

**No. 19-1736**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

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**JOSE DANIEL GUERRA-CASTANEDA,**

**Petitioner,**

**v.**

**WILLIAM P. BARR,**

**Respondent.**

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**NOTICE OF INTENT TO REMOVE  
Agency No. A208-273-627**

**(DETAINED)**

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Pursuant to First Circuit Local Rule 18.0(1), Respondent hereby notifies the Court that the Department of Homeland Security intends to execute Petitioner's final order of removal no earlier than September 3, 2019.

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General  
Civil Division

JESSICA E. BURNS  
Senior Litigation Counsel  
Office of Immigration Litigation

/s/ Giovanni B. Di Maggio  
GIOVANNI B. DI MAGGIO  
COA# 1183679  
Trial Attorney  
Office of Immigration Litigation  
Civil Division, U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, D.C. 20044  


DATED: August 19, 2019

Attorneys for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that on August 19, 2019, I caused the foregoing document to be filed with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the CM/ECF system.

Petitioner's counsel, Nina Jane Froes, is a registered CM/ECF user and will be served through the CM/ECF system.

/s/ Giovanni B. Di Maggio

GIOVANNI B. DI MAGGIO

Trial Attorney

Office of Immigration Litigation

# United States Court of Appeals For the First Circuit

No. 19-1736

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JOSE DANIEL GUERRA-CASTANEDA,

Petitioner,

v.

WILLIAM P. BARR,

Respondent.

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Before

Kayatta and Barron,  
Circuit Judges.

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## ORDER OF COURT

Entered: August 30, 2019

Petitioner has filed a motion for stay of removal, which the government opposes. To give the court an opportunity to review that motion fully, we grant a temporary stay of removal. Removal is temporarily stayed until September 13, 2019. The court may vacate or extend this stay.

By the Court:

Maria R. Hamilton, Clerk

cc:  
Nina Jane Froes  
OIL OIL  
Giovanni Di Maggio

# United States Court of Appeals For the First Circuit

No. 19-1736

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JOSE DANIEL GUERRA-CASTANEDA,

Petitioner,

v.

WILLIAM P. BARR,

Respondent.

---

Before

Thompson, Kayatta and Barron,  
Circuit Judges.

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## ORDER OF COURT

Entered: September 11, 2019

Petitioner has filed a motion for stay of removal. On August 30, 2019, we granted a temporary stay pending full review. Having now fully reviewed the stay motion, we conclude that a further stay is in order. Petitioner's removal is hereby stayed. If the petition for review is denied -- and absent further order of court prescribing a different result -- the stay of removal will expire when mandate issues.

In addition to any other claims or issues pursued, the parties are advised to direct particular attention in their merits briefs to the CAT claim and to the agency's conclusion that petitioner did "not present[] any evidence that he will be detained in a prison governed by . . . 'extraordinary measures.'" (IJ Dec. at 11; BIA Dec. at 3).

By the Court:

Maria R. Hamilton, Clerk

cc:

Nina Jane Froes, OIL OIL, Giovanni Di Maggio



**U.S. Department of Justice**  
Civil Division  
Office of Immigration Litigation

KIM:GBD:gbd  
39-34-79.03

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September 13, 2019

**VIA CM/ECF**

Honorable Maria R. Hamilton, Clerk  
United States Court of Appeals for the First Circuit  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 2500  
Boston, MA 02210

Re: *Guerra-Castaneda v. Barr*, Docket No. 19-1736  
Respondent's Notice to the Court

Dear Ms. Hamilton:

The Department of Homeland Security ("DHS") has advised the undersigned that, today, Petitioner was removed to El Salvador, despite the Court's September 11, 2019 Order staying Petitioner's removal while his petition for review is pending with the Court. DHS further advised that it has already begun exploring options for facilitating Petitioner's return to the United States. Respondent will notify the Court if and when DHS provides any additional relevant information.

Sincerely,

/s/ Giovanni B. Di Maggio  
GIOVANNI B. DI MAGGIO  
Trial Attorney  
COA # 1183679  
U.S. Dep't of Justice, Civil Division  
Office of Immigration Litigation  
P.O. Box 878, Ben Franklin Station  
Washington, D.C. 20044

Attorney for Respondent

cc: Nina Jane Froes, Counsel for Petitioner  
Via CM/ECF

**CERTIFICATE OF SERVICE**

I certify that on September 13, 2019, I filed the foregoing with the First Circuit Court of Appeals by using the Court's CM/ECF system. I further certify that all party participants are members of the CM/ECF system and that the system will accomplish service of process.

*/s/ Giovanni B. Di Maggio*

GIOVANNI B. DI MAGGIO

Trial Attorney

COA # 1183679

U.S. Dep't of Justice, Civil Division

Office of Immigration Litigation

P.O. Box 878, Ben Franklin Station

Washington, D.C. 20044

Attorney for Respondent

# United States Court of Appeals For the First Circuit

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No. 19-1736

JOSE DANIEL GUERRA-CASTANEDA

Petitioner

v.

WILLIAM P. BARR

Respondent

---

Before

Thompson, Kayatta and Barron,  
Circuit Judges.

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## ORDER OF COURT

Entered: September 14, 2019

On Friday, September 13, 2019, this court received an after-hours filing from respondent stating that petitioner had been that same day removed to El Salvador, despite this court's September 11, 2019, order staying petitioner's removal from the United States, which remains in effect. The filing further states that DHS has "already begun exploring options for facilitating [p]etitioner's return[.]"

By no later than **5 p.m. on Monday, September 16, 2019**, respondent shall provide to the court, in detail, an explanation of how and why petitioner was removed to El Salvador in the face of this court's stay order and why respondent should not be held in contempt. Respondent shall also make all necessary inquiries and, at the same time, provide all information in its possession, custody, or control concerning (1) petitioner's current location and his condition, including whether he is presently detained by Salvadoran authorities or otherwise, and (2) the efforts being made to return him to this country forthwith. Respondent's submission to this court shall be made under the pains and penalties of perjury.

By the Court:

Maria R. Hamilton, Clerk

cc: Nina Jane Froes; OIL OIL; Giovanni Di Maggio

No. 19-1736

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

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**JOSE DANIEL GUERRA-CASTANEDA,  
Petitioner,**

**v.**

**WILLIAM P. BARR,  
Respondent.**

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**RESPONDENT'S RESPONSE TO  
THE COURT'S SEPTEMBER 14, 2019 ORDER  
Agency No. A208-273-627**

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**JOSEPH H. HUNT  
Assistant Attorney General  
Civil Division**

**KEITH I McMANUS  
Assistant Director  
Office of Immigration Litigation**

**GIOVANNI B. DI MAGGIO  
COA # 1183679  
Trial Attorney  
Office of Immigration Litigation  
Civil Division, U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, DC 20044**

**Attorneys for Respondent**

**Filed: September 16, 2019**

## INTRODUCTION

On Friday, September 13, 2019, Petitioner’s counsel, Nina Jane Froes, contacted Respondent, through the undersigned counsel, to advise that she had reason to believe that the Department of Homeland Security (“DHS”) had that same day removed Petitioner Jose Daniel Guerra-Castaneda to El Salvador, despite the Court’s September 11, 2019 order staying Mr. Guerra-Castaneda’s removal from the United States. Respondent’s counsel immediately took action to verify this information with DHS, to then request that DHS begin exploring options for facilitating Mr. Guerra-Castaneda’s return (as well as explain how Mr. Guerra-Castaneda came to be removed in the first place), and to notify the Court.

On Saturday, September 14, 2019, the Court ordered Respondent, by no later than 5:00 PM on September 16, 2019, to provide to the Court an explanation of how and why Mr. Guerra-Castaneda was removed to El Salvador in the face of the Court’s stay order and why Respondent should not be held in contempt.<sup>1</sup> See Order, No. 19-1736 (1st Cir. Sep. 14, 2019) (“order to show cause”). Additionally, the Court ordered Respondent to “make all necessary inquiries and, at the same

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<sup>1</sup> Despite counsel’s best efforts, and owing mainly to the need to further coordinate with the client agencies, Respondent was unable to timely file his response to the Court’s order by 5:00 p.m. EST. Respondent sincerely regrets that failure and apologizes to the Court and Petitioner. In an effort to request additional time, Respondent belatedly filed an emergency extension motion; as of this filing, the Court has not ruled on the extension request. In the alternative, Respondent respectfully requests that the Court grant him leave to file this response out of time.

time, provide all information in its possession, custody, or control concerning (1) [Mr. Guerra-Castaneda's] current location and his condition, including whether he is presently detained by Salvadoran authorities or otherwise, and (2) the efforts being made to return him to this country forthwith." The Court emphasized that Respondent's submission is to be made under the pains and penalties of perjury.

As a threshold matter, Respondent apologizes to the Court and to Mr. Guerra-Castaneda for this error. The government fully recognizes the seriousness of its mistake and Respondent's efforts—initially, pursuant to his own initiative and, later, also pursuant to the Court's order—to explore options for facilitating Mr. Guerra-Castaneda's return to the United States and to discern how he came to be removed in the first place are ongoing.

Mindful of the Court's directive to provide a prompt and fulsome response to its order, Respondent's counsel has compiled what information he could that is responsive to the Court's inquiries, as much as practicable as of the time of this filing. Because Respondent has herein responded to the Court's inquiries, and because the extraordinary measure of holding the Attorney General of the United States in contempt is unwarranted under the circumstances, Respondent respectfully urges the Court to refrain from holding him in contempt and to discharge the order to show cause.

## **BACKGROUND**

The facts contained herein are based upon the Court’s docket and the parties’ filings to date, the undersigned counsel’s personal knowledge of his own actions and those actions of other attorneys and staff at the Office of Immigration Litigation (“OIL”) of which he is personally aware, and from the attached sworn declarations of Immaculata Guarna-Armstrong, Assistant Field Office Director, DHS, Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”), Burlington, Massachusetts, and Robert G. Hagan, Supervisory Detention and Deportation Officer, DHS, ICE, ERO, New Orleans, Louisiana Field Office. See generally Guarna-Armstrong Declaration (“Guarna-Armstrong Decl.”); Hagan Declaration (“Hagan Decl.”).

On July 23, 2019, Mr. Guerra-Castaneda, a native and citizen of El Salvador, timely sought review of a June 24, 2019 decision of the Board of Immigration Appeals (“Board” or “BIA”) dismissing his appeal from an Immigration Judge’s (“IJ”) January 8, 2019 decision denying his applications for asylum, withholding of removal, and protection under the regulations implementing the Convention Against Torture (“CAT”), and ordering him removed to El Salvador.<sup>2</sup> See Petition

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<sup>2</sup> A more detailed procedural history of Mr. Guerra-Castaneda’s removal proceedings is recited in Respondent’s August 30, 2019 response to Mr. Guerra-Castaneda’s stay motion. See Respondent’s Opposition to Petitioner’s Untimely Motion for a Stay of Removal 1-5, No. 19-1736 (1st Cir. Aug. 30, 2019).

for Review, No. 19-1736 (1st Cir. Jul. 23, 2019); Certified Administrative Record (“AR”) 3-5, 85-96. At the time, Mr. Guerra-Castaneda was detained under DHS custody, following the July 25, 2018 publication of an INTERPOL Red Notice providing that the government of El Salvador was requesting the apprehension of Mr. Guerra-Castaneda for prosecution on murder charges. See AR 97-102, 184-85; Petition for Review 1, No. 19-1736 (1st Cir. Jul. 23, 2019). On July 25, 2019, the Court issued a Notice to Counsel Regarding the Application of Local Rule 18.0. See Notice Regarding Application of Local Rule 18.0, No. 19-1736 (1st Cir. Jul. 25, 2019). On July 26, 2019, OIL notified ICE ERO Boston that Mr. Guerra-Castaneda had filed the petition, and requested to be advised immediately with the earliest possible date of removal, if and when Mr. Guerra-Castaneda were to be scheduled for removal.

On August 19, 2019, ICE ERO notified OIL that Mr. Guerra-Castaneda was tentatively scheduled for removal to El Salvador on September 4, 2019. See Guarna-Armstrong Decl. para. 12. Also on August 19, 2019, pursuant to Local Rule 18.0, Respondent filed with the Court a Notice of Intent to Remove, notifying the Court and Mr. Guerra-Castaneda that DHS intended to execute Mr. Guerra’s final order of removal no earlier than September 3, 2019. See Notice of Intent to Remove, No. 19-1736 (1st Cir. Jul. 26, 2019). Accordingly, a first motion requesting a stay of removal would have been due on August 21, 2019, or two

business days after the filing of the Notice of Intent to Remove. See First Circuit Local Rule 18.0(2).

On August 28, 2019, ICE ERO Boston notified OIL that Mr. Guerra-Castaneda's removal had been rescheduled for September 6, 2019, and that he would be transferred to Oakdale, Louisiana on September 3, 2019 in order to stage him for removal. See Guarna-Armstrong Decl. para. 13. On August 29, 2019, Mr. Guerra-Castaneda filed with the Court a motion to stay his removal. See Stay Motion, No. 19-1736 (1st Cir. Aug. 29, 2019). Upon the Court's request, Respondent filed his response in opposition to Mr. Guerra-Castaneda's stay motion by noon the following day, that is, August 30, 2019. See Respondent's Opposition to Petitioner's Untimely Motion for a Stay of Removal, No. 19-1736 (1st Cir. Aug. 30, 2019). That same day the Court issued, at approximately 5:03 PM ET, an order granting Mr. Guerra-Castaneda a temporary stay of removal "until September 13, 2019," to give the Court an opportunity to fully review the stay motion. See Order Granting Temporary Stay, No. 19-1736 (1st Cir. Aug. 30, 2019).

On September 3, 2019, at approximately 11:35 AM ET, OIL notified the local ICE, Office of Chief Counsel ("OCC"), in Boston, Massachusetts, that the Court had issued a temporary stay until September 13, 2019. See Guarna-Armstrong Decl. para. 14. Shortly thereafter, at approximately 11:50 AM ET, OIL notified ICE ERO Boston of the same. Sometime on the morning of September 3,

2019, ICE ERO Boston transferred Mr. Guerra-Castaneda to Oakdale, Louisiana, to be staged for his removal flight that was scheduled to depart on September 6, 2019, from the ICE ERO Alexandria, Louisiana Staging Facility. See Guarna-Armstrong Decl. para. 16; Hagan Decl. para. 4. Sometime on September 3, 2019, ICE ERO Boston entered a comment into Enforce Alien Removal Module (“EARM”), ICE’s electronic database, stating that ERO was not to remove Mr. Guerra-Castaneda until and unless OIL notified ERO that the Court had lifted the stay of removal. See Guarna-Armstrong Decl. para. 15. Sometime on September 3, 2019, ICE ERO Boston notified its Air Operations unit that a temporary stay had been granted and that Mr. Guerra-Castaneda should not be removed from the United States. Guarna-Armstrong Decl. para. 17. Sometime on September 3, 2019, ICE ERO Boston instructed ICE ERO Alexandria Staging Facility to remove Mr. Guerra-Castaneda from the manifest of the flight that was scheduled to occur on September 6, 2019, which instructions, on September 4, 2019, were forwarded internally to others at ICE ERO Alexandria Staging Facility. See Hagan Decl. para. 5; Guarna-Armstrong Decl. para. 18.

On September 4, 2019, ICE ERO Boston notified ICE ERO Oakdale that the Court had granted a temporary stay of removal. See Guarna-Armstrong Decl. para. 18. Additionally, ICE ERO Boston requested that ICE ERO Oakdale take Mr. Guerra-Castaneda off the manifest for the scheduled September 6, 2019 removal

flight and that he be returned to a detention facility within ICE ERO Boston's jurisdiction the following week. See Guarna-Armstrong Decl. para. 19; Hagan Decl. para. 5. When an alien is taken off of a removal flight manifest due to a court-ordered stay of removal, ICE's usual practice is to return the detainee to the ERO Field Office with administrative control over the case (here, ICE ERO Boston). Hagan Decl. para. 6. But Mr. Guerra-Castaneda was mistakenly not returned to ICE ERO Boston, as he should have been, because he was mistakenly forgotten by the assigned ERO transferring officers. Hagan Decl. para. 6.

On September 4, 2019, Ms. Froes contacted the undersigned to advise that Mr. Guerra-Castaneda believed he would be removed the following day, prompting the undersigned to immediately inquire with ICE OCC Boston, which, in turn, immediately responded with confirmation that ICE ERO had been notified on September 3, 2019 about the temporary stay order and, in turn, had been instructed not to remove Mr. Guerra-Castaneda in light of said order. On September 11, 2019, the Court issued an order granting a permanent stay of removal while Mr. Guerra-Castaneda's petition for review is pending before the Court. See Order Granting Stay of Removal, No. 19-1736 (1st Cir. Sep. 11, 2019). On September 12, 2019, at approximately 4:54 PM ET, OIL notified ICE OCC Boston that the Court had granted a permanent stay of removal. Guarna-Armstrong Decl. para. 20. Meanwhile, officers at ICE ERO Alexandria Staging

Facility had erroneously re-manifested Mr. Guerra-Castaneda for removal, apparently thinking that the stay of removal had been cleared and that Mr. Guerra-Castaneda could be removed. Hagan Decl. para. 6.

At approximately 8:00 AM ET, Mr. Guerra-Castaneda was removed from the United States on a chartered flight that departed from ICE ERO Alexandria Staging Facility. Guarna-Armstrong Decl. para. 20. At approximately 2:18 PM ET on September 13, 2019, the undersigned counsel received a phone call from Ms. Froes, who indicated that she had reason to believe that Mr. Guerra-Castaneda had been removed to El Salvador in violation of the Court's stay order. This phone call ended at approximately 2:24 PM ET, at which time the undersigned counsel immediately notified his supervisor at OIL. At approximately 2:43 PM ET, the undersigned contacted ICE OCC Boston requesting immediate verification of Mr. Guerra-Castaneda's removal status and inquiring, in the event that he had been removed, what must be done to secure his return to the United States. At approximately 2:49 PM ET, ICE OCC Boston advised that ERO was attempting to confirm Mr. Guerra-Castaneda's status and would advise. At approximately 4:00PM ET, ICE ERO Boston confirmed that Mr. Guerra-Castaneda had been removed to El Salvador. Guarna-Armstrong Decl. para 23. At approximately 4:24 PM ET, ICE OCC Boston confirmed with OIL, per information it had received from ERO, that Mr. Guerra-Castaneda had been removed to El Salvador. At

approximately 4:40 PM ET, Respondent, through the undersigned counsel's supervisor, requested from ICE OCC Boston confirmation regarding what steps were being taken to facilitate Mr. Guerra-Castaneda's return to the United States. At approximately 5:36 PM ET, ICE OCC Boston provided written confirmation that ERO had begun efforts to facilitate Mr. Guerra-Castaneda's return. At approximately 5:45 PM ET, Respondent, through the undersigned counsel, filed with the Court a Notice stating that DHS had advised Respondent that Mr. Guerra-Castaneda had been removed to El Salvador, despite the Court's stay order, and that DHS had further advised Respondent that it had already begun exploring options for facilitating his return to the United States. See Notice to the Court, No. 19-1736 (1st Cir. Sep. 13, 2019). The Court's September 14, 2019 order to show cause followed.

## DISCUSSION

### **Discharge Of The Order To Show Cause Is Warranted**

#### **A. Respondent Has Provided The Court With Information Responsive To Its Inquiries Regarding How And Why Petitioner Was Removed, His Current Location And Condition, And The Efforts Being Made To Return Him To This Country**

The above-noted background information as well as the attached declarations are responsive to the Court's inquiries regarding how and why Mr. Guerra-Castaneda was removed. See supra Background; Guarna-Armstrong Decl. paras. 1-29; Hagan Decl. paras. 1-8. Additionally, the attached declarations are responsive to the Court's inquiries regarding Mr. Guerra-Castaneda's current location and condition, and the efforts being made to return him to the United States. See Guarna-Armstrong Decl. paras. 24-29; Hagan Decl. para. 8. Specifically, ICE ERO Boston has confirmed—through coordination with ICE ERO's Removal and International Operations Division's Assistant Attaché in El Salvador—that Mr. Guerra-Castaneda was transferred to the Salvadoran Civilian National Police upon his arrival on September 13, 2019, and is pending a court appearance for the criminal charge referenced in the INTERPOL Red Notice noted above. See Guarna-Armstrong Decl. paras. 27-28. Additionally, ICE ERO Boston has begun the process of complete a Significant Public Benefit Parole Application Form on behalf of Petitioner, and has contacted Ms. Froes to obtain certain information for this application. See Guarna-Armstrong Decl. para. 29. ICE ERO

Boston intends to forward the application to ICE ERO's Law Enforcement Parole Unit at ICE Headquarters as soon as it obtains all necessary information from Ms. Froes and as soon as the feasibility of returning Mr. Guerra-Castaneda to the United States is determined. See Guarna-Armstrong Dec. para. 29.

**B. The Extraordinary Measure Of Holding The Attorney General Of The United States In Civil Contempt Is Not Warranted**

“[H]olding the Attorney General of the United States in [civil] contempt to ensure compliance with a court order should be a last resort, to be undertaken only after all other means to achieve the ends legitimately sought by the court have been exhausted.”<sup>3</sup> In re Att’y Gen. of U.S., 596 F.2d 58, 65 (2d Cir. 1979). The Court “cannot ignore the fact that a contempt sanction imposed on the Attorney General in his official capacity has great[] public importance, with separation of power overtones, and warrants more sensitive judicial scrutiny than such a sanction imposed on an ordinary litigant.” Id. at 64. While “no person is above the law,” the Attorney General “is not simply an attorney but the chief law enforcement officer of the nation, a public official who exercises powers entrusted to him by both the executive and legislative branches, with obligations to the judicial branch, and who is the principal attorney for another branch of government coequal to the

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<sup>3</sup> The Court's show cause order does not seem to contemplate a criminal contempt charge. See generally Fed. R. Crim. Proc. 42(1).

judicial branch in constitutional function and design.” Id. at 64-65 (internal footnote omitted). “Courts accordingly owe him respect as an official and, absent an abuse of power or misuse of office, the most careful and reasoned treatment as party or as litigant.” 596 F.2d at 65.

Here, before “all other means to achieve the ends [the Court] legitimately s[eeks]” have been exhausted, the Respondent is being made to answer why he should not be held in contempt after learning and disclosing that DHS had improvidently removed Mr. Guerra-Castaneda. In re Att’y Gen. of U.S., 596 F.2d at 65. Were the Court to hold the Attorney General in civil contempt under these circumstances, it would amount to the use of its contempt power as a first (rather than last) resort. This would be especially unwarranted here, in light of the fact that Respondent’s counsel promptly notified the Court of Mr. Guerra-Castaneda’s removal while also confirming that DHS had already begun exploring remedial measures and that he would update the Court with any additional relevant information that DHS provides him. By this filing, and through the additional information provided in the attached declarations, Respondent has followed through on that promise. Furthermore, as detailed above and in the attached declarations, DHS has since taken additional, concrete steps toward locating Mr. Guerra-Castaneda and identifying potentially viable options for facilitating Mr. Guerra-Castaneda’s return to the United States, militating strongly against the need

for the Court to resort to the use of its civil contempt power to achieve the ends it seeks. See In re Att'y Gen. of U.S., 596 F.2d at 65.

**CONCLUSION**

Because Respondent has provided the Court with information responsive to its inquiries and demonstrated why the extraordinary measure of holding the Attorney General of the United States in civil contempt is unwarranted under the circumstances, the Court should discharge the order to show cause.

Respectfully Submitted,

JOSEPH H. HUNT  
Assistant Attorney General  
Civil Division

KEITH I. McMANUS  
Assistant Director  
Office of Immigration Litigation

/s/ Giovanni B. Di Maggio  
GIOVANNI B. DI MAGGIO  
COA # 1183679  
Trial Attorney  
Office of Immigration Litigation  
Civil Division, U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, DC 20044  


Dated: September 16, 2019

Attorneys for Respondent

**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 27(d)(2)(A), counsel for Respondent hereby certifies that the attached response complies with the type-volume limitation because it does not exceed 20 pages and it contains 2,831 words. Pursuant to Fed. R. App. P. 27(d)(1)(E), the undersigned further certifies that the response complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally-spaced, 14-point, Times New Roman typeface using Microsoft Word 2016.

*/s/ Giovanni B. Di Maggio* \_\_\_\_\_

GIOVANNI B. DI MAGGIO

Trial Attorney

Office of Immigration Litigation

Dated: September 16, 2019

Attorney for Respondent

**CERTIFICATE OF SERVICE**

I certify that, on September 16, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

*/s/ Giovanni B. Di Maggio* \_\_\_\_\_

GIOVANNI B. DI MAGGIO

Trial Attorney

Office of Immigration Litigation

Attorney for Respondent

DECLARATION OF ASSISTANT FIELD OFFICE DIRECTOR

IMMACULATA GUARNA-ARMSTRONG

Pursuant to the authority of 28 U.S.C. § 1746, I, Immaculata Guarna-Armstrong, the Assistant Field Office Director for U.S. Department of Homeland Security, United States Immigration and Customs Enforcement, Enforcement and Removal Operations, Burlington, Massachusetts declare as follows:

1. I am an Assistant Field Office Director (“AFOD”) for U.S. Department of Homeland Security, United States Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE”).
2. I have served as an AFOD for approximately eight (8) years. Prior to holding my current position, I served as Supervisory Detention and Deportation Officer for four (4) years.
3. Included in my official duties as an AFOD in Burlington, Massachusetts is the responsibility for managing and monitoring the scheduling of removal orders for aliens in ICE custody.
4. I have experience utilizing ICE record systems to obtain information regarding specific aliens. ICE maintains electronic and paper records on aliens in the course of its regularly conducted business activity. These records are made in the course of regularly conducted business activity at or near the time of relevant events by a person with knowledge of these events. In preparing this declaration, I have examined ICE official records, including the Enforce Alien Removal Module (“EARM”). EARM is the ICE electronic database utilized by ERO to maintain information regarding the custody and removal status of aliens. This database is ordinarily relied upon to ascertain an alien’s immigration and criminal history, current case status, and plans for removal, if any.

5. I am providing this declaration in response to this Court's Order to Show Cause entered on September 14, 2019.
6. In the course of preparing this declaration, I have examined the official records available to me regarding the immigration history and custody status of Jose Daniel Guerra-Castaneda, Administrative File No. 208-273-627. I have also discussed this case internally with Deportation Officers, Supervisory Detention and Deportation Officers, and my chain of command from within the Boston ICE-ERO office.
7. Based upon the review of ICE's official records and my conversations within my office, I declare as follows:
8. On July 25, 2019, the Department of Justice, Office of Immigration Litigation ("OIL") sent an e-mail to an e-mail account ("BOS-STAYS") monitored by Boston ICE-ERO that indicated that a petition for review had been filed in the First Circuit by the Petitioner. The OIL e-mail asked that Boston ICE-ERO send detention and removal status as soon as possible to an OIL attorney and his supervisors.
9. On July 25, 2019, a Boston ICE-ERO Deportation Officer ("DO") entered a comment into EARM indicating that ERO needed to notify OIL of removal plans for the Petitioner.
10. On July 25, 2019, a Boston ICE-ERO DO attempted to notify the OIL attorneys associated with this petition via e-mail that Boston ICE-ERO had requested a travel document for the Petitioner on July 22, 2019 and that once received, Boston ICE-ERO would move forward with scheduling the Petitioner's removal. It appears that this e-mail did not reach the OIL attorneys associated with this petition.
11. On August 6, 2019, a Boston ICE-ERO DO attempted to notify the OIL attorneys associated with this Petition via e-mail that Boston ICE-ERO had obtained a travel

document for the Petitioner, but that there was not yet a removal date or removal flight information. It appears that this e-mail did not reach the OIL attorneys associated with this petition.

12. On August 19, 2019, a Boston ICE-ERO DO notified OIL via e-mail that the Petitioner was tentatively scheduled for removal to El Salvador on September 4, 2019.
13. On August 28, 2019, a Boston ICE-ERO DO notified OIL via e-mail that the Petitioner was scheduled for removal to El Salvador on September 6, 2019 and that he would be transferred to Oakdale, Louisiana on September 3, 2019 in order to stage him for removal. The Boston ICE-ERO DO requested that OIL advise as to whether there were any impediments to transfer or removal.
14. On September 3, 2019, at approximately 11:35 A.M., Boston ICE-ERO received an e-mail from OIL notifying that the First Circuit had issued a temporary stay of removal until September 13, 2019.
15. On September 3, 2019, a Boston ICE-ERO DO entered a comment into the EARM system that a temporary stay of removal had been issued by the First Circuit until September 13, 2019 and that ERO was not to remove the Petitioner until and unless OIL notified ERO that the First Circuit had lifted the stay of removal.
16. Boston ICE-ERO transferred the Petitioner to Oakdale, Louisiana on the morning of September 3, 2019.
17. On September 3, 2019, a Boston ICE-ERO DO sent an e-mail to officers within the Boston ICE-ERO Air Operations unit advising that a temporary stay of removal had been granted and that the Petitioner should not be removed from the United States.

18. On September 4, 2019, a Boston ICE-ERO Enforcement and Removal Assistant (“ERA”) contacted multiple ERO Officers in the Oakdale, Louisiana ERO office to advise that the First Circuit had granted a temporary stay of removal. The ERA asked that the Petitioner be taken off the manifest for his scheduled September 6, 2019 removal flight and that he be returned to a detention facility within Boston ICE-ERO’s jurisdiction the following week.
19. On September 4, 2019, a Supervisory Detention and Deportation Officer from the Alexandria Staging Facility sent an e-mail to eleven ERO officers requesting that the Petitioner be pulled from “any removal flight” and returned to Boston.
20. On September 12, 2019, at 4:54 P.M., OIL notified Boston ICE-ERO via an e-mail to the BOS-STAYS e-mail account that the First Circuit, on September 11, 2019, had issued an order granting the Petitioner’s motion for a stay of removal. A Boston ICE-ERO DO received this e-mail at 4:57 P.M and confirmed receipt of such e-mail by sending an e-mail to the BOS-STAYs account.
21. On September 13, 2019, at approximately 8:00 A.M., Petitioner was removed from the United States from the Alexandria Staging Facility on a charter removal flight.
22. On September 13, 2019, a Boston ICE-ERO DO entered a comment into EARM at 9:53 A.M. that the First Circuit had entered an order granting the Petitioner’s stay motion and that therefore a stay of removal was in effect and was to remain in effect until and unless the First Circuit denied the petition for review.
23. On September 13, 2019, Boston ICE-ERO confirmed at approximately 4:00 P.M. that the Petitioner had been removed to El Salvador.

24. On September 14, 2019, Boston ICE-ERO's Acting Field Office Director contacted the Deputy Assistant Director for ICE-ERO's Headquarters' Field Operations unit to provide information on this matter.
25. Boston ICE-ERO also contacted the Unit Chief for ICE-ERO's Removal Division at ICE Headquarters on September 16, 2019 to request assistance on obtaining information on the Petitioner's location and current status.
26. On the morning of September 16, 2019, Boston ICE-ERO contacted the ICE-ERO's Removal and International Operations Division's Assistant Attaché in El Salvador. Boston ICE-ERO requested the Attaché's assistance in liaising with the Government of El Salvador to obtain information regarding the Petitioner's location and current status.
27. Boston ICE-ERO discussed the matter with the Assistant Attaché. Per the Assistant Attaché, the Petitioner was transferred to the El Salvadoran Civilian National Police upon his arrival in El Salvador on September 13, 2019. Salvadoran authorities verified the Petitioner's identity and the fact that he had an active INTERPOL Red Notice warrant prior to taking him into custody. The Petitioner is pending a court appearance for his warrant and is in the custody of the El Salvador Civilian National Police.
28. Boston ICE-ERO and ICE-ERO's Removal and International Operations unit will continue to work with the Assistant Attaché to obtain more information regarding the Petitioner's current location, the status of his criminal case, and the feasibility of his return to the United States.
29. On September 16, 2019, Boston ICE-ERO began the process of completing a Significant Public Benefit Parole Application Form on behalf of the Petitioner. Boston ICE-ERO contacted the Petitioner's attorney to obtain certain information for this Application.

Boston ICE-ERO intends to forward the Application to the ICE-ERO's Law Enforcement Parole Unit at ICE Headquarters as soon as it obtains all necessary information from the Petitioner's attorney and as soon as the feasibility of returning Petitioner to the United States is determined.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on the Sixteenth day of September, 2019



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Immaculata Guarna-Armstrong  
Assistant Field Office Director  
U.S. Department of Homeland Security  
United States Immigration and Customs Enforcement  
Burlington, Massachusetts

DECLARATION OF SUPERVISORY DETENTION AND DEPORTATION OFFICER  
ROBERT G. HAGAN

I, Robert G. Hagan, hereby make the following declaration with respect to the above-captioned matter:

1. I am a Supervisory Detention and Deportation Officer (SDDO) employed by the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), New Orleans, Louisiana Field Office. I have been employed with ICE since June 1997. I have served as an SDDO since 2015.
2. My duties as SDDO include, among other things, responsibility for the overall management of the Alexandria Staging Facility, a sub-component of the ERO New Orleans Field Office located in Alexandria, Louisiana. The subject matter of this declaration involves my official duties as SDDO and is based on personal knowledge and information made known to me in the course of my professional duties.
3. Alexandria Staging Facility (ASF) accepts detainees from around the country for removals back to the respective detainee's country of origin. The ERO Field Office that has administrative control over any given case is responsible for working the case through the proceedings process until a final order of removal has been secured and is responsible for having the case manifested for a chartered removal flight through ICE AIR Operations (IAO). A submission from that office is sent to IAO requesting a seat on a flight for the detainee to be approved and placed on that removal flight. As the flight is scheduled, a request is also submitted for room and board for ASF to accept the detainee and place the detainee on the approved flight. While a detainee is physically detained within the ERO New Orleans Field Office awaiting removal, control of the case remains

with the originating office. A court-ordered stay of removal and all other case-related decisions, including custody decisions, remain the responsibility of the ERO Field Office with administrative control over the case. If a stay of removal is granted by a court, that information is relayed to ASF by the Field Office with administrative control over the case to have the subject removed from the flight and returned to the ERO Field Office with administrative control over the case.

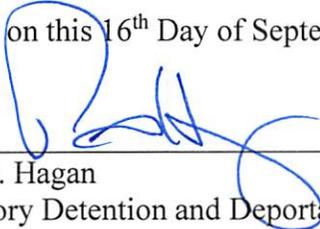
4. On September 3, 2019, Jose Daniel Guerra-Castaneda (A208 273 627) was transferred to ASF, and was housed at Natchitoches Parish Jail, staging for his removal flight that was scheduled for Friday, September 6, 2019.
5. On September 3, 2019, the ERO Boston Field Office sent an e-mail to ASF instructing that Guerra-Castaneda be removed from the manifest of the flight that was to occur on Friday, September 6, 2019. On September 4, 2019, I forwarded the email to the Deportation Officers at ASF to have the subject removed from the flight manifest and returned to Boston.
6. When an alien is taken off a removal flight manifest due to a court-ordered stay of removal, the usual practice is to return the detainee to the ERO Field Office with administrative control over the case on the next available flight back to the controlling office's area of responsibility. Guerra-Castaneda was mistakenly not returned to ERO Boston Field Office as he should have been due to the fact that ERO had moved him to one of the New Orleans outlying facilities and the transferring officers mistakenly forgot to have him returned. After not getting returned to the ERO Boston Field Office on the following week's flight, Guerra-Castaneda was erroneously re-manifested by officers at

ASF who were under the mistaken belief that the stay of removal had been cleared and the subject could be removed.

7. On September 13, 2019, once the flight had departed and landed in El Salvador, I was notified of the removal and was informed by the officers of the occurrence.
8. ERO New Orleans has offered to ERO Boston all necessary assistance in coordinating Guerra-Castaneda's return to the United States as expeditiously as possible.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 16<sup>th</sup> Day of September, 2019



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Robert G. Hagan  
Supervisory Detention and Deportation Officer  
ICE New Orleans Field Office

No. 19-1736

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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**JOSE DANIEL GUERRA-CASTANEDA,**

A File No. 208-273-627,

Petitioner,

v.

**WILLIAM BARR,**

**Attorney General of the United States,**

Respondent

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PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO THE COURT'S  
SEPTEMBER 14, 2019 ORDER

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Nina J. Froes, Esq.

COA Bar No. 1163821

[REDACTED]  
[REDACTED]  
[REDACTED]

Filed 09/17/2019

## **Introduction**

Counsel of the Petitioner opposes the request to discharge the order to show cause and believes that civil contempt sanctions are warranted under the circumstances, considering the egregious violation of the Court's order staying Petitioner's removal and the lack of satisfactory explanation for how Petitioner's removal came to occur, and because the Respondent did not fully provide all requested information, particularly about the Petitioner's whereabouts and condition.

Petitioner's counsel does not dispute the facts adduced by Respondent's counsel in the background information contained on pages 3 to 9 of the Respondent's Response to the Court's September 14, 2019 Order ("response"). Petitioner's counsel would only like to add to the statement of facts certain information within undersigned counsel's personal knowledge that is pertinent to the resolution of this matter.

## **Additional Background Information**

On the evening of September 12, at approximately 8:30 p.m., Petitioner's Counsel received a phone call from Petitioner who was very distressed and stated that he was scheduled to be on a flight to El Salvador early the next morning. According to phone records, Petitioner's counsel called the Burlington, MA ERO office at exactly 8:10 A.M. Petitioner's counsel told the duty officer who answered

the phone that she was concerned that Petitioner would be removed imminently and a stay was in place. The duty officer stated that he would put counsel through to the officer in charge of the Petitioner's case. Petitioner's counsel was placed on hold for about ten minutes before the call was answered by the removal officer. Petitioner's removal officer assured counsel that Petitioner was scheduled to be transported back to Boston that day and denied that Petitioner had been scheduled to be removed from the United States to El Salvador.

At 4:14 P.M. on September 13, 2019, Petitioner's counsel received a telephone call from Petitioner stating that he had arrived in El Salvador and that he had been brought to court and was being remanded to pretrial detention. Since that time, Petitioner's counsel has had no contact directly with the Petitioner, but has spoken to Petitioner's mother and criminal defense attorney.

Although Petitioner's counsel cannot confirm the location and condition of Petitioner with any certainty, counsel has been told by Petitioner's mother and his criminal defense lawyer that the Petitioner is being held in the "Bartolinas de Cementerio" in Cojutepeque, Cuscatlan, El Salvador, which is a pretrial detention facility. Petitioner's counsel has no reason to disbelieve the mother's and defense lawyer's representations as to the Petitioner's whereabouts. Petitioner's counsel provided information as to his whereabouts to the ERO officer who has been responsible for Petitioner's case and who is currently working on his parole

request. Respondent should be able to send an official to independently verify and report on the conditions of detention.

### Argument

#### **I. The Order to Show Cause Should Not Be Discharged**

##### **A. Respondent Has Not Provided a Fully Responsive Answer to the Court**

The background information provided by Respondent and the declarations from the Assistant Field Office Director and Detention and Deportation Officer are not fully responsive to the Court's inquiries and are wholly unsatisfactory. The two declarations essentially provide no explanation as to how the Petitioner ended up getting removed. They simply state that he was "mistakenly not returned to the ERP Boston Field Office...and the transferring officers mistakenly forgot to have him returned." Hagan Dec. para. 6. The two officials who provided affidavits are management-level Immigration and Customs Enforcement officials. They should be able to provide better excuse to this court other than simply that they "forgot" and made a "mistake" - especially when the stakes for the Petitioner are so high.

The Respondent's response also provides no information about the Petitioner's whereabouts or condition. The response only states that he was handed over to the custody of the Salvadoran National Civil Police. As stated above, counsel for Petitioner has direct contact with Petitioner's family in El Salvador and his whereabouts could be easily ascertained through counsel or via the ICE Attaché

in El Salvador. According to google maps, the distance from San Salvador to Cojutepeque is about 39 kilometers driving on the Pan-American Highway.<sup>1</sup> The actual location and conditions of detention are a central issue in the Petitioner's case and Respondent should be ordered to send an independent and impartial investigator to provide a full report on the location of detention and conditions under which the Petitioner, specifically, is being detained.

While the response does state that efforts are being made to process the Petitioner's return by way of Public Interest Parole, it does not state how our government plans to compel the government of El Salvador to return a citizen of their country who is currently in state custody pending criminal charges. Even if our government were to issue a parole document, it seems unlikely that the Petitioner will be allowed to return until after he is tried, and, then only in the event that he is acquitted.

### **B. Civil Sanctions Should Be Imposed**

This Court should impose civil sanctions in this matter because the violation of the stay was not a minor violation without consequences. The reason why the stay was issued, presumably, is because there was a concern, based on country

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<sup>1</sup> See, Google maps, San Salvador to Cojutepeque.  
<https://www.google.com/maps/dir/San+Salvador/COjutepeque/@13.7394285,-89.2217003,11z/data=!3m1!4b1!4m13!4m12!1m5!1m1!1s0x8f633067b411775d:0x1f75978893fb5c96!2m2!1d-89.2181911!2d13.6929403!1m5!1m1!1s0x8f6350043fca7223:0x7977bd4834f6c8c0!2m2!1d-88.9365976!2d13.7208503>

conditions reports, that Petitioner could be subjected to conditions amounting to torture if detained or jailed in El Salvador. He has now been returned to El Salvador and is in state custody.

While it is true that great respect and deference is owed to the Attorney General as the chief law enforcement officer of our country, he still must be held responsible for carrying out his duties properly. The Attorney General cannot be allowed to simply disregard court orders that he does not agree with, no matter the consequences that befall the person the order was meant to protect. The violation of this order was particularly egregious because the purpose was to protect the Petitioner from torture.

Wherefore, Petitioner respectfully requests that the Court issue any order deemed appropriate to compel the Respondent to report on Petitioner's whereabouts and detention and to ensure that the Petitioner is safely returned to the United States.

Dated: September 17, 2019

Respectfully Submitted,

Jose Daniel Guerra Castaneda  
By and through Counsel,

/s/ Nina J. Froes  
Nina J. Froes (COA no. 1163821)  
Attorney for Petitioner



CERTIFICATE OF SERVICE

I, Nina J. Froes, Esq., Attorney for Petitioner, hereby certify that on September 17, 2019, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the First Circuit using the appellate CM/ECF system.

X I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 17, 2019

/s/ Nina J. Froes,  
Nina J. Froes (COA no. 1163821)  
Attorney for Petitioner





**U.S. Department of Justice**  
Civil Division  
Office of Immigration Litigation

KIM:GBD:gbd  
39-34-79.03

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September 18, 2019

**VIA CM/ECF**

Honorable Maria R. Hamilton, Clerk  
United States Court of Appeals for the First Circuit  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 2500  
Boston, MA 02210

Re: *Guerra-Castaneda v. Barr*, Docket No. 19-1736  
Respondent's Second Notice to the Court

Dear Ms. Hamilton:

Consistent with Respondent's prior notice to the Court and his response to the Court's order to show cause, Respondent hereby notifies the Court as follows:

Since Respondent filed his response to the show cause order, the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), through information obtained from ICE's Assistant Attaché, has verified that Petitioner "is being held at the Cojutepeque Police Station, located in [the] city of Cojutepeque in the Department of Cuscatlan" in El Salvador. Additionally, based upon information obtained from ICE's Assistant Attaché, DHS has advised that Petitioner's case is before the "Second Instruction Court of Cojutepeque."

DHS has also advised that ICE's Enforcement and Removal Operations (ERO) in Boston is continuing to work with ICE-ERO Headquarters to provide Respondent with specific details as to the efforts being made to attempt to return the Petitioner to the United States.

Respondent will continue to notify the Court if and when DHS provides any additional relevant information.

Sincerely,

/s/ Giovanni B. Di Maggio

GIOVANNI B. DI MAGGIO

Trial Attorney

COA # 1183679

U.S. Dep't of Justice, Civil Division

Office of Immigration Litigation

P.O. Box 878, Ben Franklin Station

Washington, D.C. 20044

cc: Nina Jane Froes, Counsel for Petitioner  
Via CM/ECF

Attorney for Respondent

**CERTIFICATE OF SERVICE**

I certify that on September 18, 2019, I filed the foregoing with the First Circuit Court of Appeals by using the Court's CM/ECF system. I further certify that all party participants are members of the CM/ECF system and that the system will accomplish service of process.

*/s/ Giovanni B. Di Maggio*

GIOVANNI B. DI MAGGIO

Trial Attorney

COA # 1183679

U.S. Dep't of Justice, Civil Division

Office of Immigration Litigation

P.O. Box 878, Ben Franklin Station

Washington, D.C. 20044

Attorney for Respondent

# United States Court of Appeals For the First Circuit

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No. 19-1736

JOSE DANIEL GUERRA-CASTANEDA,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

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Before

Thompson, Kayatta, and Barron,  
Circuit Judges.

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## ORDER

Entered: September 19, 2019

On Monday, September 16, 2019, this court received respondent's response to our September 14, 2019 Order directing respondent to "provide all information in its possession, custody, or control concerning (1) petitioner's current location and his condition, including whether he is presently detained by Salvadoran authorities or otherwise, and (2) the efforts being made to return him to this country forthwith."

Having reviewed respondent's September 14, 2019 submission, as well as petitioner's September 18, 2019 responsive filing, the court has determined that certain information requested remains outstanding, and further information is needed. Respondent is directed to provide information regarding petitioner's current condition and, further, the respondent shall describe in detail the efforts being made to ascertain information about petitioner's current condition and the means and resources at its disposal to do so. The court directs respondent to provide a detailed explanation of its efforts to locate petitioner and to secure his prompt return to the United States, as well as the means and resources at respondent's disposal to do so.

This court orders respondent to provide affidavits from the transferring and manifesting officers. Respondent also is ordered to provide more detail on the transfer and manifest processes.

In addition, respondent will provide to the court the steps it will take to ensure that such removals do not happen in the future in contravention of this court's stay-of-removal orders.

Respondent shall file its response by no later than September 26, 2019, and respondent is directed that its response shall include any other information in its possession, custody, or control relevant to the court's inquiries. Respondent's submission to this court shall be made under the pains and penalties of perjury.

After reviewing respondent's submission, the court may consider directing a representative of respondent to appear and address these issues in person. Status reports shall be filed whenever the events warrant an update, but respondent must file a status report at least every ten (10) days, beginning with the tenth day following the submission discussed above.

Counsel for the petitioner is invited to file with the court further responses to offer any additional information deemed relevant to the resolution of the matter.

With respect to the case on the merits, in order to minimize the period between petitioner's unauthorized removal and any ultimate disposition of his petition, briefing is hereby expedited as follows: Petitioner's brief shall be filed on or before September 23, 2019. Respondent's brief shall be filed on or before October 3, 2019. Petitioner's reply brief, if any, shall be filed on or before October 10, 2019.

The issue of contempt is reserved for the ultimate panel's consideration and resolution, and the parties should fully brief that issue.

The court's show-cause order is continued.

By the Court:

Maria Hamilton

cc:

Nina Jane Froes

OIL

Giovanni Di Maggio

**No. 19-1736**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

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**JOSE DANIEL GUERRA-CASTANEDA,  
Petitioner,**

**v.**

**WILLIAM P. BARR,  
Respondent.**

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**RESPONDENT'S RESPONSE TO  
THE COURT'S SEPTEMBER 19, 2019 ORDER  
Agency No. A208-273-627**

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**JOSEPH H. HUNT  
Assistant Attorney General  
Civil Division**

**KEITH I. McMANUS  
Assistant Director  
Office of Immigration Litigation**

**GIOVANNI B. DI MAGGIO  
COA # 1183679  
Trial Attorney  
Office of Immigration Litigation  
Civil Division, U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, DC 20044**

**Attorneys for Respondent**

**Filed: September 26, 2019**

## INTRODUCTION

On September 19, 2019, the Court entered an order continuing its September 14, 2019 order to show cause because “the [C]ourt . . . determined that certain information requested remains outstanding, and further information is needed.” Order 1-2, No. 19-1736 (1st Cir. Sept. 19, 2019). In its order, the Court directed Respondent “to provide information regarding [P]etitioner’s current condition” and to “describe in detail the efforts being made to ascertain information about [P]etitioner’s current condition and the means and resources at its disposal to do so.” Id. at 1. The Court also directed Respondent “to provide a detailed explanation of its efforts to locate [P]etitioner and to secure his prompt return to the United States, as well as the means and resources at [R]espondent’s disposal to do so.” Id. Additionally, the Court directed Respondent “to provide affidavits from the transferring and manifesting officers” and “to provide more detail on the transfer and manifest processes.” Id. Furthermore, the Court directed Respondent to provide “the steps it will take to ensure that such removals do not happen in the future in contravention of this court’s stay-of-removal orders.” Id. at 2. The Court emphasized that Respondent “is directed that [his] response shall include any other information in [his] possession, custody, or control relevant to the [C]ourt’s inquiries” and that “Respondent’s submission to [the] [C]ourt shall be made under the pains and penalties of perjury.” Id.

Mindful of the Court's directive to provide a fulsome response to its September 19, 2019 order, Respondent's counsel has worked diligently to obtain information responsive to the Court's inquiries.

### **BACKGROUND**

The facts contained herein are based upon the Court's docket and the parties' filings to date, the undersigned counsel's personal knowledge of his own actions and those actions of other attorneys and staff at the Office of Immigration Litigation ("OIL") and the Civil Division at the Department of Justice ("Civil DOJ") of which he is personally aware, and the attached sworn declarations of Jeffrey D. Lynch, Deputy Assistant Director ("DAD"), Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"), International Operations Division ("IOD") ("Lynch Decl."); Robert G. Hagan, Supervisory Detention and Deportation Officer ("SDDO"), DHS, ICE, ERO, New Orleans, Louisiana Field Office ("Hagan Decl. II"); and Glen W. Noblitt, Deportation Officer ("DO"), DHS, ICE, ERO, New Orleans, Louisiana Field Office ("Noblitt Decl.").<sup>1</sup>

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<sup>1</sup> Due to unforeseen circumstances, DAD Lynch was unavailable to personally sign his declaration in time for filing. DAD Lynch, however, expressly authorized the undersigned counsel to sign said declaration on his behalf.

After learning that Petitioner Daniel Jose Guerra-Castaneda was removed to El Salvador, and following the Court’s initial show-cause order, OIL and its leadership have worked diligently along with various ICE offices—including local Offices of Chief Counsel (“OCC”) and representatives of ERO currently handling the matter—to explain how and why Mr. Guerra-Castaneda was removed to El Salvador in the face of the Court’s stay order; to determine Mr. Guerra-Castaneda’s current location and his condition in El Salvador; and to discover what efforts are being made to facilitate his return to the United States. Respondent’s initial response to the show-cause order and his subsequent notice to the Court provided the Court with the relevant information available to OIL and its DHS contacts at that time.

On September 19, 2019, the Court issued its most recent order requiring additional information. OIL immediately advised its leadership and Civil DOJ leadership, and notified ICE OCC Immigration Law and Practice Division (“ILPD”), ICE OCC Boston, ICE OCC New Orleans, and ICE Field Legal Operations (“FLO”) Headquarters (“HQ”). ICE ERO Law Division (“EROLD”) was also notified about the case. Since then, OIL has remained actively and consistently engaged with its own leadership, with Civil DOJ leadership, and with ICE EROLD, ICE OCC ILPD, ICE OCC Boston, ICE OCC New Orleans, and ICE FLO HQ in an effort to respond to the Court’s latest inquiries.

## **INFORMATION RESPONSIVE TO THE COURT'S INQUIRIES**

### **I. Information Regarding Means And Resources, And Efforts Being Made, To Ascertain Petitioner's Location And Current Condition And To Secure Petitioner's Return**

The declaration of DAD Lynch is instructive as to the means and resources at the government's disposal to ascertain Mr. Guerra-Castaneda's location and current condition, and to secure his return to the United States. As DAD Lynch states, "the process of transporting a foreign national from his own country to the United States is never easy, requiring coordination between two sovereign nations, and various components of three departments of the United States government in multiple locations." Lynch Decl. ¶ 7. "In this case, the process is complicated by the fact that Mr. Guerra-Castaneda is in the custody of the government of El Salvador facing murder charges." Id.

In addition to describing the general process for facilitating the return of an alien who has been removed from the United States, DAD Lynch explains that ICE ERO has communicated with one of its Assistant Attachés for Removal in El Salvador, who confirms that Mr. Guerra-Castaneda is in the custody of Salvadoran authorities pending criminal charges. See id. ¶¶ 4-12. According to DAD Lynch, the Assistant Attaché has also reached out to a Resident Legal Advisor ("RLA") with DOJ's Criminal Division stationed at the embassy in San Salvador to seek his advice on how best to proceed in obtaining relevant information about Mr. Guerra-

Castaneda and to facilitate communication with the Salvadoran government about this case. See Lynch Decl. ¶ 11. The RLA, in turn—despite generally having “no role in facilitating the return of an alien who is removed in violation of a court-ordered stay of removal”—has “reached out to a contact in the Salvadoran Attorney General’s Office, and is awaiting a response.” Id. Although Respondent is hopeful that the efforts of the RLA and ICE’s Assistant Attaché to engage with the Salvadoran government will yield additional relevant information, the unique circumstances of this case—including the “foreign policy sensitivities and sovereign criminal justice interests”—mean that ERO “may lack the means and resources” to facilitate Mr. Guerra-Castaneda’s return to the United States. Id. ¶ 12.

**II. Information Regarding The Transfer And Manifesting Processes At ICE ERO, And The Declaration Of The Deportation Officer Who Mistakenly Caused Mr. Guerra-Castaneda To Be Manifested On The September 13, 2019 Removal Flight To El Salvador**

The declaration of SDDO Hagan is instructive as to the transfer and manifesting processes at the Alexandria Staging Facility (“ASF”), a sub-component of the ERO New Orleans Field Office located in Alexandria, Louisiana. Hagan Decl. II ¶ 2. Notably, the ASF “accepts detainees from around the country” for removal and “[h]undreds of detainees are removed daily through the ASF. On

average, approximately 600 detainees move in and out of the ASF per day.” Id.

¶ 3. Nevertheless, “erroneous removals are rare.” Id.

In this case, despite the detailed procedures and built-in safeguards detailed in SDDO Hagan’s declaration—which generally will help prevent an alien’s improvident removal—Mr. Guerra-Castaneda was mistakenly removed to El Salvador in violation of the Court’s stay order. See Hagan Decl. ¶¶ 4-5. As DO Noblitt explains in his declaration, after the ASF was notified that Mr. Guerra-Castaneda was to be taken off the manifest of a removal flight scheduled for September 6, 2019, ICE should have returned him to Boston. See Noblitt Decl. ¶¶ 4-5. But due to human error, Mr. Guerra-Castaneda was mistakenly re-manifested on the next available removal flight to El Salvador on September 13, 2019. See Noblitt Decl. ¶¶ 6-8. Those unfortunate circumstances ultimately resulted in Mr. Guerra-Castaneda’s inadvertent removal. See id.

### **III. Information Regarding The Steps Respondent Will Take To Prevent Future Removals In Contravention Of The Court’s Stay-Of-Removal Orders**

The government has undertaken or will undertake the following steps to prevent future removals in contravention of the Court’s stay-of-removal orders. ICE ERO Boston advises that it will remind all officers of the importance of timely updating Enforcement Alien Removal Module (“EARM”) with notes in the “Comments” section to reflect information conveyed by OIL regarding the filing of

petitions for review in this circuit and the requirement to promptly provide OIL with information regarding detention and removal status to allow OIL adequate time to provide such information to the Court in compliance with Local Rule 18.0. EARM is the “ICE electronic database utilized by ERO to maintain information regarding the custody and removal status of aliens.” Hagan Decl. II ¶ 6. ICE ERO Boston further advises that it will remind all officers of the importance of timely updating EARM to reflect information conveyed by OIL regarding the Court’s orders entering temporary or permanent stays of removal; timely updating EARM involves entering notes in the “Comments” section of EARM as to the stay order and triggering the “Stay of Removal” alert on the EARM page as well.

Additionally, ICE ERO Boston advises that it will remind all officers of the importance of timely contacting the ERO Office with custody of the alien (if the alien is no longer detained within the Boston Area of Responsibility) to convey information regarding the Court’s stay orders. Relatedly, ICE ERO Boston also advises that it will notify all officers that such contact needs to be done both telephonically and electronically and should continue until ERO Boston receives confirmation from the ERO Office with custody of the alien that such office has received the stay order and the alien is no longer manifested for a removal flight if one was scheduled.

ICE ERO New Orleans, for its part, advises that it will communicate with the other ERO Field Offices nationwide to inform them that stay notices should be sent to the NOL-Stays e-mail box, which is monitored by the New Orleans Field Office, and that stays should be noted in the appropriate alert tab in EARM, which is accessible by all of ERO, including the DOs at ASF. In addition, ICE ERO New Orleans indicates that supervisors at ASF will have access to the NOL-Stays e-mail box as a safeguard against EARM not being timely updated. Hagan Decl. II ¶ 6. Furthermore, ASF management “has counseled and spoken with all the officers at ASF on the appropriate procedures and the importance of taking all available steps to avoid any erroneous removal in the future.” Id.

As for OIL, at a recent senior staff meeting, its Appellate Section Director reminded the heads of his litigating teams that notifying ICE promptly about the Court’s stay orders is a priority and that such notifications must be made as promptly as possible (which normally means as soon as possible within the same business day). Additionally, the OIL-Appellate Director emphasized that its attorneys who will be on leave, or who otherwise will not have access to email notifications from the Court, are expected to make arrangements for coverage by other attorneys during such absences, so as to help ensure that Court orders are not missed. Finally, the OIL-Appellate Assistant Director overseeing this case asked his fellow team leaders to remind their attorneys of the need to utilize, pursuant to

Local Rule 18.0, appropriate notice procedures when communicating with both ICE and the Court.

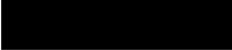
**CONCLUSION**

Respondent respectfully submits the foregoing information responsive to the Court's inquiries and will notify the Court if and when he receives or obtains any additional relevant information, in addition to providing the necessary status reports required by the Court's most recent order.

Respectfully Submitted,

JOSEPH H. HUNT  
Assistant Attorney General  
Civil Division

KEITH I. McMANUS  
Assistant Director  
Office of Immigration Litigation

/s/ Giovanni B. Di Maggio  
GIOVANNI B. DI MAGGIO  
COA # 1183679  
Trial Attorney  
Office of Immigration Litigation  
Civil Division, U.S. Department of Justice  
P.O. Box 878, Ben Franklin Station  
Washington, DC 20044  


Dated: September 26, 2019

Attorneys for Respondent

**CERTIFICATE OF SERVICE**

I certify that, on September 26, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

*/s/ Giovanni B. Di Maggio* \_\_\_\_\_

GIOVANNI B. DI MAGGIO

Trial Attorney

Office of Immigration Litigation

Attorney for Respondent

DECLARATION OF DEPUTY ASSISTANT DIRECTOR  
INTERNATIONAL OPERATIONS DIVISION  
JEFFREY D. LYNCH

1. I, Jeffrey D. Lynch, hereby make the following declaration with respect to the above-captioned matter. The subject matter of this declaration involves my official duties and is based on personal knowledge and information made known to me in the course of my professional duties.
2. I am the Deputy Assistant Director (DAD) for the International Operations Division (IOD) within the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). I have been employed with ICE and its legacy agency Immigration and Naturalization Service since 1992. I began my career as an Immigration Inspector in the Honolulu District Office, and over the years served as a Deportation Officer in York, Pennsylvania, Deputy Assistant Regional Director in Dallas, Texas, Supervisory Detention and Deportation Officer in Omaha, Nebraska, Deputy Field Office Director in Denver, Colorado, and Field Office Director before transferring to ERO Headquarters (HQ) in Washington, D.C. in March 2019.
3. As the DAD for the International Operations Division (IOD) I am familiar with the case of Jose Daniel Guerra-Castaneda (A208 273 627). I am aware that he is subject to a final order of removal, was the subject of an INTERPOL Red Notice by the government of El Salvador requesting the apprehension of Mr. Guerra-Castaneda for prosecution on murder charges, and that he was mistakenly removed to El Salvador on September 13, 2019, despite the issuance of a temporary stay of removal by this Court on August 30, 2019, and then a full stay of removal on September 11, 2019.
4. My responsibilities as DAD for IOD involve overseeing ERO Deputy Attachés for

Removal (DARs) and Assistant Attachés for Removal (AARs) who are strategically located in stations overseas to provide field offices and HQ staff with assistance on removal-related matters and the Washington, DC-based Foreign Operations Unit. DARs and AARs are ERO's overseas representatives, providing vital support to ERO's overall mission. Their responsibilities include:

- a. Providing ERO mission awareness to foreign and U.S. government officials;
  - b. Facilitating the removal operation of aliens to and through the host country;
  - c. Coordinating with ERO, HSI and OPLA field offices, HQ components, other federal, state and local law enforcement agencies, commercial airlines, interagency and foreign government counterparts on the removal of aliens from the United States.
  - d. Assisting ERO (HQ and field offices) in confirming the identity and nationality of aliens in order to obtain travel documents;
  - e. Creating and maintaining contacts in host country governments regarding the negotiation of ICE Air Operations charter flights;
  - f. Continuing to support and maintain use of the electronic Travel Document system in host countries;
  - g. Supporting the negotiation of Letters and Memorandums of Cooperation, Memorandums of Understanding, and Diplomatic Notes for removal activities with host countries;
  - h. In conjunction with the Removal and International Operations, resolving removal issues with foreign governments and elevating higher level issues to the necessary level;
  - i. Coordinating Congressional, DHS, State, ICE and other senior level official visits in furtherance of removal efforts;
  - j. Monitoring country clearances for ICE personnel on temporary duty assignments within their AOR and conducting well-being checks if needed.
5. The ICE Policy Directive Number 11061.1, "Facilitating the Return to the United States of Certain Lawfully Removed Aliens," and the "FAQs" (Frequently Asked Questions with Answers) on the implementation of that Policy Directive (attached) do not directly apply to the unique circumstances of this case, but parts of the process described, however are equally necessary to the return of an individual who was removed contrary to a court-ordered stay of removal.

6. To assist the court's understanding of the process, the relevant parts of the process

described in the Return FAQs are excerpted and re-ordered below:

In order to return to the United States by air or sea, [the alien] must have with [him] a valid passport or equivalent documentation and either a valid immigrant/nonimmigrant visa or a transportation/boarding letter.

A transportation/boarding letter is a document issued by a U.S. Embassy or Consulate abroad, allowing [that alien] to board a commercial aircraft or maritime vessel to come to the United States. A transportation/boarding letter cannot be issued without a passport or equivalent travel document.

If [the alien is] returning by air or sea, [ICE ERO] will work with the ICE Homeland Security Investigations Law Enforcement Parole Unit (LEPU) to arrange for [him] to be issued appropriate transportation documents by the U.S. Embassy or Consulate abroad. The commercial air or sea carrier will rely upon that documentation to authorize [the alien] to board the U.S.-bound flight or vessel. ICE will coordinate with U.S. Customs and Border Protection (CBP) at the port of entry in advance of [the alien's] arrival by air or sea.

ERO will also provide [the alien] with a point of contact for this process.

How long this process . . . take[s] may vary depending on several factors, including whether [the alien] return[s] to the United States by land, sea or air, as well as whether [he] possess[es] a valid passport at the time of the request, how long it takes the U.S. Embassy to prepare a transportation/boarding letter, etc. Absent unusual circumstances, the length of this process generally ranges from a matter of weeks to a few months.

See Attachment, "FAQs on Facilitating the Return of Certain Lawfully Removed Aliens," available at <https://www.ice.gov/ero/faq-return-certain-lawfully-removed-aliens>

7. As a preliminary matter, the process of transporting a foreign national from his own country to the United States is never easy, requiring coordination between two sovereign nations and various components of three departments of the United States government in multiple locations. In this case, the process is complicated by the fact that Mr. Guerra-Castaneda is in the custody of the government of El Salvador facing murder charges.

8. I supervise the Assistant Attaché in El Salvador assigned to this case and consequently am aware of the actions taken by the Assistant Attaché upon learning of Mr. Guerra-Castaneda's removal.
9. With respect to the steps DHS has taken to coordinate outreach to the Salvadoran government about facilitating Guerra-Castaneda's return to the United States and his current physical condition, below are steps DHS ICE ERO has taken to comply with the Court's requests.
10. On September 16, 2019, ICE verified through information obtained from Guadalupe (Lupita) Serna, ICE's Assistant Attaché for Removal located in San Salvador, El Salvador, that Guerra-Castaneda is being held at the Cojutepeque Police Station, located in [the] city of Cojutepeque in the Department of Cuscatlan" in El Salvador. Additionally, based upon information obtained from ICE's Assistant Attaché for Removal, DHS learned that Petitioner's case is before the Second Instruction Court of Cojutepeque.
11. On or about September 20, 2019, AAR Serna informally contacted a Resident Legal Advisor ("RLA") for the Office of Overseas Prosecutorial Development Assistance and Training ("OPDAT") within the Criminal Division at DOJ, who is posted at the embassy in San Salvador, to get his advice on the best route to take with both asking the Salvadoran government for updates on detention conditions and facilitating the return of Guerra-Castaneda. The RLA's duties include providing technical assistance to the Salvadoran Attorney General's Office, through which he has developed close relationships with local prosecutors. While the RLA generally has no role in facilitating the return of an alien who is removed in violation of a court-ordered stay of removal, in

this case AAR Serna contacted him to facilitate communication with the Salvadoran government. The RLA, in turn, has reached out to a contact in the Salvadoran Attorney General's Office, and is awaiting a response. According to AAR Serna, because of the unusual and unprecedented circumstance that Mr. Guerra-Castaneda is in the custody of Salvadoran authorities, which prevents ICE from taking its usual approach of coordinating directly with the alien, she is awaiting further advice and guidance from the RLA at the US Embassy in San Salvador before proceeding with further inquiries to the government of El Salvador.

12. The USDOJ representative at the Embassy is expected to engage with the El Salvador Attorney General's office for its advice on available procedures, taking into account foreign policy sensitivities and sovereign criminal justice interests. Again, Guerra-Castaneda is in custody in El Salvador pending charges for Homicide, and DHS ICE ERO, while exhausting efforts to secure his prompt return to the United States, may lack the means and resources to do so based on his custody and pending criminal charges.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26th day of September 2019

 for

Jeffrey D. Lynch  
Deputy Assistant Director  
International Operations Division  
Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations.

DECLARATION OF SUPERVISORY DETENTION AND DEPORTATION OFFICER  
ROBERT G. HAGAN

I, Robert G. Hagan, hereby make the following declaration with respect to the above-captioned matter:

1. I am a Supervisory Detention and Deportation Officer (SDDO) employed by the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), New Orleans, Louisiana Field Office. I have been employed with ICE since June 1997. I have served as an SDDO since 2015.
2. My duties as SDDO include, among other things, responsibility for the overall management of the Alexandria Staging Facility, a sub-component of the ERO New Orleans Field Office located in Alexandria, Louisiana. The subject matter of this declaration involves my official duties as SDDO and is based on personal knowledge and information made known to me in the course of my professional duties.
3. Alexandria Staging Facility (ASF) accepts detainees from around the country for removal back to the respective detainee's country of origin. Hundreds of detainees are removed daily through the ASF. On average, approximately 600 detainees move in and out of the ASF per day. Even though ASF conducts a high volume of removals and these removals can originate from any of the 24 ICE/ERO Field Offices, erroneous removals are rare.
4. The ERO Field Office that has administrative control over any given case is responsible for working the case until a final order of removal has been secured and is responsible for having a detained alien manifested for a chartered removal flight through ICE AIR Operations (IAO). A submission from that office is sent to IAO requesting a seat on a flight for the detainee to be approved and placed on that removal flight. At that point, an

email from the ERO Field Office retaining control of the case is sent to IAO for the detainee to be placed on a removal manifest by IAO and cleared for removal. IAO updates the computer-generated manifest so it can be emailed to the appropriate personnel. This generally happens at least a week or more in advance of the removal flight. Once the detainee is manifested by IAO, the ERO Field Office retaining control of the case transfers the detainee to ASF for this office to place the detainee on the flight. In general, the detainee is transferred to ASF on a normal IAO flight that makes stops at the various ERO field offices on a weekly basis in order to stage the detainees for removal at ASF the week prior to their scheduled removal flights. The docket control remains the responsibility of the ERO Field Office that is in charge of the case. Once a removal flight is scheduled, a request is also submitted for room and board for ASF to accept the detainee and place the detainee on the approved flight. The detainee is usually at ASF for approximately a week, if all flights go on schedule. ASF does not have control of each case in order to check each detainee to ensure that the removal can proceed because control remains with the responsible ERO Field Office. It is dependent on the ERO Field Office retaining control of the case to review each case to confirm that there is no impediment to removal and notify ASF if there is an impediment to removal.

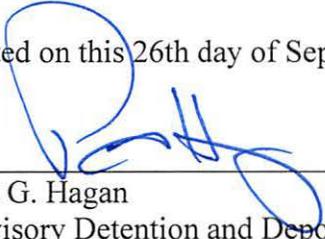
5. While a detainee is physically detained at ASF awaiting removal, control of the case remains with the originating ERO Field Office. A court-ordered stay of removal and all other case-related decisions, including custody decisions, remain the responsibility of the ERO Field Office with administrative control over the case. If a stay of removal is granted by a court, that information is relayed to ASF by the Field Office with administrative control over the case to have the subject removed from any scheduled

removal flight and returned to the ERO Field Office with administrative control over the case.

6. In an effort to avoid erroneous removals in the future, New Orleans ERO management will communicate with the other Field Offices to let them know that stay notices should be sent to the NOL-Stays e-mail box. This box is monitored by the New Orleans Field Office and stays are noted in an alert tab in Enforcement Alien Removal Module (EARM). EARM is the ICE electronic database utilized by ERO to maintain information regarding the custody and removal status of aliens. It is accessible by all of ERO, including the Deportation Officers at ASF. In addition, supervisors at ASF will have access to the NOL-Stays e-mail box as a safeguard against EARM not being reviewed or timely updated. Furthermore, upon being notified that a detainee's removal has been stayed, that his case has been remanded for further administrative proceedings, that he has been granted administrative relief from removal, or upon learning of any other circumstance that would prevent immediate removal, ASF will generally immediately coordinate the return of the detainee to the ERO Field Office with administratively control over the case as soon as a notification is made. In such cases, IAO will be notified in order for them to have the subject removed from the manifest of any scheduled removal flight. Finally, ASF management has counseled and spoken with all the officers at ASF on the appropriate procedures and the importance of taking all available steps to avoid any erroneous removal in the future.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26th day of September, 2019



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Robert G. Hagan  
Supervisory Detention and Deportation Officer  
ICE New Orleans Field Office

DECLARATION OF DEPORTATION OFFICER  
GLEN W. NOBLITT

I, Glen W. Noblitt, hereby make the following declaration with respect to the above-captioned matter:

1. I am a Deportation Officer (DO) employed by the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), New Orleans, Louisiana Field Office. I have been employed with ICE for 17 years. I have served as a DO for four years.
2. Since August 14, 2019, I have been assigned to the Details Desk at the Alexandria Staging Facility (ASF), a sub-component of the ERO New Orleans Field Office located in Alexandria, Louisiana, where my duties include coordinating alien movements, and organizing removal packets for each removal flight or ground transport. The subject matter of this declaration involves my official duties as a DO and is based on personal knowledge and information made known to me in the course of my professional duties.
3. On September 3, 2019, Jose Daniel Guerra-Castaneda (A208 273 627) was transferred from Boston to the ASF via ICE Air Operations (IAO). He was placed in Natchitoches Parish Detention Center (NPDC), staging for his removal flight to El Salvador that was scheduled for Friday, September 6, 2019.
4. On September 3, 2019, the ERO Boston Field Office sent an e-mail to ASF instructing that Guerra-Castaneda be removed from the manifest of the flight that was to occur on Friday, September 6, 2019. On September 4, 2019, that e-mail was forwarded to the DOs at ASF, including myself, to have the subject removed from the flight manifest.

5. Guerra-Castaneda was removed from the September 6, 2019 manifest and should have been scheduled with Ice Air Operations in Mesa, Az., which is the primary logistical location for Ice Air Operations, to be returned to the Boston Field Office.
6. After Guerra-Castaneda was removed from the September 6, 2019 manifest, on the afternoon of September 6, 2019, I saw that an ICE Form I-203, Order to Detain or Release, and an ICE Form I-216, Record of Person and Property Transfer, bearing Guerra-Castaneda's name and Alien Registration Number had been left in the mailbox for outgoing removal flights to El Salvador. As part of the internal filing system used at ASF to assist with movement coordination and document tracking, travel documents and travel packets are placed in country-specific bins to signify that the detainee is ready for travel and retrieved when the officers prepare for the removal flight. The Form I-203 and Form I-216 are used to place aliens on flight manifests and to also transfer detained aliens from one location to another. I checked Guerra-Castaneda's Alien number listed on the forms and determined that he was a detainee at the NPDC.
7. Due to the high number of detainees who transit in and out of the ASF on a daily basis, I did not recall that Guerra-Castaneda was the subject of the prior e-mail and the same individual whom we had removed from the manifest for the removal flight scheduled for September 6, 2019. In addition, on that same day, when I checked Enforcement Alien Removal Module (EARM), the electronic database utilized by ERO to maintain information regarding the custody and removal status of aliens, the field indicating that a stay of removal was in effect had not been activated. While there was information regarding a potential stay in the Comments section of EARM, I did not click that tab to

read the comments and erroneously assumed that I had missed placing Guerra-Castaneda on the next available flight to El Salvador that was departing on September 13, 2019.

8. As a result of my erroneous belief that Guerra-Castaneda had no stay or other impediment to removal, I requested that IAO Mesa, Arizona add Guerra-Castaneda to the next flight to El Salvador. Accordingly, he was manifested on the next available flight and was removed on September 13, 2019.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26th day of September, 2019

A handwritten signature in black ink, appearing to read "Glen W. Noblitt", is written over a horizontal line. The signature is stylized and somewhat cursive.

Glen W. Noblitt  
Deportation Officer  
ICE New Orleans Field Office



**U.S. Department of Justice**  
Civil Division  
Office of Immigration Litigation

KIM:GBD:gbd  
39-34-79.03

---

September 27, 2019

**VIA CM/ECF**

Honorable Maria R. Hamilton, Clerk  
United States Court of Appeals for the First Circuit  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 2500  
Boston, MA 02210

Re: *Guerra-Castaneda v. Barr*, Docket No. 19-1736  
Supplemental Declaration of Jeffrey D. Lynch

Dear Ms. Hamilton:

Yesterday, Respondent filed with the Court his response to the Court's September 19, 2019 order, to which is attached the declaration of Jeffrey D. Lynch. As Respondent explained in his response, Mr. Lynch was unavailable to personally sign his declaration in time for filing. Mr. Lynch, however, expressly authorized the undersigned counsel to sign the declaration on his behalf.

Today, Mr. Lynch provided the undersigned counsel with an identical copy of his declaration that now bears Mr. Lynch's own signature. The substance of the declaration is unchanged. Accordingly, Respondent hereby submits to the Court the attached supplemental declaration of Jeffrey D. Lynch.

Sincerely,

/s/ Giovanni B. Di Maggio

GIOVANNI B. DI MAGGIO

Trial Attorney

COA # 1183679

U.S. Dep't of Justice, Civil Division

Office of Immigration Litigation

P.O. Box 878, Ben Franklin Station

Washington, D.C. 20044

cc: Nina Jane Froes  
Gilles R. Bissonnette  
SangYeob Kim  
Henry Klementowicz  
Via CM/ECF

**CERTIFICATE OF SERVICE**

I certify that on September 27, 2019, I filed the foregoing with the First Circuit Court of Appeals by using the Court's CM/ECF system. I further certify that all party participants are members of the CM/ECF system and that the system will accomplish service of process.

*/s/ Giovanni B. Di Maggio*

GIOVANNI B. DI MAGGIO

Trial Attorney

COA # 1183679

U.S. Dep't of Justice, Civil Division

Office of Immigration Litigation

P.O. Box 878, Ben Franklin Station

Washington, D.C. 20044

Attorney for Respondent

DECLARATION OF DEPUTY ASSISTANT DIRECTOR  
INTERNATIONAL OPERATIONS DIVISION  
JEFFREY D. LYNCH

1. I, Jeffrey D. Lynch, hereby make the following declaration with respect to the above-captioned matter. The subject matter of this declaration involves my official duties and is based on personal knowledge and information made known to me in the course of my professional duties.
2. I am the Deputy Assistant Director (DAD) for the International Operations Division (IOD) within the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). I have been employed with ICE and its legacy agency Immigration and Naturalization Service since 1992. I began my career as an Immigration Inspector in the Honolulu District Office, and over the years served as a Deportation Officer in York, Pennsylvania, Deputy Assistant Regional Director in Dallas, Texas, Supervisory Detention and Deportation Officer in Omaha, Nebraska, Deputy Field Office Director in Denver, Colorado, and Field Office Director before transferring to ERO Headquarters (HQ) in Washington, D.C. in March 2019.
3. As the DAD for the International Operations Division (IOD) I am familiar with the case of Jose Daniel Guerra-Castaneda (A208 273 627). I am aware that he is subject to a final order of removal, was the subject of an INTERPOL Red Notice by the government of El Salvador requesting the apprehension of Mr. Guerra-Castaneda for prosecution on murder charges, and that he was mistakenly removed to El Salvador on September 13, 2019, despite the issuance of a temporary stay of removal by this Court on August 30, 2019, and then a full stay of removal on September 11, 2019.
4. My responsibilities as DAD for IOD involve overseeing ERO Deputy Attachés for

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5. The ICE Policy Directive Number 11061.1, "Facilitating the Return to the United States of Certain Lawfully Removed Aliens," and the "FAQs" (Frequently Asked Questions with Answers) on the implementation of that Policy Directive (attached) do not directly apply to the unique circumstances of this case, but parts of the process described, however are equally necessary to the return of an individual who was removed contrary to a court-ordered stay of removal.

6. To assist the court's understanding of the process, the relevant parts of the process

described in the Return FAQs are excerpted and re-ordered below:

In order to return to the United States by air or sea, [the alien] must have with [him] a valid passport or equivalent documentation and either a valid immigrant/nonimmigrant visa or a transportation/boarding letter.

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If [the alien is] returning by air or sea, [ICE ERO] will work with the ICE Homeland Security Investigations Law Enforcement Parole Unit (LEPU) to arrange for [him] to be issued appropriate transportation documents by the U.S. Embassy or Consulate abroad. The commercial air or sea carrier will rely upon that documentation to authorize [the alien] to board the U.S.-bound flight or vessel. ICE will coordinate with U.S. Customs and Border Protection (CBP) at the port of entry in advance of [the alien's] arrival by air or sea.

ERO will also provide [the alien] with a point of contact for this process.

How long this process . . . take[s] may vary depending on several factors, including whether [the alien] return[s] to the United States by land, sea or air, as well as whether [he] possess[es] a valid passport at the time of the request, how long it takes the U.S. Embassy to prepare a transportation/boarding letter, etc. Absent unusual circumstances, the length of this process generally ranges from a matter of weeks to a few months.

See Attachment, "FAQs on Facilitating the Return of Certain Lawfully Removed Aliens," available at <https://www.ice.gov/ero/faq-return-certain-lawfully-removed-aliens>

7. As a preliminary matter, the process of transporting a foreign national from his own country to the United States is never easy, requiring coordination between two sovereign nations and various components of three departments of the United States government in multiple locations. In this case, the process is complicated by the fact that Mr. Guerra-Castaneda is in the custody of the government of El Salvador facing murder charges.

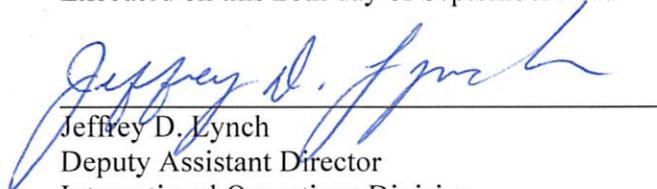
8. I supervise the Assistant Attaché in El Salvador assigned to this case and consequently am aware of the actions taken by the Assistant Attaché upon learning of Mr. Guerra-Castaneda's removal.
9. With respect to the steps DHS has taken to coordinate outreach to the Salvadoran government about facilitating Guerra-Castaneda's return to the United States and his current physical condition, below are steps DHS ICE ERO has taken to comply with the Court's requests.
10. On September 16, 2019, ICE verified through information obtained from Guadalupe (Lupita) Serna, ICE's Assistant Attaché for Removal located in San Salvador, El Salvador, that Guerra-Castaneda is being held at the Cojutepeque Police Station, located in [the] city of Cojutepeque in the Department of Cuscatlan" in El Salvador. Additionally, based upon information obtained from ICE's Assistant Attaché for Removal, DHS learned that Petitioner's case is before the Second Instruction Court of Cojutepeque.
11. On or about September 20, 2019, AAR Serna informally contacted a Resident Legal Advisor ("RLA") for the Office of Overseas Prosecutorial Development Assistance and Training ("OPDAT") within the Criminal Division at DOJ, who is posted at the embassy in San Salvador, to get his advice on the best route to take with both asking the Salvadoran government for updates on detention conditions and facilitating the return of Guerra-Castaneda. The RLA's duties include providing technical assistance to the Salvadoran Attorney General's Office, through which he has developed close relationships with local prosecutors. While the RLA generally has no role in facilitating the return of an alien who is removed in violation of a court-ordered stay of removal, in

this case AAR Serna contacted him to facilitate communication with the Salvadoran government. The RLA, in turn, has reached out to a contact in the Salvadoran Attorney General's Office, and is awaiting a response. According to AAR Serna, because of the unusual and unprecedented circumstance that Mr. Guerra-Castaneda is in the custody of Salvadoran authorities, which prevents ICE from taking its usual approach of coordinating directly with the alien, she is awaiting further advice and guidance from the RLA at the US Embassy in San Salvador before proceeding with further inquiries to the government of El Salvador.

12. The USDOJ representative at the Embassy is expected to engage with the El Salvador Attorney General's office for its advice on available procedures, taking into account foreign policy sensitivities and sovereign criminal justice interests. Again, Guerra-Castaneda is in custody in El Salvador pending charges for Homicide, and DHS ICE ERO, while exhausting efforts to secure his prompt return to the United States, may lack the means and resources to do so based on his custody and pending criminal charges.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26th day of September 2019



Jeffrey D. Lynch  
Deputy Assistant Director  
International Operations Division  
Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement and Removal Operations.

**No. 19-1736**

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**UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

**JOSE DANIEL GUERRA-CASTANEDA**

**A FILE NO. 208 273 627**

**Petitioner,**

**v.**

**WILLIAM BARR**

**Attorney General of the United States,**

**Respondent**

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**PETITIONER'S NOTICE OF NEW COUNSEL AND OF INTENTION TO  
FILE A RESPONSE TO RESPONDENT'S SEPTEMBER 26, 2019  
SUBMISSION BY OCTOBER 2, 2019**

**ON PETITION FOR REVIEW OF A DECISION OF THE BOARD OF  
IMMIGRATION APPEALS**

---

Gilles R. Bissonnette #123868  
SangYeob Kim #1183553  
Henry Klementowicz #1179814  
AMERICAN CIVIL LIBERTIES UNION OF  
NEW HAMPSHIRE  
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Gilles@aclu-nh.org  
SangYeob@aclu-nh.org  
Henry@aclu-nh.org

Nina J. Froes #1163821



Filed 09/27/2019

**PETITIONER’S NOTICE OF NEW COUNSEL AND OF INTENTION TO  
FILE A RESPONSE TO RESPONDENT’S SEPTEMBER 26, 2019  
SUBMISSION BY OCTOBER 2, 2019**

Petitioner files this Notice to inform the Court that Petitioner’s counsel, on September 19, 2019, retained attorneys from the American Civil Liberties Union of New Hampshire (“ACLU-NH”) to more fully address and brief the significant issues, including civil contempt and wrongful removal, now present in this case.<sup>1</sup> Per this Court’s September 19, 2019 order stating that “Counsel for the petitioner is invited to file with the court further responses to offer any additional information deemed relevant to the resolution of the matter,” Petitioner, through new ACLU-NH counsel, plans to file a response to Respondent’s September 26, 2019 submission by **Wednesday, October 2, 2019**. This planned response will more fully argue the necessity for civil contempt sanctions in this case, especially given the need to ensure that government agencies fully comply with future court orders. Petitioner’s counsel believes that further briefing would be of assistance to this Court, as Petitioner’s counsel is not aware of the First Circuit having ever considered coercive civil contempt sanctions in this context against the Attorney General and related responsible officers.

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<sup>1</sup> The government previously detained Petitioner in federal immigration custody at the Strafford County Department of Corrections in Dover, New Hampshire prior to his transfer to Louisiana for removal.

Respectfully Submitted,

Jose Daniel Guerra Castaneda

By and through Counsel,

/s/ Gilles Bissonnette

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Dated: September 27, 2019

**CERTIFICATE OF SERVICE**

I, Gilles Bissonnette, Esq., Attorney for Petitioner, hereby certify that on September 19, 2019, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the First Circuit using the appellate CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: September 27, 2019

/s/ Gilles Bissonnette

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