UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

LUIS ANGEL MALDONADO FLORES,	:	**No. 1:25-cv-02398**
Petitioner,	:	
	:	
v.	:	**(Wilson, J.)**
	:	
CRAIG LOWE, et al.,	:	
Respondents.[1]	:	**Filed Electronically**

RESPONDENT'S BRIEF IN OPPOSITION TO THE MOTION FOR CIVIL CONTEMPT AND SANCTIONS

Respectfully submitted,
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[1] Although Petitioner named several other government officials, the only proper respondent in this case is Craig Lowe, the Warden of Pike County Correctional Facility. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) ("[T]he default rule is that the proper respondent is the warden of the facility where the prison is being held, not the Attorney General or some other remote supervisory official."). Petitioner requests release from confinement. (Doc. 1 at 42, ¶ d.) As such, all other Respondents should be dismissed.

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This is a habeas action filed on December 14, 2025, by Petitioner, Luis Angel Maldonado Flores (hereafter Petitioner or Maldonado Flores), a former immigration detainee[2] of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), who was detained at the Pike County Correctional Facility in Lords Valley, Pennsylvania. (Doc. 1 at 2.) Specifically, Maldonado Flores requested the Court grant a writ of habeas corpus and "order the government to stay Luis's removal until he is able to fully adjudicate his motion to reopen removal proceedings, including any petition for review to the U.S. Court of Appeals." (Doc. 1 at 5.) In its Response to the Petition (Doc. 4), the Respondent notified the Court that Petitioner was removed from the United States on December 14, 2025.

Petitioner concedes that he has been subject to a valid final order of removal since approximately 2005. (Docs. 1 at 12-13; 2-1 at 2.)[3] At the time DHS/ICE executed that removal order on December 14, 2025, neither the U.S. Attorney's

[2] Petitioner was transferred to Texas on December 13, 2025 – prior to this Court's December 14 order restraining his transfer from this District – and removed from the United States on December 14, 2025, at approximately 11:50 a.m. Eastern Standard Time. (Doc. 4, Exhibit 4.)

[3] Petitioner further concedes he was post-final order and that he was detained pursuant to 8 U.S.C. § 1231 and that the Immigration Court had not issued stay as of the time he filed his Petition. (Doc. 1 at 3.)

Office nor DHS/ICE had actual knowledge that, hours earlier, the Court had issued an *ex parte* Temporary Restraining Order (TRO) prohibiting Petitioner's removal.

Presently before the Court is Petitioner's motion for contempt and sanctions. (Doc. 6.) The Court should deny that motion because Petitioner has not – and cannot – establish a knowing violation of the Court's TRO, as required by Federal Rule of Civil Procedure 65. Further, granting Plaintiff's request to order Petitioner's return to the United States would be futile. Not only would Petitioner remain subject to the same final order of removal and to detention, but the law strips the Court of jurisdiction to restrain DHS/ICE from immediately removing him again.

I. PROCEDURAL HISTORY

On December 12, 2025, Petitioner through counsel filed the instant Petition seeking declaratory judgment that his removal would violate the Immigration and Nationality Act (INA); an injunction to prevent his removal until he completes the discretionary reopening of his immigration proceedings in Michigan; an injunction ordering his release from detention; and an award of fees and cost pursuant to the Equal Access to Justice Act (EAJA). (Doc. 1 at 19-20.) On December 13, 2025, Maldonado Flores also filed a Motion for Temporary Restraining Order asking the Court to enjoin "Respondents from removing Petitioner from the jurisdiction of this Court pending adjudication of his Petition for Writ of Habeas Corpus." (Doc. 2 at 1.) Maldonado Flores' counsel did not include in that motion a certification of "any

efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b)(1)(B). The motion was granted by this Court in its order to show cause (OSC) on December 14, 2025, and the Court directed Respondent to respond to the Petition on or before December 22, 2025. (Doc. 3.) The Response was filed on December 17, 2025. (Doc. 4.)

On December 31, 2025, counsel for Petitioner filed a motion for contempt and sanctions seeking the return of Petitioner to the United States, status updates on efforts to return Petitioner, and attorney's fees. (Doc. 6 at 22.) Respondent submits this brief in opposition to that motion.

II. FACTUAL BACKGROUND

A. Maldonado Flores' Immigration History

The material facts are not in dispute. Maldonado Flores is a native and citizen of Honduras. (Doc. 4, Exhibit 1 at 1-2, DHS Record of Deportable/Inadmissible; Doc. 4, Exhibit 2 at 8, Notice to Appear.) Maldonado Flores was a minor when he entered the United States illegally with his mother and was arrested on or about May 19, 2003. (Doc. 4, Exhibit 1 at 2.)

On May 22, 2003, ICE issued a Notice to Appear directed to Maldonado Flores. (*Id.*, Exhibit 2 at 8.) The Notice to Appear charged him as removable pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), in that he is a noncitizen present in the United States without being admitted or

paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. (*Id.*) The Notice to Appear was served on Maldonado Flores on October 31, 2003. (*Id.*, Exhibit 2 at 2.)

On September 24, 2004, an Immigration Judge in Detroit, Michigan, issued an Order granting him voluntary departure in lieu of removal, with a departure date on or before January 22, 2005. (*Id.*, Exhibit 2 at 6-7, Order of Immigration Judge; Exhibit 4 at ¶ 1, Declaration of John J. Coulter, Jr.) On October 1, 2004, Maldonado Flores received a Notice of Action-Voluntary Departure confirming the Order to self deport. (*Id.*, Exhibit 2 at 5.) Maldonado Flores failed to depart, thus converting his voluntary departure into a removal order. (*Id.*, Exhibit 2 at 5, 6-7; Exhibit 4 at ¶ 2, Coulter Decl.)

On July 17, 2005, a Warrant of Removal/Deportation was issued for Maldonado Flores. (*Id.*, Exhibit 2 at 2-4.) According to the records of the Immigration Court in Detroit, dated December 16, 2025, Maldonado Flores did not file any appeal of his Order granting voluntary departure. (*Id.*, Exhibit 3 at 2.) Additionally, there are no future hearings currently scheduled. (*Id.*, Exhibit 3 at 1.) Further, appeal was waived before the immigration court on September 24, 2004. (*Id.*, Exhibit 2 at 7.)

In 2017, Petitioner returned to Honduras with his father. (Doc. 1 at 13.) Because of allegedly unsafe country conditions there, Petitioner returned to the

United States without inspection in 2021. (*Id.* at 14.) On December 2, 2025, Maldonado Flores, was arrested by ICE and detained at the Pike County Correctional Facility, in Pennsylvania. (Doc. 1 at 5; Doc. 4, Exhibit 1 at 2.) On information and belief, not until his December 2025 detention did Petitioner pursue any legal relief with the immigration court to rectify his illegal presence in the United States since 2021. To that end, although Petitioner asserts that he filed both a motion to reopen and a motion to stay his removal with the Immigration Court in Detroit, Michigan (*see* Doc. 1 at 3; Doc. 1-2, Exhibit B.), a check of records with that court as recently as January 6, 2026, does not show any such filings or any pending matters in that court.[4] Petitioner concedes that the Immigration Court did not issue a stay of removal at any time prior to the execution of the removal order on December 14, 2025. (Doc. 1 at 3.)

A database review confirms that Maldonado Flores was transferred from Newark to Harlingen, Texas on Saturday, December 13, 2025. (Doc. 4, Exhibit 4 at

[4] https://acis.eoir.justice.gov/en/caseInformation last visited January 6, 2026. The undersigned has been informed by DHS/ICE counsel that other database inquiries have also not shown any motion to reopen pending in the Detroit Immigration Court. Moreover, while opposing counsel has presented evidence to the undersigned of a Federal Express delivery confirmation for a package delivered to the Immigration Court on December 12, 2025, counsel has not received a stamped copy of the motion back and has not confirmed that her paper filings were successfully docketed.

¶ 5.) He was removed on Sunday, December 14, 2025, on a flight that departed at approximately 10:50 a.m. Central Time (11:50 a.m. Eastern Time). (*Id.* at ¶ 6.)

B. Counsel's Receipt of the TRO

While at home on Sunday, December 14, 2025, at approximately 9:39 a.m. the undersigned received and viewed an email on his government mobile telephone sent from Chambers and addressed to him and Assistant U.S. Attorney Richard D. Euliss. (Exhibit A at ¶ 4, Declaration of T. Judge, Attachment 1.)[5] That email attached courtesy copies of the Petition (Doc. 1), the motion for a temporary restraining order (Doc. 2), and the order to show cause (OSC) (Doc. 3). (Exhibit A at ¶ 5, Declaration of T. Judge.) The undersigned did not review the attached documents at that time. (*Id.* at ¶ 6.) The undersigned acknowledged his receipt of the email by responding at 9:39 a.m. – the approximate time when he first viewed the email. (*Id.* at ¶ 7, Attachment 2.) However, at that time, the undersigned appreciated only that the Court had issued an OSC with a response date of December 22, 2025, and that the Petition, order, and a motion for a TRO had been attached to

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[5] Specifically, the email indicated as follows:

> Good morning,
> Judge Wilson issued the attached order today. A response is due by December 22, 2025. Please also find attached a copy of the petition and motion for TRO.
> Thank you, [ ]

(Exhibit A at ¶ 4, Attachment 1.)

the email. (*Id.* at ¶ 8.) The undersigned did not realize that the Court had also issued the TRO restraining Petitioner's removal within the OSC.[6] (*Id.* at ¶ 9.) Because it appeared to the undersigned that no immediate action was necessary, the undersigned planned to address it during normal business hours.

At approximately 10:07 a.m. that same morning, Petitioner's counsel sent an email to two separate ICE general email boxes stating that the Court had entered a stay of removal.[7] (Exhibit B, Declaration of R. Euliss at ¶ 9.) Petitioner's counsel copied Assistant U.S. Attorney Richard D. Euliss but not the undersigned on that email. (*Id.*) Mr. Euliss did not see any of these December 14 emails until he returned to the office on the morning of Monday, December 15, 2025. (*Id.* at ¶ 10.)

On the morning of December 15, 2025, upon appreciating that, within the OSC, the Court had issued a TRO forbidding petitioner's removal or transfer, Mr. Euliss immediately forwarded the same to the ICE points of contact at approximately 7:54 a.m. on December 15, 2025. (*Id.* at ¶¶ 10-11.) Approximately thirty minutes later, ICE notified our office that Petitioner had been removed the previous day. (*Id.* at ¶ 10.)

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[6] Specifically, the undersigned replied to Chambers as follows:

> Thank you [ ].
> Tim

(Exhibit A at ¶ 7, Attachment 2.)

[7] As of December 17, 2025, DHS/ICE could not verify having received the email. (Doc. 4, Exhibit 4.)

Upon returning to the office on Monday, December 15, 2025, at approximately 8:30 a.m., the undersigned reviewed the above-described correspondence from that morning wherein AUSA Euliss immediately contacted counsel for ICE to notify the agency of the Order granting the TRO and was informed that ICE had already removed the Petitioner on December 14, 2025.[8]

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[8] By way of further explanation, the undersigned as the Deputy Chief of the Civil Division and Richard Euliss as the Chief of the Civil Division are made counsel of record by the Clerk of Court for federal respondents in all federal inmate and immigration detention habeas cases. (Exhibit B at ¶¶ 2-3.) This process happens as a matter of course in all habeas proceedings without the undersigned or Mr. Euliss taking any affirmative steps and without our prior knowledge of the case's existence. (*Id.* at ¶ 3.) As a general practice, the first Electronic Case Filing (ECF) notice the undersigned and Mr. Euliss receive in a new habeas proceeding is when the assigned judge issues an Order to Show Cause (OSC) setting a briefing schedule. (*Id.* at ¶ 4.) The undersigned and Mr. Euliss then assign an AUSA to defend the matter with no further involvement by either of us, unless we choose to assign it to ourselves. (*Id.*) The undersigned and Mr. Euliss commonly receive ECF notifications of OSCs in new habeas matters multiple times a day. (Exhibit A at ¶ 10; Exhibit B at ¶ 5.) If an OSC is issued on a weekend or after normal work hours, the undersigned and Mr. Euliss typically wait until the next business day to review the OSC and other pertinent documents to make a staff assignment unless we become aware of some exigency requiring immediate action. (*Id.*)

Further, as a general practice, when the undersigned and Mr. Euliss become aware of a TRO restricting ICE's ability to transfer or remove a noncitizen, the USAO's regular practice is to forward that order to our ICE points of contact right away. (Exhibit A at ¶ 11; Exhibit B at ¶ 13.) Had the undersigned or Mr. Euliss realized on Sunday, December 14, 2025, that the Court had issued the TRO in this case, we would have immediately notified ICE rather than waiting for the following day. (*Id.*) But even if we had given ICE notice on Sunday, December 14, 2025, it is impossible to know whether there would have been sufficient time for ICE to halt Petitioner's removal that was already underway given that mere hours passed between the Court's issuance of the TRO and Petitioner's removal. (*Id.*)

(Exhibit A at ¶¶ 12-13; Exhibit B at ¶ 10.) Shortly thereafter, the undersigned contacted Petitioner's counsel to notify her that Petitioner had been removed. (Exhibit A at ¶ 14; Exhibit B at ¶ 10.)

It took until December 17, 2025, for the U.S. Attorney's Office to confirm the approximate time of Petitioner's removal through a declaration signed on December 17, 2025. (Exhibit A at ¶ 15 (citing Doc. 4, Exhibit 4.)) Any inadvertent noncompliance with the TRO by the U.S. Attorney's Office or DHS/ICE was neither willful nor with actual knowledge of the issuance of the TRO by the Court. (Exhibit A at ¶ 16; Exhibit B at ¶¶ 6-15.)

III. QESTIONS PRESENTED

A. Whether the motion should be denied because Petitioner failed to demonstrate a violation of the Court's December 14, 2025, Order based on the requirements of Fed. R. Civ. P. 65?

B. Whether the motion should be denied because the relief requested, return of the Petitioner to the United States, would be futile as the Court lacks jurisdiction over challenges to the execution of a removal order?

Suggested Answers: Yes

IV. ARGUMENT

A. The motion should be denied because Petitioner failed to demonstrate a violation of the Court's December 14, 2025, Order based on the requirements of Fed. R. Civ. P. 65.

Federal Rule of Civil Procedure 65 controls the Court's analysis as to whether a violation of its December 14, 2025, Order (Doc. 3) occurred. In relevant part, Fed. R. Civ. P. 65 provides the following:

> (b) Temporary Restraining Order.
>
> (1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:
>
> (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
>
> (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.
>
> . . .
>
> (d) Contents and Scope of Every Injunction and Restraining Order.
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> . . .
>
> (2) Persons Bound. **The order binds only the following who receive actual notice of it** by personal service or otherwise:
>
> (A) the parties;
>
> (B) the parties' officers, agents, servants, employees, and attorneys; and
>
> (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

. . .

Fed. R. Civ. P. 65 (emphasis added).

1. Neither Respondent nor its officer, agents, servants, employees, or attorneys had actual knowledge of the TRO.

The text of Rule 65 is plain on its face, requiring actual knowledge for a party or its officers, agents, servants, employees, and attorneys to be bound. Here, neither counsel for Respondent nor – as far as the undersigned is aware – the agents or employees of DHS/ICE had actual knowledge of the Court's December 14 Order restraining removal. As described above, the undersigned provided a courtesy reply to Chambers on Sunday, December 14. (Exhibit A; Exhibit B.) Neither the undersigned nor any other employee of the U.S. Attorney's Office had reviewed the OSC or realized that the Court had entered a TRO until returning to the office the following Monday. (*Id.*) The undersigned appreciated only that a petition had been filed, a motion for a TRO had been filed, and an order to show cause setting a response date of December 22 had been issued. (Exhibit A.) This was not remarkable at the time as there has been a recent and significant increase in the amount of habeas petitions resulting in orders to show cause. Consistent with his general practice when an order to show cause issues on a weekend, the undersigned planned to review the matter on Monday for appropriate staff assignment. (Exhibit A; Exhibit B.) Had the undersigned had actual knowledge of the directive by the

Court not to remove the Petitioner, the undersigned would have taken every reasonable and immediate action to notify DHS/ICE of the Order. (*Id.*)

Additionally, Petitioner's counsel sent an email on December 14, 2025, to two general DHS/ICE mailboxes and Mr. Euliss. Mr. Euliss did not see that email until the following day. (Exhibit B at ¶ 10.) As of December 17, 2025, DHS/ICE was not able to verify it had received the email. (Doc. 4, Exhibit 4.) There is no indication that anyone at DHS/ICE had actual knowledge of Petitioner's counsel's email prior to Petitioner's removal.

Therefore, the Court should deny the motion because neither counsel for Respondent nor DHS/ICE had actual knowledge of the issuance of the directive not to remove Petitioner on December 14, 2025.

2. Petitioner did not meet the requirements of Rule 65(b)(1)(B).

A court may issue a TRO *ex parte*, "but only if safeguards in Rule 65(b) are met." *Hope v. Warden York County Prison*, 972 F.3d 310, 321 (3d Cir. 2020). This includes, as relevant here, the moving counsel's certification in writing of compliance with Rule 65(b)(1)(B). *Id.* Here, Petitioner's counsel asserts that the certificate of non-concurrence pursuant to Local Rule 7.1 satisfies the requirements of Rule 65(b)(1)(B). This is incorrect. First, Rule 65 requires more than just a statement of the effort made. It requires counsel to include a statement of the "reasons why [notice] should not be required." Fed. R. Civ. P. 65(b)(1)(B). The

certificate of non-concurrence contains no such statement. (*See* Doc. 6 at 14; Doc. 2 at ¶ 7.) Merely indicating that counsel contacted the U.S. Attorney's Office on December 12, 2025, without receiving a response does not state why prior notice should not be required.

Second, a solitary message left on the general voicemail for the U.S. Attorney's Office is not a good faith effort to give the notice required by Rule 65(b)(1)(B), especially when unaccompanied by the statement describing "the reasons why [notice] should not be required."[9] Fed. R. Civ. P. 65(b)(1)(B). This is especially so given that Petitioner's counsel had previously exchanged emails with Civil Chief Richard D. Euliss on an unrelated matter and given that Mr. Euliss's direct email address is listed on the docket in this case. In fact, Petitioner's counsel copied Mr. Euliss on her December 14 email to the general ICE email boxes attaching the Court's TRO. (Exhibit B at ¶ 15). It is unclear, therefore, why Petitioner's counsel did not undertake a more reasonable effort to comply with the notice requirement for the extraordinary relief of an *ex parte* restraining order.

[9] In the motion for contempt, Petitioner's counsel for the first time referenced a voicemail left on the main phone number for the U.S. Attorney's Office. (Doc. 6 at 14.) Mr. Euliss did not know about the voicemail until after the instant motion was filed. (Exhibit B at ¶ 14.) Mr. Euliss thereafter had USAO staff retrieve the voicemail, wherein Petitioner's counsel indicates that she was calling about this case and expresses a desire to confer on her motion for a TRO. (*Id.*) However, the voicemail does not mention Mr. Euliss by name or indicate that the message was directed to him. (*Id.*)

It would be manifestly unjust to impose on Respondent, or its agents, various sanctions (some of which would benefit Petitioner directly) for unknowingly violating an order the issuance of which was preceded by moving counsel's failure to meet her own obligations under the governing Rules. And those obligations are imposed on moving counsel to guard against the very outcome that transpired here: an unknowing and unintentional violation of an *ex parte* TRO by the party who did not have the benefit of participating in those *ex parte* proceedings.[10] Therefore, the Court should decline to find Respondent or its counsel in contempt.

B. The motion should be denied because the relief requested, return of the Petitioner to the United States, would be futile as the Court lacks jurisdiction over challenges to the execution of a removal order.

Generally speaking, to establish civil contempt, a Petitioner must show: (1) a valid court order existed; (2) the defendant had knowledge of the order; and (3) the defendant disobeyed the order. *See Harris v. City of Phila.*, 47 F.3d 1311, 1326 (3d

[10] Rule 65(b)(1)(A) also requires the movant to offer "specific facts in an affidavit or a verified complaint clearly show[ing] that immediate and irreparable injury will result to the movant before the adverse party could be heard in opposition[.]" While styled as "verified," the Petition is not, in fact, verified by Petitioner or any other person with first-hand knowledge of the facts of this case. (Doc. 1 at 21 (including a "verification" by Petitioner's counsel that the statements in the Petition "are true and correct to the best of my knowledge").) In this additional way, Petitioner failed to comply with the procedural requirements for an *ex parte* TRO. To be clear, we note this procedural defect not to suggest that Respondent and its agents would not have followed or been bound by the TRO had they had actual knowledge of it, but to further demonstrate the injustice of awarding sanctions to a movant who failed to satisfy her own obligations to secure that very same TRO.

Cir.1995) (citing *Roe v. Operation Rescue*, 919 F.2d 857, 868 (3d Cir.1990).) The movant must establish those elements by clear and convincing evidence. *Id.* at 1321. *Ex parte* TROs, however, are unique procedural vehicles that are specifically governed by heightened standards under Rule 65. As set out above, Petitioner cannot demonstrate that Respondent or counsel are in civil contempt because they did not have actual knowledge of the TRO, as expressly required by Rule 65(b)(1)(B).

But even if the Court were to find Respondent or counsel in contempt, the Court should not grant Petitioner's request for relief in the form of requiring Respondent to facilitate his return to the United States, status updates on efforts, and attorney's fees. (Doc. 6 at 22.) As set out below, returning Petitioner to the United States would be futile as the Court lacks jurisdiction over those claims, meaning that he would be swiftly returned to Honduras at the conclusion of these proceedings.

Petitioner seeks an order declaring that his removal violates the Immigration and Nationality Act and the U.S. Constitution; an order enjoining his removal until the Detroit Immigration Court ruled on his motion to reopen as well as exhaustion of judicial review; an order requiring his release from detention until his motion to reopen is exhausted including any judicial review; and attorney's fees. (Doc. 1 at 19-20.) Habeas is not meant for such relief. *See DHS v. Thuraissigiam*, 591 U.S. 103, 118 (2020) (finding that the alien's requested relief of "vacatur of his removal

order and an order directing the Department to provide him with a new opportunity to apply for asylum and other relief from removal falls outside the scope of the common-law habeas writ") (cleaned up); *id.* at 119-20 ("the opportunity to remain lawfully in the United States" falls outside the scope of habeas relief).

As the Third Circuit has observed:

> By raising his claims in the wrong proceeding, [Petitioner] chose a path that cannot lead to relief. He demands that the Attorney General wait before removing him. And he contests how the Government [ ]detained him to remove him promptly. But both claims challenge the act of executing his removal order. So under § 1252(g) and (b)(9), we and the District Court lack jurisdiction. He can pursue both claims, of course, but not here. He must raise them in his petition for review before the [proper court of appeals].

Tazu v. Att'y Gen., 975 F.3d 292, 300 (3d Cir. 2020). Here, Petitioner's challenge to remain within the United States while he seeks the discretionary relief of reopening his currently final immigration proceedings pending removal from the United States is moot and an impermissible challenge to the execution of his removal order. *Id.*

1. Granting a motion to reopen by the Immigration Court is discretionary.

Assuming a motion to reopen was received by the Immigration Court, such motions do not automatically stay the execution of a final order of removal. The applicable federal regulation provides as follows:

> (b) Before the Immigration Court—(1) In general. An immigration judge may upon the immigration judge's own motion at any time, or

> upon motion of DHS or the alien, reopen or reconsider any case in which the judge has rendered a decision, unless jurisdiction is vested with the Board of Immigration Appeals. . . . A motion to reopen must be filed within 90 days of the date of entry of a final administrative order of removal, deportation, or exclusion, or on or before September 30, 1996, whichever is later. . . .
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> . . .
>
> (v) Stays. Except in cases involving in absentia orders, the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the immigration judge, the Board, or an authorized DHS officer.
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> . . .
>
> (4) Exceptions to filing deadlines—(i) Asylum and withholding of removal. The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply if the basis of the motion is to apply for asylum under section 208 of the Act or withholding of removal under section 241(b)(3) of the Act or withholding of removal under the Convention Against Torture, and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. **The filing of a motion to reopen under this section shall not automatically stay the removal of the alien.** However, the alien may request a stay and, **if granted** by the immigration judge, the alien shall not be removed pending disposition of the motion by the immigration judge. If the original asylum application was denied based upon a finding that it was frivolous, then the alien is ineligible to file either a motion to reopen or reconsider, or for a stay of removal.

8 C.F.R. § 1003.23 (emphasis added).

Here, Petitioner was not subject to order issued in absentia. Instead, he and his mother were granted voluntary departure in 2004. (Doc. 4, Exhibit 2 at 5-7, Order of Immigration Judge; Exhibit 4 at ¶¶ 1-2, Declaration of John J. Coulter, Jr.)

On July 17, 2005, a Warrant of Removal/Deportation was issued for Petitioner. (*Id.*, Exhibit 2 at 2-4.) Petitioner failed to depart, thus converting his voluntary departure into a removal order. (*Id.*, Exhibit 2 at 5, 6-7; Exhibit 4 at ¶ 2.) On December 2, 2025, Petitioner was arrested and detained pending the execution of his final order of removal. (Doc. 1 at 5; Doc. 4, Exhibit 1 at 2.) Assuming that Petitioner sent a motion to reopen and a motion to stay to the Immigration Court on December 12, 2025, the applicable regulation makes clear that a stay was is in the sole and sound discretion of the immigration judge.[11]

Despite his creative descriptions to the contrary, Petitioner is challenging the execution of his final order of removal. (*See* Doc. 6 at 9-12.) He asserts that he had a statutory right to seek reopening. (*Id.*) He is incorrect. The statute merely provides a means to request a reopening and a stay of his removal, not a right to that relief. Granting of that relief was discretionary.[12] That same regulation granting a means to present such claims for relief expressly does not stay removal pursuant to a final decision of the Immigration Court. 8 C.F.R. § 1003.23(b)(4). Petitioner, therefore,

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[11] Petitioner's underlying claim for asylum appears to be based on changed country conditions in Honduras. (Doc. 1 at 14-17.) Petitioner could have filed to reopen his final order of removal with the Detroit Immigration Court any time after he reentered the United States unlawfully in 2021. (*Id.* at 14.)

[12] The relief was also unlikely, as Petitioner relied on equitable tolling for his untimely requests, (Doc. 2-1 at 4), even though he admits that he has known about the alleged unsafe conditions in Honduras since his 2021 illegal reentry. (Doc. 1 at 2.)

seeks through this action something that neither statute nor regulation provides – this Court's nullification or stay of his final order of removal and permission to lawfully remain in the United States while he seeks discretionary relief. *See Thuraissigiam*, 591 U.S. at 118 (finding that the alien's requested relief of "vacatur of his removal order and an order directing the Department to provide him with a new opportunity to apply for asylum and other relief from removal falls outside the scope of the common-law habeas writ") (cleaned up); *id.* at 119-20 ("the opportunity to remain lawfully in the United States" falls outside the scope of habeas relief). Whether to stay Petitioner's removal, however, is a matter solely within the discretion of the immigration judge.[13] Yet, by filing this action, Petitioner has essentially sought the same relief in separate forums.[14]

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[13] Since adequate process is available, there is no need for this Court to provide additional or alternative process.

[14] Petitioner misleadingly suggests that he needed to seek this Court's intervention because his removal was not sufficiently imminent for the immigration court to entertain his motion for a stay. (Doc. 1 at 18.) As a preliminary matter, the 3 business-day period in Ch. 8.3(c)(2)(A) of the Immigration Court Practice Manual cited by Petitioner does not apply when in physical custody. *Compare* Ch. 8.3(c)(2)(A)(1) with Ch.8.3 (c)(2)(A)(3), available at https://www.justice.gov/eoir/reference-materials/ic/chapter-8/3. For those currently in ICE custody, the immigration court will consider a stay request so long as removal is "imminent." As Petitioner represented in his TRO motion, "[o]n December 10, 2025, ICE informed counsel that Petitioner's removal [wa]s imminent and likely to occur within the next 5-7 days." (Doc. 2 at 2.)

The fact remains that Petitioner, at all times, was subject to a final order of removal, which DHS/ICE executed on December 14, 2025. At the time the Petition was filed, his detention was authorized pursuant to 8 U.S.C. § 1231. Therefore, Petitioner's detention and subsequent removal was not contrary to the Immigration and Nationality Act or the U.S. Constitution. Rather, DHS/ICE was at all times authorized to arrest, detain, and execute the final order of removal. Therefore, the Court should not grant the requested relief of returning Petitioner to the United States only to be sent back to Honduras at the completion of these proceedings.

2. 8 U.S.C. §1252(g)

If the Court were to grant the relief requested, Petitioner would be returned to Honduras at the completion of these proceedings because the Court lacks jurisdiction over the claims in the Petition. This is so because Section 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, **or execute removal orders** against any alien under this chapter." 8 U.S.C. §1252(g) (emphasis added). That bar applies "notwithstanding any other provision of law, including [the habeas statute.]" *Id.* This provision strips jurisdiction to adjudicate Petitioner's claims challenging his detention and removal.

a. Section 1252(g) was "'directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion'" and "similar discretionary decisions." *Tazu*, 975 F.3d at 297 (quoting *Reno v. Am.-Arab Anti-Discrim. Comm. (AADC)*, 525 U.S. 471, 485 (1999)). Through §1252(g) and other provisions of the INA, Congress "aimed to prevent removal proceedings from becoming 'fragment[ed], and hence prolong[ed].'" *Id.* at 296 (alterations in original) (quoting *AADC*, 525 U.S. at 487); *see Rauda v. Jennings*, 55 F.4th 773, 777-78 (9th Cir. 2022) (Congress' intent was to "streamline immigration proceedings by limiting judicial review to final orders, litigated in the context of petitions for review").

To achieve these ends, §1252(g) prohibits district courts from adjudicating any and all challenges related to removal—not only whether to remove, but also when to remove. *See Tazu*, 975 F.3d at 297; *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002). Likewise, the statute bars district courts from hearing challenges to the method by which the Secretary of Homeland Security chooses to commence removal proceedings—including whether to detain an alien pending removal proceedings. *See Tazu*, 975 F.3d at 298-99 (holding that §1252(g) bars review of Government's decision to "re-detain[] him for prompt removal").

Here, in order to prevent ICE from executing his final order of removal, Petitioner is seeking declaratory judgment that his removal would violate the Immigration and Nationality Act (INA), an injunction to prevent his removal until

he completes immigration proceedings in Michigan, an injunction ordering his release from detention, and an award of fees and cost pursuant to the Equal Access to Justice Act (EAJA). (Doc. 1 at 19-20.) Those challenges fall squarely within Section 1252(g)'s bar on judicial review of "any cause or claim … arising from the decision or action … to commence proceedings … or execute removal orders against any alien under this chapter." 8 U.S.C. §1252(g). Therefore, a sanction directing DHS/ICE to return Petitioner would be futile given that the Court lacks jurisdiction to interfere with ICE's execution of a removal order, meaning that Petitioner would be subject to removal even after his return.

b. A contrary holding as to Petitioner's statutory and constitutional claims (Doc. 1 at 19) would enable aliens to freely circumvent §1252(g)'s jurisdictional bar. The true substance of a petitioner's claims must control their fate, regardless of the creative labels affixed by counsel. That is, §1252(g)'s prohibition applies regardless of whether noncitizen "restyle[s]" his challenge as being directed "to the Executive's general lack of authority to violate due process, equal protection, the Administrative Procedure Act, or some other federal law." *Tazu*, 975 F.3d at 298; *see also E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (reading §1252(g) as divesting courts over challenges to "executive branch decisions or actions"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (recognizing that aliens may not "make an end-run around the terms of [§1252(g)] by simply characterizing their

complaint"). "If a plaintiff is, at bottom, challenging [an action covered by §1252(g)], then regardless of how she technically pleads her claim, it's a challenge to [such action]. And district courts lack jurisdiction over such claims." *Duarte v. Mayorkas*, 27 F.4th 1044, 1063 (5th Cir. 2022) (Willett, J, concurring in part and dissenting in part). That is the case here, as a close inspection of Petitioner's filings readily demonstrates.

For example, Petitioner revealingly acknowledges that he filed this proceeding after "ICE officials informed counsel that **Petitioner's removal [wa]s imminent** and likely to occur within the next 5-7 days." (Doc. 2 at 2. (emphasis added).) Petitioner also directly asks the Court "to stay [his] removal[.]" (Doc. 1 at 5.) It is difficult to conceive of a more direct challenge to ICE's execution of a final order of a removal. If § 1252(g) is to be afforded any meaning, that provision has stripped this Court of jurisdiction over this proceeding.

It makes no difference that Petitioner is raising a statutory and constitutional challenge. *AADC* held that §1252(g) unequivocally closed the door to aliens raising a First Amendment challenge to the commencement of proceedings. 525 U.S. at 487-92 (holding that §1252(g) deprived district court of jurisdiction over claim that certain aliens were targeted for deportation in violation of the First Amendment); *Tazu*, 975 F.3d at 298, 300 (reading §1252(g) to cover constitutional challenges to the execution of a removal order). Indeed, in *AADC* the government admitted that

"the alleged First Amendment activity was the basis for selecting the individuals for adverse action." 525 U.S. at 488 n.10. Nonetheless, the Supreme Court found that the "challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within §1252(g)[.]" *Id.* at 487; s*ee, e.g., Cardoso*, 216 F.3d at 517 (holding that §1252(g) precluded entering "injunction commanding the Attorney General to adjust her immigration status and precluding the Attorney General from executing pending removal orders").

* * *

The instant case is substantially similar to a challenge brought by a habeas petitioner who was removed during the pendency of his habeas petition and sought an order for his return to the United States so he could pursue a motion to reopen immigration proceedings and apply for a U-visa. *Hector G.M. v. Warden Elizabeth Detention Center*, No. 20-2521, 2021 WL 5320854 (3d Cir. Nov. 16, 2021). Relying largely on *Tazu*, a panel of the Third Circuit in *Hector G.M.* observed as follows:

> García Mendoza did not challenge the execution of his removal through a petition for review of a final order of removal, as he could have. Instead, he sought to pursue that challenge through a habeas petition. But by enacting subsection (g), Congress stripped away that alternative, and federal courts lack jurisdiction over García Mendoza's habeas petition.

Id. at *3. The Court further observed:

> [T]he presence of a separate federal question does not exempt García Mendoza's habeas petition from subsection (g). *See Tazu*, 975 F.3d at 297 (holding that due process challenges to removal are not immune to

> the provisions of § 1252(g)). To the extent that García Mendoza had any cognizable due process challenge to his removal procedures, he could have raised it in a petition for review, *see* 8 U.S.C. § 1252(a)(2)(D), but he waived that right.

Id. at *4. Here, Petitioner did not seek to obtain relief over his illegal status in the United States until December 2025, and even then he did so in the improper forum of a U.S. district court. As the Third Circuit has repeatedly held, any relief for Petitioner's claims must be brought in that venue through a petition for review, and only after he starts with the immigration court. Thus, this Court would be compelled to hold likewise and dismiss the Petition for lack of jurisdiction pursuant to §1252(g). Therefore, the Court should not grant the requested relief.

3. 8 U.S.C. §1252(b)(9)

As stated above, any challenge to Petitioner's removal proceedings must be pursued through a petition for review in the appropriate court of appeals after a final order of removal. *See* 8 U.S.C. §1252(a)(5), (b)(9). Petitioner cannot short-circuit that process by seeking collateral review in this Court until the immigration court acts on the motion to reopen and any future proceedings.

The INA provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. §1252(b)(9). And Congress has prescribed

a single path for judicial review of orders of removal: "a petition for review filed with an appropriate court of appeals." 8 U.S.C. §1252(a)(5); *see also Verde-Rodriguez v. Att'y Gen. U.S.*, 734 F.3d 198, 201 (3d Cir. 2013). Read together, these provisions express Congress's intent to channel judicial review of every aspect of removal proceedings into the petition-for-review process in the courts of appeals. *See Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (highlighting Congress's "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals)"). Therefore, "most claims that even relate to removal" are improper if brought before the district court. *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020); *see also AADC*, 525 U.S. at 483 (labeling §1252(b)(9) an "unmistakable zipper clause," and defining a zipper clause as "[a] clause that says 'no judicial review in deportation cases unless this section provides judicial review.'"); *Vasquez v. Aviles*, 639 Fed. Appx. 898, 900-01 (3d Cir. 2016); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) ("Taken together, §1252(a)(5) and §1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through the [petition-for-review] process.").

Here, Petitioner's claims undeniably request "[j]udicial review" of "questions of law and fact … arising from a[] … proceeding brought to remove [him]." 8 U.S.C. §1252(b)(9). Therefore, the Court lacks jurisdiction over the Petition and it

must be dismissed. *See E.O.H.C.*, 950 F.3d at 183, 187-88 (applying provision to aliens who had their proceedings reopened and argued that their statutory right-to-counsel was being infringed upon); *Tonfack v. Attorney General*, 580 Fed. Appx. 79 (3d Cir. 2014)(applying provisions to post-final order noncitizen where an immigration judge granted his motion to reopen seeking relief under the Convention Against Torture (CAT) to challenge his removal previously ordered to Cameroon); *Turcios v. ODDO*, Civ. No. 3:25-cv-0083, 2025 WL 1904384 (W.D.Pa. July 10, 2025) (applying the provisions and denying a TRO for lack of jurisdiction where noncitizen challenged his removal to a third country not stated on his removal order without meaningful notice and opportunity to be heard); Y.J.C. v. ODDO, Civ. No. 3:24-cv-0179, 2025 WL 1953256 (W.D.Pa. July 16, 2025) (same). Therefore, the Court should not grant the requested relief because Petitioner's claims are precluded by Section 1252(b)(9).

4. 28 U.S.C. § 1651, the All Writs Act.

Based on the above statutory scheme provided by Congress, the All Writs Act does not apply to or confer jurisdiction over Petitioner's claims. "Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling." *Massey v. United States,* 581 F.3d 172, 174 (3d Cir.2009) (internal quotation omitted). A panel of the Third Circuit held that the All Writs Act does not apply to claims where Sections 1252(g) and 1252(b)(9)

controlled. *See Vasquez-Colocho v. Att'y Gen. of United States*, No. 25-2835, 2025 WL 3718361 *1-2 (3d Cir. Dec. 19, 2025). The court held as follows:

> Nor can Petitioner rely on the All Writs Act, or "any other provision of law," because § 1252 provides "the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5); *see also Tazu v. Att'y Gen.*, 975 F.3d 292, 294 (3d Cir. 2020) ("8 U.S.C. § 1252(g) strips us of jurisdiction to review any 'decision or action by the Attorney General to ... execute removal orders against any alien.' And § 1252(b)(9) makes a petition for review [under the INA]... the *exclusive* way to challenge 'any action taken or proceeding brought to remove an alien.' ") (emphasis added). For that reason, courts lack the authority to sua sponte pause removals.

Vasquez-Colocho, 2025 WL 3718361, at *1–2.

Here, the Court likewise is presented with specific statutory scheme of Sections 1252(g) and (b)(9), which render the All Writs Act inapplicable to the instant case. This Court should find the rationale of the panel in *Vasquez-Colocho* persuasive and reject that the All Writs Act would warrant the relief of ordering the Petitioner to be brought back to the United States only to be returned at the conclusion of these proceedings.

* * *

Based on the above, the Court should not find that Respondent or counsel are in civil contempt of the Court's December 14 Order. Finally, the relief of returning Petitioner to the United States should not be granted because it would be futile as the Court lacks jurisdiction over the claims in the Petition and Petitioner would be sent back to Honduras at the conclusion of these proceedings.

V. CONCLUSION

This case presents a regrettable set of circumstances where DHS/ICE deported Petitioner hours after this Court issued an *ex parte* TRO temporarily prohibiting that very act. Respondent and its counsel respect the Court's authority and its orders, and they are, and have always been, committed to complying with them without exception. But to comply with those orders, they must know about them. Here, Respondent and counsel did not have actual knowledge of the Court's order before the Petitioner was removed. The distinction matters. Respondent, therefore, requests that the Court (1) deny Petitioner's motion to for contempt and sanctions; and (2) dismiss this habeas proceedings for lack of jurisdiction or, alternatively, as moot.

Respectfully submitted,
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Dated: January 7, 2026

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

TAHIROU SAMASSA	:	**No. 1:25-cv-02197**
Petitioner,	:	
	:	
v.	:	**(Wilson, J.)**
	:	
CRAIG LOWE, et al.,	:	
Respondents.	:	**Filed Electronically**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on January 7, 2026, she served a copy of the attached

RESPONDENT'S BRIEF IN OPPOSITION TO THE MOTION FOR CIVIL CONTEMPT AND SANCTIONS

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