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6 Attorneys for Defendant: JUAN TERCERO GONZALEZ

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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10
11 JUAN TERCERO GONZALEZ,)
12 Petitioner,)

Case No. 3:25-cv-03417-JO-DEB

13 v.)

**DECLARATION OF COUNSEL
IN SUPPORT OF HABEAS
PETITION AND
SUPPLEMENTAL BRIEFING**

14
15 KRISTI NOEM, Secretary of the)
United States Department of)
16 Homeland Security, et al.,)
17 Respondents.)

18
19 **DECLARATION OF MURRAY D. HILTS**

20 I, Murray D. Hilts, declare as follows:

21 1. I am an attorney licensed to practice law in the State of California and
22 admitted to practice before this Court. I represent Petitioner Juan Tercero
23 Gonzalez in this habeas corpus action filed pursuant to 28 U.S.C. § 2241. I have
24 personal knowledge of the facts stated in this declaration based on my client
25 communications, review of records, and investigation conducted in preparation of
26 this case. If called as a witness, I could and would testify competently to the
27 following.
28

1 **Petitioner’s Identity, Entry, and Immigration History**

2 2. Petitioner is a 40-year-old Guatemalan national who last entered the
3 United States in or about 2004, where he has lived continuously since that time.

4 3. Petitioner has never been formally admitted into the United States in
5 an immigrant or non-immigrant status. He has resided here for more than
6 twenty-one years, working and supporting his family. He has established
7 longstanding residence, family ties, and community connections during his time in
8 the United States

9 4. Petitioner does not have a prior removal order, nor has he previously
10 been placed in removal proceedings prior to 2025.

11 **Arrest, Detention, and Custody Status**

12 5. On December 1, 2025, Petitioner was taken into custody by
13 Immigration and Customs Enforcement (ICE) and transported to the
14 Otay Mesa Detention Center, where he remains detained today.

15 6. At the time of detention, Petitioner was issued a Notice to Appear
16 alleging inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i).

17 7. Petitioner has been detained continuously since December 1, 2025.
18 He has not been afforded any bond hearing, custody redetermination,
19 or individualized assessment of danger or flight risk by any neutral
20 decisionmaker.

21 8. Petitioner has sought information on how to request a bond hearing
22 but has been informed that, due to Matter of Yajure Hurtado, 29 I&N Dec. 216
23 (BIA 2025), immigration judges currently lack jurisdiction to consider such
24 requests for detainees in his category.

25 **Custody Redetermination and Impact of Matter of Yajure Hurtado**

26 9. Under ordinary Ninth Circuit law, individuals in Petitioner’s
27 circumstances—present without admission but with longstanding residence—are
28 typically considered detained under 8 U.S.C. § 1226(a) and thus eligible to seek a

1 custody redetermination.

2 10. However, on September 5, 2025, the Board of Immigration Appeals
3 issued Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), holding that
4 individuals present without admission are categorically “applicants for admission”
5 detained under 8 U.S.C. § 1225(b)(2) and thus ineligible for bond hearings. This
6 decision has been interpreted by immigration courts as removing jurisdiction over
7 nearly all custody redetermination requests filed by individuals like
8 Mr. Tercero Gonzalez.

9 11. Immigration judges in San Diego have since treated this decision as
10 categorically eliminating jurisdiction over custody redetermination motions for
11 detainees like Petitioner, regardless of their length of residence or equities.

12 12. Because of this decision, any attempt by Petitioner to seek a bond
13 hearing before the Immigration Court would be dismissed for lack of jurisdiction,
14 and an appeal to the BIA would also be dismissed. For this reason, further
15 administrative efforts to challenge detention are futile.

16 13. I am personally aware of multiple cases in which similar custody
17 motions were rejected solely because of Matter of Yajure Hurtado, with no
18 individualized analysis conducted.

19 **Personal Background, Ties, and Hardship**

20 14. Petitioner has deep family ties in the United States and has been a
21 contributing member of the community for decades. His detention has caused
22 significant hardship to his family, who depend on him for emotional and financial
23 support. He has no prior criminal history.

24 15. Prolonged detention has placed substantial strain on Petitioner, who
25 has reported increasing stress and anxiety as his detention continues with no
26 available mechanism for review.

27 **Procedural Status and Records Access**

28 16. On December 1, 2025, the Department of Homeland Security served

1 Petitioner with Form I-862 Notice to Appear to schedule a master
2 calendar hearing. A Master Calendar Hearing is set for December 15,
3 2025 at 8:00 AM, as reflected in the Form I-862 dated December 1,
4 2025. A true and correct copy of that notice is attached.

5 17. I have full access to Petitioner’s complete immigration court file
6 through the EOIR Online Portal, including all filings, hearing notices, pleadings,
7 audio recordings (where applicable), and documents generated or submitted in his
8 proceedings. I receive real-time electronic notifications of all filings and have
9 reviewed all records currently available to counsel for accuracy and completeness
10 in preparation of this declaration and the habeas petition

11 **Continuing Detention and Basis of Habeas Relief**

12 18. Petitioner’s detention has now exceeded five months without any
13 review by a neutral adjudicator.

14 19. As addressed in the Petition and supplemental briefing:

15 a. Petitioner is detained under 8 U.S.C. § 1226(a), not 8 U.S.C. §
16 1225(b), because the Ninth Circuit has held that “applicant for admission” is a
17 status that exists only at a discrete moment, not for decades.

18 b. Even assuming § 1225(b) applies, the prolonged and
19 unreviewed nature of detention raises serious due process concerns.

20 c. ICE’s ability to file an automatic stay under 8 C.F.R. §
21 1003.19(i)(2) further deprives Petitioner of meaningful review even if a bond were
22 granted.

23 20. Petitioner accordingly seeks release on appropriate conditions or, at
24 minimum, a constitutionally adequate bond hearing before a neutral decisionmaker
25 capable of evaluating danger and flight risk.

26 **Compliance With Court’s December 4, 2025 Minute Order**

27 21. I submit this declaration in compliance with the Court’s
28 December 4, 2025 directive requiring Petitioner to file “a declaration supporting

1 the claims in the habeas petition” by December 11, 2025, at 9:00 AM.

2 22. The facts stated herein are true to the best of my knowledge, based on
3 my review of the record and communications with Petitioner.

4
5 I declare under penalty of perjury under the laws of the United States that
6 the foregoing is true and correct.

7 Executed on December 10, 2025, in San Diego, California.

8
9 /s/ Murray D. Hilts

10 Murray D. Hilts, Esq.

11 Attorney for Petitioner,

12 JUAN TERCERO GONZALEZ
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