UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No: 1:26-CV-22513-KMW

NICOLE BETANCUR-GONZALEZ, Petitioner, v. **GARRETT J. RIPA**, et al., Respondents.	

TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

I. The Court should order Ms. Betancur's immediate release because she has valid TPS, the government provides no evidence otherwise, and the December 10 Order in *Nat'l TPS All. v. Noem* is preclusive.

A. The government provides no evidence that Ms. Betancur is not a valid TPS holder.

In its Return to the Petition, the government confirms that USCIS granted Ms. Betancur temporary protected status. (DE 8, at 2). The government does not contest that federal law prohibits the detention of TPS holders. The government also does not contend that USCIS has legally withdrawn Petitioner's individual grant of TPS.

Instead, the government claims that USCIS terminated Petitioner's TPS on November 20, 2025, but provides only an unsupported statement of that termination. (DE 8, at 2). Respondents' brief cites to a single sentence in an ICE officer's declaration that simply states, "On November 20, 2025, USCIS terminated Petitioner's TPS application." (DE 8-2, at 2). This is insufficient to comport with the statutory requirements for termination of TPS. *See* 8 U.S.C. § 1254a(b)(3)(B). The government did not provide any documentation evidencing a lawful termination of TPS.

The government also fails to provide any justification for detaining Ms. Betancur other than her immigration status. Given the clear statutory mandate that no TPS holder shall be detained on the basis of immigration status and based on Respondents' failure to provide evidence of a proper termination of TPS, the Court should find that Respondents violated 8 U.S.C. § 1254a(d)(4) and order that Respondents immediately release Petitioner.

B. The December 10 Order remains in effect and has preclusive effect on this matter.

The declaratory judgment of the U.S. District Court for the Northern District of California recognizing that the DHS decisions vacating and terminating TPS for Venezuela were illegal has preclusive effect here. *See Nat'l TPS All. v. Noem*, No. 25-cv-01766-EMC, 2025 WL 3539156 at *3 (N.D. Cal. Dec. 10, 2025) (hereinafter "December 10 Order"). The Federal Register notice extending TPS for Venezuela through October 2, 2026, therefore remains in effect, and Ms. Betancur's TPS remains valid. 90 Fed. Reg. 5961 (Jan. 17, 2025).[1]

The government argues that the December 10 Order should not be given preclusive effect because it is on appeal. (DE 8, at 6). However, until the December 10 Order is reversed on appeal – which it has not been – it remains in effect.

The government cites to and relies on the U.S. Supreme Court's stay decisions on Administrative Procedure Act (APA) orders *other than* the December 10 declaratory judgment Order. (DE 8, at 5).[2] However, the government fails to acknowledge that there is no stay in place for, specifically, the December 10 Order, after the government chose not to seek one.

The Declaratory Judgment Act allows a district court to provide a form of relief – declaring the rights of any interested party – whether or not further relief is or could be sought. 28 U.S.C. § 2201. Declaratory relief is distinct and independent from other forms of relief, including that available under the APA. *See Powell v. McCormack*, 395 U.S. 486, 518 (1969) ("[A] request for declaratory relief may be considered independently of whether other forms of relief are

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[1] Per regulation, "[u]pon the termination of designation of a foreign state, those nationals afforded [TPS] shall, upon the sixtieth (60th) day after the date notice of termination is published in the Federal Register, or on the last day of the most recent extension of designation... automatically and without further notice or right of appeal, lose [TPS]." 8 C.F.R. § 244.19. Here, the last day of the January 2025 extension was Oct. 2, 2026. As such, any termination of Venezuela's TPS designation could not result in Petitioner losing TPS before that time.

[2] On Mar. 31, 2025, the U.S. District Court for the Northern District of California issued a preliminary order under the APA postponing the effective date of the DHS decision to remove TPS for Venezuela. *Nat'l TPS All. v. Noem*, 773 F. Supp. 3d 807 (N.D. Cal. 2025). On May 19, 2025, the U.S. Supreme Court issued a stay on appeal, without opinion, of the District Court's Mar. 31, 2025, preliminary order. *Noem v. Nat'l TPS All.*, 145 S.Ct. 2728, 2729 (2025). After the Ninth Circuit affirmed the District Court's preliminary order, the District Court entered a summary judgment order on Sep. 5, 2025, setting aside the DHS actions under the APA. *Nat'l TPS All. v. Noem*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025) (hereinafter "9/5/25 APA Order"). On Oct. 3, 2025, the U.S. Supreme Court stayed the 9/5/25 APA Order without opinion, pending the government's appeal to the Ninth Circuit. *Nat'l TPS All. v. Noem*, 146 S.Ct. 23, 24 (2025). Thus, the Supreme Court stays applied only to the District Court's original postponement and latter summary judgment order under the APA but preceded its grant of declaratory relief.

appropriate.") In *Nat'l TPS All.*, the District Court rejected the government's argument that the Supreme Court stay prevented the declaratory relief order. 2025 WL 3539156, at *3. Instead, the District Court *sua sponte* stayed the order for two weeks to permit the government the opportunity to seek a stay, but the government declined to do so. Thus, the December 10 Order remains in effect and is not affected by the Supreme Court's prior stay decisions.

The National TPS Alliance (NTPSA) sought a declaratory judgment to determine the rights of its Venezuelan members and resolve the lawfulness of the Secretary's purported termination and vacatur for Venezuela. Besides eliminating a defense in future habeas cases, the December 10 Order provided NTPSA members a measure of repose by declaring that their continued presence and employment in the United States is lawful. *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023) ("declaratory judgment . . . enables the parties to enjoy the benefits of reliance and repose").

Issue preclusion "bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, *even if the issue recurs in the context of a different claim*." *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (emphasis added and citation omitted). The December 10 Order has a preclusive effect here because it decided the dispositive issue in this petition – that the purported termination and vacatur of TPS for Venezuela were invalid and Ms. Betancur remains a TPS holder. *See, e.g., CSX Transportation, Inc. v. Brotherhood of Maintenance of Way Employees*, 327 F.3d 1309, 1317 (11th Cir. 2003) ("[Issue preclusion] has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation.") (citation omitted). Thus, the Court should apply the declaratory relief of the December 10 Order to this matter and confirm that Ms. Betancur remains a beneficiary of TPS.

C. The government's argument that the timing of Ms. Betancur's NTPSA membership is relevant is unsupported by law.

The government also argues that the declaratory judgment should not apply to Ms. Betancur's case because she was not a member of the Plaintiff organization NTPSA in *Nat'l TPS All. v. Noem* at the time their amended complaint was filed. (DE 8, at 8-9). However, the government has not cited any case holding that the timing of when a person acquired membership in the organization is relevant.

Moreover, the U.S. Supreme Court recently spoke on the governing standards for membership for associational standing, and timing of membership is not one of them. *See Students*

for Fair Admissions v. President & Fellows of Harvard Coll., 600 U.S. 181, 200 (2023). There, the Supreme Court held that the elements needed to establish associational membership standing are that: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Id.* at 199 (q*uoting Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)). Respondents do not explain why this Court should impose a membership requirement that no other court, including the Supreme Court, has decided is relevant.

Ms. Betancur was a NTPSA member when she filed her habeas petition. As a voluntary member of NTPSA, she is indistinguishable from plaintiffs and can be considered a party to the litigation. It would not have made sense for the District Court to declare that TPS for Venezuelans remains valid if that judgment did not apply to NTPSA members; an organization cannot obtain TPS. Moreover, Ms. Betancur is in privity with NTPSA, regardless of when she joined. *See Richards v. Jefferson County,* 517 U.S. 793, 798 (1996) (discussing privity for preclusion where someone "has his interests adequately represented by someone with the same interests"); *Griswold v. County of Hillsborough*, 598 F.3d 1289, 1292 (11th Cir. 2010) (*citing Taylor*, 553 U.S. at 893-94) (finding individual shareholder and president in privity with companies in prior suit). She has been adequately represented by NTPSA and her interests in protecting her TPS for Venezuelans are aligned with NTPSA's interests in protecting TPS for their Venezuelan members. Thus, the Court should recognize that Ms. Betancur remains a holder of TPS for Venezuelans.

II. The government's arguments against jurisdiction have been roundly rejected by the judicial branch.

The government's arguments that 8 U.S.C. §§ 1252(g) and 1252(b)(9) bar Petitioner's habeas claims are misplaced. (DE 8, at 9-13). Petitioner's claim is not a challenge to the government's decision to commence removal proceedings or to any removal order but rather a challenge to the legality and constitutionality of her present detention.

A. Section 1252(g) does not bar review.

The plain language of section 1252(g) applies only to three discrete actions: the decision to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. American-Arab Anti-Discrimination Comm.* ("AADC"), 525 U.S. 471, 482 (1999). The Supreme Court has repeatedly emphasized that § 1252(g) is narrow and does not sweep in all claims that are factually

related to removal. *Id.* Petitioner does not seek to halt proceedings, contest removability, or enjoin execution of a removal order. Instead, Petitioner challenges the lawfulness of her detention.

The government claims that detention *arises from* the decision to commence proceedings and is therefore unreviewable. (DE 8, at 10). That reading is inconsistent with *AADC*, which rejected precisely this kind of expansive "arising from" interpretation. As the Supreme Court explained, § 1252(g) does not cover "many other decisions or actions that may be part of the deportation process." 525 U.S. at 482. Immigration detention—particularly prolonged detention without adequate process—falls into that category of reviewable conduct.

The Eleventh Circuit's decision in *Alvarez v. ICE*, 818 F.3d 1194 (11th Cir. 2016), does not support Respondent's argument. *Alvarez* addressed a challenge to discretionary enforcement decisions, not a habeas petition seeking release from unlawful custody. In *Alvarez*, the court held "the district court erroneously concluded that it had no jurisdiction to entertain the merits" of the Plaintiff's detention-related claim but that no Bivens remedy was available. 818 F.3d at 1212.

Furthermore, the government claims that § 1252(g) bars review of detention without bond under § 1225 and primarily relies on *Mokanu v. Warden*, 2026 WL 472294 (S.D. Fla. Feb. 19, 2026). That case is clearly distinguishable from Petitioner's because *Mokanu* involved someone paroled into the United States at the border and who was detained under § 1225(b) (arriving alien context), whereas Petitioner here is detained under § 1226(a), which expressly contemplates bond and individualized custody determinations. Additionally, the district court's reasoning that immigration detention is unreviewable under § 1252(g) conflicts with *Reno's* directive that §1252(g) be construed narrowly and not extended to collateral custody challenges. *Mokanu* would effectively override binding Supreme Court precedent limiting § 1252(g)'s scope. Petitioner's habeas claim challenges the constitutional adequacy of the detention framework and is outside of § 1252(g)'s limited scope.

B. Section 1252(b)(9) does not bar review.

Section 1252(b)(9) serves to ensure that legal questions arising from final removal orders are only reviewable by the court of appeals in a petition for review. However, this section does not prevent review of any of Petitioner's claims because she is not challenging a final removal order, but the legality of her detention. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020); *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1367 (11th Cir. 2006). The Court maintains jurisdiction over Petitioner's core habeas claims pursuant to the Suspension Clause of the U.S.

Constitution: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I § 9, cl. 2.

III. Respondents can only detain Petitioner under 8 U.S.C. § 1226(a), and thus, she must be provided a bond hearing.

Under the INA, § 1225 and § 1226 govern the detention of noncitizens before a final order of removal. The government argues that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because she is an "applicant for admission who is seeking admission," despite her presence in the United States since July 28, 2021. That interpretation is novel, expansive, and unpersuasive because it disregards three decades of consistent statutory interpretation by all branches of the United States government, countless district court decisions rejecting the government's interpretation nationwide—including this Court's prior rulings,[3] and the plain language and context of § 1225 and § 1226. The Petitioner is entitled to a bond hearing as "§ 1226(a) is the "default rule" and "applies to aliens already present in the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 288, 301 (2018).

A. The plain language and context of § 1225 does not support the assertion that the Petitioner is an "applicant for admission" who is "seeking admission."

The government claims to lean heavily on the "plain meaning" of § 1225(b)(2) to argue that all noncitizens who enter without inspection are "applicants for admission" who are "seeking admission," even asserting that "[t]he statute itself makes clear that an alien who is an 'applicant for admission' is necessarily 'seeking admission.'" (DE 8, at 16). Although the government claims "the statute…makes clear," their reading ignores both its text and structure.

To start, the government argues that the plain text of § 1225(a) and § 1225(b)(2) mandates that the government detain all "applicants for admission" who are not clearly and beyond a doubt

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[3] This Court has rejected the government's expansive interpretation of § 1225(b)(2). *See Castillo v. Field Office Dir. of Enf't & Removal Operations*, No. 25-25296-CV, 2025 WL 4689386, at *4 (S.D. Fla. Nov. 21, 2025) (ruling the government interpretation "directly contravenes the statute, disregards decades of settled precedent," and is erroneous) (citations omitted); *Chamsadine v. Assistant Field Dir. Warden*, No. 26-21487-CV, 2026 WL 746400, at *2 (S.D. Fla. Mar. 17, 2026) ("This Court and countless others have uniformly rejected the government's expansive interpretation of § 1225" And listing 97 similar district court decisions nationwide); *Gil-Paulino v. Sec'y of the U.S. Dep't of Homeland Sec.*, No. 25-cv-24292, DE 41 (S.D. Fla. Oct. 10, 2025) (interpretation "directly contravenes the statute" and "disregards decades of settled precedent").

entitled to be admitted because "§ 1225(a) deems all aliens who either 'arrive[] in the United States' or who are 'present in the United States [and] who ha[ve] not been admitted' to be 'applicant[s] for admission,'" and "§ 1225(b)(2) states that 'an alien who is an applicant for admission' 'shall be detained' pending removal proceedings if the 'alien seeking admission is not clearly and beyond a doubt entitled to be admitted.'" (DE 8, at 15-16). But the government omits key statutory language— "an alien seeking admission"—from § 1225(b)(2)(A), thereby ignoring a second, independent condition for mandatory detention.

Properly read, § 1225(b)(2)(A) applies only to individuals who are both "applicants for admission" and actively "seeking admission." Under 8 U.S.C. § 1101(a)(13)(A), "admission" means lawful entry after inspection and authorization, and the ordinary meaning of "seeking" requires a present affirmative effort. Noncitizens who entered without inspection years ago are not engaged in any such effort and thus are not "seeking admission." Congress did not define being an "applicant for admission" in terms of the act of "seeking" admission. Rather, one is "treated as" or "deemed" an "applicant for admission" by merely being "*present* in the United States" without having "been admitted." 8 U.S.C. § 1225(a)(1) (emphasis added). In other words, Congress described being an applicant for admission based on mere presence (or status) alone, whereas the government attempts to read the action of "seeking admission" into the definition of "applicant for admission." Congress "could easily have included noncitizens who are 'seeking admission' within the definition [of applicants for admission] but elected not to do so." *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025).

The government also attempts to argue that "applicant for admission" is a "way" or "manner" of "seeking admission," such that any alien who is an "applicant for admission" is "seeking admission" for purposes of § 1252(b)(2)(A). (DE 8, at 17). That is inconsistent with Congress's approach, which deems Petitioner an "applicant for admission" based solely on her presence in the United States, not on "seeking admission." *See supra*. Nor does it align with § 1225(a)(3), which provides that "[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). The government contends that "or otherwise" means 'in a different way or manner,' such that an "applicant for admission" is a "way or manner" of seeking admission for purposes of § 1225(b)(2)(A). (DE 8, at 17). However, that reading ignores the rest of the provision, which refers to noncitizens who are "otherwise . . .

seeking admission *or readmission to or transit*" through the country. 8 U.S.C. § 1225(a)(3) (emphasis added). The government cannot plausibly argue that all applicants for admission are also seeking readmission or transit. The better reading is that "or otherwise" clarifies *which* applicants—and other noncitizens—must be inspected: namely, those requesting permission to enter, reenter, or transit the country. *See Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938, at *27 (N.D. Cal. Dec. 19, 2025).

Further, the government's argument that all "applicants for admission" are necessarily "seeking admission" "violat[es] one of the cardinal rules of statutory interpretation" by rendering parts of § 1225(b)(2)(A) "superfluous." *Castanon-Nava*, 161 F.4th at 1061. If Congress had intended that reading, it would not have used both "applicant for admission" and "seeking admission" in the same provision. *See Biden v. Texas*, 597 U.S. 785, 798, 142 S. Ct. 2528, 2539, 213 L. Ed. 2d 956 (2022) ("If Congress had wanted the provision to have that effect, it could have said so in words far simpler than those that it wrote."). While the government downplays the canon as non-"absolute" (DE 8, at 18), "[it] is strongest when an interpretation *would render superfluous another part of the same statutory scheme*." *City of Chicago, Illinois v. Fulton*, 592 U.S. 154, 159 (2021) (emphasis added). That redundancy is exactly what the government's reading produces.

The government also claims the surplusage canon "should not be employed to undermine congressional intent," but that argument fails as well. It is highly implausible that the same Congress that deferred implementing § 1226(c) over concerns about detaining 45,000 individuals simultaneously intended to mandate the detention of millions under § 1225(b)(2)—all without explicit language or a single mention in the legislative record. Thus, the Court should reject the government's expansive and novel interpretation of § 1225(b)(2) and find that Petitioner is not subject to mandatory detention.

B. Petitioner is entitled to a bond hearing under § 1226(a).

The text, structure, and history confirm § 1226 is the sole detention authority for Petitioner here. Section 1226 provides the "default rule" for noncitizens apprehended "inside the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). While the government argues "the Court did not—and did not need to—resolve the precise groups of aliens subject to § 1225(b) or § 1226" (DE 8, at 23), the record says otherwise. In *Jennings*, the Solicitor General conceded that § 1226(a) "governs the detention and release of other aliens arrested inside the United States," including "those who are present after entering illegally." Supp. Br. for Pet'rs at 12, *Jennings*, No. 15-1204.

The plain language and context of § 1226(a) provide that DHS "may" arrest and detain a noncitizen "pending a decision on whether the alien is to be removed from the United States," while permitting release "on bond." 8 U.S.C. § 1226(a). By statute, removal proceedings cover individuals like Petitioner who are charged as inadmissible after entering without inspection. *See* 8 U.S.C. § 1229a(a)(1) (directing judges to "conduct proceedings for deciding the inadmissibility . . . of [a noncitizen]"); *see also id.* §§ 1182(a)(6)(A)(i), § 1229a(e)(2)(A).

Moreover, the historical context of IIRIRA "confirms the plain import of its text." *Biden*, 597 U.S. at 804. In 1996, Congress replaced the language providing for bond "[p]ending a determination of deportability" in former § 1252(a) (1995) with "pending a decision on whether the alien is to be removed" in § 1226. Through this change, Congress ensured that noncitizens who entered without inspection—whom IIRIRA reclassified as inadmissible—remained eligible for bond. Indeed, the legislative record explains § 1226(a) "restates" the prior provisions providing for "release on bond" to noncitizens in the country, including those who entered without inspection. H.R. Rep. No. 104-469, pt. 1,at 229; *accord* H.R. Rep. No. 104-828, at 210.

Additionally, § 1226(c) confirms the applicability of § 1226(a) to inadmissible noncitizens like Petitioner by acting as the exception that proves the rule. Because § 1226(c) carves out a subset of inadmissible noncitizens from bond eligibility under § 1226(a) for specific criminal or terrorism grounds, it necessarily implies that § 1226(a) generally affords bond to other inadmissible entrants. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (noting the fact that Congress has created specific exceptions proves the statute applies in general). This structure was reinforced by the Laken Riley Act ("LRA"), which added mandatory detention grounds targeting those who entered without inspection; if such entrants were not already covered by § 1226(a), Congress would have had no need to exclude a subset of them from bond eligibility. The government's position ironically undermines the LRA by making these noncitizens who entered without inspection eligible for discretionary parole by the agency under § 1182(d)(5) rather than mandatory detention, even if they are accused of or committed the Act's predicate crimes. But Congress enacted the LRA precisely to avoid that result and require such noncitizens' detention. *See Pereira v. Sessions*, 585 U.S. 198, 212 (2018) ("We are not willing to impute to Congress *such a contradictory and absurd purpose*, particularly where doing so has no basis in the statutory text.")(emphasis added). The government cannot adequately explain why Congress in the LRA specifically focused on noncitizens "present in the United States without being

admitted or paroled" if § 1226 did not apply to them in the first place. *See* 8 U.S.C. § 1226(c)(1)(E)(i).

Finally, the government argues that it is acceptable to ignore three decades of consistent statutory interpretation by all branches of the United States government citing *Loper Bright Enters v. Raimondo*, 603 U.S. 369, 411 (2024), since "the plain language of the statute and not prior practice controls" and "the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes." (DE 8, at 23). However, the Court in *Loper Bright* also stated that "the longstanding practice of the government can"—and should—"inform [the Court's] determination of what the law is." 603 U.S. at 386 (citation omitted) (cleaned up).

That longstanding practice is uniform. In March 1997, just months after IIRIRA's enactment, DOJ promulgated regulations reaffirming that noncitizens "who are present without having been admitted or paroled...will be eligible for bond." 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). For three decades across five administrations after IIRIRA's enactment, the government consistently applied § 1226(a) to noncitizens who entered without inspection—a history that is "powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting). Judicial recognition confirms that such executive practice bears "significant interpretive weight." *See, e.g., Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of the government's interpretation and practice). Congress likewise ratified this understanding by silence: "Congress' failure to repeal or revise in the face of such administrative interpretation . . . constitute[s] persuasive evidence that that interpretation is the one [Congress] intended." *Zemel v. Rusk*, 381 U.S. 1, 11 (1965). Congress had multiple opportunities over three decades to correct the Executive's interpretation of § 1226, including in post-IIRIRA legislation and the LRA, but did not do so and, in fact, through the LRA, enacted legislation just last year confirming its application of § 1226. Accordingly, § 1226 is the sole detention authority for Petitioner, and she is entitled to a bond hearing.

IV. Conclusion

For the foregoing reasons, the Court should reject Respondents' arguments, grant Petitioner's writ, and order the relief requested in her habeas petition. (DE 1, at 15-16).

Dated: April 27, 2026

Respectfully submitted,

s/David Claros

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2026, I electronically filed the foregoing and all attachments with the Clerk of the Court by using the CM/ECF system.

s/ David Claros

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