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March 23, 2026

VIA CM/ECF

Hon. Anne M. Nardacci
U.S. District Judge
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207

**Re: *Garcia Parra v. Favro*: Supplemental Submission
Civil Action No. 9:26-cv-00363-AMN**

Dear Judge Nardacci:

This office represents the Federal Respondents in this matter. I respectfully submit this letter brief and the accompanying Supplemental Declaration of Deportation Officer Hancox per the Court's direction at the hearing held on March 17, 2026.

At the hearing, the Court inquired about a statement in a March 6, 2026, Form I-213, which stated Petitioner was appearing for a biometric appointment for an I-130 application at the time she was taken into custody. Dkt. #3-2 at 5. The Court asked whether that was accurate—i.e., whether Petitioner was scheduled for an I-130 interview on March 6, 2026—and additionally whether Petitioner had filed an I-130 and, if so, the status of that application. I reiterate my apologies to the Court for not having the information to respond to those questions at the hearing. As to the first question, Petitioner was not scheduled for an I-130 interview on March 6, 2026. In his supplemental declaration, Officer Hancox explains, “[w]hen I prepared the Form I-213 on March 6, 2026, I believed that Petitioner was at U.S. Citizenship and Immigration Services (USCIS) for a Form I-130 interview,” but he “now understand[s] Petitioner was actually at USCIS for a biometrics appointment related to her Form I-485.” Supp. Hancox Decl. at ¶ 4.

As to the next two questions, after further review of DHS files, Officer Hancox was able to confirm that on or about May 9, 2016, Petitioner's spouse, Jose Bolivar Cajamarca Huiracocha, filed with USCIS a Form I-130 Petition for Alien Relative for Petitioner's benefit. The petition was approved on December 14, 2016. A copy of the Form I-130 is attached to the Supplemental Hancox Declaration at Exhibit “C.”¹

¹ In response to another question from the hearing, the sentence “The SUBJECT showed her order of removal from the Immigration Judge and served an I-205 warrant of removal,” Dkt. #3-

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The approved Form I-130 has no impact on ICE's statutory detention authority under 8 U.S.C. § 1231(a)(6). Petitioner has been subject to a final order of removal since 2010. The approval of the Form I-130 did not change her immigration status: "[a]n approved I-130 Form does not establish eligibility for adjustment of status but rather establishes only the Petitioner's relative status to a citizen." *Metreveli v. Flanagan*, No. 25-CV-8039 (MKV), 2025 WL 3496754, at *1 (S.D.N.Y. Dec. 5, 2025) (citing *Dep't of State v. Munoz*, 602 U.S. 899, 904 (2024)). To obtain status, "[t]he non-citizen relative may in turn submit a separate application for a visa or adjustment of status."² *Id.* The Form I-130 merely established a predicate classification on which Petitioner could have applied to adjust status through an I-485. See *Xiu Qing You v. Nielsen*, No. 18-cv-5392, 2020 WL 2837022, at *8 (S.D.N.Y. June 1, 2020) ("Petitioner has only filed and received a predicate application—the I-130—which happens to be the predicate for relief under . . . adjustment of status . . .").³

Here, Petitioner did not attempt to adjust status through a Form I-485 based on the approved I-130. Supp. Hancox Decl. ¶ 6. "[A]pproval of the I-130 petition does not automatically entitle the alien to adjustment of status as an immediate relative of a United States citizen. *INS v. Chadha*, 462 U.S. 919, 937 (1983) (citing *Menezes v. INS*, 601 F.2d 1028 (9th Cir.1979)). "While an I-130 establishes eligibility for status, the Attorney General—or in the context of deportation proceedings, the IJ—must still decide to accord the status."

2 at 5, was unclear and Officer Hancox "amends the language to reflect that at the March 6, 2026 biometrics appointment, Petitioner was showed her order of removal from the Immigration Judge and an I-205 warrant of removal." Supp. Hancox Decl. ¶ 8; see also *id.* Exh. "B", at 4 (addendum dated March 23, 2026)

² See also 6 USCIS Policy Manual Pt. B, Ch. 5 ("[A] family-based petition accords no immigration status nor does it bar removal.") (USCIS PM), <https://www.uscis.gov/policy-manual>; 7 USCIS PM Pt. B, Ch. 3 ("A pending or approved petition does not confer lawful immigration status [I]t merely classifies the beneficiary in a particular immigrant visa category, which forms the basis for the beneficiary's adjustment application.").

³ See also 6 USCIS PM Ch. 1 ("If the . . . beneficiaries of family-based immigrant visa petitions meet the eligibility requirements and USCIS approves their petitions, alien beneficiaries may then pursue LPR status . . . by applying for adjustment of status."); 7 USCIS PM Pt. A, Ch. 7; 6 USCIS PM Ch. 5 ("The alien's history . . . is usually not relevant to [an I-130]. . . . [I]f during the adjudication the officer encounters grounds of inadmissibility that are relevant for adjustment of status . . . , the officer should document the specific grounds or factors . . . to review during the alien's application for adjustment of status"); see also 1 USCIS PM Pt. E, Ch. 8; 7 USCIS PM, Pt. A, Ch. 1 ("[T]he focus on an adjustment application is on the applicant's eligibility and admissibility."); 7 USCIS PM, Pt. A, Ch. 10 (noting family-based applications for adjustment of status under an I-485 involve discretion).

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Agyeman v. I.N.S., 296 F.3d 871, 879 (9th Cir. 2002) (citing *Chadha*, 462 U.S. 919, 937 (1983) (“It is by no means certain, for example, that Chadha’s classification as an immediate relative would result in the adjustment of Chadha’s status from nonimmigrant to permanent resident.”)). Nor is it clear that such adjustment of status would have been granted here because Petitioner entered the United States without inspection or parole and would have been statutorily ineligible to adjust at that time. *See* 8 U.S.C. § 1255(a); 8 C.F.R. § 245.1(b)(1); *see also* 1 USCIS PM Pt. E, Ch. 8 (statutory ineligibility).

Similarly, Petitioner’s pending Form I-360 may, if approved, give Petitioner a pathway to seek adjustment of status through a Form I-485 notwithstanding her entry without inspection and admission or parole. But a pending petition alone does not affect Petitioner’s removability or the corresponding detention authority under 8 U.S.C. § 1231(a)(6). *See* 8 U.S.C. § 1255(a) (“The status of an alien . . . having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.”); 7 USCIS PM Pt. B, Ch. 2 (“The inspected and admitted or inspected and paroled requirement does not apply to . . . Violence Against Women Act (VAWA) applicants.”). Notably, even an *approved* I-360 would not automatically defer action as to Petitioner’s order of removal. 3 USCIS PM Pt. D, Ch. 5 (“Approved self-petitioners . . . *may* be considered for deferred action on a case-by-case basis.” (emphasis added)); *see* 8 C.F.R. § 1.3 (a)(4)(vi); *cf. Guadarrama v. Scott*, No. 2:26-CV-00193-TMC, 2026 WL 507673 (W.D. Wash. Feb. 24, 2026).

To the extent Petitioner seeks indirect relief from her final order of removal by way of a stay of removal from this court pending administrative proceedings, those arguments should first be handled in the immigration courts and then potentially to the circuit court by way of a petition for review. 8 U.S.C. § 1229a(c)(7) (motions to reopen); 8 U.S.C. § 1229b (cancellation of removal); 8 U.S.C. § 1229a(b)(5)(C) (rescission of in absentia order); *see Ertur v. Ashcroft*, No. C05-0188-MJP-MJB, 2005 WL 1201015 (W.D. Wash. Mar. 16, 2005) (Report and Recommendation) (“Allowing habeas jurisdiction . . . prior to a decision by the BIA or the Ninth Circuit threatens to undermine the structure of review of immigration decisions authorized by Congress and interpreted by the Courts.”), *objections denied* Dkt. # 22 (May 19, 2005), *and appeal dismissed* Dkt. # 32 (Jan. 17, 2006); *cf. Magana-Magana v. Bondi*, 129 F.4th 557 (9th Cir. 2025) (noting split of authority, but finding jurisdiction at the circuit court level to review, in the context of a petition for review after motion to reopen in VAWA context).⁴

⁴ EOIR Policy Manual Part II, Ch. 4.9 (EOIR PM) (motions to reopen), <https://www.justice.gov/eoir/policy-manual-eoir>; EOIR PM Pt. III, Ch. 4.6 (same as to Board of

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Petitioner's requests for immediate release or injunctive relief precluding detention or removal pending resolution of her attempt to reopen her case or the adjudication of her Form I-360 constitute an indirect challenge to the removal order, over which this Court lacks jurisdiction under 8 U.S.C. § 1252 for the reasons set forth in the Federal Respondents' brief. Because of the currently effective final order of removal, detention remains lawful under 8 U.S.C. § 1231(a)(6).

Respectfully Submitted:

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Immigration Appeals); EOIR PM Part II, Ch. 7 (motions to stay); EOIR PM Pt. III, Ch. 5 (same as to Board of Immigration Appeals).