SAMPLE Opposition to DHS Motion to Pretermit [Ecuador, Guatemala, Honduras and Uganda].

Prepared by NIJC in December 2025 with attribution to the 2025 Practice Advisory issued by the National Immigration Project and the Center for Gender & Refugee Studies.

***Practitioners should undertake their own research and should update citations and country conditions and specifically tailor their response to each client's individual case.

NON-DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS

In the Matter of **CLIENT** *In removal proceedings*	Hon. No. A Individual Hearing:

MOTION TO STRIKE DEPRTMENT OF HOMELAND SECURITY'S MOTION TO PRETERMIT
OR, IN THE ALTERNATIVE, OPPOSITION TO PRETERMISSION

TABLE OF CONTEXTS

INTRODUCTION……... 3

ARGUMENT……3

I. The Department's Motion is Untimely……3
II. The ACAs Asserted by the Department are Unlawful…….. 4
a. The ACAs are Unlawful because they Violate Nonrefoulment…….. 4
b. Application of the ACAs is Unlawful Because they are Retroactive.. 8
III. CLIENT Meets Exceptions to the ACA……. 9
IV. CLIENT Fears Persecution in Ecuador, Guatemala, Honduras, and Uganda……... 10
V. CLIENT Remains Eligible for Withholding of Removal…… 14

CONCLUSION ……...14

INTRODUCTION

CLIENT moves this Court to strike the Department of Homeland Security's (Department's) motion to pretermit because it is untimely. In the alternative, CLIENT opposes pretermission based on the Asylum Cooperative Agreements (ACAs) with Ecuador, Guatemala, Honduras, and Uganda because the ACAs are unlawful, CLIENT meets exceptions to the ACAs, and CLIENT fears persecution in Ecuador, Guatemala, Honduras and Uganda, the countries to which the Department asserts CLIENT can be sent for meaningful review of her protection claim.

ARGUMENT

I. The Department's Motion is Untimely

CLIENT was issued a Notice to Appear and placed in removal proceedings by the Department on DATE. She filed her application for asylum on DATE. She is scheduled for an individual merits hearing on DATE, mere days from the day the Department filed its motion. The Department never moved for pretermission prior to its DATE motion. Even acknowledging that the ACAs upon which the Department relies were published in June (Honduras), July (Guatemala), September (Uganda), and November (Ecuador) of 2025, the Department has had between one and six months to raise pretermission. It did not. Now, mere days before CLIENT's scheduled merits hearing, the Department asks this court to take the extraordinary step of pretermitting CLIENT's protection claims.

Chapter 5.3 of the Immigration Court Practice Manual states, "Pre-decision motions are limited in time." This Court issued a filing deadline thirty days in advance of the individual hearing. EOIR Policy Manual, Part II, 3.1(b)(2)(C). The Department failed to file its motion thirty days in advance of the hearing. The Department failed to request

Respondent's position on its motion. The Court should not allow the Department to blindside CLIENT with this eleventh hour effort to foreclose access to protection, particularly after CLIENT timely filed argument and evidence in support of her protection claim.

II. The ACAs Asserted by the Department are Unlawful

The ACAs with Ecuador, Guatemala, Honduras and Uganda are unlawful and should not prevent CLIENT from accessing protection in the United States. *See* Agreement Between the Government of the United States of America and the Government of the Republic of Ecuador Relating to the Transfer of Third-Country Nationals to Ecuador, 90 Fed. Reg. 51,376 (Nov. 17, 2025) (U.S .- Ecuador ACA); Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala Relating to the Transfer of Nationals of Central American Countries to Guatemala, 90 Fed. Reg. 31,670 (July 15, 2025) (U.S .- Guatemala ACA); Agreement between the Government of the United States of America and the Government of the Republic of Honduras (June 25, 2025) (U.S .- Honduras ACA); and Agreement Between the Government of the United States of America and the Government of the Republic of Uganda for Cooperation in the Examination of Protection Requests, 90 Fed. Reg. 42,597 (Sept. 3, 2025) (U.S .- Uganda ACA).

A. The ACAs are Unlawful because they Violate Nonrefoulment

Congress created the safe third country provision at INA § 208(a)(2)(A) as one of three narrow exceptions to the right to seek asylum. The two other exceptions are not at

issue in this case.[1] Under the safe third country provision, an individual may not apply for asylum "if the Attorney General determines that the [noncitizen] may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the [non-citizen's] nationality or, in the case of an alien having no nationality, the country of the [non-citizen's] last habitual residence) *in which the [noncitizen'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 [noncitizen] 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 [noncitizen] to receive asylum in the United States." INA § 208(a)(2)(A)(emphasis added). Because CLIENT's life or freedom is threatened in Ecuador, Guatemala, Honduras and Uganda and she would not have access to a full and fair asylum procedures in those countries, the ACAs with Ecuador, Guatemala, Honduras, and Uganda violate the statute and are unlawful.

The United Nations High Commissioner for Refugees (UNHCR) publicly stated that the ACAs the United States has executed constitute "an approach at variance with international law that could result in the transfer of highly vulnerable individuals to countries where they may face life-threatening dangers." UNCHR, Statement on New h U.S. Asylum Policy, Nov. 19, 2019, https://www.unhcr.org/en-us/news/press/2019/11/5dd426824/ statement-on-new-us-asylum-policy.html (last accessed 12/17/2025). The INA's withholding of removal provision, INA § 241(b)(3),

[1] The other two exceptions affect individuals who fail to apply within one year of their arrival, INA § 208(a)(2)(B), and those who had a previous application denied, id. INA § 208(a)(2)(C).

bars removal of an individual to a country where it is more likely than not that they would face persecution. Section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") bars removal of an individual to a country where it is more likely than not that they would be subjected to torture. *See also* 8 C.F.R. §§ 208.16(c)(2), 1208.16(c)(2). The ACAs with Ecuador, Guatemala, Honduras, and Uganda and the Federal Register notices announcing them do not include evaluations of whether Ecuador, Guatemala, Honduras, and Uganda are safe for migrants seeking humanitarian protection.[2] As set forth *infra* at section IV, conditions in these countries present a direct and acute threat to CLIENT due to (1) her status as a woman previously in a relationship she was unable to leave, (2) her status as a [COUNTRY] woman, and (3) her status as a single mother removed to a supposed safe-third-country. Moreover, all four countries lack well-functioning asylum systems.

In May of 2025, Hebrew Immigrant Aid Society reported as to Ecuador, "[R]ecent changes in internal migration policies have led to the suspension of the [refugee] registration process. Thousands of people now face uncertainty and lack of protection…" *Refugees in Ecuador: What You Need to Know, https://hias.org/news/refugees-ecuador-what-you-need-know/* (last accessed 12/17/2025). The United Nations High Commissioner for Refugees (UNHCR) concurs as to Ecuador: "Forcibly displaced people face major barriers to accessing rights and services, including…documentation…Women and children are especially vulnerable to exploitation, trafficking, and recruitment by criminal groups." *UNHCR Ecuador Strategy*

[2] The Department does not provide, and Respondent cannot locate, implementing operating procedures for the ACAs with Ecuador, Guatemala, Honduras and Uganda.

2026: Emergency Analysis, https://www.unhcr.org/us/where-we-work/countries/ecuador?dataset=POP&yearsMode=range&selectedYears=%5B2012%2C2026%5D&level=OPR&category=PTY&fundingSource=ALS&compareBy=%5B%22category%22%5D&levelCompare=%5B%5B%22OECU_ABC%22%5D%5D&viewType=chart&chartType=bar&contextualDataset=BUD&tableDataView=absolute (last accessed 12/17/2025).

Guatemala similarly does not offer access to protection in compliance with INA § 208(a)(2)(A). The UNHCR reported in late 2025, "Humanitarian needs remain high. Host communities are under increasing pressure, often with limited resources. Protection challenges include restricted access to healthcare, education, shelter, and documentation, especially in remote areas." *UNHCR Operational Update: Guatemala July – September 2025*, https://reliefweb.int/sites/default/files/attachments/2d/db/2ddb0568-a8c5-5f5a-a529-cc421caaacaa.pdf (last accessed 12/17/2025).

Honduras has not shown itself to have a viable, functioning asylum or refugee system. Tab Q1, *Senate Foreign Relations Committee: Democratic Staff Report, "Cruelty, Coercion, and Legal Contortions: The Trump Administration's Unsafe Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador."* Because Honduras is a refugee-producing country without a well-functioning asylum system, the ACA is unlawful.

Uganda's asylum system also does not comply with INA § 208(a)(2)(A). The United Nations Office for the Coordination of Humanitarian Affairs reports, "[F]unding shortfalls and global donor fatigue are converging to erode the very foundations of Uganda's refugee response...the risk is clear: without urgent action, Uganda's refugee

model could collapse under the weight of its own success and become a forgotten crisis." Asylum policy under threat - The case of Uganda (September 2025), https://reliefweb.int/report/uganda/asylum-policy-under-threat-case-uganda-september-2025 (last accessed 12/17/2025).

The Department asserts this Court may not assess the viability of the asylum systems of ACA receiving countries pursuant to *Matter of C-I-G-M- & L-V-S-G-*, 29 I&N Dec. 291 (BIA 2025), but this suggested limitation runs afoul of the statute and is not a best reading of the statute. Given the foregoing, the Court should find the ACAs with Ecuador, Guatemala, and Uganda are inconsistent with, and seek to bypass, statutory and regulatory provisions intended to protect refugees. As a result, the ACAs are contrary to law.

B. Application of the ACAs is Unlawful Because they are Retroactive

Matter of C-I-G-M- & L-V-S-G-, 29 I&N Dec. 291 (BIA 2025) upholds the retroactive application of ACAs, but this is an erroneous legal interpretation. CLIENT preserves the argument that applying the ACAs retroactively is unlawful. United States jurisprudence has a "deeply rooted" presumption against retroactive legislation, based on principles of "[e]lementary considerations of fairness"; "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

ACAs contain no text that contemplates retroactive application, much less "achieves this high level of clarity." *St. Cyr*, 533 U.S. at 317. CLIENT entered the United States of America and applied for asylum prior to June 2025, when the first of the four relevant ACAs entered into force. (U.S.- Honduras ACA). *C-I-G-M-* asserts the fact that the 2019 regulations predate the arrival of asylum seekers subject to this ACA cures its retroactivity problem. 29 I&N at 298. But it cannot escape the fact that the relevant ACAs did not apply to someone in CLIENT's position, and now the government claims they do. Application of the ACAs to CLIENT is unambiguously retroactive and unlawful.

III. CLIENT Meets Exceptions to the ACA

CLIENT asserts the Court may find it would be in the public interest for her to seek asylum in the United States and should deny the Department's motion for that reason. While *C-I-G-M-* suggests Immigration Judges are not empowered to make such findings, 29 I&N at 294, the regulatory language upon which it relies is *ultra vires* relative to INA §208(a)(2)(A). For these reasons, CLIENT is – or should be found – exempt from the ACAs and the Department's motion should be denied.

Additionally, per the Joint Implementation Plan executed by the United States and Honduras, the removal of family units to Honduras can only occur on a case-by-case basis. Agreement between the United States of America and Honduras (June 25, 2025), https://www.state.gov/wp-content/uploads/2025/09/25-625-Honduras-Migration-and-Refugees-JIP.pdf ("The transfer of family units is subject to notification to the Republic of Honduras and confirmation of its capacity to provide the necessary conditions for reception."). CLIENT is in removal proceedings with her [FAMILY]. She is also [individualize to client's specific situation, i.e., Client the mother of a three-year-old U.S.

citizen son, who fully depends on her and lives with her.] The Department has filed nothing indicating it has notified the Honduran government about this family unit, which includes two minor children, or confirmed the capacity of Honduras to receive the family.

Additionally, the Joint Implementation Plan indicates Honduras has agreed to accept "no more than ten (10) individuals transferred per month." *Id*. The Department has filed nothing indicating the numerical limit has not been reached for this month. On information and belief, the Department has filed many motions to pretermit based on ACAs nationwide, and more than likely has requested pretermission in more than ten cases this month. Because the Department has not – and likely cannot – demonstrate to this Court it that is has not exceeded its numerical cap, pretermission in CLIENT's case is not appropriate.

IV. CLIENT Fears Persecution in Ecuador, Guatemala, Honduras, and Uganda

C-I-G-M- erroneously suggests an asylum seeker's claim regarding harm in a third country to which the asylum seeker may be removed pursuant to an ACA may be resolved in an "abbreviated" fashion "without conducting a full evidentiary hearing." 29 I&N at 296. This wholly ignores the statutorily recognized and deeply entrenched concept of future fear claims; where an asylum seeker may qualify for asylum based on the likelihood of future harm, even where the asylum seeker has not experienced past persecution. *Matter of Mogharrabi*, 19 I&N Dec. 439 (B.I.A. 1987), INA § 101(a)(42), 8 C.F.R. § 208.13(b)(2). If this Court determines one or more of the ACAs applies to CLIENT, she should be afforded a full hearing regarding her fear of harm in those countries.

The Department suggests CLIENT should not be meaningfully considered for an exception to the ACAs because thus far in her proceedings she has not asserted fear as to Ecuador, Guatemala, Honduras and Uganda. Department Motion at 3-6. Despite having placed CLIENT in removal proceedings nearly four years ago, in DATE, the first time the Department raised the specter of removal to Ecuador, Guatemala, Honduras and Uganda was a week ago, on DATE. Because the Department never asserted an intention to remove CLIENT to a country other than her own home country, she did not have reason to assert she *also* fears harm in Ecuador, Guatemala, Honduras and Uganda, as well as any other country where [individualize, i.e., women are persecuted and her ex-partners can reach her.] The Department's assertion that CLIENT should not be considered for an exception to the ACAs because she did not assert fear as to countries heretofore not raised as removal destinations is disingenuous and should not be considered by this Court.

CLIENT fears persecution, including torture, in Ecuador, Guatemala, Honduras and Uganda based on (1) [individualize, i.e., her status as a woman previously in a relationship she was unable to leave, (2) her status as a COUNTRY woman, and (3) her status as a single mother removed to supposed safe-third country]. With this motion, CLIENT files evidence in support of these claims, which indicates:

- As a woman in Ecuador, Guatemala, Honduras and Uganda, CLIENT will be subject to gender harm, including femicide, sometimes due to the societal norm of women being treated as property. The governments of the named countries are unable or unwilling to protect CLIENT from this harm and, indeed, would likely participate in, or acquiesce to, her torture. CLIENT faces substantial risk of violence or murder as a woman in all parts of the countries.

- Tab X, *Using Gender-Based Violence Frameworks to Eradicate Conversion Practices in Latin America* ("The inaction of the State, particularly the Ministry of Women and Human Rights and the Undersecretariat for Diversities, is a factor that aggravates the situation. The lack of forceful measures to prevent violence, protect victims and punish those responsible generates a climate of impunity and distrust in institutions.")
- Tab X, Stephanie Wallace, *Guatemala: lasting legacy of gender-based violence and state impunity. Violence against women and girls has been normalised, not reduced, since the conflict* ("Despite this acknowledgement, more than two decades on Guatemalan women still face precarious and complicated conditions. This is visible in the high rates of gender-based violence and femicide that plague Guatemalan society. In addition, impunity for these crimes is still widespread, meaning many women are unable to experience a sense of justice.")
- Tab X, Laia Corxet Sole*, Women's Bodies As A Battlefield: Gender-Based Violence In Honduras* ("Honduras has been named on several occasions the worst place in the world to be a woman...The Honduran State has failed to establish a system that protects women.")
- Tab X, *How the limited access to services for victims of Gender Based Violence affects Uganda's gender SDG targets* ("[A]ctual utilisation of GBV services remains very low at only 10 percent. Even among survivors who are aware of these services, many still do not seek support. Confidentiality concerns, stigma, financial barriers, and limited capacity among local leaders—who are often the first point of contact—continue to hinder victims from accessing timely protection and justice.")

- CLIENT'S [PERSECUTORS] would be able to access her in Honduras, Guatemala, or Ecuador and inflict harm upon her there as these countries border the countries in which she experienced past harm. The governments of the named countries are unable or unwilling to protect CLIENT and, indeed, would likely participate in, or acquiesce to, her torture.

    - Tab X, *Using Gender-Based Violence Frameworks to Eradicate Conversion Practices in Latin America* ("The Ecuadorian case underscores the challenges of relying solely or primarily on punitive measures to address conversion practices. While criminal legal frameworks are often perceived as a foundation for accountability, they frequently fall short in contexts where

religious and familial spaces are deeply involved. The threat of criminal penalties for perpetrators can create significant disincentives for survivors to come forward, driven by fear of ostracism or reprisals, or, alternatively, by affective bonds.")

- Tab X, Statement of NAME., Country Conditions Expert on Guatemala ("Guatemalan authorities got convictions in 12 percent or less of all homicides and 11 percent or less of all rapes committed between 2014 and 2022. By registering among the lowest convictions rates for this crime, the State signals its lack of concern for rape victims/survivors who are predominantly female.")
- Tab X, *A Cut Too Deep: US Foreign Aid Withdrawals and the Collapse of Protection for Women and Girls in Honduras* ("Deep-rooted institutional corruption and documented collusion between police forces and organized criminal networks have severely undermined the legitimacy of security institutions, enabling [gender-based violence] to persist with near-total impunity...").

- CLIENT is [PERSONAL CIRCUMSTANCES]. In Ecuador, Guatemala, Honduras and Uganda, [FAMILY] would not have the same level of education or health care provided to them in the United States. This is especially impactful for the FAMILY [, as he has a PTSD diagnosis and sees a doctor frequently. *See* Exh. R1].

    - Tab X, *World Report 2024: Ecuador* ("Ecuadorian human rights organizations and UN experts warned that, in the absence of jobs and education, an increasing number of children are being recruited by criminal groups, subjected to sexual exploitation, and coerced to engage in violence.")
    - Tab X, Statement of NAME., Country Conditions Expert on Guatemala ("REDACTED.")
    - Tab X, *2023 Country Report on Human Rights Practices: Honduras* ("Abuse of Refugees and Asylum Seekers: Transiting migrants, forcibly displaced populations, and asylum seekers with pending cases were vulnerable to abuse and sexual exploitation by criminal organizations. Women, children, and lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+) individuals were especially vulnerable to abuse.")
    - Tab X, *Uganda: Events of 2024* ("A joint report by Human Rights Watch and the Initiative for Social and Economic Rights found that Uganda's lack of government-funded pre-primary education worsens wealth inequality and has lifelong negative consequences. Only 1 in 10 children aged 3 to 5 are enrolled in licensed pre-primary schools, while 60 percent attend no pre-primary school.

> Private preschool fees hinder access for low-income families, leading to poorer primary school performance and increased dropout rates for those who miss pre-primary education.")

If this Court determines the ACAs with Ecuador, Guatemala, Honduras and Uganda apply to CLIENT, she requests the opportunity to present additional evidence, including testimony, about her fear of persecution and her fear of torture in Ecuador, Guatemala, Honduras, and Uganda.

V. CLIENT Remains Eligible for Withholding of Removal

While 8 CFR §1240.11(h)(2) states an ACA renders an asylum seeker ineligible for withholding of removal and relief under the Convention Against Torture, there is no statutory language indicating an ACA precludes withholding of removal and CAT relief in addition to asylum. As such, even if this Court finds CLIENT cannot proceed on her asylum claim as to [CLIENT'S HOME COUNTRY] because of the ACAs, it should nonetheless evaluate her eligibility for withholding of removal and CAT relief as to [HOME COUNTRY].

CONCLUSION

The Department's untimely motion requesting the Court retroactively pretermit a case that is ready to proceed to merits based on an unlawful ACA should be denied by this Court. CLIENT has established her eligibility for asylum, and she should be granted relief.

Dated: Respectfully submitted,

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS

In the Matter of **CLIENT** *In removal proceedings*	No. Individual Hearing:

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Counsel's Motion to Strike, it is HEREBY ORDERED that the motion be _____ **GRANTED** _____ **DENIED** because:

_____DHS 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.
_____ Other:

Date:

_____
Immigration Judge