

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSED

SERGIO ALBERTO BARCO MERCADO, on his
own behalf and on behalf of others similarly situated,

Plaintiff,

v.

KRISTI NOEM, Secretary of the U.S. Department of
Homeland Security, in her official capacity, et al.,

Defendants.

25 Civ. 6568 (LAK)

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3-2-26

CONTEMPT MOTION STIPULATION AND ORDER

WHEREAS, on November 25, 2025, Plaintiff Sergio Alberto Barco Mercado and the provisionally certified class (“Plaintiffs”) filed a Motion for Contempt and Sanctions against Defendants Kristi Noem, Department of Homeland Security, Todd Lyons, Immigration and Customs Enforcement, Marcos Charles, and LaDeon Francis (“Defendants”) (ECF No. 108) (“Contempt Motion”);

WHEREAS, Plaintiffs’ Contempt Motion raised concerns that Defendants have not been complying with the Courts’ orders in this case, including the Court’s Temporary Restraining Order (ECF Nos. 65 & 70) and Preliminary Injunction (ECF No. 97) (“Preliminary Injunction”);

WHEREAS, on December 11, 2025, the Court granted Plaintiffs’ requests for certain discovery in connection with the Contempt Motion and thereafter granted extensions of the Parties’ time to complete discovery in connection with the Contempt Motion and for Plaintiffs’ time to file a reply brief (ECF Nos. 128–29, 136, 139);

WHEREAS, the Parties now wish voluntarily to resolve Plaintiffs’ outstanding concerns regarding Defendants’ compliance with the Court’s orders according to the terms set forth below in this stipulation (“Stipulation”);

WHEREAS, the Parties jointly request that this Stipulation be so-ordered by the Court, as indicated by the signatures appearing below, the Court's willingness to so-order this Stipulation being a material condition of the Parties' willingness to enter into it;

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto:

1. For the avoidance of doubt, the Parties agree that all terms of the Preliminary Injunction (ECF No. 97) apply to any room, cell, or other space where individuals are detained for any length of time by Defendants at 26 Federal Plaza, New York, New York ("26 Fed"), whether on the tenth floor or on any other floor, when any room, cell, or other space is used to detain individuals for any length of time;

2. Defendants shall ensure that the confidential legal calls mandated by the Preliminary Injunction, including in Paragraphs 2(b), 2(c), and 4, take place in a private, confidential room that is not subject to auditory monitoring;

3. Defendants shall ensure that when calls are made to (212) 436-9400, the number designated for attorneys to call to contact or schedule calls with individuals detained at 26 Fed, such number will be answered by a Supervisory Detention and Deportation Officer ("SDDO") or if a SDDO is not available, by another individual under the supervision of a SDDO, or if such individual likewise is not available, that the call be transferred to a call center where it is either answered by an individual instructed regarding the requirements of the Preliminary Injunction or connected to a voicemail account. Defendants shall ensure that if the call is not answered by an SDDO or a person under the supervision of an SDDO, that there is an opportunity to leave a voicemail or verbal message and that the attorney receive a response to any voicemail or message within six (6) regular business hours. The foregoing requirements shall apply to any other telephone number designated by Defendants to facilitate calls between attorneys and individuals detained at 26 Fed;

4. The Notice of Rights required by Paragraph 2 of the Preliminary Injunction (“Notice of Rights”) shall be posted in a semi-permanent fashion (drilled or securely attached, and laminated) in the processing room of the tenth floor and on any other floor where individuals are detained by Defendants for any length of time, and posted either inside each holding cell where individuals are detained for any length of time or on the outside see-through wall of each holding cell where individuals are detained for any length of time such that the Notice of Rights can be viewed by the individuals in the holding cell. Such Notice of Rights shall be in English and Spanish, with text below in several other languages (including at a minimum Arabic, Bengali, French, Haitian Creole, Hindi, K’iche’ (Quiché)/Kxlantzij, Mam, Portuguese, Pulaar, Punjabi, Q’eqchi’ (Kekchi), Romanian, Russian, Simplified Chinese, Turkish, Vietnamese, and Wolof) saying “this notice is available in other languages upon request”;

5. All detained individuals will sign a copy of the Notice of Rights and such copy will be saved in their files. Upon Plaintiffs’ request, Defendants shall either produce to Plaintiffs’ counsel these signed Notices of Rights or a log confirming that every individual detained at 26 Fed has received such a Notice;

6. For the avoidance of doubt, nothing in this Stipulation abrogates or replaces any of Defendants’ obligations under the Preliminary Injunction, all of which remain in place;

7. In exchange for Defendants’ agreement to all of the above terms, Plaintiffs hereby withdraw the Contempt Motion without Prejudice;

8. Nothing herein shall preclude Plaintiffs from filing or re-filing a motion in the future to address issues with compliance or from seeking sanctions and/or attorneys’ fees at a later time, and Plaintiffs hereby reserve all rights and remedies going forward in connection with ensuring Defendants’ compliance with the Court’s orders;

9. All of the obligations herein shall be implemented no later than seven (7) days from the date this Stipulation is fully executed.

IT IS HEREBY FURTHER STIPULATED AND AGREED, this Stipulation may be signed in counterparts and that a facsimile and/or e-mail signature on this Stipulation shall have the effect of an original signature.

Dated: February 27, 2026
New York, New York

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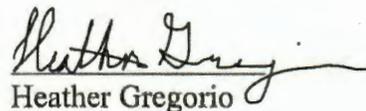
Pro Hac Vice Motion forthcoming

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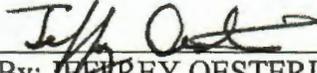


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Attorney for Defendants

SO ORDERED:

HON. LEWIS A. KAPLAN
United States District Judge

Dated: _____

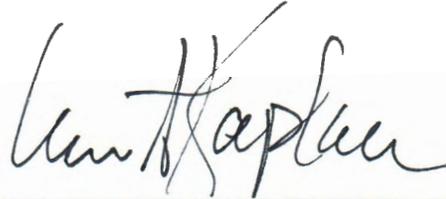
Memorandum Endorsement

Barco Mercado v. Noem, 25-cv-6568 (LAK)

For the avoidance of doubt, the parties are advised that the provisions of paragraphs 1 through 9 constitute orders of the Court compliance with which is mandatory.

SO ORDERED.

Dated: March 2, 2026

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan". The signature is written in a cursive, flowing style.

Lewis A. Kaplan
United States District Judge