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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

E.Q.,

Petitioner,

v.

John Cantú, Field Office Director, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Phoenix Field Office, in his official capacity; Kristi Noem, Secretary, U.S. Department of Homeland Security, in her official capacity; Pamela Bondi, U.S. Attorney General, in her official capacity; Fred Figueroa, Warden of Eloy Detention Center, in his official capacity,

Respondents.

MOTION FOR EMERGENCY STAY OF REMOVAL

INTRODUCTION

Petitioner E.Q. is currently in detention at the Eloy Detention Center.[1] He is at imminent risk of being deported from the United States – either to Afghanistan where he will likely be tortured or killed by the Taliban because a close family member worked as an interpreter for the prior Afghan government and U.S. military, or to an undesignated third country where he may be persecuted or tortured. Petitioner seeks a temporary restraining order so that he will have an opportunity for a lawful credible fear interview, as required by 8 U.S.C. §1225(b)(1)(B). He maintains that there is no valid removal order that can be enforced against him, and that removing him from the United States would violate the Immigration and Nationality Act, including 8 U.S.C. §1225(b)(1) and 8 U.S.C. §1231(b)(3), as well as the Foreign Affairs Reform and Restructuring Act (FARRA), which implements the Convention Against Torture.[2]

LEGAL BACKGROUND

U.S. immigration law affords noncitizens in the United States three forms of protection from persecution and/or torture: asylum, withholding of removal, and protection under the Convention Against Torture (CAT).

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[1] *See* Exhibit 10, Screenshot of ICE Detainee Locator (7/13/25 at 7:03 pm).

[2] Undersigned counsel hereby certifies that on July 13, 2025, at or about 7:30 p.m., in an effort to notify the Respondents that a petition for writ of habeas corpus is being filed and that Petitioner will seek a temporary restraining order preventing his removal from this jurisdiction and from the United States, an email was sent to the following individuals: Corina Almeida, ICE Chief Counsel; Jason Ciliberti, Acting FOD for ICE Arizona; Wilber Rocker, Deputy Chief Counsel for Arizona Florence; Matt P Hanson, Deputy Chief Counsel for Arizona Eloy; and Katherine Branch, U.S. Department of Justice.

Asylum provides full protection against deportation to any country and a pathway to lawful permanent resident status. 8 U.S.C. § 1158. This means the person cannot be deported to their country of origin or to any other country.

Individuals who are deemed ineligible for asylum may qualify for withholding of removal. 8 U.S.C. §1231(b)(3)(A). Withholding of removal is a mandatory protection; if a person is eligible for withholding of removal as to a particular country, DHS is prohibited from removing the person to that country. An individual is ineligible for withholding of removal if they have, among other things, committed certain serious crimes or provided "material support" to terrorist groups. *See* 8 U.S.C. §1231(b)(3)(B).

Third, pursuant to the Foreign Affairs Reform and Restructuring Act (FARRA), Congress instructed that the U.S. government may not "expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture." Pub. L. 105-277 Div. G §2242(a), 112 Stat. 2681, 2681-822 (1999) (codified as statutory note to 8 U.S.C. §1231). This mandate applies to all persons and has no exceptions.

FACTUAL BACKGROUND[3]

Petitioner E.Q. is a native and citizen of Afghanistan. A close family member of E.Q. worked in Afghanistan for several years as an interpreter for the prior Afghan

[3] The Factual Background is based on the attached Exhibits.

government and U.S. military. As a result, the Taliban suspected that E.Q. was working with his family member as an American spy. While E.Q. was in Afghanistan, the Taliban followed him and tried to collect information about him from his friends and relatives. In the spring of 2024, the Taliban raided E.Q.'s home, where he lived with his family; accused him of working with his family member as an "American spy"; confiscated his family's electronic devices; and broke their television.

About the same time, the Taliban sent summonses to E.Q. directing him to report to a government security office for questioning. Exhibit 1, Summonses. The fact that the Taliban know that E.Q.'s family member worked for the prior Afghan government and U.S. military and have summoned him for questioning puts him at significant risk of illegal detention, interrogation, torture, and potentially even execution. Exhibit 2, Declaration of Tim Foxley, ¶¶ 29, 54. The Taliban have a pattern and practice of torturing and killing individuals they suspect of having assisted the U.S. government. *Id.*, ¶¶ 19-21. Thus, there are substantial grounds for believing that E.Q. would be in danger of being persecuted and tortured if he is forced to return to Afghanistan.

After receiving the summonses, E.Q. feared for his life, went into hiding, and ultimately fled Afghanistan in or about August 2024. He arrived in the United States on or about January 16, 2025. Upon his arrival in the United States, E.Q. was apprehended by U.S. Customs and Border Protection and an expedited removal order was issued against him. Exhibit 9, Declaration of EQ. Afghanistan was designated as the country

of removal. Exhibit 3, Notice and Order of Expedited Removal; Exhibit 4, SB Reasonable Probability Worksheet.

After E.Q. expressed a fear of removal to Afghanistan, he was referred for a credible fear interview with an asylum officer from U.S. Citizenship and Immigration Services (USCIS). The asylum officer found E.Q. ineligible for asylum because he had entered without inspection, based on the so-called "Securing the Border" regulations that were adopted in July 2024. Exhibit 5, Record of Negative Credible Fear and Reasonable Probability Finding, p 1. *See* 89 Fed. Reg. 48710 (6/4/2024) (Interim Final Rule), 89 Fed. Reg. 81156 (10/7/2024) (Final Rule), codified at 8 C.F.R. §208.35(a). The asylum officer denied withholding of removal based at least in part on the finding that E.Q. would be subject to a "mandatory bar" because he had been employed at a place of business in Afghanistan that provided services to the general public, including members of the Taliban. Exhibit 5, Record of Negative Credible Fear and Reasonable Probability Finding, p 1. That decision was affirmed by an immigration judge on February 25, 2025.[4]

The mandatory bars that apply to withholding of removal applications do not apply to requests for protection under the Convention Against Torture. On February 20, 2025, an asylum officer denied E.Q.'s request for protection under the CAT on the basis

[4] On March 17, 2025, E.Q., along with three organizational plaintiffs, filed a lawsuit in the U.S. District Court for the District of Columbia challenging DHS's decision to apply mandatory bars during credible fear screenings. The U.S. District Court for the District of Columbia subsequently found that E.Q. does not have standing to challenge DHS's decision to apply mandatory bars in this manner. *E.Q. v. DHS*, Case No. 25-cv-791 (CRC) (D.D.C.), Order dated June 26, 2025.

that E.Q. did not establish a reasonable probability that he would suffer severe physical or mental pain or suffering if forced to return to Afghanistan. Exhibit 5, Record of Negative Credible Fear and Reasonable Probability Finding, p 1. The asylum officer's decision denying CAT relief was affirmed by an immigration judge on February 25, 2025. Exhibit 6, Decision of IJ (2/25/2025).[5]

The Securing the Border regulations, which were used as a basis for finding E.Q. ineligible for asylum, have been found unlawful and have been vacated. *Las Americas v. DHS*, 2025 U.S. Dist. LEXIS 94453, 2025 WL 1403811 (D.D.C. 2025).

ICE has designated Afghanistan as the country of removal. However, under ICE's current policies, he may be deported to a country other than Afghanistan.[6] E.Q. fears that if he is removed to a third country, he could be subjected to persecution or torture in that country. He is entitled, but has not been given an opportunity, to apply for withholding of removal and CAT protection as to any third country of removal. E.Q. seeks an order that he cannot be removed to any third country unless and until he has an opportunity to apply for withholding of removal and CAT protection as to such

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[5] On April 14, 2025, E.Q. was reinterviewed by an asylum officer. On April 30, 2025, E.Q. received a second negative credible fear determination. The asylum officer found E.Q. ineligible for asylum based on the Securing the Border regulations; his request for withholding of removal and CAT relief was denied on the basis that his testimony was not credible. Exhibit 7, Record of Negative Credible Fear and Reasonable Probability Finding (4/30/2025). That decision was affirmed by an immigration judge on May 9, 2025. Exhibit 8, Decision of IJ (5/9/2025).

[6] In recent months, Respondents have vastly increased the use of third-country removals against noncitizens with removal orders. *See e.g.*, Gabe Whisnant and Peter Aitken, *Kristi Noem Reveals New Countries Now Taking Deported Asylum Seekers*, NEWSWEEK (Jun. 26, 2025), https://www.newsweek.com/kristi-noem-honduras-guatemala-deported-asylum-seekers-2091384.

country. He also seeks an order preventing his removal to Afghanistan because he is entitled to CAT protection.

LEGAL ARGUMENT

A. Standard for Temporary Restraining Order

A petitioner seeking a temporary restraining order must establish the following elements: (1) the petitioner is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the petitioner's favor; and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under this standard, a temporary restraining order should be granted to stay E.Q.'s removal from the United States.

B. Likelihood of Success on the Merits

Before the Respondents remove E.Q. either to Afghanistan or any third country, E.Q. is entitled to a lawful credible fear interview under 8 U.S.C. §1225(b)(1)(B), at which an asylum officer decides whether E.Q. has a "credible fear of persecution" as defined in §1225(b)(1)(B)(v). To date, E.Q. has not been provided with such an interview. His removal from the United States without such an interview would violate the Immigration and Nationality Act, 8 U.S.C. §1225(b)(1), and the Convention Against Torture.

As an initial matter, Petitioner's claims are reviewable in habeas proceedings. *See* 28 U.S.C. §2241(c) (writ of habeas extends to persons who are detained in violation of the Constitution or laws or treaties of the United States); *Trump v. J.G.G.*,

145 S. Ct. 1003, 1006 (2025) (an individual subject to detention and removal is entitled to judicial review in habeas as to "questions of interpretation and constitutionality"). *See also Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (en banc) (28 U.S.C. § 2241 "makes the writ of habeas corpus available to all persons 'in custody in violation of the Constitution or laws or treaties of the United States'").

In addition, this court has jurisdiction to issue a mandamus order under 28 U.S.C. §1361 to compel the Respondents to perform a duty owed to E.Q. – namely to conduct a lawful credible fear interview under §1225(b)(1)(B). According to §1225(b)(1)(A)(ii), if a person subject to expedited removal indicates an intention to apply for asylum or a fear of persecution – as E.Q. has – then the inspecting immigration officer "shall refer the [noncitizen] for an interview by an asylum officer under subparagraph (B)." According to §1225(b)(1)(B)(i), the asylum officer "shall conduct" the interview and determine whether the person has a "credible fear of persecution," which is defined as a "significant possibility" of establishing eligibility for asylum. 8 U.S.C. § 1225(b)(1)(B)(v). Although an asylum officer conducted an interview, that interview was not conducted in accordance with §1225(b)(1). Instead it was conducted under procedures that have been found to be illegal and have been vacated. *See Las Americas v. DHS*, 2025 U.S. Dist. LEXIS 94453, 2025 WL 1403811 (D.D.C. 2025) (finding that the procedures applied by the Respondents under the "Securing the Border" regulations were unlawful and ordering that they be vacated and set aside). Thus, there is no lawful order of removal against E.Q. that the Respondents

can execute. *See* §1225(b)(1)(A)(i) (if the noncitizen indicates an intention to apply for asylum or a fear of persecution, then the inspecting officer does not issue an order of removal but refers the case to an asylum office); §1225(b)(1)(B)(ii) and (iii) (if no credible fear interview has been conducted as required under §1225(b)(1)(B), then an order of removal cannot be issued). This court has authority under the mandamus statute to order Respondents to provide E.Q. with a lawful credible fear interview as required under §1225(b)(1).

Section 1252(a)(2)(A) does not preclude jurisdiction. In *Mendoza-Linares v. Garland*, 51 F.4th 1146 (9th Cir. 2022), the Ninth Circuit found that §1252(a)(2)(A) deprived the district court of jurisdiction over the petitioner's claim that the credible fear interview was unlawful. However, that case is distinguishable. After the expedited removal order was issued in *Mendoza-Linares*, the petitioner filed a petition for review under §1252 "seeking review of the expedited removal order and the IJ's [immigration judge's] determination." 51 F.4th at 1153. Specifically, the petitioner sought review of the credible fear determination; in order to grant relief, the court would have had to review "the merits of a credible fear determination" *Id.* at 1155. But that is not required in this case. There is a difference between reviewing the merits of an agency's decision (which is precluded by *Mendoza-Linares*) and determining that the agency had no authority to issue a removal order against E.Q. based on the "Securing the Border" regulation. In this case, it has already been determined that the agency had no authority to issue the type of order that it issued against E.Q. The question whether the

Respondents can enforce a removal order that they had no authority to issue was neither presented to the court nor resolved in *Mendoza-Linares*.

This court's decision in *Tabatabaeifar v. Scott*, 2025 U.S. Dist. LEXIS 91554, 2025 WL 1397114 (D.Az. 5/14/2025), is more on point. In that case, as here, DHS failed to provide a credible fear interview as required by §1225(b)(1)(B). "Rather than follow the procedure mandated by 8 U.S.C. §1225(b) and 8 C.F.R. §208.30 for the expedited removal of unauthorized [noncitizens] who claim asylum," the asylum officer deemed the petitioner ineligible for asylum and assessed her only for CAT relief. *Id.* at *1. The petitioner then filed a habeas petition alleging, *inter alia*, that DHS failed to assess her asylum claim in violation of 8 U.S.C. § 1225(b)(1) and 8 C.F.R. § 208.30. This court held that "§1252(a)(2)(A) does not apply" because:

> Respondents do not purport to follow Section 1225(b) in this case, nor do they purport to remove Petitioner pursuant to Section 1225(b). ... Since Petitioner was not subjected to any expedited removal proceedings pursuant to Section 1225(b), Section 1252(a)(2)(A) does not strip the court of jurisdiction over Petitioner's claims.

Id. at *4 (footnotes omitted). This court distinguished *Mendoza-Linares*, noting that it stands for the proposition that "jurisdiction over the merits of individual expedited removal orders" is precluded. *Id.* at n.4 (emphasis added). Jurisdiction is not precluded where DHS takes action that it is not authorized to take. [7]

[7] In *Tabatabaeifar*, the government did not purport to follow §1225(b)(1). Here, the Respondents may claim that they purported to follow §1225(b)(1). But that is not determinative. The question is not what the government says it purports to do; rather, the question is whether the government actually has authority to take action. And here, another court has already determined that the government does not have the authority to

E.Q.'s claim challenging third-country removal is not precluded by §1252. His third-country challenge applies only to actions that post-date his removal order and credible fear interview. Petitioner was told that the designated country of removal was Afghanistan. But under ICE's current policies, he may be removed without notice to an undesignated third country. *See, e.g.*, Gabe Whisnant and Peter Aitken, *supra* note 5. The claim that it is unlawful to deport a person to a previously undesignated third country is not a challenge to an order of removal and thus not barred by §1252(a)(5) or (b)(9). *See, e.g.*, *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007) ("[b]y virtue of their explicit language, both §§1252(a)(5) and 1252(b)(9) apply only to those claims seeking judicial review of orders of removal"); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019) (where petitioner challenged DHS's attempts, outside removal proceedings, to designate Somalia as the country of removal without first reopening his proceedings to provide an opportunity to apply for relief from removal to that country, §1252(a)(5) did not preclude jurisdiction; "the Court does not need to review the removal order").

Nor is Petitioner's challenge to the denial of CAT relief barred by §1252(e)(2). For persons who have been ordered removed under §1225(b)(1), review of such claims occurs in habeas proceedings, subject to the limitations in §1252(e)(2). *See* §1252(a)(4) (petition for review in court of appeals shall be sole and exclusive means for judicial

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remove E.Q. based on an unlawful credible fear determination using procedures that have been vacated. *See Las Americas v. DHS*, 2025 U.S. Dist. LEXIS 94453, 2025 WL 1403811 (D.D.C. 2025).

review of CAT claims, except as provided in §1252(e)). Section 1252(e)(2) limits judicial review in habeas proceedings of "any determination made under section [8 U.S..C. 1225(b)(1)]." There are two components to a determination under §1225(b)(1): first, a decision to issue an order of removal, *see* 8 U.S.C. §1225(b)(1)(A)(i); and second, a decision on whether the petitioner is eligible to pursue an application for asylum under 8 U.S.C. §1158, *see* §1225(b)(1)(B). A decision denying CAT relief does not fall into either one of those categories. As the Supreme Court recently explained:

> [A] CAT order is not a final order of removal because "it is not an order 'concluding that the alien is deportable or ordering deportation.'" … And what is more, we held, a CAT order "does not disturb" or "affect the validity" of a final order of removal. … We therefore held that the BIA's CAT order "d[id] not merge into" a final order of removal for purposes of judicial review because only "rulings that affect the validity of the final order of removal" merge into that order.

Riley v. Bondi, 2025 U.S. LEXIS 2493 (June 26, 2025), quoting *Nasrallah v. Barr*, 590 U.S. 573, 582-583 (2020). And a CAT decision is separate from and distinct from a determination regarding asylum. A CAT decision is made under FARRA § 2242, 112 Stat. 2681–822, not the asylum statute, 8 U.S.C. §1158. Simply put, there is nothing in §1225(b)(1) that even mentions the Convention Against Torture. Thus, a decision on a CAT claim cannot be made "under" §1225(b)(1), and review of a CAT claim is not limited by §1252(e)(2).[8]

[8] A petition for review to the court of appeals is available only for a person who has been ordered removed in proceedings under 8 U.S.C. §1229a. Thus, the only means for judicial review of a CAT decision not issued under §1229a is by a habeas petition.

Section 1252(g) also does not preclude judicial review of Petitioner's claims. That provision is "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999). Accordingly, §1252(g) does not bar review of the lawfulness of removal-related actions because such claims are collateral to ICE's discretionary decisions. *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc) ("[t]he district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority"); *Arce v. United States*, 899 F.3d 796, 800–801 (9th Cir. 2018) ("we have limited the statute's jurisdiction-stripping power to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders"); *Madu v. United States AG*, 470 F.3d 1362, 1368 (11th Cir. 2006) (§1252(g) "does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.").

Here, E.Q. presents three claims, none of which challenges an order of removal or any exercise of discretion by Respondents. Instead, E.Q. challenges Respondents' authority to designate new countries of removal not designated during the removal process, in violation of the procedural protections mandated by the INA and the FARRA; he challenges a decision denying a request for protection under the Convention Against Torture as implemented by statute (which, the Supreme Court has held, is not a "final order of removal" and "does not merge into a final order of removal for purposes of judicial review," *Riley v. Bondi*, 2025 U.S. LEXIS 2493 (June 26,

2025); and he claims that it was improper for DHS to order him removed based on regulations that have been found to be unlawful and void. The Supreme Court has held that §1252(g) is a "narrow" provision and has "rejected as 'implausible' the Government's suggestion that §1252(g) covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation.'" *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). Here, none of Petitioner's claims arises from the government's decision to commence proceedings, adjudicate cases, or execute a removal order. Section 1252(g) thus does not preclude judicial review.

There is a strong likelihood that the Petitioner will prevail on the merits of his claims. Regarding Petitioner's claim for protection against removal to an undesignated third country, at least one court has already held that such removal is unlawful. *See Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019). That case establishes at least a likelihood of success. *See also Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) (all nine Supreme Court justices agreed that "notice must be afforded within a reasonable time and in such a manner as will allow [plaintiffs] to actually seek . . . relief in the proper venue before such removal occurs"); *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) ("[i]n order to actually seek habeas relief, a detainee must have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief").

There is also a strong likelihood that Petitioner will succeed on his CAT claim with respect to Afghanistan. His close family member worked as an interpreter for the

prior Afghan government and U.S. military; the Taliban have a widespread practice of retaliating against family members of those associated with the prior government; the Petitioner has been targeted by the Taliban, who have invaded his home and seized electronic devices; and the Taliban has issued summonses against Petitioner. Under these circumstances, Petitioner is very likely to be able to establish a reasonable possibility that he is eligible for protection under the CAT.

Finally, Petitioner has a likelihood of success on his claim that his removal order exceeded Respondents' statutory authority. The District Court for the District of Columbia has vacated the regulation under which Petitioner was deemed ineligible for asylum, making it clear that there is no valid removal order against E.Q. that can be executed.

C. Irreparable Harm

There is no doubt about the likelihood of irreparable harm. The Petitioner has been targeted by the Taliban and accused of being an "American spy." His close family member worked as an interpreter for the prior Afghan government and U.S. military. The Taliban's security office has summoned Petitioner for questioning. The threatened harm to the Petitioner is clear and simple: persecution, torture, and death. The Supreme Court has long recognized that removal is a "particularly severe" injury, inflicting substantial harm on a noncitizen. *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (quoting *Fong Yeu Ting v. United States*, 149 U.S. 698, 740 (1893)). Special care accordingly must be taken in asylum cases lest the court permit persecution to occur.

See Leiva-Perez v. Holder, 640 F.3d 962, 969 (9th Cir. 2011) (threat of persecution, including beatings, constitutes irreparable harm).

D. Balance of Equities and the Public Interest

The remaining two factors to be considered for a TRO – balance of harms and public interest – merge when the government is the party opposing a motion for preliminary injunction. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The Government will suffer no irreparable harm if the court stays removal while this lawsuit is pending. In addition, it is in the public interest to prevent the Petitioner from being unlawfully removed to a country where he would be persecuted or tortured and to allow him to pursue his claims for relief. According to the Supreme Court, "there is a public interest in preventing [noncitizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken*, 556 U.S. at 436; *see also Alabama Ass'n of Realtors v. HHS*, 594 U.S. 758, 766 (2021) ("our system does not permit agencies to act unlawfully even in pursuit of desirable ends"); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582 (1952) (affirming district court's preliminary injunction of an illegal executive order even though a wartime president said his order was "necessary to avert a national catastrophe"). The balance of the equities and the public interest counsel in favor of granting a stay of removal. *See Tabatabaeifar*, 2025 U.S. Dist. LEXIS 91554 at *27 (granting a stay of removal because petitioner risks removal to a country where she could be tortured or otherwise persecuted; there is no evidence to suggest that she poses a threat to the public; and "the

public has a strong interest in ensuring that the nation's immigration laws are robustly—and fairly—enforced").

CONCLUSION

For the foregoing reasons, E.Q. requests that this Court issue a temporary restraining order immediately, on an emergency basis, prohibiting for 14 days his transfer out of this court's jurisdiction and his removal from the United States.

Dated this 13th day of July 2025.

/s/ Delia Salvatierra

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