

No. 2023-8082

**Official Order
of the
Texas Commissioner of Insurance**

Date: 7/18/2023

Subject Considered:

Enrique Gutierrez

[REDACTED]
Mission, TX 78572

Default Order
SOAH Docket No. 454-23-21058
TDI Enforcement File No. 31587

General remarks and official action taken:

The subject of this default order is whether a General Lines life, accident and health license should be issued to Enrique Gutierrez (Respondent). Respondent did not respond to a Notice of Hearing filed by the Texas Department of Insurance. This order denies Respondent's license application.

The following findings of fact and conclusions of law are adopted:

Findings of Fact

Failure to Respond to Notice of Hearing

1. On June 12, 2023, the department filed a Notice of Hearing, attached as Exhibit A, and an Original Petition, attached as Exhibit B, with the State Office of Administrative Hearings.
2. The department's factual allegations set out in the attached Notice of Hearing and Original Petition are incorporated in this order as findings of fact.
3. The department sent the Notice of Hearing and Original Petition to Respondent's last known address provided in writing to the department, [REDACTED],

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Commissioner's Order

Enrique Gutierrez

SOAH Docket No. 454-23-21058

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Mission, TX 78572. The Notice of Hearing and Original Petition were also sent to an additional address associated with Respondent: [REDACTED] Mission, TX 78572.

4. Respondent failed to file a written response to the Notice of Hearing within 20 days of the date the Notice of Hearing and Original Petition were mailed.

Conclusions of Law

1. The commissioner has jurisdiction under Texas law, including TEX. INS. CODE §§ 82.051-82.055, 4001.002, 4001.102, 4001.105, 4005.101-4005.105, 4101.051, and 4054.051; TEX. OCC. CODE §§ 53.021-53.023; 28 TEX. ADMIN. CODE § 1.502; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. The commissioner has authority to dispose of this case informally under TEX. GOV'T CODE § 2001.056; TEX. INS. CODE § 82.055; and 28 TEX. ADMIN. CODE §§ 1.47, 1.88, and 1.89.
3. The department provided proper notice of the hearing under TEX. GOV'T CODE §§ 2001.051, 2001.052, and 2001.054; and 28 TEX. ADMIN. CODE §§ 1.28, 1.88, 1.89, and 19.906.
4. Based on Respondent's failure to file a written response to the Notice of Hearing, the department is entitled to disposition by default under 28 TEX. ADMIN. CODE §§ 1.88 and 1.89.
5. The department's factual and legal allegations set out in the attached Notice of Hearing and Original Petition are incorporated in this order and deemed admitted as true under 28 TEX. ADMIN. CODE § 1.89.

2023-8082

Commissioner's Order

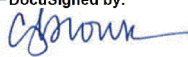
Enrique Gutierrez

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Order

It is ordered that Enrique Gutierrez's application is denied. A copy of this order will be provided to law enforcement or other appropriate administrative agencies for further investigation as may be warranted.

DocuSigned by:


FC5D7EDDFFBB4F8...

Cassie Brown

Commissioner of Insurance

Prepared and reviewed by:

/s/ Erik Huhn

Erik Huhn, Staff Attorney
Enforcement

Affidavit

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Before me, the undersigned authority, personally appeared Roxanne Rodriguez, who, being by me duly sworn, deposed as follows:

"My name is Roxanne Rodriguez and I am employed by the Texas Department of Insurance. I am of sound mind, capable of making this affidavit, and have personal knowledge of these facts which are true and correct.

I have reviewed TDI's records concerning Enrique Gutierrez. I have confirmed that:

- a. The last mailing address provided to the department in writing by Enrique Gutierrez is [REDACTED], Mission, TX 78572.
- b. The file maintained by Enforcement contains a Notice of Hearing and Original Petition dated June 12, 2023, which were filed with the State Office of Administrative Hearings.
- c. On June 12, 2023, the Notice of Hearing and Original Petition addressed to Enrique Gutierrez were mailed first-class and certified, return receipt requested, to his last known address and one additional address: [REDACTED] Mission, TX 78572.

Copies of the first-class mail log and certified mail log maintained by Enforcement are attached as Exhibit C and Exhibit D, respectively."

DocuSigned by:
Roxanne Rodriguez
A307B689AF854DF...
Affiant

2023-8082

Commissioner's Order

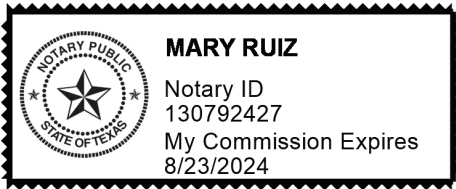
Enrique Gutierrez

SOAH Docket No. 454-23-21058

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SWORN TO AND SUBSCRIBED before me by means of an interactive two-way audio and video communication on 6/30/2023. This notarial act was an online notarization.

Notary Seal



Digital Certificate

DocuSigned by:
Mary Ruiz
795DC4D59167489...

Notary Public State of Texas

FILED **2023-8082**
454-23-21058
6/12/2023 10:17 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

ACCEPTED
454-23-21058
6/12/2023 10:18:18 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

**SOAH DOCKET NO. 454-23-21058
TDI ENFORCEMENT FILE NO. 31587**

TEXAS DEPARTMENT OF INSURANCE,

BEFORE THE STATE OFFICE

Petitioner

v.

OF

ENRIQUE GUTIERREZ,

ADMINISTRATIVE HEARINGS

Respondent

NOTICE OF HEARING

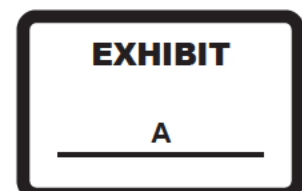
The Texas Department of Insurance seeks to deny your license application. This Notice of Hearing and the Original Petition, which is attached and incorporated for all purposes, states the allegations against you and the relief sought by the department.

A public hearing will be held before an Administrative Law Judge on **September 14, 2023, at 9:00 a.m.** The hearing will take place via videoconference using a videoconference platform controlled by the State Office of Administrative Hearings, unless otherwise ordered to proceed in another manner by the Administrative Law Judge.

The hearing shall be conducted under TEX. GOV'T CODE, ch. 2001 and 1 TEX. ADMIN. CODE, ch. 155. Unless otherwise directed by the Administrative Law Judge, the hearing shall continue from day to day in the offices of the State Office of Administrative Hearings until concluded. You have the right to appear at this hearing and to be represented by an attorney.

Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH.

YOU MUST FILE A WRITTEN RESPONSE TO THE NOTICE OF HEARING WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS OF THE DATE THE NOTICE OF HEARING WAS MAILED. FAILURE TO FILE A WRITTEN RESPONSE BY THIS DEADLINE SHALL ENTITLE TDI TO SEEK DISPOSITION BY DEFAULT UNDER 1 TEX. ADMIN. CODE § 155.501 AND 28 TEX. ADMIN. CODE §§ 1.88 AND 1.89.



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Notice of Hearing

Enrique Gutierrez

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IF YOU FAIL TO FILE A WRITTEN RESPONSE, THE SCHEDULED HEARING CAN BE CANCELED AND WITHOUT FURTHER NOTICE TO YOU THE COMMISSIONER OF INSURANCE CAN ISSUE AN ORDER IN WHICH THE ALLEGATIONS IN THE NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING, INCLUDING DENIAL OF YOUR LICENSE APPLICATION, IS GRANTED BY DEFAULT.

IF YOU FILE A WRITTEN RESPONSE BUT THEN FAIL TO APPEAR ON THE DAY AND TIME SET FOR HEARING, WITHOUT FURTHER NOTICE TO YOU, THE COMMISSIONER OF INSURANCE CAN ISSUE AN ORDER IN WHICH THE ALLEGATIONS IN THE NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING, INCLUDING DENIAL OF YOUR LICENSE APPLICATION, IS GRANTED BY DEFAULT.

In accord with 28 TEX. ADMIN. CODE § 1.90(e) and 1 TEX. ADMIN. CODE §§ 155.101 and 155.103, you should send copies of your written response to:

- (1) *(by mail, fax, or electronically)*
Docketing Division
State Office of Administrative Hearings
300 West 15th Street, Room 504
P.O. Box 13025
Austin, Texas 78711-3025
(512) 322-2061 (Fax);
www.soah.texas.gov

- (2) *(by mail, fax, or email)*
Chief Clerk
Texas Department of Insurance
P.O. Box 12030, MC GC-CCO
Austin, Texas 78711-2030
(512) 490-1064 (Fax)
chiefclerk@tdi.texas.gov; and

- (3) *(by mail, fax, or email)*
Erik Huhn, Staff Attorney
Texas Department of Insurance
Enforcement, MC ENF

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Notice of Hearing

Enrique Gutierrez

SOAH Docket No. 454-23-21058

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P.O. Box 12030
Austin, Texas 78711-2030
(512) 490-1020 (Fax)
Erik.Huhn@tdi.texas.gov

Receiving Documents Electronically and Filing Documents with SOAH

The State Office of Administrative Hearings (SOAH) offers you the ability to electronically receive orders and other documents issued by SOAH by email instead of by mail. If you want to receive SOAH-issued documents by email, follow the instructions on SOAH's website: www.soah.texas.gov.

A request to receive SOAH-issued documents by email does not change the procedures you must follow to file documents or exhibits with SOAH. Instructions on how to file documents and exhibits are on SOAH's website. SOAH's website also includes guidance for representing yourself.

Important Security Notice (for In-Person Hearings ONLY)

ALL VISITORS TO THE WILLIAM P. CLEMENTS BUILDING WITHOUT AN AGENCY OR DPS ISSUED ID CARD MUST PROVIDE THE BUILDING SECURITY OFFICER WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS DOCKET NUMBER AND RECEIVE A VISITOR'S PASS IN ORDER TO BE ALLOWED ACCESS TO THE HEARING ROOM. INDIVIDUALS SHOULD ALLOW ADDITIONAL TIME TO GO THROUGH THE SECURITY PROCESS.

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Notice of Hearing
Enrique Gutierrez
SOAH Docket No. 454-23-21058
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If you have any questions, please contact me at the address or telephone number shown below.

Respectfully Submitted,

/s/ Erik Huhn

Erik Huhn
State Bar No. 24132806
Texas Department of Insurance
Enforcement, MC ENF
P.O. Box 12030
Austin, Texas 78711-2030
(512) 676-6355 (Direct)
(512) 490-1020 (Fax)
Erik.Huhn@tdi.texas.gov

ATTORNEY FOR THE PETITIONER
TEXAS DEPARTMENT OF INSURANCE

Enclosure: Original Petition

cc: Leah Gillum, Deputy Commissioner, Fraud and Enforcement Division, MC ENF
Whitney Fraser, Litigation Director, Enforcement, MC ENF
Administrative Review, MC CO-AAL

CERTIFICATE OF SERVICE

I, Erik Huhn, certify that a true and correct copy of the *Notice of Hearing and the Original Petition* were sent by regular, first-class mail and by certified mail, return receipt requested, on this 12th day of June, 2023 to:

Enrique Gutierrez



Mission, TX 78572

Respondent Pro Se

Via CM/RRR: 9214 8901 9403 8318 6772 79

Enrique Gutierrez



Mission, TX 78572

Respondent Pro Se

Via CM/RRR: 9214 8901 9403 8318 6777 05



Via Email

/s/ Erik Huhn

Erik Huhn

FILED **2023-8082**
454-23-21058
6/7/2023 2:39 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
April Bermea , CLERK

SOAH Docket No. 454-23-21058

ACCEPTED
454-23-21058
6/7/2023 3:45:44 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
April Bermea , CLERK

SOAH DOCKET NO. 454-_____
TDI ENFORCEMENT FILE NO. 31587

TEXAS DEPARTMENT OF INSURANCE,

Petitioner

v.

ENRIQUE GUTIERREZ,

Respondent

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORIGINAL PETITION

The Texas Department of Insurance (TDI) seeks to deny Enrique Gutierrez’s general lines life, accident and health license application. In support of this petition, the department makes the following allegations upon information and belief:

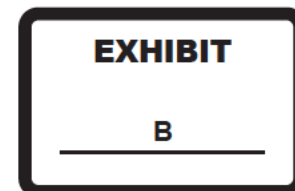
Jurisdiction

The Commissioner of Insurance has jurisdiction over this matter under TEX. INS. CODE §§ 82.051-82.055, 4001.002, 4005.101, 4005.102, 4054.051; 28 TEX. ADMIN. CODE § 1.502; TEX. OCC. CODE §§ 53.021-53.023; and TEX. GOV’T CODE §§ 2001.051-2001.178.

Factual Allegations

1. On April 22, 2022, Gutierrez applied for a general lines life, accident and health agent license.
2. On January 24, 2023, a proposed summary denial letter was sent to Gutierrez denying his application based on his criminal history. Gutierrez disclosed his criminal history on his application.
3. On February 24, 2023, TDI acknowledged receipt of Gutierrez’s request for a hearing on the denial.

Criminal History:



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Original Petition
Enrique Gutierrez
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4. On September 23, 2013, Gutierrez entered a guilty plea to Aggravated Sexual Assault of a Child, a first-degree felony offense, in the 206th District Court of Hidalgo County, case number CR-2351-13-D. The court placed Gutierrez on an eight-year community supervision probationary period with deferred adjudication.
5. On May 5, 2020, while still on probation for the above-mentioned offense, Gutierrez was convicted of Driving While Intoxicated, a Class A misdemeanor, in the Hidalgo County Court at Law No. 8, case number CR-20-03171-H. Gutierrez was sentenced to 365 days confinement in the Hidalgo County Jail and ordered to pay a \$250 fine. However the court suspended the imposition of his sentence and placed Gutierrez on community supervision for two years.
6. On September 22, 2021, Gutierrez completed his eight-year community supervision probationary period relating to his Aggravated Sexual Assault of a Child offense.
7. On May 16, 2022, Gutierrez was discharged from the probation period resulting from his Driving While Intoxicated offense.
8. Gutierrez is currently registered on the Texas Public Sex Offender Registry.

Legal Allegations

1. As contemplated by TEX. OCC. CODE § 53.021(d)(1)(A), TDI may consider Gutierrez to have been convicted of Aggravated Sexual Assault of a Child, a first-degree felony, because he was charged with:
 - a. an offense described by Article 62.001(5), Code of Criminal Procedure; and
 - b. after consideration of the factors described by Tex. Occ. Code 53.022 and 53.0223(a), the TDI determined that 1) Gutierrez may pose a continued threat to public safety or 2) licensing Gutierrez would create a situation in which he has an opportunity to repeat the prohibited conduct.
2. Gutierrez committed acts for which a license may be denied under TEX. OCC. CODE, Chapter 53, Subchapter B, because he was convicted of:

- a. an offense listed in Article 42A.054, Code of Criminal Procedure, as contemplated by TEX. OCC. CODE § 53.021(a)(2); and
 - b. a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure, as contemplated by TEX. OCC. CODE § 53.021(a)(3).
3. TDI may deny Gutierrez's license application because he has committed an offense of such serious nature that it is of prime importance in determining fitness of licensure, as contemplated by 28 TEX. ADMIN. CODE § 1.502(e)(4)(B).
4. The factors listed in 28 TEX. ADMIN. CODE § 1.502(h) do not outweigh the serious nature of Gutierrez's criminal history, as 28 TEX. ADMIN. CODE § 1.502(f) contemplates.

Relief Sought

If one or more of the above allegations is found to be true, the department asks the Administrative Law Judge to enter a Proposal for Decision recommending that the Commissioner of Insurance issue an order:

1. denying Gutierrez's license application, and
2. granting any other just and appropriate relief to which TDI may be entitled to by law.

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Original Petition
Enrique Gutierrez
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Respectfully Submitted,

/s/ Erik Huhn

Erik Huhn
State Bar No. 24132806
Texas Department of Insurance
Enforcement, MC ENF
P.O. Box 12030
Austin, Texas 78711-2030
(512) 676-6355 (Direct)
(512) 490-1020 (Fax)
Erik.Huhn@tdi.texas.gov

ATTORNEY FOR THE PETITIONER
TEXAS DEPARTMENT OF INSURANCE

2023-8082

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Mary Ruiz on behalf of Erik Huhn
Bar No. 24132806
Enforcementgeneral@tdi.texas.gov
Envelope ID: 76386679
Filing Code Description: Request to Docket
Filing Description: Request to Docket
Status as of 6/7/2023 3:50 PM CST

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	6/7/2023 2:39:00 PM	SENT

Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Erik Huhn		Erik.Huhn@tdi.texas.gov	6/7/2023 2:39:00 PM	SENT
Whitney Fraser		Whitney.Fraser@tdi.texas.gov	6/7/2023 2:39:00 PM	SENT

Associated Case Party: Enrique Gutierrez

Name	BarNumber	Email	TimestampSubmitted	Status
Enrique Gutierrez		[REDACTED]	6/7/2023 2:39:00 PM	SENT

2023-8082

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Mary Ruiz on behalf of Erik Huhn
Bar No. 24132806
Enforcementgeneral@tdi.texas.gov
Envelope ID: 76503790
Filing Code Description: Notice of Hearing
Filing Description: NOH_OP_31587
Status as of 6/12/2023 10:18 AM CST

Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Whitney Fraser		Whitney.Fraser@tdi.texas.gov	6/12/2023 10:17:04 AM	SENT
Erik Huhn		Erik.Huhn@tdi.texas.gov	6/12/2023 10:17:04 AM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	6/12/2023 10:17:04 AM	SENT

Associated Case Party: Enrique Gutierrez

Name	BarNumber	Email	TimestampSubmitted	Status
Enrique Gutierrez		[REDACTED]	6/12/2023 10:17:04 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Leah Gillum		Leah.Gillum@tdi.texas.gov	6/12/2023 10:17:04 AM	SENT
Catarina Tapia		Catarina.Tapia@tdi.texas.gov	6/12/2023 10:17:04 AM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	6/12/2023 10:17:04 AM	SENT

Firm Mailing Book For Accountable Mail

Name and Address of Sender
 Texas Dept of Insurance
 Mail Code ENF
 1601 Congress Avenue, Suite 6.900
 Austin TX 78711
 David Moreno
 June 12, 2023

- Check type of mail or service
- Adult Signature Required
 - Adult Signature Restricted Delivery
 - Certified Mail
 - Certified Mail Restricted Delivery
 - Collect on Delivery (COD)
 - Insured Mail
 - Priority Mail
 - Priority Mail Express
 - Registered Mail
 - Return Receipt for Merchandise
 - Signature Confirmation
 - Signature Confirmation Restricted Delivery

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 (If issued as an international certificate of mailing or for additional copies of this receipt). Postmark with Date of Receipt

USPS Tracking/Article Number	Address (Name, Street, City, State, & Zip Code)	Postage	(Extra Service) Fee	Handling Charge	Actual Value if Registered	Insured Value	Due Sender if COD	ASR Fee	ASRD Fee	RD Fee	RR Fee	SC Fee	SCRD Fee	SH Fee
Erik/31587	Enrique Gutierrez Mission, TX 78572	99, 99		ver \$50,000 in value										
	Enrique Gutierrez Mission, TX 78572													

US POSTAGE \$003.70
 06/12/2023
 ZIP 78701
 041M1252405

RECEIVED
 JUN 13 2023
 TDI - ENFORCEMENT

CENTRAL STATION
 JUN 2023
 AUSTIN, TX
 78711

EXHIBIT
 C



**Shipment Confirmation
Acceptance Notice**

A. Mailer Action

Note to Mailer: The labels and volume associated to this form online, must match the labeled packages being presented to the USPS® employee with this form.

Shipment Date: 06/12/2023
 Shipped From:
 Name: MC ENF D MORENO
 Address: 1601 CONGRESS AVENUE SUITE 6 900
 City: AUSTIN
 State: TX ZIP+4® 78711

Type of Mail	Volume
Priority Mail Express®*	
Priority Mail®	0
First-Class Package Service®	
Returns	
International*	
Other	2
Total	2

*Start time for products with service guarantees will begin when mail arrives at the local Post Office™ and items receive individual processing and acceptance scans.

B. USPS Action

Note to RSS Clerk:

1. Home screen > Mailing/Shipping > More
2. Select Shipment Confirm
3. Scan or enter the barcode/label number from PS Form 5630
4. Confirm the volume count message by selecting Yes or No
5. Select Pay and End Visit to complete transaction

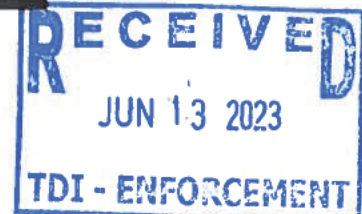
USPS EMPLOYEE: Please scan upon pickup or receipt of mail.
 Leave form with customer or in customer's mail receptacle.



USPS SCAN AT ACCEPTANCE



9275 0901 1935 6200 0045 0154 88



Erik/31587



Firm Mailing Book For Accountable Mail



Name and Address of Sender
 M/C ENF D MORENO
 TEXAS DEPARTMENT OF INSURANCE
 1801 CONGRESS AVENUE, SUITE 6,900
 AUSTIN TX 78711

USPS Tracking/Article Number
 9214 8901 9403 8318 6772 79

Erik/31587

9214 8901 9403 8318 6777 05

Check type of mail or service
 Adult Signature Required
 Adult Signature Restricted Delivery
 Certified Mail
 Certified Mail Restricted Delivery
 Collect on Delivery (COD)
 Insured Mail
 Priority Mail

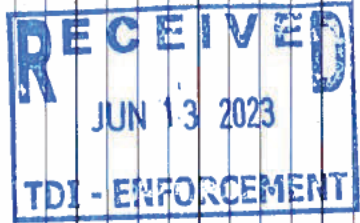
Priority Mail Express
 Registered Mail
 Return Receipt for Merchandise
 Signature Confirmation
 Signature Confirmation Restricted Delivery

Addresssee (Name, Street, City, State, & ZIP Code™)
 ENRIQUE GUTIERREZ
 [REDACTED]
 MISSION, TX 78572

ENRIQUE GUTIERREZ
 [REDACTED]
 MISSION, TX 78572

Affix Stamp Here
 (for additional copies of this receipt).
 Postmark with Date of Receipt.

Postage	(Extra Service) Fee	Handling Charge	Actual Value if Registered	Insured Value	Due Sender if COD	ASR Fee	ASRD Fee	RD Fee	RR Fee	SC Fee	SCRD Fee	SH Fee
0.84	4.15								2.10			
0.84	4.15	Handling Charge - if Registered and over \$50,000 in value				Adult Signature Required	Adult Signature Restricted Delivery	Restricted Delivery	Return Receipt	Signature Confirmation	Signature Confirmation Restricted Delivery	Special Handling



Total Number of Pieces Listed by Sender: 2

Total Number of Pieces Received at Post Office: 2

Postmaster, Per (Name of receiving employee)
 [Signature]

Complete in Ink

Privacy Notice: For more information on USPS privacy policies, visit usps.com/privacypolicy.

U.S. Form 3877, January 2017 (Page 1 of 1)
 I.S.N. 7530-02-000-9098 JobId: 4253557