IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

MARIO HERNANDEZ ESCALANTE,	§	
	§	
Petitioner,	§	
	§	
v.	§	
	§	Civil Action No. 9:25-cv-182-MJT
KRISTI NOEM, TODD M. LYONS, NIKITA BAKER,	§	
	§	
	§	
Respondents.	§	

RESPONDENTS' OBJECTION TO REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Respondents, by and through undersigned counsel, hereby submit an objection to the July 11, 2025 Report and Recommendation of United States Magistrate Judge Stetson (the "R&R"), ECF No. 31.

BACKGROUND

I. Factual background.

Petitioner has been detained by U.S. Immigration and Customs Enforcement ("ICE") for the purpose of effectuating a reinstated final order of removal. Petitioner is a native and a citizen of El Salvador who first entered the United States on an unknown date at an unknown location in Texas without being inspected or paroled by an immigration officer. On or about December 14, 1993, Petitioner applied for asylum. On September 30, 1998, his application was denied and he was served with a Form I-862 Notice to Appear placing him in removal proceedings before the Immigration Court. On or about March 18, 1999, Petitioner failed to appear at his this removal hearing and an immigration judge ("IJ") ordered Petitioner to be removed from the United States to El Salvador. Declaration of Anthony Bennett ("Bennett Decl."), *attached hereto as* Exhibit "A,"

¶ 4. On May 13, 2005, Petitioner applied for temporary protected status. That petition was denied. On October 6, 2006, Petitioner was apprehended by ICE and processed as a fugitive alien who was the subject of a final removal order. *Id.* ¶ 18. On March 28, 2007, Petitioner was removed to El Salvador. *Id.* ¶ 19.

Petitioner again impermissibly entered the United States. Petitioner's final order of removal was reinstated, *id.* ¶ 24, and he was removed to El Salvador for a second time on February 23, 2011, *id.* ¶ 29.

Undeterred by two prior removals., Petitioner continued in his disregard of United States immigration laws and again illegally reentered the United States. ICE apprehended him on August 10, 2018. *Id.* ¶ 36. His prior order of removal to El Salvador was reinstated. *Id.* ¶ 35. This time, however, Petitioner claimed a fear of persecution if returned to El Salvador. On December 12, 2019, an IJ granted Petitioner deferral of removal to El Salvador, he was placed in reasonable fear proceedings, and ultimately placed in Withholding Only proceedings before the Immigration Court. On February 14, 2020, Petitioner was released from ICE detention and placed on supervised release. *Id.* ¶ 41. His release was partially motivated by the fact that at that time there was not a third country that would accept him for removal. *Id.*

On June 3, 2025, ICE arrested Petitioner when he appeared for his scheduled check in and revoked his supervised release. *Id.* ¶ 45. Petitioner is currently in custody at the ICE facility in Livingston, Texas. On June 18, 2025 Respondents served Petitioner with a Notice of Removal indicating that Defendants intend to remove him to Mexico. *Id.* ¶ 48.

II. Petitioner's Criminal History

Petitioner has an extensive criminal history. On April 19, 2006, Petitioner was found guilty of driving under the influence in violation of Virginia law and sentenced to 12 months imposed with 11 months suspended. Bennett Decl. ¶ 17. On February 23, 2010, Petitioner was found guilty of an alcohol safety program violation of Virginia Criminal Code 18.2-271.1 at Arlington County General District Court, Arlington, Virginia for which a sentence of eleven (110) months was imposed. *Id.* ¶ 21. On August 4, 2010, Petitioner was found guilty of driving under the influence in violation of Virginia law and sentenced to 12 months imposed with 10 months and 20 days suspended. *Id.* ¶ 22. On June 14, 2018, Petitioner was found guilty of felony simple assault on a law enforcement officer in violation of Virginia law and sentenced to three years imposed with two years and six months suspended. *Id.* ¶ 31. On September 14, 2018, Petitioner was convicted in the United States District Court for the Eastern District of Virginia of illegal entry after removal in violation of federal law for which he was sentenced to 12 months. *Id.* ¶ 37. On February 17, 2022, Petitioner was found guilty of driving under the influence in violation of Virginia law and sentenced to 30 days. *Id.* ¶ 43. On March 24, 2022, Petitioner was convicted of violation of probation in violation of Virginia law and was sentenced to two years and six months. *Id.* ¶ 44.

LEGAL STANDARD

I. Legal framework governing objections to reports and recommendations.

The Court reviews the objected-to portions of a magistrate judge's report and recommendation *de novo*. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). In conducting the analysis, the Court may also consider new evidence raised for the first time in an objection to a magistrate judge's report and recommendation. *See Performance Autoplex II, Ltd. V. Mid-Continent Cas. Co.*, 322 F.3d 847, 862 (5th Cir. 2003) (suggesting factors to consider in determining whether to accept additional evidence); *Freeman v. Cnty. of Bexar*, 142 F.3d 848, 853 (5th Cir. 1998).

ARGUMENT

I. The Magistrate Judge erred in finding that Respondents failed to satisfy their burden of establishing a substantial likelihood that Petitioner would be removed in the reasonably foreseeable future.

The Magistrate Judge erred in shifting the burden to Respondents to establish that there is a substantial likelihood of Petitioner's removal in the reasonably foreseeable future and further erred by finding that Respondents cannot carry that burden.

a. The Magistrate Judge erred in shifting the burden to Respondents when Petitioner failed to satisfy his initial burden of establishing that there is no likelihood of removal in the reasonably foreseeable future.

First, the Magistrate Judge erred in shifting the burden to the Respondent to justify continued detention. ECF No. 31 at 9. In the R&R, the Magistrate Judge found that "upon return to custody, it is now up to INS to show that there is a substantial likelihood of removal to Mexico in the foreseeable future."[1] *Id* at 10. This was impermissible. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that Section 1231(a)(6) "read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States" but "does not permit indefinite detention." 553 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. In *Zadvydas*, the Court identified six months as a presumptively reasonable period of post-order detention but made clear that the presumption does not mean that all aliens not ordered removed must be released after six months.

[1] The Magistrate Judge indicated that it is "up to INS to show there is a substantial likelihood of removal to Mexico…." ECF No. 31 at 10. But INS no longer exists. It was dissolved on March 1, 2023. The functions of INS were divided among three new agencies in the Department of Homeland Security: (1) United Staes Customs and Immigration Services ("USCIS"); (2) U.S. Immigration and Customs Enforcement ("ICE"); and (3) U.S. Customs and Border Protection ("CBP").

For an alien to establish a prima facie claim for habeas relief under *Zadvydas*, the alien must first establish that he has been in post-order custody for more than six months at the time the habeas petition is filed. *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011). Then, the alien must provide a good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. *Andrade v.* Gonzales, 459 F.3d 538, 543–44 (5th Cir. 2006) ("The alien bears the initial burden of proof in showing that no such likelihood of removal exists. In the instant case, Andrade has offered nothing beyond his conclusory statements suggesting that he will not be immediately removed to Cape Verde following resolution of his appeals. His constitutional claim is meritless."); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) ("Therefore, in order to state a claim under *Zadvydas*, the alien must not only show the post-removal order detention in excess of six months but must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."); *Khan v. Fasano*, 194 F.Supp.2d 1134, 1136 (S.D. Cal. 2001).

The "reasonably foreseeable future" is not a static concept. Instead, it is fluid and country-specific, significantly depending on the diplomatic relations between the United Staes and the country that will receive the removed alien. The processes for obtaining a temporary travel document from another country are complex, multi-faceted, and include considerations of diplomacy that are beyond the control of ICE. The Northern District of Georgia has explained:

> Clearly, it is no secret that the bureaucracies of second and third world countries, and not a few first world countries, can be inexplicably slow and counter-intuitive in the methods they employ as they lumber along in their decision-making. To conclude that a deportable alien who hails from such a country must be released from detention, with the likely consequence of flight from American authorities back to the hinterlands, simply because his native country is moving slow, would mean that the United States has effectively ceded its immigration policy to those other countries. The Court does not read the holding of *Zadvydas* as requiring such an extreme result.

Fahim v. Ashcroft, 227 F. Supp. 2d 1359, 1367 (N.D. Ga. 2002).

Moreover, even a "lack of visible progress ... does not in and of itself meet [the petitioner's] burden of showing that there is no significant likelihood of removal." *Id.* at 1366. "It simply shows that the bureaucratic gears of the [federal immigration agency] are slowly grinding away." *Khan*, 194 F.Supp.2d at 1137; *Idowu v. Ridgs*, No. 3:03-cv-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003).

"*The burden is on the alien to show that there is no reasonable likelihood of repatriation.*" *Khan*, 194 F.Supp.2d at 1136 (emphasis added). Mere conclusory allegations are insufficient to meet the alien's burden of proof. *Nagib v. Gonzales*, No. 3:06-cv-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-cv-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004). The Northern District of Texas has clarified:

> To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that "the circumstances of his status" or the existence of "particular and individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4; *see also Akinwale*, 287 F.3d at 1052; *Ali v. Gomez*, No. SA-11-CA-726-FB, 2012 WL 13136445, *6 (W.D. Tex. March 14, 2012) ("But, within the context of *Zadvydas*' analytical framework, petitioner has offered only 'conclusory statements' to show he will not immediately be removed to Pakistan following the resolution of his administrative actions that are preventing his removal (unless he is granted a withholding of removal)."). If the alien does "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701.

The R&R fails to identify what evidence Petitioner offered to satisfy his burden to establish that there is no likelihood of removal in the reasonably foreseeable future. In fact, the R&R does not identify any evidence submitted by Petitioner that satisfies this burden. The R&R explains that "Petitioner argues in response that the presumptive six-month period in *Zadvydas* has expired thereby shifting the burden to the Government…" ECF No. 31, at 7. The R&R further explains, "[a]s indicated by the Fifth Circuit, upon return to custody, it is now up to INS to show that there is a substantial likelihood or removal to Mexico in the foreseeable future." ECF No. 31, at 10. Read together, the R&R demonstrates that the Magistrate Judge improperly shifted the burden to the Respondents merely because the presumptive six-month period in *Zadvydas* had expired.

First, contrary to the R&R's suggestion, it is not the Fifth Circuit's holding in *Zadvydas* on remand that once the six-month period expires, the burden shifts to the Respondents. On remand, the Fifth Circuit merely recognized that given the record and other opinions, *Zadvydas* "provide[d] good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 285 F.3d 398, 404 (5th Cir. 2002). That finding was not based solely on the lapse of six months. Instead, it was due to the fact that the removal was "no longer practically attainable" for the aliens, *Zadvydas*, 533 U.S. at 690, and therefore the period of detention at issue was "indefinite" and "potentially permanent," *id.* at 690–91. Factually important in that conclusion was that the petitioner in *Zadvydas* was essentially stateless. *Id.* at 686

Second, shifting the burden merely based on the expiration of the six-month period is inconsistent with *Zadvydas* and Fifth Circuit precent imposing the initial burden on the Petitioner to establish that no such likelihood or removal exists. The Fifth Circuit has made clear that Petitioner "bears the initial burden of proof in showing that no such likelihood of removal exists." *Andrade*, 459 F.3d at 543 (citing *Zadvydas*, 533 U.S. at 701). Without more, the Magistrate Judge erred in shifting the burden to establish a likelihood that Petitioner will be removed in the reasonably foreseeable future to Respondents.

Third, the R&R failed to identify any evidence submitted by Petitioner to satisfy his burden. In the Petition, Petitioner alleges that he "has been informed that Respondents are seeking to remove him to a third country, but upon information and belief, as of the time of the filing, no third country has been identified to accept Mr. Hernandez. He is not likely to be imminently removed." ECF No. 1, at 2, ¶ 4. He continues, "[a]bsent a third country willing to accept him or reconsideration of the protection he has been granted, ICE's efforts to obtain a third country of removal are merely speculative…." *Id.* ¶ 5. In Petitioner's Reply to Respondents' Opposition on the Merits and Opposition to Respondents' Motion to Dismiss or Stay the Merits of the Petition, Petitioner included a section arguing that the burden has shifted to Respondents. *See* ECF No. 14, at 10. There, Petitioner argues,

> [c]ombined with Mr. Hernandez's stated fear of going to Mexico because his brother was killed there, and the government's continuing obligation to comply with the obligation in *D.V.D.*, Mr. Hernandez has met his initial burden that he is outside the six-month period contemplated in *Zadvydas* and has established "good reason to believe that there is no significant likelihood or removal in the reasonably foreseeable future[.]"

ECF No. 14, at 10 (quoting *Zadvydas*, 533 U.S. at 701. As the Court is aware, the United States Supreme Court has stayed the *D.V.D.* injunction so Petitioner's reliance on *D.V.D.* in an attempt to shift the burden to Respondents no longer carries any weight. And the remaining argument is merely Petitioner's conclusory allegation that there is no significant likelihood of removal in the foreseeable future. But as discussed *supra*, Petitioner cannot satisfy his burden of proof to show no substantial likelihood of removal exists through "conclusory statements suggesting that he will not be immediately removed to [Mexico]." *See Andrade*, 459 F.3d at 543–44; *see also Ali*, 2012 WL 13136445, at *6; *Nagib*, 2006 WL 1499682, at *3; *Idowu*, 2003 WL 21805198, at *4.

Therefore, it is not surprising that the R&R failed to identify any proof submitted by Petitioner to support his argument that no likelihood of removal exists because Petitioner failed to offer any. In this regard, Petitioner failed to satisfy his burden of proof and the Magistrate Judge should not have shifted the burden to Respondents to establish a substantial likelihood of removal in the reasonably foreseeable future.

b. Respondents are prepared to remove Petitioner upon the completion of his due process.

Respondents have begun the process of removing Petitioner to Mexico and are also exploring the possibility of removing Petitioner to Canada. However, Respondents efforts have been slowed due to Petitioner's fear claim as to Mexico and his failure to submit necessary paperwork to explore removal to facilitate the possibility of removal to Canada.

On June 3, 2025, Respondents issued a notice of Revocation of Release to Petitioner and advised him that his case was under current review by Mexico for issuance of a travel document. Bennett Decl. ¶ 45. On June 16, 2025, Respondents reissued a notice of Revocation of Release to Petitioner and advised him that his case was under current review by Mexico for issuance of a travel document. Bennett Decl. ¶ 47. Two days later, Petitioner was served with a notice of removal letter informing him that ICE intends to remove him to Mexico under INA 241(b)(1)(C) with a Form I-241 Request for Acceptance of Alien as to Mexico. *Id.* ¶ 48. The United States is regularly successful in removing individuals such as Petitioner to Mexico as a third country removal. *Id.* And as Thomas Giles, ICE Enforcement and Removal Operations Interim Assistant Director for Field Operations, has testified, Mexico has agreed to accept removals of citizens of El Salvador, such as Petitioner. ECF No. 32-2, at 84:16-85:8 (testimony of Thomas Giles). Prior to Respondents' ability to finalize his removal to Mexico, Petitioner expressed a fear of being removed to Mexico. Bennett Decl. ¶ 51. He also expressed interest in removal to Canada as an alternative to Mexico. *Id.* Because Petitioner expressed fear of removal to Mexico, his case was referred to the United States Citizenship and Immigration Services ("USCIS") for a screening of eligibility for protection. *Id.* ¶ 52. While this process unfolds, the alien will not be removed to a third country. *Id.* Petitioner was scheduled to receive his third country screening with USCIS on July 25, 2025. *Id.* ¶ 58. Although ICE made Petitioner available for the screening, because his attorneys were not available for the screening, it did occur. *Id.* Because Petitioner is subject to a final order of removal, Respondents are prepared to remove him upon completion of the due process he is entitled to as a result of his fear claim. *Id.* ¶ 59.

Separately, the Respondents have started exploring the possibility of removing Petitioner to Canada given his expressed interest in removal to Canada. Petitioner's cooperation is necessary for this process to proceed. Unfortunately, Petitioner has failed to complete forms that are necessary for Respondents to facilitate his removal to Canada. *Id.* ¶ 56. This has prevented Respondents from taking additional steps to secure Petitioner's removal to Canada.

Respondents are taking steps to promptly remove Petitioner from the United States. Their efforts are slowed by Petitioner's failure to provide necessary information to facilitate his removal to Canada, and by ensuring Petitioner receives the appropriate process with respect to his claim of fear of removal as to Mexico. But nothing in the record tends to establish that Respondents will not be able to remove Petitioner to Mexico once the process of evaluating his fear claim has completed. To the contrary, the United States is prepared to remove Petitioner upon completion of that process. Bennett Decl. ¶ 59. Similarly, there is nothing in the record that shows Respondents will not be able to continue to expeditiously pursue removal to Canada upon receipt of the appropriate paperwork from Petitioner.

In sum, despite the fact that the burden should not shift to Respondents, the Bennett Declaration demonstrates that Respondents have taken all reasonable steps to secure Petitioner's removal to Mexico. Unlike *Zadcydas*, where the period of detention was indefinite and potentially permanent, the period of detention at issue here has a reasonably likely termination point—the conclusion of Petitioner's screening regarding his fear of removal to Mexico. Accordingly, the Magistrate Judge erred in recommending the Petitioner's release based on an erroneous finding that there was no reasonable likelihood of removal in the reasonably foreseeable future.

II. The Magistrate Judge improperly exercised jurisdiction in this matter despite the clear jurisdiction stripping provisions of 8 U.S.C. § 1252.

The Magistrate Judge also erred by exercising jurisdiction despite the clear jurisdiction stripping provisions of 8 U.S.C. § 1252. To the extent that Petitioner is challenging Respondents' ability to effectuate his final order of removal, the claim is jurisdictionally barred. The jurisdiction of federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Courts "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen*, 511 U.S. at 377 (internal citations omitted). Relevant to this case is the Immigration Reform and Immigrant Responsibility Act ("IIRIRA"). Several of the IIRIRA's provisions—as well as provisions of the REAL ID Act of 2005, which refined IIRIRA's judicial review scheme—deprive this Court of jurisdiction over this matter.

First, 8 U.S.C. § 1252(g) deprives the Court of jurisdiction to review claims arising from the three discrete actions identified in § 1252(g), including the execution of removal orders.[2]

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[2] Specifically, 8 U.S.C § 1252(g) provides: "Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction 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 against any alien under this chapter."

Congress spoke clearly and emphatically providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas revies under § 2241 of claims relating to a decision to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 482 (1999).

Circuit courts of appeals that have addressed the issue have held that § 1252(g) eliminates subject atter jurisdiction over habeas challenges, including constitutional claims, to an arrest or detention for the purposes of executing a final order of removal. *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding that it lacked jurisdiction over noncitizen's habeas challenge to the exercise of discretion to execute his removal order); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order."); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it" and that "[b]oth are covered by the statute"); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (§ 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "*any* cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim"); *Elgharib v. Napolitano*, 600 F.3d 597, 602 (6th Cir. 2010) ("[A] natural reading of 'any other provision of law (statutory or nonstatutory)' includes the U.S. Constitution." (quoting 8 U.S.C. § 1252(g))); *see also Duamutef v. INS*, 386 F.3d 172, 181-82 & n.8 (2d Cir. 2004) (holding that district court lacked mandamus jurisdiction due to § 1252(g) to compel ICE to take custody over state prisoner and execute final removal order, but declining to address whether § 1252(g) barred habeas claims); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal based claims and remanding with instructions to dismiss those claims); *see also Westley v. Harper*, Civ. Action No. 25-229, 2025 WL 592788, at *4–6 (E.D. La. Feb. 24, 2025) (rejecting petitioner's argument that *Zadvydas* challenges are not precluded by Section 1252(g)).

Second, to the extent there was any question about the Court's lack of jurisdiction, the REAL ID Act's amendments to Section 1252(b)(9) should eliminate them. The amendments provide that "[j]udicial review of *all questions of law and fact*, including interpretation and application of constitutional and statutory provision, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added). Accordingly, "the sole and exclusive means for judicial review" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). Thus, to the extent there was any question that this Court lacked subject matter jurisdiction, Congress answered that question by divesting district courts of jurisdiction over such matters and vested review in only the courts of appeals. *Id.* These provisions sweep more broadly than Section 1252(g) and make clear the Court lacks jurisdiction to hear this challenge to Petitioner's detention, which is an action taken as part of the process of removing Petitioner from the United States.

For the foregoing reasons, the Magistrate Judge erred in exercising jurisdiction over Petitioner's Petition for Writ of Habeas Corpus.

CONCLUSION

For the foregoing reasons, the Court should sustain Respondents' objection to the R&R and dismiss the case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2025, I electronically filed the foregoing document with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of this filing.

/s/ James Gillingham
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