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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA (Las Vegas)**

9 * * *

9 Alexis Ivan Venegas Banuelos,
10 Petitioner,
11 vs.
12 KRISTI NOEM, Acting Secretary of the
13 United States Department of Homeland
14 Security;
15 PAM BONDI, Attorney General of the
16 United States;
17 JASON KNIGHT, Salt Lake City Field
18 Office Director, Enforcement and Removal
19 Operations, U.S. Immigration and Customs
20 Enforcement;
21 John MATTOS, Warden at Southern
22 Nevada Southern Detention Center.
23 Respondents.

CASE NO. 2:25-cv-02483-RFB-BNW
Agency No. 

**REPLY TO FEDERAL
RESPONDENTS' RESPONSE TO
ORDER TO SHOW CAUSE (ECF 9)**

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I. ARGUMENT

A. PETITIONER HAS STANDING TO CHALLENGE HIS DETENTION

Petitioner is presently in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. The Constitution guarantees that the writ of habeas corpus is “available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2). Further, this Court has granted relief on more than a dozen cases concerning this very issue. *See, e.g., Ramirez v. Noem*, No. 25-CV-02136, 2025 WL 3270137, at *1 n.1 (D. Nev. Nov. 24, 2025) (citing cases).

B. THIS COURT HAS JURISDICTION.

This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651. On December 18, 2025, the United States District Court for the Central District of California clarified an earlier decision and issued a final judgment vacating the policy established by DHS and the decision in *Matter of Yajure Hurtado. Maldonado Bautista v. Noem*, No. 25-CV-01873, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025). Specifically, the class consists of

[a]ll noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), §

1 1225(b)(1), or § 1231 at the time the Department of Homeland
2 Security makes an initial custody determination.

3 *Bautista v. Santacruz*, No. 25-CV-01873, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 20, 2025).

4 Further, the Respondents make the same arguments with respect to jurisdiction that this
5 Court has rejected now on several occasions. *See, e.g., Ramirez*, 2025 WL 3270137, at *1 n.1;
6 *E.C. v. Noem*, No. 25-CV-01789, 2025 WL 2916264, at *8 (D. Nev. Oct. 14, 2025); *Roman v.*
7 *Noem*, No. 25-CV-01684, 2025 WL 2710211, at *5; *Vazquez v. Feeley*, No. 25-CV-01542,
8 2025 WL 2676082, at *13 (D. Nev. Sep. 17, 2025).

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10 **i. 8 U.S.C. § 1252(b)(9) does not preclude jurisdiction.**

11 Concerning the question of removability, 8 U.S.C. § 1252(b)(9) funnels judicial review
12 to the appropriate federal court of appeals, which would be the Ninth Circuit here. However,
13 where a petitioner is not seeking review of a removal order or is challenging their detention or
14 a part of the removal process, § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586
15 U.S. 392, 402 (2019); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*,
16 591 U.S. 1, 19 (2020) (“§ 1252(b)(9) does not present a jurisdictional bar where those bringing
17 suit are not asking for review of an order of removal, the decision to seek removal, or the
18 process by which removability will be determined.”). Further, Respondents concede that 8
19 U.S.C. § 1252(b)(9) does “not bar claims challenging the conditions or *scope of detention* of
20 foreign nationals in removal proceedings.” Respondent’s Response in Opposition, at 10
21 (emphasis added). Respondents argue that § 1252(b)(9) should be read to bar all claims
22 “challenging the decision to detain.” *Id.* This reading contradicts the clear language of the
23 statute as the decision to detain is unequivocally a part of the “scope of detention.”
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1 **ii. 8 U.S.C. § 1252(g) does not preclude jurisdiction.**

2 Another jurisdictional bar exists in 8 U.S.C. § 1252(g), which states that courts cannot
3 hear “any cause of claim by or on behalf of any alien arising from the decision or action by the
4 Attorney General to commence proceedings, adjudicate cases, or execute removal orders
5 against any alien under this chapter.” § 1252(g). The Supreme Court has limited application of
6 this section to three discrete actions that an Attorney General may take: (1) the decision or
7 action to commence proceedings, (2) the decision or action to adjudicate cases, and (3) the
8 decision or action to execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*,
9 525 U.S. 471, 482 (1999). Because Petitioner challenges the lawfulness of his detention, it is
10 not a challenge to one of the three discrete events listed in *Reno*.
11

12 **iii. 8 U.S.C. § 1226(e) does not preclude jurisdiction.**

13 While Section 1226(e) of the INA precludes an alien from challenging a discretionary
14 judgment by the Attorney General or a decision that the Attorney General has made regarding
15 their detention or release, *see Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), Section
16 1226(e) “does not preclude challenges to the statutory framework that permits the alien’s
17 detention without bail.” *Jennings*, 138 S. Ct. at 841.
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19 Moreover, Section 1226(e) does not limit habeas review over constitutional claims or
20 questions of law. *Singh v. Holder*, 638 F.3d 1196 at 1202. As Petitioner is raising constitutional
21 claims and questions of law—whether the automatic stay provision in this case and the BIA’s
22 new interpretation of the INA violate the Petitioner’s right to procedural due process and
23 substantive due process after denying him the ability to post a bond—Section 1226(e) does not
24 preclude this Court’s jurisdiction to review Petitioner’s habeas petition.
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B. ADMINISTRATIVE EXHAUSTION IS FUTILE AND SHOULD BE WAIVED.

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2 It would be futile to wait for the BIA to decide whether the interpretation of 8 U.S.C.
3 §1252 (b)(2) is applicable to Petitioner versus 8 U.S.C. §1226(a) because the BIA has already
4 decided the issue in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Even where
5 petitioners have not yet requested a custody redetermination hearing before an IJ, this Court
6 has granted Habeas Corpus and injunctive relief. *See, e.g., E.C.*, 2025 WL 2916264
7 (“[R]equiring Petitioner to request a bond hearing only to be denied one pursuant to *Hurtado*
8 would be an exercise in futility.”)

9
10 There is widespread agreement among additional federal courts that *Matter of Yajure*
11 *Hurtado*’s new interpretation violates the INA and is unconstitutional. This Court recently
12 found in *Vazquez v. Feeley* and subsequent decisions that § 1226, not §1225, applies to
13 noncitizens such as the Petitioner. That decision, along with at least two dozen other federal
14 court decisions, have emphasized that the Department’s interpretation of § 1225 is erroneous
15 for several reasons, such as (1) the plain meaning of the INA provisions in the context of recent
16 amendments, (2) legislative history, and (3) longstanding agency practice. This Court found
17 that “the phrases ‘applicants for admission’ and ‘seeking admission,’ taken together, are
18 limited in temporal scope, and cannot be read to apply indefinitely to all noncitizens residing
19 in the U.S. for years or decades.” *Vazquez v. Feeley*, 2025 WL 2676082, at *13. Several district
20 courts in the Ninth Circuit, including this Court, and throughout the country have found
21 equally. *See, e.g., Ramirez*, 2025 WL 3270137, at *5; *Rodriguez Vazquez v. Bostock*, 779 F.
22 Supp. 3d 1239 (W.D. Wash. 2025); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099
23 (D. Ariz. Aug. 11, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304, 2025 WL
24 2591530 (C.D. Cal. Sep. 8, 2025); *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025 WL
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1 2716910 (E.D. Cal. Sep. 23, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924, 2025 WL
2 2637503 (N.D. Cal. Sep. 12, 2025); *Vasquez Garcia v. Noem*, No. 25-CV-02180, 2025 WL
3 2549431 (S.D. Cal. Sep. 3, 2025).

4 Further, the fact that the Laken Riley Act amended § 1226(c) to expand the category of
5 migrants subject to mandatory detention indicates that § 1226(a) was intended to be applied to
6 noncitizens charged as inadmissible. *Vazquez v. Feeley*, 2025 WL 2676082, at *14. The Court
7 found that Congress had a similar intent when it passed the IRRIRA and recognizes the
8 backdrop of precedential cases that highlight a distinction between noncitizens arriving at the
9 border and those who have resided in the country for an extended period of time. *Id.* at *15.
10 The Court also recognized that the Laken Riley Act was passed against a “backdrop of
11 longstanding agency practice applying § 1226(a) to inadmissible noncitizens already residing
12 in the country.” *Id.* at *16. Using traditional interpretive tools, courts should construe statutes
13 to work in harmony with what has come before. *Id.*

14 With respect to the automatic stay provision under 8 C.F.R. § 1003.19(i)(2), no
15 alternative administrative remedy exists to challenge the constitutionality of this regulation.
16 The Board of Immigration Appeals lacks authority to adjudicate constitutional challenges to
17 immigration laws or procedures. *See Matter of G.K.*, 26 I&N Dec. 88, 96–97 (BIA 2013).
18 Rather, constitutional questions concerning such regulations fall within the jurisdiction of the
19 federal courts for review.

20 Each day that Petitioner remains in unconstitutional detention constitutes irreparable
21 harm, which itself provides good cause to excuse the exhaustion requirement. Accordingly,
22 this Court should adopt its previous reasoning in *Ramirez* and that of the majority of federal
23 district courts, which have waived exhaustion on the basis of such irreparable injury. *See, e.g.*,
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1 *Ramirez*, 2025 WL 3270137, at *5; *E.C.*, 2025 WL 2916264, at *8; *Vazquez v. Feeley*, 2025
2 WL 2676082; *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal.
3 Sep. 23, 2025); *Roman v. Noem*, 2025 WL 2710211; *Zaragoza Mosqueda et al. v. Noem*, No.
4 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sep. 8, 2025). Without intervention, Petitioner
5 will remain detained for months until the BIA issues a decision—one that will almost certainly
6 be adverse to him.

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8 **C. MR. VENEGAS BANUELOS IS LIKELY TO SUCCEED IN SHOWING**
9 **THAT HIS DETENTION VIOLATES DUE PROCESS OR THERE IS A**
10 **SERIOUS QUESTION**

11 A temporary restraining order is appropriate if a petitioner can show that: (1) he is “likely
12 to succeed on the merits”; (2) he “is likely to suffer irreparable harm in the absence of preliminary
13 relief”; (3) “the balance of equities tips in his favor”; and (4) “an injunction is in the public
14 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit’s
15 alternative “sliding scale” approach, a temporary restraining order is appropriate if “a plaintiff
16 demonstrates . . . that serious questions going to the merits were raised and the balance of
17 hardships tips sharply in the plaintiff’s favor.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
18 1127, 1134–35 (9th Cir. 2011) (internal quotation marks omitted). Petitioner’s due process
19 claims satisfy these standards.

20 Petitioner asserts that his detention violates due process because (1) the automatic stay
21 provision at 8 C.F.R. §1003.19(i)(2) violates his procedural and substantive due process rights and
22 (2) the BIA’s new interpretation in *Matter of Yajure Hurtado* that §1225(b)(2) is applicable to
23 Petitioner, not section 1226(a), is incorrect and violates the INA.

24
25 **1. Automatic stay at 8 C.F.R. §1003.19(i)(2)**

26 The automatic stay provision at 8 C.F.R. § 1003.19(i)(2) has been a source of concern since
27 its implementation, as it grants the Department unilateral authority to suspend an Immigration
28 Judge’s decision and continue an individual’s detention, even when the Judge has lawfully ordered

1 that individual's release on bond. *Ashley v. Ridge*, 288 F. Supp 2d 662, 673 (D.N.J. 2003)(finding
2 that the "continued detention of Petitioner without judicial review of the automatic stay of the bail
3 determination, despite the Immigration Judge's decision that he be released on bond, violated
4 Petitioner's procedural and substantive due process constitutional rights"); *Zabadi v. Chertoff*, No.
5 05-CV-1796, 2005 WL 1514122 (N.D. Cal. June 17, 2005) (finding the automatic stay provision
6 unconstitutional); *Zavala v. Ridge*, 310 F. Supp 2d 1071(N.D. Cal. 2004) (same).

7 Most recently, numerous federal courts, including this Court, have held that detaining
8 individuals like Petitioner under the automatic stay provision constitutes a violation of their
9 procedural and due process rights. *Vazquez v. Feeley*, 2025 WL 2676082, *16; *Günaydin v. Trump*,
10 784 F. Supp. 3d 1175 (finding the automatic stay provision violates Petitioner's due process and
11 describing the history of the automatic stay provision and its problems); see also, *Reynosa Jacinto*
12 *v. Trump*, No. 25-CV-03161, 2025 U.S. Dist. LEXIS 160314, at *7 (D. Neb. Aug. 19, 2025);
13 *Maldonado v. Olson*, No. 25-CV-3142, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025).

14 To determine whether Petitioner's continued detention violates his procedural due process,
15 the courts typically employ the test under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Here the
16 court weighs the following factors: (1) "the private interest that will be affected by the official
17 action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and
18 the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the
19 Government's interest, including the function involved and the fiscal and administrative burdens
20 that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

21 In this case, Petitioner's private interest is his freedom—"the most elemental of liberty
22 interests—the interest in being free from physical detention by one's own government." *Hamdi v.*
23 *Rumsfeld*, 542 U.S. 507, 529 (2004); see also *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)
24 ("Freedom from imprisonment—from government custody, detention, or other forms of physical
25 restraint—lies at the heart of the liberty that the Clause protects."). This factor weighs heavily in
26 Petitioner's favor, as the automatic stay provision deprives him of his fundamental liberty interest
27 in freedom from incarceration. In addition, continued detention inflicts further harms, including
28 separation from his family and community; the loss of employment; the denial of adequate

1 healthcare; the invasion of his privacy; and the impairment of his right to counsel due to the
2 obstacles in maintaining communication and access. Whereas the government's interest to keep
3 the Petitioner detained throughout his appeal is not as weighty.

4 In regards to the second factor, "the risk of erroneous deprivation" of Petitioner's right to
5 be free from incarceration, the court must review if the invocation of the automatic stay procedure
6 increases that risk. Recently, this court found the "unchecked power vested in DHS to prolong an
7 individual's detention cannot in any circumstance be a 'carefully limited exception' to an
8 individual's right to liberty as required by the Due Process Clause"). *Vazquez v. Feeley*, 2025 U.S.
9 Dist. LEXIS 182412, *56; 2025 LX 460110; 2025 WL 2676082 (citing Salerno, 481 U.S. at 755).

10 Other courts reviewing this issue have found that a regulation permitting the losing party
11 to stay a decision allowing the Petitioner to remain detained results in an increased risk of
12 erroneous deprivation of his liberty interest. *See Ashley*. 288 Supp 2d at 671 ("It produces a
13 patently unfair situation by 'taking the stay decision out of the hands of the judges altogether and
14 giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing
15 that detention is justified.'") *see also Reynosa Jacinto v. Trump*, 25-CV-03161-JFB-RCC at *7,
16 2025 U.S. Dist. LEXIS 160314 (D. Neb. August 19, 2025); *Maldonado v. Olson*, No. 25-CV-3142
17 (SRN/SGE), 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025);
18 *Silva v. Larose*, No. 25-CV-2329, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025).

19 As to the last factor, the government's interest and burden of additional or substitute
20 procedural requirements, the *Mathews* test requires the court to weigh the Petitioner's private
21 liberty interests and risk of erroneous deprivation against the government's interest in enforcing
22 the automatic stay regulation, which includes the use of additional or substitute procedural
23 requirements.

24 **D. PETITIONER WILL SUFFER IRREPARABLE HARM IF HE IS NOT**
25 **RELEASED FROM DETENTION.**

26 Petitioner will suffer two significant harms if a temporary restraining order is not issued in
27 this matter: (1) the present and ongoing violation of Petitioner's constitutional rights resulting from
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1 his unlawful detention, and (2) the harms that flow from the unlawful and continuing detention
2 such as loss of family, loss of employment, loss of home, and risk to Petitioner’s health.

3 **1. Constitutional Violations**

4 “It is well established that the deprivation of constitutional rights ‘unquestionably
5 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting
6 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Indeed, the Ninth Circuit has made clear that “[a]n
7 alleged constitutional infringement will often alone constitute irreparable harm.” *Goldie’s*
8 *Bookstore, Inc. v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984); *Associated*
9 *General Contractors of Calif., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th
10 Cir. 1991) (recognizing presumption of irreparable harm when constitutional infringement
11 alleged); *see also Federal Practice & Procedure*, § 2948.1 (2d ed. 1995) (“When an alleged
12 deprivation of a constitutional right is involved, most courts hold that no further showing of
13 irreparable injury is necessary.”). Further, as the Eleventh Circuit has held, the “unnecessary
14 deprivation of liberty clearly constitutes irreparable harm.” *United States v. Bogle*, 855 F.2d 707,
15 710–11 (11th Cir. 1998). Here, Respondent’s continued deprivation of Petitioner’s liberty violates
16 Petitioner’s due process rights and constitutes irreparable injury. Indeed, each day of confinement
17 is a day of freedom forever taken from Petitioner.

18 **2. Increased Risk of Health Concerns**

19 Petitioner’s health is in grave risk of serious harm if he remains in detention. Petitioner
20 has a significant history of mental health problems that have been exacerbated by his continued
21 detention and isolation. Continuing to be deprived of mental health resources and the ability to
22 have companionship introduces risks to Petitioner’s life that otherwise would not be present.
23 Further, the Petitioner’s special needs necessitate that he be released to avoid worsening any of
24 his existing health conditions.

25 Due to significant special education challenges, Petitioner was unable to graduate, and
26 instead entered the workforce to help support himself and his family. Petitioner currently lives
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1 with his mother and siblings, who hold Deferred Action for Childhood Arrivals (“DACA”) status
2 and lawful permanent resident status.

3 During his years in school, Petitioner was evaluated and determined eligible for special
4 education services. He was placed on an Individualized Education Program (IEP), which
5 documented his significant learning difficulties and the need for specialized instructional
6 support. Despite his efforts, these challenges affected his academic progress and contributed to
7 his inability to complete high school.

8 Petitioner also has a history of depression and anxiety. He has struggled with his mental
9 health for many years, experiencing periods of emotional instability that have made daily
10 functioning more difficult, particularly during times of stress or family hardship.

11 **A. EQUITABLE CONSIDERATIONS AND PUBLIC INTEREST FAVOR**
12 **PETITIONER’S RELEASE.**

13 The last two factors under *Winter* “merge when the Government is the opposing party.”
14 *Nken v. Holder*, 556 U.S. 418, 435; 129 S. Ct. 1749, 1762; 173 L. Ed. 2d 550, 567; 2009 U.S.
15 LEXIS 3121, *31; 77 U.S.L.W. 4310. First the balance of equities strongly favors Petitioner.
16 Petitioner faces irreparable harm to his constitutional rights, to his health and other harms that flow
17 from ongoing detention.

18 Moreover, the government’s interest in Petitioner’s continued detention is minimal and
19 pales in comparison to the concrete and irreparable harm that Petitioner continues to suffer. Here,
20 Petitioner remains in custody despite the fact that he was found by the Immigration Judge not to
21 be a danger or a flight risk. His continued detention not only violates his constitutional rights but
22 also causes direct suffering to him, his family and his community. As the Ninth Circuit has
23 regularly held, there is no harm to the government when a court prevents the government from
24 engaging in unlawful practices. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013);
25 *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

26 Finally, the temporary restraining order sought here is in the public interest. The public has
27 an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th
28 Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right has been

1 violated, because all citizens have a stake in upholding the Constitution.”); *Phelps-Roper v. Nixon*,
2 545 F.3d 685, 690 (8th Cir. 2008) (“[I]t is always in the public interest to protect constitutional
3 rights.”). Moreover, the public has an interest in accurate determinations in all legal proceedings,
4 including in the decision of whether to detain individuals during their immigration cases. The
5 public is also served by avoiding excessive expense on detention and ensuring that the government
6 does not expend its resources to detain individuals unnecessarily.

7
8 **CONCLUSION**

9 WHEREFORE, and for the foregoing reasons, Petitioner asserts that his continued detention is
10 unlawful, and he respectfully requests that this Court grant his request for a temporary restraining
11 order directing the government to provide him with a bond hearing within seven (7) days under
12 INA § 1226(a), and to enjoin the government from denying bond on the ground that he is detained
13 under § 1225(b)(2). If the government fails to provide the required bond hearing, Petitioner
14 further requests his immediate release.

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17 Dated: December 22, 2025

18 */S/ Sylvia L. Esparza*

19 _____
20 Sylvia L. Esparza, Esq.
21 Attorney for Petitioner
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