

No. 19-161

In the Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, ET AL.,
PETITIONERS

v.

VIJAYAKUMAR THURAISSIGIAM

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: AUG. 2, 2019
CERTIORARI GRANTED: OCT. 18, 2019

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 18-55313

VIJAYAKUMAR THURAISSIGIAM, PLAINTIFF-APPELLEE

v.

U.S. DEPARTMENT OF HOMELAND SECURITY;
U.S. CUSTOMS AND BORDER PROTECTION;
U.S. CITIZENSHIP AND IMMIGRATION SERVICES;
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;
KIRSTJEN NIELSEN, SECRETARY OF DHS; JEFFERSON B.
SESSIONS III, ATTORNEY GENERAL; WILLIAM P. BARR,
ATTORNEY GENERAL; KEVIN K. MCALEENAN, ACTING
COMMISSIONER OF CBP; THOMAS HOMAN; L. FRANCIS
CISSNA, DIRECTOR OF USCIS; PETE FLORES,
SAN DIEGO FIELD DIRECTOR, CBP; GREGORY
ARCHAMBEAULT, SAN DIEGO FIELD OFFICE DIRECTOR,
ICE; FRED FIGUEROA, WARDEN, OTAY MESA
DETENTION CENTER, RESPONDENTS-APPELLEES

DOCKET ENTRIES

DATE	PROCEEDINGS
3/8/18	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: No. The schedule is set as follows: Appellant Vijayakumar Thuraissigiam opening brief due 05/08/2018. Appellees Gregory Archambeault, L. Francis Cissna, Fred Figueroa, Pete Flores, Thomas Homan, Kevin K. McAleenan, Kirstjen Nielsen, Jefferson B.

DATE	PROCEEDINGS
	Sessions III, Attorney General, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement answering brief due 06/08/2018. Appellant's optional reply brief is due 21 days after service of the answering brief. [10791869] (RT)
3/9/18	Filed (ECF) Appellant Vijayakumar Thuraissigiam EMERGENCY Motion to stay removal. Date of service: 03/09/2018. [10792237] [18-55313] (Gelernt, Lee)
3/9/18	Filed order (BARRY G. SILVERMAN and MORGAN B. CHRISTEN): Appellant's request for a temporary stay of removal contained within Docket Entry No. is granted. Appellees' response to the motion for a stay pending appeal is due March 12, 2018 at 9:00 am Pacific Time. Appellant's optional reply is due March 12, 2018 at 1:00 pm Pacific time. The briefing schedule established previously remains in effect. [10793451] (AF)
	* * * * *
3/12/18	Filed order (BARRY G. SILVERMAN and MORGAN B. CHRISTEN) Appellant's motion for a stay of removal pending appeal (Docket Entry No.) is denied. See Hilton v. Braunskill, 481 U.S. 770, 776 (1987). The motion to file exhibits under seal (Docket Entry No. [5]) is granted. The Clerk shall

DATE PROCEEDINGS

maintain the filing at Docket Entry No. 5 under seal. The briefing schedule established previously remains in effect. [10795114] (ME)

* * * * *

3/13/18 Filed order (BARRY G. SILVERMAN and MORGAN B. CHRISTEN) The motion for reconsideration (Docket Entry No.) is denied. See 9th Cir. R. 27-10. The motion for reconsideration en banc (Docket Entry No.) is denied on behalf of the court. 9th Cir. Gen. Ord. 6.11. The motion to stay appellant's removal pending the motion for reconsideration (Docket Entry No.) is denied as moot. The briefing schedule established previously remains in effect. [10797423] (AC)

* * * * *

3/21/18 Filed order (BARRY G. SILVERMAN and MORGAN B. CHRISTEN): In response to a request from a member of the court, the court's March 13, 2018 order is vacated to the extent that the order denies reconsideration en banc on behalf of the court. Appellant's removal from the United States is stayed pending further court order. This matter is deemed urgent. See 9th Cir. Gen. Ord. 3.3(g). The Clerk shall set an expedited briefing schedule and refer this matter to a three-judge panel for resolution. All other

DATE	PROCEEDINGS
	pending motions will be addressed by separate order. [10806769] (AF)
3/22/18	Filed order (BARRY G. SILVERMAN and MORGAN B. CHRISTEN) The motion for summary affirmance is denied without prejudice to renewing the arguments in the briefing (Docket Entry No.). The court's March 13, 2018 order is vacated in its entirety. Appellant's removal remains stayed. The Clerk will establish a briefing schedule by separate order. [10808260] (ME)
3/22/18	Filed clerk order (Deputy Clerk: PK): No judge has requested a vote to hear this case initially en banc. The petition for initial hearing en banc (Docket Entry No.) is therefore denied. [10808855] (AF)
3/22/18	Filed clerk order (Deputy Clerk: AT): The briefing schedule is as follows: the opening brief is due April 4, 2018; the answering brief is due April 17, 2018; and the optional reply brief is due April 20, 2018. No motions for extension of time will be entertained absent extraordinary circumstances. This appeal will be placed on an argument calendar in the month of May, 2018. See 9th Cir. Gen. Ord. 3.3(g). [10809321] (ME)

* * * * *

DATE	PROCEEDINGS
5/17/18	ARUGED AND SUBMITTED TO A. WALLACE TASHIMA, M. MARGARET MCKEOWN and RICHARD A. PAEZ. [10876007] (KAD) * * * * *
3/7/19	FILED OPINION (A. WALLACE TASHIMA, M. MARGARET MCKEOWN and RICHARD A. PAEZ) REVERSED AND REMANDED. Judge: AWT Authoring, FILED AND ENTERED JUDGMENT. [11218934] (RMM)
3/7/19	Appellee Jefferson B. Sessions III in 18-55313 substituted by Appellee William P. Barr in 18-55313 [11219173] (RY) * * * * *
8/6/19	MANDATE ISSUED. (AWT, MMM and RAP) [11388724] (RR) * * * * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
(SAN DIEGO)

Docket No. 3:18cv135

VIJAYAKUMAR THURAISSIGIAM, PLAINTIFF

v.

U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”);
U.S. CUSTOMS AND BORDER PROTECTION (CBP);
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
(USCIS); U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT (ICE); KIRTJEN NIELSEN, SECRETARY
OF DHS; JEFFERSON BEAUREGARD SESSIONS, III,
ATTORNEY GENERAL OF THE UNITED STATES; KEVIN
K. MCALEENAN, ACTING COMMISSIONER OF CBP;
THOMAS HOMAN, ACTING DIRECTOR OF ICE;
L. FRANCIS CISSNA, DIRECTOR OF USCIS; PETE
FLORES, SAN DIEGO FIELD DIRECTOR, CBP; GREGORY
ARCHAMBEAULT, SAN DIEGO FIELD OFFICE DIRECTOR,
ICE; FRED FIGUEROA, WARDEN, OTAY MESA
DETENTION CENTER, DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
1/19/18	1	Petition for Writ of Habeas Corpus against Gregory Archambeault, L. Francis Cissna, Fred Figueroa, Pete Flores, Thomas Homan, Kevin K. McAleenan, Kirtjen Nielsen, Jefferson Beauregard Sessions, III, U.S.

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement (Filing fee \$5 receipt number 0974-10828736.), filed by Vijayakumar Thuraissigiam. (Attachments: # 1 Civil Cover Sheet) The new case number is 3:18-cv-135-L-AGS. Judge M. James Lorenz and Magistrate Judge Andrew G. Schopler are assigned to the case. (Wofsy, Cody) (Irc) Modified to remove screening text. (jao). (Entered: 01/19/2018)</p>
		* * * * *
3/5/18	25	<p>MOTION to Dismiss by Gregory Archambeault, L. Francis Cissna, Fred Figueroa, Pete Flores, Thomas Homan, Kevin K. McAleenan, Kirtjen Nielsen, Jefferson Beauregard Sessions, III, U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement. (Attachments: # 1 Memo of Points and Authorities,</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		# 2 Proof of Service) (Press, Joshua) (Entered: 03/05/2018)
		* * * * *
3/7/18	52	Emergency MOTION to Stay of Removal by Vijayakumar Thuraissigiam. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration, # 3 Exhibit, # 4 Exhibit, # 5 Proof of Service) (Gelernt, Lee) (acc). (Entered: 03/07/2018)
3/7/18	53	Emergency MOTION to Stay re 52 Emergency MOTION to Stay of Removal Pending Petitioner's Emergency Motion for Stay of Removal by Vijayakumar Thuraissigiam. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration, # 3 Proof of Service) (Gelernt, Lee) (acc). (Entered: 03/07/2018)
3/7/18	54	Joint MOTION to Shorten Time for Petitioner's Emergency Motion for Stay of Removal by Vijayakumar Thuraissigiam. (Gelernt, Lee) QC re: missing cert of service (acc). (Entered: 03/07/2018)
3/8/18	55	ORDER Dismissing Case with prejudice for lack of Jurisdiction;

DATE	DOCKET NUMBER PROCEEDINGS
	<p>denying as moot 52, 53 Petitioner's Ex Parte Application for Temporary Stay; denying as moot 54 Joint Motion to Shorten Time for Petitioner's Emergency Motion for Stay of Removal; and denying as moot 25 Respondent's Motion to Dismiss. the Petition DISMISSED WITH PREJUDICE for lack of subject matter jurisdiction. As a result, as there is no likelihood of success on the merits to support Petitioner's emergency motion for stay of removal, this motion is DENIED. (Doc. No. 52 (see <i>Nken v. Holder</i>, 556 U.S. 418, 426 (2009)). Thus, Respondents' motion to dismiss, Petitioner's ex parte application for a stay of removal pending his emergency motion, and the joint motion to shorten time for petitioner's emergency motion for stay of removal are DENIED AS MOOT.4 (Doc. Nos. 25, 53, 54.) The Clerk of Court is DIRECTED to CLOSE this case. Signed by Judge Anthony J. Battaglia on 3/8/2018. (acc) (Entered: 03/08/2018)</p>

DATE	DOCKET NUMBER	PROCEEDINGS
3/8/18	56	CLERK'S JUDGMENT. IT IS SO ORDERED AND ADJUDGED that the Petition is DISMISSED WITH PREJUDICE for lack of subject matter jurisdiction. As a result, as there is no likelihood of success on the merits to support Petitioners emergency motion for stay of removal, this motion is DENIED. (Doc. No. 52 (see Nken v. Holder, 556 U.S. 418 426 (2009)). Thus, Respondents' motion to dismiss, Petitioner's ex parte application for a stay of removal pending his emergency motion, and the joint motion to shorten time for Petitioner's emergency motion for stay of removal are DENIED AS MOOT.4 (Doc. Nos. 25, 53, 54.) The Clerk of Court is DIRECTED to CLOSE this case. (acc) (Entered: 03/08/2018)
3/8/18	57	NOTICE OF APPEAL to the 9th Circuit as to 56 Clerk's Judgment, 55 Order, by Vijayakumar Thuraissigiam. (Filing fee \$505 receipt number 0974-10997026.) (Notice of Appeal electronically

DATE	DOCKET NUMBER	PROCEEDINGS
		transmitted to US Court of Appeals.) (Attachments: # 1 Judgment and Order, # 2 Representation Statement) (Newell, Jennifer). (Modified on 3/9/2018: Edited docket text re linked Order and Judgment.) (akr). (Entered: 03/08/2018)
		* * * * *
8/21/19	66	Joint MOTION to Hold in Abeyance by Vijayakumar Thuraissigiam. (Gelernt, Lee) (jrm). (Entered: 08/21/2019)
8/22/19	67	ORDER granting Joint Motion to Hold Case in Abeyance (Doc. No. 66). Signed by Judge Anthony J. Battaglia on 8/22/2019. (jrm) (jao). (Entered: 08/22/2019)
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Case No. [18CV0135L AGS]

VIJAYAKUMAR THURAISSIGIAM, PETITIONER

v.

U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”);
U.S. CUSTOMS AND BORDER PROTECTION (“CBP”);
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
 (“USCIS”); U.S. IMMIGRATION AND CUSTOMS
 ENFORCEMENT (“ICE”); KIRSTJEN NIELSEN,
 SECRETARY OF DHS; JEFFERSON BEAUREGARD
 SESSIONS III, ATTORNEY GENERAL OF THE UNITED
 STATES; KEVIN K. MCALEENAN, ACTING
 COMMISSIONER OF CBP; THOMAS HOMAN, ACTING
 DIRECTOR OF ICE; L. FRANCIS CISSNA, DIRECTOR OF
 USCIS; PETE FLORES, SAN DIEGO FIELD DIRECTOR,
 CBP; GREG ARCHAMBEAULT, SAN DIEGO FIELD
 OFFICE DIRECTOR, ICE; FRED FIGUEROA, WARDEN,
 OTAY MESA DETENTION CENTER, RESPONDENTS

Filed: Jan. 19, 2019

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Vijayakumar Thuraissigiam fled Sri Lanka after being abducted and severely beaten, leading to his hospitalization for days. Petitioner is a Tamil, an ethnic minority group that is persecuted in Sri Lanka, who was active in supporting a Tamil political party and

candidate. He was kidnapped and beaten by government officials as a result. In the aftermath of the civil war in Sri Lanka, Tamils like Petitioner have been subjected to a consistent and extreme pattern of abduction and torture. Indeed, even without the kind of persecution Petitioner suffered, Tamils removed to Sri Lanka after unsuccessfully seeking asylum abroad—as Petitioner would be absent relief—are routinely assumed to be traitors, arrested, and tortured.

Petitioner entered the United States in February, 2017, and was subsequently apprehended by immigration agents near San Ysidro, California. After apprehension, Petitioner was afforded only a cursory administrative asylum hearing and was subsequently issued an “expedited removal” order pursuant to 8 U.S.C. § 1225(b)(1). Absent court intervention, Petitioner will be deported to Sri Lanka, where he faces further beatings, torture, and death because of his political associations; his imputed political opinions as a Tamil; and the perception by Sri Lankan government officials that asylum seekers like Petitioner are traitors. Petitioner is currently detained at the Otay Mesa Detention Center in San Diego, California.

Petitioner’s expedited removal order violated his statutory, regulatory and constitutional rights. His hearing was procedurally unfair because it did not provide him with a meaningful opportunity to prove his claims. The expedited removal order issued against him is also substantively unlawful because an erroneous legal standard was applied and because, based on the undisputed facts in the administrative record, Petitioner can show a significant possibility of prevailing on his claims for asylum and other forms of relief available to noncitizens fleeing

persecution and torture. Petitioner accordingly seeks to vacate his existing removal order and seeks an order directing Respondents to provide him with a new, meaningful opportunity to apply for asylum and other relief from removal.

Petitioner respectfully alleges, by undersigned counsel, as follows:

JURISDICTION AND VENUE

1. This case arises under the United States Constitution; the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*; the regulations implementing the INA’s asylum and expedited removal provisions; the Convention Against Torture (“CAT”), the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231), and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.* This Court has jurisdiction pursuant to 8 U.S.C. § 1252(e)(2) (INA provision providing habeas jurisdiction over certain challenges to expedited removal); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (general habeas statute); Art. I, § 9, Cl. 2 of the United States Constitution (“Suspension Clause”); Art. III of the United States Constitution; the Due Process Clause; and the Common Law.

2. Petitioner is in federal immigration custody because he is subject to an order of removal and is presently detained at the Otay Mesa Detention Center in San Diego, California.

3. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this action occurred in this District.

PARTIES

4. Mr. Thuraissigiam is a native and citizen of Sri Lanka who fled his home country to seek asylum in the United States. He entered the United States in February 2017, and he was subsequently apprehended by immigration agents.

5. Respondent U.S. Department of Homeland Security (“DHS”) has responsibility for enforcing the immigration laws of the United States.

6. Respondent U.S. Customs and Border Protection (“CBP”) is the sub-agency of DHS that is responsible for the initial processing and detention of noncitizens who are apprehended near the border and placed in expedited removal proceedings.

7. Respondent U.S. Citizenship and Immigration Services (“USCIS”) is the sub-agency of DHS that, through its Asylum Officers, conducts interviews of certain individuals placed in expedited removal to determine whether they have a credible fear of persecution and should be permitted to apply for asylum.

8. Respondent U.S. Immigration and Customs Enforcement (“ICE”) is the sub-agency of DHS that is responsible for carrying out removal orders and operates and oversees the Berks detention facility.

9. Respondent Kirstjen Nielsen is sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, she directs each of the component agencies within DHS, ICE, USCIS, and CBP. As a result, Respondent Nielsen has responsibility for the administration of the immigration laws

pursuant to 8 U.S.C. § 1103, is empowered to grant asylum or other relief, and is a legal custodian of Petitioner.

10. Respondent Jefferson Beauregard Sessions III is sued in his official capacity as the Attorney General of the United States. In this capacity, he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, oversees the Executive Office of Immigration Review, is empowered to grant asylum or other relief, and is a legal custodian of Petitioner.

11. Respondent Kevin K. McAleenan is sued in his official capacity as the Acting Commissioner of CBP, and is a legal custodian of Petitioner.

12. Respondent Thomas Homan is sued in his official capacity as the Acting Director of ICE, and is a legal custodian of Petitioner.

13. Respondent L. Francis Cissna is sued in his official capacity as the Director of USCIS, and is a legal custodian of Petitioner.

14. Respondent Pete Flores, is sued in his official capacity as the San Diego Field Director of CBP, and is a legal custodian of Petitioner.

15. Respondent Greg Archambeault is sued in his official capacity as the San Diego Field Office Director of ICE, and is a legal custodian of Petitioner.

16. Respondent Fred Figueroa is sued in his official capacity as the Warden of Otay Mesa Detention Center, and is a legal custodian of Petitioner.

STATUTORY BACKGROUND**Jurisdiction:**

17. In general, a final removal order must be challenged directly in the court of appeals by petition for review. 8 U.S.C. § 1252(a)(1).

18. However, with respect to expedited removal orders issued pursuant to 8 U.S.C. § 1225(b)(1), the proper forum for review is a district court habeas proceeding. 8 U.S.C. § 1252(e)(2).

The Expedited Removal Scheme:

19. Under 8 U.S.C. § 1225(b)(1), certain persons who are seeking admission to the United States may be placed into “expedited removal” proceedings. Section 1225(b)(1)(A)(i) authorizes the Attorney General to apply expedited removal to certain inadmissible noncitizens who are “arriving” in the United States and seeking admission at a port of entry. *Id.*; 8 C.F.R. § 1.2 (defining “arriving aliens” as including “applicant[s] for admission coming or attempting to come into the United States at a port-of-entry”).

20. Section 1225(b)(1)(A)(iii) also authorizes the Attorney General to apply expedited removal to certain inadmissible noncitizens located within the United States “who have not been admitted or paroled” and who cannot demonstrate that they have been continuously physically present in the United States for two years. 8 U.S.C. § 1225(b)(1)(A)(iii). Pursuant to that provision, in 2004, the Attorney General began to apply expedited removal to persons within the United States who are apprehended within 100 miles of the border and who are

unable to demonstrate that they have been physically present in the United States for 14 days. *See* 69 Fed. Reg. 48877 (Aug. 11, 2004). Petitioner entered the United States, was arrested in the United States, and was placed into expedited removal under this authorization.

21. All persons subject to expedited removal are entitled to an interview with an asylum officer if they indicate either an intention to apply for asylum or a fear of returning to their country. 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4) (providing that if “an alien subject to the expedited removal provisions indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal of the alien until the alien has been referred for an interview by an asylum officer”); 8 U.S.C. § 1225(b)(1)(B) (setting forth procedure for interviews by asylum officers to determine whether the noncitizen has a “credible fear of persecution”); *see also* 8 C.F.R. § 208.30.

22. If the noncitizen is referred to an asylum officer, the officer conducts a “credible fear interview” which is designed “to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture.” 8 C.F.R. § 208.30(d).

23. The asylum officer must “conduct the interview in a non-adversarial manner, separate and apart from the general public.” 8 C.F.R. § 208.30(d). If the asylum officer determines that an individual “is unable to participate effectively in the interview because of illness, fatigue, or other impediments, the officer may reschedule the interview.” 8 C.F.R. § 208.30(d)(1). The

asylum officer is required to determine that the individual “has an understanding of the credible fear determination process.” 8 C.F.R. § 208.30(d)(2).

24. The statute and the regulations further provide that the noncitizen has a right to “consult with a person or persons of the alien's choosing prior to the interview or any review thereof.” 8 U.S.C. § 1225(b)(1)(B)(iv); 8 C.F.R. § 208.30(d)(4). “Any person or persons with whom the alien chooses to consult may be present at the interview,” and may be allowed to present a statement at the end of the interview. 8 C.F.R. § 208.30(d)(4). If the noncitizen “is unable to proceed effectively in English,” and the asylum officer “is unable to proceed competently in a language chosen by the alien,” the officer “shall arrange for the assistance of an interpreter in conducting the interview.” 8 C.F.R. § 208.30(d)(5).

25. At the conclusion of the interview, the asylum officer must create a written summary of the “material facts” provided during the interview, review that summary with the individual and provide him/her with the opportunity to correct any errors. 8 C.F.R. § 208.30(d)(6); *see also* 8 U.S.C. § 1225(b)(1)(B)(iii)(II). If the asylum officer makes a negative credible fear determination, the officer must provide a written record of the determination that “shall include . . . the officer’s analysis of why, in light of [the] facts, the alien has not established a credible fear of persecution.” 8 U.S.C. § 1225(b)(1)(B)(iii)(II).

26. Upon the individual’s request, the agency must provide for prompt review of the asylum officer’s determination by an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); *see also* 8 C.F.R. § 208.30(g)(1). The immigration judge “may receive into evidence any

oral or written statement which is material and relevant to any issue in the review.” 8 C.F.R. § 1003.42(c). And the statute specifies that the immigration judge review must include an opportunity for the individual “to be heard and questioned by the immigration judge, either in person or by telephonic or video connection. . . . ” 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

27. The immigration judge’s decision “is final and may not be [administratively] appealed.” 8 C.F.R. § 1208.30(g)(2)(iv)(A). However, an immigration judge “may upon his or her own motion at any time, or upon motion of the Service or the alien, reopen or reconsider any case in which he or she has made a decision[.]” 8 C.F.R. § 1003.23(b)(1).

28. Likewise, an asylum officer may reconsider a negative determination. 8 C.F.R. § 1208.30(g)(2)(iv)(A). If reconsideration is granted, a new interview under 8 U.S.C. § 1225(b)(1)(B) must be conducted, and a new credible fear determination must be made. In the event of a negative determination, a written record is required, 8 U.S.C. § 1225(b)(1)(B)(iii)(II), and the applicant has a right to administrative review by an immigration judge, 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

29. When a noncitizen is granted a credible fear interview, he is entitled to the procedural protections set forth by statute and regulation, including the right to seek administrative review of any negative credible fear determination. *See also* Michael A Benson, Executive Assoc. Commissioner for Field Operations, Immigration & Naturalization Service, Memorandum, Expedited Removal: Additional Policy Guidance (Dec. 30, 1997) (“Re-interviews will occur when the Office of Interna-

tional Affairs determines that the alien has made a reasonable claim that compelling new information concerning the case exists and should be considered. Districts should cooperate by continuing to detain the alien until the second adjudication, and potentially also a second review by the immigration judge, is completed.”).

30. To prevail ultimately on an asylum claim, the applicant must establish that there is at least a 10% chance that he or she will be persecuted on account of one of the listed grounds, including political affiliation or belonging to a particular social group. Critically, however, to prevail at the *credible fear* interview, Congress did not require applicants to establish their ultimate entitlement to asylum, *i.e.*, a 10% chance of being persecuted. Rather, to prevail at a credible fear interview, the applicant need only show “a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum. . . . ” 8 U.S.C. § 1225(b)(1)(B)(v). Thus, to prevail at the credible fear stage, applicants need only show a *significant possibility* that there is a *10% chance* of persecution if they are returned to their home country.

31. If a noncitizen is found by the asylum officer to have a “credible fear,” he may not be removed from the United States until his application for asylum is adjudicated in a full removal hearing. *See* 8 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that an alien has a credible fear of persecution . . . , the alien shall be detained for further consideration of the application for asylum.”).

32. Specifically, noncitizens who satisfy the credible fear standard are taken out of the expedited removal system altogether and placed into the regular (INA Section 240) removal process. 8 U.S.C. § 1229; INA § 240. At the Section 240 hearing, they will have the opportunity to develop a full record before an immigration judge, and may appeal an adverse decision to the BIA and federal court of appeals. 8 C.F.R. § 208.30(f); *see also* 8 U.S.C. § 1225(b)(1)(B)(ii).

33. The reason for the low threshold at the credible fear stage is straightforward. An asylum claim is complex and often will take significant amount of time, resources and expertise to develop properly, including expert testimony and extensive country conditions evidence. It is thus highly unrealistic for applicants in the expedited removal system, especially if unrepresented, to present a full asylum claim while in detention and under severe time constraints. Accordingly, by establishing a low threshold at the credible fear stage, Congress ensured that potentially valid asylum claims could be developed properly and presented in a full Section 240 hearing before an immigration judge.

FACTUAL BACKGROUND

34. Mr. Thuraissigiam is a 46-year-old Sri Lankan man who fled to the United States in order to escape persecution by the Sri Lankan government.

35. Mr. Thuraissigiam is Tamil, an ethnic minority group in Sri Lanka. A decades-long civil war between government forces and the Tamil separatist group Liberation Tigers of Tamil Eelam (LTTE) began in the 1980s.

36. In 2002, a cease fire was declared.

37. In 2004, elections were held in Sri Lanka. During the elections, Mr. Thuraissigiam worked on behalf of M.K. Shivajilingam, a candidate for parliament with the Tamil National Alliance, a Tamil-affiliated political group. He helped to arrange public meetings in support of Mr. Shivajilingam.

38. The cease fire collapsed in 2006. In 2007, Mr. Thuraissigiam was ordered to report to a Sri Lankan Army camp. He was detained and beaten, and told he should not support Mr. Shivajilingam. Eventually he was released.

39. In 2009, the Sri Lankan government defeated the LTTE, ending the civil war.

40. In 2013, Mr. Thuraissigiam again worked in support of Mr. Shivajilingam, who was then a candidate in a provincial election. He again helped to arrange public meetings in support of Mr. Shivajilingam.

41. In February, 2014, men approached Mr. Thuraissigiam at his farm and identified him by name. They told Mr. Thuraissigiam that they were government intelligence officers. A van arrived at the farm and the men pushed him into it.

42. In the van, he was bound, beaten, and interrogated about his political activities and connection to Mr. Shivajilingam. He was taken to a house where he was further beaten and asked similar questions about his political activities. He was lowered into a well, simulating drowning, threatened with death, and then suffocated, causing him to lose consciousness.

43. Mr. Thuraissigiam woke up in a hospital, where he spent days recuperating from his serious injuries.

He still suffers from numbness in his left arm and has scars from the beatings.

44. He went into hiding in Sri Lanka and India, and then fled the country in 2016. After an arduous journey through Latin America, he was able to reach the U.S.-Mexico border.

45. Mr. Thuraissigiam entered the United States on February 17, 2017, and was subsequently apprehended. He is currently detained at the Otay Mesa Detention Center in San Diego, California.

46. It is widely recognized that, since the end of the civil war, human rights violations have remained widespread and targeted at Tamils in Sri Lanka. See Freedom From Torture, *Tainted Peace: Torture in Sri Lanka since May 2009*, August 2015 (“*Tainted Peace*”) 10, 19 (documenting 148 cases of torture perpetrated since the end of the civil war, overwhelmingly against Tamils, including sexual torture in 71% of the cases), available at https://www.freedomfromtorture.org/sites/default/files/documents/sl_report_a4_-_final-f-b-web.pdf; Human Rights Watch, “*We Will Teach You a Lesson*,”: *Sexual Violence against Tamils by Sri Lankan Security Forces*, 2012 (“*Sexual Violence against Tamils*”) (documenting widespread violations of human rights committed against Tamils in Sri Lanka by government officials after the civil war), available at <https://www.hrw.org/report/2013/02/26/we-will-teach-you-lesson/sexual-violence-against-tamils-sri-lankan-security-forces>; see also United Nations, *Sri Lanka routinely tortures security suspects amid stalled reform process, UN expert finds*, July 18, 2017 (concluding that “The Tamil community has borne the brunt of the State’s well-oiled torture apparatus”), available at <http://www.ohchr.org/EN/>

NewsEvents/Pages/DisplayNews.aspx?NewsID=21884&LangID=E; Associated Press, *Dozens of men say Sri Lankan forces raped and tortured them*, Nov. 8, 2017 (“*Dozens of men*”) (documenting dozens of Tamil men who were abducted, tortured, and/or raped by Sri Lankan government forces in 2016 and 2017), *available at* <https://www.apnews.com/ced017bd441f46ba838aaedf6ff5d8e2>; *id.* (quoting a human rights investigator with 40 years of experience interviewing torture survivors explaining: “The levels of sexual abuse being perpetuated in Sri Lanka by authorities are the most egregious and perverted that I’ve ever seen.”)

47. In particular, there is a widespread pattern of Sri Lankan security forces abducting Tamils in vans, and subsequently torturing them. *See Tainted Peace* at 28 (victims “described a form of abduction by armed men from the street or their homes, who blindfolded or hooded them and took them in ‘white vans’ to unknown locations”); *Sexual Violence against Tamils* (documenting many accounts of abduction and torture by government officials in vans); *see also* International Truth and Justice Project, *Unstopped: 2016/17 Torture in Sri Lanka*, July 2017 (“*Unstopped*”) at 7, 18 (documenting 24 cases in which Tamils were abducted in vans and tortured), *available at* http://www.itjpsl.com/assets/ITJP_unstopped_report_final.pdf; *Dozens of men* (many victims “told similar tales: they were abducted at home or off the streets by men in white or green vans” and then tortured).

48. Individuals are targeted for such extrajudicial abduction, torture, and sexual violence based on their actual or perceived connection to the LTTE or opposi-

tion political groups. *Tainted Peace* at 9, 19 (individuals tortured included those associated with a political opposition group or “with a real or perceived association” with the LTTE); *Sexual Violence against Tamils* (similar); U.S. Dept. of State, Sri Lanka 2016 Human Rights Report 1 (recognizing “arbitrary arrest, lengthy detention, surveillance, and harassment of . . . persons viewed as sympathizers” of the LTTE), *available at* <https://www.state.gov/documents/organization/265760.pdf>; U.S. Dept. of State, Sri Lanka 2015 Human Rights Report 1-2 (similar).

49. Indeed, regardless of whether they are specifically tied to the LTTE or opposition political groups, those who are deported to Sri Lanka after seeking asylum abroad face extreme risk of arrest, torture, and sexual violence upon arrival in Sri Lanka. *See Gaksakuman v. U.S. Atty. Gen.*, 767 F.3d 1164, 1170 (11th Cir. 2014) (vacating denial of asylum because applicant had submitted evidence that “as a ‘failed asylum seeker,’ he would be subject to torture upon his return to Sri Lanka,” where the government would deem him a traitor for having fled the country); *Tainted Peace* 26, 29 (documenting multiple cases of Tamils arrested at the airport and tortured); *Sexual Violence against Tamils* (similar); *see also Thayaparan v. Sessions*, 688 F. App’x 359, 371 (6th Cir. 2017) (following *Gaksakuman* and agreeing that background materials “tended to prove that failed asylum seekers were at the risk of being detained and tortured regardless of whether they were actually Tamil with ties to the LTTE”); The Guardian, *UN condemns Australia’s forced return of asylum seeker to Sri Lanka*, Dec. 22, 2017 (“Asylum seekers returned to Sri Lanka are routinely arrested at the airport. . . .”), *available at* <https://www.theguardian.com>.

com/world/2017/dec/22/un-condemns-australias-forced-return-of-asylum-seeker-to-sri-lanka.

50. Government agents in Sri Lanka have come to Mr. Thuraissigiam's house and his mother's house repeatedly since he was kidnapped, asking for his whereabouts.

ADMINISTRATIVE DECISIONS

51. Petitioner was issued an expedited removal order after the government determined that he did not have a credible fear of persecution. The process that led to this expedited removal order was wholly inadequate.

52. The asylum officer violated his duty "to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture." 8 C.F.R. § 208.30(d). For example, the officer never asked Mr. Thuraissigiam whether he had been involved in political activities. If asked, Mr. Thuraissigiam would have told the officer about his political activities on behalf of a Tamil-affiliated political party and candidate. That information would have been both relevant and useful in light of the widely known country conditions evidence indicating that there is a widespread pattern of government abduction and torture of Tamils in Sri Lanka. *See, e.g.*, ¶¶ 46-49.

53. There were also communication problems throughout the interview. The translator and the asylum officer often misunderstood Mr. Thuraissigiam; these communication issues affected the interview throughout, in violation of the regulations governing the credible fear interview process. *See* 8 C.F.R. § 208.30(d)(2) (asylum

officer must determine that applicant “has an understanding of the credible fear determination process”); 8 C.F.R. § 208.30(d)(1) (“If the asylum officer determines that an individual “is unable to participate effectively in the interview because of illness, fatigue, or *other impediments*, the officer may reschedule the interview.” (emphasis added)).

54. The negative credible fear determination also resulted from a number of legal errors. For example, and critically, the asylum officer failed to consider relevant country conditions evidence, as he was legally required to do. *See* 8 U.S.C. § 1225(b)(1)(B)(v) (asylum officer must take into account “such other facts as are known to the officer”); 8 C.F.R. § 208.30(e)(2) (same); *Aguilar-Ramos v. Holder*, 594 F.3d 701, 705 (9th Cir. 2010) (holding, in Convention Against Torture case, that “[t]he failure of the IJ and BIA to consider evidence of country conditions constitutes reversible error”).

55. In particular, the asylum officer should have been aware of the widespread country conditions evidence that Tamils are subject to systematic persecution and torture by the government. *See, e.g.*, ¶¶ 46-49. The asylum officer knew that Mr. Thuraissigiam was Tamil and had been abducted from his home in a van and severely beaten. And the country conditions materials amply corroborate what happened to Mr. Thuraissigiam, and place it within a context of frequent government persecution of Tamils. Like many other documented cases, he was a Tamil abducted by government intelligence agents from his home in a van and tortured. *See, e.g., Tainted Peace* at 28 (documenting dozens of such kidnappings, overwhelmingly of Tamils, in which victims “described a form of abduction by armed men

from the street or their homes, who blindfolded or hooded them and took them in ‘white vans’ to unknown locations”); *Sexual Violence against Tamils* (documenting many accounts of abductions of Tamils by government officials in vans). The officer did not take account of that country conditions evidence, as was required to do.

56. Moreover, the country conditions in Sri Lanka with regard to Tamils are so extreme that Mr. Thuraissigiam should have prevailed even apart from his specific past persecution and circumstances. Widespread documentary evidence indicates that “a failed asylum seeker” from Sri Lanka is at extreme risk of being “subject to torture upon his return to Sri Lanka,” where the government would deem him a traitor for having fled the country—evidence which led the Eleventh Circuit to vacate a denial of asylum on this basis. *Gaksakuman*, 767 F.3d at 1170; *see also Thayaparan*, 688 F. App’x at 371 (same). The country conditions alone were enough for Mr. Thuraissigiam to prevail, but the asylum officer failed to consider them.

57. Mr. Thuraissigiam requested that an immigration judge review the asylum officer’s determination.

58. The hearing before the immigration judge was also procedurally and substantively flawed for many of the same reasons as the asylum officer’s interview and decision. The immigration judge, like the asylum officer, failed to take account of the widely known country conditions evidence that Petitioner would face persecution and torture if returned to Sri Lanka.

59. At both the asylum officer interview and immigration judge hearing, Mr. Thuraissigiam was extremely frightened and did not know whether information he offered would be shared with the Sri Lankan government.

60. Mr. Thuraissigiam twice requested a new credible fear interview, and he requested a new immigration judge review. All these requests were denied.

61. Based on the testimony Mr. Thuraissigiam provided to the asylum officer and immigration judge—testimony the decision makers accepted as credible—under a correct legal standard, Petitioner should have passed the credible fear stage.

62. Under the correct standard—which requires only that an applicant show a significant possibility there is a 10% chance of establishing eligibility for asylum, or a significant possibility of establishing eligibility for withholding of removal or CAT—Petitioner should have prevailed.

EXHAUSTION

63. There are no further administrative procedures that Petitioner is required to exhaust.

CAUSES OF ACTION**Count One****(Violation of the Immigration and Nationality Act;
the Foreign Affairs Reform and
Restructuring Act of 1998;
the United Nations Convention Against Torture;
the APA; and Implementing Regulations)**

64. All of the foregoing allegations are repeated and re-alleged as though fully set forth herein.

65. Respondents have violated Petitioner's statutory and regulatory rights by depriving him of a meaningful right to apply for asylum, withholding of removal, and Convention Against Torture ("CAT") relief under the governing statutes and regulations. *See* Immigration and Nationality Act ("INA") and implementing regulations, 8 U.S.C. § 1225(b)(1) (expedited removal), 8 C.F.R. §§ 235.3(b)(4), 208.30, and 1003.42; 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1231(b)(3) (withholding of removal); and the United Nations Convention Against Torture, implemented in the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231).

66. These provisions entitle Petitioner to a fair procedure to apply for asylum, withholding of removal, and CAT relief. Petitioner's procedural rights guaranteed by these statutes and regulations were violated.

67. The asylum officer and immigration judge also erred by applying an incorrect legal standard. Petitioner was ordered removed despite the fact that he can show a significantly possibility that he could establish

eligibility for asylum, withholding of removal, and CAT claims.

68. Petitioner should have prevailed in establishing a credible fear and would thus have been allowed to pursue his claims for asylum, withholding of removal and protection under the Convention Against Torture in regular Section 240 immigration proceedings.

Count Two

(Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution)

69. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

70. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.”

71. Petitioner, having effected entry into the United States by crossing the border, is indisputably present in the United States and entitled to the protections of the Due Process Clause.

72. Petitioner’s due process rights were violated by the asylum officer and immigration judge in not providing him with a meaningful opportunity to establish his claims, failing to comply with the applicable statutory and regulatory requirements, and in not providing him with a reasoned explanation for their decisions.

73. Under constitutionally adequate procedures, Petitioner would have prevailed on his claims.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays the Court to:

- a. Issue an Order directing Respondents to show cause why the writ should not be granted;
- b. Declare Petitioner's expedited removal order contrary to law;
- c. Enter an order directing Respondents to vacate the expedited removal order entered against Petitioner;
- d. Issue a writ of habeas corpus, an injunction, or a writ of mandamus directing Respondents to provide Petitioner a new opportunity to apply for asylum and other applicable forms of relief; and
- e. Grant such further relief as the Court deems just and proper.

Dated: Jan. 19, 2018

Respectfully submitted,

By: /s/ CODY WOF SY.
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Jennifer Chang Newell (SBN 233033)
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Attorneys for Petitioner

*Application for admission pro hac
vice forthcoming

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 18-55313

VIJAYAKUMAR THURAISSIGIAM,
PETITIONER-APPELLANT

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, ET AL.,
RESPONDENT-APPELLEES

**APPELLEES' SUPPLEMENTAL EXCERPTS OF
RECORD**

Volume 1 of 1

* * * * *

[FOLDOUT 1]

U.S. Department of Homeland Security

Continuation Page for Form I213

Alien's Name Thuraissigaim, Vijayakumar	File Number [REDACTED] Event No: [REDACTED]	Date 02/18/2017
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MINOR CHILDREN:

CLAIMS ONE SRILANKAN NATIONAL

FATHER NAME AND ADDRESS:

Nationality: SRI LANKA [REDACTED]
[REDACTED]
THAMUL, SRI LANKA

MOTHER NAME AND ADDRESS:

Nationality: SRI LANKA [REDACTED]
[REDACTED]
THAMUL, SRI LANKA

ASSISTING ASSETS:

ALL-TERRAIN VEHICLE

FUNDS IN POSSESSION:

United States Dollar 104.00

RECORDS CHECKED:

[REDACTED]

NARRATIVE:

On January 17, 2017, at approximately 10:50 p.m., Border Patrol Agent [REDACTED] was patrolling the area of "Goats Canyon" when he saw three subjects walking east from the primary border fence and begin walking towards Spooners. Agent [REDACTED], identified himself as a Border Patrol Agent, and ordered the subjects to sit down. This area is approximately four miles west of the San Ysidro Port of Entry and approximately 25 yards north of the international boundary between the United States and Mexico. Agent [REDACTED] was able to establish that the three subjects were citizens and nationals of Sri Lanka and were not in possession of any immigration documents that would allow them to enter or remain in the United States. At approximately 10:55 p.m., Agent [REDACTED] placed the subjects under arrest, one later identified as THURAISSIGIAM, Vijayakumar, and had them transported to the Imperial Beach Border Patrol Station for processing.

At the station, THURAISSIGIAM's biographical and biometric information was entered into the Department of Homeland Security (DHS) processing systems. These systems, along with record checks, revealed that THURAISSIGIAM has no prior criminal history, but he was previously encountered by Homeland Security Investigations (HSI) in Mexico City and was issued the identifiers listed on the front page of the I-213.

THURAISSIGIAM was issued A# [REDACTED].

No wants or warrants were found.

All questioning and casework was done in the English/Tamil languages through the use of Language Line Solutions Interpreter ID# 211399.

On February 18, 2017, at approximately 10:50 a.m., Border Patrol Agent [REDACTED] advised THURAISSIGIAM of his right to speak with a Consular Officer of Sri Lanka witnessed by Border Patrol Agent [REDACTED]. THURAISSIGIAM stated that he understood his right and did not want to speak to the consulate.

THURAISSIGIAM was served with DHS forms I-296, I-867A, I-867B, M-444, and a list of free legal services.

THURAISSIGIAM is claiming credible fear if returned to Sri Lanka.

THURAISSIGIAM is being held in DHS custody pending the expedited removal to Sri Lanka after speaking with an asylum officer.

QUESTIONS: for Thuraisingam, Vijayakumar by BPA [REDACTED].

Do you speak English? Very little

Where did you learn to speak English? I don't speak English

What is the language that you speak and understand best? I speak Tamil (Sri Lanka)

What other languages can you speak, read or write? None

What is your true name? Thurisingam, Vijayakumar

Have you ever used any other names? No

What is your date of birth? [REDACTED]

Have you ever used any other dates of birth? No

Where are you from—what country? Sri Lanka

What city were you born in? [REDACTED] Thamu,
Sri Lanka

Where does your family live now? —what countries?
My family lives in Sri Lanka

What type of work does your father do? He passed
away

Are you married? Yes, my wife's name is [RE-
DACTED]

Do you have any children? Yes, [REDACTED]

Have you ever attended school? Yes

What is your level of education? Very little

Have you ever held a job? I am a farmer

What kind of work have you done? A farmer

Are you planning to work in the United States so that
you can send money back to your family? No

What type of work? NA

Where are you going to work? NA

LIFETIME TRAVEL ROUTE OF ALL COUNTRIES IN CHRONOLOGICAL ORDER

When was the first time you left your country of birth?
June 29, 2016

Where did you travel to? Well In 2014 trouble started
for me. I was beaten by some people and with the help

of my uncle ([REDACTED]) I left Sri Lanka to India on August 16, 2014. After 3 months in India on a Tourist Visa I returned to Sri Lanka and was beaten again by some people. After years of being threatened on June 29, 2016 I left Sri Lanka to a country I don't remember. My uncle arranged for me to leave Sri Lanka but I don't remember the countries until I arrived in Panama. In Panama while walking, a group of bandits robbed me of my passport. I was in Panama about 21 days immigration camp, then Costa Rica for 25 days, Guatemala for 2 month walking, then Tapachula for 1 days until finally arrived in Tijuana.

When was the last time you were in your native country —your country of birth? For about 3 months I was in Madras, India in 2014 then I returned back to Sri Lanka.

How long were you in Mexico? 1 week

Why did you not present yourself for inspection at a legal Port of Entry into the United States? I don't know I just followed people here

Why did you run/hide from officers of the U.S. Border Patrol today? NA

Did your family pay for your travel to the United States? Yes

How much did you or your family pay to smugglers for your travel? My family paid 4,000,000 Sri Lankan Rupee= 26,483 USD

Was the money paid in United States dollars? Sri Lanka Rupee

What currency was the money paid in? —How was it paid? Sri Lankan Rupee

How did you or your family get all of this money for your travel? Sold many plots of land

* * * * *

Where are you planning to live in the United States? I just wanted a safe place

Do you have any family members living in the United States? —who? —Where? No

Do you have anyone related to you—cousins, aunts, uncles—in the United States? No

Do you have any friends living in the United States? No

* * * * *

Do you have an attorney in the United States? No

* * * * *

IDENTITY DOCUMENTS AND STATUS ABROAD

Do you have any identity documents? No

* * * * *

Do you have legal immigration status anywhere in the world? No

Do you have a passport from your country of birth? NO I lost it in Panama

If so, where is the original passport now? Lost

Have you ever applied for refugee status anywhere in the world? No

Have you ever had a refugee travel document issued by any country in the world? —what country? No

Have you ever applied for a United States Visa before? No

Have you ever had legal status to live in any country other than your country of birth? —what country? No

Do you have citizenship in any country other than your country of birth? No I had a tourist Visa in India in 2014

Do you have resident status anywhere other than your country of birth? No

CONDITIONS IN HOME COUNTRY

Where you ever physically harmed in your country of birth? I was beaten and ended up at the hospital in Sri Lanka.

Were you ever physically harmed in any other country? No

Are you a member of any political party? No

What is your religion? Hindu

* * * * *

Did you leave your country to find better employment? No

Is that the reason that you traveled to the United States? I left because people were trying to kill me

Do you have any fear of returning to your home country? Yes, they will kill me

How many different cities did you reside in when you were in your home country? Only at permanent address.

[REDACTED], Sri Lanka

* * * * *

When was the last time you were in your home country?
June 29, 2016

* * * * *

Event No: [REDACTED]

U.S. Department of Homeland Security**Information about Credible Fear Interview**

Purpose of this notice

The purpose of this notice is to explain what will happen while you are in detention, what rights you have, and what may happen to you as a result of statements you make. It is important that you understand your rights and what will happen. **PLEASE READ THIS NOTICE CAREFULLY.**

You have been detained because the U.S. Department of Homeland Security (DHS) believes that you may not have the right to stay in the United States. You have indicated an intention to apply for asylum or a fear of persecution or return to your country. You will be interviewed by a specially-trained asylum officer to determine if you have a “credible fear of persecution.” You will be detained until that interview takes place. If the DHS finds that you have a credible fear of persecution, you may or may not be released.

Right to consult with other persons

Normally, the interview will not take place sooner than 48 hours after you arrive at the detention facility. You may use this time to rest and consult with family members, friends, or other representatives. In unusual circumstances, you may be given additional time to contact someone. If you need this additional time, you should inform a DHS officer. You may request that the interview take place sooner if you are prepared to discuss your fears or claim immediately.

You may consult with a person or persons of your choosing, provided that such consultation is at no expense to the government and does not delay the process. A person of your choice can be present with you at your interview. A list of representatives who may be able to speak to you free of charge is attached to this notice. You may use the telephone while you are in detention to call a representative, friend or family member in the United States, collect or at your own expense. If you wish to call someone, you should inform an DHS officer for assistance. You also may contact the United States Office of the United Nations High Commissioner for Refugees, at (202) 296-5191 from 9:00 a.m - 5:00 p.m. (eastern standard time), Monday thru Friday.

Description of credible fear interview

The purpose of the credible fear interview is to determine whether you might be eligible to apply for asylum before an immigration judge. This interview is not your formal asylum hearing. It is only to help us determine whether there is a significant possibility that you may qualify as a refugee.

At your interview, you will have the opportunity to explain to the asylum officer why you think you should not be returned to your home country. If you want to apply for asylum in the United States, or think you will be harmed, persecuted or tortured if you return to your home country, you must show an asylum officer that you have a credible fear of being harmed or persecuted because of your race, religion, nationality, membership in a particular social group or political opinion, or that it is likely that you will be tortured.

If the officer determines that you have a credible fear or persecution or that you might face torture if you are returned to your home country, you may be eligible to remain in the United States.

It is very important that you tell the officer all the reasons why you have concerns about returning to your home country or are afraid to return to your home country. There are regulations protecting the confidentiality of asylum claims.

It is also very important that you tell the truth during your interview. Although the purpose of this interview is not to gather evidence against you, failure to tell the truth could be used against you in this or any future immigration proceeding.

Need for interpreter or special consideration

If you do not speak English well or if you prefer to be interviewed in your own language, DHS will provide an interpreter for the interview. The interpreter has been told to keep the information you discuss confidential. If the interpreter is not translating correctly or you don't feel comfortable with the interpreter, you may request another interpreter. The officer will take written notes.

If you will need to tell the asylum officer information that is very personal and very difficult to talk about, you may request a female officer and female interpreter, or a male officer and male interpreter. The DHS will provide them if they are available. You will also have the opportunity to speak with the asylum officer separately from your family if you so desire.

Consequences of failure to establish credible fear and review of determination

If the asylum officer determines that you do not have a credible fear of persecution, you may request to have that decision reviewed by an immigration judge. The immigration judge's review will be in person or by telephone or video connection. The review will happen as soon as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days from the date of the asylum officer's decision. You may consult with a person or person of your choosing before the review by the immigration judge, provided it does not cause unreasonable delay. You will be given a copy of the asylum officer's record of determination to examine prior to the review by the immigration judge. If any of the information is incorrect, you should notify the immigration judge. The immigration judge may decide that you do have a credible fear and that you are eligible for a full asylum hearing before an immigration judge. If you are ordered removed, you may be barred from reentry to the United States for a period of 5 years or longer.

Interpreter Certification

I [ID#211399 LANGUAGE LINE SOLUTIONS] (name of interpreter) certify that I am fluent in both the [TAMIL] and English languages, that I interpreted the above information from English to [TAMIL] completely and accurately, and that the recipient understood my interpretation.

/s/ [ILLEGIBLE] _____
Signature of Interpreter

Feb. 18, 2017

Date

Alien Acknowledgment of Receipt

I acknowledge that I have been given notice concerning my credible fear interview. I understand that I may consult with a person or persons of my choosing prior to the interview as long as it does not unreasonably delay the process and is at no expense to the Government.

/s/ [T. VISAYAKUMAR]

Alien's signature

Feb. 18, 2017

Date

[FOLDOUT 2]

[FOLDOUT 3]

[FOLDOUT 4]

[FOLDOUT 5]

A Number: [REDACTED]	Interview Date: 3/7/2017	
Name: Thuraissigiam, Vijayakumar	asylum officer: [REDACTED]	
Country: Sri Lanka	Interpreter: Lionbridge 3895138	
Asylum Office: ZLA	Start: 8:08am	Stop: 8:18am

QUESTIONS & ANSWERS

INTERPRETER OATH

Officer	Interpreter
Do you have copies of the M-444 and I-870	Yes
Hello Interpreter, I will now swear you in.	
Do you affirm that you will truthfully, literally and fully interpret and that you will not add to, or change the matter to be interpreted; that you will immediately notify me if you become unable to interpret in a neutral manner, and that you will keep everything confidential?	Yes

Thank you. Please introduce yourself as the interpreter and ensure the applicant understands you.	
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INTRODUCTION

Good morning, I am **Officer [REDACTED]** and I am going to be interviewing you today through an interpreter. I am going to be asking you questions to determine if you are eligible to have an asylum hearing before an immigration judge.

Officer	Applicant
Is the interpreter speaking your native language	Yes
You previously indicated that you were afraid to return to your country. Are you still afraid to return? Is this correct?	Yes
And you still want to continue with this credible fear interview? Is this correct?	Yes
How are you being treated at the detention facility?	They take care of me well.

Do you have any medical or health issues?	No
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CONFIDENTIALITY

Officer	Applicant
Everything you say today is confidential. Your interpreter has been placed under oath and has sworn to keep everything confidential so please feel comfortable sharing your story with me today. Do you understand what I have explained to you about confidentiality?	Yes

APPLICANT OATH

Officer	Applicant
Before we begin, I will place you under oath. Please raise your right hand.	
Do you promise that the testimony you are about to give will be the whole truth and nothing false?	Yes

Thank you. You may lower your hand.	
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M444

Officer	Applicant
When you entered detention, you should have been read Information about Your Credible Fear interview. This is a description of what will happen in your credible fear interview and the rights you have as an applicant. Do you remember this?	Yes
Did you understand the information?	Yes
Do you have any questions about it?	No

ATTORNEY

Officer	Applicant
Do you have an attorney or a consultant?	No
<ul style="list-style-type: none"> If No: During this interview, you have the right to be represented by an attorney 	Can I talk to my family and get it arranged?

<p>or to consult with any person. Would you like to proceed with this interview without an attorney or consultant or would you like to reschedule so that you have time to find one?</p>	
<ul style="list-style-type: none"> • That is your choice, Sir. You can choose to find an attorney or you can continue without one. 	<p>I think I should wait and talk with an attorney.</p>
<ul style="list-style-type: none"> • So you're saying that you would like to reschedule this interview so you can find and speak with attorney or consultant? 	<p>Yes</p>
<ul style="list-style-type: none"> • Okay, we will reschedule. 	<p>Thank you very much.</p>

A Number: [REDACTED]	Interview Date: 3/9/2017	
Name: Thuraissigiam, Vijayakumar	asylum officer: [REDACTED]	
Country: Sri Lanka	Interpreter: Lionbridge 3900514	
Asylum Office: ZLA	Start: 8:03 am	Stop: 9:09 am

QUESTIONS AND ANSWERS

INTERVIEW INITIATED: 8:03 am

Note Time Interview Starts

INTERPRETER INTRODUCTION

ADMINISTERED INTERPRETER OATH

OFFICER	Interpreter
Hello Interpreter, you are going to be interpreting for a Credible Fear interview today. Do you have copies of the I-870 and M-444 forms?	Yes
Do you affirm that you will truthfully, literally and fully interpret the questions asked by the asylum officer and the answers given by the applicant; that you will not add to, delete from, comment on, or otherwise change	Yes

<p>the matter to be interpreted; and that you will immediately notify the officer in this case if you become aware of your inability to interpret in a neutral manner on account of a bias against the applicant or the applicant's race, religion, nationality, membership in a particular social group, or political opinion? Do you affirm that you understand that the matters discussed during this interview are confidential?</p>	
<p>Thank you. I will now connect you to the applicant.</p>	

INTRODUCTION TO APPLICANT:

Good morning, I am Officer **[REDACTED]**. I am an Asylum Officer with US Government. I will be conducting today's credible fear interview to determine if you are eligible to have an asylum hearing before an immigration judge.

Officer	Applicant
What is your native language?	Tamil
Do you speak any other language	No
Do you understand the Interpreter?	Yes
Interpreter, do you understand the applicant?	Yes
Are you currently alone in the room?	Yes
Are you comfortable proceeding with this interview?	Yes

ADMINISTERED APPLICANT OATH

Before we begin, I need to place you under oath. Please raise your right hand.

OFFICER	Principal Applicant— Interviewee
Do you promise that the testimony you are about to give will be the whole truth and nothing but the truth?	Yes
Thank you. You may now put your hand down.	

I'm going to ask the interpreter to read you a statement, please listen carefully.	
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SECTION 1.28, FORM I-870, READ TO APPLICANT BY INTERPRETER

Interpreter, can you please read Section 1.28 of Form I-870

Officer	Interviewee
Do you understand what was just read to you?	Yes

M-444 ORIENTATION:

Officer	Principal Applicant— Interviewee
<p>When you entered detention, you were read Information about Your Credible Fear interview. This is a 2 page document which describes what will happen in the credible fear interview and the rights you have as an applicant.</p> <p>I have the document which you signed on: <u>2/18/17</u>. Do you remember this information being</p>	No.

read to you in your native language?	
You don't remember having this read to you or signing the form?	I remember signing a form but not being read to me or given in my native language.
[Interpreter was asked to read M-444 form to applicant]	
Do you have any questions about the form?	No
Do you have any question about the purpose of today's interview?	Yes
What is your question?	Yes, I understand.
Would you like to continue with the interview?	Yes
How are you being treated at the detention facility where you are at now?	They treat me well, no problems.
Are you currently ill or taking any medications?	No I have no problems.

ATTORNEY

Officer	Applicant
I understand this interview was rescheduled so	Yes

<p>that you could find an attorney or immigration consultant. Do you have an attorney or an immigration consultant now?</p>	
<p>Would you like your attorney/immigration consultant on the phone for this interview?</p>	<p>No, I have no problem we can continue with this inquiry.</p>
<p>You have the right to have you attorney or immigration consultant present during the interview.</p>	<p>No, I don't need any I can continue.</p>
<p>This is a very important interview, which will determine if you are eligible to appear before an Immigration Judge to present your claim for Asylum. Are you sure you would like to continue without an attorney or immigration consultant?</p>	<p>Yes, we talked to the lawyer but did not confirm with the lawyer.</p>
<p>You have two options; you can continue today without your lawyer or I can give you two days to consult with your attorney. How do you want to proceed?</p>	<p>We can continue with the inquiry today.</p>

REVIEWED I-870 BACKGROUND INFORMATION & ADD'L QUESTIONS:

What is your full name?	Thuraissigiam, Vijayakumar
What is your date of birth?	[REDACTED]
Have you ever used any other names?	No
Have you used any other dates of birth?	No
What country are you a citizen of?	Sri Lanka
Were you born there?	Yes
Are you a citizen of or have status in any other country?	No
Have you lived or worked in other countries?	No
Have you ever visited other countries?	Yes
What countries?	India
How long were you there?	41 years
You lived in India 41 years?	No I visited and stayed there 3 months.
What was your purpose in going there?	Because I had a problem in my country and I went to India and when my visa

	expired I came back to Sri Lanka
Do you have lawful status in any other countries?	No
Where did you live before coming to the U.S.?	Sri Lanka
What was your address there?	[REDACTED] Thamul, Sri Lanka
What did you do there? (e.g. work, school)	Farming
What is your race or ethnicity? (For example, some people say they are Sinhalese, Tamil)	Tamil
What is your religion if you practice one?	Hindu

What is your marital status?	Married
Do you have any children?	Yes, one
Did any family members arrive with you at the same time?	No
Do you want your spouse or children included in your claim?	Yes

If Married:

What is your spouse's name?	[REDACTED]
What country is your spouse a citizen of?	Sri Lanka
Where is your spouse currently located?	In Sri Lanka
What is your spouse's date of birth?	[REDACTED]

If children:

How many children do you have?	One
What is your child's name?	[REDACTED]
What is your child's date of birth?	[REDACTED]
What country is your child a citizen of?	Sri Lanka
Where is your child currently located?	In Sri Lanka

Sponsor/Relative Information:

Do you have the contact information for any family members or friends in the United States who will be your point of contact?	No
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ENTRY INFORMATION

Officer	Applicant
Records indicate you entered the United States on <u>2/17/17</u> near or around <u>San Ysidro, CA</u> is that correct?	Yes
Were you detained that same day?	Yes
Have you ever entered the US before?	No
Have you ever had lawful permission to enter or live in the United States	No
Have you ever applied for any legal status in the United States before, like a visa, or asylum?	No
Has anyone ever applied for any immigration benefits on your behalf in the US before?	No

Medical/MH Conditions:

Do you have any physical, mental, or emotional conditions?	No
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SUBSTANTIVE QUESTIONS

We are about to begin discussing the basis of your claim for asylum. I ask that you please speak loudly and clearly, and pause after two or three sentences so that the interpreter may accurately translate your responses. Please listen to my questions carefully and try to answer them directly. If we don't discuss something that you think is important, at the end of our interview you will have an opportunity to give me more information.

Past Harm

Officer	Applicant
Why did you leave <u>Sri Lanka</u> ?	I was arrested and beaten and they were looking for me. I could not live in Sri Lanka so I left the country.
When did these events occur? (specific date/year)	In 2014
How many times were you beaten or arrested?	I was arrested once. I was beaten and dumped on the road. When I woke up I was in the hospital
How were you harmed?	They beat me and injured my foot. They beat me with wooden rods. When they started beating me I passed out so I don't know what they did. I woke up in the hospital. My left arm has become

	numb now from the beating.
What did the doctors say your injuries were?	I was in the hospital for 11 days. They said because of the beating.
Besides the physical beating do you remember if they said anything to you while being attacked?	They arrested me and put me in their van and they started beating me and I fainted and after that I don't know what happened.
Who arrested and beat you? Do you know their name(s)?	I was working on my farm. Two men came and called me and when I approached there was a van with 5 men in it. They took off my shirt and covered my face with it and removed my underwear, by banyan, and tied me up with it and started beating.
Do you know why they beat you specifically?	They called me and I went to the van. It was on the 9th and I woke up in the hospital on the 10th.
Do you know why they beat you specifically though?	No, I don't know.
They never said anything to you?	No, they didn't say. They only blindfolded me and started beating me.

Did they ever identify themselves?	No
Do you have any idea who these people might be?	I do not know
Was your family ever harmed or threatened?	No
Did you report these events to the police/authorities?	No
Why not?	I thought if I go to the police, the problems will be more. I don't know why, I just left the country.
Why would you think the police wouldn't help you if you reported it?	Because I do not know who did it and if I complain to them they will ask who did it and since I do not know who did it, they will not help me.
Has anyone else that you know been harmed the way you were?	No. I don't know, it could have happened.
Has anyone else ever harmed you during your lifetime?	No
You said your wife and child are in Sri Lanka, who do they live with?	They live with my mother

In the same place where you lived when you were attacked?	Yes
Have they ever been threatened or harmed?	No

Future Harm

Are you afraid of returning to Sri Lanka?	Yes
Who are you afraid of in Sri Lanka?	I do not know
Are there any gangs/groups that are active in your area?	No
What do you fear will happen to you if you return to Sri Lanka?	No, I will not go back. My life is not safe there.
How do you know you are not safe there?	Because I was beaten once, I am scared.
How would the persons who attacked you know/recognize you?	I was doing farming and they came to my farm and they called me and I said "I am watering my plants." Then I stopped the water pump and went to them. When I went up to the road a few seconds later a van came with 5 men in it and they came and threw me into the van.

How would these individuals know you have returned to Sri Lanka?	I don't know how they will know, but I am scared to go back.
Why do you think they would come back again to harm you?	They could come and hurt me again. I cannot go back. Because they beat me once, they can do it again.
Why did they choose to beat you in particular?	Because I was working alone in my farm. I don't know why they chose to beat me.
Is the government/police willing/able to protect?	I don't know.

Internal Relocation:

Do you think you could live safely in another part of Sri Lanka?	No
Why not?	I am not going back.
Why do you think you could not live safely in another part of Sri Lanka?	They might beat me. It can happen somewhere else.
Do you have any family members living on other areas of your country?	No

Convention Against Torture:

<p>Other than what we have discussed, have you ever been harmed or mistreated in the <u>past</u> by a government official? This can include the police, military, public officials.</p>	No
<p>How about someone who is acting at the request of a public official?</p>	No
<p>Do you fear you could be harmed in the <u>future</u> by government officials, the police, or any person associated with the government if you return?</p>	I don't know, I can't say
<p>Do you think the police or government of your country would look the other way if these individuals would hurt you again?</p>	No. I don't know, I can't say.
<p>Do you think that the police would harm you if the people you fear asked or told them to?</p>	No. I have not gone to the police.

Other Nexus:

I am required to ask everyone the following questions. These questions are related to *other* reasons you might fear returning to your country. Please do not repeat anything we have already discussed, I have already documented that information. If the question does not apply to you, you can just say “no” with no further explanation.

Have you ever been or are you afraid of being harmed because of your political opinion?	No
Have you ever been harmed or threatened because someone disagreed with an opinion you hold or something you have spoken out about?	No
Have you ever been or are you afraid of being harmed because of your religion?	No
Have you ever been or are you afraid of being harmed because of your race?	No
Have you ever been or are you afraid of being harmed because of your	No

nationality? (e.g. country, specific part of country)	
Have you ever been or are you afraid of being harmed because some people think you have because you are seen as “different from others?”	No
Sometimes people are targeted as a form of revenge against a family member. Are you afraid of being harmed because of your relationship to someone in your family?	No
Have you ever been harmed or threatened by anyone in your family at any time in your life? Even when you were a child?	No
Have you ever been harmed or afraid of being harmed for any other reason that you have not already told me?	No

Mandatory Bars:

Officer	Applicant
Have you ever harmed another human being?	No
Have you ever committed a crime in any country? (including your own)?	No
Have you ever been arrested or detained in any country (including your own)?	No
Have you ever been affiliated with groups that use violence in order to reach their goals?	No
Have you ever served in the military?	No
Have you received any military-type training?	No
Have you ever publicly stated you approve of terrorist activities?	No
Even if you did not want to, have you ever helped a person involved in terrorist activities?	No
Even if you did not want to, have you ever tried to convince others to join or	No

support a group that advocated for or used violence to achieve their goals?	
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End of Interview Questions:

Officer	Applicant
Aside from what we've discussed, do you have any other problems in your country or is there anything else you would like to add?	No, that's all
Did you understand everything that was asked?	Yes
The interpreter is now going to read you an explanation of what will happen after this interview.	

PARAGRAPH 3.2 OF FORM I-870 READ TO APPLICANT

Interpreter, please read paragraph 3.2 of form I-870.

Do you understand what was read to you?	Yes
Do you have any questions or comments?	No

Please give me a moment to review my notes and summarize what we discussed.

SUMMARY OF FACTS: I am going to give you a brief summary of what we discussed today, and after I am done, please let me know if there is anything that you would like to add.

You indicated that you are afraid of returning to Sri Lanka because you believe you will be beaten up and that you do not feel safe there. You testified that you were taken by men and beaten and awoke one day later in the hospital.

You do not know who these individuals are or why they beat you. You testified that you were working on your farm when these men came in a van, blindfolded you, took you away and beat you.

You do not know if the police or other government entities are willing or able to protect you because you did not report this incident to the authorities. Although you do not know who beat you or why you were beaten, you are fearful of returning of Sri Lanka.

PROVIDE SUMMARIZED CASE TO APPLICANT AS REQUIRED BY PARA. 3.3, FORM I-870

Is this summary correct?	Yes
Is there anything else you would like to add or do you have any other questions?	No

Conclusion

- We are now at the end of the interview. Thank you for speaking with me today. You will receive a response in about one week.

- Please place the phone on the desk in front of you, but do not hang up. Let the officer know you are done.
- Interpreter, thank you for your service today. You may disconnect.

INTERVIEW CONCLUDED: 9:09 am

A [REDACTED]	COUNTRY: SRI LANKA	APSO: [REDACTED]	DATE: 3/9/2017
<ul style="list-style-type: none"> • <i>If there is a significant possibility of establishing eligibility for asylum or withholding under 241(b)(3), complete A., B., and C only.</i> • <i>If there is a significant possibility of establishing eligibility for protection under the Convention Against Torture, complete A., B., and D only.</i> • <i>If there is a significant possibility of establishing eligibility for asylum or withholding of removal under 241(b)(3) or for withholding or deferral of removal under the CAT pursuant to 8 CFR 208.16(c) or 208.17, complete Sections A., B., C., and D. unless the claim falls in Section A (Harm) or Section B. (Credibility). In which case, stop and complete Form I-870.</i> 			
<p>A. Harm (If yes to A.1., and/or A.2., move to Part B. If no to A.1. and A.2., STOP, and complete FORM I-870.)</p>			
<p>1. Has the applicant testified that he or she has experienced <u>past</u> harm in his or her country?</p> <p><i>If yes, identify any past harm or mistreatment suffered, and identify all relevant entit(ies).</i></p> <p>Harm: Being taken and beaten up Entit(ies): Unknown men</p>		<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p>	

<p>2. Has the applicant testified that he or she fears <u>future</u> harm if returned to his or her country?</p> <p><i>If yes, identify any past harm or mistreatment feared, and identify all relevant entit(ies).</i></p> <p>Harm: Being beaten up Entit(ies): Unknown men</p>	<p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p>
<p>B. Credibility (<i>Select the appropriate box and if testimony was partially credible or not credible, then: (1) identify the credibility factor and explain the evidence to support it, (2) provide the applicant's explanation, and (3) address if the explanation is reasonable for reach factor. After analyzing all relevant credibility factors, conder them in the totality of the circumstances.</i>)</p>	
<p>Applicant's testimony was credible: Considering the totality of the circumstances and all relevant factors, the applicant's testimony was consistent, detailed, and plausible. Therefore, it is found credible. (<i>Check box and moved to Section C. and/or D.</i>)</p>	<p><input checked="" type="checkbox"/></p>
<p>Applicant's testimony was partially credible: Considering the totality of the circumstances and all relevant factors, the applicant's testimony was found partially credible. The applicant's testimony was found credible regarding the</p>	<p><input type="checkbox"/></p>

relevant facts that are sufficient to establish a credible fear. <i>(Check box, explain and move to Section C. and/or D.)</i>	
<p>Applicant's testimony was not credible: Considering the identified credibility issues, the absence of reasonable explanations for those issues, and taking into consideration the applicant's individual circumstances, the applicant's testimony is found not credible under the totality of the circumstances and all relevant factors. <i>(Check box, explain, STOP, and complete Form I-870.)</i></p>	<input type="checkbox"/>
<p>C. Persecution <i>(If yes to C.1. or C.2., complete C.3. If no to C.1. and C.2., complete C.3.)</i></p>	
<p>1.a. <u>Past Persecution:</u> There is a significant possibility the applicant can establish in a full hearing that:</p> <ul style="list-style-type: none"> • The harm experienced was sufficiently serious to amount to persecution; • The entity that harmed the applicant was motivated to harm the applicant on account of his or her race, religion, nationality, membership in a particular social group, or political opinion; <i>and</i> 	<p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p>

<ul style="list-style-type: none"> • The entity that harmed the applicant was an agent of the government or an entity that the government was unable or unwilling to control. <p><i>AND</i></p> <p>1.b. There is no evidence so substantial that the presumption of well-founded fear can be rebutted.</p> <p><i>or</i></p> <p>If the presumption of well-founded fear has been rebutted, there is a significant possibility that asylum could be granted based on: (1) the severity of the past persecution; or (2) a reasonable possibility of other serious harm.</p>	
<p>2. <u>Future Persecution:</u> There is a significant possibility that the applicant can establish in a full hearing that:</p> <ul style="list-style-type: none"> • The applicant fears harm that is sufficiently serious to amount to persecution; 	
<ul style="list-style-type: none"> • The applicant <ol style="list-style-type: none"> 1) <u>possesses</u> a protected characteristic, 2) of which the feared entity is or could become <u>aware</u> 	<p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p>

<p>or the feared entity believes that the applicant possess a protected characteristic,</p> <p>3) the feared entity has the <u>capability</u> to persecute the applicant,</p> <p>4) the feared entity has the <u>inclination</u> to persecute the applicant, OR there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of a protected ground;</p> <ul style="list-style-type: none"> • The entity would be motivated to harm the applicant on account of his or her race, religion, nationality, membership in a particular social group, or political opinion; • The entity that would harm the applicant would be an agent of the government or an entity that the government would be unable or unwilling to control; <i>and</i> • Under all the circumstances, it would not be reasonable for the applicant to relocate within the 	
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applicant's country to avoid future persecution.	
<p>3. <u>Written Analysis:</u></p> <p>Race <input type="checkbox"/> Religion <input type="checkbox"/> Nationality <input type="checkbox"/> Membership in a Particular Social Group <input type="checkbox"/> Political Opinion <input type="checkbox"/></p> <p><i>If credible fear of persecution established, identify the protected ground and specify: No Nexus</i></p> <p><i>As needed, provide a brief reasoned analysis. Focus on determinative factors, applying the eligibility elements to the facts.</i></p> <p>The applicant testified that he was taken by men in a van and beaten and awoke one day later in the hospital. He indicated that he does not know who these individuals were or why they beat him up.</p> <p>The applicant provided no testimony indicating that he was or will be targeted because of race, religion, nationality, membership in a particular social group, or political opinion. It is unknown who these individuals were or why they wanted to harm the applicant. Thus, the applicant failed to establish that these acts were due to a protected characteristic.</p>	
<p>D. Torture (<i>Make a selection in D.1. and, as needed, complete D.2.</i>)</p>	
<p>D.1. There is a significant possibility the applicant can establish in a full hearing that:</p> <ul style="list-style-type: none"> • The feared harm would be specifically intended to in- 	<p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p>

<p>flict severe pain or suffering on the applicant;</p> <ul style="list-style-type: none">• The feared harm would constitute severe physical or mental pain or suffering;• The feared harm would be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity;• The applicant would be in the offender's custody or physical control; <i>and</i>• The harm would not arise only from or be inherent in or incidental to lawful sanctions. <p>In making this determination, the following evidence must be considered:</p> <ul style="list-style-type: none">• Evidence of past torture inflicted upon the applicant;• Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;• Evidence of gross, flagrant or mass violations of human rights within the country of removal; and other relevant information	
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<p>regarding conditions in the country of removal.</p> <p>If the applicant has demonstrated that there is a significant possibility of establishing past torture <u>AND</u> there are no changes in circumstances so substantial such that the applicant does not have a credible fear of torture, the applicant will be found to have established a credible fear of torture.</p>	
<p>D.2. <u>Written Analysis:</u> <i>As needed, provide a brief reasoned analysis. Focus on determinative factors, applying the eligibility elements to the facts.</i></p> <p>The applicant does not appear to have experienced torture. He testified to being beaten on one occasion by unknown individuals for unknown reasons. The applicant did not testify that the harm he experienced in the past was caused by, or [was] at the instigation of a public official, nor that the harm was inflicted with the acquiescence of a public official. The applicant did not report the incident to the police or other authorities; therefore, he does not know if the police or other authorities were aware that he was being harmed. He did not know if they would look the other way or be unwilling to help him. <u>[He simply indicated that he didn't go to them for help because he wouldn't be able to provide them with information on his attacker.]</u> The applicant testified that his family continues to reside at the location where he was attacked and denies any threats being made against him or his family.</p>	

U.S. Department of Homeland Security

Notice of Referral to Immigration Judge

C/o DHS Otay Mesa Detention Center/OMDC, 7488 Calzada de la Fuente, San Diego, CA 92158 (619) 661-3800	Date [Mar. 13, 2017]
Name Vijayakumar THURAISSIGIAM	A-File [REDACTED]
Place and Manner of Arrival Near San Ysidro, CA; Entered without inspection	Country of Citizenship Sri Lanka
	Date of arrival 2/17/2017

To immigration judge:

1. The above-named alien has been found inadmissible to the United States and ordered removed pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act). A copy of the removal order is attached. The alien has requested asylum and/or protection under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act and 8 CFR § 208.30(g).
2. The above-named alien arrived in the United States as a stowaway and has been ordered removed pursuant to section 235(a)(2) of the Act. The alien

has requested asylum and/or withholding of removal under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act.

3. The above-named alien arrived in the United States in the manner described below and has requested asylum and/or withholding of removal under the Convention against Torture. The matter is referred for a determination in accordance with 8 CFR § 208.2(c). Arrival category (check one):
- Crewmember/applicant Crewmember/refused
 Crewmember/violator VWP/applicant
 235(c) order S-visa nonimmigrant
 Crewmember/landed VWP/violator
 Stowaway: credible fear determination attached
4. The above-named alien has been ordered removed by an immigration officer pursuant to section 235(b)(1) of the Act. A copy of the removal order is attached. In accordance with section 235(b)(1)(C) of the Act, the matter is referred for review of that order. The above-named alien claims to be (check one):
- a United States citizen an alien granted refugee status under section 207 of the Act
- a lawful permanent resident alien

- an alien granted asylum under section 208 of the Act.
- 5. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the Department of Homeland Security (DHS) has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien does not have a reasonable fear of persecution or torture. The alien has requested a review of that determination in accordance with 8 CFR §§ 208.31(f) and (g).
- 6. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the DHS has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien has a reasonable fear of persecution or torture. The matter has been referred for a determination in accordance with 8 CFR § 208.31(e).
- 7. The Secretary of Homeland Security has determined that the release from custody of the above-named alien who is under a final order of removal would pose a special danger to the public according to the standards set in 8 CFR § 241.14(f)(1). The DHS has therefore invoked procedures to continue

the alien's detention even though there is no significant likelihood that the alien will be removed from the United States in the reasonably foreseeable future. The matter is referred to the immigration judge for a review of this determination in accordance with 8 CFR 241.14(g).

U.S. Department of Homeland Security

Notice of Referral to Immigration Judge**NOTICE TO APPLICANT**

You are ordered to report for a hearing before an immigration judge for the reasons stated above. Your hearing is scheduled on

To be		To be		You are to appear
determined	at	determined		
_____		_____		at _____
(Date)		(Time)		

EOIR, site to be determined in San Diego

(Complete office address)

- You may be represented in this proceeding, at no expense to the government, by an attorney or other individual authorized and qualified to represent persons before an Immigration Court. If you wish to be so represented, your attorney or representative should appear with you at this hearing. In the event of your release from custody, you must immediately report any change of your address to the Immigration Court on Form EOIR-33, which is provided with this notice. If you fail to appear for a scheduled hearing, a decision may be rendered in your absence.
- You may consult with a person or persons of your own choosing prior to your appearance in Immigration Court. Such consultation is at no expense to the government and may not unreasonably delay the process.

- Attached is a list of recognized organizations and attorneys that provide free legal service.

/s/ [ILLEGIBLE]
 (Signature and title of immigration officer)

CERTIFICATE OF SERVICE

- The contents of this notice were read and explained to the applicant in the Tamil language.
- The original of this notice was delivered to the above-named applicant by the undersigned on [Mar. 13, 2017] and the alien has been advised of communication privileges pursuant to 8 CFR 236.1(e). Delivery was made:

- in person by certified mail, return receipt # _____ requested by regular mail

/s/ [ILLEGIBLE]
 (Signature and title of immigration officer)

Attachments to copy presented to immigration judge:

- | | |
|---|--|
| <input type="checkbox"/> Passport | <input checked="" type="checkbox"/> Form I-860 |
| <input type="checkbox"/> Visa | <input checked="" type="checkbox"/> Form I-869 |
| <input type="checkbox"/> Form 1-94 | <input type="checkbox"/> Form I-898 |
| <input type="checkbox"/> Forensic document analysis | <input type="checkbox"/> Asylum Officer's reasonable fear determination worksheet (I-899) |
| <input type="checkbox"/> Fingerprints and photographs | <input checked="" type="checkbox"/> Asylum officer's credible fear determination worksheet (I-870) |

- EOIR-33
- FOR 8 CFR 241.14(f) CASES ONLY:** Written statement including summary of the basis for the Secretary's determination to continue the alien in detention, and description of the evidence relied on in finding the alien specially dangerous (with supporting documents attached).
- FOR 8 CFR 241.14(f) CASES ONLY:** Written notice advising the alien of initiation of proceedings and informing alien of procedures governing the Reasonable Cause Hearing at 8 CFR 241.14(h).
- Other (specify): _____

IMMIGRATION COURT
7488 CALZADA DE LA FUENTE
SAN DIEGO, CA 92154

Case No. [REDACTED]
IN THE MATTER OF: THURASSIGIAM, VIJAYAKUMAR,
RESPONDENT

IN: CREDIBLE FEAR REVIEW PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Mar 17, 2017 at 08:00 A.M. a review of the DHS Credible Fear Determination was held in the matter noted above. Testimony [] was [] was not taken regarding the background of the Applicant and the Applicant's fear of returning to his/her country of origin or last habitual residence.

After consideration of the evidence, the Court finds that the Applicant [] has [] has not established a significant possibility that he/she would be persecuted on the basis of his/her race, religion, nationality, membership in a particular social group, or because of his/her political opinion. [or for relief under the Convention Against Torture]

ORDER: It is hereby ordered that the decision of the immigration officer is:

[] Affirmed, and the case is returned to the DHS for removal of the alien.

[] Vacated.

This is a final order. There is no appeal available.

DONE and ORDERED this [17th] day of [Mar.], 20[17].

/s/ [ILLEGIBLE]
HENRY P. IPEMA
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M)
PERSONAL SERVICE (P)

TO: [✓] ALIEN [] ALIEN c/o Custodial Officer
[] ALIEN's ATT/REP [✓] DHS

DATE: [3/12/2017] BY: COURT STAFF [HP1]

Attachments: [] EOIR-33 [] EOIR-28
[] Legal Services List [] Other

Record of Sworn Statement in Proceedings
under Section 235(b)(1) of the Act

U.S. Department of Homeland Security

Office: IMPERIAL BEACH, CA, BORDER PATROL
STATION

File No: **[REDACTED]**

Event No: **[REDACTED]**

Statement by: VIJAYAKUMAR THURAISSIGIAM

In the case of: VIJAYAKUMAR THURAISSIGIAM

Date of Birth: **[REDACTED]**

Gender (select one): Male Female

At: IMPERIAL BEACH, CA, BORDER PATROL
STATION Date: Feb. 18, 2017

Before: **[REDACTED]** BORDER PATROL AGENT
(Name and Title)

In the Tamil language. Interpreter ID #211399 Em-
ployed by LANGUAGE LINE SOLUTIONS

I am an officer of the United States Department of Homeland Security. I am authorized to administer the immigration laws and to take sworn statements. I want to take your sworn statement regarding your application for admission to the United States. Before I take your statement, I also want to explain your rights, and the purpose and consequences of this interview.

You do not appear to be admissible or to have the required legal papers authorizing your admission to the United States. This may result in your being denied

admission and immediately returned to your home country without a hearing. If a decision is made to refuse your admission into the United States, you may be immediately removed from this country, and if so, you may be barred from reentry for a period of 5 years or longer.

This may be your only opportunity to present information to me and the Department of Homeland Security to make a decision. It is very important that you tell me the truth. If you lie or give me misinformation, you may be subject to criminal or civil penalties, or barred from receiving immigration benefits or relief now or in the future.

Except as I will explain to you, you are not entitled to a hearing or review.

U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country. If you fear or have a concern about being removed from the United States or about being sent home, you should tell me so during this interview because you may not have another chance. You will have the opportunity to speak privately and confidentially to another officer about your fear or concern. That officer will determine if you should remain in the United States and not be removed because of that fear.

Until a decision is reached in your case, you will remain in the custody of the Department of Homeland Security.

Any statement you make may be used against you in this or any subsequent administrative proceeding.

Q. Do you understand what I have said to you?

A. Yes.

Q. Do you have any questions?

A. No.

Q. Are you willing to answer my questions at this time?

[T. Vijayakumar.]

A. Yes.

Q. Do you swear or affirm that all statements you are about to make are true and complete?

A. Yes.

Q. What is your true and complete name?

A. THURAISSIGIAM, Vijayakumar.

Q. Have you ever used any other names?

A. No.

Q. What is your date of birth?

A. [REDACTED]

Q. Where were you born?

A. Sri Lanka.

Q. What country are you a citizen of?

A. Sri Lanka.

Q. Are you in possession of any immigration documents that allow you to enter or remain in the United States legally?

A. No.

Q. Have you ever applied for any immigration status?

A. No.

Q. What country are your parent's citizens of?

A. Sri Lanka.

Q. Where do your parents reside?

A. Sri Lanka.

Q. Do you have any family residing in the United States?

A. No.

Q. Do you have any petitions filed on your behalf?

A. No.

Q. For what purpose did you enter the United States illegally?

A. I came here because people beat me up.

Q. What was your intended destination in the United States?

A. United States.

Q. When and where did you last enter the United States illegally?

A. Last night from Tijuana.

Q. Were you inspected by immigration officers at a Port of Entry?

A. No.

Q. Have you ever been apprehended by any law enforcement offices in the United States or your country of citizenship?

A. No.

Q. How many times have you been apprehended by the United States Border Patrol for entering the United States illegally?

A. This is the first time.

Q. What happened after the United States Border Patrol apprehended you?

A. N/A

Q. Have you ever presented before an Immigration Judge? [T. Vijayakumar]

A. No.

Q. Were you advised of your consulate rights?

A. Yes.

Q. Are you going to speak to a consulate officer?

A. No.

Signature	Title
/s/ <u>ILLEGIBLE</u> [REDACTED]	BORDER PATROL AGENT

**Jurat for Record of Sworn Statement in
Proceedings under Section 235(b)(1) of the Act**

U.S. Department of Homeland Security

Q: Why did you leave your home country or country of last residence?

A. BECAUSE PEOPLE BEAT ME UP.

Q. Do you have any fear or concern about being returned to your home country or being removed from the United States?

A. Yes. [T. Vijaykumar]

Q. Would you be harmed if you are returned to your home country or country of last residence?

A. YES. [T. Vijaykumar]

Q. Do you have any question or is there anything else you would like to add?

A. NONE

I have read (or have had read to me) this statement, consisting of 1 pages (including this page). I state that my answers are true and correct to the best of my knowledge and that this statement is a full, true and correct record of my interrogation on the date indicated by the above named officer of the Department of Homeland Security. I have initialed each page of this statement (and the corrections noted on page(s)_____).

/s/ VIJAYAKUMAR THURAISSIGAIM
VIJAYAKUMAR THURAISSIGAIM

Sworn and subscribed to before me at IMPERIAL BEACH, CA, BORDER PATROL STATION on Feb. 18, 2017.

/s/ **[REDACTED]**
BORDER PATROL AGENT
Signature of Immigration Officer **[ILLEGIBLE]**

Witnessed by:

BORDER PATROL AGENT
[REDACTED] [ILLEGIBLE]

Notice and Order of Expedited Removal**U.S. Department of Homeland Security**

DETERMINATION OF INADMISSIBILITYEvent No: **[REDACTED]**File No: **[REDACTED]**Date: Feb, 18, 2017In the Matter of: VIJAYAKUMAR THURAISSIGIAM

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U .S.C. 1225(b)(1)), the Department of Homeland Security has determined that you are inadmissible to the United States under section(s) 212(a) (6)(C)(i); (6)(C)(ii); (7)(A)(i)(I); (7)(A)(i)(II); (7)(B)(i)(I); and/or (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

1. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act. You are not a citizen or national of the United States, you are a native of Sri Lanka and citizen of Sri Lanka, and on February 17, 2017, you illegally entered the United States at/near San Ysidro, California, and you were not inspected by an Immigration Officer.

[REDACTED]**BORDER PATROL AGENT**

Name and title of immigration officer (Print)

/s/ **[REDACTED]**

**ORDER OF REMOVAL
UNDER SECTION 235(b)(1) OF THE ACT**

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

[[REDACTED], SDDO]

Name and title of immigration officer (Print)

/s/ [[REDACTED], SDDO
[[REDACTED]]

Signature of immigration officer

[[REDACTED], [ILLEGIBLE]]

Name and title of supervisor (Print)

/s/ [[REDACTED]]
[[REDACTED]]

Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on [3/13/2017]

Date

[[ILLEGIBLE]]

Signature of immigration officer