Jonathan Celis Guzman

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Jonathan Celis Guzman Petitioner, v. The Warden of Eden Detention Center in his/her official capacity, et al., Respondents.	Case No. 6:26-cv-232 **PETITIONER'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE**

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I. INTRODUCTION

Petitioner Jonathan Celis Guzman respectfully moves this Court for emergency relief in the form of a Temporary Restraining Order pursuant to Federal Rule of Civil Procedure 65 and this Court's authority under 28 U.S.C. §§ 1331, 1651, and 2241. This action does not seek review of the Immigration Judge's removal decision, nor does it challenge the merits of asylum, credibility, or removability. Instead, Petitioner challenges the unlawful execution of his removal while a timely filed administrative appeal remained pending before the Board of Immigration Appeals ("BIA").

On November 14, 2025, an Immigration Judge in Texas ordered Petitioner removed to Mexico. Petitioner timely filed a Notice of Appeal with the BIA. The BIA acknowledged receipt of the appeal and filing fee, and counsel of record properly entered her appearance. The appeal remains pending to this day.

Federal regulation provides in mandatory terms that a removal order "shall not be executed" during the time allowed for filing an appeal and, where a timely appeal is filed, during the pendency of that appeal. 8 C.F.R. § 1003.6(a). The stay is automatic. It arises by operation of law. It does not depend on agency discretion.

Despite the existence of this binding regulatory stay, the Department of Homeland Security ("DHS") removed Petitioner to Mexico on December 19, 2025,

while his appeal was actively pending. No notice of removal was provided to counsel of record. No notice is reflected on the EOIR docket accessible to counsel. Counsel learned of the removal only through Petitioner's family.

The Supreme Court has long held that agencies are bound by their own regulations, and that failure to comply with mandatory procedural rules renders resulting action invalid. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954); *Service v. Dulles*, 354 U.S. 363, 388 (1957); *Vitarelli v. Seaton*, 359 U.S. 535, 539–40 (1959). When an agency disregards a regulation that conditions its authority, it acts beyond delegated power and ultra vires. Here, because 8 C.F.R. § 1003.6(a) prohibits execution of a removal order during the pendency of a timely appeal, DHS lacked legal authority to execute Petitioner's removal on December 19, 2025.

The consequences are not merely procedural. Deportation may result in the loss "of all that makes life worth living," and therefore demands scrupulous adherence to procedural safeguards. *Bridges v. Wixon*, 326 U.S. 135, 154 (1945). The Fifth Amendment protects all "persons" within the United States, including noncitizens in removal proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Once Congress and the agency create a right to administrative appeal and impose a mandatory stay during its pendency, that review must be meaningful, not illusory.

Removal while a regulatory stay is operative nullifies the condition precedent to execution of the order and interferes with the BIA's appellate jurisdiction. Once a timely appeal is filed, jurisdiction over the removal order vests in the BIA. 8 C.F.R. §§ 1003.1(b), 1003.3(a). Executive action that frustrates ongoing adjudicative review undermines the integrity of the administrative process and violates basic separation-of-powers principles. Courts retain authority to prevent executive interference with pending review. See 28 U.S.C. § 1651(a); *Nken v. Holder*, 556 U.S. 418, 427–35 (2009).

This Court has jurisdiction because Petitioner does not seek review of the removal order itself. Rather, he challenges the manner and timing of its execution — specifically, removal in violation of a mandatory regulatory stay and in derogation of ongoing administrative appellate jurisdiction. Section 1252 does not bar review of constitutional claims or questions of law. 8 U.S.C. § 1252(a)(2)(D). Nor does it insulate ultra vires executive conduct from habeas scrutiny. *INS v. St. Cyr*, 533 U.S. 289, 300–06 (2001); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

The harm is ongoing and irreparable. Petitioner has resided in the United States for over twenty years and previously held DACA status for more than a decade. He was removed while his appeal was pending and without notice to counsel. The Supreme Court has recognized that removal pending review may inflict irreparable injury not automatically cured by the theoretical possibility of

later return. *Nken*, 556 U.S. at 435. Here, removal during the pendency of a mandatory stay has deprived Petitioner of the practical benefit of the appellate process guaranteed by regulation.

Petitioner does not ask this Court to revisit the merits of the Immigration Judge's decision. He asks this Court to enforce a binding federal regulation, preserve the integrity of the appellate process, and prevent the Executive from nullifying mandatory procedural safeguards through premature execution. The narrow question before this Court is whether DHS possessed lawful authority to execute the removal order while 8 C.F.R. § 1003.6(a)'s automatic stay remained in effect. If the stay was operative — and the BIA appeal remains pending — then the order was not legally executable, and the removal exceeded delegated authority.

Absent emergency judicial intervention, the regulatory stay mandated by federal law becomes meaningless, and the constitutional guarantee of meaningful review becomes contingent upon executive discretion rather than binding legal constraint.

Petitioner therefore respectfully requests that this Court issue an immediate Temporary Restraining Order to preserve jurisdiction, prevent further prejudice to his pending appeal, and order such relief as is necessary to restore the status quo ante pending full adjudication.

II. JURISDICTION

This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 2241, and 1651(a). Petitioner does not seek review of the underlying removal order. Rather, he challenges the unlawful execution of removal in violation of a mandatory regulatory stay and during the pendency of administrative appellate jurisdiction. Such claims fall squarely within the Court's habeas and federal-question jurisdiction.

A. Habeas Jurisdiction Under 28 U.S.C. § 2241

Federal courts retain habeas jurisdiction to review unlawful executive detention and unlawful execution of removal orders. See 28 U.S.C. § 2241(c)(3). Although the REAL ID Act limited district court jurisdiction over direct challenges to removal orders, it did not eliminate habeas review of constitutional claims and questions concerning the legality of executive custody or ultra vires conduct. INS *v. St. Cyr,* 533 U.S. 289, 305–06 (2001); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

Petitioner does not challenge the Immigration Judge's findings, credibility determinations, or eligibility for relief. He challenges the manner and timing of the Government's action — specifically, removal while a mandatory regulatory stay

under 8 C.F.R. § 1003.6(a) was in effect and while his appeal remained pending before the BIA.

Where the Executive acts beyond delegated authority or in violation of binding regulations, habeas relief remains available. See *St. Cyr*, 533 U.S. at 302; *Accardi*, 347 U.S. at 266–68.

B. Federal Question Jurisdiction Under 28 U.S.C. § 1331

This action arises under the Constitution and laws of the United States. Petitioner asserts violations of:

- The Fifth Amendment's Due Process Clause;
- The Immigration and Nationality Act;
- Binding federal regulations governing execution of removal orders; and
- The Accardi doctrine prohibiting agencies from disregarding mandatory regulations.

Accordingly, federal question jurisdiction exists under 28 U.S.C. § 1331.

C. Jurisdiction Under the All Writs Act – 28 U.S.C. § 1651(a)

The All Writs Act authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions." 28 U.S.C. § 1651(a). This

includes authority to prevent executive action that would frustrate or render meaningless pending review. See *Nken v. Holder*, 556 U.S. 418, 426–27 (2009).

Removal while a timely administrative appeal remains pending interferes with the BIA's jurisdiction and undermines the integrity of the adjudicative process. Courts retain authority to preserve meaningful review and prevent executive action that nullifies procedural safeguards established by law.

Absent intervention, the Government may rely on Petitioner's removal to argue mootness, departure doctrines, or procedural forfeiture, thereby frustrating both administrative and judicial review. The All Writs Act empowers this Court to prevent such interference.

D. Section 1252 Does Not Strip Jurisdiction

The Government may argue that 8 U.S.C. § 1252 divests this Court of jurisdiction. That argument fails.

Section 1252(a)(5) channels challenges to removal orders to the courts of appeals. Petitioner does not challenge the removal order itself. He challenges the Government's authority to execute that order while a mandatory regulatory stay was operative and while the appeal remained pending.

Section 1252(a)(2)(D) expressly preserves review of constitutional claims and questions of law. Petitioner raises both. The Supreme Court has repeatedly held that jurisdiction-stripping provisions must be interpreted in light of the strong presumption in favor of judicial review of executive action. See *St. Cyr*, 533 U.S. at 298–99.

Moreover, removal executed in violation of binding regulation constitutes ultra vires action not shielded by jurisdictional bars. *Accardi*, 347 U.S. at 266–68.

Petitioner does not seek review of discretionary decisions, factual findings, or the merits of asylum. He seeks enforcement of a mandatory regulatory stay and redress for executive action taken without lawful authority. Such claims remain reviewable in federal district court.

E. The Case Is Not Moot

Petitioner's removal does not render this action moot.

First, the injury is ongoing. Petitioner remains outside the United States while his BIA appeal remains pending. Because the appeal remains active, effective relief remains available, including facilitation of Petitioner's return and restoration of the status quo ante. Second, courts retain authority to order facilitation of return where removal occurred unlawfully. Removal does not extinguish jurisdiction to remedy unlawful

executive conduct. See *Nken,* 556 U.S. at 435 (recognizing that removal pending review may cause irreparable injury not cured by later return).

Third, the controversy remains live because the BIA appeal is still pending. The legality of the Government's execution of removal and the effect of that action on Petitioner's appellate rights remain justiciable.

To hold otherwise would permit the Executive to evade judicial review by acting first and litigating later — a result inconsistent with due process and the rule of law.

III. FACTUAL BACKGROUND

Petitioner Jonathan Celis Guzman is a native and citizen of Mexico. He entered the United States at approximately eight years of age and has resided in this country for more than two decades. He established longstanding family, community, and employment ties in the United States.

For more than ten years, Petitioner was granted Deferred Action for Childhood Arrivals ("DACA") by the Department of Homeland Security. During the validity periods of his DACA approvals, DHS exercised prosecutorial discretion in his favor, deferring removal and authorizing employment. Petitioner relied on this status to work lawfully, support himself and his family, and maintain stability in the United States.

On August 21, 2025, DHS issued a Notice to Appear charging Petitioner as removable under the Immigration and Nationality Act. On August 24, 2025, Petitioner was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") and detained at the Eden Detention Center in Texas.

Petitioner appeared before the Immigration Court and was represented by counsel throughout the removal proceedings. On November 14, 2025, the Immigration Judge issued a written decision denying Petitioner's applications for relief and entered an order of removal.

Petitioner did not waive his right to appeal. No written waiver of appeal was filed with the Immigration Court.

Within the time permitted by regulation, on December 13, 2025, Petitioner timely filed a Notice of Appeal with the Board of Immigration Appeals. The appeal was accepted for filing and docketed by the Board. Counsel entered a Notice of Appearance before the BIA. The appeal remains pending. The BIA has not issued a decision and has not dismissed the appeal.

On December 19, 2025, while the appeal remained pending, DHS executed Petitioner's removal to Mexico.

Prior to removal, neither Petitioner nor his counsel received written notice that removal would be executed while the appeal was pending. Counsel did not

receive notice that the appeal had been dismissed, denied, or otherwise resolved. Counsel learned of Petitioner's deportation through communication with Petitioner's family members after removal had already occurred.

At the time removal was executed, the appeal remained pending before the Board of Immigration Appeals. The appeal continues to appear as pending in the Executive Office for Immigration Review system.

As a result of the removal, Petitioner is currently in Mexico while his administrative appeal remains unresolved. His removal has limited his ability to consult with counsel regarding his appeal and to participate meaningfully in ongoing proceedings.

IV. STANDARD FOR TEMPORARY RESTRAINING ORDER

A Temporary Restraining Order is an extraordinary remedy designed to preserve the status quo and prevent irreparable harm pending full adjudication. *Fed. R. Civ. P. 65* authorizes a district court to issue temporary injunctive relief where necessary to prevent immediate and irreparable injury.

To obtain a temporary restraining order, a movant must demonstrate:

1. A substantial likelihood of success on the merits;

2. A substantial threat of irreparable injury if the injunction is not granted;

3. That the threatened injury outweighs any harm the injunction might cause the opposing party; and

4. That the injunction will not disserve the public interest.

Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008); *Canal Authority of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974); *Tex. Med. Ass'n v. HHS*, 110 F.4th 762, 770 (5th Cir. 2024).

The same standard governs both temporary restraining orders and preliminary injunctions. *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011).

In immigration cases, courts also consider the principles articulated in *Nken v. Holder*, 556 U.S. 418 (2009), which recognized that removal during pending review may inflict irreparable harm and undermine meaningful adjudication. Although *Nken* addressed a stay of removal in the court-of-appeals context, its analysis of irreparable injury and preservation of meaningful review applies with equal force where executive action threatens to nullify pending appellate proceedings.

Temporary relief is particularly appropriate where the challenged action may frustrate jurisdiction or render subsequent relief ineffectual. The Supreme Court has recognized that courts may act to preserve the integrity of adjudicative

processes and prevent executive action that would defeat meaningful review. See *Nken*, 556 U.S. at 427; see also 28 U.S.C. § 1651(a).

Here, Petitioner seeks narrowly tailored relief preserving the status quo that existed prior to execution of removal so that the pending administrative appeal may proceed in accordance with governing law. Because the removal was executed while a mandatory regulatory stay was operative and while appellate jurisdiction remained vested in the BIA, all four factors strongly favor emergency intervention.

V. ARGUMENT

A. Likelihood of Success on the Merits

Petitioner is likely to succeed because DHS executed his removal in direct violation of a mandatory regulatory stay, acted beyond delegated authority, interfered with vested appellate jurisdiction, and deprived him of constitutionally protected procedural rights. The removal was not merely premature — it was legally unauthorized.

1. DHS Executed Removal in Direct Violation of a Mandatory Regulatory Stay

The governing regulation provides in unequivocal terms:

"[T]he decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed." 8 C.F.R. § 1003.6(a).

When a timely appeal is filed, execution of the removal order is automatically stayed during the pendency of that appeal. The regulation uses mandatory language — "shall not be executed" — which leaves no room for agency discretion.

Petitioner timely filed a Notice of Appeal. The appeal was accepted and docketed. No waiver of appeal was filed. No dismissal order issued. The appeal remains pending.

Where a removal order is not legally executable, the agency lacks authority to carry it out. Compliance with 8 C.F.R. § 1003.6(a) is a condition precedent to lawful execution. Execution of removal in violation of that regulation is therefore ultra vires.

Once the appeal was filed and docketed, jurisdiction vested in the Board of Immigration Appeals. See 8 C.F.R. §§ 1003.1(b), 1003.3(a). Authority over the removal order transferred to the Board. DHS could not lawfully execute the order absent dismissal or resolution of the appeal.

Because the regulatory stay remained operative on December 19, 2025, DHS acted beyond delegated authority in executing removal.

2. Agencies Must Comply With Their Own Regulations (Accardi Doctrine)

It is a foundational principle of administrative law that agencies are bound by their own regulations.

In *United States ex rel. Accardi v. Shaughnessy*, the Supreme Court invalidated deportation proceedings where the Attorney General failed to comply with governing regulations. 347 U.S. 260, 266–68 (1954). The Court reaffirmed this principle in *Service v. Dulles*, 354 U.S. 363, 388 (1957), and again in *Vitarelli v. Seaton*, 359 U.S. 535, 539–40 (1959), holding that agency action taken in violation of binding procedural rules is invalid even where the agency otherwise possesses broad substantive authority.

The regulatory stay codified at 8 C.F.R. § 1003.6(a) is such a binding rule. By executing removal while that stay remained in effect, DHS disregarded a mandatory limitation on its authority.

When an agency acts in excess of regulatory constraints, its action is void. Petitioner is therefore likely to succeed on his ultra vires claim.

3. Removal During the Pendency of Appeal Violated the Fifth Amendment

The Fifth Amendment guarantees that no "person" shall be deprived of liberty without due process of law. U.S. Const. amend. V.

The Supreme Court has repeatedly held that noncitizens physically present in the United States are entitled to due process protections in removal proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

Deportation may result in the loss "of all that makes life worth living," and therefore demands scrupulous adherence to procedural safeguards. *Bridges v. Wixon*, 326 U.S. 135, 154 (1945).

Petitioner was afforded a statutory and regulatory right to administrative appeal. Once such review is provided, it must be meaningful. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

By executing removal before the Board could adjudicate the appeal, DHS impaired the process designed to review the Immigration Judge's decision. The injury is structural. It lies not merely in removal itself, but in the destruction of the regulatory mechanism guaranteeing appellate review.

Due process protects not only the existence of procedures but their effective operation. Removal during a mandatory stay renders appellate review illusory.

4. DHS Interfered With Petitioner's Statutory Right to Counsel

The Immigration and Nationality Act guarantees the right to representation in removal proceedings at no expense to the government. 8 U.S.C. § 1362; see also 8 U.S.C. § 1229a(b)(4)(A).

Regulations require service upon counsel of record. 8 C.F.R. § 292.5(a).

Petitioner was represented by counsel at all relevant times. DHS executed removal without providing advance notice to counsel that removal would be carried out while the appeal remained pending.

The lack of notice had concrete consequences. Had counsel been notified, she could have sought emergency relief before removal occurred. Removal without notice deprived Petitioner of meaningful access to judicial safeguards at a critical procedural moment.

Interference with representation in removal proceedings implicates procedural due process concerns. See *Castaneda-Delgado v. INS*, 525 F.2d 1295, 1299 (7th Cir. 1975).

5. The REAL ID Act Does Not Strip Jurisdiction Over Ultra Vires Execution

The REAL ID Act channels challenges to the validity of removal orders to the courts of appeals. 8 U.S.C. § 1252(a)(5). Petitioner does not challenge the validity of the removal order. He challenges DHS's lack of authority to execute the order while a mandatory regulatory stay remained in effect.

Section 1252(g) bars review of certain discretionary decisions to commence proceedings, adjudicate cases, or execute removal orders. See *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). But § 1252(g) does not insulate executive action taken in direct contravention of binding regulations.

When a regulation provides that an order "shall not be executed," the agency lacks lawful authority to execute removal during that period. Determining whether DHS acted in violation of a regulatory stay does not require review of the removal order's merits. It requires only determining whether DHS acted within the bounds of its delegated authority.

Courts retain jurisdiction to determine whether executive officials acted ultra vires. *Accardi*, 347 U.S. at 266–68.

Interpreting § 1252 to bar review here would render 8 C.F.R. § 1003.6(a) meaningless and allow the Executive to nullify mandatory stays by acting before

appellate review concludes. The statute should not be construed to extinguish meaningful review of whether the agency complied with its own binding regulations.

For all of these reasons, Petitioner has demonstrated a substantial likelihood of success on the merits.

B. Irreparable Harm

Irreparable harm is not speculative — it has occurred and continues.

The Supreme Court has recognized that removal pending review can inflict serious and irreparable injury. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Removal separates individuals from family, community, and counsel and may not be fully remedied by later return.

Petitioner has been physically removed from the United States while his appeal remains pending. He remains outside the country during ongoing administrative proceedings.

The primary injury is structural. Removal during a mandatory regulatory stay nullified the safeguard guaranteeing meaningful appellate review. That procedural injury cannot be remedied through monetary damages.

The loss of constitutional rights, even for minimal periods of time, constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Absent immediate judicial intervention, Petitioner will continue to suffer ongoing harm from removal executed in violation of binding federal regulation.

C. The Balance of Equities Favors Relief

The balance of equities strongly favors Petitioner.

DHS suffers no cognizable harm from being required to comply with binding federal regulations. Restoration of the status quo merely ensures that the regulatory stay functions as intended.

By contrast, Petitioner faces continued separation from family, disruption of appellate rights, and exposure abroad while his appeal remains unresolved.

Where the government itself created the unlawful condition, the equities weigh heavily in favor of corrective relief.

D. The Public Interest Supports Injunctive Relief

When the government is a party, the balance of equities and public interest merge. *Nken*, 556 U.S. at 435.

The public has a compelling interest in ensuring that federal agencies comply with binding regulations and constitutional guarantees. The integrity of the

immigration appellate process depends upon adherence to mandatory procedural safeguards.

Allowing removal to stand despite a pending appeal would render 8 C.F.R. § 1003.6(a) meaningless and undermine confidence in the rule of law.

The public interest therefore favors enforcement of binding regulations and preservation of meaningful administrative review.

VI. REQUEST FOR RELIEF

WHEREFORE, Petitioner Jonathan Celis Guzman respectfully requests that this Court grant the following emergency relief:

1. Issue an immediate Temporary Restraining Order pursuant to *Fed. R. Civ. P. 65*, finding that Petitioner has demonstrated a substantial likelihood that Respondents executed his removal in violation of 8 C.F.R. § 1003.6(a), the Accardi doctrine, and the Fifth Amendment;

2. Enjoin Respondents from treating the removal order as lawfully executed while Petitioner's appeal remains pending before the Board of Immigration Appeals;

3. Enjoin Respondents from taking any action to dismiss, terminate, or otherwise interfere with Petitioner's pending BIA appeal on the basis of his removal;

4. Order Respondents to take all lawful steps necessary to restore the status quo ante, including facilitation of Petitioner's return to the United States if required to cure the unlawful execution of removal;

5. In effectuating restoration of the status quo, order Respondents to exercise any statutory authority available — including parole authority under the Immigration and Nationality Act — to permit Petitioner's physical return pending resolution of his appeal;

6. In the alternative, order Respondents to provide immediate and concrete relief sufficient to cure the due-process injury caused by removal during the pendency of the regulatory stay, including measures ensuring meaningful access to counsel and full participation in BIA proceedings;

7. Set an expedited schedule for further briefing and hearing; and

8. Grant such other temporary, preliminary, or permanent relief as the Court deems just and proper to preserve its jurisdiction and protect Petitioner's statutory and constitutional rights.

9. Waive any security requirement under *Fed. R. Civ. P. 65(c)*, or in the alternative set a nominal bond in an amount the Court deems appropriate, as Respondents will suffer no cognizable monetary harm from temporary preservation of the status quo and this action seeks enforcement of binding federal regulations and constitutional protections.

VII. CONCLUSION

DHS executed Petitioner's removal while a mandatory regulatory stay prohibited execution and while appellate jurisdiction remained vested in the Board of Immigration Appeals. The removal was therefore carried out in excess of delegated authority and in derogation of binding procedural safeguards.

Petitioner does not seek review of the Immigration Judge's merits determination. He seeks only enforcement of a mandatory federal regulation and preservation of meaningful appellate review.

Absent immediate intervention, the regulatory stay mandated by 8 C.F.R. § 1003.6(a) will be rendered meaningless, and the integrity of the administrative appellate process will be compromised.

For these reasons, Petitioner respectfully requests that the Court grant the requested Temporary Restraining Order and such further relief as is necessary to restore the status quo ante and preserve jurisdiction.

Dated: June 04, 2026

Deported



Jonathan Celis Guzman

Jonathan Celis Guzman A[redacted]

CERTIFICATE OF SERVICE

I hereby certify that on June 04, 2026 I served a copy of the PETITIONER'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE on the Clerk's Office of the United States District Court:

Clerk of Court
United States District Court
33 E. Twohig Avenue, Room 202
San Angelo, TX 76903-6451

Dated: June 04, 2026

Respectfully Submitted,

