

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 14.259 ACRES OF LAND, MORE OR )  
 LESS, SITUATE IN DOÑA ANA )  
 COUNTY, STATE OF NEW MEXICO; )  
 CATHOLIC DIOCESE OF LAS CRUCES; )  
 AND DOÑA ANA COUNTY )  
 TREASURER, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

No. 2:26-cv-01458

**DEFENDANT ROMAN CATHOLIC DIOCESE OF LAS CRUCES’S RESPONSE IN  
OPPOSITION TO PLAINTIFF’S MOTION FOR LEAVE TO DEPOSIT  
FUNDS INTO COURT REGISTRY**

This case concerns the United States Government’s attempted exercise of its power of eminent domain to condemn property of Defendant Roman Catholic Diocese of Las Cruces (the Diocese) for the purpose of building sections of a barrier wall along the southern border of the United States. The Government’s proposed taking will substantially burden the free exercise of religion by the Diocese, its parishioners, and the other faithful who seek to commune with God on Diocesan property. The Diocese therefore intends to raise defenses to the intended taking under the First Amendment’s Free Exercise Clause and the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb *et seq.* The Government’s motion seeks leave to deposit with the Court estimated just compensation, a preliminary step necessary to effectuate an immediate and automatic transfer of title to the Government under to the Declaration of Taking Act, 40 U.S.C. §§ 3114 *et seq.* By triggering this automatic process the Government attempts to pretermite the

First Amendment and RFRA defenses that the Diocese intends to raise. Accordingly, this Court should deny the Government's request for leave to deposit and defer any transfer of title until the Diocese is fully heard regarding those defenses.

**I. The Government Seeks to Condemn Diocesan Land that Is Part of a Holy Site.**

The Diocesan property that the Government seeks to condemn is located at the base of Mount Cristo Rey in Sunland Park, New Mexico. Atop the mountain sits a 29-foot-tall limestone statue of Jesus Christ that “serves as a shrine to thousands of faithful in the El Paso and Southern New Mexico area.” MtCristoRey.com, <https://perma.cc/2DKF-GQ55> (last visited May 7, 2026). In 1933, a local parish priest, Father Lourdes Costa, “envisioned erecting a monument at the summit of this glorious mountain” and “preached to [his] congregation sharing his vision of a cross on the mountaintop.” *Id.* At Father Costa's urging, the Roman Catholic Diocese of El Paso, Texas, purchased the property in question and employed the world-famous sculptor Urbici Soler to realize Father Costa's vision.<sup>1</sup> *Id.* In 1940, the monument that sits atop Mount Cristo Rey today was completed. *Id.*

The mountaintop shrine is the site of annual pilgrimages. On the feast day of Christ the King each fall, as many as 40,000 faithful climb Mount Cristo Rey to “marvel at the beauty of the monument and the view offered from the summit” and to participate in a mass. *Upcoming Events*, MtCristoRey.com, <https://perma.cc/AQ9C-2D9V> (last visited May 7, 2026). “Some of the faithful make the 5 mile journey barefooted, while fewer make the ascent on their knees.” *Id.* Thousands of faithful also ascend the mountain as part of a separate annual pilgrimage, the most recent of

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<sup>1</sup> The Diocese of Las Cruces was established in 1982, assuming jurisdiction over the New Mexico counties that had previously been part of the Diocese of El Paso. *Beginnings*, Roman Catholic Diocese of Las Cruces, <https://tinyurl.com/2brnpckr> (last visited May 7, 2026).

which recently took place above “an active construction zone,” as the Government began work constructing the border wall on nearby property. Martha Pskowski, *Blasting Begins on Mount Cristo Rey*, El Paso Times (Apr. 1, 2026), <https://perma.cc/3KC2-SEZ3>.

## **II. Granting Leave to Deposit Would Prevent the Diocese from Being Fully Heard on Its First Amendment and RFRA Defenses.**

Over the past year, the Government has repeatedly sought the Diocese’s consent to condemn the property in question. The Diocese has consistently conveyed that condemnation of the property would substantially burden the free exercise of religion by the Diocese and the faithful who seek to commune with God on Mount Cristo Rey. As the Diocese explained in a public comment to the U.S. Customs and Border Protection’s proposed plans for the property:

The erection of a border wall through or along this holy site could irreparably damage its religious and cultural sanctity, obstruct pilgrimage routes, and transfer sacred space into a symbol of division. Any federal action to seize this land, construct physical barriers, or impede access to Mounty Cristo Rey would constitute a significant infringement on religious freedom and the rights of worship, which are protected under both the First Amendment to the U.S. Constitution and the Religious Freedom Restoration Act.

Ex. A.

In spite of these concerns, the Government is pressing forward with its plans and is insisting on effecting the condemnation through the expedited procedures provided by the Declaration of Taking Act (Taking Act). Under that Act, the “filing of a declaration of taking and depositing in the court . . . the estimated compensation stated in the declaration” automatically causes “title to the estate or interest specified in the declaration” to “vest[] in the Government” and the property in question to be “condemned and taken for the use of the Government.” 40 U.S.C. § 3114(b)(1)–(2). The Taking Act thus “enables the United States to acquire title simply by depositing funds ‘for or on account’ of the just compensation to be awarded to the owners, rather than making

payment pursuant to a court order.” *United States v. Dow*, 357 U.S. 17, 23 (1958); *Likins-Foster Honolulu Corp. v. Comm’r of Internal Revenue*, 417 F.2d 285, 289 (10th Cir. 1969) (“In condemnations proceedings, as provided by [40 U.S.C. § 3114], title . . . vest[s] in the United States upon the filing of the declaration of taking and the payment into court of the estimated compensation.”).

Thus, if this Court grants the Government’s motion for leave to deposit, the Diocese would not be able to assert its First Amendment and RFRA defenses until after the Government has effected a taking and title has vested in the United States. This Court should not permit this incursion on religious liberty before the Diocese’s First Amendment and RFRA defenses are even entertained. Instead, it should deny the motion and defer any transfer of title until the Diocese is fully heard regarding those defenses.<sup>2</sup>

The Diocese acknowledges that the Taking Act does not expressly contemplate the denial of leave to deposit estimated just compensation under these fairly unusual circumstances.<sup>3</sup> But

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<sup>2</sup> The Government argues that its motion, if granted, will not affect the Diocese’s substantial rights because it will “only effectuate[] transfer of title,” and this Court “separately will determine when possession of the condemned property interest will transfer to the United States.” Mot. 2–3, ECF No. 6. But that is disingenuous. The Government routinely argues in other condemnation cases that it is entitled to possession merely because it has already taken title. *See, e.g., Ex. B., Pl.’s Partially Opposed Mot. For Order of Immediate Possession 3, United States v. 0.546 Acres of Land, More or Less, Situate in Starr Cnty.*, No. 25-cv-188 (S.D. Tex. June 4, 2025), ECF No. 25 (“Because it Acquired this Property Under the Declaration of Taking Act, the United States is Entitled to Immediate Possession.”).

<sup>3</sup> Although First Amendment and RFRA defenses to condemnation proceedings are rare, they are not unheard of. Indeed, the Tenth Circuit has reached the merits of a RFRA defense to a condemnation proceeding. *Thiry v. Carlson*, 78 F.3d 1491, 1495–96 (10th Cir. 1996). And other appellate courts have vacated district court decisions that gave insufficient consideration to religious landowners’ First Amendment objections to condemnation proceedings. *Yonkers Racing Corp. v. City of Yonkers*, 858 F.2d 855, 872–73 (2d Cir. 1988); *Pillar of Fire v. Denv. Urb. Renewal Auth.*, 509 P.2d 1250, 1254–55 (Colo. 1973); *see also Chabad Lubavitch of the Beaches, Inc. v.*

that is of no moment. “RFRA is no ordinary statute,” but a ““super-statute.”” *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1146 (10th Cir. 2013) (citation omitted), *aff’d*, 573 U.S. 682 (2014). RFRA “applies to all Federal law, and the implementation of that law, whether statutory or otherwise, and whether adopted before or after” RFRA’s date of enactment. 42 U.S.C. § 2000bb-3(a). It therefore “cut[s] across all other federal statutes . . . and modif[ies] their reach.” Michael Stokes Paulsen, *A RFRA Runs Through It: Religious Freedom and the U.S. Code*, 56 Mont. L. Rev. 249, 253 (1995). In *Hobby Lobby*, for example, the Supreme Court held that RFRA required the government to adopt a less restrictive means of implementing the Patient Protection and Affordable Care Act (ACA)’s contraceptive mandate by permitting employers with religious objections to “self-certify” their opposition to “providing coverage for particular contraceptive services” and for such employers’ insurance issuer or third-party administrator to separately provide coverage. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 730-31 (2014). This procedure existed nowhere in the ACA’s statutory text and was available only to religious nonprofits under the statute’s implementing regulations. *See id.* at 731. But the Court nevertheless held that RFRA required the provision of that accommodation to employers with religious objections. *Id.*

A similar result obtains with regard to the Government’s motion for leave to deposit. Although in ordinary condemnation cases the Taking Act permits immediate and automatic transfer of title to the United States upon filing of declaration of taking and deposit of estimated just compensation, 40 U.S.C. § 3114(b)(1), that is not the case in circumstances like these, where

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*Inc. Vill. of Atl. Beach*, No. 22-cv-4141, 2022 WL 22946691, at \*10 (E.D.N.Y. Sept. 6, 2022) (preliminarily enjoining condemnation of a religious landowner’s property based on First Amendment defense).

a religious landowner asserts defenses under the First Amendment or RFRA to the condemnation. Were it otherwise, the Taking Act would automatically permit at least temporary transfer of title and potentially irreparable injury to landowners' exercise of religion without any consideration of their defenses. Under the circumstances presented here, RFRA modifies the reach of the Taking Act and requires transfer of title to be deferred until the Diocese's First Amendment and RFRA objections are ventilated.

### CONCLUSION

For all of the foregoing reasons, the Diocese respectfully requests that this Court deny the Government's motion for leave to deposit estimated just compensation or otherwise defer transfer to the United States of title to the property in question until after the Diocese's First Amendment and RFRA defenses are fully resolved.

Dated: May 8, 2026

Respectfully submitted,

/s/ Seth Wayne

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**CERTIFICATE OF SERVICE**

I hereby certify that, on May 8, 2026, I electronically filed the foregoing with the Clerk of the Court and served a copy upon all counsel of record registered to receive notice via the Court's CM/ECF system.

*/s/ Seth Wayne*  
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Seth Wayne

# EXHIBIT A

## **Public Comment Submission**

**From:** Roman Catholic Diocese of Las Cruces

**Re:** U.S. Customs and Border Protection Request for Input on Border Barrier Construction in Doña Ana County, New Mexico (Dated June 3, 2025)

**Date:** July 3, 2025

To Whom It May Concern:

The Roman Catholic Diocese of Las Cruces (hereinafter referred to as “Diocese”) respectfully submits this comment in response to the Request for Input regarding proposed border barrier construction in Doña Ana County, New Mexico, issued on June 3, 2025. The Diocese opposes any construction which would impair the religious, cultural, and historical significance of Mount Cristo Rey.

Over the past several months, the Diocese has received multiple inquiries and requests from the United States Department of Justice (“DOJ”) seeking access to Mount Cristo Rey, located on land owned by the Diocese, for the purposes of evaluation for and possible development of a border wall. Throughout that period of time, the Diocese has expressed its opposition to any efforts by the U.S. Customs and Border Protection (“CBP”), the DOJ, or any other federal agency, to construct a border wall or related infrastructure on its property at Mount Cristo Rey. Over the course of the Diocese’s communications with DOJ regarding this proposed project, the scope of the right of entry requested by DOJ varied significantly, and the impact of the project proposed through the June 3, 2025 Request for Input on Border Barrier Construction in Dona Ana County, New Mexico on Mount Cristo Rey is not clear – and does not appear to be consistent with the requests previously made to the Diocese.

### **Religious and Cultural Significance of Mount Cristo Rey**

In addition to being a natural landmark visible throughout the borderland region of New Mexico, Texas, and northern Mexico, Mount Cristo Rey is a site of profound religious, cultural, and historical importance. For nearly a century, pilgrims have ascended Mount Cristo Rey in devotion and prayer, many of them making the trek annually for the Christ the King pilgrimage, a tradition dating back to the 1930s, when construction began on the iconic 29-foot statue of Christ at its summit.

Thousands of faithful each year from across the borderland region engage in pilgrimage to this site, viewing the mountain not just as a monument, but also as a place of prayer where faith transcends borders. Pilgrims to Mount Cristo Rey seek a place of prayer, reflection, and communion with God. For many migrants, Mount Cristo Rey represents hope, and is a reminder of the presence of God in their lives, even in the midst of a long, harsh and often perilous journey. The Diocese has taken, and continues to take, the position that a grant of entry onto land it owns for CBP purposes, whether temporary or permanent, would deter those pilgrims and migrants from

exercising their religion as they have done for almost one hundred years. A place of hope, faith, and communion would become a place of fear, exclusion and division.

The erection of a border wall through or along this holy site could irreparably damage its religious and cultural sanctity, obstruct pilgrimage routes, and transform the sacred space into a symbol of division. Any federal action to seize this land, construct physical barriers, or impede access to Mount Cristo Rey would constitute a significant infringement on religious freedom and the rights of worship, which are protected under both the First Amendment to the U.S. Constitution and the Religious Freedom Restoration Act (RFRA).

### **Conclusion and Request**

The Roman Catholic Diocese of Las Cruces respectfully but firmly urges CBP, the DOJ, and the Department of Homeland Security to exclude Mount Cristo Rey and surrounding areas from all border barrier planning, surveying, or construction activities. We welcome continued dialogue and strongly encourage the agency to pursue alternative border management strategies that respect religious heritage, community values, and human dignity.

Sincerely,

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# EXHIBIT B

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CASE NO. 7:25-CV-00188
	§	
0.546 ACRES OF LAND, MORE OR	§	
LESS, SITUATE IN STARR COUNTY,	§	
STATE OF TEXAS; AND DAVID	§	
DOMINGO PORRAS, et al.;	§	
	§	
<i>Defendants.</i>	§	

**PARTIALLY OPPOSED MOTION OF THE UNITED STATES OF AMERICA  
FOR ORDER OF IMMEDIATE POSSESSION**

The United States of America (“United States”) moves for an order requiring all Defendant(s) to this action and all persons in possession or control of the property described in the Complaint and Declaration of Taking to immediately surrender possession of the condemned estate to the United States.

**I. INTRODUCTION**

The United States requests an order granting immediate possession of the condemned estate. Congress provided funding for border barrier along the southwest border in the Rio Grande Valley Sector. *See* Consol. Appropriations Act, 2021, Pub. L. 116-260, div. F, tit. II, 134 Stat. 1452, (2020). On January 20, 2025, President Trump issued an Executive Order directing the Secretary of the Department of Homeland Security to take all appropriate action, including construction of physical barriers, to secure the southern border of the United States. *See* Exec. Order No. 14165, 90 Fed. Reg. 8467 (2025). The United States plans to construct border barrier in

Starr County, Texas that Congress specifically designated to be constructed in the Rio Grande Valley, and the identified tract listed in the above styled and numbered cause is a part of the project. As explained below, time is of the essence. Accordingly, the United States respectfully requests this Court to enter an Order of Immediate Possession.

## II. BACKGROUND FACTS

On April 22, 2025, the United States filed a Complaint in Condemnation against 0.546 acres of land situated in Starr County, Texas and identified as tract RGV-RGC-6078 (“Subject Property”). (Dkt. No. 1).

The estate taken is a fee simple, subject to existing easements for public roads and highways, public utilities, railroads, and pipelines; and subject to the mineral interests of third parties; excepting and reserving to the Grantor all interests in minerals and appurtenant rights for the exploration, development, production, and removal of said minerals; excepting and excluding all interests in water rights and water distribution and drainage systems, if any, provided that any surface rights arising from such water rights or systems are subordinated to the United States’ construction, operation, and maintenance of the border barrier.

Pursuant to the Declaration of Taking Act, 40 U.S.C. § 3114, and Federal Rule of Civil Procedure (“Rule”) 71.1 (formerly Rule 71A), the United States filed a Complaint (Dkt. No 1), Declaration of Taking (Dkt. No. 2) and deposited \$6,240.00 in the Registry of the Court (Dkt. No. 9) as estimated just compensation to acquire a fee simple interest in the Subject Property. The United States will use this property to construct, install, operate, and maintain border barrier, including gates and power to operate such gates as well as roads that will be required to construct, operate, and maintain the border barrier. *See* Declaration of Taking, Schedules “B” and “D”.<sup>1</sup> The

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<sup>1</sup> Dkt. Nos. 2-1 at 4 & 2-1 at 9-12.

Fiscal year 2021 Department of Homeland Security Appropriations Act appropriated funding to acquire the interest sought in this action. *See* Declaration of Taking, Schedule “A”;<sup>2</sup> *see also* Consolidated Appropriations Act, 2021, Pub. L. 116-260, div. F, tit. II, 134 Stat. 1452 (2020) (appropriating funds).

### III. ARGUMENT AND AUTHORITIES

#### A. *Because it Acquired this Property Under the Declaration of Taking Act, the United States is Entitled to Immediate Possession.*

The United States initiated this case by filing a Complaint and a Declaration of Taking and depositing estimated just compensation into the Registry of the Court, as required by the Declaration of Taking Act (“Act”), 40 U.S.C. § 3114 (formerly 40 U.S.C. § 258a). The filing and deposit immediately vest title to the acquired property in the United States. *See* 40 U.S.C. §3114(b)(1). The Act specifically provides that upon the filing of the declaration of taking, “the court may fix the time within which, and the terms on which, the parties in possession shall be required to surrender possession to the petitioner . . .”. 40 U.S.C. § 3114(d)(1). The purpose of the Declaration of Taking Act is to give the Government immediate possession of the property and give the owner immediate compensation, in the form of estimated compensation, in return for title to the land. *United States v. Miller*, 317 U.S. 369 (1943). As the Court explained,

[t]he purpose of the statute is twofold. First, *to give the Government immediate possession of the property* and to relieve it of the burden of interest . . . .  
Secondly, to give the former owner, if his title is clear, immediate cash compensation to the extent of the Government’s estimate of the value of the property.

*Id.* at 381 (emphasis added). The transfer of title is immediate upon the filing of the declaration and deposit of estimated just compensation. *See, e.g., Catlin v. United States*, 324 U.S. 229, 238

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<sup>2</sup> *Id.*

(1945) (holding that a landowner may not delay or prevent the vesting of title by an interlocutory appeal).

The Supreme Court reaffirmed that the Declaration of Taking Act immediately confers to the United States title and a right to possession in *Kirby Forest Industries, Inc. v. United States*, 467 U.S. 1 (1984). There it reviewed the methods by which the United States may appropriate property, primarily comparing use of a declaration of taking with a “straight-condemnation” proceeding. *Id.* at 3-5. In a “straight condemnation,” the United States only files a complaint in condemnation and only acquires title after the determination and payment of just compensation. *Id.* at 4. In contrast, the Court noted that the Declaration of Taking Act is “[a] more expeditious procedure . . .”. *Id.* The Court held that upon the filing of a declaration of taking and deposit of estimated just compensation, “[t]itle and right to possession thereupon vest immediately in the United States.” *Id.* at 5. Further distinguishing a “straight-condemnation” case from one brought under 40 U.S.C. § 3114, the Court explained that the adoption of the Declaration of Taking Act was “for the purpose of affording the Government the option of peremptorily appropriating land prior to final judgment, thereby permitting immediate occupancy . . .”. *Id.* at 12. Finally, as stated in *Narramore v. United States*, Congress enacted the Declaration of Taking Act “[t]o give the Federal Government immediate possession of condemned property and to avoid delays in federal construction projects...”. 960 F.2d 1048, 1050 (Fed. Cir. 1992).

Accordingly, because the United States has acquired the property at issue under the Declaration of Taking Act, the United States is entitled to immediate possession of the property. *See Miller*, 317 U.S. at 381; *Kirby Forest Indus.*, 467 U.S. at 5, 12.

*B. The United States Needs Immediate Possession in Order to Meet the Congressional Directive to Construct Fencing in the Rio Grande Valley Sector and the Executive Order to Secure the United States' Southern Border.*

Congress mandated that the Department of Homeland Security (“DHS”) achieve and maintain operational control of the international land border between the United States and Mexico. *See* The Secure Fence Act of 2006, Pub. L. 109-367, § 2, 120 Stat. 2638 (Oct. 26, 2006). As part of achieving operational control of the border, Congress provided DHS with funding for this project with the most recent being \$1.375 billion dollars in fiscal year 2020. *See* Consol. Appropriations Act, 2021, Pub. L. 116-260, div. F, tit. II, 134 Stat. 1452, (2020). On January 20, 2025, President Trump signed Executive Order 14165, directing the Secretary of the Department of Homeland Security to “take all appropriate action to deploy and construct temporary and permanent physical barriers to ensure complete operational control of the southern border of the United States.” *See* Exec. Order No. 14165, 90 FR 8467 (2025).

Consistent with Congress’s mandate that DHS achieve and maintain operational control of the border and the President’s Executive Order, the United States is requesting immediate possession of the Subject Property. The construction of border barrier on the Subject Property is needed to improve security along the border of the United States. More specifically, the United States needs immediate possession in order to begin construction, installation, operation and maintenance of a border barrier, including gates, power lines and roads in Starr County, Texas.

The United States has awarded task orders and issued notices to proceed with material acquisition, fabrication, construction, and other activities related to border barrier construction. Construction contracts for the Subject Property have already been awarded and construction will begin upon the acquisition of land necessary for this project. Under the Declaration of Taking Act, the United States is entitled to immediate possession of the condemned estate once the Declaration

of Taking is filed and the estimate of just compensation is deposited with the Court. *United States v. Miller*, 317 U.S. at 381; *see also Kirby Forest Industries, Inc. v. United States* 467 U.S. at 5. The United States has already completed the filing and deposit. Furthermore, transfer of possession will not impact the landowners' right to contest just compensation at a later date, but it will allow the United States the opportunity to complete the necessary construction to satisfy Congress' mandate and comply with the President's Executive Order to enhance the security at this nation's southern border. In addition, the United States will incur significant monetary penalties arising from a delay in construction if possession to the Subject Property is not transferred promptly.

Because of the United States' demonstrated need for immediate access, this Court should grant immediate possession of the interest sought.

#### **IV. CERTIFICATE OF CONFERENCE**

On May 21 and 29, 2025, Plaintiff reached out by phone to all the known parties in this case, Juan Porras, David Porras, Aminta Martinez, Raymond Martinez, Gilbert Martinez, and Peter A. Martinez advised they are unopposed to the filing and all the others are opposed or didn't answer the calls. Since several of the parties have not returned our calls, on May 28, 2025, Plaintiff sent out a letter to all known parties advising of this filing and asking them to give us a call. Because the majority were either opposed or did not answer our calls, this Motion is partially opposed.

#### **V. CONCLUSION**

Based on the foregoing, the United States submits that it is entitled to the entry of an order of immediate possession and requests that the Court grant this motion and enter an order of possession giving the United States immediate possession of the condemned estate described in Schedule E of the Declaration of Taking. (Dkt. No. 2-1 at 14)

Respectfully submitted,

**NICHOLAS J. GANJEI**  
United States Attorney  
Southern District of Texas

By: /s/ José Angel Flores, Jr.  
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**CERTIFICATE OF SERVICE**

I, José Angel Flores, Jr, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on June 4-5, 2025, a copy of the foregoing was served on all known parties in accordance with the Federal Rules of Civil Procedure.

By: /s/ José Angel Flores, Jr.  
**JOSÉ ANGEL FLORES, JR.**  
Assistant United States Attorney