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UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF CALIFORNIA

VLADIMIR ERNESTO PRIETO-CORDOVA

Petitioner,

v.

CHRISTOPHER J. LAROSE, *in his official capacity as Warden of the Otay Mesa Detention Center*; PATRICK DIVVER, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security*; PAMELA BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

Case No. 01-24-0005-7419

PETITION FOR WRIT OF HABEAS CORPUS

ORAL ARGUMENT REQUESTED

Case No. '25CV2824 CAB DDL

INTRODUCTION

1. **Personal Information:**

a. This petition is on behalf of Vladimir Ernesto Prieto-Cordova (hereinafter "Vladimir."

b. Vladimir's Identification number is: _____.

2. Vladimir is currently being held on orders by Federal authorities on immigration charges.

2. Vladimir is confined at the federal immigration institute named Otay Mesa Detention Center, located at 7488 Calzada De La Fuente, San Diego, CA 92154.

Bases for the Challenge to Vladimir' Confinement

The Madura regime in the Country of Venezuela is a repressive and brutal regime that suppresses any opposition to its authoritarian values and actions. It is a fearsome government, willing to torture and commit murder against its citizens who might show opposition to its proclivities, including but not limited to using the rule of violence instead of the rule of law. So objectionable is this regime, that the current national administration is threatening to go to war with the Country of Venezuela.

3. In the early part of 2020 and later, the Maduro regime acting through its supporters and operatives, threatened to permanently cripple this Petitioner, Vladimir Prieto-Cordova, when an armed group entered his apartment with the intent of forcing him to vote in the regional elections supporting the Maduro regime. They threated to hurt him by leaving him paralyzed so he would never be able to compete in his sport again. He is aware of murders being committed by the regime for political purposes. (Vladimir Prieto-Cordova Sworn Statement, Attachment A).

4. On or about October 9, 2026, Immigration and Customs Enforcement (ICE) contacted Petitioner Vladimir Ernesto Prieto-Cordova and when he reported to ICE, they initially told him they were going to put an ankle bracelet on him only to come back later to tell him he was under arrest and detained. His custody came after his first and second applications for asylum, despite having been released on his own recognizance under section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations on February 16, 2022, under six (6) conditions, specified in Attachment A. He has never violated those conditions. A deportation would likely result in his being tortured or and or murdered, if deported to his home country, Venezuela.

5. Based on events nationally, it is anticipated that ICE will likely be looking for alternative countries for removal, despite knowing that he lacks citizenship in or a connection to any other country. Vladimir is an asylum applicant, is not a flight risk, and he will not flee, as he has no other alternatives.

6. He is a valued fencing coach for the University of California, San Diego Fencing Team, and is a legitimate seeker of asylum under the laws of the United States, and his continued detention pending his asylum application arbitrary and without foundation. Vladimir therefore requests this Court to order his immediate release from ICE custody pending a determination on his asylum application.

7. Vladimir was paroled into the United States on January 25, 2022, almost four (4) years ago by Respondents. He applied for asylum immediately after his arrival (Attachment B). His case remained inactive for the 3 years and 9 months until just several weeks ago, when the ICE called him in for an interview and verbally told him that they were planning to have him wear an

ankle bracelet. When he arrived, they did not put an ankle bracelet on him. Rather, they took him into custody where he remains at the Otay Mesa Detention Facility.

8. This is Vladimir's first challenge to his confinement, which is based on his immigration status.

9. **Appeals of Immigration Proceedings**: As outlined above, this case concerns immigration proceedings. Vladimir was taken into custody on October 9, 2025, and there no removal order at this time. But, the current ICE administration's known practices are to immediately remove an immigrant who is seeking asylum to deport him or her, without lawful process, to a foreign country other than their own if there is no practical way of insuring their safety back to their home country. The is no possibility to file an appeal with the Board of Immigration Appeals as there is no removal order. Moreover, there is the possibility that ICE may attempt to transfer Vladimir from this jurisdiction to one where his support personnel will have difficulty representing him.

JURISDICTION & VENUE

10. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

11. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. See, e.g., Zadvydas, 533 U.S. at 687. (Case 1:23-cv-01151 Document 1 Filed 08/29/23 Page 3 of 29 PageID# 3).

12. Federal courts also have federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or

otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. Respondents' continued detention of Petitioner up to and past the 90-day removal period has adversely and severely affected Petitioner's liberty and freedom.

13. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at Otay Mesa Detention Facility in San Diego County and within the boundaries of the Southern District of California. Furthermore, a substantial part of the events or omissions giving rise to this action occurred and continue to occur at ICE's Otay Mesa's Field Office in San Diego, California within this division.

14. Asylum is a protection grantable to foreign nationals already in the United States or arriving at the border who meet the international law definition of a "refugee." The United Nations' 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees define a refugee as a person who is unable or unwilling to return to their home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted in the future "on account of race, religion, nationality, membership in a particular social group, or political opinion." Congress incorporated this definition into U.S. immigration law in the Refugee Act of 1980. Asylum is technically a "discretionary" status, meaning that some individuals can be denied asylum even if they meet the definition of a refugee.

For those individuals, backstop forms of protection known as "withholding of removal" and relief under the Convention Against Torture may be available to protect them from harm.

15. As a signatory to the 1967 Protocol, and under U.S. immigration law, the United States has legal obligations to provide protection to those who qualify as refugees. The Refugee Act of 1980 established two paths to obtain refugee status—either from abroad, as a resettled refugee, or in or arriving at the border of the United States as a person seeking asylum. This fact sheet does not describe the law or process for gaining refugee status abroad.

16. Vladimir is an asylum applicant—may not be protected from being returned to his home country,

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

17. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id. This OSC would serve as a hold on Vladimir's detention, transfer, or removal from this District, until such time as a proper hearing can be held.

18. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." Fay v. Noia, 372 U.S. 391, 400 (1963).

19. Petitioner is "in custody" for the purpose of § 2241 because he is arrested and

detained by Respondents.

PARTIES

20. **VLADIMIR ERNESTO PRIETO-CORDOVA** is a native and citizen of Venezuela. He was initially paroled into the U.S. and was detained for approximately two to three (3) weeks and then released from custody. However, he is currently detained at the ICE Otay Mesa Detention Facility, under the current administration's policy to deport a "million people or more."

21. **CHRISTOPHER J. LAROSE** is the Superintendent of Otay Mesa Detention Facility ("Otay"), a federal detention center with ICE to detain non-citizens. He is responsible for overseeing Otay's administration and management. Mr. LaRose is Petitioner's immediate custodian. He is sued in his official capacity.

22. **PATRICK DIVVER** is the Director, ICE Enforcement and Removal Operations San Diego Field Office. He is sued in his official capacity.

23. **KRISTI NOEM** is the Secretary of the U.S. Department of Homeland Security (DHS). DHS oversees ICE, which is responsible for administering and enforcing the immigration laws. Secretary Mayorkas is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

24. **PAMELA BONDI** is the Attorney General of the United States. She oversees the immigration court system, which is housed within the Executive Office for Immigration Review (EOIR) and includes all IJs and the Board of Immigration Appeals (BIA). She is sued in her official capacity.

LEGAL FRAMEWORK

A. Withholding of Removal and Relief Under the Convention Against Torture:

25. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a

right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the Refugee Act is to enforce the "historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands." *Refugee Act of 1980*, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

26. The "motivation for the enactment of the Refugee Act" was the United Nations Protocol Relating to the Status of Refugees, "to which the United States had been bound since 1968." INS v. Cardoza-Fonseca, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory meaning to our national commitment to human rights and humanitarian concerns.'" *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

27. The Refugee Act established the right to apply for asylum in the United States and defines the standards for granting asylum. It is codified in various sections of the INA.

28. The INA gives the Attorney General or the Secretary of Homeland Security discretion to grant asylum to noncitizens who satisfy the definition of "refugee." Under that definition, individuals generally are eligible for asylum if they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion and if they are unable or unwilling to return to and avail themselves of the protection of their homeland because of that persecution of fear. 8 U.S.C. § 1101(a)(42)(A).

29. Although a grant of asylum may be discretionary, the right to apply for asylum is not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1).

30. Because of the life-or-death stakes, the statutory right to apply for asylum is robust. The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. § 1229a(b)(4)(A), § 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on the applicant to present evidence to establish eligibility.).

31. In 1996, Congress created "expedited removal" as a truncated method for rapidly removing certain noncitizens from the United States with very few procedural protections. 8 U.S.C. § 1225(b)(1). Because there are few procedural protections, expedited removal applies narrowly to only those noncitizens who are inadmissible to the United States because they engaged in fraud or misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required documentation, 8 U.S.C. § 1182(a)(7). No other person may be subjected to expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3).

32. Noncitizens subjected to expedited removal are ordered removed by an immigration officer "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i). That officer must determine whether the individual has been continuously present in the United States for less than two years; is a noncitizen; and is inadmissible because he or she has engaged in certain kinds of fraud or lacks valid entry documents "at the time of . . . application for admission." See 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).

33. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the U.S. Constitution. Reno v. Flores, 507 U.S. 292, 306 (1993).

34. Noncitizens who are applicants for asylum are entitled to a full hearing in immigration court before they can be removed from the United States. 8 U.S.C. § 1229a.

Consistent with due process, noncitizens may seek administrative appellate review before the Board of Immigration Appeals of removal orders entered against them and judicial review in federal court upon a petition for review. 8 U.S.C. § 1252(a) et seq.

35. Otherwise, if the officer concludes that the individual is inadmissible under an applicable ground, the officer "shall," with simply the concurrence of a supervisor, 8 C.F.R. § 235.3(b)(7), order the individual removed "without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

36. Thus, a low-level DHS officer can order the removal of an individual who has been living in the United States with virtually no administrative process—just completion of cursory paperwork—based only on the officer's own conclusions that the individual has not been admitted or paroled, that the individual has not adequately shown the requisite continuous physical presence, and that the individual is inadmissible on one of the two specified grounds.

37. Once a determination on inadmissibility is made, removal can occur rapidly, within twenty-four hours.

38. Asylum is not an admission to the United States and an applicant for asylum, while they must be physically present in the United States to apply, need not apply for or seek admission to the United States. Matter of V-X-, 26 I&N Dec. 147 (BIA 2013).

39. For those who fear return to their countries of origin, the expedited removal statute provides a limited additional screening. But the additional screening, to the extent it occurs, does not remotely approach the type of process and the rights available to asylum seekers receive in regular Section 240 immigration proceedings.

40. An expedited removal order comes with significant consequences beyond

removal itself. Noncitizens who are issued expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C.§ 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, noncitizens issued expedited removal orders after having been found inadmissible *based on misrepresentation* are subject to a lifetime bar on admission to the United States unless they are granted a discretionary exception or waiver. 8 U.S.C. § 1182(a)(6)(C).

41. Expedited removal only applies to noncitizens who are inadmissible on one of two specified grounds: 8 U S.C. § 1182(a)(6)(C): 1) it applies to those who seek to procure immigration status or citizenship via fraud or false representations, or 2) § 1182(a)(7), which applies to noncitizens who, "at the time of application for admission," fail to satisfy certain documentation requirements. 8 U.S.C. § 1225(b)(1)(A)(1). *If DHS seeks to remove noncitizens based on other grounds, they must afford the noncitizen a full hearing before an immigration judge. See 8 C.F.R. § 235.3(b)(1), (3).*

42. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

43. Thus, non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: 1) asylum, 2) withholding of removal, and 3) CAT relief. There are no restrictions on eligibility for CAT (the United Nations Convention Against Torture) deferral of removal. 8 C.F.R. § 1208.16.

44. The facts show that Petitioner, Vladimir, was paroled into the U.S., given six (6) conditions as a condition of parole, non of which he as violated. He has become a contributing

member of society, rising to coach of the USCS Foil Fencing Team, where the competition schedule is just beginning. He coaches a U.S. fencer who is near qualification for the Olympics. One of the urgent purposes of this petition is to return him to his duties at the University, so while his application for asylum is being processed, he can continue in that role.

1. **Vladimir's Confinement is Unnecessary and Inappropriate Under the ICE Regulations:**

45. Vladimir's application is for protection from removal. He has been in the U.S. for three (3) years and nine (9) months, without removal. He has become a productive member of U.S. society, serving with distinction as a valued coach of the University of California San Diego Fencing Team. His release will not threaten the laws of the United States, nor the statutes regulating ICE processes. He will always be available for lawful proceedings in the administrative offices of ICE or the U.S. Courts throughout his processing.

III. This Court Has the Discretion to Grant Habeas Relief Without Exhaustion of Remedies:

46. First, in detention cases, appeals to the Board of Immigration Appeals (BIA) can take months or years. Thus, requiring habeas petitioners to appeal to the BIA to prudentially exhaust is woefully inefficient, would cause irreparable harm by continuing to deprive a person of their liberty, would result in harming others beyond the petitioner and/or would be futile where the agency has a precedent decision on the relevant issue.

47. Second, while exhaustion of administrative remedies may be either statutorily or judicially required. There is no statutory exhaustion requirement in 28 U.S.C § 2241. However, although exhaustion may be judicially required, (this type of exhaustion is known as prudential exhaustion), it is not mandatory… Thus, *Courts may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies*

would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." [Emphasis supplied]. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (quoting *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d.

Vladimir Prieto-Cordova requests this court to waive any requirements of exhaustion and to rule on his petition to be released from custody. *He is absolutely not a flight risk!*

FACTUAL BACKGROUND

48. Vladimir is a Venezuelan citizen. He was born in that country, was educated there, and eventually rose to a position of positive notoriety and prominence based on his achievements in the sport of fencing.

49. Petitioner, Vladimir Ernesto Prieto-Cordova has been extraordinarily successful with the UCSD Fencing Team up to the day ICE took him into custody on October 9, 2025. For example, fencing is a high-profile sport in Venezuela as it is one of the very few sports that regularly qualifies athletes for the Olympics specially from 1996 till now. The highlight is the Olympic gold in London by Ruben Limardo. Here you can see a list of Venezuelan fencers that competed in the Games. You can see that foilist Antonio Leal competed in the Rio Olympics with Valdimir as a National Coach.

50. Valdimir works as Foil Coach at UCSD, which is a Division I Fencing Team than regularly ranks in the top 15 in the country. One of the most notable fencers Vladimir is coaching right now at UCSD is sophomore Katherine [ ]. Some of her most notable results include: 7th at NCAA Championships'25 (qualifying her as an "All American"); 7th at World University Games'25; and 4th in the Under 20 World Ranking for 23-24, which puts her in the running for the Olympics representing the United States.

51. After his individual achievements, he became a coach of the sport of fencing for 17 years, and coached the Venezuelan National Team. He also gained prominence as an International Fencing Referee, achieving honors throughout the greater international fencing community. He is now incarcerated at the Otay Mesa Federal Detention Center, in spite of his status under U.S. Law as an asylum seeker from an authoritarian regime with a record of crimes against its population. The current administration has just threatened to go to war with this country of Venezuela.

52. **Vladimir the Athlete & Coach**: Vladimir was a National and World Figure in Venezuela when he fled the persecution he was experiencing in Venezuela. He was ranked nationally in his weapon at the top, and was ranked in the World rankings as well. So accomplished was he, that he was recruited by UCSD to coach its Foil team. He coached the Venezuelan National Team for eight (8) years and has been a top-level coach for 17 years. He was a very successful fencer for the Venezuelan National Team as well. In addition, he is a highly respected International Fencing Referee in all three weapons, Sabre, Foil and Epee, and is highly ranked as an international referee by the Federacion Internationale Escrime (FIE), which is an honor in-and-of itself, and is known world-wide in the international fencing community.

53. ***Using Vladimir's own words***, he is and was an athlete and a vocal opponent of Nicolás Maduro's regime in Venezuela. Due to his involvement and reputation in sports, he was forced to attend political events, where he was repeatedly threatened with persecution and violence.

54. On November 21, during the regional elections, an armed group entered the apartment where he was living. They attempted to force him to vote for the regime. The group included members of collectives from Del Valle and soldiers from Fuerte Tiuna. They threatened

to harm him, specifically saying they would leave him paralyzed so he could never practice sports again.

He has actively participated in street demonstrations supporting the opposition and advocating for democracy in Venezuela. As an athlete, he is recognized both in his country and internationally. He is part of the sports community, which is considered a professional organization. Over the years, he has represented Venezuela in numerous international competitions, gaining recognition worldwide.

55. He fears for his life. There have been numerous cases of people being murdered simply for opposing the regime. He worked for a long time with the Ministry of Sports, and now he is labeled a "deserter" and "traitor" for fleeing Venezuela. If he returns, the regime will likely arrest him, and he fears he could be tortured or even killed for not supporting it. He is certain that if he returns, he will be captured, tortured, and possibly killed because of his opposition to the regime. Throughout his time in Venezuela, he was an active member of the opposition, participating in peaceful activities supporting democracy. His father, Luis Prieto, was also involved in the Civil Political Association, and he continues to support the Venezuelan opposition, participating in peaceful activities here in the United States.

56. He has lived in constant fear because of the armed collectives and military groups that have a history of kidnapping, torturing, and even killing opponents. The sports ministry in Venezuela has close ties to these collectives, particularly in areas like La Vega, where he lived. Figures like Pedro Infante, Alejandra Benitez, and Marvin Maldonado have strong connections to these violent groups. He fears for his life, knowing these groups will stop at nothing to carry out their threats.

57. The United States is the only country that has offered protection to Venezuelans like him. Other countries have rejected him and his followers or allowed attacks against them because of their nationality.

58. He traveled directly to Mexico from Venezuela, while in transit. However, he was not offered any immigration status or protection. He, Vladimir Prieto-Cordova, is now applying for asylum in the United States to safeguard his life.

59. As an athlete, he has represented Venezuela in numerous international competitions, including in Chile, Japan, Russia, Canada, Costa Rica, Puerto Rico, Poland, and Mexico. Being part of the sports community is not easy; it requires specific characteristics, and not everyone can be part of it. As an athlete and coach, he has been recognized both in his country and internationally. He was identified by the regime and pressured to participate in events that supported Nicolás Maduro. However, he has always refused to endorse the regime, as he does not believe in its values.

60. During his time working with the Ministry of Sports, he witnessed widespread misuse of funds and corruption. He has never supported the current regime and endured many threats and harassment as a result. Ministry officials often sent people to monitor athletes, particularly those in La Vega, to intimidate he and his followers into supporting Maduro. He was constantly threatened and harassed simply for not aligning with the regime's views. (See Vladimir Sworn Statement).

61. **Vladimir the Asylum Seeker**: He is an asylum seeker who applied for asylum status two (2) days late January 25, 2023, based upon his attorney's sad inattention to the requirements of the statutes after arriving in the United States, pursuant to United States law. Asylum is a protection grantable to foreign nationals already in the United States or arriving at the border who meet the international law definition of a "refugee." The United Nations' 1951 Convention

Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees define a refugee as a person who is unable or unwilling to return to their home country, and cannot obtain protection in that country, due to past persecution *or a well-founded fear of being persecuted in the future "on account of race, religion, nationality, membership in a particular social group, or political opinion."* [Emphasis supplied]. Congress incorporated this definition into U.S. immigration law in the Refugee Act of 1980. Asylum is technically a "discretionary" status, meaning that some individuals can be denied asylum even if they meet the definition of a refugee. For those individuals, backstop forms of protection known as "withholding of removal" and relief under the Convention Against Torture may be available to protect them from harm. Vladimir is one of the individuals protected by the Refugee Act of 1980.

62. Vladimir's continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in Zadvydas v. Davis, 533 U.S. 678 (2001), because his legitimate removal is not reasonably foreseeable. He cannot be deported to his home country of because his application is in anticipation that if returned to Venezuela, he would be tortured or worse. He is entitled to the protection under the Convention Against Torture (CAT) with respect to that country. 8 C.F.R. § 1208.17.

63. ICE's sudden, probable attempt, to remove Vladimir to a random collection of unspecified alternative countries, (but because even ICE must recognize the danger to him if he were to be returned to Venezuela)—to which he has no ties, and which have no policy or history of accepting non-citizen deportees—are speculative and pointless and would not be a viable option.

64. Furthermore, the ICE San Diego Otay Field Office's sudden custodial detention of Vladimir signals its intent to deport to any country, based on news reports of its activities, and similarly situated individuals holding them without prompt, individualized determinations of

whether they should remain detained and seeking countries with which a detainee has no contact. This conduct is inconsistent with ICE's own long-standing policy, thereby violating the Administrative Procedure Act (APA) and due process. See Accardi v. Shaughnessy, 347 U.S. 260 (1954).

65. **Qualified Fencing Coaches Are Prized in the U.S.** What is remarkable about Vladimir's story is that there are many, many coaches throughout the United States that are here either on O-1visas or Green Cards, because they are so sought after in this extremely popular, very fast growing sport in the U.S. They come from a variety of countries, including many from Russia, Italy, France, Ukraine, and several others. Under different circumstances, had Vladimir's country been more stable and less authoritarian, Vladimir could have easily obtained, at the very least, an O-1 visa, and been here as a recognized and welcomed refugee and top fencing coach. O-1 visas are given to athletes and coaches who obtaining an O-1 visa as a fencing coach demands proof of exceptional achievements, strong sponsorship, and careful adherence to USCIS guidelines. to qualify, you must have sustained national or international acclaim for your achievements, which is demonstrated through extensive documentation showing you are among the top of your field. You must meet specific criteria, which often includes providing evidence from at least one of three of the category, the most obvious being The O-1 visa is a temporary work visa designated for individuals who have achieved and sustained national or international acclaim, which Vladimir certainly has. .

ARGUMENT

66. It is apparent that Respondents are commencing removal proceedings against him in immigration court with the threat of deportation to a different country than Venezuela, entitling him to present this habeas asylum claim with the due process rights under 8 U.S.C. § 1229a.

Following what the news reports tell us of ICE's practices, it is highly likely that ICE will try to eject him from his own asylum case, continue to detain him and possibly rapidly transfer him away from this district so that they can remove him from the Southern District of California. While ICE has not spoken to what its intentions are with respect to Vladimir because they have only just detained him, he is in danger of being deported, which should not happen, and then to a country not his own.

67. The primary relief that Vladimir seeks from this court is an order of release from custody and a stay of any deportation orders, pending a resolution of his asylum claims.

68. Accordingly, to vindicate Petitioner's rights, this Court is requested to grant the instant petition for a writ of habeas corpus and to immediately issue and staying any deportation or transfer orders out of this district, and release him from custody.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

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

69. Petitioner re-alleges and incorporates by reference the paragraphs above.

70. Petitioner's *potential prolonged detention* under § 1225(b) without any individualized assessment of the need for detention deprives petitioner of due process of law. The Court should therefore order release from unconstitutional detention. It is important to note that this Claim for relief only anticipates prolonged detention in supporting an argument for release pending the ongoing proceedings, not that prolonged detention currently exists. Counsel for Petitioner recognizes that this is not a "prolonged detention case," at least not yet.

71. 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.

72. "[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").

73. "A statute permitting indefinite detention of an alien would raise a serious constitutional problem" under the Fifth Amendment's Due Process Clause. Id. at 690. That serious constitutional problem is raised by the government's reading of § 1225(b). It interprets the statute to permit the indefinite detention of a noncitizen whom the government has not found to be removable or inadmissible, but instead granted the right to remain in the United States pending removal proceedings after demonstrating a credible fear of persecution to an asylum officer.

74. 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.*

75. 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.

76. In doing so, they follow *Demore v. Kim*, 538 U.S. 510, 518 (2003). Demore identified mandatory detention pending removal proceedings as a "brief period," lasting "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal."

77. Thus, in the Second and Ninth Circuits, the reasonable period of § 1226(c) mandatory detention pending removal proceedings ends at six months. *Lora*, 804 F.3d at 613; *Rodriguez, 804* F.3d at 1065. The remaining circuits to have addressed the issue hold detention unreasonable after six months, depending on the facts and circumstances of the case, with nine months "straining any common-sense definition of a limited or brief civil detention." Chavez-*Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 477 (3d Cir. 2015). While Vladimir has only been incarcerated for two weeks, his circumstances are such that any longer time after this would be disastrous to him and the people he serves, his student athletes.

78. The only Court of Appeals to consider prolonged detention under § 1225(b) holds that "to avoid serious constitutional concerns, mandatory detention under § 1225(b) . . . must be construed as implicitly time-limited." *Rodriguez*, 804 F.3d 1060.

79. Following *Rodriguez* and *Lora*, numerous district courts in the Second Circuit hold that due process limits mandatory detention under § 1225(b) to a reasonable period of six months.

See, e.g., *Ricketts v. Simonse*, 2016 WL 7335675 (S.D.N.Y. Dec. 16, 2016); *Saleem v. Shanahan*, 2016 WL 4435246 (S.D.N.Y. Aug. 22, 2016); *Arias v. Aviles*, 2016 WL 3906738 (S.D.N.Y. July 14, 2016). They are joined by district courts in other circuits. See, e.g., *Ahad v. Lowe*, 2017 WL 66829 (M.D. Pa. Jan. 6, 2017); *Gregorio-Chacon v. Lynch*, 2016 WL 6208264 (D.N.J. Oct. 24, 2016); *Damus v. Tsoukaris*, 2016 WL 4203816 (D.N.J. Aug. 8, 2016); Bautista v. Sabol, 862 F. Supp. 2d 375, 377 (M.D. Pa. 2012); *Maldonado v. Macias*, 150 F.Supp.3d 788 (W.D. Tex. 2015).

80. 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).

81. 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)).

82. 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.

83. Petitioner's potential prolonged, indefinite detention under § 1225(b) 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. See, e.g., *Nadarajah v. Gonzales*, 443 F.3d 1069, 1084 (9th Cir. 2006); *Madrane v. Hogan*, 520 F.Supp.2d 654 (M.D. Pa. 2007); *Victor v. Mukasey*, 2008 WL 5061810 (M.D. Pa. Nov. 25, 2008); *Nunez-Pimentel v. U.S. Dep't of Homeland Security*, 2008 WL 2593806 (M.D. Pa. June 27, 2008) (ordering release from prolonged detention pending removal proceedings).

SECOND CLAIM FOR RELIEF

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT § 235(b), 8 U.S.C. § 1225(b)

Petitioner re-alleges and incorporates by reference the paragraphs above.

84. Under the statutory interpretation doctrine of constitutional avoidance, the Court should construe § 1225(b) as limited to a reasonably brief period, extendable only if the government shows justification for detention at a bond hearing.

85. Though the government's interpretation of § 1225(b) as permitting indefinite mandatory detention is unconstitutional, "[w]hen the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell v. Benson*, 285 U.S. 22, 62 (1932); see also *Zadvydas*, 533 U.S. 678 at 689 (citing *Crowell*). This doctrine of statutory interpretation is known as constitutional avoidance.

86. "[T]he Supreme Court has instructed that, where one possible application of a statute raises constitutional concerns, the statute as a whole should be construed through the prism of constitutional avoidance." *Rodriguez v. Robbins*, 715 F.3d 1127, 1141 (citing *Clark v. Martinez*, 543 U.S. 371, 380 (2005)). "Thus, the dispositive question is not whether the government's reading of § 1225(b) is permissible in some (or even most) cases, but rather whether there is any single application of the statute that calls for a limiting construction." Id.

87. In *Martinez*, the Court analyzed § 1231(a)(6), a statute it had previously read as a matter of constitutional avoidance to limit mandatory detention after the conclusion of removal proceedings to a presumptively reasonable period of six months. *Zadvydas v. Davis*, 533 U.S. 678. The same statute applied to both admitted and inadmissible noncitizens, but the government argued that the same limit on detention did not apply to inadmissible noncitizens because they were not entitled to the same constitutional protections. Martinez, 543 U.S. at 380.

88. The text of the statute did not distinguish between the two classes, however, and "[t]o give these same words a different meaning for each category would be to invent a statute rather than interpret one." Id. at 378. Because the same statutory text applied to both groups, and detention for more than six months raised constitutional concerns for at least the admitted noncitizens, every noncitizen subject to the statute was entitled to the same reading limiting mandatory detention. "The lowest common denominator, as it were, must govern." Id. at 380.

89. The government reads § 1225(b) to permit the prolonged detention without a bond hearing of all "arriving aliens," 8 C.F.R. § 1.2., including both asylum seekers and certain lawful permanent residents ("LPR") who depart the country and seek admission upon their return. INA § 101(a)(13)(C), 8 U.S.C. § 1101(a)(13)(C) (identifying LPRs classified as arriving aliens when

returning to the United States after travel abroad); 8 C.F.R. § 1003.19(h)(2)(i)(B) (depriving an immigration judge of jurisdiction over a bond hearing for arriving aliens in removal proceedings).

90. As explained above in the First Claim for Relief, arriving asylum seekers are entitled to be free from arbitrary and capricious detention under the Due Process Clause. Even assuming arguendo they were not, however, LPRs are entitled to due process in prolonged detention because "once an alien gains admission to our country and begins to develop the ties that go with permanent residence his constitutional status changes accordingly." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

91. In *Plasencia*, the Supreme Court ruled that an LPR seeking readmission after a trip abroad and charged as "excludable" (the former term of art for "inadmissible" under then-current immigration laws), could nonetheless "invoke the Due Process Clause on returning to this country . . . " Id. Because an LPR's due process right is constitutional in nature, it may not be stripped by mere statutory designation as an "arriving alien." See *Kwong Hai Chew v. Colding*, 344 U.S. 590, 600 (1953) (in the case of a returning LPR, holding that "[f]rom a constitutional point of view, he is entitled to due process without regard to whether or not, for immigration purposes, he is to be treated as an entrant alien").

92. Section 1225(b) would therefore "raise a serious constitutional problem," *Zadvydas*, 533 U.S. at 690, if read to deny a bond hearing to LPRs held as arriving aliens in prolonged detention. Thus, as a matter of constitutional avoidance, the statute must be read to require a bond hearing when detention becomes unreasonably prolonged. Ricketts v. Simonse, 2016 WL 7335675; Arias v. Aviles, 2016 WL 3906738 *4-*10.

93. Moreover, because the text of § 1225(b) does not distinguish between LPRs and other noncitizens charged as arriving aliens, LPRs are the statute's "lowest common denominator."

Martinez, 543 U.S. at 380. Section 1225(b) must therefore be read to grant all noncitizens held as arriving aliens the same due process protections afforded to LPRs in unreasonably prolonged detention. *Rodriguez v. Robbins*, 715 F.3d 1127, 1142-43, at *1; *Saleem v. Shanahan*, 2016 WL 4435246, at *3-*5.

94. The only Court of Appeals to address detention under § 1225(b) holds that it becomes unreasonably prolonged at six months. *Rodriguez*, 715 F.3d at 1144. Such a bright-line limit follows the practice of both the Supreme Court and Second Circuit of limiting mandatory immigration detention to the presumptively reasonable period of six months. *Zadvydas*, 533 U.S. at 701 ("We do have reason to believe . . . that Congress previously doubted the constitutionality of detention for more than six months."); *Lora v. Shanahan*, 804 F.3d 601, 616 (2d Cir. 2015) ("[W]e hold that[] in order to avoid the constitutional concerns raised by indefinite detention, an immigrant . . . must be afforded a bail hearing before an immigration judge within six months of his or her detention." This Court should therefore find that petitioner, whose mandatory detention exceeds six months, is entitled to a bond hearing.

95. "[S]ometime after the six-month timeframe considered by *Demore*, and certainly by the time [a noncitizen] ha[s] been detained for one year," mandatory detention is unreasonable. Id. at 478.

96. Moreover, delay caused by "individual actions by various actors in the immigration system, each of which takes only a reasonable amount of time to accomplish, can nevertheless result in the detention of a removable alien for an unreasonable, and ultimately unconstitutional, period of time." *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 223.

97. The reasonableness of ongoing detention must also consider "whether an alien challenges aspects of the Government's case that present real issues, for example: a genuine

factual dispute; poor legal reasoning; reliance on a contested legal theory; or the presence of a new legal issue." It is impermissible to "effectively punish these aliens for choosing to exercise their legal right to challenge the Government's case against them by rendering the corresponding increase in time of detention as reasonable." *Chavez-Alvarez*, 783 F.3d at 476.

THIRD CLAIM FOR RELIEF

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT § 236(a), 8 U.S.C. § 1226(a)

98. Petitioner re-alleges and incorporates by reference the paragraphs above.

99. As a matter of statutory interpretation, this Court should hold that § 1225(b) is limited to the period between a noncitizen's arrest as an arriving alien and the commencement of her removal proceedings before an immigration judge. Such an interpretation is supported by the text, purpose, and overall construction of the statute, the doctrine of constitutional avoidance, and the government's own practice of limiting mandatory detention of other recently arrived noncitizens to the period before removal proceedings commence. The Court should therefore find that petitioner's detention pending removal proceedings is authorized not by § 1225(b), but by the discretionary detention statute at § 1226(a), *entitling petitioner to an immediate bond hearing*.

100. The plain text of § 1225(b) mandates detention of arriving aliens only for the period between their arrest and before they are referred to an immigration judge for removal proceedings. The two subsections of § 1225(b) at issue here permit detention only "for further consideration of the application for asylum," 8 U.S.C. § 1225(b)(1)(B)(ii) and "for a proceeding . . . ." Id. § 1225(b)(2)(a). Neither provision governs detention beyond that point, much less pending completion of removal proceedings. See Webster's Third New International Dictionary 886 (1993) (defining "for" to mean "as a preparation toward . . . or in view of"). Pending removal

proceedings, detention is authorized by section 1226(a), entitling Mr. [client] to a bond hearing. See *Matter of X-K-, 23 I. & N.* Dec. at 731 ("Immigration Judges have custody jurisdiction over aliens in . . . removal proceedings . . . .")

101. Where Congress intended to authorize detention pending completion of an administrative proceeding, it unambiguously said so. See 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (stating that a noncitizen "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed"); id. § 1226(a) ("an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States). (emphases added). Cf. *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994) ("A term appearing in several places in a statutory text is generally read the same way each time it appears.").

102. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Nken v. Holder*, 556 U.S. 418, 430 (2009) (internal citations and alterations omitted). This is "particularly true here" where the provisions at issue were "enacted as part of a unified overhaul" of the statute under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Id. at 430-31.

103. The overall construction of the statute also supports a reading that limits § 1225(b) detention to the period before removal proceedings commence. Cf. *United States v. Witkovich*, 353 U.S. 194, 199 (1957) ("A restrictive meaning for what appear to be plain words may be indicated by the Act as a whole . . . ."). Section 1225 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." Section 1225(b) is titled "Inspection of Applicants for Admission." The subsections at issue here are titled "Asylum Interviews: Referral of certain aliens," 8 U.S.C. § 1225(b)(1)(B)(ii), and "Inspection of other aliens: In

general," id. § 1225(b)(2)(A). By their plain language, none of these sections address detention authority pending removal proceedings. Rather, they address only detention pending inspection and referral to subsequent removal proceedings. Authority for mandatory detention pending removal proceedings appears instead in 8 U.S.C. § 1226, in a section appropriately titled "Apprehension and detention of aliens." That section does not authorize mandatory detention pending removal proceedings for arriving aliens.

104. Where Congress intended to authorize mandatory detention of arriving aliens past the inspection and referral process, it provided specific statutory authority to do so. In § 1225(b)(1)(B)(iii)(IV), titled "Mandatory Detention," Congress provided for the detention of a noncitizen "pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." If Congress had intended to subject all arriving aliens to mandatory detention beyond the inspection and referral process, the specific mandate in § 1225(b)(1)(B)(iii)(IV) would be superfluous. "It is a cardinal principle of statutory construction that a statute ought . . . to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal quotations omitted).

105. Moreover, as explained above in the Second Claim for Relief, the doctrine of constitutional avoidance requires this Court to "first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided." *Crowell v. Benson*, 285 U.S. 22, 62. In light of the text and overall construction of § 1225(b), as discussed above, the statute may be fairly construed to limit mandatory detention to the period before removal proceedings commence. The Court must do so in order to avoid the constitutional question raised by the government's reading.

106. Petitioner's interpretation of § 1225(b) also accords with the government's own practice of detaining other recent arrivals under § 1226(a) once they pass a credible fear interview and their removal proceedings have commenced. Both noncitizens who present themselves at the border and those who enter without inspection and are subsequently arrested near the border are initially detained under § 1225(b)(1)(B)(ii) for expedited removal proceedings. See *Matter of X-K-*, *23 I. & N.* Dec. 731, 734.

107. Once the government determines that either arriving aliens or entrants without inspection have a credible fear of persecution, it refers them to non-expedited removal proceedings. Yet for entrants without inspection alone, the government detains under § 1226(a) once removal proceedings commence. Id. This entitles entrants without inspection, but not those who present themselves to an officer to seek asylum, to an immediate bond hearing.

108. The text of § 1225(b) does not distinguish between entrants without inspection and those who, like petitioner Vldimir, present themselves at the border. It therefore must be construed consistently to be limited to the period before removal proceedings commence. *Clark v. Martinez*, 543 U.S. at 378 ("To give these same words a different meaning for each category would be to invent a statute rather than interpret one.").

109. Finally, a construction of § 1225(b) as limited to before commencement of removal proceedings avoids the absurd result of incentivizing entry without inspection. According to the government's reading of § 1225(b), Congress incentivized asylum seekers to enter without inspection rather than present themselves at the border by providing access to bond hearings during removal proceedings for only the first class. It is improbable that Congress intended such a result with § 1225(b), because the purpose of mandatory detention is "preventing . . . aliens from

fleeing prior to . . . their removal proceedings[,]" *Demore v. Kim*, 538 U.S. 510, 527–28, not avoiding removal proceedings altogether by entering without inspection.

110. This Court should therefore hold that petitioner's detention pending removal proceedings is governed by § 1226(a), entitling him to a bond hearing upon request, and based upon his circumstances, release on his own recognizance.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

a. Assume jurisdiction over this matter;

b. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6); the Administrative Procedure Act, 5 U.S.C.§ 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

c. Order Petitioner's immediate release.

e. Grant any other further relief this Court deems just and proper.

Respectfully submitted,

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Admitted in Maryland Only

ATTACHMENTS:

Attachment A:	ORDER OF RELEASE ON RECOGNIZANCE
Attachment B:	APPLICATION FOR ASYLUM & FOR WITHOLDING OF REMOVAL
Attachment C:	ORDER OF RELEASE ON RECOGNIZANCE & NOTICE OF CUSTODY DETERMINATION
Attachment D:	ORDER OF RELEASE ON RECOGNIZANCE ADDENDUM
Attachment E:	NOTICE OF CUSTODY DETERMINATION
Attachment F:	AFFIDAVIT OF VLADIMIR PRIETO-CORDOVA
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Attachment H:	FLORIDA PROCEEDINGS (200 PAGE DOCUMENT BY SEPARATE COVER)

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