Matter of Fermin MARISCAL-HERNANDEZ, Respondent

Decided December 9, 2022

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

(1) Where an Immigration Judge finds that a traffic stop was nothing more than a routine law enforcement action, a respondent has not established a prima face case of a Fourth Amendment violation—much less an egregious violation—and is not entitled to a hearing on a suppression motion. *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988), *followed*.

(2) Unsupported assertions and speculation have no evidentiary value and are insufficient to establish a prima facie case that an investigatory stop was an egregious violation of the Fourth Amendment, and thus they do not warrant a suppression hearing.

FOR THE RESPONDENT: Jan Joseph Bejar, Esquire, San Diego, California

FOR THE DEPARTMENT OF HOMELAND SECURITY: Alvin Ratana, Assistant Chief Counsel

BEFORE: Board Panel: MALPHRUS, Deputy Chief Appellate Immigration Judge; HUNSUCKER and PETTY, Appellate Immigration Judges.

HUNSUCKER, Appellate Immigration Judge:

In a decision dated December 7, 2018, an Immigration Judge denied the respondent's motion to suppress evidence and terminate his removal proceedings. The respondent has appealed from this decision as well as the Immigration Judge's decision to deny his motion to terminate based on *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). The appeal will be dismissed.

I. FACTUAL AND PROCEDURAL HISTORY

On February 14, 2017, Immigration and Customs Enforcement ("ICE") officers were conducting surveillance in Encinitas, California, seeking to arrest a previously removed noncitizen with a final order of removal. During this surveillance, the officers saw a man resembling the target of their investigation exit the apartment complex where they believed their target lived and enter the passenger side of a vehicle. ICE officers stopped and then approached the vehicle and questioned the vehicle's occupants—the respondent and the respondent's son.

In a declaration appended to his motion to suppress, the respondent claims that ICE officers presented him and his son with a photograph of the man who was the target of the investigation. The respondent asserts he told the officers he did not know the man in the photograph. A Record of Deportable/Inadmissible Alien (Form I-213) documenting the stop states that ICE officers then asked both the respondent and his son for identification. The respondent's son produced a Mexican matrícula—an identity document issued by the Government of Mexico—but the respondent replied that he could not produce any identification. According to the Form I-213, the respondent and his son then admitted they were unlawfully present in the United States. The respondent's declaration is vague about his further communications with the ICE officers during the stop. In it, the respondent claims the ICE officers "did not really speak to [him]," but he does not deny telling officers that he was unlawfully in the United States. Both the respondent and his son were then arrested and transported to the San Diego ICE office.

The respondent states in his declaration that while officers at the San Diego ICE office asked him "various questions" and took his fingerprints, they never asked him if he was lawfully in the United States. The respondent further claims he was never advised of his rights to remain silent and hire an attorney, and he "felt compelled to answer the questions" he was asked, though he does not specify what those questions were. The respondent was released later that day. The same day as the arrest and stop, ICE officers prepared the Form I-213. In addition to detailing the stop and arrest, this form states that a records check revealed the respondent was voluntarily returned to Mexico on January 13, 2003.

Prior to his release from the San Diego ICE office, the Department of Homeland Security ("DHS") personally served the respondent with a notice to appear that stated he was to appear for a removal hearing before the San Diego Immigration Court at a date and time to be set. The notice to appear alleged the respondent is a native and citizen of Mexico who entered the United States on or about December 15, 2001, without admission or parole and charged him with removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(a)(6)(A)(i) (2012), as an individual present in the United States without having been admitted or paroled.

The respondent moved to suppress the Form I-213, which contains evidence of his alienage and supports the allegations and charge of removability. The respondent claimed DHS obtained this evidence through an egregious violation of his rights under the Fourth Amendment of the United States Constitution—specifically, that ICE officers knowingly stopped him based on his apparent ethnicity without any reasonable

suspicion that he was unlawfully present in the United States. He also claimed DHS violated his rights under the INA and the governing regulations by conducting a warrantless arrest and failing to advise him of his right against self-incrimination. Finally, he claimed the Form I-213 is unreliable and that he should be permitted to cross-examine the ICE officers who arrested him "and any other officer" involved in his "seizure and custodial interrogation."

The Immigration Judge denied the respondent's motion to suppress the Form I-213 and terminate proceedings. The respondent did not submit any applications for relief from removal but was granted the benefit of voluntary departure under section 240B(b)(1) of the INA, 8 U.S.C. § 1229c(b)(1) (2018). On appeal, the respondent challenges the Immigration Judge's decision to deny his motion to suppress the Form I-213 and terminate proceedings.[1]

II. ANALYSIS

A. Admission of Evidence in Immigration Proceedings

"In immigration proceedings, the 'sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair.'" *Matter of E-F-N-*, 28 I&N Dec. 591, 593 (BIA 2022) (citation omitted); *see also Sanchez v. Holder*, 704 F.3d 1107, 1109 (9th Cir. 2012) (per curiam) (same). Here, the Immigration Judge properly found the Form I-213 to be probative of the respondent's alienage and the allegation in the notice to appear that he is a native and citizen of Mexico. *See Matter of E-F-N-*, 28 I&N Dec. at 593 (citing *Matter of Ruzku*, 26 I&N Dec. 731, 733 (BIA 2016) ("[T]o be probative, evidence must tend to prove or disprove an issue that is material to the determination of the case.")). It is also probative of his removability under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i), because it reflects the respondent is unlawfully in the United States.

[1] The respondent also appealed the Immigration Judge's denial of his motion to terminate based on *Pereira*. The respondent argued his notice to appear did not vest the Immigration Judge with jurisdiction over his removal proceedings because it did not specify the time and date of his initial removal hearing. This argument is foreclosed by binding precedent. *United States v. Bastide-Hernandez*, 39 F.4th 1187, 1190–94 (9th Cir. 2022) (en banc) (holding that the failure to include the date and time of a removal hearing on a notice to appear does not deprive an Immigration Court of jurisdiction); *Matter of Arambula-Bravo*, 28 I&N Dec. 388, 391 (BIA 2021) (same). Although the respondent's notice to appear did not inform him of the time and date of his initial hearing, he was provided with this information in a subsequent notice of hearing, and he appeared for all of his hearings.

The admission of the Form I-213 was fundamentally fair. *Sanchez*, 704 F.3d at 1109 ("Admission of a Form I-213 'is fair absent evidence of coercion or that the statements are not those of the petitioner.'"); *see also Hernandez v. Garland*, No. 20-72138, 2022 WL 16547160, at *5 (9th Cir. Oct. 31, 2022) ("Forms I-213 are entitled to a presumption of reliability because of their general characteristics as government-prepared documents. Those characteristics exist regardless of the purpose for which the form is used." (citation omitted)). Although the respondent asserts he "felt" compelled to answer the ICE officers' questions, he has not presented evidence demonstrating that ICE officers used coercion to obtain any of the information contained in the Form I-213, including that he and his son admitted to being unlawfully present during the stop. Additionally, while the respondent claims in his declaration the officers "did not really speak to [him]" and "never asked [him] if [he] was lawfully in the United States," he does not deny making the statements regarding his alienage, or the time, place, and manner of his entry as recorded in the Form I-213. Thus, the respondent's declaration does not "cast doubt upon [the] reliability" of the Form I-213. *Espinoza v. INS*, 45 F.3d 308, 311 (9th Cir. 1995).

Furthermore, the respondent has not shown that the Immigration Judge's decision to admit the Form I-213 and not permit him to cross-examine the ICE officers who prepared this form prejudiced him. *See Olea-Serefina v. Garland*, 34 F.4th 856, 866 (9th Cir. 2022) (stating that to demonstrate a violation of due process in removal proceedings, a respondent must demonstrate "prejudice, which means that the outcome of the proceeding may have been affected by the alleged violation'" (citation omitted)).[2]

B. Exclusionary Rule

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. To effectuate this constitutional right, the Supreme

[2] Asking for identification during an investigatory stop is a "routine and accepted" practice that serves many legitimate purposes, including protecting the safety of officers, identifying the possible subject of an arrest warrant, or quickly clearing a person detained and allowing officers to focus their efforts elsewhere. *Hiibel v. Sixth Judicial Dist. Ct. of Nev.*, 542 U.S. 177, 186 (2004). It is well established that "the identity of an alien in removal proceedings is 'never itself suppressible . . . .'" *Perez Cruz v. Barr*, 926 F.3d 1128, 1136 (9th Cir. 2019) (citation omitted); *see also B.R. v. Garland*, 26 F.4th 827, 842 (9th Cir. 2022) ("Alienage evidence obtained using only an alien's identity is severed from any violation that may otherwise justify exclusion."). However, DHS does not assert it used the respondent's identity to establish his alienage or lack of immigration status in this case.

Court of the United States has, in some contexts, required evidence obtained in violation of the Fourth Amendment, or derived from such a violation, to be excluded from judicial proceedings. *See Herring v. United States*, 555 U.S. 135, 139 (2009) (noting "our decisions establish an exclusionary rule that, *when applicable*, forbids the use of improperly obtained evidence at trial" (emphasis added)).

In *Matter of Sandoval*, 17 I&N Dec. 70, 83 (BIA 1979), we held that the exclusionary rule does not apply in civil immigration proceedings. We reached this holding after concluding the "societal costs" of applying the exclusionary rule in immigration proceedings, namely, the "sanctioning of a continuing violation of this country's immigration laws," outweighed "the remote likelihood that the exclusion of unlawfully seized evidence . . . would significantly affect the conduct of immigration officers." *Id.* at 81, 83. In *INS v. Lopez-Mendoza*, the Supreme Court agreed with our holding and reasoning in *Matter of Sandoval*. 468 U.S. 1032, 1050 (1984) ("[W]e are persuaded that the . . . balance between costs and benefits comes out against applying the exclusionary rule in civil deportation hearings . . . .").

As stated in *Lopez-Mendoza*, the exclusionary rule may apply in immigration proceedings where evidence was obtained as a result of "egregious violations of [the] Fourth Amendment . . . that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained." *Id.* at 1050–51 (plurality opinion); *see also Matter of Cervantes*, 21 I&N Dec. 351, 353 (BIA 1996) (acknowledging that the "Supreme Court left open the possibility that the exclusionary rule might apply in immigration proceedings involving 'egregious violations . . . .'" (citation omitted)). The United States Court of Appeals for the Ninth Circuit, in whose jurisdiction this case arises, has held that the exclusionary rule applies in the immigration context where immigration officers commit an "egregious" violation of the Fourth Amendment, meaning the "evidence is obtained by deliberate violations of the [F]ourth [A]mendment, or by conduct a *reasonable officer should [have known]* is in violation of the Constitution." *Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1018 (9th Cir. 2008) (alternations in original) (citation omitted).[3]

[3] The Ninth Circuit's "reasonable officer" test is the most expansive test for egregious conduct among the circuits. *See Garcia-Torres v. Holder*, 660 F.3d 333, 337 n.4 (8th Cir. 2011) (rejecting the Ninth's Circuit's position that "an 'egregious violation' is nothing more than a 'bad faith' violation" because "the Fourth Amendment prohibits only 'unreasonable' searches and seizures and the Ninth Circuit's standard applies whenever 'a reasonable officer should have known' his conduct was illegal"). The First, Second, Third, Fourth, and Eighth Circuits have held that the exclusionary rule applies in removal proceedings where a violation is considered "egregious" under the "totality of the circumstances." *See, e.g.*, *Corado-Arriaza v. Lynch*, 844 F.3d 74, 78 (1st Cir. 2016); *Yanez-Marquez v. Lynch*, 789 F.3d 434, 459 (4th Cir. 2015); *Oliva-Ramos v. Att'y Gen. of*

Since *Lopez-Mendoza*, the Supreme Court has not addressed the exclusionary rule in the immigration context. However, where, as here, a controlling circuit court has held that the exclusionary rule may apply if immigration officials commit an egregious violation of the Fourth Amendment, a respondent who moves to exclude evidence must establish "a prima facie case before [DHS] will be called on to assume the burden of justifying the manner in which it obtained the evidence.'" *Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1988) (citation omitted); *see also Sanchez v. Sessions*, 904 F.3d 643, 653 (9th Cir. 2018) (applying the burden-shifting framework from *Matter of Barcenas* in determining whether evidence should be suppressed).[4] The Immigration Judge correctly concluded the respondent has not made this showing. Thus, DHS was not required to justify how it obtained the information in the Form I-213, and suppression under the exclusionary rule was not warranted.

The evidence in the Form I-213 was obtained as a result of a lawful investigatory stop. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968) (allowing a brief, investigatory stop under the Fourth Amendment when the officer has reasonable, articulable suspicion that criminal activity is afoot); *see also United States v. Cortez*, 449 U.S. 411, 417 (1981) (noting that the Fourth Amendment applies to brief investigatory stops, including the stop of a vehicle). Immigration officers may "seize" an individual under the Fourth Amendment through a temporary detention to investigate whether that person is in the country unlawfully so long as the officer can "articulate objective facts providing a reasonable suspicion that [the subject of the seizure] was an alien illegally in this country." *Orhorhaghe v. INS*, 38 F.3d

U.S., 694 F.3d 259, 279 (3d Cir. 2012); *Puc-Ruiz v. Holder*, 629 F.3d 771, 778–79 (8th Cir. 2010); *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 234–37 (2d Cir. 2006). The Sixth and Seventh Circuits have acknowledged that the exclusionary rule may apply in immigration proceedings if there is an "egregious" violation but have neither explicitly defined egregiousness, nor found circumstances justifying exclusion. *See Nolasco-Gaspar v. Holder*, 581 F. App'x 546, 546–47 (6th Cir. 2014) (per curiam); *Gutierrez-Berdin v. Holder*, 618 F.3d 647, 652–53 (7th Cir. 2010). Finally, the Fifth, Tenth, and Eleventh Circuits have either not addressed the issue, or suggested that the exclusionary rule does not apply in removal proceedings. *See Meza v. U.S. Att'y Gen.*, 789 F. App'x 790, 797 (11th Cir. 2019) (per curiam); *Luevano v. Holder*, 660 F.3d 1207, 1212 (10th Cir. 2011); *Escobar v. Holder*, 398 F. App'x 50, 53 (5th Cir. 2010) (per curiam).

[4] According to the Ninth Circuit, to warrant the suppression of evidence based on an egregious violation of the Fourth Amendment, a court must first determine whether the Fourth Amendment was violated and second whether the violation was egregious. *Orhorhaghe v. INS*, 38 F.3d 488, 493 (9th Cir. 1994). However, the Ninth Circuit has stated that a court may decline to address the first step and focus only on whether the egregiousness prong has been satisfied. *See Martinez-Medina v. Holder*, 673 F.3d 1029, 1034 (9th Cir. 2011).

at 497 (alteration in original) (citation omitted); *see also* 8 C.F.R. § 287.8(b)(2) (2021) (codifying this standard into the regulations).[5]

Physical characteristics suggestive of ethnicity or ancestry are not, standing alone, a reasonable basis to stop and question an individual regarding his immigration or citizenship status. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886–87 (1975); *Sanchez*, 904 F.3d at 650–51; *Gonzalez-Rivera v. INS*, 22 F.3d 1441, 1452 (9th Cir. 1994). Here, however, the record establishes that the ICE officers who stopped the respondent had reasonable suspicion to do so. As noted, the ICE officers were conducting surveillance in Encinitas, California, seeking to arrest a previously removed individual with a final order of removal when they observed the respondent, who resembled the suspect, exit the apartment complex where the subject was believed to live, enter a vehicle, and drive away. The respondent's resemblance to the person the officers were seeking to arrest, and his presence in the same location where this person resided, are reasonable, articulable, objective facts justifying a brief, investigatory stop of the respondent to determine if he was the subject for whom they were searching. *Terry*, 392 U.S. at 30; *see also Cortez*, 449 U.S. at 417; *Orhorhaghe*, 38 F.3d at 497; 8 C.F.R. § 287.8(b)(2).

The respondent speculates the ICE officers knew he was not the target of their investigation when they showed him and his son a photograph of the target and asked if they knew the individual, and the officers should have then terminated the encounter immediately. The Immigration Judge was not required to accept the respondent's interpretation of the record in this regard. The Immigration Judge found that the ICE officers observed the respondent physically resembled their target—a resemblance the respondent does not deny—and was present in the same location where the target was thought to reside. These findings are not clearly erroneous. *See Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.").

Thus, the ICE officers had a reasonable suspicion that the respondent was the target of their warrant. *See, e.g.*, *Terry*, 392 U.S. at 5–6 (holding that there was reasonable suspicion justifying a stop when the officer observed two individuals pacing back and forth in front of a store, peering into the store window, and periodically conferring). After the officers asked for identification and the respondent's son produced a foreign identification document and the respondent stated he had no identification, the facts supported the ICE officers' continued suspicion and justified reasonably

[5] The respondent does not argue on appeal the ICE officers who stopped and arrested him violated 8 C.F.R. § 287.8(b)(2), and we consider any arguments in this regard to be waived. *See, e.g.*, *Matter of V-A-K-*, 28 I&N Dec. 630, 630 n.2 (BIA 2022).

extending the length of the stop. *See Rodriguez v. United States*, 575 U.S. 348, 350–54 (2015) (explaining that the permissible length of the seizure is limited by the seizure's objective and only becomes unlawful when the seizure is prolonged beyond the time reasonably necessary to complete that objective); *see also* 8 C.F.R. § 287.8(b)(2) (stating that an immigration officer "may briefly detain the person *for questioning*" (emphasis added)).

Because there is no clear error in the Immigration Judge's finding that the stop was nothing more than a routine law enforcement action, the respondent has not established a prima face case of a Fourth Amendment violation—much less an egregious violation—and was not entitled to a hearing on his suppression motion at which he could cross-examine the ICE officers involved in his arrest and detention and DHS would be required to justify how it obtained the information in the Form I-213. *See Matter of Barcenas*, 19 I&N Dec. at 611; *see also Maldonado v. Holder*, 763 F.3d 155, 160–63 (2d Cir. 2014) (holding that no suppression hearing is required where an affidavit on its face is insufficient to conclude an egregious constitutional violation took place).

Moreover, counsel's argument in the respondent's appellate brief that the "only logical conclusion" is that the stop was the result of "unlawful racial profiling" is not evidence. *See, e.g.*, *Matter of J.J. Rodriguez*, 27 I&N Dec. 762, 765–66 (BIA 2020) (noting that statements by counsel are not evidence and are not entitled to evidentiary weight). Unsupported assertions and speculation have no evidentiary value and are insufficient to establish a prima facie case that an investigatory stop was racially motivated or an egregious violation of the Fourth Amendment, and thus they do not warrant a suppression hearing. *Matter of Wong*, 13 I&N Dec. 820, 822 (BIA 1971) (stating that "a mere demand for a suppression hearing is not enough to cause one to be held," especially where statements in a motion for suppression lack specificity and detail, are "general, conclusory or based on conjecture," or are not "based on personal knowledge").

Finally, we reject the respondent's assertion that the Form I-213 should be suppressed because the ICE officers violated his statutory and regulatory rights. First, we discern no violation of section 287(a)(2) of the INA, 8 U.S.C. § 1357(a)(2) (2018), which permits an immigration officer to conduct a warrantless arrest where the officer has "reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest." "The phrase 'has reason to believe' has been equated with the constitutional requirement of probable cause." *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980) (citation omitted). The ICE officers had a "reason to believe" the respondent was in the United States in violation of law when, during the stop, the respondent stated he had no identification and then made

the uncoerced admission that he was unlawfully in the United States. *See id.* (holding that an uncoerced admission that the individual was not from the United States constituted "a clearly sufficient basis for [a] warrantless arrest"). Further, as explained in *United States v. Quintana*, there is "reason to believe" an individual in a vehicle would likely escape before a warrant could be obtained. 623 F.3d 1237, 1241 (8th Cir. 2010); *see also United States v. Reyes-Oropesa*, 596 F.2d 399, 400 (9th Cir. 1979) (concluding that a warrantless arrest was proper under section 287(a)(2) when an individual working in a garage presented a forged resident card to immigration officers).

Second, the respondent's argument that the ICE officers violated 8 C.F.R. § 287.3(c) (2021) by not advising him, at the time of his warrantless arrest, that any statement he made could be used against him in a subsequent proceeding is foreclosed by binding precedent. The Board and the Ninth Circuit have held that this regulation only requires immigration officers to advise a respondent of his or her right against self-incrimination *after* DHS has placed the respondent in removal proceedings. *Matter of E-R-M-F- & A-S-M-*, 25 I&N Dec. 580, 585 (BIA 2011); *see also Samayoa-Martinez v. Holder*, 558 F.3d 897, 901–02 (9th Cir. 2009). Because the alleged violation occurred before the initiation of removal proceedings, 8 C.F.R. § 287.3(c) is inapplicable. Accordingly, the Immigration Judge properly admitted the Form I-213 into the record.

III. CONCLUSION

For the foregoing reasons, the Immigration Judge properly denied the respondent's motion to suppress and terminate proceedings. The respondent has not otherwise challenged his removability or sought relief from removal. The Immigration Judge granted the respondent the benefit of voluntary departure, and the record reflects the respondent submitted timely proof of having paid the voluntary departure bond. Accordingly, the appeal is dismissed, and the period of voluntary departure is reinstated.

ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent is permitted to voluntarily depart the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by DHS. *See* section 240B(b) of the INA, 8 U.S.C. § 1229c(b); *see also* 8 C.F.R. § 1240.26(c), (f) (2021). In the event a respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If a respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by DHS, the respondent shall be subject to a civil penalty as provided by the regulations and the statute, and shall be ineligible for a period of 10 years for any further relief under sections 240B, 240A, 245, 248, and 249 of the INA, 8 U.S.C. §§ 1229b, 1255, 1258, 1259 (2018).

WARNING: If a respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the INA, 8 U.S.C. § 1229c(d), shall not apply. *See* 8 C.F.R. § 1240.26(e)(1).

WARNING: If, prior to departing the United States, a respondent files any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the INA, 8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate order of removal shall immediately take effect. However, if the respondent files a petition for review and then departs the United States within 30 days of such filing, the respondent will not be deemed to have departed under an order of removal if the respondent provides to DHS such evidence of his or her departure that the ICE Field Office Director of DHS may require and provides evidence DHS deems sufficient that he or she has remained outside of the United States. The penalties for failure to depart under section 240B(d) of the INA, 8 U.S.C. § 1229c(d), shall not apply to a respondent who files a petition for review, notwithstanding any period of time that he or she remains in the United States while the petition for review is pending. *See* 8 C.F.R. § 1240.26(i).