JUDGE LEON SCHYDLOWER

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
El Paso Division

Hermelindo Gumercin Escobar Monterroso,

Petitioner,

v.

Kristi Noem, *Secretary of Homeland Security, U.S. Department of Homeland Security*

Todd Lyons, *Acting Director, U.S. Immigration and Customs Enforcement*,

Mary De Anda-Ybarra, *Director, El Paso ICE Field Office, U.S. Immigration and Customs Enforcement*,

Pamela Bondi, *Attorney General, U.S. Department of Justice*,

Warden, *ERO El Paso Camp East Montana*,

Respondents.

EP 25CV0576

Civil Action No. _____

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner is a citizen of Guatemala who entered the United States in approximately 2012 without inspection between ports of entry on the U.S.-Mexico border, and upon information and belief was not encountered by immigration officials at that time. Approximately 13 years later, Petitioner was arrested by U.S. Immigration and Customs Enforcement ("ICE"), while dropping off paperwork so that his minor child could be released into his care from an Office of Refugee Resettlement (ORR) facility. Petitioner is now detained by U.S. Immigration and Customs Enforcement ("ICE"), under facts and circumstances that place him squarely within ICE's general

detention authority 8 U.S.C. § 1226(a). Under that statute, Petitioner is eligible to seek discretionary release on bond from an Immigration Judge ("IJ"). However, due to a new policy announced by ICE in July 2025, and now a recent Board of Immigration Appeals (BIA) decision that overturns decades of settled law, Respondents contend that Petitioner is actually detained under 8 U.S.C. § 1225(b). However, while § 1225 requires mandatory detention and does not allow release on bond, it only applies to noncitizens apprehended at the border "seeking admission." Petitioner therefore brings this action for a declaratory judgment from this Court that he is properly detained (if at all) only pursuant to 8 U.S.C. § 1226(a); and seeking an order that Respondents schedule him for a discretionary bond hearing pursuant to § 1226(a) before an Immigration Judge within 15 days.

JURISDICTION AND VENUE

2. 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).

3. 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.

4. 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.

5. Venue lies in this District because Petitioner is currently detained within the territorial jurisdiction of this division of this District; 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

6. Petitioner Hermelindo Gumercin Escobar Monterroso is a citizen and native of Guatemala and is currently detained by Respondents at ERO El Paso Camp East Montana in El Paso, TX within the territorial jurisdiction of this Court.

7. 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.

8. 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.

9. Respondent Mary De Anda-Ybarra is the Director of the El Paso ICE ERO Field Office of U.S. Immigration and Customs Enforcement (ICE) which has jurisdiction over ERO El Paso Camp East Montana where Petitioner Escobar Monterroso is unlawfully detained. As the local ICE official overseeing enforcement operations in the region, she is responsible for Petitioner's continued detention and any actions related to his removal. She is therefore the Petitioner's immediate legal custodian for the purpose of habeas jurisdiction.

10. 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.

11. Respondent Warden of the ERO El Paso Camp East Montana is the immediate custodian who is currently holding Petitioners Escobar Monterroso in physical custody in El Paso, TX. They are sued in their official capacity.

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

LEGAL BACKGROUND

A. Immigration Detention Legal Framework

13. 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.

14. 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.*

15. 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).

16. 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.

17. 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].

18. 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.*

19. 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.

20. 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 his burden of proof that he is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

21. 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)

22. 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."[1] 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.")

23. 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.*

24. 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 §

[1] Available at: https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited October 6, 2025).

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 HIS are not required to 'correct' the release paperwork by issuing INA § 212(d)(5) parole paperwork.")

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

C. Recent BIA decision *Matter of Yajure Hurtado*

26. 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).

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

28. 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.

29. 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.

30. 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, FN6 ("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.'")

31. 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.

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

33. 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.")

FACTS

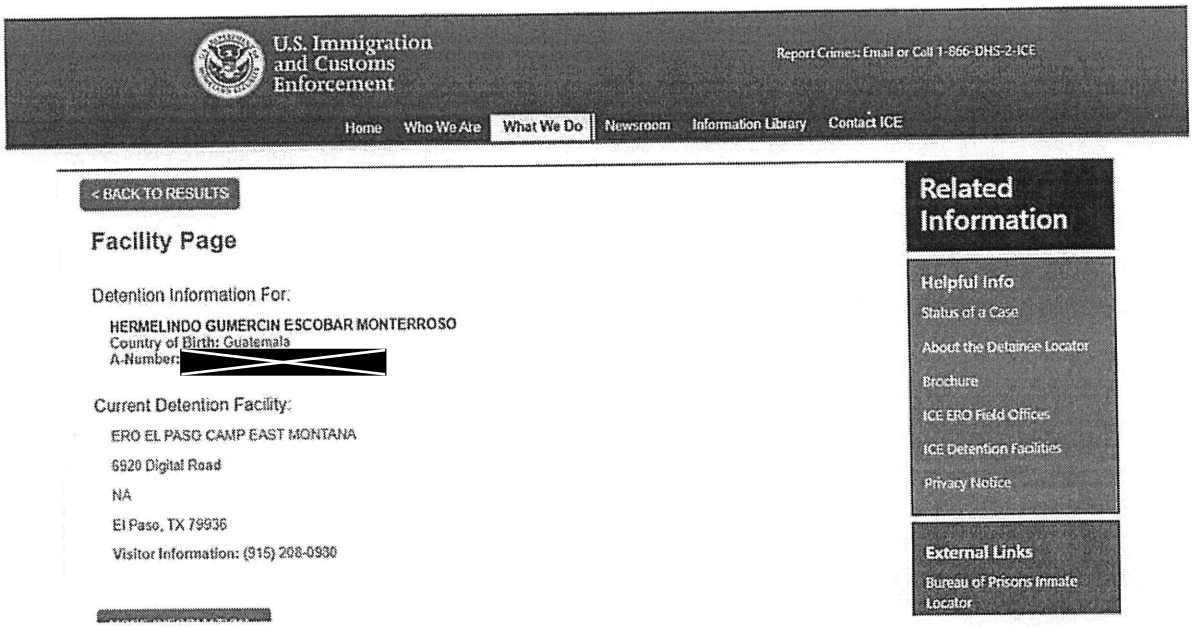
34. Petitioner Hermelindo Gumercin Escobar Monterroso is a citizen of Guatemala. He entered the United States in 2012 without inspection between ports of entry across the U.S.-Mexico border. Upon information and belief, he was not encountered by immigration officials nor issued an ICE Notice to Appear upon entry.

35. Petitioner Hermelindo Escobar later relocated to the state of Maryland, where he established his life and community ties. He currently resides in Takahoma Park, MD, with his wife, and three of their children. Petitioner's [redacted] year old daughter entered the U.S. over the summer of 2025, and was taken into ORR custody. Petitioner sought to serve as her sponsor for her release from ORR custody into his care.

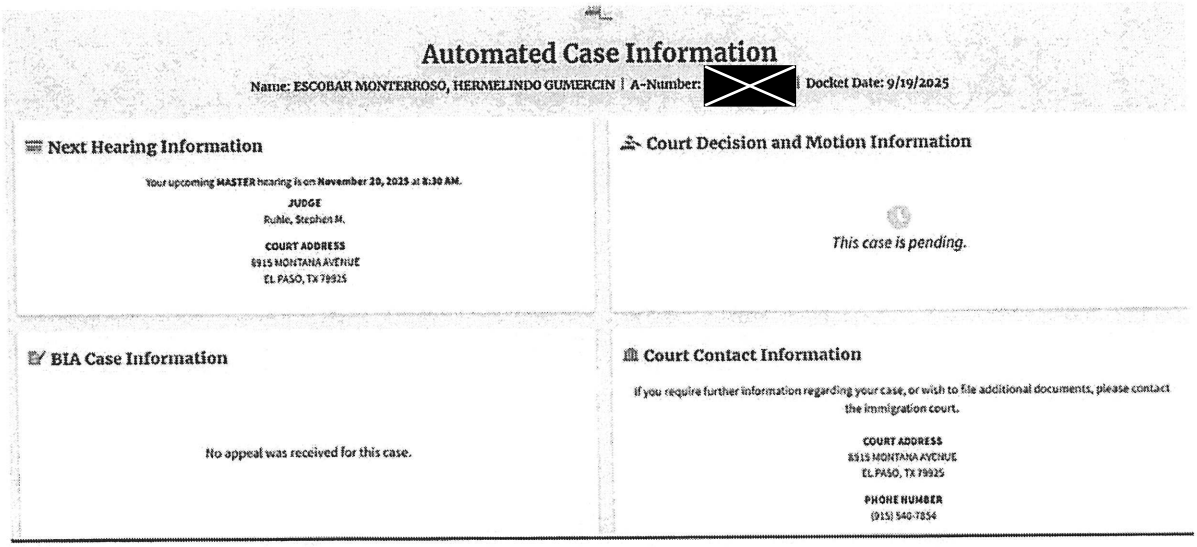
36. On September 16, 2025, while dropping off required ORR sponsor paperwork, and about 13 years after his entry into the United States, Petitioner encountered immigration authorities for the first time and was taken into immigration custody by ICE agents.

37. On November 7, 2025, Petitioner joined a habeas petition in the Western District of Texas as a putative Petitioner. *See Castro Cardona v. Noem*, Civ. No. 3:25-cv-514. On November 19, 2025, Petitioner was stricken from the habeas petition and ordered to file his own action. *Id.* at Dkt. No. 4.

38. Petitioner is currently detained at ERO El Paso Camp East Montana in El Paso, TX, within the territorial jurisdiction of this Court. See ICE Detainee Locator information (available at https://locator.ice.gov/ (last visited on November 19, 2025)):



39. Petitioner Hermelindo Escobar has pending removal proceedings (his Master Calendar Hearing is scheduled for November 20, 2025) and is not subject to a final order of removal. *See* EOIR Automated Case Information (available at https://acis.eoir.justice.gov/ (last visited on November 19, 2025)):



40. Petitioner's detention has caused profound emotional, psychological, and financial hardship to his entire family. He has lived in the United States continuously since 2012, where he

has built a life centered around his wife and three of their children. Two of them are U.S. citizens, ages [redacted] and [redacted] Their teenage daughter remains in ORR custody because she does not yet have a sponsor to whom she can be released. Before his detention, Petitioner was the family's sole provider. His wife, who is a full-time caregiver and stays home with their children, does not work outside home. Since his arrest, the family has been left without any stable income, making it extremely difficult to meet basic living expenses such as rent, food, and childcare. The financial instability has placed significant stress on the household, and the children are directly affected by the sudden loss of their father's support and presence. The children, especially the [redacted] year-old, are struggling to understand their father's absence. This child has already been receiving therapy due to school-related behavioral issues, which have worsened since the detention. One of the children suffers from [redacted] and requires consistent medical attention—care that is now more difficult to maintain given the family's loss of income and stability. The three-year-old has also been showing signs of emotional distress and separation anxiety. Petitioner himself suffers from chronic stomach pain, headaches, and insomnia, for which he takes daily medication. Although he is receiving some medical care while detained, the confinement and uncertainty of his situation have further aggravated his physical and emotional health.

41. All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. Accordingly, it would be futile for Petitioner Hermelindo Escobar to request a bond from an Immigration Judge. Exhaustion of administrative remedies would therefore be futile.

FIRST CLAIM FOR RELIEF:
Declaratory Judgment

42. Petitioner re-alleges and incorporates by reference paragraphs 1-40.

43. Petitioner requests a declaration from this Court that he 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 his 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)
(All Petitioners)

44. Petitioner re-alleges and incorporates by reference paragraphs 1-40.

45. Since Petitioner is not an applicant for admission "seeking admission" or an "arriving alien" 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), he is entitled to a bond redetermination hearing by an immigration judge pursuant to 8 U.S.C. § 1226(a).

46. 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

47. Petitioner re-alleges and incorporates by reference paragraphs 1-40.

48. 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.

49. After entering the United States unlawfully, Petitioner went on to develop ties to the community over the course of several years. 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.

50. Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate deprives Petitioner of his rights without due process of law.

REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests 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) Enjoin Petitioner's transfer outside of this judicial district pending this litigation;

c) Declare that Petitioner is not an applicant for admission "seeking admission" or "an arriving alien" subject to 8 U.S.C. § 1225(b);

d) Declare that Respondents' actions, as set forth herein, violate Petitioner's due process rights;

e) Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);

f) Order that Respondents conduct bond hearings for Petitioner pursuant to 8 U.S.C. § 1226(a) within 15 days;

g) Grant the writ of habeas corpus and order Respondents to release Petitioner forthwith, upon payment of the bond as ordered by the Immigration Judge;

h) Award Petitioner his costs of suit; and

i) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

Date: November 20, 2025

/s/ Charles Carr
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**Pro Hac Vice Counsel for Petitioner*

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk
U.S. Attorney's Office for the Western District of Texas
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Respectfully submitted,

Date: November 20, 2025

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