

JOSE JORDAN AND ASSOCIATES, APLC

Jose R. Jordan, Esq. CA SBN 316268

210 N. Citrus Ave., Suite A

Covina, CA 91723

Telephone: (626) 594-5321

Facsimile: (626) 380-2615

E-Mail: info@josejordan.com

Attorney for Petitioner

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Odilon CASTRO CASTILLO,

Petitioner,

v.

Markwayne MULLIN, Secretary,
Department)of Homeland Security; Todd
BLANCHE, Attorney General;
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Todd LYONS,
Executive Associate Director of
Immigration and Customs Enforcement,
Enforcement and Removal Operations
(ICE-ERO); and Jeremy CASEY, Imperial
Regional Detention Facility Administrator,
ICE-ERO,

Respondents.

Civil Case No. '26CV3077 BAS JLB

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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INTRODUCTION

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3 1. Odilon CASTRO CASTILLO (hereinafter, “Petitioner”) has been residing in
4 the United States since in or about the year 2007.
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- 6 2. On or about October 16, 2017, an Immigration Judge (hereinafter, “IJ”)
7 granted Petitioner withholding of removal based on his having suffered
8 persecution on account of his sexual identity and orientation in his native
9 country.
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- 11 3. He was apprehended by Immigration and Customs Enforcement (hereinafter,
12 “ICE”) on or about September 30, 2025, and he has remained in ICE custody
13 ever since.
14
- 15 4. Petitioner is currently detained at the ICE Imperial Regional Detention
16 Facility.
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- 18 5. Petitioner has been denied release by the Department of Homeland Security
19 (hereinafter, “DHS”)
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- 21 6. Petitioner was then scheduled for a bond redetermination hearing before an
22 IJ on or about May 11, 2026. But, based on new agency policy that all
23 persons who entered the United States EWI are deemed applicants for
24 admission to the U.S. and are ineligible for release in bond redetermination
25 hearings based on the immigration statute, 8 U.S.C. § 1225(b)(2)(A), he was
26 denied release on bond for lack of jurisdiction as a “mandatory detainee.”
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2 7. Section 1225(b)(2)(A) states that an applicant for admission seeking
3 admission shall be detained for a removal proceeding. It is the position of
4 the Executive Office for Immigration Review (hereinafter, “EOIR”), which
5 includes both the Board of Immigration Appeals (hereinafter, “Board” or
6 “BIA”) and Immigration Judges, that 8 U.S.C. § 1225(b)(2)(A) applies to all
7 individuals who arrived in the United States without inspection, regardless
8 of how long they have lived in the United States and regardless of how far
9 they were apprehended from the border.

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13 8. Section 1225(b)(2)(A), however, does not apply to individuals, like
14 Petitioner, who are present in the United States. Instead, such individuals are
15 subject to detention under a different statute, § 1226(a), and are eligible for
16 release on bond.
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18 9. Nevertheless, in July of 2025, ICE released a memorandum instructing its
19 attorneys to coordinate with the U.S. Department of Justice (hereinafter,
20 “DOJ”), the agency housing EOIR, to reject bond redetermination hearings
21 for applicants who arrived in the United States without documents.¹
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24 ¹ “ICE Says Many In Immigration Detention No Longer Qualify For Bond
25 Hearings,” CBS News (Jul. 15, 2025),
26 <https://www.cbsnews.com/news/ice-immigration-detention-bond-hearings/>;
27 “ICE declares millions of undocumented immigrants ineligible for bond hearings,”
28 The Washington Post (Jul. 15, 2025)
<https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/>

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2 10. EOIR has already applied this reasoning in a May 22, 2025 BIA decision,
3 finding that a noncitizen who had been residing in the United States for
4 almost ten (10) years and had entered into the United States without
5 inspection was ineligible for bond.
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7 11. Further, despite a legal ruling in *Rodriguez v. Bostock*, 2025 WL 1193850
8 (W.D. Wa. Apr. 24, 2025), rejecting this position, Respondents continue to
9 maintain that noncitizens who entered the United States without documents
10 are not eligible for bond redetermination hearings because they are
11 applicants for admission within the meaning of 8 U.S.C. § 1225(b)(2)(A).
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14 12. This reading is a violation of the statute and due process.
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16 13. In addition, on or about November 20, 2025, the Court issued an order
17 granting declaratory relief concluding that the detention of class members is
18 governed by Section 236(a) of the Immigration and Nationality Act
19 (hereinafter, “INA” or “the Act”) and that class members are not subject to
20 mandatory detention pursuant to INA § 235(b)(2).²
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23 14. On or about November 25, 2025, the U.S. District Court for Central District
24 of California issued an order certifying a nationwide class consisting of
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26 ² The Court’s Partial Summary Judgment order was issued before the Class
27 Certification order, but in the Class Certification order, the Court “extend[ed] the
28 same declaratory relief granted to Petitioners to the Bond Eligible Class as a
whole.” *See* Order Granting Plaintiff-Petitioners’ Motion for Class Certification at
p. 14.

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2 noncitizens who have entered the United States without inspection, who
3 were not apprehended upon arrival, and who are not otherwise subject to
4 detention under INA §§ 236(c), 235(b)(1), or 241. *Maldonado Bautista v.*
5 *Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 25, 2025 C.D. Cal.) (Order
6 Granting Plaintiff-Petitioners' Motion for Class Certification). *Maldonado*
7 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 20, 2025 C.D.
8 Cal.) (Order Granting Petitioners' Motion for Partial Summary Judgement).
9 *Maldonado Bautista* rejected the Board's decision in *Matter of Yajure*
10 *Hurtado*, 29 I&N Dec. 216 (BIA 2025).
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14 15. The Central District Court, on or about December 18, 2025, next entered a
15 final judgment holding that members of its previously-defined bond eligible
16 class are detained under INA § 236(a) and not subject to mandatory
17 detention under INA § 235(b)(2)(A). The Court found that class members
18 are entitled to consideration for release on bond by immigration officers and,
19 if not released, a custody redetermination hearing before an IJ. The court
20 also vacated DHS's July 8th "Interim Guidance Regarding Detention
21 Authority for Applicants for Admission," finding it violated the
22 Administrative Procedure Act. Importantly, the order did not grant a vacatur
23 of *Matter of Yajure Hurtado, supra*.
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2 16. On or about January 13, 2026, Chief Immigration Judge Teresa L. Riley
3 issued nationwide guidance instructing all immigration judges that
4 “*Maldonado Bautista* is not a nationwide injunction and does not purport to
5 vacate, stay or enjoin *Yajure Hurtado*.” Immigration judges are instructed to
6 follow the BIA’s decision in *Matter of Yajure Hurtado, supra*, as binding
7 precedent. The guidance from EOIR states that a “declaratory judgment” is
8 not binding and does not have the authority to compel specific action.
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11 17. The C.D.CA, however, subsequently granted Plaintiffs’ motion to enforce
12 and issued an order vacating the Board’s decision in *Matter of Yajure*
13 *Hurtado, supra*, on or about February 18, 2026.
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16 18. Yet, on or about March 6, 2026, the Ninth Circuit Court of Appeals issued a
17 stay of the Central District’s declaratory judgment and order.
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19 19. As such, Petitioner seeks an order of declaratory and injunctive relief and set
20 aside relief under the Administrative Procedure Act (hereinafter, “APA”)
21 requiring that he be provided a substantive IJ bond redetermination hearing
22 and that he not be denied such hearing due to an alleged lack of jurisdiction.
23

24 **JURISDICTION AND VENUE**

25 20. This Court has jurisdiction under 28 U.S.C. § 2241 (federal *habeas* statute);
26 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory
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2 judgment); United States Constitution Article I, Section 9 (Suspension
3 Clause).

4
5 21.Venue properly lies within the Southern District of California under 28
6 U.S.C. § 1391, because this is a civil action in which Respondents are
7 agencies of the United States, Petitioner is detained in this District, and a
8 substantial part of the events or omissions giving rise to this action occurred
9 in the District.
10

11 **PARTIES**
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13 22.Petitioner resides in Anaheim, California and is currently detained at the
14 Imperial Regional Detention Facility.
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16 23.Respondent Markwayne Mullin is the Secretary of DHS, and is sued in his
17 official capacity. The Secretary of Homeland Security is charged with the
18 administration and enforcement of immigration laws. 8 U.S.C. § 1103(a).
19

20 24.Respondent Todd Blanche is the Attorney General (hereinafter, "AG") of the
21 United States and is sued in his official capacity as the head of the DOJ. The
22 AG is responsible for the fair administration of the laws of the United States.
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24 25.Respondent EOIR is a component agency of the DOJ responsible for
25 conducting removal and bond hearings of noncitizens. EOIR is comprised of
26 a lower adjudicatory body administered by Immigration Judges and an
27 appellate body known as the BIA.
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2 26.IJs issue bond redetermination hearing decisions, which are then subject to
3 appeal to the Board.

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5 27.Respondent Todd Lyons is the Acting Director of ICE and is sued in his
6 official capacity. ICE is responsible for the Petitioner's detention.

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8 28.Jeremy Casey is the Facility Administrator at the Imperial Regional
9 Detention Facility and is sued in his official capacity. Respondent Marin is
10 also responsible for the detention of Petitioner.

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12 **LEGAL BACKGROUND**

13 29.The Immigration and Nationality Act (hereinafter, "INA" or "the Act")
14 prescribes three (3) basic forms of detention for noncitizens in removal
15 proceedings.
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17 30.First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard
18 non-expedited removal proceedings before an Immigration Judge. *See* 8
19 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond
20 hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a),
21 1236.1(d), while noncitizens who have been arrested, charged with, or
22 convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C.
23 § 1226(c).
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2 31. Second, the INA provides for mandatory detention of noncitizens subject to
3 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals
4 seeking admission referred to under § 1225(b)(2).
5

6 32. Last, the Act also provides for detention of noncitizens who have been
7 previously ordered removed, including individuals in withholding-only
8 proceedings, *see* 8 U.S.C. § 1231(a)–(b).
9

10 33. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

11 34. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part
12 of the Illegal Immigration Reform and Immigrant Responsibility Act
13 (hereinafter, “IIRIRA”) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03,
14 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was
15 most recently amended earlier this year by the Laken Riley Act, Pub. L.
16 No. 119-1, 139 Stat. 3 (2025).
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20 35. Following the enactment of IIRIRA, EOIR drafted new regulations
21 explaining that, in general, people who entered the country without
22 inspection were not considered detained under § 1225 and that they were
23 instead detained under § 1226(a). *See* Inspection and Expedited Removal of
24 Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;
25 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
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2 36. Thus, in the decades that followed, most people who entered without
3 inspection—unless they were subject to some other detention
4 authority—received bond hearings. That practice was consistent with many
5 more decades of prior practice, in which noncitizens who were not deemed
6 “arriving” were entitled to a custody hearing before an IJ or other hearing
7 officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt.
8 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention
9 authority previously found at § 1252(a)).
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13 37. Respondents’ new policy turns this well-established understanding on its
14 heads and violates the statutory scheme.
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16 38. Indeed, this legal theory that noncitizens who entered the United States
17 without admission or parole are ineligible for bond hearings was already
18 rejected by a District Court in the Western District of Washington, finding
19 that such individuals are entitled to bond redetermination hearings before
20 IJs, and rejecting the application of § 1225(b)(2) to such cases. *Rodriguez v.*
21 *Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *12 (W.D. Wash.
22 Apr. 24, 2025).
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25 39. Despite this finding from a federal court, in July 2025, ICE released a
26 memorandum instructing its attorneys to coordinate with the Department of
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2 Justice, the agency housing EOIR, to reject bond redetermination hearings
3 for applicants who arrived in the United States without documents.

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5 40. A May 22, 2025 unpublished BIA decision confirms that EOIR is taking this
6 same position that noncitizens who entered the United States without
7 admission or parole are ineligible for immigration judge bond hearings.

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9 41. This is now a widespread position applying across the United States.

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11 42. This interpretation defies the INA. The plain text of the statutory provisions
12 demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

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14 43. Section 1226(a) applies by default to all persons “pending a decision on
15 whether the [noncitizen] is to be removed from the United States.” These
16 removal hearings are held under § 1229a, which “decid[e] the
17 inadmissibility or deportability of a[] [noncitizen].”

18
19 44. The text of § 1226 also explicitly applies to people charged as being
20 inadmissible, including those who entered without inspection. *See* 8 U.S.C. §
21 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that,
22 by default, such people are afforded a bond hearing under subsection (a).
23 Section 1226 therefore leaves no doubt that it applies to people who face
24 charges of being inadmissible to the United States, including those who are
25 present without admission or parole.
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2 45. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or
3 who recently entered the United States. The statute's entire framework is
4 premised on inspections at the border of people who are "seeking
5 admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).
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7 46. Accordingly, the mandatory detention provision of § 1225(b)(2) does not
8 apply to people like Petitioner who are alleged to have entered the United
9 States without admission or parole.
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11 **FACTS**
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13 47. Petitioner has resided in the United States since on or about the year 2007
14 and lives in Anaheim, California.
15

16 48. On or about October 16, 2017, he was granted withholding of removal based
17 on his having been the victim of homophobic persecution in his country of
18 citizenship and nationality.
19

20 49. In or about September of 2025, he was arrested by immigration authorities in
21 Southern California.
22

23 50. ICE denied Petitioner's request for release, and he subsequently requested a
24 bond redetermination hearing before an immigration judge.
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26 51. Importantly, on or about October 16, 2017, Petitioner was granted
27 withholding of removal by an IJ due to his having suffered persecution in his
28 native Mexico on account of his being homosexual.

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2 52. Nonetheless, on or about May 11, 2026, the Immigration Judge denied
3 Petitioner release on bond due to his being a “mandatory detainee.”

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5 53. Petitioner has been steadily employed throughout his tenure in this country.

6 54. He is neither a danger to others nor a flight risk.

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8 55. Any appeal to the BIA would be futile.

9 **CAUSES OF ACTION**

10 **COUNT I**

11 **Violation of 8 U.S.C. § 1226(a)**

12 **Unlawful Denial of Bond Hearing**

13
14 56. Petitioner repeats, re-alleges, and incorporates by reference each and every
15 allegation in the preceding paragraphs as if fully set forth herein.

16
17 57. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply
18 to noncitizens residing in the United States who are subject to the grounds of
19 inadmissibility because they previously entered the country without being
20 admitted or paroled. Such noncitizens are detained under § 1226(a), unless
21 they are subject to another detention provision, such as § 1225(b)(1), §
22 1226(c), or § 1231.

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25 58. The application of § 1225(b)(2) to bar Petitioner from receiving a bond
26 redetermination hearing before an immigration judge violates the
27 Immigration and Nationality Act.
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COUNT II

Violation of the Administrative Procedure Act

Unlawful Denial of Bond

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6 59. Petitioner repeats, re-alleges, and incorporates by reference each and every
7 allegation in the preceding paragraphs as if fully set forth herein.

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9 60. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply
10 to noncitizens residing in the United States who are subject to the grounds of
11 inadmissibility because they originally entered the United States without
12 inspection or parole. Such noncitizens are detained under § 1226(a), unless
13 they are subject to another detention provision, such as § 1225(b)(1), §
14 1226(c) or § 1231.
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17 61. The application of § 1225(b)(2) to bar Petitioner from receiving a bond
18 redetermination hearing before an immigration judge is arbitrary, capricious,
19 and not in accordance with law, and as such, it violates the APA. *See* 5
20 U.S.C. § 706(2).
21

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23 **COUNT III**

24 **Violation of Procedural Due Process**

25 62. Petitioner repeats, re-alleges, and incorporates by reference each and every
26 allegation in the preceding paragraphs as if fully set forth herein.
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2 63. The government may not deprive a person of life, liberty, or property
3 without due process of law. U.S. Const. amend. V. “Freedom from
4 imprisonment—from government custody, detention, or other forms of
5 physical restraint—lies at the heart of the liberty that the Clause protects.”
6 *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
7 (2001).
8
9

10 64. Petitioner has a fundamental interest in liberty and being free from official
11 restraint.
12

13 65. The government’s detention of Petitioner without a *bona fide* bond
14 redetermination hearing to determine whether he is a flight risk or danger to
15 others violates his right to due process.
16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitioner respectfully requests that this Court:

- 19
20 a. Assume jurisdiction over this matter;
21
22 b. Declare that the refusal to allow Petitioner a substantive bond
23 redetermination hearing before an Immigration Judge violates the
24 INA, APA, and Due Process;
25
26 c. Issue a writ of *habeas corpus* requiring that Respondents release him
27 or provide the bond hearing to which he is entitled within fourteen
28 (14) days;

- 1
- 2 d. Set aside Respondents' unlawful detention policy under the APA, 5
- 3 U.S.C. § 706(2);
- 4
- 5 e. Award reasonable attorneys' fees and costs pursuant to the Equal
- 6 Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any
- 7 other applicable law; and
- 8
- 9 f. Order further relief as this Court deems just and appropriate.

10 Dated: May 15, 2026

11 Respectfully Submitted,

12

13 /s/Jose R. Jordan, Esq.

14 **JOSE JORDAN AND ASSOCIATES, APLC**

15 Jose R. Jordan, Esq. CA SBN 316268

16 210 N. Citrus Ave., Suite A

17 Covina, CA 91723

18 Telephone: (626) 594-5321

19 Facsimile: (626) 380-2615

20 E-Mail: info@josejordan.com

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