ALEC S. BRACKEN (USB 17178)
CONTIGO LAW
PO BOX 249
Midvale, Utah 84047
Phone: 801-980-9430
Email: alec@contigo.law
Attorney for Petitioner

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,

PAMELA 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**

PETITIONER'S RESPONSE TO RESPONDENTS' MOTION TO DISMISS FOR LACK OF JURISDICTION

IMMIGRATION HABEAS CASE

Respondents Cannot Carry The Burden of Their Motion to Dismiss to Prove That Petitioner Was Physically Outside the State of Utah at the Time the Habeas Petition Was Filed

Respondents bear the burden of their motion to dismiss of establishing that this Court lacked habeas jurisdiction at the time the petition was filed. To do so, Respondents must prove—not speculate—that Petitioner was physically outside the State of Utah at 5:17 p.m. on December 19, 2025, when the habeas petition was filed. They cannot meet that burden on the present record.

A. Respondents Offer No ICE Evidence Establishing When Petitioner Left Utah

Critically, none of the affidavits submitted by ICE state when Petitioner departed Utah. Although Respondents' declarations are detailed in other respects—identifying arrest locations, processing steps, and even times when Petitioner later returned to Utah—they are entirely silent as to the one dispositive fact: the time Petitioner left ICE custody in Utah or crossed state lines.

That omission is fatal. If ICE had evidence establishing that Petitioner left Utah before 5:17 p.m., it would have been trivial to include that fact. ICE controls the transport, the officers, the vehicles, and the records. Yet Respondents provide:

- No ICE transport logs;
- No officer declarations stating a departure time;
- No vehicle records;
- No border-crossing or intake records showing arrival in Wyoming before 5:17 p.m.

Respondents ask the Court to infer Petitioner's location at 5:17 p.m. without producing a single ICE record addressing that moment. The Court should decline that invitation.

B. The Third-Party Jail Log Does Not Establish ICE Custody or Physical Location at 5:17 p.m.

Respondents rely heavily on a third-party county jail booking log, generated by a private vendor and printed nearly a month after the habeas petition was filed, which they now assert reflects that Petitioner arrived in Wyoming at 1:37 p.m. That document does not establish what Respondents claim.

Even assuming the document purports to reflect an arrival time, it remains insufficient and unreliable. The log is not an ICE record, is unauthenticated, and is unsupported by any declaration from a custodian of records or from DHS. It does not establish:

- That ICE assumed physical or constructive custody of Petitioner at 1:37 p.m.;
- That the listed time reflects actual arrival in Wyoming rather than an administrative or booking entry;
- That Petitioner departed Utah at any particular time;
- Or that Petitioner was continuously in ICE custody between Utah and Wyoming.

The log identifies no ICE officer, no transport unit, no conveyance, and no chain of custody. It provides no explanation of what the phrase "ICE CONTRACT RELEASE" means, whether the time reflects physical arrival, administrative intake, or a retroactive data entry, or how the information was generated. Critically, no ICE affidavit corroborates the timing reflected in this third-party record, and no ICE transport or intake documentation is provided.

A post-hoc, third-party booking entry—standing alone and unexplained—cannot establish Petitioner's physical location at the time the habeas petition was filed, particularly where ICE's own sworn declarations omit the time Petitioner left Utah or arrived in Wyoming. Respondents cannot meet their motion's burden through inference layered on an ambiguous administrative record.

C. Petitioner's Account Undermines Respondents' Timeline and Is Unrebutted by ICE Evidence

Petitioner's account is straightforward and internally consistent. He states that he was arrested around 7:00 a.m. in Orem, Utah; transported to the ICE ERO office; spent several hours there being processed; and believes he did not leave ICE custody until after 3:00 p.m. He recalls arriving in Wyoming around dinner time, well after the habeas petition was filed. Ex. 1.

Respondents do not directly contradict this account. They do not state that Petitioner left Utah earlier. Exs. 2 and 3. They simply remain silent on that point. Where the Government controls the relevant evidence and fails to produce it, the resulting ambiguity must be resolved against the party bearing the burden. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005).

D. Respondents' Claimed Timeline Is Logistically Implausible and Unsupported

Respondents' theory requires the Court to accept that ICE:

- Arrested Petitioner in Orem in the early morning;
- Transported him to ICE ERO (via West Valley);
- Processed him and reinstated a removal order;
- Determined a destination;
- Arranged transport;
- And moved him across state lines into Wyoming all by 1:37 p.m., on a day when multiple individuals were arrested and processed.

Yet ICE provides no evidence showing when Petitioner left Utah. The Court should not credit a compressed, logistically implausible timeline that is unsupported by ICE's own records and contradicted by Petitioner's sworn account.

E. Respondents' Failure of Proof Requires Denial of the Motion

Respondents' motion fails for a simple reason: **they have not proven that Petitioner was physically outside Utah at 5:17 p.m. on December 19, 2025.** They rely on inference, ambiguity, and a third-party record that does not establish the critical fact. That is insufficient to defeat habeas jurisdiction.

Where jurisdictional facts are disputed, and where the Government bears the burden but withholds or omits dispositive evidence, dismissal is inappropriate. At a minimum, the ambiguity must be resolved in favor of jurisdiction. Accordingly, Respondents' motion to dismiss should be denied.

Respondents' Allegations of Bad Faith Are Unsupported and Contradicted by the Record

Respondents repeatedly insinuate that Petitioner's filings—both the original habeas petition and the amended petition—were brought in bad faith. That assertion is unfounded, unsupported by the record, and ignores both the information available to counsel at the time of filing and Respondents' own conduct.

Good faith does not require omniscience. It requires reasonable investigation, reliance on available facts, and the assertion of colorable legal claims grounded in law and evidence. Petitioner's filings easily meet that standard.

A. The Original Habeas Petition Was Filed in Good Faith Based on the Information Available at the Time

At the time the original habeas petition was filed on December 19, 2025, counsel and Petitioner's family were unable to obtain any verifiable information from ICE regarding Petitioner's custody status, location, or whether a prior removal order had been reinstated. ICE's public inquiry line was not functioning, and Respondents did not respond to outreach efforts. Doc. 11. Faced with imminent removal, a complete lack of information from the detaining authority, and a client who had been arrested that same morning in Utah, counsel reasonably relied on:

- Petitioner's known arrest location (Orem, Utah);
- The absence of any notice or documentation of reinstatement;
- The Government's failure to communicate basic custody information; and
- The urgent need to preserve judicial review before removal.

Filing a habeas petition under those circumstances is not bad faith—it is precisely what habeas corpus is designed for. Courts have long recognized that habeas exists to ensure judicial review when the Government controls both the detention and the information surrounding it.

B. Habeas Does Not Require Omniscience; Its Core Function Is to Require the Government to Justify Detention

Respondents' repeated accusations of bad faith rest on an implicit and incorrect premise—that a habeas petitioner must plead with perfect factual knowledge of the Government's internal actions and custody decisions at the moment of filing. That premise is incompatible with the very purpose of habeas corpus.

Habeas does not require omniscience. A petitioner is not expected to possess, at the outset, facts that are exclusively within the Government's control, such as the precise timing of internal custody transfers, transport decisions, or reinstatement determinations. To hold otherwise would invert the writ's function and reward governmental opacity.

On the contrary, the historic and doctrinal purpose of habeas corpus is to compel the Government to justify the lawfulness of detention, not to require the detainee to preemptively disprove it. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). As the Supreme Court has long recognized, the writ exists so that the jailer must justify the detention, and the court may require the custodian to respond and produce the factual and legal basis for continued restraint. *Id.* That is why habeas proceedings traditionally commence with an order to show cause—directing the Government to explain and justify custody. *Walker v. Johnston,* 312 U.S. 275, 284–85 (1941).

In this case, that is exactly what occurred. Faced with imminent removal, no access to ICE, and no verifiable information regarding custody status or reinstatement, Petitioner filed a habeas petition in good faith to trigger judicial review and require the Government to explain the basis for detention and removal. Respondents' suggestion that Petitioner should have pleaded facts known only to ICE—before ICE was ordered to respond—misunderstands habeas doctrine and would eviscerate the writ's protective function.

Respondents' argument would effectively transform habeas into a pleading trap: if the Government withholds information, the petitioner loses; if the Government later reveals facts, the petitioner is accused of bad faith for not knowing them earlier. That is not the law. Habeas exists precisely because the Government controls custody and information, and the burden rests with the Government to justify detention once the writ is invoked.

Accordingly, Petitioner's reliance on the facts reasonably available at the time of filing—and the invocation of habeas to require the Government to account for its actions—reflects proper use of the writ, not bad faith. Respondents' attempt to recast habeas as an exercise in speculative pleading should be rejected.

C. The Amended Petition Reflects Evolving Facts, Not Improper Motive

Respondents also mischaracterize the filing of the Amended Petition as evidence of bad faith. That argument misunderstands both the procedural posture and the purpose of amendment.

The Amended Petition did not attempt to obscure facts or advance inconsistent theories. Rather, it responded to new information that emerged only after the original filing, including:

- Respondents' removal of Petitioner in violation of a court order;
- The factual and legal consequences of removal for Petitioner's access to the courts.

Amendment under these circumstances reflects responsible litigation, not bad faith. The Federal Rules expressly permit amendment to conform pleadings to newly discovered facts and evolving legal issues. Where Respondents themselves altered the factual landscape by removing Petitioner after judicial intervention, amendment was not only appropriate—it was necessary.

D. The Request for U-Visa Certification Was Legally Grounded and Factually Supported

Respondents further suggest that the request for U-visa certification was frivolous or strategic That contention is incorrect as a matter of law.

Witness tampering and obstruction of justice are expressly enumerated qualifying crimes under the U-visa statute and regulations. 8 U.S.C. § 1101(a)(15)(U)(iii); 8 C.F.R. § 214.14(a)(9). Certification does not require a criminal conviction, nor does it require that charges be filed. It requires credible evidence that qualifying criminal activity occurred and that the petitioner was a victim and has been helpful. 8 C.F.R. § 214.14(c).

Here, ICE removed Petitioner:

- After a habeas petition was filed;
- After this Court issued a clear non-removal order; and
- With actual notice of that order.

That conduct foreseeably and directly prevented Petitioner from appearing at a scheduled federal court hearing and interfered with the Court's ability to adjudicate a pending case. As a matter of law, removal under those circumstances constitutes obstruction of justice and witness tampering, because it impedes participation in an official proceeding and obstructs the due administration of justice. *See* 18 U.S.C. §§ 1503, 1512.

Seeking certification under these facts is not aggressive—it is squarely within the framework Congress created to protect victims whose participation in judicial proceedings is undermined by unlawful conduct.

E. Petitioner Is in Fact a Victim of Witness Tampering and Obstruction of Justice

Respondents' attempt to frame the U-visa theory as speculative ignores the statutory definition of the crime. Witness tampering does not require threats or intimidation; it includes conduct intended to prevent attendance or participation in an official proceeding. 18 U.S.C. § 1512.

ICE's removal of Petitioner:

- Prevented him from appearing at the December 31, 2025 habeas hearing;
- Severed communication with counsel;
- Undermined this Court's jurisdiction; and
- Foreclosed meaningful participation in pending judicial proceedings.

Those consequences were not incidental. They were the direct and foreseeable result of removal in defiance of a court order. Under the U-visa framework, that is sufficient to establish victimization for certification purposes.

F. U-Visa Certification Does Not Require Proof of Criminal Guilt, Intent, or a Completed Prosecution.

Respondents' suggestion that Petitioner acted in bad faith by seeking U-visa certification rests on a fundamental misunderstanding of the U-visa framework. Neither the statute nor the implementing regulations require proof that a perpetrator committed a crime, possessed criminal intent, or was charged or convicted. Nor must qualifying criminal activity be conclusively established at the time certification is sought. Rather, Congress designed the U-visa to operate at an investigative stage, focused on victimization and helpfulness—not adjudication of criminal liability.

Under the governing statute, a U-visa applicant need only demonstrate that he "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of qualifying criminal activity. 8 U.S.C. § 1101(a)(15)(U)(i). The implementing regulation confirms that this determination is pre-adjudicative in nature, providing that a certifying official may sign a Form I-918, Supplement B if the official determines that the petitioner has been a victim of qualifying criminal activity and has been, is being, or is likely to be helpful in the investigation or prosecution of that activity. 8 C.F.R. § 214.14(c)(2)(i). Nothing in the statute or regulations requires a criminal charge, a completed investigation, proof of intent, proof beyond a reasonable doubt, or a conviction.

DHS's own policy guidance expressly rejects the position Respondents advance. DHS guidance expressly provides that "[a] current investigation, the filing of charges, a prosecution or conviction is not required to sign the law enforcement certification." *U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies*, United Stated Department of Homeland Security, (Last Viewed January 24, 2026), Page 7, https://niwaplibrary.wcl.american.edu/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf. Nothing in the U-visa statute or regulations requires proof beyond a reasonable doubt, a finding of criminal intent, or a conviction as a prerequisite to certification. Because the Guidance Manual reflects DHS's official interpretation of its own regulations, it should be treated as highly persuasive and controlling absent conflict with statute or regulation.

Consistent with this framework, the evidentiary burden at the certification stage is intentionally low. USCIS regulations require only that the applicant submit credible evidence that qualifying criminal activity occurred and that the applicant was a victim. 8 C.F.R. § 214.14(c)(4). In other words, the applicant need only provide sufficient information to permit investigation—not to conclusively prove the crime.

Against this legal backdrop, Respondents' bad-faith accusation collapses. Petitioner alleged that Respondents' conduct prevented his participation in a pending federal judicial proceeding and obstructed the administration of justice. Whether that conduct ultimately satisfies every element of a federal criminal statute is not the question at the certification stage. The relevant inquiry is whether qualifying criminal activity has been credibly alleged, whether Petitioner suffered harm as a result, and whether Petitioner has been or will be helpful in investigating or reporting that activity. Petitioner plainly met that threshold. Seeking U-visa certification under these circumstances was objectively reasonable, legally grounded, and exactly what Congress and DHS contemplated—not improper or strategic gamesmanship.

G. Respondents' Bad-Faith Accusations Are Themselves Unsupported

Finally, Respondents' allegations of bad faith are notably unsupported by any evidence of improper motive, misrepresentation, or abuse of process. Instead, Respondents rely on hindsight—arguing that because they now advance a different factual narrative, earlier filings must have been improper. That is not the standard for bad faith, and accepting such an argument would chill the very purpose of habeas corpus and victim-protection statutes.

***Arguendo*, Jurisdiction Should Be Maintained Because Petitioner Was Physically Present in Utah When the Court Assumed Jurisdiction and Issued Its Orders**

Even assuming *arguendo* that Petitioner was physically outside Utah at the precise moment the habeas petition was filed—a contention Respondents have not established—jurisdiction should nevertheless be maintained because Petitioner was physically present in Utah when this Court assumed jurisdiction and issued its initial orders. Exs. 2 and 3.

Respondents' own filings establish that by Monday morning, when the District Court took up the matter and entered its non-removal order, Petitioner was physically present in Utah. As reflected in

Respondents' declarations, Petitioner had been returned to Utah and was in ICE custody within the State at the time the Court exercised its authority over the case.

Under these circumstances, dismissing the petition on a hyper-technical view of jurisdiction would elevate form over substance and reward the very conduct the Court sought to prevent. Habeas corpus exists to ensure meaningful judicial review of detention and removal decisions, and that purpose would be frustrated if the Government could defeat jurisdiction by contesting a disputed moment in time while conceding that the detainee was present in the forum when the Court acted. Hensley v. Municipal Court, 411 U.S. 345, 351 (1973).

Where, as here, the petitioner is physically present within the District at the time the Court assumes jurisdiction and issues orders of non-removal, the Court retains authority to adjudicate the habeas petition. At a minimum, Respondents' own evidence confirms that jurisdiction attached no later than Monday morning, and Respondents' motion to dismiss should be denied on that independent basis

Conclusion

Respondents have failed to carry their burden to establish that Petitioner was physically outside Utah at the time the habeas petition was filed. Their jurisdictional argument rests on inference, post-hoc records, and evidentiary silence where the Government controls the proof. Their allegations of bad faith are unsupported by the record and contrary to settled habeas doctrine. Accordingly, Respondents' Motion to Dismiss for Lack of Jurisdiction should be denied

Dated: January 24, 2026

Respectfully submitted,

/S/ ALEC S. BRACKEN
Alec S. Bracken (UT SBN 17178)
Contigo Law
P.O. Box 249
Midvale, UT 84047
Tel. (801) 676-6548
Email: alec@contigo.law