

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FRANCISCO D'COSTA, Petitioner,)
)
v.)
)
WARDEN, JOE CORLEY)
)
DETENTION FACILITY; DIRECTOR,)
)
U.S. IMMIGRATION AND CUSTOMS)
)
ENFORCEMENT; SECRETARY, U.S.)
)
DEPARTMENT OF HOMELAND)
)
SECURITY, Respondents.)

CIVIL ACTION NO.

4:25-CV-06177

**EMERGENCY MOTION TO ENFORCE COURT ORDER, FOR FINDING
OF CIVIL CONTEMPT, AND TO COMPEL IMMEDIATE
FACILITATION OF PETITIONER'S RETURN TO THE UNITED
STATES; EMERGENCY REQUEST FOR TELEPHONIC HEARING AND
EXPEDITED RULING; CERTIFICATE OF EMERGENCY UNDER
LOCAL RULE 7.1(A) (NO CONFERENCE REQUIRED)**

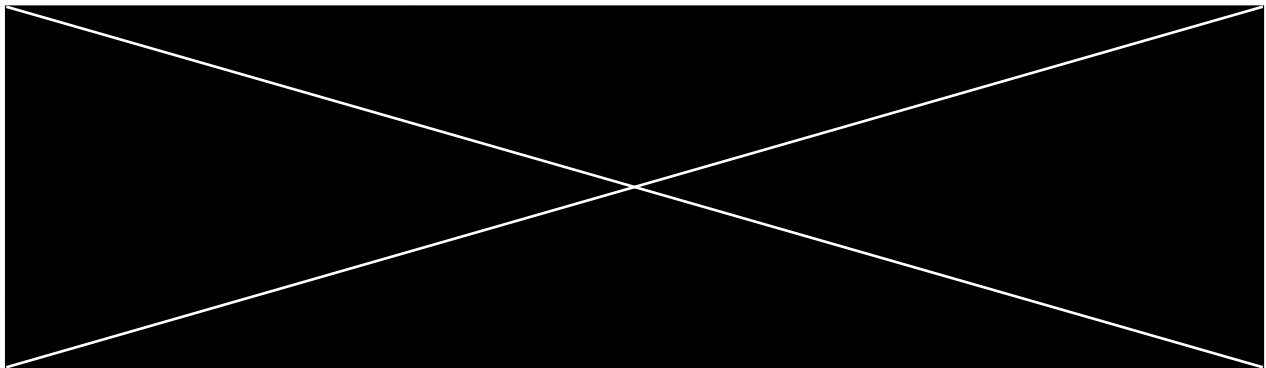
TO THE HONORABLE KEITH P. ELLISON, UNITED STATES DISTRICT
JUDGE:

Petitioner Francisco D'Costa ([REDACTED]), by and through undersigned counsel, respectfully files this Emergency Motion to Enforce Court Order, for Finding of Civil Contempt, and to Compel Immediate Facilitation of Petitioner's Return to the United States. This motion arises from Respondents' flagrant violation of this Court's December 20, 2025 Order (ECF No. 5) ("Order"), which temporarily enjoined Respondents from removing or deporting Petitioner pending ruling on the Emergency Motion for Temporary Restraining Order ("TRO Motion," ECF No. 1) or further order of the Court.

Despite the Stay Order's explicit terms, directed service to ensure notice, and issuance at approximately 11:08 AM on December 20, 2025 (as evidenced by the Court's Case Manager's email attaching the signed order), **Respondents removed Petitioner to India** on December 20, 2025, via a flight departing at **approximately 2:55 PM**, after the **order was issued at 11:08 AM** and notified **internally by 11:46 AM**, providing ample time for compliance.

This violation deprives Petitioner of due process under the Fifth Amendment by mooted his pending Motion to Reopen ("MTR") before the Immigration Judge

and his Petition for Review in the Fifth Circuit (No. 25-60666). It also exposes him to irreparable harm as 



This violation occurred despite a multi-hour window for compliance, as confirmed by Respondents' own timeline. (ECF No. 7). Removal during an active injunction requires **Petitioner's return to restore the status quo**, regardless of any claimed "administrative error" by DHS, as the Supreme Court held in *Noem v. Abrego Garcia*, No. 24A949 (Apr. 10, 2025) (unanimously affirming facilitation of return despite government's "administrative error" excuse, requiring the case be treated "as if no deportation occurred" to prevent irreparable harm).

On December 29, 2025, Respondents filed an Advisory admitting the removal and claiming administrative error, "not known at the time of removal" (ECF No. 7). On December 30, 2025, Respondents declined counsel's request for voluntary return. No certificate of conference is required per Local Rule 7.1(A) (emergency/impracticable). An emergency telephonic hearing is requested forthwith per Judge Ellison's procedures.

I. INTRODUCTION AND EMERGENCY CERTIFICATION

1. The Stay Order was issued and emailed by Case Manager Arturo A. Rivera at 11:08 AM on December 20, 2025, with directed service to USATXS.CivilNotice@usdoj.gov. Undersigned counsel acknowledged receipt at 1:57 PM (Ex. A) (ECF No. 7).
2. Despite this, ICE removed Petitioner via a 2:55 PM flight. Respondents' Advisory (ECF No. 7) confirms notice to OPLA by 11:32 AM and email to facility management at 11:46 AM, yet no halt occurred. This Court retains authority to enforce its injunction and remedy the violation by ordering facilitation of return, as in analogous cases (*infra* § III.A).
3. **Emergency:** Immediate irreparable harm from mooted the MTR (due process violation noted at December 22 hearing) and persecution risk. Return is feasible and necessary to restore status quo.
4. Counsel learned of removal post-flight via family contact.
5. **Jurisdiction/Authority:** Retained under 28 U.S.C. § 2241 (habeas), § 1651 (All Writs Act), § 1361 (mandamus), Fed. R. Civ. P. 70 (enforce judgment), and inherent power (18 U.S.C. § 401). See *United States v. United Mine Workers*, 330 U.S. 258, 293 (1947); *Brownback v. King*, 592 U.S. 209 (2021).

II. FACTUAL BACKGROUND

Petitioner lawfully entered the U.S. in 2009, overstayed, and faced removal proceedings. Pro se, he accepted voluntary departure (November 5, 2025). After retaining counsel, he filed an MTR (December 3/5, 2025) based on 



 The MTR remains pending; PFR filed December 5 (Fifth Circuit denied stay but merits pending).

ICE signaled removal December 19; Petitioner transported to airport December 20 morning. Stay Order issued 11:08 AM; Respondents notified by 11:46 AM (ECF No. 7). Flight departed 2:55 PM. December 22 hearing proceeded (motions under advisement; merits set January 13, 2026; stay extended). Respondents' Advisory (ECF No. 7) and refusal confirm violation but claim error.

III. LEGAL STANDARD AND ARGUMENT

A. Respondents Violated the Stay Order, Warranting Immediate Enforcement and Return

The Stay Order is unequivocal: Respondents "**SHALL NOT** (1) remove or deport Petitioner...without first seeking and receiving leave." (ECF No. 5). Service to USAO email constitutes constructive notice binding DHS/ICE (Fed. R. Civ. P.

5(b)(2)(C); Judge Ellison procedures presume CM/ECF/email notice). Order effective upon signing/issuance at 11:08 AM, with directed service providing immediate government awareness.

Courts routinely order returns post-unlawful removal:

- ***Noem v. Abrego Garcia (D. Md./SCOTUS 2025)***: "Facilitate and effectuate" return despite "administrative error" and foreign custody; treat as if no deportation.
- ***Melgar-Salmeron (2025)***: Return ordered post-stay violation.
- ***Hernandez Garcia (2025)***: Same-day return post-violation.

Irreparable harm clear (persecution risk; *Nken v. Holder*, 556 U.S. 418 (2009)).

B. Civil Contempt Finding Appropriate

Civil contempt requires clear and convincing evidence that (1) a court order was in effect; (2) the order required certain conduct; and (3) respondent failed to comply (*American Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 581 (5th Cir. 2000)). All met here. Respondents' "error" claim (ECF No. 7) insufficient where harm follows (*Noem v. Abrego Garcia*: SCOTUS mandates facilitation despite "mistake"; Judge Xinis: discovery/depositions on compliance).

Relief: Coercive prospective daily fines in an amount the Court deems sufficient to compel prompt compliance (e.g., \$5,000 or more per day), ongoing reporting/supervision of officials, accruing until purge by full facilitation of return (18 U.S.C. § 401; *ACLI Gov't Sec., Inc. v. Rhoades*, 989 F. Supp. 462 (S.D.N.Y. 1997); *United States v. Richmond*, 2002 U.S. Dist. LEXIS 17247 (N.D. Ill. 2002); *United States v. McMillan*, 53 F. Supp. 2d 895 (S.D. Miss. 1999)).

C. Due Process Mandates Stay/Return for MTR Adjudication

Removal pre-MTR ruling violates meaningful opportunity to be heard. Jurisdiction preserved (*Devitri v. Cronen*, 290 F. Supp. 3d 86 (D. Mass. 2017): removal unconstitutional if it moots reopen claims; *Sied v. Nielsen*, 2018 WL 1142202 (N.D. Cal.)).

D. No Defenses Apply

- **No Notice:** Constructive notice via directed USAO email at/near 11:08 AM issuance binds (order's purpose); demand affidavits (who/when received, steps to halt).
- **Mootness:** Removal does not divest this Court of authority to preserve the status quo and prevent irreparable due process harm (*United States v. United Mine Workers*, 330 U.S. 258, 293 (1947) (district court has power to

preserve existing conditions while determining its authority); *Brownback v. King*, 592 U.S. 209 (2021) (jurisdiction to determine jurisdiction)); return restores status quo (*Noem v. Abrego Garcia*, 604 U.S. __ (2025)).

- **Foreign Custody:** Courts order facilitation despite (Abrego: El Salvador coordination).

IV. REQUESTED RELIEF

Petitioner respectfully requests:

1. **Emergency telephonic hearing** (dial-in per Clerk; counsel available).
2. Order declaring removal unlawful; enforcing Stay Order nunc pro tunc.
3. Civil contempt finding; coercive sanctions (e.g., \$5k/day fine per Respondent until return, or other coercive measures the Court deems fit, such as supervision.).
4. Order compelling Respondents to **immediately facilitate/effectuate return** (charter flight w/in 72 hrs.; diplomatic repatriation; no re-removal).
5. Expedited discovery: Sworn affidavits (by Dec. 31, 2025) from ICE Director, Warden, deportation officer, USAO on chronology/notice (including exact time of USAO email receipt); depositions if deficient.
6. Upon return: Bond/parole; extend stay pending MTR/IJ decision; advance Jan. 13 hearing.

7. Attorneys' fees/costs (Fed. R. Civ. P. 11; 28 U.S.C. § 1927).
8. Such other relief as just.

Respectfully submitted this 31st day of December, 2025.

Respectfully submitted,



/s/ Ruben Franco

RUBEN FRANCO

Counsel for Petitioner

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Conroe, Texas 77301

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I represent Petitioner, Francisco Dcosta, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on December 31, 2025.



/s/ Ruben Franco

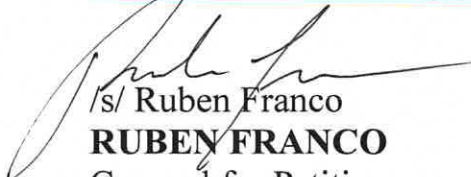
RUBEN FRANCO

Counsel for Petitioner

CERTIFICATE OF SERVICE

I certify that on December 31, 2025, a copy of this filing was served via CM/ECF on all counsel/parties per S.D. Tex. L.R. 5.1, including

USATXS.CivilNotice@usdoj.gov.



/s/ Ruben Franco
RUBEN FRANCO
Counsel for Petitioner

INDEX OF EXHIBITS

Exhibit	Description	Page
Exhibit A	Email Chain (Dec. 20, 2025: Rivera to counsel at 11:08 AM attaching Stay Order)	1
Exhibit B	Petitioner's eTicket Flight Receipt	2