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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Federico Reyes Vasquez,

Petitioner

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

Michael Bernacke, in his official capacity as
ICE Field Officer Director and Warden in
current custody of Petitioner,

PAMALA BONDI, in her official capacity as
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs
Enforcement.

Respondents

Civil No.: **2:25-cv-01146-JNP**

REPLY TO THE RESPONDENTS'
RESPONSE TO PETITIONER'S VERIFIED
HABEAS PETITION

IMMIGRATION HABEAS CASE

INTRODUCTION

1
2 Respondents ask this Court to dismiss a habeas petition on the theory that it lacks jurisdiction
3 because Petitioner is no longer “in custody.” But Petitioner is no longer in custody only because
4 Respondents removed him in direct violation of this Court’s non-removal order. If accepted,
5 Respondents’ argument would establish a dangerous rule: that the Government may defeat habeas
6 jurisdiction—and nullify judicial review—simply by deporting a petitioner, even unlawfully, and then
7 asserting that custody has ended. The Constitution does not permit courts to be divested of jurisdiction
8 by executive defiance of court orders.
9

10 Respondents also mischaracterize Petitioner’s pleadings as bad faith. At the time the original
11 habeas petition and the Amended Petition were filed, counsel had no confirmation from DHS regarding
12 Petitioner’s procedural posture, no reliable access to ICE officials, and no working ICE public inquiry
13 line. There was no evidence available to counsel that a prior removal order had been reinstated or that
14 DHS was proceeding under 8 U.S.C. § 1231(a)(5). The Amended Petition’s custody allegations were
15 therefore pleaded in good faith and on information and belief, based on the reality that Petitioner had
16 been arrested, detained, transferred, and then removed while DHS withheld basic status information.
17 The Court itself confirmed the legitimacy of these concerns by issuing an Order to Show Cause and
18 prohibiting removal to preserve jurisdiction while it evaluated the case.
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21 Respondents’ jurisdictional argument also rests on a legally erroneous understanding of
22 “custody.” Habeas custody is not limited to physical detention behind jail walls. The Supreme Court
23 has long held that individuals subject to significant governmental restraints on liberty—including
24 parole—remain “in custody” for habeas purposes. Here, Petitioner remains confined by the
25 Government’s control over his ability to reenter the United States, to participate in these proceedings,
26 and—by DHS’s own position—to be taken immediately into custody upon return. Indeed, the Court
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1 ordered Respondents to facilitate Petitioner’s return specifically to restore the status quo ante and
2 required that he be housed in a facility where he can be made available for further hearings.

3 Ultimately, Respondents’ motion is not a sound jurisdictional challenge. It is an attempt to
4 leverage an unlawful removal to erase this Court’s authority and to avoid the consequences of violating
5 a clear court order. Habeas corpus does not yield to such tactics. This Court retains jurisdiction to
6 protect its authority, to restore the status quo that existed before Respondents’ illegal conduct, and to
7 adjudicate Petitioner’s claims on the merits. Respondents’ motion to dismiss should be denied.
8

9 **ARGUMENT**

10 **I. The Amended Petition’s “In Custody” Allegations Were Pleaded in Good Faith**
11 **Based on Information and Belief, Because DHS Withheld Confirmation of**
12 **Petitioner’s Status**

13 Respondents attempt to convert the Amended Petition’s custody allegations into a jurisdictional
14 “gotcha,” accusing Petitioner of misrepresentation and suggesting bad faith. That accusation fails both
15 factually and legally.

16 At the time the original habeas petition was filed—and again when the Amended Petition was
17 prepared—counsel had no confirmation from DHS regarding Petitioner’s precise custodial or
18 procedural posture. ICE’s public inquiry line was not functioning, counsel could not reach an ICE
19 officer with knowledge of Petitioner’s status, and Petitioner was detained and then removed during an
20 extraordinarily compressed timeline. The Amended Petition explicitly explains that counsel and
21 Petitioner’s family “made every effort to discover the status of Petitioner with ICE,” but were unable
22 to obtain information because ICE’s communication channels were effectively unavailable. Those
23 allegations were therefore made on information and belief, in good faith, under circumstances created
24 by DHS’s own failure to provide basic status information. Although Counsel had some assurances from
25 Respondents’ counsel, Counsel could not confirm that information from Respondents directly.
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1 Critically, there was no evidence available to counsel at filing that a prior removal order had
2 been reinstated or that DHS was proceeding exclusively under 8 U.S.C. § 1231(a)(5). Respondents
3 now rely on documents and internal DHS determinations that were neither disclosed nor accessible to
4 Petitioner at the time. Habeas pleading does not require clairvoyance, and Rule 11 does not require
5 counsel to guess correctly about facts uniquely within the Government’s control.
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7 Moreover, the Court itself reviewed the initial petition and found the jurisdictional question
8 sufficiently substantial to warrant an Order to Show Cause and immediate preservation of the status
9 quo. That alone refutes any suggestion that Petitioner’s custody allegations were frivolous.

10 **II. DHS Cannot Defeat Habeas Jurisdiction by Illegally Deporting the Petitioner in**
11 **Violation of a Court Order**

12 Respondents’ central theory—that this Court lacks jurisdiction because Petitioner is no longer
13 “in custody”—depends entirely on DHS’s own unlawful conduct. DHS removed Petitioner in direct
14 violation of this Court’s December 22, 2025 Order prohibiting removal. The Court has already so
15 found.
16

17 Accepting Respondents’ argument would establish a dangerous rule: DHS could defeat habeas
18 jurisdiction in every case simply by removing the petitioner, unlawfully, and then asserting that the
19 Court has lost jurisdiction because the petitioner is no longer in custody. That rule would eviscerate the
20 Suspension Clause and render federal habeas review illusory whenever DHS acts quickly enough.
21

22 Federal courts do not permit a party to benefit from its own violation of a court order. Nor may
23 a litigant moot a case by engaging in the very conduct the court prohibited. That is precisely why the
24 Court ordered Petitioner’s return: to restore the status quo that existed prior to DHS’s unlawful removal
25 and to ensure that the case proceeds as it would have absent that violation.
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27 Respondents’ “no custody” argument is therefore barred as a matter of equity, constitutional
28 structure, and basic judicial authority.

1 **III. Habeas “Custody” Is Not Limited to Physical Detention; Severe Governmental**
2 **Restraints on Liberty Qualify**

3 Even setting aside DHS’s unlawful removal, Respondents’ custody argument rests on an
4 incorrect legal premise: that only physical detention qualifies as “custody” under 28 U.S.C. § 2241.

5 The Supreme Court has long rejected that view. In *Jones v. Cunningham*, the Court held that a
6 person released on parole is “in custody” for habeas purposes because parole imposes significant
7 restraints on liberty not shared by the public generally. 371 U.S. 236 (1963). Custody, therefore,
8 encompasses ongoing governmental control and legal restraint, not merely jail walls.
9

10 Here, Petitioner remains subject to substantial restraints imposed by the Government:

- 11 • DHS controls whether, when, and how Petitioner may reenter the United States;
12 • Petitioner cannot independently return to the jurisdiction to participate in proceedings without
13 DHS facilitation;
14 • DHS has represented—and the Court has ordered—that upon return, Petitioner will be housed
15 in a facility where DHS can make him available for further hearings, i.e., taken into DHS
16 custody immediately upon reentry.
17

18 These restraints are far more substantial than parole conditions deemed sufficient in *Jones*.
19 Petitioner is not “free” in any meaningful sense; he remains confined by the Government’s control over
20 his liberty, movement, and legal status.
21

22 **IV. The Purpose of the Return Order Is to Restore the Status Quo Ante, Not to**
23 **Manufacture Jurisdiction**

24 Respondents mischaracterize the posture of this case by asserting that Petitioner seeks to “return
25 to custody” in order to litigate past detention. That is not what is happening.

26 The Court ordered DHS to facilitate Petitioner’s return to restore the status quo that existed
27 before DHS violated the Court’s non-removal order. The return order is remedial and jurisdiction-
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1 preserving. It ensures that DHS cannot nullify judicial review through unilateral action and that the
2 Court can adjudicate the case as it would have had DHS complied with the law.

3 Notably, DHS itself maintains that Petitioner will be taken into custody upon reentry. The return
4 order therefore does not create custody; it restores the lawful custodial posture that existed before
5 DHS's illegal removal.
6

7 **V. Respondents' Mootness Argument Fails Because Any Alleged Mootness Was**
8 **Caused by DHS's Own Misconduct and Because Effective Relief Remains**
9 **Available**

10 Respondents argue that the Amended Petition is moot because Petitioner is outside the United
11 States. That argument fails for two independent reasons.

12 First, a case is not moot where mootness is caused by the defendant's unlawful conduct. DHS
13 cannot create mootness by violating a court order and then invoke that violation as a jurisdictional
14 shield.

15 Second, effective relief remains available and is already being implemented: restoration of the
16 status quo, facilitation of Petitioner's return, supervision of DHS compliance, and adjudication of
17 Petitioner's claims with Petitioner present and subject to lawful process. This Court has already
18 recognized that return is the appropriate remedy where removal is unlawful, and it has exercised that
19 authority here.
20

21 **VI. Respondents' Attempt to Rescind Existing Court Orders Is a Procedurally**
22 **Improper Collateral Attack**

23 Finally, Respondents ask this Court to dissolve the non-removal order and rescind the return
24 and fee provisions of the December 31 Order. That request is procedurally improper and substantively
25 meritless.
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1 Those orders were entered to protect the Court’s jurisdiction and to remedy DHS’s violation.
2 They remain binding unless modified under the appropriate legal standards. Respondents cannot erase
3 them by reasserting jurisdictional arguments the Court has already rejected in substance and action.

4 Respondents’ belated request to dissolve the non-removal order and rescind the return and fee
5 provisions fails for an additional, independent reason: Respondents have waived these arguments.

6
7 At the December 31, 2025 hearing, Respondents’ counsel conceded that Petitioner was removed
8 in violation of the Court’s December 22 Order and represented that DHS would work with Petitioner’s
9 counsel to facilitate his return to the United States. Respondents did not dispute that the Court’s order
10 was valid, did not argue that the Court lacked authority to issue it, and did not contend that the order
11 had not been violated. To the contrary, Respondents acknowledged the violation and focused on
12 remediation.

13
14 Consistent with that concession, Respondents did not oppose the Court’s remedial authority,
15 including the requirement that DHS facilitate Petitioner’s return to restore the status quo ante. Nor did
16 Respondents oppose the Court’s determination that attorney’s fees were warranted as a consequence
17 of DHS’s violation. The Court expressly noted that it was ruling “in favor of petitioner” and invited
18 submission of a fee petition—an invitation Respondents did not contemporaneously challenge.
19 Respondents likewise did not seek reconsideration, clarification, or a stay of either the December 22
20 non-removal order or the December 31 return and fee order.

21
22 Having conceded the violation, accepted the remedial framework, and failed to timely challenge
23 the Court’s authority or orders, Respondents may not now—weeks later—attempt to unwind those
24 rulings through a motion to dismiss premised on arguments they previously abandoned. Arguments not
25 raised when relief is ordered are waived, particularly where the opposing party and the Court have
26 relied on the concession and proceeded accordingly.
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1 Allowing Respondents to retract those concessions now would undermine the orderly
2 administration of justice and permit the Government to oscillate between compliance and defiance
3 depending on tactical advantage. The law does not permit such gamesmanship. The non-removal order,
4 the return order, and the fee determination are the law of the case, and Respondents' waived objections
5 cannot be revived through a collateral jurisdictional attack.
6

7 **VII. Substantial, Live Relief Remains Available; Petitioner Does Not Seek a Grant of a**
8 **U Visa; and Respondents Bear the Burden to Lawfully Justify Any Detention or**
9 **Removal After the Status Quo Is Restored**

10 Respondents repeatedly suggest that, even if this Court retains jurisdiction, there is no
11 meaningful relief left for the Court to provide. That is incorrect.

12 First, substantial relief remains available and necessary. The Court has already ordered
13 restoration of the status quo ante by requiring Respondents to facilitate Petitioner's return and ensure
14 that he is housed in a facility where he can be made available for further proceedings. That remedial
15 process is ongoing and subject to this Court's supervision. Ensuring compliance with that order,
16 preventing further unilateral action, and adjudicating Petitioner's claims with Petitioner present are
17 concrete forms of relief squarely within the Court's authority.
18

19 Second, Petitioner is not asking this Court to grant a U visa. Nor is Petitioner asking the Court
20 to substitute itself for DHS or USCIS in adjudicating immigration benefits. The relief sought is
21 fundamentally procedural and constitutional: restoration of lawful process, protection against unlawful
22 executive action, and access to the statutory framework Congress created without being removed in
23 violation of a court order. Respondents' repeated reframing of this case as a demand for visa
24 adjudication misstates the nature of the habeas relief sought.
25

26 Third, once the status quo is restored, the burden shifts to Respondents to lawfully justify any
27 continued detention or removal. It is not Petitioner's obligation to disprove hypothetical future
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1 detention or removal authority in the abstract. If Respondents contend that Petitioner is subject to
2 reinstated removal, mandatory detention, or immediate removal, they must demonstrate—through
3 lawful process, with Petitioner present and able to participate—that such authority exists and is being
4 exercised in compliance with the Constitution, the INA, and this Court’s orders.

5
6 That is precisely why restoration of the status quo is essential. DHS cannot remove first and
7 litigate later. Nor can it demand dismissal before it has met its burden through the process the Court
8 ordered. Habeas relief remains live because the Court must ensure that any future detention or removal
9 occurs, if at all, only after Respondents have carried their burden and complied with judicial oversight.
10 Accordingly, this case is not moot, relief is not exhausted, and dismissal at this stage would prematurely
11 terminate proceedings before Respondents have lawfully established their asserted authority or
12 complied fully with this Court’s remedial orders.

13
14 **VIII. Even Assuming Arguendo That Respondents’ Jurisdictional Theory Is Correct,
15 Their Failure to Timely Present Evidence and Arguments—and Their Decision to
16 Remove Petitioner Instead—Bars the Relief They Now Seek**

17 Even assuming, *arguendo*, that Respondents are correct that a prior removal order had been
18 reinstated and that Petitioner ultimately would not be entitled to the relief sought, Respondents’ motion
19 still fails. The dispositive problem is not the abstract validity of Respondents’ legal theory, but their
20 failure to timely present it to this Court when ordered to do so—and their choice to remove Petitioner
21 instead of litigating the issue lawfully.

22 The Court’s December 22 Order to Show Cause provided Respondents a clear and orderly
23 mechanism to resolve precisely the questions they now raise. Respondents were directed to show cause
24 why the habeas petition should not be granted. At that point, there was no exigency requiring immediate
25 execution of a reinstated removal order, if one in fact existed. Respondents had ample opportunity to
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1 present evidence of reinstatement, statutory authority, and jurisdictional objections to this Court before
2 taking irreversible action.

3 Indeed, Petitioner's counsel affirmatively reached out to Respondents' counsel and stated that,
4 if evidence could be provided demonstrating that Petitioner was properly subject to reinstated removal
5 and ineligible for relief, Petitioner would consider withdrawing the petition. Respondents declined to
6 present such evidence to the Court, did not seek clarification or modification of the non-removal order,
7 and did not request expedited consideration of jurisdictional objections. Instead, they removed
8 Petitioner in direct violation of the Court's order.
9

10 Respondents cannot now retroactively justify that decision by presenting arguments and
11 evidence they could have and should have presented when the Order to Show Cause was due. The rule
12 of law requires that disputes be resolved through the judicial process—not through unilateral executive
13 action that moots review and then demands dismissal on jurisdictional grounds.
14

15 Nor may Respondents short-circuit these proceedings before the status quo has been restored.
16 The Court has already determined that return is necessary to restore the status quo ante and to permit
17 the case to proceed as it would have absent Respondents' unlawful removal. Respondents' current
18 motion seeks to dismiss the case before they have complied with that remedial order and before they
19 have lawfully proven their jurisdictional claims in the forum designated by the Constitution.
20

21 In short, even if Respondents' legal theory were ultimately correct, their failure to timely
22 present it, their disregard of the Court's preservation order, and their attempt to terminate proceedings
23 before restoring the status quo foreclose the relief they now seek. The motion to dismiss should
24 therefore be denied.
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1 **CONCLUSION**

2 The Amended Petition’s custody allegations were pleaded in good faith, based on information
3 and belief, in a factual environment shaped by DHS’s refusal or inability to provide status confirmation.
4 Rather than litigate the jurisdictional questions through the process ordered by this Court, DHS violated
5 a clear non-removal order, removed Petitioner, and now seeks to benefit from that violation by arguing
6 that this Court has been divested of jurisdiction.
7

8 The Constitution does not permit that result. Habeas jurisdiction cannot be extinguished by
9 illegal deportation, custody is not limited to physical detention, and mootness cannot be manufactured
10 through executive defiance of court orders. This Court retains authority to protect its jurisdiction, to
11 restore the status quo ante, to supervise compliance with its orders, and to require Respondents—once
12 the status quo is restored—to lawfully justify any continued detention or removal.
13

14 Because Respondents waived any challenge to the Court’s prior orders, failed to timely present
15 their jurisdictional evidence when ordered to do so, and seek dismissal before complying with the
16 Court’s remedial directives, their motion to dismiss should be denied.
17

18
19 Respectfully submitted,

20 Dated January 19, 2026

21
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