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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SAN FRANCISCO-OAKLAND DIVISION

CLENE COSTA DIAS *Petitioner,* v. Polly KAISER, Field Office Director of the San Francisco Field Office of U.S. Immigration and Customs enforcement; Todd M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, Kristi NOEM, Secretary of the U.S. Department of Homeland Security, and Pamela BONDI, Attorney General of the United States *Respondents,*	**Case No. 25-MC-80347** **REQUEST FOR PRELIMINARY INJUNCTION** Note on Motion Calendar: **ORAL ARGUMENT REQUESTED**

INTRODUCTION

Petitioner Clene Costa Dias ("Petitioner") is a Brazilian noncitizen detained by Immigration and Customs Enforcement (ICE) at the ICE San Francisco Field Office, in San Francisco, California. She entered the United States in or around October 18, 2024, and she was subsequently released on parole. For the next twelve months, Petitioner complied with what was asked of her: she looked for counsel to represent her in immigration court, filed an asylum application and supporting documents, and she has adhered to the conditions of her release, including telephonic and video check-ins as part of the Intensive Supervision Appearance Program (ISAP). Nevertheless, in or around October 31, 2025, she was arrested at a check-in at the San Francisco ICE field office, without any notice or opportunity to respond to any allegation purportedly justifying her re-detention. She remains in detention at the ICE San Francisco Field Office, separated from her immediate family and friends.

At no time prior to her arrest did Respondents provide Petitioner a hearing, let alone a hearing before a neutral decisionmaker at which ICE was required to justify her re-detention and show that she now poses a flight risk or danger to the community. Indeed, she was not provided any notice as to the reason for her re-detention, much less the written notice required under 8 C.F.R. § 212.5(e)(2) that must accompany a revocation of parole. Nor has she received any meaningful opportunity to respond to any allegations triggering her re-detention.

By denying her any notice and hearing, Respondents violated Petitioner's right to due process. As a number of Federal District courts recently held, her ongoing detention is therefore unlawful, and her immediate release is required. (See e.g., *E.A. T.-B. v. Wamsley*, No. 25-cv-1192-KKE, --- F. Supp. 3d ---, 2025 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025) (ordering immediate release because "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty"). Accordingly, Petitioner respectfully seeks immediate relief from this Court to vindicate her right to liberty under the Fifth Amendment's Due Process Clause.[1]

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[1] Together with the filing of the habeas petition and motion, counsel certifies that they are providing concurrent notice regarding this filing to the U.S. Attorney's Office for the Central District of California via fax (559-497-4099)

STATEMENT OF FACTS

Petitioner Clena Costa Dias ("Petitioner") is an asylum seeker who fled Brazil due to threats against her life by members of a police militia group who were after her spouse sue to him having witnessed some of its members murdering someone. (Dec. of Jose F. Vergara, ¶ 2.) After Petitioner arrived in the United States on October 18, 2024 , federal agents detained her, but after determining that she was not a flight risk or danger to the community, they released her on her own recognizance with a Notice to Appear for removal proceedings with the Concord Immigration Court. (Id.) Since then, Petitioner has been residing along with her spouse, Cleide Alexandre Soares Junior in Contra Costa County. (Id.) Since her arrival in the United States, she has made a living cleaning homes. (Id. ¶ 3.) She also has made numerous friends and she is an active member at her local church. (Id., ¶ 2.) Petitioner also did everything the government asked her to do, including complying with all terms of her monitoring program, which includes sending pictures of herself to ICE on a regular basis, and maintain ICE informed of her whereabouts. (Id.) In addition, Petitioner has no criminal history anywhere in the world. (Id.) Petitioner filed an asylum application and supporting evidence with the Concord Immigration Court on May 6, 2025. The Immigration Court scheduled her individual immigration court hearing for August 24, 2028. (Id., ¶ 4.)

On October 26 or 27, 2025, Petitioner was instructed to appear at the ICE San Francisco Field Office on October 31, 2025. (Id., ¶ 5.) Prior to that date, Respondent had sent numerous selfie-pictures to ISAP, and she always provided updates about her new address. During the monitoring process, Petitioner was one hour late with taking a picture due to the fact she was at work. On another occasion she received an instruction to take a selfie-picture immediately. When she received the instruction, she was on her way to work. Still, she always kept ICE informed about her whereabouts. (Id.)

Petitioner presented herself at the San Francisco Field Office with her Immigration attorney. Where she was instructed to talk to a Deportation Officer. (Id., ¶ 5.) The Deportation Officer informed Petitioner that she had a number of violations relating to the monitoring program. Her counsel asked for

any evidence of these violations, but the Deportation Officer was unable to provide any evidence of information about any violations. Petitioner was then placed in Detention. (Id.) As of the time of filing of this motion, she is still being held at the ICE San Francisco Field Office, at 630 Sansome Street, in San Francisco. (Id.)

Petitioner filed a habeas petition in this court along with the present motion. By means of the present motion, she now seeks immediate relief from her continued, unlawful detention.

ARGUMENT

Requirements for a preliminary injunction order

On a motion for a TRO or an injunction, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." (*Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are "substantially identical").) A TRO may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." (*All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified).) To succeed under the "serious question" test, Petitioner must also show that he is likely to suffer irreparable injury and that an injunction is in the public's interest. (Id. at 1132.)

Petitioner is likely to succeed on the merits of her argument that her detention is unlawful because she was not afforded a pre-deprivation hearing

Due process requires Respondents to afford Petitioner a hearing before a neutral decisionmaker where ICE is required to justify re-detention *before* it occurs. In recent months, as DHS has detained many similarly-situated noncitizens, several courts—including District Courts in California—have held the same and ordered the immediate release of noncitizens who had been re-detained by DHS without a pre-deprivation hearing. (*See, e.g.*, *E.A. T.-B.*, 2025 WL 2402130; *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 2084921

(N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).) In light of this, Petitioner is likely to succeed on her claim and the Court should order her immediate release. If Respondents continue to assert that her detention is justified after her release, they may thereafter schedule a hearing where they bear the burden of presenting clear and convincing evidence that her re-detention is warranted.

In regards to cases involving an immigrant being re-detained, the U.S. District Court for the Western District of Washington recently explained in *E.A. T.-B.*, the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976) is the controlling framework for determining what process Petitioner is due. *Mathews* requires the Court to evaluate (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguard" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (424 U.S. at 335; *see also Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (applying *Mathews* factors to assess right to pre-deprivation hearing); *Morrissey v. Brewer*, 408 U.S. 471, 482–84 (1972) (assessing parolee's liberty interests and the state's interests to assess what process is due a parolee). Here, those factors strongly favor Petitioner.

A. Petitioner Has a Weighty Private Interest.

Petitioner has an exceptionally strong interest in freedom from physical confinement and in a hearing prior to any revocation of her liberty. Indeed, her "interest in not being detained is 'the most elemental of liberty interests[.]'" (*E.A. T.-B.*, 2025 WL 2402130, at *3 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).) Thus, "[d]etention, including that of a non-citizen, violates due process if there are not 'adequate procedural protections' or 'special justification[s]' sufficient to outweigh one's 'constitutionally protected interest in avoiding physical restraint.'" (*Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second

alteration in original) (quoting *Zadvydas*, 533 U.S. at 690).) Similarly, the Ninth Circuit has held that "[i]n the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" (*Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. *See, e.g.*, *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).)

This principle applies with significant force given Petitioner's initial release from detention on parole. "The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated." (*Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017).) As the *Hurd* court explains, this includes cases of "pre-parole conditional supervision," *id.* (citing *Young v. Harper*, 520 U.S. 143, 152 (1997)); "probation," (Id.) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)), and "parole," (Id.) (citing *Morrissey*, 408 U.S. at 482).)

These principles apply with even more force here, where civil immigration detention is concerned, than in cases involving renewed incarceration in the criminal context. As one court has explained, "[g]iven the civil context, [a noncitizen's] liberty interest is arguably greater than the interest of parolees in *Morrissey*." (*Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).) Parolees and probationers have a diminished liberty interest because of their underlying convictions. (*See, e.g.*, *United States v. Knights*, 534 U.S. 112, 119 (2001) ("Probation is one point on a continuum of possible punishments . . . ." (citation modified)); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987) ("To a greater or lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy the absolute liberty to which every citizen is entitled . . . ." (citation modified).) Nonetheless, even in the criminal parole and supervised release context, courts have held that parolees cannot be re-

arrested without a due process hearing affording them the opportunity to contest the legality of their re-incarceration. (See, e.g., *Hurd*, 864 F.3d at 684.)

Critically, in recent months and years, courts have repeatedly applied these principles to hold that noncitizens have a strong liberty interest in cases involving re-detention. A person re-detained after a prior release from ICE custody is "undoubtedly deprive[d] . . . of an established interest in his liberty." (*E.A. T.-B.*, 2025 WL 2402130, at *3.) Other courts have reached the same conclusion. (*See, e.g.*, *Garcia*, 2025 WL 2420068, at *10) ("[P]arole allowed [the petitioner] to build a life outside detention, albeit under the terms of that parole. [Petitioner] has a substantial private interest in being out of custody which would allow him to continue in these life activities, including supporting his family."); (*Pinchi*, 2025 WL 2084921, at *4) ("[Petitioner] has a substantial private interest in remaining out of custody. She has an interest in remaining in her home, continuing her employment, providing for her family, obtaining necessary medical care, maintaining her relationships in the community, and continuing to attend her church."); (*Maklad*, 2025 WL 2299376, at *8 (similar).)

As in these cases, Petitioner has a strong interest in her liberty. Prior to her re-detention, Petitioner resided in Contra Costa County, California for nearly a year, living with her spouse, living a productive life as a house cleaner, and complying with her ISAP check-in requirements. (Jose F. Vergara Decl. ¶¶ 1–5.). She has substantial connections to this country, and her sister and friends are suffering in her absence. These facts show not only that Petitioner's freedom at stake, but that her absence is negatively affecting the life of her sister.

B. The Risk of Erroneous Deprivation Is High.

Second, "the risk of erroneous deprivation of Petitioner's liberty interest in the absence of a pre-detention hearing is high." (*E.A. T.-B.*, 2025 WL 2402130, at *4.) "That the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process." (Id.) Her re-detention must still "bear[] [a] reasonable relation" to a valid government purpose—here, preventing flight or protecting the community against dangerous individuals. (*Zadvydas*, 533 U.S. at 690) (second alteration in the original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Only a hearing before a neutral decisionmaker—where ICE must

prove that re-detention is justified and that Petitioner poses a flight risk or danger—can ensure that this "reasonable relation" to a valid government purpose exists. But to date, only the "government enforcement agent" has made any decision about the propriety of detention, (*Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971)), a far cry from the hearing before a neutral decisionmaker that due process requires, (see, e.g., *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) ("Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement."); see also *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) (similar).) In fact, Petitioner did not (and has not) even received a formal notice of the basis for her re-detention, much less any opportunity to respond to any allegations purporting to justify her re-detention or a hearing before a neutral decisionmaker.

The importance of a hearing before a neutral decisionmaker principle remains even though Petitioner might have initially been subject to mandatory detention under 8 U.S.C. § 1225(b)(1) or (b)(2) when he was processed for expedited removal. (See *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019).) This is because, as this Court explained in *E.A. T.-B.*, "Petitioner does not claim to be entitled to a hearing consistent with a particular statute: he argues that the Due Process Clause requires it." (2025 WL 2402130, at *4.) And due process requires such a hearing because "Petitioner's circumstances have changed materially" since her release in November 2024. (*Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019).) As noted above, she has formed deep connections to this country, residing in California, and working to support herself and her sister. "These facts show that a[] [pre-deprivation] hearing provide[s] additional safeguards under these circumstances." (Id.; see also, e.g., *Jorge M.F.*, 534 F. Supp. 3d at 1055) ("In any pre-detention hearing, the IJ would be required to consider any additional evidence from the eight-plus months since Petitioner was released."); (*Garcia*, 2025 WL 2420068, at *10 ("[P]arole allowed [Petitioner] to build a life outside detention.").

C. The Government's Interest Is Minimal.

Finally, "the government's interest in detaining [Petitioner] or re-detaining [her] without a hearing is slight." (*Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970) ("If the government wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in

doing so without a hearing is low."). "[A]lthough [a pre-deprivation hearing] would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP] violations before arresting and re-detaining her, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." (*E.A. T.-B.*, 2025 WL 2402130, at *5.) Notably, since her release, Petitioner "has continued to demonstrate that [she] poses neither a flight risk nor a danger to the community," holding an honest job and helping both herself and her sister, and developing friendships, among other factors. (*Pinchi*, 2025 WL 2084921, at *5.)

The government may claim that its interest in enforcing immigration laws weighs heavily in its favor. But the government's interest in immigration enforcement "is not at stake here; instead, it is the much lower interest in detaining [Petitioner] pending removal without a bond hearing." (*Perera*, 598 F. Supp. 3d at 746.) Many other courts have observed the same. (See, e.g., *Zagal-Alcaraz v. ICE Field Office*, No. 3:19-CV-01358-SB, 2020 WL 1862254, at *7 (D. Or. Mar. 25, 2020) ("The government interest at stake here is not the continued detention of Petitioner, but the government's ability to detain him without a bond hearing."), *report and recommendation adopted*, 2020 WL 1855189 (D. Or. Apr. 13, 2020). What is more, Petitioner has complied with the immigration laws: she was released on parole and has been preparing to appear at her first Master Calendar Hearing, as the Immigration and Nationality Act (INA) expressly permits. 8 U.S.C. § 1158. Any claimed "enforcement" amounts to punishing and deterring people like Petitioner from asserting the statutory rights that the INA expressly provides, rather than enforcing those laws.

In addition, the government's interest is not limited to enforcement of the law; instead, it also encompasses the interest of the "public," including the administrative or financial burdens additional process requires. (*Mathews*, 424 U.S. at 348.) Here, any cost in holding a hearing, should the government choose to do so, is minimal. Moreover, any financial burden is outweighed by the costs of detaining Petitioner prior to such a hearing. The public's "interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required." (*Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).) This consideration also "cuts strongly in favor" of Mr. Ramirez because when "[w]hen the Government incarcerates individuals it cannot show to be a poor

bail risk for prolonged periods of time, as in this case, it separates families and removes from the community breadwinners, caregivers, parents, siblings and employees." (*Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020).)

In sum, Petitioner has demonstrated—or is likely to be able to demonstrate—that she "has a protected liberty interest in his continuing release from custody, and that due process requires that Petitioner receive a hearing before an immigration judge before he can be re-detained." (*E.A. T.-B.*, 2025 WL 2402130, at *5.)

Petitioner will suffer irreparable harm absent an injunction.

Petitioner must also show she is "likely to suffer irreparable harm in the absence of preliminary relief." (*Winter*, 555 U.S. at 20.) Irreparable harm is the type of harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

Here, Petitioner's unlawful detention constitutes "a loss of liberty that is . . . irreparable." (*Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff'd in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where "preliminary injunction is necessary to ensure that individuals . . . are not needlessly detained" because they are neither a danger nor a flight risk).) This is particularly true here, where Petitioner's detention also violates the Constitution. "Civil immigration detention violates due process outside of certain special and narrow nonpunitive circumstances." (*Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation modified).) As detailed above, Petitioner's detention is outside of those "special and narrow nonpunitive circumstances," as the Due Process Clause forbids his detention without a pre-deprivation hearing. These constitutional concerns also counsel in favor of finding that Petitioner has demonstrated irreparable harm, for he has shown that his detention violates due process. (See *Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that "in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm").)

Detention also inflicts substantial harm on Petitioner by separating her from her sister and friends. Absent a TRO, Petitioner has no hope of being reunited with her sister and her friends and community. Such "separation from family members" is an important irreparable harm factor. (*Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); *see also, e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding "separated families" to be a "substantial injur[y] and even irreparable harm[]"); *cf. Hernandez*, 872 F.3d at 996 (recognizing that "government-compelled [family] separation" causes family members "trauma" and "other burdens").)

In sum, Petitioner is suffering numerous and irreparable harms: detention itself, separation from family and friends. All of these factors warrant a TRO.

The balance of hardships and public interest weigh heavily in Petitioner's favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." (*Nken v. Holder*, 556 U.S. 418, 435 (2009).) Here, as previously discussed, Petitioner faces weighty hardships: loss of liberty and separation from family and friends. The government, by contrast, faces no hardship, as all it must do is release a person it previously released and who has since lawfully resided in San Mateo County, California. Avoiding such "preventable human suffering" strongly tips the balance in favor of Petitioner. (*Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).)

What is more, "the public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal] process." (*Hernandez*, 872 F.3d at 996.) Indeed, "in cases involving a constitutional claim, a likelihood of success on the merits . . . strongly tips the balance of equities and public interest in favor of granting a preliminary injunction." (*Baird*, 81 F.4th at 1048.)

Accordingly, the balance of hardships and the public interest favor a temporary restraining order to ensure that Respondents release Petitioner and to require a hearing before a neutral decisionmaker where the government must demonstrate she poses a flight risk or danger before any re-detention.

Immediate release is warranted.

As in *E.A. T.-B.*, this Court should order Petitioner's immediate release. "[A] post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty." (*E.A. T.-B.*, 2025 WL 2402130, at *6.) In other words, Petitioner's unlawful detention without a pre-deprivation hearing is *already* occurring, and only immediate release remedies that issue. Moreover, the evidence here demonstrates that Petitioner has made every effort to follow the law: receiving parole, preparing to for asylum, and complying with ISAP requirements. As a result, the Court should order her immediate release and provide that Petitioner may only be re-detained if ICE justifies re- detention by clear and convincing evidence at a hearing where ICE is required to demonstrate Petitioner is a flight risk or danger to the community. (See, e.g., *Pinchi*, 2025 WL 2084921, at *7; *Maklad* 2025 WL 2299376, at *10; *Garcia*, 2025 WL 2420068, at *13.)

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court grant her motion for a preliminary injunction and order her immediate release.

Respectfully submitted,

DATE: 10/31/2025

/S/ Jose F. Vergara

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 4,185 words, in compliance with the Local Civil Rules.

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