DETAINED

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Attorney for Petitioner

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

Abel MARTINEZ ALEMAN
a/k/a Pedro RIVERA,

Petitioner,

v.

PAMELA BONDI, Attorney General;
KRISTI NOEM, Secretary of Homeland Security;
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
CAMMILLA WAMSLEY, Field Office Director, ICE Seattle Field Office; and
BRUCE SCOTT, Warden, Northwest ICE Processing Center;

Respondents.

Case No.: 2:25-cv-2346

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR AN ORDER TO SHOW CAUSE

Agency File Number:
a/k/a [redacted]

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

This case involves a request to clarify the interpretation of the Immigration and Nationality Act ("INA") as it pertains to the procedures of the Tacoma Immigration Court "to mandate detention without the possibility of bond for noncitizens who entered the United States without

inspection, even if they have lived here for years." *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. Apr. 24, 2025). Mr. Martinez Aleman, previously known by the name of Pedro Rivera, has been in the United States for nearly forty years with his U.S. citizen wife and four children, three of whom are also U.S. citizens.

Mr. Martinez Aleman has a long and complicated immigration history (described more fully below) that necessitates a thorough review by the Board of Immigration Appeals (BIA). However, if he is removed while his motion to reopen is pending, then he will become ineligible to apply for cancellation of removal, one of the forms of relief which he seeks. Additionally, he will be subject to additional harm if removed to El Salvador, explained more fully in his asylum application. Mr. Martinez Aleman has already sought a discretionary stay of removal before the BIA, which was denied, necessitating the filing of this instant petition.

PARTIES

1. Petitioner Abel Martinez Aleman a/k/a Pedro Rivera is a citizen of El Salvador who is presently detained at the Northwest ICE Processing Center in Tacoma, Washington.

2. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. She has responsibility over the Executive Office for Immigration Review, which decides removal cases and applications for relief from removal.

3. Respondent Kristi Noem is sued in her official capacity as the Secretary of the Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

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4. Respondent Todd Lyons is sued in his official capacity as 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.

5. Respondent Cammilla Wamsley is sued in her official capacity as the Field Office Director of the ICE Seattle Field Office. She is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, including detentions, enforcement, and removal operations. She is the immediate legal custodian of the petitioner for purposes of a federal habeas petition.

6. Respondent, Bruce Scott, is sued in his official capacity as the Warden of the Northwest ICE Processing Center, the privately-operated immigration detention center where the petitioner is being detained. Mr. Scott has direct custody of the petitioner.

JURISDICTION

7. This Court has jurisdiction over this matter under 18 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2241 *et seq.* (declaratory action); and 8 U.S.C. § 1101 *et seq.* (the Immigration and Nationality Act).

8. Further, this Court has jurisdiction under the Suspension Clause of Article I, § 9, cl. 2, of the U.S. Constitution. *See INS v. St. Cyr*, 533 U.S. 289 (2001).

9. 8 U.S.C. § 1252(g) does not bar review in this matter because Petitioner brings a collateral attack to his removal order, rather than challenging directly the execution of the removal order. Moreover, cases like *Velasco Gomez v. Scott*, No. C25-0522HLR-BAT, 2025 WL 1726465, at *4 (W.D. Wash. June 20, 2025) are distinguishable. In *Velasco Gomez*, this Court explained that

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a pending application for a U-visa does not affect ICE's ability to execute a removal order. *Id.* Importantly, regardless of removal, an individual may become eligible to receive a U visa even after removal. In contrast, the relief sought by Mr. Martinez Aleman hinges on his ability to remain in the United States. This difference implicates his due process right to seek relief, as discussed more fully below, and, therefore, rises above the jurisdictional bar in section 1252(g).

10. This Court also retains jurisdiction to review Petitioner's claim under the Administrative Procedure Act.

11. No other petitions, appeals, or motions regarding habeas corpus have been filed with any other court.

VENUE

12. Venue in the Western District of Washington is appropriate under 28 U.S.C. § 1391(e)(1) because the Petitioner is detained in this judicial district.

13. Venue is further appropriate under 28 U.S.C. § 1391(e)(1) because the Respondents live, work, and/or operate within this judicial district and because the actions which gave rise to this Petition took place in Tacoma, Washington, which falls within this judicial district.

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

14. 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 this Court issues an OSC, it must further require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

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15. 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).

FACTUAL ALLEGATIONS

16. Petitioner, Abel Martinez Aleman, is a citizen of El Salvador who is presently detained at the Northwest ICE Processing Center. He has been living in the United States since his entry into the United States without inspection sometime in the year 1988.

17. Mr. Martinez Aleman is married to a U.S. citizen and has three U.S. citizen children and one child with Deferred Action for Childhood Arrivals.

18. Mr. Martinez Aleman applied for asylum with the help of a non-attorney less than one month after his entry to the U.S. He has never had the opportunity to learn how to read or write in any language because he started working as soon as he was able to support his destitute family in El Salvador. Unable to read his correspondence from the immigration court, Mr. Martinez Aleman's neighbor advised him that if he showed up to court without an attorney, he would lose. He did not attend.

19. Shortly thereafter, the immigration court administratively closed his case, and Mr. Martinez Aleman was terrified that his family would become destitute if he was not able to work. He bought a Salvadoran birth certificate from a family friend who needed money, so he could apply for a work permit as Pedro Rivera. The Pedro Rivera born in El Salvador has never been in the United States. All along, Petitioner's goal has been to provide for his family; he has

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never expressed malice in using the incorrect name. Later, he tried to rectify his status by applying for asylum again in 1991 under the name Pedro Rivera and was assigned a new A number.

20. He pursued his asylum case and immigration court proceedings under this name. An immigration judge in Seattle, Washington, granted him voluntary departure in 2009. His attorney at the time incorrectly advised him that, if he stayed in the United States, he would later be approved for a waiver, even though his grant of voluntary departure converted into a removal order because he did not depart the U.S. Additionally, this attorney advised Mr. Martinez Aleman to continue working in the United States with an employment authorization document granted in conjunction with an application for Temporary Protected Status filed under the name, Pedro Rivera.

21. Acting on the advice of his attorney, Mr. Martinez Aleman remained in the United States. In May 2025, Petitioner disclosed this information to undersigned counsel, and it formed the basis for his motion to reopen, so he could pursue his application for cancellation of removal based on the exceptional and extremely unusual hardship that his U.S. citizen wife will face in his absence, and his application for asylum based on changed country conditions.

22. In 2014, Petitioner was placed on an Order of Supervision (OSUP) with his local ICE Field Office. He complied with his OSUP and ICE check-ins for the last ten years. On January 8, 2025, he received a letter from ICE terminating his OSUP, and on August 18, 2025, he was issued a notice scheduling his removal. He immediately filed that motion to reopen based on ineffective assistance of counsel on August 27, 2025, and filed an I-246, Request for Stay of Removal and Reinstatement of Order of Supervision, with ICE on September 9, 2025. An immigration judge denied the motion to reopen on October 9, 2025.

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23. Mr. Martinez Aleman immediately appealed to the BIA and also filed an emergency motion to stay removal while the BIA reviewed his appeal. The BIA denied this motion in its discretion on November 14, 2025.

24. At Mr. Martinez Aleman's previously scheduled ICE check-in for November 18, 2025, he was detained and scheduled to be taken to the Northwest Ice Processing Center in Tacoma, Washington, to execute his removal order. He also learned on this day that ICE had denied his I-246. This petition for a writ of habeas corpus follows.

MEMORANDUM OF LAW

Mr. Martinez Aleman challenges the constitutionality of the statutory framework by which the Respondents are detaining him without bond under 8 U.S.C. § 1225(b)(2). He asserts that, because he was detained in the interior, that if any detention is appropriate, it must be under 8 U.S.C. § 1226(a).

I. Legal Framework of Immigration Detention

25. The Supreme Court has stated that "[i]t is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)) (internal quotation marks omitted). "Freedom from imprisonment---from government custody, detention, or other forms of physical restraint---lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (internal citation omitted); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental Due Process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721

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(Kennedy, J., dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious.").

26. Due Process, therefore, 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." *Id.* at 690 (internal quotation marks and citation omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention---to mitigate the risks of danger to the community and to prevent flight risks from absconding immigration proceedings. *Id.*; *Demore v. Kim*, 538 U.S. 510, 528 (2003).

27. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

28. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). 8 U.S.C. § 1229a.

29. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission under section 1225(b)(2).

30. Last, the Act authorizes detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings. 8 U.S.C. §§ 1231(a)–(b).

31. This case concerns the detention provisions in section 1231.

II. *Zadvydas* Habeas Petitions

32. As recently summarized by this Court in *Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, at *2 (W.D. Wash. Nov. 17, 2025):

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> In *Zadvydas*, the Supreme Court held that the [Immigration and Nationality Act] does not authorize "indefinite, perhaps permanent, detention" of noncitizens subject to final orders of removal. 533 U.S. [at] 699[.] . . . Applying the doctrine of constitutional avoidance, the Court explained that such an interpretation was necessary "to avoid a serious constitutional threat[.]" *Id.* As the Court recognized, "[a] statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem [under] . . . [t]he Fifth Amendment's Due Process Clause[.]" *Id.* at 690[] . . . "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.*

33. Under the *Zadvydas* framework, "it is 'presumptively reasonable' for the Government to detain a noncitizen for six months while the Government works to" execute a removal order. *Abubaka*, 2025 WL 3204369, at *3 (quoting *Zadvydas*, 533 U.S. at 682). "After this 6–month period, once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* (quoting *Zadvydas*, 533 U.S. at 701) (internal quotation marks omitted). "[F]or detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701. In other words, the government must make a strong showing as to why it rested on its laurels in failing to execute a removal order---in Petitioner's case, sixteen years. Therefore, when detention appears to be indefinite, it is unlawful under *Zadvydas*. *See Tang v. Bondi*, No. 2:25-cv-01473-RAJ-TLF, 2025 WL 2637750, at *3 (W.D. Wash. Sept. 11, 2025).

34. Moreover, subsection (b)(3) also restricts removal to a country where the "[noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C.

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§ 1231(b)(3)(A). In other words, where a Petitioner has a viable claim for asylum, this Court must exercise its jurisdiction over a petition for a writ of habeas corpus.

35. Courts in the Western District of Washington have recently considered matters in a similar procedural posture to that of Petitioner---that is, review of detention of noncitizens with unexecuted removal orders. For example, in *Tang v. Bondi*, a court explained that "[c]ourts in this circuit have found a request to release a re-detained noncitizen seeks a prohibitory injunction because it seeks 'to preserve the status quo preceding [the] litigation---[the petitioner's] presence in the United States free from detention[.]'" 2025 WL 2637750, at *3 (quoting *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *10 (W.D. Wash. Aug. 21, 2025)) (internal quotation marks omitted) (alterations original to *Tang*). The court further explained that, absent any indication from the government that removal is imminent, continued detention will likely be unreasonable. *Id.* at *5 ("There is no indication when the request [for a travel document] will be submitted to Vietnam. This, in combination with serious doubts about whether Vietnam will issue a travel document for Mr. Tang, supports the likelihood that Mr. Tang's current detention is unreasonably indefinite.").

36. Similarly, Petitioner does not have a passport from any country, and there is no evidence at this time that ICE has requested or made any other efforts to procure a travel document for his removal. Indeed, there is no evidence that ICE has made any effort to do so since Petitioner was ordered removed in 2009. Accordingly, it is likely that Petitioner's "current detention is unreasonably indefinite." *Id.*

37. *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022), is not dispositive. There, the Court of Appeals for the Ninth Circuit explained that section 1252(g) stripped jurisdiction over a habeas

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petition filed during the pendency of an appeal of a motion to reopen. In *Rauda*, the court explained:

> Once the BIA decides that motion [to reopen], [the petitioner] will be able to file a petition for our court to review *that* final agency action—including review of the BIA's denial of his request for a stay of removal pending its decision. Matias has taken full advantage of his statutory rights and will continue to have access to the process guaranteed to him under the statute even if he is removed.

Id. at 777.

38. However, in this case, Petitioner faces imminent harm if removed because he fears for his life if removed to El Salvador. Motions to reopen are permitted for asylum seekers if their asylum applications are based on changed country conditions, yet no final decision has been made on the viability of Mr. Martinez Aleman's underlying asylum application. Instead, an immigration judge has decided only that he failed to meet any of the exceptions for untimely filing a motion to reopen. As described in paragraphs 44–46, if removed, Petitioner will not be able to seek review by the Court of Appeals for the Ninth Circuit when the BIA finally issues a decision because his case will have become moot. The relief he seeks relies on his ability to remain in the United States. Therefore, unlike the petitioner in *Rauda*, petitioner will no longer "continue to have access to the process guaranteed to him under the statute even if he is removed." 55 F.4th at 777; *see also* 8 U.S.C. §§ 1229a(c)(7)(B), 1158(a)(1).

39. Instead, this Court has jurisdiction to review country of removal designations because ICE acts "outside of removal proceedings" and so it is not barred by section 1252(a)(5). *Aden v. Nielsen*, 409 F.Supp.3d 998, 1006 (W.D. Wash. 2019).

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III. Petitioner's right to procedural due process has been violated.

40. The Constitution guarantees due process for all individuals in the United States, regardless of immigration status. *E.g.*, *Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) ("The Supreme Court has long recognized that deportable [noncitizens] are entitled to constitutional protections of due process." (citing *Yamataya v. Fisher*, 189 U.S. 86, 100–04 (1903)); *see also Zadvydas*, 533 U.S. at 695.

41. Continued detention violates Petitioner's right to procedural due process. *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Mathews* requires consideration of three factors: (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 safeguards;" 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." *Id.* at 335. Petitioner can satisfy all three criteria.

42. First, physical freedom is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Whether detention conditions are distinguishable from criminal incarceration is another consideration. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Gunaydin v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025). Petitioner, who has no criminal history, is "experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning . . . lack of privacy, and, most fundamentally, the lack of freedom of movement." *Gunaydin*, 784 F.Supp.3d at 1187; *see also Tang*, 2025 WL 2637750, at *5 ("The Ninth Circuit has recognized the irreparable harms imposed on anyone subject to immigration detention, including subpar medical and psychiatric care in ICE detention

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facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained.") (internal quotation marks and citation omitted).

43. Second, courts must "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Id.* Here, Petitioner's applications for relief all require him to remain the United States and preferably not detained, and he has a statutory right to pursue these applications for relief. 8 U.S.C. § 1229a(c)(7)(B).

44. In 2009, an immigration judge granted him voluntary departure, and if he did not timely depart, then he would be removed to El Salvador, or in the alternative, Mexico. Petitioner's asylum claim is based on the changed country conditions in El Salvador since President Bukele was elected, which occurred after his grant of voluntary departure converted into a removal order in 2009. Accordingly, he has never had an opportunity to express his fear of return to El Salvador based on changed country conditions or a fear of removal to Mexico to any immigration official. 8 U.S.C. § 1231(b)(3)(A); *see also Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *5 (W.D. Wash. Nov. 17, 2025) ("Recognizing the gravity of the interests at stake, courts in this district have concluded that due process requires the Government to give a noncitizen 'sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation.'") (quoting *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21, 2025)). Therefore, Petitioner faces not only a risk of erroneous and unlawful removal from the United States but also significant threats to safety if he is not released.

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45. This erroneous removal will effectively terminate his ability to seek relief through a motion to reopen, of which he has a statutory right to pursue. 8 U.S.C. § 1229a(c)(7)(B). In other words, he will be "left powerless to petition the courts for redress[.]" *Kumar*, 2025 WL 3204724, at *7 (quoting *Nguyen*, 2025 WL 2419288, at *21) (internal quotation marks omitted); *see also Baltodano v. Bondi*, No. C25-1958RSL, 2025 WL 2987766, at *3 (W.D. Wash. Oct. 23, 2025) (explaining that "in *Nguyen* the court found that due process with regard to threatened third country removal is not satisfied 'by simply allowing the noncitizen to *file* a motion to reopen their removal proceedings; rather, *the removal proceedings must be reopened so that a hearing can be held.*") (emphasis added). Taking away this statutory right from Petitioner is a violation of his right to due process and, therefore, an "erroneous deprivation of [his] private rights[.]" *Gunaydin*, 784 F.Supp.3d at 1187; *see also Kumar*, 2025 WL 3204724, at *6 ("Much of Kumar's petition is aimed at ensuring adequate process *after* he is screened for eligibility for protections against removal to Uganda. For instance, in the event USCIS determines Kumar has no reasonable fear of removal, he seeks adequate time to prepare a motion to reopen his removal proceedings.") (emphasis in original).

46. Additionally, Mr. Martinez Aleman has a viable application for non-LPR cancellation of removal if his case is reopened, but success of that application hinges on his physical presence in the United States. 8 U.S.C. § 1229a(b)(1). Removal from the United States effectively terminates his ability to seek either form of relief. Therefore, the risk of erroneous deprivation of his right to seek asylum or non-LPR cancellation of removal is high if he is removed. A bond hearing is necessary to balance Petitioner's liberty interest in pursuing these applications

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against the government's enforcement interest. *See Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011).

47. Third and finally, the government's interest must outweigh the "individual's constitutionally protected interest in avoiding physical restraint" in order to justify continued detention. *Zadvydas*, 533 U.S. at 690. Here, Petitioner has faithfully complied with ICE check-ins for over ten years and has worked tirelessly to rectify his immigration status. As described above, removal will strip away his statutory right to seek a motion to reopen. Moreover, the government's interest in executing his removal is minimal compared to Petitioner's statutory right to seek relief. The government has put forth no evidence to suggest that Petitioner is a danger or otherwise poses a flight risk. *Singh*, 638 F.3d at 1203–04. There is no reason to suggest that detention is necessary to secure the government's interest in removal while Petitioner pursues his applications for relief.

48. All three *Mathews* factors suggest that Petitioner's right to procedural due process has been violated and that he should be immediately released.

49. Additionally, Petitioner's order of supervision was improperly terminated, and he has not been afforded an opportunity to respond to and contest the reasons for revocation. 8 C.F.R. § 241.4(*l*)(1); *see also Villanueva v. Tate*, No. H-25-3364, 2025 WL 2774610, at *6–7 (S.D. Tex. Sept. 26, 2025). Section 241.4(*l*)(1) requires "notifi[cation] of the reasons for revocation[.] . . . The [noncitizen] will be afforded an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." This procedure was not followed in Petitioner's case.

50. His Order of Supervision was terminated on January 8, 2025, "due to proceedings being terminated[,]" yet he never heard from ICE about pending removal until August 18, 2025,

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when he received a notice that "[a]rrangements ha[d] been made for [his] departure to El Salvador." After rescheduling his appointment, in coordination with his local Deportation Officer, Mr. Martinez Aleman was detained at an ICE appointment on November 18, 2025. He never received an "initial information interview" after his OSUP was terminated in January 2025. The January 2025 letter was signed by Deportation Officer McIntosh, but it is unclear whether Officer McIntosh is "someone to whom the Executive Associate Director has legally delegated authority, or a district director who has made specific findings that the circumstances 'do not reasonably permit referral of the case to the Executive Associate [Director].'" *Villanueva*, 2025 WL 2774610, at *6 (quoting 8 C.F.R. § 241.4(*l*)(2)).

51. "Under deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations." *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020). Failure to do so is a violation of Petitioner's right to due process.

IV. Petitioner's right to due process will be violated if he is removed from the United States before the Board of Immigration Appeals rules on his motion to reopen and underlying applications for relief.

52. Petitioner's motion to reopen alleges severe ineffective assistance of counsel that violated his Fifth and Sixth Amendment rights. Additionally, Petitioner has a statutory right to file a motion to reopen to seek additional relief. 8 U.S.C. § 1229a(c)(7)(B). However, if he is removed from the U.S., that right will be effectively terminated because he will no longer be eligible for any form of relief. 8 U.S.C. §§ 1229a(c)(7)(B), 1158(a)(1). A similar principle was discussed in *Nguyen* where the court reviewed *Senate of State of California v. Mosbacher*, 968 F.2d 974 (9th Cir. 1992):

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> [A]s the circuit court explained, were the Secretary ordered to release the data, there would be nothing the Court or parties could truly do to "unrelease" the information if the Secretary prevailed in the end. *Mosbacher*, 968 F.2d at 978 ("*[O]nce the data is released, the Secretary will have lost the whole case for all practical purposes.*").

Nguyen, 2025 WL 2419288, at *11 (emphasis added).

53. Similarly for Petitioner, even though he has a pending motion to reopen before the Board of Immigration Appeals, his removal from the United States would effectively nullify the motion, eliminating any eligibility for possible relief. Accordingly, even though Petitioner's physical presence in the United States is not necessary for the BIA (or Court of Appeals for the Ninth Circuit) to adjudicate his motion to reopen, the redress stemming from that adjudication is only available while he is in the United States. If Petitioner is removed from the United States, he will not be able to present his application for asylum based on changed country conditions before an immigration judge---he has a due process right to do so. 8 U.S.C. § 1229a(b)(4)(B); 8 C.F.R. § 1240.11(c)(3)(iii). Additionally, he will lose his eligibility for non-LPR cancellation of removal, which requires his physical presence in the United States.

54. While Petitioner is not asking this Court to review directly his motion to reopen, he does posit that it can review the constitutional issues included in the motion to reopen to the extent they implicate relief because they do not relate to the execution of a removal order. "The Sixth Circuit reasoned that the petitioners' challenge survived the jurisdictional bar because their claim arose from their attorney's allegedly constitutionally deficient performance before and during their immigration hearings, rather than from the agency's commencement of proceedings, adjudication of cases, or execution of a removal order." *Velasco Gomez*, 2025 WL 1726465, at *5 (citing *Mustata v. Dep't of Justice*, 179 F.3d 1017, 1019, 1022 (6th Cir. 1999)).

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V. APA Claim for Unreasonable Agency Delay in Benefit Adjudications

55. In addition to the claims described above, the BIA's unreasonable delay in adjudicating the merits of Petitioner's motion to reopen, including his underlying application for asylum based on changed country conditions is arbitrary and capricious where the Petitioner will be harmed by imminent execution of a removal order. *See Sepulveda Ayala v. Noem*, No. C25-5185JNW, 2025 WL 1616075, at *3 (W.D. Wash. June 5, 2025) (explaining that section 1252(g) does not bar review where petitioner brings "an APA claim challenging the Government's unreasonable delay in adjudicating his U-visa petition"); *see also Sarr v. Scott*, 765 F.Supp.3d 1091, 1108 (W.D. Wash. 2025) ("Although there is no indication in the record that this delay was tactical or deliberate on the part of the Government, Courts have found delays caused by the immigration court to be attributable to the Government.").

56. Here, but for the BIA's delay in adjudicating Petitioner's appeal, he would be entitled to petition for review of his claim and seek a stay of removal before the Court of Appeals for the Ninth Circuit. Petitioner's ability to seek redress in the federal courts hinge exclusively on the BIA's timeline. Petitioner has exhausted all options to seek interim relief (excluding this instant petition) and, if removed, his opportunity to seek redress will be forever lost.

57. "The central question in evaluating 'a claim of unreasonable delay' is 'whether the agency's delay is so egregious as to warrant mandamus.'" *Sepulveda Ayala*, 2025 WL 1616075, at *4 (quoting *In re Core Comm's, Inc.*, 531 F.3d 849, 855 (D.C. Cir. 2008)).

> To decide whether an agency's delay is unreasonable under the APA, district courts in the Ninth Circuit apply the "*TRAC*" factors. *In re Pesticide Action Network N. Am., Nat. Res. Def. Council, Inc.*, 798 F.3d 809, 813 (9th Cir. 2015) ("*Pesticide Action Network*") (citing *[Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 79 (D.C. Cir. 1984)]). These factors are:

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> (1) the time agencies take to make decisions must be governed by a rule of reason;
>
> (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason;
>
> (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake;
>
> (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority;
>
> (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and
>
> (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

Id. at *4–5 (quoting *TRAC*, 750 F.2d at 79).

58. These factors weigh in favor of Petitioner. The timeline for BIA appeals can take years to resolve. Not only would detention for the entire period of his appeal be unlawful, but as described throughout this petition, that timeline effectively nullifies any opportunity for relief for asylum-seekers and applicants for non-LPR cancellation of removal. Congress has not provided a timetable for the BIA. While Petitioner acknowledges the BIA's incredibly large docket, his health and welfare is at stake and significantly impacted by the BIA's delay. Expediting Petitioner's case before the BIA is a small price to pay compared to the significant due process interests he has explained in this petition. Finally, even giving the BIA the benefit of the doubt for its long adjudication timeline, Petitioner can still demonstrate unreasonable delay. Because each of these factors weighs in Petitioner's favor, he can demonstrate a viable APA claim.

59. This Court may review APA claims in a petition for habeas corpus. The Supreme Court has explained that challenges to removal "fall within the 'core' of the writ of habeas corpus

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and thus must be brought in habeas. *Trump v. JGG*, 604 U.S. 670, 672 (2025). "And 'immediate physical release [is not] the only remedy under the federal writ of habeas corpus.'" *Id.* (quoting *Peyton v. Rowe*, 391 U.S. 54, 67 (1968)). Pursuant to the All Writs Act, 28 U.S.C. § 1651(a), this Court may "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." *See F.T.C. v. Dean Foods, Col*, 384 U.S. 597, 603 (1966).

60. Habeas corpus remains an appropriate vehicle to challenge unlawful agency action, as long as the petitioner satisfies the "in custody" requirement of 28 U.S.C. § 2241(c). Indeed, the seminal case of *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954), was itself a habeas petition challenging the immigration agency's failure to comply with its own regulations around removal. Likewise, in *Santamaria Orellana v. Baker*, the District of Maryland granted preliminary injunctive relief in a habeas proceeding to halt removal until the petitioner received review by an Immigration Judge---the same relief Petitioner seeks here. 2025 WL 2841886, at *10 (D. Md. Oct. 7, 2025).

VI. 8 U.S.C. §§ 1225 and 1226 Habeas Petitions

61. In the event that Petitioner's motion to reopen is granted, he will likely no longer be detained under section 1231. Instead, the relevant detention provision will convert to section 1226(a).

62. The detention provisions at sections 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section

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1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

63. Following the enactment of IIRIRA, the Executive Office for Immigration Review (EOIR) drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under section 1225 and that they were instead detained under section 1226(a). *See* 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).

64. Thus, in the decades that followed, most people who entered without inspection---unless they were subject to some other detention authority---received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1 at 229 (1996) (noting that section 1226(a) simply "restates" the detention authority previously found at section 1252(a)).

65. On July 8, 2025, ICE "in coordination with" the Department of Justice (DOJ), announced a new policy that rejected this well-established interpretation of the statutory framework and reversed decades of practice.

66. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to the mandatory detention provision under section 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

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67. Respondents' new policy turns this well-established interpretation on its head and violates the statutory scheme.

68. Indeed, this legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings was already rejected by this Court, finding that such individuals are entitled to bond redetermination hearings before immigration judges and rejecting the application of section 1225(b)(2) to such cases. *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

69. Despite this ruling from a federal court, in July 2025, ICE released a memorandum instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR, to reject bond redetermination hearings for applicants who arrived in the United States without documents.

70. A May 22, 2025, unpublished BIA decision confirms that EOIR is taking this same position that noncitizens who entered the United States without admission or parole are ineligible for immigration judge bond hearings.

71. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under section 1225(b)(2)(A) and are ineligible for bond hearings.

72. This is now the widespread position applying across the United States.

73. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

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74. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g.*, *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass July 7, 2025); *Diaz Martinez v. Hyde*, 792 F.Supp.3d 211 (D. Mass 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV.5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-0314 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 Civ. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263 (N.D.Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-cv-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Berez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that section 1226(a) and not section 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25CV03161,

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2025 WL 2402271, at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25CV03158, 2025 WL 2374224, at *2 (D. Neb. Aug. 14, 2025) (same).

75. DHS's interpretation defies the INA. As the courts above have explained, the plain text of the statutory provisions demonstrates that section 1226(a), not section 1225(b), applies to people like Petitioner.

76. Section 1226(a) applies by default to all persons pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under section 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

77. The text of section 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). Section 1226, therefore, leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

78. By contrast, section 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Accordingly, the mandatory detention provision of section 1225(b)(2) does not apply to people like Petitioner who are alleged to have entered the United States without admission or parole.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

79. Petitioner has exhausted all available administrative remedies that can provide the relief he seeks.

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80. A bond hearing is not available to him because all immigration judges are bound by *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which held that "[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission."

81. Next, for habeas claims exhaustion is not jurisdictional; it is merely prudential. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). "[A] court 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." *Id.* (internal citation and quotation marks omitted).

82. Petitioner filed for discretionary stays of removal with both Immigration and Customs Enforcement and the Board of Immigration Appeals (BIA). He has a pending appeal before the BIA regarding a motion to reopen a final order of removal. Therefore, Petitioner is not yet able to file a petition for review in circuit court and seek a stay of removal.

IRREPARABLE INJURY

83. The harm that flows from the violation of Petitioner's constitutional rights is unquestionably irreparable. *See K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 113 (3d Cir. 2013). The deprivation of a noncitizen's liberty is, in and of itself, irreparable harm. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Irreparable harm is virtually presumed in cases like this one where an individual is detained without due process. *Torres-Jurado v. Biden*, No. 19 CIV. 3595

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(AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) ("[B]efore the Government unilaterally takes away that which is sacred, it must provide a meaningful process.").

84. As noted above, Petitioner has a U.S. citizen wife and minor son and can file for non-lawful permanent cancellation of removal if his immigration case is reopened. If he is removed, he will lose this opportunity forever because 8 U.S.C. § 1229a(b)(1) requires him to be physically present in the United States. Additionally, Petitioner fears threats and harm to his life if removed to El Salvador. He has not had an opportunity to present his claim of asylum based on changed country conditions---nor has "the Attorney General decide[d] that [Petitioner's] life or freedom would be threatened in that country[.]" 8 U.S.C. § 1231(b)(3).

CLAIMS FOR RELIEF

COUNT I – Violation of the Immigration and Nationality Act (INA)

85. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

86. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended by Respondents.

87. The application of section 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

88. The application of section 1231 to Petitioner unlawfully precludes review of his application for asylum based on changed country conditions under section 1231(b)(3).

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COUNT II – Violation of Due Process

89. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

90. The government may not deprive a person of life, liberty, or property without due process of law. U.S. CONST. amend. V. "Freedom from imprisonment---from government custody, detention, or other forms of physical restraint---lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690.

91. Petitioner has a fundamental interest in liberty and being free from official restraint while he pursues his immigration case.

92. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT III – Violation of the Administrative Procedure Act

93. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

94. 5 U.S.C. § 706(1) grants this Court the power to "compel agency action unlawfully withheld or unreasonably delayed[.]"

95. The BIA's unreasonable delay in adjudicating Petitioner's motion to reopen is prohibiting his due process to seek relief.

96. This Petition has been verified by Petitioner. *See Verification of Petitioner.*

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PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

(1) Issue an Order to Show Cause ordering Respondents to show cause as to why this Petition should not be granted within three days and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;

(2) Issue a writ of habeas corpus ordering Respondents to release Petitioner immediately; or, in the alternative, issue an order requiring Respondents to schedule a bond hearing within twenty days, wherein they will bear the burden to demonstrate by clear and convincing evidence that he is a danger to the community or a flight risk, to justify his continued and unjustified detention;

(3) Stay Petitioner's transportation to another jurisdiction until this Court resolves his Petition for a Writ of Habeas Corpus;

(4) Issue an order immediately releasing the petitioner from detention pursuant to *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001);

(5) Declare that Petitioner's detention is unlawful;

(6) Immediately issue an order preventing the petitioner from being removed from the United States;

(7) Issue an order that Respondents may not seek to remove Petitioner to a third country without notice and a meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings;

(8) Issue an order that Respondents may not remove Petitioner to any third country because Respondents' third country removal program is unconstitutionally punitive;

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(9) Issue an order providing for an award of attorney's fees and costs under the Equal Access to Justice Act at 28 U.S.C. § 2412, and on any other basis justified under the law; and

(10) Grant such other relief as may be just and reasonable.

Dated: November 21, 2025

By: */s/ Alycia T. Moss*
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Pro Hac Vice Application Forthcoming

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

On behalf of Mr. Martinez Aleman, the party in custody, I verify the facts contained in this Petition for Writ of Habeas Corpus, upon information and belief, having reviewed the relevant records and pleadings. Mr. Martinez Aleman has not verified the petition himself because he is detained by Respondents.

Dated this 21st day of November, 2025.

/s/ Alycia T. Moss
Alycia T. Moss

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CERTIFICATE OF SERVICE

The undersigned hereby certifies I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

US Attorneys
Email: usawaw.habeas@usdoj.gov

Dated: November 21, 2025

By: */s/ Catherine M. Renshaw*
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