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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 Kambiz Bakhtiari,

15 Petitioner,

16 v.

17 John Mattos, NSDC Warden; Michael
18 Bernacke, Field Director, West Valley City
19 Office of ICE ERO; Todd Lyons, ICE
20 Acting Director; Kristi Noem DHS
21 Secretary; Pam Bondi, U.S. Attorney
22 General, *et al.*,

23 Respondents.

24 Case No. 2:25-cv-02346-APG-NJK

25 **Motion for Temporary Restraining
26 Order**

27

1 in the OSUP.⁴ He worked, including starting his own business, and supported his
2 family.⁵

3 On July 7, 2025, over six years after he was ordered removed and without
4 any change in circumstances, ICE re-detained Bakhtiari. ICE officers did not
5 provide any reasons for the re-detention. Bakhtiari has been held in ICE custody
6 ever since the day ICE arrested him. ICE has never provided Bakhtiari with an
7 opportunity to challenge his re-detention or his continuing detention.

8 Bakhtiari still cannot be removed to Iran. Bakhtiari has complied with ICE's
9 past and recent requests to seek travel documents from Iran but was informed that
10 Iran will not accept him.⁶ Specifically, on November 18, 2025, he was taken to the
11 ICE ERO office in Las Vegas to speak to someone from the Iranian consulate.⁷
12 Bakhtiari provided them with the information they requested. In response, the
13 Iranian consulate said to him in no uncertain terms that they do not know who he is
14 and they have no documents about him at all in the Iranian system.⁸ On
15 information and belief, in late November 2025, he was taken back to the ICE office
16 in Las Vegas. He again spoke with the Iranian consulate. They told him that they
17 would not be issuing any travel documents or a passport to him.

18 Petitioner is therefore facing unlawful indefinite detention. Based on the
19 current administration's policy, he faces a threat of removal to a dangerous third
20 country without due process. The requested temporary restraining order ("TRO")
21 would preserve the status quo while Petitioner litigates these claims by
22 (1) reinstating Petitioner's release on supervision, (2) prohibiting the government

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24 ⁴ ECF No. 1-1 at 2.

25 ⁵ ECF No. 1-1 at 2-3.

26 ⁶ ECF No. 1-1 at 3.

27 ⁷ ECF No. 1-1 at 3.

⁸ ECF No. 1-1 at 3.

1 from revoking his OSUP without first following the required statutory procedures,
2 and (3) prohibiting the government from removing him to a third country without
3 an opportunity to file a motion to reopen with an IJ.

4 In granting this motion, this Court would not break new ground. Several
5 courts have granted TROs or preliminary injunctions mandating release for post-
6 final-removal-order immigrants like Petitioner. *See Rodriguez-Gutierrez v. Noem*,
7 No. 25-cv-02726-BAS-SBC (S.D. Cal. Nov. 7, 2025); *Phetsadakone v. Scott*, 2025 WL
8 2579569, at *6 (W.D. Wash. Sept. 5, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-
9 JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025); *Phan v. Becerra*, No. 2:25-
10 CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025); *Nguyen v.*
11 *Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *29 (W.D. Wash. Aug. 21, 2025).

12 Several courts have likewise granted temporary restraining orders
13 preventing third-country removals without due process. *See, e.g., J.R. v. Bostock*,
14 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025); *Vaskanyan v.*
15 *Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega*
16 *v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Hoac v.*
17 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16,
18 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D.
19 Cal. July 16, 2025).

20 Granting this relief would not even be breaking new ground in this District.
21 Indeed, judges in this district have recently granted preliminary injunctions,
22 temporary restraining orders, and habeas relief on these issues. *See Bunnell v.*
23 *Noem*, No. 2:25-cv-02259-GMN-EJY, 2025 WL 3707588 (D. Nev. Dec. 22, 2025)
24 (granting temporary restraining order releasing petitioner from custody); *Shadalo*
25 *v. Mattos*, No. 2:25-cv-02076-RFB-BNW, 2025 WL 3568234 (D. Nev. Dec. 14, 2025)
26 (granting preliminary injunction and ordering release from custody); *see also Barka*
27 *v. Mattos*, No. 2:25-cv-01781-GMN-MDC, 2025 WL 3723998 (D. Nev. Dec. 23, 2025)

1 (granting petition and releasing petitioner from custody); *Gomez v. Mattos*, No. 2:25-
2 CV-00975-GMN-BNW, 2025 WL 3101994 (D. Nev. Nov. 6, 2025) (same).

3 Petitioner therefore respectfully requests that this Court grant this TRO.
4

5 STATEMENT OF FACTS

6 Concurrent with this motion, Petitioner files his amended § 2241 petition.
7 Petitioner incorporates by reference the statements of fact set forth in those
8 pleadings.

9 ARGUMENT

10 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on the
11 merits, that he is likely to suffer irreparable harm in the absence of preliminary
12 relief, that the balance of equities tips in his favor, and that an injunction is in the
13 public interest.” *Winter v. Nat. Res. Def Council, Inc.*, 555 U.S. 7, 20 (2008); *accord*
14 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7 (9th
15 Cir. 2001) (noting that a TRO and preliminary injunction involve “substantially
16 identical” analysis). A “variant[] of the same standard” is the “sliding scale”: “if a
17 plaintiff can only show that there are ‘serious questions going to the merits’—a
18 lesser showing than likelihood of success on the merits—then a preliminary
19 injunction may still issue if the balance of hardships tips *sharply* in the plaintiff’s
20 favor, and the other two *Winter* factors are satisfied.” *Immigrant Defenders Law*
21 *Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025) (internal quotation marks
22 omitted). Under this approach, the four *Winter* elements are “balanced, so that a
23 stronger showing of one element may offset a weaker showing of another.” *All. for*
24 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). A TRO may be
25 granted where there are “‘serious questions going to the merits’ and a hardship
26 balance ... tips sharply toward the plaintiff,” and so long as the other *Winter* factors
27 are met. *Id.* at 1132.

1 Here, this Court should issue a temporary restraining order because
2 “immediate and irreparable injury . . . or damage” is occurring and will continue in
3 the absence of an order. Fed. R. Civ. P. 65(b). Not only have Respondents re-
4 detained Petitioner and held him in indefinite detention in violation of his due
5 process, statutory, and regulatory rights, ICE policy also allows them to remove him
6 to a third country in violation of his due process, statutory, and regulatory rights.
7 This Court should order Petitioner’s immediate release and enjoin removal to a
8 third country with no or inadequate notice or an opportunity to be heard.

9 **I. Petitioner will likely succeed on the merits, or at a minimum,**
10 **Petitioner raises serious merits questions.**

11 In his amended § 2241 petition, Petitioner raises five claims that he has been
12 unconstitutionally detained and that he cannot be removed to a third country.

13 Petitioner addresses the merits of each claim below:

14
15 **A. Petitioner is likely to succeed on the merits of his claim that**
16 **his detention violates *Zadvydas* and the Immigration and**
17 **Nationality Act, 8 U.S.C. § 1231(a)(6). (Grounds 1 and 2).**

18 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a
19 problem affecting people like Petitioner: Federal law requires ICE to detain an
20 immigrant during the “removal period,” which typically spans the first 90 days after
21 the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). And after that 90-day
22 removal period expires, ICE may detain the migrant while continuing to try to
23 remove them. *Id.* § 1231(a)(6). If that subsection were understood to allow for
24 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
25 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
26 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.*
27 at 689. As an initial matter, *Zadvydas* held that detention is “presumptively
reasonable” for six months after the removal order becomes final. *Id.* at 701.

1 After six months, detention ceases to be presumptively reasonable. Courts
2 use a burden-shifting framework to decide whether detention remains authorized.
3 First, the petitioner must prove that there is “good reason to believe that there is no
4 significant likelihood of removal in the reasonably foreseeable future.” *Id.* If he does
5 so, the burden shifts to “the Government [to] respond with evidence sufficient to
6 rebut that showing.” *Id.* Ultimately, then, the burden of proof rests with the
7 government: The government must prove that there is a “significant likelihood of
8 removal in the reasonably foreseeable future,” or the immigrant must be released.
9 *Id.*

10 Here, Petitioner was ordered removed much more than 6 months ago, as his
11 removal order became final in 2019. He has also been detained since July 7, 2025.
12 On information and belief, Bakhtiari was previously detained for the initial 90-day
13 removal period plus an additional three months in 2019.⁹ He has now been re-
14 detained for six months. The cumulative amount of detention has been for well over
15 six months. Even without counting the prior period of detention, Bakhtiari’s present
16 detention has passed the presumptive six months of reasonable time, and there is
17 no reasonable likelihood of removal as Iran will not issue travel documents (which
18 is what occurred back in 2019). Thus, Bakhtiari will prevail on this claim. Thus,
19 this Court will likely find that Petitioner warrants *Zadvydas* relief.

20 **B. Petitioner is likely to succeed on the merits of his claim that**
21 **ICE violated its own regulations (Ground 3).**

22 In addition to *Zadvydas*’s protections, 8 C.F.R. §§ 241.4(l), 241.13(i) provide
23 extra process for re-detentions. These regulations permit an official to “return[s]
24 [the person] to custody” because they “violate[d] any of the conditions of release.” 8
25 C.F.R. § 241.13(i)(1); *accord id.* § 241.4(l)(1). Otherwise, they permit revocation of
26

27 ⁹ ECF No. 1-1 at 3.

1 release only if the appropriate official (1) “determines that there is a significant
2 likelihood that the alien may be removed in the reasonably foreseeable future,” and
3 (2) makes that finding “on account of changed circumstances.” *Id.* § 241.13(i)(2).

4 No matter the reason for re-detention, the re-detained person is entitled to
5 “an initial informal interview promptly,” during which they “will be notified of the
6 reasons for revocation.” *Id.* §§ 241.4(l)(1), 241.13(i)(3). The interviewer must
7 “afford[] the [person] an opportunity to respond to the reasons for revocation,”
8 allowing them to “submit any evidence or information” relevant to re-detention and
9 evaluating “any contested facts.” *Id.*

10 ICE is required to follow its own regulations. *United States ex rel. Accardi v.*
11 *Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th
12 Cir. 2004) (“The legal proposition that agencies may be required to abide by certain
13 internal policies is well-established.”). A court may review a re-detention decision
14 for compliance with the regulations. *See Gomez v. Mattos*, No. 2:25-CV-00975-GMN-
15 BNW, 2025 WL 3101994, at *3 (D. Nev. Nov. 6, 2025); *Phan v. Beccerra*, No. 2:25-
16 CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No.
17 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v.*
18 *United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

19 Here, none of the prerequisites to detention apply. ICE did not detain
20 Petitioner due to a violation. And there are no changed circumstances that justify
21 re-detaining him. Respondents’ intent to eventually complete a travel document
22 request to remove Petitioner does not constitute a “changed circumstance” under
23 C.F.R. § 241.13(i)(2). *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
24 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL,
25 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). ICE failed to provide Petitioner
26 with “reasons for revocation,” they failed to allow Petitioner an “opportunity to
27 respond to the reasons for revocation,” and Petitioner was not allowed to “submit

1 any evidence or information” relevant to re-detention and evaluating “any contested
2 facts.” 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3).

3 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
4 the applicable regulations,” this Court will likely find that “petitioner is entitled to
5 his release” on an order of supervision. *Liu*, 2025 WL 1696526, at *3.

6 **C. Petitioner is likely to succeed on the merits of his claim that he**
7 **is entitled to adequate notice and an opportunity to be heard**
8 **prior to any third country removal (Grounds 4 and 5).**

9 Finally, Petitioner is likely to succeed on the merits of his claim that he may
10 not be removed to a third country absent adequate notice and an opportunity to be
11 heard.

12 U.S. law enshrines protections against dangerous and life-threatening
13 removal decisions. By statute, the government is prohibited from removing an
14 immigrant to any third country where a person may be persecuted or tortured, a
15 form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
16 The government “may not remove [a noncitizen] to a country if the Attorney
17 General decides that the [noncitizen's] life or freedom would be threatened in that
18 country because of the [noncitizen’s] race, religion, nationality, membership in a
19 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
20 1208.16. Withholding of removal is a mandatory protection.

21 Similarly, Congress codified protections enshrined in the Convention Against
22 Torture (CAT) prohibiting the government from removing a person to a country
23 where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231
24 note) (“It shall be the policy of the United States not to expel, extradite, or
25 otherwise effect the involuntary return of any person to a country in which there
26 are substantial grounds for believing the person would be in danger of being
27 subjected to torture, regardless of whether the person is physically present in the

1 United States.”); 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT
2 protection is also mandatory.

3 To comport with the requirements of due process, the government must
4 provide notice of the third country removal and an opportunity to respond. Due
5 process requires “written notice of the country being designated” and “the statutory
6 basis for the designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v.*
7 *Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep’t*
8 *of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May
9 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

10 Due process also requires the following: “[A]sk[ing] the noncitizen whether he
11 or she fears persecution or harm upon removal to the designated country and
12 memorialize in writing the noncitizen's response. This requirement ensures DHS
13 will obtain the necessary information from the noncitizen to comply with section
14 1231(b)(3) and avoids [a dispute about what was said].” *Aden*, 409 F. Supp. 3d at
15 1019. “Failing to notify individuals who are subject to deportation that they have
16 the right to apply for asylum in the United States and for withholding of
17 deportation to the country to which they will be deported violates both INS
18 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at
19 1041.

20 If the noncitizen claims fear, measures must be taken to ensure that the
21 noncitizen can seek asylum, withholding, and relief under CAT before an
22 immigration judge in reopened removal proceedings. The amount and type of notice
23 must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
24 circumstances, he would have a reasonable opportunity to raise and pursue his
25 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009 (citing
26 *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossou v. I.N.S.*, 132 F.3d 405,
27

1 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring a minimum of 15
2 days notice).

3 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,
4 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016), and
5 for good reason: To have a meaningful opportunity to apply for fear-based protection
6 from removal, immigrants must have time to prepare and present relevant
7 arguments and evidence. Merely telling a person where they may be sent, without
8 giving them a chance to look into country conditions, does not give them a
9 meaningful chance to determine whether and why they have a credible fear.

10 Respondents’ third country removal policy skips over these statutory and
11 constitutional procedural protections. According to ICE’s July 9, 2025 Directive,
12 individuals can be removed to third countries “without the need for further
13 procedures,” so long as “the [U.S.] has received diplomatic assurances.”¹⁰ Petitioner
14 is likely to succeed on the merits of his claim on this fact alone, because the policy
15 instructs officers to provide no notice or opportunity to be heard of any kind. The
16 same is true of the minimal procedures ICE offers when no diplomatic assurances
17 are present. The policy provides no meaningful notice (only 6-24 hours), instructs
18 officers not to ask about fear, and provides no actual opportunity to see counsel and
19 prepare a fear-based claim (6-24 hours), let alone reopen removal proceedings. In
20 sum, it directs ICE officers to violate the rights of those whom they seek to subject
21 to the third country removal program.

22 Faced with similar arguments, several courts have recently granted
23 individual TROs against removal to third countries. See *Rodriguez-Gutierrez*, No.
24 25-cv-02726-BAS-SBC (S.D. Cal. Nov. 7, 2025) *J.R.*, 2025 WL 1810210; *Vaskanyan*,

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27 ¹⁰ P. Ex. 3.

1 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL 1993771, at *7; *Phan*,
2 2025 WL 1993735, at *7.

3 Because ICE's new policies for third country removal fail to comply with
4 existing law, they also violate the Administrative Procedures Act. Furthermore,
5 given the blatant unlawfulness and unconstitutionality of ICE's policies,
6 Petitioner's detention under the color of those policies is unlawful.

7 **II. Petitioner will suffer irreparable harm absent injunctive relief.**

8 Petitioner also meets the second factor: irreparable harm. "It is well
9 established that the deprivation of constitutional rights 'unquestionably constitutes
10 irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
11 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the "alleged deprivation
12 of a constitutional right is involved, most courts hold that no further showing of
13 irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th
14 Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure*,
15 § 2948.1 (2d ed. 2004)).

16 Here, the potential irreparable harm to Petitioner is even more concrete. He
17 has been unable to maintain his business and financially support his wife and
18 children.¹¹ Furthermore, unlawful detention itself "constitutes extreme or very
19 serious damage, and that damage is not compensable in damages." *Hernandez v.*
20 *Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) (internal citations omitted).

21 Third-country deportations pose that risk and more. Recent third-country
22 deportees have been held, indefinitely and without charge, in hazardous foreign
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27 ¹¹ ECF No. 1-1 at 2-3.

1 prisons.¹² They have been subjected to solitary confinement.¹³ They have been
2 removed to countries so unstable that the U.S. government recommends making a
3 will and appointing a hostage negotiator before traveling to them.¹⁴ These and other
4 threats to Petitioner’s health and life independently constitute irreparable harm.

5 **III. The balance of hardships and the public interest weigh heavily in** 6 **Petitioner’s favor**

7 The final two factors for a TRO—the balance of hardships and public interest—
8 “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S.
9 418, 435 (2009). That balance tips decidedly in Petitioner’s favor.

10 The government “cannot reasonably assert that it is harmed in any legally
11 cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d
12 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent
13 violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at
14 436 (describing public interest in preventing noncitizens “from being wrongfully
15 removed, particularly to countries where they are likely to face substantial harm”);
16 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when
17 government’s treatment “is inconsistent with federal law, . . . the balance of
18 hardships and public interest factors weigh in favor of a preliminary injunction.”).

19 Petitioner also faces weighty hardships: unlawful, indefinite detention and
20 removal to a third country where he is likely to suffer imprisonment or other serious

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22 ¹² Edward Wong et al., *Inside the Global Deal-Making Behind Trump’s Mass*
23 *Deportations*, N.Y. Times (Jun. 25, 2025), available at
24 [https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html)
[deportations.html](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html)

25 ¹³ Gerald Imray, *Men deported by US to Eswatini in Africa will be held in*
26 *solitary confinement for undetermined time*, Associated Press (Jul. 18, 2025),
27 available at [https://apnews.com/article/eswatini-united-states-trump-deportation-](https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbbcf6caff87d0bb8)
[immigrants-a5853b16b7b275cbbcf6caff87d0bb8](https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbbcf6caff87d0bb8)

¹⁴ *See* Wong, *supra*.

1 harm. The balance of equities thus favors preventing the violation of “requirements
2 of federal law,” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir.
3 2014), by granting emergency relief to protect against unlawful detention and
4 prevent unlawful third country removal.

5 **CONCLUSION**

6 For those reasons, Petitioner requests that this Court issue a temporary
7 restraining order granting the following relief: (1) reinstate Petitioner's release on
8 supervision, (2) prohibit the government from revoking his OSUP without first
9 following the required statutory procedures, and (3) prohibit the government from
10 removing him to a third country without an opportunity to file a motion to reopen
11 with an IJ.

12
13 Dated January 5, 2026.

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15 Respectfully submitted,

16 Rene L. Valladares
17 Federal Public Defender

18 /s/ Jonathan M. Kirshbaum
19 Jonathan M. Kirshbaum
20 Assistant Federal Public Defender
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on January 5, 2026. I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:

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/s/ Victoria Lenzi

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