United States District Court
Eastern District of Michigan

Dinu Relu Rascol,

Petitioner,

v.

Kevin Raycraft, Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; Michael L. White, St. Clair County Sheriff; Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement; U.S. Immigration and Customs Enforcement; Markwayne Mullin, Secretary, U.S. Department of Homeland Security; Todd Blanche, U.S. Attorney General; and Executive Office for Immigration Review,

Respondents.

Civil No. 26-13534

Honorable Stephen J. Murphy III
Mag. Judge Patricia T. Morris

Respondents' Response to Petitioner's Emergency Motion for Temporary Restraining Order

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Petitioner is a noncitizen subject to a final order of removal. In his emergency motion for a temporary restraining order, he seeks to stay his removal. As explained in the attached brief, the Court should deny petitioner's motion because only the appropriate court of appeals has jurisdiction to stay his removal, his specific

challenge to his removal is the subject of a class action and he is a member of that class, so he must bring any challenge to his removal in that class action, his upcoming removal is lawful and his detention to facilitate his removal is lawful, he has not demonstrated that he is likely to suffer imminent irreparable injury absent an injunction, and the balance of equities does not weigh in his favor.

Respectfully submitted,

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Dated: September 18, 2026

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Respondents' Brief in Support of Their Response to Petitioner's Motion for a Temporary Restraining Order

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Issues Presented

I. Should the Court deny petitioner's motion when he cannot show that he is likely to succeed on the merits because the Court lacks jurisdiction to grant him the relief he seeks in this case?

II. Should the Court deny petitioner's motion when he has not demonstrated that he will suffer imminent irreparable injury absent an injunction?

III. Should the Court deny petitioner's motion when the balance of equities weighs against petitioner?

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Introduction

Petitioner is a noncitizen subject to a final order of removal, but he cannot be removed to his home country of Romania. Petitioner has known that he would be removed from the United States and that his removal would be to a country other than his native country for nearly ten years. Recently, ICE obtained diplomatic assurances that petitioner could safely be removed to a third country and detained him to facilitate his lawful removal. Now, petitioner seeks a temporary restraining order from this Court to stop his removal. The Court should reject petitioner's challenge because Congress has granted the courts of appeals exclusive jurisdiction over challenges to removals, even if district courts had jurisdiction over this kind of challenge, petitioner is a member of a class seeking the same relief in a class action in Massachusetts, which bars his individual claim for relief in this case, and petitioner's removal (and temporary detention to facilitate his removal) is lawful. Further, plaintiff has not demonstrated that he will face imminent irreparable injury absent an injunction, or that the public interest weighs in favor of a temporary restraining order.

Background

Petitioner Dinu Relu Rascol is a citizen of Romania. (Exhibit 1 – I-213 at 1). Rascol was initially admitted to the United States in 1991 as a refugee. (*Id.* at 2). However, Rascol was convicted of several felonies involving larceny and fraud

between 2003 and 2015, so immigration officials initiated removal proceedings against him. (*Id.*). In 2017, the immigration court ordered Rascol removed to Romania, but granted him withholding of removal, which meant that ICE could not remove Rascol to Romania. (*Id.*; Exhibit 2 – Removal Order). Neither party appealed the immigration court's order, so Rascol's order of removal became administratively final in 2017. (Exhibit 1 – I-213 at 2). Since that time, Rascol has known that he would eventually be removed and his removal would be to a third country. (*See id.*; Exhibit 2 – Removal Order).

In 2018, ICE released Rascol under an order of supervision. (Exhibit 3 – Not. of Revocation at 1).

In March 2025, DHS issued new guidance that would allow noncitizens like Rascol to be removed to a third country without further procedures if the third country "has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured." (Exhibit 4 – DHS Memo at 1–2).

On June 3, 2025, Rwanda provided diplomatic assurances to the United States that noncitizens removed to Rwanda would not be persecuted or tortured and the Department of State verified those assurances to DHS in May 2026. (Exhibit 5 – Leyva Decl. ¶ 4; Exhibit 6 – State Ltr.). Further, Rwanda issued a travel document for Rascol in September 2026. (Exhibit 3 – Not. of Revocation at 1–2). Pursuant to these developments, a supervisory immigration official issued an administrative

warrant for Rascol's arrest. (Exhibit 7 – Warrant). And, pursuant to that warrant, on September 10, 2026, officers arrested Rascol, gave him notice of the reason for his arrest, informed him that he would be removed to Rwanda, conducted an informal interview with him regarding his detention, then detained him to facilitate his removal. (*Id.*; Exhibit 3 – Not. of Revocation at 1–2).

On September 18, 2026, Rascol filed a petition for a writ of habeas corpus in this Court seeking to block his removal and challenging his arrest because he alleges his arrest was executed without a warrant. (Pet., ECF No. 1).

On the same day, Rascol filed an emergency motion for a temporary restraining order seeking to stay his removal. (Mot. for TRO, ECF No. 3).

Standard of Review

Under Rule 65, a district court may issue a temporary restraining order or preliminary injunction. Fed. R. Civ. P. 65. If notice is provided to the adverse party, the standards for issuing a preliminary injunction and a temporary restraining order are the same. *See Overstreet v. Lexington-Fayette Urb. Cnty. Gov't*, 305 F.3d 566, 572 (6th Cir. 2002); *News Herald, a Div. of Gannett Satellite Info. Network, Inc. v. Ruyle*, 949 F. Supp. 519, 521 (N.D. Ohio 1996).

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction

is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *McPherson v. Michigan High Sch. Athletic Ass'n, Inc.*, 119 F.3d 453, 459 (6th Cir. 1997). An "injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet*, 305 F.3d at 573.

Argument

The Court should deny petitioner's motion for a temporary restraining order because petitioner cannot demonstrate that he is entitled to the extraordinary remedy of a temporary restraining order or a preliminary injunction.

I. Petitioner Cannot Succeed on the Merits

To succeed on a motion for preliminary injunction, the movant must demonstrate "a strong likelihood of success on the merits." *Boddy v. Grech*, 178 F.4th 264, 271 (6th Cir. 2026). "To show a strong likelihood of success on the merits, [the movant] must show more than a mere possibility of success." *Id.* at 272 (quotation omitted). "In addition to demonstrating a likelihood of success on the substantive claims, a plaintiff must also show a likelihood of success of establishing jurisdiction." *Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 554 (6th Cir. 2021) (citing *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 900 F.3d 250, 256 n.4 (6th Cir. 2018)). "If a plaintiff cannot show a likelihood of jurisdiction, then the court will deny the preliminary injunction." *Id.*

A. Petitioner Cannot Show a Likelihood of Jurisdiction

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Id.* (citations omitted). "It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Id.* (citation omitted).

Petitioner is subject to an administratively final order of removal. (Exhibit 2 – Removal Order). Congress has provided a noncitizen subject to an order of removal two pathways to challenge his removal, but neither path leads to this Court.

First, noncitizens subject to administratively final orders of removal may move to re-open their removal proceedings in the Board of Immigration Appeals. 8 C.F.R. § 1003.23. A motion to re-open does not automatically stay a noncitizen's removal. 8 C.F.R. § 1003.23(b)(1)(v). However, the Board has jurisdiction to stay a noncitizen's removal if the noncitizen promptly moves for a stay. *See* 8 C.F.R. §§ 241.6(b), (c), 1003.23(b)(v); *see also Matter of Boulama*, 2023 WL 9658707, at *1 n.1 (BIA Aug. 2, 2023) (noting that BIA had granted stay of removal for consideration of motion to re-open); *Matter of Mcdonald*, 2023 WL 7014309, at *1 (BIA Feb. 7, 2023) (BIA granting motion to stay removal).

Second, with the REAL ID Act of 2005, Congress granted the U.S. Courts of Appeals exclusive jurisdiction to hear motions to stay removals in federal court. *See* REAL ID Act of 2005, H.R. 1268, 109th Cong. (2005) (enacted), Pub. L. No. 109-13, Div. B., 119 Stat. 231, 8 U.S.C. § 1252(a)(5). In particular, the Act establishes that "a petition for review filed with an appropriate court of appeals in accordance with this section shall be the *sole and exclusive* means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5) (emphasis added).

Consistent with this duty, the courts of appeals have developed special procedures for hearing motions to stay removals in immigration cases on an expedited basis. *See* 6th Cir. R. 18(b). And each court of appeals considers emergency motions to stay removal several times per month, at a minimum. *See, e.g.*, *Perez-Perez v. Bondi*, No. 25-3146 (6th Cir.), ECF No. 14 (granting emergency stay of removal); *Alanis v. Bondi*, No. 25-3872 (6th Cir.), ECF No. 7 (granting temporary stay of removal so court could consider emergency stay of removal); *Arateco-Munoz v. Bondi*, No. 25-3721 (6th Cir.), ECF No. 8 (same); *Garcia v. Bondi*, No. 25-3666 (6th Cir.), ECF No. 12) (same).

In contrast, federal district courts have no jurisdiction to stay a noncitizen's removal. With the REAL ID Act of 2005, Congress stripped federal district courts of any jurisdiction whatsoever to "hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence

proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). This jurisdiction stripping provision explicitly addresses the Habeas Act, 28 U.S.C. § 2241, the Mandamus Act, 28 U.S.C. § 1361, and the All Writs Act, 28 U.S.C. § 1651, and unequivocally states that federal district courts may not rely on any of these statutes to exercise jurisdiction over challenges to a noncitizen's removal. *See* 8 U.S.C. § 1252(g).

Given this clear statutory language, it is well-settled in the Sixth Circuit that federal district courts do not have jurisdiction to hear challenges to removal or enjoin ICE from executing an order of removal. *See Hamama v. Adducci*, 912 F.3d 869, 877 (6th Cir. 2018) ("The district court did not have jurisdiction over Petitioners' removal-based claims"); *Muka v. Baker*, 559 F.3d 480, 483 (6th Cir. 2009) (holding that district courts do not have jurisdiction to hear direct or indirect challenges to removal) (citations omitted).

Here, petitioner cannot establish this Court's jurisdiction to stay his removal. Congress has established specific procedures for noncitizens seeking to stay a removal. Petitioner may seek to stay his removal in the Board of Immigration Appeals or in the appropriate court of appeals. 8 U.S.C. § 1252(a)(5); 8 C.F.R. §§ 241.6(b), (c), 1003.23(b)(v). Conversely, Congress has specifically prohibited noncitizens from seeking to stay their removals in federal district courts by filing a habeas suit. 8 U.S.C. § 1252(g). For unexplained reasons, petitioner has rejected

both of the lawful pathways Congress has provided him to stay his removal and instead sought to stay his removal in this Court, even though a federal statute and controlling case law prohibit this Court from granting him the relief he seeks. 8 U.S.C. § 1252(g); *Hamama*, 912 F.3d at 877. Plaintiff's refusal to follow the proper procedures to seek a stay of his removal does not somehow grant this Court jurisdiction beyond what Congress has explicitly provided but instead dooms his motion.

B. Petitioner Is Not Likely to Succeed on the Merits of His Challenge to His Removal

The Immigration and Nationality Act (INA) provides a statutory hierarchy for selecting a country of removal. 8 U.S.C. § 1231(b)(2). *See Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341–342 (2005). Noncitizens subject to removal orders need not be removed to their native country. *See id.* As the Supreme Court explained, Section 1231(b)(2) "provides four consecutive removal commands" governing how the Government selects the country of removal. *Jama*, 543 U.S. at 338–39.

Generally, noncitizens ordered removed "may designate one country to which the alien wants to be removed," and DHS "shall remove the noncitizen to [that] country[.]" 8 U.S.C. § 1231(b)(2)(A). In certain circumstances, DHS will not remove the noncitizen to their designated country, including where "the government of the country is not willing to accept the alien into the country." *Id.* § 1231(b)(2)(C)(iii). In such a case, the noncitizen "shall" be removed to the

noncitizen's country of nationality or citizenship, unless that country "is not willing to accept the noncitizen[.]" *Id.* § 1231(b)(2)(D). If a noncitizen cannot be removed to the country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he country in which the alien was born," or "[t]he country in which the alien last resided[.]" *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the noncitizen may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii). Thus, if those are unavailable, DHS may rely on the residual authority of subparagraph (E) to designate "another country whose government will accept the alien." However, DHS may not remove an alien to a country if it decides that the alien's "life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." *Id.* § 1231(b)(3)(A).

While the INA provides for third-country removals, it does not delineate a particular process for carrying out those removals. *See* 8 U.S.C. § 1231(b). Consequently, on March 30, 2025, DHS issued guidance, clarifying its "policy regarding the removal of aliens with final orders of removal pursuant to sections 240, 241(a)(5), or 238(b) of the [INA] to countries other than those designated for

removal in those removal orders." (Exhibit 4 – DHS Memo). The March Guidance distinguishes between removals to countries that have provided credible assurances that any aliens removed there will not be persecuted or tortured, and removals to those countries that have not done so. (*Id.* at 1–2). For countries that have provided such an assurance, "the alien may be removed without the need for further procedures." (*Id.*).

DHS's March 2025 policy has been challenged in a class action in a federal court in Massachusetts. *See D.V.D. v. Dep't of Homeland Sec.*, Civ. A. No. 25-10676 (D. Mass. Apr. 18, 2025). The Massachusetts court has certified a class in that case and the class is as follows:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id.

The Supreme Court entered a stay of the district court's preliminary injunction pending appeal, both as to the class and the named plaintiffs. *See Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S. Jun. 23, 2025); *Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S. July 3, 2025). On February 25, 2026, the district court vacated the class-wide preliminary injunction and issued class-wide declaratory and vacatur

relief. *See D.V.D. v. Dep't of Homeland Sec.*, Civ. A. No. 25-10676 (D. Mass. Feb. 25, 2026) (setting aside DHS's third-country removal policy and declaring, among other things, that class members have the right to meaningful notice and opportunity to raise a country-specific claim against removal before removal to a third country.) The government appealed that decision and on March 16, 2026, the First Circuit granted the government's emergency motion for stay pending appeal. *See D.V.D. v. Dep't of Homeland Sec.*, No. 26-1212 (1st Cir. Mar. 16, 2026). The appeal is still pending, so the First Circuit's stay of the declaratory judgment remains in effect.

Rule 23(b)(2) classes can thus be certified only when "the relief sought must perforce affect the entire class at once." *Wal-Mart Stores, Inc. v. Dukes,* 564 U.S. 338, 361–62 (2011). "For that reason," Rule 23(b)(2) classes are "mandatory classes," with "no opportunity" for "class members to opt out" and litigate their claims individually. *Id.* at 362; *see also U.S. v. Sanchez-Gomez*, 584 U.S. 381, 387 (2018) (noting that "[t]he certification of a suit as a class action has important consequences for the unnamed members of the class, including being "bound by the judgment") (cleaned up).

For this reason, numerous courts have appropriately declined to address claims relating to third-country removals due to the class action and the Supreme Court's stay of the district court's preliminary injunction in that case. *See, e.g.*, *Ghamelian v. Baker*, No. 25-cv-02106-SAG, 2025 WL 2049981, at *3 (D. Md. July

22, 2025), *reconsideration denied*, 2025 WL 2074155 (D. Md. July 23, 2025) (declining to address claims relating to third-country removal because of petitioner's status as a *D.V.D.* class member); *I.V.I. v. Baker*, No. 25-cv-1572-JKB, 2025 WL 1519449, at *2 (D. Md. May 27, 2025) ("Even stripped of any reference to the District of Massachusetts' order, these claims are the same as (or substantially related to) the class claims being litigated in that district." (citation omitted)); *Tanha v. Warden, Baltimore Det. Facility*, No. 1:25-cv-02121-JRR, 2025 WL 2062181, at *5 (D. Md. July 22, 2025) ("The court finds that Petitioner is a member of the D.V.D. Class."); *Sanchez v. Bondi*, No. 1:25-cv-02287-CNS, 2025 WL 2550646, at *3 (D. Colo. Aug. 20, 2025) ("[B]ecause Mr. Sanchez is a member of *D.V.D.'s* Rule 23(b)(2) class, he has failed to show a likelihood of success on the merits of his claim."); *Qasemi v. Kurzdorfer*, No. 25-cv-668-FPG, 2025 WL2938607, at *6 (W.D.N.Y. Oct. 16, 2025) (because the petitioner was a *D.V.D.* class member, "[i]t would be inappropriate for the Court to inject itself into that ongoing litigation."). *But see, e.g., Nguyen v. Scott*, 2025 WL 2419288, at *20-21 (W.D. Wash. Aug. 21, 2025) (holding that petitioner's ability to seek relief related to third-country removal was not impacted).

Here, petitioner cannot succeed on the merits of his challenge to his removal. First, petitioner's exclusive path to challenge his removal pursuant to the same DHS policy at issue in the Massachusetts class action is in that court, because he is

explicitly a class member in that suit and, as a class member, he must seek relief in that court; he cannot file suit seeking the same relief in a new suit. *See Groseclose v. Dutton*, 829 F.2d 581, 584 (6th Cir. 1987) (holding that individual class member could not proceed in individual case). Second, the Supreme Court and the First Circuit have stayed the Massachusetts's court's orders after considering whether DHS had shown a strong likelihood of success on the merits. *See Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S. Jun. 23, 2025); *See D.V.D. v. Dep't of Homeland Sec.*, No. 26-1212 (1st Cir. Mar. 16, 2026). For the same reasons that those stays were issued by the Supreme Court and the First Circuit, petitioner cannot show that he has a strong likelihood of success on the merits here.

C. Petitioner is Not Likely to Succeed on the Merits of His Challenge to His Detention

Arrests in the civil immigration context are not made pursuant to judicial warrants. *See* 8 C.F.R. § 287.5. Instead, civil immigration arrests are executed pursuant to administrative warrants, which can be issued by immigration officials. *See* 8 C.F.R. § 287.5(e)(2). Immigration officials are expressly authorized to arrest and detain noncitizens subject to administratively final orders of removal in order to facilitate the noncitizens' removal. 8 C.F.R. § 241.4(l)(2)(iii).

Here, petitioner's arrest and detention were lawful. Petitioner's only challenge to his detention is his argument that his arrest was unlawful because officials did not obtain a warrant. (Pet., ECF No. 1, PageID.21). However, petitioner was arrested

pursuant to a warrant because DHS had obtained a travel document to remove him. (Exhibit 3 – Not. of Revocation at 1–2; Exhibit 7 – Warrant). Accordingly, petitioner cannot show that he is likely to succeed on his challenge to his detention.

II. Petitioner Has Not Demonstrated Irreparable Injury

A showing of imminent irreparable injury "is indispensable: If the plaintiff isn't facing imminent and irreparable injury, there's no need to grant relief *now* as opposed to at the end of the lawsuit." *D.T. v. Sumner Cnty. Sch.*, 942 F.3d 324, 326–27 (6th Cir. 2019) (emphasis in original). Thus, while the Court must weigh the other preliminary injunction factors, "even the strongest showing on the other three factors cannot eliminate the irreparable harm requirement." *Id.* (quotation omitted).

Here, petitioner has not demonstrated that he is likely to suffer imminent irreparable injury absent an injunction. It is well settled that removal alone is not sufficient to establish irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) ("It is accordingly plain that the burden of removal alone cannot constitute the requisite irreparable injury."). And the evidence petitioner submits about his specific removal to Rwanda does not meet his burden under Rule 65. For instance, petitioner speculates in his declaration that he will be tortured "based on [his] Roma ethnicity." (Decl., ECF No. 1-3, PageID.26). However, he does not provide any facts demonstrating that he has personal knowledge about anyone in Rwanda being

persecuted based on Roma ethnicity, so this statement is not evidence.[1] *See* Fed. R. Evid. 602. Meanwhile, he has provided other evidence that directly undercuts this claim and shows that noncitizens removed from the United States to Rwanda have been housed in a facility that "is gated and guarded by Rwandan government-employed security guards" and "their freedom of movements has not been restricted." (Supp. Decl., ECF No. 5-1, PageID.104). Petitioner's other evidence consists of news reports (which are not evidence) challenging whether a removal to Rwanda would ultimately grant a noncitizen status in that country or eventually result in a return to their home country—which does not constitute "imminent" irreparable injury. (*See* News Art., ECF No. 1-7); *Platt v. Bd. of Commissioners on Grievances & Discipline of Ohio Supreme Ct.*, 894 F.3d 235, 245 (6th Cir. 2018) ("a court may take notice of the documents and what they say, but it [cannot] consider the statements contained in the document for the truth of the matter asserted.") (quotation omitted). Accordingly, petitioner has not shown that his removal to Rwanda is likely to cause him imminent, irreparable injury absent an injunction.

[1] Nor does his conclusory statement actually establish that his future treatment is likely to qualify as "Torture" when that term is defined as an "extreme form of cruel and inhuman treatment," which intentionally inflicts "severe pain or suffering" on another for an improper purpose, and is performed "at the instigation of or with the consent or acquiescence of a public official acting in an official capacity or other person acting in an official capacity." 8 C.F.R. §§ 208.18(a)(1), (a)(2).

III. The Public Interest Weighs Against Petitioner

The third and fourth preliminary injunction factors "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. The Supreme Court has acknowledged that the public has a valid interest in the efficient functioning of the immigration system and held that courts cannot presume that plaintiffs establish the third and fourth preliminary injunction factors simply by alleging that they are being wrongfully denied immigration rights. *See id.* at 435–36.

Here, the public interest weighs in favor of allowing petitioner's removal. Petitioner has no lawful basis for remaining in this country and the public has an interest in the efficient execution of final orders of removal. *See Nken*, 556 U.S. at 435–36. Further, his prompt and lawful removal will render this suit moot and preserve this Court's resources for other cases and controversies pending before it.

Conclusion

Respondents respectfully request that the Court deny petitioner's motion for a temporary restraining order.

Respectfully submitted,

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Dated: September 18, 2026

Certificate of Service

I hereby certify that on September 18, 2026, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey
Zak Toomey
Assistant U.S. Attorney