UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS EL PASO DIVISION

CATALINA SANTIAGO SANTIAGO, Petitioner,	Case No. 25-cv-00361-KC
v.	
KRISTI NOEM, et al.;	
Respondents.	

PETITIONER'S REPLY IN SUPPORT OF HABEAS PETITION

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INTRODUCTION I.

Disguised as a simple claim of statutory authority, the Government's position in this case carries a far more alarming implication: that any one of the more than 500,000 DACA recipients in the United States could face sudden and arbitrary detention without process—even if they cannot be removed; even if they have faithfully complied with program requirements for years in reliance on the Government's assurances; and even if detention would result in the de facto termination of their DACA. Our Constitution does not permit this.

II. ARGUMENT

A. The Court Has Jurisdiction to Hear This Case

This case is about Ms. Santiago's challenge to her unlawful detention. Her claims are not barred by § 1252(g) because they do not challenge any decision to "commence proceedings, adjudicate cases, or execute removal orders." Nor does § 1252(b)(9) require her to endure unlawful detention for years before seeking relief, as her claims are distinct from any challenge to her removal. "Because the constitutionality of Petitioner's detention can be adjudicated without touching on the merits of any final order of removal, jurisdiction of this claim is not precluded by [§ 1252]." Maldonado v. Macias, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015) (Cardone, J.). If the Court were to adopt Respondents' expansive reading of these jurisdictional provisions, it would raise "serious Suspension Clause concerns that courts must avoid when possible." Sepulveda Ayala v. Bondi, No. 25-cv-01063, 2025 WL 2084400, at *5 (W.D. Wash. July 24, 2025); see also Duarte v. Mayorkas, 27 F.4th 1044, 1057 (5th Cir. 2022).

1. Section 1252(g) Does Not Deprive the Court of Jurisdiction

Respondents' contention that 8 U.S.C. § 1252(g) bars review of Ms. Santiago's challenges to detention is foreclosed by binding precedent. As the Supreme Court has explained, § 1252(g) is not "a shorthand way of referring to all claims arising from deportation

proceedings." Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999)

("AADC"). Instead, it bars review only of claims challenging three discrete exercises of

"prosecutorial discretion"—"the decision or action . . . to commence proceedings, adjudicate

cases, or execute removal orders." Id. There are "many other decisions or actions that may be

part of the deportation process," but challenges to them are not barred. Id. While Respondents

assert that Ms. Santiago's claims "stem directly" from the decision to commence proceedings,

Resp. at 12, the Supreme Court's plurality opinion in Jennings v. Rodriguez rejected this reading

of § 1252(g), finding that the statute does not encompass all claims "that can technically be said

to 'arise from' the three listed actions." 583 U.S. 281, 294 (2018). Ms. Santiago challenges only

her detention—not any of the actions listed in § 1252(g). So as the Fifth Circuit and this Court

have confirmed, § 1252(g) does not apply. See Cardoso v. Reno, 216 F.3d 512, 516 (5th Cir.

2000); Virani v. Huron, No. 19-cv-00499, 2020 WL 1333172, at *1 (W.D. Tex. Mar. 23, 2020)

(citing Gul v. Rozos, 163 F. App'x 317, 2006 WL 140540, at *1 (5th Cir. 2006)) (same).

2. Section 1252(b)(9) Does Not Deprive the Court of Jurisdiction

Section 1252(b)(9) does not apply because Ms. Santiago is "not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined." *Texas v. United States*, 126 F.4th 392, 417 (5th Cir. 2025). She is challenging her

¹ In fact, as Congress has intended, Ms. Santiago is challenging the government's ability to commence proceedings against her *in her removal proceedings*. Notably, she has already won that argument before an immigration judge, who terminated her proceedings. See ECF No. 16.

² Courts have also applied this logic to hear detention challenges of deferred action recipients. See Sepulveda Ayala, 2025 WL 2084400, at *4; Primero v. Mattivelo, No. 25-cv-11442, 2025 WL 1899115, at *3 (D. Mass. July 9, 2025).

³ Respondents ignore this adverse authority, citing instead Alvarez v. ICE, 818 F.3d 1194, 1203 (11th Cir. 2016). But that case reverses the district court's decision finding no jurisdiction over a Bivens action raising certain detention claims. The narrow detention-related claim it found barred challenged only the "decision to lodge a detainer against" the noncitizen. Id. Respondents' other cases do not fare any better, as they involve challenges to decisions related to one of the three enumerated actions in § 1252(g), such as the execution of a voluntary departure order, Valencia-Mejia v. United States, No. CV 08–2943, 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008), and detention that was "integral" for executing a removal order, Tazu v. Att'y Gen. United States, 975 F.3d 292, 298 (3d Cir. 2020).

current unlawful detention. Contrary to Respondents' expansive reading of the plurality opinion in Jennings, that opinion found that there was jurisdiction to review detention claims despite § 1252(b)(9), rejecting a broad reading of the statute that "would [] make claims of prolonged detention effectively unreviewable." 583 U.S. 281, 293-94 (2018); see also Nielsen v. Preap, 586 U.S. 392, 402 (2019) (§ 1252(b)(9) did not bar detention challenge). As the Fifth Circuit similarly found in Duarte, 27 F.4th at 1056, "where review of an agency determination involves neither a determination as to the validity of the Appellants' deportation orders or the review of any question of law or fact arising from their deportation proceedings," § 1252(b)(9) does not apply. Id.⁴ This is precisely the case here. See Ayobi v. Castro, No. 19-cv-01311, 2020 WL 13411861, at *3 (W.D. Tex. Feb. 25, 2020) (§ 1252(b)(9) does not deprive jurisdiction to "hear claims by non-citizens challenging the constitutionality of their detention"); Escalante v. Noem, No. 25-cv-00182, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); Aguilar v. ICE, 510 F.3d 1, 11 (1st Cir. 2007); Hamdi ex rel. Hamdi v. Napolitano, 620 F.3d 615, 626 (6th Cir. 2010).

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B. Ms. Santiago's Detention Under § 1225(b) Does Not Vitiate Her Constitutional Due Process Rights

Respondents' primary defense of Ms. Santiago's detention is that, as an "arriving alien," she is detained under 8 U.S.C. § 1225(b), which authorizes mandatory detention. See Resp. at 17. But that is beside the point. What matters in this case is that all detention—even mandatory detention—is subject to the protections imposed by the Due Process Clause of the Constitution. As the Supreme Court has repeatedly made clear, "[t]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful,

⁴ Ruiz v. Mukasey, 552 F.3d 269 (2d Cir. 2009), which Respondents cite, Resp. at 14, similarly shows why Ms. Santiago's claims are not barred by § 1252(b)(9). There, as in Duarte, the Second Circuit found jurisdiction to review the denial of a petition to adjust the status of a U.S. citizen's spouse. Although adjustment would serve as a defense to removal proceedings, the court nonetheless found the denial "unrelated to any removal action or proceeding." Id. at 274 n.3.

unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. 678, 693 (2001); see also Mathews v. Diaz, 426 U.S. 67, 77 (1976). This includes noncitizens detained under 8 U.S.C. § 1225(b). See Jennings, 583 U.S. at 312 (allowing lower courts to consider as-applied due process challenges to detention under § 1225(b)). For this reason, "preoccupation with technical concerns over 1225 processing versus 1226 processing for detention only exalts form over substance insofar as the Due Process Clause, writ large, is concerned," especially where, as here, the case involves "a prolonged period of [lawful presence in the United States]." Rodrigues De Oliveira v. Joyce, No. 2:25-cv-00291, 2025 WL 1826118, at *5 (D. Me. July 2, 2025).

Respondents' reliance on *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), to suggest otherwise, Resp. at 17-18, is misplaced. There, the Supreme Court considered whether a noncitizen apprehended while trying to enter the country and found not to have a credible fear of return could obtain judicial review of that finding. 591 U.S. at 114-15. He could not, as such noncitizens "ha[ve] only those rights *regarding admission* that Congress has provided by statute." *Id.* at 140 (emphasis added). But the Court "did not address whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge their [unlawful] detention." *Paiva Alves v. U.S. Dep't of Justice*, No. 25-cv-306, 2025 WL 2629763, at *3 (W.D. Tex. Sept. 12, 2025) (Cardone, J.). *Thuraissigiam* thus does not foreclose Ms. Santiago's due process claims. *See A.L. v. Oddo*, 761 F. Supp. 3d 822, 825-26 (W.D. Pa. 2025) ("Nowhere . . . did the Supreme Court suggest that arriving aliens being held under § 1225(b) may be held . . . unreasonably with no due process implications, nor that [they] have no due process rights."); *Mata Velasquez v. Kurzdorfer*, No. 25-cv-493, 2025 WL 1953796, at *15 (W.D.N.Y. July 16, 2025) (similar); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023) (similar); *Leke v. Hott*, 521 F. Supp. 3d 597, 604-05 (E.D. Va. 2021) (similar).

C. Ms. Santiago's Detention Violates Her Substantive Due Process Rights

Substantive due process requires that there be a reasonable relation between an individual's detention and the government's purported interests in that detention. See Jackson v. Indiana, 406 U.S. 715, 738 (1972); Brown v. Taylor, 911 F.3d 235, 243 (5th Cir. 2018). With immigration detention, the Supreme Court has acknowledged that the government's interests are limited to (1) preventing flight risk, so a person can go through removal proceedings and ultimately be removed, or (2) otherwise ensuring the safety of the community. Zadvydas, 533 U.S. at 690-91. "[B]y definition, the first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best." Id. at 690; see also id. ("[W]here detention's goal is no longer practically attainable, detention no longer 'bear[s] [a] reasonable relation to the purpose for which the individual [was] committed."") (citation omitted); cf. Phan v. Reno, 56 F. Supp. 2d 1149, 1156 (W.D. Wash. 1999) ("Detention by the INS can be lawful only in aid of deportation."). The second justification, in turn, is only permissible "when limited to specially dangerous individuals and subject to strong procedural protections." Id. at 691.

Here, no rationale can justify Ms. Santiago's detention. Her valid DACA grant means *she* cannot be removed. See 8 C.F.R. § 236.21(c)(1); accord AADC, 525 U.S. at 484; Sepulveda Ayala, 2025 WL 2084400, at *7-8 (collecting cases). As such, her detention serves no ultimate purpose. See Sepulveda Ayala v. Bondi, No. 2:25-cv-01063, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025) (concluding that "[b]ecause deferred action prevents removal, [petitioner] has shown that his detention is unlawful"); Primero, 2025 WL 1899115, at *5 (same). Nor do Respondents even try to claim that her detention is justified based on flight risk or danger.

Indeed, Ms. Santiago has passed DACA's stringent vetting requirements⁵ seven times, most

⁵ Individuals cannot qualify for DACA if they have even a single misdemeanor conviction involving certain activities or a sentence to custody for more than 90 days. 8 C.F.R. § 236.22(b).

recently in April 2024. She was granted advance parole, then inspected and permitted to reenter the country in 2022. Since then, she has continued to abide by the rules, and she is now able to pursue lawful permanent resident status through her U.S. citizen wife—for which Respondents do not contest she is prima facie eligible. *See* Resp. at 18. Respondents' only argument is that Ms. Santiago's removal proceedings will one day come to an end. *Id.* But that is not the point. Unless there is some possibility that they will end with Ms. Santiago's deportation—which there is not so long as she has DACA—there is no reason for her to be detained at all.

D. Ms. Santiago's Detention Violates Her Procedural Due Process Rights

At the very least, there is no reason for Ms. Santiago to be detained without individualized review of the necessity of her detention. The Due Process Clause also requires "adequate procedural protections" to ensure a noncitizen's detention in fact bears a reasonable relation to its stated purpose. *Zadvydas*, 533 U.S. at 690. The *Mathews v. Eldrige*, 424 U.S. 319, 332 (1976), balancing test applies when determining this question in the context of immigration detention. *See, e.g., W.M.M. v. Trump*, No. 25-10534, 2025 WL 2508869 (5th Cir. Sept. 2, 2025). Under the *Mathews* test, the Court must weigh (1) Ms. Santiago's private interests and (2) the risk of the erroneous deprivation of those interests under current procedures against (3) the Government's interest and the cost of additional procedures. 424 U.S. at 335.

Under the first prong, Ms. Santiago's detention involves "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 509 (2004). And her liberty interest is particularly strong. Unlike a noncitizen detained while actually "arriving" in the United States, Ms. Santiago has been lawfully present here with a valid grant of DACA for nearly fifteen years. In 2012, she came forward to the Government and shared her sensitive personal information with the understanding that, if she played by the rules, she would not be targeted. She structured her life around the

Government's repeated promises that "the rug [wouldn't] get pulled out from under" her. Pet. ¶ 27. The Government granted her DACA time and again. It even allowed her to leave the country, then invited and permitted her to come back lawfully, through a grant of parole. Having lived for years under government-issued DACA and parole, Ms. Santiago had every reason to expect she would not be detained without meaningful process. *Cf. Rodrigues De Oliveria*, 2025 WL 1826118, at *6 (finding strong *Mathews* interests where "the intentional parole of Petitioner for nearly a decade" made her presence "directly attributed to the Government").

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Under the second *Mathews* prong, the risk of erroneous deprivation of Ms. Santiago's liberty is also high. The Government's repeated decisions to grant her DACA and parole are "irreconcilable" with its subsequent decision to detain her with "no notice, opportunity to be heard, nor a finding of changed circumstances to justify detention." *Lopez v. Sessions*, No. 18-cv-4189, 2018 WL 2932726, at *11 (S.D.N.Y. June 12, 2018); *see also Valdez v. Joyce*, No. 25-cv-4627, 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (finding high risk of erroneous deprivation where paroled petitioner was detained "absent a change in circumstances, procedure, or evidentiary filings"); *Rodrigues De Oliveria*, 2025 WL 1826118, at *6 (similar).

As Respondents acknowledge, the only procedural protection to which Ms. Santiago is now entitled is consideration for release on humanitarian parole under 8 U.S.C. § 1182(d)(5). Resp. at 16-17. But as the Supreme Court has stressed, due process requires an individualized and procedurally adequate hearing before a neutral arbiter. See, e.g. Foucha v. Louisiana, 504

⁶ As Ms. Santiago's advance parole document confirmed, "[p]arole into the United States is not guaranteed. In all cases, you are still subject to immigration inspection at a port-of-entry to determine whether you are eligible to come into the United States."

⁷ Ms. Santiago's situation is much like that of a parolee in the criminal context. As the Supreme Court found in *Morrissey v. Brewer*, parolees have a strong interest in their "continued liberty" where they "relied on at least an implicit promise" that they will only be detained if they "fail[] to live up to parole conditions." 408 U.S. 471, 482 (1972). Here, Ms. Santiago relied on overt government promises that if she complied with the conditions of her DACA, she would be allowed to build a life here without arbitrary arrest and detention.

U.S. 71, 81, 86 (1992); Addington v. Texas, 441 U.S. 418, 433 (1979). By contrast, the parole process consists merely of a custody review by the noncitizen's jailer. See 8 C.F.R § 212.5(a). It does not include a hearing before a neutral arbiter, does not require the agency to create or provide any documentation of its reasoning, and does not allow for an appeal. See id. Today, going through this process is also futile. As the Government itself recently admitted, ICE "ERO field offices no longer have the option to discretionarily release [noncitizens]." So Ms. Santiago will not be afforded any process, making the erroneous deprivation of her liberty all but certain.

Finally, under the third *Mathews* prong, the Government has no legitimate interest in detaining Ms. Santiago—it cannot deport her and does not even argue (nor could it) that she presents a flight risk or a danger. *See supra*. Additional process would entail little to no burden. Balancing these factors demonstrates that "Respondents' ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates [her] due process rights." *Valdez*, 2025 WL 1707737, at *4.

E. Ms. Santiago's Detention Runs Afoul of the Government's Own Regulations
The Government's only counter to Ms. Santiago's claim that her arrest violated 8 C.F.R.
§ 287.8 is that it can arrest arriving aliens without a warrant. Resp. at 20. That is not the issue.
Under 8 C.F.R. § 287.8(c), to properly effectuate a warrantless arrest, immigration officers must have reason to believe the individual is here illegally and is "likely to escape before a warrant can be obtained." But Ms. Santiago produced a valid document showing that she has DACA, which confers lawful presence, 8 C.F.R. § 236.21(c), and she was officers' full view and control.

⁸ Nationwide Hold Room Waiver, D.N.N. v. Baker, No. 25-cv-1613, ECF No. 40-3 at 2 (D. Md. June 30, 2025) (emphasis added).

⁹ The separate process Ms. Santiago has been afforded with respect to her *removability*, Resp. at 20, in entirely inapposite. No part of that process involves a neutral arbiter reviewing the rational basis for her *detention*. It is also worth noting that the "notice" Respondents wrongly claim is sufficient to satisfy Ms. Santiago's procedural due process rights, her Notice to Appear, was not issued until *after* she was detained.

Pet. ¶ 35. Respondents have therefore failed to show compliance with § 287.8(c). See Rosado v. Figueroa, No. CV 25-02157, 2025 WL 2337099, at *18 (D. Ariz. Aug. 11, 2025), report and rec. adopted sub nom. Rocha Rosado v. Figueroa, No. CV-25-02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (finding Fourth Amendment violation where petitioner "was in the country for years with the acquiescence of the government . . . and was not under an order of removal").

The necessary implication of Ms. Santiago's continued detention is that she will no longer be able to renew her DACA grant, which expires in April 2026. USCIS "strongly encourage[s]" DACA recipients to submit their renewal requests between 120 and 150 days prior to expiration "to reduce[] the risk that [their] current period of DACA will expire before [they] receive a decision," but regulations prohibit the agency from adjudicating the applications of individuals in ICE custody, 8 C.F.R. § 236.23(a)(2). Under the Government's theory, it can continue to detain Ms. Santiago without any due process until it is too late for her to renew her DACA. This cannot be. Only USCIS can terminate a grant of DACA, and this requires notice and an opportunity to respond. 8 C.F.R. § 236.23(d)(1). ICE cannot simply hold Ms. Santiago for no reason until it is able to manufacture one by effectuating the de facto termination of her DACA status in an end-run around the entire regulatory scheme.

F. Ms. Santiago's APA and Fourth Amendment Claims Are Cognizable in Habeas and Respondents Have Waived Arguments as to Their Merits

Habeas corpus is available if a person is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). As the Supreme Court has repeatedly explained, "[h]abeas is at its core a remedy for unlawful executive detention." *Munaf* v. Geren, 553 U.S. 674, 693 (2008); see also Poree v. Collins, 866 F.3d 235, 242–43 (5th Cir.

¹⁰ See USCIS, Frequently Asked Questions, https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions#renewal

2017). Here, each of Ms. Santiago's claims for relief challenge the legality of her custody, and thus lie "within the core of habeas corpus," *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973).
Respondents do not explain why they believe Ms. Santiago's APA and Fourth Amendment claims are "non-habeas" claims. *See* Resp. at 10–11. It cannot be disputed that these claims are cognizable in habeas. *See* 28 U.S.C. § 2241(c)(3) (habeas relief is available where person is "in custody in violation of the Constitution or laws or treaties of the United States"); 5 U.S.C. § 703 (APA review may proceed by "any applicable form of legal action, including . . . writs of . . . habeas corpus") *Rosado*, 2025 WL 2337099, at *18 (granting habeas petition where noncitizen's arrest violated Fourth Amendment). Both claims directly challenge the legality of Ms. Santiago's ongoing detention. *See* Pet. ¶¶ 54–55; ¶ 75. This Court should thus consider these claims; and because Respondents have failed to substantively respond to them, they have waived any arguments as to their merits. *Kellam v. Metrocare Servs.*, No. 12-352, 2013 WL 12093753, at *3 (N.D. Tex. May 31, 2013), *aff'd* 560 F. App'x 360 (5th Cir. 2014) ("Generally, the failure to respond to arguments constitutes abandonment or waiver of the issue." (citations omitted)); *JMCB, LLC v. Bd. of Commerce & Indus.*, 336 F. Supp. 3d 620, 634 (M.D. La. 2018) (same).

III. CONCLUSION

For all these reasons, Ms. Santiago asks the Court to grant her habeas petition.

¹¹ Although Ms. Santiago has asserted jurisdiction under 28 U.S.C. § 1331, "substance prevails over form in the context of a request for habeas relief." *Winn v. Cook*, No. 18-CV-0382, 2019 WL 10817201, at *1 (N.D. Okla. Feb. 4, 2019). Here, the petition makes clear that the relief sought is under habeas: it is styled as a "Verified Petition for a Writ of Habeas Corpus"—not a complaint—and Ms. Santiago seeks release from custody—not any changes to her custody conditions. *See* Pet. at 1, 20-21. However, she will tender the \$405 filing fee should the Court so request.

¹² Respondents' own cited authorities support the conclusion that Ms. Santiago's claims sound in habeas. See Rice v. Gonzalez, 985 F.3d 1069, 1070 (5th Cir. 2021) (finding court not authorized to grant habeas where the challenge is based on adverse conditions of confinement); Ahmed v. Warden, No. 24-cv-01110, 2024 WL 5104545, at *1 (W.D. La. Sept. 25, 2024) (same); Ndudzi v. Castro, No. 20-cv-0492, 2020 WL 3317107, at *3 (W.D. Tex. June 18, 2020) (discussing whether conditions of confinement claims should be separated from unlawful detention claims).

Dated: September 19, 2025

/s/ Chris Benoit
Chris Benoit

BENOIT LEGAL PLLC

311 Montana Ave, Ste B, El Paso, TX 79902 (915) 532-5544 chris@coylefirm.com

/s/ Luis Cortes Romero

Luis Cortes Romero*

NOVO LEGAL

19309 68th Avenue South Suite R102 Kent, Washington 98032

(206) 212-0260

Luis@novo-legal.com

/s/ Amy Rubenstein

Amy Rubenstein*

NOVO LEGAL

4280 Morrison Road Denver, Colorado 80219

(303) 335-0250

amy@novo-legal.com

Respectfully submitted,

/s/ Bridget Pranzatelli

/s/ Stephanie E. Norton

Bridget Pranzatelli*

Stephanie E. Norton*†

NATIONAL IMMIGRATION PROJECT

1763 Columbia Road NW

Suite 175 #896645

Washington, DC 20009

(202) 217-4742

bridget@nipnlg.org

ellie@nipnlg.org

/s/ Marisa Ong

Marisa Ong*

SINGLETON SCHREIBER

6501 Americas Parkway NE Ste #670

Albuquerque, NM 87110

(575) 405-5192

mong@singletonschreiber.com

/s/ Norma Islas

Norma Islas

ISLAS LAW FIRM, PLLC

8201 Lockheed Drive, Ste. 216

El Paso, Texas 79925

(915) 599-9882

islaslaw@msn.com

^{*}Admitted pro hac vice.

[†] Not admitted in DC; working remotely from Wyoming and admitted in New York only.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties of record.

Dated: September 19, 2025 /s/Stephanie E. Norton