UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

RENE GARIBAY-ROBLEDO,
Petitioner,

v.

KRISTI NOEM, et al.
Respondents.

Civil Action No. 1:25-CV-00177-H

RESPONSE OF PETITIONER'S COUNSEL TO ORDER TO SHOW CAUSE

Petitioner's undersigned Counsel, John Michael Bray, respectfully submits this response to the Court's November 21, 2025, Order to Show Cause and states as follows:

I. INTRODUCTION AND FACTUAL BACKGROUND

Petitioner's Counsel, John Michael Bray, respectfully submits this response to the Court's November 21, 2025, Order to Show Cause. *See* Order to Show Cause, *Garibay-Robledo v. Noem*, No. 1:25-cv-177-H (N.D. Tex. Nov. 21, 2025). Counsel fully acknowledges the seriousness of the issues the Court has raised and appreciates the opportunity to address them directly, to accept responsibility for the errors that occurred, and to explain the steps he has taken to ensure they do not recur.

Counsel does not dispute that the filings at issue contained mistakes. The erroneous citation to "*Cardenas v. Young*," and the misformatted quotation attributed to *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), were errors for which counsel accepts responsibility. *See* Aff. of John Michael Bray ¶¶ 4–12, 18–22. These mistakes were inadvertent, and counsel regrets that they appeared in documents submitted to the Court. They did not arise

from any intent to mislead, any disregard for the accuracy of filings, or any use of artificial intelligence to generate legal authority. *Id.* ¶ 11. Rather, they resulted from lapses in verification and editing—lapses that counsel acknowledges and has since taken significant measures to correct.

With respect to the nonexistent "*Cardenas v. Young*" citation, Counsel relied on a representation made in a professional immigration-law discussion forum by another licensed attorney. Aff. ¶¶ 6–10. Although that reliance was misplaced, Counsel recognizes that he bore the responsibility to independently confirm the veracity of the citation before including it in a filing. The failure to do so was an oversight on his part, and he regrets that it occurred. *Id.* ¶ 12. Likewise, the language attributed to *Matter of M-S-* was intended as a paraphrase but, because of a formatting mistake, appeared as a direct quotation. *Id.* ¶¶ 18 - 22. Counsel understands the significance of that error and accepts responsibility for not catching it during his review.

These citation and formatting errors, however, did not supply the substantive legal argument. The core legal theory advanced in the petition and reply—that individuals placed into removal proceedings under 8 U.S.C. § 1229a are detained pursuant to 8 U.S.C. § 1226(a)—was grounded in real, existing authority, including *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and multiple district court decisions within Texas. Aff. ¶¶ 23–27. Although aspects of the briefing were flawed, the legal contention itself was not fabricated, frivolous, or objectively unreasonable.

Counsel also understands the Court's concern regarding Local Civil Rule 7.2(f). His prior understanding of the rule—which he formed from the rule's text and the nature of habeas pleadings—was that it applies to *briefs*, not to initiating petitions or requests for

temporary restraining orders. Aff. ¶¶ 13–17. When counsel later filed a document he understood to be a brief within the meaning of Local Civil Rule 7.2(f)—the November 17 reply—he included the Rule 7.2(f) disclosure. *Id.* ¶ 15. Counsel acknowledges that he should have revisited the applicability of the rule more broadly and sincerely regrets any lack of clarity caused by his interpretation.

Importantly, upon becoming aware of the issues identified by the Court, Counsel reviewed the filings, prepared corrected versions, and implemented expanded quality-control safeguards, including hiring additional licensed attorneys to assist with citation verification and review of federal submissions. Aff. ¶¶ 30–38. For this reason, the undersigned Counsel has sought leave of the Court to file a corrected habeas petition and a first amended reply brief concurrently with the filing of the instant response to the Order to Show Cause. These steps reflect Counsel's recognition of the errors, his commitment to candor, and his determination to ensure that similar errors do not arise again.

Furthermore, Counsel has long made it his practice to correct inaccuracies proactively when he discovers them, including filing notices of errata in other federal matters without prompting from the Court or opposing counsel. Aff. ¶¶ 39–41. In this case, he acknowledges the mistakes made, accepts responsibility for them, and has taken substantial steps to address the Court's concerns fully and transparently.

II. ARUGMENT

A. Counsel Did Not Violate Rule 11(b).

Rule 11(b) requires that an attorney certify, after a reasonable inquiry, that the legal and factual contentions in a filing are warranted by existing law or by a nonfrivolous argument for its extension, and that the filing is not submitted for any improper purpose.

Fed. R. Civ. P. 11(b). The Fifth Circuit has emphasized that sanctions should not be imposed for advocating a plausible legal theory, and that the Rule 11 inquiry is governed by an objective standard assessed under the "snapshot" rule, which "focus[es] upon the instant the attorney affixes his signature to the document." *Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 528 (5th Cir. 2016).

1. The legal theory advanced on Petitioner's behalf was grounded in real authority and was, at minimum, objectively plausible.

The central legal contention in the petition and reply—that noncitizens placed into removal proceedings under 8 U.S.C. § 1229a are detained pursuant to 8 U.S.C. § 1226(a), not § 1225(b)—is supported by *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and by numerous decisions within the federal district courts of Texas. *See* Aff. of John Michael Bray ¶¶ 23–27. Even if the supporting citations in the initial petition were flawed, the underlying legal argument was one that multiple courts have accepted. That alone forecloses a finding that the filings presented "objectively unreasonable" legal contentions.

Rule 11 does not impose sanctions for errors in citation where the legal theory itself is nonfrivolous. Indeed, as the Fifth Circuit held in *Snow Ingredients*, sanctions are inappropriate where a filing advances a plausible legal position, even if imperfectly. *See generally Snow Ingredients*, 833 F.3d at 528 (discussing grounds for Rule 11 sanctions).

2. The errors arose from inadvertence, not from an improper purpose or reckless disregard of the truth.

Rule 11(b) is aimed at preventing abuse of the judicial process—filings submitted to harass, delay, or mislead. Nothing in the record supports such a finding here. Counsel acknowledges that the citation to "*Cardenas v. Young*" should have been thoroughly verified and regrets not vetting it beyond conducting a quick Google search, which yielded

a result showing another Fifth Circuit case with the same name but that showed only the Fifth Circuit docket number instead of a citation to a volume of the Federal Reporter. *See* Aff. ¶¶ 6–12. Counsel also acknowledges the formatting mistake that caused a paraphrase of *Matter of M-S-* to appear as a quotation. *Id.* ¶¶ 18–22. These errors, however, stemmed from lapses in verification and editing—not from any intent to introduce false authority or mischaracterize the law.

Rule 11 acts to "deter baseless filings in district court," *Cooter & Gell v. Hartman Corp.*, 496 U.S. 384, 393 (1990), and "to spare innocent parties and overburdened courts from the filing of frivolous lawsuits." *Kurkowski v. Volcker*, 819 F.2d 201, 204 (8th Cir.1987). The Fifth Circuit's objective "snapshot" standard does not automatically convert negligence into a sanctionable act. Nor does it require perfect performance; it requires reasonable inquiry under the circumstances. Fed. R. Civ. P. 11(b).

For this reason, courts applying Rule 11 typically distinguish between intentional or reckless falsehoods, which are sanctionable, and unintentional mistakes, which are generally not properly sanctionable. This aligns with an observation made by Judge David C. Godbey, of the Dallas Division of this Court, who has also observed that "Rule 11 sanctions 'are to be imposed sparingly, as they can have significant impact beyond the merits of the individual case and can affect the reputation and creativity of counsel.'" *Stevens Transp. v. Stautihar*, Civil Action No. 3:19-CV-2590-N, 2021 U.S. Dist. LEXIS 34115, at *5 (N.D. Tex. 2021) (ultimately quoting *Hartmax Corp. v. Abboud*, 326 F.3d 862, 867 (7th Cir. 2003)).

3. At the time the filings were submitted, Counsel's reliance and understanding were not objectively unreasonable under the "snapshot rule.

Under the "snapshot" rule, the Court must evaluate Counsel's conduct "upon the instant the attorney affixes his signature to the document." *Snow Ingredients*, 833 F.3d at 528. When counsel filed the habeas petition, he believed—incorrectly but in good faith—that the "*Cardenas v. Young*" citation was legitimate because it had been shared by another licensed attorney in a professional immigration-law forum. Aff. ¶¶ 6–10. *See also* Ex. A, Screenshot of Online Forum. While Counsel acknowledges he should have thoroughly verified the citation through Westlaw or LexisNexis instead of simply relying on a quick Google search, the question under Rule 11 is not whether his conduct was flawless, but whether it was objectively unreasonable at the time.

Likewise, at the time the reply brief was filed, Counsel believed he had accurately paraphrased the holding of *Matter of M-S-* and inadvertently failed to remove quotation marks that had been inserted during drafting. Aff. ¶¶ 18–22. These circumstances do not meet the Rule 11 threshold for sanctionable conduct, which demands objective unreasonableness—not mere oversight.

4. Counsel's remedial actions demonstrate compliance with Rule 11(b).

Courts evaluating Rule 11(b) also consider whether an attorney timely corrected any errors once discovered. *See In re City of Lancaster*, 228 S.W.3d 437, 442 (Tex. App.—Dallas 2007, no pet.) (declining to refer case to state bar where court held that "based on the record—including their responses—[the court] conclude[s] Hager and Nelson have shown cause why they should not be sanctioned in this case," where "Hager and Nelson

have apologized to the Court, and indicated that any failure on their part was not intentional, but rather was inadvertent.").

Here, upon learning of the issues identified by the Court, Counsel prepared a First Amended Habeas Petition and a Corrected Reply Brief (for which the undersigned has concurrently sought leave of the Court to submit), implemented mandatory citation-verification procedures, and expanded internal review protocols by hiring additional licensed attorneys. Aff. ¶¶ 30–38. These steps reflect respect for the Court's concerns and a commitment to ensuring accuracy going forward.

While Rule 11(b) requires objective reasonableness, it does not require perfection. Instead, it requires honesty, diligence, and reasonable inquiry. The record, assessed objectively, reflects all three. For these reasons, the undersigned Counsel respectfully submits that no violation of Rule 11(b) occurred.

B. Counsel Did Not Violate Local Rule 7.2(f).

Local Civil Rule 7.2(f) requires a disclosure when a "brief" is prepared using generative artificial intelligence. N.D. Tex. Loc. Civ. R. 7.2(f). The local rule's text limits its application to briefs, and does not extend to petitions, complaints, or other initiating pleadings. At the time the habeas petition and TRO request were filed, Counsel understood these documents to be pleadings governed by Federal Rule of Civil Procedure 8, not briefs governed by Local Rule 7.2. *See* Aff. of John Michael Bray ¶¶ 13–17. If this Court interprets habeas petitions, complaints, and other case-initiating documents to qualify as "briefs" within the meaning of Local Rule 7.2(f), Counsel will of course provide such a disclosure in future filings, but he did not omit such disclosure in this case so as to purposefully evade the court.

Indeed, when Counsel later submitted a document he understood to fall within the scope of Rule 7.2(f)—the November 17 reply brief—he included the required AI-use disclosure on the first page. Aff. ¶ 15. That disclosure was made precisely because Counsel sought to comply with the Local Civil Rules and was included solely in the spirit of transparency. As explained in the affidavit, although Counsel used AI to summarize certain factual materials for his own internal reference, no generative AI system supplied any legal authority, reasoning, quotations, or legal analysis. *Id.* ¶ 11.

To the extent the Court's concerns relate to the misformatted paraphrase of *Matter of M-S-*, that error was not caused by the use of AI. Rather, it was a human drafting mistake that transformed a paraphrase into the appearance of a direct quotation. *Id.* ¶¶ 18–22. Counsel accepts responsibility for that error and regrets the confusion it caused, but Local Civil Rule 7.2(f) is not implicated by human drafting or citation mistakes; it is concerned only with the undisclosed use of generative AI in the preparation of briefs.

Because (1) the filings at issue prior to the reply brief were not briefs under the Local Rules, (2) counsel complied with Rule 7.2(f) when filing the reply brief, and (3) no legal authority or quotation in this case was generated by artificial intelligence, the undersigned Counsel respectfully submits that there was no violation of Rule 7.2(f).

C. Counsel Did Not Violate the Duty of Candor.

The duty of candor requires that an attorney not knowingly make false statements of fact or law to the Court. *See* Tex. Disciplinary R. Prof'l Conduct 3.03(a)(1). A violation occurs only where an attorney is aware that a representation is false or acts with conscious disregard of its truth or falsity. The record here does not reflect any such conduct.

Counsel acknowledges the errors that appeared in the filings—specifically, the nonexistent "*Cardenas v. Young*" citation and the misformatted paraphrase of *Matter of M-S-*. *See* Aff. of John Michael Bray ¶¶ 6–12, 18–22. He accepts responsibility for these mistakes and fully recognizes the Court's concern. But neither error was made knowingly, intentionally, or with any purpose of misleading the Court. At the time the habeas petition was filed, counsel believed the "*Cardenas v. Young*" citation to be genuine because it had been shared by another licensed attorney in a professional immigration-law forum. Aff. ¶¶ 6–10. Although Counsel now understands that reliance was misplaced and should have been independently verified, the duty of candor is not violated by an inadvertent acceptance of incorrect information believed in good faith to be accurate.

Similarly, the statement attributed to *Matter of M-S-* was intended as a paraphrase and became a quotation only because of a formatting oversight during drafting. *Id.* ¶¶ 18–22. Counsel does not dispute that this was a significant error, but he did not knowingly present fabricated language or intentionally misstate the holding of the case. Once the issue was brought to his attention, he immediately reviewed the decision, identified the accurate language, and prepared a corrected brief. *Id.* ¶¶ 30–32.

Courts evaluating candor consider not only the presence or absence of intentional falsehood but also the attorney's response once an issue is identified. *See Hammer v. Morgan*, No. 03-18-00042-CV, 2018 Tex. App. LEXIS 7609, at *2 n.1 (Tex. App.—Austin Sep. 11, 2018, no pet.) (declining to impose sanctions where "counsel for Morgan acknowledge[d] that he owed the trial court a duty of candor and that this duty required him to inform the trial court" of the appellate court's where counsel filed a "nunc prop tunc" motion for summary judge in ostensible effort to circumvent subsequently issued

contrary appellate decision); *but see In re Harris*, No. 05-05-01080-CV, 2005 Tex. App. LEXIS 7513, at *4 (Tex. App.—Dallas Sep. 13, 2005, no pet.) (issuing show cause order where attorney's conduct indicated she "may have deliberately misrepresented the proceedings to obtain mandamus relief"). *See also In re City of Lancaster*, 228 S.W.3d 437, 442 (Tex. App.—Dallas 2007, no pet.) (where attorneys who provided sworn statements that were true when submitted but were later rendered false by subsequent events, court declined to refer case to state bar after counsel "apologized to the Court, and indicated that any failure on their part was not intentional, but rather was inadvertent.").

Here, Counsel endeavored to act transparently and promptly, providing supplemental authority in later filings that supported the legal positions asserted those contained in the original habeas petition. Counsel has also sought leave to file prepared corrected filings, has instituted mandatory citation-verification protocols, and has expanded internal review processes by adding two additional licensed attorneys to assist with federal submissions. *Id.* ¶¶ 33–38. These steps demonstrate Counsel's recognition of the seriousness of the errors and his commitment to preventing future inaccuracies.

Finally, Counsel has a demonstrated his history of voluntarily correcting inaccuracies in federal filings, including filing notices of errata in other cases without prompting by the Court or opposing counsel—even prior to this Court's Order to Show Cause, which issued on November 21, 2025. *Id.* ¶¶ 39–41. This pattern is consistent with, not contrary to, the duty of candor.

Because the record contains no evidence of any knowing misrepresentation, intentional fabrication, or deliberate disregard of the truth—and instead reflects inadvertent

errors followed by immediate, responsible corrective action—Counsel respectfully submits that he did not violate his duty of candor to the Court.

D. Even if the Court Finds Deficiencies in the Filings, Sanctions Are Not Warranted.

Even if the Court concludes that certain aspects of Counsel's filings could have been clearer or more cautiously verified, sanctions remain unwarranted under the governing legal standards. Rule 11 is not a strict-liability rule, nor does it penalize isolated mistakes, imperfect phrasing, or errors corrected promptly once discovered. Instead, Rule 11 focuses on whether an attorney advanced an objectively unreasonable legal contention or acted with an improper purpose. Fed. R. Civ. P. 11(b); *Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 528 (5th Cir. 2016).

1. The filings did not present objectively unreasonable legal contentions, as these theories have since been adopted nationwide.

The legal theory underlying the habeas petition—that detention of individuals placed into full removal proceedings is governed by 8 U.S.C. § 1226(a)—is supported by established authority, including *Jennings v. Rodriguez*, 583 U.S. 281 (2018), as well as by federal district courts throughout the United States, including multiple divisions of at least three federal districts here in Texas. *See* Aff. of John Michael Bray ¶¶ 23–27. *See, e.g.*, *Aparicio-Rodriguez v. Noem*, No. 3:25-cv-02858-L-BN, ECF No. 10 (N.D. Tex. Nov. 6, 2025) (Magistrate Judge's Findings, Conclusions, and Recommendation); *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-773 (W.D. Tex. Oct. 21, 2025); *Ortega-Aguirre v. Noem*, No. 4:25-cv-4332 (S.D. Tex. Oct. 10, 2025); *Fuentes v. Lyons*, No. 5:25-cv-153 (S.D. Tex. Oct. 16, 2025); *Ortiz-Ortiz v. Bondi*, No. 5:25-cv-132 (S.D. Tex. Oct. 15, 2025); *Buenrostro-Mendez v. Bondi*, No. 4:25-cv-3726 (S.D. Tex. Oct. 7, 2025); *Padron*

Covarrubias v. Vergara, No. 5:25-cv-00112 (S.D. Tex. Oct. 8, 2025); *Lopez-Arevelo v. Ripa*, No. 3:25-cv-337 (W.D. Tex. Sept. 22, 2025); *Ortega-Munoz v. Noem*, 1:25-cv-1753-RP (W.D. Tex. Nov. 7, 2025). Because the legal argument itself was grounded in legitimate statutory interpretation, Counsel submits that sanctions are inappropriate under the Fifth Circuit's standard. As *Snow Ingredients* makes clear, a court "should not impose Rule 11 sanctions for advocacy of a plausible legal theory, particularly where the law is arguably unclear." 833 F.3d at 528.

2. The errors identified were inadvertent and caused no prejudice to the Court or opposing counsel.

The mistaken citation to "*Cardenas v. Young*" and the misformatted paraphrase of *Matter of M-S-* were unintended errors that counsel promptly acknowledged and sought to correct. *See* Aff. ¶¶ 6–12, 18–22, 30–32. They did not mislead the Court about the actual holdings of controlling cases, nor did they prejudice the government's ability to respond. The broader legal argument was fully supported by accurate, independently valid authority.

Sanctions jurisprudence recognizes that where an error does not materially mislead the Court or alter the substance of the legal argument, it weighs strongly against the imposition of sanctions. This principle—summarized in commentary as "no harm, no foul"—reflects the purpose of Rule 11 as a deterrent, not a punitive mechanism for human error. *See* Douglas J. Pepe, LITIGATION, Vol. 36, No. 2, Winter 2010.

3. Counsel's prompt corrective actions further demonstrate that sanctions would not serve Rule 11's purpose.

Upon learning of the errors identified by the Court, counsel immediately undertook corrective measures: preparing an amended habeas petition and corrected reply brief; reviewing all citations for accuracy; implementing mandatory citation-verification

protocols; and expanding internal review by hiring additional licensed attorneys. Aff. ¶¶ 30–38.

Rule 11 is designed to deter improper conduct, not to punish an attorney who acknowledges mistakes, takes responsibility for them, and institutes safeguards to prevent recurrence. The Fifth Circuit instructs courts to assess conduct under the "snapshot rule," evaluating reasonableness at the time of filing, *Snow Ingredients*, 833 F.3d at 528, but remedial actions are nonetheless relevant in determining whether sanctions would be proportional, equitable, or necessary to deter future conduct.

4. Sanctions would not advance the objectives of Rule 11 in these circumstances.

The purpose of Rule 11 is to prevent abuse of the judicial process, not to impose penalties for inadvertent mistakes made in the course of advancing a legitimate, nonfrivolous legal argument. Here, counsel's conduct does not reflect bad faith, recklessness, or disregard for the truth. It reflects human error, followed by immediate and earnest corrective action.

Because the legal contentions were objectively reasonable, the errors were unintentional, the record was corrected promptly, and counsel has instituted meaningful safeguards, sanctions would not further Rule 11's deterrent purpose. Instead, they would risk chilling good-faith advocacy in an area of law where statutory interpretation is often complex and evolving. For these reasons, even if the Court finds the filings deficient in some respects, sanctions are neither warranted nor appropriate.

III. CONCLUSION

Counsel acknowledges the errors identified by the Court and accepts full responsibility for them. As explained above and in the accompanying affidavit, the citation

and formatting mistakes were inadvertent and not the product of any intent to mislead, any improper purpose, or any objectively unreasonable legal position. The legal arguments advanced were grounded in established authority, and the record demonstrates that counsel acted in good faith both at the time of filing and after the issues came to light.

Upon learning of the errors, counsel took immediate steps to correct the record and to strengthen internal verification procedures, including implementing mandatory citation checks and expanding attorney review of federal filings. These measures reflect counsel's commitment to candor, diligence, and continued compliance with the Federal Rules of Civil Procedure and the Local Rules of this Court.

For these reasons, Counsel respectfully submits that he did not violate Rule 11(b), Local Civil Rule 7.2(f), or the duty of candor, and that sanctions would not advance the purposes of Rule 11 in this matter. Counsel therefore respectfully requests that the Court discharge the Order to Show Cause and permit the filing of a First Amended Habeas Petition and Corrected Reply Brief so that the case may proceed on a complete and accurate record.

DATE: December 3, 2025.

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By: */s/ John M. Bray*
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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing RESPONSE OF PETITIONER'S COUNSEL TO ORDER TO SHOW CAUSE, as well as any and all attachments thereto, on Counsel for Respondents by serving the same via email to Assistant U.S. Attorney Ann Cuce-Haag via Ann.Haag@ice.dhs.gov and/or by filing the same using the Court's CM/ECF system.

/s/ John M. Bray
John M. Bray
Attorney for Petitioner

DATE: December 3, 2025.