

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-02059-DDD-STV

HOSSEIN BATOIE,

Petitioner,

v.

JUAN BALTAZAR, Acting Warden, Aurora ICE Processing Center,
ROBERT HAGAN, Field Office Director, U.S. Immigration & Customs Enforcement, U.S. Department of Homeland Security,¹
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, and
PAMELA BONDI, U.S. Attorney General, U.S. Department of Justice, in their official capacities,

Respondents.

RESPONSE TO MOTION FOR RELEASE FROM DETENTION (ECF No. 51)

Petitioner's Motion for Release from Detention (ECF No. 51, the Motion) should be denied. In seeking Petitioner's release, the Motion essentially asks for a disfavored injunction because it calls for the same relief as the habeas petition (ECF No. 1, the Petition). Ordinarily that would require Petitioner to make a strong showing on the factors for preliminary relief under Fed. R. Civ. P. 65. Petitioner, however, does not mention or attempt to meet those factors.

Instead, Petitioner argues that the Court has inherent authority to release him if there are "exceptional circumstances" or if he has a "clear case on the merits" of the Petition. In support of

¹ Robert Hagan has taken over from Robert Guadian as Field Office Director and is automatically substituted as a respondent in this matter. *See* Fed. R. Civ. P. 25(d) (providing that a public officer's "successor is automatically substituted as a party" when the officer "ceases to hold office while the action is pending").

this position, he cites case law developed in the context of criminal post-conviction review, but the Tenth Circuit has never applied that doctrine in the immigration context. And even if the Court were to apply it here, the standard is very high, and Petitioner has not met it.

For all these reasons, the Court should deny Petitioner's request to accelerate his release.

BACKGROUND

A. Petitioner's Entry into the United States and 2004 Immigration Proceedings

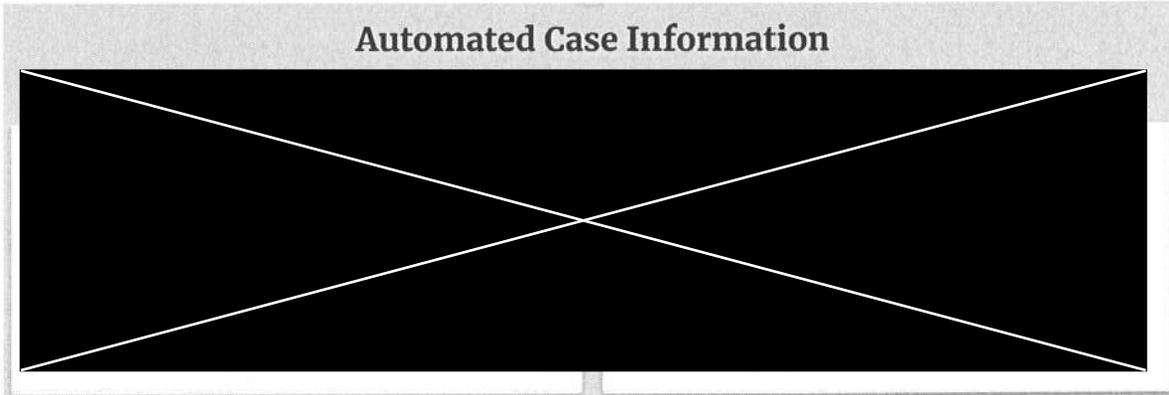
Petitioner is a native and citizen of Iran. ECF No. 24-1 ¶4. In 2000, he was admitted into the United States on a time-limited visa, which he overstayed. *Id.* ¶5-7. Petitioner sought asylum, claiming fear of harm from  but his request was denied. ECF No. 1 ¶11; ECF No. 24-1 ¶¶8-10.

In 2003, the Bureau of Citizenship and Immigration Services referred Petitioner's case to an Immigration Judge (IJ) and issued a Notice to Appear (NTA) charging Petitioner with being removable. ECF No. 24-1 ¶11-12. On November 10, 2004, the IJ held a hearing in Petitioner's case. *Id.* ¶15. Petitioner admitted the allegations in the NTA and conceded his removability. *See id.* ¶13.

The IJ summarized his order at the hearing on a form checklist. *See* ECF No. 4-1. The summary has checkmarks indicating that Petitioner's application for withholding of removal was granted, but also that his applications for withholding and for other relief were withdrawn and that the proceedings were terminated. *See id.* at 1. It does not explicitly order Petitioner's removal or designate a country of removal. *Id.* Both parties waived their right to appeal. *See* ECF No. 37-1 at 2.²

² Respondents' pin cites to filings in this case refer to the pagination set forth in the ECF headers.

The record shows that Petitioner is subject to a final order of removal as of 2004. The Immigration Court's public website shows that Petitioner was ordered removed:



EOIR Automated Case Information, *available at*: <https://acis.eoir.justice.gov/en/caseInformation/> (last visited Nov. 18, 2025); ECF No. 24-1 ¶18. A U.S. Department of Homeland Security (DHS) file system also contains contemporaneous notes that Petitioner withdrew his application for certain relief from removal and that the IJ granted withholding of removal. ECF No. 24-1 ¶19; ECF No. 1 ¶¶11-12 (noting that the IJ “granted withholding of removal to an undesignated country”).

During the two decades after the IJ hearing, Petitioner also applied for work authorization, which DHS granted under 8 C.F.R. § 274a.12(a)(10). ECF No. 24-1 ¶21. That regulation does not offer work eligibility to those whose removal proceedings were terminated. 8 C.F.R. § 274a.12. Instead, Petitioner was granted work authorization as a noncitizen “granted withholding of deportation or removal.” *Id.* § 271a.12(a)(10).

B. The Petition

On June 22, 2025, U.S. Immigration and Customs Enforcement (ICE) officers took Petitioner into custody for removal to a third country under 8 U.S.C. § 1231 and 8 C.F.R. § 1208.16(f). ECF No. 24-1 ¶22. Shortly thereafter, Petitioner filed the Petition. *See* ECF No. 1. He claims that

the “statutory authority for [DHS] to detain and deport [him] is unclear due to ambiguities on the face of [the] 2004 [IJ] Order,” but that “under all possible interpretations, [DHS]’s legal authority to detain and deport [him] is unlawful.” *Id.* at 1. He argues that his detention and third-country removal violate the Immigration and Nationality Act (INA) and his due-process rights. *See id.* ¶¶40-45. He asks the Court to declare his detention and removal unlawful and order either his immediate release or a bond hearing before an IJ. *See id.* at 13 (Prayer for Relief).

C. The IJ’s Subsequent *Nunc Pro Tunc* Ruling

On July 9, 2025, DHS filed a motion for clarification with the Immigration Court regarding the IJ’s 2004 order. *See* ECF No. 28 at 10-11. On July 24, 2025, Petitioner filed a motion for substitution of counsel with the Immigration Court seeking the opportunity to oppose DHS’s motion for clarification. ECF No. 41 at 32. Specifically, Petitioner argued that the motion for clarification was not “properly filed,” that Petitioner “oppose[d] the motion as improper,” and that if the motion “is (or was) accepted,” Petitioner “request[ed] a 30 day extension of the response deadline to submit his arguments in opposition.” *Id.*

On August 21, 2025, the Immigration Court granted DHS’s motion for clarification and ruled, *nunc pro tunc* to November 10, 2004, that Petitioner is ordered removed to Iran and is granted withholding of removal to Iran. ECF No. 37-1 at 3. The IJ explained that the 2004 order lacked this specificity because it was entered before the Board of Immigration Appeals (BIA) began requiring that level of detail:

While the Court did not order the respondent be removed to a specific country, this case was decided prior to the Board of Immigration Appeal’s decision in Matter of I-S- & C-S-, 24 I&N Dec. 432, 434 (BIA 2008), which clarified that “when an Immigration Judge decides to grant withholding of removal, an explicit order of removal must be included in the decision.” This is also likely why the Court “terminated” proceedings pursuant to 8 C.F.R. § 1240.12(c).

Id. at 2. The IJ ruled on Petitioner's motion for substitution of counsel several days later. *See* ECF No. 41 at 15.

Despite having waived appeal in 2004, Petitioner has filed an appeal of the *nunc pro tunc* order to the BIA, arguing, among other things, that the IJ erred in failing to timely rule on his motion for substitution of counsel and in ruling on Respondents' motion for clarification without receiving a response from Petitioner. ECF No. 41 at 15-16.

D. Petitioner's Continued Detention and Potential Removal

Shortly after it first detained Petitioner, ICE began the process of seeking his removal to a third country, *i.e.*, to a country other than that designated in his removal order. *See* Ex. 1, Decl. of Mark Kinsey ¶4 (explaining that ICE submitted third-country removal requests to three countries on June 28, 2025). On November 18, 2025, ICE initiated a post-order custody review (POCR)³ to review Petitioner's continued detention, and the POCR is pending a final review and decision. *Id.* ¶9. ICE asserts that it is continuing to seek third-country-removal options for Petitioner. *Id.* ¶10.

ARGUMENT

The Motion should be denied. *First*, Petitioner is seeking what amounts to a preliminary injunction, but he does not mention or address the factors required to get one. None of those factors favors release. *Second*, Petitioner relies on inapposite case law from the criminal context that should not be applied here. And *third*, even if the Court were to apply Petitioner's preferred standard, he has not made the required showing.

³ POCRs are the process by which ICE reviews the continued detention of aliens with administratively final removal orders who remain in detention beyond an initial 90-day removal period. *See* 8 C.F.R. § 241.4.

I. The Court cannot grant an injunction without applying the ordinary four-factor test under Fed. R. Civ. P. 65.

“A preliminary injunction is an order, entered before a final determination of the merits, that commands a party to do or refrain from a specified act.” *A.C.L.U. of Kan. & W. Mo. v. Praeger*, 815 F. Supp. 2d 1204, 1207-08 (D. Kan. 2011). Here, Petitioner asks the Court to enter an order before a final determination of the merits commanding Respondents to release him from custody, and so he asks for a preliminary injunction.

“A preliminary injunction is an extraordinary remedy, the exception rather than the rule.” *Mrs. Fields Franchising, LLC v. MFGPC*, 941 F.3d 1221, 1232 (10th Cir. 2019). To obtain a preliminary injunction, a movant must show that: (1) they are “likely to succeed on the merits”; (2) they will otherwise “suffer irreparable injury”; (3) the “threatened injury” without the injunction outweighs the other party’s under the injunction; and (4) the injunction is not “adverse to the public interest.” *Mrs. Fields*, 941 F.3d at 1232; *see also Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) (noting that “absent a clear command from Congress, courts must adhere to the traditional four-factor test” before granting an injunction). And when, as here, the movant seeks an injunction that would “grant[] all the relief the plaintiff could expect from a trial win” and that would “change[] the status quo,” the movant “faces a heavier burden and must make a ‘strong showing’ that the first and third factors weigh in [their] favor.” *Denver Scrap Metal Recycle Ctr., Inc. v. Adams*, No. 25-cv-01542-DDD-SBP, 2025 WL 2815301, at *4 (D. Colo. June 18, 2025) (citation omitted).

Here, Petitioner does not discuss or attempt to apply the four-part preliminary injunction factors, and so his motion should be denied.

II. Even under the four-factor test, Petitioner's motion fails.

None of the four factors favors Petitioner:

Likelihood of success on the merits. The Petition has been fully briefed. *See generally* ECF No. 1 (Petition); ECF No. 33 (Response to Order to Show Cause why the Petition should not be granted). As set forth in more detail in Respondents' response to the Petition, Petitioner is subject to a final order of removal that mandates his detention. ECF No. 33 at 6-9; 8 U.S.C. § 1231(a)(2) (mandating detention during a 90-day removal period); *Mirza v. Dep't of Homeland Sec. Ice*, No. 22-cv-02610-DDD, 2023 WL 2664860, at *3 (D. Colo. Jan. 10, 2023) (noting that after the removal period, the government "has discretion to detain inadmissible aliens") (citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)). He is still within the presumptively constitutional six-month detention period under *Zadvydas*, and he does not raise a *Zadvydas* claim. Instead, Petitioner disputes the validity of his removal order. ECF No. 51 at 5-7, 10-11.

As an initial matter, this Court does not have jurisdiction to decide whether Petitioner's removal order is valid. *See* ECF No. 33 at 11-14. But even if it did, the evidence shows that Petitioner *is* subject to a final order of removal:

- Petitioner conceded his removability before the IJ in 2004. *See* ECF No. 24-1 ¶13.
- Petitioner received withholding from removal in 2004, which logically may be granted only if Petitioner is otherwise subject to removal. *See, e.g., Ali v. Beers*, 988 F. Supp. 2d 89, 93 (D. Mass. 2013) ("[A]s a matter of logic, a finding of removal must precede a withholding of removal."); *see also Cruz-Camey v. Gonzales*, 504 F.3d 28, 30 (1st Cir. 2007) (endorsing idea that an "IJ's order canceling removal implicitly includes a threshold determination that the petitioner is otherwise subject to removal").
- For twenty-odd years, Petitioner received work authorization as a person granted withholding, which cannot be granted to someone whose immigration

proceedings were terminated and which again suggests that Petitioner was otherwise subject to removal. *See* ECF No. 24-1 ¶21; *see also* 8 C.F.R. § 274a.12(a)(10).

- The Immigration Court’s public database shows that Petitioner was ordered removed. ECF No. 24-1 ¶18.
- Most recently, the Immigration Court granted ICE’s motion for clarification, reviewed Petitioner’s file, and ruled, *nunc pro tunc*, that Petitioner was ordered removed to Iran as of November 10, 2004. ECF No. 37-1 at 3.

Petitioner is subject to a final removal order.

Petitioner has attempted to appeal the IJ’s recent *nunc pro tunc* order, arguing that he was not given an opportunity to respond to the motion for clarification.⁴ That appeal, however, does not give any reason to question Petitioner’s decision in 2004 to waive his appellate rights. *See* ECF No. 41 at 15-16. Petitioner also claims that since recently obtained audio from the IJ hearing in 2004 does not explicitly discuss removal, it must mean no removal was on the table. ECF No. 51 at 6-7. But it is much more likely that everyone in the room shared a pre-*Matter of I-S- & C-S*-understanding that an explicit order of removal was not necessary. Petitioner conceded his removability and agreed to withdraw his applications for relief from removal in exchange for a grant of withholding. On these facts, it is not plausible that no order of removal was contemplated in 2004. Indeed, the Immigration Court, reviewing its own record, already concluded as much.

Petitioner is therefore unlikely to succeed on the merits.

⁴ Petitioner argues, in part, that he did not have that opportunity because Respondents purportedly did not comply with this Court’s order to keep him “fully informed” of the status of proceedings before the IJ. ECF No. 51 at 2 n.2. Respondents respectfully disagree. Petitioner knew of the motion and timely sought an opportunity to respond to it. *See* ECF No. 41 at 32 (motion to substitute counsel requesting opportunity to respond to motion for clarification filed nearly a month before the *nunc pro tunc* order). The IJ simply declined to give Petitioner that opportunity.

Irreparable harm. In the Motion, Petitioner identifies no irreparable harm that he would face if he is not released. While Petitioner has previously claimed that he has a cardiac condition, ECF No. 4 at 3, he does not identify any specific issue he has had with the treatment or monitoring of that condition while in Respondents' custody.

Balance of harms and public interest. The last two preliminary injunction factors merge when the government is a party. *Ortega v. Grisham*, 148 F.4th 1134, 1142 (10th Cir. Aug. 19, 2025). Those factors favor Respondents. The Supreme Court has recognized that the public interest in the enforcement of the United States' immigration laws is significant. *Nken v. Holder*, 556 U.S. 418, 436 (2009). Here, Respondents have a valid statutory and constitutional basis for detention. *See* 8 U.S.C. § 1231(a); *Zadvydas*, 533 U.S. at 701. Petitioner is being detained for "a period reasonably necessary to secure" his removal. *Zadvydas*, 533 U.S. at 699. And as the Supreme Court recently indicated, any time that the government is "enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (citation omitted) (Roberts, C.J., in chambers).

Petitioner should not be granted an injunction under the required four-part test.⁵

III. The Court does not have inherent authority to grant interim release to a non-citizen whose detention is presumptively constitutional.

Petitioner claims that the Court has "inherent power" to release him pending a hearing and decision on the Petition, citing to *Pfaff v. Wells*, 648 F.2d 689 (10th Cir. 1981). ECF No. 51 at 5.

⁵ Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." If the Court grants Petitioner's request for a preliminary injunction, Respondents request that the Court require appropriate security.

The *Pfaff* case involved a state prisoner who was seeking review of his state criminal proceedings. *Pfaff*, 648 F.2d at 690-91. In that context, the Tenth Circuit held that “[d]espite the lack of specific statutory authority, it is within the inherent power of a federal district court to enlarge a state prisoner on bond, pending hearing and decision on a petition for habeas relief,” but only if the prisoner makes “a showing of exceptional circumstances” or “a demonstration of a clear case on the merits of the habeas petition.” *Id.* at 693.

To Respondents’ knowledge, however, the Tenth Circuit has never applied this doctrine in the context of an immigration habeas, and this Court should not do so, either. The Seventh Circuit has explained why. In *Bolante v. Keisler*, 506 F.3d 618 (7th Cir. 2007) (Posner, J.), an alien sought bail pending appellate court review of a BIA asylum determination. The court distinguished *Pfaff* and other cases that arose “in the context of criminal prosecutions” because “an inherent judicial authority is not an infeasible authority.” *Id.* at 619-20. Instead, “[i]t is an exercise of a court’s common law powers and thus, unlike a ruling based on the Constitution, is subject to legislative curtailment.” *Id.* at 620 (citation omitted). So, a federal court cannot grant bail under its inherent authority “if Congress has forbidden it.”⁶ *Id.* at 621. Because the INA strips federal courts of jurisdiction to review administrative bail determinations for aliens seeking review of a BIA decision, the court ruled that the federal courts lacked authority to grant an alien interim release. *Id.*

Similar reasoning should apply here where Petitioner’s release is subject to similar statutory limits. Congress has mandated Petitioner’s detention as an alien subject to a final order of removal. *See* 8 U.S.C. § 1231(a) (requiring an alien’s detention during the removal period). That

⁶ The court diverged from a Second Circuit case on this point. *See id.* at 621 (noting that the Second Circuit in *Elkimya v. Department of Homeland Security*, 484 F.3d 151 (2d Cir. 2007), did not address the jurisdictional limits on review of bail determinations under the INA).

detention is presumptively reasonable for six months and may continue “until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Petitioner has not yet been held for six months, and so there is no constitutional or legislative basis for the Court to exercise its inherent authority to release him.⁷

IV. Even under *Pfaff*, Petitioner has not shown “exceptional circumstances” or a “clear case on the merits” of the Petition sufficient to grant interim release.

A. There are no exceptional circumstances.

The exceptional circumstances test is a stiff one. “Exceptional circumstances” have only been held to include things like a severe, rapidly deteriorating health condition, or a criminal sentence so short that without interim release the petitioner would otherwise serve the whole sentence before resolution of the habeas petition. *Vreeland v. Zupan*, No. 14-cv-02175-PAB, 2023 WL 5485627, at *6 (D. Colo. Aug. 24, 2023), *certificate of appealability denied*, No. 23-1301, 2024 WL 1757312 (10th Cir. Apr. 24, 2024) (citations omitted); *see also United States v. Lattany*, No. 23-cr-00074-NYW-1, 2025 WL 1382998, at *3 (D. Colo. May 13, 2025) (noting “there will be few occasions where a prisoner will meet” the exceptional circumstances standard and denying release where there was no indication custodian could not treat prisoner’s medical condition (citation omitted)); *Roberts v. Diggins*, No. 22-cv-00053-PAB, 2022 WL 180634, at *5 (D. Colo. Jan.

⁷ While the *Zadvydas* Court imposed the presumptive six-month time period as a matter of statutory interpretation and not as an application of the Due Process Clause, it did so because “a serious constitutional problem” would arise if § 1231 were to permit “indefinite detention of an alien.” 533 U.S. at 690. Thus, the six-month limit creates a constitutional safe harbor within which detention ordinarily does not run afoul of due process.

20, 2022) (discussing unpublished Tenth Circuit authority that “various health problems,” “significant delay in the district court,” or an impending transfer to a halfway house are not exceptional circumstances (citations omitted)).

Petitioner points to three things that he claims make his circumstances exceptional: (1) he has appealed his final order of removal; (2) Respondents have not followed the right procedures for third-country removal; and (3) Respondents have not followed the right procedures to assess the need for continued discretionary detention. ECF No. 51 at 5-7. None of these create exceptional circumstances:

BIA appeal. Even assuming Petitioner’s appeal of the IJ’s recent *nunc pro tunc* order may proceed notwithstanding the waiver of his appellate rights, it is categorically different from the sorts of urgently time-sensitive circumstances, like a rapidly deteriorating health condition, that courts have endorsed as exceptional in the past.

Procedures for third-country removal. The same thing is true of Petitioner’s assertion that Respondents are not following the correct procedure to effectuate his removal. The only thing Petitioner points to in support of this argument is that “Respondents have provided no information to this Court or to Petitioner about their attempts to identify a third country or about their compliance with” agency procedures. ECF No. 51 at 8. From this, Petitioner “assume[s] that Respondents have done nothing” and that his detention is “essentially punitive.”⁸ *Id.* Even if that were true, it would still not constitute exceptional circumstances of the sort courts have previously recognized.

⁸ Notably, the procedures in question require no notice at all to the alien in many circumstances. *See id.* at 7 (discussing DHS memo requiring notice to the alien only where a third country has not provided credible diplomatic assurances that the alien will not be persecuted or tortured).

POCR reviews. Finally, Petitioner urges that Respondents' failure to conduct a POCR constitutes exceptional circumstances. ECF No. 51 at 8-10. Like Petitioner's other arguments, this is not the sort of urgent situation that constitutes exceptional circumstances under the law. Indeed, even if there were a violation of the POCR regulations, the proper remedy is to afford Petitioner a POCR, not to release him. *See, e.g., I.V.I. v. Baker*, No. cv JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025) (declining to order petitioner's release where procedural errors like failure to provide a custody review or service of certain documents are "remediable by the provision of any process he may have been denied, rather than by release alone"). And as noted above, Respondents have initiated a POCR for Petitioner. Ex. 1 ¶9.

In addition, nowhere in the underlying Petition does Petitioner raise the lack of a POCR as a basis for his claims. A party may not obtain interim relief based on circumstances not raised in their substantive pleadings. *See Little v. Jones*, 607 F.3d 1245, 1251 (10th Cir. 2010) ("[T]he movant must establish 'a relationship between the injury claimed in the party's motion and the conduct asserted in the complaint.'" (quoting *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994))). Thus, Petitioner seeks relief based on matters outside his Petition and cannot obtain interim relief for that reason.

Petitioner has not demonstrated any "exceptional circumstances" warranting his interim release.

B. Nor does Petitioner show a clear case on the merits.

To show a "clear case on the merits," a petitioner must "show not only a substantial federal constitutional claim that presents not merely a clear case on the law, but a clear, and readily evi-

dent, case on the facts, but also the existence of some circumstances making the request exceptional and deserving of special treatment in the interests of justice.” *Vreeland*, 2023 WL 5485627, at *6 (citation omitted). That is an even higher hurdle than the ordinary likelihood-of-success standard. So, if Petitioner does not meet the bar for an injunction—which, as explained above, he does not as to his claims regarding the validity of his removal order—he cannot show a clear case on the merits, either. And as explained in response to the Petition, to the extent Petitioner challenges the process by which Respondents are seeking to effectuate his third-country removal, those arguments are meritless in this Court. *See* ECF No. 33 at 9-11. They belong not here but in the District of Massachusetts where there is a pending class action of which Petitioner is a member.

Id.

CONCLUSION

For the reasons set forth above, the Motion should be denied.

Dated: November 18, 2025.

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ V. William Scarpato III
V. William Scarpato III
Nick Deuschle
Assistant United States Attorneys
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Fax: (303) 454-0407
Victor.Scarpato@usdoj.gov

Counsel for Respondents

CERTIFICATE OF COMPLIANCE

Counsel for Respondents hereby certifies that the foregoing pleading complies with the type-volume limitation set forth in DDD Civ. P.S. III(A)(1).

CERTIFICATE OF SERVICE

I certify that on November 18, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

Laura L. Lichter
Mark Robert Barr
Lichter Immigration
1601 Vine Street
Denver, CO 80206-1117
Llichter@lichterimmigration.com
Mbarr@lichterimmigration.com

Attorneys for Petitioner

and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

none.

s/ V. William Scarpato III
V. William Scarpato III