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DETAINED

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

In the Matter of	)	
Luis Ernesto Lliguishusca Loja	)	**File No. A 240-159-856**
In Removal Proceedings	)	

RESPONDENT'S BRIEF ON APPEAL

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RESPONDENT'S BRIEF ON APPEAL

I. INTRODUCTION

Respondent Luis Ernesto Lliguishusca Loja, a nineteen-year-old detained pro se respondent, was ordered removed to Ecuador on January 12, 2026, after the Immigration Judge ("IJ") deemed his applications for asylum, withholding of removal, and protection under the Convention Against Torture abandoned. That decision rests on material errors of law, clearly erroneous factual findings, and a proceeding that failed to satisfy the requirements of due process.

The hearing record reflects that Respondent repeatedly informed the Immigration Judge that he was attempting to pursue protection through counsel. At an earlier hearing, he advised the court that he had retained an attorney who could not appear and requested additional time for counsel to be present. At the final hearing, he again informed the court that a lawyer was working on his asylum case and his release. Rather than clarifying the status of counsel or making any meaningful inquiry into the status of Respondent's application, the Immigration Judge

immediately concluded that Respondent had abandoned all relief and entered a removal order. *See* Tr. Nov. 14, 2025; Tr. Jan. 12, 2026.

Those errors were particularly significant because the Respondent remained detained throughout the proceedings and appeared without a representative. Under those circumstances, the Immigration Judge had a heightened obligation to develop the record before entering a finding that permanently foreclosed Respondent's opportunity to seek humanitarian protection. By failing to do so, the Immigration Judge deprived Respondent of the full and fair hearing guaranteed by the Due Process Clause of the Fifth Amendment.

The record before the Board further confirms that Respondent was actively attempting to pursue relief rather than abandon it. Documentary evidence submitted with the concurrently filed Motion to Remand corroborates that Respondent timely completed his asylum application, that counsel promptly undertook efforts to file it, and that delays associated with Respondent's detention materially affected the filing process. *See* Motion to Remand and accompanying exhibits. Failure to fulfill the deadline set by the Court resulted from exceptional circumstances beyond the Respondent’s control and implicated a showing of good cause for untimely filing.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Respondent Luis Ernesto Lliguishusca Loja is a native and citizen of Ecuador, born on May 24, 2006, in Cañar, Ecuador. He entered the United States without inspection on May 22, 2023, at the age of sixteen, crossing the border in Texas. He was not apprehended by border officials, was never processed through a shelter for unaccompanied minors, and received no information regarding his rights as an unaccompanied child. *See* Motion to Reopen, Exhibit A.

Respondent seeks asylum, withholding of removal, and protection under the Convention Against Torture based on persecution he suffered beginning at age thirteen at the hands of Los Lobos Ecuador. Members of the organization repeatedly threatened and physically attacked the Respondent and his family. *See* Motion to Reopen, Exhibits A and D.

The United States Department of State designated Los Lobos, together with Los Choneros, as Foreign Terrorist Organizations on September 5, 2025, pursuant to section 219 of the Immigration and Nationality Act. *See* Foreign Terrorist Organization Designation of Los Choneros and Los Lobos, 90 Fed. Reg. 43020 (Sept. 5, 2025); U.S. Dep't of State, Press Statement, Terrorist Designations of Los Choneros and Los Lobos (Sept. 4, 2025).

On August 6, 2025, Immigration and Customs Enforcement officers arrested Respondent in Albany, New York, as he was traveling to work. Removal proceedings were initiated before the Batavia Immigration Court, and the initial Master Calendar Hearing was held on August 28, 2025.

It must be noted that the Notice to Appear was issued on August 6, 2025, and the ICE arrest was Respondent's first contact with immigration. From the initiation of removal proceedings to issuance of the removal order, approximately five months elapsed, during which time he remained continuously detained.

After this arrest, the Respondent was transferred through several detention facilities before arriving at the Mesa Verde ICE Processing Center in Bakersfield, California, where he has remained continuously detained throughout these proceedings. As a result of these transfers and the subsequent change of venue, jurisdiction over his proceedings was vested in the Adelanto Immigration Court.

Thus, beginning in October 2025, Respondent appeared for three master hearings before the Adelanto Immigration Court, all remotely, while continuously detained and unrepresented: on October 10, 2025; November 14, 2025; and, lastly, January 12, 2026.

At his October 10, 2025 master calendar hearing, the Immigration Judge advised Respondent of his rights and responsibilities in the proceedings and granted an extension of time. *See* Tr. Oct. 10, 2025, 14:19-25, 15:2-11.

The continued hearing was held on November 14, 2025, occasion at which removability was established. Respondent appeared unrepresented, but informed the Immigration Judge that he had retained an attorney, however, she could not appear that day. *See* Tr. Nov. 14, 2025, 17:5-6. Respondent further explained that said counsel had instructed him to request another hearing so that she could appear on his behalf. *See* Tr. Nov. 14, 2025, 18:1-2. The Immigration Judge denied the requested continuance and proceeded to the discussion of removability. *See* Tr. Nov. 14, 2025, 18:4-5. Moreover, Respondent expressly indicated he feared being removed to Ecuador. *See* Tr. Nov. 14, 2025, 24:16-18. The IJ reset the master calendar for January 12, 2026, and set a deadline for the submission of Form I-589 and proof of payment of the asylum filing fee. *See* Tr. Nov. 14, 2025, 26:14-18.

Following the November 14 hearing, undersigned counsel undertook limited-scope pro bono representation for the purpose of preparing and submitting Respondent's Form I-589. Counsel prepared the application and transmitted it to Respondent at the Mesa Verde ICE Processing Center for review and signature. The application was not promptly delivered to Respondent by detention officials, delaying his ability to complete and return it. After receiving the application, Respondent completed the requested information, signed the application, and

immediately returned it for mailing. Counsel thereafter promptly completed the filing process. *See* Motion to Reopen; Motion to Remand.

Counsel paid the required filing fee through the EOIR electronic payment system and mailed the completed filing package, including the signed Form I-589 and Form EOIR-61, to the Adelanto Immigration Court before the January 12, 2026 hearing. Because counsel's representation was limited to document assistance and counsel had not entered an appearance as attorney of record in the removal proceedings, no EOIR-28 was filed on his behalf and the filing could not be submitted electronically through ECAS. *See* Motion to Reopen; Motion to Remand.

At the January 12, 2026 hearing, after noting that no application had been received by the deadline, Respondent clearly stated that he had a lawyer working on his asylum case (the same that represented him in federal court). *See* Tr. Jan. 12, 2026, 29:8-9. Rather than asking any follow-up questions concerning the identity of counsel, the status of the application, or whether additional time was necessary to clarify the filing, the Immigration Judge immediately concluded that Respondent had abandoned all applications for relief and ordered him removed to Ecuador. *See* Tr. Jan. 12, 2026; Oral Decision dated Jan. 12, 2026. Had the Immigration Judge made any further inquiry, she would have learned that Respondent had retained undersigned counsel to represent him in a federal habeas corpus proceeding and that, by agreement between the parties, undersigned counsel was also assisting Respondent on a pro bono basis with the preparation of his application for relief before the Immigration Court. *See* Motion to Reopen, Exhibit B.

Respondent timely reserved his right to appeal. *See* Tr. Jan. 12, 2026, 29:21-23.

On January 13, 2026, the day after the hearing, the Immigration Court issued a Rejected Filing Notice returning the Form I-589, the fee receipt, and Form EOIR-61 on the ground that the case was no longer pending before that court. *See* Rejection Notice, dated January 13, 2026. The

notice confirms that the filing package had been received by the court and was returned because the proceedings had already been concluded by the Immigration Judge's January 12, 2026 removal order.

On February 1, 2026, Respondent filed a Motion to Reopen before the Immigration Court, presenting evidence of the filing timeline and the circumstances of his detention. *See* Motion to Reopen. Following Respondent's timely Notice of Appeal on February 10, 2026, the Immigration Judge denied the Motion to Reopen on jurisdictional grounds because the appeal had divested the Immigration Court of authority to consider the motion, pursuant to 8 C.F.R. § 1003.23(b)(1). *See* Order of the Immigration Judge, dated February 13, 2026. Respondent now submits this appeal together with a concurrently filed Motion to Remand, requesting that the Board vacate the removal order and, to the extent necessary, remand the proceedings for consideration of the additional evidence in the first instance.

III. ISSUES PRESENTED FOR REVIEW

(1) Whether the Immigration Judge clearly erred in finding that Respondent had failed to apply for asylum, withholding of removal, and protection under the Convention Against Torture, and in deeming all applications for relief abandoned.

(2) Whether the Immigration Judge abused her discretion and committed legal error by finding Respondent's applications abandoned without adequately considering whether any failure to timely file resulted from circumstances beyond Respondent's control.

(3) Whether the Immigration Judge violated her heightened duty to develop the record for a detained, unrepresented respondent by ordering removal without further inquiry after

Respondent informed the court that he had retained counsel who was working on his asylum case.

(4) Whether the cumulative effect of the Immigration Judge's legal and factual errors deprived Respondent of the full and fair hearing guaranteed by the Due Process Clause of the Fifth Amendment.

(5) Whether, to the extent resolution of these issues requires consideration of evidence that was unavailable to the Immigration Judge, the Board should remand the proceedings for further factfinding pursuant to 8 C.F.R. § 1003.1(d)(3)(iv).

IV. STANDARD OF REVIEW

The Board reviews an Immigration Judge's findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). A factual finding is clearly erroneous when, although there is evidence to support it, the reviewing body is left with the definite and firm conviction that a mistake has been committed. *See Matter of S-H-*, 23 I&N Dec. 462, 464–66 (BIA 2002). Accordingly, the Immigration Judge's factual findings, including the determination that Respondent abandoned his applications for relief, are subject to clear-error review.

Questions of law, discretion, judgment, constitutional claims, and all other issues arising from an Immigration Judge's decision are reviewed de novo. 8 C.F.R. § 1003.1(d)(3)(ii). Whether the Immigration Judge properly applied the governing regulations concerning abandonment, fulfilled the heightened duty to develop the record for a detained, unrepresented respondent, and afforded Respondent the due process guaranteed by the Fifth Amendment are questions of law subject to de novo review.

The Board does not engage in factfinding in the course of deciding appeals. 8 C.F.R. § 1003.1(d)(3)(iv). Where additional evidence is necessary to resolve issues raised on appeal, the proper course is remand to the Immigration Judge for further factfinding. *See Matter of Coelho*, 20 I&N Dec. 464, 471–73 (BIA 1992). Respondent therefore submits, together with this appeal, a Motion to Remand requesting that, to the extent further factual development is necessary, the proceedings be remanded for consideration of the additional evidence in the first instance.

V. SUMMARY OF ARGUMENT

The Immigration Judge's January 12, 2026 order finding that Respondent had failed to apply for relief, and deeming all relief abandoned, rests on a factual premise that the record directly contradicts. As established by the evidence submitted with the concurrently filed Motion to Remand, Respondent's Form I-589 was completed and signed before the hearing, the filing fee was paid through the EOIR payment system on January 6, 2026, and the complete filing package was mailed to the Adelanto Immigration Court on January 8, 2026, four days before the hearing. *See* Motion to Remand, Exhibits D, E, F, L. FedEx tracking records confirm the package was received by the court on January 12, 2026, the same day as the hearing; the application simply had not yet been logged into the court's file by the time the hearing began that morning. *See* Motion to Remand, Exhibit G. To the extent the Board considers this evidence, the Immigration Judge's finding that no application existed is clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i).

Any delay in the arrival of the application was caused by circumstances beyond Respondent's control. The Mesa Verde ICE Processing Center received Respondent's signature-ready application on December 5, 2025, but withheld it from him for approximately seventeen days, delivering it only on December 22, 2025. *See* Motion to Remand, Exhibits H, I.

Respondent acted with diligence by signing and returning the application the same day he received it. A finding of abandonment is legally untenable where the delay in filing resulted from government obstruction. *See Socop-Gonzalez v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001) (en banc); *Matter of Morales-Morales*, 28 I&N Dec. 714 (BIA 2023).

The Immigration Judge's error was compounded by her failure to develop the record. During the January 12, 2026 hearing, Respondent affirmatively stated on the record that he had retained an attorney who was working on his asylum case and on his release. *See* Tr. Jan. 12, 2026, 29:8-9. Rather than inquiring into the identity of counsel or the status of the application, the Immigration Judge proceeded directly to a finding of abandonment. This failure to inquire violated the Immigration Judge's heightened duty to develop the record for a detained, unrepresented respondent and deprived Respondent of the full and fair hearing guaranteed by the Due Process Clause of the Fifth Amendment. Furthermore, the Immigration Judge abused her discretion by summarily denying a continuance or extension of time without considering the specific circumstances of Respondent's case, which constituted good cause for his failure to comply with the filing deadline.

Respondent sought to correct these errors through a Motion to Reopen filed on February 1, 2026, which the Immigration Judge denied on jurisdictional grounds after the Notice of Appeal was filed. *See* 8 C.F.R. § 1003.23(b)(1); Motion to Remand, Exhibit P. Consequently, this appeal and the concurrently filed Motion to Remand are the only available vehicles for the Board to correct these material errors of law and fact.

The Board should vacate the January 12, 2026 order because it rests on clearly erroneous factual findings and violations of Respondent's due process rights. Alternatively, to the extent the Board concludes that consideration of the previously unavailable evidence is necessary to resolve

the issues raised, it should grant the Motion to Remand. *See* 8 C.F.R. § 1003.1(d)(3)(iv); *Alcarez-Rodriguez v. Garland,* 89 F.4th 754, 762-764 (9th Cir. 2023). Respondent's detailed asylum claim regarding persecution by Los Lobos, a designated Foreign Terrorist Organization, establishes the prima facie eligibility for relief required for a remand. *See Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992). Justice requires that this case be remanded so that Respondent's application may be adjudicated on the merits.

VI. ARGUMENT

A. The Immigration Judge Committed Material Errors of Law by Deeming the Applications Abandoned Without Adequate Inquiry

The Board reviews questions of law, including the application of statutes and regulations, de novo. 8 C.F.R. § 1003.1(d)(3)(ii). The Immigration Judge's determination that Respondent waived his right to apply for relief by not complying with a pre-set deadline constitutes a material error of law because it was reached without the inquiry required by the facts presented on the record or considering extraordinary circumstances.

In this case, the hearing record provided several "red flags" that made a summary finding of abandonment legally improper. At the January 12, 2026 hearing, when asked about the status of his relief, Respondent informed the Immigration Judge that he had an attorney "working on my asylum case and on my release." *See* Tr. Jan. 12, 2026, 29:8-9. This followed a prior hearing on November 14, 2025, where Respondent had already advised the court: "I do have an attorney and that's why she told me to request another hearing for her to be here. She told me she could not be here today." *See* Tr. Nov. 14, 2025, 18:1-2.

Faced with a detained, unrepresented respondent who repeatedly asserted he was working with counsel on an asylum application, the Immigration Judge was legally required to conduct a follow-up inquiry before concluding that all relief had been abandoned. The court failed to ask basic clarifying questions, such as the identity of the attorney, the status of the filing, whether the respondent had a copy of the application, what obstacles prevented the timely filing, or whether a brief continuance was necessary to resolve the discrepancy between Respondent's statement and the court's records. *See* Tr. Jan. 12, 2026.

By proceeding directly to a removal order without this necessary inquiry, the Immigration Judge misapplied the standard for abandonment. An abandonment finding cannot be sustained as a matter of law where the respondent's own statements on the record contradict the existence of an intent to waive relief. Because the Immigration Judge failed to resolve these contradictions through adequate inquiry, the resulting order of removal rests on a material error of law.

This case is distinguishable from cases where respondents failed to act diligently or where delays were self-created. *See*, e.g., *Toj-Culpatan v. Holder*, 715 F.3d 1077, 1083 (8th Cir. 2013) (finding no due process violation where respondent failed to provide specific evidence of how detention prevented filing). Here, the evidence shows exactly how and when the government created the barrier.

The Ninth Circuit has squarely held that asylum seekers cannot be penalized for failing to apply for relief or meet a deadline when the government imposes systemic barriers to filing. *See Rojas v. Johnson*, 773 F.3d 1089, 1095 (9th Cir. 2014) (finding that detention facility policies restricting access to legal materials and counsel violated due process when they prevented timely filing of asylum applications).

Similarly, in *Orantes-Hernandez v. Meese* 685 F. Supp. 1488, 1505-06 (C.D. Cal. 1988), the district court held that the government violated due process by failing to inform detained asylum seekers of their rights and by creating barriers to accessing counsel and filing applications. The court issued a permanent injunctive relief mandating proper notice of asylum rights and access to counsel. *Id.*

Here, Mesa Verde Detention Facility created a systemic barrier by blocking Respondent's access to his Form I-589 for seventeen days – from December 5 through December 22, 2025 – despite counsel's repeated attempts to facilitate its signing and return. At no point did Respondent or counsel delay or fail to act diligently. The delay was caused entirely by Mesa Verde's administrative barriers. *See* Motion to Reopen and Motion to Remand. This is precisely the type of government-created obstacle that *Rojas* and *Orantes-Hernandez* prohibit.

The government cannot simultaneously: (1) detain Respondent in a facility that restricts his access to legal documents and communication with legal counsel; (2) block his ability to sign and return those documents for over two weeks; and (3) penalize him for "waiving" the right to file such application when the delay was entirely the government's fault.

In addition, it should be considered that the Respondent’s detention imposed significant language barriers to his access to information and legal counseling. All communication at the detention center is conducted in English, while the Respondent is a young Ecuadorian national with limited formal education and no proficiency in English.

Even if the Court were to find that the Form I-589 was untimely filed, the Immigration Judge was required to consider whether extraordinary circumstances justified the delay in filing and warranted an extension of time.

Courts have recognized that government interference constitutes an extraordinary circumstance that may excuse delays in filing. See *Viridiana v. Holder*, 746 F.3d 1170, 1177 (9th Cir. 2014) (holding that the list of extraordinary circumstances is not exhaustive and must be interpreted flexibly).

The Immigration Judge made no findings regarding extraordinary circumstances and did not provide Respondent with an opportunity to present evidence of the government-created barriers. This was a legal error.

In *Alcarez-Rodriguez v. Garland,* 89 F.4th 754, 762-764 (9th Cir. 2023), the Ninth Circuit concluded that an extension of a filing deadline is reasonable when there is a showing of good cause for failure to timely file, even if the regulation does not provide such exception. It further held that the Board of Immigration Appeals (BIA) must provide adequate consideration and explanation when evaluating claims of good cause for untimely filing of an asylum application. The court emphasized that cursory or conclusory denials of good cause claims constitute an abuse of discretion and violate due process. *Id*. When an applicant presents specific evidence of circumstances beyond their control that prevented timely filing, the BIA cannot simply dismiss those claims without meaningful analysis. *Id*. Due process requires that the agency engage with the evidence and provide a reasoned explanation for its decision. *Id.*

In the present case, the Immigration Judge did not engage with Respondent's noncompliance at all, neither did she investigate the reasons for untimeliness. There was no analysis, no consideration of the government's role in the delay, and no opportunity for further explanation. This falls far short of the standard required by *Alcarez-Rodriguez*.

To the extent the Court finds that any filing deadlines were missed, equitable tolling applies. Under *Holland v. Florida*, 560 U.S. 631 (2010), equitable tolling is available when the

party has been pursuing their rights diligently and some extraordinary circumstance prevented timely filing. *Id.* at 649. And the Eleventh Circuit in *Avila-Santoyo v. U.S. Atty. Gen.*, 713 F.3d 1357 (2013) applied the Holland standard to "exceptional circumstances" in immigration regulations.

Here, both prongs are satisfied.

First, Respondent and counsel acted with exceptional diligence throughout this matter. Respondent retained pro bono counsel to assist him with the preparation of the asylum application. Counsel started the preparation of the Form I-589 right away and, on December 4, 2025, mailed the application for Respondent's completion and signature – well in advance of any deadline. *See* Motion to Reopen and Motion to Remand. Upon finally receiving the paperwork, Respondent immediately completed and signed the documents and returned it to counsel. Form I-589 arrived at the Immigration Court on January 12, 2026. *See* Motion to Reopen and Motion to Remand.

Second, extraordinary circumstances entirely beyond Respondent's and counsel's control prevented timely filing. Mesa Verde's seventeen-day administrative blockage of the Form I-589 (December 5-22, 2025) was a governmental barrier that directly and solely caused the delay. This was not a case of client inaction, attorney neglect, or lack of preparation. Rather, it was systematic obstruction by a government facility that prevented a detained individual from exercising his right to apply for asylum.

The Second Circuit has held that equitable tolling applies to immigration filing deadlines. *Iavorski v. INS*, 232 F.3d 124, 134 (2d Cir. 2000). The Ninth Circuit has similarly recognized equitable tolling in immigration cases. *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1184-85 (9th Cir. 2001).

Equitable tolling is particularly appropriate here because the delay was caused entirely by government action, not by any fault of Respondent or counsel. When the government creates the very barrier that prevents compliance with a deadline, fundamental fairness requires that the deadline be tolled. To hold otherwise would allow the government to benefit from its own wrongdoing, a result that is antithetical to basic principles of justice.

B. The Immigration Judge Abused Her Discretion and Violated the Respondent's Due Process Rights by Denying His Request for a Continuance and Extension of Time

The immigration judge may set and extend time limits for the filing of applications and related documents and responses thereto, if any. If an application or document is not filed within the time set by the immigration judge, the opportunity to file that application or document shall be deemed waived. 8 C.F.R. § 1003.31(h).

A finding of abandonment under 8 C.F.R. § 1003.31(h) is not a mechanical consequence of a missed deadline; it is a discretionary determination that must be supported by the record. Jurisprudence from the Board of Immigration Appeals and the Ninth Circuit support that an Immigration Judge may not deem relief abandoned due to untimely filing where there is a showing of good cause. *See Matter of R-C-R-,* 28 I. & N. Dec. 74 (B.I.A. 2020); *Arizmendi-Medina v. Garland,* 72 F.4th 1132 (9th Cir. 2023); *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001) (en banc). Likewise, the Ninth Circuit has held that a good-cause exception can be argued to 8 C.F.R. § 1003.31(h) even if not explicitly provided by the regulation. *See Alcarez-Rodriguez v. Garland*, 89 F.4th 754, 763 (9th Cir. 2023).

In the present case, the Respondent demonstrated a clear intention to pursue relief, by affirmatively expressing his fear to return to his home country and actively seeking legal counsel

to assist him in navigating the immigration system, which he lacked the capacity to understand on his own, but faced procedural and external obstacles inherent to his detained pro se status that ultimately prevented timely compliance with the deadline set by the judge. *See* Tr. Oct. 10, 2025; Tr. Nov. 14, 2025; Tr. Jan. 12, 2026.

In *Arizmendi-Medina v. Garland*, 72 F.4th 1132 (9th Cir. 2023), the Ninth Circuit held that, when setting and enforcing a deadline, an IJ may not proceed in a manner that deprives a noncitizen of due process. In summary, the panel noted that the IJ's denial of a continuance to submit an application for relief was an abuse of discretion, which clearly compromised the outcome of proceedings and caused the respondent undue prejudice, because the merits of his application were never considered at all. *Id*. This case is fundamentally similar to the one of Mr. Lliguishusca Loja: the IJ gave Arizmendi-Medina consecutive continuances to retain counsel and file any applications for relief, ultimately setting a final deadline at a continued Master hearing; the Respondent sought legal counsel and appeared with newly retained counsel, looking for an additional continuance; however, the IJ denied the request for continuance and rejected all attempts to rectify this delay, refusing to accept an asylum application on the strict basis that the deadline set had passed, and thus deemed the application abandoned. The Petitioner in that case was found to have been denied due process because the "rejection of the opportunity to file a relief application on December 18, 2018 deprived him of a full and fair opportunity to be heard". *Id*. at 1047. The panel found immigration proceedings were fundamentally unfair, as "IJs may not, however, when setting and enforcing deadlines, proceed in a manner that deprives a noncitizen of due process." *Id*. at 1047 (citing *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 620 (9th Cir. 2006)).

The denial of a continuance in this scenario characterized an abuse of discretion, which fundamentally compromised Respondent's right to a full hearing. *See Arizmendi-Medina v. Garland*, 72 F.4th 1132. The Ninth Circuit has already identified abuse of discretion to be so severe as to inherently attack the Respondent's core right to a full and fair hearing. See *Jerezano v. INS*, 169 F.3d 613 (9th Cir. 1999), at 615 (holding that the IJ abused his discretion, thereby depriving Jerezano of due process).

The Ninth Circuit established four factors to identify an abuse of discretion in a decision that denied a continuance: "(1) the nature of the evidence excluded as a result of the denial of the continuance, (2) the reasonableness of the immigrant's conduct, (3) the inconvenience to the court, and (4) the number of continuances previously granted." *Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009) (citing *Karapetyan v. Mukasey*, 543 F.3d 1118, 1129 (9th Cir. 2008)).

Mr. Lliguishusca Loja was denied a continuance and an extension of time to file an application for relief on two occasions: on the November 14, 2025, and the January 12, 2026, hearings. Despite expressly telling the IJ he had sought counsel and was actively working on his asylum case to justify these requests, the IJ did not give the opportunity for Respondent to further explain the reasons for such request or inquiry any further.

On November 14, 2025, the Respondent told the IJ he had an attorney, but she could not accompany him on the hearing that date. *See* Tr. Nov. 14, 2025, 17:5-6, 18:1-2 Thus, he requested a continuance so that his lawyer could accompany at a reset date, which the judge denied and requested him to represent himself, proceeding to removability discussion. *See* Tr. Nov. 14, 2025, 17:16-20, 18:4-5. This request was denied on the grounds that Respondent had been given "a reasonable and sufficient amount of time to seek an attorney". *See* Tr. Nov. 14, 2025, 17:16-20. Nonetheless, it should be noted that this timeline referred by the judge was of

approximately one month (since the last hearing), during which the Respondent remained continuously detained, in a state completely new to him (given he was arrested in New York), severed from all ties to his family and community and facing severe obstacles imposed by the detention status itself. Upon learning that the Respondent had retained legal counsel, and despite the Respondent's explicit explanation that counsel was unable to appear because she was unavailable on the scheduled hearing date, the Immigration Judge neither inquired further into the circumstances nor granted a continuance to allow counsel to appear and represent the Respondent during the proceedings.

On the January 12, 2026, Master Hearing, the Respondent communicated "I do have my lawyer working on the federal trying to work in my asylum case and my release". *See* Tr. Jan. 12, 2026, 29:8-9. The Immigration Judge did not afford the Respondent a meaningful opportunity to explain the circumstances surrounding his failure to timely file his applications. Instead, the Immigration Judge summarily deemed the applications abandoned and immediately entered an order of removal. *See* Tr. Jan. 12, 2026, 29:11-17.

Here, all of the *Ahmed* factors weigh heavily in favor of a finding of abuse of discretion, in both instances and cumulatively. *Ahmed*, 569 F.3d, 1012. This abuse is further emphasized by the fact an application for asylum, Form I-589, had been duly completed and submitted with the Immigration Court by the attorney repeatedly referenced by the Respondent (which was acting under limited scope solely for the preparation of such application, and thus did not assume representation in proceedings or appear for the scheduled hearings), and arrived in the Immigration Court *that same day. See* Motion to Reopen and Motion to Remand and accompanying exhibits.

First, the document excluded as a result of this decision is the Respondent's own application for asylum, which established a credible and firm path to relief, together with all supporting documentation establishing his eligibility for relief. By refusing to accept the untimely filing, the Immigration Judge foreclosed any consideration of the merits of the Respondent's claims and prevented the development of a complete evidentiary record. Accordingly, the Immigration Judge should have accorded significant weight to the importance of the excluded filings when determining whether to grant a continuance or extension of time. Instead, the rejection of the application resulted in the Respondent being ordered removed without any adjudication of the merits of his claims for protection, rendering the removal order fundamentally erroneous.

Second, Respondent's conduct was reasonable given his circumstances: a detained 19-year old immigrant, placed in detention in another state and detached from any contacts to family, community and possible legal counsel he could have known, indigent given the completely inability to work, and facing severe government-imposed obstacles to navigate his own proceedings. Respondent was in removal proceedings for solely five months when ordered removed, during which time he was continuously detained. The period of the first continuance was of solely one month, which, when analysed under the individual scenario of the Respondent, presents little possibility of seeking and retaining counsel. Between the November 14, 2025, and the January 12, 2026 hearing, less than two months elapsed, which again poses minimum availability for Respondent to fully present an application for relief, specially from within a detention center. Even so, he sought legal assistance and, with the assistance of counsel, completed a detailed application for asylum and paid the related fee well within that time, but faced severe obstacles to finally submit it with the Immigration Court, such as the withholding of

legal mail from immigration authorities at the detention center. *See* Motion to Reopen and Motion to Remand.

Third, the IJ would hardly be inconvenienced from granting another extension, especially given the preliminary nature of the hearing. The January 12, 2026, hearing was a Master Hearing, meaning the merits of the case were not to be adjudicated at this occasion and would have to be scheduled for a later date regardless of whether Respondent's application had been accepted at that hearing. Granting a brief continuance or extension of time would not have disrupted the orderly administration of the proceedings, because any merits determination would necessarily have been reserved for a separately scheduled Individual Hearing. This means proceedings were not delayed at all. *See Arizmendi-Medina v. Garland,* 72 F.4th 1043, 1052 (9th Cir. 2023).

Fourth, as previously noted, the Respondent was granted, in fact, only one extension, following his first Master Hearing at the Adelanto Immigration Court. All subsequent requests were denied by the IJ. Anyhow, the Respondent was subjected to only three hearings with this Court, in a detained docket, with a lapse of about one month between each. Furthermore, following the determination that the Respondent was removable, only a single additional hearing was scheduled, less than two months later, at which the Immigration Judge deemed the applications for relief abandoned and ordered the Respondent removed. Mr. Lliguishusca Loja, thus, received ultimately only one continuance to seek legal counsel, and, after his failure to comply, was expected to proceed pro se and denied any further extensions. As a consequence, proceedings moved in a rapid pace, such that, from the docketing of the Notice to Appear to the issuance of the removal order, only 5 months elapsed.

Therefore, all of the *Ahmed* factors weigh in favor of finding that the IJ abused her discretion in not granting a continuance or extension of time to file an application for relief. This prevented him from reasonably presenting his case. *See Ahmed,* 569 F.3d, 1012; *see also Zetino v. Holder*, 622 F.3d 1007, at 1013 (9th Cir. 2010) (quoting *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 620-621 (9th Cir. 2006)).

The Ninth Circuit has recognized that the good-cause standard serves as an important safeguard against arbitrary decisionmaking, requiring Immigration Judges to meaningfully consider the circumstances surrounding a respondent's failure to meet a deadline before imposing the severe consequence of deeming an application abandoned. *See e.g.*, *Alcarez-Rodriguez v. Garland*, 89 F.4th 754, 763 (9th Cir. 2023). Similarly, the Second Circuit highlighted that "it is a matter of concern when an IJ's strict adherence to the established time limit prevents a petitioner from presenting his case." *Dedji v. Mukasey*, 525 F.3d 187, 192 (2nd Cir. 2008). This is precisely the case of concern *Dedji* warned about, given the IJ did not conduct a good-cause investigation and relied solely on a pre-determined deadline to reach a finding of abandonment.

C. The Immigration Judge's Factual Findings Underlying the Abandonment Determination Were Clearly Erroneous

The Board reviews an Immigration Judge's findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). A finding of abandonment under 8 C.F.R. § 1003.31(h) is a factual determination regarding a respondent's intent and diligence. In this case, the Immigration Judge's conclusion that Respondent abandoned his applications for relief is clearly erroneous because it is contradicted by the hearing record and further refuted by the evidence of government-imposed obstacles submitted with the Motion to Reopen and Motion to Remand.

The hearing record reflects that Respondent acted with consistent diligence to pursue his claims. At the October 10, 2025 hearing, Respondent expressed his intent to file but noted his confusion regarding the submission process. *See* Tr. Oct. 10, 2025, 15:4-5. By November 14, 2025, he had already retained counsel and requested a continuance for her to appear. *See* Tr. Nov. 14, 2025, 17:2-6, 18:1-2. This history demonstrates a respondent actively engaged in his defense, not one indifferent to his obligations.

Furthermore, any alleged delay in the filing of the Form I-589 was caused by circumstances beyond Respondent's control, not by a lack of diligence. As established by the evidence submitted with the concurrently filed Motion to Remand, Respondent's signature-ready application was mailed to the Mesa Verde ICE Processing Center on December 4, 2025. *See* Motion to Remand, Exhibit H. Although FedEx records confirm delivery to the facility on December 5, 2025, detention officials withheld the package from Respondent for seventeen days, only delivering it to him on December 22, 2025. *See* Motion to Remand, Exhibit I. Respondent completed and returned the application the same day he received it. *See* Motion to Remand, Exhibits A and L.

The characterization of this situation as a "failure to apply for relief" fundamentally mischaracterizes the facts and ignores the governmental interference that prevented the application from being filed.

The Ninth Circuit and the Board have made clear that a party should not be charged with delay caused by circumstances outside their control, particularly when due to government conduct. *See Socop-Gonzalez v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001) (en banc); *Matter of Morales-Morales*, 28 I&N Dec. 714 (BIA 2023). The seventeen-day withholding of

Respondent's legal mail by ICE officials compressed the filing window and prevented the application from being docketed sooner.

The government cannot obstruct a detained respondent's access to his legal documents and then treat the resulting delay as proof of abandonment. *See Orantes-Hernandez v. Meese*, 685 F. Supp. 1488 (C.D. Cal. 1988), *aff'd*, 919 F.2d 549 (9th Cir. 1990). Given that Respondent had retained counsel, signed his application immediately upon receipt, and ensured its mailing before the hearing, the Immigration Judge's finding of abandonment rests on a clearly erroneous assessment of Respondent's actions and intent. Because the record as a whole demonstrates that Respondent was diligently pursuing relief, the abandonment determination must be vacated.

D. The Immigration Judge Violated Her Heightened Duty to Develop the Record for a Pro Se Detained Respondent

Immigration Judges have heightened duties when dealing with pro se respondents, particularly those who are detained. In *Jacinto v. INS*, 208 F.3d 725, 728 (9th Cir. 2000), the Ninth Circuit held that an IJ has a duty to fully develop the record when a respondent appears pro se. In *Agyeman v. INS*, 296 F.3d 871, 877 (9th Cir. 2002), the court held that an IJ must ensure that a pro se respondent understands the available forms of relief and has a meaningful opportunity to apply for them. It further held that the evidentiary burden should be lowered for detained respondents, as they "may have limited access to relevant documents and will, therefore, depend even more heavily on the IJ for assistance" *Id.*

In *Quintero v. Garland*, 998 F.3d 612, 618-20 (4th Cir. 2021), this heightened duty to develop the record in pro se cases is affirmed. The Fourth Circuit held that an IJ must: (1) adequately explain the hearing procedures and the relevant legal requirements in plain language; (2) provide respondents with sufficient guidance as to how they may present and prove the

elements of their claims; (3) exercise sensitivity to the nature, availability and practical limitations affecting the evidence that the noncitizen can reasonably be expected to produce; (4) develop the record to ensure that all relevant facts are before the court; and (5) be particularly diligent in ensuring that both favorable and unfavorable facts and circumstances are brought to light and thoroughly explored. The court emphasized that the “immigration judges have a legal duty to fully develop the record, which becomes particularly important in pro se cases”, because “this procedural protection is essential for ensuring fundamental fairness and reasoned decisionmaking in removal proceedings" *Id.*

Quintero v. Garland also highlighted that this duty to fully develop the record is further dependable on the particular circumstances of each case, stating the IJ should weigh the Respondent's age, education level, detention status, and immigration history, the applicable ground(s) of removability, and the form(s) of relief sought, in its ruling. *Id.*

Here, the Immigration Judge did not properly weigh the Respondent’s particular vulnerability and procedural disadvantage. The Respondent is a 19-year-old Ecuadorian national who does not speak English and comes from a background of significant socioeconomic hardship. He was unable to complete high school due to the severe persecution he suffered as a child. He entered the U.S. unaccompanied at 16 years old and, prior to his arrest in 2025, the Respondent had no contact with immigration authorities and is entirely unfamiliar with immigration proceedings and procedural requirements. He has been detained throughout his removal proceedings, in an immigration facility situated across the country from his family and community support, and where meaningful access to legal counsel, information, and advisal regarding his rights is limited by language barriers and infrastructural constraints. At each hearing, he expressed a clear intent to apply for relief but indicated he was struggling with the

logistics of legal representation and the physical submission of documents. *See* Tr. Oct. 10, 2025, 15:4-5; Tr. Nov. 14, 2025, 17:2-6, 18:1-2. Under these circumstances, the Immigration Judge's duty to fully develop the record, to adequately advise and guide the Respondent throughout the removal proceedings, and to consider any adverse factors that may have contributed to delays in filing an application for relief is significantly heightened.

Notwithstanding these factors, the Immigration Judge concluded that he had exhausted his opportunities to seek relief by the third master calendar hearing, after almost no assistance from DHS or the Immigration Court. And even though the Respondent clearly indicated that he had obtained counsel and was actively pursuing his asylum application, the Judge issued a removal order without inquiring into the reasons for the delay or developing the record. This cursory treatment falls far short of the heightened duties required when dealing with a pro se, detained respondent.

The combination of: (1) detention, which restricts access to counsel and legal resources; (2) pro se status, which limits understanding of complex legal procedures; (3) extensive language and socioeconomic barriers; and (4) government interference, which prevented timely filing, created compounding due process violations. The Immigration Judge had a duty to recognize these circumstances and to ensure that Respondent had a full and fair opportunity to present his asylum claim. That duty was not fulfilled.

Rather than assisting a pro se, detained youth to clarify the status of his filing, the Immigration Judge took a reactive stance. When Respondent mentioned, at the final hearing, that a lawyer was working on his asylum case, the Immigration Judge's duty was to probe further to ensure the record accurately reflected the status of that application. *See* Tr. Jan. 12, 2026, 29:8-9; *see* also *Jacinto v. INS*, 208 F.3d 725, 728 (9th Cir. 2000), citing *Key v. Heckler*, 754 F.2d 1545,

1551 (9th Cir. 1985) (holding that the IJ must "scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts"). The court's failure to ask a single follow-up question regarding the attorney's name or the method of filing was a direct breach of this duty.

This failure was particularly egregious because the court knew from the November 14, 2025 hearing that Respondent had successfully retained an attorney. *See* Tr. Nov. 14, 2025, 17:2-6, 18:1-2. To then treat the case as a simple failure to file, without inquiring why the application was not yet in the court's file, ignored the very obstacles that the heightened duty to develop the record is designed to address. The Immigration Judge's summary finding of abandonment, in the face of Respondent's stated reliance on counsel, represents a failure to fulfill her essential role in these proceedings.

E. The Proceedings Violated Respondent's Right to a Full and Fair Hearing Under the Fifth Amendment

The Fifth Amendment guarantees noncitizens in removal proceedings a full and fair hearing and a meaningful opportunity to be heard. *See Mathews v. Eldridge*, 424 U.S. 319 (1976); *Landon v. Plasencia*, 459 U.S. 21, 32–33 (1982). Those protections require procedures that are fundamentally fair before an individual may be deprived of the opportunity to seek protection from removal.

Respondent did not receive that process. Throughout these proceedings, he consistently demonstrated his intention to pursue asylum, withholding of removal, and protection under the Convention Against Torture. At the October 10, 2025 hearing, he informed the Immigration Judge that he had received documents but did not know how or to whom they should be submitted. *See* Tr. Oct. 10, 2025, 15:4-5. At the November 14, 2025 hearing, he advised the court that he had retained counsel and requested additional time for counsel to appear. *See* Tr. Nov. 14,

2025, 17:2-6, 18:1-2. At the January 12, 2026 hearing, he again informed the Immigration Judge that a lawyer was working on his asylum case and on his release. *See* Tr. Jan. 12, 2026, 29:8-9.

Despite these repeated indications that Respondent was attempting to pursue relief, the Immigration Judge entered a removal order without conducting any meaningful inquiry into the status of Respondent's application or his efforts to obtain representation. As explained above, the Immigration Judge committed legal error by deeming the applications abandoned without adequate inquiry, clearly erred in the factual findings underlying that determination, and failed to fulfill her heightened duty to develop the record for a detained, unrepresented respondent.

As detailed above, courts have recognized that detained asylum seekers face unique barriers to accessing the legal system and that the government has affirmative obligations to ensure meaningful access.

In *Innovation Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1159 (D. Or. 2018), the district court held that detention policies restricting access to counsel violate due process, particularly when combined with other barriers to filing.

In *Torres v. United States Department of Homeland Security*, 411 F. Supp. 3d 1036, 1050 (C.D. Cal. 2019), the court held that the government's failure to provide meaningful access to legal materials and counsel to detained asylum seekers violated both statutory and constitutional rights.

The prejudice resulting from these errors is evident. Respondent lost the opportunity to have his applications for asylum, withholding of removal, and protection under the Convention Against Torture adjudicated on their merits. Because the proceedings resulted in the entry of a removal order without affording Respondent a meaningful opportunity to present his claims, they

failed to satisfy the requirements of the Due Process Clause of the Fifth Amendment.

F. The Board Should Vacate the Removal Order on Appeal and, Alternatively, Remand if Further Fact Development Is Required

For the reasons set forth above, the Board should sustain this appeal and vacate the Immigration Judge's January 12, 2026 removal order. The record before the Immigration Judge demonstrates that the abandonment determination resulted from material errors of law, clearly erroneous factual findings, and the failure to fulfill the heightened duty to develop the record for a detained, unrepresented respondent. Those errors denied Respondent the full and fair hearing guaranteed by the Fifth Amendment.

Alternatively, should the Board conclude that resolution of any issue presented on appeal requires consideration of evidence that was not before the Immigration Judge, the proper course is to remand the proceedings.

The Board does not engage in factfinding in the course of deciding appeals. 8 C.F.R. § 1003.1(d)(3)(iv). Where additional factual development is necessary, remand to the Immigration Judge is the appropriate procedural mechanism. *See Matter of Coelho*, 20 I&N Dec. 464, 471–73 (BIA 1992).

Respondent has concurrently filed a Motion to Remand supported by documentary evidence concerning the preparation and submission of his Form I-589, the circumstances surrounding the filing of that application, and the obstacles imposed by his detention. *See* Motion to Remand and accompanying exhibits. That evidence was not before the Immigration Judge and therefore cannot properly be evaluated by the Board in the first instance. *See* 8 C.F.R. § 1003.1(d)(3)(iv).

The Motion to Remand also includes Respondent's completed Form I-589 and supporting evidence establishing his claims for asylum, withholding of removal, and protection under the Convention Against Torture. Those materials demonstrate at least a prima facie claim for relief, satisfying the standard governing remand. *See Matter of Coelho*, 20 I&N Dec. at 473.

Accordingly, the Board should sustain the appeal, vacate the Immigration Judge's January 12, 2026 removal order, and remand these proceedings for further proceedings consistent with its decision. Alternatively, to the extent the Board concludes that additional factfinding is required before resolving the issues presented on appeal, it should grant Respondent's concurrently filed Motion to Remand.

VII. CONCLUSION

For the foregoing reasons, and for those set forth in the concurrently filed Motion to Remand, Respondent respectfully requests that the Board sustain this appeal, vacate the Immigration Judge's January 12, 2026 order, and remand these proceedings to the Immigration Court for further proceedings consistent with the Board's decision. Alternatively, should the Board conclude that consideration of the additional evidence presented with the Motion to Remand is required, it should grant that motion and remand for adjudication of Respondent's application on the merits.

Respectfully submitted,

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Proof of Service

On this day, I, Natalia Vieira Santanna, served a copy of the following documents:

RESPONDENT'S BRIEF ON APPEAL

To the following:

Office Location:	**Mailing Address:**
Office of the Principal Legal Advisor Department of Homeland Security 10250 Rancho Road Adelanto, CA 92301	US Immigration and Customs Enforcement US Department of Homeland Security Office of the Principal Legal Advisor 10250 Rancho Road, Suite 201A Adelanto, CA 92301

by:

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

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