

**FACT PATTERN #1:** Mr. Alex Lopez is from Peru. He came to the US in April 2002 using a visitor visa. A Notice to Appear was issued to him in May 2022, placing him in removal proceedings. He then filed an I-589 Application for asylum, withholding, CAT with the Immigration Court in Hartford, as he lives in CT. His case is scheduled for a final hearing in Hartford in June 2026.

His asylum case is based on the fact that his brother was recently killed in his country in 2022 by gang members of the group Los Lobos, due to the escalating gang violence. His brother witnessed the gang members murder a neighbor and reported this incident to the police. He was murdered the next day.

While Mr. Lopez was vacationing in New Hampshire he was arrested by ICE along with a group of others in the car in which he was riding. He remains in detention at this time. He is now seeking a release on Bond.

A sample Motion to Set Bond is included in the packet, asking for the release of Mr. Lopez and explaining why he should be released.

A mock bond hearing will take place with the Government Attorney opposing Bond due to the fact that the Applicant is a flight risk and the fact that his asylum case is not likely to succeed on the merits. The Defense Attorney will represent the client, arguing the merits of why the Respondent should be released. The Immigration Judge will make a decision as to whether the Respondent should be released or not.

The panelists will discuss:

1. What is an Notice to Appear (NTA) and how to check if it contains the proper information. When to contest the NTA and how.
  2. How to take pleadings/written pleadings.
  3. How to submit/file a Motion for Bond. What are the factors considered for Bond. What documents should be submitted with a Bond Motion.
  4. New Laws relating to Bond.
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**The Theory of the Case:**

**Panelists to Discuss:**

**What is a Master Calendar Hearing. What happens at a Master Hearing. (Demonstration of taking pleadings)**

How to develop a theory of the case and what documents should be submitted in support of asylum cases: Affidavits; Police Reports; Medical/Hospital Reports; Expert Reports; Psychological Evaluations.

What is a PSG: How to develop this. Non-circular reasoning. PSG memos.

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**FACT PATTERN #2:** Mr. Alex Lopez is from Peru. He came to the US in April 2022 without a visa. On the way to the US, he traveled through several countries to get here, including Mexico. He was stopped at the border and a Notice to Appear was issued to him upon his capture at the border. He was released ROR and then told he would later be scheduled for a hearing in New York- where he gave his sister's address. He then filed an I-589 Application for asylum, withholding, CAT with the Immigration Court within one year of entry. He is now appearing in Court with his attorney on the day of his individual hearing.

Asylum facts are the same as above. Alex lived with his brother and after his brother was killed by Los Lobos, he feared for his life and then fled the country.

A mock trial will take place. One panelist will act as the Judge; one will act as the Government Attorney and one as the Defense Attorney. One person will act as the Client.

The Judge will do preliminaries, swear in the Respondent, give warnings, mark evidence, etc.

The government attorney will make 2 Motions to Pretermit. First, the attorney will make a Motion to Pretermit on the basis of the ACA Agreement with Ecuador, arguing that the Respondent should be removed to Ecuador and have his claim heard in Ecuador.

Defense will object on basis that this is a last minute filing and untimely by the Department. (judge will give Attorney time to confer with client and hold hearing anyway on issue). A small hearing will then be heard on ACAs. Defense will argue that ACA should not apply to this case (retroactively) and that Ecuador is not a safe third country for the Respondent as Los Lobos is prevalent also in Ecuador as a transnational gang. (Judge will agree to allow asylum to go forward)

The government will then make a motion to pretermit under HAAV, arguing that the Respondent has not established a prima facie case for asylum under HAAV. (judge will deny government motion and allow direct and cross to start)

Mock trial will proceed with Direct/Cross Examination and any objections.

**Government will argue Circumvention of Pathways Rule, that the Respondent passed through Mexico and did not apply for asylum there and that he is only entitled to Withholding for this reason. Defense to argue that his life was in imminent danger and fled for this reason immediately after his brother was murdered.**

**Documents:**

**Motion to Set Bond**

**Matter of HAAV**

**Matter of CIGN and LVSG**

**Sample NTA**

**Sample Brief in Opposition to Motion to Pretermit based on ACAs**

**DETAINED**

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

In the Matter of:

ALEX E. LOPEZ,

In Bond Proceedings

File No.: A 240-606-088

**MOTION TO SET BOND**

Respondent, by and through undersigned counsel, respectfully moves this Immigration Court to release him on his own recognizance, or alternatively, on bond. As grounds for this motion, Respondent submits the following:

1. Respondent is a native and citizen of Peru. He entered the United States on or about April 29, 2002 with a visitor visa. A copy of his visa and passport are attached hereto.
2. A Notice to Appear was issued to Respondent on May 2, 2022 placing him in removal proceedings in Hartford, CT.
3. Thereafter, Respondent filed an I-589 Application with the Hartford Immigration Court, which remains pending. Due to changed circumstances in his country, including the murder of his brother, he has a bona fide claim to asylum in the United States at this time. He is scheduled for a final hearing on this matter on June 26, 2026, with Judge Munson.
4. Mr. Lopez is currently detained in Berlin, New Hampshire as he was arrested while vacationing the area.
5. No bond has been set on his case by ICE/ERO at this time.
6. Mr. Lopez has strong ties to the US including a USC Mother, a USC Uncle and an LPR Aunt. Copies of their identity documents are attached to this Motion.
7. Mr. Lopez is, with support from his sponsor and community, able to pay for a bond at this time. A sponsorship letter, tax returns from his sponsor, and additional evidence related to this fact are attached.
8. The Respondent has a bona fide asylum case pending at this time and seeks his release in order to properly consult with his Counsel on his case and to prepare for his hearing.
9. Mr. Lopez has not been convicted of any crimes anywhere in the world.
10. Given the equities in this case, we ask the Court to grant Mr. Lopez conditional parole, or

in the alternative, set bond in a *de minimis* amount.

## **ARGUMENT**

### **A. Mr. Lopez is eligible for bond**

11. The Department of Homeland Security (“DHS”) did not place Mr. Lopez in expedited removal proceedings, but directly in removal proceedings under INA § 240. He is not an arriving alien and he entered the country with a visa in 2002.
12. Therefore, this Court has jurisdiction under INA § 236(a) to grant bond.
13. Mr. Lopez is not subject to mandatory detention. He has no arrests or criminal convictions at this time.

### **B. Mr. Lopez merits release from custody**

#### **1. Mr. Lopez is not a flight risk**

14. Mr. Lopez’s sponsor, his USC mother, will ensure that he complies with this court’s obligations and that he attends all future court dates. An affidavit to this effect has been submitted.
15. As discussed above, Mr. Lopez would like to continue to properly prepare for his upcoming asylum hearing with his attorneys.
16. Mr. Lopez is prima facie eligible for asylum, withholding, and CAT. He has already filed said applications with the Immigration Court in Hartford, CT.
17. Mr. Lopez would like his day in Court and he understands that this is his opportunity to properly and legally present his case to an Immigration Judge. He has no intention to flee the country or to abandon his case.
18. Mr. Lopez lives at home with his mother and he engages in steady employment. He pays his taxes in the United States and he maintains a bank account and strong ties to this

country.

19. Therefore, Mr. Lopez is not a flight risk at this time.

**2. Mr. Lopez is not a danger to the community**

20. As referenced above, Mr. Lopez has no criminal convictions in any country.

21. Community members and his employer have submitted letters of good moral character which attest to Mr. Lopez's character.

22. Thus, Mr. Lopez is not a danger to the community.

**C. This court should release Mr. Lopez on bond.**

23. Immigration judges should consider a detainee's financial circumstances in setting bond. *See, e.g., Abdi v. Nielsen*, 287 F. Supp. 3d 327, 345 (W.D.N.Y. 2018). The court in *Abdi* reasons that since the purpose of a bond payment is to assure a person's appearance at future hearings, setting a bond amount higher than what is necessary to reasonably secure participation in the court process is discouraged.

24. Mr. Lopez has complied with the Court's directives and all ICE/ERO requirements to date. He has every intention to appear in Court and to have the Immigration Judge hear his case.

25. We therefore ask that Mr. Lopez be released on a bond in the *de minimis* amount of \$1,500.

Respectfully submitted:

JOE ATTORNEY

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE OF IMMIGRATION REVIEW  
IMMIGRATION COURT**

In the Matter of: ALEX LOPEZ

File No.: A 240-606-099

**ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of Respondent's Motion for a Bond Redetermination Hearing Based Upon Changed Circumstances, it is HEREBY ORDERED that the motion be  GRANTED  DENIED because:

- DHS does not oppose the motion.
- The respondent does not oppose the motion.
- A response to the motion has not been filed with the court.
- Good cause has been established for the motion.
- The court agrees with the reasons stated in the opposition to the motion.
- The motion is untimely per \_\_\_\_\_.
- Other: \_\_\_\_\_.

Deadlines:

- The application(s) for relief must be filed by \_\_\_\_\_.
- The respondent must comply with DHS biometrics instructions by \_\_\_\_\_.

\_\_\_\_\_  
Immigration Judge

\_\_\_\_\_  
Date

**Certificate of Service**

This document was served by:  Electronic Service       Mail       Personal Service  
To:  Noncitizen  Noncitizen c/o Custodial Officer  Noncitizen's Attorney  DHS  
Date: \_\_\_\_\_ By: Court Staff \_\_\_\_\_

**CERTIFICATE OF SERVICE**

This document was electronically filed through ESERVICE on June 5, 2025.

I, Joe Attorney, Esq. certify that a copy of Respondent's Motion for Respondent's Release on Bond were served on the U.S. Department of Homeland Security, Office of Chief Counsel on June 5, 2025.

In the Matter of: ALEX LOPEZ

File No.: A 240-606-099

\_\_\_\_\_  
Joe Attorney

Date: 6/5/2025

**Matter of H-A-A-V-, Respondent**

*Decided September 11, 2025*

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

If the factual allegations underlying a claim for asylum, withholding of removal, or protection under the Convention Against Torture, viewed in the light most favorable to the respondent, do not establish prima facie eligibility for relief or protection, an Immigration Judge may pretermitt the applications without a full evidentiary hearing on the merits of the claim.

FOR THE RESPONDENT: Reuben S. Kerben, Esquire, Kew Gardens, New York

BEFORE: Board Panel: MALPHRUS, Chief Appellate Immigration Judge; HUNSUCKER, Appellate Immigration Judge; MCCLOSKEY, Temporary Appellate Immigration Judge.

MALPHRUS, Chief Appellate Immigration Judge:

In a decision issued on May 8, 2025, the Immigration Judge pretermitted the respondent's applications for asylum, withholding of removal, and protection under the regulations implementing the Convention Against Torture ("CAT").<sup>1</sup> Sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A) (2018); 8 C.F.R. § 1208.16(c) (2025). The respondent appeals the Immigration Judge's decision. Because we conclude that the Immigration Judge did not err in pretermittting applications that did not present a prima facie claim for relief, the appeal will be dismissed.

**I. FACTUAL AND PROCEDURAL HISTORY**

The respondent is a native and citizen of Peru. He was placed in removal proceedings and, through counsel, subsequently filed a Form I-589 Application for Asylum and Withholding of Removal, based on extortion by criminal gangs in Peru. At his initial master calendar hearing, the respondent entered oral pleadings and conceded removability. At the next master calendar hearing on May 8, 2025, DHS made an oral motion to pretermitt the respondent's applications for relief. After confirming that there were no

<sup>1</sup> The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994).

factual issues in dispute, the Immigration Judge determined that the respondent had not established prima facie eligibility for asylum or related relief, pretermitted his applications, and ordered him removed to Peru. The respondent argues on appeal that the Immigration Judge's decision is contrary to existing Board precedent and that the Immigration Judge violated his right to due process of law and his statutory and regulatory rights by pretermitting his applications for relief.

## II. ANALYSIS

Whether the Immigration Judge erred in pretermitting the respondent's applications for asylum and related relief is a question of law the Board reviews de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii) (2025). Section 240(b)(4)(B) of the INA, 8 U.S.C. § 1229a(b)(4)(B) (2018), provides that an alien in removal proceedings "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."<sup>2</sup> Relatedly, section 240(c)(4)(B) of the INA, 8 U.S.C. § 1229a(c)(4)(B), sets forth standards for evaluating whether the respondent has met the burden of proof on any applications for relief, noting that the Immigration Judge should evaluate the testimony of the respondent and any witnesses and "weigh the credible testimony along with other evidence of record." The regulations implementing these statutory provisions in the context of asylum and withholding of removal applications provide that Immigration Judge will decide such applications for relief "after an evidentiary hearing to resolve factual issues in dispute," 8 C.F.R. § 1240.11(c)(3) (2025), and that at such an evidentiary hearing, the respondent "shall be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf," 8 C.F.R. § 1240.11(c)(3)(iii). Those regulations also apply to applications for withholding or deferral of removal under the CAT. *See Matter of C-B-*, 25 I&N Dec. 888, 890-91 (BIA 2012).

The statutory and regulatory provisions above ensure that the respondent has the opportunity to present evidence in support of any applications for relief and to respond to any evidence presented by DHS. These provisions, however, do not require a full evidentiary hearing if there are no factual issues in dispute. *See* 8 C.F.R. § 1240.11(c)(3). Immigration Judges have broad discretion to conduct and control immigration proceedings and may determine the length and type of hearings held.

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<sup>2</sup> The statute includes an exception that pertains to national security information, which is not relevant here.

See *Matter of Interiano-Rosa*, 25 I&N Dec. 264, 265 (BIA 2010); see also INA § 240(b)(1), 8 U.S.C. § 1229a(b)(1) (2018); 8 C.F.R. § 1240.1(c) (2025). Immigration Judges are not required to hold merit hearings on applications that are incomplete or where an applicant is ineligible for relief and may pretermitt those applications.<sup>3</sup> See, e.g., *Matter of C-A-R-R-*, 29 I&N Dec. 13, 15 (BIA 2025) (holding that Immigration Judges need not consider the merits of Form I-589 applications that are incomplete); *Matter of J-G-P-*, 27 I&N Dec. 642, 643, 650 (BIA 2019) (affirming an Immigration Judge's prepermission of a cancellation of removal application based on a criminal conviction).

We are unpersuaded by the respondent's argument that the Immigration Judge did not properly review the respondent's applications for relief from removal. First, the respondent had a reasonable opportunity to present evidence on his own behalf, as he was represented by counsel and the Form I-589 instructions and corresponding regulations provide notice of the importance of submitting a complete asylum application and additional supporting evidence. See INA § 240(b)(4)(B), 8 U.S.C. § 1229a(b)(4)(B); 8 C.F.R. § 1208.3(a) (2025); 8 C.F.R. § 1208.3(c)(3) (2020);<sup>4</sup> see also *Matter of C-A-R-R-*, 29 I&N Dec. at 15.

Second, the respondent had an abbreviated hearing on the claim at the master calendar stage. The Immigration Judge confirmed with counsel that there were no disputed issues of fact and gave the respondent's counsel the opportunity to proffer any particular social group(s) in support of his asylum claim. The respondent's counsel, however, did not articulate any particular

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<sup>3</sup> Federal courts also have procedures to resolve cases that do not require a full evidentiary jury trial or bench trial. In civil litigation, a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure can be granted when a judge, after assuming that all factual allegations contained in the complaint are true and giving the plaintiff the full benefit of the doubt, determines that the plaintiff has failed to state a claim upon which relief can be granted. See generally *McChesney v. Fed. Election Comm'n*, 900 F.3d 578, 583–84 (8th Cir. 2018). Also, a judge may grant summary judgment under Rule 56 of the Federal Rules of Civil Procedure when the judge determines that, considering the facts in the light most favorable to the nonmoving party, there is no genuine dispute as to any material facts that require a trial or evidentiary hearing and that a party is entitled to judgment as a matter of law. See *Valderas v. City of Lubbock*, 937 F.3d 384, 388 (5th Cir. 2019).

<sup>4</sup> As noted in *Matter of C-A-R-R-*, 29 I&N Dec. at 15 n.1, the currently effective version of this regulation is the 2020 version as modified by the Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 Fed. Reg. 18078, 18221 (Mar. 29, 2022) (codified at 8 C.F.R. pts. 1003, 1208, 1235, 1240).

social groups for the Immigration Judge to consider and did not present any reasons why a full evidentiary hearing was necessary. The respondent does not claim on appeal that any material facts remain in dispute or that he was not given a sufficient opportunity to proffer the basis for his claim for relief.

We agree with the Immigration Judge that the undisputed facts of the respondent's case do not meet the requirements to establish a claim for asylum, withholding of removal, or protection under the CAT. The respondent's claim is based on extortion by criminal gangs, and the United States Court of Appeals for the Fifth Circuit, in whose jurisdiction this case arises, has repeatedly held that it "do[es] not recognize economic extortion as a form of persecution under immigration law." *Ramirez-Mejia v. Lynch*, 794 F.3d 485, 493 (5th Cir. 2015) (alteration in original) (quoting *Castillo-Enriquez v. Holder*, 690 F.3d 667, 668 (5th Cir. 2012)); accord *Gonzalez-Soto v. Lynch*, 841 F.3d 682, 684 (5th Cir. 2016); *Garcia v. Holder*, 756 F.3d 885, 890 (5th Cir. 2014). As the respondent's past extortion does not rise to the level of persecution, it also does not meet the "higher bar of torture." *Roy v. Ashcroft*, 389 F.3d 132, 140 (5th Cir. 2004) (citation omitted).

The respondent's Form I-589 does not describe suffering other past harm besides extortion and does not identify other specific forms of violence that he fears in the future. The respondent also did not articulate a particular social group or other protected ground as the basis of his claim when given the opportunity to do so. See *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018) ("Where an applicant raises membership in a particular social group as the enumerated ground that is the basis of her claim, she has the burden to clearly indicate 'the exact delineation of any particular social group(s) to which she claims to belong.'" (citation omitted)). Accordingly, the respondent did not present a prima facie case for asylum, withholding of removal, or protection under the CAT. See *Matter of L-O-G-*, 21 I&N Dec. 413, 419 (BIA 1996) (holding that prima facie eligibility requires a reasonable likelihood of satisfying the requirements for relief). Thus, a full evidentiary hearing on the merits was unnecessary.

We recognize that in *Matter of Fefe*, 20 I&N Dec. 116, 118 (BIA 1989), the Board held that an Immigration Judge "should not . . . adjudicate a written application for asylum if no oral testimony has been offered in support of that application." The Board stated that the "full examination of an applicant" ordinarily will be necessary for reasons of fairness and to prevent applicants from being presumed credible when the claim is fabricated. *Matter of Fefe*, 20 I&N Dec. at 118. The Board further stated that at a minimum the applicant should "be placed under oath[] and be questioned as to whether the

information in the written application is complete and correct.” *Id.* The Board later reaffirmed *Matter of Fefe* in *Matter of E-F-H-L-*, 26 I&N Dec. 319, 324 (BIA 2014), holding that an applicant for asylum and withholding of removal was entitled to a hearing on the merits of his or her applications even without having established prima facie eligibility. The Board’s decision, however, was vacated by the Attorney General in *Matter of E-F-H-L-*, 27 I&N Dec. 266 (A.G. 2018).

The respondent’s reliance on *Matter of Fefe* is misplaced. *Matter of Fefe* predated the enactment of section 240(b)(4)(B) of the INA, 8 U.S.C. § 1229a(b)(4)(B). See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, § 304(a)(3), 110 Stat. 3009-546, 3009-590. Moreover, *Matter of Fefe*, 20 I&N Dec. at 117-18, relied on regulations that are no longer in effect. See also *Ramirez v. Sessions*, 902 F.3d 764, 771 n.1 (8th Cir. 2018) (calling into question the continued relevance of *Matter of Fefe*). Thus, *Matter of Fefe* is no longer binding precedent.

The ability of Immigration Judges to act on facts conceded by counsel is well established.<sup>5</sup> See generally *Martinez v. Bally’s Louisiana, Inc.*, 244 F.3d 474, 476 (5th Cir. 2001) (stating that “[a] judicial admission is a formal concession in the pleadings or stipulations by a party or counsel that is binding on the party making them” and has the “effect of withdrawing a fact from contention”); *Matter of Velasquez*, 19 I&N Dec. 377, 382-83 (BIA 1986) (holding that aliens are generally bound by the admissions and concessions of their counsel). It was therefore permissible for the Immigration Judge to rely on counsel’s assertion that if the Immigration Judge accepted the facts as included in the application, there were no factual issues in dispute.

Contrary to the respondent’s assertion on appeal, the Immigration Judge did not deprive him of his due process right to a full and fair hearing. Due process requires that respondents in immigration proceedings be given an “opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citation omitted).<sup>6</sup> An

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<sup>5</sup> If the respondent had appeared pro se, the Immigration Judge would have needed to place him under oath to affirm that his application was complete and correct before determining whether he established a prima facie claim. See 8 C.F.R. § 1240.11(c)(3)(iii).

<sup>6</sup> The Board has the authority to evaluate constitutional issues, including whether a respondent’s due process rights under the Fifth Amendment of the United States Constitution have been violated. See, e.g., *Matter of M-D-C-V-*, 28 I&N Dec. 18, 29-30 (BIA 2020) (concluding that the respondents’ due process rights were not violated).

applicant's fundamental due process rights are not violated when an Immigration Judge pretermits an application for asylum or related relief or protection if the applicant appeared at a hearing before an Immigration Judge, had the opportunity to plead to the charges and submit an application for relief and supporting evidence, and the applicant or his legal representative did not, either in writing or orally, show prima facie eligibility for the relief or protection sought. *See Okpala v. Whitaker*, 908 F.3d 965, 971 (5th Cir. 2018) (stating that as a general rule, due process requires that an alien be afforded a fair opportunity to be heard).

Nor are we persuaded by the respondent's contention that the Immigration Judge was not a "neutral arbiter" or "acting independently." While the respondent alleges that the Immigration Judge prejudged his asylum claim, we have already concluded that in the absence of any factual disputes, the Immigration Judge was authorized to pretermite the respondent's applications where he did not establish prima facie eligibility for his claims. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) (holding that judicial rulings alone rarely show bias); *see also Matter of Exame*, 18 I&N Dec. 303, 306 (BIA 1982) ("[A]n applicant is not denied a fair hearing merely because the immigration judge has a point of view about a question of law or policy."). Therefore, we are not persuaded that the Immigration Judge did not act as a neutral arbiter or act independently, and we conclude that the respondent's due process rights were not violated in this respect.

We recognize that many claims for asylum and related relief and protection contain disputed factual issues relevant to a respondent's eligibility for asylum or related relief and thus will warrant a full hearing and cross-examination of the respondent and witnesses before the case is resolved. However, if the factual allegations underlying a claim for asylum, withholding of removal, or protection under the CAT, viewed in the light most favorable to the respondent, do not establish prima facie eligibility for relief or protection, an Immigration Judge may pretermite the applications without a full evidentiary hearing on the merits of the claim. In this case, the Immigration Judge conducted the hearing appropriately, complied with the applicable statutes and regulations, and provided the respondent with the requisite due process.

### III. CONCLUSION

For the foregoing reasons, we affirm the Immigration Judge's denial of the respondent's applications for asylum and related relief. We also conclude that the record reflects that the respondent's proceedings were fair and complied with the INA and regulations.

**ORDER:** The respondent's appeal is dismissed.

**NOTICE:** If a respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by DHS, or conspires to or takes any action designed to prevent or hamper the respondent's departure pursuant to the order of removal, the respondent shall be subject to a civil monetary penalty of up to \$998 for each day the respondent is in violation. *See* INA § 274D, 8 U.S.C. § 1324d (2018); 8 C.F.R. § 280.53(b)(14) (2025).

**Matter of C-I-G-M- & L-V-S-G-, Respondents**

*Decided October 31, 2025*

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

- (1) If the Department of Homeland Security claims that an asylum cooperative agreement bars a respondent from applying for asylum in the United States, the Immigration Judge should determine whether the safe third country bar applies prior to and separate from considering a respondent's eligibility for asylum.
- (2) A respondent subject to the terms of an asylum cooperative agreement has the burden to establish by a preponderance of the evidence that he or she will more likely than not be persecuted on account of a protected ground or tortured in the relevant third country to avoid application of the safe third country bar and for the respondent to be eligible to seek asylum and other protection claims in the United States.

FOR THE RESPONDENT: Richard J. Hatch, Esquire, Omaha, Nebraska

FOR THE DEPARTMENT OF HOMELAND SECURITY: Danil E. Vishniakov,  
Associate Legal Advisor

BEFORE: Board Panel: MALPHRUS, Chief Appellate Immigration Judge;  
HUNSUCKER and VOLKERT, Appellate Immigration Judges.

MALPHRUS, Chief Appellate Immigration Judge:

The Department of Homeland Security ("DHS") has filed an interlocutory appeal from the Immigration Judge's August 26, 2025, decision denying its motion to pretermite the lead respondent's applications for asylum, withholding of removal, and protection under the regulations implementing the Convention Against Torture ("CAT").<sup>1</sup> See sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A) (2018); 8 C.F.R. § 1208.16(c) (2025);

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<sup>1</sup> The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States on Nov. 20, 1994). The respondents are the lead respondent and her minor child. The minor child seeks asylum as a derivative beneficiary of the lead respondent. INA § 208(b)(3)(A), 8 U.S.C. § 1158(b)(3)(A); 8 C.F.R. § 1208.3(a)(1) (2025). She has not filed separate applications for relief or protection and is not entitled to assert a derivative claim for withholding of removal or CAT protection. See *Matter of A-K-*, 24 I&N Dec. 275, 279–80 (BIA 2007). References to the respondent in the singular are to the lead respondent, unless otherwise indicated.

8 C.F.R. § 1208.18(a) (2020). We requested and received supplemental briefing from both parties. The appeal will be sustained, and the record will be remanded.

This case involves the safe third country bar to asylum under section 208(a)(2)(A) of the INA, 8 U.S.C. § 1158(b)(2)(A), and the authority of Immigration Judges under 8 C.F.R. § 1240.11(h) (2025) to apply bilateral or multilateral agreements between the United States and countries other than Canada.<sup>2</sup> Although we do not ordinarily entertain interlocutory appeals, we deem it appropriate to do so here “to correct recurring problems in the handling of cases by Immigration Judges.” *Matter of M-D-*, 24 I&N Dec. 138, 139 (BIA 2007). Problems involving the handling of cases subject to the regulation have recently become a recurring issue, and our decision in this matter will provide guidance to Immigration Judges and the parties on the proper application of the regulation. See 8 C.F.R. § 1003.1(d)(1) (2025) (“[T]he Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation of the [INA] and its implementing regulations.”).

## I. FACTUAL AND PROCEDURAL HISTORY

The respondents are natives and citizens of Guatemala. They entered the United States without inspection on August 23, 2023. The next day, DHS served them with notices to appear in removal proceedings. The lead respondent filed an application for asylum, withholding of removal, and CAT protection on September 28, 2023. In her application, the respondent claimed that she fears being harmed by her “neighbors and other bad men” in Guatemala. DHS filed a motion to pretermitt the lead respondent’s application on August 7, 2025, arguing that she is ineligible to apply for asylum and related relief because she may be removed to Honduras for consideration of those claims pursuant to an agreement between the United States and Honduras.

The respondents filed a brief in opposition to DHS’ motion in which they argued, through counsel, that they would be persecuted in Honduras “because they are refugees fleeing from threats and violence against their family in Guatemala.” The respondents did not contest that the lead respondent is otherwise subject to the terms of the agreement with Honduras. Nor did they present any evidence that they had ever been to Honduras. The only evidence the respondents submitted in support of their argument was

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<sup>2</sup> The safe third country agreement between the United States and Canada is separately governed by 8 C.F.R. § 1240.11(g).

the United States Department of State 2023 Country Report on Human Rights Practices for Honduras.

The Immigration Judge denied DHS' motion to premit. He stated in his order that the respondent "through counsel presents a fear of travel to Honduras . . . which is an exception to the [asylum cooperative agreement]." The present appeal followed.

The issue on appeal is whether the Immigration Judge applied the correct analysis in determining that the safe third country bar to asylum did not apply to the respondent. Whether the facts establish that a statutory bar to asylum applies is a legal question we review de novo. 8 C.F.R. § 1003.1(d)(3)(i) (2025); *see also Matter of A-G-G-*, 25 I&N Dec. 486, 488 (BIA 2011) (involving the firm resettlement bar).

## II. DISCUSSION

### A. Legal Background

Under the safe third country bar to asylum, an alien is ineligible to apply for asylum in the United States

if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

INA § 208(a)(2)(A), 8 U.S.C. § 1158(a)(2)(A). This bar is implemented in relevant part by 8 C.F.R. § 1240.11(h), which governs the authority of Immigration Judges to apply asylum cooperative agreements ("ACAs") between the United States and countries other than Canada. *See Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act*, 84 Fed Reg. 63994, 64010 (Nov. 19, 2019) (interim rule) ("ACA Rule").<sup>3</sup> The regulation applies "only prospectively to aliens who arrive at a U.S. port of entry, or enter the United States between ports of entry, on or after" November 19, 2019, and

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<sup>3</sup> The Secretary of Homeland Security recently ratified the ACA Rule. *See Ratification of Department Action*, 90 Fed. Reg. 42309 (Sept. 2, 2025).

“provide[s] a general mechanism for implementation of all existing and future ACAs not previously implemented.” *Id.* at 63995–96.

Under the regulation, an Immigration Judge is required to “determine whether under the relevant [ACA] agreement the alien should be removed to the third country, or whether the alien should be permitted to pursue asylum or other protection claims in the United States.” 8 C.F.R. § 1240.11(h)(1). An alien subject to an ACA is ineligible to apply for asylum, withholding of removal, or CAT protection in the United States

unless the immigration judge determines, by a preponderance of the evidence, that:

- (i) The relevant agreement does not apply to the alien or does not preclude the alien from applying for asylum in the United States;
- (ii) The alien qualifies for an exception to the relevant agreement as set forth in paragraph (h)(3) of this section and the Federal Register document specifying the exceptions particular to the relevant agreement; or
- (iii) The alien has demonstrated that it is more likely than not that he or she would be persecuted on account of a protected ground or tortured in the third country.

8 C.F.R. § 1240.11(h)(2). If an alien is “subject to the terms of” one or more ACAs and has not demonstrated that the safe third country bar does not apply, the Immigration Judge shall order the alien “removed to the relevant third country in which the alien will be able to pursue his or her claims for asylum or protection against persecution or torture under the laws of that country.” 8 C.F.R. § 1240.11(h)(4). “If more than one agreement applies to the alien and the alien is ordered removed, the immigration judge shall enter alternate orders of removal to each relevant country.” 8 C.F.R. § 1240.11(h)(1).

In applying the safe third country bar, the authority delegated to Immigration Judges by the regulation is limited to determining whether any of the conditions discussed in 8 C.F.R. § 1240.11(h)(2) apply so as to render the relevant ACA inapplicable to the particular respondent. Immigration Judges do not have authority to make the determination required under section 208(a)(2)(A) of the INA as to whether “the alien would have access to a full and fair procedure” in the third country because the Attorney General has expressly reserved that statutory authority. *See* 84 Fed. Reg. 63997, 64002 (explaining that the Attorney General and the Secretary of Homeland Security will make the threshold full and fair third country determination prior to the implementation of an ACA, and that this determination is “separate and apart from the regulatory provisions” in the ACA rule). Similarly, Immigration Judges lack authority to determine whether it is in the public interest for an alien subject to an ACA to pursue asylum in the United

States because section 208(a)(2)(A) of the INA, 8 U.S.C. § 1158(a)(2)(A), “reserves to the Secretary [of Homeland Security] or [her] delegates the determination whether it is in the public interest for the alien to receive asylum in the United States.” 8 C.F.R. § 1240.11(h)(3).<sup>4</sup>

The United States entered into an ACA with Honduras on March 10, 2025. *See* Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Requests, 90 Fed. Reg. 30076 (July 8, 2025). The ACA does not apply to unaccompanied minors, nationals or habitual residents of Honduras, or people involved in certain crimes or subject to Interpol notifications. *Id.* at 30078–80. As originally agreed, the ACA would only apply to aliens who arrived in the United States on or after the date the ACA entered into force. *Id.* at 30078–79. The Governments of the United States and Honduras exchanged diplomatic notes on June 25, 2025, which amended the ACA by removing that temporal limitation. *Id.* at 30082–86.

#### B. Procedures in Removal Proceedings

If a respondent seeking asylum is subject to the terms of an ACA, DHS must provide oral or written notice that it intends to remove the respondent to the relevant third country for consideration of his or her asylum claim. *See* 84 Fed. Reg. at 64000 (“[T]his interim rule provides that an alien who will potentially be subject to an ACA will be advised that he or she may be removed to a third country pursuant to a bilateral or multilateral agreement.”). Once DHS has provided notice, the respondent must have a reasonable opportunity to satisfy his or her burden to show by a preponderance of the evidence that the safe third country bar does not apply because he or she will more likely than not be persecuted or tortured in the relevant third country. *See* 8 C.F.R. §§ 1240.8(d), 1240.11(h)(2)(iii); *see also* *Matter of H-A-A-V-*, 29 I&N Dec. 233, 234 (BIA 2025) (explaining that “statutory and regulatory provisions [governing removal proceedings] ensure that the respondent has the opportunity to present evidence in support

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<sup>4</sup> Immigration Judges may not require DHS to demonstrate that an ACA country of removal is willing to accept a respondent who is subject to the terms of an ACA. *See* 8 C.F.R. § 241.15(d) (2025) (“No commitment of acceptance by the receiving country is required prior to designation of the receiving country, before travel arrangements are made, or before the alien is transported to the receiving country.”); *see also* *Matter of A-S-M-*, 28 I&N Dec. 282, 285 (BIA 2021) (recognizing that Immigration Judges do not have jurisdiction to review DHS’ discretionary determination as to the country of removal).

of any applications for relief and to respond to any evidence presented by DHS”).

Where a respondent claims the ACA bar should not apply, the Immigration Judge must determine the bar’s applicability and, to the extent it may be necessary to resolve disputed facts, hold an evidentiary hearing to address them. Because a respondent will generally have no substantial connection to the relevant third country, evaluating a respondent’s claim of future persecution or torture in the third country “is more straightforward” than undertaking “a complex assessment” of an asylum applicant’s fear of persecution in his or her home country. 84 Fed Reg. at 64004. As the commentary to the ACA Rule notes, “[b]ecause the ACA country of removal did not prompt the alien’s claim, the process for determining simply whether to send the alien to a third country for that consideration is reasonably more minimalistic than the requisite procedures for deciding asylum and withholding of removal claims on the merits.” *Id.*

Thus, if a respondent subject to an ACA claims a fear of persecution or torture in a relevant third country, but has no substantial connection to that country, an Immigration Judge should typically be able to resolve the applicability of the safe third country bar without conducting a full evidentiary hearing. Instead, it will generally be appropriate for the Immigration Judge to conduct an abbreviated hearing, typically in a master calendar setting, that includes consideration of any documentary evidence submitted by the respondent. *See Matter of H-A-A-V-*, 29 I&N Dec. at 235–36, 238 (holding that it is appropriate for an Immigration Judge to prepermit a respondent’s applications for asylum, withholding of removal, and CAT protection without a full evidentiary hearing in certain circumstances).

The ACA Rule was promulgated to facilitate “a threshold screening to determine whether an alien is barred from applying for asylum in the United States pursuant to an ACA.” 84 Fed Reg. at 63998. Thus, if DHS claims that an ACA bars a respondent from applying for asylum in the United States, the Immigration Judge should determine whether the safe third country bar applies prior to and separate from considering a respondent’s eligibility for asylum. If the respondent meets his or her burden to demonstrate that the bar does not apply, the Immigration Judge should proceed to consider the merits of the respondent’s asylum and protection claims. However, if the respondent does not meet his or her burden, the safe third country bar applies, and there is no basis for the Immigration Judge to further consider asylum. *See* 8 C.F.R. § 1240.11(h)(4); 84 Fed Reg. at 63996 (“[A]pplication of the ACA bar does not involve an evaluation of whether an alien would ultimately

receive asylum relief if able to apply, or even whether the alien has made a preliminary showing of a significant possibility that the alien would be eligible for asylum.”). The Immigration Judge should order the respondent removed to the relevant third country. 8 C.F.R. § 1240.11(h)(4).

### C. Application to the Respondent

DHS’ motion to pretermite the respondent’s asylum application provided her with proper notice of its intent to remove her to Honduras for consideration of her asylum and protection claims under the relevant ACA. The respondents’ opposition to the motion claimed that they would be persecuted in Honduras “because they are refugees fleeing from threats and violence against their family in Guatemala,” and was supported only by the country report for Honduras. The Immigration Judge erred in denying, without meaningful factual or legal basis, DHS’ motion based on the respondent’s “fear of travel to Honduras.”

Under 8 C.F.R. § 1240.11(h)(2)(iii), a respondent subject to the terms of an ACA has the burden to establish by a preponderance of the evidence that he or she will more likely than not be persecuted on account of a protected ground or tortured in the relevant third country to avoid application of the safe third country bar and for the respondent to be eligible to seek asylum and other protection claims in the United States. The respondents’ counsel made conclusory statements to the Immigration Judge that the respondents in this case will be persecuted in Honduras. However, the respondents have presented no evidence that they have ever been to Honduras or that anyone in Honduras would target them for harm based on their Guatemalan nationality or their alleged status as individuals “fleeing from threats and violence against their family in Guatemala.” The generalized evidence of country conditions in Honduras submitted with their response to DHS’ motion is clearly insufficient to satisfy the burden of proof. *See generally Setiadi v. Gonzales*, 437 F.3d 710, 714 (8th Cir. 2006) (“It is insufficient to allege a generalized fear of persecution because of isolated acts of violence to those other than the [respondent].”); *Nadeem v. Holder*, 599 F.3d 869, 873–74 (8th Cir. 2010) (“Evidence of general conditions is insufficient to establish that one is more likely than not to suffer torture.”).

### D. Other Issues

The respondent argues that she cannot be subject to the ACA with Honduras because it was implemented after she arrived in the United States and filed her asylum application. The respondent arrived in the United States on August 23, 2023, and applied for asylum approximately a month later.

The ACA with Honduras was entered into on March 10, 2025, and entered into force on June 25, 2025. 90 Fed. Reg. at 30080–81, 30086.

Although the ACA with Honduras was entered into after the respondent applied for asylum, the ACA Rule governing the “implementation of all existing and future ACAs” took effect on November 19, 2019, several years before the respondents entered the United States. 84 Fed. Reg. at 63995–63996; *see also id.* at 63995 (explaining that the ACA Rule will apply to “any future” agreements “once the agreements enter into force”). Moreover, the ACA with Honduras, as amended, specifically states that it applies to aliens who arrived in the United States at any time. 90 Fed. Reg. at 30079–80, 30082–86; *see also Avero Belgium Ins. v. Am. Airlines, Inc.*, 423 F.3d 73, 81 (2d Cir. 2005) (explaining that a treaty may govern conduct that occurred before the treaty entered into force when such an “intention appears from the treaty or is otherwise established” (citation omitted)).

Thus, we conclude that the respondent is subject to the ACA with Honduras through the application of 8 C.F.R. § 1240.11(h). Although the ACA with Honduras was not implemented until after the respondent filed her asylum application in the United States, “application of the new provision is not retroactive” because it only “affects the propriety of prospective relief.” *Landgraf v. USI Film Products*, 511 U.S. 244, 273 (1994); *see also Wanyama v. Holder*, 698 F.3d 1032, 1037 (8th Cir. 2012) (“[A]liens do not have a constitutionally protected liberty or property interest in receiving asylum, because it is ‘statutorily created relief that is subject to the unfettered discretion of a governmental authority.’” (quoting *Obleshchenko v. Ashcroft*, 392 F.3d 970, 971 (8th Cir. 2004))). Nothing in section 208(a)(2)(A) of the INA, 8 U.S.C. § 1158(a)(2)(A), restricts the application of this bar to agreements formed after an alien’s arrival in the United States.

The respondent also argues in her supplemental brief that Honduras does not provide a full and fair procedure for adjudicating her asylum claim and it would be in the public interest to allow her to pursue her asylum claim in the United States. As explained in part II.A., the Attorney General and the Secretary of Homeland Security have expressly reserved the authority to determine whether aliens have access to full and fair procedures as required under section 208(a)(2)(A) of the INA, 8 U.S.C. § 1158(a)(2)(A). *See* 84 Fed. Reg. at 63997, 64002. Additionally, the authority to make the “public interest” determination is reserved to the Secretary and her delegates. 8 C.F.R. § 1240.11(h)(3). Neither the Immigration Judge nor the Board has the authority to make either of these determinations. *See Matter of H-M-V-*, 22 I&N Dec. 256, 258 (BIA 1998) (“[T]he jurisdiction of this Board, and of

the Immigration Judge, is limited by statute and regulation to that which has been delegated by the Attorney General.”).

### III. CONCLUSION

The Immigration Judge erred in determining that the ACA with Honduras does not apply to the respondent based solely on counsel’s representations that the respondent fears being harmed there and generalized evidence of country conditions in Honduras. Accordingly, we will sustain DHS’ appeal and reverse the Immigration Judge’s denial of its motion to pretermite. We will remand the record to the Immigration Judge for further consideration of the applicability of the ACA bar consistent with the guidance provided in this decision. On remand, the Immigration Judge should take any other action necessary for the resolution of the respondents’ removal proceedings, including making a determination on their removability. We express no opinion on the ultimate outcome of these proceedings. *See Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996).

**ORDER:** The appeal is sustained, and the Immigration Judge’s August 26, 2025, decision denying DHS’ motion to pretermite is vacated.

**FURTHER ORDER:** The record is remanded for further proceedings consistent with the foregoing opinion.

**DEPARTMENT OF HOMELAND SECURITY  
NOTICE TO APPEAR**

**In removal proceedings under section 240 of the Immigration and Nationality Act:**  
**Subject ID:** \_\_\_\_\_ **FINS** **File No:** \_\_\_\_\_  
**DOB:** \_\_\_\_\_ **Event No:** \_\_\_\_\_  
**In the Matter of:** \_\_\_\_\_ **currently residing at:** \_\_\_\_\_  
**Respondent:** \_\_\_\_\_

(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 \_\_\_\_\_ and a citizen of \_\_\_\_\_, on or about \_\_\_\_\_;
3. You arrived in the United States at or near \_\_\_\_\_, on or about \_\_\_\_\_;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:  
 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.  
 Section 235(b)(1) order was vacated pursuant to:  8CFR 208.30  8CFR 235.3(b)(5)(iv)

**YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:**  
 26 Federal Plaza 12 Floor Room 1237 New York NY US 10278  
 (Complete Address of Immigration Court, including Room Number, if any)

on \_\_\_\_\_ at \_\_\_\_\_ to show why you should not be removed from the United States based on the  
 (Date) (Time)  
 charge(s) set forth above. \_\_\_\_\_  
 (Signature and Title of Issuing Officer) (Sign in ink)

Date: \_\_\_\_\_  
 (City and State)



## I. INTRODUCTION

[RESPONDENT'S NAME], by and through undersigned counsel, opposes the Department of Homeland Security's (DHS) Motion to Pretermit and requests that the Court deny the motion in its entirety because they are not subject to the Asylum Cooperative Agreements (ACAs) with Honduras, Guatemala, Ecuador, and Uganda.

[RESPONDENT'S NAME], an asylum applicant from [COUNTRY OF ORIGIN], should be afforded the opportunity to proceed with their pending asylum application in the United States. The preponderance of the evidence demonstrates that Honduras, Guatemala, Ecuador, and Uganda are not safe third countries and do not have full and fair procedures for determining protection claims, and the United States' recent agreement with said countries should not be construed to apply retroactively. If any of the four countries is determined to be a safe third country, this Court should set this case for a hearing with an appropriate timeline for submission of evidence regarding a claim for protection from the applicable country/countries.

The ACAs between the United States and Honduras, Guatemala, Ecuador, and Uganda do not apply to Respondent. As background, the relevant ACAs came into force as follows:

- The Honduras ACA was signed by the parties on March 10, 2025, amended on June 25, 2025, and published in the Federal Register on July 8, 2025.
- The Guatemala ACA was effected by an exchange of diplomatic notes on June 11, 2025, and June 13, 2025, and published in the Federal Register on July 15, 2025.
- The Ecuador ACA was effected by an exchange of diplomatic notes on July 16, 2025, and July 23, 2025, and published in the Federal Register on November 17, 2025.
- The Uganda ACA was signed by the two countries on July 29, 2025, and published in the Federal Register on September 3, 2025.

[RESPONDENT'S NAME] entered the United States on [DATE], prior to the publication of the [Honduras/Guatemala/Ecuador/Uganda] ACA[s]. The Court has authority to determine whether an asylum applicant is subject to the terms of an agreement, and if so, whether "under the relevant agreement the alien should be removed to the third country, or whether the alien should be permitted to pursue asylum or other protection claims in the United States." 8 CFR § 1240.11(h)(1). The Court should analyze whether [RESPONDENT'S NAME] qualifies to still seek asylum from [COUNTRY OF ORIGIN] in the United States under 8 CFR § 1240.11(h)(1)-(2)(i)-(iii). Alternatively, if the Court finds that [RESPONDENT'S NAME] is subject to any of the four ACAs, [RESPONDENT'S NAME] respectfully requests additional time to show that they will suffer persecution or torture upon removal to Honduras, Guatemala, Ecuador, and/or Uganda under 8 CFR § 1240.11(h)(1)(2)(iii).

[RESPONDENT'S NAME] raises the following arguments in support of their request that the Court deny DHS's Motion to Pretermitt: (1) DHS waived its ability to raise the issue of pretermission under the ACA, and now prejudices [RESPONDENT'S NAME] by raising this issue for the first time [SHORTLY BEFORE/AT] their [Individual Hearing]; (2) DHS has not met its burden of showing that any of the four ACA countries named is actually capable of receiving [RESPONDENT'S NAME] and affording a "full and fair procedure" for seeking asylum or equivalent protection; (3) There is credible evidence that shows the four countries are not safe and thus, their designation as "safe third countries" is invalid; (4)

[RESPONDENT'S NAME] came to the United States on [DATE PRIOR TO ACA'S SIGNING] and the retroactive application of the ACA violates due process; (5) The Court has authority to find it is in the public interest for [RESPONDENT'S NAME] to receive asylum in the United States; (6) 8 CFR § 1240.11(h)(2), cited by DHS in its motion, is inconsistent with

8 USC § 1158(a)(2)(A), which does not preclude a grant of withholding of removal or protection under the Convention Against Torture (CAT) to the Respondent's country of origin even if the third country bar precludes a grant of asylum; (7) Pretermission is inappropriate where there are disputed issues of fact; and (8) [RESPONDENT'S NAME] merits additional time to file an I-589 regarding their fear of removal to Honduras, Guatemala, Ecuador, and/or Uganda if the Court finds any of the ACAs applicable.

## II. FACTS AND PROCEDURAL HISTORY

[NOTE: the Facts and Procedural History section should be adapted accordingly and include information on how Respondent entered the country (i.e. through CBP One or through parole); whether Respondent was detained; the dates of all the master calendar hearings Respondent attended before the ACA motion was filed; whether Respondent had filed their asylum application or evidence by the time the ACA motion was filed; whether pleadings had been taken and a country of removal designated; whether testimony had already begun; whether DHS had filed the four ACAs in a piecemeal and/or inefficient manner; whether the IJ had already decided certain threshold issues; and whether the case had been completed, remanded, and/or reopened. The purpose of this section is to show that DHS had numerous opportunities to file the ACA motion and give Respondent and the Court notice and did not do so.]

[RESPONDENT'S NAME] came to the United States on [DATE]. They were detained by Border Patrol and held for [X days until they were released on parole]. On [DATE], they [timely] filed an I-589 Application [pro se]. Undersigned counsel, representing [RESPONDENT'S NAME] pro bono, appeared before the [COURT NAME/PLACE] Immigration Court on [DATE]. [Document all opportunities where DHS had the opportunity to raise the ACA. Sample language: At the [DATE] master calendar hearing, DHS did not raise any

ACAs even though the agreements had been published in the Federal Register on July 8, 2025 (Honduras), July 15, 2025 (Guatemala), November 17, 2025 (Ecuador), and September 3, 2025 (Uganda). *See* Department of Homeland Security's Motion to Pretermitt the Respondent's Protection Applications, Tab A. On [DATE], with the assistance of undersigned counsel, [RESPONDENT'S NAME] filed evidence in support of their asylum case. Undersigned counsel appeared before the [COURT NAME/PLACE] Immigration Court again on [DATE] for a short hearing, at which the Court set [RESPONDENT'S NAME]'s case for an Individual Hearing. Again, DHS did not raise the ACAs. [RESPONDENT'S NAME], while detained, worked diligently with pro bono counsel to prepare his case and filed additional evidence and a pre-hearing brief on [DATE]. On [DATE], DHS finally filed its Motion to Pretermitt based on the ACAs between the United States and Honduras, Guatemala, Ecuador, and Uganda. The ACAs provided to the Court and in the Federal Register were not in effect when [RESPONDENT'S NAME] left [COUNTRY OF ORIGIN] on [DATE], arrived in the United States on [DATE], and applied for asylum on [DATE].]

### III. ARGUMENT

- A. The Department waived the right to raise the issue of pretermittion under the relevant ACAs and prejudices [RESPONDENT'S NAME] by raising this issue for the first time [shortly before/at] their [Individual/Master Calendar] Hearing. [If DHS did raise the one or more of the ACAs at first opportunity, Counsel should cut or edit subsection A and summary of arguments in Section I *supra* accordingly]**

Even though the ACAs in question were published in the Federal Register in July, September, and November 2025, DHS did not raise this issue at [RESPONDENT'S NAME]'s master calendar hearings on [DATE(S) OF MASTERS], when they appeared [pro se/represented by undersigned counsel]. Moreover, when pleadings were taken at the hearing on [DATE], DHS provided no notice to the Court or Respondent that [RESPONDENT'S NAME] might be subject

to the ACAs. If DHS wanted to pursue its motion to pretermite [RESPONDENT'S NAME]'s asylum application, it should have done so immediately after the publication of each ACA in the Federal Register. It is fundamentally unfair to [RESPONDENT'S NAME] that DHS did not do so, but instead filed the motion to pretermite with a request for an expedited master calendar hearing and for expedited deadlines [days before/at] a final hearing that will determine the rest of [RESPONDENT'S NAME]'s life. For similar reasons, it will also be a violation of [RESPONDENT'S NAME]'s due process rights if the Court grants DHS's motion. Accordingly, the Court should deny DHS's motion to pretermite because DHS waived the issue by not raising it at any of the prior hearings in this case or in writing immediately after the signing of each ACA.

Relatedly, DHS's motion is untimely under the Immigration Court Practice Manual (ICPM). Pursuant to ICPM § 3.1, "[f]or individual calendar hearings involving unrepresented, non-detained aliens, filings must be submitted at least thirty (30) days in advance of the hearing." In addition, the ICPM specifically allows for exceptions to the 30-day deadline, such as rebuttal and impeachment evidence, but does not allow for exceptions for motions, such as the ACA motion filed by DHS in this case. Nonetheless, the Department elected to file its motion on [DATE], [X] days before [RESPONDENT'S NAME]'s [Individual/Master Calendar Hearing]. In addition, DHS has not proffered good cause, or attempted to do so, for the late filing. As such, the Court should deny the motion as untimely.

**B. The Department has not met its burden of showing that Honduras, Guatemala, Ecuador, and Uganda will receive [RESPONDENT'S NAME] and provide a full and fair procedure for determining protection claims.**

It is the Department's burden as the moving party to show that there is cause for the motion to be granted. Here, pursuant to 8 USC § 1158(a)(2)(A), DHS must show that [RESPONDENT'S NAME] would be received in the ACA countries and have access to a full

and fair procedure for determining a claim to asylum or equivalent protection. The Department has not done so.

### 1. Honduras

DHS fails to show that [RESPONDENT'S NAME] will actually be received by Honduras. Under the ACA's Joint Implementation Plan, which DHS neglected to file, Honduras committed to taking no more than ten individuals per month for the next two years unless and until further negotiations take place—a total of just 240 people, at most, over two years. *See* Department of State: Agreement Between the United States of America and Honduras, with Joint Implementation Plan, Tab B at 14. This number is underinclusive because 240 people is not nearly enough to guarantee that Honduras would receive [RESPONDENT'S NAME]. The Department has not submitted any evidence to show that Honduras has expanded its commitment or specifically accepted [RESPONDENT'S NAME] for processing a claim for asylum. Similarly, the ACA states neither party has an obligation to accept individuals involved in “any other activity linked to illicit activities” but provides no definition or elaboration on who may fall within that exception. *Id.* at 13. Clearly, then, the ACA has limiting criteria and exclusions but DHS provides no confirmation that Honduras will actually receive [RESPONDENT'S NAME]. [Advocates may consider elaborating on this point where a respondent has criminal history in the United States or other countries, but take care to not raise any criminal bars].

Even if Honduras will receive Respondent, DHS has not shown that Honduras will provide a full and fair procedure for determining [RESPONDENT'S NAME]'s protection claims. Indeed, following the administration's unsuccessful attempt to implement a Honduras ACA in 2019, the Senate Foreign Relations Committee (“SFRC”) published a detailed report exposing the glaring defects in the procedures afforded asylum-seekers in Honduras. *See* SFRC

Democratic Staff Report, “Cruelty, Coercion, and Legal Contortions: The Trump Administration’s Unsafe Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador” (January 18, 2021), [https://www.foreign.senate.gov/download/cruelty-coercion-and-legal-contortions --sfrc-democratic-staff-report](https://www.foreign.senate.gov/download/cruelty-coercion-and-legal-contortions--sfrc-democratic-staff-report) (last visited [DATE]), Tab C. Both the State Department and the SFRC investigation concluded that Honduras did not have “any full-time staff dedicated to refugee or asylum determinations . . . . In 2019, Honduras adjudicated only 46 asylum claims.” *Id.* at 68. The investigation found that the ACA agreements the administration entered into with Honduras, Guatemala, and El Salvador “follow[ed] a pattern of unlawful maneuvers designed to close off legal pathways to protection in the United States.” *Id.* at 55. As explained in the SFRC’s report:

There is broad acknowledgement, even within the Trump administration, that Guatemala, Honduras, and El Salvador lack institutional capacity to provide protection to asylum seekers transferred under the ACAs. Although these governments have indicated a willingness to do so, their leaders readily admit that their capacity to protect refugees and asylum seekers is seriously deficient . . . . Honduras’ autonomous National Human Rights Commissioner asserted that Honduras lacks the capacity and resources necessary to provide “dignified treatment” to individuals transferred under the ACA.

*Id.* at 67. Nearly five years after the publication of this damning report, however, DHS is still unable – or unwilling – to provide the Court with evidence to show that Honduras will provide a full and fair procedure for determining protection claims.<sup>1</sup> [If Honduras has close ties with the

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<sup>1</sup> While the Board of Immigration Appeals’ (Board or BIA) recently issued a decision applying the Honduras ACA and pretermittin an asylum claim, the decision is problematic in several ways, including in its analysis of whether Honduras had a full and fair procedure for adjudicating applications for protection. *See Matter of C-I-G-M & L-V-S-G-*, 29 I&N Dec. 291 (BIA 2025). First, the Board erred as a matter of law in dismissing the argument that Honduras lacks such procedures on the grounds that the preamble to the regulation reserves authority to the Attorney General and Secretary of Homeland Security to make this categorical determination, *id.* at 298, where this reservation of authority is not found in the statutory language of 8 USC § 1158(a)(2)(A) or the regulatory language at 8 CFR § 1240.11(h). Indeed, with regards to the latter, case law establishes that “it is the language of the regulatory text, and not the preamble, that controls.” *Nat’l Wildlife Fed’n v. EPA*, 286 F.3d 554, 570 (D.C. Cir. 2002). *See also Peabody Twentymile Mining, LLC v. Sec’y of Lab.*, 930 F.3d 992, 998 (10th Cir. 2019); *Mejia-Velasquez v. Garland*, 26 F.4th 193, 202 (4th Cir. 2022).

Further, 8 USC § 1158(a)(2)(A) accords the Court authority to determine *both* whether Respondent is eligible for withholding of removal and CAT protection from the third country *and* whether the third country would

Respondent's country of origin and there is credible evidence that they would cooperate with that country to return the Respondent, include that information here and attach relevant supporting documentation.] Accordingly, the Court should deny DHS's motion.

## 2. Guatemala

As to Guatemala, DHS fails to show that [RESPONDENT'S NAME] will actually be received by Guatemala. The ACA between the United States and Guatemala is vague and only sets out an *intention* for the parties to transfer nationals from Central American countries to Guatemala. *See* Department of Homeland Security's Motion to Pretermitt the Respondent's Protection Applications, Tab A. The ACA fails to provide eligibility requirements, implementation procedures, timelines for implementation or the operative date of the agreement, or any other information. *See id.* Further, the ACA states that it "shall enter into force following an exchange of notes between the Parties indicating that the domestic steps required for entry into force have been completed," but DHS has not provided a copy of the subsequent notes or given the Court any information about them. *See id.* As such, the Court should find that there is no finalized ACA between Guatemala and the United States that applies to [RESPONDENT'S

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allow them a full and fair procedure for applying for asylum. Notably, however, *C-I-G-M* allows the Court the authority to determine only the former, while according authority over the latter inquiry to DHS. *C-I-G-M* fails to explain the inconsistent treatment of these two issues, and DHS does not proffer an explanation in [RESPONDENT'S NAME]'s case.

Finally, the BIA in *C-I-G-M* also erred in citing to a separate regulation for the premise that the Court may not require that DHS demonstrate that an ACA country will accept a respondent. *Matter of C-I-G-M & L-V-S-G*, 29 I&N Dec. at 295 n.4. The Ninth Circuit has held that, where designation of a country of removal is conditional under the statute, DHS must show that the condition is met for that country to be properly designated. *See Himri v. Ashcroft*, 378 F.3d 932 (9th Cir. 2004), *as amended* (Aug. 24, 2004), *amended sub nom. El Himri v. Ashcroft*, No. 03-71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004). Just as *Himri* held that designation of a country of removal under 8 USC § 1231(b)(2)(E)(vii) was improper because DHS did not establish, as required by statute, that the country would "accept" the respondents, it would also be improper for the Court to order removal to an ACA country under 8 USC § 1158(a)(2)(A) if DHS has not established that a respondent "would have access to a full and fair procedure" to seek asylum there.

[NAME], and that DHS has not provided sufficient information to show that Guatemala would receive [RESPONDENT'S NAME].

Assuming *arguendo* that [RESPONDENT'S NAME] is covered by the ACA submitted by the Department and that Guatemala is willing to accept [them], the Court should nonetheless deny the Department's motion because it does not show that Guatemala will provide a full and fair procedure for determining [RESPONDENT'S NAME]'s protection claims. Indeed, on June 26, 2025, after the exchange of the initial set of diplomatic notes, "Guatemala's presidential communications office said the government did not sign a safe third-country agreement nor any immigration related agreement during Noem's visit. They reaffirmed that Guatemala would *receive Central Americans sent by the United States as a temporary stop on their return to their countries.*" See Tab G, AP NEWS, US signs agreements with Guatemala and Honduras to take asylum-seekers, Noem says, (emphasis added), available at: <https://apnews.com/article/guatemala-honduras-noem-asylum-371666b1b5c091276ac27395fc0adac9> (last visited: [DATE]). Thus, Guatemala has not agreed to provide *any* kind of procedure for deportees to apply for permanent relief; it merely envisions itself as a temporary transit stop for migrants. [If Guatemala has close ties with the Respondent's country of origin and there is credible evidence that they would cooperate with that country to return the Respondent, include that information here and attach relevant supporting documentation.] Based on these circumstances, the Department has not met its burden of showing that Guatemala has agreed to accept [RESPONDENT'S NAME] or to afford [them] full and fair procedures for applying for relief.

### 3. Ecuador

As to Ecuador, DHS fails to show that [RESPONDENT'S NAME] will actually be received by Ecuador. Under the Ecuador ACA, the United States and Ecuador “shall develop operating procedures to assist with the implementation of this Agreement through a subsequent instrument, including, among others, clear criteria to determine eligibility for transfer to the Republic of Ecuador, as well as any necessary bilateral assistance to implement this Agreement.” *See* Department of Homeland Security’s Motion to Pretermitt the Respondent’s Protection Applications, Tab A. The Department did not, however, attach or even allude to in its motion any such “subsequent instrument,” the existence of which is necessary to determine Respondent’s eligibility for transfer. Moreover, the ACA states that its implementation is subject to the availability of funds and technical capacity of each Party, but DHS has not provided the Court with information on Ecuador’s presumed availability of funds or technical capacity to receive [RESPONDENT’S NAME]. *See id.* Without this critical information, the Court cannot determine whether Ecuador will receive Respondent.

Second, DHS had not shown that Ecuador will provide a full and fair procedure for determining [RESPONDENT’S NAME]’s protection claims. Indeed, Human Rights Watch’s most recent report on Ecuador notes that “migrants and asylum seekers [] struggle to obtain regular status.” *See* Human Rights Watch: Ecuador Events of 2024, Tab K. In addition, the U.S. Department of State recognized that “[m]igrants and refugees, especially women, children, and lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) individuals, sometimes experienced gender-based violence and human trafficking . . . . Authorities reported an increase in forced labor, sex trafficking, and the forced recruitment of migrants and refugees into criminal activity, such as drug trafficking and robbery, on the northern and southern borders, particularly by domestic criminal groups and transnational criminal organizations that also operated in

Colombia.” See Department of State 2023 Human Rights Report: Ecuador. [If Respondent is Venezuelan, Ecuador restricted the migration of Venezuelans in 2025, and that information should be included here. For more information: <https://www.latinamericareports.com/ecuador-changes-migration-policy-affecting-venezuelan-immigrants/10981/>.]

[If Ecuador has close ties with the Respondent’s country of origin and there is credible evidence that they would cooperate with that country to return the Respondent, include that information here and attach relevant supporting documentation.] Based on the above information, DHS has not shown that Ecuador will either receive [RESPONDENT’S NAME] or afford [them] a free and full procedure for applying for protection.

#### 4. Uganda

[Include this argument if the Respondent is from a non-African country: Finally, as to Uganda, DHS’s own directive prohibits motions to pretermitt based on the ACA with Uganda to be filed where the Respondent is from a country outside of Africa. See Jazmine Ulloa, Allison McCann & Hamed Aleaziz, *Trump Administration Pushes Asylum Seekers to Apply in Other Countries*, N.Y. TIMES, Dec. 20, 2025, Tab T. As [RESPONDENT’S NAME] is from [RESPONDENT’S COUNTRY OF ORIGIN], DHS erred in filing a motion to pretermitt based on the Uganda ACA and should withdraw the motion.]

[Finally, as to Uganda/Furthermore] DHS fails to show that [RESPONDENT’S NAME] will actually be received by Uganda. Under the ACA, the United States and Uganda “shall develop operating procedures to assist with the implementation of this Agreement.” See Department of Homeland Security’s Motion to Pretermitt the Respondent’s Protection Applications, Tab A. The Department did not, however, attach or even allude to in its motion any such “operating procedures,” even though the language of the ACA indicates that such

procedures *must* be developed. Moreover, the ACA states that its implementation is subject to the availability of funds and technical capacity of each Party, but DHS has not provided the Court with information on Uganda's presumed availability of funds or technical capacity to receive [RESPONDENT'S NAME]. *See id.* Without this critical information, the Court cannot determine whether Uganda will receive Respondent.

Second, DHS had not shown that Uganda will provide a full and fair procedure for determining [RESPONDENT'S NAME]'s protection claims. The Department has not, for example, submitted any evidence that describes how an individual can apply for asylum, withholding of removal, or CAT protection in Uganda. Instead, country conditions evidence shows that Uganda recently stopped granting refugee status to nationals from Eritrea, Ethiopia, and Somalia due to funding shortages. *See Refugees International, Uganda Refugee Ban, Aid Cuts A Step in the Wrong Direction, Tab P.* The categorical exclusion of asylum seekers of certain nationalities due to funding shortages is especially problematic given the language of the ACA clearly allows for Uganda to refuse deportees if it lacks funding capacity. [Further, although Respondent is not a national of Eritrea, Ethiopia, or Somalia, Uganda's ability to provide a full and fair procedure for them to apply for protection is – as is the case with those three countries – subject to budgetary limitations.]

[Advocates should be aware that DHS may submit reports that UNHCR and other organizations have commended Uganda for having a progressive asylum process. When preparing evidence regarding the insufficiency of Uganda's asylum system, advocates will want to review the entirety of each document and determine whether any content undermines this argument.]

[If Uganda has close ties with the Respondent's country of origin and there is credible evidence that they would cooperate with that country to return the Respondent, include that information here and attach relevant supporting documentation.]

In sum, DHS's motion lacks a factual and legal basis given the apparent implausibility that [RESPONDENT'S NAME] will actually be received by Honduras, Guatemala, Ecuador, or Uganda. Further, even if they receive Respondent, DHS has offered no evidence to show that any of these four countries has full and fair procedures for [RESPONDENT'S NAME] to apply for asylum or other protection, putting them at risk of refoulement to [COUNTRY OF ORIGIN]. Therefore, the Court should find that DHS has not met its burden for the motion to be granted.

**C. Designation of Honduras, Guatemala, Ecuador, and Uganda as safe third countries is invalid where credible evidence shows that they are not safe.**

The Department's position that Honduras, Guatemala, Ecuador, and Uganda are safe third countries flies in the face of voluminous publicly available country conditions reports. While the Department bears the burden in establishing good cause for the motion to pretermit, DHS has failed to provide the Court with any country conditions information. We briefly describe current conditions in the four countries in turn.

**1. Honduras**

The State Department's own 2025 Trafficking in Persons Report for Honduras states that migrants are targeted by human traffickers present in the country, reflecting the country's broader failure to shield asylum applicants from persecution or torture. *See* Department of State 2025 Trafficking in Persons Report: Honduras, Tab D at 92. In addition, the State Department recognized that criminal groups, such as gangs and narcotics traffickers, were "significant perpetrators of violent crimes and committed acts of homicide, torture, kidnapping, extortion, human trafficking, intimidation, and other threats and violence against . . . vulnerable

populations.” See Department of State 2024 Human Rights Report: Honduras, Tab E. Human Rights Watch concludes that the country “continues to struggle with widespread corruption, a compromised judiciary, high levels of violence, and attacks against environmental defenders. See Human Rights Watch Events of 2024: Honduras, Tab E. [Include mention of any characteristics/vulnerabilities that the Respondent possesses and any country conditions information that supports mistreatment of people with those characteristics/vulnerabilities in Honduras, e.g., LGBTQ+ individuals, children, women, nationality, race, religion, migration status, etc. Provide supporting country conditions evidence as attachments.] In such a context, Honduras cannot credibly and objectively be presented as a safe or viable destination under the ACA framework or be considered a safe and viable destination for [RESPONDENT’S NAME].

## 2. Guatemala

“For many migrants, Guatemala is the most difficult part of their journey due to abuse, unjust detention, and economic sanctions.” See Doctors Without Borders, Migrants say Guatemala is one of the most difficult parts of the journey, Tab H. In fact, “Guatemala has one of the highest violent crime rates in Latin America.” See Gov.UK Foreign Travel Advice: Guatemala, Tab I. As a transit hub for drugs and migrants, the country is “besieged by transnational drug trafficking, uncontrolled migration, and the relentless grip of violent street gangs.” See R. Evan Ellis, *Guatemala’s Security Challenges and the Government’s Response*, STRATEGIC HORIZONS, Fall 2025, at 290-306. Tab J. Further, state institutions are weak and beset by systemic corruption. See *id.* [Include mention of any characteristics/vulnerabilities that the Respondent possesses and any country conditions information that supports mistreatment of people with those characteristics/vulnerabilities in Guatemala, e.g., LGBTQ+ individuals, children, women, nationality, race, religion, migration status, etc. Provide supporting country

conditions evidence as attachments.] Thus, the determination that Guatemala is a “safe” third country is erroneous.

### 3. Ecuador

The 2024 Department of State Human Rights Report on Ecuador opens with: “On January 9, President Daniel Noboa decreed a state of emergency to stem escalating violence from local and transnational organized crime groups. The President directed police and military forces to conduct enhanced security operations against these groups to address security threats.” See Department of State 2024 Human Rights Report: Ecuador, Tab M. The report goes on to state that “[s]ignificant human rights issues included credible reports of: arbitrary or unlawful killings; torture or cruel, inhuman, or degrading treatment or punishment; arbitrary arrest or detention; and serious restrictions on freedom of expression and media freedom.” *Id.* The Department of State acknowledged that kidnappings and extortion by criminal groups increased in 2024 in Ecuador, and that the government was forced to issue numerous executive decrees and renewed states of exception to curb rising crime. *Id.* Human Rights Watch’s most recent report on Ecuador states that homicide rates are at “unprecedented levels” and notes that President Daniel Noboa admitted that the country was in an “internal armed conflict.” See Human Rights Watch: Ecuador Events of 2024, Tab K. Due to skyrocketing violence, Ecuador has “shifted from being a transit or host country for foreign refugees to dealing [with] the phenomenon of displacement of its own population,” with approximately 93,000 Ecuadorians displaced by violence in 2024. See HIAS, Refugees in Ecuador: What You Need to Know, Tab O. [Include mention of any characteristics/vulnerabilities that the Respondent possesses and any country conditions information that supports mistreatment of people with those characteristics/vulnerabilities in Ecuador, e.g., LGBTQ+ individuals, children, women,

nationality, race, religion, migration status, etc. Provide supporting country conditions evidence as attachments.] Under these circumstances, there is no colorable argument that Ecuador is a “safe” third country for [RESPONDENT’S NAME], and the Court should deny DHS’s motion.

#### 4. Uganda

The 2024 Department of State Human Rights Report on Uganda found “[s]ignificant human rights issues” that “included credible reports of: arbitrary or unlawful killings; disappearances; torture or cruel, inhuman, or degrading treatment or punishment; arbitrary arrest or detention; transnational repression against individuals in another country; unlawful recruitment of use of children in armed conflict by nonstate armed groups; . . . and significant presence of any of the worst forms of child labor.” *See* Department of State 2024 Human Rights Report: Uganda, Tab Q. Moreover, the State Department’s Travel Advisory for Uganda states that violent crime—including armed robbery, home invasion, and sexual assault—is “a real danger” in Uganda, and that “[p]olice struggle to respond to serious crime in most places due to limited resources.” *See* Department of State Travel Advisory Uganda, Tab R. The Travel Advisory further notes the risk of terrorism, which has killed Ugandans as well as foreigners. *See id.* Other governmental sources underscore the risk of harm from terrorist attacks, political violence, and random crime in Uganda. *See* Gov.UK Foreign Travel Advice: Uganda, Tab S. [Include mention of any characteristics/vulnerabilities that the Respondent possesses and any country conditions information that supports mistreatment of people with those characteristics/vulnerabilities in Uganda, e.g., LGBTQ+ individuals, children, women, nationality, race, religion, migration status, etc. Provide supporting country conditions evidence as attachments.] Based on this information, the Court should find that the determination that Uganda is a safe third country is invalid.

**D. Application of the ACA would violate [RESPONDENT'S NAME]'s due process rights, as [RESPONDENT'S NAME] came to the United States and applied for asylum prior to the ACA's signing.**

[RESPONDENT'S NAME] came to the United States on [DATE] and applied for asylum on [DATE], prior to the signing of the four relevant ACAs in this case. Thus, the agreements should not be retroactively applied to [RESPONDENT'S NAME], as it would violate their due process rights.

United States jurisprudence has a “deeply rooted” presumption against retroactive application of legislation, based on principles of “[e]lementary considerations of fairness”, “settled expectations should not be lightly disrupted . . . the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place.” *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994). The standard to rebut this presumption is “demanding,” requiring “a clear indication from Congress that it intended such a result.” *INS v. St. Cyr*, 533 U.S. 289, 316 (2001). The language rebutting the presumption of retroactivity must be “so clear that it could sustain only one interpretation.” *Id.* at 317, quoting *Lindh v. Murphy*, 521 U.S. 320, 328, n.4 (1997).

The BIA engages only in cursory analysis and reference to *Landgraf* in its decision in *C-I-G-M*. Nowhere does the BIA acknowledge that *Landgraf* specifies a two-step process to determine whether a federal statute has retroactive effect. The first step is determining if “Congress has expressly prescribed the statute's proper reach.” *Landgraf*, 511 U.S. at 280. In the absence of Congress’s clear intent permitting retroactive application, a court must determine whether the statute creates new legal consequences for prior events in a way that upsets “familiar considerations of fair notice, reasonable reliance, and settled expectations.” *Id.* at 270. Here, there is no express permission in the language of 8 USC § 1158(a)(2)(A) to apply an ACA

retroactively.<sup>2</sup> Under the next step in *Landgraf*, it is clear that premitting relief and removal to an ACA country would attach new legal consequences that did not exist at the time [RESPONDENT'S NAME] came to the United States—upsetting the notions of fair notice, reasonable reliance, and settled expectations mentioned in *Landgraf*.

The BIA cites to nonbinding dicta in *Landgraf* for the suggestion that there is no retroactive application where only “prospective relief” is affected. *C-I-G-M- & L-V-S-G-*, 29 I&N Dec. at 298. *Landgraf* simply did not involve such circumstances. The petitioner in *Landgraf* sought to avail herself of an amendment to federal law while she appealed the dismissal of her complaint. A party’s denial of “prospective relief” resulting from (not in spite of) application of a new statute was simply not at issue in *Landgraf*. The Supreme Court is clear that the question is not, as the BIA puts it, whether the statute *restricts* retroactive application of an ACA; the question is whether the statute *permits* such application.

The BIA also cursorily cites Eighth Circuit decisions for the proposition that the statutory and discretionary nature of asylum means that applicants have no constitutionally protected liberty or property interest. *C-I-G-M- & L-V-S-G-*, 29 I&N Dec. at 298. The BIA ignores that this is not true for individuals who establish eligibility for mandatory forms of protection such as withholding of removal and CAT. Apart from asylum, [RESPONDENT'S NAME]’s I-589 includes claims for withholding of removal and CAT that cannot be foreclosed by the applicability of an ACA. Therefore, the Court should deny DHS’s Motion to Premit.

**E. It is in the public interest for [RESPONDENT'S NAME] to be granted asylum in the United States and the Court has the authority to do so.**

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<sup>2</sup> See also *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 208 (1988) (“Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. [...] By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.”).

The asylum applicants in *C-I-G-M-* also referred to the statutory language in 8 USC § 1158(a)(2)(A) to argue that it would be in the public interest for them to receive asylum in the United States, ACA notwithstanding. *Id.* at 298. There is no text in 8 USC § 1158(a)(2)(A) that justifies an interpretation where only the DHS Secretary or their delegates would have authority for a public interest finding. Just as with the finding on full and fair adjudication procedures for asylum in an ACA country, the BIA relied on language that is *ultra vires* relative to 8 USC § 1158(a)(2)(A). Therefore, the Court has the authority to make the finding.

Here, the facts of [RESPONDENT'S NAME]'s case clearly establish that it is in the public interest for them to receive asylum in the United States. [Insert relevant facts such as favorable discretionary factors—positive contributions to the community, significant past trauma, caregiver status, medical history, etc.].

**F. 8 CFR § 1240.11(h)(2) is *ultra vires* and cannot bar a grant of withholding of removal or CAT to respondent's country of origin.**

8 CFR § 1240.11(h)(2) states, in relevant part, that an asylum applicant subject to an ACA “is ineligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act, or for withholding of removal or CAT protection in the United States” unless certain exceptions apply. The statute on which the regulation purports to rely, 8 USC § 1158(a)(2)(A), simply has no text that speaks to an ACA being a bar to a withholding of removal or CAT claim to Respondent's country of origin. The plain reading of the statute is that asylum, referred to as “Paragraph (1)” in the statute, is the only relief that is precluded if an ACA applies. Having no foundation in the text of the statute, 8 CFR § 1240.11(h)(2) is *ultra vires* and cannot bar [RESPONDENT'S NAME]'s existing withholding of removal and CAT claims for [COUNTRY OF ORIGIN]. Therefore, the Court should deny DHS's Motion to Pretermite and adjudicate [RESPONDENT'S NAME]'s applications for withholding and CAT protection from [COUNTRY OF ORIGIN].

**G. Pretermission is inappropriate because issues of fact are in dispute.**

The BIA in *C-I-G-M* again relies on the nonbinding preamble to the regulation rather than any text of the regulation or statute itself to suggest that a withholding of removal or CAT claim for an ACA country may be resolved without a full evidentiary hearing. *Id.* at 296. Not only is there no statutory or regulatory text to support swift pretermission of protection claims for ACA countries, but the BIA’s suggestion is dicta because it was not essential to the holding in the case. The suggestion is also inconsistent with the BIA’s own holding in *Matter of H-A-A-V-*, 29 I&N Dec. 233 (BIA 2025), which permits pretermission *only* after viewing factual allegations “in the light most favorable to the respondent” to determine if they give rise to *prima facie* eligibility for relief. *Id.* at 238. Here, the facts regarding the dangers posed to [RESPONDENT’S NAME] in Honduras, Guatemala, Ecuador, and Uganda, properly viewed in the most favorable light, clearly give rise to a *prima facie* case for withholding of removal and CAT claims for those four countries. [Detail examples specific to the asylum applicant’s circumstances.]

Moreover, the Court’s own policy memorandum on pretermission references 8 CFR § 1240.11(c)(3) for the claim that evidentiary hearings are necessary to resolve disputed issues of fact.<sup>3</sup> Clearly, DHS’s motion implicates issues of fact that are in dispute. These issues include, but are not limited to: whether Uganda will receive [RESPONDENT’S NAME] and afford a “full and fair procedure” for seeking asylum or equivalent protection, whether the four ACA countries raised are places where [RESPONDENT’S NAME] runs the risk of persecution or torture, and whether it is in the public interest for [RESPONDENT’S NAME] to receive asylum

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<sup>3</sup> Sirce E. Owen, EOIR, Pretermission of Legally Insufficient Applications for Asylum (Apr. 11, 2025) <https://www.justice.gov/eoir/media/1396411/dl?inline>.

in the United States. Therefore, pretermission is inappropriate, and any claims should move forward to a full Individual Hearing.

**H. Alternatively, the court should provide [RESPONDENT'S NAME] additional time to file additional claims and evidence for protection against removal to Honduras, Guatemala, Ecuador, and Uganda.**

If the Court finds that any of the ACAs do apply, [RESPONDENT'S NAME] respectfully requests more time to prepare their withholding of removal and CAT claims for the applicable ACA country/countries. [RESPONDENT'S NAME]'s claims are based on [identify protected grounds and facts that underlie the claims of relief]. [RESPONDENT'S NAME]'s fear of harm is substantiated by country conditions evidence. [Cite available country conditions evidence included with this motion brief, and add additional country conditions evidence as appropriate.] Given DHS's own delay in raising the ACAs and the resulting short notice, [RESPONDENT'S NAME] respectfully requests additional time to file their application and evidence for withholding of removal and CAT for the applicable ACA country/countries.

#### **IV. CONCLUSION**

The Court should deny DHS's Motion to Pretermit for all of the aforementioned reasons and permit [RESPONDENT'S NAME]'s applications for relief to be considered in full at an Individual Hearing.

Respectfully Submitted,

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[ADVOCATE'S NAME]  
EOIR ID Number: [XX#####]  
[FIRM/ORGANIZATION NAME]  
[ADDRESS]

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[RESPONDENT'S NAME]

A [###-###-###]

**CERTIFICATE OF SERVICE**

On [DATE], I, [SERVER'S NAME], served a copy of this **RESPONDENT'S  
OPPOSITION TO THE DEPARTMENT OF HOMELAND SECURITY'S MOTION  
TO PRETERMIT** and any attached pages to the U.S. Department of Homeland Security  
Office of the Principal Legal Advisor at the following address: [ADDRESS] via [ECAS,  
ICE E-SERVICE, USPS MAIL DELIVERY, OR COURIER DELIVERY].

\_\_\_\_\_  
[SERVER'S NAME]

\_\_\_\_\_  
Date