**UNITED STATES DISTRICT COURT**
**DISTRICT OF MASSACHUSETTS**

| | |
|---|---|
| ANY LUCIA LOPEZ BELLOZA,<br><br>Petitioner,<br><br>v.<br><br>PATRICIA HYDE, Field Office Director, MICHAEL KROL, HSI New England Special Agent in Charge, and TODD LYONS, Acting Director U.S. Immigration and Customs Enforcement, KRISTI NOEM, U.S. Secretary of Homeland Security, PAMELA BONDI, U.S. Attorney General, DONALD J. TRUMP, President of the United States of America<br><br>Respondents. | Case No. 1: 25-cv-13499-RGS |

**RESPONDENTS' RESPONSE TO COURT'S MEMORANDUM AND ORDER ON PETITIONER'S MOTION FOR ORDER TO SHOW CAUSE**

Respondents by and through their attorney, Leah B. Foley, United States Attorney for the District of Massachusetts, respectfully submit this response to the Court's Memorandum and Order on Petitioner's Motion for Order to Show Cause ("the decision"). Doc. No. 37.

The Court directed Respondents to convey its decision and its recommendation "that a student visa (or other comparable visa status) be extended to [Petitioner] in the Secretary's discretion" to the Department of State. *Id.* at 9. The Court also ordered Respondents provide an answer as to whether the Secretary of State would "exercise his considerable discretion under the [Immigration and Nationality Act] … to grant [Petitioner] a non-immigrant student visa." *Id.* at 8-9.

Respondents have conveyed the Court's decision and its recommendation to the Department of State. As explained below, under the INA, the Secretary of State lacks the

authority to issue visas, as such authority lies in the exclusive province of consular officers. *See* 8 U.S.C. § 1104(a). While Petitioner can certainly apply for a non-immigrant student visa at the U.S. Embassy in Honduras, Petitioner, to obtain such visa, would need to meet the eligibility requirements, including demonstrating that she has "residence in a foreign country which [she] has no intention of abandoning." 8 U.S.C. § 1101(a)(15)(F)(i). Additionally, to obtain a non-immigrant student visa, Petitioner would need to demonstrate she is not inadmissible to the United States under the INA; but at this juncture, with an executed final order of removal against her, she appears inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(9).

As explained below, U.S. Immigration and Customs Enforcement ("ICE") has considered facilitating Petitioner's return to the United States to the "status quo" that existed prior to her removal but declines to take such action as Petitioner was subject to a final order of removal and ICE's effectuation of such order comported with statute and the Constitution. Finally, Respondents urge this Court to decline to order Petitioner's return to the United States because an order of civil contempt is improper when the Court lacks jurisdiction to enter the order that was violated and even if returned to the United States to restore the status quo, Petitioner still would be subject to a final order of removal and ICE would be authorized to detain and remove Petitioner pursuant to such order.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. Factual Background

Petitioner is a native and citizen of Honduras. Petitioner and her mother entered the United States without inspection and were encountered and arrested by U.S. Border Patrol on or about December 12, 2014. They were issued Notices to Appear in removal proceedings as both were charged as inadmissible to the United States in violation of 8 U.S.C. § 1182(a)(6)(A)(i)(I)

in that they were present in the United States without inspection or admission by an immigration official.

On or about March 21, 2016, after a full hearing, an Immigration Judge ("IJ") in the Houston Immigration Court ordered the removal of Petitioner and her mother. This decision was appealed to the Board of Immigration Appeals ("BIA") and on February 8, 2017, the BIA dismissed the appeal. *Id.* At that time, Petitioner was subject to a final order of removal. *Id.* *See also* 8 C.F.R. § 1241.1(a) (an order of removal entered by an IJ "shall become final … [u]pon dismissal of an appeal by the Board of Immigration Appeals."). It does not appear that Petitioner's removal order was appealed to the U.S. Court of Appeals for the Fifth Circuit as permitted by 8 U.S.C. § 1252(a)(5).

On November 20, 2025, Petitioner was arrested by U.S. Customs and Border Protection officers at Logan International Airport on account of her final order of removal and transferred into ICE's custody. On November 21, ICE transferred Petitioner from Massachusetts to Texas via a flight that departed Massachusetts at 12:27 PM. Petitioner arrived in Texas at 4:48 PM and was housed at the Port Isabel detention facility. On November 22, ICE effectuated Petitioner's final order of removal and released her from custody via a flight that left Harlingen, Texas at 10:35 AM and landed in Honduras at 1:09 PM.

**B. <u>Procedural Background</u>**

Petitioner filed her habeas Petition at 6:00 PM on November 21, 2025 (i.e., after her arrival in Texas) challenging her detention as unlawful under the Fifth Amendment and the INA. Doc. No. 1. District Judge Burroughs issued an order at 6:10 PM on November 21 that Petitioner was not to be removed from the United States or transferred outside of Massachusetts for 72 hours so

as to allow "a fair opportunity for the judge who will be randomly assigned to this case to review the merits of the petition and to rule on any contested issues of jurisdiction," Doc. No. 2.

In response to the Petition, Respondents argued that this Court lacked habeas jurisdiction over the Petition because Petitioner was not in the District of Massachusetts when she filed the Petition. Doc. No. 8. Additionally, Respondents argued that Petitioner's arrest and detention were lawful under the INA and the Constitution as she was subject to a final order of removal from the United States. *Id.* In response to a Motion for Order to Show Cause (Doc. No. 16), Respondents again explained that ICE had legal authority to detain Petitioner pursuant to her final order of removal and there was no statutory or constitutional impediment to ICE's effectuation of that removal order. Doc. No. 27. However, Respondents did acknowledge that ICE inadvertently failed to comply with the Court's November 21, 2025 Order that prohibited ICE from removing Petitioner from the jurisdiction of the United States for a period of at least 72 hours. *Id.*

After conducting a hearing on the Petitioner's Motion for Order to Show Cause, this Court concluded that because the habeas "petition was filed after [Petitioner] had arrived at the detention center in Port Isabel, physical jurisdiction over the petition did not attach in this district, and the petition could only be brought in the district where she was then confined, namely, the Southern District of Texas." Doc. No. 37 at 7.

As to the issue of Respondents' failure to comply with the November 21, 2025 Order prohibiting removal from the United States for a period of 72 hours, the Court explained that "a finding of criminal contempt for the government's failure to abide by the letter of the court's stay order is not on the table, as the government did nothing of a deliberate nature to warrant such a finding." *Id.* at 8.

The Court deferred further consideration of whether a finding of civil contempt was appropriate, acknowledging that "there is a genuine question whether a court's ability to enforce compliance with its orders regarding consideration of a petition is independent of its jurisdiction over the petition itself, such that the power to issue civil contempt remains." *Id.* at 7 n.5. Further, the Court explained that "it would prefer to give [Respondents] the opportunity to rectify the mistake it acknowledges having made" in inadvertently failing to abide by the November 21, 2025 Order "before contemplating the issuance of any further order." *Id.* at 9. As such, the Court raised the possibility of the Secretary of State granting Petitioner a non-immigrant student visa to allow Petitioner to return to the United States. *Id.* at 8. Alternatively, the Court raised the possibility of ordering the government to arrange Petitioner's "expeditious return to the United States and to the status quo, with a threat of a finding of contempt should the government refuse to comply." *Id.* The Court therefore directed Respondents to provide an answer as to whether the Secretary of State would issue Petitioner a non-immigrant student visa within twenty-one days. *Id.* at 9.

**RESPONSE TO THE COURT'S RECOMMENDATION**

Respondents conveyed the Court's decision and its recommendation that the Secretary of State issue a non-immigrant student visa to Petitioner to the Department of State. The Department of State responded to explain that under the INA, the Secretary of State lacks the authority to adjudicate visa applications and issue visas, as such authority lies in the exclusive province of consular officers. *See* 8 U.S.C. § 1104(a). Petitioner can certainly apply for a non-immigrant student visa but would need to establish her eligibility for such visa, including demonstrating that she has "residence in a foreign country which [she] has no intention of abandoning" and obtaining a waiver for her inadmissibility to the United States due to her

removal pursuant to a valid removal order. *See* 8 U.S.C. § 1101(a)(15)(F)(i); 8 U.S.C. § 1182(a)(9).

**A. The Secretary of State Lacks Authority to Issue Visas**

The INA generally provides that a foreign national may not be admitted into the United States without having been issued an immigrant or nonimmigrant visa. *See* 8 U.S.C. §§ 1181(a), 1182(a)(7). Congress vested the power to grant or deny a visa exclusively to consular officers—expressly precluding the Secretary of State the authority to grant or refuse visas. *See* 8 U.S.C. § 1104(a) ("The Secretary of State shall be charged with the administration and the enforcement of the provisions of this chapter and all other immigration and nationality relating to (1) the power, duties, and functions of diplomatic and consular officers of the United States, *except those powers, duties, and functions conferred upon the consular officers relating to the granting or refusal of visas*." (emphasis added)).

As such, the INA "grants consular officers exclusive authority to review applications for visas, precluding even the Secretary of State from controlling their determination." *Baan Rao Thai Rest. v. Pompeo*, 985 F.3d 1020, 1024 (D.C. Cir. 2021) (internal quotation marks and citation omitted). *See also Hammoud v. Rubio,* No. 24-CV-01139-TC, 2025 WL 3760869, at *4–5 (D. Kan. Dec. 30, 2025) (Recognizing that "the Secretary of State lacks authority to adjudicate the merits of a visa application"); *Yaghoubnezhad v. Stufft*, 734 F. Supp. 3d 87, 98 (D.D.C. 2024) (same). As such, while acknowledging the Court's recommendation that the Secretary of State issue or extend a non-immigrant visa to Petitioner, under the INA, the Secretary of State lacks the authority to adjudicate and issue visas, which lies in the exclusive province of consular officers. *See* 8 U.S.C. § 1202(d) ("All nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer.")

**B. A Visa Applicant Must Demonstrate Eligibility and Admissibility**

Petitioner is certainly free to apply for a non-immigrant student visa to attempt to return to the United States but must satisfy eligibility and admissibility requirements to obtain such a visa. The visa applicant bears the burden of establishing eligibility for a visa to the satisfaction of the consular officer. 8 U.S.C. § 1361. If the applicant "fails to establish to the satisfaction of the consular officer that he is eligible to receive a visa or other document required for entry, no visa or other document required for entry shall be issued to such person." *Id.* Therefore, no presumption of any foreign national's eligibility for a visa can legally exist. *Id.*

Before issuing a visa, the consular officer must ensure the applicant is eligible for a visa and is not inadmissible to the United States under any provision of the INA. *Id.*; *Kerry v. Din*, 576 U.S. 86, 89 (2015). With certain exceptions not relevant here, 8 U.S.C. § 1201(g) provides that no visa "shall be issued to an alien" if "it appears to the consular officer . . . that such alien is ineligible to receive a visa . . . under section 1182 of this title, or any other provision of law," or if "the consular officer knows or has reason to believe" that the alien is ineligible. 8 U.S.C. § 1201(g); *see also* 22 C.F.R. § 40.6.

When a visa application has been properly completed and executed before a consular officer in accordance with the provisions of the INA and the implementing regulations, the consular officer must issue the visa or refuse the visa under 8 U.S.C. § 1182(a) or 8 U.S.C. § 1201(g), or other applicable law. 22 C.F.R. § 41.121(a).

As part of the F-1 student visa application process, the applicant files the Nonimmigrant Visa Application, or DS-160, through the State Department's website. 22 C.F.R. § 41.103(a). Once the relevant documents and fees are collected and a visa appointment is available, a visa applicant must attend an in-person interview at a U.S. Embassy or Consulate to present her visa

application. *See* 8 U.S.C. § 1202(h) ("[T]he Secretary of State shall require every alien applying for a nonimmigrant visa" to appear for an interview.)

The F-1 nonimmigrant student classification is defined as a foreign national "having a residence in a foreign country which *[she] has no intention of abandoning*, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study" at a qualifying educational institution. 8 U.S.C. § 1101(a)(15)(F)(i) (emphasis added).

To qualify for an F-1 visa, a foreign national is required to (1) apply and gain admission to an approved U.S. educational institution, (2) obtain a Form I-20, Certificate of Eligibility for Nonimmigrant Student Status ("Form I-20"), issued by an approved school, and (3) submit a visa application at the U.S. Embassy or Consulate where the foreign national resides. *Fife v. Barr,* 469 F. Supp. 3d 279, 283 (D.N.J. 2020), *aff'd sub nom. Fife v. Att'y Gen. United States*, 845 F. App'x 95 (3d Cir. 2021).

If Petitioner was to apply for a student visa, under Section 1184(4)(b), Petitioner "shall be presumed to be an immigrant until [she] establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that [she] is entitled to a nonimmigrant status under section 1101(a)(15) of this title."

The Supreme Court has explained that for certain classes of nonimmigrant visas, including student visas, "Congress expressly conditioned admission for some purposes on an intent not to abandon a foreign residence or, by implication, on an intent not to seek domicile in the United States." *Elkins v. Moreno*, 435 U.S. 647, 665 (1978). Explained further, "[b]y including restrictions on intent in the definition of some nonimmigrant classes, Congress must

have meant aliens to be barred from these classes if their real purpose in coming to the United States was to immigrate permanently." *Id.*

In Section 1101(a)(15)(F), "Congress explicitly limited eligibility for nonimmigrant status to those aliens having 'a foreign residence which the alien has no intention of abandoning.'" *Carlson v. Reed*, 249 F.3d 876, 882 (9th Cir. 2001). Indeed, the regulations underlying Section 1101(a)(15)(F) require that the student "intends, and will be able, to depart upon termination of student status." 22 C.F.R. § 41.61(b)(1)(iv).

As such, if Petitioner were to apply for a non-immigrant student visa, before any such visa could be issued by a consular officer, she would need to demonstrate, to the satisfaction of such officer, that she did not intend to abandon her foreign residence in Honduras and that she did not intend to remain in the United States upon completion of her studies.

Additionally, 8 U.S.C. § 1201(g) provides that no visa "shall be issued to an alien" if "it appears to the consular officer . . . that such alien is ineligible to receive a visa . . . under section 1182 of this title, or any other provision of law," or if "the consular officer knows or has reason to believe" that the alien is ineligible. 8 U.S.C. § 1201(g). Here, Petitioner appears inadmissible to the United States, and thus ineligible to receive a non-immigrant student visa, on account of 8 U.S.C. § 1182(a)(9), which renders individuals who have been removed from the United States subject to bars on return to the United States for certain time periods, absent receipt of a waiver of inadmissibility.

For the above reasons, the Department of State has explained that it is unable to meet the Court's recommendation that the Secretary of State unilaterally issue Petitioner a non-immigrant student visa.

## RESPONSE TO THE COURT'S SECOND ALTERNATIVE OPTION

In its decision, the Court also raised a "second alternative" as a possible remedy to ICE's inadvertent failure to comply with the Court's November 21, 2025 Order. Doc. No. 37 at 8. The Court indicated that it could possibly "order the government to arrange [Petitioner's] expeditious return to the United States and to the status quo, with a threat of a finding of contempt should the government refuse to comply." *Id.*

### A. ICE Declines to Return Petitioner to the United States

ICE has considered returning Petitioner to the United States to the status quo that existed immediately prior to her removal, but respectfully declines to pursue this course of action as Petitioner's arrest, detention, and removal of Petitioner was authorized by statute and also comported with the Constitution.

As such, any return to the status quo would place Petitioner in the same position as she was on November 22, 2025—subject to detention pending imminent removal from the United States. ICE's statutory authority to arrest, detain, and remove Petitioner stemmed from 8 U.S.C. § 1231(a), which provides for the detention and removal of aliens with final orders of removal. *See Nken v. Holder*, 556 U.S. 418, 441 (2009) (explaining that upon the BIA's affirmance of an IJ's order of removal, "the Executive Branch became legally entitled to remove him from the United States").

ICE's detention and removal of Petitioner was specifically authorized by 8 U.S.C. § 1231(a)(6) as she was subject to a final order of removal since 2017 and was inadmissible to the United States under 8 U.S.C. § 1182(a)(6)(A)(i), which applies to individuals, such as Petitioner who were "present in the United States without being admitted or paroled." *See Quezada-Martinez v. Moniz*, 722 F. Supp. 3d 7, 11 (D. Mass. 2024) (Agreeing that petitioner's "detention

is authorized by § 1231(a)(6)" as such "finding comports with the text of the statute as well as with recent Supreme Court precedent."); *Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 (D. Mass. 2017) (Finding ICE "has statutory authority" under Section 1231(a)(6) to arrest and detain an inadmissible alien beyond the removal period.) [1]

As previously argued, Petitioner's general Fifth Amendment due process claim protesting her detention for purpose of removal was without merit as the Supreme Court repeatedly has "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). The First Circuit also has recognized that the "execution of removal orders is a legitimate governmental interest which detention may facilitate." *Hernandez-Lara v. Lyons*, 10 F.4th 19, 32 (1st Cir. 2021) (cleaned up). *See also Aguilar v. U.S. Immigration and Customs Enforcement*, 510 F.3d 1, 22 (1st Cir. 2007) (recognizing the government's "legitimate interest in effectuating detentions pending the removal of persons illegally in the country")

Petitioner's claim of lack of "process" prior to removal is belied by the ample administrative process she and her mother received to this juncture where they had full opportunity to seek relief from removal. *See A. A. R. P. v. Trump*, 605 U.S. 91, 94 (2025)

[1] While Petitioner's counsel has raised various arguments about the legitimacy of Petitioner's removal order, there simply is no basis for district court review of Petitioner's removal order or the circumstances that led to such order under the INA. As explained by another session of this Court: "Put simply, there is a procedure to address such claims, and that procedure does not involve this Court. The Court is unwilling to ignore or defy the law, even in highly sympathetic circumstances. To do so would be a fundamental violation of its most basic responsibilities." *Doe v. Smith,* No. CV 18-11363-FDS, 2018 WL 4696748, at *3 (D. Mass. Oct. 1, 2018).

(explaining that to satisfy procedural due process, "no person shall be removed from the United States without opportunity, at some time, to be heard") (internal quotation marks omitted). Specifically, Petitioner and her mother were ordered removed after a full hearing in Immigration Court and after the BIA dismissed their appeal. While they could have appealed their removal order to the court of appeals, or sought to reopen proceedings administratively, or sought a stay of removal from ICE, they did not do so.

ICE respectfully decline to facilitate Petitioner's return to the United States and the status quo of November 22, 2025, prior to the inadvertent violation of the Court's Order which prohibited removal for a period of 72 hours after the Petition was filed. Such declination is driven by the fact that Petitioner was subject to a final order of removal and therefore her arrest, detention, and removal were authorized by statute and the Constitution.

Petitioner's removal in contravention of the November 21, 2025 Court Order was not akin to a removal of an individual who was in pending proceedings without a final order of removal. *See Grace v. Whitaker,* 344 F. Supp. 3d 96, 144–45 (D.D.C. 2018) (ordering return of non-citizen plaintiffs entitled to further process prior to removal). Petitioner's removal was not in contravention of an administrative stay of removal granted by ICE, an Immigration Judge, or the BIA. *See Avalos-Palma v. United States*, No. CIV.A. 13-5481 FLW, 2014 WL 3524758, at *6 (D.N.J. July 16, 2014) ("Plaintiff was deported from the United States in clear violation of the mandate to stay an *in absentia* deportation order upon the filing of a motion to reopen."). It was not in violation of a judicial stay of removal entered by a court of appeals pending adjudication of a petition for review. *See Nken*, 556 U.S. at 429. Petitioner's removal was not done in contravention of an order prohibiting removal to a certain country. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, 784 F. Supp. 3d 401, 412 (D. Mass. 2025) (ordering ICE to facilitate return of an

individual removed to Guatemala despite receipt of withholding of removal to such country). This removal was not in violation of a stay of removal entered by a district court so as to allow an alien to file a motion to reopen in Immigration Court. *See Dcosta v. Warden of Immigr. Det. Facility*, No. 4:25-CV-06177, 2026 WL 74187, at *5 (S.D. Tex. Jan. 9, 2026) (ordering return as petitioner "has been removed to the very country to which he alleges he is at risk without a meaningful opportunity to be heard on his Motion to Reopen and in violation of this Court's order.").

Here, Petitioner was not in ongoing removal proceedings. Petitioner was not subject to an administrative stay of removal. Petitioner did not have a petition for review pending. Petitioner's removal had not been withheld to a certain country. Petitioner did not have a motion to reopen pending. Instead, Petitioner was subject to a final order of removal and the purpose of the November 21, 2025 Court Order staying removal for 72 hours was "[t]o provide a fair opportunity for the judge who will be randomly assigned to this case to review the merits of the petition and to rule on any contested issues of jurisdiction." Such purpose, despite the inadvertent violation of the Order, has been achieved as this Court has since determined it lacked jurisdiction over the Petition.

As such, ICE declines to return Petitioner to the status quo "while her immigration status plays out in due course in the appropriate courts of law" as suggested by this Court (Doc. No. 37 at 8) because Petitioner's "immigration status" has already been decided by the "appropriate courts of law"—and she is subject to a final order of removal.[2]

[2] Petitioner's counsel's claim that Petitioner filed for a T-visa with U.S. Citizenship and Immigration Services after her removal does not change this result. The filing of a T-visa does not prevent arrest, detention, or removal—indeed, the applicable statue merely provides that ICE "may" grant a stay of removal if the alien "sets forth a prima facie case for approval" of the T-visa application. 8 U.S.C. § 1227(d)(1). Further, the applicable regulation specifically states that

**B. <u>This Court should Decline to Order Petitioner's Return to the United States</u>**

In addition to the reasons stated above—namely that Petitioner's return to the status quo would merely result in subsequent detention and removal again to Honduras—Respondents urge this Court to decline to enter a return order because an order of civil contempt is improper when the Court lacks jurisdiction over the underlying action from where the subsequently violated court order stemmed.

Although the Supreme Court has explained that if a party violates a court order, such party may be subject to *criminal* contempt if certain elements are established "even though the order is set aside on appeal or though the basic action has become moot," *United States v. United Mine Workers of Am.*, 330 U.S. 258, 294 (1947), the Court has distinguished *civil* contempt where the underlying order that was violated was one that the court lacked authority to enter. The Court has explained that it "does not follow, of course, that simply because a defendant may be punished for criminal contempt for disobedience of an order later set aside on appeal, that the plaintiff in the action may profit … in a simultaneous proceeding for civil contempt based upon a violation of the same order." *Id.* at 294-95. Stated further, "[t]he right to remedial relief falls with an injunction which events prove was erroneously issued … and a fortiori when the injunction or restraining order was beyond the jurisdiction of the court." *Id.* at 295. *See also Dep't of Homeland Sec. v. D. V. D.,* 145 S. Ct. 2627, 2629, 222 L. Ed. 2d 1155 (2025) (explaining that even if a district court order "operates as a remedy for civil contempt" such order "would be unenforceable given our stay of the underlying injunction"); *U.S. Cath. Conf. v. Abortion Rts. Mobilization, Inc*., 487 U.S. 72, 80 (1988) (remanding to the district court to

---

the filing of a T-visa application "has no effect on DHS authority or discretion to execute a final order of removal". 8 C.F.R. § 214.204(b)(2)(i).

determine if it had jurisdiction in the underlying action, because if not, then "the civil contempt citation must be reversed").

Consistent with Supreme Court precedent on the topic, the First Circuit also has determined that a district court must have jurisdiction over the underlying matter to hold a party in civil contempt for violation of a subsequently issued court order. *See AngioDynamics, Inc. v. Biolitec AG,* 823 F.3d 1, 7 (1st Cir. 2016) (explaining that "the court's jurisdiction to hold a party in civil contempt would spring from its jurisdiction over the action itself"). But, if the court is "without authority to issue the injunction, the contempt decree is invalid, and must be reversed." *Abbott v. E. Massachusetts St. Ry. Co.,* 19 F.2d 463, 464 (1st Cir. 1927).

Other courts similarly agree that a finding of civil contempt is improper if the underlying order that was violated is later reversed or was issued without authority. *See e.g., Reliance Ins. Co. v. Mast Const. Co.,* 84 F.3d 372, 376 (10th Cir. 1996) ("Stated more clearly, a claim for civil contempt must fall if the order that was disobeyed is subsequently reversed by the issuing court or the appellate court, or if its issuance exceeded the power of the issuing court."); *Latrobe Steel Co. v. United Steelworkers of Am., AFL-CIO*, 545 F.2d 1336, 1347 (3d Cir. 1976) ("one of the fundamental postulates of our legal system is that a decree of a court without jurisdiction is void, and that it might well be anomalous to hold a party accountable for violation of such a void order"); *Salvage Process Corp. v. Acme Tank Cleaning Process Corp.,* 86 F.2d 727, 727 (2d Cir. 1936) (same).

Here, this Court determined that it lacked jurisdiction over the Petition because it was filed when Petitioner was not in the District of Massachusetts. Doc. No. 37 at 7. This Court has acknowledged "a genuine question whether a court's ability to enforce compliance with its orders regarding consideration of a petition is independent of its jurisdiction over the petition

itself, such that the power to issue civil contempt remains." *Id.* at n.5. As the above cited law makes clear, however, if a district court lacks jurisdiction over the underlying action and the parties to such action, then an order issued by the court, even if subsequently violated, would not render a litigant subject to civil contempt. As such, in this instant matter, as the Court lacked jurisdiction over the Petition, it follows that civil contempt is improper for the inadvertent violation of the November 21, 2025 Order that was issued after Petitioner departed from the District of Massachusetts.

Even if this Court maintains an ability to enforce compliance of the November 21, 2025 Order despite its underlying lack of jurisdiction over the Petition, Respondents renew their arguments against a finding of civil contempt previously raised before this Court. Doc. No. 27, 14-17. As the First Circuit has explained, civil contempt "is aimed at restoring the parties to the positions they would have held had the order been obeyed." *Ramos Colon v. U.S. Atty. for Dist. of P.R.,* 576 F.2d 1, 5 (1st Cir.1978). Such a restoration here to the status quo that existed prior to the inadvertent violation of the Court's November 21, 2025 Order would simply result in the same outcome as Petitioner would again be subject to detention and removal from the United States pursuant to her final order of removal. Returning Petitioner to the status quo due to a finding of civil contempt in this case also does not make sense as civil "contempt exists to recompense a private party for a loss occasioned by the failure of another to comply with a court order." *Id.* at 4-5. But here, the failure to comply with the Court order simply hastened Petitioner's lawful removal from the United States, it did not cause her any independent "loss," as again, she was subject to a final order of removal and the Court order simply prohibited removal for a period of 72 hours, it did not prohibit removal generally or to a certain country.

Finally, the purpose of the November 21, 2025 Order forestalling removal—"[t]o provide a fair opportunity for the judge who will be randomly assigned to this case to review the merits of the petition and to rule on any contested issues of jurisdiction"—has been achieved as this Court has determined it lacked jurisdiction over the Petition. As such, a return to the status quo would result in the re-imposition of a court order the purpose of which has already been satisfied.[3]

## CONCLUSION

The Court's recommendation that the Secretary of State issue Petitioner a non-immigrant student visa is unfeasible as the Secretary of State lacks authority to adjudicate visa applications and issue visas and, in any event, Petitioner appears ineligible for a student visa. Respondents respectfully decline to return Petitioner to the status quo as existed prior to the inadvertent violation of the November 21, 2025 Order as Petitioner was subject to a final order of removal and would remain subject to detention and removal if returned to the United States. Finally, Respondents urge this Court to refrain from ordering Respondents to return Petitioner to the status quo because this Court lacks authority to enter such order as part of its exercise of civil contempt authority as it lacked jurisdiction over the underlying Petition in the first instance.

Respectfully submitted,

LEAH B. FOLEY
United States Attorney

Dated: February 6, 2026

[3] Similarly, this Court's November 24, 2025 Order that Petitioner not be transferred outside the United States without advance notice was entered "to provide an opportunity for a fair and orderly consideration of this matter and resolve any contested issues about jurisdiction" Doc. No. 4 at 3. Despite Petitioner's removal, this Court has directed briefing and heard argument and therefore "the opportunity for a fair and orderly consideration of this matter" has nonetheless occurred. *Id.*

Mark Sauter
Assistant United States Attorney
United States Attorney's Office
1 Courthouse Way, Suite 9200
Boston, MA 02210
Tel.: 617-748-3347
Email: mark.sauter@usdoj.gov

**CERTIFICATE OF SERVICE**

I, Mark Sauter, Assistant United States Attorney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: February 6, 2026

By: */s/ Mark Sauter*
Mark Sauter
Assistant United States Attorney