

United States District Court
Eastern District of Michigan

Franklin Ezequiel Salgado Bustos,

Petitioner,

Civil No. 25-13202

v.

Honorable Nancy G. Edmunds

Magistrate Judge Curtis Ivy, Jr.

Kevin Raycraft, in his official capacity as Acting Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Kristi Noem, in her official capacity as Secretary, U.S. Department of Homeland Security; and Pamela Bondi, in her official capacity as U.S. Attorney General,

Respondents.

Response to Petition for a Writ of Habeas Corpus

Respondents submit this response to petitioner's request for a writ of habeas corpus, (ECF No. 1). As described in the attached brief, respondents respectfully request that the Court deny the petition because petitioner's detention does not violate the constitution or federal law.

Respectfully submitted,

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**Respondents' Brief in Support of Their Response to Petition for a
Writ of Habeas Corpus**

Issues Presented

- I. Should the Court dismiss all respondents except the ICE Field Office Director when only the ICE Field Office Director is a proper respondent in this habeas case?
- II. Does the Court lack jurisdiction over petitioner's challenge to the agency's charge of expedited removal when 8 U.S.C. § 1252(e) limits district courts' jurisdiction to hear challenges to expedited removal?

- III. Even if the Court has jurisdiction, is petitioner's challenge to his expedited removal premature when he is challenging his expedited removal in administrative proceedings and that process is not yet complete?
- IV. Is petitioner properly detained pursuant to his expedited removal proceedings when the plain terms of the statute demonstrate that he is susceptible to expedited removal and a statute requires his detention during his administrative proceedings?
- V. Should the Court reject petitioner's due process claim when he has received all process due under the Constitution?

Table of Contents

Table of Authorities	iv
Introduction.....	1
Background	2
Standard of Review.....	3
Argument.....	4
I. The Court Should Dismiss All Respondents Except the ICE Field Office Director	4
II. The Court Lacks Jurisdiction Over Salgado Bustos’s Challenge to Expedited Removal	5
III. Salgado Bustos’s Challenge to His Expedited Removal is Premature	7
IV. Salgado Bustos is Properly Detained Under 8 U.S.C. § 1225(b)(1).....	9
V. Salgado Bustos’s Detention Complies with the Due Process Clause.....	14
Conclusion	15
Certificate of Service	16

Table of Authorities

Cases

<i>Al-Shabee v. Gonzales</i> , 188 F. App’x 333 (6th Cir. 2006).....	14
<i>BedRoc Ltd., LLC v. United States</i> , 541 U.S. 176 (2004)	9
<i>Dep’t of Homeland Sec. v. Thuraissigiam</i> , 591 U.S. 103 (2020).....	passim
<i>Doe v. Noem</i> , —F.4th—, 2025 WL 2630395 (1st Cir. Sept. 12, 2025).....	12, 13
<i>Jennings v. Rodriguez</i> , 583 U.S. 281 (2018)	10
<i>Munoz Materano v. Arteta</i> , 25 Civ. 6137, 2025 WL 2630826 (S.D.N.Y. Sept. 12, 2025).....	13
<i>Nat’l Park Hosp. Ass’n v. Dep’t of Interior</i> , 538 U.S. 803 (2003).....	8
<i>Polselli v. Internal Revenue Serv.</i> , 598 U.S. 432 (2023).....	12
<i>Roman v. Ashcroft</i> , 340 F.3d 314 (6th Cir. 2003).....	4, 5
<i>Shearson v. Holder</i> , 725 F.3d 588 (6th Cir. 2013)	9

Statutes

28 U.S.C. § 2241	4
28 U.S.C. § 2243	4
8 U.S.C. § 1182(a)(6).....	2
8 U.S.C. § 1182(a)(7).....	2, 10
8 U.S.C. § 1182(a)(7)(A)(i)(I)	3
8 U.S.C. § 1182(d)(5).....	12
8 U.S.C. § 1182(d)(5)(A).....	2, 11
8 U.S.C. § 1225(b)	7, 14
8 U.S.C. § 1225(b)(1)(A)(i)	7, 9, 10
8 U.S.C. § 1225(b)(1)(A)(iii).....	3, 9
8 U.S.C. § 1225(b)(1)(B)	9

8 U.S.C. § 1225(b)(1)(B)(iii)(III)7, 8
8 U.S.C. § 1225(b)(1)(B)(iii)(IV) 10, 11, 14
8 U.S.C. § 1225(b)(2)..... 12, 13
8 U.S.C. § 1225(b)(2)(A).....13
8 U.S.C. § 1229a13
8 U.S.C. § 1229(a)(1).....13
8 U.S.C. § 1231(b)(3)(A).....7
8 U.S.C. § 1252(a)(2)(A)5
8 U.S.C. § 1252(e)5
8 U.S.C. § 1252(e)(2).....6
8 U.S.C. § 1252(e)(5).....6

Regulations

8 C.F.R. § 1.2 10, 11
8 C.F.R. § 208.16(f)7
8 C.F.R. § 208.30(e)(8)7
8 C.F.R. § 208.30(f)7
8 C.F.R. § 235.3(b)(2)(i)13
8 C.F.R. § 208.14(c)(3)12
8 C.F.R. § 208.14(c)(4)12
8 C.F.R. § 1003.42(c)8
8 C.F.R. § 1003.42(d)(1)8

Introduction

Petitioner is a noncitizen with no lawful immigration status. He unlawfully entered the United States in 2022 and was immediately arrested by Border Patrol officers, charged with inadmissibility, and temporarily paroled. His parole expired in 2023, and the agency recently issued him an expedited removal order, but petitioner claimed a fear of removal to his home country, which triggered a multi-level administrative review process that is ongoing and may ultimately provide petitioner relief from removal. In this suit, petitioner challenges his detention during his administrative proceedings by claiming that he is ineligible for expedited removal and that he is entitled to release during his administrative proceedings. The Court should first dismiss all respondents except the ICE Field Office Director because he is the only proper respondent in this habeas suit. The Court should reject petitioner's challenge to expedited removal because the Court lacks jurisdiction to hear such a claim and, even if the Court had jurisdiction, petitioner's challenge is not ripe because the administrative process is not complete and because petitioner is properly charged with expedited removal. Finally, the Court should reject petitioner's due process argument because administrative immigration proceedings define a noncitizen's constitutional due process rights and petitioner has received all process available in those proceedings.

Background

Franklin Ezequiel Salgado Bustos is a citizen of Nicaragua who unlawfully entered the United States without inspection or admission near Calexico, California, at approximately midnight on November 20, 2022. (Exhibit 1 – Walker Decl. ¶ 4; Exhibit 2 – I-213 at 1). A U.S. Border Patrol official encountered Salgado Bustos when he entered the United States. (Exhibit 1 – Walker Decl. ¶ 5; Exhibit 2 – I-213 at 1).

Upon Salgado Bustos’s arrest, an immigration officer determined that Salgado Bustos had entered the United States unlawfully and he lacked a valid immigration document, which rendered him inadmissible under 8 U.S.C. § 1182(a)(6) and (a)(7). (See Exhibit 1 – Walker Decl. ¶ 5; Exhibit 2 – I-213 at 1) (indicating “PWA [present without admission] Mexico” and displaying blank immigration document fields). After his arrest, Salgado Bustos claimed that he feared returning to Nicaragua. (Exhibit 1 – Walker Decl. ¶¶ 5–6; Exhibit 2 – I-213 at 2) (stamped “Credible Fear Claim”). If Salgado Bustos had not claimed a credible fear at that time, he would have been removed to Nicaragua on an expedited basis. (See *id.*).

Two days later, on November 22, 2022, Border Patrol officials paroled Salgado Bustos under 8 U.S.C. § 1182(d)(5)(A). (Exhibit 1 – Walker Decl. ¶ 6; Exhibit 2 – I-213 at 3). Border Patrol officials paroled Salgado Bustos because he had initially been detained at a facility designated for short term detention and there

was no room at any nearby long-term detention center. (*See* Exhibit 2 – I-213 at 2). Salgado Bustos’s parole expired on January 19, 2023. (Exhibit 1 – Walker Decl. ¶ 5; Exhibit 2 – I-213 at 3).

In November 2023, Salgado Bustos submitted an application for asylum to USCIS. (Exhibit 1 – Walker Decl. ¶ 7). While that application was pending, on September 29, 2025, ICE detained Salgado Bustos and notified him that it had entered an order of expedited removal against him under 8 U.S.C. § 1225(b)(1)(A)(iii). (*Id.* ¶¶ 8–9; Exhibit 3 – I-860 at 1). ICE entered its order of expedited removal against Salgado Bustos because he did not possess a valid immigration document and was, therefore, inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I). (Exhibit 1 – Walker Decl. ¶¶ 8–9; Exhibit 3 – I-860 at 1–2).

On the same day that ICE detained Salgado Bustos, he again claimed that he feared returning to Nicaragua. (Exhibit 1 – Walker Decl. ¶¶ 10–12). ICE referred Salgado Bustos to USCIS, who appointed an officer to conduct a credible fear interview with Salgado Bustos. (*Id.*). USCIS completed its credible fear interview on October 8, 2025. (*Id.*). If USCIS, determines that Salgado Bustos has a credible fear of returning to Nicaragua, it will refer him for full removal proceedings and issue a Notice to Appear under 8 U.S.C. § 1229(a). (*Id.*).

Standard of Review

A district court may grant a writ of habeas corpus if a petitioner is in federal

custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241.

Argument

The Court should deny petitioner's request for a writ of habeas corpus. First, the Court should dismiss all respondents except the ICE Field Office Director. Second, the Court lacks subject matter jurisdiction to review the agency's charge of expedited removal against Salgado Bustos. Third, even if the Court had jurisdiction to review the charge of expedited removal against Salgado Bustos, petitioner's challenge is not ripe because he is seeking relief from removal in the administrative process and that process is not yet complete. Fourth, similarly, even if the Court had jurisdiction to review the charge of expedited removal against Salgado Bustos and it were ripe for review, the Court should find that Salgado Bustos is properly detained pursuant to the charge of expedited removal against him under the plain terms of the statute. Finally, the Court should reject Salgado Bustos's due process argument because he has received all process due under the Constitution.

I. The Court Should Dismiss All Respondents Except the ICE Field Office Director

A writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Except in extraordinary circumstances, the only proper respondent in a habeas corpus case is the detainee's immediate custodian. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). In the

immigration context, that is the ICE Field Office Director. *See id.*

Here, the Secretary of the Department of Homeland Security and the Attorney General are not proper respondents. Salgado Bustos alleges that Acting ICE Field Office Director Kevin Raycraft is his “immediate custodian.” (Pet., ECF No. 1, PageID.7). Therefore, only the ICE Field Office Director is a proper respondent in this case and the remaining respondents should be dismissed. *See Roman*, 340 F.3d at 320.

II. The Court Lacks Jurisdiction Over Salgado Bustos’s Challenge to Expedited Removal

Federal courts have limited jurisdiction to review a noncitizen’s expedited removal. *See Thuraissigiam*, 591 U.S. at 108–15; 8 U.S.C. §§ 1252(a)(2)(A), (e). Section 1252(a)(2)(A), titled “Matters not subject to judicial review,” provides that, for orders of expedited removal issued under section 1225(b)(1) “[n]otwithstanding any other provision of law ... no court shall have jurisdiction to review ... except as provided in [§ 1252(e)],” “any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 1225(b)(1),” or any “decision ... to invoke the provisions of such section,” or any “procedures and policies adopted ... to implement the provisions of section 1225(b)(1).” 8 U.S.C. § 1252(a)(2)(A)(i), (ii), (iv). Thus, § 1252 bars all challenges to expedited removal unless a claim falls into one of the exceptions listed in § 1252(e). *See id.*

Under § 1252(e), titled “Habeas Corpus Proceedings,” federal courts only have jurisdiction over three specific types of habeas claims challenging expedited removals: (1) whether “the petitioner is an alien,” (2) “whether the petitioner was ordered removed under” section 1225(b)(1) and (3) whether the noncitizen has “been admitted” as a lawful permanent resident, refugee, or granted asylum. 8 U.S.C. § 1252(e)(2). “In determining whether an alien has been ordered removed under section 1225(b)(1) of this title, the court’s inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner.” 8 U.S.C. § 1252(e)(5). “There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.” *Id.*

Here, Salgado Bustos’s challenge to his expedited removal does not fall within any of the exceptions in § 1252(e), therefore, this Court lacks jurisdiction to hear his challenge under § 1252(a)(2)(A). Salgado Bustos is a noncitizen, he is charged with removal under § 1225(b)(1), and he is not a lawful permanent resident, refugee, or asylee. (*See* Exhibit 1 – Walker Decl. ¶¶ 4–15; Exhibit 3 – I-860 at 1). Therefore, there is no dispute within the Court’s jurisdiction regarding the charge of expedited removal against Salgado Bustos. *See also Thuraissigiam*, 591 U.S. at 112–13.

III. Salgado Bustos’s Challenge to His Expedited Removal is Premature

While Salgado Bustos is technically charged with expedited removal, as the Supreme Court has observed: “Once a fear is asserted” the process is effectively “no longer [] expedited.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 113 (2020).

Noncitizens subject to expedited removal may be removed without further hearing unless they express a fear of persecution upon return to their home country. 8 U.S.C. § 1225(b)(1)(A)(i). If a noncitizen in expedited removal proceedings claims a fear of returning to his or her home country, the noncitizen is referred to USCIS for a credible fear interview. *Id.* If USCIS determines that the noncitizen has a credible fear of returning to their home country, immigration officials will place him or her in full removal proceedings for further consideration of his application for asylum, *see* 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. § 208.30(f), and/or removal to another country, 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 208.16(f); *Thuraissigiam*, 591 U.S. at 110 n.5.

Alternatively, if USCIS determines that the noncitizen does *not* have a credible fear of persecution, a supervisor at USCIS will review the determination. 8 C.F.R. § 208.30(e)(8). If the supervisor agrees with the initial determination, the noncitizen may appeal to an immigration judge, who can take further evidence and

“shall make a de novo determination.” 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 1003.42(c), (d)(1); .

“An alien subject to expedited removal thus has an opportunity at three levels to obtain an asylum hearing, and the applicant will obtain one unless the asylum officer, a supervisor, and an immigration judge all find that the applicant has not asserted a credible fear.” *Thuraissigiam*, 591 U.S. at 110.

Here, even if the Court had jurisdiction to review the agency’s charge of expedited removal against Salgado Bustos, his challenge to that process is not ripe. “The ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.” *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 808 (2003) (quotations omitted). While Salgado Bustos is charged with expedited removal, now that he has triggered the credible fear review process, there are several layers of administrative review remaining, including hearings before a neutral immigration judge, that will ultimately determine whether Salgado Bustos will be removed. Accordingly, even if the Court had jurisdiction to review Salgado Bustos’s expedited removal, that issue is not ripe for the Court to review at this time and the Court should require Salgado Bustos to exhaust those administrative procedures before challenging the charge of expedited removal against him in this Court. *See Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013).

IV. Salgado Bustos is Properly Detained Under 8 U.S.C. § 1225(b)(1)

A court’s “inquiry begins with the statutory text, and ends there as well if the text is unambiguous.” *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). The text of § 1225(b)(1) unambiguously applies to Salgado Bustos and requires his detention during his administrative proceedings.

An immigration officer may order a noncitizen “removed from the United States without further hearing or review,” (*i.e.*, order an expedited removal), if the noncitizen is apprehended while “arriving in the United States” or if the noncitizen is “inadmissible under section 1182(a)(6)(C) or 1182(a)(7).” 8 U.S.C. § 1225(b)(1)(A)(i). Further, immigration officials may also order expedited removals of noncitizens who have “not been admitted or paroled into the United States, and who ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States for the 2-year period immediately prior to the date of the determination of inadmissibility.” *Id.* at § 1225(b)(1)(A)(iii).

As noted above, if a noncitizen who would otherwise be eligible for expedited removal articulates a credible fear of returning to their home country, they are entitled to an administrative review process. *See* 8 U.S.C. § 1225(b)(1)(B); *Thuraissigiam*, 591 U.S. at 110. However, under the plain language of the statute, noncitizens “shall be detained pending a final determination of credible fear of

persecution and, if found not to have such a fear, until removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). The Supreme Court has held that noncitizens detained under this provision are not entitled to bond hearings during their administrative removal proceedings and instead are subject to mandatory detention for the duration of their administrative proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Thus, Salgado Bustos is lawfully detained pursuant to the agency’s charge of expedited removal while he administratively pursues his claim for asylum under the plain language of the statute. *See id.*; *Thuraissigiam*, 591 U.S. at 138–40.

In addition, even if the Court had jurisdiction to review the agency’s initiation of expedited removal proceedings against Salgado Bustos, the record demonstrates that the agency’s action was proper because Salgado Bustos meets every element of the statute. Salgado Bustos was apprehended while arriving to the United States. *See* 8 U.S.C. § 1225(b)(1)(A)(i); 8 C.F.R. § 1.2. He is inadmissible under 8 U.S.C. § 1182(a)(7) because he does not possess a valid immigration document. (*See* Exhibit 1 – Walker Decl. ¶¶ 4–5, 8; Exhibit 2 – I-213 at 1). He was not lawfully admitted to the United States. (*See id.*). And he did not physically reside in the United States from 2020 until 2022, which was the two-year period prior to an immigration official’s initial determination that he was inadmissible. (*See id.*). Therefore, the agency has properly initiated expedited removal proceedings against Salgado

Bustos, and he is properly detained pursuant to those proceedings under the plain language of § 1225(b)(1)(B)(iii)(IV).

The fact that Salgado Bustos was temporarily paroled after his initial apprehension does not remove him from the scope of § 1225(b)(1). In narrow circumstances, immigration officials have discretion to temporarily parole noncitizens like Salgado Bustos. *See* 8 U.S.C. § 1182(d)(5)(A). However, under the plain text of that statute, “such parole of such alien shall not be regarded as an admission of the alien” and “when the purposes of such parole shall. . . have been served the alien shall forthwith return or be returned to custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Id.* Similarly, “an arriving alien remains an arriving alien even if paroled pursuant to section [1182](d)(5) of the Act, and even after any such parole is terminated or revoked.” 8 C.F.R. § 1.2. Accordingly, under the plain terms of the statute, Salgado Bustos’s temporary parole, which expired almost two years ago, does not change the analysis. (*See* Exhibit 1 – Walker Decl. ¶ 6; Exhibit 2 – I-213 at 3).

Petitioner’s argument that his expired parole permanently removes him from the scope of § 1225(b)(1) is untenable. (*See* Pet., ECF No. 1, PageID.3). While the statute uses the term “paroled” in § 1225(b)(1)(A)(iii)(II), this does not indicate that anyone who has ever been paroled can no longer be charged with expedited removal,

but instead only indicates that “those people who are *currently* paroled may not be subject to expedited removal proceedings.” *See Doe v. Noem*, —F.4th—, 2025 WL 2630395 at *9–10 (1st Cir. Sept. 12, 2025) (emphasis added). “[I]t does not impose a categorical ban on the use of expedited removal proceedings for those whose past parole has since been terminated.” *Id.* And to the extent there is any ambiguity in this language, the structure of the statute and its implementing regulations show that Salgado Bustos’s interpretation is unreasonable, because it would effectively erase the plain text of § 1182(d)(5), which explicitly describes that the termination of parole requires the noncitizen’s return to detention and has no effect on the original charges of removability against him. *See* 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. §208.14(c)(3), (4) (distinguishing between noncitizens who have been paroled before and after expiration of parole); *see also Polsell v. Internal Revenue Serv.*, 598 U.S. 432, 441 (2023) (“We ordinarily aim to “giv[e] effect to every clause and word of a statute.”).

Similarly, petitioner’s authority is distinguishable. First, petitioner relies on recent cases involving noncitizens detained under 8 U.S.C. § 1225(b)(2). (*See* Pet., ECF No. 1, PageID.19). However, Salgado Bustos is not detained under § 1225(b)(2). (*See* Exhibit 3 – I-860). Instead, he is detained under § 1225(b)(1), which applies to a different class of noncitizens who are detained under different circumstances and for different administrative proceedings, *see* 8 U.S.C. §

1225(b)(2)(A), therefore, cases interpreting § 1225(b)(2) are not relevant here. Second, petitioner relies on several unreported district court cases from other districts. (*See* Pet., ECF No. 1, PageID.3–4). However, most of those cases are factually or procedurally distinguishable, therefore, they have little value to this analysis. *See, e.g., Munoz Materano v. Arteta*, 25 Civ. 6137, 2025 WL 2630826, at *1 (S.D.N.Y. Sept. 12, 2025) (involving noncitizen currently in full removal proceedings but allegedly detained under expedited removal proceedings). And the few cases that address the relevant issue have little value because they conflict with the plain language of the statute and the only published court of appeals decision addressing this issue. *See Doe v. Noem*, —F.4th—, 2025 WL 2630395 at *9–10 (1st Cir. Sept. 12, 2025).

Petitioner’s argument that the agency’s failure to issue a notice to appear is somehow improper is also misguided. The agency must issue a notice to appear when it initiates formal removal proceedings under 8 U.S.C. § 1229a. *See* 8 U.S.C. § 1229(a)(1). No statute or regulation requires the agency to issue a notice to appear when it charges a noncitizen with expedited removal. *See id.* Instead, the agency must issue a Form I-860 to initiate expedited removal proceedings and the agency has done so in this case. *See* 8 C.F.R. § 235.3(b)(2)(i); (Exhibit 3 – I-860). Therefore, petitioner is incorrect that the agency should have issued a notice to appear in this case.

V. Salgado Bustos's Detention Complies with the Due Process Clause

Since 1892, the Supreme Court has consistently held that the process due under the constitution is coextensive with the administrative immigration procedures provided by Congress. *Thuraissigiam*, 591 U.S. at 138–40. In this case, Salgado Bustos is charged with expedited removal, which provides several statutorily mandated levels of administrative review and limited judicial review. *See* 8 U.S.C. §§ 1225(b), 1252(e). The Supreme Court has held that this process satisfies the Due Process Clause. *Thuraissigiam*, 591 U.S. at 138–40. And there is no dispute that Salgado Bustos has taken advantage of every procedural protection available to him under the law. (*See* Exhibit 1 – Walker Decl. ¶¶ 4–12). Therefore, Salgado Bustos does not present a plausible due process claim.

The Court should reject Salgado Bustos's argument that the agency violated his due process rights because he is ineligible for expedited removal and, therefore cannot be detained pursuant to his expedited removal proceedings. Even if petitioner were correct that the agency erred when it charged him with expedited removal (and he is not), the error would make his detention under § 1225(b)(1)(B)(iii)(IV) unlawful, but it would not make it unconstitutional. *See Thuraissigiam*, 591 U.S. at 138–40; *see also Al-Shabee v. Gonzales*, 188 F. App'x 333, 339 (6th Cir. 2006) (“Shabee's disagreement with the Immigration Judge's order, however, does not constitute a violation of the Due Process Clause.”).

Conclusion

Respondents respectfully requests that the Court deny petitioner's request for a writ of habeas corpus.

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Dated: October 17, 2025

Certificate of Service

I hereby certify that on October 17, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey _____

Zak Toomey

Assistant U.S. Attorney