



## Frequently Asked Questions on the Designation of New Foreign Terrorist Organizations and Its Impact on Asylum Seekers

March 2025

Asylum and withholding of removal applicants are subject to the terrorism-related inadmissibility grounds (commonly known as “TRIG”) at section 212(a)(3) of the Immigration and Nationality Act (INA). The TRIG provisions, incorporated into the mandatory bars to asylum at INA § 208(b)(2)(A)(5), can disqualify individuals from protection based on broadly defined criteria. These bars consist of a complex set of rules and interconnected definitions that the government interprets expansively, often barring applicants with minimal or indirect associations with designated groups.

On Feb. 20, 2025, a [Federal Register notice](#) was published officially designating certain organizations as Foreign Terrorist Organizations (FTOs) pursuant to INA § 219 and further expanding the scope of the TRIG bars. This resource examines how these designations can potentially impact asylum seekers and provides guidance for advocates on how to continue zealously representing their clients.

### Which organizations are included in the new designation?

- Tren de Aragua (also known as Aragua Train).
- Mara Salvatrucha (also known as MS-13).
- Cartel de Sinaloa (also known as Sinaloa Cartel, Mexican Federation, Guadalajara Cartel).
- Cartel de Jalisco Nueva Generacion (also known as New Generation Cartel of Jalisco, CJNG, Jalisco New Generation Cartel).
- Carteles Unidos (also known as United Cartels, Tepalcatepec Cartel, Cartel de Tepalcatepec, The Grandfather Cartel, Cartel del Abuelo, Cartel de Los Reyes).
- Cartel del Noreste (also known as CDN, Northeast Cartel, Los Zetas).
- Cartel del Golfo (also known as CDG, Gulf Cartel, Osiel Cardenas-Guillen Organization).
- La Nueva Familia Michoacana (also known as LNFM).

## How will the designation impact asylum seekers?

The TRIG bars render noncitizens inadmissible and barred from asylum and withholding of removal if they have “engaged in terrorist activity.” The definition of “engage in terrorist activity” includes, among other activities, providing “material support” to a terrorist organization.<sup>1</sup>

The “material support” provision of the TRIG grounds represents a large percentage of TRIG determinations and has traditionally received a great deal of focus by U.S. Citizenship and Immigration Services (USCIS) officers, counsel at Immigration and Customs Enforcement Office of the Principal Legal Advisor (ICE OPLA), and Immigration Judges (IJ). The material support provision is also the one that is most likely to sweep up individuals with no connections to or support for terrorism. This is because the “material support” prong of the statute has been interpreted very broadly by courts and the Board of Immigration Appeals (BIA) to include acts committed even under duress, such as making ransom payments to FTOs to secure the release of kidnapped family members or making payments to pass through checkpoints on the road. The government also considers merchants who sell anything to terrorists as having provided material support. As a result, the designation of these gangs and cartels as FTOs is likely to sweep up innocent asylum seekers who reject the violence and the ideology of these organizations.

## What are some examples of fact patterns that could implicate the TRIG bars based on the new designations?

- Luis, a fruit vendor in El Salvador, is forced at gunpoint to pay extortion money, known as “la renta,” to MS-13 to continue operating his stand.
- Carlos, a restaurant owner, serves food to members of the Cartel de Jalisco Nueva Generación when they occasionally visit his establishment.
- Vanessa, a mother from Mexico, pays a ransom to the Sinaloa Cartel to secure the release of her kidnapped son.
- Pablo, a Venezuelan asylum seeker, pays Tren de Aragua as part of his journey to the United States.

## Is there a *de minimis* exception for having provided material support to a terrorist organization?

In *Matter of A-C-M-*, the BIA held that there is no *de minimis* amount that negates a material support finding.<sup>2</sup> Therefore, the government is likely to find even the smallest amount of support to an FTO constitutes material support. While certain statutory

<sup>1</sup> INA § 212(a)(3)(B)(iv)(VI).

<sup>2</sup> 27 I&N Dec. 303 (BIA 2018).

exemptions may cover many of these minimal instances of support as described below, there is no implicit exception for minor or incidental support.

### **Does the statute contain a duress exception?**

No. In 2016, the BIA issued a precedent decision, *Matter of M-H-Z*, which concluded that there is no implied duress exception in the material support bar.<sup>3</sup> The BIA reasoned that since the statute allows the agency to apply exemptions where necessary, Congress must not have intended for the statute itself to contain a duress exception.<sup>4</sup>

### **What exemptions are currently available?**

The TRIG bars include a discretionary exemption provision for certain grounds of inadmissibility under INA § 212(a)(3)(B). Exemptions fall into two main categories: group-based exemptions and situational exemptions. The current exemptions are listed on USCIS's [website](#).

Many asylum seekers affected by the new FTO designations may qualify for a situational exemption to the TRIG bars. Some of the most common situational exemptions are as follows:

#### **1. Duress**

Three exemptions exist for individuals who engaged in certain activities under duress, including individuals who provided material support to a terrorist organization, received military-type training, or solicited individuals to join a terrorist organization.<sup>5</sup> Before granting an exemption, USCIS must first determine that the material support was provided under duress. Factors to be considered include:

- Whether the applicant reasonably could have avoided providing support.
- The severity and type of harm inflicted or threatened.
- To whom the harm was directed.
- The perceived imminence of the threatened harm.

<sup>3</sup> *Matter of M-H-Z*, 26 I&N Dec. 757 (BIA 2016).

<sup>4</sup> *Id.* at 762; see also Terrorism-Related Inadmissibility Grounds Exemptions, <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-exemptions>.

<sup>5</sup> The three duress-based exemptions are for Material Support, Military Training, and Solicitation. Information on these exemptions can be found on the USCIS website, available at <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-trig-situational-exemptions#:~:text=Exemptions%20may%20be%20granted%20for,perceived%20threat%20of%20serious%20harm>.

After USCIS determines that the applicant provided material support under duress, the adjudicator must then consider whether the applicant warrants a favorable exercise of discretion. The non-exhaustive factors USCIS will consider in this analysis include the following:

- Amount and type of material support provided.
- Frequency of material support provided.
- Nature of the terrorist activities.
- Asylum applicant's awareness of the terrorist activities.
- Length of time that has passed since the applicant provided the material support.
- Asylum applicant's conduct since providing material support.<sup>6</sup>

In the examples above, Luis and Vanessa may be eligible to seek a duress exemption as both faced immediate and serious harm if they had refused to comply.

## **2. Certain Limited Material Support to a Terrorist Organization and Insignificant Material Support<sup>7</sup>**

These two situations are described in more detail in a 2022 DHS memo. "Certain Limited Material Support" applies in cases where support was provided under specific circumstances, including:

- Certain routine commercial transactions.
- Certain routine social transactions.
- Certain humanitarian assistance.
- Material support provided under substantial pressure that does not rise to the level of duress.

The "insignificant material support" category may include situations where the support was:

- Minimal in amount; and
- The asylum applicant believed that it was inconsequential in effect.<sup>8</sup>

<sup>6</sup> *Id.*

<sup>7</sup> Implementation of the Discretionary Exemption Authority Under Immigration and Nationality Act (INA) § 212(d)(3)(B)(i) for the Provision of Certain Limited or Insignificant Material Support to Designated Organizations, <https://www.uscis.gov/sites/default/files/document/policy-manual/Certain-Limited-Material-Support-Insignificant-Material-Support-for-Designated-Groups-PM-602-0191.pdf>

<sup>8</sup> *Id.*

Examples could include paying a small amount to pass through a cartel checkpoint to flee a country of origin, serving members of a gang at one's place of business, or providing a cartel member with a drink at a social gathering. In the examples above, Carlos and Pablo may be able to argue for exemptions under this 2022 memo.

### **What is the process for seeking an exemption from USCIS?**

There is no special process or specific form required to seek a duress exemption from USCIS. However, USCIS generally follows a three-pronged approach before approving the exemption.

1. First, certain threshold requirements must be met.<sup>9</sup> Applicants must meet the basic eligibility criteria, which may vary depending on the specific exemption being sought given that each exemption is different.
2. Second, the applicant must demonstrate that they meet the specific conditions of the duress exemption.
3. Third, USCIS will evaluate all relevant factors to assess the applicant's situation under the totality of the circumstances.

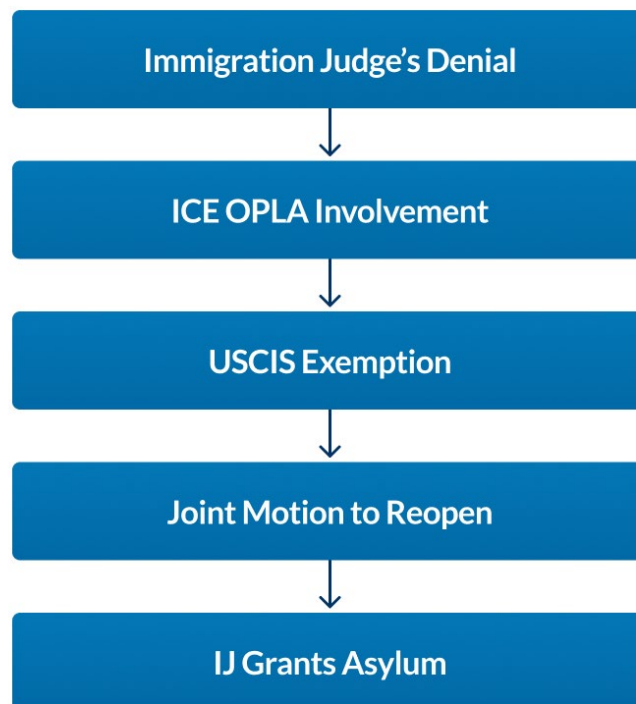
USCIS officers are authorized to make these exemptions regarding various cases, such as refugee/asylum applications, refugee/asylee relative petitions, adjustment of status applications, and Temporary Protected Status applications. Officers normally fill out an exemption worksheet where they record their analysis; determine whether a TRIG bar applies; and, if so, whether there is an exemption.

### **What is the process for seeking an exemption for clients in removal proceedings before the Executive Office for Immigration Review (EOIR)?**

Seeking an exemption for a client in removal proceedings before EOIR is extremely difficult because IJs do not have authority to grant exemptions – only USCIS does. Consequently, the process requires coordination among multiple agencies and follows these steps:

<sup>9</sup> These threshold requirements are present in all situational exemptions: establish that the applicant is otherwise eligible for the visa or benefit, undergo and pass all security and background checks, disclose in all applications and interviews any material support provided, and establish that they are not a danger to the United States. Finally, most of the threshold requirement contain certain restrictions, such as not providing material support for the commission of a terrorist activity. Please read each exemption policy memoranda carefully to determine the threshold criteria. They are available on the USCIS website: <https://www.uscis.gov/laws-and-policy/other-resources/terrorism-related-inadmissibility-grounds-trig/terrorism-related-inadmissibility-grounds-trig-situational-exemptions>.

- 1) **Immigration Judge's Denial:** The IJ denies asylum and issues a removal order. In the decision, the IJ must make what is known as a “but for” finding, determining that the noncitizen would have been granted asylum but for the TRIG bar.
- 2) **ICE OPLA Involvement:** The ICE OPLA attorney then submits a request for an exemption to USCIS. Obtaining the cooperation of ICE OPLA in this process can be very difficult and require a great deal of follow-up.
- 3) **USCIS Exemption:** USCIS reviews the request and issues a notice of exemption if it determines it applies.
- 4) **Joint Motion to Reopen:** Once the exemption is granted, both parties file a joint motion to reopen the case to grant asylum.
- 5) **IJ Grants Asylum:** Following the reopening, the IJ grants asylum based on the exemption.



Please see the sample materials attached (Exhibits A and B), including the Notice of Exemption issued by USCIS and a joint motion to reopen filed by respondent's counsel and ICE OPLA after the exemption was granted.

## What can advocates do as they prepare their client's asylum application?

- **Know the facts!** It is crucial that advocates carefully screen their clients for *any* interactions with the above-listed organizations, including *during* their journey to the United States where immigrants often encounter cartels and gangs. Please refer to the list of questions attached as Exhibit B. Advocates should avoid being caught off guard by DHS arguments that their clients are subject to the TRIG bars.

Ask yourself the following questions:

- **Do these facts make my client subject to the TRIG bars for providing material support to a *designated* FTO?**
  - Remember, only the cartels and gangs listed above are designated FTOS. Providing money to an unlisted gang or cartel may not implicate the TRIG bars. For example, a client who tells you that they paid “la renta” to the 18<sup>th</sup> Street Gang in El Salvador has not provided material support to a designated FTO because the 18<sup>th</sup> Street Gang is not included in this designation.<sup>10</sup>
- **Do these facts make my client subject to the TRIG bars based on providing material support to an *undesigned* FTO?**
  - DHS can still argue that even undesigned organizations constitute FTOS as so-called Tier III organizations. Tier III [organizations](#) are defined by law as “a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in,” terrorist activity but are not formally designated.<sup>11</sup> Advocates should be prepared for such arguments any time there is contact with a cartel or transnational gang, even if they are not on the designated list. However, there are additional arguments that advocates can make to challenge DHS assertions that undesigned gangs and cartels should be considered Tier III organizations. Additionally, INA § 212(a)(3)(B)(iii)(V)(b) provides an exception for Tier III groups that act for “mere monetary gain.” Arguably, this exception suggests that criminal gangs or other organized criminal groups that primarily engage in illegal activities for profit do not

<sup>10</sup> Terrorist-Related Inadmissibility Grounds (TRIG), Instructor Guide, U.S. Citizenship and Immigration Services Academy, obtained via FOIA by the ACLU and available at [USCIS-Officer-Academy-TRIG-Instructor-Guide-Jun.-2012.pdf](#) (stating that “[g]angs usually don’t qualify as Tier III terrorist organizations because of their criminal focus (i.e., their activities further personal monetary gains)”).

<sup>11</sup> INA § 212(a)(3)(B)(vi)(III).

typically meet the criteria for Tier III designation under TRIG. Furthermore, the bar does not apply with respect to Tier III organizations if a client did not know or did not reasonably know that the group that they provided support to is a terrorist organization.<sup>12</sup>

○ **What if my client’s interactions with the FTO occurred before the group’s designation as a Tier I organization?**

- DHS is likely to argue that the TRIG bars apply retroactively to conduct that occurred before a group was officially designated as a FTO on Feb. 20, 2025.<sup>13</sup> However, practitioners should challenge this interpretation by arguing that the law should not be applied retroactively to penalize actions taken before the designation. Under section 411(c)(3)(A) of the USA PATRIOT Act, the TRIG grounds do not apply retroactively to individuals who engaged with a Tier I FTO or Tier II organization before they were designated as such. However, the Patriot Act does authorize the retroactive application of the Tier III determinations, meaning that DHS can still argue the group was a Tier III organization before the formal designation.<sup>14</sup> However, this would require an individualized assessment rather than automatic classification. Moreover, as previously explained, most gangs and cartels do not qualify as Tier III organizations for the reasons explained above. Additionally, practitioners should continue advocating for a TRIG exemption where applicable and ensure all arguments are preserved for a potential appeal.

○ **If these facts make my client subject to the TRIG bars, is an exemption available?**

- If your client is potentially subject to the TRIG bars, it is essential to assess whether any exemptions may apply, especially the most common ones, such as the duress exemptions, certain limited material support exemptions, and insignificant material support exemptions.

<sup>12</sup> INA § 212(a)(3)(B)(i)(VI) (membership in a Tier III group); INA § 212(a)(3)(B)(iv)(VI)(cc)(material support); INA § 212(a)(3)(B)(iv)(IV)(cc) (solicitation of funds or other things of value); INA § 212(a)(3)(B)(iv)(V)(cc) (solicitation of persons).

<sup>13</sup> Human Rights First, *Delay and Denial: The Impact of the Immigration Law’s “Terrorism Bars” on Asylum Seekers and Refugees in the United States* (Oct. 31, 2009).

<sup>14</sup> *Bodnoordi v. Holder*, 757 F.3d 1075, 1077 (9<sup>th</sup> Cir. 2014); *Daneshvar v. Ashcroft*, 355 F.3d 615, 627 (6<sup>th</sup> Cir. 2004).



- Always consult the USCIS website on [exemptions](#) to determine whether one might apply to your client.
- **Submit Freedom of Information Act requests for clients for their [USCIS A file](#) and [EOIR record of proceedings](#).** It is especially important if you represent a client in immigration court to understand any prior statements that they have made over the course of an affirmative asylum interview before USCIS. When requesting a USCIS A file, be sure to specifically request the “asylum officer notes and assessment” to better flag potential TRIG issues that may be raised.
- **Seek Convention Against Torture protection for clients in removal proceedings.**
  - Consider arguing for Convention Against Torture (CAT) protection in the alternative. It is important to argue for CAT protection for clients who may be subject to a TRIG bar. The TRIG bars do not bar a grant of CAT deferral. A grant of CAT deferral may protect a client from deportation while they go through the exemption process with USCIS.

## Conclusion

Given the new February 2025 FTO designations, practitioners should anticipate heightened scrutiny from DHS asylum officers, DHS attorneys, and IJs regarding any past affiliations or material support their clients may have provided to the newly designated groups. DHS is likely to assert broad interpretations of the material support bar to challenge asylum eligibility and other forms of immigration relief. Therefore, practitioners must thoroughly screen their clients for any prior interactions with potential terrorist organizations, including those involving family members. They must develop strong legal arguments against the application of the material support bar – including in cases involving pre-designation conduct – and preserve all arguments in favor of a TRIG exemption. Lastly, practitioners should be aware that the material support bar could create significant barriers to other forms of relief filed with immigration court or USCIS, including adjustment of status applications for asylees and refugees.

We encourage Affiliates to reach out to CLINIC for case-specific support. CLINIC attorneys can provide technical assistance via [Ask the Experts](#) to address specific case questions involving TRIG bars. Affiliates seeking more in-depth case assistance on potential TRIG bars may also submit a referral to CLINIC's [Mentorship Project](#).

**EXHIBIT A**

AUG 10 2022

RECEIVED



U.S. Citizenship  
and Immigration  
Services

DHS/ICE/OPLA [REDACTED]

**NOTICE OF DETERMINATION**

RE: Grant of Material Support Duress Exemption / [REDACTED]

Upon review of your case, USCIS has determined that you are eligible for an exemption for providing material support to a terrorist organization under duress, and merit a favorable exercise of discretion in the totality of the circumstances for this exemption. **Before you can be granted the benefits sought, your case must be reopened by the immigration court.** USCIS will submit the decision on your exemption to the ICE Office of the Chief Counsel, which will then forward to you a "Joint Motion to Reopen" template. In order to reopen your case, you or your counsel must sign the motion and return it to the Office of the Chief Counsel. Specific information will be provided in the template that the Office of the Chief Counsel will mail to you.

On February 26, 2007, the Secretary of Homeland Security exercised his discretionary authority under Immigration and Naturalization Act (INA) § 212(d)(3)(B)(i) to exempt the application of the § 212(a)(3)(B)(i)(I) inadmissibility provision defined at § 212(a)(3)(B)(iv)(VI) to certain individuals who afforded material support under duress to terrorist organizations described under § 212(a)(3)(B)(vi)(III), provided that the totality of the circumstances justifies the favorable exercise of discretion. The Secretary's notice of determination delegated authority for implementing the material support exemption to U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has the discretion to determine whether the exemption criteria are met.

In order to be considered for an exemption from the applicability of the material support inadmissibility provision, the applicant must establish that he or she is otherwise eligible for the immigration benefit or protection being sought, undergo and pass all required background and security checks, fully disclose the nature and circumstances of each provision of material support, and establish that he or she does not pose a danger to the safety or security of the United States.

Factors to be considered in determining whether material support was provided under duress in each instance of support include whether the applicant could have avoided, or took steps to avoid providing material support, the severity and type of harm inflicted or threatened, to whom the harm was directed, and in cases of threats alone, the perceived imminence of the harm threatened and the perceived likelihood that the harm would be inflicted.

Factors to be considered in the totality of the circumstances include the amount, type, and frequency of the support provided, the nature of the activities committed by the terrorist organization, the applicant's awareness of those activities, the length of time since material support was provided, the applicant's conduct since that time, and any other relevant factor.

#### FACTS AND PROCEDURAL HISTORY

The facts of your case are as follows: You are a native and citizen of Cameroon. You applied for admission to the United States at the port of entry in Laredo, TX, on October [REDACTED] 2019, and were placed in detention. After a credible fear interview with USCIS on November 18, 2019, you were issued a Notice to Appear in Immigration Court (NTA), dated November 22, 2019. On January 15, 2020, you admitted the charges in the NTA of removability under INA § 237(a)(7)(A)(i)(I) as an arriving alien and you requested relief in the form of asylum, withholding of removal, and protection under the Convention Against Torture (CAT) when you submitted your asylum application on February [REDACTED] 2020. At an individual hearing on March 10, 2020, you made virtual appearances before an immigration judge (IJ) to offer testimony on your applications for relief. Throughout this entire time, you remained in immigration detention.

At your hearing on March 10, you testified that in May 2018, you were accosted at your warehouse by a group of 20 armed members of the separatist group Amba Boys, who demanded that you give them 10,000 CFA (approximately \$16) in order to not destroy your identity card. They demanded further support from you, and you gave them another 20,000 CFA (approximately \$32). They also took some grains of granite to eat from bags you were unloading into your warehouse before leaving. Based on this interaction with the Amba Boys in which you were photographed by an unknown person with the Amba Boys, the Cameroonian military accused you of being an Amba Boy separatist and detained you and tortured you on two occasions. You then fled the country in June 2019. You had no further interactions with the Amba Boys or any other armed groups.

You fled from Cameroon to Nigeria on June 5, 2019, flew to Turkey and then to Ecuador, where you traveled through Colombia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala and Mexico until you reached Laredo, Texas point of entry on October [REDACTED] 2019, where you presented yourself to Border Patrol authorities and requested asylum.

At the conclusion of your hearing on March 10, 2020, the IJ found that you were ineligible for a grant of asylum due to the material support bar. The IJ stated on the record that she found you credible regarding the past persecution that you had suffered at the hands of Cameroonian military on account of your imputed political opinion supporting the separatist Amba Boys. The IJ also found that you had established that it was more likely than not that you would be tortured by Cameroonian government forces if you were returned to Cameroon, and granted you deferral of removal under the Convention Against Torture (CAT). Both you and the attorney from Immigration and Customs Enforcement (ICE) reserved the right to appeal this decision, but only DHS appealed. The Board of Immigration Appeals (BIA) held that the IJ's denial of asylum and withholding was final and sustained DHS' appeal regarding the granting of deferral of removal under CAT. A subsequent oral decision was rendered on July 12, 2021, again granting your request for deferral of removal under the CAT. DHS did not file a second appeal, so the order of deferral of removal under CAT is administratively final at this time.

You have fully disclosed the nature and circumstances of each activity or association within the scope of INA § 212(a)(3)(B). In all applications and interviews, you have consistently answered all questions about the type, nature, frequency, and duration of the material support you provided. You have passed all required background and security checks. Upon review of your file and circumstances, there is no indication that you pose a danger to the safety and security in of the United States.

The money you provided to the Amba Boys constitutes provision of material support to a terrorist organization. The Amba Boys actions as you described them and as reported in reputable sources from Cameroon cause the group to meet the definition of an undesignated, or Tier III terrorist organization, under INA § 212(a)(3)(B)(vi)(III). By definition, a Tier III terrorist organization is a group of two or more individuals, whether organized or not, that engages in terrorist activity or has a subgroup that engages in terrorist activity. Your own testimony indicates that you knew these armed separatist fighters were engaged in attacks on government forces and civilians. Therefore, by your own testimony, you have provided material support to a Tier III terrorist organization.

Although you are statutorily barred from asylum for engaging in terrorist activity by providing material support to a terrorist organization, the available evidence indicates that you provided the material support under duress. Previously, at other times when the separatists came to town, you closed your shop and warehouse to avoid them. However, one day in May 2018, you were accosted by 20 armed Amba Boys and agreed to pay them a total of 30,000 CFA (approximately \$48 equivalent) on this single instance because you knew that they attack people, there were 20 of them with weapons pointed at you, and you wanted to save your life. Without your permission and without any action from you, they cut open your bags of granite and several of the Amba Boys took some granite before leaving. Finally, after being targeted for arrest and torture by the Cameroonian military who wrongfully accused you of being an Amba Boy, you fled the country. Across all forms and testimony, you represented that your participation with the separatists was involuntary. As such, USCIS has determined that you provided material support under duress.

Additionally, the totality of the circumstances weighs in favor of a positive exercise of discretion. USCIS considered the amount, type, and frequency of the support you provided. On a single occasion you gave a total of 30,000 CFA (approximately \$48 equivalent) to the Amba Boys and they took some handfuls of granite from your wares. You had previously avoided giving support to this group by closing your store and warehouse when the Amba Boys came into the town from the bush where they hid. USCIS notes that this was an extremely violent group, and you experienced the threat of their violence firsthand. The sole instance of money you provided to the separatists was under a credible threat of death and/or severe bodily harm to yourself. You have no criminal record or other conduct of concern. Accordingly, USCIS has determined that a positive exercise of discretion is warranted in your case. There are no other negative discretionary factors to weigh in the totality of the circumstances.

**Therefore, upon review of your case, USCIS has determined that you are eligible for a TRIG exemption for providing material support to a terrorist organization under duress, and merit a favorable exercise of discretion in the totality of the circumstances. Before you can be granted the benefits sought, your case must be reopened by the immigration court. USCIS will submit your TRIG exemption to the ICE Office of the Chief Counsel, which will then forward to you a "Joint Motion to Reopen" template. In order to reopen your case, you or your counsel**

[REDACTED]

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must sign the motion and return it to the Office of the Chief Counsel. Specific information will be provided in the template that the Office of the Chief Counsel will mail to you.

*Your file did not contain a G-28 from an attorney of record, and thus no copy of this notice has been mailed to any attorney with whom you may be working.*

The determination made under this exercise of authority shall apply to any subsequent benefit or protection application, unless new information indicates that you no longer merit this discretionary exemption, or such exercise of authority is revoked. This exercise of authority may be revoked as a matter of discretion and without any notice, at any time, with respect to any and all persons subject to it. Any grant of the exemption authority does not prevent the U.S. Government from commencing subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person).

USCIS RAIO TRIG Program Office

CC:

[REDACTED]

Non-Detained

*Approved INA § 212(d)(3)(B)(i) Exemption*

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

[REDACTED]

In the Matter of:

[REDACTED]

File No.: A [REDACTED]

In Removal Proceedings

**JOINT MOTION TO REOPEN TO GRANT RELIEF/BENEFIT  
BASED ON USCIS APPROVAL OF  
AN INA § 212(d)(3)(B)(i) EXEMPTION**

**I. BACKGROUND**

On February 26, 2007, Michael Chertoff, the Secretary of Homeland Security, after consulting with the Secretary of State and the Attorney General and taking into account the relevant national security and foreign policy interests, exercised his discretion in accordance with INA § 212(d)(3)(B)(i) to determine that the bar under INA § 212(a)(3)(B)(iv)(VI) (the inadmissibility provision barring aliens who have provided

material support to a terrorist or terrorist organization) shall not apply with respect to material support<sup>1</sup> to a terrorist organization<sup>2</sup> that was provided by certain applicants.

The exercise of the exemption authority applies to individuals who provided material support under duress to terrorist organizations as described in INA § 212(a)(3)(B)(vi)(III) (Tier III, undesignated terrorist organization) if certain threshold criteria are met and if warranted by the totality of the circumstances. Upon a grant of this exemption, the material support bar would not apply to those seeking immigration benefits such as asylum or adjustment of status.

On April 27, 2007, Secretary Chertoff and Secretary Rice expanded the category of eligible individuals, and exercised their discretionary authority under INA § 212(d)(3)(B)(i) to not apply the material support inadmissibility provision with respect to certain aliens who provided material support under duress to terrorist organizations described in INA § § 212(a)(3)(B)(vi)(I) and (II) (Tier I and Tier II designated terrorist organizations), if warranted by the totality of the circumstances.

On December 26, 2007, the President signed the Consolidated Appropriations Act, 2008 (CAA), Pub. L. 110-161, 121 Stat. 1844. In Section 691(a) of Title VI of

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<sup>1</sup> Material support “includes, but is not limited to: a safe house, transportation, communication funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training.” INA § 212(a)(3)(B)(iv)(VI).

<sup>2</sup> Terrorist Organizations are divided into three categories, of which the first two are designated and the final category is not designated. INA § 212(a)(3)(B)(vi). “Tier I” terrorist organizations are designated by the Secretary of State as Foreign Terrorist Organizations under INA § 219. INA § 212(a)(3)(B)(vi)(I). “Tier II” terrorist organizations are designated by the Secretary of State in consultation with the Attorney General or the Secretary of Homeland Security as a terrorist organization on the Terrorist Exclusion List. INA § 212(a)(3)(B)(vi)(II). The third category encompasses non-designated organizations consisting of “a group of two or more individuals, whether organized or not,” which engage in terrorist activity. INA § 212(a)(3)(B)(vi)(III).

Division J,<sup>3</sup> Congress amended the discretionary authority of the Secretary of Homeland Security and the Secretary of State, under subsection 212(d)(3)(B)(i) of the INA, to exempt the effect of an alien's terrorist activities on his or her inadmissibility or removability from the United States. Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008, Title VI, § 691 (Dec. 26, 2007). Section 691(b) provides that the following groups shall not be considered to be terrorist organizations on the basis of an act or event occurring prior to enactment of the CAA (December 26, 2007): Karen National Union/Karen Liberation Army (KNU/KNLA); Chin National Front/Chin National Army (CNF/CNA); Chin National League for Democracy (CNLD); Kayan New Land Party (KNLP); Arakan Liberation Party (ALP); Tibetan Mustangs; Cuban Alzados; Karenni National Progressive Party; appropriate groups affiliated with the Hmong; and appropriate groups affiliated with the Montagnards.

On June 3, 2008, Secretary Chertoff and Secretary Rice exercised their discretionary authority under INA § 212(d)(3)(B)(i) to not apply INA § 212(a)(3)(B), excluding subclause (i)(II), with respect to an alien not otherwise covered by the provisions of section 691(b) of the CAA, for any activity or association relating to one of the named groups, provided that there is no reason to believe that the relevant terrorist activities of the alien or the recipients were targeted against noncombatant persons, and if warranted by the totality of the circumstances.

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<sup>3</sup> Division J of the Consolidated Appropriations Act, 2008, is the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008. Title VI is the General Provisions section of Division J.



## II. SPECIFIC JOINT MOTION IN THIS CASE

U.S. Immigration and Customs Enforcement (hereinafter “ICE”) and [REDACTED] (hereinafter “the respondent”), through undersigned counsel, jointly move the Immigration Court (hereinafter “immigration judge”)] to reopen the above-captioned proceedings. This motion is based on a USCIS grant of an INA § 212(d)(3)(B)(i) exemption.

On July 12, 2021, the court entered an administratively final order of removal, but granted the respondent deferral of removal under the regulations implementing the Convention Against Torture. That order followed a full hearing in which the court determined that the respondent was ineligible for relief and protection based solely on the material support to a terrorist organization.

On August 10, 2022, U.S. Citizenship and Immigration Services (USCIS) granted the respondent a discretionary exemption to the terrorism bar. *See* Attachment A.

Given that the Immigration Judge completed a full hearing on the merits of the underlying relief/protection of Asylum and determined that the terrorism bar was the sole basis to deny, and given that USCIS has granted the INA § 212(d)(3)(B)(i) exemption, ICE joins in this motion to reopen and further stipulates that currently there are no known statutory bars to granting the respondent the above specified relief, protection, or benefit in light of the INA § 212(d)(3)(B)(i) exemption grant.

This motion also serves to notify the Court that the relevant security checks have been completed and are current. Please note that the security checks are due to expire on March 21, 2023.

**III. CONCLUSION**

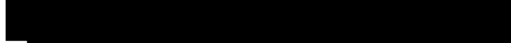
Based on the foregoing reasons, ICE and the respondent respectfully request that this motion to reopen be granted.

Dated: September 21, 2022

Respectfully submitted,



Office of the Chief Counsel  
U.S. Immigration & Customs Enforcement  
U.S. Department of Homeland Security



and Attorney for the respondent,



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

In the Matter of: [REDACTED]

File No.: A [REDACTED]

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Joint Motion to Reopen to Grant Relief/Benefit based on USCIS Approval of An INA 212(d)(3)(B)(i) Exemption it is hereby Ordered that the Motion be:

GRANTED  DENIED because:

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

Deadlines:

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

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

**Certificate of Service**

This document was served by: [ ] Mail [ ] Personal Service  
To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Alien's Atty/Rep [ ] DHS

Date: \_\_\_\_\_ By: Court Staff \_\_\_\_\_



## Exhibit B – Screening Tool

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It is extremely important to question all clients about any contact with the designated gangs, cartels, or other non-state actors who may have conducted violent activities in their home countries. Below is a helpful screening tool for legal practitioners to use when interviewing their clients in anticipation of the client’s asylum interview or hearing before an Immigration Judge.

**Note:** Only certain gangs and cartels have been designated as Foreign Terrorist Organizations (FTOs). If a client’s activities involve an **undesigned** gang or cartel, there are strong arguments that the TRIG bars do not apply.

Screening Questions	Client's Response
<b>Personal Connections</b>	
- Have you ever been involved or affiliated with or had any interaction with an armed group (of two or more individuals), gang, or cartel?	
- Do you know anyone who is affiliated with an armed group, gang, or cartel?	
- If so, describe all the interactions you’ve had with this person.	
<b>Family Involvement</b>	
- Is anyone in your family involved with or worked for an armed group, gang, or cartel?	
- Does your family know anyone with such an affiliation?	
- What is your relationship with that person?	
- Describe all the interactions you’ve had with this person.	
<b>Neighborhood or Local Connections</b>	
- When growing up, did gangs, armed groups, or cartels own any shops in your neighborhood or town?	
- Did your family go to those shops?	
- Did your family ever purchase anything from a gang- or cartel-owned store, food stand, or cart?	

- Did you or your family ever give anything to a gang, armed group, or cartel (e.g., water, food, tea, shelter, money, etc.)?	
<b>Providing Assistance</b>	
- Have you or your family ever helped a gang, armed group, or cartel in any way, such as:	
• Carrying luggage or supplies	
• Transporting members or supplies	
• Helping hold weapons	
• Lending them a phone to make a call	
• Cooking or cleaning	
• Helping with day-to-day operations	
• Hosting anyone at your home	
• Gathering information in furtherance of their activities	
<b>Checkpoints &amp; Extortion</b>	
- Have you ever encountered any checkpoints in your home country?	
- If so, what did you do to get through the checkpoint (e.g., pay money)?	
- Who oversaw the checkpoint?	
- Has your family encountered any checkpoints in your home country?	
- If so, what did they do to get through the checkpoint (e.g., pay money)?	
- Who oversaw the checkpoint?	
- Did you or your family members ever have to provide goods, services, bribes, money, or anything else under threat of harm from a gang, cartel, or armed group?	
<b>Journey to United States</b>	
- Did you pay anyone to help you arrive in the United States?	
- If so, who?	
- Did you ever encounter an armed individual or group on your journey to the United States?	
- If so, did you give them anything of value, even if seemingly insignificant?	

- Did your family member pay anyone to help you arrive in the United States?	
- If so, who?	
- Did your family member encounter an armed individual or group on their journey to the United States?	
- If so, did they give them anything of value, even if seemingly insignificant?	

In addition to thoroughly questioning your clients, it is important to file all relevant FOIA requests with the appropriate government agency. Most immigration-related FOIA requests can be filed online.

- o For USCIS records, file the request online via <https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act>.
  - A USCIS FOIA is particularly essential if the Asylum Office referred your client’s asylum claim to the Immigration Court. Be sure to obtain a copy of the Asylum Officer’s notes and assessment of the case by specifically requesting “asylum officer’s notes and assessment” in your request.
- o Visit the [SecureRelease](#) portal to register an account and submit a FOIA request with CBP and ICE, among other immigration agencies.
- o For Department of State (DOS) records, register and submit the request via <https://pal.foia.state.gov/app/Home.aspx>. EOIR records can be submitted by registering and submitting a request via the [Public Access Link](#) (PAL), <https://foia.eoir.justice.gov/app/Home.aspx>. If you are already attorney or representative of record, you may also consider doing an EOIR records request, rather than a FOIA. This process is usually faster than a FOIA: <https://www.justice.gov/eoir/ROPrequest>.