

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION**

ROMAN HUSAR,
Petitioner,

v.

KRISTI NOEM,
Secretary of Homeland Security, et al.,
Respondents.

Civil No. 6:25-cv-00093-H

**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO WRIT OF
HABEAS CORPUS AND REQUEST FOR INJUNCTIVE RELIEF**

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DISCLOSURE ON THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE

Pursuant to Local Rule 7.2(f), I hereby disclose that I have utilized generative artificial intelligence in the preparation of this document, but that I have independently cross-checked and verified the accuracy of all legal authorities, citations, facts, and arguments contained herein using Lexis+, which incorporates Shepardizing technology into brief analysis. Thus, after a reasonable inquiry, I certify that I have conducted a reasonable inquiry to verify that no unpublished, non-existent, or unverifiable authorities were included in this brief.

/s/ Jennifer Peyton
Jennifer I. Peyton
Attorney for Petitioner

DATE: December 22, 2025.

TO THE HONORABLE JUDGE HENDRIX:

Petitioner Roman Husar (“Mr. Husar”) respectfully submits this brief in reply to Respondents’ Response in Opposition, filed December 8, 2025 (ECF No. 8), to the writ of habeas corpus and request for a declaratory and injunctive relief, filed with the Court on November 18, 2025 (ECF No. 1), as specifically directed by the Court in its Order, dated November 18, 2025 (ECF No. 3).

I. INTRODUCTION

Respondents’ opposition confirms the need for immediate judicial intervention and confirms the central defect in this case: the Government seeks to detain a long-time “§ 240 respondent” under a detention statute that applies *only* to individuals seeking admission at the border. By recasting Mr. Husar, a respondent who was lawfully admitted pursuant to a parole application, retroactively and without explanation, as an “applicant for admission” subject to 8 U.S.C. § 1225(b)(2), Respondents attempt to bypass the procedural safeguards Congress built into 8 U.S.C. § 1226, in a boldfaced attempt to strip the immigration judges of bond jurisdiction, and to insulate their unlawful detention decision from any neutral review.

That position cannot be squared with the statutory structure that governs removal proceedings, with the Government’s own litigation posture, or with the factual record reflected in DHS’s Appendix. DHS initiated § 240 removal proceedings against Mr. Husar on September 11, 2025 by serving a Notice to Appear. Prior to his arrest, DHS treated Mr. Husar as a § 240 respondent—with the rights, obligations, and procedural posture accompanying that status. In fact, prior to his arrest, Mr. Husar had lawfully resided and worked in the United States pursuant to his lawful status. He filed

applications for Temporary Protected Status in August 2024,¹ and a request to extend his parole documentation. See Exhibits 1-2.

But everything changed when Mr. Husar was returning to his home after an artistic expression in support of Ukraine at the Burning Man festival. He was encountered by the Oldham County sheriff and quickly transferred to ICE proceedings. Of note, the Government alleges that Mr. Husar was arrested for possession of marijuana; Oldham County sheriff has confirmed that neither misdemeanor nor felony charges are recorded for Mr. Husar during the relevant time period. Exh. 3. Without warning or explanation, ICE arrested him on the spot and transferred him to Eden Detention Center, in Eden, Texas. Only after this abrupt detention did DHS assert, for the first time since his lawful admission in January 2023, Mr. Husar was unilaterally and erroneously identified in essentially the same position as an “arriving alien” whose custody is governed not by § 1226 but by § 1225(b)(2), thereby placing him in mandatory detention with no bond jurisdiction and no neutral forum for review. See ECF No. 8 at 3-4 (arguing that the term “applicant for admission” includes two categories: arriving aliens and those present without admission).

The Government’s theory fails for two independent reasons. First, *Lopez-Arevelo v. Ripa* is directly on point and persuasive, as Magistrate Judge David Horan observed in the Dallas Division of this Court. See Pet’s App’x, FCR Report in *Aparicio-Rodriguez v. Noem*, at 88-89 (stating that the magistrate agrees with the court in *Lopez-Arevelo* and other courts in the Fifth Circuit and finds that *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), is distinguishable in context of procedural due process argument). *Lopez-Arevelo*

¹ Mr. Husar filed for Temporary Protected Status in August 2024. This is a minimal form of relief. Shall not be removed. Pending for over fifteen months. Subject of a mandamus in Atlanta GA. See Exh.1.

rejected the same maneuver DHS attempts here: reclassifying a long-standing § 240 respondent as an applicant for admission to deny access to § 1226 custody hearings. Allowing DHS to toggle between statutory regimes, at will, would collapse the INA's careful distinction between border-processing statutes and interior-removal statutes, undermining Congress's design and authorizing precisely the kind of unchecked detention of which the Supreme Court has consistently been wary. *See Jennings v. Rodriguez*, 583 U.S. 281, 289–90 (2018).

Second, DHS's position contradicts its own record and fails to grapple with Mr. Husar's protected liberty interest. A noncitizen cannot simultaneously be (1) lawfully admitted in January 2023, charged as removable under § 212(a)(7)(A)(i)(I), while also being deemed (2) an "arriving alien" subject to § 1225(b)(2). The Government cannot retroactively convert interior-arrest custody during long-running removal litigation into border-processing detention simply because it prefers the harsher statutory framework.

In sum, Respondents' opposition does not undermine Petitioner's entitlement to relief—it reinforces it. DHS's abrupt and unexplained shift to § 1225(b)(2) detention is legally unsustainable, factually inconsistent with the record, and constitutionally fraught. The Court should reject that position and order the Government to provide Mr. Husar the custody process Congress prescribed: a bond hearing under § 1226(a) before a neutral arbiter, without further delay.

II. FACTUAL BACKGROUND

The material facts in this case are straightforward and largely uncontested. The Government's own appendix confirms that Mr. Husar was lawfully admitted into the United States as a parolee on January 17, 2023. On September 11, 2024 – over two and a

half years after the lawful admission, DHS served a Notice to Appear (“NTA”) on Mr. Husar on or about September 11, 2025. The NTA that DHS served on him alleges inadmissibility under INA § 212(a)(7)(A)(i), for being present in the country without having a valid, unexpired visa or travel document in his possession. *See* ECF No. 8, Resp’s App’x, at APP.005–009.

Although the NTA characterized Mr. Husar as an “arriving alien,” it did not invoke the border-processing scheme of § 1225(b). Instead, it placed him squarely into the statutory framework of § 240 proceedings, which governs the vast majority of interior removability cases. As of the filing of this reply brief, EOIR has docketed his case and scheduled him for a continued “master calendar” hearing for January 12, 2026, before Immigration Judge McPhail. *See* Ex. 3, Updated Hearing Notice.

However, the Government’s response brief adds several additional facts material to the issues raised here.² Firstly, the Government confirms that Mr. Husar was lawfully admitted to the United States pursuant to parole. *See* ECF No. 8, Resp’s Response Brief, at 1. The Government’s own documents confirm that Mr. Husar sought extension of his lawful status through timely filing of applications for Temporary Protective Status, and similarly, an extension of his parole. *See* ECF No. 8, Resp’s Response Brief, at 1-2. At no point does the Government assert that DHS ever initiated expedited removal under § 1225(b)(1) or that DHS complied with the statutory requirement to refer him for a credible fear interview. Nor does the Government dispute that DHS elected to issue a

² As noted, *supra*, the Government also asserts—without submitting certified conviction records or any supporting judicial documentation—that Mr. Husar was “arrested for possession of marijuana” by the Oldham County Sheriff’s office. There is no support for these statements. Counsel for Respondent has obtained court records from Oldham County that note no misdemeanor or felony charges are pending against Mr. Husar. *See* Exh. 3.

standard NTA initiating § 240 removal proceedings, not a § 1225(b) order of expedited removal.

Finally, the Government does not dispute that ICE's arrest of Mr. Husar on September 11, 2025, resulted in a sudden shift in the statutory basis asserted for his detention. The Government initially permitted Mr. Husar to lawfully remain within the United States pursuant to his lawful admission. He was employment authorized, and submitted required documentation to extend and maintain his lawful status. Now, years later, the Government now contends that he is retroactively subject to mandatory detention under § 1225(b)(2)(A). The Government's response brief identifies no contemporaneous DHS custody decision, no amended NTA, and no other agency action indicating that DHS considered him detained under § 1225(b) at any point prior to his arrest in September 2025. The Response also identifies no statutory authority permitting DHS to toggle between statutory detention frameworks months after release, long after the § 240 proceedings began, and after Mr. Husar had established the liberty interest attendant to that release.

Taken together, these details reflect the following: Mr. Husar lawfully entered the United States, he pursued and obtained employment authorization, and timely filed application to maintain that status. He was then arrested without warning and reclassified him under an entirely different statutory scheme. *See* ECF No. 3, Immigration Court Case Documents. Nothing in the INA authorizes this kind of retroactive recharacterization. And nothing in DHS's own filings explains, let alone justifies, this abrupt departure to unexpectedly characterize Mr. Husar as subject to mandatory detention, after his initial lawful admission.

III. ARGUMENT

A. The Statutory Scheme Makes Clear that Detention of a Noncitizen in § 240 Proceedings Is Governed by 8 U.S.C. § 1226, Not § 1225(b)(2).

Respondents' core argument—that Mr. Husar is detained under § 1225(b)(2) because he is an “applicant for admission”—collapses once the relevant statutory framework is accurately applied. *See* Gov't Opp., ECF No. 7 at 3-7. Congress constructed two distinct detention regimes, each tied to a specific procedural posture. Which statute governs is not a matter of agency preference or post hoc recharacterization, but of statutory command. And the statute that governs the detention of a long-term § 240 respondent like Mr. Husar is 8 U.S.C. § 1226, not § 1225(b)(2). Respondents' contention to the contrary ignores the text, structure, and purpose of the Immigration and Nationality Act (“INA”), as well as decades of consistent interpretation distinguishing the two detention regimes.

1. Congress reserved § 1225(b)(2) for initial processing during inspection at the border—not for respondents in ongoing § 240 removal proceedings.

Congress drew a bright line between the detention of “applicants for admission” at or near the border, governed by § 1225(b), and the detention of noncitizens already present in the United States and placed in removal proceedings, governed by § 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–90 (2018) (observed that § 1225(b) applies to aliens seeking admission into the United States, while § 1226 governs detention of aliens already in the country pending their removal proceedings). The distinction is not a matter of discretion; rather, it reflects fundamentally different statutory purposes.

Section 1225(b)(2) applies to “applicants for admission” who are encountered at or near the border, or in the context of initial inspection and processing. As the Supreme

Court has repeatedly emphasized, § 1225(b) governs the inspection of aliens seeking admission and delineates what DHS must do at the threshold of entry. *See Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018) (held § 1225(b)(1)&(2) authorized brief detention of noncitizens immediately upon entering the country).

By contrast, § 1226(a) provides discretionary detention authority pending a decision on whether the alien is to be removed, expressly encompassing respondents in § 240 proceedings. *See Jennings*, 583 U.S. at 288 (“Section 1226 generally governs the process of arresting and detaining aliens . . . pending their removal” where such aliens “were inadmissible at [their] time of entry”). Once DHS files a Notice to Appear under § 239 and initiates § 240 removal proceedings, the detention authority shifts to § 1226—the statute Congress expressly designed to govern custody during ongoing removal litigation. *Jennings* draws this line sharply:

- § 1225 regulates *pre-admission* processing;
- § 1226 governs detention “pending a decision on whether the alien is to be removed,” i.e., during § 240 proceedings.

See Jennings, 583 U.S. at 288-89.

Here, there is no dispute DHS served Mr. Husar with a Notice to Appear after his initial lawful admission. Mr. Husar was permitted to enter the United States, and maintain his lawful presence within the United States. This abruptly changed on September 11, 2025, when Mr. Husar was encountered by ICE, charging under § 212(a)(7)(A)(i)(I). *See Gov’t App’x*, ECF No. 8 at 1–4 (observe charge of inadmissibility in NTA).³

2. The distinction between “seeking admission” and being an “applicant for admission” reinforces that § 1226 governs Petitioner’s detention.

³

Additionally, Mr. Husar would argue that § 1225 generally does not govern detention once DHS initiates § 240 proceedings.

As observed by Judge Pulliam of the San Antonio Division of the United States District Court for the Western District of Texas, under facts substantially similar to those in Mr. Husar's case, the petitioner there "was not seeking 'admission,' as that term is defined by [8 U.S.C.] § 1101(a)(13)(A), in that he was not seeking entry, much less 'lawful entry . . . after inspection' and authorization. *See Aguinaga Trujillo v. Noem*, 5:25-cv-01266-JKP, *8 (W.D. Tex. Nov. 24, 2025) (slip op.) (citing *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008)).

For context, the INA defines an "applicant for admission" to include any noncitizen "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). A noncitizen is "admitted" only if he has effected a "lawful entry . . . into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). This simple statutory language confirms that Mr. Husar, who was lawfully inspected and admitted, falls under § 1101(a)(13)(A)'s definition of someone who has been lawfully admitted. Under the Fifth Circuit's jurisprudence, this "admission" under the statute means lawful entry following inspection—"something quite different, obviously, from post-entry adjustment of status." *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008).

Crucially, however, on the facts of this case Petitioner was not "seeking admission" when he was encountered while driving in Oldham County, Texas. At that time, Mr. Husar was not attempting to enter the United States at all, let alone to accomplish a "lawful entry . . . after inspection." *Martinez*, 519 F.3d at 544. Because Mr.

Husar was not “seeking admission” when he was arrested in September 2025, ICE lacks authority to detain him under § 1225(b)(2), even though they can detain him under § 1226.

Thus, because Mr. Husar is not “seeking admission,” Respondents here must not detain him under § 1225(b)(2), and the Court should determine that § 1226 properly governs Petitioner’s detention. *Cf. Lopez Benitez*, 2025 WL 2371588, at *6.

3. The Government’s reliance on *Yajure Hurtado* and *Jennings* is misplaced.

The Government cites *Matter of Yajure Hurtado*, 28 I. & N. Dec. 389 (BIA 2024), for the proposition that DHS may treat noncitizen aliens as “applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer” subject to § 1225(b)(2). *See* Gov’t Opp., ECF No. 7 at 8. But *Yajure Hurtado* reflects a recent policy shift. As even Respondents concede, this departure from long-standing agency interpretation conflicts with how immigration agencies had always before interpreted this statute. *See* Gov’t Opp., ECF No. 7 at 7 n.1 (“Previously . . . § 1226(a) had been interpreted as an available detention authority for aliens who were present without admission and placed in § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747–48 (BIA 2023).”). Moreover, *Yajure Hurtado* conflicts with *Jennings* by collapsing the statutory distinction between border inspection and domestic removal proceedings.

Nor does *Jennings* support the Government. *Jennings* held only that § 1225(b) does not imply a six-month time limit on detention; it did not address, let alone approve, DHS’s ability to shift an interior detainee between § 1225(b) and § 1226 regimes. *Jennings*, 583 U.S. at 313–14. The Court expressly remanded the constitutional question

of prolonged detention without bond. *Id.* at 314. DHS's reliance on *Jennings* to justify Mr. Husar's indefinite, unreviewable detention therefore misses the mark.

B. DHS's Reliance on § 1225(b) and *Thuraissigiam* Is Misplaced; Under *Hernandez-Fernandez*, Petitioner Possesses a Protected Liberty Interest and Is Entitled to Procedural Due Process.

Even if Respondents' statutory interpretation were correct, it would not end the inquiry. As *Hernandez-Fernandez* held, constitutional constraints apply even where the statute purports to mandate detention. 2025 U.S. Dist. LEXIS 206751, at 19. The Due Process Clause does not permit the Government to remove someone from the community and place him in civil confinement based solely on a categorical statutory label, without any opportunity to contest his confinement.

Although Respondents' opposition rests on the premise that Petitioner may be detained without recourse to due process because he is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b), that argument cannot withstand scrutiny for two independently dispositive reasons. Firstly, *DHS v. Thuraissigiam* does not apply to the kind of detention-based procedural due process claim Petitioner raises. Secondly, under *Hernandez-Fernandez v. Lyons*, DHS's own decision to release a noncitizen into the interior creates a constitutionally protected liberty interest that may not be extinguished without an individualized custody hearing.

1. *Thuraissigiam* Does Not Apply Because Petitioner Challenges His Detention, Not the Admission Process.

Respondents argue as though Petitioner were challenging the legality of his admission, the validity of an expedited-removal process, or asserting a right to enter or remain in the United States. He is not. The only question before the Court is whether DHS may detain Petitioner without providing any individualized custody determination,

notwithstanding his substantial period of physical presence and DHS's prior determination that he was safe to release.

Courts have rejected the Government's reflexive invocation of *Thuraissigiam* in precisely this posture. Most recently, Judge Pulliam held that *Thuraissigiam* "has no application" where the petitioner "does not challenge the admission process in any way or assert a right to remain" but instead "merely seeks a chance to apply for release on bond." *Hernandez-Fernandez v. Lyons*, 2025 U.S. Dist. LEXIS 206751, at 16–17 (W.D. Tex. Oct. 21, 2025). The distinction is critical: *Thuraissigiam* restricts habeas review of expedited removal determinations—not constitutional challenges to post-release re-detention.

The same distinction governs here. Petitioner seeks no judgment about his removability, admission, or eligibility for relief. He seeks only the process due before the Government may revoke the liberty it previously granted. Respondents' reliance on *Thuraissigiam* ignores this fundamental difference and should be rejected.

2. DHS's Act of Releasing Petitioner Into the United States Created a Liberty Interest Protected by the Due Process Clause.

Long-standing constitutional doctrine recognizes that when the government releases an individual into the community, that release gives rise to a protected liberty interest. This principle, rooted in *Morrissey v. Brewer*, *Young v. Harper*, and related parole-revocation cases, applies with full force to immigration custody. The Western District of Texas recently confirmed that "once released from immigration custody, noncitizens acquire a protectable liberty interest in remaining out of custody on bond." *Hernandez-Fernandez*, 2025 U.S. Dist. LEXIS 206751, at 20.

The court explained that the Government's earlier release "reflects a determination ... that the noncitizen is not a danger to the community or a flight risk," and thus due process attaches before that liberty may be revoked. *Id.* at 22. Crucially, Judge Pulliam rejected the Government's argument—identical to Respondents' here—that its new interpretation of § 1225(b) allows the agency to disregard this liberty interest and substitute mandatory detention in its place. *Id.* at 18–20. Even assuming *arguendo* that § 1225(b) could reach such an individual, the Constitution requires process before DHS may re-detain him.

Petitioner's circumstances are materially indistinguishable. Petitioner Mr. Husar presented himself at a port of entry, was inspected admitted, and permitted to enter the United States. He then integrated into the community; and nothing in the record suggests dangerousness or flight risk. Under these circumstances, due process protects Petitioner's liberty interest and requires an individualized custody hearing before the Government may confine him.

3. Under *Mathews v. Eldridge*, Due Process Requires a Hearing at a Minimum, or in the Alternative, that Petitioner Be Ordered Released.

When procedural due process is at issue, courts apply the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). As shown below, the factors overwhelmingly favor Petitioner.

The Government cannot revoke a person's liberty—after previously releasing him into the United States—without providing any opportunity to be heard. Under *Mathews*, the inquiry is straightforward application of the class three-prong test: (1) the weight of

Petitioner's liberty interest, (2) the danger of erroneous detention, and (3) the minimal burden on the Government all require a bond hearing. *See Mathews*, 424 U.S. at 335.

Firstly, Petitioner's liberty interest is substantial. Mr. Husar was admitted into the United States because it determined he did not pose a danger or flight risk. He lived peacefully in the United States, and developed the ordinary ties that come with daily life. Detaining someone in that position is an extraordinary intrusion on personal freedom, and due process demands scrutiny before such liberty is withdrawn. Yet, "Respondents fail to contend with the liberty interests created by the fact that the Petitioner[] in this case [was] released on recognizance *prior to the manifestation of this interpretation.*" *See Lopez-Arevelo v. Ripa*, No. 3:25-CV-00337-KC, 2025 U.S. Dist. LEXIS 188232, 2025 WL 2691828, at *4 (W.D. Tex. Sept. 22, 2025).

Secondly, the risk of error in the Government's approach is acute. Respondents maintain that § 1225(b) categorically eliminates any bond hearing, meaning no decisionmaker has ever evaluated Petitioner's individual circumstances. This is exactly the kind of unreviewed, automatic deprivation that *Mathews* forbids. *See Martinez v. Sec. of Noem*, No. 5:25-CV-01007-JKP, 2025 U.S. Dist. LEXIS 174415, 2025 WL 2598379, at *3 (W.D. Tex. Sept. 8, 2025). A system in which no one asks whether detention is actually necessary practically guarantees erroneous confinement.

Thirdly, and by contrast, the Government's interest in detaining Petitioner without a hearing is negligible. DHS previously concluded he was safe to release, and nothing in the record suggests changed circumstances. *Cf. Hernandez-Fernandez*, 2025 U.S. Dist. LEXIS 206751, at *21-22 (held that alien's release three years ago "reflects a determination by the government that the noncitizen is not a danger to the community or

a flight risk”) (internal citation omitted). Providing a routine bond hearing imposes no meaningful burden; immigration courts conduct such hearings daily.

For these reasons, courts—including in *Hernandez-Fernandez*—have held that due process requires an individualized custody determination for noncitizens who were previously released into the interior and later re-detained based solely on a statutory reinterpretation. *See Hernandez v. Fernandez*, 2025 U.S. Dist. LEXIS 206751, *18-23. The same constitutional principle applies here: before the Government may revoke Petitioner’s liberty, it must afford him a bond hearing before a neutral adjudicator. Thus, the Court should grant the for writ of habeas corpus.

IV. CONCLUSION & PRAYER

For the reasons set forth above, Petitioner Roman Husar respectfully submits that the Department of Homeland Security lacks statutory authority to detain him under 8 U.S.C. § 1225(b)(2) and that his continued confinement without a neutral custody determination violates both the Immigration and Nationality Act and the Fifth Amendment’s Due Process Clause.

The Government’s own filings demonstrate that it has initiated—and continues to pursue—removal proceedings under § 240, thereby subjecting Petitioner’s custody to 8 U.S.C. § 1226. Yet DHS has invoked § 235(b)(2) to deny him access to any bond hearing, trapping him in administrative limbo and depriving this Court of the orderly judicial review that Congress and the Constitution require.

Judicial intervention is thus warranted to prevent further unlawful detention and to preserve Mr. Husar’s constitutional right to liberty pending resolution of his removal case. Accordingly, Petitioner respectfully prays that the Court order Petitioner’s release

immediately, or in the alternative, grant Petitioner a hearing placing the burden on the Government to show that Petitioner is not eligible for bond, and as such, grant his writ of habeas corpus and the related relief as requested. Petitioner has previously applied for bond before the Conroe Immigration Court. On October 17, 2025, Petitioner's request for bond was summarily denied, citing no jurisdiction under *Yajure Hurtado*. Exh. 5.

DATE: December 22, 2025.

Respectfully submitted,

/s/ Jennifer Peyton

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO WRIT OF HABEAS CORPUS AND REQUEST FOR INJUNCTIVE RELIEF, as well as any and all attachments thereto, on Counsel for Respondents by serving the same via email to Assistant U.S. Attorney Ann Cuce-Haag via Ann.Haag@ice.dhs.gov and/or by filing the same using the Court's CM/ECF system.

/s/ Jennifer Peyton
Jennifer Peyton
Attorney for Petitioner

DATE: December 22, 2025.