

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

DAINIER ALEMAN GARCIA

PETITIONER

v.

NO. 3:25-CV-522-RGJ

KRISTI NOEM, in her Official Capacity as
Secretary, Department of Homeland Security;
TODD LYONS, in his Official Capacity as
Acting Director, U.S. Immigration and
Customs Enforcement;
PAM BONDI, in her Official Capacity as
Attorney General of the United States; and
JEFF TINDALL, in his Official Capacity as
Oldham County Jailer

RESPONDENTS

RESPONDENTS' RESPONSE TO MOTION FOR CONTEMPT

The Court should deny Petitioner's Motion for Contempt because Respondents have complied with the Court's orders.

The Court issued an order on September 26 (Doc. 22) stating that "the United States is ordered to certify compliance with their representation demonstrating Garcia's removal to Cuba, by a filing on the docket no later than September 28, 2025." (Doc. 22, PageID.173, 174.) The United States complied with that order that same day with a filing titled "Respondents' Notice Regarding Petitioner's Impending Removal". (Doc. 23.) In a subsequent filing, the Respondents informed the Court and Petitioner that the Sixth Circuit had stayed the Petitioner's removal, forestalling Petitioner's removal until any lift of that stay, and that once the Sixth Circuit lifts its stay, Petitioner will be "removed as promptly as ICE can finalize all necessary arrangements." (Doc. 24.)

Petitioner then filed a motion for contempt, claiming that the Court's September 26 order directed the Respondents to "show that moving the Petitioner would not frustrate the judicial process of adjudicating the Petitioner's writ, and in addition, certify that this honorable court would maintain jurisdiction in this matter." (Doc. 27, PageID.186-187.) However, the Court's September 26 order contains no such direction. (Doc. 22, PageID.173-174.) Instead, it stated that "the Court 'does not intend to intervene' in removal proceedings nor frustrate the removal order," and that "[b]oth parties agree that this Court retains jurisdiction while Mr. Garcia remains in the United States, even if not within the jurisdiction of the Western District of Kentucky." (Doc. 22, PageID.174.).

Subsequently, the Respondents submitted a filing notifying the Court and Petitioner that "[o]n October 3, the Sixth Circuit dismissed Petitioner's case" and "ICE then scheduled Petitioner for the earliest removal flight that could be operationally arranged." (Doc. 30, PageID.200.) The Respondents also notified the Court and Petitioner that "[t]hat flight was scheduled to depart from Chicago, Illinois, on October 22, 2025," and "[i]n order to place Petitioner on that October 22, 2025 flight for removal, ICE moved the Petitioner to Broadview, Illinois, on October 20" which "is typical." (*Id.*) Respondents further notified the Court and Petitioner that (1) "ICE was not able to safely and timely transport Petitioner from the Broadview facility to the October 22, 2025 flight due to unforeseen circumstances," (2) ICE "made arrangements to place Petitioner on a removal flight from Chicago the week of October 27, 2025," and (3) ICE

moved Petitioner from the Broadview facility to the Waukesha County Jail in order to facilitate his removal.” (Doc. 30, PageID.200-201.).

The Respondents also submitted a declaration evidencing that “ICE’s sole purpose in its transfers of Petitioner from the Oldham County Jail and afterward were to facilitate his removal to Cuba pursuant to his final order of removal.” (Doc. 30, PageID.201; Doc. 30-1, PageID.206, ¶ 11.). The Respondents then notified the Court and Petitioner that the Petitioner was removed to Cuba on October 28, 2025. (Doc. 31, PageID.207.). The habeas petition before the Court is now moot and should be dismissed for that reason. *Id.*; see also *Demis v. Sniezek*, 558 F.3d 508, 513 (6th Cir. 2009) (dismissing a case because it was moot); *Rodriguez v. Hirshberg Acceptance Corp.*, 62 F.4th 270, 274 (6th Cir. 2023) (noting that administrative closure is not equivalent to dismissal under the Federal Rules of Civil Procedure).

Petitioner complains that Respondents have acted “in direct disobedience to the court order” by moving Petitioner. (Doc. 27, PageID.187.) That is false. The Court’s order stated that “the Court ‘does not intend to intervene’ in removal proceedings nor frustrate the removal order.” (Doc. 22, PageID.173.). The order further stated, “[t]o the extent Garcia’s removal is imminent and such movement is unrelated to any intent to frustrate communication with counsel or the exigency of the habeas corpus proceeding before the Court, the United States may comply with Garcia’s removal order.” (Doc. 22, PageID.173.) The Court’s order authorized the Respondents to move the Petitioner from Oldham County in order to remove him from the United States, and that is what the

Respondents did, informing the Court and Petitioner of steps along that process. (Doc. 30, PageID.200-201; Doc. 30-1, PageID.206, ¶ 11; Doc. 31, PageID.207.)

Petitioner's filing asserts that "Federal Rule of Civil Procedure 70, applies when a party fails to perform a specific act as ordered by a court. It allows the court to hold the party in contempt and take action to enforce the order." (Doc. 27, PageID.187).

Respondents complied with the Court's orders, and Rule 70 has no application here.

Petitioner also points to 18 U.S.C. § 401, but that statute's relevant portion only authorizes contempt where a party disobeys an order, which has not happened here. (*Id.*). Likewise, the motion's cursory citation to 18 U.S.C. § 402 (Doc. 27, PageID.186) has no applicability because it applies to a person "willfully disobeying any lawful ... order," which has not happened here, and even then, only when "the act or thing so done be of such character as to constitute also a criminal offense," which is not even suggested in Petitioner's filing. (Doc. 27, PageID.186-188.).

The Respondents having obeyed all orders of the Court in this case, and there being no basis for finding otherwise or for the Petitioner's motion generally, the Court should deny Petitioner's Motion for Contempt.

Respectfully submitted,

KYLE G. BUMGARNER
United States Attorney
Western District of Kentucky

/s/ Timothy D. Thompson
Timothy D. Thompson
Jason Snyder
Assistant United States Attorneys
717 W. Broadway
Louisville, KY 40202
(502) 582-6238
timothy.thompson@usdoj.gov
jason.snyder@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

KYLE G. BUMGARNER
United States Attorney
Western District of Kentucky

/s/ Timothy D. Thompson
Timothy D. Thompson
Assistant United States Attorney