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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Kevin Garcia Carias, *et al.*

Petitioner,

v.

Luis Rosas, *et al.*,

Respondents.

Case No. 26-CV-00672-JJT (DMF)

MOTION TO ENFORCE FEBRUARY 13 ORDER (DOC. 12)

I. INTRODUCTION

Petitioners, twin brothers Kevin and Nelino Garcia Carias ("Petitioners"), respectfully move this Court to enforce its February 13, 2026 Order granting habeas relief and directing Respondents to "immediately release Petitioners from custody under the same conditions that existed before their redetention." (Doc. 12). Petitioners ask the Court to find that the June 2, 2026 Board of Immigration Appeals' (Board or BIA) published decision in *Matter of N-A-G-C-*, 29 I&N Dec. 662 (BIA 2026) orders detention in violation of the Court's habeas order, hold that Respondents may not rely on the BIA decision to avoid, undo, or materially narrow this Court's habeas judgment, and order that the detention order be stricken from the BIA decision.

On February 13, 2026, the Court granted habeas relief on due process grounds, holding that Petitioners had a protected liberty interest in their continued release and that Respondents could not redetain them without constitutionally adequate process. (Doc. 12 at 2–4). Months after Petitioners were released pursuant to that Order, and after having notice of this Court's order, the BIA granted DHS's appeal of the earlier immigration bond decision, vacated the Immigration Judge's bond order, and ordered Petitioner Nelino Garcia Carias detained without bond, a decision that will also apply to Kevin. *See* Exh. 1 (*Matter of N-A-G-C-*, 29 I&N Dec. 662, 667 (BIA 2026)). In doing so, the Board did not purport to comply with this Court's ruling; instead, it treated the federal court order as non-controlling, noting "Federal district court decisions are not binding on the Board." *Id.* at 665. This Court's intervention is therefore necessary to enforce its habeas

judgment and ensure that Respondents do not use the BIA's bond-jurisdiction decision to redetain Petitioners in violation of this Court's release order.

II. RELEVANT BACKGROUND

Petitioners are siblings who entered the United States in 2022. They were apprehended, detained, transferred to the Office of Refugee Resettlement, and released to live with a family sponsor after the government determined they posed neither a flight risk nor a danger to the community. (Doc. 12 at 1). Petitioners were placed in removal proceedings under 8 U.S.C. § 1226 and were granted Special Immigrant Juvenile Status under 8 U.S.C. § 1101(a)(27)(J). *Id*

Respondents redetained Petitioners on September 26, 2025 without notice or an opportunity to contest their redetention. *Id.* Petitioners requested a bond hearing with the Immigration Court and requested the termination of their removal proceedings. (Doc. 1 ¶ ¶ 29-30). On October 14, 2025, the immigration judge ordered Petitioners released on bond. *Id.* One week later, the immigration judge ordered the termination of Petitioners' removal proceedings. *Id.* DHS appealed both orders to the BIA and invoked the automatic stay of the bond orders pursuant to regulation. *Id.* Although Petitioners' bond hearing and request for termination of proceedings were before the same immigration judge, their cases were not consolidated in the Immigration Court, and separate though identical appeals were filed by DHS with respect to each Petitioner. *Id.*

On February 3, 2026, Petitioners filed a petition for habeas relief with this Court on the grounds that their detention was in violation of the Due Process Clause, the Fourth Amendment and the Immigration and Nationality Act ("INA"). (Doc. 1).

The Court issued an Order to Show Cause specifically directing Respondents to address Petitioners' argument that their release in 2022 created a liberty interest in their continued freedom from custody. (Doc. 12 at 1–2). Respondents did not address that issue. Instead, they focused on whether Petitioners were entitled to a bond hearing under the INA and conceded Petitioners were class members in *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025). (Doc. 12 at 2).

In its order granting the petition and ordering release, the Court found that Petitioners had "a protected liberty interest in their release from immigration detention" and were "entitled to a pre-deprivation hearing before rearrest and detention." (Doc. 12 at 2). Applying *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Court held that the factors weighed in Petitioners' favor. (Doc. 12 at 3–4). It emphasized that freedom from physical restraint lies at the core of due process, that Respondents had not supported why Petitioners were redetained after prior release and prior no-danger/no-flight-risk determinations, and that Respondents' interest in detaining Petitioners without a hearing was low. *Id.* The Court ordered immediate release. It held: "For all these reasons, the Petition will be granted, and Petitioners will be ordered released from custody immediately." (Doc. 12 at 4). The operative relief states:

> "IT IS FURTHER ORDERED Petitioners' Petition for Writ of Habeas Corpus (Doc. 1) is granted.
> IT IS FURTHER ORDERED Respondents must immediately release Petitioners from custody under the same conditions that existed before their redetention.
> IT IS FURTHER ORDERED Respondents must provide a notice of compliance within two business days of Petitioners' release." *Id.*

Respondents released Petitioners from detention on February 17, 2026, and this Court's decision became final on April 14, 2026 when Respondents did not appeal. (Doc. 14). On May 13, 2026, counsel filed a timely motion for fees and costs pursuant to the Equal Access to Justice Act. (Doc. 15). Respondents did not timely respond to that motion.

About two months after Petitioners were released from detention as ordered by the Court, the BIA issued identical briefing schedules with regard to DHS' appeal of the bond order issued to each Petitioner. On April 27, 2026, each Petitioner filed an identical brief with the BIA in opposition to DHS' appeal which, *inter alia*, cited this case and noted that on February 13, 2026, this Court found that Petitioners' detention violated their constitutional rights to due process, granted their petition for a writ of habeas corpus and ordered their immediate release. Exh. 2, Bond Appeal Documents. Similarly, each Petitioner cited and noted the habeas relief ordered by this Court in the identical brief each filed with the BIA on March 12, 2026 in opposition to DHS' appeal of the termination order issued with respect to each Petitioner. *Id.*

On June 2, 2026, the BIA issued *Matter of N-A-G-C-,* 29 I&N Dec. 662 (BIA 2026 regarding the DHS appeal of the bond order issued with respect to Nelino. In *N-A-G-C-,* the Board sustained DHS's appeal from the IJ's October 14, 2025 bond order and, vacated the IJ's bond decision. Further, notwithstanding this Court's habeas decision, the Board specifically ordered Nelino detained without bond. *Id.* at 662, 667. The BIA has yet to issue a decision with respect to Kevin, but in as much as his case has the same facts

and procedural posture as that of his brother's companion case, Respondents are likely to apply the *N-A-G-C* decision to him.

In *N-A-G-C-*, the Board held that neither a prior UC designation nor an approved SIJ petition gave an Immigration Judge authority to redetermine custody for a person who had not been admitted to the United States. *Id.* at 662–67. The Board stated that the "only issue before us is whether the Immigration Judge had authority to redetermine custody under INA § 236(a), 8 U.S.C. § 1226(a)." *Id.* at 665. Having answered that statutory question in DHS's favor, the Board declined to address danger or flight risk. *Id.* at 666 n.2. Instead, the Board ordered that "[t]he Immigration Judge's bond decision is vacated, and the respondent is ordered detained without bond." *Id.* at 667.

On Monday, June 8, 2026 counsel for Petitioners emailed counsel for Respondents and asked for assurances that neither Petitioner would be taken back into custody based on the BIA's decision and detention order. As of the date of this filing, Respondents have not provided assurance that they will comply with this Court's binding order, notwithstanding the BIA decision and detention order.

III. LEGAL STANDARD

A. The Court's Inherent and Statutory Authority to Enforce Its Orders

Federal courts possess inherent authority to enforce their own orders, rooted in Article III of the Constitution and essential to the judicial function. As the Supreme Court explained in *Ex parte Robinson*:

> "The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the

> enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice." 86 U.S. 505, 510 (1873).

This inherent authority extends to enforcing mandatory decrees by coercive means. *Michaelson v. United States ex rel. Chicago, St. P., M. & O. Ry. Co.*, 266 U.S. 42, 65–66 (1924). The Court specifically recognized the power to enforce mandatory decrees "by coercive means" as an inalienable aspect of judicial authority. *Id.* Civil contempt is remedial rather than punitive; its purpose is to coerce compliance with court orders. *International Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 827 (1994). The Supreme Court has emphasized that the ability to enforce court orders is fundamental to judicial independence: "The ability to punish disobedience to judicial orders is regarded as essential to ensuring that the Judiciary has a means to vindicate its own its own authority without dependence on another Branch to decide whether proceedings should be initiated." *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 796 (1987). Without this power, courts would be "mere boards of arbitration whose judgments and decrees would be only advisory." *Id. See also United States v. Suarez*, 801 F.Supp.3d 872, 880 (N.D. Cal. 2025) ("The Court has inherent authority to manage cases and courtroom matters, including by ensuring obedience to orders.") citing *United States v. W.R. Grace*, 526 F.3d 499, 508-09 (9th Cir. 2008) (en banc).

This Court also has statutory power under 18 U.S.C. § 401 to punish "disobedience or resistance to [the Court's] lawful writ, process, order, rule, decree, or command." The All Writs Act, 28 U.S.C. § 1651(a), similarly provides that federal courts may issue "all writs necessary or appropriate in aid of their respective jurisdictions." The Supreme Court has

held that this statute authorizes courts to issue commands "necessary or appropriate to effectuate and prevent the frustration of orders" issued under the court's jurisdiction. *Pennsylvania Bureau of Correction v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985).

B. Government Officials Subject to Enforcement

Government officials and agencies are subject to the Court's authority to enforce its orders. Federal courts have repeatedly exercised contempt power to compel action by and punish government agencies and officials responsible for carrying out government actions. *See, e.g., United States v. United Mine Workers*, 330 U.S. 258 (1947); *Cobell v. Norton*, 334 F.3d 1128 (D.C. Cir. 2003) (contempt finding against federal agency). As the Supreme Court has stated, "an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties." *Mine Workers, supra*, 330 U.S. at 293.

C. The Court Has Jurisdiction To Evaluate Compliance And Enforce Its Grant Of Habeas Relief Order Without First Requiring Appeal To The BIA.

This Court has jurisdiction to evaluate whether its order has been followed. "The [District Court] has retained jurisdiction to hear and determine any question arising under its order. Whether or not the order is followed or disobeyed should be determined by it in the first instance." *Fisher v. Hurst*, 333 U.S 147, 150 (1948).

Federal district courts are the only institution with recourse to address the BIA's noncompliance with this prior order. Because the BIA's custody decision does not include or finalize an order of removal, it is not directly reviewable by petition for review

in the court of appeals under 8 U.S.C. § 1252, which governs judicial review of final orders of removal. 8 U.S.C. § 1252(a)(1), (b)(1); *see also* 8 U.S.C. § 1101(a)(47).

IV. ARGUMENT

A. The BIA Decision Does Not Comply With This Court's Habeas Order Because This Court Ordered Release on Constitutional Due Process Grounds.

This Court has already decided the constitutional issue presented by Petitioners' redetention. It held that Petitioners had "a protected liberty interest in their release from immigration detention" and were "entitled to a pre-deprivation hearing before rearrest and detention." (Doc. 12 at 2). Applying *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Court concluded that Respondents had deprived Petitioners of liberty without constitutionally adequate process. (Doc. 12 at 3–4). The Court then granted habeas relief and ordered Respondents to "immediately release Petitioners from custody under the same conditions that existed before their redetention." *Id.* at 4.

The BIA's later decision addressed a narrower and different question. In *Matter of N-A-G-C-*, the Board stated that "[t]he only issue before us is whether the Immigration Judge had authority to redetermine custody under INA § 236(a), 8 U.S.C. § 1226(a)." 29 I&N Dec. 662, 665 (BIA 2026). The Board answered that statutory question in DHS's favor, vacated the IJ's bond decision, and ordered detention without bond. *Id.* at 667. But it did not decide the constitutional due process question this Court resolved (nor as discussed below, does it have authority to finally decide that question). Nor did it assess danger, flight risk, changed circumstances, or the necessity of detention. To the contrary, the Board expressly stated that, because it found no IJ bond authority, it "need not

address the Immigration Judge's findings related to danger or flight risk." *Id.* at 666 n.2. Counsel for Kevin and Nelino noted this Court's finding of due process violations, the Courts order for immediate release and provided the citation to this habeas action with this Court. Exh. 2.

The BIA decision is in direct opposition to this Court's order. It did not provide Petitioners with the pre-deprivation process this Court held was constitutionally required. It did not apply *Mathews*. It did not identify any new basis for detention. And it did not and cannot undo this Court's habeas judgment.

B. The BIA Is Not Free to Overrule, Nullify, or Evade This Court's Habeas Judgment.

The BIA stated that it was "aware" that a federal district court in *Bautista v. Santacruz* had vacated *Matter of Yajure Hurtado*, but that the case before it arose in Florence, Arizona, "and is not within the Central District of California." *Matter of N-A-G-C-*, 29 I&N Dec. at 663 n.1. The Board also stated that "[f]ederal district court decisions are not binding on the Board." *Id.* at 665 (*citing Matter of K-S-*, 20 I&N Dec. 715, 718 (BIA 1993). Whatever relevance those statements may have in administrative adjudication, they do not permit Respondents to disregard this Court's order in this case.

The ruling in *Matter of K-S-* is irrelevant due to a fundamental difference in the facts. There, the Petitioner argued that the court was bound to apply the district court's ruling in an identical case. *Id.* The BIA found that district court "precedents" are fundamentally different than circuit court of appeals decisions, and need not require the identical outcome in a similar case. *Id.* Petitioners in this case did not ask the BIA to adopt a ruling

in a similar district court decision, but rather to comply with a final district court decision determining that *their own* detention was unconstitutional.

Respondents—parties to this habeas action—attempt to rely on a later administrative decision to undermine this Court's order entered against them. They may not. This Court granted habeas relief, ordered immediate release, and required release under the same conditions that existed before Petitioners' redetention. (Doc. 12 at 4). Unless that order is stayed, modified, or reversed by a court with authority to do so, Respondents remain bound by it. The BIA cannot overrule this Court's order, modify the relief granted, or authorize Respondents to redetain Petitioners in violation of the Court's habeas judgment.

C. The BIA Lacks Authority to Adjudicate the Constitutional Claim This Court Resolved; This Court Does Not.

The BIA's inability to displace this Court's order is reinforced by the limits of the Board's own authority. The Ninth Circuit has long recognized that "[a]n exception to the exhaustion requirement has been carved for constitutional challenges to the Immigration and Naturalization Act and INS procedures," *Rashtabadi v. INS*, 23 F.3d 1562, 1567 (9th Cir. 1994), because "[t]he BIA does not have jurisdiction to determine the constitutionality of the statutes it administers," *Padilla-Padilla v. Gonzales*, 463 F.3d 972, 977 (9th Cir. 2006). The BIA also lacks jurisdiction over claims arising under international law. Id.

The Ninth Circuit has reaffirmed the same principle for constitutional challenges to immigration procedures. See *Iraheta-Martinez v. Garland*, 12 F.4th 942, 949 (9th Cir. 2021) ("'An exception to the exhaustion requirement has been carved for constitutional challenges to ... [DHS] procedures.'" (quoting *Sola v. Holder*, 720 F.3d 1134, 1135 (9th

Cir. 2013) (per curiam))); *Chettiar v. Holder*, 665 F.3d 1375, 1379 n.2 (9th Cir. 2012); *Coyt v. Holder*, 593 F.3d 902, 905 (9th Cir. 2010); *but see Lee v. Holder*, 599 F.3d 973, 976 (9th Cir. 2010) (per curiam).

Those cases reflect a basic division of authority. The BIA may interpret and apply immigration statutes and regulations within its administrative jurisdiction. But it may not overrule federal courts or finally adjudicate constitutional challenges to the procedures it administers. This Court, by contrast, has jurisdiction to decide constitutional due process claims in habeas and to enforce the relief it has already granted. That is what happened here. Petitioners challenged their redetention as unconstitutional because Respondents deprived them of a settled liberty interest without pre-deprivation process. This Court agreed and ordered immediate release. (Doc. 12 at 2–4). The BIA later decided only that the IJ lacked statutory authority to redetermine custody under § 1226(a). *Matter of N-A-G-C-*, 29 I&N Dec. at 665–67. Because the BIA could not adjudicate the constitutional issue this Court decided, its narrower administrative ruling cannot displace this Court's constitutional judgment.

D. Respondents Cannot Use the BIA Decision to Redetain Petitioners Without Violating This Court's Order.

Respondents' apparent position would allow the government to do exactly what this Court prohibited. Petitioners had lived in the community for years after ORR released them to a sponsor and after the government determined they posed neither a danger nor a flight risk. (Doc. 12 at 1, 3–4). This Court held that Respondents could not

deprive them of that liberty interest without constitutionally adequate process. Id. at 2–4. It ordered release under the same conditions that existed before redetention. Id. at 4. The BIA decision does not change those facts. It identifies no violation of release conditions, no new evidence of danger, no new evidence of flight risk, and no finding that detention is necessary. While arguably the Board has authority to vacate the IJ's bond order, even though the issue was moot as Petitioners were no longer detained, the Board has no authority to order detention in contravention of the Court's habeas decision.

Using that decision to redetain Petitioners would violate both the letter and purpose of this Court's order. The letter requires release under the same conditions that existed before redetention. (Doc. 12 at 4). The purpose is to remedy the unconstitutional deprivation of liberty without prior process. *Id.* at 2–4. Redetention based on a later agency ruling that did not consider the constitutional issue, danger, flight risk, or changed circumstances would recreate the very due process violation this Court already remedied.

E. The Court Should Enforce Its Order and Prohibit Respondents From Relying on the BIA Decision to Redetain Petitioners.

This Court has jurisdiction to determine whether its order has been followed. "The [District Court] has retained jurisdiction to hear and determine any question arising under its order. Whether or not the order is followed or disobeyed should be determined by it in the first instance." *Fisher v. Hurst*, 333 U.S. 147, 150 (1948). The Court also has inherent authority, statutory authority under 18 U.S.C. § 401, and authority under the All Writs Act, 28 U.S.C. § 1651(a), to issue orders necessary to effectuate and prevent the

frustration of its judgment. See *Pennsylvania Bureau of Correction v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985).

Enforcement is warranted because the BIA decision creates an immediate risk that Respondents will redetain Petitioners despite this Court's release order. The Court should make clear that *Matter of N-A-G-C-* does not supersede, modify, or limit the habeas judgment, and that Respondents may not rely on it to redetain Petitioners or alter the conditions of release imposed by this Court's order.

F. Petitioner Is Entitled to Attorney's Fees

Petitioners have a pending EAJA motion before this Court (Doc. 15) and Respondents did not timely respond to it. Courts routinely award attorney's fees to parties who must seek enforcement of court orders. *See, e.g., Inst. of Cetacean Rsch. v. Sea Shepherd Conservation Soc'y*, 774 F.3d 935, 958 (9th Cir. 2014) (litigants "are entitled to recover attorney's fees and costs incurred in bringing and prosecuting these contempt proceedings."). Petitioners should not have been required to file this motion. Had Respondents complied with this Court's Order – as they were legally obligated to do – this motion would have been unnecessary. Petitioners and their attorney have been forced to expend additional resources solely because of Respondents' noncompliance. Elementary principles of fairness require that Respondents bear the costs of their own defiance.

V. Conclusion

The BIA's detention order should be set aside as to Petitioners because it directly conflicts with this Court's habeas judgment. The Board was not deciding an appeal in a

vacuum. By the time it acted, this Court had already granted habeas relief and ordered Petitioners released under the same conditions that existed before their unlawful redetention. (Doc. 12). The Board lacked authority to revisit that constitutional ruling, lacked authority to determine whether Respondents had satisfied due process, and lacked authority to enter an administrative order that functionally nullifies this Court's release order. The decision therefore cannot furnish a lawful basis for redetention. At minimum, the Court should declare the BIA's order unenforceable against Petitioners and prohibit Respondents from relying on it to detain them.

On its face, the BIA decision in *N-A-G-C* orders detention in violation of the Court's order of which the Board and Respondents were aware. Unless this Court intervenes, the BIA's order of detention will eventually be executed by Respondents' enforcement agents. Respondents unlawfully redetained Petitioners in violation of their constitutional rights to due process, transferred them from their home in Baltimore, Maryland to a prison in Florence, Arizona, and held them there for four months before releasing them pursuant to the order of this Court in the dead of night leaving them to find their way back home thousands of miles away. Petitioners should not have to wait for the "sword to drop" and suffer the stress, anxiety and trauma of a future, unlawful redetention before this Court again intervenes on their behalf.

V. RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests that this Court:

1. Order that Respondents' decision in *N-A-G-C* violates this Court's February 13 Order;

2. Order that Respondents cannot redetain Petitioners solely on the basis of the BIA's decision in *N-A-G-C*;
3. Order that the BIA strike from the *N-A-G-C* decision the order that Petitioner Nelino Garcia Carias is ordered detained and order that a similar order shall not be included in any decision sustaining the appeal of the bond order issued with respect to Petitioner Kevin Garcia Carias;
4. Order Respondents to immediately rescind any directive, communication or notice provided to any and all DHS, ICE or other immigration enforcement officers, agents or offices, including but not limited to such enforcement officers, agents or offices located in Maryland, indicating that Petitioners are ordered detained pursuant to *N-A-G-C;*
5. Award Petitioners their reasonable attorney's fees and costs incurred in bringing this motion, to be paid by Respondents;
6. Grant such other and further relief as the Court deems just and proper.

Dated: June 11, 2026

Respectfully submitted,

s/Laura Belous
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Attorney for Petitioners