UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:26-cv-60185-WPD

MONTEJO-JACINTO, FERNANDO SANTO,

Petitioner,

vs.

PAMELA BONDI, et al.,

Respondents.
_____/

RESPONDENTS' RETURN/RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MEMORANDUM OF FACT AND LAW IN SUPPORT OF SAME

Respondents[1] file this Return to Plaintiff's Verified Petition for Writ of Habeas Corpus [D.E. 1] (hereinafter the "Petition") and respond to Court's Order dated January 26, 2026 [D.E. 5]. As set forth below, this action should be dismissed as Petitioner is properly detained.

I. FACTUAL BACKGROUND

The petitioner, Fernando Santos Montejo-Jacinto (Petitioner), is a native and citizen of Guatemala. *See* **Exhibit A:** Form I-213, Record of Deportable/Inadmissible Alien. Petitioner illegally entered the United States at an unknown time and place. *See Id.* On July 31, 2024. Florida Fish and Wildlife encountered Petitioner during a freshwater fisheries inspection. *See* **Exhibit B**:

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Broward Transitional Center. D.E. 1 at ¶ 10. Therefore, the Proper Respondent and immediate custodian at the Broward Transitional Center is acting Assistant Field Office Director (AFOD) Carlos Nunez. *See Rumsfeld v. Padilla*. Accordingly, Respondents Kristi Noem, Pamela Bondi, Todd M. Lyons, Juan Agudelo and Cynthia Swain must all be dismissed as improper parties.

Declaration of Deportation Officer ¶ 7. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) was notified and provided Petitioner with a Form G-56 requiring him to report to the Stuart ICE Sub-office on September 18, 2024. *Id.* ¶ 8. Petitioner reported to the ICE office and was released on an order of recognizance. *See* **Exhibit C**: Form I-286, Notice of Custody Determination.

On September 18, 2024, DHS filed a Notice to Appear (NTA) with Executive Office for Immigration Review (EOIR), charging Petitioner with inadmissibility under § 212(a)(6)(A)(i), in that he is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* **Exhibit D**: Notice to Appear. On September 18, 2025, Petitioner was taken into ICE custody at a check-in with ERO. *See* Exh. A, Form I-213; *see also* **Exhibit E**: Detention History.

Petitioner requested a custody redetermination with EOIR Broward Transitional Center (BTC) Immigration Court, and on December 19, 2025, the Immigration Judge denied the motion on the basis that the court did not have jurisdiction based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* **Exhibit F**: Immigration Judge Order, dated December 19, 2025. On December 17, 2025, Petitioner filed a motion to terminate proceedings with the EOIR Immigration Court based on his approved Form I-130, and on December 18, 2025, the Immigration Judge denied the motion. *See* **Exhibit G:** Immigration Judge Order, dated December 18, 2025. The Petitioner is currently detained at BTC. *See* Exh. E. His next hearing is on February 13, 2026, at BTC. *See* **Exhibit H**: Notice of Hearing.

II. ARGUMENT

A. Petitioner is an Applicant for Admission subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

The government has carefully reviewed this petition and determined that the legal issues

presented concern the statutory authority for U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), whether Petitioner is entitled to a bond hearing. While reserving all rights, including the right to appeal, the government respectfully submits this abbreviated response to the Court's Order and Habeas Petition on this issue in lieu of a formal responsive memorandum of law to preserve the legal issues, to conserve judicial and party resources, and to expedite the Court's consideration of this matter. If the Court prefers to receive a formal memorandum of law on this issue, the government will submit one upon request.

It is the government's position that Petitioner is subject to mandatory detention under § 1225(b), because he was present in the United States without being admitted or paroled. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025). However, the government acknowledges that Judges in this District, including this Court, have reached the opposite conclusion. *See, e.g., Aguilar Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at *3, 8 (S.D. Fla. Oct. 15, 2025) ("§ 1226(a), not § 1225(b)(2), governs Petitioner's detention"); *Gil-Paulino v. Sec'y of the U.S. Dep't of Homeland Sec.*, 25-24292-CIV-WILLIAMS, ECF No. 41, (S.D. Fla. Oct. 10, 2025) ("§ 1226 governs Petitioner's detention"); *Hernandez Alvarez v. Acting Warden Roger Morris*, et al., Case No. 25-24806-CIV-WILLIAMS, ECF No. 6 (S.D. Fla. Oct. 27, 2025) (agreeing with petitioner that "detention is governed by 8 U.S.C. § 1226(a), which allows for the release of noncitizens on bond . . . not § 1225(b)(2), applicable to noncitizen "applicant[s] for admission" to the United States.); *Cerro Perez v. Parra*, et al., Case No. 25-24820-CIV-WILLIAMS, ECF No. 9 (S.D. Fla. Oct. 27, 2025) (same); *Alvarez Puga v. Assistant Field Office Director Krome,* et al., No. 25-24535-CIV-ALTONAGA (S.D. Fla. Oct. 15, 2025) (concluding that "prudential exhaustion requirements are excused for futility" and finding

that "section 1226(a) and its implementing regulations govern Petitioner's detention, not section 1225(b)(2)(A)"); *Zamora Policarpo v. Parra*, Case No. 25-25236-CIV-COHN, ECF No. 8 (S.D. Fla. Dec. 22, 2025) (finding good cause to excuse Petitioner's failure to exhaust administrative remedies where it is evident the BIA will reject Petitioner's request for a bond hearing or release and that Petitioner is subject to detention under § 1226(a) and entitled to a bond hearing before an immigration judge); *Penagos Quintero v. Ripa*, et al., Case No. 25-25746-CIV-BECERRA, ECF NO.14 (Jan. 5, 2026) (concluding that jurisdiction is not barred by 8 U.S.C. § 1252, exhaustion was not required, and that the petitioner's detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)); *Martinez v. Field Off. Dir.*, No. 25-26026-CIV-LEIBOWITZ, ECF No. 7 (S.D. Fla. Jan. 14, 2026) ("Pending the Eleventh Circuit's resolution of this issue, the Court continues to side with the clear weight of existing authority in finding that Petitioner here is entitled to a prompt, individualized bond hearing under 8 U.S.C. § 1226(a)"); *Espinal Encarnacion v. ICE Field Office Director*, et al., No. 25-61898-CIV-DAMIAN, ECF No. 29 (Dec. 23, 2025) ("this Court finds that 8 U.S.C. § 1226(a) and its implementing regulations govern Petitioner's detention, and not Section 1225(b)"); *Ocegueda Gonzalez v. Noem,* et al., No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH, ECF No. 25 (Dec. 23, 2025) ("Having concluded that Petitioner's detention is governed by 8 U.S.C. § 1226(a), Petitioner is entitled to an individualized bond hearing before an immigration judge."); *Acosta v. Ripa*, et al., Case No. 25-62360-CIV-DIMITROULEAS, ECF No. 19 at 7 (S.D. Fla. Dec. 26, 2025) ("§ 1226(a) and its implementing regulations govern Petitioner's detention, not § 1225(b)(2)(A)"); and *Fuentes Granados v. Secretary of Homeland Security*, Case No. 26-60020-CIV-SMITH, ECF No. 7 (S.D. Fla. Jan. 27, 2026) ("Petitioner is being unlawfully detained due to his improper classification as "an alien who is an applicant for admission" pursuant to 8 U.S.C. § 1225(b)(2)(A)[;] . . .Petitioner's proper

classification is a detainee pursuant to 8 U.S.C. § 1226(a)").

The government is appealing the judgment that 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b), governs detention under the facts presented in the cases above to the Eleventh Circuit in *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, et al., No. 25-14065 (11th Cir.) and *Cerro Perez v. Assistant Field Office Director*, et al., No. 25-14075 (11th Cir.). Until the foregoing appeals are resolved, however, the government acknowledges that this Court's recent decisions in *Kelyn Sanchez Figueroa v. Bondi*, Case No. 25-cv-62707-WPD [DE 14], *Acosta v. Ripa*, et. al., Case No. 25-cv-62360-WPD [DE 18] and *Taffur v. Noem*, et. al. Case No. 25-cv-62308-WPD [DE 12] would control the result here if the Court adheres to its reasoning in those cases, as the facts are not materially distinguishable for purposes of which statutory provision authorizes Petitioner's detention.

Thus, while the government does not consent to issuance of the writ and reserves all rights, including the right to appeal, in order to conserve judicial and party resources while expediting the Court's consideration of this case, the government hereby relies upon, and incorporates by reference, the legal arguments it presented in *Acosta v. Ripa*, et. al., Case No. 25-cv-62360-WPD [DE 12] as well as the legal arguments the government presented to the Eleventh Circuit in *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, et al., No. 25-14065 (11th Cir.) and *Cerro Perez v. Assistant Field Office Director*, et al., No. 25-14075 (11th Cir.),[2] and the Court may decide this issue without further briefing; while at the same time noting decisions contrary to Respondents' position. However, as noted above, should the Court prefer to receive a formal opposition brief in this matter, the government will file such a brief upon the Court's request.

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[2] Specifically, the government incorporates by reference all arguments raised in its opposition brief in *Acosta v. Ripa*, et. al., Case No. 25-cv-62360-WPD [DE 12]. A copy of that brief is attached as **Exhibit I**.

B. *Bautista* is neither binding, preclusive nor applicable to Petitioner.

Petitioner claims he is being unlawfully detained by ICE and seeks a writ of habeas corpus to enforce his rights as a member of the Bond Eligible Class certified in the matter of *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) in December 2025. *See* DE 1 ¶ 7. However, Petitioner's reliance on *Bautista* is misplaced. The December 18, 2025 partial final judgment in *Bautista v. Noem* is neither binding nor applicable, and presents no basis for granting the petition. First, the *Bautista* declaratory judgement lacks legal effect on petitioners and custodians, such as the parties to this case, outside the Central District of California. Second, the Court should not give preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. Finally, issue preclusion is inapplicable here, particularly as preclusion principles apply with less force both against the government and in habeas corpus proceedings.

1. The *Bautista* declaratory judgement lacks effect outside the Central District of California and over custodians located outside that District.

In *Maldonado*, per the operative pleading, habeas relief was sought only by the named petitioners in that case, and Petitioner is not one of the named petitioners. *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d. ----, 2025 WL 3713987, at * 14 (C.D. Cal. Dec. 18, 2025) ("The Amended Class Complaint and briefings from Petitioners confirm that habeas relief was sought only as to the named Petitioners."). Second, the named petitioners did not seek nationwide habeas relief, but, instead, the case is limited to the Central District of California. *Id.* Third, in granting declaratory relief, the District Court in that case noted that habeas relief could only be afforded to class members who were located within the boundaries of the Central District of California. *Id.* at * 14 (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 446 (2004), for the proposition that "habeas jurisdiction lie[s] 'in only one district: the district of confinement'", and noting that

"[n]owhere in the Amended Class Complaint or Motion for Partial Summary Judgment do Petitioners seek habeas relief on a nationwide level"). Thus, Petitioner is not a member of the Bond Eligible Class contrary to his claims, he could not have been one as a matter of law because the *Maldonado Bautista* lacked jurisdiction over his claims, and the decision explicitly stated that the relief provided was only for the named California petitioners.

Fourth, a habeas petitioner must name the petitioner's *immediate* custodian—*i.e.*, the custodian who has actual custody over the petitioner and can produce the "corpus." *Padilla*, 542 U.S. at 435. "Failure to name the petitioner's custodian as a respondent deprives federal courts of personal jurisdiction" needed to issue relief. *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994); *Padilla*, 542 U.S. at 444. Given that Petitioner's custodian was not named in the *Maldonado Bautista* case and the *Maldonado Bautista* Court would have lacked jurisdiction over such custodian had she been named, any relief in the *Maldonado Bautista* case would not be preclusive here. In short, *Maldonado Bautista* case provides no basis for relief for Petitioner.

It is undeniable that Petitioner was detained in Florida, has remained detained in Florida, that his immediate custodian is located in Florida, that he is not a member of the Bond Eligible Class in *Maldonado Bautista*, that the *Maldonado Bautista* Court lacks jurisdiction over Petitioner's habeas claim and that the *Maldonado Bautista* Court explicitly limited habeas relief to named petitioner acknowledging that no nationwide class relief was granted. This ends the analysis on the matter. *Padilla*, 542 U.S. at 439-40; *see also Doe v. Garland*, 109 F.4th 1188, 1196 (9th Cir. 2024) (holding immediate custodian and not supervisory ICE Field Office Director should be named in habeas petition). Consequently, the *Bautista* decision offers no independent basis for habeas relief.

2. The Court should not give preclusive effect to a declaratory judgment on appeal.

Even if the *Bautista* declaratory judgment could have nationwide preclusive effect, which the *Maldonado Bautista* Court explicitly stated it did not do, that judgment has been appealed to the Ninth Circuit, *Bautista, et al. v. United States Department of Homeland Security, et al.*, No. 25-7958 (9th Cir.), and this Court should not afford preclusive effect to a judgment pending appeal or to any underlying legal issues in deciding whether to grant habeas relief in this case.

The Supreme Court has "long recognized that 'the Government is not in a position identical to that of a private litigant,' *INS v. Hibi*, 414 U.S. 5, 8 (1973) (per curiam), both because of the geographic breadth of government litigation and also, most importantly, because of the nature of the issues the government litigates." *United States v. Mendoza*, 464 U.S. 154, 159 (1984). "Government litigation frequently involves legal questions of substantial public importance." *Id.* Thus, although the Supreme Court has held the federal government "may be estopped . . . from relitigating a question" when "the parties to the lawsuits are the same," *id.* at 163, 164, it is not so precluded in cases where the party seeking to offensively use preclusion was not a party to the initial litigation, *see id.* at 162. This is because allowing "nonmutual collateral estoppel against the government . . . . would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue." *United States v. Mendoza*, 464 U.S. 154, 160 (1984).

For similar reasons, the government should not be precluded from litigating the issue of the proper detention authority here, where neither Petitioner nor his current custodian were named parties in the ongoing *Bautista* litigation. In such a circumstance, applying preclusion against the government raises the same concern raised in *Mendoza*—it allows the *Bautista* court's decision to freeze the law for all district courts nationwide, and stymies development of the law. This is particularly so because the *Bautista* court could never grant complete habeas relief to all class

members as a result of § 1252(f)(1)—instead, the *Bautista* class action was merely a vehicle for seeking to use the judgment in individual habeas matters such as this one. At minimum, the court should exercise its discretion to decline to employ offensive issue preclusion, as it does in cases where a non-party seeks to invoke preclusion against a private party. *See Syverson v. Int'l Bus. Machines Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007) (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979)).

The court should also decline to give the *Bautista* declaratory judgment preclusive effect given the existence of several inconsistent judgments from district courts around the country, suggesting that reliance on the adverse judgment in *Bautista* would be unfair. *See Parklane Hosiery*, 439 U.S. at 330–31 (citing the existence of prior inconsistent judgments as indicium of unfairness of applying issue preclusion); *see, e.g.*, *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *2–3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025).

Additionally, it is doubtful that issue preclusion is ever appropriate in the habeas context. For instance, in *Griffin v. Gomez*, the Ninth Circuit held that a prior "class action has no preclusive affect in habeas proceedings." *Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998). The court later explained that res judicata and collateral estoppel do not apply to habeas proceedings. *See Clifton v. Attorney General*, 997 F.2d 660, 662 n.3 (9th Cir. 1993) (recognizing that because "conventional

notions of finality of litigation have no place" in habeas and the inapplicability of res judicate to habeas is "inherent in the very role and function of the writ.") (quoting Sanders v. United States, 373 U.S. 1, 8 (1963)); *see also Hardwick v. Doolittle*, 558 F.2d 292, 295 (5th Cir. 1977) ("The doctrines of res judicate and collateral estoppel are not applicable in habeas proceedings."); *Hierens v. Mizell*, 729 F.2d 449, 456 (7th Cir. 1984) ("a decision in another case is not res judicata as to a habeas proceeding.").

In sum, the *Bautista* declaratory judgment has no preclusive effect on this case as matter of law, and even if it could possibly have such an effect, for the reasons stated above such effect should not be given. As explained by a sister court who declined to give *Bautista* preclusive effect outside its district:

> A dispute in this posture is unusual, but not unheard of. As Justice Story remarked, the traditional comity between courts "does not prevent an inquiry into the jurisdiction of the court in which the original judgment was given." *Old Wayne Mut. Life Ass'n v. McDonough*, 204 U.S. 8, 16 (1907) (quoting Joseph Story, Commentaries on the Constitution of the United States § 1313 (1833)). It is "a subject [that] may be inquired into every other court, when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceedings." *Williamson v. Berry*, 49 U.S. (8 How.) 495, 540 (1850); *Old Wayne*, 204 U.S. at 16–17 (same). Indeed, traditional habeas proceedings normally could only challenge "the power and authority of the court" or other detaining authority "to act." *Brown v. Davenport*, 596 U.S. 118, 129 (2022) (quotation omitted). While the conclusions of another court, when enforced onto a peer court, are generally "unassailable collaterally," an exception has always existed for "lack of jurisdiction." *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 78 (1939); *Ex parte Watkins*, 28 U.S. (3 Pet.) 193, 202–03 (1830) (Marshall, C.J.) (same).
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> When the issuing court lacks jurisdiction, "its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought . . . in opposition to them; they constitute no justification, and all persons concerned in executing such judgments . . . are considered in law as trespassers." *Williamson*, 49 U.S. at 541 (quoting *Elliott v. Piersol*, 26 U.S. (1 Pet.) 328, 329 (1828)); *Watkins*, 28 U.S. at 203 ("An imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity[.]").

* * *

> The Court issues this Order with some reluctance. The business of another court is generally beyond this Court's concern. But the petitioner seeks relief based on the Central District's orders, leaving this Court no choice but to address their binding effect. Here, a fellow district judge purports to bind all pending and future cases involving the mandatory detention issue to her reasoning in an advisory opinion, disrupting this Court's extensive immigration docket and the dockets of fellow courts across the Nation. But the Central District's orders are not binding because the Central District lacked authorization to issue them. The orders are unauthorized because they are advisory and because they violate the INA's limits on judicial review. Additionally, they would require this Court to act in defiance of Supreme Court precedent. Thus, the Court rejects the petitioner's assertion that it is bound by the Central District's orders and must grant relief as a result.

Calderon Lopez v. Lyons, No. 25-cv-00226, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025). Thus, because the *Bautista* declaratory judgment would be void if pertaining to Petitioner[3], due to the *Bautista* Court's lack of jurisdiction over the Petitioner and his immediate custodian as discussed above, this Court is not required to wait for a court of appeals to stay or vacate that judgment before this Court declines to give it preclusive effect.

C. Petitioner failed to Exhaust his Administrative Remedies

Lastly, the Court should dismiss the petition for writ of habeas corpus for failure to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

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[3] Notably, Petitioner is not a named petitioner in the *Bautista Maldonado* case, and as noted above the *Bautista Maldonado* Court explicitly limited any habeas relief to named petitioners detained in the Central District of California.

Petitioner has not fully availed himself of the administrative remedies available to him. Although Petitioner did seek a custody determination, Petitioner has a right to appeal the IJ's decision on redetermination to the BIA, which he has not exercised. By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). Notably, pursuant to 8 U.S.C. § 1252, any decision by the BIA on constitutional claims, such as those raised here, would be appealable directly to the Eleventh Circuit Court of Appeal. Here, Petitioner has refused to avail himself of the administrative and review process available to him including appealing the denial of his custody determination to the BIA before proceeding to this Court in hopes of shopping for a more favorable forum and undermining the review process set forth in statute. Accordingly, the Petition should be dismissed for failure to exhaust administrative remedies so that the administrative review process may continue.

III. CONCLUSION

Based upon the foregoing, the Petition should be dismissed because his detention is lawful under 8 U.S.C. § 1225(b)(2)(A) and because Petitioner has failed to exhaust his administrative remedies before seeking relief from the Court

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 29, 2025, I electronically filed the foregoing with the Clerk of Court using CM/ECF.

Respectfully submitted,

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UNITED STATES ATTORNEY

By: */s/ Francisco Armada*
Assistant United States Attorney