

# APPENDIX

## A-1

[DO NOT PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 20-12038

Non-Argument Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

*versus*

LUIS DAVID HUERTA-CARRANZA,

a.k.a. David Huerta,

a.k.a. Luis David Huerta,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 8:19-cr-00597-RAL-AAS-1

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Before WILSON, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

Luis Huerta-Carranza, a native and citizen of Mexico, appeals from his conviction and sentence for being found illegally in the United States after being convicted of a felony and previously deported, in violation of 8 U.S.C. § 1326(a) and (b). He argues that the district court erred in denying his motion to dismiss the indictment because the immigration judge (“IJ”) lacked jurisdiction in his original removal proceeding based on a defective notice to appear (“NTA”), under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021). He also argues that U.S.S.G. § 2L1.2(b)(1)(A) and (3)(C) are unconstitutional and violate the Fifth Amendment’s due process and equal protection clauses. However, he concedes that our precedent forecloses both of his claims, and he seeks to simply preserve them for further review. Accordingly, we affirm.

**I. Background**

Huerta-Carranza entered the United States illegally from Mexico in the 1990s. In 2001, authorities served Huerta-Carranza

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with a NTA charging him as removable for being present in the United States without being admitted or paroled. The NTA indicated that he should appear before an IJ at a date and time to be determined. A subsequent notice provided him with the date, place, and time of his removal hearing. The IJ subsequently ordered him removed to Mexico, and he was removed in June 2001. At some point thereafter he reentered the United States illegally and was arrested several times for various offenses between 2004 and 2013. In 2013, he was charged and convicted of illegal reentry and again removed from the United States in January 2014. He reentered again and was once again charged and convicted of illegal reentry and after serving his sentence was again removed to Mexico in 2017. Later, in July 2019, he again illegally entered, his prior removal order was reinstated, and he was removed that same month. Later in 2019, he reentered again and was charged in the present case with illegal reentry after having sustained a felony conviction and being removed.

Huerta-Carranza filed a motion to dismiss the indictment, arguing that the IJ lacked jurisdiction over his original 2001 removal proceedings because his NTA was defective under *Pereira*, in which the Supreme Court held that a notice to appear that does not specify the time and place of the initial removal proceeding does not qualify as a “notice to appear under [8 U.S.C.] 1229(a)” and therefore does not trigger the stop-time rule for purposes of cancellation of removal. 138 S. Ct. at 2110, 2115. However, he conceded that in *Perez-Sanchez v. U.S. Att’y Gen.*,

935 F.3d 1148, 1154–56 (11th Cir. 2019), we held that the failure to include the date, time, and place of an alien’s removal hearing in a NTA did not deprive the IJ of jurisdiction over the proceedings. The district court entered an endorsed order denying the motion to dismiss, citing *Perez-Sanchez*.

Huerta-Carranza proceeded to a bench trial based on stipulated facts and was found guilty as charged. He renewed his motion to dismiss during the bench trial, and it was denied.

His presentence investigation report (“PSI”) indicated that he received a four-level guidelines increase to the base offense level under U.S.S.G. § 2L1.2(b)(1)(A) because he committed the instant offense after being convicted of another illegal reentry offense.<sup>1</sup> He also received a six-level increase under U.S.S.G. § 2L1.2(b)(3)(C) because after being deported he was convicted of a felony offense (other than illegal reentry) for which the sentence imposed exceeded one year and one month.<sup>2</sup> His total adjusted offense level

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<sup>1</sup> Section 2L1.2(b)(1)(A) provides that “[i]f the defendant committed the instant offense after sustaining—(A) a conviction for a felony that is an illegal reentry offense, increase by 4 levels.” U.S.S.G. § 2L1.2(b)(1)(A).

<sup>2</sup> Section 2L1.2(b)(3)(C) provides that “[i]f, after the defendant was ordered deported or ordered removed from the United States for the first time, the defendant engaged in criminal conduct that, at any time, resulted in . . . a conviction for a felony offense (other than an illegal reentry offense), for which the sentence imposed exceeded one year and one month, increase by 6 levels.” U.S.S.G. § 2L1.2(b)(3)(C). Huerta-Carranza’s PSI indicated that he was convicted in 2005 of five felony counts related to forgery. He was sentenced to 180 days in jail followed by 2 years’ probation, but his probation was later

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of 15 and his criminal history category of V resulted in a guidelines range of 37 to 46 months' imprisonment. He objected to the offense-level enhancements under U.S.S.G. § 2L1.2(b), arguing that the guideline was unconstitutional because it resulted in double counting of his criminal history due to his status as an alien and violated his right to equal protection and due process of the law. The district court overruled his objection at sentencing as foreclosed by binding precedent. The district court sentenced him to 46 months' imprisonment. This appeal followed.

## II. Discussion

Huerta-Carranza is correct that both of his claims are squarely foreclosed by binding precedent. Under the prior-panel-precedent rule, "a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc." *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008).

First, we have rejected the argument that, under *Pereira*, the IJ lacks jurisdiction over removal proceedings because the NTA was defective. *Perez-Sanchez*, 935 F.3d at 1154–55. The Supreme Court's subsequent decision in *Niz-Chavez*<sup>3</sup> that 8 U.S.C. § 1229b(d)(1) and § 1229(a)(1) unambiguously require that the

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revoked and he was sentenced to 9 months in jail, which when combined with his initial term of imprisonment totaled more than a year and a month.

<sup>3</sup> After Huerta-Carranza filed his notice of appeal, the Supreme Court issued its decision in *Niz-Chavez*.

government provide a single NTA containing all of the information required to be in an NTA in order to trigger the stop-time rule for cancellation of removal was not a jurisdictional ruling and did not undermine our holding in *Perez-Sanchez*. 141 S. Ct. at 1479–86. And we have continued to rely on *Perez-Sanchez*'s holding that a defective NTA does not create a jurisdictional issue post-*Niz-Chavez*. See *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1322 (11th Cir. 2021) (holding that “the immigration court retains jurisdiction over an alien’s removal proceedings even if the alien’s notice to appear does not contain the time or place of the proceedings”). Accordingly, we conclude that the district court did not err in denying Huerta-Carranza’s motion to dismiss the indictment.

Second, we have held that U.S.S.G. § 2L1.2(b) does not violate the Fifth Amendment’s guarantees of due process and equal protection. See *United States v. Osorto*, 995 F.3d 801, 821–22 (11th Cir.), *cert. denied*, 142 S. Ct. 470 (2021) (holding that U.S.S.G. § 2L1.2(b)(2) and (3) satisfied procedural due process and do not violate equal protection); *United States v. Adeleke*, 968 F.2d 1159, 1160–61 (11th Cir. 1992) (holding that previous version of U.S.S.G. § 2L1.2(b)(1) does not violate equal protection and does not constitute impermissible double counting of criminal history). Accordingly, the district court did not err in denying Huerta-Carranza’s constitutional challenge to U.S.S.G. § 2L1.2(b).

**AFFIRMED.**

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

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[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

May 24, 2022

**MEMORANDUM TO COUNSEL OR PARTIES**

Appeal Number: 20-12038-AA  
Case Style: USA v. Luis Huerta-Carranza  
District Court Docket No: 8:19-cr-00597-RAL-AAS-1

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at [www.pacer.gov](http://www.pacer.gov). Information and training materials related to electronic filing are available on the Court's website. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or [cja\\_evoucher@ca11.uscourts.gov](mailto:cja_evoucher@ca11.uscourts.gov) for questions regarding CJA vouchers or the eVoucher system.



For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call T. L. Searcy, AA at (404) 335-6180.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna H. Clark

Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

# APPENDIX

A-2

Luis David Huerta-Carranza  
8:19-cr-597-T-26AAS

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

Case Number: 8:19-cr-597-T-26AAS

v.

USM Number: 58236-379

LUIS DAVID HUERTA-CARRANZA  
a/k/a David Huerta  
a/k/a Luis David Huerta

Samuel Landes, AFPD

**JUDGMENT IN A CRIMINAL CASE**

The Defendant was found guilty as to Count One of the Indictment. The Defendant is adjudicated guilty of the following offense:

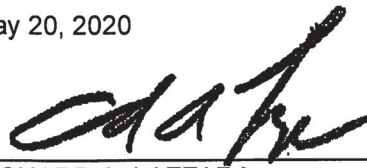
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
8 U.S.C. §§ 1326(a) and (b)(1)	Illegal Re-entry after Deportation and Conviction for a Felony Offense	December 13, 2019	One

The Defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

**IT IS ORDERED** that the Defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the Defendant shall notify the Court and United States Attorney of any material change in the Defendant's economic circumstances.

Date of Imposition of Judgment:

May 20, 2020



RICHARD A. LAZZARA  
UNITED STATES DISTRICT JUDGE

May 20, 2020

Luis David Huerta-Carranza  
8:19-cr-597-T-26AAS

### IMPRISONMENT

The Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **FORTY-SIX (46) MONTHS**.

The Court makes the following recommendation to the Bureau of Prisons:

- 1) Incarceration at Coleman, Florida to be close to family.

The Defendant is remanded to the custody of the United States Marshal to await processing by the Bureau of Immigration and Customs Enforcement.

### RETURN

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By: \_\_\_\_\_  
Deputy U.S. Marshal

Luis David Huerta-Carranza  
8:19-cr-597-T-26AAS

## **SUPERVISED RELEASE**

Upon release from imprisonment, the Defendant will be on supervised release for a term of **THREE (3) YEARS**.

## **MANDATORY CONDITIONS**

1. Defendant shall not commit another federal, state or local crime.
2. Defendant shall not unlawfully possess a controlled substance.
3. Defendant shall cooperate in the collection of DNA as directed by the Probation Officer.
4. Defendant shall refrain from any unlawful use of a controlled substance. Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.

The Defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The Defendant shall also comply with the additional conditions on the attached page.



Luis David Huerta-Carranza  
8:19-cr-597-T-26AAS

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, Defendant shall comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by Probation Officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. Defendant shall report to the Probation Office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the Probation Officer instructs you to report to a different Probation Office or within a different time frame. After initially reporting to the Probation Office, the Defendant will receive instructions from the court or the Probation Officer about how and when the Defendant must report to the Probation Officer, and the Defendant must report to the Probation Officer as instructed.
2. After initially reporting to the Probation Office, you will receive instructions from the court or the Probation Officer about how and when Defendant shall report to the Probation Officer, and Defendant shall report to the Probation Officer as instructed.
3. Defendant shall not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the Probation Officer.
4. Defendant shall answer truthfully the questions asked by your Probation Officer
5. Defendant shall live at a place approved by the Probation Officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), Defendant shall notify the Probation Officer at least 10 days before the change. If notifying the Probation Officer in advance is not possible due to unanticipated circumstances, Defendant shall notify the Probation Officer within 72 hours of becoming aware of a change or expected change.
6. Defendant shall allow the Probation Officer to visit you at any time at your home or elsewhere, and Defendant shall permit the Probation Officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. Defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the Probation Officer excuses you from doing so. If you do not have full-time employment Defendant shall try to find full-time employment, unless the Probation Officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), Defendant shall notify the Probation Officer at least 10 days before the change. If notifying the Probation Officer at least 10 days in advance is not possible due to unanticipated circumstances, Defendant shall notify the Probation Officer within 72 hours of becoming aware of a change or expected change.
8. Defendant shall not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, Defendant shall not knowingly communicate or interact with that person without first getting the permission of the Probation Officer.
9. If you are arrested or questioned by a law enforcement officer, Defendant shall notify the Probation Officer within **72 hours**.
10. Defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. Defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the Probation Officer determines that you pose a risk to another person (including an organization), the Probation Officer may require you to notify the person about the risk and Defendant shall comply with that instruction. The Probation Officer may contact the person and confirm that you have notified the person about the risk.
13. Defendant shall follow the instructions of the Probation Officer related to the conditions of supervision.

## U.S. Probation Office Use Only

A U.S. Probation Officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Luis David Huerta-Carranza  
8:19-cr-597-T-26AAS

### ADDITIONAL CONDITION OF SUPERVISED RELEASE

1. Should the defendant be deported, he shall not be allowed to re-enter the United States without the express permission of the appropriate governmental authority.
2. If the defendant is not deported, he shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon completion of this program, the defendant is directed to submit to random drug testing.

### CRIMINAL MONETARY PENALTIES

The Defendant must pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
\$100.00	N/A	Waived	N/A	N/A

### SCHEDULE OF PAYMENTS

Having assessed Defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

Special Assessment shall be paid in full and is due immediately.

Unless the Court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the Court, unless otherwise directed by the Court, the Probation Officer, or the United States attorney.

Defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, and (9) penalties, and (10) costs, including cost of prosecution and court costs.

# APPENDIX

A-3



**From:** [cmecf\\_fimd\\_notification@fimd.uscourts.gov](mailto:cmecf_fimd_notification@fimd.uscourts.gov)  
**To:** [cmecf\\_fimd\\_notices@fimd.uscourts.gov](mailto:cmecf_fimd_notices@fimd.uscourts.gov)  
**Subject:** Activity in Case 8:19-cr-00597-RAL-AAS USA v. Huerta-Carranza Order on Motion to Dismiss  
**Date:** Wednesday, February 05, 2020 9:56:26 AM

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U.S. District Court

Middle District of Florida

### Notice of Electronic Filing

The following transaction was entered on 2/5/2020 at 9:55 AM EST and filed on 2/5/2020

**Case Name:** USA v. Huerta-Carranza

**Case Number:** [8:19-cr-00597-RAL-AAS](#)

**Filer:**

**Document Number:** 24(No document attached)

### Docket Text:

**ENDORSED ORDER denying [23] Motion to Dismiss as to Luis David Huerta-Carranza (1). See Perez-Sanchez v. U.S. Attorney General, 935 F. 3d 1148 (11th Cir. 2019). Entered by Judge Richard A. Lazzara on 2/5/2020. (SRC)**

**8:19-cr-00597-RAL-AAS-1 Notice has been electronically mailed to:**

David Charles Waterman    [David.Waterman@usdoj.gov](mailto:David.Waterman@usdoj.gov), [CaseView.ECF@usdoj.gov](mailto:CaseView.ECF@usdoj.gov),  
[TPADOCKET.Mailbox@usdoj.gov](mailto:TPADOCKET.Mailbox@usdoj.gov), [usaflm.ecf@usdoj.gov](mailto:usaflm.ecf@usdoj.gov)

Samuel Landes    [Samuel\\_Landes@fd.org](mailto:Samuel_Landes@fd.org), [Amanda\\_Kasperitis@fd.org](mailto:Amanda_Kasperitis@fd.org)

**8:19-cr-00597-RAL-AAS-1 Notice has been delivered by other means to:**

# APPENDIX

A-4

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
515 11TH ST. WEST, SUITE 300  
BRADENTON, FL 34205-1111

In the Matter of:  
HUERTA-CARRANZA, DAVID-

Case No.: A78-408-858

IN REMOVAL PROCEEDINGS

RESPONDENT

ORDER OF THE IMMIGRATION JUDGE

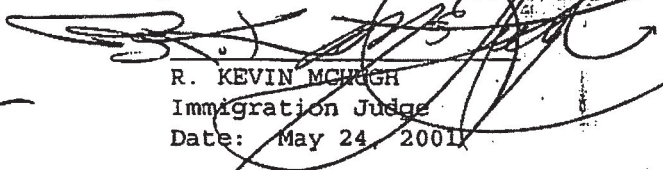
Upon the basis of respondent's admissions, I have determined that the respondent is subject to removal on the charge(s) in the Notice to Appear.

Respondent has made no application for relief from removal.

It is HEREBY ORDERED that the respondent be removed from the United States to MEXICO on the charge(s) contained in the Notice to Appear.

If you fail to appear for removal at the time and place ordered by the INS, other than because of exceptional circumstances beyond your control (such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances), you will not be eligible for the following forms of relief for a period of ten (10) years after the date you were required to appear for removal:

- (1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;
- (2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and
- (3) Adjustment of status or change of status as provided for in section 245, 248 or 249 of the Immigration and Nationality Act.

  
R. KEVIN MCHUGH  
Immigration Judge  
Date: May 24, 2001

Appeal: WAIVED (A/I/B)  
Appeal Due By: Jun 25, 2001

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)  
TO: ☐ ALIEN ☒ ALIEN c/o Custodial Officer ☐ Alien's ATT/REP ☒ INS  
DATE: 5/24/01 BY: COURT STAFF MTV  
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☒ Legal Services List ☐ Other

# APPENDIX

A-5

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

August 16, 2022

**MEMORANDUM TO COUNSEL OR PARTIES**

Appeal Number: 20-12038-AA  
Case Style: USA v. Luis Huerta-Carranza  
District Court Docket No: 8:19-cr-00597-RAL-AAS-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: T. L. Searcy, AA/lt  
Phone #: (404) 335-6180

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 20-12038-AA

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

LUIS DAVID HUERTA-CARRANZA,  
a.k.a. David Huerta,  
a.k.a. Luis David Huerta,

Defendant - Appellant.

---

Appeal from the United States District Court  
for the Middle District of Florida

---

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, BRANCH, and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

# APPENDIX

A-6

**Notice to Appear**

**In removal proceedings under section 240 of the Immigration and Nationality Act**

File No: A78 408 858

In the Matter of:

Respondent: HUERTA - Carranza, David currently residing at:  
2627 Marina Ave. Fl (407) 932 - 4710  
Kissimmee (Number, street, city, state and ZIP code) (Area code and phone number)

- ☐ 1. You are an arriving alien.  
☒ 2. You are an alien present in the United States who has not been admitted or paroled.  
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

- I. You are not a citizen or national of the United States;  
II. You are a native of Mexico and a citizen of Mexico;  
III. You entered the United States at or near Calexico, California  
on or about January 1, 1996;  
IV. You were not then admitted or paroled after inspection by an Immigration Officer.

RECEIVED JUSTICE  
2001 FEB 10 P 12 30  
EXECUTIVE OFFICE FOR  
IMMIGRATION & CUSTOMS  
ENFORCEMENT  
FLORIDA

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act (Act), as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

*Sustained  
on 5-24-01.*

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: To be set.

on \_\_\_\_\_ at \_\_\_\_\_ to show why you should not be removed from the United States based on the  
(Date) (Time)  
charge(s) set forth above.

*[Signature]*  
Patrol Agent In Charge  
(Signature and Title of Issuing Officer)

Date: 02/15/01

Tampa, Florida  
(City and State)

See reverse for important information

*[Handwritten: EX-1]*



**Notice to Respondent**

**Warning:** Any statement you make may be used against you in removal proceedings.

**Alien Registration:** This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

**Representation:** If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

**Conduct of the hearing:** At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

**Failure to appear:** You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

**Request for Prompt Hearing**

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

\_\_\_\_\_  
(Signature of Respondent)

Before:

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature and Title of INS Officer)

**Certificate of Service**

This Notice to Appear was served on the respondent by me on 02/22/01, in the following manner and in compliance with section 239(a)(1)(F) of the Act:  
(Date)

- ☒ in person      ☐ by certified mail, return receipt requested      ☐ by regular mail
- ☐ Attached is a credible fear worksheet.
- ☒ Attached is a list of organizations and attorneys which provide free legal services.
- ☒ The alien was provided oral notice in the spanish language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

KLIN David Huerta  
(Signature of Respondent if Personally Served)

[Signature]  
(Signature and Title of Officer)