

1 Beles and Beles Law Offices
2 Robert J. Beles Bar No. 41993
3 Emilio Parker Bar No. 276310
4 1 Kaiser Plaza, Suite 2300
5 Oakland, California 94612-3616
6 Tel. No. (510) 836-0100
7 Fax No. (510) 832-3690
8 emiliotparker@gmail.com

9 Attorneys for *Petitioner* Juan Carlos Hidalgo Solis

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Juan Carlos Hidalgo Solis

Petitioner,

v.

Warden of the Golden State Annex Detention
Facility;

Todd M. LYONS, Acting Director,
Immigration and Customs Enforcement, U.S.
Department of Homeland Security;

Kristi NOEM, in her Official Capacity,
Secretary, U.S. Department of Homeland
Security; and

Pam BONDI, in her Official Capacity,
Attorney General of the United States;

Respondents - Defendants,

CASE NO.: 1:25-CV-01924-TLN-CKD

PETITIONER'S REPLY TO
RESPONDENT'S OPPOSITION TO
EMERGENCY EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

PETITIONER’S REPLY TO GOVERNMENT’S OPPOSITION TO EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

LEGAL STANDARD

A party seeking a temporary restraining order and preliminary injunction must establish “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U. S. 7, 20 (2008). “If a plaintiff can only show that there are serious questions going to the merits – a lesser showing than likelihood of success on the merits – then a preliminary injunction may still issue if the balance of hardships tips sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014)(internal quotation marks and citations omitted). “When the Government is the opposing party,” the final two factors “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

A. Likelihood of Success on the Merits
a. Due Process

The Due Process Clause protects all persons within the United States from being “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. The Due Process Clause applies equally to noncitizens unlawfully present in the United States, like Mr. Hidalgo Solis. See *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Although Mr. Hidalgo Solis’s claim is constitutional, it ultimately turns on whether either section 1225(b) or section 1226(a) provides a valid basis for Mr. Hidalgo Solis’s continued detention. Here, since Mr. Hidalgo Solis has not been properly detained under either statutory detention authority, a temporary restraining order and preliminary injunction must be issued.

i. Mandatory Detention Under 8 U.S.C. § 1225(b)(2)(A)

The Respondents invoke section 1225(b) as a basis for mandatory detention. The relevant portion of § 1225(b) regarding the definition of an applicant for admission is § 1225(b)(2)(A) which provides the following:

In the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for proceeding under section 1229a of this title.
U.S.C §1225(b)(2)(a).

There is no real dispute that Mr. Hidalgo Solis is “an applicant for admission” who is not “clearly and beyond a doubt entitled to be admitted.” *Id.* However, the mandatory detention provision of 8 U.S.C. 1225(b) does not apply to Mr. Hidalgo Solis because Mr. Hidalgo Solis is not “an alien seeking admission”.

The fact that the petitioner is an applicant for admission does not resolve the dispute in this case as the reading of § 1225(b)(2) requires that the respondent also be an “alien seeking admission.”

Although Respondents do not address the specific language of § 1225(b)(2), respondents seem to argue that Petitioner is also an “alien seeking admission” and subject to removal under 8 U.S.C. § 1225(b)(2) since that statute requires that the applicant for admission must also be determined to be an “alien seeking admission” in order to be subject to mandatory detention. Respondents’ theory repeats arguments that have been uniformly rejected by many district courts. A noncitizen released into the interior of the country pending deportation proceedings is not “seeking admission”. See, e.g., *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025); *Salcedo Aceros v. Kaiser*, 25-cv-06924-EMC, 2025 WL 2637503, at *8–12 (N.D. Cal. Sep. 12, 2025); *Jimenez Garcia v. Kaiser et al.*, 25-cv-06916-YGR, at *8–9 (N.D. Cal. Aug. 29, 2025); *Calderon v. Kaiser*, No. 5:25-cv-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263, at *3–4 (N.D. Cal. Aug. 21, 2025). *Valencia Zapata v. Kaiser*, 2025 WL 2741654, at * 10 (N.D. Cal. Sept. 26, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025).

Respondents argue that “every applicant for admission ‘must be inspected by immigration officers’ to ensure that they may be admitted into the country consistent with U.S. immigration law.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018)(citing section 1225(a)(3) which provides that “[all aliens...who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.” The government concludes that pursuant to the statutory scheme, detention pending removal

1 proceedings is mandatory. Applied here, that logic suggests that an “applicant for admission” is
2 merely one kind of noncitizen “seeking admission,” which would mean the use of the phrase
3 “seeking admission” in section 1225(b)(2) carries no additional meaning.

4 However, in section 1225(b)(2)(A), Congress felt the need to cabin the application of
5 mandatory detention to only those “seeking admission” *after* it already limited the provision’s
6 scope to “applicants for admission.” In that context, therefore, it is far from obvious that
7 Congress intended the two terms to be completely coterminous.

8 Fortunately, the remainder of the statutory scheme provides probative evidence of
9 Congress’s intent which resolves the interpretive question in favor of Mr. Hidalgo Solis. First,
10 in January 2025, Congress amended the provision governing discretionary detention – 8 U.S.C.
11 § 1226 – to add an additional category of noncitizens subject to mandatory detention. *See* Laken
12 Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). “ This category includes noncitizens who are
13 (1) inadmissible under 1182(6)(A)(present without admission or parole),
14 (6)(C)(misrepresentation), or (7)(C)(lack of proper documentation) and (2) have been charged
15 with one of certain enumerated crimes.” *Salcedo Aceros*, 2025 WL 2637503, at *10.

16 Under Respondents’ view, however, this class of individuals was already subject to
17 mandatory detention under section 1225(b)(2)(A) because they satisfy the statutory definition of
18 “applicants for admission.” Therefore, adopting Respondent’s theory would be to presume
19 Congress intended its amendment to have “[no] real and substantial effect” – a presumption the
20 Supreme court had admonished is appropriate. *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995).

21 Moreover, section 1225(b)’s implementing regulations suggest that it was not intended
22 to sweep as broadly as Respondents claim. 8 C.F.R. § 235.3(c)(1) provides that section 1225(b)
23 shall apply to “any arriving alien” that appears inadmissible and is placed in standard removal
24 proceedings. By limiting the scope of section 1225(b) in this way, the regulation effectively
25 defines an “applicant for admission” who is “seeking admission” to be an “arriving alien” – a
26 definition that would exclude those like Mr. Hidalgo Solis who are now in the interior of the
27 country. If Respondents are correct that Congress meant for section 1225(b) to apply more
28 broadly all along, it could have corrected that language but it did not.

Respondents’ construction of the statute would also seem to shrink the discretionary
detention provision, section 1226, beyond recognition. Section 1226 provides that “on a warrant

1 issued by the Attorney General, an alien may be arrested and detained pending a decision on
2 whether the alien is to be removed.” 8 U.S.C. § 1226(a). That provision also permits the Attorney
3 General to “release the alien...on conditional parole.” *Id.* § 1226(a)(2)(B). The implementing
4 regulations permit an ICE officer to release the alien in the officer’s discretion “provided that the
5 alien must demonstrate to the satisfaction of the officer that such release would not pose a danger
6 to property or persons, and that the alien is likely to appear for any future proceedings.” 8 U.S.C.
§ 236.1(c)(8).

7 For many years, the understanding – shared by the Executive and the Supreme Court –
8 was that section 1226, not section 1225, governed immigration arrests conducted within the
9 interior of the United States. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)(“Despite being
10 applicants for admission, aliens who are present without having been admitted or paroled ... will
11 be eligible for bond and bond redetermination.”); *Jennings v. Rodriguez*, 583 U.S. 281, 289
12 (2018)(“In sum, U.S. Immigration law authorizes the Government to detain certain aliens seeking
13 admission into the country under §§ 1226(a) and (b)(2). It also authorizes the Government to
14 detain certain aliens *already in the country pending the outcome of removal proceedings* under
15 §§ 1226(a) and (c).”)(emphasis added). Respondent’s view is that virtually every noncitizen in
16 the interior of the country is both an “applicant for admission” and is “seeking admission,”
17 making all of them subject to mandatory detention under the statutes. Because a noncitizen
18 cannot simultaneously be subject to mandatory detention and discretionary detention, the result
19 is that section 1226 will apply only to an extremely small group of noncitizens: those present in
20 the United States who have been admitted but now lack legal status. *See, e.g., Jennings*, 583
21 U.S. at 289-90. The statutory scheme is devoid of any indication that Congress meant for section
1226 to be that narrow. In sum, section 1225(b)(2)(A) does not supply statutory authority to
22 detain Mr. Hidalgo Solis.

23 After initiating removal proceedings under § 1229(a), the government chose to release
24 Mr. Hidalgo Solis on conditional parole under §1226(a). In doing so, the government placed Mr.
25 Hidalgo Solis into a normal removal proceeding, not an expedited one, and it also chose not to
26 detain him under § 1225(b). “Sections 1226(a) and 1225(b) cannot be applied simultaneously.”
27 *Salcedo Aceros*, 2025 WL 2637503, at *8; *see also Valencia Zapata v. Kaiser*, -- F. Supp. 3d --
28 , No. 25-cv-07492- RFL, 2025 WL 2741654, at *9 (N.D. Cal. Sept. 26, 2025); *Pablo Sequen v.*
Albarran, --F. Supp. 3d -- , No. 25-cv-06487-PCP, 2025 WL 2935630, at *1–2 (N.D. Cal. Oct.

1 15, 2025). Like other District Courts, this court must find that the government cannot simply
2 switch tracks and purport to subject Mr. Hidalgo Solis to mandatory detention under § 1225(b)
3 after it already released her under § 1226(a). Here, Mr. Hidalgo Solis is not in expedited removal
4 proceedings.

5 Mr. Hidalgo Solis has a liberty interest that was created by the government after
6 immigration officials released her on own recognizance under § 1226(a) when they determined
7 he posed little if any danger to the community. By deciding to release Mr. Hidalgo Solis from
8 custody after he was initially apprehended and placing her in § 240 proceedings, the government
9 created “an implicit promise,” on which he has reasonably relied, that her liberty “will be revoked
10 only if [s]he fails to live up to the parole conditions [of his release].” *Morrissey*, 408 U.S. at 482.
11 “The liberty of a person released from government custody is valuable and must be seen as within
12 the protection of the Due Process Clause.” *Pinchi*, 792 F. Supp. 3d at 1032 (quoting *Morrissey*,
13 408 U.S. at 482); see also *Calderon v. Kaiser*, No. 25-cv-06695-AMO, 2025 WL 2430609, at *2
14 (N.D. Cal. Aug. 22, 2025) (petitioner’s release under § 1226 created “protected liberty interest
15 in remaining out of custody, which has only become more significant in the years since then”).
16 Petitioner’s private interest in her continued freedom from detention is therefore weighty.

17 **a. DHS may not subject an immigrant in**
18 **§ 240 removal proceedings to**
19 **mandatory detention under 8 U.S.C. §**
20 **1225(b) based solely on termination of**
21 **parole under 8 C.F.R. § 212.5(e)(2)(i)**

22 There is no statutory authority permitting DHS to apply § 1225(b) detention after
23 initiating § 240 proceedings absent a new placement in expedited removal. 8 C.F.R. §
24 212.5(e)(2)(i) governs parole termination only. It is not a detention statute and cannot create
25 mandatory detention where Congress did not. See *Jennings*, 583 U.S. at 521.

26 Once in § 240 proceedings, § 1226(a) is the default custody statute and bond jurisdiction
27 lies with the Immigration Judge. Mandatory detention applies only if § 1226(c) is satisfied.
28 Congress separated these statutes intentionally: § 1225 governs inspection “pending a
determination of admissibility primarily before DHS elects to place the person in § 240
proceedings. Once DHS issues and files a Notice to Appear in immigration court initiating § 240
proceedings, as is the case here, the § 1225 inspection/admission framework is no longer

operative and § 1226 governs. See *Jennings v. Rodriguez*, 583 U.S. 513 (2018) stating that § 1225 and § 1226 are distinct detention regimes.

Respondents' construction of the § 1225 mandatory detention statute would also seem to shrink the discretionary detention provision, section 1226, beyond recognition. Section 1226 provides that "on a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed." 8 U.S.C. § 1226(a). That provision also permits the Attorney General to "release the alien...on conditional parole." *Id.* § 1226(a)(2)(B). The implementing regulations permit an ICE officer to release the alien in the officer's discretion "provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceedings." 8 U.S.C. § 236.1(c)(8). Under Respondents rationale, all immigrants who have not yet been admitted could be considered applicants for admission/arriving aliens because they are in the same status as when they entered the United States and thus subject to § 1226(b) mandatory detention. However, this is not the case.

For many years, the understanding – shared by the Executive and the Supreme Court – was that section 1226, not section 1225, governed immigration arrests conducted within the interior of the United States. See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled ... will be eligible for bond and bond redetermination."); *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) ("In sum, U.S. Immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1226(a) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country pending the outcome of removal proceedings* under §§ 1226(a) and (c).") (emphasis added). Since Mr. Hidalgo Solis was placed in § 240 removal proceedings before an immigration judge over two years ago, his detention while in § 240 proceedings is governed by § 1226(a) and (c) regardless of the status of her parole.

ii. Discretionary Detention under 8 U.S.C. § 1226(a)

Though most of Respondents' submission is dedicated to arguing that Mr. Hidalgo Solis was properly detained under section 1225(b) mandatory detention requirements, they cannot justify Mr. Hidalgo Solis's detention under section 1226(a) as well. Section 1226(a) provides that an "alien may be arrested and detained pending a decision on whether the alien is to be removed." It further provides that the Attorney General "may continue to detain the arrested

1 alien” or “may release the alien on a bond ...or conditional parole.” 8 U.S.C. § 1226(a).

2 Though Mr. Hidalgo Solis admits violating the ISAP program when his picture was not
3 properly downloaded on his phone. Mr. Hidalgo Solis never missed court nor missed an ICE
4 appointment. Mr. Hidalgo Solis *voluntarily* attended his ISAP appointment when he was
5 detained on November 13, 2025.

6 Even if Respondents’ allegations that Mr. Hidalgo Solis violated his release conditions
7 were credited, his detention would remain improper. Section 1226(a)’s implementing regulations
8 require release of a detained noncitizen unless the noncitizen poses a danger to the community
9 or is a flight risk. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196-97 (9th Cir. 2022). When
10 the noncitizen is initially detained, 8 C.F.R. § 236.1(c)(8) provides for release if the noncitizen
11 “demonstrate(s) to the satisfaction of the [ICE] officer that such release would not pose a danger
12 to property or persons, and that the alien is likely to appear for any future proceeding.” See *id.*
13 If the ICE officer determines that the noncitizen should not be released, the regulations permit
14 the noncitizen to request a bond hearing before an immigration judge at any time before a removal
15 order becomes final. See 8 C.F.R. §§ 236.1(d)(1), 1003.19; *Rodriguez Diaz*, 53 F.4th at 1197.
16 In this hearing, too, the inquiry is whether the noncitizen is “a threat to national security, a danger
17 to the community at large, likely to abscond, or otherwise a poor bail risk.” In *re Guerra*, 245
18 I&N Dec. 37, 40 (BIA 2006). Though the immigration judge may “consider various factors in
19 making this determination, including the individual’s ties to the United States as well as his
20 employment history, criminal record, history of immigration violations, and manner of entry into
this country,” those factors are considered to assess dangerousness and flight risk. *Rodriguez*
Diaz, 53 F.4th at 1197.

21 Thus, detention is permitted under section 1226(a) only if Mr. Hidalgo Solis is dangerous
22 or a flight risk. Respondents have not come close to showing that, and in fact, have hardly even
23 tried. Though there was a minor technical violation, they have not explained how this violation
24 makes Mr. Hidalgo Solis dangerous or a flight risk. The Respondents do not address flight risk
nor safety because those factors clearly weigh in favor of Mr. Hidalgo Solis’s immediate release.

25 As explained, the determination that Mr. Hidalgo Solis’s detention is not authorized under
26 section 1225(b) or section 1226(a) resolves his Due Process claim in his favor. There is no need
27 to delineate when his liberty interest arose or what the scope of that liberty interest now is because
28 the government may never detain individual that enjoys the protection of the Due Process Clause

without a legal basis to do so. Regardless, the remaining factors weigh heavily in Mr. Hidalgo Solis's favor.

B. Petitioner Is Likely to Suffer Irreparable Harm Absent Injunctive Relief

There can be no question that Mr. Hidalgo Solis is likely to suffer irreparable harm in the absence of a preliminary injunction. "Deprivation of physical liberty by detention constitutes irreparable harm." *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018); see also *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'"). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005). Mr. Hidalgo Solis was arrested without any pre-detention hearing or other legal basis to do so. He thus has shown a clear likelihood of irreparable harm.

Illegal detention is an unquestionably serious impingement on an individual's constitutional rights. Since Respondents lack a basis to detain Mr. Hidalgo Solis, he suffers from irreparable harm.

C. The remaining preliminary injunction factors – the balance of equities, and the public interest – weigh in favor of Mr. Hidalgo Solis.

The final two factors – which merge here because the government is the opposing party – weigh in Mr. Hidalgo Solis's favor. While the government has a compelling interest in enforcing the immigration laws, granting relief to Mr. Hidalgo Solis will not seriously impinge its ability to do so. The government has already placed Mr. Hidalgo Solis in full removal proceedings under section 1229a, thus granting Mr. Hidalgo Solis's immediate release will not delay its ability to prosecute his removal. Moreover, his immediate release does not preclude the government from detaining Mr. Hidalgo Solis if it can convince a neutral arbiter that he is subject to detention under section 1226(a) – that is, that he is a danger or a flight risk. Therefore, at worst, immediate release imposes a minor delay on the government's execution of the immigration laws.

Respondents have offered no evidence that Mr. Hidalgo Solis's detention would serve any purpose. The evidence before the Court does not suggest that Mr. Hidalgo Solis presents

1 any danger to the community or any flight risk. After all, he has no criminal history and was
2 detained after dutifully attending her ICE appointment. “Under these circumstances, there is
3 significant risk that [the] curtailment of liberty” that Mr. Hidalgo Solis’s would suffer by her re-
4 detention by ICE “w[ould] not [be] justified by any valid interest.” *Pinchi*, 792 F. Supp. 3d at
5 1035.

6 Respondents have not shown any persuasive countervailing interest in choosing not to
7 provide a pre-detention hearing at this stage. If Respondents wish to detain Mr. Hidalgo Solis
8 notwithstanding his release over two years ago, they can provide a hearing before a neutral
9 decisionmaker. It is undisputed that “[i]n immigration court, custody hearings are routine and
10 impose a ‘minimal’ cost.” *Salcedo Aceros*, 2025 WL 2637503 at *12 (citing *Singh*, 2025 WL
11 1918679, at *8). Mr. Hidalgo Solis is already subject to full removal proceedings, and
12 Respondents conceded at the preliminary injunction hearing that those proceedings remain
13 active. A pre-deprivation bond hearing will not interfere with those proceedings. Moreover,
14 detention for its own sake is not a legitimate governmental/public interest. *Pinchi*, 792 F. Supp.
15 3d at 1036 (“Detention for its own sake, to meet an administrative quota, or because the
16 government has not yet established constitutionally required pre-detention procedures is not a
17 legitimate government interest.”).

18 The risk of erroneous deprivation also weighs in Mr. Hidalgo Solis’s favor. “Once a
19 liberty interest is established, the question is whether process—a hearing—would lessen the risk
20 of an erroneous detention.” *Salcedo Aceros*, 2025 WL 2637503 at *12. Where the petitioner “has
21 not received any bond or custody . . . hearing,” “the risk of an erroneous deprivation [of liberty]
22 is high.” *Singh v. Andrews*, -- F. Supp. 3d --, No. 1:25-cv00801-KES, 2025 WL 1918679, at *7
23 (E.D. Cal. July 11, 2025) (quoting *A.E. v. Andrews*, No. 1:25-cv-00107-KES, 2025 WL 1424382,
24 at *5 (E.D. Cal. May 16, 2025)). Civil immigration detention is permissible only to protect
25 against danger to the community or to prevent a flight risk. See *Zadvydas*, 533 U.S. at 690.

26 Under the Due Process Clause of the Fifth Amendment to the United States Constitution,
27 no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const.
28 amend. V. “Freedom from imprisonment—from government custody, detention, or other forms
of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533
U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)) favor. “Once a liberty
interest is established, the question is whether process—a hearing—would lessen the risk of an

1 erroneous detention.” *Salcedo Aceros*, 2025 WL 2637503 at *12. Where the petitioner “has not
2 received any bond or custody . . . hearing,” “the risk of an erroneous deprivation [of liberty] is
3 high.” *Singh v. Andrews*, -- F. Supp. 3d --, No. 1:25-cv00801-KES, 2025 WL 1918679, at *7
4 (E.D. Cal. July 11, 2025) (quoting *A.E. v. Andrews*, No. 1:25-cv-00107-KES, 2025 WL 1424382,
5 at *5 (E.D. Cal. May 16, 2025)). Civil immigration detention is permissible only to protect
6 against danger to the community or to prevent a flight risk. See *Zadvydas*, 533 U.S. at 690.

7 Counsel waives oral argument and is amenable to converting this TRO into a motion for
8 preliminary injunction.

9 Date: December 23, 2025

Respectfully Submitted,

10
11 /s/ Robert Beles
12 Robert Beles
13 Attorney For Petitioner
14 Juan Carlos Hidalgo Solis
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in the Petition with the Petitioner. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on December 23, 2025, in Oakland, CA.

/s/ Robert Beles
Robert Beles
Attorney for Petitioner
Juan Carlos Hidalgo Solis