UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

RENE GARIBAY ROBLEDO, Petitioner, v. KRISTI NOEM, Secretary of Homeland Security, et al., Respondents.	Civil No. 1:25-CV-00177-H

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO WRIT OF HABEAS CORPUS AND INJUNCTIVE RELIEF

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DISCLOSURE ON THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE

Pursuant to Local Rule 7.2(f), I hereby disclose that I have utilized generative artificial intelligence in the preparation of this document, but that I have independently cross-checked and verified the accuracy of all legal authorities, citations, facts, and arguments contained herein. No unpublished, non-existent, or unverifiable authorities were generated or relied upon.

/s/ John M. Bray
John M. Bray
Attorney for Petitioner

DATE: November 17, 2025.

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TO THE HONORABLE JUDGE HENDRIX:

Petitioner Rene Garibay Robledo ("Mr. Garibay") respectfully submits this brief in reply to Respondents' Response in Opposition, filed November 3, 2025 (ECF No. 11), to the writ of habeas corpus and related request for injunctive relief, filed with the Court on September 11, 2025 (ECF No. 1), and as specifically directed by the Court in its Order, dated October 15, 2025 (ECF No. 6).

I. INTRODUCTION

Respondents' opposition confirms the need for immediate judicial intervention and confirms the central defect in this case: the Government seeks to detain a long-time "§ 240 respondent"—one who has lived in the United States for more than thirty years, who has no criminal convictions disqualifying him for bond, and who has numerous family members with citizenship status—under a detention statute that applies *only* to individuals seeking admission at the border. By recasting Mr. Garibay, retroactively and without explanation, as an "applicant for admission" subject to 8 U.S.C. § 1225(b)(2), Respondents attempt to bypass the procedural safeguards Congress built into 8 U.S.C. § 1226, in a boldfaced attempt to strip the immigration judges of bond jurisdiction, and to insulate their unlawful detention decision from any neutral review. *See* ECF No. 11 at 6–9.

That position cannot be squared with the statutory structure that governs removal proceedings, with the Government's own litigation posture over the last several months, or with the factual record reflected in DHS's Appendix. DHS initiated ordinary § 240 removal proceedings against Mr. Garibay in August 2025 by serving a Notice to Appear. *See* Gov't App'x at 005–009 (ECF No. 12); *see* 8 U.S.C. § 1229a. Those proceedings have *never* been dismissed, terminated, or re-filed. At the same time that ICE detained Petitioner, EOIR set his removal case for hearings and received filings. Presently, his case is set for a hearing

on December 9, 2025, at 1 p.m., before Immigration Judge Abdias Tida. *See* Gov't App'x at 016-018. In every practical and legal sense, DHS has treated Mr. Garibay as a § 240 respondent—with the rights, obligations, and procedural posture that accompany that status. Now that this posture is no longer convenient for the purposes of custody, Respondents eschew it, instead, claiming his detention is governed by § 235(b).

But the Government's theory fails for two independent reasons. First, as another judge in the Dallas Division of this Court has already recognized, *Lopez-Arevelo v. Ripa* is directly on point and persuasive. *See* ECF No. 5 at 3-18 (Magistrate's Recommendation, *Aparicio-Rodriguez v. Noem*, 3:25-cv-2858-L-BN). *Lopez-Arevelo* rejected the same maneuver DHS attempts here: reclassifying a long-standing § 240 respondent as an applicant for admission to deny access to § 1226 custody hearings. *Id.* Allowing DHS to toggle between statutory regimes at would collapse the INA's careful distinction between border-processing statutes and interior-removal statutes, undermining Congress's design and authorizing precisely the kind of unchecked detention the Supreme Court has consistently been wary of. *See Jennings v. Rodriguez*, 583 U.S. 281, 289–90 (2018).

Second, DHS's position contradicts its own record. A deportable noncitizen cannot simultaneously be (1) in active § 240 removal proceedings and charged as removable under § 212(a)(6)(A)(i), yet also (2) an "arriving alien" subject to § 1225(b)(2). The Government cannot retroactively convert interior-arrest custody during long-running removal litigation into border-processing detention simply because it prefers the harsher statutory framework.

In sum, Respondents' opposition does not undermine Petitioner's entitlement to relief—it reinforces it. DHS's abrupt and unexplained shift to § 1225(b)(2) detention is legally unsustainable, factually inconsistent with the record, and constitutionally fraught.

This Court should reject that position and order the Government to provide Mr. Garibay the custody process Congress prescribed: a bond hearing under § 1226(a) before a neutral arbiter, without further delay.

II. FACTUAL BACKGROUND

The material facts in this case are straightforward and largely uncontested. The Government's own appendix confirms that DHS initiated ordinary § 240 removal proceedings against Mr. Garibay in August 2025 and has maintained those proceedings without dismissal or interruption. DHS served him with a Notice to Appear on August 14, 2025, alleging inadmissibility under INA § 212(a)(6)(A)(i). *See* Gov't App'x, ECF No. 12, at 005–009. The NTA did not characterize him as an "arriving alien," nor did it invoke the border-processing scheme of § 1225(b). Instead, it placed him squarely into the statutory framework of § 240 proceedings, which governs the vast majority of interior removability cases, and EOIR docketed his case, which remains pending to date. *See* Gov't App'x at 016-018 (hearing notice). At the time of Mr. Garibay's apprehension, Respondents also issued a Notice of Custody Determination, which classified Mr. Garibay's detention as under § 236, 8 U.S.C. § 1226. *See* Pet's App'x at 1-2 (Form I-286, and Form I-200, reflecting detention under § 236).

The Government's sudden shift in theory contradicts what is charged in the NTA filed against Mr. Garibay and the I-286. Despite treating Mr. Garibay as an ordinary § 240 respondent, DHS now asserts—solely to justify its new detention posture—that he is actually an "applicant for admission" subject to mandatory detention under § 1225(b)(2). *See* ECF No. 11 at 6–9. This classification is contradicted by every procedural step preceding his arrest: the issuance of the NTA, the maintenance of removal proceedings, and the scheduling of hearings, the most recent of which is currently set before Immigration

Judge Abdias Tida on December 9, 2025 at 1:30 p.m. *See* Gov't App'x at 016-018 (hearing notice). There has been no dismissal of proceedings, no termination by ICE counsel, no reissuance of NTAs, and no administrative events that would remotely place him back into the initial-inspection category to which § 1225(b)(2) applies.

This unilateral attempt to reclassify Petitioner has immediate and concrete consequences. Because DHS insists that § 1225(b)(2) governs his detention, the agency now asserts that immigration judges are categorically barred from reviewing his custody, leaving him entirely dependent on discretionary DHS parole—a form of review that is both opaque and discretionary, and that provides no neutral process for assessing flight risk or danger. Meanwhile, his detention at the Bluebonnet Detention Center prejudices his ability to prepare for the imminent December 9 merits hearing, especially as he is detained hundreds of miles away from both his attorney and his family, and it effectively weaponizes detention as a litigation tactic at a critical stage of his immigration proceedings.

Taken together, these facts paint a clear picture: DHS has initiated and maintained § 240 proceedings and classified Mr. Garibay's detention under INA § 236—only to change their story and now claim that the authority for his detention is actually under an entirely different statutory scheme, *i.e.*, § 235. *See* Pet's App'x at 1-2 (Form I-286 and Form I-200, reflecting detention under § 236). Yet, nothing in the INA authorizes this kind of retroactive recharacterization. And nothing in DHS's own filings explains, let alone justifies, this abrupt departure from their treatment of his case before EOIR.

III. ARGUMENT

A. Exhaustion Is Prudential and Excused Because, Under the Government's Own Theory, No Administrative Forum Has Authority to Grant Relief.

The Government argues that Mr. Garibay must first exhaust administrative remedies by seeking a bond hearing from an Immigration Judge before turning to federal court. *See* Gov't Opp., ECF No. 11 at 2–3 (Section III, Part A, claiming "Petitioner has not exhausted administrative remedies"). But that argument collapses under its own weight.

In the same brief, the Government asserts that Mr. Garibay's detention is governed exclusively by 8 U.S.C. § 1225(b)(2) because he is an "applicant for admission," and that, as a result, immigration judges categorically lack jurisdiction to conduct a bond hearing. *See* ECF No. 11 at 6–9. Yet in the same breath, the Government contends that he must first seek administrative relief through an Immigration Judge before turning to federal court. *Id.* at 2–3. Both cannot be true. And if the Government's jurisdictional theory is taken at face value—as the Government urges—then exhaustion is not merely unnecessary but *impossible*.

Exhaustion of administrative remedies in habeas or immigration detention cases is not jurisdictional; rather, it is a prudential doctrine that courts apply flexibly, and "'[u]nder the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.'" *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 U.S. Dist. LEXIS 206527, at *12 (S.D. Tex. 2025) (quoting *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025). Federal courts routinely waive exhaustion where resort to administrative procedures would be futile or inadequate to prevent irreparable harm, including in the context of habeas. *Id.*

Here, futility is not speculative—it is conceded. DHS maintains that because Mr. Garibay is now labeled an "applicant for admission," he cannot seek a bond before an immigration judge, essentially due to a lack of bond jurisdiction that renders him

mandatorily detained. *See* Gov't Opp., ECF No. 11 at 4. Thus, according to DHS's own position, the agency forum to which Mr. Garibay is supposedly required to apply cannot grant the relief sought. Requiring exhaustion in such circumstances would be little more than a purposeless formality. *Cf. McCarthy v. Madigan*, 503 U.S. 140, 149 (1992).

The prudential nature of exhaustion also permits courts to bypass it where a petitioner raises a substantial constitutional claim or faces irreparable harm from ongoing detention. *Cf. Garza v. Lappin*, 253 F.3d 918, 923 (7th Cir. 2001) (in § 2255 case, noting that exhaustion is unnecessary where delay would cause irreparable injury). Mr. Garibay's detention is already prolonged, and DHS's own conflicting positions make clear that no administrative mechanism presently exists to adjudicate his custody. The Fifth Circuit has excused exhaustion in precisely such circumstances, recognizing that a detainee is not required to pursue a process that offers no potential for relief. *See Dilworth v. Johnson*, 215 F.3d 497, 501 n.3 (5th Cir. 2000) ("[E]xhaustion is not necessary where resort to state remedies would be futile, because the necessary delay before entrance to a federal forum which would be required is not justified where the state court's attitude towards a petitioner's claims is a foregone conclusion.")).

Furthermore, even if the Immigration Judge theoretically had jurisdiction (which the Government seems to deny), the exhaustion requirement would still not bar review because Mr. Garibay challenges the legal authority under which DHS purports to detain him—not merely the discretionary outcome of a bond proceeding. Courts consistently hold that statutory and constitutional challenges to the source of detention authority fall outside any exhaustion requirement. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas*

v. Davis, 533 U.S. 678, 688 (2001) (federal courts retain jurisdiction to determine "whether detention is statutorily authorized").

The urgency of the case independently counsels against exhaustion. DHS arrested and detained Mr. Garibay on August 14, 2025—three months ago—and transferred him to Bluebonnet the next day. *See* Gov't App'x at 001-004. Detention at Bluebonnet materially impairs his ability to prepare for his removal hearing, which is now set for December 9, 2025, before IJ Abdias Tida. Forcing him to pursue a futile administrative motion, which DHS claims the IJ lacks jurisdiction to grant, would impose further delay on a record that already reflects imminent, irreparable harm. Courts regularly waive prudential exhaustion such as where exhaustion would result in "the deprivation of a constitutional right" or where the administrative process would be too slow to prevent irreparable injury. *See generally Walters v. Reno*, 145 F.3d 1032, 1048 (9th Cir. 1998) (assessing prudential requirements in context of request for classwide injunction).

Finally, the Government's argument ignores the very nature of Mr. Garibay's claim. A habeas challenge to the legality of detention is precisely the kind of claim federal courts are empowered to review without prior administrative steps, especially where the agency disclaims jurisdiction over the subject matter. The Supreme Court has emphasized that habeas is a "swift and imperative" judicial remedy for unlawful detention or restraint. *Fay v. Noia*, 372 U.S. 391, 400 (1963). Requiring exhaustion here—where no administrative decisionmaker exists—would invert that principle completely.

In short, the Government cannot simultaneously (1) deny that immigration judges have the power to release Mr. Garibay (*i.e.*, that he is subject to "mandatory detention") and (2) claim that he must first seek that nonexistent relief. The exhaustion doctrine was

never meant to be weaponized as a trapdoor to avoid judicial review. Because the Government's own position makes administrative relief unavailable, and because continued detention without review inflicts irreparable harm, exhaustion is excused and this Court properly exercises jurisdiction over the habeas and injunctive relief claims.

B. Detention of a Noncitizen in § 240 Proceedings Is Governed by 8 U.S.C. § 1226, Not § 1225(b)(2).

Respondents' core argument—that Mr. Garibay is detained under § 1225(b)(2) because he is an "applicant for admission"—collapses once the relevant statutory framework is accurately applied. *See* Gov't Opp., ECF No. 11, at 4. Congress constructed two distinct detention regimes, each tied to a specific procedural posture. Which statute governs is not a matter of agency preference or post hoc recharacterization, but of statutory command. And the statute that governs the detention of a long-term § 240 respondent like Mr. Garibay is 8 U.S.C. § 1226, not § 1225(b)(2). Respondents' contention to the contrary ignores the text, structure, and purpose of the Immigration and Nationality Act ("INA"), as well as decades of consistent interpretation distinguishing the two detention regimes.

1. Congress reserved § 1225(b)(2) for initial processing during inspection at the border—not for respondents in ongoing § 240 removal proceedings.

Congress drew a bright line between the detention of "applicants for admission" at or near the border, governed by § 1225(b), and the detention of noncitizens already present in the United States and placed in removal proceedings, governed by § 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–90 (2018) (observed that § 1225(b) applies to aliens seeking admission into the United States, while § 1226 governs detention of aliens already in the country pending their removal proceedings). The distinction is not a matter of discretion; rather, it reflects fundamentally different statutory purposes.

Section 1225(b)(2) applies to "applicants for admission" who are encountered at or near the border, or in the context of initial inspection and processing. As the Supreme Court has repeatedly emphasized, § 1225(b) governs the inspection of aliens seeking admission and delineates what DHS must do at the threshold of entry. *See Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018) (held § 1225(b)(1)&(2) authorized brief detention of noncitizens immediately upon entering the country.

By contrast, § 1226(a) provides discretionary detention authority pending a decision on whether the alien is to be removed, expressly encompassing respondents in § 240 proceedings. *See Jennings*, 583 U.S. at 288 ("Section 1226 generally governs the process of arresting and detaining" aliens who were [inadmissible at the time of entry] pending their removal."). Once DHS files a Notice to Appear under § 239 and initiates § 240 removal proceedings, the detention authority shifts to § 1226—the statute Congress expressly designed to govern custody during ongoing removal litigation. *Jennings* draws this line sharply:

- **§ 1225** (INA § 235) regulates *pre-admission* processing;
- **§ 1226** (INA § 236) governs detention "pending a decision on whether the alien is to be removed," *i.e.*, during § 240 proceedings.

See Jennings, 583 U.S. at 288-89.

Here, there is no dispute DHS served Mr. Garibay with a Notice to Appear on August 14, 2025, charging him under § 212(a)(6)(A)(i). *See* Gov't App'x, ECF No. 12 at 005–009. Nor is there any dispute that EOIR docketed the case, set hearings, consolidated it with his family's proceedings, and most recently scheduled a final individual hearing on November 13, 2025. These are the hallmarks of § 240 proceedings. Nothing in the record

suggests that DHS ever withdrew the NTA, terminated proceedings, or reclassified him under any expedited or border-processing provision.

For three months now, Respondents unequivocally treated him as a § 240 respondent for the purposes of removal, not as an alien undergoing inspection at the border. But Respondents cannot now invoke a statute that presupposes an uncompleted inspection process simply because they prefer the detention consequences of 8 U.S.C. § 1225(b)(2).

2. *Matter of M-S-* confirms that § 1226 governs custody once DHS initiates § 240 proceedings.

Additionally, the Attorney General's decision in *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), is directly on point and forecloses DHS's argument. *Matter of M-S-* holds that once DHS has placed a noncitizen into § 240 removal proceedings—even if the person initially arrived at the border—the agency's detention authority is governed by § 1226(a), not § 1225(b). *See id.* at 510–12. *M-S-* makes clear that the initiation of § 240 proceedings is the statutory pivot point:

> "Once DHS chooses to place an alien into full removal proceedings under section 240, detention is governed by section 236 [§ 1226]."

Id. at 510.

This principle applies with overwhelming force here. DHS did not merely place Mr. Garibay into § 240 proceedings—it also made its own internal determination that he was properly detained under the provisions of INA § 236, 8 U.S.C. § 1226. *See* Pet's App'x at 1-2 (Form I-286 and Form I-200). DHS cannot now retroactively disavow their § 236 determination and their placement of Mr. Garibay into § 240 proceedings and simply claim that the detention statute applying to border inspections governs him instead.

Thus, once DHS initiated a § 240 case against Mr. Garibay by filing and serving the NTA, the detention authority shifted to § 1226. *See Matter of M-S-*, 27 I. & N. Dec. 509, 510 (BIA 2019) (when DHS initiates formal removal proceedings, noncitizen's detention is under § 1226(a)). Once DHS exercised its prosecutorial discretion to place Mr. Garibay in § 240 proceedings, it was bound by § 1226 for custody purposes. *See Matter of M-S-*, 27 I. & N. Dec. at 510; *Jennings*, 583 U.S. at 288–90.

3. The Government's position would nullify the statutory distinction between § 1225 and § 1226 and allow DHS to evade judicial review.

Accepting Respondents' argument would virtually erase the structure of the INA entirely. If DHS could recast any § 240 respondent as an "applicant for admission" subject to § 1225(b)(2), then practically no respondent in removal proceedings—no matter how long they may have been in the United States—would be entitled to a bond hearing. DHS could simply wait until an opportune moment, arrest the individual, and announce that § 1225(b)(2) applies. Immigration Judges would be stripped of jurisdiction, habeas review would be hindered, and noncitizens would be locked into potentially indefinite detention until removal litigation concluded.

This is precisely the danger Jude Cardone, of the United States District Court for the Western District of Texas, flagged in a similar habeas case, which rejected DHS's attempt to toggle between statutory regimes to deny access to bond hearings. *See Lopez-Arevelo v. Ripa*, EP-25-cv-337, 2025 WL 2691828, at *7 (W.D. Tex. Sep. 22, 2025). In *Lopez-Arevelo*, Judge Cardone warned that such a maneuver would allow DHS to collapse Congress's carefully constructed framework and impose detention without neutral review. That concern applies with full force here.

4. § 1226 applies as a matter of law, entitling Mr. Garibay to a bond hearing, despite DHS's contradictory charging decision.

Section 1226(a) authorizes detention "pending a decision on whether the alien is to be removed from the United States." That describes § 240 proceedings precisely. It also authorizes release on bond or conditional parole "as the Attorney General may prescribe." That is the authority immigration judges exercise when holding bond hearings.

Under the governing statutory scheme, and under binding precedent, Mr. Garibay is entitled to a prompt custody redetermination under § 1226(a) before a neutral adjudicator. DHS cannot deprive him of that process by retroactively reclassifying him into a statutory category that neither applies to his circumstances nor protects any legitimate governmental interest.

DHS seeks to achieve this retroactive reclassification of Mr. Garibay by asserting that he is an "applicant for admission," but that is factually incompatible with its own conduct:

- DHS charged him under § 212(a)(6)(A)(i)—a ground that presumes physical presence inside the United States, not someone encountered at the border.
- DHS placed him in § 240 proceedings, not expedited removal or other border-based processes.
- On August 14, 2025, DHS conducted its own custody determination of Mr. Garibay after taking custody of him, confirming DHS was detaining him under § 236. *See* Pet's App'x at 1-2 (Form I-286 and Form I-200).
- DHS never vacated, dismissed, or restarted proceedings.

These facts are not reconcilable with DHS's claim that § 1225(b)(2)—a statute reserved for initial inspection of applicants for admission—now controls his custody.

5. The Government's reliance on *Yajure Hurtado* and *Jennings* is misplaced.

The Government cites *Matter of Yajure Hurtado*, 28 I. & N. Dec. 389 (BIA 2024), for the proposition that DHS may treat noncitizen aliens as "applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer" subject to § 1225(b)(2). *See* Gov't Opp., ECF No. 11 at 8. But *Yajure Hurtado* reflects a recent policy shift. As even Counsel for Respondents concede, this departure from long-standing agency interpretation conflicts with how immigration agencies had always before interpreted this statute. *See* Gov't Opp., ECF No. 11 at 7 n.1 ("Previously, § 1226(a) had been interpreted as an available detention authority for aliens who were present without admission and placed in § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747–48 (BIA 2023)."). Moreover, *Yajure Hurtado* conflicts with both *Jennings* and *M-S-* by collapsing the statutory distinction between border inspection and domestic removal proceedings.

Nor does *Jennings* support the Government. *Jennings* held only that § 1225(b) does not imply a six-month time limit on detention; it did not address, let alone approve, DHS's ability to shift an interior detainee between § 1225(b) and § 1226 regimes. *Jennings*, 583 U.S. at 313–14. The Court expressly remanded the constitutional question of prolonged detention without bond. *Id.* at 314. DHS's reliance on *Jennings* to justify Mr. Garibay's indefinite, unreviewable detention therefore misses the mark.

6. Because DHS has chosen—and continues to pursue—§ 240 removal proceedings, § 1226 governs eligibility for bond.

The record establishes that Mr. Garibay's removal case is, and always has been, within the § 240 framework. That fact that Mr. Garibay's removal proceedings remain pending before the Immigration Court confirms as much. *See* Gov't App'x at 016–018

(hearing notice). Under that posture, detention authority lies squarely in § 1226, which provides for a bond hearing before an Immigration Judge. The Court should therefore order Respondents to treat Mr. Garibay's custody as governed by § 1226 and to afford him a prompt bond hearing—or release him if no such hearing occurs within seven days.

IV. CONCLUSION & PRAYER

For the reasons set forth above, Petitioner Rene Garibay Robledo respectfully submits that the Department of Homeland Security lacks statutory authority to detain him under 8 U.S.C. § 1225(b)(2) and that his continued confinement without a neutral custody determination violates both the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause.

The Government's own filings demonstrate that it has initiated—and continues to pursue—removal proceedings under § 240, thereby subjecting Petitioner's custody to 8 U.S.C. § 1226. Yet DHS has invoked § 235(b)(2) to deny him access to any bond hearing, trapping him in administrative limbo and depriving this Court of the orderly judicial review that Congress and the Constitution require.

Immediate judicial intervention is therefore warranted to prevent further unlawful detention and to preserve Mr. Garibay's constitutional right to liberty pending resolution of his removal case. Accordingly, Petitioner respectfully prays that the Court hold a hearing and thereafter grant declaratory, injunctive, habeas relief.

DATE: November 17, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO WRIT OF HABEAS CORPUS AND REQUEST FOR INJUNCTIVE RELIEF, as well as any and all attachments thereto, on Counsel for Respondents by serving the same via email to Assistant U.S. Attorney Ann Cuce-Haag via Ann.Haag@ice.dhs.gov and/or by filing the same using the Court's CM/ECF system.

/s/ John M. Bray
John M. Bray
Attorney for Petitioner

DATE: November 17, 2025.