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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LOC MINH NGUYEN,

Petitioner,

v.

WARDEN OF THE OTAY MESA DETENTION FACILITY, et al.,

Respondents.

Case No.: 3:25-cv-02441-AGS-MMP

RESPONDENTS' RETURN TO PETITIONER'S AMENDED HABEAS PETITION

I. INTRODUCTION

Petitioner has filed an amended habeas petition (the "Petition") pursuant to 28 U.S.C. § 2241. For the reasons set forth below, the Court should dismiss the Petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Vietnam. Ex. 1 at 1. On October 26, 1979, Petitioner was admitted into the United States as a refugee. *Id.* Following criminal convictions, Petitioner was ordered deported on August 3, 1994, and ordered removed on January 10, 2001, to Vietnam. Decl. of Hugo Lara Ramirez ("Ramirez Decl.") ¶¶ 4-5; Exs. 2-3. Following these orders, and several more criminal convictions, Petitioner has remained on orders of supervision ("OSUP") pending removal to Vietnam because the government has been unable to obtain a travel document ("TD") from Vietnam. *Id.* ¶¶ 6-9; Exs. 4-7.

Meanwhile, Immigration and Customs Enforcement ("ICE") is now regularly obtaining TDs from Vietnam and arranging travel itineraries to execute final orders of removal for Vietnamese citizens. *Id.* ¶ 19. On June 4, 2025, ICE re-detained Petitioner. *Id.* ¶ 10. That same day, ICE issued a Form I-200, Warrant for Arrest of Alien, pertaining to Petitioner, in order to effectuate his removal to Laos. *Id.* ¶ 11; Ex. 8. Petitioner also received and acknowledged a Form I-205, Warrant of Removal/Deportation. *Id.* ¶ 12; Ex. 9. On October 30, 2025, ICE provided Petitioner with a Notice of Revocation of Release and a specific informal interview regarding the revocation of his order of supervision. *See id.* ¶¶ 13-14; Exs. 10-11.

ICE has worked expeditiously to prepare and submit a TD request to effectuate Petitioner's removal to Vietnam. *Id.* ¶¶ 16-17. Once Petitioner's TD is obtained, ICE will arrange for his removal. *Id.* ¶ 22. ICE is not seeking to remove Petitioner to a third country. *Id.* ¶ 15. According to the declaring officer's experience, "there is a significant likelihood of removal to Vietnam in the near future." *Id.* ¶ 18.

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III. ARGUMENT

A. Petitioner's Claims and Requests are Barred by 8 U.S.C. § 1252

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C. § 1252(g). Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("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.") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."). In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Petitioner's claims necessarily arise "from the decision or action by the Attorney General to . . . execute removal orders," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g); *see* 8 U.S.C. § 1252(f)(2) ("Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited

as a matter of law."). Thus, the Court should dismiss the Petition for lack of jurisdiction under 8 U.S.C. § 1252.

B. Petitioner's Detention is Lawful Under *Zadvydas*

An alien ordered removed must be detained for ninety (90) days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period). The statute "limits an alien's post-removal detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 683. Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

In *Zadvydas*, the Supreme Court held: "[T]he habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the alien's presence at the moment of removal*." *Id.* at 699 (emphasis added). In so holding, the Court recognized that detention is presumptively reasonable pending efforts to obtain TDs, because the noncitizen's assistance is needed to obtain the TDs, and a noncitizen who is subject to an imminent, executable warrant of removal becomes a significant flight risk, especially if he or she is aware that it is imminent.

The Court also held that the detention could exceed six months: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides 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 and that the noncitizen has the initial burden of proving that removal is not significantly likely." *Id.* The Ninth Circuit has emphasized, "*Zadvydas* places the burden on the alien to show, after a detention period of six months, that there is 'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

Petitioner claims his removal is not reasonably foreseeable at this juncture given that (1) the government, for the past twenty-four years, has been unable to deport him; and (2) since detaining Petitioner in June 2025, ICE allegedly has not been diligent in trying to remove him. ECF No. 13 at 14-15. Petitioner's arguments, however, do not support his request for release from detention.

Whether Petitioner's current detention is constitutional is governed by the Supreme Court's directives in *Zadvydas*. In that regard, Petitioner filed his initial petition on September 11, 2025. ECF No. 1. Petitioner argues that *Zadvydas* created a grace period of 180 days from the date he was ordered removed by the immigration judge. Therefore, he argues that the grace period expired in June 2001 because he was ordered removed in January 2001. ECF No. 13 at 11. He further argues that he was detained for approximately 19 months after he was ordered removed and that, at the time of filing the Petition, he has been detained for over four months. *Id.* at 11-12. Thus, he argues that he has been detained for more than six months, cumulatively. *Id.* at 12.

These arguments, however, rely on an inaccurate characterization of the *Zadvydas* standard. It is therefore important to emphasize how the Supreme Court actually ruled and what the exact constitutional standard is:

> After this six-month period, once the alien provides 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. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6–month presumption, of course, does not mean that every alien not removed must

> be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Zadvydas, 533 U.S. at 701. Thus, the noncitizen "may be held in confinement until it has been determined that there is ***no significant likelihood of removal in the reasonably foreseeable future***." *Id.* (bold italic emphasis added).

Here, there is a significant likelihood that Petitioner will be removed to Vietnam in the reasonably foreseeable future. He was re-detained for removal in June 2025, after ICE had been successfully obtaining TDs for Vietnamese citizens who immigrated to the United States before 1995 and removing them. Ramirez Decl. ¶¶ 10, 19-20; *see Ngo v. Noem*, No. 25-cv02739-TWR-MMP, ECF Nos. 10, 11 (S.D. Cal. Oct. 23, 2025); *Tran v. Noem*, No. 25-cv-02391-BTM-BLM, ECF No. 12 (S.D. Cal. Oct. 23, 2025). ICE began to prepare Petitioner's TD request soon after his re-detention. *Id.* ¶¶ 16-17. Once ICE receives Petitioner's TD, he can be promptly removed, as ICE has routine flights to Vietnam. *Id.* ¶ 21. For this reason, ICE has found that there is a significant likelihood of Petitioner's removal to Vietnam in the near future. *Id.* ¶ 18. The fact that Petitioner filed his Petition soon after his re-detention does not mean there is "no significant likelihood" that he will be removed "in the reasonably foreseeable future." To the contrary, as recognized by *Zadvydas*, it takes some amount of time to remove people who are detained pursuant to a final removal order. There is no bar against Petitioner's removal to Vietnam, and the government is currently arranging for that removal.

It is true that the government had not been able to remove Petitioner to Vietnam, as with other similarly situated individuals, because of the prior political relationship between the United States and Vietnam. However, that barrier has been removed. This issue was exhaustively addressed in more recent litigation addressing detainees facing removal to Vietnam. In 2020, the district court in *Trinh v. Homan* explained the then-current state of affairs:

> The parties now agree that Vietnam does not maintain a blanket policy of refusing to repatriate pre-1995 immigrants. Instead, Vietnam now

> considers each request from ICE on a case-by-case basis. ICE frequently requests travel documents from Vietnam for pre-1995 immigrants, and Vietnam issues them in a non-negligible portion of cases. Petitioners do not appear to dispute that once Vietnam issues a travel document, removal becomes significantly likely, rendering class members unable to meet their initial burden under *Zadvydas*.

466 F. Supp. 3d 1077, 1090 (C.D. Cal. 2020) (cleaned up).

It is of no matter that the government re-detained Petitioner without TDs in hand. Under *Zadvydas*, the government is not required to pre-arrange a noncitizen's removal travel before detaining them. Indeed, it would be extremely difficult to do so. The constitutional standard, and only issue before this Court, is whether there is a significant likelihood of removal in the reasonably foreseeable future; not, however, the *imminent* future. A finding that requires Respondents to obtain TDs before re-detaining noncitizens subject to final orders of removal transforms the *Zadvydas* standard into an imminent one, and creates more obstacles to effectuate removal. Moreover, Respondents are not required to release every noncitizen detained longer than six months. *Zadvydas*, 533 U.S. at 701. The Constitution prevents only "indefinite" or "potentially permanent" detention, which is not the case here. *Id.* at 689-91.

Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Off. Dir.*, No. C13-0092-RSM, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner "failed to satisfy his burden of showing that there is no significant likelihood of his removal in the reasonably foreseeable future" where he had been detained more than seven months post-final order).

That Petitioner does not yet have a specific date of anticipated removal does not make his detention unconstitutionally indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008) (explaining that a demonstration of "no significant likelihood of

removal in the reasonably foreseeable future" would include a country's refusal to accept a noncitizen or that removal is barred by our own laws). On the contrary, evidence of progress, even slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy. *See, e.g., Sereke v. DHS*, No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug. 15, 2019) (slip op.) ("the record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future."); *Marquez v. Wolf*, No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal").

Thus, because Petitioner cannot establish a violation under *Zadvydas*, the Petition must be denied.

C. Petitioner's Complaints About Procedural Deficiencies in His Re-detention Do Not Establish a Basis for Habeas Relief

Petitioner's first claim for relief—that ICE failed to comply with its own regulations before re-detaining Petitioner—also fails. ECF 13 at 6-8.

A noncitizen who is not removed within the removal period may be released from ICE custody, "pending removal . . . subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C. § 1231(a)(6). An OSUP may be issued under 8 C.F.R. § 241.4, and the order may be revoked under section 241.4(l)(2)(iii) where "appropriate to enforce a removal order." *See also* 8 C.F.R. § 241.5 (conditions of release after removal period). ICE may also revoke the OSUP where, "on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). The regulation further provides:

> *Upon revocation*, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly *after* his or her return to Service custody to afford the

> alien an opportunity to respond to the reasons for revocation stated in the notification.

8 C.F.R. § 214.4(l) (emphasis added).

Here, Petitioner claims that his detention is unlawful because the agency failed to comply with its regulations *before* re-detaining him. ECF No. 13 at 8. In particular, Petitioner cites the absence of changed circumstances, that he was never given an informal interview, or given an opportunity to contest his detention. *Id.* Notably, the regulations do not require written notice, advance notice, an advanced interview, nor for Respondents to prove to the satisfaction of a petitioner that changed circumstances are present.[1]

Yet it is clear that there are changed circumstances here—namely, ICE's revived ability to obtain travel documents from the Vietnamese government and to schedule routine removal flights to Vietnam. Ramirez Decl. ¶¶ 19-21. That fact alone is fatal to Petitioner's claim, because even if the agency had failed to provide Petitioner with "advance notice" of the revocation (which the regulations do not require), or neglected to conduct the informal interview before the filing of the Petition, Petitioner could not establish that he was prejudiced by those omissions nor that a constitutional level violation has occurred. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("The mere failure of an agency to follow its regulations is not a violation of due process."); *United States v. Tatoyan,* 474 F.3d 1174, 1178 (9th Cir.2007) (holding that "[c]ompliance with ... internal [customs] agency regulations is not mandated by the Constitution" (internal quotation marks omitted)); *Bd. of Curators of Univ. of Mo. v. Horowitz,* 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* "enunciate[s] principles of federal administrative law rather than of constitutional law").

[1] There are obvious law enforcement reasons for not providing "advance" notice of a re-detention before executing a warrant of removal, just as there is no requirement to provide prior notice of execution of an arrest warrant. Providing such notice "creates a risk that the alien will leave town before the delivery or deportation date." *United States v. Gonzales & Gonzales Bonds & Ins. Agency, Inc.*, 103 F. Supp. 3d 1121, 1137 (N.D. Cal. 2015).

For example, in *Ahmad v. Whitaker*, the government revoked the petitioner's release but did not provide him an informal interview. No. 6928540, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted by* 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful because, he contended, the federal regulations prohibited re-detention without, among other things, an opportunity to be heard. *Id.* In rejecting his claim, the court held that although the regulations called for an informal interview, the petitioner could not establish "any actionable injury from this violation of the regulations" because the government had procured a travel document for the petitioner, and his removal was reasonably foreseeable. *Id.* Similarly, in *Doe v. Smith*, the district court held that even if the ICE detainee petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation . . . should result in release." *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order. . . . Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

So too here. At the time of his re-detention, Petitioner knew he was subject to a final order of removal to Vietnam. *See* ECF No. 13 at 3. He does not challenge that order in this lawsuit or offer any indication that he intends to do so. Petitioner also had reason to know, based on his OSUPs, that although he was released from detention, ICE would continue its efforts to obtain a TD to effectuate his removal to Vietnam. And because Respondents had, and continue to have, an evidentiary basis to conclude there is a significant likelihood that Petitioner will be removed to Vietnam in the reasonably foreseeable future, any challenge that Petitioner would have raised to the revocation prior to his re-detention would have failed. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *op. amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) ("While the regulation provides the detainee some opportunity to

respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation 'when, in the opinion of the revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.'") (emphasis in original) (citing 8 C.F.R. §§ 241.4(*l*)(2)(i), (iv)); *Carnation Co. v. Sec'y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) ("violations of procedural regulations should be upheld if there is no significant possibility that the violation affected the ultimate outcome of the agency's action" (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS' failure to follow regulations requiring that an arrested alien be advised of his right to speak to his consulate was not prejudicial and thus not a ground for challenging the conviction); *United States v. Barraza-Leon*, 575 F.2d 218, 221-22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by failing to inquire into the alien's background, any error was harmless because there was no showing that the petitioner was qualified for relief from deportation).

Thus, whatever procedural deficiencies or delays may have occurred, they do not warrant Petitioner's release and, indeed, could be cured by means other than release. Petitioner does not challenge his removal order, nor could he. ICE has provided Petitioner with a Notice of Revocation of Release and conducted an informal interview. Ramirez Decl. ¶¶ 13-14; Exs. 10-11. ICE's ERO is awaiting translation of the TD request, and once received, it will send a formal request to the Vietnam Embassy. *See id.* ¶ 17. With Petitioner's removal highly likely to occur in the reasonably foreseeable future, no purpose would be served by this Court's ordering his release—other than frustrating "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699.

Because Petitioner has not established a basis for habeas relief, the Court should dismiss his Petition.

/ / /

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss the habeas petition.

DATED: October 31, 2025

Respectfully submitted,

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DECLARATION OF HUGO LARA RAMIREZ

I, Hugo Lara Ramirez, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following statements are true and correct, to the best of my knowledge, information, and belief:

1. I am currently employed by the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), as a Deportation Officer assigned to the Otay Mesa suboffice of the ICE ERO San Diego Field Office.

2. I have been employed by ICE as a law enforcement officer since May 5, 2024, serving as a Deportation Officer since May 5, 2024. I currently remain serving in that

position. As a Deportation Officer, my responsibilities include case management of individuals detained by ICE at the Otay Mesa Detention Center in Otay Mesa, California.

3. This declaration is based upon my personal knowledge and experience as a law enforcement officer and information provided to me in my official capacity as a Deportation Officer in the Otay Mesa suboffice of the ICE ERO San Diego Field Office, as well as my review of government databases and documentation relating to Petitioner Loc Minh Nguyen (Petitioner).

4. On August 3, 1994, following a criminal conviction, Petitioner was ordered deported to Vietnam.

5. On January 10, 2001, Petitioner was ordered removed to Vietnam.

6. On May 3, 2001, Petitioner was released from ICE custody under an order of supervision pending removal from Vietnam because the government was unable to obtain a travel document to Vietnam.

7. On October 20, 2001, Petitioner attempted to enter the United States by falsely claiming to be a United States citizen. That same day, Petitioner was issued an Expedited Removal Order. On November 20, 2001, Petitioner was released on an order of supervision pending removal to Vietnam.

8. Following release from a four-year sentence for burglary, Petitioner was placed into ICE custody on September 29, 2008. On October 1, 2008, Petitioner was released on an order of supervision.

9. On November 29, 2011, following release from a three-year sentence for receiving stolen property, Petitioner was placed into ICE custody. On February 28, 2012, Petitioner was released on an order of supervision.

10. On June 4, 2025, ICE re-detained Petitioner to execute his removal order to Vietnam.

11. On June 4, 2025, ICE issued a Form I-200, Warrant for Arrest of Alien, for Petitioner's arrest, finding probable cause to believe that Petitioner is removable from the United States.

12. On June 4, 2025, ICE issued a Form I-205, Warrant of Removal/Deportation.

13. On October 30, 2025, ICE provided Petitioner with formal notice of the reason for revocation of his order of supervision.

14. On October 30, 2025, ICE +conducted an informal interview with Petitioner regarding his detention status.

15. ICE is not seeking to remove Petitioner to a third country.

16. Since ICE re-detained Petitioner, ERO has worked expeditiously to effectuate Petitioner's removal to Vietnam.

17. ERO is currently putting together a travel document request to send to the Vietnam Embassy, which will require a Vietnam travel document application in Vietnamese. On October 25, 2025, ERO sent the travel document request for translation. After the request is translated to Vietnamese, ERO will send a formal request to the Vietnam Embassy.

18. Based on my experience, there is a high likelihood of Petitioner's removal to Vietnam in the near future. I am aware of no barrier to the consulate's issuance of a travel document for Petitioner.

19. ICE has been routinely obtaining travel documents for Vietnamese citizens, including those who, like Petitioner, entered the United States before 1995.

20. Compared to fiscal year 2024, where ICE removed 58 Vietnamese citizens, ICE has removed at least 587 Vietnamese citizens this fiscal year as of October 2025.

21. ICE routinely has flights to Vietnam.

22. Once a travel document is issued for Petitioner, his removal can be effectuated promptly.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this 30th day of October 2025.

Hugo Lara Ramirez
Deportation Officer
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement