarily be filed within one year of the

applicant's arrival in the United States. 8 U.S.C. § 1158(a)(2)(B). An untimely application may nevertheless be considered if the applicant demonstrates, to the satisfaction of the Immigration Judge, "extraordinary circumstances relating to the delay in filing.". 8 U.S.C. § 1158(a)(2)(D). Extraordinary circumstances are events or factors directly related to the failure to meet the deadline. They must not have been intentionally created by the applicant, and the application must be filed within a reasonable period given those circumstances. 8 C.F.R. § 1208.4(a)(5).

The regulation expressly identifies, as examples, the situation of an applicant who "was given parole, until a reasonable period before the filing of the asylum application," and serious illness or mental disability, "including any effects of persecution or violent harm suffered in the past." 8 C.F.R. § 1208.4(a)(5)(i), (iv). Whether such circumstances exist, and whether the application was filed within a reasonable period, are questions resolved on the facts of each case. *See Matter of T-M-H- & S-W-C-*, 25 I&N Dec. 193, 196 (BIA 2010).

Respondent entered the United States on August 27, 2023, and was paroled from DHS custody under INA § 212(d)(5)(A) on October 19, 2023. The parole authorization was valid for one year. *See* Exhibit 1, Interim Notice Authorizing Parole. Respondent was therefore in parole status when the one-year deadline expired on August 27, 2024, which places his case squarely within the circumstance identified in 8 C.F.R. § 1208.4(a)(5)(iv). The remaining question is whether he filed within a reasonable period thereafter. The record shows that he did, given the circumstances that followed.

First, Respondent had no proceeding in which to file. When he was released, he was told only that he had a hearing in 2026, and no one explained that he needed to file an asylum application within one year or how to do so. *See* Evidence, Respondent's Declaration, ¶ 26. The Notice to Appear that DHS issued in September 2023 was never filed with the Immigration Court, and EOIR's case information system reflected no proceedings in Respondent's name until August 13, 2025. *See* Exhibit 2, Notice to Appear dated September 21, 2023; *see also* Exhibit 4, EOIR Automated Case Information. When Respondent searched for his case online and then sought help from an immigration consultant, he was told that his A-number did not appear in the system and that he had no open case. *See* Evidence, Respondent's Declaration, ¶ 29. A Kichwa/Spanish speaker with no command of English, Respondent reasonably understood that he was to wait for the hearing he had been told about.

Second, Respondent was coping with the effects of the persecution he had suffered. He experienced depression, anxiety, nightmares, and constant fear after the attempt on his life, and these continued after his arrival in the United States. *See* Evidence, Respondent's Declaration, ¶¶ 16, 27 to 28.

Third, once proceedings actually began, Respondent moved diligently despite extraordinary obstacles. DHS detained him on July 13, 2025, and filed a new Notice to Appear on August 13, 2025. *See* Record of Proceedings, Notice to Appear dated August 13, 2025. Days later, he was hospitalized from August 17 to August 23, 2025, for an infection contracted in detention. *See* Exhibit 5, Héctor Javier Gualli Guaminga's Affidavit in Support of Petition for Writ of Habeas Corpus, filed Dec. 3, 2025, in the Eastern District of California.

At his first hearing, on August 26, 2025, he learned for the first time that he had to file an asylum application. He immediately began completing the form on his own and asked detention officers to forward it to the Court. *See* Evidence, Respondent's Habeas Declaration, ¶¶ 21 to 22. Before the next hearing, ICE transferred him in restraints through Louisiana, Texas, Arizona, and Washington to California, and he lost pages of his application in the process. *See* Evidence, Respondent's Habeas Declaration, ¶¶ 23, 25 to 26. He sought pro bono counsel without success, retained counsel in January 2026, was released by order of a federal court on February 6, 2026, and filed his application on March 4, 2026, within the deadline set by the Court. *See* Evidence, Respondent's Habeas Declaration, ¶ 24; Record of Proceedings, Form EOIR-28 dated January 14, 2026; Record of Proceedings, Payment Receipt dated March 4, 2026.

The January 15, 2026 order of the Adelanto Immigration Court, which attributed delay in the detained proceedings to Respondent, does not alter this analysis. See Record of Proceedings, Order of the Immigration Judge dated January 15, 2026. That order addressed scheduling in the detained proceedings and made no finding regarding the one-year deadline or its exceptions. The deadlines it referenced were set while Respondent was detained, unrepresented, recovering from hospitalization, and being transferred across the country after losing the draft of his application.

Whether these circumstances establish an exception to the filing deadline is a question that depends on Respondent's testimony and the Court's assessment of his credibility. It cannot be resolved against him on the papers. This is especially so because

the Immigration Judge's determination on this issue is subject to only limited judicial review. See INA § 208(a)(3). In any event, as shown in Sections E and F, the timeliness of the asylum application has no bearing on Respondent's claims for withholding of removal and protection under the Convention Against Torture.

2. The Circumvention of Lawful Pathways rule provides no basis for pretermission

At Respondent's 2023 credible fear interview, the asylum officer applied the presumption of asylum ineligibility established by the Circumvention of Lawful Pathways rule, 8 C.F.R. § 1208.33. *See* Evidence, Credible Fear Packet, EOIR 9, 18. That rule has since been vacated. *East Bay Sanctuary Covenant v. Trump*, No. 18-CV-06810-JST (N.D. Cal. May 7, 2026). It cannot serve as a basis for pretermitting Respondent's asylum claim. In any event, the rule never applied to withholding of removal or protection under the Convention Against Torture.

H. Pretermission Would Deprive Respondent of a Meaningful Opportunity to Be Heard

In removal proceedings, “the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government”. INA § 240(b)(4)(B). Applications for asylum and withholding of removal are decided "after an evidentiary hearing to resolve factual issues in dispute." 8 C.F.R. § 1240.11(c)(3). These guarantees implement the Fifth Amendment, which entitles noncitizens in removal proceedings to due process of law, that is, "a meaningful opportunity to be heard." *Serrano-Alberto v. Att'y Gen.*, 859 F.3d 208, 211 (3d Cir. 2017). Due process requires "the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 213 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)); *Abdulai v. Ashcroft*, 239 F.3d 542, 549 (3d Cir. 2000).

That guarantee comprises three protections: (1) "factfinding based on a record produced before the decisionmaker and disclosed to him or her"; (2) the opportunity to "make arguments on his or her own behalf"; and (3) "an individualized determination of his [or her] interests." *Serrano-Alberto*, 859 F.3d 208, 213 (quoting *Dia v. Ashcroft*, 353 F.3d 228, 239 (3d Cir. 2003).

At the outset, the record presents questions of credibility and weight that cannot be resolved without testimony. The record now includes statements attributed to Respondent in the 2023 border processing and credible fear records, some of which are

more detailed than, or differ in particulars from, his later declaration. *See* I-213, Record of Deportable / Inadmissible Alien; *see also* Evidence, Credible Fear Packet.

Those records were prepared through interpreters, shortly after a difficult journey, while Respondent was detained. The credible fear notes state on their face that they are "not a verbatim transcript" and that "there may be areas of the individual's claim that were not explored or documented." *See* Evidence, Credible Fear Packet, EOIR 7. Credibility must be assessed under the totality of the circumstances, considering all relevant factors. INA § 208(b)(1)(B)(iii).

That assessment requires the Court to hear Respondent, observe his testimony, and consider his explanations for any differences. It cannot be made on the papers. At the threshold stage, the facts alleged are taken as true, and pretermission is not a vehicle for adverse credibility determinations. *See* Matter of *H-A-A-V-*, 29 I&N Dec. 233, 234–36, 238 (BIA 2025). Notably, the only credibility determination in this record, made by the Department's own asylum officer, was favorable to Respondent. *See* Evidence, Credible Fear Packet, EOIR 7, 29.

Beyond credibility, the questions on which the Department may rely are inherently factual. The persecutor's motive is "a matter of fact to be determined by the Immigration Judge." *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011). Whether a proposed particular social group is cognizable, whether the applicant belongs to it, and whether the harm was inflicted on account of that membership are likewise inherently factual inquiries. *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018). Whether the Department can identify a specific, accessible, and substantially safer area of Ecuador requires findings of fact, *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33–34 (BIA 2012), as does the reasonableness of the period in which Respondent filed his application, 8 C.F.R. § 1208.4(a)(5). Each of these issues is addressed above, and each requires evidence and findings that only a hearing can supply.

Moreover, if the Court considers any element insufficiently corroborated, Respondent must be given notice and an opportunity to respond. Where an Immigration Judge determines that an applicant should provide corroborating evidence, that evidence must be provided unless the applicant does not have it and cannot reasonably obtain it. INA § 208(b)(1)(B)(ii). The Third Circuit requires the Immigration Judge to identify the facts for which corroboration is reasonably expected, to inquire whether the applicant has

provided it, and to analyze whether he has adequately explained its absence. *See Abdulai v. Ashcroft*, 239 F.3d 542, 554 (3rd Cir. 2000). Pretermission on the ground that the record lacks some item of evidence, without that inquiry, would deny Respondent the opportunity the statute and the Third Circuit guarantee.

Nor is this case comparable to *Matter of G-R-B-*. There, the respondent alleged no harm rising to the level of persecution, identified no evidence of future harm, and did not identify "any evidence or aspect of his application that was overlooked by the Immigration Judge." 30 I&N Dec. at 103. Here, by contrast, Respondent has alleged an attempt on his life, death threats delivered by an identified persecutor in ethnic terms, the killing of his dogs as a warning, and police who watched his family's land being invaded. That account is supported by his sworn declarations, by country conditions evidence, and by the Department's own credible fear record, which found him credible and found a reasonable possibility of torture. See Sections A through F.

For these reasons, Respondent preserves his objection to pretermission without an evidentiary hearing. Pretermission on this record would violate INA § 240(b)(4)(B), 8 C.F.R. § 1240.11(c)(3), and the Due Process Clause of the Fifth Amendment.[1]

IV. CONCLUSION AND RELIEF REQUESTED

Respondent's application, declaration, and supporting evidence, together with the credible fear record the Department placed before the Court, set forth a prima facie claim for each form of relief he seeks.

The record describes an attempt on Respondent's life, death threats delivered in ethnic terms by an identified persecutor, and the deliberate destruction of the protection that had saved him, all while the police stood by. It shows that his Indigenous Kichwa ethnicity was at least one central reason for that harm, that the Ecuadorian authorities were unable or unwilling to protect him, and that the Department has made no showing that he could safely and reasonably relocate.

His claims for withholding of removal and protection under the Convention Against Torture are independent of the timeliness of his asylum application, and the exception to the filing deadline turns on facts that only a hearing can resolve. The

[1] Respondent further notes that the sua sponte pretermission procedure applied under Matter of G-R-B- mirrors the regulatory pretermission procedure adopted in 85 Fed. Reg. 80,274 (Dec. 11, 2020), whose implementation remains enjoined. Pangea Legal Servs. v. U.S. Dep't of Homeland Sec., 512 F. Supp. 3d 966, 970–71, 977 (N.D. Cal. 2021).

Department's own asylum officer found Respondent credible and found a reasonable possibility that he would be tortured with the acquiescence of the Ecuadorian police. On this record, there are genuine and substantial issues of fact that require an evidentiary hearing.

For these reasons, Respondent respectfully requests that the Court:

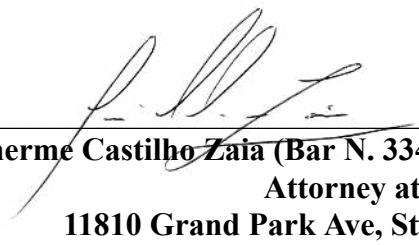
(1) discharge the Order to Show Cause dated [DATE];

(2) decline to pretermit Respondent's Form I-589, Application for Asylum and for Withholding of Removal, including his request for protection under the Convention Against Torture;

(3) schedule an individual hearing at which Respondent may testify and present evidence in support of his claims; and

(4) in the alternative, should the Court consider any element of Respondent's claims insufficiently supported, identify that element and afford Respondent notice and a reasonable opportunity to submit additional evidence and to testify before any decision on pretermission is made.

Respectfully,



Guilherme Castilho Zaia (Bar N. 334469)
Attorney at Law
11810 Grand Park Ave, Ste 500
North Bethesda, MD 20852
Counsel for Respondent

Exhibit list

Exhibits:	Pages:
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Exhibit 1: Interim Notice Authorizing Parole

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement



Date: 10/19/2023

In Reference to: A # 241 147 606

INTERIM NOTICE AUTHORIZING PAROLE

DOB: 11/08/1999

This letter is to inform you that U.S. Immigration and Customs Enforcement (ICE) has decided to parole you from its custody pursuant to its authority under section 212(d)(5)(A) of the Immigration and Nationality Act. This notice is being issued to you in lieu of Form I-94, *Arrival-Departure Record*, *see* 8 C.F.R. § 235.1(h)(2), and you should maintain a copy of this letter in your possession at all times.

Your parole authorization is valid for one year beginning from the date on this notice and will automatically terminate upon your departure or removal from the United States or at the end of the one-year period unless ICE provides you with an extension at its discretion. ICE may also terminate parole on notice prior to the automatic termination date. Parole is entirely within the discretion of ICE and can be terminated at any time and for any reason. Your parole is not valid for work authorization and is not an admission in lawful status.

Parole is conditioned on you complying with the terms and conditions of your release. You must notify ICE and the immigration judge of any address correction or address change. You must report for every scheduled hearing before the immigration court and every appointment as directed by ICE (including for removal from the United States should you become subject to a final removal order). You must not violate any local, State or Federal laws or ordinances. You must comply with any other specified conditions if identified separately.

I certify that I received a copy of this notice.

Gualli Guaminga, Hector		
Alien Name	Alien Signature	Date

CERTIFICATE OF SERVICE

I certify that on today's date, I served the respondent a copy of this parole notice by the following method (as checked):

☐ In person ☐ Other: _____

D.O. C. MEZZACAPO		
ICE Official Name	ICE Official Signature	Date

Address: 18 SCOTT ST NEWARK, NEW JERSEY 07102/Phone: (201) 349-1794

Exhibit 2: Notice to Appear dated September 21, 2023

P|C. 1324

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

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

File No: 241147606

In the Matter of:

Respondent: HECTOR JAVIER GUALLI-GUAMINGA currently residing at:

50 Glenwood St., Brockton, MA 02301 774-453-7209

(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 Ecuador and a citizen of ECUADOR;
3. You entered the United States at an unknown location on or about 2023-08-27;
4. You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document;
5. 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:

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

Section 212(a)(6)(A)(i) of the Act, as amended, as an alien present in the United States without being admitted or paroled, or who has 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:

JFK BLDG, 15 NEW SUDBURY, #320, BOSTON, MA 02203

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

on 02/24/2026 *(Date)* at 1:30 PM *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

Paul Gleason Supervisory Asylum Officer

(Signature and Title of Issuing Officer)

Date: 09/21/2023 Houston, TX

(City and State)

P|C. 1324

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

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

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(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 Ecuador and a citizen of ECUADOR;
3. You entered the United States at an unknown location on or about 2023-08-27;
4. You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document;
5. 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:

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

Section 212(a)(6)(A)(i) of the Act, as amended, as an alien present in the United States without being admitted or paroled, or who has 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:

JFK BLDG, 15 NEW SUDBURY, #320, BOSTON, MA 02203

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

on 02/24/2026 *(Date)* at 1:30 PM *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

Paul Gleason Supervisory Asylum Officer

(Signature and Title of Issuing Officer)

Date: 09/21/2023 Houston, TX

(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**. 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)

_____
(Signature and Title of Immigration Officer)

Date: _____

Certificate of Service

This Notice To Appear was served on the respondent by me on _____, 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 _____ 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)

_____
(Signature and Title of officer)

Privacy Act Statement

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

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

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

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

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

Exhibit 3: Order of Release on Recognizance

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF RELEASE ON RECOGNIZANCE
(CONTINUATION PAGE)

Alien Name: GUALLI-GUAMINGA, HECTOR JAVIER		Picture	Right Index Print
File Number: 241 147 606	Date: February 06, 2026		
Alien's Signature			
Alien's Telephone Number (if any): (862)-452-4625 (Friend: Jessica)			
Alien's Address: 56 Maple Ave, Irvington, NJ 07111			

PERSONAL REPORT RECORD

Date	Officer	Comment/Changes

Signature	Title: Deportation Officer



HECTOR GUALLI-GUAMINGA
A241147606
November 08, 1999

Printed on: February 20, 2026 8:36:51 AM

ICE

Next Reporting Date and Time: **August 19, 2026 between 10:00 AM and 12:00 PM**

Participant reported at the (NEW) ERO office on N/A.

Please keep this receipt with your records. Store receipt away from sunlight.

For information on an Immigration court case, please go to: https://acis.eoir.justice.gov or call 800-898-7180.

I-220R

U.S. Department of Homeland Security

Continuation Page for Form I-220A

Alien's Name	File Number	Date
GUALLI-GUAMINGA, HECTOR JAVIER	241 147 606 Event No: BUF2507000052	Feb 06, 2026

LOCATION OF ICE OFFICE WHICH YOU REPORT TO

U.S. IMMIGRATION & CUSTOMS ENFORCEMENT
ERO Newark Office
970 Broad Street, 11th Floor
Newark, NJ 07102

Signature	Title
MARTINEZ, DANIEL	Deportation Officer

Exhibit 4: EOIR Automated Case Information

An official website of the United States government
Here's how you know

EOIR | Automated Case Information

Court Closures Today October 7, 2026

Please check https://www.justice.gov/eoir-operational-status for up to date closures.

Automated Case Information

Name: GUALLI-GUAMINGA, HECTOR JAVIER | A-Number: 241-147-606 | Docket Date: 8/13/2025

Next Hearing Information

Your upcoming **MASTER** hearing is **IN PERSON** on **December 7, 2026** at **9:00 AM**.

JUDGE
Ryan, Dennis

COURT ADDRESS
970 BROAD STREET, ROOM 1200
NEWARK, NJ 07102

Court Decision and Motion Information

Exhibit 5: Héctor Javier Gualli Guaminga’s Affidavit in Support of Petition for Writ of Habeas Corpus, filed Dec. 3, 2025, in the Eastern District of California

Natalia Vieira Santanna,
CA BAR No. 337502
MI BAR No. P76443
SANTANNA LAW OFFICES
PO Box 7528, Oakland, CA, 94601
(510) 922-0154 (Telephone)
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Attorney for Petitioner-Plaintiff

Otavio Haverroth Silva,
CA BAR No. 343846
HS LAW CORP
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(510) 241-9336 (Telephone)
otavio@legalhs.com (Email)
Attorney for Petitioner-Plaintiff

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

H.J.G.G., Petitioner, v. Minga WOFFORD, et al. Respondents.	No. **AFFIDAVIT OF H.J.G.G. IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS, EX-PARTE MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Hector Javier Gualli Guaminga, declare as follows:

1. I provided this information to my lawyer, who understands Spanish and spoke with me in Spanish. I listened to everything that was written, and I understand it. I promise to tell the truth.
2. My name is Hector Javier Gualli Guaminga, and I am 26 years old. I am an Ecuadorian national and a member of the Kichwa ethnic group. I have been detained since July 13, 2025, when I was arrested by ICE.

3. In Ecuador, my family and I went through very hard times and serious persecution because of a dispute over a land dispute, motivated by our belonging to the Indigenous Kichwa group.
4. My parents legally bought a piece of land, but a local woman started claiming it was hers. Because we're Indigenous and my parents don't have much formal education, she thought she could take advantage of us. I helped my parents with the legal process, so she started targeting me.
5. She sent people to scare us and warned that she could "take care of" me if I kept defending the land. In July 2023, our two dogs were killed, and a message saying "we are coming for you" was left in blood. That's when I realized my life was in real danger.
6. Desperate, I fled Ecuador and came to the United States in search of safety. I believed that here I would have a better chance to be safe and to live without the constant fear I had in Ecuador.
7. I crossed the United States border on August 27, 2023, through Arizona, and turned myself in to the immigration officers. I was immediately detained and remained in detention for around two months.
8. After two months, I had a credible fear interview. I told the officer that I was afraid to go back to Ecuador because of the persecution I suffered there. After this interview, they released me.
9. At the moment of release, they only took my fingerprints and told me that I had to appear for a hearing in 2026. They said I did not need to do anything else. They did not inform me why I was being released or that I had to find a lawyer. They did not say anything about the asylum process. No one explained to me that I had to file an asylum application within one

year of entering the United States or how to do this. They only told me I had a hearing in 2026. They did not tell me anything more.

10. I did not receive any conditions for my release. They did not ask me to pay a bond, and they did not tell me I had to report regularly to ICE. When they released me, they only asked me for a phone number and an address. I said I would live at 50 Glenwood St, Brockton, Massachusetts.

11. All I knew was that I had to go to the Immigration Court in Boston in February 2026. I kept my address the same, in Brockton, ever since I entered the United States, and checked my mail regularly in case any notifications came for me, but it never did. I kept waiting, but I never received anything from immigration.

12. About two months after my release at the border, I tried to check my A-number in the online system, but I could not find anything. I then went to an immigration "consultant" to ask about getting a work permit. She told me she could not help me because my A-number did not appear in the system and that I did not have a case open. I did not understand why. I kept waiting to talk with the judge in 2026, at my hearing.

13. I was awaiting my hearing date when I was arrested by ICE. Honestly, I do not understand why this happened. I was doing everything right, I did not commit any crimes or violate any laws or conditions from immigration.

14. Then, on July 13 of this year, around noon, in Buffalo, New York, I was arrested while helping my friend with his move. I was parking the van, in my pajamas, when about four unmarked cars, with no visible identification, showed up, and six or seven agents got out.

15. My friend, who was driving the car, had a valid driver's license and there was no traffic violation. I did not understand why they were doing this.

16. The agents did not show any documentation or identify themselves to me, but now I understand they were from ICE. Besides, they only spoke English, so I did not understand what they were saying, but I still cooperated and did not resist in any way.
17. Then they handcuffed my hands behind my back and put me into one of the cars. The handcuffs were very tight, and it hurt, leaving a red mark on my wrists.
18. They took me to an office in Buffalo, about an hour away. There, they asked me where I lived, with whom, who did I work with, who was my boss. I answered all their questions and was moved to the Batavia Detention Center. They still did not inform me of what was happening or why I was being detained.
19. In Batavia, they put me in a processing room for about an hour and a half. After that, I was transferred to a cell, where I stayed from July 13 until September 8, 2025.
20. While I was in Batavia, I had to be hospitalized because of food poisoning from spoiled food that was served to me. I was in the hospital from August 17 to August 23. The doctors told me it was a bacterial infection. They only gave me some medication, which made me feel nauseous and lose my appetite. I became weak, and I continued to have stomach ache and often feel unwell till this day.
21. In Batavia, I had my first court hearing in front of an immigration judge on August 26. That judge told me, for the first time, that I needed to file an asylum application, and gave me the form and told me to complete it by the next hearing, which was set for September 11.
22. Even without a lawyer and with language difficulties, I started to fill out the form and I wanted to move forward with my case. I asked the officers in the detention center if they could send the form to the judge for me, but they said I needed to present it at the hearing.

But before the hearing took place, I was transferred to California, and the hearing date was changed to October 8.

23. I lost some of the pages of the form during the transfer, and was not able to present the asylum request.

24. At this second hearing, on October 8, the judge did not say anything about the asylum, and only told me I needed to find legal representation, so I asked for more time to find an attorney. And I did try to find an attorney, I contacted several pro bono lawyers, but none of them responded. The calls did not go through and my voicemails were not answered. I do not have the money to hire a lawyer for my asylum.

25. On the night of September 8, they took me out of Batavia and took me by bus to the airport. Then they moved me through several places. I arrived in Louisiana on September 9 and spent one night there, from the 9th to the 10th. On September 10, they took me to Texas, where I arrived the same day. From Texas, I was moved the same day to Arizona and arrived there in the afternoon of September 10. I stayed one night in Arizona and then arrived in Washington State on September 11. Shortly after that, they transferred me to California, and I arrived in Mesa Verde September 11 or 12, where I am still detained now.

26. During my transfers, they always kept me in chains, with my wrists in handcuffs, my ankles in shackles, and a belt around my waist. On some bus rides, there was no toilet, and it was so bad that we had to pee into bottles. On some flights, even though there was a bathroom, there was no water, and I became dehydrated.

27. In Louisiana, I was kept in a cold, dark, and crowded cell, with about 40 people. In Arizona, I slept on the floor, without even a blanket, and was given only a sandwich, an apple and a bottle of water. In all of these places, it was hard to keep clean, to sleep, and to eat enough.

28. I was treated like a criminal. In Arizona, some officers tightened my restraints so much that my hands and my waist hurt a lot. When I complained, they ignored me. In Batavia, I heard guards shouting at detainees, cursing them out and slamming doors.

29. Where I am now, here in Mesa Verde, the showers and bathrooms are very dirty, and I developed a fungal infection on my skin. They even had to replace some of the showers because of this problem. When I went to the clinic, they just gave me a cream and didn't really try to find out what was wrong.

30. Today, I sleep in a big open room with almost a hundred other detainees, without any individual cells. It is always noisy, the lights stay on at night.

31. It is also very cold in the cell, and they only give out one blanket, which is very thin and not enough. I asked for a thicker blanket, but they said it was only one per person. My back hurts from the hard bed and I cannot rest well, getting only a few hours of sleep each night.

32. They serve food three times a day, but it is always more or less the same, it does not taste very good, and many times it is not enough, so I am often hungry.

33. Since I entered the country, I have tried, as much as I can, to follow the rules. I gave my address and phone number so they could find me, and looked for help to fix my status and even asked about getting work authorization so I could work legally. I want to resolve my immigration situation the right way, not by running from it.

34. Because I have been sick, I feel discouraged and weak, like I lost a lot of my strength, and I still have pain in my stomach that does not really go away. I have insomnia, and there are nights when I lie awake the whole time and cannot sleep at all because I am so worried about my situation, my future, and my family. I became very anxious, and feel constantly sad, being stuck here, apart from my family and the life I built for myself for these past 2

years. What scares me the most is the idea of returning to Ecuador, where I would be attacked and threatened again.

35. To this day, I do not understand why I was arrested and why I'm here. I was doing everything right, following their instructions, and never did anything bad.

36. If I am released, my partner and I plan to live together in Wallington, New Jersey. I want to find a pro bono lawyer and go through with my asylum process, because I truly fear returning and know what happened to me was not right.

37. I will follow any instructions or conditions immigration gives me, and will go to all court hearings or appointments scheduled. I have always been available to immigration and and that is not going to change. I just want the opportunity to share my story and resolve my immigration status in the United States.

I say that what I wrote here is true, according to what I know and remember. Executed this 28th day of November, 2025.

/s/ Hector Javier Gualli Guaminga
Hector Javier Gualli Guaminga
Declarant

I, Teodoro Daniel Larsen, telephone number 415 425-2508, mailing address P.O. Box 90487, San Diego, CA 92169, certify that the professional translation of this document from Spanish to English has been performed by myself, a qualified translator fluent in both languages, and that the following is an accurate and complete translation of the document.

_____ **Date: November 28, 2025.**

Yo, Hector Javier Gualli Guaminga, declaro lo siguiente:

1. Le di esta información a mi abogado, que entiende español y habló conmigo en español. Escuché todo lo que estaba escrito y lo entiendo. Prometo decir la verdad.

2. Me llamo Hector Javier Gualli Guaminga y tengo 26 años. Soy ecuatoriano y miembro del grupo étnico Kichwa. Estoy detenido desde el 13 de julio de 2025, cuando fui arrestado por ICE.

3. En Ecuador, mi familia y yo pasamos tiempos muy difíciles y seria persecución por una disputa sobre una disputa de tierras, motivado porque pertenecemos al grupo indígena Kichwa.

4. Mis padres compraron legalmente una parcela de tierra, pero una mujer local empezó a reclamar que era de ella. Como somos indígenas y mis padres no tienen mucha educación formal, ella pensó que podría aprovecharse de nosotros. Como ayudé a mis padres con el proceso legal, ella comenzó a dirigirse a mí.

5. Envió gente para asustarnos y advirtió que podría “ocuparse” de mí si yo seguía defendiendo la tierra. En julio de 2023, nuestros dos perros fueron muertos y fue dejado un mensaje en sangre: “vamos por ti”. Entonces me di cuenta de que mi vida estaba realmente corriendo peligro.

6. Desesperado, hui de Ecuador y vine a Estados Unidos buscando seguridad. Creí que aquí tendría mejor oportunidades de estar seguro y vivir sin el miedo constante que tenía en Ecuador.

7. Crucé la frontera de Estados Unidos el 27 de agosto de 2023 por Arizona y me entregué a los oficiales de inmigración. Me detuvieron de inmediato y permanecí detenido unos dos meses.

8. Después de dos meses, tuve una entrevista de miedo creíble. Le dije al oficial que tenía miedo de volver a Ecuador por la persecución que sufría allá. Después de la entrevista, me liberaron.

9. En el momento de liberarme, solamente me tomaron las huellas digitales y me dijeron que tenía que presentarme a una audiencia en 2026. Dijeron que no necesitaban nada más. No me informaron por qué me estaban liberando ni que debía buscar un abogado. No dijeron nada sobre el proceso de asilo. Nadie me explicó que tenía que presentar una solicitud de asilo dentro del período de un año de ingresar a Estados Unidos ni cómo hacerlo. Solamente me dijeron que tenía una audiencia en 2026. No me dijeron nada más.

10. No recibí ninguna condición para mi liberación. No me pidieron que pagara fianza ni me dijeron que tenía que reportarme regularmente a ICE. Cuando me liberaron, solamente me pidieron un número de teléfono y una dirección. Les dije que viviría en 50 Glenwood St, Brockton, Massachusetts.

11. Todo lo que sabía era que tenía que ir a la Corte de Inmigración en Boston en febrero de 2026. Siempre mantuve la misma dirección en Brockton desde que ingresé a Estados Unidos y revisaba mi correo regularmente en caso de que me llegara alguna notificación, pero nunca llegó nada. Seguí esperando, pero nunca recibí nada de inmigración.

12. Unos dos meses después de que me libertaron en la frontera, intenté verificar A-number en el sistema online, pero no pude encontrar nada. Entonces, fui a una "consultora" de inmigración para preguntar sobre cómo conseguir un permiso de trabajo. Ella me dijo que no podía ayudarme porque mi A-number no aparecía en el sistema y que yo no tenía un caso abierto. No entendí el porqué. Seguí esperando hablar con el juez en 2026 en mi audiencia.

13. Estaba esperando la fecha de mi audiencia cuando fui arrestado por ICE. Honestamente, no entiendo por qué sucedió. Estaba haciendo todo correctamente, no cometí ningún delito ni violé ninguna ley ni condición de inmigración.

14. Después, el 13 de julio de este año alrededor del mediodía en Buffalo, Nueva York, fui arrestado mientras ayudaba a mi amigo a mudarse. Yo estaba estacionando la van en piyama cuando unos cuatro automóviles sin marcas, sin identificación visible, aparecieron y seis o siete agentes bajaron.

15. Mi amigo, que estaba conduciendo el automóvil, tenía una licencia de conducir válida y no hubo ninguna violación de tránsito. No entendía por qué estaban haciendo eso.

16. Los agentes no mostraron ninguna documentación ni se identificaron a mí, pero ahora entiendo que eran de ICE. Además, solamente hablaban inglés, entonces no entendí lo que estaban diciendo, pero cooperé y no me resistí de ninguna manera.

17. Después me esposaron con las manos atrás y me pusieron en uno de los automóviles. Las esposas estaban muy apretadas y dolían, dejándome una marca roja en las muñecas.

18. Me llevaron a una oficina en Buffalo, a más o menos una hora de viaje. Allá, me preguntaron dónde vivía y con quién, con quién trabajaba, quién era mi jefe. Respondí todas las preguntas y me trasladaron al Centro de Detención de Batavia. Todavía no me informaron lo que estaba sucediendo ni por qué me estaban deteniendo.

19. En Batavia, me pusieron en una habitación de procesamiento por aproximadamente una hora y media. Después, me transfirieron a una celda, donde estuve del 13 de julio al 8 de septiembre de 2025.

20. Mientras estuve en Batavia, me tuvieron que hospitalizar por intoxicación alimenticia de comida podrida que me sirvieron. Estuve en el hospital del 17 de agosto al 23 de agosto. Los médicos me dijeron que fue una infección bacteriana. Solamente me medicaron un poco, lo que me hizo sentir nauseabundo y perder el apetito. Me debilité y seguí con dolor de estómago y a menudo me siento mal hasta el día de hoy.

21. En Batavia, tuve mi primera audiencia de la corte frente a un juez de inmigración el 26 de agosto. Ese juez me dijo por primera vez que debía presentar una solicitud de asilo y me dio el formulario y me dijo que lo completara antes de la siguiente audiencia, que era el 11 de septiembre.

22. Aun sin abogado y con dificultades con el idioma, empecé a llenar el formulario y quería avanzar con mi caso. Les pedí a los oficiales del centro de detención si podían enviarle el formulario al juez de mi parte, pero dijeron que yo debía presentarlo en la audiencia. Pero antes de que tuviera lugar la audiencia, me transfirieron a California y cambiaron la fecha de la audiencia para el 8 de octubre.

23. Durante la transferencia perdí algunas páginas del formulario y no pude presentar la solicitud de asilo.

24. En la segunda audiencia, el 8 de octubre, el juez no dijo nada sobre el asilo y me dijo que debía encontrar representación legal, entonces pedí más tiempo para encontrar un abogado. E intenté encontrar un abogado, contacté a varios abogados pro bono, pero ninguno respondió. Las llamadas no se completaban y mis mensajes en los correos de mensajes no fueron respondidos. No tengo dinero para contratar un abogado para mi asilo.

25. El 8 de septiembre a la noche, me sacaron de Batavia y me llevaron en autobús al aeropuerto. Después me llevaron por varios lugares. Llegué a Louisiana el 9 de septiembre y pasé una noche allá, del 9 al 10 de septiembre. El 10 de septiembre, me llevaron a Texas, a donde llegué el mismo día. De Texas, me llevaron el mismo día a Arizona y llegué aquí el 10 de septiembre por la tarde. Pasé una noche en Arizona y después llegué al estado de Washington el 11 de septiembre. Poco tiempo después, me transfirieron a California, y llegué a Mesa Verde el 11 o 12 de septiembre, donde estoy detenido ahora.

26. Durante las transferencias, siempre me mantuvieron encadenado, esposado de las muñecas, con grilletes en los tobillos, y un cinto en la cintura. En algunos viajes de autobús, no había baño y era tan malo que teníamos que hacer pis en botellas. En algunos vuelos, aunque había baño, no había agua y me deshidraté.

27. En Louisiana, me mantuvieron en una celda fría, oscura y abarrotada de gente, con unas 40 personas. En Arizona, dormí en el piso sin siquiera una cobija y me dieron solamente un emparedado, una manzana y una botella de agua. En todos estos lugares, era difícil mantenerse limpio, dormir y comer lo suficiente.

28. Era tratado como un delincuente. En Arizona, algunos oficiales me apretaban tanto las correas que me dolían mucho las manos y muñecas. Cuando me quejaba, me ignoraban. En Batavia, escuchaba a los guardias gritarles a los detenidos, maldecirlos y dar portazos.

29. Donde estoy ahora, aquí, en Mesa Verde, las regaderas y los baños son muy sucios, y desarrollé una infección fúngica en la piel. Ellos hasta tuvieron que reemplazar algunas regaderas por este problema. Cuando fui a la clínica, apenas me dieron una crema y realmente ni intentaron averiguar qué estaba mal.

30. Hoy, duermo en una habitación grande abierta con casi 100 otros detenidos sin celdas individuales. Siempre hay ruido, las luces se quedan encendidas a la noche.

31. También hace mucho frío en la celda y dan solamente una cobija, que es muy fina y no es suficiente. Pedí una cobija más gruesa, pero dijeron que era solamente una por persona. Me duele la espalda por la cama dura y no puedo descansar bien por tener solamente algunas horas de sueño por noche.

32. Sirven comida tres veces por día, pero siempre es más o menos lo mismo, no tiene un sabor muy bueno y muchas veces no es la cantidad suficiente, entonces a menudo me quedo con hambre.

33. Desde que entré al país, trato seguir las reglas al máximo. Di mi dirección y número de teléfono para que pudieran encontrarme, busqué ayuda para poner en orden mi situación legal y hasta pregunté sobre cómo conseguir autorización para trabajar para

poder trabajar legalmente. Quiero resolver mi situación de inmigración del modo correcto, no huyendo de ella.

34. Como he estado enfermo, me siento desanimado y débil, como si hubiera perdido toda mi fuerza y aún tengo dolor de estómago porque realmente no pasa. Tengo insomnio y hay noches que me la paso acostado despierto todo el tiempo y no logro dormir en absoluto porque estoy demasiado preocupado sobre mi situación, mi futuro y mi familia. Me he puesto muy ansioso y me siento constantemente triste por estar atascado aquí, separado de mi familia y de la vida que construí para mí mismo los últimos dos años. Lo que más me asusta es la idea de regresar a Ecuador, donde sería atacado y amenazado de nuevo.

35. Hasta el día de hoy, no entiendo por qué fui arrestado ni por qué estoy aquí. Estaba haciendo todo correctamente, siguiendo sus instrucciones y nunca hice nada malo.

36. Si soy liberado, mi compañera y yo planeamos vivir juntos en Wallington, Nueva Jersey. Quiero encontrar un abogado pro bono y pasar por el proceso de asilo porque realmente temo regresar y saber que lo que me sucedió no era correcto.

37. Seguiré todas las instrucciones y condiciones que la inmigración me dé e iré a todas las audiencias de la corte o citas que me programen. Siempre estuve a disposición de inmigración y eso no va a cambiar. Simplemente quiero la oportunidad de compartir mi historia y resolver mi situación de inmigración en Estados Unidos.

Digo que lo que escribí aquí es verdad de acuerdo con lo que sé y recuerdo. Firmado este 28 de noviembre de 2025.



/f/ Hector Javier Gualli Guaminga

Hector Javier Gualli Guaminga

Declarante

Hector Javier Gualli-Guaminga **File No. A 241-147-606**

PROOF OF SERVICE

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

RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE AND BRIEF IN OPPOSITION TO PRETERMISSION

To the following:

Office Location:	**Mailing Address:**
Department of Homeland Security Office of the Chief Counsel 970 Broad Street, Room 1300 Newark, NJ 07102	US Immigration and Customs Enforcement US Department of Homeland Security Office of the Principal Legal Advisor 970 Broad Street, Room 1300 Newark, NJ 07102

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.

Guilherme Castilho Zaia (Bar N. 334469)
Attorney at Law
11810 Grand Park Ave, Ste 500
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Counsel for Respondent