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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10 **FRESNO DIVISION**

11  
12 JOSE OSVALDO FERREIRA JUNIOR

13 *Petitioner,*

14  
15 v.

16 Timothy S. ROBBINS, Field Office Director of the  
Los Angeles Field Office of U.S. Immigration and  
17 Customs enforcement; Todd M. LYONS, Acting  
18 Director of U.S. Immigration and Customs  
Enforcement; U.S. DEPARTMENT OF  
19 HOMELAND SECURITY, Kristi NOEM,  
20 Secretary of the U.S. Department of Homeland  
Security, Christopher CHESTNUT, Warden,  
21 California City Detention Center, and Pamela  
BONDI, Attorney General of the United States  
22

23 *Respondents,*

**Case No. 25-1183**

**PETITION FOR WRIT OF HABEAS  
CORPUS PURSUANT TO 28 U.S.C. §2241**

**IMMIGRATION HABEAS CASE**

1 INTRODUCTION

2 1. Petitioner Jose Osvaldo Ferreira Junior (“Petitioner”) is a U-Visa applicant<sup>1</sup> who fled Brazil  
3 along with his spouse and their United States-born infant child with the intent to seek asylum in the  
4 United States. After Petitioner arrived in the United States on February 7, 2023, federal agents briefly  
5 detained Petitioner and his family, determined that Petitioner and his spouse were not a flight risk or  
6 danger to the community, and released them on their own recognizance. A Notice to Appear was  
7 subsequently provided to them, ordering them to appear at removal proceedings with the San Francisco  
8 Immigration Court. In regards to Petitioner, since his entry to the United States, Petitioner has done  
9 everything the government asked him to do, including complying with all terms of his monitoring  
10 program, which includes sending pictures of himself to ICE on a regular basis, and maintain ICE  
11 informed of his whereabouts. In addition, Petitioner has no criminal history in Brazil. As for the United  
12 States, Petitioner has a misdemeanor reckless driving conviction, which was the result of driving at  
13 excessive speed. Nevertheless, as a responsible father and husband, Petitioner completed all the terms  
14 of his probation. In addition, shortly after being served with the Notice to Appear, Petitioner had  
15 retained the services of an immigration attorney to work on his family’s removal case, as well as their  
16 U-Visa application. Petitioner had his Master Calendar hearing with the immigration court scheduled  
17 for June 3, 2026, with the San Francisco Immigration Court.

18 2. Prior to November 19, 2025, Petitioner again did what the government told him to do: He  
19 appeared at all his scheduled in-person check-in visits at the ICE Field office in San Francisco, where  
20 and he always provided updates about his new address and other contact information. He also had  
21 notified ICE about his arrest and misdemeanor conviction for the reckless driving charge at an in-person  
22 check-in on March 20, 2025, and after providing his ICE officer with a certified copy of the judgment at  
23 a subsequent in-person check-in on May 29, 2025, he was informed that he had nothing to worry about  
24 and that his next visit was scheduled for November 19, 2025.

25  
26 <sup>1</sup> A U-Visa application is an immigration benefit for individuals who were victims of certain crimes and who cooperated with  
27 the authorities with the investigation and/or prosecution of the crime. If the application is granted, the individual would  
28 receive a four-year nonimmigrant visa. He would also be able to apply for adjustment of status three years after the approval  
of the U Visa petition. (See 8 U.S.C. §1101(a)(15)(U); also see 8 U.S.C. §1255(M).)

1 3. On November 19, 2025, Petitioner presented himself at the ICE San Francisco Field Office for  
2 what he assumed would be a routine in-person visit. However, to his surprise, ICE Officials detained  
3 him due to a DUI conviction. Petitioner tried to explain that he had been convicted for reckless driving  
4 and that he already had provided ICE officers with a copy of the judgment at his May 29, 2025 visit, but  
5 they officers ignored his explanation and proceeded with restraining and detaining him. On the same  
6 day, Petitioner was transferred to the California City Detention Center, in California City, California.

7 4. Before re-detaining him, Respondents did not provide Petitioner with any written notice  
8 Explaining the basis for the revocation of her release. Nor did they provide a hearing before a neutral  
9 decisionmaker where ICE was required to justify the basis for re-detention or explain why Petitioner is a  
10 flight risk or danger to the community.

11 5. A number of courts have held that due process demands such a hearing before the government 's  
12 Decision to terminate a person's liberty. (See *E.A. T.-B. v. Wamsley*, --- F.Supp. 3d --- No. C25-1192-  
13 KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).)

14 6. By failing to provide such a hearing, Respondents have violated Petitioner's constitutional right  
15 to due process. Accordingly, this Court should grant the instant petition for a writ of habeas corpus and  
16 order her immediate release. (See *Id.* at 6 \* (ordering immediate release because "a post-deprivation  
17 hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent  
18 an erroneous deprivation of liberty.")

#### 19 JURISDICTION AND VENUE

20 7. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question),  
21 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act), 28 U.S.C. § 2241  
22 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and  
23 Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

24 8. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28  
25 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

#### 26 REQUIREMENTS OF 28 U.S.C. § 2243

1 9. The Court must grant the petition for writ of habeas corpus or issue an order to show cause  
2 (OSC) to the Respondents “fortwith,” unless Petitioner is not entitled to relief. (28 U.S.C. §2243.) If  
3 an OSC is issued, the Court must require Respondents to file a return “within three days unless for good  
4 cause additional time, not exceeding twenty days, is allowed.” (Id.)

5 10. Habeas corpus is perhaps the most important writ known to the constitutional law... affording  
6 as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” (*Fay v. Noia*,  
7 372 U.S. 391, 400 (1963).) “The application for the writ usurps the attention and displaces the calendar  
8 of the judge or justice who entertains it and receives prompt action from him within the four corners of  
9 the application.” (*Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van*  
10 *Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (Habeas corpus is “a speedy remedy,  
11 entitled by statute to special, preferential consideration to insure expeditious hearing and  
12 determination.”).

13 11. Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because he is in Respondents’  
14 custody at California City Corrections Center.

#### 15 PARTIES

16 12. Petitioner is a 36-year-old asylum seeker from Brazil. He has a pending case with the  
17 Adelanto Immigration Court.<sup>2</sup> He is presently in civil immigration detention at the California City  
18 Detention Center, in California City, California.

19 13. Respondent Timothy S. Robbins is the Acting Field Office Director of the Los Angeles  
20 ICE Field Office. In this capacity, he is responsible for the administration of immigration laws  
21 and the execution of immigration enforcement and detention policy within ICE’s Los Angeles  
22 Area of Responsibility, including the detention of Petitioner. Respondent Robbins maintains an  
23 office and regularly conducts business in this district. Respondent Robbins is sued in his official  
24 capacity.

25  
26  
27 <sup>2</sup> Following his detention and transfer to the California City Detention Center, her case was transferred to the Adelanto  
28 Immigration Court. No hearings have been scheduled in regards to his removal proceedings . Prior to that, he had a case  
with the San Francisco Immigration Court, where he had his first Master Calendar hearing scheduled for June 3, 2026.

1 14. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official  
2 Performing the Duties of the Director of ICE, he is responsible for the administration and  
3 enforcement of the immigration laws of the United States; routinely transacts business in this  
4 District; and is legally responsible for pursuing any effort to detain and remove the Petitioner.  
5 Respondent Lyons is sued in his official capacity.

6 15. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate  
7 authority over DHS. In that capacity and through her agents, Respondent Noem has broad authority  
8 over and responsibility for the operation and enforcement of the immigration laws; routinely  
9 transacts business in this District; and is legally responsible for pursuing any effort to detain and  
10 remove the Petitioner. Respondent Noem is sued in her official capacity.

11 16. Respondent Department of Homeland Security (DHS) is the federal agency responsible for  
12 implementing and enforcing the INA, including the detention and removal of noncitizens.

13 17. Respondent Christopher Chestnut is employed by the private corporation, CoreCivic, Inc., as the  
14 Warden of the California City Detention Center, where Petitioner is detained. He has immediate  
15 physical custody of Petitioner. He is sued in his official capacity.

16 18. Respondent Pamela Bondi is the Attorney General of the United States and the most  
17 senior official at the Department of Justice. In that capacity and through her agents, she is  
18 responsible for overseeing the implementation and enforcement of the federal immigration laws.  
19 The Attorney General delegates this responsibility to the Executive Office for Immigration  
20 Review, which administers the immigration courts and the BIA. Respondent Bondi is sued in her official  
21 capacity.

## 22 EXHAUSTION

23 19. There is no requirement to exhaust because no other forum exists in which  
24 Petitioner can raise the claims herein. There is no statutory exhaustion requirement prior to  
25 challenging the constitutionality of an arrest or detention, or challenging a policy under the  
26 Administrative Procedure Act. Prudential exhaustion is not required here because it would be  
27 futile, and Petitioner will “suffer irreparable harm if unable to secure immediate judicial  
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1 consideration of [their] claim.” (*McCarthy v. Madigan*, 503 U.S. 140, 147 (1992).) Any further  
2 exhaustion requirements would be unreasonable.

3 **FACTUAL BACKGROUND**

4 20. Petitioner is a 36-year-old citizen and national of Brazil. He is married to Maria Eduarda Paula  
5 Carvalho, who also is a citizen and national of Brazil. They have a child together named M [REDACTED]  
6 [REDACTED] who is a United States citizen.

7 21. Petitioner fled Brazil along with his spouse and infant child intending to seek asylum and related  
8 protections from persecution and torture in the United States due to [REDACTED]

9 22. On or about February 7, 2023, Petitioner arrived in the United States along with his spouse and  
10 infant child. That same day, Respondents arrested and detained Petitioner and his family.

11 23. Prior to their entry to the United States, Petitioner and his spouse had resided in the United  
12 States from March 2018 through June 2022. On that occasion, they had entered the United States with a  
13 visitor visa (B-2). During their time living in the United States, their child, M [REDACTED]  
14 [REDACTED] was born.

15 24. In or around February 9, 2023, Respondent DHS released Petitioner from its custody into the  
16 United States under 8 U.S.C. § 1182(d)(5), after a determination that he was a low flight risk and was  
17 not a danger to the community. Petitioner and his spouse were instructed to appear at the ICE San  
18 Francisco field office on March 28, 2023.

19 25. As instructed, both Petitioner and his spouse appeared in person at the ICE San Francisco Field  
20 Office on March 28, 2023. They were both instructed to return for an in-person check-in on March 20,  
21 2024.

22 26. Although they had not yet been served with a Notice to Appear—and had no knowledge when  
23 they might be called for their master calendar hearing— following their release on February 9, 2023,  
24 Petitioner and his spouse sought the services of an immigration attorney to represent them in at their  
25 removal proceeding with the immigration court. They eventually retained the services of the Bueno  
26 Law Corporation in December 2023. Although Petitioner initially expected to file an asylum application  
27 with the immigration court, their immigration attorney learned that on June 2, 2019, Petitioner had been  
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1 the victim of an aggravated assault, which made him eligible for an immigration benefit known as U  
2 Visa, under which victims of certain crimes might qualify for a four-year nonimmigrant visa. In  
3 addition, after three years from the date of approval for the U Visa application, Petitioner would be able  
4 to apply for adjustment of status and become a Legal Permanent Resident. Based on that, Petitioner and  
5 his family filed an U Visa application with the United States Citizenship and Immigration Services on  
6 July 15, 2024.

7 27. A few days later, on July 21, 2024, Petitioner was served with a Notice to Appear, indicating  
8 that a Master Calendar Hearing had been scheduled for June 3, 2026.

9 28. On March 20, 2024, Petitioner and his spouse made an in-person visit to the San Francisco ICE  
10 Field Office where after undergoing an interview, where Petitioner was provided with an Order of  
11 Release on recognizance, which stated he was being released pursuant to section 236 of the Immigration  
12 and Nationality Act. As a condition of Petitioner's release, he was instructed to make an appearance via  
13 email for both him and his spouse with the ICE Field office in San Francisco on March 20, 2025.

14 29. Following the March 20, 2024 visit to the ICE San Francisco Field Office, on August 23, 2024,  
15 Petitioner was driving in San Francisco County with his spouse when they were stopped by police  
16 officers. The police officer informed Petitioner he had been driving at an excessive speed. Although the  
17 police officer initially indicated to Petitioner he was going to give him a ticket for excessive speeding,  
18 the police officer eventually detained Petitioner, believing he might have been driving under the  
19 influence.

20 30. Petitioner was charged with driving under the influence ("DUI") pursuant to California Vehicle  
21 Code Sections 23152(a) and (b), a misdemeanor. However, on February 24, 2025, the San Francisco  
22 Superior Court dismissed the DUI charges and instead, found Petitioner guilty of Wet Reckless driving  
23 under California Vehicle Code Section 23103 pursuant to a plea agreement. In regard to the sentence,  
24 the San Francisco Superior Court suspended the sentence and instead, placed Petitioner on probation,  
25 which included attending a 92-day first offender program. Petitioner completed the first offender  
26 program on May 29, 2025.

1 31. Although Petitioner was scheduled for a check-in by email on March 20, 2025, in or around  
2 March 8, 2025, Petitioner was notified that both him and his spouse needed to check in in person at the  
3 ICE San Francisco Field office due to a change in the monitoring policy under which no more check-in  
4 by email was permitted.

5 32. Pursuant to the instructions received by ICE, Petitioner and his spouse appeared in person at the  
6 ICE San Francisco Field Office on March 20, 2025. During this visit, ICE officers questioned Petitioner  
7 about the DUI charges. Respondent informed them about his plea deal. The ICE officers instructed  
8 Petitioner to return to the ICE San Francisco field office on May 19, 2025 in order to provide them with  
9 a copy of the court judgment.

10 33. Petitioner returned alone to the ICE San Francisco field office on May 19, 2025. He provided  
11 the ICE officers with a copy of the Minute Order from the San Francisco County Superior court,  
12 indicating that he was not convicted of DUI under Cal. Veh. Code § 23152, but rather, he had been  
13 convicted of wet reckless driving under Cal. Veh. Code § 23103, but that the imposition of sentence had  
14 been suspended. After reviewing the documents, the ICE Officer told Petitioner that “everything is all  
15 right” and that Petitioner was to return for another check in visit on November 19, 2025.

16 34. To the best of his knowledge, Petitioner complied with all terms of his monitoring program  
17 during the two years and nine months following his initial visit to ICE on March 28, 2023. These  
18 requirements included the in-person visits to the ICE Field Office on every date indicated in his form I-  
19 220A and to notify ICE whenever Petitioner and his family changed addresses. Although Petitioner had  
20 a wet reckless driving conviction, Petitioner believed that based on his meeting with ICE on May 19,  
21 2025 and the statement by the ICE Officer that “everything is all right,” ICE had determined that he was  
22 still in compliance with the terms of the supervision. Until the day of his detention, Petitioner and his  
23 family always lived within San Mateo County, near San Francisco.

24 35. In addition, since his entry into the United States on February 7, 2023, Petitioner had been living  
25 a productive life together with his spouse and infant child. Petitioner and his family attended services at  
26 Grace Covenant Church every Sunday, and Petitioner participated in the volunteer program at the  
27 church. He was well known in the local community as a hard-working person who took care of his  
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1 spouse and infant child. In regards to his employment, Petitioner had a successful career at a building  
2 company, which permitted him to provide for his family.

3 36. On November 19, 2025, Petitioner and his spouse appeared for their scheduled in-person visit at  
4 the ICE Field Office in San Francisco, where Petitioner was promptly arrested by ICE Officer in the  
5 presence of his spouse. The ICE Officers verbally stated they were detaining Petitioner due to his DUI  
6 conviction. Petitioner tried to explain that the DUI charges had been dismissed and that he had been  
7 placed on probation relating to a reckless driving conviction, but the ICE officers detained Petitioner  
8 nonetheless. On the same day, Petitioner was transferred to the California City Detention Center, in  
9 California City, California.

10 37. Prior to Petitioner's re-detention, he did not receive written notice of the reason for his re-  
11 detention.

12 38. Prior to Petitioner's re-detention, ICE did not provide notice of the revocation of her parole, as  
13 required by 8 C.F.R. § 212.5(e)(2).

14 39. Prior to Petitioner's re-detention, he never received a hearing before a neutral decisionmaker to  
15 determine if his re-detention is justified.

#### 16 LEGAL BACKGROUND

17 40. Under current caselaw that governs the immigration court system, the mandatory detention  
18 scheme under 8 U.S.C. § 1225(b)(1) applies to individuals who are placed in expedited removal  
19 proceedings, pass a CFI, and are subsequently placed in removal proceedings. (See *Matter of M-S-*, 27 I.  
20 & N. Dec. 509 (A.G. 2019).) Such individuals are subject to detention without any bond hearing until  
21 the conclusion of their proceedings unless DHS releases them on parole. (See *Id.* at 510, 518–19.)

22 41. However, once released, due process requires that a person like Petitioner receive a hearing  
23 before a neutral decisionmaker to determine whether any re-detention is justified, and whether the  
24 person is a flight risk or danger to the community.

25 42. "Freedom from imprisonment—from government custody, detention, or other forms of physical  
26 restraint—lies at the heart of the liberty protected by the Due Process Clause." (*Zadvydas v. Davis*, 533  
27 U.S. 678, 690 (2001).) As a number of District Courts recently recognized, this is the "the most  
28

1 elemental of liberty interests.” *E.A. T.-B. v. Wamsley*, \_\_\_ F.Supp.3d \_\_\_, No. C25-1192-KKE, 2025 WL  
2 2402130, at \*3 (W.D. Was. Aug. 19, 2025).)

3 43. Consistent with this principle, individuals released on parole or other forms of conditional  
4 release have a liberty interest in their “continued liberty.” (*Morrissey v. Brewer*, 408 U.S. 471, 482  
5 (1972).)

6 44. Such liberty is protected by the Fifth Amendment because, “although indeterminate, [it]  
7 includes many of the core values of unqualified liberty,” such as the ability to be gainfully employed and  
8 live with family, “and its termination inflicts a ‘grievous loss’ on the [released individual] and often on  
9 others.” (Id.)

10 45. To guarantee against arbitrary re-detention and to guarantee the right to liberty, due process  
11 requires “adequate procedural protections” that ensure the government’s asserted justification for a  
12 noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in  
13 avoiding physical restraint.” (*Zadvydas*, 533 U.S. at 690 (citation modified).)

14 46. Due process thus guarantees notice and an individualized hearing before a neutral  
15 decisionmaker to assess danger or flight risk before the revocation of an individual’s release. (*Goldberg*  
16 *v. Kelly*, 397 U.S. 254, 267 (1970) (“The fundamental requisite of due process of law is the opportunity  
17 to be heard . . . at a meaningful time in a meaningful manner.” (citation modified)); *see also, e.g.,*  
18 *Morrissey*, 408 U.S. at 485 (requiring “preliminary hearing to determine whether there is probable cause  
19 or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole  
20 conditions” and that such determination be made “by someone not directly involved in the case”  
21 (citation modified)).

22 47. Several courts, have recognized that these principles apply with respect to the re-detention of the  
23 many noncitizens that DHS has recently begun taking back into custody, often after such persons have  
24 been released for months and years.

25 48. For example, in *E.A. T.-B.*, the Federal Court for the Western District of Washington applied the  
26 *Mathews v. Eldridge*, 424 U.S. 319 (1976), framework to hold that even in a case where the government  
27 argued mandatory detention applied, a person’s re-detention required a hearing.

1 49. In applying the three *Mathews* factors, the Court held that the petitioner had “undoubtedly  
2 [been] deprive[d] . . . of an established interest in his liberty,” (*E.A. T.-B.*, 2025 WL 2402130, at \*3),  
3 which, as noted, “is the most elemental of liberty interests,” *id.* (citation modified). The Court further  
4 explained that even if detention was mandatory, the risk of erroneous deprivation of liberty without a  
5 hearing was high because a hearing serves to ensure that the purposes of detention—the prevention of  
6 danger and flight risk—are properly served. (*Id.* at \*4–5.) Finally, the Court explained that “the  
7 Government’s interest in re-detaining non-citizens previously released without a hearing is low:  
8 although it would have required the expenditure of finite resources (money and time) to provide  
9 Petitioner notice and hearing on [ISAP] violations before arresting and re-detaining him, those costs are  
10 far outweighed by the risk of erroneous deprivation of the liberty interest at issue.” (*Id.* at \*5.) As a  
11 result, this Court ordered the petitioner’s immediate release. (*Id.* at \*6.)

12 50. The decision in *E.A. T.-B.* is consistent with many other district court decisions addressing  
13 similar situations. (See, e.g. *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y.  
14 June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, ---  
15 F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar);  
16 *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025)  
17 (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21,  
18 2025) (similar).

19 51. The same framework and principles apply here and compel Petitioner’s immediate release.

20 **CLAIM FOR RELIEF**

21 **Violation of Fifth Amendment Right to Due Process**

22 **Procedural Due Process**

23 51. Petitioner restates and re-alleges all paragraphs as if fully set forth here.

24 52. Due process does not permit the government to strip Petitioner of her liberty without written  
25 notice and a hearing before a neutral decisionmaker to determine whether re-detention is warranted  
26 based on danger or flight risk. (See *Morrissey*, 408 U.S. at 487–88.) Such written notice and a hearing  
27 must occur *prior* to any re-detention.

1 53. Respondents revoked Petitioner's release and deprived her of liberty without affording her any  
2 written notice or meaningful opportunity to be heard by a neutral decisionmaker prior to her re-  
3 detention.

4 54. Accordingly, Petitioner's re-detention violates the Due Process Clause of the Fifth Amendment.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner respectfully requests that this Court:

- 7 (1) Assume jurisdiction over this matter;
- 8 (2) Issue an Order to Show Cause ordering Respondents to show cause within three days as to why  
9 this Petition should not be granted as required by 28 U.S.C. § 2243;
- 10 (3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody  
11 immediately and permanently enjoining her re-detention absent written notice and a hearing  
12 prior to re-detention where Respondents must prove by clear and convincing evidence that he is  
13 a flight risk or danger to the community and that no alternatives to detention would mitigate  
14 those risks;
- 15 (4) Declare that Petitioner's detention without an individualized determination before a neutral  
16 decisionmaker violates the Due Process Clause of the Fifth Amendment;
- 17 (5) Award Petitioner's attorney's fees and costs under the Equal Access to Justice Act, and on any  
18 other basis justified under law; and
- 19 (6) Grant any further relief this Court deems just and proper.
- 20  
21

22 DATE: 11/28/2025

Respectfully submitted,

/S/ Jose F. Vergara

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COUNSEL FOR PETITIONER