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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PREM SINGH,

Petitioner,

v.

WARDEN OF THE GOLDEN STATE
ANNEX DETENTION FACILITY, ET AL.,

Respondents.

CASE NO. 1:25-CV-01869-TLN-SCR

OPPOSITION TO MOTION FOR TEMPORARY
RESTRAINING ORDER; ANSWER
TO PETITION FOR WRIT OF
HABEAS CORPUS

I. INTRODUCTION

This Court should deny the petition because petitioner's detention is lawful as he is being detained pursuant to the mandatory detention statute, 8 U.S.C. § 1225(b). Because there is no regulatory, statutory, or constitutional requirement that Petitioner be afforded a bond hearing, Petitioner's claim that he must be afforded a bond hearing before an immigration judge at which the government bears the burden of proof should be denied. Because Petitioner's detention is lawful, the Court should also deny the Petitioner's petition and request for immediate injunctive relief.¹

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¹ Though Petitioner did not file motions for Preliminary Injunction (PI) or Temporary Restraining Order (TRO), the Court ordered Respondents to respond to Petitioner's "request for immediate injunctive relief" (ECF 3). Respondents understand this order and the rule of liberally construing pro se filings as requiring a response to a TRO or PI and have responded accordingly.

II. STATUTORY BACKGROUND

A. “Applicants for Admission” Under 8 U.S.C. § 1225

The Immigration and Nationality Act (“INA”) defines an “applicant for admission” as an “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .).” 8 U.S.C. § 1225(a)(1); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (“an alien who tries to enter the country illegally is treated as an ‘applicant for admission’”) (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I & N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission[.]”). However long they have been in this country, an alien who is present in the United States but has not been admitted “is treated as ‘an applicant for admission.’” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Under Section 212(a) of the INA, certain classes of aliens are inadmissible — and therefore ineligible to be admitted to the United States — including those “present in the United States without being admitted or paroled[.]” 8 U.S.C. § 1182(a)(6)(A)(i).

B. Detention Under 8 U.S.C. § 1225

Petitioner entered the United States without admission or inspection on December 16, 2022. Petitioner was apprehended, processed, placed in removal proceedings, and released shortly thereafter. Applicants for admission may be removed from the United States by expedited removal under § 1225(b)(1), or full removal proceedings before an immigration judge under 8 U.S.C. § 1229a, pursuant to § 1225(b)(2). All applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.”). Petitioner is an Applicant for Admission and undergoing full removal proceedings before an immigration judge under 8 U.S.C. § 1229a. Therefore, he is subject to mandatory detention pending the outcome of those proceedings. 8 U.S.C. § 1225(b)(2)(A).

2. Section 1225(b)(2)

Under Section 1225(b)(2), an alien “who is an applicant for admission” is subject to mandatory detention pending full removal proceedings “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (requiring that such aliens “be detained for a proceeding under section 1229a of this title”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (proceedings under section 1229a are “full removal proceedings under section 240 of the INA”); *see also id.* (“[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, [] 8 U.S.C. § 1225(b)(2)(A)[] mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299); 8 C.F.R. § 235.3(b)(3) (an alien placed into § 1229a removal proceedings in lieu of expedited removal proceedings under § 1225(b)(1) “shall be detained” pursuant to § 1225(b)(2)). DHS has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see also Biden v. Texas*, 597 U.S. 785, 806 (2022).

C. Detention Under 8 U.S.C. § 1226(a)

A different statutory detention authority, 8 U.S.C. § 1226, applies to aliens who have been lawfully admitted into the U.S. but are deportable and subject to removal proceedings. Section 1226(a) provides for the arrest and detention of these aliens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion, detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.² By regulation, immigration officers can release an alien if he demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (*i.e.*, a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in

² Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional parole” under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider).

Until recently, the government interpreted § 1226(a) to be an available detention authority for aliens present without being admitted or paroled who were placed directly in full removal proceedings under § 1229a. *See, e.g., Ortega-Cervantes*, 501 F.3d at 1116. In view of legal developments, the government has determined that this interpretation was incorrect and inconsistent with the plain text of the statute; 8 U.S.C. § 1225 is the sole applicable immigration detention authority for *all* applicants for admission. *See Jennings*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.”). Under the plain text of the statutes, proceedings under 8 U.S.C. § 1226(a) apply to aliens who are not applicants for admission, including those admitted or paroled into the United States.

III. REQUEST FOR ABEYANCE

The 8 U.S.C. §§ 1225 and 1226 issue implicated, though not directly raised, by Petitioner is arising in many immigration cases, including *Rodriguez Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025), which is on an expedited appeal to the Ninth Circuit and appears to be set for argument on the February 2026 calendar (Ninth Circuit Docket No. 25-6842). The statutory analysis in that case may be dispositive of issues herein. Respondents therefore request that the court hold its ruling on the merits in abeyance pending the Ninth Circuit’s ruling in *Rodriguez Vazquez*. Such an abeyance would also serve the purpose of allowing Petitioner to properly exhaust his administrative remedies as discussed below.

IV. ARGUMENT

A. **This Court Should Dismiss the Petition or Stay Proceedings Based on Petitioner’s Failure to Exhaust Administrative Remedies.**

Petitioner fails to provide any evidence that he has sought to avail himself of any administrative remedy to his detention. ECF 1. While the petition states “[t]he Immigration Court lacks jurisdiction and authority to provide Petitioner with a bond hearing to determine whether Petitioner’s detention is justified” (ECF 1 at 5), Petitioner provides no order or any other evidence that an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) reached such a conclusion. Petitioner provides no

1 explanation for why he has not sought administrative remedies to his detention or any argument that
2 exhaustion should be waived. *Id.* To date, as far as Respondents are aware, Petitioner's request for
3 release on bond has been heard by neither an IJ nor the Board of BIA. When an alien fails to exhaust
4 administrative review, courts should "ordinarily" dismiss the habeas petition without prejudice or stay
5 proceedings until he exhausts that process. *See Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir.
6 2011). Bypassing review by an IJ and the BIA is an "improper" "short cut." *Id.* The Ninth Circuit
7 identifies three reasons to require exhaustion before entertaining a habeas petition. *See Puga v. Chertoff*,
8 488 F.3d 812, 815 (9th Cir. 2007). First, the agency's "expertise" makes its "consideration necessary to
9 generate a proper record and reach a proper decision." *Id.* (quoting *Noriega-Lopez v. Ashcroft*, 335 F.3d
10 874, 881 (9th Cir. 2003)). Second, excusing exhaustion encourages "the deliberate bypass of the
11 administrative scheme." *Id.* (quoting *Noriega-Lopez*, 335 F.3d at 881). Third, "administrative review is
12 likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Id.*
13 (quoting *Noriega-Lopez*, 335 F.3d at 881). Each reason applies here.

14 **1. Exhaustion is warranted in this case.**

15 In his petition, Petitioner does not establish what provision of law governs his detention and
16 immigration process. ECF 1. Petitioner claims that he "entered [the] United State[s] of] America
17 12/16/2022." ECF 1 at 5. While Respondents position is that Petitioner's unlawful entrance and
18 subsequent proceedings render him an applicant for admission under 8 U.S.C. § 1225, Petitioner's status
19 has not been established by administrative review of that question, and Petitioner does not make
20 allegations concerning the statute governing his detention. Before addressing how an agency's own
21 actions of detention and release affect the matter, this Court likely would benefit from an IJ's and the
22 BIA's expertise interpreting the situation. *See Puga*, 488 F.3d at 815. After all, "the BIA is the subject-
23 matter expert in immigration bond decisions." *Aden v. Nielsen*, 2019 WL 5802013, at *2 (W.D. Wash.
24 Nov. 7, 2019). And the BIA is well-positioned to assess how specific agency actions, such as a release
25 on recognizance, affects the statutory provisions at stake for Petitioner.

26 Moreover, the BIA exists to, among other things, resolve disputes such as that here. *See* 8 C.F.R.
27 § 1003.1(d)(1). By regulation:

28 [T]he [BIA], through precedent decisions, shall provide clear and uniform guidance to DHS, the

1 immigration judges, and the general public on the proper interpretation and administration of the
2 [INA] and its implementing regulations.

3 *Id.*

4 Waiving exhaustion also would “encourage other detainees to bypass the BIA and directly
5 appeal their no-bond determinations from the IJ to federal district court.” *Aden*, 2019 WL 5802013, at
6 *2. Individuals, like Petitioner, would have little incentive to seek relief before an IJ and the BIA if this
7 Court permits review here, especially where Petitioner fails to identify the relevant statutory authority at
8 issue. This is doubly true for Petitioner, who has not provided any evidence that he took even the first
9 step to have his detention administratively reviewed by an IJ. Allowing petitioners to employ the
10 strategy of skipping the agency adjudicative system entirely and going straight to federal court would
11 needlessly increase the burden on district courts. *See Bd. of Tr. of Constr. Laborers’ Pension Trust for*
12 *S. Calif. v. M.M. Sundt Constr. Co.*, 37 F.3d 1419, 1420 (9th Cir. 1994) (“Judicial economy is an
13 important purpose of exhaustion requirements.”); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418
14 (2023) (noting “exhaustion promotes efficiency”). This Court should allow the administrative process to
15 play out, as Petitioner has taken no action to have his detention administratively reviewed.

16 **2. Petitioner’s reason to waive exhaustion would swallow the rule.**

17 Federal courts are “not free to address the underlying merits [of a habeas petition] without first
18 determining the exhaustion requirement has been satisfied or properly waived.” *Laing v. Ashcroft*, 370
19 F.3d 994, 998 (9th Cir. 2004). Discretion to waive exhaustion “is not unfettered.” *Id.* A petitioner
20 bears the burden to show that an exception to the exhaustion requirement applies. *Leonardo*, 646 F.3d at
21 1161; *Aden*, 2019 WL 5802013, at *3. Petitioner has made no assertion of any exception to exhaustion,
22 and the court should not find one applies here. *See Draper v. Rosario*, 836 F.3d 1072, 1080 (9th Cir.
23 2016) (holding that “[a]lthough pro se pleadings must be construed liberally,” a pro se litigant must still
24 “provide some explanation” of official action related to non-exhaustion).

25 Detention alone is insufficient to excuse exhaustion. *See, e.g., Delgado*, 2017 WL 4776340, at
26 *2. Adopting such a rationale “would essentially mandate the release of all detainees while their appeals
27 were pending and, thereby, stand the exhaustion requirement on its head.” *Meneses v. Jennings*, No. 21-
28 CV-07193-JD, 2021 WL 4804293, at *5 (N.D. Cal. Oct. 14, 2021), *abrogated on other grounds by Doe*

1 *v. Garland*, 109 F.4th 1188 (9th Cir. 2024); *see also Bogle v. DuBois*, 236 F. Supp. 3d 820, 823 n.6
2 (S.D.N.Y. 2017) (noting that “continued detention . . . is insufficient to qualify as irreparable injury
3 justifying non-exhaustion”) (quotation marks omitted).

4 Nor has Petitioner alleged that he is suffering or will suffer irreparable harm if he followed the
5 required course of putting the issue before an IJ and pursuing an appeal with the BIA in the event of an
6 unfavorable outcome to Petitioner. While Petitioner would remain in custody pending such appeal, so
7 too does every single individual who alleges unlawful detention, meaning every alien appealing their
8 detention decision would meet an irreparable-harm standard if that standard is premised solely on
9 continued detention. *See, e.g., Delgado*, 2017 WL 4776340, at *2. The exception would swallow the
10 rule. *See id.* (“Because all immigration habeas petitions could raise the same argument [that detention is
11 irreparable injury], if it were decisive, the prudential exhaustion requirement would always be waived—
12 but it is not.”). Therefore, the court should decline to waive exhaustion here and require Petitioner to
13 follow the proper course with an IJ adjudication and a BIA appeal before seeking relief in habeas before
14 this court.

15 **B. Petitioner is Subject to mandatory detention under 8 U.S.C § 1225(b)**

16 If this court determines that exhaustion is waived and reaches the merits, it should still deny the
17 Petition and the motion for TRO. Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which
18 provides that Petitioner “shall” be detained. Because Petitioner is currently detained under 8 U.S.C. §
19 1225(b)(2)(A), he is ineligible for release or bond hearing under 8 U.S.C. § 1226(a). He seeks to
20 circumvent the detention statute under which he is rightfully detained to secure a custody
21 redetermination hearing that he is not entitled to. Petitioner argues that, contrary to the plain language
22 of 8 U.S.C. § 1225(b)(2)(A), he is entitled to a bond hearing and release on conditions, though he does
23 not cite to a statute authorizing such a hearing or release. Petitioner falls precisely within the statutory
24 definition of aliens subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A) because he was and
25 remains an applicant for admission.

26 Detention under this statute is thus mandatory, and the only mechanism for release is parole,
27 which may be permitted under 8 U.S.C. § 1182(d)(5) as an exercise of the discretion of the Department
28 of Homeland Security. Petitioner’s release in 2022 is best understood as an exercise of that DHS

1 discretion. DHS then re-detained Petitioner subject to the same grant of discretion on July 29, 2025.
2 Detentions under 8 U.S.C. § 1225(b) authority do not require warrants. *See Jennings*, 583 U.S. at 302
3 (explaining that the government may detain an applicant for admission without a warrant under 8 U.S.C.
4 § 1225(b), but must obtain a warrant under 8 U.S.C. § 1226(a) for other aliens).

5 **C. There is no Constitutional Right to an Immigration Court Bond Hearing and**
6 **Petitioner’s Right to Due Process has not been Violated.**

7 Petitioner also argues that not providing a pre-re-detention hearing violates his due process
8 rights. ECF 1 at 7-9. However, Petitioner is an applicant for admission originally apprehended near the
9 border, so his due process rights are minimal. *Thuraissigiam*, 591 U.S. at 107 (finding that an alien
10 apprehended near the border “has no entitlement to procedural rights other than those afforded by
11 statute”). “Applicants for admission,”—including Petitioner—“fall into one of two categories, those
12 covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to mandatory
13 detention. *Jennings*, 583 U.S. at 287 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate
14 detention for applicants for admission until certain proceedings have concluded.”). They are not entitled
15 to custody redetermination hearings, whether pre- or post-detention. *Jennings*, 583 U.S. at 297
16 (“[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.”). Further, as
17 the Supreme Court described in *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022), unlike federal
18 agencies, “[r]eviewing courts are generally not free to impose [additional procedural rights] if the
19 agencies have not chosen to grant them.”

20 The fact that Petitioner is an applicant for admission resolves the dispute in this case because
21 applicants for admission must be detained under statute, and they are not entitled to bond hearings. The
22 court should not invent a due process right to a hearing where none exists in the governing statutory
23 scheme.

24 While Petitioner correctly notes that due process applies to all persons within the United States,
25 including applicants for admission, “due process is flexible and calls for such procedural protections as
26 the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). In the case of an alien
27 entering without inspection or admission and intercepted near the border, those rights are reduced. *See*
28 *Thuraissigiam*, 591 U.S. at 107. Petitioner was never granted admission to the United States. For

1 immigration law purposes, he is treated as being stopped at the border, even though he has been
2 physically present within the United States. *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir.
3 1995) (en banc); *Thuraissigiam*, 591 U.S. 103, 139 (2020).

4 “[A]pplicants for admission have virtually no constitutional rights regarding their applications.”
5 *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33-
6 34 (1982)). “Whatever the procedure authorized by Congress is, it is due process as far as an alien
7 denied entry is concerned.” *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950). Thus, when
8 it “involve[s] an asylum applicant who had not ‘technically entered the United States,’ [the Court]
9 examine[s] only whether the government violated the statutory rights that Congress afforded such
10 applicants.” *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th Cir. 2020) (citation omitted).

11 Immigration laws have long authorized immigration officials to charge aliens as removable from
12 the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *Demore v.*
13 *Kim*, 538 U.S. 510, 523–26 (2003); *Abel v. United States*, 362 U.S. 217, 232–37 (1960) (discussing
14 longstanding administrative arrest procedures in deportation cases). In the Immigration and Nationality
15 Act, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a
16 decision on removal, during the administrative and judicial review of removal orders, and in preparation
17 for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. “Detention during removal proceedings is a
18 constitutionally valid aspect of the deportation process.” *Velasco Lopez v. Decker*, 978 F.3d 842, 848
19 (2d Cir. 2020) (citing *Demore*, 538 U.S. at 523 n.7) (“prior to 1907 there was no provision permitting
20 bail for any aliens during the pendency of their deportation proceedings”); *Carlson v. Landon*, 342 U.S.
21 524, 538 (1952) (“Detention is necessarily a part of [the] deportation procedure.”); *Reno v. Flores*, 507
22 U.S. 292, 306 (1993) (“Congress eliminated any presumption of release pending deportation,
23 committing that determination to the discretion of the Attorney General.”).

24 The government’s interest in protecting the public and preventing deportable non-citizens from
25 fleeing are strong and compelling. *See e.g., Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir.
26 2022) (government’s interests in “protecting the public from dangerous criminal aliens” and
27 “increas[ing] the chance that, if ordered removed, the aliens will be successfully removed” are “interests
28 of the highest order that only increase with the passage of time”).

1 The courts have recognized that “there is little question that the civil detention of [noncitizens]
 2 during removal proceedings can serve a legitimate government purpose, which is ‘preventing deportable
 3 ... [noncitizens] from fleeing prior to or during their removal proceedings, thus increasing the chance
 4 that, if ordered removed, the [noncitizens] will be successfully removed.’” *Prieto–Romero v. Clark*, 534
 5 F.3d 1053, 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

6 The mandatory detention statute does not provide for bond hearings as demanded in the petition.
 7 Congress in the INA did provide for the possibility of parole in the discretion of the agency. 8 U.S.C.
 8 § 1182(d)(5). Due process requires no further relief than that already provided in the parole process
 9 authorized by Congress.

10 Because the Petition fails on the merits, the court should not provide immediate injunctive relief.
 11 “A [petitioner] seeking a preliminary injunction must show that: (1) he is likely to succeed on the merits,
 12 (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities
 13 tips in his favor, and (4) an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 22
 14 (2008). Here, Petitioner has not shown he is likely to succeed on the merits, and therefore should not
 15 receive immediate injunctive relief.

16 **D. In the Alternative, Respondents Request the Court Order Petitioner to be Afforded**
 17 **Such Process as Complies with 8 U.S.C. § 1226(a)**

18 In the alternative, if the court disagrees with Respondents, finding both that exhaustion is waived
 19 and that Petitioner is entitled to process beyond what is authorized by 8 U.S.C. § 1225(b), Respondents
 20 request the Court order that Petitioner receive process consistent with 8 U.S.C. § 1226(a) and its
 21 implementing regulations. Such hearing should be the same as a custody redetermination hearing before
 22 an IJ. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. In such a hearing, the IJ
 23 should be permitted the discretion to undertake the inquiry normally associated with such
 24 redetermination hearings. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for
 25 IJs to consider). Petitioner has not been detained past six months, so such burden shifting as Petitioner
 26 requests would not be appropriate, even under discretionary detention statutes which Respondents assert
 27 do not apply here. The Court also should not order process beyond this hearing or alter the applicable
 28 burdens at such a hearing as doing so would be creating additional process beyond the statutory scheme,

1 which reviewing courts are generally not free to impose. *See Johnson*, 596 U.S. at 582.

2 V. CONCLUSION

3 For the foregoing reasons, it is respectfully requested that the Court deny petition for writ of
4 habeas corpus and the motion for a temporary restraining order.

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6 Dated: December 23, 2025

ERIC GRANT
United States Attorney

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9 By: /s/ J. DOUGLAS HARMAN
J. DOUGLAS HARMAN
Assistant United States Attorney
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