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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

**PETITIONER'S SUPPLEMENTAL
BRIEF REGARDING TRANSFER
AUTHORITY AND GROUNDS FOR
RELEASE AND AFFIDAVITS FROM
BARBARA MAY AND TUCKER MAY**

I. INTRODUCTION

Petitioner submits this supplemental brief to address the scope and limits of ICE's authority to transfer immigration detainees under 8 U.S.C. § 1231(g), and to supplement the record in support of her forthcoming amendment to the habeas petition seeking release.

II. ICE'S TRANSFER AUTHORITY UNDER 8 U.S.C. § 1231(g) IS NOT UNLIMITED

ICE has broad statutory discretion to "arrange for appropriate places of detention" under 8 U.S.C. § 1231(g)(1). Courts recognize that DHS may transfer immigration detainees for logistical or administrative reasons. See *Van Dinh v. Reno*, 197 F.3d 427, 433-34 (10th Cir. 1999); *Committee of Central American Refugees v. INS*, 795 F.2d 1434, 1436 (9th Cir. 1986). However, this power is not absolute and must yield to the requirements of due process and access to the courts.

III. JUDICIAL REVIEW AND CONSTITUTIONAL LIMITS ON TRANSFER

Courts routinely enjoin transfers where they would impair access to counsel, obstruct judicial review, or inflict inhumane treatment. See *Devitri v. Cronen*, 289 F. Supp. 3d 287, 297 (D. Mass. 2018); *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1029 (W.D. Wash. 2019); *Jones v. Blanas*, 393 F.3d 918, 931–33 (9th Cir. 2004).

Petitioner acknowledges that 8 U.S.C. § 1231(g)(1) confers broad discretionary authority upon the Attorney General (now DHS/ICE) to determine the location of immigration detention, including the transfer of detainees between facilities. See *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985) (“We are not saying that the petitioner should not have been transported to Florida. That is within the province of the Attorney General to decide.”); *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (“the Attorney General’s discretionary power to transfer aliens from one locale to another...arises from 8 U.S.C. 1231(g)(1)...”).

Further, 8 U.S.C. § 1252(a)(2)(B)(ii) restricts federal court review over actions committed to the Attorney General’s discretion “under this subchapter [including section 1231].”

However, jurisdictional bars do not extend to claims alleging violations of constitutional rights or fundamental procedural protections.

Both the Supreme Court and Ninth Circuit recognize that, while the underlying transfer decision is discretionary and generally unreviewable, federal courts retain jurisdiction to review whether the exercise of that discretion results in a constitutional violation or an unlawful denial of access to the courts or counsel. See *Rios-Berrios*, 776 F.2d at 863 (“A transfer that effectively severs an established attorney-client relationship, absent adequate accommodation, raises serious due process concerns.”); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565 (9th Cir. 1990) (“The government must not obstruct prompt and reasonable access to counsel.”).

1 The Supreme Court has similarly instructed that “[even] where Congress intends to
2 preclude judicial review of constitutional claims[,] its intent to do so must be clear.” *Califano v.*
3 *Sanders*, 430 U.S. 99, 109 (1977); see also *Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007)
4 (“[Section] 1252 does not preclude habeas review of constitutional claims...”).
5

6 Accordingly, while the Court may not review the mere fact or wisdom of transfer, it has
7 clear jurisdiction to review whether the transfer, as executed in this case, violated Petitioner’s
8 constitutional rights to due process, access to counsel, or humane treatment. This is the basis of
9 the present request for relief.
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11 **IV. THE FACTS HERE DEMAND JUDICIAL INTERVENTION**

12 1. There is no evidence that a further transfer would serve any legitimate logistical or
13 security need; on the contrary, it appears retaliatory following Petitioner’s exercise of her right to
14 seek legal relief.
15

16 2. Venue for Petitioner’s removal proceedings remains with the Los Angeles Immigration
17 Court. If her in absentia order is vacated, she will have to be transported back to Los Angeles for
18 her hearing.
19

20 3. Petitioner’s pain-management device was previously lost during transfer and only
21 recently returned. Even now, access to her device and its batteries at Adelanto has been unreliable.
22 Another transfer would likely deprive her of this essential medical care.
23

24 4. During her previous transfer, Petitioner was forced to sleep on the floor, with no pillow
25 or humane bedding, exacerbating back pain from recent surgery.
26

27 5. Transfer would sever her access to her counsel, who lives and works in Los Angeles,
28 and prevent in-person meetings critical to her defense.

1 6. As this is her first experience in detention, unfamiliarity with such conditions is causing
2 her severe emotional distress and moving her away from Adelanto would prevent her husband
3 from providing needed support.

4 Respondents may argue that transferring Petitioner to another facility does not impair her
5 access to counsel because ICE purports to offer telephonic or video-conferencing communication
6 with attorneys. However, in this case, such remote access is plainly insufficient to protect
7 Petitioner's constitutional rights.

8 Petitioner's counsel has already experienced significant delays and obstacles created by
9 Respondents in delivering and receiving important, time-sensitive legal documents. In particular,
10 counsel mailed crucial documents to Petitioner, intended to allow for the filing of a motion to
11 reopen her removal proceedings, but Respondents failed to promptly deliver these materials,
12 resulting in Petitioner being transferred to Louisiana overnight before the documents could be
13 returned to counsel.

14 This episode demonstrates that reliance on telephonic or remote access is not adequate in
15 circumstances where (1) physical document exchange is required, (2) confidential legal strategy
16 and review must take place, and (3) the risk of bureaucratic error or delay is high.

17 The Ninth Circuit has repeatedly held that meaningful access to retained counsel often
18 requires in-person meetings—especially where complex, time-sensitive, or confidential matters
19 are involved. See *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565 (9th Cir. 1990) (“The
20 government must not obstruct prompt and reasonable access to counsel.”); *Rios-Berrios v. INS*,
21 776 F.2d 859, 863 (9th Cir. 1985) (“A transfer that effectively severs an established attorney-
22 client relationship, absent adequate accommodation, raises serious due process concerns.”).

1 In this case, Petitioner's ability to meet with counsel in person is not a mere convenience—
2 it is essential to protect her constitutional rights, to ensure the effective preparation and
3 presentation of her claims, and to guard against the precise delays and denials that have already
4 occurred. Any further transfer would make in-person meetings impossible and would irreparably
5 harm her defense.
6

7 **V. HABEAS PETITION AMENDMENT: NO LAWFUL BASIS FOR CONTINUED**
8 **DETENTION**

9 Petitioner's forthcoming amended habeas petition will seek release because: (1) her
10 removal order is stayed and thus not executable; (2) she is not a flight risk; (3) she is not a danger
11 to the community; (4) her continued detention serves no purpose, not even for Respondents; and
12 (5) Respondents have failed to provide even basic care to a non-criminal detainee.
13

14 **V. PETITIONER IS NOT ELIGIBLE FOR BOND BY THE IMMIGRATION COURT -**
15 **ONLY THIS COURT, VIA HABEAS, CAN GRANT RELIEF**

16 Petitioner currently remains detained pursuant to a final order of removal and is therefore
17 subject to mandatory detention under 8 U.S.C. § 1231(a)(2). The immigration courts lack
18 jurisdiction to review or order release of a noncitizen subject to a final order of removal; only a
19 federal district court has authority to review the lawfulness of such detention through a habeas
20 corpus petition. See *Prieto-Romero v. Clark*, 534 F.3d 1053, 1058 (9th Cir. 2008) (“[O]nce an
21 order of removal becomes administratively final, the Attorney General shall detain the alien.”);
22 see also *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (district courts have jurisdiction to grant
23 habeas relief where detention exceeds statutory or constitutional limits).
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1 Accordingly, while the immigration judge may have jurisdiction over motions to reopen
2 or terminate, that tribunal lacks the power to review the conditions or necessity of continued
3 custody for a noncitizen with a final order.

4 While Petitioner has moved to reopen her in absentia removal proceedings in immigration
5 court, and the removal order is presently stayed, the immigration judge lacks authority to review
6 or alter her continued detention. If the motion to reopen is denied, Petitioner may appeal to the
7 Board of Immigration Appeals (BIA), and thereafter to the Ninth Circuit Court of Appeals, but
8 only as to the merits of the motion to reopen, not the lawfulness or conditions of her detention.
9 These appellate avenues would also likely prolong her time in custody.
10

11 Therefore, this habeas petition, challenging the necessity and conditions of continued
12 detention, is the only appropriate and available remedy to secure judicial review of whether
13 Petitioner's continued detention is constitutional, necessary, or humane under the circumstances.
14 Only this Court, via habeas corpus, can provide a remedy for unconstitutional or otherwise
15 unlawful detention in these circumstances.
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18 **VI. STANDARD FOR EMERGENCY RELIEF AND APPLICATION TO**
19 **PETITIONER'S CASE**

20 To obtain a temporary restraining order or preliminary injunction, Petitioner must
21 demonstrate:

- 22 1. she is likely to succeed on the merits;
- 23 2. she is likely to suffer irreparable harm absent relief;
- 24 3. the balance of equities tips in her favor; and
- 25 4. an injunction is in the public interest.
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1 See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). See also *All. for the Wild*
2 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

3 **A. Likelihood of Success on the Merits**

4 Petitioner is likely to succeed on the merits of her habeas claim because Respondents
5 cannot lawfully justify her continued detention or transfer. Her removal order is stayed; she is not
6 a flight risk; she is not a danger to the community; and there is no legitimate government purpose
7 for further transfer or continued detention. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)
8 (“Once removal is no longer reasonably foreseeable, continued detention is no longer
9 authorized.”); *Rodriguez v. Robbins*, 715 F.3d 1127, 1135–36 (9th Cir. 2013).

10 Moreover, any transfer that impairs access to counsel or results in inhumane conditions—
11 such as those suffered by Petitioner—violates due process. See *Rios-Berrios v. INS*, 776 F.2d 859,
12 863 (9th Cir. 1985) (“A transfer that effectively severs an established attorney-client relationship,
13 absent adequate accommodation, raises serious due process concerns.”); *Jones v. Blanas*, 393
14 F.3d 918, 931–33 (9th Cir. 2004) (civil detainees may not be subjected to conditions harsher than
15 necessary).

16 **B. Irreparable Harm**

17 Petitioner faces immediate and irreparable harm absent injunctive relief. Transfer would
18 expose her to further inhumane and dangerous conditions—prolonged shackling, sleep
19 deprivation, and denial of necessary medical care. It would also deprive her of meaningful access
20 to her legal counsel and family, aggravating her medical and psychological distress. Irreparable
21 harm exists where “constitutional rights are threatened or impaired,” and courts recognize that
22 denial of medical care, family support, or access to counsel is irreparable. See *Elrod v. Burns*,
23 427 U.S. 347, 373 (1976); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565 (9th Cir. 1990).

C. Balance of Equities

The balance of equities sharply tips in Petitioner’s favor. On one hand, Petitioner faces severe harm to her health, family, due process rights, and ability to litigate her case. On the other, the government asserts no concrete or urgent logistical reason for her transfer; her removal order is stayed, and she poses no danger or risk of flight. See *Fraihat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir. 2021) (“A stronger showing of one element may offset a weaker showing of another.”); *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1137 (9th Cir. 2011) (balancing hardships).

D. Public Interest

The public interest is best served by protecting the constitutional rights of all persons in the United States, including those in immigration custody. The public has a strong interest in ensuring that detention is humane, lawful, and subject to judicial oversight, and that detainees are not punished or harmed for exercising their legal rights. See *Nken v. Holder*, 556 U.S. 418, 436 (2009) (“The public interest...is served by ensuring that the laws are faithfully executed and that justice is done.”); *Fraihat*, 16 F.4th at 636 (“[T]he public interest favors preventing irreparable harm to noncitizens and protecting their constitutional rights.”).

The Ninth Circuit also applies a sliding-scale or “serious questions” test under which the elements are balanced: a stronger showing of one element may offset a weaker showing of another. See *Fraihat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir. 2021) (“an alternative ‘serious questions’ standard, also known as the ‘sliding scale’ variant of the Winter standard...”); *Cottrell*, 632 F.3d at 1131.

1 Under this approach, a TRO may be granted where the plaintiff shows that there are
2 “serious questions going to the merits” and that the balance of hardships tips sharply in her favor,
3 so long as the other Winter factors are also satisfied. *Id.* at 1132

4 Both a preliminary injunction and a TRO are “an extraordinary remedy that may only be
5 awarded upon a clear showing that the plaintiff is entitled to such relief.”
6 *Winter*, 555 U.S. at 22.

7 Here, Petitioner meets all prongs of both the Winter and sliding-scale tests: she has raised
8 at least serious questions, and likely strong merits, about the constitutionality and necessity of her
9 detention and transfer; she faces immediate and irreparable harm; the balance of hardships tips
10 sharply in her favor; and the public interest is best served by ensuring humane treatment, due
11 process, and judicial oversight.

12 VII. CONCLUSION

13 While 8 U.S.C. § 1231(g) grants DHS broad authority to manage detention locations, the
14 United States Constitution is the supreme law of the land and takes precedence over any statutory
15 provision, including the Immigration and Nationality Act, when the exercise of statutory authority
16 results in the violation of constitutional rights. See U.S. Const. art. VI, cl. 2 (“This Constitution,
17 and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme
18 Law of the Land...”); see also *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001) (“[W]e must interpret
19 the statute to avoid a serious constitutional threat.”).

20 Where the exercise of DHS’s logistical or detention powers under section 1231(g) leads
21 to unconstitutional deprivations—such as denial of due process, access to counsel, humane
22 conditions, or family association—the Constitution must prevail, and this Court is empowered to
23 enjoin such violations.

1 Accordingly, the Court should enjoin Respondents from transferring Petitioner out of
2 Adelanto, and grant such other and further relief as is just.
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5 Date: October 5, 2025
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7 Respectfully submitted,
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10 /s/ Marcelo Gondim

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