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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

BARBARA GOMES MARQUES MAY,

Petitioner,

v.

THOMAS GILES, et al.,

Respondents.

No. 2:25-cv-08816-AH-DFM

RESPONDENTS' OPPOSITION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER [DKT. 12]

Honorable Anne Hwang
United States District Judge

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I. INTRODUCTION

For the second time, Petitioner Barbara Gomes Marques May seeks extraordinary relief on an *ex parte* basis. This time, Petitioner seeks an order (1) prohibiting her transfer from the U.S. Immigration and Customs Enforcement's detention facility at Adelanto, California, (2) directing Respondents to provide her with access to pain management medication, and (3) assure reasonable access to her attorney and husband at Adelanto. *See* Dkt. 12 at 1-2. As before, Petitioner fails to meet her heavy burden to establish entitlement to the issuance of a Temporary Restraining Order.

For the reasons explained below, the Court should deny Petitioner's second *ex parte* application for a TRO.

II. BACKGROUND AND PROCEDURAL HISTORY

As Petitioner admits, she is a citizen of Brazil who overstayed her tourist visa. *See* Dkt. 1, ¶¶ 15, 20; Dkt. 15-1, ¶ 1. Three weeks ago, on September 16, 2025, ICE detained Petitioner when she appeared for a USCIS interview for an I-130 Petition for Alien Relative filed by her U.S. citizen husband. Dkt 1, ¶ 23. Thereafter, Petitioner was transferred to the Adelanto ICE Processing Center and then on to Arizona before arriving in Louisiana. *See* Dkt. 5, ¶¶ 4, 6.

Petitioner previously sought an *ex parte* TRO, which this Court denied without prejudice. *See* Dkt. 11. "Petitioner indicated that she intended to amend the Petition and file a new request for a TRO addressing the issues raised by the following day; however, no such request was filed." Dkt. 13 at 2.

Instead, last Tuesday, September 30, 2025, Petitioner states that she moved to reopen her removal in Immigration Court, which resulted in an Immigration Judge staying her removal back to Brazil. Dkt. 12 at 4. Two days later, on October 2, 2025, ICE transferred Petitioner to the Adelanto ICE Processing Facility. *Id.*

The next day, Friday, October 3, 2025, Petitioner filed the instant *ex parte* application for a TRO. *See* Dkt. 12. Therein, Petitioner states that both she "and her counsel have reasons to believe that ICE intends to transfer her out of Adelanto at any time, including during the weekend, to an undisclosed location." *Id.* at 4. She further claimed that she required the use "of a Nalu Neurostimulation System for pain, which ICE left in Louisiana and has not returned to her." *Id.* Petitioner concluded that a transfer from Adelanto would "against separate Petitioner from her counsel and husband and severely impede her access to the courts and to her legal remedies, while exposing her to further inhumane conditions." Petitioner did not include any evidence to corroborate the assertions in the *ex parte*.

On October 4, 2025, this Court issued an order setting a briefing schedule on the *ex parte*. *See* Dkt. 13. By that order, the Court directed Petitioner "to file supplemental points and authorities, together with supporting evidence where necessary[.]" *Id.* at 5. Specifically, Petitioner was to "address …what claims she is pursuing through" her Petition.

On October 5, 2025, Petitioner filed her supplemental points and authorities. *See* Dkt. 15. Additionally, she filed two declarations – one from herself[1] and the other from her husband. *See* Dkt. nos. 15-1 & 15-2. Her supplemental filings state that her pain management device was returned to her. *See* Dkt. 15 at 3. Her husband also states that he provided additional batteries for her "prescribed" device. *See* Dkt. 15-2, ¶ 3.

III. STANDARD OF REVIEW

The standard for issuing a TRO and a preliminary injunction are substantially identical. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A TRO is "an extraordinary and drastic remedy ... that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). For a TRO to issue, the movant must demonstrate: (1) a likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) the TRO is in the public interest. *See Winter v. Nat. Res. Def. Council,*

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[1] Petitioner's declaration erroneously states that she has been in ICE custody since November 1, 2019. *See* Dkt. 15-1, ¶ 2.

Inc., 555 U.S. 7, 20 (2008).

IV. ARGUMENT

A. Petitioner's Request for a TRO Barring Her Transfer From this District Should Be Denied

Petitioner fails to carry her demanding burden to establish entitlement to the extraordinary remedy of a TRO constraining the Attorney General's discretion to decide where to place detained immigrants like herself. Furthermore, she does not and cannot establish that she is likely to suffer irreparable harm caused by a transfer from Adelanto. In *Omar Sanchez Ruiz*, Judge Staton explained why such bans on district transfer by preliminary injunctive relief are not appropriate (*cf.* the *Ex Parte* Order), denying a TRO on this point. *See* Exh. A hereto. Respondents reiterate those points below.

1. The law and facts do not clearly favor Petitioner

The government may detain aliens pending their removal pursuant to a removal order. Under 8 U.S.C. § 1231(g)(1), the Executive has great discretion in deciding where to detain aliens. Petitioner effectively concedes this point. *See* Dkt. 15 at 2 ("Petitioner acknowledges that 8 U.S.C. § 1231(g)(1) confers broad discretionary authority…"). The INA precludes review of "any . . . decision or action of the Attorney General . . . the authority for which is specified under this subchapter to be in the discretion of the Attorney General . . . ." 8 U.S.C. § 1252(a)(2)(B)(ii). Therefore, § 1252(a)(2)(B)(ii) bars relief that would impact where and when to detain petitioners. *See Van Dinh v. Reno*, 197 F.3d 427, 433–34 (10th Cir. 1999) (citing *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985)) (finding that judicial review of decision to transfer a detainee is inappropriate due to lack of jurisdiction).

In *Van Dinh*, the noncitizen-plaintiffs were incarcerated at a facility in Colorado, where they were notified of the "distinct possibility" that they would be transferred to another facility. *See* 197 F.3d at 429. Plaintiffs filed a *Bivens* class action complaint requesting injunctive relief restraining all noncitizen transfers until local counsel had an opportunity to interview their clients and injunctive relief restraining transfer outside the area of those noncitizens with an established attorney-client relationship. *See id.* There, the Tenth Circuit concluded that "the district court had no jurisdiction to review the Attorney General's discretionary decision to transfer and detain appellants in another INS facility under § 1252(a)(2)(B)(ii)" and thus no *Bivens* class action was available. *Id.* at 435. In reaching this conclusion, the Court found that "[t]he Attorney General is mandated to 'arrange for appropriate places of detention for [noncitizens] detained pending removal.'" *Id.* at 433 (citing 8 U.S.C. § 1231(g)(1)). "The Attorney General's discretionary power to transfer [noncitizens] from one locale to another, as [he or] she deems appropriate, arises from this language." *Id.* Thus, it is "apparent that a district court has no jurisdiction to restrain the Attorney General's power to transfer [noncitizens] to appropriate facilities by granting injunctive relief in a Bivens class action suit." *Id.*

Moreover, in *Rios–Berrios*, the petitioner was apprehended in California, charged with entry without inspection, and moved to Florida for a deportation hearing that was scheduled to begin effectively five working days from the time of his apprehension. *See* 776 F.2d at 860-61. The immigration judge twice continued the hearing for a total of two working days, first after the petitioner stated that he needed time to find an attorney and again after being informed that the petitioner had called a friend who had been in contact with an attorney and bail bondsman. *See id.* After the immigration judge granted the continuances, he also advised that the hearing would proceed with or without counsel. *See id.* When the petitioner appeared without counsel, there was no inquiry regarding the petitioner's expressed wish to be represented by counsel and the hearing went forward. *See id.* The Ninth Circuit found a violation of the petitioner's right to be represented by counsel of his own choice at his own expense. *See id.* at 862-63. However, the Ninth Circuit clarified that there was no right to block his transfer to another district:

> We wish to make ourselves clear. 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. We merely say that his transfer there, combined with the unexplained haste in beginning deportation proceedings,

> combined with the fact of petitioner's incarceration, his inability to speak English, and his lack of friends in this country, demanded more than lip service to the right of counsel declared in statute and agency regulations, a right obviously intended for the benefit of aliens in petitioner's position.

Id. at 863 (citations omitted).

Accordingly, judicial intervention is not proper with respect to the government's decision about where to detain Petitioner.

2. Petitioner also fails to show that he will likely suffer serious irreparable harm by being transferred to another district.

Petitioner also has not demonstrated that she will suffer irreparable injury if she is transferred to another district while detained. To show irreparable harm, she must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League,* 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22.

Petitioner claims that a transfer from Adelanto would "severely impede her access to the courts and to her legal remedies[.]" Not so. Dkt. 12 at 4. As a threshold matter, if this Court had jurisdiction when the Petition was filed, then axiomatically any later transfer to another district within the United States would not end that jurisdiction. A writ of habeas corpus operates not upon the prisoner, but upon the prisoner's custodian. *See Braden v. 30th Jud. Circuit Ct. of Kentucky*, 410 U.S. 484, 494–495 (1973). Jurisdiction over a § 2241 petition attaches when a petitioner files a petition in her district of confinement and names her custodian. *See Mujahid v. Daniels*, 413 F.3d 991, 994 (9th Cir. 2005) ("jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change."). *See, e.g., Acosta v. Doerer*, No. 5:24-cv-01630-SPG-SSC, 2024 WL 4800878, at *4 (C.D. Cal. Oct. 24, 2024) (holding that the district court maintained jurisdiction even after immigration detainee petitioner was transferred from one federal facility to another); *Rincon-Corrales v. Noem*, No. 2:25-cv-00801-APG-DJA, 2025 WL 1342851, at *2 (D. Nev. May 8, 2025) ("[O]nce a petitioner has properly filed a habeas petition in the district of confinement, any subsequent transfer does not strip the filing district of habeas jurisdiction.").

Moreover, and contrary to the conclusory assertions in Petitioner's supplemental memorandum [Dkt. 15 at 4], there has been no impact on her access to the Court or her counsel, and certainly not any impact that would warrant the extreme remedy of a TRO. Without supporting evidence, Petitioner claims that "time-sensitive" legal documents did not arrive before she was transferred to Louisiana. Dkt. 15 at 4.[2] Yet those documents – purportedly required to allow her to file a motion to reopen her removal proceedings – clearly did reach her, and did not prevent filing such a motion, since she states that she filed the motion on September 30, 2025. *See* Dkt. 12 at 4.

Again, however, there is no such loss of jurisdiction in the first place that could justify a bar on district transfer, as Judge Staton explained in in *Omar Sanchez Ruiz*. There is no basis to enjoin transfer on this point.

Petitioner instead conjures speculative concerns over a potential transfer; she evidently prefers Adelanto as a detention location, relative to any other potential locations. Such concerns, however, do not establish irreparable harm. Dkt. 12 at 6. For example, Petitioner claims that transfer to another facility will impair meaningful access to her counsel. Dkt. 15 at 3. But again, she provides no evidentiary support for this statement or her claim that access to telephonic or video-conferencing "is plainly insufficient to protect Petitioner's constitutional rights." *Id.* at 4. Rather, the procedural history of this case, including the filing of a motion to reopen her immigration proceedings, contravene her assertions to the contrary. Her husband also states that he has had the opportunity to speak with her "many times." Dkt. 15-2, ¶ 4.

Furthermore, a pending habeas petition does not require that the government maintain custody within the district where the petition was filed. In BOP habeas petition

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[2] Notably, Petitioner's counsel did not submit a declaration or any evidence supporting this contention.

contexts, for example, the filing of a habeas petition does not create a constitutional bar against the BOP's unreviewable authority to transfer individuals in their custody to other facilities within the United States. Arguing that videoconferencing is inadequate does not suffice to create a constitutional bar against any such transfers.

Nor does Petitioner cite any authority for the proposition that she has a constitutionally protected interest entitling her to be housed in a facility that is the closest in proximity to her husband. That is because there is no constitutionally protected interest especially here, where there is no indication that any prospective transfer would result in Petitioner experiencing anything different than any other detainee who is transferred to a facility away from their family.

If Petitioner's allegations of irreparable harm based on a transfer away from family during her detention period were sufficient, then any detainee would have the ability to bar any transfer on the same grounds, thereby contravening the Executive's discretion in deciding where to detain aliens. Furthermore, any BOP inmate would also have the constitutional right to bar any facility transfer away from their family.

In sum, Petitioner fails to establish any specific serious and irreparable harm that would arise from her potentially being detained in any other district versus being detained in the Central District of California.

Last, the requested TRO is also not narrowly tailored on this point. For example, detention in the Southern District of California, i.e. San Diego, would patently not be an "irreparable harm" relative to detention at Adelanto within the Central District of California. Nor would detention in the Northern District of California, the Eastern District of California, etcetera. Yet the order sought here would bar any transfer outside not only the Central District, but Adelanto specifically. The effect is to essentially confer upon an immigration detainee a "veto right" against any non-preferred detention location, in contravention of law. That falls far short of the high legal standard for issuing preliminary TRO relief, which requires a much more stringent evidentiary demonstration and much more severe prejudice.

B. The Balance of Interests Favors the Government

It is well settled that the public interest in enforcement of the United States's immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders[.]"). This public interest outweighs Petitioner's private interest here.

C. A Habeas Petition Is Not The Appropriate Procedural Mechanism To Challenge Conditions of Confinement

In her supplemental briefing, Petitioner complains of her conditions of confinement.

While some District Court decisions have sought to broaden the scope of habeas, the Ninth Circuit was fairly clear about its scope in the recent case of *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023), explaining that:

> "Thus, the history of habeas corpus demonstrates why release from confinement is the only available remedy for claims at the writ's core and, consequently, informs our analysis about how to classify petitions that allege release is the only available remedy. Release is the only available remedy—and thus a claim is at the core of habeas—if a successful petition demonstrates that the *detention itself* is without legal authorization."

Pinson, 69 F.4th at 1070 (italic emphasis in original).

As the Ninth Circuit explained, while various claims have been found to fall within habeas, "[i]n all these circumstances, however, the petitioner has demonstrated that custody *was not authorized to begin* with, which is a legal defect that cannot be solved by ordering damages or declaratory relief or an injunction." *Id.* (italic emphasis in original). This delineation of habeas jurisdiction is consistent with *See Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020) (defining the scope of historical habeas jurisdiction).

D. Petitioner's Claim as to Potentially Excessive Future Detention Pursuant to Her Removal Order Is Defective and Deficient

Petitioner speculatively claims that she may face unconstitutionally prolonged detention. *See* Dkt. 15 at 6. Petitioner has not yet attempted to plead such a claim in an amended petition, but if she did, it would fail as a matter of law—and would not carry her heavy burden to establish entitlement to TRO relief.

The INA requires detention of removable aliens during a 90-day removal period, 8 U.S.C. § 1231(a)(1), and it permits continued detention under § 1231(a)(6) for the time "reasonably necessary" to effect removal, because indefinite detention would raise Fifth Amendment Due Process concerns. *Zadvydas v. Davis*, 533 U.S. 678, 689–90 (2001). As delineated by the Supreme Court, the presumptively reasonable period for detention while attempting to complete removal is six months. *Id.* at 680. The noncitizen "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

After that period, "if the alien 'provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,' the Government must either rebut that showing or release the alien." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021) (quoting *Zadvydas*, 533 U.S. at 689–701).

The Ninth Circuit has explained that the *Zadvydas* language requires an alien to show that "he is stuck in a 'removable-but-unremovable limbo,' as the petitioners in *Zadvydas* were[;]" that is, the alien must show he "is unremovable because the destination country will not accept him or his removal is barred by our own laws." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

Here, Petitioner has been in custody for just under three-weeks pursuant to her removal order, which is far short from the six-month detention period that the Supreme Court has held is presumptively reasonable. Nor does the fact that Petitioner *may* appeal a hypothetical denial of her motion to reopen her immigration proceedings to the Board of Immigration Appeals or Ninth Circuit entitle her to relief, because it does not show that her detention is indefinite under the *Zadvydas* standard. Courts properly deny *Zadvydas* claims where a "habeas petitioner's assertion as to the unforeseeability of removal, supported only by the mere passage of time, [is] insufficient to meet the petitioner's burden to demonstrate no significant likelihood of removal under the Supreme Court's holding in *Zadvydas*." *Muthalib v. Kelly*, 2017 WL 11696616, at *3 (C.D. Cal. Apr. 19, 2017) (collecting cases).

E. The Balance of Equities and Public Interest Supports Denial of a TRO

The final two factors required for a preliminary injunction or TRO—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See, e.g., Nken v. Holder*, 556 U.S. 418, 435 (2009) (Kennedy, J., concurring) (emphasis added). Courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v Romero-Barcelo*, 456 U.S. 305, 312-13 (1982). In the instant case, the balance of equities and the public interest tip strongly in favor of the Respondents.

The public interest in enforcement of United States immigration laws is significant. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant."). Moreover, any order that grants "particularly disfavored" relief by enjoining the governmental entity from administering the statute it is charged with enforcing, constitutes irreparable injury to the Defendants and weighs heavily against the entry of injunctive relief. *Cf. New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers).

Here, Petitioner's requested relief would interfere with Respondents' enforcement of immigration laws. Accordingly, the balance of equities and the public interest tip in favor of Respondents.

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IV. CONCLUSION

The Respondents respectfully request that Petitioner's second *ex parte* TRO Application be denied and that the Petition be dismissed.

Dated: October 6, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Respondents, certifies that the memorandum of points and authorities contains 3,481 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 6, 2025

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