

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

CHANTHILA SOUVANNARATH,

Petitioner,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, *et al.*,

Respondents.

Civil Action No. 25-cv-938-SDD-SDJ

Judge Shelly D. Dick
Magistrate Judge Scott D. Johnson

**SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONER'S MOTION TO ENFORCE
THE TEMPORARY RESTRAINING ORDER, DKT. 4**

INTRODUCTION

Now that the limited discovery this Court ordered has concluded, there is no question that Respondents violated the Temporary Restraining (“TRO” or the “Order”), Dkt. 4. There is also no dispute that Mr. Souvannarath was in the physical custody and control of Respondents when they were notified of this Court’s Order. In fact, there is no disagreement over the fact that Respondents could have completed the flight carrying Mr. Souvannarath to Laos and returned with him on that same flight. But Respondents chose to ignore this Court’s Order in the hopes that disappearing Mr. Souvannarath would neutralize his ability to timely enforce it. Such decisions have consequences. And the consequence here militates in favor of requiring Respondents to facilitate Mr. Souvannarath’s return. Both the facts and the law support this result.

First, Respondents’ discovery responses and two declarations submitted on Mr. Souvannarath’s behalf—by Savitri Arvey (Director of Refugee and Immigrant Rights Research and Analysis at Human Rights First) and Scott Shuchart (Former Senior Official at Immigration and Customs Enforcement (“ICE”))—underscore that Mr. Souvannarath was in Respondent’s custody when they learned of this Court’s Order. For the avoidance of any doubt, Respondents learned of the Order from their counsel when Petitioner was shackled in a plane surrounded by both ICE and Enforcement Removal Operations (“ERO”) personnel. *See*, Ex. A-5 at 3-4 (Admission Response No. 9); Ex. A-4 at 9 (Interrogatory Response No. 21) (referencing online ICE Air Operations manual, photo: ICE Air Operations 3 and ICE Air Operations 6); Ex. C (Shuchart Decl.) at ¶¶7,8). At 2:56 p.m. CDT, when Respondents learned of this Court’s Order, the ICE Air Flight destined for Laos was grounded in Colombo, Sri Lanka, approximately 1,800 miles from Laos. Ex. B (Arvey Decl., ¶6). This means Mr. Souvannarath could have easily returned to the United States when the aircraft so returned. Indeed, “it has long been government policy and

practice to respond to court orders . . . or other developments in the removability of a noncitizen through the time that the aircraft has landed and disembarked.” Ex. C (Shuchart Decl., ¶13).

Second, under these facts, binding Fifth Circuit law holds that Mr. Souvannarath was in Respondents’ legal custody during the course of the October 24, 2025 deportation flight. *Umanzor v. Lambert*, 782 F.2d 1299, 1302 (5th Cir. 1986) (holding petitioner remained in the “custody” of the United States throughout the duration of ICE deportation flight). To put it simply, Mr. Souvannarath “was under actual physical restraint by the government’s agent—the airline—at the moment the [TRO issued]” because he “was imprisoned inside of the aircraft, against his will, until the aircraft completed the flight and he was released” into the custody of the Laotian government. *Id.* The United States may not “stash [people] away” in “foreign” parts and then “claim[] . . . that because it has rid itself of custody . . . there is nothing that can be done.” *Abrego Garcia v. Noem*, 2025 WL 1135112, at *1 (4th Cir. Apr. 17, 2025) (Wilkinson, J.).

Mr. Souvannarath respectfully asks that the Court find that Respondents violated the TRO, grant his Motion to Enforce the TRO, and order Respondents to facilitate his return.

RELEVANT BACKGROUND

On October 15, 2025, Mr. Souvannarath mailed a habeas corpus petition and a motion for a TRO to this Court. Those filings were docketed on October 16, 2025, Dkt. No. 1, and a TRO issued from this Court on October 23, 2025—temporarily proscribing Mr. Souvannarath’s removal until the Court could further consider his claims concerning derivative citizenship. Dkt. No. 4. Respondents learned of this Court’s Order at 2:56 p.m. CDT on October 24, 2025, when Petitioner was midflight to Laos. Dkt. No. 23 at 3–4; *see also* Ex. A-4 (Respondents’ response to Petitioner’s discovery requests) at 4 (Interrogatory Response No. 9). Mr. Souvannarath filed a Motion to Enforce the TRO on October 28, 2025. Dkt. 11.

A Court conference was subsequently held, and on November 4, 2025, the Court ordered the parties to conduct limited discovery on the issue of whether Respondents violated this Court's Order. Dkt. Nos. 4, 5. The parties accordingly duly exchanged discovery requests. *See* Exhibit A. On November 14, 2025, Mr. Souvannarath moved to quash Respondents' discovery requests due counsel for Petitioner's limited ability to confer with their client and verify responses, let alone their ability to timely collect the documents requested (the vast majority of which, if not all, are already in Respondents' possession). Dkt. No. 29. The parties exchanged discovery responses on November 19, 2025. *See generally* Ex. A. That evening, Petitioner's counsel learned that Mr. Souvannarath had been released from the Laotian jail in which he had been detained since his arrival in Laos on October 26, 2025.¹

At the conclusion of discovery, the following facts are not in dispute:

- Respondents were on notice of Mr. Souvannarath's *pro se* efforts to bring legal claims against them as early as October 15, 2025, when Respondent Jordan provided information to counsel about Petitioner's "letters." *See* Ex. A-4 at 2 (Interrogatory Response No. 4).
- Respondents were aware of the Order on "October 24, 2025, when notified by the U.S. Attorney's Office at 2:56 p.m." *See* Ex. A-4 at 4 (Interrogatory Response No. 9).
- The Department of Homeland Security ("DHS") operated the flight to Laos on which Mr. Souvannarath was detained by ICE. *See* Ex. A-4 at 7 (Interrogatory Response No. 16); Ex. C (Shuchart Decl.) at ¶¶ 8, 11; *See* Ex. B (Arvey Decl.) at ¶¶ 4, 6.

¹ In an attempt to divert from the undisputed fact that Petitioner was in Respondents' *legal* custody when they learned of this Court's Order, Respondents seek to cast doubt on Petitioner and his counsel's extraordinarily limited ability to communicate prior to the discovery deadline. But Respondents' allegations are misplaced for two reasons. *First*, in their Opposition to Petitioner's Motion to Quash by Federal Respondents, Respondents allege—without any citation to case law—that Petitioner "made no good faith effort to" comply with the Court's discovery directive. ECF No. 32. This is not so. Rather, Petitioner was detained in a Laotian jail without reliable, let alone confidential, access to counsel, and remained detained there until November 19, 2025. ECF No. 29-1. Accordingly, no discovery questions or responses could be discussed with him at any length, much less confidentially, prior to the discovery deadline. *Second*, Respondents focus on discovery requests concerning Petitioner's wife, but she is not a party in interest in this case. Moreover, Respondents were provided with the information relating to Petitioner's wife's phone call with an agent of Respondents by Petitioner's counsel, who produced it via email, on October 31, 2025, and filed it into the record. ECF No. 21-1 at 3.

- “Respondents became aware of Judge Dick’s October 23, 2025, Order enjoining Mr. Souvannarath’s removal, Dkt. 4, while Mr. Souvannarath was still on the flight to Laos.” *See* Ex. A-5 at 3-4 (Admission Response No. 9).
- Throughout the duration of the deportation flight, Mr. Souvannarath was restrained in five-point restraints, including handcuffs, a waist chain, and leg irons while in the company of ERO staff. *See* Ex. C (Shuchart Decl.) at ¶¶7,8; Ex. A-4 at 9 (Interrogatory Response No. 21) (referencing online ICE Air Operations manual, <https://www.ice.gov/features/ICE-Air>) at Ex. A-4 at 9 (Interrogatory Response No. 21) (“Officers transport alien nationals to the flight line for air charter flights and assist with the boarding process. There are a variety of ERO personnel on board who ensure the health and safety of the aliens and officers during removal flights.”)²; ICE Air Operations at 3, 6 (containing images depicting noncitizens in restraints boarding deportation flight); Ex. C (Shuchart Decl.) at ¶12, ¶8 (“[P]assengers on ICE charter flights are generally in restraint devices,” including “handcuffs, waist chains, and leg irons.”); Ex. A-2 at 5 (Admission Response No. 14) (“ICE medical staff were on board the Petitioner’s removal flight”).
- Mr. Souvannarath was not permitted to disembark the aircraft at any time during the deportation flight. *See* Ex. C (Shuchart Decl.) at ¶9 (“Detainees are generally restrained, under armed guards, without freedom of movement, for the entirety of the flight.”); *id.* at ¶11 (“There is no point, prior to disembarkation and transfer to the receiving country, that the noncitizen becomes ‘free to go’ or in any way ceases to be under the authority of the United States.”).
- “Restraints are removed either on the plane, after landing and taxiing to a gate, or shortly after deplaning. Custody of the noncitizen then transfers to the receiving country, or the individual is released from custody at passport control.” Ex. C (Shuchart Decl.) at ¶10.
- Respondents have the ability to return Mr. Souvannarath and are committed to “work[ing] with relevant partners in the federal government to facilitate Petitioner’s return,” *see* Ex. A-5 at 4 (Admission Response No. 12); unsurprisingly, they have managed to return wrongfully deported individuals when ordered to do so in the past, *id.* at 5 (Admission Response No. 13); Ex. C (Shuchart Decl.) at ¶13 (“[I]t has long been government policy and practice to respond to court orders, errors when

² “There are a variety of ERO personnel on board who ensure the health and safety of the aliens and officers during removal flights,” including for example (i) the “ERO field office ground officer in charge – coordinates communication with airport security and ensures all documentation has been properly submitted”; (ii) “The Pilot in Command – is not only the lead pilot of the aircraft, but also oversees all matters related to flight safety and service of the aircraft”; (iii) “ICE Air Operations flight officer in charge – responsible for coordinating with field office personnel, contract aircraft and security crews, and medical personnel assigned to the charter flight, and reviews all associated documentation, flight manifests, medical documentation, medication, and property prior to take off”; (iv) “Rear Cabin Crew – ensure the safety and security of the detainees aboard the aircraft and provide meal and beverage service as a secondary responsibility”; and (v) “An in-flight medical professional – a licensed registered nurse, nurse practitioner, or physician’s assistant, who monitors detainees’ health during the flight, administers prescription medication, reports any medical issues to the flight officer in charge, and ensures continuity of care to detainees with medical issues. All medical professionals are trained in first aid to include CPR and the use of an on-board automated external defibrillator.”

removing an individual subject to an administrative or judicial stay of removal, notice of a late-filed appeal, or other developments in the removability of a noncitizen through the time that the aircraft has landed and disembarked If the noncitizen had not been handed over to the receiving government yet (if they were still in the air, or in the plane on the tarmac, or otherwise not yet processed by the receiving government) they would simply stay on the plane, or be re-embarked, and returned to the United States as though they had never left, with no change in their immigration status.”).

ARGUMENT

I. PETITIONER WAS IN RESPONDENTS’ CUSTODY WHEN THEY RECEIVED NOTICE OF THE TRO.

Additional discovery in this case underscores that Mr. Souvannarath was in Respondents’ legal custody during the course of the October 24, 2025 deportation flight. *See* Ex. A-4 at 2 (Interrogatory Response Nos. 3-4) (“[T]he U.S. Attorney’s Office first received notice of the Court’s order through a proactive docket review on October 24 at 2:51 p.m. CDT, and it communicated the order to DHS at approximately 2:56 p.m.”); *id.* at 4 (Interrogatory Response No. 9) (“Respondents became aware of Judge Dick’s October 23, 2025 Order enjoining Mr. Souvannarath’s removal, Dkt. 4, while Mr. Souvannarath was still on the flight to Laos.”). The facts are clear that this means Mr. Souvannarath could have been returned to the United States. *See* Ex. C (Shuchart Decl.) at ¶13 (“If the noncitizen had not been handed over to the receiving government yet . . . they would simply stay on the plane, or be re-embarked, and returned to the United States as though they had never left, with no change in their immigration status.”).

The law is equally clear. As an initial matter, the Supreme Court interprets the notion of legal custody broadly. *See e.g., Maleng v. Cook*, 490 U.S. 488, 492 (1989) (extending habeas jurisdiction to petitioners not in anyone’s physical custody); *Justices of Bos. Mun. Court v. Lydon*, 466 U.S. 294, 300–02 (1984) (holding individuals to be “in custody” for habeas purposes when they were free on personal recognizance awaiting trial); *Braden v. 30th Jud. Circuit Court of Ky.*, 410 U.S. 484, 498–99 (1973) (holding petitioner can be “in custody” of an entity through that

entity's agent); *United States v. Jung Ah Lung*, 124 U.S. 621, 622, 626 (1888) (holding individuals captured by captain of steamship to be "in custody" for habeas purposes). This means that, even if a person is not in Respondents' "actual physical custody," that person is in their custody for the purposes of habeas corpus relief when there is a "some type of restraint on the liberty of a person." *Merlan v. Holder*, 667 F.3d 538, 539 (5th Cir. 2011); *see also Jones v. Cunningham*, 371 U.S. 236, 239–43 (1963) (similar).

Moreover, binding precedent holds that petitioners remain in the "custody" of the United States for the duration of an ICE deportation flight. *Umanzor*, 782 F.2d at 1302. In *Umanzor*, the Fifth Circuit analyzed a question analogous to the one at bar and held that petitioner was "in custody" up until the point a deportation flight was completed and he was permitted to disembark the aircraft. The Court explained: "We have little difficulty in concluding that Umanzor was under actual physical restraint by the government's agent—the airline—at the moment the habeas petition was filed [because] Umanzor was imprisoned inside of the aircraft, against his will, until the aircraft completed the flight and he was released." *Id.*; *see also Munaf v. Geren*, 553 U.S. 674, 686 (2008) ("An individual is held 'in custody' by the United States when the United States official charged with his detention has 'the power to produce' him." (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885))); *Cheema v. Curran*, 2018 WL 2090719 (D. Ariz. Apr. 11, 2018) (finding petitioner was "in custody" while onboard an ICE deportation flight).

Accordingly, there is no question that Respondents could have facilitated ICE's compliance with the TRO when they learned about it, because Mr. Souvannarath was in the custody of ICE and ERO staff until the moment he disembarked the ICE Air flight in Laos. *See* Ex. A-4 at 9 (Interrogatory Response No. 21) (referencing ICE Air Operations manual); Ex. A-5 at 5 (Admission Response No.14) (explaining ICE medical staff are onboard flight); Ex. B (Arvey

Decl.) (discussing shackling) at ¶7; Ex. C (Shuchart Decl.) at ¶10 (“Restraints are removed either on the plane, after landing and taxiing to a gate, or shortly after deplaning. Custody of the noncitizen then transfers to the receiving country, or the individual is released from custody at passport control.”); *id.* at ¶11 (“There is no point, prior to disembarkation and transfer to the receiving country, that the noncitizen becomes ‘free to go’ or in any way ceases to be under the authority of the United States.”); *see also Singh v. Waters*, 87 F.3d 346, 349 (9th Cir. 1996) (holding petitioners remain in “custody” even after removal has been effectuated when, as here, there are exceptions for “extreme circumstances,” for example, when the government removed a petitioner “in violation of the [j]udge’s order”); *J.G.G. v. Trump*, 2025 WL 914682 (D.C. Cir. March 26, 2025) (“The government does not dispute that the Plaintiffs on the non-military planes and the planes themselves were fully under its control at the time of the court’s oral order.”).

When court orders are received midflight, the answer has always been simple: “If the noncitizen had not been handed over to the receiving government yet (if they were still in the air, or in the plane on the tarmac, or otherwise not yet processed by the receiving government) they would simply stay on the plane, or be re-embarked, and returned to the United States as though they had never left, with no change in their immigration status.” Ex. C (Shuchart Decl.) at ¶13. Against this backdrop, there is no question that Respondents could have facilitated ICE’s compliance with the TRO when they learned about it. Instead, they chose to ignore it. Such contempt should not be countenanced. Mr. Souvannarath thus asks this Court to grant his Motion to Enforce.

II. ALTERNATIVELY, IF THE COURT DEEMS ADDITIONAL DISCOVERY NECESSARY, PETITIONER WILL WORK WITH RESPONDENTS TO OBTAIN AND PRODUCE IT.

Mr. Souvannarath takes the position that there is sufficient evidence before the Court for it

to rule on Petitioner's Motion to Enforce the TRO, Dkt. 11. That said, if the Court concludes that it is still missing critical factual information regarding Respondents' violation of the TRO, Mr. Souvannarath respectfully requests additional time to meet and confer with Respondents, and to potentially litigate deficiencies in Respondents' discovery responses.

In the end, Mr. Souvannarath's discovery requests were specifically tailored to address (1) the timing and actions taken by Respondents upon learning of this Court's TRO, Dkt. 4; and (2) whether Mr. Souvannarath was still in Respondents' custody when he was on the deportation flight en route to Laos. *See generally* Ex. A. Certain deficiencies that could be addressed and supplemented with more time include, for example, Ex. A-3 at 5 (Requests for Production Nos. 5–7) (seeking written policies and/or any written guidance concerning issues (1) and (2)). Although Respondents argue that “there is no DHS policy” or “official written policy” responsive to Mr. Souvannarath's Requests, there very well may be relevant email traffic on the issue, or relevant information that could be learned during depositions—in particular, what, if any, affirmative steps should be taken to comply with a court order following counsel for Respondents' discovery and transmission of its existence.

CONCLUSION

Silencing a habeas petitioner by ignoring a court order issued in his favor has never been the law of the land. The sanctity of this country's democracy rests on the fact that it upholds a government of “[l]aws, and not of men.” John Adams, *Thoughts on Government* (1776), at 131. Because Respondents knowingly and wrongfully ignored this Court's Order in the hopes that their actions would go undetected, they should be called to account. Mr. Souvannarath thus respectfully asks this Court to grant his Motion to Enforce the TRO, Dkt. 11, and order Respondents to facilitate his return to the United States.

Dated: November 24, 2025

Sarah E. Decker*

ROBERT F. KENNEDY HUMAN RIGHTS

1300 19th Street NW, Suite 750
Washington, DC 20036
Tel: (908) 967-3245
decker@rfkhumanrights.org

Sarah T. Gillman*

ROBERT F. KENNEDY HUMAN RIGHTS

88 Pine Street, 8th Floor, Suite 801
New York, NY 10005
Tel: (646) 289-5593
gillman@rfkhumanrights.org

Stephanie M. Alvarez-Jones*

Bridget Pranzatelli (LA Bar No. 41899)
**NATIONAL IMMIGRATION PROJECT
OF THE NATIONAL LAWYERS GUILD
(National Immigration Project)**

1763 Columbia Road NW
Ste. 175 #896645
Washington, DC 20009
T: (202) 470-2082
F: (617) 227-5495
stephnic@nipnlg.org
bridget@nipnlg.org

Attorneys for Petitioner

** Admitted pro hac vice*

Respectfully submitted,

/s/Charles Andrew Perry

Charles Andrew Perry

LA Bar No. 40906

Nora Ahmed*

NY Bar No. 5092374

ACLU FOUNDATION OF LOUISIANA

1340 Poydras St., Ste. 2160

New Orleans, La 70112

Tel: (504) 522-0628

aperry@laaclu.org

nahmed@laaclu.org