

Deifilia M. Diaz Gutierrez (94910) (EOIR: YY853664)
The Law Offices of Valencia & Diaz, Ltd.
5427 Cornell Road
Cincinnati, Ohio 45242.

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR REMOVAL PROCEEDINGS
IMMIGRATION COURT
801 W. SUPERIOR AVE, STE 13-100
CLEVELAND, OH 44113

IN THE MATTER OF)
)
XXXXXXXXXXXXXXXXXXXXX) **Case No. A 000-000-000**
)
)
IN REMOVAL PROCEEDINGS)
)
)

NEXT HEARING: May 22nd, 2017 at 8:00 a.m.

TYPE OF HEARING: Master Calendar.

IMM. JUDGE: The Honorable David C. Whipple.

**RESPONDENT'S MOTION FOR
CONTEMPT OF COURT AND
SANCTIONS**

UNITED STATES DEPARTMENT OF JUSTICE
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XXXXXXXXXXXXXXXXXXXXX)	Case No. A 000-000-000
IN REMOVAL PROCEEDINGS)	
_____)	

RESPONDENT’S MOTION FOR CONTEMPT OF COURT AND SANCTIONS

Respondent XXXXXXXXXXXXXXXXXXXXX, by and through his attorney of record, Deifilia M. Diaz Gutierrez, files this Motion for Contempt of Court and Sanctions against the Office of Chief Counsel (OCC). 8 U.S.C. §1229a (b)(1) establishes the Immigration Judge’s authority to sanction by civil penalty or findings of contempt of court.

This Honorable court ordered the OCC to contact USCIS: in specific, The Vermont Service Center, to request a prima facie determination on the respondent’s petition for U Nonimmigrant status. This determination is indispensable to the progression of the respondent’s defense to removal. This determination is essential as it would allow the respondent’s U visa application to be expedited and thus be able to obtain a defense for removal. Further, this determination can *only* [emphasis added] be requested by the Immigration and Customs Enforcement (ICE) and OCC. Thus, the disobedience of OCC to abide by this Court’s order is violating the respondent’s constitutional rights and subjects him to prolonged detention.

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On March 20, 2017, this honorable court held a bond hearing and a master calendar hearing. In both cases, as part of the exhibits, the respondent submitted a copy of his receipt of the Form I-918, Petition for U Nonimmigrant Status as proof that he had filed said petition. The Honorable Judge Janas continued this matter to March 30, 2017 at 9:30a.m. for a decision on the respondent's custody and further ordered the Office of Chief Counsel (OCC) to contact USCIS, particularly, the Vermont Service Center and request the prima facie determination on the respondent's petition for U Nonimmigrant status.

1. On March 30, 2017, the Honorable Judge Janas found the respondent to be subject to mandatory detention and denied the respondent's bond. The OCC admitted its failure to contact the USCIS Vermont Service Center to request the respondent's prima facie determination regarding his U nonimmigrant petition. As consequence, the Honorable Judge Janas granted a continuance for April 27, 2017 at 9:30a.m. to allow more time for the OCC to contact the Vermont Service Center and request a prima facie determination on the respondent's petition for U Nonimmigrant status.
2. On April 27th, 2017, a master calendar hearing was conducted where the OCC again admitted its failure to request the prima facie determination on the respondent's petition for U Nonimmigrant status. Once again, the OCC failed to abide by this court order. Thus, Honorable Judge Janas continued once again this matter to May 22, 2017 at 8:00am. This court has continued the present matter on 3 different occasions while respondent is deprived of his liberty to allow the OCC to request a prima facie

determination on the respondent's petition for U Nonimmigrant status. Yet, the OCC has failed to follow this court order.

3. On April 12, 2017, the USCIS Vermont Service Center responded to present counsel's inquiry regarding the request of prima facie determination. This agency informed present counsel of the absence of the prima facie determination request by OCC. A copy of this email was filed before this honorable court on April 25th, 2017 and is attached to this motion.
4. The OCC has refused to comply with the court's order to contact the Vermont Service Center and request a prima facie determination on the respondent's petition for U Nonimmigrant status. Thus, per 8 U.S.C. §1229a (b)(1) this Honorable Court has the authority and should to find the OCC in contempt and order sanctions against this agency.
5. The OCC failure to abide by this court's order: 1) subjected the respondent to prolong deprivation of his liberty, a violation of his constitutional rights, 2) prevented the respondent to exercise his right to seek a defense for removal, 3) forced him to incur further attorney's fees, and 4) forced this court to waste judicial resources.
6. This determination is crucial to the respondent's removal proceedings as the prima facie determination request will provide for this Honorable Court the likelihood of success on the respondent's defense for removal. Also, it would place the respondent's U Visa application to be expedited, which in turn will serve this Honorable Court to properly render a decision regarding the respondent's removal from the U.S.

For the reasons stated above, counsel for respondent respectfully requests that this Court grant respondent's motion and

- a. Hold the Office of Chief Counsel OCC in Contempt of Court,
- b. Order sanctions and attorney's fees upon the OCC for the sum of \$4,500.00.
- c. Terminate the respondent's proceedings.

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR REMOVAL PROCEEDINGS
IMMIGRATION COURT
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IN THE MATTER OF:)
)
XXXXXXXXXXXXXXXXXXXX) CASE NO: A 000-000-000
)
IN REMOVAL PROCEEDINGS)
DETAINED)

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the RESPONDENT’S MOTION FOR CONTEMPT OF COURT AND SANCTIONS, it is HEREBY ORDERED that the motion be:

GRANTED **DENIED** because:

- € DHS does not oppose the motion.
- € The Respondent does not oppose the motion.
- € A response to the motion has not been filed with the court.
- € Good cause has been established for the motion.
- € The court agrees with the reasons stated in opposition to the motion.
- € The motion is untimely per _____.
- € Other:

Deadlines:

- € The application for relief must be filed by: _____
- € The respondent must comply with DHS biometrics instructions by _____

Date

David C. Whipple

The Law Offices of Valencia & Diaz, Ltd.
5427 Cornell Road
Cincinnati, Ohio 45242.

Immigration Judge

Certificate of Service

This document was served by: Mail Personal Service

To: Respondent Respondent c/o Custodial Officer Respondent's Attorney HS

Date: _____ By: Court Staff _____

XXXXXXXXXXXXXXXXXXXXX
A 000-000-000

CERTIFICATE OF SERVICE

On this 18th day of May 2017, I, DEIFILIA M. DIAZ GUTIERREZ, served copy of the RESPONDENT'S MOTION FOR CONTEMPT OF COURT AND SANCTIONS and attached pages to ASSISTANT CHIEF COUNSEL, at the following address: 925 Keynote Circle, Suite 201, Brookland Heights, OH. 44131 via, UPS Air Next Day Delivery.

DEIFILIA M. DIAZ GUTIERREZ

05/18/2017
Date

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