


UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

_____	)	
LYDIENNE YONDO ESSIBENG	)	
	)	
<i>Petitioner,</i>	)	
	)	
v.	)	Civil Action No. <u>8:25-cv-03690</u>
	)	
KRISTI NOEM, <i>et al.</i>	)	
	)	
<i>Respondents.</i>	)	
_____	)	

**FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS  
AND COMPLAINT FOR DECLARATORY RELIEF**

Petitioner filed the instant petition for a writ of habeas corpus on November 10, 2025 (ECF No. 1). On November 12, 2025, following a joint report by the parties (ECF No. 4), the Court approved the briefing order in this matter which permits an amended petition to be filed on or before November 17, 2025 (ECF No. 6). Accordingly, Petitioner hereby duly submits this First Amended Petition. Pursuant to L.R. 6(c), a redline version of this Amended Petition is attached hereto as Ex. 3.

**INTRODUCTION**

Petitioner Lydienne Yondo Essibeng  entered the United States in September 2024, across the U.S.-Mexico border, between ports of entry, and was released on her own recognizance pursuant to 8 U.S.C. § 1226(a). She was recently re-detained by U.S. Immigration and Customs Enforcement (“ICE”), under facts and circumstances that place her squarely within ICE’s general detention authority, 8 U.S.C. § 1226(a). Under that statute, Petitioner is eligible to seek release on bond from an Immigration Judge (“IJ”). However, due to a new policy by ICE announced in July 2025, and an unprecedented legal opinion by the Board of

Immigration Appeals in September 2025 that overturns decades of settled law, Respondents now consider Petitioner to be detained under a different detention statute, 8 U.S.C. § 1225(b)(2), which does not allow release on bond. Petitioner therefore brings this action seeking a declaration from this Court that she is properly detained (if at all) only pursuant to 8 U.S.C. § 1226(a) discretionary detention; and seeking an order that Respondents schedule her for a bond hearing before an Immigration Judge within 15 days.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241; 28 U.S.C. § 2201, the Declaratory Judgment Act; and 28 U.S.C. § 1331, Federal Question Jurisdiction. In addition, the individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

2. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act, and the Court's inherent equitable powers, as well as issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

3. This Court also has 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 review of a final agency action may proceed, absent a special statutory review proceeding, by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction." 5 U.S.C. § 703.

4. Venue lies in this District because Petitioner was detained in the Baltimore Hold Room, within the territorial jurisdiction of this division of this District, at the time of filing this action; and each Respondent is an agency or officer of the United States sued in his or her official

capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

#### **THE PARTIES**

5. Petitioner Lydienne Yondo Essibeng is a citizen and native of Cameroon and was detained by Respondents at the ICE Field Office in Baltimore, MD, within the territorial jurisdiction of this Court, at the time of filing this action.

6. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (“DHS”). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

7. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). He is the head of the federal agency responsible for all immigration enforcement in the United States.

8. Respondent Jeremy Bacon is the Director of the Baltimore ICE ERO Field Office of U.S. Immigration and Customs Enforcement (ICE) which has jurisdiction over ICE Field Office where Petitioner was unlawfully detained at the time of filing this action. As the local ICE official overseeing enforcement operations in the region, he was responsible for Petitioner’s continued detention and any actions related to their removals. He was Petitioner’s immediate legal custodian for the purpose of habeas jurisdiction who was holding Petitioner in legal custody at the time she filed this action.

9. Respondent Pamela Bondi is the Attorney General of the United States. She is the head of the U.S. Department of Justice, which oversees the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Court judges, who decide removal cases and applications for bond as her designees.

10. All government Respondents are sued in their official capacities.

## LEGAL BACKGROUND

### A. Immigration Detention Legal Framework

11. When a noncitizen is alleged to have violated immigration laws, they are generally placed into traditional removal proceedings, during which an immigration judge will determine whether they are removable and then whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

12. Detention is authorized for “certain aliens already in the country pending the outcome of removal proceedings under § 1226(a) and 1126(c).” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a) generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Discretionary detention under § 1226(a) has been described as the “default” provision for immigration detention for those subject to traditional removal proceedings. *Id.* at 288. Under § 1226(a), “[e]xcept as provided in subsection (c) of this section, the Attorney General ‘may release’ an alien detained under § 1226(a) ‘on ...bond’ or ‘conditional parole.’” *Id.*

13. Alternatively, mandatory detention is authorized for “certain aliens *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2),” [emphasis added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and determined to be “applicants for admission” may be subject to mandatory detention under two separate subsections. Applicants for admission include someone:

“present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for the purposes of this chapter to be an applicant for admission.”

§ 1225(a)(1).

14. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to expedited removal and mandatory detention if they are determined to be an “arriving alien,” and if they have not been physically present in the United States continuously for a two-year period immediately prior.

Regulations define an “arriving alien” as:

“an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.”

8 C.F.R. § 1.2.

15. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of “applicant for admission” specifically when “the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title,” i.e. for traditional removal proceedings [emphasis added].

16. An “arriving alien” or an applicant for admission “seeking admission” may only be released from detention on parole (which is a form of release on recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no bond available to an arriving alien or applicant for admission seeking admission. *Id.* There is no such thing as a “parole bond” – a release must be either parole under § 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

17. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE’s initial custody determination before the IJ (a “custody review hearing”), who has the authority to modify ICE’s custody determination and set bond in a

case in which ICE has designated no bond, lower bond when ICE has set a cash bond amount, or deny bond completely. 8 C.F.R. § 1003.19.

18. Custody review hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the IJ, she must still appear in immigration court for the IJ to determine her removability and hear any claim for relief from removal. At a custody review hearing, once jurisdiction over bond is established, the IJ's inquiry is limited to whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets her burden of proof that she is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

19. For decades, it has been Respondents' practice to afford § 1226(a) discretionary bond hearings and custody review hearings to those individuals who have been encountered neither at a point of entry nor seeking admission to the United States. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at \*10 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) ("Respondents' proposed application of § 1226 is also belied by the Department of Homeland Security's 'longstanding practice' of treating noncitizens taken into custody while living in the United States, including those detained and found inadmissible upon inspection and then released into the United States with the government's acquiescence, who have committed no crime after release, as detained under § 1226(a)," citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024)).

**B. New ICE memo reinterpreting 8 U.S.C. § 1225(b)(2)**

20. On July 8, 2025, Respondent ICE issued new interim guidance that announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). *See* ICE memorandum "Interim

Guidance Regarding Detention Authority for Applications for Admission.”<sup>1</sup> This memo concerns the detention of “applicants for admission” as defined by § 1225(a)(1). “Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)].” *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* (“For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated.”)

21. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that “[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*

22. Moreover, ICE maintains that “DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position.” *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of “correct” paperwork is nonetheless permissible. *Id.* (“Accordingly, ERO and HSI are not required to ‘correct’ the release paperwork by issuing INA § 212(d)(5) parole paperwork.”)

23. Nationwide implementation of the ICE § 1225(b)(2) mass detention policy ensued.

### **C. Recent BIA decision *Matter of Yajure Hurtado***

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<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last visited on November 14, 2025).

24. On September 5, 2025, the Board of Immigration Appeals (BIA), which oversees all appeals of IJ decisions including custody redeterminations, upheld ICE's re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

25. The BIA held that the noncitizen was an "applicant for admission" within the scope of § 1225(b), and therefore subject to mandatory detention.

26. The BIA characterized the issue before it as "one of statutory construction: Does the INA require that *all* applicants for admission, even those like the respondent who have entered without admission or inspection and have been residing in the United States for years without lawful status, be subject to mandatory detention for the duration of their immigration proceedings, and thus the Immigration Judge lacks authority over a bond request filed by an alien in this category?" [emphasis added]. *Id.* at 220.

27. The BIA reasoned that individuals "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer." *Id.* at 228.

28. The BIA acknowledged the decades of precedent preceding its decision that authorized release of individuals present without having been inspected and admitted or paroled under § 1226(a). *Id.* at 225 n.6 ("We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled 'Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures,' 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), reflects that the Immigration and Naturalization Service took the position at that time

that “[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”)

29. Ultimately, the BIA upheld the decision that the IJ lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for discretionary bond. *Id.* at 229.

30. The BIA decision is binding on all immigration judges nationwide.

31. Respondents’ new policy and interpretation of 8 U.S.C. § 1225(b)(2) stand to sweep millions of noncitizens into mandatory detention, without any consideration for release on bond (regardless of their ties to their community or lack of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at \*11 (“It has been estimated that this novel interpretation would require the detention of millions of immigrants currently residing in the United States.”)

#### **D. Orders for Release on Recognizance**

32. Pursuant to their authority under 8 U.S.C. § 1226, Respondents may release an individual on an order or release on recognizance. *See, e.g.* Ex. 1, ICE Form I-220A.

33. A release on recognizance is a form of release on conditional parole under 8 U.S.C. § 1226(a)(2)(B). *See Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at \*7 (E.D. Va. Sept. 19, 2025) (“Release on recognizance is not a ‘humanitarian’ or ‘public benefit’ ‘parole into the United States’ under section 1182(d)(5)(A) but rather a form of ‘conditional parole’ from detention upon a charge of removability, authorized under section 1226.”), citing *Martinez v. Hyde*, -- F.Supp.3d --, --, 2025 WL 2084238, at \*3 (D. Mass. July 24, 2025); and *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007). *See also Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (B.I.A. 2023) (“The respondents were ... released

on their own recognizance pursuant to [the Department of Homeland Security's] conditional parole authority under ... 8 U.S.C. § 1226(a)(2)(B)[.]”.

34. The authority to release an individual on conditional parole is vested in the officer issuing the warrant for arrest. *See also* 8 C.F.R. § 236.1(c)(8) (“Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release an alien not described in [8 U.S.C. § 1226(c)(1)], under the conditions at [8 U.S.C. §§ 1226(a)(2) and (3)];”).

35. Conditional parole may be revoked at any time. *See* 8 U.S.C. § 1226(b) (“The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.”).

36. However, only specific officials are empowered to authorize the revocation of conditional parole, including: the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge. *See* 8 C.F.R. § 236.1(c)(9).

37. If the conditional parole is revoked, immigration officers may then “rearrest the alien *under the original warrant*, and detain the alien,” [emphasis added]. *See* 8 U.S.C. § 1226(b).

#### FACTS

38. Petitioner is a citizen of Cameroon. She entered the United States without inspection between ports of entry, across the U.S.-Mexico border, on September 11, 2024. *See* Ex. 2, ICE Notice to Appear. Petitioner was detained by Border Patrol some time after entering, but shortly thereafter was released from immigration custody on her own recognizance, pursuant to 8 U.S.C. § 1226(a)(2)(B). *See* Ex. 1, ICE Form I-220A Order of Release on Recognizance.

39. Petitioner then made her way to Maryland, where she established a life. Petitioner's husband has already been granted asylum in the United States, and he has filed an I-730 Refugee/Asylee Relative Petition on her behalf. Petitioner also timely filed her own asylum application, which remains pending.

40. Petitioner complied fully with the terms of her release on recognizance: She submitted to GPS tracking on her phone, and was regularly appearing for check-in appointments as part of the Intensive Supervision Appearance Program ("ISAP").

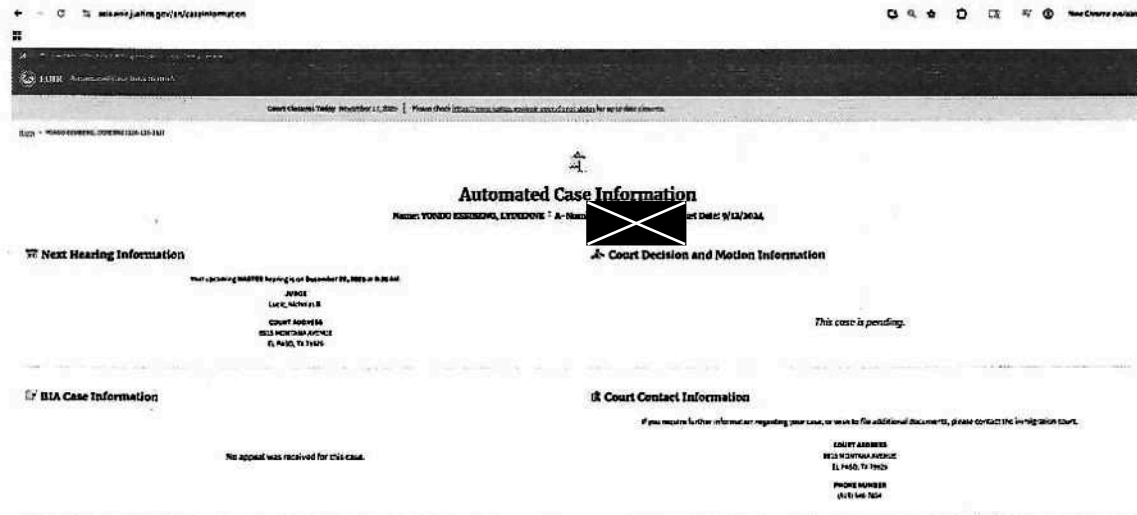
41. On or about November 7, 2025, at an ISAP check-in, Respondents revoked Petitioner's order of release on recognizance and took her back into detention.

42. At the time of filing this habeas corpus petition, on November 10, 2025, Petitioner was detained at the Baltimore Field Office in Baltimore, Maryland within the territorial jurisdiction of this Court. Petitioner was transferred to Camp East Montana in El Paso, Texas on November 11, 2025; *see also* ICE Detainee Locator Information (*available at* <https://locator.ice.gov/> (last visited on November 14, 2025)):

<https://locator.ice.gov/locator/#/details>

The screenshot shows the ICE Detainee Locator Information page. At the top, it displays the U.S. Department of Homeland Security logo and the text "U.S. Immigration and Customs Enforcement". Below this is a navigation bar with links for "Home", "Who We Are", "What We Do", "Newsroom", "Information Library", and "Contact Us". The main content area is titled "Facility Page" and provides the following information: "Detention Information For: LYDIENNE YONDO ESSIENG, Country of Birth: Cameroon, A-Number: [REDACTED]". It also lists the "Current Detention Facility" as "ERO EL PASO CAMP EAST MONTANA" with the address "6920 Digital Road, NA, El Paso, TX 79936" and "Visitor Information: (915) 206-5980". On the right side, there is a "Related Information" section with links for "Helpful Info", "State of Origin", "About the Detainee Locator", "The Data", "ICE Field Offices", "ICE Apprehension Facilities", "Privacy Notice", and "External Links".

43. Petitioner has pending removal proceedings (her next Master Calendar Hearing is scheduled for December 22, 2025), and is not subject to a final order of removal. *See* Ex. 2, ICE Form I-862 Notice to Appear; *see also* EOIR Automated Case Information (*available at* <https://acis.eoir.justice.gov/> (last visited on November 14, 2025)):



44. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). *See Yajure Hurtado*, 29 I. & N. Dec. 216. Accordingly, it would be futile for Petitioner to request a bond hearing from an Immigration Judge. Exhaustion of administrative remedies is therefore not required.

**FIRST CLAIM FOR RELIEF:  
Declaratory Judgment**

45. Petitioner re-alleges and incorporate by reference paragraphs 1-44.

46. Petitioner requests a declaration from this Court that she is not an applicant for admission “seeking admission” or “an arriving alien” subject to mandatory detention under 8 U.S.C. §§ 1225(b)(1) or (b)(2), and that her current detention by Respondents is proper, if at all, only under 8 U.S.C. § 1226(a).

**SECOND CLAIM FOR RELIEF:**

**No-Bond Detention in Violation of 8 U.S.C. § 1226(a)**

47. Petitioner re-alleges and incorporate by reference paragraphs 1-44.

48. Since Petitioner is not an applicant for admission “seeking admission” or “arriving aliens” subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2), and has no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), she is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

49. Alternatively, Petitioner was originally detained and released under § 1226(a) authority. She was released on an Order of Release on Recognizance, pursuant to § 1226(a)(2)(B). When Petitioner’s release on recognizance was revoked, she should have been rearrested under the original warrant and arresting authority of § 1226. *See* 8 U.S.C. § 1226(b). As such, she is entitled to a bond redetermination hearing by an immigration judge pursuant to § 1226(a).

50. Respondents’ actions, as set forth herein, violate Petitioner’s statutory right to a bond redetermination hearing in front of an immigration judge.

**THIRD CLAIM FOR RELIEF:  
Detention in Violation of Due Process**

51. Petitioner re-alleges and incorporate by reference paragraphs 1-44.

52. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community.

53. After entering the United States unlawfully, Petitioner went on to develop ties to the community over the course of a year. Petitioner is therefore a “person” within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and has a liberty interest in freedom from physical restraint.

54. Respondents’ actions in detaining Petitioner without a bond hearing before a neutral

and detached magistrate deprives Petitioner of her rights without due process of law.

### REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully request that the Court enters an order:

- a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;
- b) Declare that Petitioner is not an applicant for admission "seeking admission" or "an arriving alien" subject to 8 U.S.C. § 1225(b);
- c) Declare that Respondents' actions, as set forth herein, violate Petitioner's due process rights;
- d) Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);
- e) Order that Respondents conduct a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a) within 15 days;
- f) Grant the writ of habeas corpus and order Respondents to release Petitioner forthwith, upon payment of the bond as ordered by the Immigration Judge;
- g) Award Petitioner her costs of suit; and
- h) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

*//s// Simon Sandoval-Moshenberg*  
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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants.

Respectfully submitted,

Date: November 17, 2025

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