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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTER DISTRICT OF CALIFORNIA

BARBARA GOMES MARQUES MAY,

Petitioner,

vs.

THOMAS GILES, ET AL

Respondents.

Case No.: 2:25-cv-08816

**SUPPLEMENTAL BRIEF ON COURT'S
JURISDICTION TO ISSUE TRO
PREVENTING REMOVAL**

I. INTRODUCTION

Petitioner respectfully submits this brief to support the Court's jurisdiction to enter a Temporary Restraining Order (TRO) preventing her removal by ICE. The All Writs Act, inherent equitable authority, and limits on 8 U.S.C. § 1252(g) empower the Court to maintain the status quo and preserve effective judicial review, especially where government conduct is calculated to frustrate habeas relief. Further, anticipated adverse authority is either inapplicable or distinguishable.

II. THE COURT'S JURISDICTION AND EQUITABLE POWER TO GRANT A TRO

A. The All Writs Act and Inherent Equitable Authority

The All Writs Act, 28 U.S.C. § 1651(a), authorizes federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions." Courts routinely invoke this power to maintain the status quo and prevent government conduct that would render judicial

review futile. See *United States v. New York Telephone Co.*, 434 U.S. 159, 174 (1977); *INS v. St. Cyr*, 533 U.S. 289, 294 n.5 (2001).

B. Respondents' Conduct Designed to Frustrate Judicial Review

Here, the government has transferred and is attempting to deport Mrs. May with the apparent purpose of mooted her habeas petition and preventing meaningful judicial review. Such government action is condemned by the courts. See *Devitri v. Cronen*, 289 F. Supp. 3d 287, 296 (D. Mass. 2018); *Arevalo v. Ashcroft*, 344 F.3d 1, 7 (1st Cir. 2003); *Lopez v. Heinauer*, 332 F.3d 507, 511 (8th Cir. 2003).

C. Section 1252(g) Does Not Bar Jurisdiction Over Collateral or Due Process Claims

Section 1252(g) must be narrowly construed. The Supreme Court in *Reno v. American-Arab Anti-Discrimination Committee* (“AADC”), 525 U.S. 471, 482 (1999), held that § 1252(g) applies only to three “discrete actions”—the decision or action to commence proceedings, adjudicate cases, or execute removal orders—and does not bar review of constitutional or collateral claims, such as denial of access to counsel, lack of notice, or government frustration of review. See also *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007); *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1029 (W.D. Wash. 2019).

D. The REAL ID Act Does Not Bar Review of Collateral or Procedural Claims

While the REAL ID Act limits district court review of direct challenges to removal orders, it preserves jurisdiction for claims that are independent of or collateral to the removal order, such as constitutional due process violations, lack of notice, or denial of access to counsel. See *Singh v. Holder*, 638 F.3d 1196, 1211–12 (9th Cir. 2011).

E. Ninth Circuit Authority

1 The Ninth Circuit has repeatedly recognized district court jurisdiction over due process and
2 collateral claims, and the power to enjoin removal to preserve meaningful judicial review.

3 District courts in this Circuit have also recognized and exercised this authority.

4
5 For example, in *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1029 (W.D.
6 Wash. 2019), the court granted TROs to prevent removal or ordered ICE to return petitioners to
7 the district, explicitly holding that jurisdiction exists over due process and access-to-counsel
8 claims, even after a removal order is final.

9 **III. LIKELIHOOD OF SUCCESS ON THE MERITS**

10
11 Petitioner demonstrates a strong likelihood of success on the merits for the following
12 reasons:

13 **1. Lack of Notice for In Absentia Removal Order**

14
15 Petitioner's removal order was entered in absentia after she failed to appear at her
16 immigration hearing. However, Petitioner did not receive the required statutory notice of her
17 hearing. The Ninth Circuit has repeatedly held that a removal order entered without proper
18 notice must be reopened as a matter of due process and under the INA. See *Lo v. Ashcroft*, 341
19 F.3d 934, 938 (9th Cir. 2003); In *Singh v. INS*, 295 F.3d 1037, 1041 (9th Cir. 2002) the court
20 said "We agree with the Seventh Circuit that the INS should not deny reopening of an *in*
21 *absentia* deportation order where the denial leads to the unconscionable result of deporting an
22 individual eligible for relief from deportation. See *Chowdhury v. INS*, 241 F.3d 848 (7th Cir.
23 2001). There, the petitioner was ordered deported *in absentia* and his immediate relative visa
24 petition was then approved while his appeal of the deportation order was pending. *Id.* at 849.
25

26 **2. Approved I-130 and Direct Path to Lawful Status**

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28

1 Petitioner has an approved I-130 family-based petition filed by her U.S. citizen spouse.
2 But for the *in-absentia* order, she would be eligible to adjust status and obtain lawful permanent
3 residence. Courts recognize that individuals on a direct legal path to status are entitled to
4 meaningful review before being permanently removed. See *Barahona-Gomez v. Reno*, 236 F.3d
5 1115, 1120 (9th Cir. 2001).
6

7 **3. Denial of Access to Counsel and Frustration of Judicial Review**

8 Respondents interfered with Petitioner's ability to communicate with her attorney and
9 receive legal documents necessary to file a motion to reopen. The Ninth Circuit has recognized
10 that denial of access to counsel and obstruction of legal process constitute due process
11 violations. See *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007).
12

13 **4. Government Conduct Designed to Frustrate Judicial Review**

14 The government's conduct in rushing to remove Petitioner, despite a pending motion to
15 reopen and TRO request, is designed to moot her claims and prevent meaningful review. Courts
16 have repeatedly condemned such conduct and granted injunctive relief to preserve judicial
17 authority. See *Arevalo v. Ashcroft*, 344 F.3d 1, 7 (1st Cir. 2003); *Devitri v. Cronen*, 289 F.
18 Supp. 3d 287, 296 (D. Mass. 2018).
19

20 Accordingly, Petitioner is likely to succeed on her claims for relief, and this factor
21 weighs strongly in favor of issuing a TRO.
22

23 **IV. ANTICIPATING AND DISTINGUISHING ADVERSE AUTHORITY**

24 **A. *Reno v. AADC*, 525 U.S. 471 (1999)**

25 Respondents may argue that AADC bars the Court from issuing a TRO. However,
26 AADC expressly limits § 1252(g) to direct challenges to the three enumerated actions and
27 recognizes district court authority over due process and collateral claims.
28

1 These cases concern direct challenges to removal orders. In contrast, Ms. May's claims
2 are for denial of access to counsel, lack of notice, and interference with judicial review—claims
3 which courts have repeatedly found to be outside the reach of § 1252(g) and the REAL ID Act.
4 See *Singh, v. Gonzales*, 499 F.3d at 978 (9th Cir. 2007)..

6 **V. THE COURT'S POWER TO PRESERVE THE STATUS QUO EVEN IF ULTIMATE**
7 **JURISDICTION IS DOUBTED**

8 The Supreme Court and Ninth Circuit have recognized that interim relief, including
9 TROs, is proper even where the court's ultimate jurisdiction is uncertain, in order to prevent
10 irreparable harm and preserve the ability to grant effective relief. See *Nken v. Holder*, 556 U.S.
11 418, 426 (2009); *Singh v. Holder*, 638 F.3d 1196, 1211–12 (9th Cir. 2011).

13 **VI. CONCLUSION**

14 For these reasons, this Court has the authority to issue a TRO preventing Petitioner's
15 removal, to preserve its own jurisdiction, and to prevent government conduct designed to
16 frustrate meaningful judicial review.

17 Date: September 29, 2025

18 Respectfully submitted,

21 /s/ Marcelo Gondim

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