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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

FEDERICO REYES VASQUEZ, Petitioner, vs. KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security, et al., Respondents.	Case No. 2:25-cv-01146-JNP AMENDED RESPONSE TO MOTION FOR SANCTIONS Chief Judge Jill N. Parrish

Respondents hereby respectfully submit an Amended Response to Petitioner's Motion for Sanctions (Doc. 8). Amendments are in footnote 8 and related text, on page 10 (argument) and addition of Exhibit E, and collectively relate to this Court's jurisdiction over the case. For the reasons proffered herein, Petitioner's Motion should be denied.

Introduction

Petitioner's Motion for Sanctions arises out of his original December 19, 2025, Verified Petition for Habeas Corpus ("Petition") and this Court's December 22, 2025, Order to Show Cause ("OSC"). As relevant to the Motion for Sanctions, the OSC included a provision prohibiting Petitioner's removal from the United States and his transfer out of the District of Utah.[1] Petitioner was removed from the United States to Mexico pursuant to an otherwise lawful Final Order of Removal on December 23, 2025. Petitioner alleges that removal was deliberate contumacy. He also alleges that removal prejudiced his habeas claim. He alleges that this merits sanctions on Respondents for contempt of court. Petitioner is wrong in all his allegations. Where, as here, Respondents and their employees and agents did not have actual notice of the court's order, where Petitioner's initial habeas claims were admittedly without merit and actually withdrawn, and where Respondents nonetheless are taking remedial action to facilitate Petitioner's return to the United States (subject to detention), sanctions are inappropriate. The Motion should be denied.

Factual and Procedural Background

Petitioner is a citizen of Mexico, who entered the United States illegally at least by February 2003.[2] An Immigration Judge entered a final order of removal on March 12, 2003. Petitioner was removed from the United States pursuant to that order first in March

[1] *Id.* at 3-4.
[2] ECF No. 10, 10-1 ¶ 5 ("Randall Decl.").

2003 and again in January 2005.[3] Sometime after he again entered the United States without inspection. He was arrested by ICE in Orem, Utah on Friday, December 19, 2025.[4] ICE detained Petitioner pursuant to the immigration judge's prior final order of removal and under authority of 8 U.S.C. § 1231(a)(5).[5] Petitioner was issued a Form I-871, Notice of Intent/Decision to Reinstate Prior Order. He signed the form, acknowledging that he "[did] not wish to make a statement contesting" the removability determination.[6] After processing at ICE ERO's Salt Lake City office, Petitioner was transferred on December 19th to the Uinta County Detention Center in Wyoming and detained there.[7] He was booked into the jail in Wyoming at 1:37 pm (13:47 hours).[8]

At 5:13 pm on Friday, December 19, 2025, Petitioner's counsel filed a Verified Petition for Habeas Corpus ("petition").[9] The petition requested a declaration that Petitioner's detention without an opportunity for a bond was unlawful, and an order that he be given an immediate bond hearing. The case was docketed and ECF notices were provided by the clerk of court on Monday, December 22, 2025, at 9:24 am,[10] and assigned to this Court at 2:15 pm.[11]

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[3] Randall Decl. at ¶¶ 9-14.
[4] Evan Tjaden Decl. ¶ 8 (Exhibit A) ("Tjaden Decl.").
[5] Randall Decl. at ¶ 15; Tjaden Decl. at ¶ 9.
[6] ECF No. 21, 21-1 (Form I-871).
[7] Randall Decl. at ¶ 15; Tjaden Decl. at ¶ 10.
[8] Exhibit E, USCO jail booking sheet.
[9] ECF Nos. 1, 2; ECF No. 21, 21-2 (NEF email).
[10] *Id.*
[11] Exhibit B, NEF email.

The petition alleged only that the Petitioner was a citizen of Mexico, that he entered the United States in 2005 without inspection, was arrested by ICE on December 19, 2025, and was detained by ICE in West Valley City, Utah.[12] Petitioner provided no more details about his illegal entry into the United States. The petition did not provide the key facts that he was removed from the United States twice previously, in March 2003 and again in January 2005, and that sometime after, he again entered the United States without inspection.[13] Also absent from the petition were the dispositive facts that Petitioner was subject to and detained pursuant to an immigration judge's final order of removal and under authority of 8 U.S.C. § 1231(a)(5),[14] and that Petitioner had that same day signed an acknowledgement that he was not contesting the reinstatement of his removal order.[15]

However, with only the petition's bare allegations and incomplete facts to rely on, the Court issued an OSC on Monday, December 22, 2025, at 3:36 pm. The OSC included provisions prohibiting Petitioner's removal from the United States and his transfer out of the District of Utah.[16] The OSC directed Petitioner to serve a copy of the Order on Respondents by December 23, 2025, by 5:00 p.m.[17] Counsel in the United

[12] Petition at ¶¶ 1, 15 (ECF No. 2).
[13] ECF No. 10; 10-1 ¶¶ 9-14.
[14] ECF No. 10; 10-1 ¶ 15.
[15] ECF No. 21, 21-1 (Form I-871).
[16] ECF No. 4 at 3-4.
[17] *Id.*

States Attorney's Office nonetheless forwarded the OSC to Respondents' internal agency counsel at 4:21 pm on December 22nd.[18]

Meanwhile, on Monday, December 22, 2025, the Petitioner was in transit from Uinta County, Wyoming, to ICE's removal staging facility in Florence, Arizona pending removal.[19] He left the Uinta County (Wyoming) facility about 6:00 am, was briefly held in Salt Lake City, and departed Salt Lake City by plane at approximately 2:45 pm.[20] After a stop in El Paso, Texas, Petitioner arrived in Phoenix at 7:30 pm.[21] He was booked into the Florence, Arizona facility at about 1:55 am on December 23, 2025.[22] He was booked out at 8:30 am and taken to the U.S.-Mexico border and removed from the United States to Mexico pursuant to the Immigration Court's reinstated final order of removal.[23]

ICE ERO personnel responsible for Petitioner's physical removal were unaware of the OSC prohibiting his removal at the time he was removed.[24] The communication of Court orders through the U.S. Attorney's Office to ICE Office of Principal Legal Advisor and then to ICE ERO is not instantaneous.[25]

[18] Exhibit C, Email from AUSA to ICE OPLA.
[19] Randall Decl. at ¶ 16; Tjaden Decl. at ¶ 12.
[20] Tjaden Decl. at ¶12.
[21] *Id.*
[22] *Id.*
[23] *Id.* at ¶ 13.
[24] Randall Decl. at ¶ 16; Tjaden Decl. at ¶ 14.
[25] Tjaden Decl. at ¶ 14.

On December 23, 2025, at 9:36 am, Petitioner's counsel contacted Respondent's counsel by email and advised Respondent's counsel of his view that Petitioner likely was ineligible for a bond, and that he would consider withdrawing the petition.[26] He filed a motion to withdraw the petition that same afternoon.[27] Counsel was aware that Petitioner had been removed from the United States.[28] During the night of December 23rd Petitioner filed a motion to withdraw the withdrawal of the petition[29] and a Motion for Sanctions against Respondents.[30]

On December 24, 2025, Petitioner filed a motion that the Court certify him as a victim of a crime so he might qualify for a U-Visa ("U-Visa motion").[31] Respondents filed their reply to the petition on December 29, 2025.[32] The same day, Petitioner filed his Amended Verified Petition for Habeas Corpus (Amended Petition), in which he fully abandoned the bond and detention issues, and instead made the same arguments he made in the U-Visa motion. The Amended Petition seeks the same relief as the U-Visa motion.[33]

The Court held a Show Cause Hearing on December 31, 2025. At the hearing, the Court questioned whether it had jurisdiction over the case based on the location of Petitioner at the time of the filing of the petition. Respondent's counsel advised that he

[26] ECF No. 21, 21-4 (Email from Alec Bracken to Joel Ferre and others).
[27] ECF No. 6.
[28] ECF No. 6 at 2.
[29] ECF No. 7.
[30] ECF No. 8.
[31] ECF No. 9.
[32] ECF No. 10.
[33] ECF No. 11.

did not have sufficient information at the time to challenge jurisdiction.[34] After the hearing, the Court ordered Respondents to facilitate Petitioner's return to the United States if he wished to return. Respondents had already voluntarily agreed to facilitate Petitioner's return.[35] The Court also required Respondent to pay legal fees.[36] Respondents have since coordinated with Petitioner's counsel to facilitate his return.[37] The Court issued its Order to Show Cause why the Amended Petition should not be granted on January 8, 2026,[38] and Respondent's Response and Petitioner's reply are pending with the Court.[39]

Legal Framework

Civil contempt is remedial and is intended to coerce compliance with an order of the court. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949); *United States v. Lippitt*, 180 F.3d 873, 876–77 (7th Cir.1999) (citing *Hicks v. Feiock*, 485 U.S. 624, 631–32 (1988)) ("[C]ontempt is considered civil if the sanction imposed is designed primarily to coerce the contemnor into complying with the court's demands and criminal if its purpose is to punish the contemnor, vindicate the court's authority, or deter future misconduct.").

[34] Tr. of Dec. 31, 2025, Hearing pp. 9-10 (Exhibit D).
[35] ECF No. 13.
[36] *Id.*
[37] ECF Nos. 19, 25.
[38] ECF No. 16.
[39] ECF Nos. 21, 22.

In the Tenth Circuit, "[t]o prevail in a civil contempt proceeding, the plaintiff has the burden of proving, by clear and convincing evidence, that a valid court order existed, that the defendant had knowledge of the order, and that the defendant disobeyed the order." *Reliance Ins. Co. v. Mast Constr. Co.,* 159 F.3d 1311, 1315 (10th Cir.1988) (citations omitted).

"In a civil contempt case, the party seeking a citation of contempt bears a heavy burden." *Equifax Servs., Inc. v. Hiltz*, 968 F.2d 1224, 1992 WL 163282, at *13 (10th Cir. 1992) (unpublished table decision). "A party alleging contempt and seeking a civil remedy must prove it by clear and convincing evidence." *Reliance Ins. Co.*, 84 F.3d at 377. Clear and convincing evidence is that evidence that "produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 285 n. 11 (1990) (brackets in original) (internal quotation marks and citations omitted).

Affirmative defenses to contempt allegations include a lack of actual knowledge of the order and an inability to comply. An injunctive order only binds "parties" or "parties' officers, agents, servants, employees, and attorneys" if they "receive actual notice of it". Fed.R.Civ.P. Rule 65(d). By its plain text and commentary, the rule makes clear that actual notice is a *sine qua non* of an injunction's binding power. *Id.*; Advisory

Committee Notes to 2007 Amendment ("a party must have actual notice of an injunction to be bound by it."). Actual notice is a material fact relating to a finding of non-compliance. *Reliance Ins. Co.* at 1317-18.

Similarly, inability to comply with the order is a defense to contempt. *See Donovan v. Burgett Greenhouses, Inc.,* 759 F.2d 1483, 1486 (10th Cir.1985) (after prima facie case is shown, "the defendant could avoid a contempt adjudication by showing through clear and convincing evidence that he was unable to meet the requirements of the injunction"). Respondents may assert a defense to civil contempt by showing by clear and convincing evidence that "all reasonable steps" were taken in good faith to ensure compliance with the court order, or by proving "plainly and unmistakably" that they were unable to comply with the order. *Bad Ass Coffee Co. of Hawaii v. Bad Ass Coffee Ltd. Partnership,* 95 F.Supp.2d 1252, 1256 n. 8 (quoting *Bauchman v. West High School,* 906 F.Supp. 1483, 1494 (D.Utah 1995)).

Lastly, "[s]anctions for civil contempt may only be employed for either or both of two distinct remedial purposes: (1) to compel or coerce obedience to a court order .... and (2) to compensate the contemnor's adversary for injuries resulting from the contemnor's noncompliance." *Id.* at 1256 (quoting *O'Connor v. Midwest Pipe Fabrications, Inc.*, 972 F.2d 1204, 1211 (10th Cir.1992) (additional quotation omitted). A contempt thus "is considered civil and remedial if it either 'coerce[s] the defendant into compliance with the court's order, [or] ... compensate[s] the complainant for losses sustained.' Where a

fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge." *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994) (quoting *United States v. Mine Workers,* 330 U.S. 258, 303–304, 67 S.Ct. 677, 701, 91 L.Ed. 884 (1947) (other citations omitted). "In civil contempt, the contemnor is able to purge the contempt ... by committing an affirmative act [to bring himself into compliance]." *Lucre Mgmt. Group, LLC v. Schempp Real Estate, LLC* (*In re Lucre Mgmt. Group, LLC*), 365 F.3d 874, 876 (10th Cir.2004) (internal quotation marks omitted).

Argument

Petitioner's entire case is built on a faulty, discredited, and disavowed factual premise: that Petitioner was eligible for an immigration bond pending removal from the United States. He obtained an *ex parte* TRO from this Court on that invalid premise[40] and now seeks coercive and even punitive sanctions against Respondents for violating an Order of which they had no actual notice, little to no ability or opportunity to comply with, and for which they already have undertaken remedial action. His motion should be denied.

To prevail in his sanctions motion, Petitioner must show "by clear and convincing evidence, that a valid court order existed, that [Respondents] had knowledge of the order,

[40] Petitioner's counsel filed his initial petition without adequate investigation, demonstrated by his December 23, 2025, 9:36 am email to Respondents' counsel, and the withdrawal of the petition. *See* Fed. R. Civ. P. 11(c)(2) and (3).

and that [Respondents] disobeyed the order." *Reliance Ins. Co. v. Mast Constr. Co.*, 159 F.3d 1311, 1315 (10th Cir.1988) (citations omitted). This is a "heavy burden," *Equifax Servs., Inc. v. Hiltz*, 968 F.2d 1224; 1992 WL 163282, at *13 (10th Cir. 1992) (unpublished) which Petitioner doesn't meet.

There was a valid order only if the Court had venue jurisdiction at the time the petition was filed. Respondents' counsel did not have sufficient information to challenge venue at the December 31, 2025, OSC hearing. It now appears that Petitioner was transferred to the District of Wyoming on December 19, 2025, and booked into the Uinta County (Wyoming) Detention Center at 1:37 pm. The Petition was not filed until 5:13 pm,[41] meaning the Court did not have jurisdiction. The Court always can determine and reexamine its own jurisdiction. *See* ECF No. 4 at 2 (citing *Brownback v. King*, 592 U.S. 209, 218–19 (2021) (quoting *United States v. Ruiz*, 536 U.S. 622, 628 (2002)).

Even assuming proper venue and thus a valid order, Petitioner still can't show Respondents had actual knowledge of the order and disobeyed it. The timing of events is critically important. The case was assigned to this Court at 2:15 pm on December 22nd and the Order prohibiting Petitioner's transfer or removal was entered at 3:36 pm. Yet, at 2:45 pm on the 22nd Petitioner was already on a flight from Salt Lake City to El Paso, the first leg of his journey to the border for removal. There was no Order prohibiting his transfer or removal when he was transferred to Texas as a part of his removal.

[41] It was not docketed until Monday, December 23, 2025.

Respondents cannot be shown to have known about and disregarded a non-existent Order.

After the Order was entered, Respondents' employees still had no actual knowledge of it prior to removing Petitioner on the morning of December 23rd and thus were unable to comply. An injunctive order only binds "parties" or "parties' officers, agents, servants, employees, and attorneys" if they "receive actual notice of it". Fed.R.Civ.P. Rule 65(d). The Court didn't require service of the Order on Respondents to occur until 5:00 pm on December 23rd, so actual knowledge wasn't legally expected before then. Nonetheless, reasonable efforts were made to ensure compliance. An Assistant United States Attorney sent an email with the Order to ICE OPLA at 4:21 pm. On December 22nd.[42]

However, transmittal of the Order to ICE attorneys does not equate to actual knowledge of the Order or its contents by ICE ERO personnel (or even by ICE attorneys). The review, routing and communication of information, including court orders, isn't an instantaneous process. It is not unreasonable that an order received by ICE OPLA at 4:21 pm might not be reviewed and communicated for action until sometime the next day. That is, receipt of the Order by ICE OPLA in the circumstances of this case does not mean ICE OPLA or ICE ERO had any actual knowledge of the contents of Order and what it forbade. They did not. Actual knowledge is a material fact

[42] At that time, Petitioner was in El Paso, Texas, soon to be moved to Florence, Arizona.

relating to a finding of non-compliance. *Reliance Ins. Co.* at 1317-18. Without actual knowledge, there is no sanctions liability.

Neither could Respondents comply. If Respondents "plainly and unmistakably" were unable to comply with the Order, they are not liable for contempt. *Bad Ass Coffee Co. of Hawaii v. Bad Ass Coffee Ltd. Partnership,* 95 F.Supp.2d 1252, 1256 n. 8 (quoting *Bauchman v. West High School*, 906 F.Supp. 1483, 1494 (D.Utah 1995)). Respondents plainly couldn't comply with the Order here. They couldn't comply with the Order barring transfer because Petitioner was already transferred from Utah before the Order was entered. Similarly, with Petitioner already in Texas and on his way to Arizona for removal when the Order was entered, the removal process was too far underway to allow compliance.

Finally, any contempt here is purged by Respondents' actions to facilitate Petitioner's return to the United States. In civil contempt, the contemnor is able to purge the contempt ... by committing an affirmative act [to bring himself into compliance]." *Lucre Mgmt. Group, LLC v. Schempp Real Estate, LLC* (*In re Lucre Mgmt. Group, LLC*), 365 F.3d 874, 876 (10th Cir.2004) (internal quotation marks omitted). Importantly, Respondents offered this before the Court ordered it.[43] Facilitation of Petitioner's return would put him in the same position he was in prior to the removal and obviate the motion for sanctions.

[43] Respondents' motion to be relieved of this obligation as a part of their position that the entire action should be dismissed, *see* ECF No. 21, doesn't negate this argument.

Conclusion

For the foregoing reasons, Respondents request that Petitioner's motion for sanctions be denied.

Pursuant to D. Utah Civ. R. 7-1(a)(4)(D), the undersigned certifies that this Response contains 3,060 words, which does not exceed the 3,100-word limit.

DATED: January 24, 2026.

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/s/ ***Michael Kennedy***
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