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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

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11 **DANILO GUERRA PUPO**

12 **Petitioner,**

13 **v.**

14 **CHRISTOPHER LAROSE, Senior**  
Warden, Otay Mesa Detention  
15 **Center; PATRICK DIVVER, Field**  
Office Director, U.S. Immigration  
16 **and Customs Enforcement; TODD**  
**LYONS, Acting Director, U.S.**  
17 **Immigration and Customs**  
Enforcement; **KRISTI NOEM,**  
18 **Secretary of United States**  
Department of Homeland Security;  
19 **and PAM BONDI, Attorney General**  
of the United States,

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**Respondents.**

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Case No.: '25CV3448 JO VET

**PETITION FOR WRIT OF  
HABEAS CORPUS AND  
ORDER TO SHOW CAUSE  
WITHIN THREE DAYS  
AND COMPLAINT FOR  
DECLARATORY RELIEF**

1                    **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO**  
2    **28 U.S.C. § 2241**

3  
4    **INTRODUCTION**

5            1.            Petitioner Danilo Guerra Pupo (Mr. Guerra) is detained by  
6 Respondents in the Otay Mesa Detention Center in San Diego,  
7 California.

8            2.            Mr. Guerra is a forty-three-year-old national and citizen of  
9 Cuba. He legally entered the United States with a CBP One  
10 appointment to seek asylum on July 21, 2024. Subsequently, that  
11 same day, Mr. Guerra was released from immigration custody with  
12 parole and issued a Notice to Appear (NTA) for removal proceedings  
13 in immigration court.

14           3.            Although Mr. Guerra's parole status was valid for one  
15 year, it was subsequently and without notice or justification  
16 terminated on April 18, 2025.

17           4.            After Mr. Guerra attended his immigration hearing on July  
18 15, 2025, ICE agents arrested him as he exited the courtroom. He has  
19 remained in immigration detention since his arrest.

20           5.            Mr. Guerra has no criminal history, has dutifully attended  
21 all hearings, and the government has provided no evidence that he is  
22 a danger or presents a flight risk.

23           6.            Mr. Guerra's parole was not terminated in accordance  
24 with the law, and his subsequent arrest and detention violate due  
25 process and the Administrative Procedure Act (APA). He submits this  
26 habeas petition under 28 U.S.C. § 2241 to challenge his detention as a  
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1 violation of the Due Process Clause of the Fifth Amendment and the  
2 APA.

### 3 JURISDICTION AND VENUE

4 7. This Court has jurisdiction under 28 U.S.C. § 2241  
5 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. §  
6 1651 (All Writs Act), 28 U.S.C. §§ 2201-02 (declaratory relief), and  
7 art. I sec. 9, cl. 2 of the United States Constitution (Suspension  
8 Clause), as Mr. Guerra is presently in custody under the authority of  
9 the United States and challenges his detention as in violation of the  
10 Constitution, laws, or treaties of the United States.

11 8. The federal district courts have jurisdiction under Section  
12 2241 to hear habeas claims by individuals challenging the lawfulness  
13 of their detention by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281,  
14 290-92 (2018).

15 9. Venue is proper in the Southern District of California,  
16 pursuant to 28 U.S.C. §§ 1391 and 2241(d) because Mr. Guerra is  
17 detained at the Otay Mesa Detention Center in San Diego, California.

### 18 PARTIES

19 10. Petitioner Mr. Guerra is a native and citizen of Cuba. He is  
20 currently detained by ICE at the Otay Mesa Detention Center.

21 11. Mr. Guerra is in Respondents' legal and physical custody  
22 at the Otay Mesa Detention Center in San Diego, California. CoreCivic,  
23 Inc., a Maryland corporation, operates that facility.

24 12. Respondent Christopher LaRose is the Senior Warden at  
25 the Otay Mesa Detention Center, where Mr. Guerra is being held.  
26 Respondent LaRose is Mr. Guerra's immediate custodian. Mr. Guerra  
27 sues him in his official capacity.

1 13. Respondent Patrick Divver is the Director of ICE's San  
2 Diego Field Office for Enforcement and Removal Operations, which  
3 has jurisdiction over ICE detention facilities in San Diego County,  
4 including the Otay Mesa Detention Center, and is thus Mr. Guerra's  
5 immediate custodian. He is sued in his official capacity.

6 14. Respondent Todd M. Lyons is the Acting Director of ICE.  
7 He is responsible for the administration of ICE and the  
8 implementation and enforcement of the immigration laws, including  
9 immigrant detention. As such, Mr. Lyons is a legal custodian of Mr.  
10 Guerra. He is sued in his official capacity.

11 15. Respondent Kristi Noem is the Secretary of the  
12 Department of Homeland Security (DHS), which is responsible for the  
13 administration of ICE, a subunit of DHS, and the implementation and  
14 enforcement of the immigration laws. As such, Ms. Noem is the  
15 ultimate legal custodian of Mr. Guerra. She is sued in her official  
16 capacity.

17 16. Respondent Pam Bondi is the Attorney General of the  
18 United States and head of the Department of Justice, which oversees  
19 the Board of Immigration Appeals and the Immigration Courts. Ms.  
20 Bondi shares responsibility for implementation and enforcement of  
21 the immigration laws with Respondent Noem. Ms. Bondi is a legal  
22 custodian of Mr. Guerra. She is sued in her official capacity.

23 **FACTUAL BACKGROUND**

24 17. Mr. Guerra is a native and citizen of Cuba. He fled Cuba in  
25 2023 fearing persecution by his government and lawfully entered the  
26 United States to seek protection on July 21, 2024. Exh. A.

1 18. Mr. Guerra was detained and inspected at the Eagle Pass,  
2 Texas, Port of Entry after having made an appointment with the CBP  
3 One application. That same day, he was released from custody and  
4 issued a Form I-94 granting him parole until July 20, 2025. Exh. B. He  
5 was also issued an NTA to appear before an immigration judge for  
6 removal proceedings pursuant to 8 U.S.C. § 1229a.

7 19. However, unbeknownst to Mr. Guerra, his parole was  
8 revoked without notice, cause, or explanation on April 18, 2025. *See*  
9 Exh. C. He learned of its revocation in May 2025 when his application  
10 for work authorization under the parolee category was denied. Exh. A.

11 20. Mr. Guerra has attended all immigration hearings and  
12 appointments and has no criminal history. *Id.*

13 21. During Mr. Guerra's immigration court hearing on July 15,  
14 2025, counsel for DHS moved the court to dismiss proceedings. On  
15 information and belief, this was done so that Mr. Guerra could be  
16 subjected to expedited removal. The immigration judge denied the  
17 motion. *Id.*

18 22. Nonetheless, ICE took Mr. Guerra into custody as he  
19 exited the courtroom. He was handed a warrant for his arrest and  
20 arrested by masked ICE agents. *Id.*

21 23. The warrant indicates that Mr. Guerra is removable from  
22 the United States because he is the subject of removal proceedings  
23 and lacks status to remain in the United States. Exh. D.

24 24. Mr. Guerra has an asylum application pending before the  
25 immigration court since May 9, 2025, and an application for  
26 permanent residence under the Cuban Adjustment Act (CAA) pending  
27

1 with the United States Citizenship and Immigration Services (USCIS)  
2 since July 23, 2025. Exh. A.

3 25. Both an immigration judge and DHS counsel have found  
4 that Mr. Guerra has established his *prima facie* eligibility for  
5 permanent residency through the CAA. *Id.*

6 26. DHS withdrew its motion to dismiss Mr. Guerra's Section  
7 1229a proceedings on September 11, 2025. *Id.*

8 27. Mr. Guerra has been in DHS custody since July 15, 2025,  
9 and remains detained at the Otay Mesa Detention Center to this day.  
10 *Id.*

11 28. There is no indication that Mr. Guerra poses a danger to  
12 the community or is a flight risk.

### 13 LEGAL FRAMEWORK

14 29. The Due Process Clause of the Fifth Amendment to the  
15 U.S. Constitution forbids the government from depriving any person  
16 of liberty without due process of law. "Freedom from imprisonment—  
17 from government custody, detention, or other forms of physical  
18 restraint—lies at the heart of the liberty that [the Due Process] Clause  
19 protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

20 30. Although immigration detention is administrative, it is still  
21 subject to due process clause review. *Hernandez v. Sessions*, 872 F.3d  
22 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate  
23 non-citizens is always constrained by the requirements of due  
24 process.").

25 31. In civil proceedings, including removal proceedings in  
26 immigration court, detention is supposed to be non-punitive; it is  
27 justified only in certain "special and 'narrow' nonpunitive  
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1 circumstances, where a special justification, such as harm threatening  
2 mental illness, outweighs the individual's constitutionally protected  
3 interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690  
4 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) and *Kansas v.*  
5 *Hendricks*, 521 U.S. 346, 356 (1997)).

6 32. In the immigration context, the "special justification" for  
7 detention is twofold: first, preventing danger to the community; and  
8 second, ensuring the appearance of the noncitizen at future  
9 immigration proceedings and for removal, if ordered." *Zadvydas*, 533  
10 U.S. at 691.

11 33. When a noncitizen arrives at the border to seek asylum in  
12 the United States, a DHS officer may continue to detain and place the  
13 noncitizen in expedited removal proceedings under 8 U.S.C.  
14 § 1225(b)(1). Alternatively, the officer may release the noncitizen into  
15 the United States on parole "on a case-by-case basis for urgent  
16 humanitarian reasons or significant public benefit." 8 U.S.C.  
17 § 1182(d)(5)(A); *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)  
18 (noting that individuals subject to section 1225(b)(1) can be released  
19 pursuant to the Attorney General's parole authority under section  
20 1182(d)(5)(A)).

21 34. Parole must be granted and revoked on an individual,  
22 case-by-case basis. Section 1182(d)(5)(A) of Title 8 directs that parole  
23 may be granted "only on a case-by-case basis" and may be terminated  
24 "when the purposes of such parole . . . shall have been served." *See*  
25 *also Doe v. Noem*, 2025 WL 1505688, at \*1 (1st Cir. May 5, 2025)  
26 (observing that "[c]ommon sense suggests . . . that parole given only  
27 on a case-by-case basis is to be terminated only on such a basis" and  
28

1 pointing to the individualized statutory language of section  
2 1182(d)(5)).

3 35. Critically, release from custody “reflects a determination  
4 by the government that the noncitizen is not a danger to the  
5 community or a flight risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168,  
6 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905  
7 F.3d 1137 (9th Cir. 2018).

8 36. Indeed, regulations *mandate* that such a determination is  
9 made prior to a grant of parole. 8 C.F.R. § 212.5(b) (authorizing  
10 parole “for ‘urgent humanitarian reasons’ or ‘significant public  
11 benefit,’ *provided* the aliens present neither a security risk nor a risk of  
12 absconding”) (emphasis added).

13 37. Such a grant of parole into the country creates a protected  
14 liberty interest and an implied promise that the noncitizen will not be  
15 re-detained unless they fail to live up to their conditions of release.  
16 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Alegria Palma v.*  
17 *LaRose*, No. 25-cv-01942, ECF No. 14 at \*6 (S.D. Cal. Aug 11, 2025);  
18 *Sanchez v. LaRose*, No. 25-cv-02396, 2025 WL 2770629, at \*3 (S.D.  
19 Cal. Sept. 26, 2025).

20 38. Procedural due process ensures that no persons are  
21 deprived of their liberty absent a fair process. Under *Mathews v.*  
22 *Eldridge*, 424 U.S. 319 (1976), courts evaluate due process by  
23 balancing (1) the private interest affected; (2) the risk of erroneous  
24 deprivation of such interest; and (3) the government’s interest. *Id.* at  
25 335.

26 39. “A procedural due process claim has two elements: (1) a  
27 deprivation of a constitutionally protected liberty or property interest,  
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1 and (2) a denial of adequate procedural protections.” *Miranda v. City*  
2 *of Casa Grande*, 15 F.4th 1219, 1225 (9th Cir. 2021) (cleaned up).

3 40. “[T]he liberty [of a person released from government  
4 custody] is valuable and must be seen as within the protection of the  
5 [Due Process Clause].” *Morrissey*, 408 U.S. at 482.

6 41. “Where, as here, [the petitioner] has not received any  
7 bond or custody . . . hearing, the risk of an erroneous deprivation [of  
8 liberty] is high because neither the government nor [the petitioner]  
9 has had an opportunity to determine whether there is any valid basis  
10 for her detention.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1035 (N.D.  
11 Cal. July 24, 2025) (citing *Singh v. Andrews*, No. 25-cv-00801, 2025  
12 WL 1978679 (E.D. Cal. July 11, 2025)) (cleaned up).

13 42. Indeed, where a petitioner “was previously released  
14 following a determination that he posed no flight risk or danger to the  
15 community, and absent any new evidence showing a material change  
16 in circumstances, the risk of erroneous detention without a hearing is  
17 substantial.” *Alegria Palma*, No. 25-cv-01942 at \*6 (ordering  
18 petitioner’s immediate release where he was re-detained without pre-  
19 deprivation hearing).

20 43. The requirement of an individualized determination is  
21 even stronger in cases of re-detention because the prior “[r]elease  
22 reflects a determination by the government that the noncitizen is not a  
23 danger to the community or a flight risk.” *Saravia*, 280 F. Supp. 3d at  
24 1176. “[T]o be lawful” the re-detention “must be based on evidence  
25 that the circumstances relevant to that original release decision have  
26 changed.” *Id.* at 1196.

1 44. “To satisfy due process, those changed circumstances must  
2 represent individualized legal justification for detention.” *Sanchez*,  
3 2025 WL 2770629 at \*3 (internal citation omitted).

4 45. Government agencies are required to follow their own  
5 regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 US. 260,  
6 268 (1954); *Nat’l Ass’n of Home Builders v. Norton*, 340 F.3d 835, 852  
7 (9th Cir. 2003). Courts have determined that where ICE fails to follow  
8 its own regulations in revoking release, the detention is unlawful and  
9 the petitioner’s release must be ordered. *See, e.g., Orellana v. Baker*,  
10 No. 25-1788-TDC, 2025 WL 2444087, at \*25-26 (D. Md. Aug. 25,  
11 2025); *M.S.L. v. Bostock*, No. 6:25-cv-1204-AA, 2025 WL 2430267, at  
12 \*10 (D. Or. Aug. 21, 2025); *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137,  
13 163 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D.  
14 Mass. 2017).

15 **FIRST CAUSE OF ACTION**

16 **Violation of the Fifth Amendment Due Process Clause**  
17 **(Substantive Due Process)**

18 46. Mr. Guerra re-alleges and incorporates by reference the  
19 allegations in paragraphs 1-45 above.

20 47. The Due Process Clause of the Fifth Amendment forbids  
21 the federal government from depriving any person of liberty without  
22 due process of law. U.S. Const. amend. V. *See generally Reno v. Flores*,  
23 507 U.S. 292 (1993); *Zadvydas*, 533 U.S. 678; *Demore v. Kim*, 538  
24 U.S. 510 (2003).

25 48. “The Due Process Clause applies to all ‘persons’ within the  
26 United States, including [noncitizens], whether their presence here is  
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1 lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at  
2 693.

3 49. “Freedom from imprisonment—from government custody,  
4 detention, or other forms of physical restraint—lies at the heart of the  
5 liberty that Clause protects.” *Id.* at 690.

6 50. Immigration detention only comports with Due Process  
7 when it furthers the government’s goals of “ensuring the appearance  
8 of [noncitizens] at future immigration proceedings and preventing  
9 danger to the community.” *Id.* (cleaned up). Immigration detention  
10 that does not serve these legitimate government purposes violates  
11 substantive Due Process. *Id.*

12 51. Mr. Guerra’s detention without regard for whether he is a  
13 flight risk or danger violates Due Process because it is not rationally  
14 related to any legitimate government purpose. *Id.*; *Demore*, 538 U.S.  
15 at 532-33 (Kennedy, J., concurring).

16 **SECOND CAUSE OF ACTION**

17 **Violation of the Fifth Amendment Due Process Clause**

18 **(Procedural Due Process)**

19 52. Mr. Guerra re-alleges and incorporates by reference the  
20 allegations in paragraphs 1-45 above.

21 53. “In the context of immigration detention, it is well-settled  
22 that due process requires adequate procedural protections to ensure  
23 that the government’s asserted justification for physical confinement  
24 outweighs the individual’s constitutionally protected interest in  
25 avoiding physical restraint.” *Hernandez*, 872 F.3d at 990 (cleaned up).

26 54. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts  
27 evaluate procedural due process by balancing (1) the private interest  
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1 affected; (2) the risk of erroneous deprivation of such interest; and  
2 (3) the government's interest. *Id.* at 335.

3 55. "The essence of due process is the requirement that a  
4 person in jeopardy of a serious loss [be given] notice of the case  
5 against him and the opportunity to meet it." *Id.* at 348 (cleaned up).

6 56. Immigration detention always implicates the liberty  
7 interest in "freedom from imprisonment." *Zadvydas*, 533 U.S. at 690.  
8 An individual released from government custody retains a liberty  
9 interest in their on-going release from custody. *Morrisey*, 408 U.S. at  
10 482; *Alegria Palma*, No. 25-cv-01942 at \*6; *Sanchez*, 2025 WL  
11 2770629 at \*3.

12 57. Where an individual is re-detained without a pre-  
13 deprivation hearing, "the risk of an erroneous deprivation of liberty is  
14 high because neither the government nor [the petitioner] has had an  
15 opportunity to determine whether there is any valid basis for her  
16 detention." *Pinchi*, 792 F. Supp. 3d at 1035 (cleaned up); *Alegria*  
17 *Palma*, No. 25-cv-01942 at \*6 ("Given that Petitioner was previously  
18 released following a determination that he posed no flight risk or  
19 danger to the community, and absent any new evidence showing a  
20 material change in circumstances, the risk of erroneous detention  
21 without a hearing is substantial.")

22 58. The government can claim no interest in re-detention  
23 where there are no changed circumstances going to flight risk or  
24 danger that warrant re-detention. *See Pinchi*, 792 F. Supp. 3d at 1035.

25 59. Here, Mr. Guerra was deprived of a constitutionally  
26 protected liberty interest when Respondents revoked his parole and  
27 re-detained him. *Zadvydas*, 533 U.S. at 690. Mr. Guerra was detained

1 without notice or justification, despite a lack of evidence of changed  
2 circumstances that he is a danger or flight risk, and without an  
3 opportunity to be heard on these issues. Given his profound legal  
4 interest in his liberty, the government's actions violate his due process  
5 rights. *See generally Mathews*, 424 U.S. at 333 (1976) (requiring  
6 notice and an opportunity to be heard before deprivation of a legally  
7 protected interest); 8 C.F.R. § 212.5(e)(2)(i) (requiring written notice  
8 of revocation of parole).

9 **THIRD CAUSE OF ACTION**

10 **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)**  
11 **(Arbitrary and capricious agency action)**

12 60. Mr. Guerra re-alleges and incorporates by reference the  
13 allegations in paragraphs 1-45 above.

14 61. The Administrative Procedure Act (APA) provides that a  
15 “reviewing court shall . . . hold unlawful and set aside agency action,  
16 findings, and conclusions found to be . . . arbitrary and capricious, an  
17 abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C.  
18 § 706(2)(A)-(C).

19 62. Agency action is arbitrary and capricious when the agency  
20 fails to “examine the relevant data and articulate a satisfactory  
21 explanation for its action including a ‘rational connection between the  
22 facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the*  
23 *U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983)  
24 (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168  
25 (1962)).

26 63. ICE's decisions to terminate Mr. Guerra's parole and re-  
27 detain him constitute reviewable final agency actions because they

1 mark the “consummation” of agency decision making and are actions  
2 “by which rights or obligations have been determined, or from which  
3 legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 168  
4 (1997) (internal citations omitted).

5 64. Here, the agency made no finding that Mr. Guerra, who  
6 has no criminal history, poses a danger to the community or a flight  
7 risk, before revoking his parole and arresting him after he appeared  
8 for immigration court.

9 65. By revoking Mr. Guerra’s parole without notice or  
10 justification and detaining him without consideration of his “serious  
11 reliance interests” or his individualized facts and circumstances,  
12 Respondents have acted arbitrarily and capriciously in violation of the  
13 APA. *See Dept. of Homeland Security v. Regents of the Univ. of Calif.*,  
14 591 U.S. 1, 30 (2020) (indicating that agencies “must be cognizant  
15 that longstanding policies may have engendered serious reliance  
16 interests that must be taken into account” prior to alteration).

17 **PRAYER FOR RELIEF**

18 Mr. Guerra respectfully asks this Court to grant the following relief:

- 19 1. Assume jurisdiction over this matter;
- 20 2. Order Respondents to show cause why the writ should not  
21 be granted within three days, and set a hearing on this  
22 Petition within five days of the return, as required by 28  
23 U.S.C. § 2243;
- 24 3. Declare that Petitioner’s parole was not lawfully revoked  
25 and that he is unlawfully detained in violation of the Due  
26 Process Clause of the Fifth Amendment and the APA;

- 1 4. Issue a Writ of Habeas Corpus ordering Respondents to
- 2 release Petitioner;
- 3 5. In the alternative, order a constitutionally adequate bond
- 4 hearing where DHS bears the burden of justifying
- 5 Petitioner's continued detention by clear and convincing
- 6 evidence and the neutral adjudicator takes into
- 7 consideration alternatives to detention and Petitioner's
- 8 ability to pay a bond;
- 9 6. Order that Respondents are prohibited from transferring
- 10 Petitioner outside this district during the pendency of
- 11 these proceedings without the court's approval;
- 12 7. Award reasonable attorney's fees and costs pursuant to the
- 13 Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C.
- 14 § 2412(d), or any other applicable law; and
- 15 8. Grant any other relief that the Court may deem just and
- 16 proper.

17  
18 Dated: December 5, 2025

Respectfully submitted,

19  
20 By: /s/ Zohaile Kakavand  
21 Zohaile Kakavand  
22 Casa Cornelia Law Center  
23 *Pro Bono Counsel for Petitioner*  
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1 VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF  
2 PURSUANT TO 28 U.S.C. § 2242

3 I represent Petitioner Mr. Danilo Guerra Pupo in these habeas  
4 corpus proceedings. I am submitting this verification on behalf of  
5 Petitioner because I am his attorney. I or my co-counsel have reviewed  
6 with Petitioner the events described in this petition. Based on those  
7 discussions, I hereby verify that the information contained in the  
8 foregoing petition is true and correct to the best of my knowledge and  
9 belief.

10  
11 Dated: December 5, 2025

Respectfully submitted,

12  
13 By: /s/ Zohaile Kakavand  
14 Zohaile Kakavand  
15 Casa Cornelia Law Center  
16 *Pro Bono Counsel for Petitioner*  
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