

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

David BUCKINGHAM

Petitioner-Plaintiff,

v.

John TSOUKARIS, in his official capacity as Field Office Director of Newark, New Jersey, Immigration and Customs Enforcement; Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; and Pamela BONDI, Attorney General, U.S. Department of Justice, et al.

Respondents-Defendant

Case No.:

**PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER,
AND/OR PRELIMINARY INJUNCTION**

Petitioner, lawful permanent resident David Buckingham, is currently detained at the Elizabeth detention center, facing imminent transfer and separation from the attorney he has retained to defend him against deportation. The federal government announced plans to transfer the Petitioner around midnight on August 12, 2025. Despite opening a new detention facility, Delany Hall, at 451 Doremus Avenue, Newark, New Jersey, 07105. the Defendants refused to commit to transferring the Petitioner to a nearby facility accessible to counsel and are instead transferring detainees as far away as New Mexico, Louisiana, or Mississippi.

To the extent that the transfer has already been effectuated, the Petitioner also brings this motion pursuant to the All Writs Act § Act, 28 U.S.C. § 1691, and the Court's inherent equitable authority for an order returning Petitioner to New Jersey, after the Respondents transferred him to Mississippi in spite of a pending habeas corpus petition before this Court and without notice to counsel. The relief sought herein is necessary to preserve the integrity of this Court's jurisdiction over Petitioner's pending habeas corpus petition challenging the very legality of his detention. It is also modest insofar as it does not require the Court to consider the merits of the petition at this time.

Transfers effected without advance notice—frequently in the middle of the night—disrupt representation by cutting off communication and relocating clients to unknown facilities. The resulting breakdown in attorney-client consultation and delay is especially prejudicial here, where Petitioner's wife and young children live in New Jersey, he has already secured counsel in New Jersey and is scheduled for a hearing before the Elizabeth Immigration Court next week.

The Third Circuit has unequivocally recognized that an immigrant's right to counsel of her choice is enshrined in the Due Process Clause of the U.S. Constitution and in the Immigration and Nationality Act ("INA"). *Leslie v. Att'y Gen.*, 611 F.3d 171, 181 (3d Cir. 2010); *see also* 8 U.S.C. §§ 1229a(b)(4)(A), 1362. Like other courts, the Third Circuit has repeatedly emphasized the centrality of this right. *See Leslie*, 611 F.3d at 181 ("Like the Court of Appeals for the Ninth Circuit, we 'warn[] the [government] not to treat [that right] casually.'") (quoting *Orantes-Hernandez v. Thornburg*, 919 F.2d 549, 554 (9th Cir. 1990))).

The right to counsel necessarily includes the right to consult with counsel. *Arroyo v. U.S. Dep't of Homeland Sec.*, No. SACV 19-815 JGB(SHKx), 2019 WL 2912848, at *17 (C.D. Cal. June 20, 2019) (citing *Orantes-Hernandez*, 919 F.2d at 564); *Cobb v. Aytch*, 643 F.2d 946, 951, 957 (3d Cir. 1981) (noting with approval "the trial court's extensive findings on the effect of the transfer on pretrial detainees' access to legal representation, and the consequent infringement on

their exercise of their right to counsel”); *cf. Miranda v. Arizona*, 384 U.S. 436, 470 (1966) (“[T]he need for counsel to protect the Fifth Amendment privilege comprehends . . . a right to consult with counsel.”). Thus, the Third Circuit has found violations of an immigrant’s statutory and due process right to counsel where the government’s actions, including detaining the individual in Florida, interfered with his relationship with retained counsel in New Jersey. *Chlomos v. INS*, 516 F.2d 310, 313–14 (3d Cir. 1975). Likewise, multiple courts in this district have enjoined immigrants’ transfers in order to prevent separation from counsel and interference with an established attorney-client relationship pending proceedings. *See, e.g., Wilmer R.R. v. Cirillo*, No. 21-435-MCA, ECF No. 13 (D.N.J. June 28, 2021) (Att. A) (enjoining transfer of petitioner at ECCF outside of New Jersey in light of impending transfers at issue here); *Olisa U. v. Edwards*, No. 19-21282 (MCA), ECF No. 32 at 1 (D.N.J. Aug. 11, 2020) (Att. B) (enjoining transfer of petitioner outside facility during pendency of the habeas proceeding); *Maynor Armando C.G. v. Tsoukaris*, No. 20-5652-MCA, ECF No. 25 at 1 (D.N.J. June 5, 2020) (Att. C) (same); *Thakker v. Doll*, No. 20-480JEJ-MCC, ECF No. 205 at 3 (M.D. Pa. July 22, 2020) (Att. D) (enjoining transfers out of facilities in Pennsylvania without prior notice to counsel and opportunity to object).¹

Because transfers to detention centers that are not accessible to their attorneys would violate their right to counsel under both the Due Process Clause and the Immigration and Nationality Act (“INA”), the Petitioner is likely to prevail on the merits to satisfy the first criterion for a temporary restraining order (“TRO”). The Petitioner also meets the remaining criteria for a TRO. Absent relief from this Court, the Petitioner will suffer irreparable harm because he will be transferred thousands of miles away from his lawyer and face possible deportation as a result of being denied critically needed assistance. The balance of equities and

¹ *See also, e.g., A.D.R.S. v. Stirrup*, No. 1:20-cv-03685-JMF, ECF No. 5 at 2–3 (S.D.N.Y. May 13, 2020); *Antonio de Jesus M. v. Nielsen*, No. 18-cv-10963-MCA, ECF No. 6 at 1 (D.N.J. June 22, 2018); *Davis v. Hendricks*, 2012 WL 6004216, at *1 (D.N.J. Nov. 3, 2012); *Burns v. Weber*, 2010 WL 276229, at *5–6 (D.N.J. Jan. 19, 2010); *Burns v. Cicchi*, 702 F. Supp. 2d 281, 294 (D.N.J. 2010); *Hyung Woo Park v. Hendricks*, 2009 WL 3818084, at *6 (D.N.J. Nov. 12, 2009).

public interest are also in the Petitioner's favor, as the temporary relief requested will simply require Respondents to maintain the status quo and comply with the law. *See Arroyo*, 2019 WL 2912848, at*24. For these reasons, the Court should enjoin Defendants from transferring the Petitioner out of a 100-mile radius of the Elizabeth Detention Center.

BACKGROUND

1. Mr. Buckingham is a lawful permanent resident. He returned from a brief trip abroad, with his U.S. citizen eight-year-old daughter, on or about August 6, 2025, at Newark Liberty International Airport. He was stopped by Customs and Border Protection (CBP).
2. On August 6, 2025. Immigration officers from the Department of Homeland Security (DHS) arrested the Petitioner, issued a Notice to Appear (NTA) ordering him to appear at the Elizabeth, New Jersey immigration court on August 26, 2025.
3. The charges on the NTA allege that the Petitioner is a native and citizen of the United Kingdom, was accorded lawful permanent residence on April 3, 2019, and that on October 4, 2022, he was convicted of wire fraud, in violation of 18 U.S.C. §1343.
4. The Petitioner hired counsel on August 8, 2025, who instantly filed a bond re-determination request with the Immigration Judge.
5. The custody case is set to be heard at the Elizabeth Immigration Court on August 21, 2025, at 1:30 PM. *See* Exh.3.
6. Petitioner's counsel also filed his Notice of Appearance on the removal proceedings.
7. The removal case is scheduled hearing for August 26, 2025, at 9:00 AM. *See* Exh. 4
8. The Petitioner is married to a U.S. citizen and has two U.S. citizen children who all reside in New Jersey.
9. On or about August 12, 2025, the Petitioner phoned his wife to tell her that he found his name on a list to be transferred. He believed that he would be transferred to Mississippi.

10. On August 12, 2025, the Petitioner filed in this Court a Habeas petitioner challenging the legality of his detention.

By transferring Mr. Buckingham thousands of miles away from his attorney and family, ICE's actions violate his rights under the Fifth Amendment of the U.S. Constitution, the INA, the Administrative Procedures Act, and its own federal regulations. Accordingly, this Court should prevent ICE from transferring the Petitioner to Mississippi, coordinate his transfer back to New Jersey, and order his immediate release.

ARGUMENT

I. THE COURT SHOULD ORDER THE PETITIONER'S STAY OR RETURN TO THIS DISTRICT SO HE CAN LITIGATE HIS PENDING HABEAS CA

The All Writs Act ("AWA") empowers federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). That authority includes preserving prospective jurisdiction and preventing actions that would frustrate the Court's ability to adjudicate the case before it. *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966); *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 172–74 (1977); *In re Diet Drugs Prods. Liab. Litig.*, 369 F.3d 293, 305–06 (3d Cir. 2004). Courts construe the AWA broadly to "achieve all rational ends of law." *California v. M&P Invs.*, 46 F. App'x 876, 878 (9th Cir. 2002) (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942)).

Unlike a traditional preliminary injunction, which requires the party to state a claim and show injury to the moving party, an AWA injunction does not require a likelihood of success on the underlying merits. Instead, it only requires a showing that unchecked conduct would impair the Court's ability to bring the litigation to a "natural conclusion." *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004); see *Arctic Zero, Inc. v. Aspen Hills, Inc.*, No. 17-cv-00459, 2018 WL 2018115, at *5 (S.D. Cal. May 1, 2018). Where transfer would undermine

counsel access and frustrate this Court’s review, the AWA authorizes a judgment maintaining the status quo or restoring the status quo ante. See, e.g., *Michael v. INS*, 48 F.3d 657, 664 (2d Cir. 1995) (ordering return under AWA to safeguard appellate jurisdiction); *SEC v. Vision Commc’ns, Inc.*, 74 F.3d 287, 291 (D.C. Cir. 1996).

Moreover, Courts retain inherent equitable authority to enjoin transfers pending a habeas petition, *see* 28 U.S.C. § 2243 (habeas courts authorized to order relief “as law and justice require”), an authority that the courts have regularly exercised where a transfer threatened to defeat jurisdiction or access to counsel. *See, e.g.*, Mem. Op. & Order, *Perez Parra v. Catro*, No. 24-cv-912 (D.N.M. Feb. 9, 2025); *see also* *Zepeda Rivas v. Davis*, 504 F. Supp. 3d 1060, 1077 (N.D. Cal. 2020); *Dorce v. Wolf*, No. 20-CV-11306, 2020 WL 7264869 (D. Mass. Dec. 10, 2020).

Thus, an injunction is necessary here to preserve this Court’s jurisdiction and Petitioner’s right to counsel while the case proceeds. *See Ex parte Endo*, 323 U.S. 283, 306–08 (1944) (transfer does not defeat habeas jurisdiction once properly invoked).

II. ALTERNATIVELY, THIS COURT SHOULD ORDER EMERGENCY RELIEF AS IT IS WARRANTED AND PROCEDURALLY PROPER

Applications for temporary restraining orders (“TRO”) are governed by the same standards as motions for preliminary injunctions. *Genentech, Inc. v. Immunex Rhode Island Corp.*, 395 F. Supp. 3d 357, 366 (D. Del. 2019). For either, the moving party must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent preliminary relief; (3) that the balance of equities tip in favor of the moving party; and (4) that the public interest is served by an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also* *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 178 (3d Cir. 2018). In the Third Circuit, courts look first to whether “a movant [has met] the threshold for the first two ‘most critical’

factors.” *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017), as amended (June 26, 2017). To establish a likelihood of success on the merits, a movant must show chances “significantly better than negligible but not necessarily more likely than not.” *Id.* A movant must also show he is “more likely than not to suffer irreparable harm in the absence of preliminary relief.” *Id.* Once those “most critical” factors are met, the court balances all factors to determine whether preliminary relief should issue. *Osorio-Martinez*, 893 F.3d at 178.

The Petitioner can demonstrate that he is likely to prevail on their constitutional and statutory claims.

A. Due Process and the INA Protect the Right to Counsel of Choice and Ability to Confer with that Counsel

“[T]he Fifth Amendment . . . indisputably affords [a noncitizen] the right to counsel of his or her own choice at his or her own expense,” and the INA codifies that right. *Leslie v. Att'y Gen.*, 611 F.3d 171, 181–82 (3d Cir. 2010) (citing 8 U.S.C. §§ 1229a(b)(4)(A), 1362; 8 C.F.R. §§ 1003.16(b), 1240.3). That right “must be respected in substance as well as in name,” including the right to consult with counsel. *Orantes-Hernandez v. Meese*, 919 F.2d 549, 554 (9th Cir. 1990) (quotation omitted). Government action that unduly curtails an ongoing attorney-client relationship violates due process. *Cobb v. Aylch*, 643 F.2d 946, 957–63 (3d Cir. 1981) (affirming injunction against transfers that impeded access to counsel); *Chlomos v. INS*, 516 F.2d 310, 313–14 (3d Cir. 1975) (vacating order where government's choices prevented communication with counsel). See also *Calderon-Rosas v. Att'y Gen.*, 957 F.3d 378, 384–85 (3d Cir. 2020) (recognizing due-process right to effective assistance in removal proceedings); *Forteau v. Att'y Gen.*, 383 F. App'x 151, 154 (3d Cir. 2010).

Courts enjoin ICE transfers that sever established attorney-client relationships. *Arroyo v. DHS*, No. 8:19-cv-815, 2019 WL 2912848, at 17–25 (C.D. Cal. June 20, 2019) (preliminary

injunction prohibiting transfers of represented detainees outside jurisdiction because transfers “interfere[d] with established attorney-client relationships”).

Here, the Petitioner’s transfer outside of the state of New Jersey will interfere with the attorney-client relationship. The Petitioner retained New Jersey counsel on August 8, 2025. Moving the Petitioner hundreds of miles from EDC will dismantle that relationship. Counsel will no longer be able to physically consult with his client if he is moved outside of the state of New Jersey. This would impede the Petitioner’s attorney from effectuating confidential, in-person meetings and proximity to sustain a healthy attorney-client relationship. If the Petitioner is unable to meet with his attorney in person, this will impede the Petitioner from sharing legal documentation that ICE gives the Petitioner, hamper obtaining the Petitioner’s signature for important applications for relief, impede fact development, and jeopardize pending and foreseeable filings. [Walczek Decl. ¶¶ 12-13]. That is precisely the undue curtailment condemned in *Cobb* and *Chlomos*. *Leslie* confirms no prejudice showing is required to remedy right-to-counsel violations. 611 F.3d at 182 & n.6.

B. The Petitioner Will Suffer Irreparable Harm

The Petitioner’s transfer outside of New Jersey will cause irreparable harm by impeding access to counsel and thwarting his right to counsel of his choice. It has been established that the deprivation of constitutional rights is irreparable harm. *Osorio-Martinez*, 893 F.3d at 179; *Buck v. Stankovic*, 485 F. Supp. 2d 576, 586 (M.D. Pa. 2007). For detained noncitizens, severing counsel access multiplies the risk of wrongful removal and permanent family separation. Here, the Petitioner would also be separated from his U.S. citizen wife and their two U.S. citizen children. It’s also important to note that the Petitioner’s children suffer from medical conditions. Once the transfer is accomplished, the harm that will stem from that transfer will cause

irreparable harm. Transfers to distant facilities like Mississippi destroy the ability to meet confidentially, prepare for testimony, gather records, and coordinate collateral proceedings. *See also* Boggs Decl., Ex. H (TRAC Immigration, State and County Details on Deportation Proceedings in Immigration Court, through May 21, 2021) (noting that only 19 percent of those detained are represented compared to 70 percent of those who have been released from detention). *Arroyo*, 2019 WL 2912848, at 22–25 (finding exactly these harms).

B. Balance of Equities and Public Interest Favors the Petitioner

The Petitioner's request relief only poses a minimal burden on the government. The government has other facilities that it can transfer the Petitioner to in New Jersey, and within a 100-mile radius. The Petitioner is only requesting that the Court enjoin his transfer within 100 miles of the Elizabeth Detention Center to ensure communication with his attorney continues and to safeguard the fundamental right to counsel. Public interest always favors preventing constitutional violations and wrongful removal. *Nken v. Holder*, 556 U.S. 418, 436 (2009); *Osorio-Martinez*, 893 F.3d at 179.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court issue an order under the All Writs Act and/or the Court's inherent equitable authority to reverse Petitioner's transfer and return him to New York and to the status quo at the commencement of this litigation.

Dated: August 13, 2025

Respectfully submitted,



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