

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS**

**Milton Geovanny Guamarriga Loja**

V.

**PAM BONDI,**  
**in her capacity as**  
**United States Attorney General**

**MIGUEL VERGARA**  
in his capacity as Harlingen Field Office Director,  
Immigration and Customs Enforcement.

CASE NUMBER

IMMIGRATION FILE

NUMBER: A

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR  
TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Petitioner, Milton Geovanny Guamarrigra Loja, by and through his attorney, and for cause of action would show the Court the following:

This is an action challenging Petitioner's unlawful detention and imminent removal by U.S. Immigration and Customs Enforcement (ICE) in violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment., and to enjoin the Defendants from removing the Petitioner during the pendency of these proceedings.

### PRELIMINARY STATEMENT

1. This case challenges the government's authority to indefinitely detain a noncitizen (who is married to a Lawful Permanent resident and three United States citizen children, with a pending family petition for US permanent residence and has a pending Motion to Reopen with the Board of Immigration Appeals, without any finding of dangerousness or flight risk. It asks that this Court grant the petitioner release from prolonged immigration detention and more importantly, to enjoin ICE from removing the noncitizen to his country of origin.
2. Petitioner is an Ecuadorian male, who has pending application for lawful status with USCIS and the Board of Immigration Appeals. See Petitioner's Exhibit A Receipt for filed I-130 Petition for Alien Relative. He has resided in the United States since entering through the border in 1998.
3. Petitioner has been held in ICE custody since around July 29, 2025 and is at risk of imminent removal, having a scheduled removal date of September 22, 2025.
4. Despite the fact that he made several formal requests for his release and to stay his removal, including a request for parole and a motion requesting a stay of removal from both the Immigration and Customs Enforcement (ICE) on August 20, 2025 as well as from the Board of Immigration Appeals on August 18, 2025, both agencies have denied his requests for release and to stay his deportation. ICE denied Petitioner's request for release on September 11, 2025 and the BIA denied the request for stay of removal on September 15, 2025. See Petitioner's Exhibit B - BIA decision on stay of removal, and Exhibit C - ICE denial of Request for Release.

5. ICE notified Mr. Guamamrrigra's Immigration attorney that he is scheduled to be removed from the United States on September 22, 2025 and moved him from the Calhoun County Correctional Center, the same night that the bIA denied his stay of removal.

6. ICE has not informed Petitioner's counsel or family about his whereabouts. They only know that he was being transferred to a detention center within the jurisdiction of the Harlingen Enforcement of Removal operations office.

7. Mr. Guamarrigra has pending forms of relief with USCIS and the BIA and his removal would cause him extreme prejudice because his family would be separated and he will not be provided an opportunity to pursue his available forms of relief in the United States.

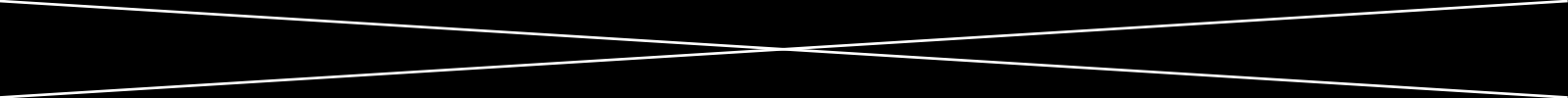

8. Mr. Guamarrigra has formally requested to be released so that he can proceed with his family petition filed by his US citizen child and available waivers and forms of relief and ostensibly be free while the hearing and subsequent appeals processes took their course. Mr. Guamarrigra is eligible for lawful permanent residence based on the family petition filed by his child and for waivers of his removal order and unlawful presence due to his lawful permanent resident spouse's medical conditions. He has also presented a strong showing of Cancellation of Removal for non-lawful-permanent residents based on his wife's [REDACTED]

[REDACTED] and his child's [REDACTED]

[REDACTED]

Respondent and his family have been undergoing severe hardship while taking care of [REDACTED] as is requires closed supervision and medical attention because his condition has made him develop man other illnesses, [REDACTED]

[REDACTED]

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9. Mr. Guamarrigra has a pending Motion to Reopen with the BIA outlining all forms of relief available to him. See BIA Receipt for Motion to Reopen enclosed as Exhibit XX.
10. Petitioner's removal without an opportunity to have his motions and petitions adjudicated and tentative prolonged, indefinite detention pending removal proceedings violates the U.S. Constitution's Fifth Amendment because he has a Fundamental Liberty Interest and it deprives petitioner of liberty without due process of law and the Immigration and Nationality Act.
11. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus and order petitioner's release from custody, with appropriate conditions of supervision if necessary and also a temporary restraining order to enjoin ICE from removing Petitioner from the United States and transferring Petitioner from the Southern District of Texas while this petition is pending;

#### **PARTIES**

12. Petitioner is presently detained at the direction of Respondents at the Port Isabel Service Processing Center. The address for that center is 27991 Buena Vista Blvd., Los Fresnos, TX 78566.
13. Respondent Miguel Vergara is named in his official capacity as the Harlingen Field Office Director, Immigration and Customs Enforcement. In this capacity, he is a legal custodian of petitioner. Respondent's address is 1717 Zoy Street, Harlingen, TX, 78552.
14. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States, She is responsible for the administration of the immigration laws. 8 U.S.C. §



1103(a). Respondent Bondi's address is United States Department of Justice, 950 Pennsylvania Avenue, Washington, DC 20530.

### **JURISDICTION**

15. Petitioner is detained in the custody of Respondents at 27991 Buena Vista Blvd., Los Fresnos, TX 78566

16. This Court has subject matter jurisdiction over this Petition under 28 U.S.C. § 2241 (power to grant habeas corpus) and 28 U.S.C. § 1331 (federal question jurisdiction); the All Writs Act, 28 U.S.C. § 1651; and the Administrative Procedure Act, 5 U.S.C. § 701.

17. Federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. Demore v. Kim, 538 U.S. 510, 516-17 (2003).

18. Mr. Guamarrigra asks this Court to review his continued detention, which is within the jurisdiction of this Court. Cardoso v. Reno, 216 F.3d 512, 516 (5th Cir. 2000). INS v. St. Cyr, 533 U.S. 289 (2001). Jennings v. Rodríguez, 583 U.S. 281, 291-96 (2018).

19. Authority to grant the requested injunctive relief in cases otherwise within the Court's jurisdiction is conferred by 28 USC § 2201(a).

### **VENUE**

23. Venue is proper in this Court pursuant to 28 USC 1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant is detained. Under 28 U.S.C. § 2241(d), venue properly lies in the southern district of Texas because Petitioner is physically present and in the custody of Respondents within the district.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. Any requirement of administrative exhaustion is therefore purely discretionary. In making that decision, the Court should consider the urgency of the need for immediate review. "Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent." Boumediene v. Bush, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).
21. Petitioner has exhausted all administrative remedies as he filed a parole request that was denied and a stay of removal with the BIA that was denied as well. He has a pending Motion to Reopen with the BIA but waiting adjudication would be futile as he is scheduled for removal on September 22, 2025.
22. Petitioner has therefore exhausted all available administrative remedies.

### **STATEMENT OF FACTS**

23. The Petitioner is a noncitizen who is a native and citizen of Ecuador. The Petitioner entered the United States on or around February 8, 1998 twenty-seven (27) years ago. The Petitioner is married and has three (3) children who were born and reside in the United States (ages 8, 17 and 23).
24. he Petitioner was placed in removal proceedings and was ordered removed by the Immigration Judge on August 22, 2006. Upon information and belief, Petitioner had applied for voluntary departure with the immigration court and that form of relief was

denied, being ordered removed with no other relief application pending. The Petitioner filed an appeal with the BIA that was dismissed on June 26, 2008.

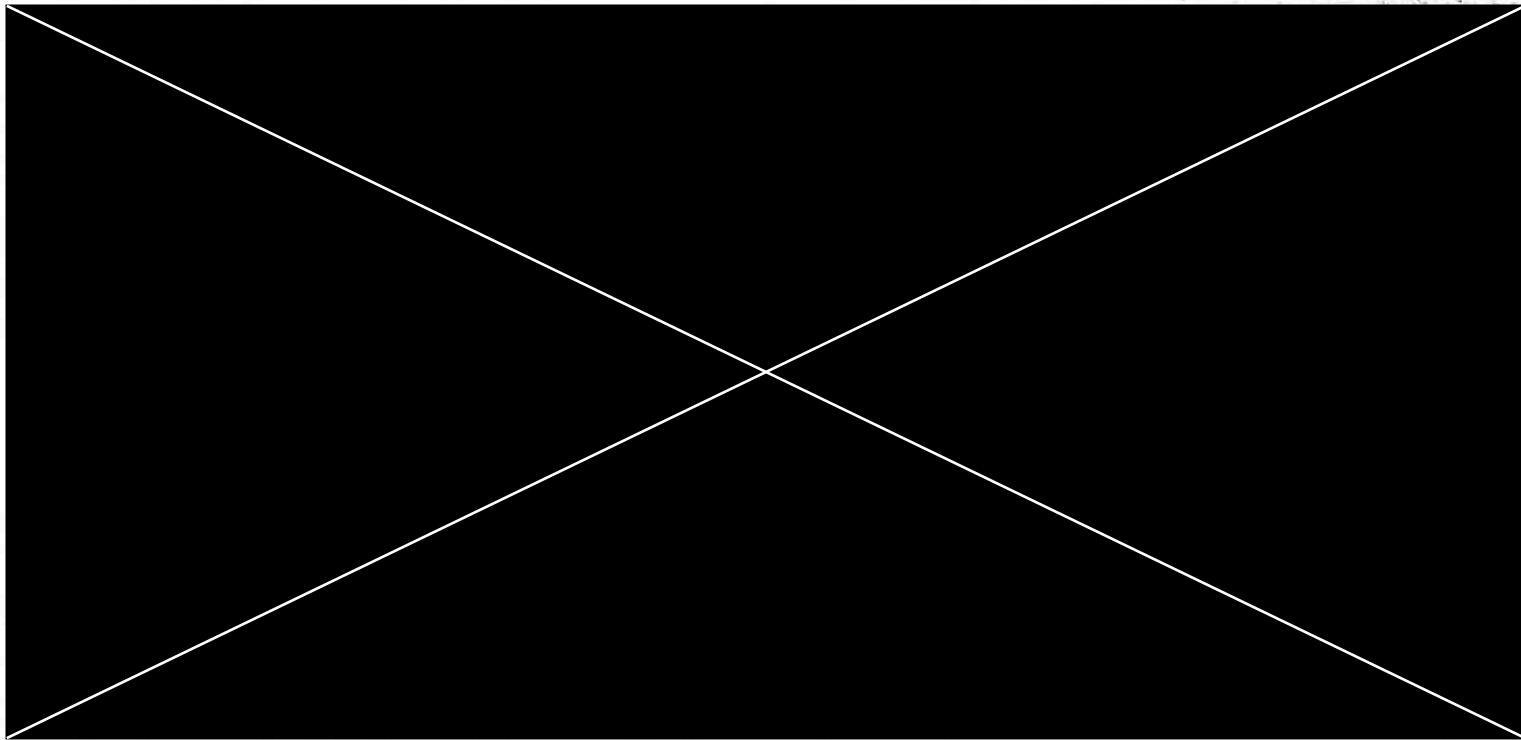
25. Petitioner entered the United States in 1998 and on or around 2003, prior to being placed in removal proceedings, he retained the services of Attorney Edward B. Tapia, Esq, who advised him that he qualified for an Employment visa and began the process of securing an Labor Certification from the Department of Labor.
26. Petitioner was first placed in removal proceedings on or around October, 2004. He was apprehended near to the US border with Canada in New York when he was traveling for work.
27. Petitioner was issued a Notice to Appear on October 4, 2004 and that Notice to appear did not have the date and time when the removal proceedings would take place. Upon information and belief, he applied for voluntary departure as a pro-se litigant and his application was denied.
28. He was released on bond and Petitioner secured the services of Eugenia Ruiz Uribe on or around September, 2005. Ms. Ruiz was an EOIR-representative working for the International Institute of Buffalo, NY, Inc. Petitioner states that he never went to her office and that she was working for a pro-bono organization at that time. Ms. Ruiz did not file any application on behalf of the Petitioner and he was ordered removed on August 22, 2006.
29. Petitioner's understanding is that his application for voluntary departure was because he had been convicted of two offenses of Driving under the influence of alcohol (DWI), a Class U Misdemeanor under VTL 1192.3 in 2003 and a Class E Felony under VTL 1192.3 in 2006.

30. Petitioner admits that his first DWI arrest occurred in 2003 when he was 21 years old and that it was due to his irresponsible behavior as a young male who was immature and with a faulty impulse control. In regards to the second DWI charge, Petitioner contends that he was not driving under the influence but had to pled guilty to the offense under the advice of counsel.
31. After his removal hearing on August 22, 2006, Ms. Ruiz told the Petitioner that she would appeal the decision of the immigration judge; but Petitioner did not hear from her ever again after that. Mr. Guamarrigra called the attorney multiple times with no response. He did not have an address for her, thus, he did not have a place where he could go and find her.
32. On or around March, 2007, Petitioner was informed by Atty. Tapia that the Department of Labor had approved his Labor Certification Application. He immediately attempted to contact Ms. Ruiz to inform her about this new development in the case but she was nowhere to be found.
33. Petitioner did not receive any mail or communications from the Board of Immigrations Appeals in regards to the appeal that was filed. Petitioner indicates that he resided at the same address of 18 Maple PL, Fl. 2, Port Chester, NY, 10573 since 2002 until January, 2025 and has never received any communications in regards to his appeal to his address.
34. Petitioner was informed later that year that he could not use the approved Labor Certification to obtain lawful permanent residence because it had not been filed prior to April, 2001 and that he was not protected under INA section 245(i). This was disheartening to the Petitioner and he felt scammed by the attorney who already knew that he did not qualify for any form of relief and put him through this process in vain.



35. Petitioner went to several attorneys trying to solve his immigration situation; however, he was undergoing extreme hardship with his family during that time and this prevented him from taking further action on his case.

36. Petitioner was born his US citizen child: [REDACTED] G [REDACTED] was born on [REDACTED] 2008.



37. Petitioner hired the law offices of Youman & Associates in August, 2008 to see if anything could be done to fix his immigration status based on his child's medical conditions.

According to the Petitioner, an attorney at the law office told them that they could not do anything until they got the file from the prior lawyer but this never happened and his situation remained the same. An attorney at Youman & Associates told the Petitioner that they could not provide any status on the appeal that had been filed by the prior lawyer.

38. Petitioner's wife: Rosa Zhagui (A# [REDACTED]) was apprehended by immigration authorities in 2009 and underwent removal proceedings, this placed additional financial and emotional hardship upon the Petitioner.

39. Petitioner's wife became a lawful permanent resident in 2010 and they sought the consultation of multiple attorneys who told them that they could not do anything to help Mr. Guamarrigra because of his removal order.

40. On or around June, 2012, Petitioner's wife: Rosa Zhagui (A# [REDACTED]) was diagnosed

[REDACTED]

41. Mr. Guamarrigra has been the sole provide and caregiver of his lawful permanent wife and three US citizen children ever since [REDACTED]

[REDACTED]

42. Mr. Guamrrigra has volunteered for the Port Chester Fire Department since 2018, being an active member and serving his community. He has fully rehabilitated from his past criminal offenses and is a beloved member of his community. The Port Chester Fire Department, the Mayor of the Town of Portchester and several members of the community have vouched their support for Mr. Guamarrigra, attesting to his good moral character.

43. Once his eldest child: Jocelyn Guamarrigra (DOB: [REDACTED]) turned 21 years in October, 2023, Petitioner sought legal representation once again, and hired Attorney Lea Oliveira De Mayo. She told him that his appeal was pending with the Board of Immigration Appeals and because of this, his daughter could petition for him and file subsequent waivers on his behalf.

44. Petitioner was apprehended by ICE agents outside of his residence on July 29, 2025. He retained the undersigned Counsel on August 5, 2025. Petitioner was present over the phone

during the consultation and was informed on such a date that his appeal with the Board of Immigration Appeals had been dismissed in 2008. Petitioner expressed to Counsel that he did not know that his appeal had been dismissed and that if he would have known this, he would have taken further action.

45. The Petitioner is now moving to have his proceedings reopened with the BIA and have his case remanded to the immigration court for the adjudication of a 42-B Application for Cancellation of Removal for Non lawful permanent residents, an I-130 Petition for alien relative and related I-601A unlawful presence waiver and an I-589 application based on changed circumstances in Ecuador that arose in 2025, after his previous removal hearing and proceedings.
46. The Petitioner has provided substantial evidence in support of these applications and also evidence of his diligence in pursuing his rights.
47. Petitioner's EOIR 42-B application is based on his LPR wife and USC child medical conditions described above and proven through medical documentation. Petitioner believes that he is entitled to this form of relief because his Notice to Appear was defective not triggering the "stop-time" rule for Cancellation of removal purposes.
48. Petitioner has a path to lawful permanent residence through an immigrant visa petition filed by one of his USC child who is over the age of 21. Once such petition is approved and if this proceedings are reopened, he will qualify for an I-601A Unlawful presence waiver, permitting him to obtain an immigrant visa at a consular interview in his home country.
49. Petitioner was denied his request for released by ICE on September 11, 2025 and the BIA denied the request for stay of removal on September 15, 2025.

50. Petitioner is scheduled to be removed on September 22, 2025. If his removal is not enjoined, this would cause great prejudice to him and his family. Even if his removal is enjoined, he will not be released anytime soon he will be in jail for well over two years, while he undergoes the entire process with the BIA and USCIS. There is no reasonable or legal justification to continue keeping him in jail under these circumstances. It is - in fact and in law- decidedly inhumane.

### **CLAIMS FOR RELIEF**

#### **ORDER TO ENJOIN RESPONDENTS FROM REMOVING THE PETITIONER FROM THE UNITED STATES AND TO MAINTAIN THE JURISDICTION OF THIS COURT.**

51. Mr. Guamarrigra is detained in Los Fresnos, Texas. He respectfully asks the Court to issue a Temporary restraining order enjoining the Respondents from removing the Petitioner during the pendency of these proceedings and ordering that he not be moved outside the jurisdiction of this court while these proceedings are pending.

#### **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

52. Petitioner re-alleges and incorporates by reference the paragraphs above.
53. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.
54. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. 678, 693 (2001). For this reason, even "removable and inadmissible aliens are entitled to be free from detention that is arbitrary and capricious," id. at 721 (Kennedy, J., dissenting). That constitutional protection is unaffected by the government's authority to make



rules for “admission” that regulate the immigration status of noncitizens. See 8 U.S.C. § 1101(a)(13)(A) (defining admission as “the lawful entry of the alien”).

55. In Zadvydas v. Davis, the Supreme Court rejected the government’s argument that its immigration powers permit it to indefinitely detain noncitizens after the conclusion of removal proceedings. Id. at 695. Since then, the government has repeated that same argument to justify prolonged, indefinite detention pending removal proceedings.

56. Each time, federal courts have roundly rejected it. Every Court of Appeals to consider prolonged detention under INA § 236(c), 8 U.S.C. § 1226(c)—a statute that, like § 1225(b) mandates detention of inadmissible noncitizens pending removal proceedings—holds it limited to a reasonable period by the Due Process Clause. See Sopo v. U.S. Attorney Gen., 825 F.3d 1199 (11th Cir. 2016); Reid v. Donelan, 819 F.3d 486 (1st Cir. 2016); Lora v. Shanahan, 804 F.3d 601 (2d Cir. 2015); Rodriguez v. Robbins, 804 F.3d 1060 (9th Cir. 2015); Diop v. ICE/Homeland Sec., 656 F.3d 221 (3d Cir. 2011); Ly v. Hansen, 351 F.3d 263 (6th Cir. 2003). None of these decisions distinguishes between previously admitted and inadmissible noncitizens. Instead, they find that due process limits the period that any noncitizen may be held in prolonged mandatory detention pending removal proceedings.

57. The ability to apply for humanitarian parole under 8 U.S.C. 1182(d)(5)(A) does not provide due process for noncitizens detained under § 1225(b). Parole does not provide a neutral forum to contest the necessity of ongoing detention. Instead it is a purely discretionary process, administered by the jailer. Neither the detained noncitizen nor counsel are provided an in-person hearing to contest facts leading to the parole decision. And no review of that decision is available. See Rodriguez v. Robbins, 715 F.3d 1127, 1144 (9th Cir. 2013) (describing parole process).

58. Moreover, release on parole is only available for “urgent humanitarian reasons or significant public benefit,” 8 U.S.C. § 1182(d)(5)(A); see also 8 C.F.R. § 212.5(b). Neither of those criteria evaluate the constitutionally permissible rationales for continued, prolonged detention during removal proceedings: whether the detained noncitizen is a flight risk or danger to her community. See R.I.L.-R v. Johnson, 80 F. Supp. 3d 164, 188 (D.D.C. 2015) (“The Zadvydas Court clearly identified a pair of interests that can, under certain circumstances, suffice to justify the detention of noncitizens awaiting immigration proceedings: ‘preventing flight’ and ‘protecting the community’ from aliens found to be ‘specially dangerous.’”) (citing Zadvydas v. Davis, 533 U.S. at 690–92)).

59. Finally, parole was also available to inadmissible noncitizens who challenged prolonged detention under § 1226(c). Yet every Court of Appeals to consider § 1226(c) has nonetheless ruled it limited to a reasonable period by the Due Process Clause. The ability to apply for parole is therefore an inadequate substitute for due process.

60. Petitioner’s prolonged, indefinite detention violates the Fifth Amendment by depriving him of liberty without due process of law. This Court should therefore order his release, with appropriate conditions of supervision if necessary. He has a pending Motion to Reopen with the BIA and pending forms of relief with USCIS.

61. Petitioner has a liberty interest in remaining in the United States and his removal would violate his due process rights. He is the father of three US citizen children and the husband of a lawful permanent resident. He is prima facie eligible for Cancellation of Removal for Non-Lawful permanent residents and for waivers of inadmissibility due to his removal order and unlawful presence in the country. Petitioner’s motion with the BIA and a petition for an immigrant visa with USCIS.

**CONCLUSION**

Mr. Guamarrigra therefore comes before the Court as a last resort to enjoin Respondent from removing him to Ecuador during the pendency of these proceedings and to grant this writ of habeas corpus considering the constitutional violations by the Defendants in Petitioner's case.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) That the Court order Defendants to appear within three days to answer why Mr. Guamarrigra should not be released;
- 3) That, upon due consideration, the Court enjoin Defendants from removing from the country and moving Mr. Guamarrigra outside the jurisdiction of this Court pending further order of this Court
- 4) Issue a Writ of Habeas Corpus ordering respondents to release petitioner immediately, on reasonable conditions of supervision if necessary;
- 5) In the alternative, conduct a bond hearing or remand to the immigration judge for a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) alternatives to detention that could mitigate flight risk are considered;
- 6) Grant such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Marianny Reyes

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Marianny Reyes, Esq.

Musa Obregon Law PC

*Pro Hac Vice* Application Pending

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/s/ Salvador Colón

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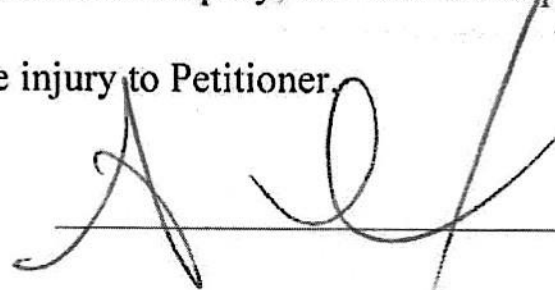
Dated: September 17, 2025



**VERIFICATION**

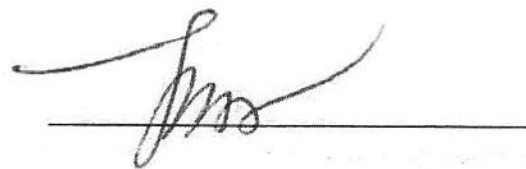
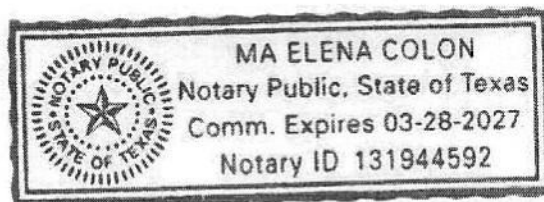
COMES NOW, Salvador Colón, under before me, the undersigned authority, known to me to be the person stated and under oath, declares the following:

My name is Salvador Colón. I swear that I am Counsel of record for the Petitioner in the instant case, who presently resides in Houston, Texas. I hereby affirm that I have read the foregoing petition, and that everything contained therein is true and correct to the best of my personal knowledge, and/or information and belief after reasonable inquiry, and that the requested injunctive relief is warranted to prevent irreparable injury to Petitioner.



SALVADOR COLON

Sworn before me on September 17, 2025



Notary Public in and for the

STATE OF TEXAS

