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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JUVENTINO MORALES JUAREZ
(A-Number [redacted]
Petitioner,

vs.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security;
TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
PATRICK DIVVER, San Diego Field Office Director, ICE;
WARDEN, OTAY MESA DETENTION CENTER; and
TODD BLANCHE, Attorney General of the United States
Respondents.

Case No. **'26CV3910 RBM BJW**

Agency No [redacted]

PETITION FOR WRIT OF HABEAS CORPUS and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Expedited Hearing Requested

PETITION FOR WRIT OF HABEAS CORPUS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

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PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Petitioner **JUVENTINO MORALES JUAREZ** (A-Number: [redacted] a native and citizen of Mexico, brings this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to challenge his unlawful, ongoing detention by the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE).
2. Petitioner is currently in removal proceedings before the Otay Mesa Immigration Court under Lead File No. [redacted] While the presiding Immigration Judge asserts jurisdiction over the core removal proceedings under INA § 240, the court has explicitly disclaimed jurisdiction to conduct an administrative bond or custody redetermination hearing on the grounds that the Petitioner is classified as an unadmitted noncitizen who "entered without inspection" (EWI).
3. By maintaining the Petitioner in physical custody for the duration of his removal proceedings while simultaneously denying him any administrative forum to test the necessity of that detention, the government has subjected him to an unconstitutional legal vacuum. This arbitrary, unilateral imprisonment violates the Fifth Amendment's Due Process Clause, the Eighth Amendment, and the Suspension Clause of the United States Constitution.

II. JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).
5. Venue is proper in the Southern District of California under 28 U.S.C. § 1391(e) and 28 U.S.C. § 2241(a) because the Petitioner is currently detained within this judicial

district at 7488 Calzada De La Fuente, San Diego, CA 92154, under the immediate custody of the facility's Warden.

III. PARTIES

6. **Petitioner Juventino Morales Juarez** is a citizen of Mexico currently incarcerated under DHS custody at the Otay Mesa facility in San Diego, California.
7. **Respondent Warden / Custodial Officer** is the immediate custodian responsible for Petitioner's physical detention at the facility.
8. **Respondent Secretary of the Department of Homeland Security** is the head of the department responsible for enforcing federal immigration laws and oversees the agencies detaining the Petitioner.
9. **Respondent Director of U.S. Immigration and Customs Enforcement (ICE)** is the operational head of the agency directly executing the administrative arrest, custody, and detainer mandates levied against the Petitioner.
10. **Respondent Attorney General of the United States** maintains ultimate legal authority over the administration of immigration laws and controls the Executive Office for Immigration Review (EOIR).
11. **Respondent Presiding Immigration Judge** is the administrative adjudicator overseeing the Petitioner's removal proceedings under the EOIR at the Otay Mesa / San Diego Immigration Court.

IV. STATEMENT OF FACTS

12. On June 15, 2026, DHS issued a Notice to Appear ("NTA") charging Petitioner with removability under Section 212(a)(6)(A)(i) of the INA as a noncitizen present in the United States without admission or parole.

13. On June 17, 2026, the NTA was filed with the Executive Office for Immigration Review, officially initiating removal proceedings under Docket Date June 17, 2026.
14. Concurrently, on or about June 15, 2026, Respondents deprived Petitioner of his physical liberty by placing him into administrative custody. He is presently held at the facility located at 7488 Calzada De La Fuente, San Diego, CA 92154.
15. **At no point prior to or immediately upon his mechanical detention did the government provide the Petitioner with an individualized, adversarial hearing** before a neutral decision-maker to determine whether his arrest and ongoing imprisonment were justified by a risk of flight or danger to the community. Instead, Respondents locked up the Petitioner unilaterally by executive fiat.
16. The Otay Mesa Immigration Court scheduled an initial Master Calendar hearing for June 23, 2026, which was subsequently rescheduled for **July 15, 2026, at 1:00 PM PT**, before the presiding Immigration Judge.
17. Although the presiding Immigration Judge maintains active jurisdiction over the removal case to adjudicate charges of removability, the court has disclaimed jurisdiction to hear a request for bond or custody redetermination. Following agency directives, the Immigration Judge claims a total lack of authority to grant bond because the Petitioner's initial entry into the country was executed without inspection.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES IS EXCUSED AS UTTERLY FUTILE

18. While federal courts generally require a habeas petitioner to exhaust available administrative remedies before seeking judicial relief, exhaustion is a prudential requirement rather than a statutory or jurisdictional bar under 28 U.S.C. § 2241. *See Ward v. Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012).
19. The Ninth Circuit explicitly recognizes that the exhaustion requirement is excused where pursuing administrative remedies would be completely futile. *Id.*; *see also Foti v. INS*, 375 U.S. 217 (1963).

20. In the immediate case, requesting or participating in an administrative bond hearing before the presiding Immigration Judge would be an exercise in futility. Because the Immigration Court claims it lacks jurisdiction over the custody component of an EWI noncitizen's case, it legally cannot—and will not—exercise jurisdiction to grant or even evaluate a bond request.

21. Forcing the Petitioner to seek bond in a forum that has already disclaimed the structural authority to rule on his custody status creates an unconstitutional catch-22:

- The Immigration Judge will refuse to conduct a meaningful custody review due to the claimed lack of bond jurisdiction.
- ICE and DHS will concurrently utilize the parallel removal proceedings to justify the continuous, indefinite deprivation of Petitioner's physical liberty.

22. Because the administrative agency lacks the legal mechanism to cure the unlawful detention or grant affirmative release, any requirement to seek an administrative bond hearing is excused. Immediate federal judicial intervention is required to prevent a manifest miscarriage of justice.

VI. CLAIMS FOR RELIEF

COUNT I

(Violation of the Fifth Amendment: Procedural Due Process – Lack of Pre-Detention Hearing and Absolute Denial of a Custody Forum)

23. Petitioner realleges and incorporates paragraphs 1 through 22 as if fully set forth herein.

24. Procedural due process requires that before the government may significantly deprive an individual of physical liberty, it must provide notice and a meaningful opportunity to be heard before a neutral adjudicator. Civil detention may never be a default mechanism; it requires an individualized pre-detention hearing, or at a minimum, a prompt post-detention hearing held immediately after capture.

25. Respondents violated Petitioner's procedural due process rights by **locking him up without any prior or immediate hearing**. He has been left to languish in a federal facility solely on the strength of an executive document issued by a law enforcement agent, with zero independent judicial review of his detention status.

26. Furthermore, procedural due process is violated when the government pursues a noncitizen's deportation in an administrative court while completely denying that same noncitizen access to an administrative forum to seek bail. The executive branch cannot bifurcate its authority to use an administrative court as a sword (to remove Petitioner) while claiming that same court is completely powerless to act as a shield (to evaluate his liberty).

COUNT II

(Violation of the Fifth Amendment: Procedural Due Process – Unconstitutional Shift of the Burden of Proof)

27. Petitioner realleges and incorporates paragraphs 1 through 26 as if fully set forth herein.

28. Under long-standing constitutional principles, **the burden of proof in civil detention actions must rest entirely on the government.** To justify the extraordinary deprivation of a human being's liberty, the government must prove by clear and convincing evidence that detention is absolutely necessary because the individual poses an active danger to society or an unmanageable flight risk. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Woodby v. INS*, 385 U.S. 276 (1966).

29. Respondents have unconstitutionally inverted this baseline requirement. By invoking a categorical bar against bond hearings for individuals who entered without inspection, the government has insulated itself from any requirement to demonstrate that the Petitioner is actually a flight risk or a danger to the community.

30. The government's failure to bear the burden of proof to justify the initial and ongoing deprivation of Petitioner's liberty violates the core mandates of the Fifth Amendment.

COUNT III

(Violation of the Fifth Amendment: Substantive Due Process – Arbitrary Detention)

31. Petitioner realleges and incorporates paragraphs 1 through 30 as if fully set forth herein.

32. Substantive due process protects individuals from arbitrary, cruel, or unauthorized government detentions. In the immigration context, civil detention is unconstitutional unless it is narrow, non-punitive, and tied directly to an active, valid administrative proceeding. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

33. Detaining a human being based on a categorical manner-of-entry classification—while denying him a pre-detention or immediate custody hearing—renders his confinement completely arbitrary. Because the government is not required to show an individualized, compelling regulatory need to lock up the Petitioner, his ongoing detention is punitive in nature and violates Substantive Due Process.

COUNT IV

(Violation of the Eighth Amendment: Cruel and Unusual Punishment / Excessive Bail)

34. Petitioner realleges and incorporates paragraphs 1 through 33 as if fully set forth herein.

35. The Eighth Amendment prohibits the imposition of excessive bail and the infliction of cruel and unusual punishments. While immigration detention is classified as civil, the total deprivation of physical liberty without access to a competent, functional bail forum constitutes a punitive mechanism.

36. By maintaining the Petitioner in absolute custody while operating within a framework that denies the Immigration Judge the jurisdiction to grant bond or evaluate custody alternatives, Respondents are inflicting an excessive, disproportionate restraint on liberty.

37. Imprisoning an individual within a legal vacuum where no administrative judge has the recognized authority to evaluate their worthiness for release operates as an absolute, unconstitutional denial of bail, violating the core protections of the Eighth Amendment.

COUNT V

(Violation of Article I, Section 9, Clause 2: The Suspension Clause)

38. Petitioner realleges and incorporates paragraphs 1 through 37 as if fully set forth herein.

39. The Suspension Clause of the United States Constitution dictates that "[t]he 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."

40. Habeas corpus serves as the vital constitutional safeguard against unlawful executive detention. For noncitizens facing removal and detention, the writ must remain available to test the legal validity and jurisdictional foundations of the executive's actions.

41. Because the administrative system at the San Diego / Otay Mesa courts claims it lacks jurisdiction to evaluate the custody of an unadmitted resident noncitizen, it provides no meaningful, adequate alternative to review the lawfulness of Petitioner's ongoing detention.

42. To deny the Petitioner access to federal habeas relief under these circumstances would leave him with absolutely no legal channel to challenge his confinement, effectively operating as an unconstitutional suspension of the Writ of Habeas Corpus.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- **GRANT** the Petition for Writ of Habeas Corpus;
- **DECLARE** as a matter of constitutional law that the government bears the absolute burden of proof to justify Petitioner's ongoing civil detention by clear and convincing evidence;
- **DECLARE** that the failure to provide an individualized custody or bond hearing prior to or immediately upon mechanical detention violated the Fifth Amendment's Due Process Clause;
- **DECLARE** that the categorical denial of an administrative bond forum based strictly on an individual's status as having entered without inspection is unconstitutional;
- **ORDER** the immediate release of Petitioner from federal custody, or in the alternative, order Respondents to provide an immediate bond hearing before a federal district court judge or a designated United States Magistrate Judge of competent jurisdiction where the government must bear the burden of proof; and
- **ENJOIN** the Respondents from removing Petitioner from the United States during the pendency of this action.

Dated: 7/8/2026

Respectfully submitted,

/s/Hernando De Cima
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105 N Rose St Ste 109
Escondido, Ca 92027
hernando@decimalaw.com
858-525-5578
Attorney for Petitioner

VERIFICATION

I, Hernando De Cima, declare under penalty of perjury under the laws of the United States of America that I am the attorney representing the Petitioner, Juventino Morales Juarez, in this matter; that I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof; and that the factual allegations contained therein regarding the administrative timelines, dates, locations, and custody status are true and correct based on official agency documentation provided by the Executive Office for Immigration Review and the Department of Homeland Security.

Executed on 7/8/2026, at Escondido, California.

Dated: 7/8/2026

Respectfully submitted,

/s/Hernando De Cima
Hernando De Cima, Esq
105 N Rose St Ste 109
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hernando@decimalaw.com
858-525-5578
Attorney for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JUVENTINO MORALES JUAREZ,

(A-Number: [redacted]

Petitioner,

v.

THE WARDEN, OTAY MESA DETENTION CENTER, ET AL.,

Respondents.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

I. INTRODUCTION & LEGAL CONTEXT

Petitioner Juventino Morales Juarez is a citizen of Mexico currently incarcerated under administrative civil detention by the Department of Homeland Security (DHS) at the Otay Mesa Detention Center within this judicial district. The government has placed Petitioner into standard removal proceedings under Section 240 of the Immigration and Nationality Act (INA), pending a hearing before the San Diego / Otay Mesa Immigration Court.

Crucially, the presiding Immigration Judge has disclaimed jurisdiction to conduct an administrative bond redetermination or custody review. The agency bases this denial on the Board of Immigration Appeals' (BIA) precedent in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which dictates that individuals classified as having "entered without inspection" (EWI) are permanent "applicants for admission" subject to mandatory border detention under INA § 235(b)(2), thereby stripping the Immigration Court of bond jurisdiction.

This posture creates an unconstitutional legal asymmetry. The executive branch utilizes the Immigration Court's active jurisdiction as a sword to prosecute Petitioner's deportation under INA § 240, but completely denies that same forum the authority to act as a shield to evaluate his physical liberty. Forced into a legal vacuum with no administrative avenue to contest his confinement, Petitioner seeks intervention from this Court to vindicate his constitutional rights under the Fifth Amendment, Eighth Amendment, and the Suspension Clause.

II. QUESTIONS PRESENTED

1. Is a habeas petitioner excused from exhausting administrative bond remedies when the administrative tribunal explicitly disclaims jurisdiction to provide custody relief?
2. Does the categorical denial of a prompt, individualized custody hearing to an interior-apprehended noncitizen based strictly on their historical manner of entry violate the Fifth Amendment's Procedural and Substantive Due Process guarantees?
3. Does the constitutional burden of proof require the government to demonstrate by clear and convincing evidence that civil detention is justified?
4. Does the creation of an unadjudicated custody vacuum violate the Eighth Amendment and the Suspension Clause?

III. LEGAL ARGUMENT

A. Exhaustion of Administrative Remedies Is Excused Because Requesting an Administrative Bond Hearing Is Utterly Futile

While federal courts prudentially apply an exhaustion requirement to 28 U.S.C. § 2241 petitions, exhaustion is not a jurisdictional prerequisite in this context. *Ward v. Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012). The Ninth Circuit explicitly recognizes that "exhaustion is not required when the administrative remedies are inadequate or futile." *Id.*; *see also Foti v. INS*, 375 U.S. 217 (1963).

Following the BIA's sweeping ruling in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Immigration Judges are categorically bound to hold that they lack the statutory authority under 8 C.F.R. § 1003.19 to redetermine custody for any noncitizen who entered without inspection, routing them instead to mandatory detention under INA § 235(b)(2). Because the presiding Immigration Judge cannot legally provide the relief sought, forcing the Petitioner to request an administrative bond redetermination would be an exercise in pure legal futility. Prudential exhaustion must be excused.

B. The Categorical Refusal to Provide an Individualized Custody Hearing Violates Procedural and Substantive Due Process under the Fifth Amendment

"Freedom from physical restraint lies at the very core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This constitutional protection applies to all persons within the United States, including noncitizens whose presence is unlawful. *Id.; Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

1. Procedural Due Process Requires a Competent Forum and a Prompt Hearing

Procedural due process demands that any deprivation of physical liberty be accompanied by notice and a meaningful opportunity to be heard before a neutral adjudicator. Under the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing test, the private interest in liberty is paramount.

The government's mechanics in this case violate this mandate in two ways:

- **Lack of Immediate Hearing:** Respondents mechanically detained the Petitioner by unilateral executive fiat on June 15, 2026, without a prompt pre-detention or immediate post-arrest judicial review.

- **Absolute Deprivation of a Custody Forum:** By using the Petitioner's historical status as an EWI noncitizen to bifurcate jurisdiction, the government forces him to participate in removal proceedings while denying him any forum to evaluate his detention. Civil detention cannot be maintained as a default executive blind spot insulated from judicial review.

2. Substantive Due Process Bars Arbitrary and Punitive Detention

Civil immigration detention violates substantive due process unless it is strictly non-punitive, narrowly tailored, and directly advances a compelling regulatory goal—specifically, preventing flight or mitigating localized danger. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510 (2003).

Categorically detaining an individual based solely on a historical manner-of-entry classification, without any individualized assessment of current risk, transforms civil detention from a narrow regulatory tool into an impermissible punitive mechanism. As multiple federal district courts have noted in rejecting the expansive reading of INA § 235(b)(2), mandatory border-style detention cannot be applied to long-term residents apprehended deep within the interior of the United States. Because the detention is totally detached from any individualized necessity, it violates Substantive Due Process.

C. Due Process Mandates That the Absolute Burden of Proof Must Rest on the Government Under a Clear and Convincing Standard

The bedrock of constitutional due process requires that when the state seeks to strip an individual of their physical freedom, the state must bear the burden of justifying that choice. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418 (1979).

In the immigration context, the Ninth Circuit has repeatedly affirmed that due process dictates that the government—not the detainee—must establish the ongoing necessity of

detention. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Aleman Gonzalez v. Barr*, 955 F.3d 1118 (9th Cir. 2020). The quantum of proof required is **clear and convincing evidence** that the individual poses an active flight risk or a danger to the community.

By applying the administrative bar of *Yajure Hurtado*, the Respondents have unconstitutionally inverted this burden. They have completely insulated themselves from proving *any* risk, forcing the Petitioner to remain imprisoned indefinitely without ever requiring the state to produce clear and convincing evidence supporting his detention.

D. The Current Administrative Lacuna Violates the Eighth Amendment and the Suspension Clause

1. Eighth Amendment Protections Against Absolute Denial of Bail

The Excessive Bail Clause of the Eighth Amendment prevents the government from implementing a system of civil detention that leaves no functional path to release. While Congress may restrict bail for specific, narrow classes of highly dangerous individuals, a wholesale ban on bail hearings for a massive class of noncitizens based solely on a lack of initial inspection operates as a blanket, unconstitutional denial of bail. *See United States v. Salerno*, 481 U.S. 739, 754-55 (1987).

2. The Suspension Clause Commands Judicial Review

Under Article I, Section 9, Clause 2, the Writ of Habeas Corpus cannot be suspended unless public safety demands it during a rebellion or invasion. The Supreme Court has explicitly ruled that the Suspension Clause requires that noncitizens facing removal have a meaningful judicial forum to test the executive's detention authority. *INS v. St. Cyr*, 533 U.S. 289 (2001); *Boumediene v. Bush*, 553 U.S. 723 (2008).

Because the Executive Office for Immigration Review claims it has no jurisdiction to evaluate custody for EWI noncitizens, the administrative path is closed. If this Court does

not exercise jurisdiction under 28 U.S.C. § 2241, Petitioner is left in a legal vacuum with no mechanism to challenge his incarceration. This dynamic operates as an unconstitutional suspension of the Writ.

IV. CONCLUSION & REQUISITE RELIEF

The categorical administrative mechanism derived from *Matter of Yajure Hurtado* cannot override the baseline requirements of the United States Constitution. The executive branch cannot bifurcate an administrative court's jurisdiction to aggressively prosecute a noncitizen's deportation under Section 240 of the INA while simultaneously declaring that same court powerless to review their physical incarceration.

Because the administrative forum has disclaimed its custody jurisdiction over individuals who entered without inspection, Petitioner is left stranded in an unconstitutional legal vacuum, suffering ongoing, unauthorized executive detention. Immediate federal judicial intervention is required to vindicate Petitioner's Fifth Amendment, Eighth Amendment, and Suspension Clause rights.

WHEREWHERE, tracking the exact remedies sought in the underlying Petition, Petitioner respectfully requests that this Court:

1. **GRANT** the Petition for Writ of Habeas Corpus;
2. **DECLARE** as a matter of constitutional law that the government bears the absolute burden of proof to justify Petitioner's ongoing civil detention by clear and convincing evidence;
3. **DECLARE** that the failure to provide an individualized custody or bond hearing prior to or immediately upon mechanical detention violated the Fifth Amendment's Due Process Clause;
4. **DECLARE** that the categorical denial of an administrative bond forum based strictly on an individual's status as having entered without inspection is unconstitutional;

5. **ORDER** the immediate release of Petitioner from federal custody, or in the alternative, order Respondents to provide an immediate bond hearing before a federal district court judge or a designated United States Magistrate Judge of competent jurisdiction where the government must bear the burden of proof; and
6. **ENJOIN** the Respondents from removing Petitioner from the United States during the pendency of this action.

Dated: 7/8/2026

Respectfully submitted,

/s/Hernando De Cima
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Attorney for Petitioner

X. CERTIFICATE OF SERVICE

I, Hernando De Cima, certify that on 7/8/2026, I filed the foregoing with the Clerk of the Court via CM/ECF and will serve the Respondents and the U.S. Attorney's Office for the Southern District of California.

Dated: 7/8/2026

Respectfully submitted,

/s/Hernando De Cima
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Attorney for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PROPOSED ORDER TO SHOW CAUSE

Upon consideration of the verified Petition for a Writ of Habeas Corpus filed by Petitioner on 7/8/2026:

IT IS HEREBY ORDERED that Respondents show cause before this Court why a Writ of Habeas Corpus should not issue directing Petitioner's release from civil immigration custody or, in the alternative, ordering Respondents to provide Petitioner with an individualized, constitutional custody redetermination hearing before an Immigration Judge.

IT IS FURTHER ORDERED THAT:

1. Respondents shall file a Return to the Petition and Show Cause Response, including any supporting briefs, declarations, or administrative records within three (3) calendar days of the date of service of this Order;
2. Petitioner may file a Traverse/Reply to Respondents' Return on or before within two (2) calendar days of the filing of Respondents' Return; and
3. A hearing on the Petition is scheduled before the Honorable District Court Judge on **_____, 2026, at ___:___ __.m.** in Courtroom ___ of the United States District Court for the Southern District of California, located at 333 West Broadway, San Diego, CA 92101.

IT IS SO ORDERED.

Dated: _____, 2026

_____
UNITED STATES DISTRICT JUDGE