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Attorney for Plaintiff/Petitioner
TATIANA ZAIKO

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TATIANA ZAIKO

Plaintiff,
v.

JAMES JANECKA, in his official
capacity as warden of the
Adelanto ICE processing center;
TINA PATEL, in her official
capacity as Field Office Director
of the Immigration and Customs
Enforcement Los Angeles Office;
KRISTI NOEM, in her official
capacity as Secretary of the
Department of Homeland
Security; PAMELA BONDI in her
official capacity as Attorney
General of the United States,

Respondents.

Case No.

PETITIONER'S REPLY TO
RESPONDENT'S OPPOSITION
TO MOTION FOR
PRELIMINARY INJUNCTION

I. INTRODUCTION

Respondents' Opposition reveals a fundamental misunderstanding of the legal issues at stake. While Respondents celebrate Ms. Zaiko's release on bond which occurred only after this Court's intervention through its TRO they ignore that the constitutional violations persist and that Ms. Zaiko remains subject to removal proceedings initiated without lawful authority.

The Opposition's most glaring omission is any substantive response to the central issue: whether an asylum applicant who timely filed while in lawful status can be charged with overstaying when USCIS explicitly authorized her to remain pending adjudication. Instead, Respondents offer only procedural deflections and jurisdictional arguments that misstate both the law and the nature of Petitioner's claims.

II. THE PETITION IS NOT MOOT

Respondents' mootness argument fails for multiple reasons:

A. The Bond Release Does Not Address the Underlying Constitutional Violations

Ms. Zaiko's release on bond which occurred only after this Court issued its TRO does not remedy the fact that she was unlawfully detained for over a month based on invalid removal proceedings. The Immigration Court's bond order addresses only custody status, not the validity of the underlying proceedings or the constitutional violations that occurred during detention.

B. The Exception to Mootness Applies

Even if release mooted the detention claim (which it does not), this case falls within the "capable of repetition yet evading review" exception to mootness. Ms. Zaiko remains in removal proceedings and could be redetained at any time based on the same unlawful charges.

C. Live Controversies Remain

Multiple live issues persist:

- The validity of removal proceedings based on an allegedly defective NTA
- The ongoing violation of due process rights through invalid proceedings

- The need for injunctive relief to prevent continued prosecution based on unlawful charges

III. THIS COURT HAS JURISDICTION

Respondents' jurisdictional arguments misconstrue both the nature of Petitioner's claims and applicable law.

A. Petitioner Does Not Challenge the "Decision to Commence Proceedings"

Contrary to Respondents' characterization, Petitioner does not challenge DHS's discretionary decision to initiate proceedings. Rather, she challenges:

1. The factual and legal validity of the charges
2. The defective service and notice procedures
3. The absence of subject matter jurisdiction when no deportability grounds exist

These are classic habeas claims cognizable under 28 U.S.C. § 2241. See *INS v. St. Cyr*, 533 U.S. 289 (2001).

B. The Statutory Bars Do Not Apply

8 U.S.C. § 1252(g) bars challenges to three specific discretionary actions, none of which are at issue here. Petitioner challenges not whether to commence proceedings, but whether valid grounds exist for any proceedings at all. This distinction is crucial and well-recognized. See *Arce v. United States*, 899 F.3d 796 (9th Cir. 2018).

Similarly, § 1252(b)(9) channels review of final orders, not challenges to the threshold validity of proceedings that should never have been initiated.

C. The Immigration Court Lacks Jurisdiction

Respondents suggest Petitioner should have raised these issues in Immigration Court, but a court without subject matter jurisdiction cannot rule on its own jurisdiction when the charging document fails to state valid grounds for removal.

IV. THE CHARGE OF REMOVABILITY CANNOT BE SUSTAINED

Respondents completely fail to address the substantive merits of Petitioner's claim.

A. USCIS Expressly Authorized Continued Presence

The undisputed facts establish:

1. Ms. Zaiko was in lawful B-2 status when her husband filed for asylum
2. USCIS issued a notice explicitly stating "You may remain in the U.S. until your asylum application is decided"
3. The asylum application remains pending
4. No final decision has been issued

Respondents offer no explanation for how someone can "overstay" when the agency explicitly authorized their continued presence.

B. The Immigration Judge's Cursory Denial Lacks Legal Support

The Immigration Judge's one-sentence denial—"Submitting an application for relief to the United States government is not a ground to terminate removal proceedings"—fundamentally misunderstands the issue. The question is not whether filing an application terminates proceedings, but whether someone authorized to remain can be charged with overstaying.

C. Respondents Misstate the Law on Lawful Status

While Respondents cite various regulations defining "lawful immigration status," they ignore that authorized presence prevents accrual of

unlawful presence and precludes removal charges based on overstaying. Their own authority recognizes this distinction.

V. THE NTA DEFECTS ARE JURISDICTIONAL

Respondents dismiss the NTA defects as mere technicalities, but Supreme Court precedent establishes that proper notice is jurisdictional. *Pereira v. Sessions*, 138 S. Ct. 2105 (2018).

Petitioner was not given proper notice based on false address information (that Respondents try to explain away through conjecture), whiteout alterations to critical information, a date time of hearing that could not have been known if service was made as certified.

These are not minor issues but fundamental due process violations affecting the Immigration Court's jurisdiction.

VI. CONDITIONS OF CONFINEMENT REMAIN RELEVANT

While *Pinson v. Carvajal* addressed pure conditions claims, Petitioner's case is distinguishable. The sleep deprivation and coercive tactics were not merely uncomfortable conditions but deliberate efforts to undermine her ability to understand and contest the charges against her.

These conditions directly relate to the validity of the proceedings themselves.

VII. CONCLUSION

Respondents' Opposition confirms the need for this Court's continued intervention. Their failure to address the merits, combined with their misstatement of jurisdictional law, demonstrates that Ms. Zaiko cannot obtain relief through immigration proceedings premised on invalid charges.

This Court should grant the preliminary injunction to:

1. Enjoin Respondents from continuing removal proceedings based on the defective NTA
2. Declare that Ms. Zaiko's USCIS-authorized presence precludes removal charges for overstaying
3. Prevent future detention based on these invalid proceedings

The Court's intervention has already proven essential—DHS only approached Ms. Zaiko's counsel to discuss her release on bond only after the TRO issued. Without continued relief, she remains subject to proceedings that should never have been initiated.

Respectfully submitted this 18th day of September, 2025.

/s/ Gary Minevich
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VERIFICATION

I, Gary Minevich, declare under penalty of perjury under the laws of the United States of America as follows:

1. I am the attorney of record for Petitioner Tatiana Zaiko in the above-captioned matter.

2. I have personal knowledge of the facts set forth in this Petition based upon my communications with Ms. Zaiko and my review of the relevant records.

3. The facts alleged in PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION are true and correct to the best of my knowledge, information, and belief.

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

Executed on September 24, 2025, at Encino, California.

/s/Gary Minevich —

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2025, I served a true and correct copy of the foregoing Preliminary Injunction Opening Brief, along with all attachments, on the following parties by the methods indicated:

Via CM/ECF and U.S. Mail

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Tina Patel, Field Office Director
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Via U.S. Mail:

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Civil Division
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Los Angeles, CA 90012

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

Executed on September 24, 2025, at Encino, California.

Gary Minevich