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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 OSCAR OLIVAS,
12 Plaintiff-Petitioner,

Case No.: 3:14-cv-01434-WQH-BLM

ORDER

13 v.

14 BILLY WHITFORD, Port
15 Director of Calexico West Port of
16 Entry, Customs and Border
17 Protection; et al.,
Defendants-Respondents.

18 HAYES, Judge:

19 The matters pending before the Court are the Motion to Vacate Judgment and the
20 Motion for Indicative Ruling filed by Respondents. (ECF No. 261).

21 **I. PROCEDURAL BACKGROUND**

22 On June 12, 2014, Petitioner filed a “Petition for a Writ of Habeas Corpus and
23 Complaint for Declaratory and Injunctive Relief,” naming as Respondents two local
24 Customs and Border Patrol (CBP) officials, the Commissioner of the CBP, the Secretary
25 of Homeland Security, and the Secretary of State. (ECF No. 1). Petitioner brings a claim
26 for habeas relief pursuant to 28 U.S.C. § 2241 on the grounds that he is “a natural-born
27 U.S. citizen” who was “unlawfully exiled to Mexico” when “CBP officials unlawfully
28 refused to allow him to enter the United States.” *Id.* at 1-2. Petitioner asserts jurisdiction

1 under § 2241, “§ 1331 (federal question),” “§§ 2201-02 (declaratory relief),” “Federal Rule
2 of Civil Procedure 65 (injunctive relief), and the Fifth and Fourteenth Amendments to the
3 U.S. Constitution.” *Id.* at 4.

4 Petitioner brings the following four claims: (1) Right of U.S. Citizen to Return to
5 United States under the Fifth and Fourteenth Amendments and the Non-Detention Act; (2)
6 Right of U.S. Citizen Against Unlawful Detention under the Fifth and Fourteenth
7 Amendments and the Non-Detention Act; (3) Violation of Fifth Amendment (Procedural
8 Due Process); and (4) Violation of Fifth Amendment (Substantive Due Process). *See id.*
9 at 18-20. Petitioner requests that this Court: “[i]ssue a writ of habeas corpus ordering
10 Defendants to allow Plaintiff to enter the United States without detaining him;” “[d]eclare
11 the Plaintiff is a U.S. citizen;” “[d]eclare that any order directing or authorizing Plaintiff’s
12 removal from the United States was entered in violation of the Due Process Clause of the
13 Fifth Amendment and/or other applicable law and is therefore null and void;” “[e]njoin
14 Defendants and their officers, agents, servants, employees, attorneys, and/or successors
15 from prohibiting Plaintiff from entering the United States and/or detaining him at or after
16 such entry;” “[g]rant Plaintiff reasonable attorneys’ fees, costs, and other disbursements
17 ...;” and “[g]rant such other relief as the Court deems just and equitable.” *Id.* at 20-21.

18 On June 16, 2014, the Court ordered Respondents to show cause why the Petition
19 should not be granted. (ECF No. 5).

20 On July 8, 2014, Respondents filed a return to the Petition. (ECF No. 12). In the
21 Return, Respondents allege that “[o]n December 17, 2010, Petitioner’s mother, Ms. Olivas-
22 Cervantes, was interviewed by a consular officer at the U.S. Consulate in Ciudad Juarez,
23 Mexico.” *Id.* at 2. “During the interview, Ms. Olivas-Cervantes signed an affidavit stating
24 that Petitioner was not born in Los Angeles, but was born in a clinic in Tijuana, Mexico.”
25 *Id.* at 3. “On or about August 22, 2011, Petitioner applied for admission to the United
26 States at the Calexico Port of Entry, claiming he was a U.S. citizen.” *Id.* at 4. “The CBP
27 officer who was processing Petitioner’s application for admission prepared documentation
28 to commence removal proceedings before an Immigration Judge (‘IJ’) ... [t]wo notices to

1 Appear (‘NTA’) were prepared, and both appeared to have been ‘cancelled,’ under 8 C.F.R.
2 § 239.2 prior to the commencement of proceedings.” *Id.* at 5.

3 On July 22, 2014, Petitioner filed a traverse. (ECF No. 15).

4 On August 14, 2014, the Court issued an amended Order denying a motion to dismiss
5 the Petition, referring the matter for expedited discovery, and stating, “The Court finds that
6 the Petition adequately alleges a colorable claim of citizenship, and subject-matter
7 jurisdiction exists in this Court.” (ECF No. 23 at 1-2).

8 On March 2, 2015, the Court denied a motion to dismiss filed by Respondents on
9 the ground that 8 U.S.C. §1252(e)(3) deprives the Court of subject matter jurisdiction.
10 (ECF No. 72). The Court found that judicial review of Petitioner’s claim is not precluded
11 by § 1252(e)(3) “because it is not a challenge to the validity of expedited removal
12 proceedings” and “[t]here is no allegation that a removal proceeding took place or that an
13 order was issued.” *Id.* at 13.

14 In August of 2015, the parties filed supplemental briefing regarding the standard and
15 burden of proof. (ECF Nos. 96, 99, 102, 104, 105, 108).

16 On November 2, 2015, the Court issued an Order ruling on motions in limine and
17 stating:

18 Petitioner has asserted a non-frivolous claim of U.S. citizenship and this Court
19 has jurisdiction pursuant to 28 U.S.C. § 2241 over Petitioner’s habeas petition
20 challenging his exclusion from the United States. *See Flores-Torres v.*
21 *Mukasey*, 548 F.3d 708, 712-13 (9th Cir. 2008) (finding that the court had
habeas jurisdiction where petitioner challenged his detention in the absence
of a final order of removal).

22 Pursuant to 28 U.S.C. § 2243, Petitioner is entitled to an evidentiary
23 hearing to prove the disputed fact that he was born in El Monte, California
24 and that he is entitled to an order allowing him to enter and remain in the
25 United States. The Court will hold an evidentiary hearing to “summarily hear
and determine” the disputed fact of petitioner’s place of birth and citizenship.
28 U.S.C. § 2243.

26 Petitioner bears the burden of establishing, by a preponderance of the
27 evidence, that he is being unlawfully excluded from the United States because
28 he is a citizen of the United States by birth. *See Snook v. Wood*, 89 F.3d 605
(9th Cir. 1996) (“It is the petitioner’s burden to prove his custody in violation

1 of the Constitution, laws or treaties of the United States.”). *See also Berenyi*
2 *v. District Director, Immigration & Naturalization Serv.*, 385 U.S. 630, 670-
3 71 (1967) (finding that when a person outside of the United States seeks a
4 declaration of citizenship, “[h]e is the moving party, affirmatively asking the
5 Government to endow him with all the advantages of citizenship.... [I]t has
6 been universally accepted that the burden is on the alien applicant to show his
7 eligibility for citizenship in every respect.”).

8 (ECF No. 126 at 3-4). The Court further noted,

9 In the immigration context the government brings the action to remove a
10 noncitizen who is currently residing in the United States or to expatriate a
11 current citizen and therefore the burden of proof may shift to the government.
12 *See e.g., Perez v. Brownell*, 356 U.S. 44, 47 n. 2 (1958) (“The Government
13 must prove the act of expatriation on which the denial [of a declaration of
14 nationality] was based by ‘clear, unequivocal, and convincing’ evidence”
15 (internal citations and quotation marks omitted)); *Lim v. Mitchell*, 431 F.2d
16 197, 199 (9th Cir. 1970) (shifting the burden from Plaintiff to the government
17 to rebut Plaintiff’s evidence of citizenship when Plaintiff was living in the
18 United States and had previously been given a certificate of identity as a
19 citizen after a hearing before the Board of Special Inquiry).

20 *Id.* at 4 n.1.

21 The Court held a four-day evidentiary hearing beginning on November 12, 2015.
22 (ECF Nos. 135, 137-39).

23 On June 28, 2016, the Court denied the Petition, concluding that “Petitioner has not
24 met his burden to prove that he is being unlawfully excluded from the United States
25 because he is a citizen of the United States by birth.” (ECF No. 167 at 39).

26 On August 16, 2017, the Court ordered entry of judgment in favor of Respondents
27 and against Petitioner as to all claims in this action, concluding that the Court lacked
28 jurisdiction over the remaining claims. (ECF No. 212).

On November 29, 2018, the Court of Appeals vacated this Court’s August 16, 2017
Order, stating, “The district court erred in requiring Olivas to bear the burden of proving
his citizenship by a preponderance of the evidence. Instead, as we held in *Mondaca-Vega*
v. Lynch, a burden-shifting framework applies in alienage determination cases.” *Olivas v.*

1 *Salazar*, 743 F. App'x 890, 890 (9th Cir. 2018) (citing *Mondaca-Vega v. Lynch*, 808 F.3d
2 413 (9th Cir. 2015)); ECF No. 230 (same). The Court of Appeals remanded to this Court
3 to weigh the evidence using the *Mondaca-Vega* framework, “in which the government
4 presents evidence of alienage, the petitioner responds with substantial credible evidence of
5 citizenship, and then the burden shifts back to the government to prove alienage by clear
6 and convincing evidence.” *Id.* The Court of Appeals rejected the government’s argument
7 that *Mondaca-Vega* applies only in removal proceedings, not in this action for habeas and
8 declaratory relief. *See id.* at 890 n.1. The Court of Appeals stated,

9 Olivas was served with a Notice to Appear (“NTA”), which should have
10 triggered a hearing before an immigration judge. But because the government
11 failed for over two years to file the NTA with the immigration court, no
12 hearing was ever scheduled. After repeated unsuccessful attempts to inquire
13 about the status of his hearing, on June 12, 2014, Olivas filed this suit seeking
14 determination of his citizenship status....

15 [T]he government concedes that had it commenced removal proceedings by
16 filing the NTA, as it admits at oral argument that it was required to do, *see* 8
17 C.F.R. §§ 1235.3(b)(5), 1235.6, 1003.13, 1003.14(a), *Mondaca-Vega* would
18 squarely control. Olivas claims that for two years, he called the government’s
19 hotline number weekly, and visited the border at least seven times, to inquire
20 about a hearing. He claims that agents threatened him with detention if he
21 persisted. The government may not benefit from its own negligence.

22 *Id.* at 890 & n.1.

23 On August 22, 2019, the Court granted the Petition, concluding that “Petitioner is
24 entitled to prevail on his claim for habeas relief on the grounds that excluding him from
25 the United States violates his constitutional rights as a natural-born U.S. citizen.” (ECF
26 No. 250 at 19). The Court further concluded that “Respondents are not entitled to exclude
27 Petitioner from the United States on the grounds that Petitioner is not a natural-born U.S.
28 citizen.” *Id.* On the same day, the Court ordered entry of judgment in favor of Petitioner
and against Respondents. (ECF No. 251).

 On February 25, 2020, Respondents filed a Motion to Vacate Judgment and a Motion
for Indicative Ruling. (ECF No. 261). On April 13, 2020, Petitioner filed a Response in

1 opposition. (ECF No. 266). On May 10, 2020, Respondents filed a Reply. (ECF No. 274).
2 On May 27, 2020, Petitioner filed a Sur-reply. (ECF No. 277).

3 **II. CONTENTIONS OF THE PARTIES**

4 Respondents request that the Court vacate its August 22, 2019 judgment (ECF No.
5 251) pursuant to Federal Rule of Civil Procedure 60(b). Respondents further request an
6 indicative ruling pursuant to Rule 62.1 that, but for the pending appeal, the Court would
7 grant Respondents' Motion to Vacate Judgment and/or conclude that the Motion to Vacate
8 Judgment raises a substantial issue. Respondents assert that they recently discovered
9 Petitioner's October 12, 1969 baptismal register in Mexicali, Mexico, which proves that
10 Petitioner was born on August 10, 1969 in Tijuana, Mexico. Respondents contend that the
11 baptismal register constitutes newly discovered evidence. Respondents contend that they
12 exercised reasonable diligence in searching for evidence of Petitioner's birth in Mexico.
13 Respondents contend that Petitioner should be estopped from challenging whether
14 Respondents exercised reasonable diligence because Petitioner offered false and
15 misleading evidence to support his position that he was born in the United States.
16 Respondents contend that introduction of the baptismal register into evidence would
17 change the outcome of this case. Respondents contend that the baptismal register is
18 admissible and constitutes clear and convincing evidence of Petitioner's alienage.

19 Petitioner contends that Respondents' Motion to Vacate Judgment is untimely
20 because it was not filed within a reasonable time after entry of judgment on August 22,
21 2019. Petitioner contends that Respondents' Motion to Vacate Judgment fails to meet the
22 stringent standards for vacating a final judgment. Petitioner contends that Respondents
23 have failed to prove that the evidence is newly discovered. Petitioner contends that
24 Respondents have failed to exercise reasonable diligence in searching for the baptismal
25 register. Petitioner contends that introduction of the baptismal register into evidence would
26 not change the outcome of this case. Petitioner contends that the baptismal register is
27 inadmissible and is insufficient to prove by clear and convincing evidence that Petitioner
28 is not a U.S. citizen.

1 **III. STANDARD OF REVIEW**

2 **a. Motion for Indicative Ruling**

3 “The filing of a notice of appeal divests the district court of jurisdiction.” *Gould v.*
4 *Mut. Life Ins. Co. of New York*, 790 F.2d 769, 772 (9th Cir. 1986) (citations omitted). When
5 a “Rule 60(b) motion ... [is] filed after [a] notice of appeal ha[s] been filed,” “[t]he district
6 court lack[s] jurisdiction to entertain the Rule 60(b) motion” *Katzir’s Floor & Home*
7 *Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1148 (9th Cir. 2004) (citations omitted). “To
8 seek Rule 60(b) relief during the pendency of an appeal, the proper procedure is to ask the
9 district court whether it wishes to entertain the motion, or to grant it, and then move [the
10 court of appeals], if appropriate, for remand of the case.” *Williams v. Woodford*, 384 F.3d
11 567, 586 (9th Cir. 2004) (internal quotation marks and citation omitted).

12 Federal Rule of Civil Procedure 62.1 states that

13 (a) Relief Pending Appeal. If a timely motion is made for relief that the court
14 lacks authority to grant because of an appeal that has been docketed and is
15 pending, the court may:

16 (1) defer considering the motion;

17 (2) deny the motion; or

18 (3) state either that it would grant the motion if the court of appeals
19 remands for that purpose or that the motion raises a substantial issue.

20 (b) Notice to the Court of Appeals. The movant must promptly notify the
21 circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district
22 court states that it would grant the motion or that the motion raises a
23 substantial issue.

24 (c) Remand. The district court may decide the motion if the court of appeals
25 remands for that purpose.

26 Fed. R. Civ. P. 62.1.

27 If the district court issues an indicative ruling, either that it would grant the motion
28 or that there is a substantial issue, the court of appeals then decides whether to remand the
case for a ruling by the district court. *See e.g., Knight v. Trimble*, No. C 10-00276 SBA
(pr), 2013 WL 6140743, at *2 (N.D. Cal. Nov. 21, 2013); *Russell Rd. Food & Beverage,*
LLC v. Galam, No. 2:13-CV-776 JCM (NJK), 2013 WL 2949615, at *2 (D. Nev. June 13,

1 2013). A statement that the motion raises a substantial issue does not bind the district court
2 to a particular ruling on the motion after remand. *See e.g., Knight*, 2013 WL 6140743, at
3 *2; *Russell Rd.*, 2013 WL 2949615, at *2; *Apple Inc. v. Samsung Elecs. Co.*, No. 11-CV-
4 01846-LHK, 2012 WL 4097751, at *3 (N.D. Cal. Sept. 17, 2012).

5 **b. Motion to Vacate Judgment**

6 Federal Rule of Civil Procedure 60(b) provides the bases from which a party can
7 seek relief from a final judgment of the Court. Rule 60(b) states that

8 (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On
9 motion and just terms, the court may relieve a party or its legal representative
10 from a final judgment, order, or proceeding for the following reasons:

11 (1) mistake, inadvertence, surprise, or excusable neglect;

12 (2) newly discovered evidence that, with reasonable diligence, could
13 not have been discovered in time to move for a new trial under Rule
14 59(b);

15 (3) fraud (whether previously called intrinsic or extrinsic),
16 misrepresentation, or misconduct by an opposing party;

17 (4) the judgment is void;

18 (5) the judgment has been satisfied, released, or discharged; it is based
19 on an earlier judgment that has been reversed or vacated; or applying it
20 prospectively is no longer equitable; or

21 (6) any other reason that justifies relief.

22 Fed. R. Civ. P. 60(b). Rule 60(b) “attempts to strike a proper balance between the
23 conflicting principles that litigation must be brought to an end and that justice should be
24 done.” *Delay v. Gordon*, 475 F.3d 1039, 1044 (9th Cir. 2007) (internal quotation marks
25 and citation omitted). The decision of whether or not to grant relief under Rule 60(b) is
26 matter of the district court’s discretion. *See Fantasyland Video, Inc. v. Cty. of San Diego*,
27 505 F.3d 996, 1005 (9th Cir. 2007). Pursuant to Rule 60(b)(2),

28 Relief from judgment on the basis of newly discovered evidence is warranted
if (1) the moving party can show the evidence relied on in fact constitutes
“newly discovered evidence” within the meaning of Rule 60(b); (2) the
moving party exercised due diligence to discover this evidence; and (3) the
newly discovered evidence must be of “such magnitude that production of it
earlier would have been likely to change the disposition of the case.”

1 *Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1093 (9th Cir. 2003) (citation
2 omitted).

3 **IV. DISCUSSION**

4 **a. Newly Discovered Evidence**

5 Respondents assert that they “did not discover the Mexicali baptismal register
6 relating to [Petitioner] until October 31, 2019.” (ECF No. 261 at 13). Respondents assert
7 that they “were unaware of the existence of the 1969 baptismal register in Mexicali, Mexico
8” *Id.* Petitioner contends that Respondents “have not proven by admissible testimony
9 that their alleged evidence existed when judgment was entered.” (ECF No. 266 at 25)
10 (emphasis omitted). Petitioner asserts that Respondents offer two pieces of allegedly newly
11 discovered evidence: “an untranslated ‘Certificado de Bautismo’ and fragmentary
12 photographs of selected excerpts of a heavily redacted alleged baptismal register.” *Id.* at
13 24. Petitioner contends that Respondents have failed to prove that the “Certificado de
14 Bautismo” and photographs “existed at the time of judgment.” *Id.* at 25. Petitioner
15 contends that Respondents have failed to prove that the alleged baptismal register “itself
16 existed when judgment was entered.” *Id.*

17 The Court of Appeals has stated that a “declaration is not ‘newly discovered
18 evidence’ under Rule 60(b)(2) [if] it discusses evidence that was not in existence at the
19 time of the judgment.” *Fantasyland Video*, 505 F.3d at 1005 (citation omitted).
20 Respondents submit a declaration of a Consular Officer employed by the State Department
21 in Tijuana, Mexico in support of their Motion to Vacate Judgment and Motion for
22 Indicative Ruling. *See* Cardenas Decl., ECF No. 261-2. The Consular Officer states that
23 he “photographed record number (Acta) 1175 in folder (Folio) 122 of book (Libro) 2 of
24 the baptismal register for the Parish at Avenida Sinaloa 1201, Colonia Esperanza, in
25 Mexicali, Mexico” on November 25, 2019. *Id.* at ¶ 8, ECF No. 261-2 at 2. The Consular
26 Officer states that “[t]he accompanying photographs (Exhibit 1) accurately depict ... the
27 ... entry in the Parish’s baptismal register for Oscar Ivan Olivas, which lists his place of
28 birth as Tijuana, Baja California, his date of birth as August 10, 1969” *Id.* at ¶ 9, ECF

1 No. 261-2 at 3. The Consular Officer states that he “confirmed with the custodian of the
2 Parish records that the records are regularly-kept records of the Parish, and that entries,
3 including the place of birth of the person baptized, are made at or near the time of the
4 baptism according to information provided by the party requesting the baptism.” *Id.* at ¶
5 10, ECF No. 261-2 at 3. The Consular Officer states that he “also confirmed with the
6 Parish custodian ... that the place of birth of Oscar Ivan Olivas was Tijuana, Baja
7 California.” *Id.* at ¶ 11, ECF No. 261-2 at 3. The Consular Officer states that he “also
8 obtained certification of the ... baptismal record of Oscar Ivan Olivas by working with the
9 Cathedral parish custodian, to obtain a Certificado de Bautismo (Certificate of Baptism)
10 which sets forth the information reflected in the Parish’s baptismal register.” *Id.* at ¶ 12,
11 ECF No. 261-2 at 3. The Consular Officer states that “[t]he accompanying Certificado de
12 Bautismo (Certificate of Baptism) of Oscar Ivan Olivas dated October 31, 2019 (Exhibit
13 2), is the original document that I obtained.” *Id.* at ¶ 13, ECF No. 261-2 at 3.

14 The Court concludes that Respondents’ Motion to Vacate Judgment and the
15 accompanying declarations and exhibits “raise[] a substantial issue” as to whether
16 Respondents have “show[n] the evidence relied on in fact constitutes ‘newly discovered
17 evidence’ within the meaning of Rule 60(b)” Fed. R. Civ. P. 62.1(b); *Feature Realty*,
18 331 F.3d at 1093 (citation omitted).

19 **b. Due Diligence**

20 Respondents contend that they “diligently searched for any and all evidence of
21 [Petitioner’s] birth in Mexico and has no reason to believe that a baptismal registration
22 existed or could be found in Mexico.” (ECF No. 261 at 13). Respondents contend that
23 they “exercised reasonable diligence” “[w]hen this case began” “by requesting that the
24 State Department conduct a second search for a Mexican registration of [Petitioner’s] birth
25 to confirm that none could be found.” *Id.* at 14. Respondents assert that “[t]he State
26 Department concluded that no birth registration existed or, if it existed, that [Petitioner’s]
27 mother ‘must have used a completely different name that has no association with any
28 family members.’” *Id.* (citation omitted). Respondents assert that the State Department

1 “does not normally ask the Catholic Church in Mexico to search for a baptismal registration
2 unless it knows that, and where, it exists.” *Id.* at 15. Respondents contend that
3 “[r]easonable diligence did not require asking the Catholic Church in Mexico to conduct a
4 diocese-wide search of over 200 parishes in Mexicali and Tijuana for a baptismal
5 registration when there was only a hunch that it might exist and a belief that, even if it
6 existed, probably could not be found.” *Id.* Respondents contend that Petitioner “took the
7 litigation position that he was baptized at age nine in the United States, and not as an infant
8 in Mexico, and he offered false and misleading evidence to support his position that he was
9 born in the United States.” *Id.* at 13. Respondents contend that Petitioner should “be
10 estopped from challenging whether Respondents exercised reasonable diligence to find his
11 Mexican baptismal registration.” *Id.*

12 Petitioner contends that Respondents “cannot show reasonable diligence” because
13 Respondents “chose not to look for the alleged baptismal record before entry of judgment
14” (ECF No. 266 at 27) (emphasis omitted). Petitioner asserts that the baptismal register
15 “was not a secret document” and “was available to inspect on request.” *Id.* at 28. Petitioner
16 contends that Respondents “have no credible excuse for not locating the alleged baptismal
17 register long before final judgment was entered in favor of [Petitioner].” *Id.* at 29.

18 On August 22, 2019, the Court ordered entry of judgment in favor of Petitioner and
19 against Respondents. (ECF No. 251). Respondents state that they received emails from
20 Petitioner’s counsel on August 23 and 26, 2019, informing Respondents that Petitioner
21 would “be working on getting ... a passport as soon as possible.” Bettwy Decl. ¶¶ 10-11,
22 ECF No. 261-1 at 2. Respondents state that they “informed State Department counsel” on
23 August 29, 2019 that Petitioner “intended to apply for a passport” *Id.* at ¶ 13, ECF No.
24 261-1 at 3. Respondents state that State Department counsel informed them on September
25 5, 2019 that Petitioner’s “renewed U.S. passport would likely be denied” *Id.* at ¶ 14,
26 ECF No. 261-1 at 3. Respondents state that

27 In anticipation of litigation over a denial of [Petitioner’s] third passport
28 application, [Respondents] proposed a third search for a Mexican birth

1 certificate and described reasons for considering the possibility that
2 [Petitioner's] mother might have baptized him as an infant, possibly either in
3 Los Angeles or in the Mexican state of Baja California before moving to the
United States in early November 1969.

4 *Id.* at ¶ 16, ECF No. 261-1 at 3. Respondents state that

5 State Department counsel independently decided that it would recommend
6 committing time and resources to conduct a renewed search for a Mexican
7 birth registration and to coordinate with the Catholic Church in Mexico for a
8 search of the baptismal registers of all parishes in Tijuana and Mexicali in the
outside hope of finding additional evidence of [Petitioner's] birthplace.

9 *Id.* at ¶ 17, ECF No. 261-1 at 3. Respondents state that

10 On November 7, 2019, State Department counsel informed [Respondents] that
11 the registration of [Petitioner's] baptism had been found, showing that
12 [Petitioner] was baptized in Mexicali, Baja California, on October 12, 1969,
13 and that his place of birth was Tijuana, Baja California, Mexico.

14 *Id.* at ¶ 19, ECF No. 261-1 at 3.

15 The Court concludes that Respondents' Motion to Vacate Judgment and the
16 accompanying declarations and exhibits "raise[] a substantial issue" as to whether
17 Respondents have "exercised due diligence to discover this evidence" Fed. R. Civ. P.
18 62.1(b); *Feature Realty*, 331 F.3d at 1093 (citation omitted).

19 **c. Likelihood to Change the Disposition of the Case**

20 Respondents contend that the "baptismal register constitutes clear and convincing
21 evidence of [Petitioner's] alienage and increases the weight of other evidence of alienage."
22 (ECF No. 261 at 16). Respondents contend that "[c]ourts often consider the competing
23 probative value of birth certificates and baptismal records, and depending on the
24 circumstances, a timely baptismal record is due greater weight than a birth certificate." *Id.*
25 Respondents contend that "[t]he State Department recognizes baptismal certificates to be
26 sufficient evidence of citizenship when the birth certificate is unreliable, as it is in this
27 case." *Id.* (citation omitted). Respondents contend that Petitioner's "baptismal register is
28 especially probative here, because the baptism was performed when he was only two

1 months old, because the register is the earliest record of his place of birth, and because
2 baptism is a religious sacrament presumably conducted solemnly and ceremoniously.” *Id.*
3 at 17 (citations omitted). Respondents contend that “there was no reason for [Petitioner’s]
4 mother or anyone to falsely report to the Mexicali church that [Petitioner] was born in
5 Tijuana, Mexico, since the place of birth has no bearing on the proper place of baptism.”
6 *Id.* (citation omitted).

7 Petitioner contends that Respondents’ “alleged new evidence is insufficient as a
8 matter of law to change the outcome” because Respondents’ “alleged new evidence is
9 insufficient to sustain [Respondent]s’ stringent burden to prove by clear and convincing
10 evidence that [Petitioner] is not a U.S. citizen.” (ECF No. 266 at 47) (emphasis omitted).
11 Petitioner contends that “[t]he alleged baptismal record does not increase the weight of
12 other evidence.” *Id.* at 50 (internal quotation marks, alteration, and citation omitted).
13 Petitioner contends that “[a]t best, the alleged baptismal records ... are inconsistent with
14 the uncontested facts that [Petitioner] was baptized in California and was issued a
15 California birth certificate.” *Id.* at 52. Petitioner contends that “[e]ven if [Petitioner] was
16 baptized in Mexicali, that does not prove by clear and convincing evidence he was not born
17 in the United States.” *Id.* Petitioner contends that “[i]t is not unreasonable that a mother
18 might have wanted to baptize her son in her hometown and thus traveled from Los Angeles
19 to Mexicali to do so” *Id.* Petitioner contends that “it is not unreasonable to believe”
20 that Petitioner’s mother “told church officials [Petitioner] was born in Tijuana ... even
21 though he was born in the United States.” *Id.*

22 On November 29, 2018, the Court of Appeals vacated this Court’s August 16, 2017
23 Order, stating, “The district court erred in requiring Olivas to bear the burden of proving
24 his citizenship by a preponderance of the evidence. Instead, as we held in *Mondaca-Vega*
25 *v. Lynch*, a burden-shifting framework applies in alienage determination cases.” *Olivas v.*
26 *Salazar*, 743 F. App’x 890, 890 (9th Cir. 2018) (citing *Mondaca-Vega v. Lynch*, 808 F.3d
27 413 (9th Cir. 2015)); ECF No. 230 (same). The Court of Appeals remanded to this Court
28 to weigh the evidence using the *Mondaca-Vega* framework, “in which the government

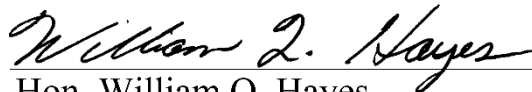
1 presents evidence of alienage, the petitioner responds with substantial credible evidence of
2 citizenship, and then the burden shifts back to the government to prove alienage by clear
3 and convincing evidence.” *Id.* The Court of Appeals rejected the government’s argument
4 that *Mondaca-Vega* applies only in removal proceedings, not in this action for habeas and
5 declaratory relief. *See id.* at 890 n.1.

6 The Court concludes that Respondents’ Motion to Vacate Judgment and the
7 accompanying declarations and exhibits “raise[] a substantial issue” as to whether “the
8 newly discovered evidence [is] of ‘such magnitude that production of it earlier would have
9 been likely to change the disposition of the case.’” Fed. R. Civ. P. 62.1(b); *Feature Realty*,
10 331 F.3d at 1093 (citation omitted).

11 **V. CONCLUSION**

12 IT IS HEREBY ORDERED that the Motion for Indicative Ruling filed by
13 Respondents (ECF No. 261) is GRANTED. The Court indicates that the Motion to Vacate
14 Judgment filed by Respondents (ECF No. 261) “raises a substantial issue.” Fed. R. Civ. P.
15 62.1(b). The Court shall decide the Motion to Vacate Judgment (ECF No. 261) “if the
16 court of appeals remands for that purpose.” Fed. R. Civ. P. 62.1(c).

17 Dated: June 4, 2020

18 
19 Hon. William Q. Hayes
20 United States District Court
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