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5 **UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
6 **SAN DIEGO**

7 Emigdio-Neri, Jesus,

Case No. '26CV2802 LEK DEB

8 Petitioner,

Agency No. 


9 v.

10 Todd Blanche, Acting Attorney  
General of the United States,  
Department of Justice; Markwayne  
11 Mullin, Secretary of Homeland  
Security; Todd Lyons, Senior Official  
12 Performing the Duties of the Director  
of U.S. Immigration and Customs  
13 Enforcement; Patrick Divver, Field  
Office Director of the San Diego  
14 Immigration and Customs Enforcement  
Office; Jorge Velarde, Assistant Field  
15 Office Director of the Immigration and  
Customs Enforcement, Otay Mesa  
16 Detention Center,

**PETITION FOR WRIT OF  
HABEAS CORPUS BY A  
PERSON IN DE FACTO FEDERAL  
CUSTODY UNDER  
28 U.S.C. § 2241 AND REQUEST  
FOR ORDER TO SHOW CAUSE**

17 Respondents.

1 **INTRODUCTION**

- 2 1. Petitioner, Jesus Emigdio-Neri<sup>1</sup>  (hereinafter “Petitioner” or “Mr.  
3 E.N.”), alleges he has been re-detained and unlawfully and forcibly removed to  
4 Mexico unjustly and illegally in violation of his U.S. Constitutional right to liberty  
5 and justice under the law. Therefore, he requests this court make an order to show  
6 cause and that he must immediately be paroled into the United States.
- 7 2. Petitioner prefers not to file a temporary restraining and would instead request  
8 Respondents be required to provide a response within three days or alternatively  
9 timing pursuant to Chief Judge Order No. 144.

10 **JURISDICTION**

- 11 3. This action arises under the Constitution of the United States and the Immigration  
12 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
- 13 4. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),  
14 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States  
15 Constitution (Suspension Clause).
- 16 5. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et.*  
17 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs  
18 Act, 28 U.S.C. § 1651.
- 19 6. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of  
20 jurisdiction. Petitioner is not contesting the commencement or adjudication of

21 <sup>1</sup> A motion to proceed under a pseudonym is forthcoming.

1 removal proceedings against him, nor is he raising an issue with respect to the  
2 execution of a valid removal order. Petitioner does challenge his re-detention and  
3 unlawful removal. The petition is independent of the removal proceedings and all  
4 questions related to the commencement of removal proceedings or any part of the  
5 review of whether or not removal should be withheld under 8 U.S.C. § 1231(b)(3).  
6 “[C]laims that are independent of or collateral to the removal process do not fall  
7 within the scope of § 1252(b)(9).” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th  
8 Cir. 2016). Additionally, Section 1252(g) “does not prohibit challenges to  
9 unlawful practices merely because they are in some fashion connected to removal  
10 orders.” *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025). Thus,  
11 this Court is not stripped of jurisdiction by Sections 1252(g) and 1252(b)(9).

12 **VENUE**

13 7. Venue is proper because Petitioner’s unlawful removal took place in San Diego  
14 County, California, as well as his residence is within San Diego, County,  
15 California. Further, a substantial part of the events or omissions giving rise to his  
16 claims occurred in this District and no real property is involved in this action. 28  
17 U.S.C. § 1391(e).

18 **REQUIREMENTS OF 28 U.S.C. § 2243**

19 8. The Court must grant the petition for writ of habeas corpus or issue an order to  
20 show cause (OSC) to the respondents “forthwith,” unless the petitioner is not  
21 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court

1 must require respondents to file a return “within *three days* unless for good cause  
2 additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

3 9. Courts have long recognized the significance of the habeas statute in protecting  
4 individuals from unlawful detention. The Great Writ has been referred to as  
5 “perhaps the most important writ known to the constitutional law of England,  
6 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
7 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

8 **PARTIES**

9 ***Petitioner***

10 10. Petitioner, Mr. E.N., is a Mexican national who is in *de facto* custody in Tijuana,  
11 Mexico, but resides with his family in San Diego County.

12 ***Respondents***

13 11. Respondent Todd Blanche, Acting U.S. Attorney General, is sued in his official  
14 capacity as the Acting Attorney General of the United States and the senior  
15 official of the U.S. Department of Justice (“DOJ”). In that capacity, he has the  
16 authority to adjudicate removal cases and to oversee the Executive Office for  
17 Immigration Review (“EOIR”), which administers the immigration courts and the  
18 Board of Immigration Appeals. Respondent Blanche is a legal custodian of  
19 Petitioner.

20 12. Respondent Markwayne Mullin Secretary of U.S. Department of Homeland  
21 Security (“DHS”) is sued in their official capacity as the Secretary of the DHS. In

1 this capacity, Respondent Secretary is responsible for the implementation and  
2 enforcement of the Immigration and Nationality Act, and oversees U.S.  
3 Immigration and Customs Enforcement (“ICE”), the component agency  
4 responsible for Petitioner’s detention and custody. Respondent Secretary is a legal  
5 custodian of Petitioner.

6 13. Respondent Todd Lyons is sued in his official capacity as the Senior Official  
7 Performing the Duties of the Director ICE. Respondent Lyons is the legal  
8 custodian of Petitioner.

9 14. Respondent Patrick Divver is sued in his official capacity as the Field Office  
10 Director of the San Diego ICE Office. Respondent Divver is a legal custodian of  
11 Petitioner and has authority to release him into the United States.

12 15. Respondent Jorge Velarde is sued in his official capacity as Assistant Field Office  
13 Director of the ICE at the Otay Mesa Detention Center. Respondent Velarde is a  
14 legal custodian of Petitioner and has direct authority to release him.

15 **STATEMENT OF FACTS**

16 16. On or about November 26, 2011, Petitioner received an expedited order of  
17 removal after attempting to enter the United States at or near Arizona. *See* Ex. B.

18 17. On or about September 19, 2014, Petitioner was apprehended inside the United  
19 States and the DHS placed him on an Order of Supervision, and served him with  
20 Form I-220B. *Id.* Presumably, he was to be scheduled for a reasonable fear

1 interview. He remained on a DHS-authorized Order of Supervision until he was  
2 unlawfully removed from the United States. *Id.*

3 18. On September 12, 2025, Petitioner, with counsel from Hurwitz Holt, APLC,  
4 appeared at a reasonable fear interview with U.S. Citizenship and Immigration  
5 Services. *See* Exh. C. The results were positive and Petitioner's case was sent to  
6 the Executive Office for Immigration Review ("EOIR") for withholding only  
7 proceedings with an immigration judge as prescribed by 8 CFR § 208.31(e).

8 19. On September 24, 2025, Petitioner appeared with counsel at his first master  
9 calendar hearing. At that hearing, the Immigration Judge indicated the case was  
10 started errantly because it was docketed as regular 8 USC § 1229a proceedings  
11 and not 8 U.S.C. § 1231(a)(5); 8 CFR § 208.31(e) proceedings. *See* Exh. D. The  
12 case was dismissed by the Immigration Judge, with an expectation that DHS  
13 would begin new proceedings under the correct designation. DHS did not begin  
14 new proceedings.

15 20. On December 18, 2025, Petitioner was requested to appear at his regular Industrial  
16 Security Alliance Partners ("ISAP")<sup>2</sup> monitoring appointment. When there, he  
17 was taken into custody and, without a pre-deprivation hearing, provided a letter  
18 indicating that DHS canceled his order of supervision and even acknowledged that  
19 he had passed a reasonable fear interview. *See* Exh. E. This letter was given to

20 \_\_\_\_\_  
21 <sup>2</sup> ISAP is a contracted company ICE uses to facilitate monitoring of non-detained  
foreign nationals.

1 him *after* he was taken into custody and not with sufficient time to contact counsel  
2 and provide a meaningful response.

3 21. On or about December 21, 2025, Petitioner was forcibly, illegally, and without  
4 consent escorted to Mexico, where he remains. *See* Exh. A.

5 22. On January 20, 2026, Petitioner filed a petition for review (“PFR”) with the U.S.  
6 Court of Appeals for the Ninth Circuit (“Ninth Circuit”). In 2024, Petitioner had a  
7 client who was unlawfully removed, filed a PFR with the Ninth Circuit, and  
8 within days the Department of Justice and Customs and Border Patrol coordinated  
9 with counsel to return that client to the United States. That has not happened in  
10 Mr. E.N.’s case. Instead, the PFR remains pending a decision on Petitioner’s  
11 motion to proceed *In Forma Pauperis*.

12 23. On or about April 23, 2026, U.S. Citizenship and Immigration Services  
13 (“USCIS”) issued to Petitioner a notice to appear at a biometric appointment on  
14 May 19, 2026, at 1655 Broadway, Suite 22, Chula Vista, CA 91911 for his  
15 employment authorization document application. If petition does not present  
16 himself, the application will be denied. Respondents are the reason why Petitioner  
17 will be unable to appear at the USCIS scheduled appointment. It is inconceivable  
18 that one agency under DHS unlawfully removed Petitioner while another agency  
19 under DHS is requiring his presence for an appointment inside the United States.

1 24. Counsel recently learned of case *Estrada Juarez v. Noem et al*, 2:26-at-00435  
2 (E.D. Cal. Mar. 10, 2026) (DACA recipient filed petition for unlawful removal).

3 25. Therefore, Petitioner suffered a gross miscarriage of justice, and given his  
4 removal was in violation of 8 CFR § 208.31(e) and 8 U.S.C. § 1231(b)(3), he  
5 requests this court restore his rights under law.

6 **CLAIMS FOR RELIEF**

7 **CLAIM ONE**

8 **Violation of the Fifth Amendment to the United States Constitution  
(Substantive Due Process – Detention and Unlawful Removal)**

9 26. Petitioner incorporates by reference the allegations of fact set forth in the  
10 preceding paragraphs.

11 27. Petitioner’s arrest and re-detention was unlawful and on this basis his immediate  
12 release into the United States is required.

13 28. The Due Process Clause of the Fifth Amendment protects all “person[s]” from  
14 deprivation of liberty “without due process of law.” U.S. Const. amend.  
15 V. “Freedom from imprisonment—from government custody, detention, or other  
16 forms of physical restraint—lies at the heart of the liberty that [the Due Process]  
17 Clause protects.” *Zadvydas*, 533 U.S. at 690.

18 29. Immigration detention is constitutionally permissible only when it furthers the  
19 government’s legitimate goals of ensuring the noncitizen’s appearance during  
20 removal proceedings and preventing danger to the community. *See id.* When the  
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1 Government has previously decided to release a noncitizen and there is no  
2 evidence in the record of any changed circumstance that might have caused the  
3 Government to reconsider its initial decision to release the noncitizen, courts have  
4 found the Government's interest in re-detention is low. *Doe v. Chestnut*, No.  
5 1:25-cv-01372CDB (HC), 2025 WL 3295154, at \*10 (E.D. Cal. Nov. 26, 2025)  
6 (citations omitted).

7 30. “[E]ven when ICE has the initial discretion to detain or release a noncitizen  
8 pending removal proceedings, after that individual is released from custody she  
9 has a protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792  
10 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No. 22-cv-  
11 02508, 2022 WL 1443250, at \*2 (N.D. Cal. May 6, 2022); *Jorge M. F. v.*  
12 *Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at \*2 (N.D. Cal. Mar. 1, 2021);  
13 *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at \*3 (N.D. Cal.  
14 Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

15 31. Many courts in this district have joined a number of district courts to recognize  
16 that noncitizens have a significant liberty interest in both “continued freedom after  
17 release on own recognizance,” *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-  
18 MMP, ECF No. 14, at \*6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and in  
19 “freedom from imprisonment” after “the government grants a [noncitizen] parole  
20 into the country,” *Sanchez v. LaRose*, No. 25-CV-2396-JESMMP, 2025 WL

1 2770629, at \*3 (S.D. Cal. Sept. 26, 2025) (emphasis added). *See also Prieto-*  
2 *Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19,  
3 2025); *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D.  
4 Cal. Nov. 17, 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC),  
5 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-  
6 cv-01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo*  
7 *Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct. 15,  
8 2025); *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y.  
9 Oct. 6, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828  
10 (W.D. Tex. Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-01723-  
11 MJPTLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*,  
12 No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

13 32. Petitioner is not a flight risk or danger to the community, as evidenced by his over  
14 10 years at liberty without issue. Accordingly, Petitioner was detained in violation  
15 of the Due Process Clause of the Fifth Amendment and must be immediately  
16 restored to freedom inside the United States.

## 17 CLAIM TWO

### 18 Violation of the Fifth Amendment to the United States Constitution (Procedural Due Process – Detention and Unlawful Removal)

19 33. As part of the liberty protected by the Due Process Clause, Petitioner has a  
20 weighty liberty interest in avoiding re-detention after his release. *See Young v.*

1 *Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82  
2 (1973); *Morrissey*, 408 U.S. at 482–83; *see also Ortega*, 415 F. Supp. 3d at 969–  
3 70 (holding that a noncitizen has a protected liberty interest in remaining out of  
4 custody following an IJ’s bond determination).

5 34. Accordingly, “[i]n the context of immigration detention, it is well-settled that due  
6 process requires adequate procedural protections to ensure that the government’s  
7 asserted justification for physical confinement outweighs the individual’s  
8 constitutionally protected interest in avoiding physical restraint.” *Hernandez*, 872  
9 F.3d at 990 (cleaned up); *Zinermon*, 494 U.S. at 127 (Generally, “the Constitution  
10 requires some kind of a hearing *before* the State deprives a person of liberty or  
11 property.”). In the immigration context, for such hearings to comply with due  
12 process, the government must bear the burden to demonstrate, by clear and  
13 convincing evidence, that the noncitizen poses a flight risk or danger to the  
14 community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also*  
15 *Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

16 35. Petitioner has a profound personal interest in his liberty. *See Alvarenga Matute v.*  
17 *Wofford*, 2025 WL 2996577, \* 4 (E.D. Ca. Oct. 24, 2025) (confirming that  
18 noncitizen with an outstanding removal order had a protected liberty interest due  
19 to his previous conditional release).

1 36. Prior to his re-detention on December 18, 2025, Petitioner had no notice of  
2 Respondents' intention to re-detain him and no opportunity to contest that action.  
3 Because the private interest in freedom from immigration detention is substantial,  
4 due process requires the government to bear the burden of proving by clear and  
5 convincing evidence that Petitioner is a flight risk or danger to the community  
6 before re-detaining him. *See e.g., Rodriguez Diaz v. Kaiser*, 2025 WL 3011852,  
7 \*11 (N.D. Ca. Sep. 16, 2025).

8 37. The government has no legitimate interest in re-detaining Petitioner without a  
9 hearing. *See e.g., Peters v. Wofford*, 2025 WL 2299801, \*7 (E.D. Ca. Aug. 8,  
10 2025) (finding that "the government's asserted interest is hinged on mere  
11 speculation about [the noncitizen's] risk of flight or dangerousness" given that  
12 noncitizen was complying with terms of his probation when detained); *Noori*,  
13 2025 WL 2800149 at \*11 ("Respondents did not provide Petitioner individualized  
14 notice and reasoning prior to his arrest and detention on June 12, 2025 and have  
15 presented no legitimate reason for why those decisions were made. Any  
16 governmental interest of efficient administration of immigration laws . . . does not  
17 outweigh these first two factors."). Bond hearings are a routine part of  
18 immigration court proceedings, imposing a minimal cost to the government. *See*  
19 *Doe v. Becerra*, --- F.Supp.3d ----, 2025 WL 691664, \*6 (E.D. Ca. March 3,  
20 2025). Nothing in Petitioner's record suggests that he would abscond or endanger

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1 the community before a bond hearing could be carried out. *See, e.g., Jorge M.F. v.*  
2 *Wilkinson*, 2021 WL 783561 \*3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*,  
3 2020 WL 5074312, \*3 (N.D. Cal. Aug. 23, 2020) (finding that “the government’s  
4 concern that delay in scheduling a hearing could exacerbate flight risk or danger is  
5 unsubstantiated in light of petitioner’s strong family ties and his continued  
6 employment during the pandemic as an essential agricultural worker”). In fact,  
7 Petitioner is represented by counsel and has a demonstrated record of attendance  
8 when scheduled for hearings or immigration-related appointments, including when  
9 he appeared for his reasonable fear interview on September 12, 2025. The  
10 government has not sufficiently demonstrated the changed circumstances that  
11 required his detention given that Petitioner had been released on recognizance and  
12 out of custody for over 10 years waiting for proceedings to initiate and has had no  
13 issues with law enforcement in the United States during that time. There is no  
14 reason to think that his compliance will change if he is rightfully returned to the  
15 United States pending a pre-deprivation custody hearing.

16 **COUNT THREE**  
17 **(Unlawful Removal Without Statutory Authority)**

18 38. Petitioner incorporates the allegations in the paragraphs above as though fully set  
19 forth here.

1 39. The government may not deprive a person of life, liberty, or property without due  
2 process of law. U.S. Const. amend. V. *Zadvydas v. Davis*, 533 U.S. 678, 690, 121  
3 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

4 40. A noncitizen may not be removed from the United States without statutory  
5 authority as determined by the Immigration and Nationality Act.

6 41. Petitioner was not provided notice of any removal order that was issued that  
7 authorized his expulsion from the United States. Petitioner's unlawful removal is  
8 particularly egregious given USCIS found he has a reasonable fear of return to  
9 Mexico. Accordingly has a right to present a claim in removal proceedings on that  
10 basis and his expulsion to Mexico is in violation of his right to safety provided  
11 under 8 U.S.C. § 1231(a)(5); 8 CFR § 208.31(e).

12 42. Upon information and belief, Petitioner was physically removed from the United  
13 States without the process required by the Immigration and Nationality Act (INA)  
14 and Due Process.

15 **COUNT FOUR**  
16 **Violation of Due Process**  
**(Indefinite Detention without Notice)**

17 43. Petitioner incorporates the allegations in the paragraphs above as though fully set  
18 forth here.

19 44. Indefinite detention violates the Fifth Amendment's Due Process Clause.  
20 *Zadvydas v. Davis*, 533 U.S. at 682, 689.

21

1 45. An “elementary and fundamental requirement” of due process is “notice  
2 reasonably calculated, under all the circumstances, to apprise interested parties of  
3 the pendency of the action and afford them an opportunity to present their  
4 objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70  
5 S.Ct. 652, 94 L.Ed. 865 (1950).

6 46. Respondents do not have evidence sufficient to demonstrate that Petitioner was  
7 provided notice of an intent to indefinitely *de facto* detain him in Mexico without  
8 notice, given his clear rights to proceedings under 8 U.S.C. § 1231(a)(5); 8 CFR §  
9 208.31(e).

10 47. Petitioner was physically removed from the United States without Due Process.

11 **COUNT FIVE**  
12 **(Violation of the Administrative Procedure Act)**  
13 **(Agency Action Unlawfully Withheld)**

14 48. Petitioner incorporates the allegations in the paragraphs above as though fully set  
15 forth here.

16 49. Under the Administrative Procedure Act, a reviewing court shall compel agency  
17 action unlawfully withheld. 5 U.S.C. § 706(1).

18 50. Petitioner is entitled to return to the United States because she has DACA status  
19 and cannot be removed, and because she was physically removed without legal  
20 process.

21

1 51. Respondents have unlawfully withheld agency action in violation of the  
2 Administrative Procedure Act.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 5 1) Assume jurisdiction over this matter;
- 6 2) Declare Petitioner’s December 21, 2025, expulsion/removal unlawful;
- 7 3) Order that Respondents immediately facilitate Petitioner’s return to the United  
8 States under the same conditions as he was before his unlawful re-detention on  
9 December 18, 2025;
- 10 4) Issue an order to show cause and require a response within three days from  
11 Respondents as to why this petition should not be granted, pursuant to 28 U.S.C. §  
12 2243 or another timeline so determined by the Court;
- 13 5) Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act  
14 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;  
15 and
- 16 6) Grant any other and further relief that this Court deems just and proper.

17  
18 Dated: May 3, 2026

Respectfully submitted,

19 /s/ Leah L. Chavarria  
20 Leah L. Chavarria  
*Pro Bono Counsel for Petitioner*

21 **LIST OF EXHIBITS**

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EXHIBIT A: Petitioner’s Signed Declaration filed with Petitioner’s PFR

EXHIBIT B: ICE Forms I-220B

EXHIBIT C: Notice of Referral to Immigration Judge

EXHIBIT D: Notice of Hearing

EXHIBIT E: Notice of Revocation of Release

EXHIBIT F: Biometric Notice

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Jesus Emigdio Neri, and submit this verification on his behalf. I hereby verify under penalty of perjury under the laws of the United States and the State of California that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 3rd day of May, 2026.

*/s/ Leah L. Chavarria*  
*Leah L. Chavarria*  
*Pro Bono Counsel for Petitioner*