U.S. Department of Justice

United States Attorney
Southern District of New York

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86 Chambers Street
New York, New York 10007

September 30, 2025

BY ECF
Hon. Paul A. Engelmayer
United States District Judge
Southern District of New York
40 Foley Square
New York, N.Y. 10007

Re: *Helen Sarahi Funes Gamez v. LaDeon Francis, et al.*, No. 25 Civ. 7429 (PAE)

Dear Judge Engelmayer:

This Office represents the respondents (the "Government") in this habeas petition seeking release of Petitioner from detention by U.S. Immigration and Customs Enforcement ("ICE"). We write respectfully in opposition to Petitioner's letter motion for an order requiring that Petitioner appear in person at the October 6 hearing. Dkt. No. 24. The Government respectfully submits that Petitioner should be permitted to testify at the October 6 hearing by telephone or videoconference, rather than requiring ICE to transport Petitioner from the Richwood Correctional Center in Monroe, Louisiana to the Southern District of New York. For the reasons set forth below, Petitioner has not met her burden for such an order.

Though Petitioner's letter motion does not frame the request as a motion for a mandatory preliminary injunction, that is what it seeks — an order compelling ICE to return Petitioner to this District "to ensure and facilitate Petitioner's physical presence at the September 29 hearing." Dkt. No. 24. Such injunctive relief requires a strong showing. "A preliminary injunction 'is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.'" *Students for Fair Admissions v. U.S. Military Academy at West Point*, 709 F. Supp. 3d 118, 129 (S.D.N.Y. 2024) (quoting *Grand River Enterprises Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007)); *see also Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008) ("A preliminary injunction is an extraordinary remedy never awarded as of right."). To demonstrate entitlement to this extraordinary and drastic remedy, a movant must clearly demonstrate: "(1) irreparable harm absent injunctive relief, (2) a likelihood of success on the merits, [] (3) public interest weighing in favor of granting the injunction," and (4) "that the balance of equities tips in his or her favor." *A.H. by & through Hester v. French*, 985 F.3d 165, 176 (2d Cir. 2021) (quotation marks and footnotes omitted).

Where, as here, the movant seeks "to modify the status quo by virtue of a 'mandatory preliminary injunction' (as opposed to seeking a 'prohibitory preliminary injunction' to maintain the status quo)," the "standard for obtaining preliminary injunctive relief is higher." *Id.* (quoting

Yang v. Kosinski, 960 F.3d 119, 127 (2d Cir. 2020)). "In this circumstance, the movant must . . . make a strong showing of irreparable harm and demonstrate a clear or substantial likelihood of success on the merits." *Id.* (emphasis added; quotation marks omitted); *accord Tom Doherty Associates, Inc. v. Saban Entertainment, Inc.*, 60 F.3d 27, 34 (2d Cir. 1995) ("[A] mandatory injunction should issue only upon a clear showing that the moving party is entitled to the relief requested, or where extreme or very serious damage will result from a denial of preliminary relief." (quotation marks omitted)).

Petitioner cannot meet her burden. Petitioner is presently detained at the Richwood Correctional Center in Monroe, Louisiana. *See* Declaration of Stephen Allport, dated September 19, 2025, ¶ 23. There are no ICE detention facilities in either the Southern District of New York or the Eastern District of New York that house female ICE detainees. *Id.* ¶ 21. The Government has offered to make Petitioner available by telephone or videoconference for the hearing on Monday morning. As she will thus have the ability to testify and raise any factual issues at the hearing, there is no irreparable harm to the Petitioner.

The crux of Petitioner's argument is that her physical appearance is required by the habeas statute, which provides that: "Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained." 28 U.S.C. § 2243. While the Government's proposal to have Petitioner appear by telephone or videoconference is not identical to having the Petitioner in person, it nevertheless meets the same goals underlying the statute: "Whether a habeas petitioner appears in person or telephonically, a habeas court may maintain the necessary perspective that petitioner is a human being who deserves to be treated with fairness and dignity." *Rosa v. Williams*, No. 07-0713, 2010 WL 11523658, at *4 D.N.M. June 15, 2010), *report and recommendation adopted by* 2010 WL 11523659 (D.N.M. July 16, 2010), citing *Goldberg v. Tracy*, 247 F.R.D. 360, 392-93 (E.D.N.Y. 2008). And it does so while acknowledging the constraints that ICE does not have the ability to house Petitioner in this District.

Relying on the *Goldberg* decision, the *Rosa* court balanced the availability of modern technology such as video conferences and telephonic appearances with the burdens inherent in requiring the physical presence of the Petitioner in finding that a telephonic appearance complied with the habeas statute. The court observed that Supreme Court cases addressing in person appearances occurred "years before the recent advances in communication technology." *Id.* (citing *Johnson v. Eisentrager,* 339 U.S. 763, 778 (1950) and *Walker v. Johnston*, 312 U.S. 275, 285 (1941)). The *Rosa* court found that "Section 2243's directive that the petitioner's body be produced in court for an evidentiary hearing, if followed in any substantial proportion of state habeas cases, would place an intolerable strain on our federal and state prison systems." *Id.*

The Government is mindful of the Second Circuit's recent holding that "[i]nherent in the term 'habeas corpus' is the notion that the government is required to produce the detainee in order to allow the court to examine the legality of her detention." *Ozturk v. Hyde*, 136 F.4th 382, 402 (2025). But that case did not involve a situation where there was no available ICE detention center in the same district as the habeas proceeding, nor did it address whether a video or telephonic appearance would suffice.

The Government thus respectfully submits that the Court should find that Petitioner's appearance by telephone or videoconference to comply with the requirements of 28 U.S.C. § 2243, and deny Petitioner's request for a mandatory injunction requiring ICE to transport Petitioner to a different location to have her appear in Court in person on October 6, 2025.

We thank the Court for its consideration of this matter.

Respectfully submitted,

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cc: Counsel of Record (by ECF)