

1 Marcelo Gondim, SBN 271302
2 Gondim Law Corp.
3 1880 Century Park E, Suite 400
4 Los Angeles, CA 90067
5 Telephone: 323-282-7770
6 Email: court@gondim-law.com
7 Counsel for Petitioner

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

BARBARA GOMES MARQUES MAY,
Petitioner,

vs.

Case No.: 2:25-cv-08816

JAMES JANECKA¹, Warden, Adelanto ICE
Processing Center
10400 Rancho Road
Adelanto, CA 92301

**FIRST AMENDED PETITION FOR
WRIT OF HABEAS CORPUS AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

KRISTI NOEM, Secretary, U.S. Dept. Of
Homeland Security
C/O Office of the General Counsel
2707 Martin Luther King Jr. Ave, Se
Washington, Dc 20528-0485;

JOSEPH B. EDLOW, Director, U.S.
Citizenship and Immigration Services
5900 Capital Gateway Dr., Mail Stop 2120,
Camp Springs, Md 20588; and

PAM BONDI, U.S. Attorney General
950 Pennsylvania Avenue NW
Washington DC 20530

Respondents.

¹ Since the filing of the original petition, Petitioner has been transferred from the Los Angeles ERO Field Office to the Adelanto ICE Processing Center. The Warden of Adelanto ICE Processing Center is now Petitioner's immediate custodian. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure and *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), the Warden of Adelanto ICE Processing Center should be substituted as a proper respondent in this matter.

Petitioner, through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and requests emergency injunctive relief to prevent her imminent transfer by Immigration and Customs Enforcement (ICE) outside of this District. In support, Petitioner alleges as follows:

I. INTRODUCTION

1. Petitioner Barbara Gomes Marques May is a noncitizen currently detained at the East Adelanto ICE Processing Center, located at Adelanto East 10400 Rancho Road Adelanto, CA 92301. She was arrested in the afternoon of September 16, 2025, when she voluntarily appeared for a scheduled USCIS interview with her U.S. citizen husband.

2. The Petitioner had an order of removal issued against her on November 21, 2019, of which she was unaware.

3. The Petitioner has resided in the United States for several years and has established strong family and community ties in Los Angeles. She is married to a U.S. citizen, and her husband's Form I-130, Petition for Alien Relative, is currently approved by Defendant, USCIS, which was informed to the Petitioner during the I-130 petition interview.

4. ICE has indicated its intent to transfer the Petitioner imminently to a distant detention center, far from her family and counsel. Such a transfer could occur within hours or days, consistent with ICE's usual practices.

5. If Petitioner is transferred, she will suffer irreparable harm, including the likely loss of meaningful access to her attorney and family, and severe interference with her ability

1 to litigate her motion to reopen in absentia removal order, which has been filed with the
2 immigration court in Los Angeles.

3
4 6. Petitioner therefore seeks emergency intervention by this Court to halt her transfer
5 while she pursues her rights under the Immigration and Nationality Act (INA) and the U.S.
6 Constitution.

7
8 7. Petitioner therefore seeks emergency intervention by this Court through a writ of
9 habeas corpus under 28 U.S.C. § 2241 to prevent her transfer while she pursues her rights
10 under the Immigration and Nationality Act and the Constitution. She also seeks injunctive
11 relief compelling Respondents to recognize and afford her all procedural and statutory
12 rights. In addition, she requests any other appropriate relief under the Administrative
13 Procedure Act (APA), as ICE's arrest at the USCIS appointment constitutes agency action
14 that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
15 law under 5 U.S.C. § 706(2)(A). Specifically, ICE's policy of effectuating arrests at USCIS
16 field offices, where individuals reasonably expect to engage in routine immigration
17 proceedings, undermines the integrity of the immigration process, disregards established
18 norms, and fails to consider significant reliance interests, rendering such actions arbitrary
19 and capricious.
20
21
22

23
24 **II. JURISDICTION AND VENUE**

25
26 8. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §§
27 1101–1538, and its implementing regulations; the Administrative Procedure Act (APA),
28

1 5 U.S.C. §§ 500–596, 701–706; and the U.S. Constitution.

2 9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),
3 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States
4 Constitution (Suspension Clause).
5

6 10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et*.
7 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28
8 U.S.C. § 1651; Federal Rule of Civil Procedure 65; and the Court’s inherent equitable
9 powers.
10

11 11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because
12 Respondents are U.S. agencies and officers of the United States acting in their official
13 capacities or because they reside in this district. In addition, a substantial part of the events
14 or omissions giving rise to the claims occurred in this District, Petitioner is detained in
15 this District, and no real property is involved in this action.
16
17

18 **III. REQUIREMENTS OF 28 U.S.C. § 2243**
19

20 12. The Court must grant the petition for writ of habeas corpus or issue an order to
21 show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to
22 relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require
23 respondents to file a return “within *three days* unless for good cause additional time, not
24 exceeding twenty days, is allowed.” *Id.* (emphasis added).
25
26

27 13. Courts have long recognized the significance of the habeas statute in protecting
28

1 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the
2 most important writ known to the constitutional law of England, affording as it does a
3 *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*,
4 372 U.S. 391, 400 (1963) (emphasis added).
5

6 7 **IV. PARTIES**

8
9 14. Petitioner, Barbara Gomes Marques May, is a native and citizen of Brazil who
10 entered the United States and currently resides in California. On November 21, 2019, an
11 Immigration Judge ordered her removal, a decision of which she was unaware. On
12 September 16, 2025, after attending what was intended to be an interview for the
13 processing of the I-130 petition of which she was a beneficiary, and her I-485 application,
14 she was detained by ICE.
15

16 15. Respondent James Janecka is the warden of the Adelanto ICE Processing Center
17 in Adelanto, California. He is Petitioner’s immediate custodian, responsible for her
18 detention at 10400 Rancho Road Adelanto, CA 92301, and the person with the authority
19 over her detention or release. Respondent Giles is sued in his official capacity.
20

21 16. Respondent Kristi Noem is the Secretary of the Department of Homeland Security.
22 As Secretary, she oversees the federal agency responsible for implementing and enforcing
23 the INA, including the detention of noncitizens. She is sued in her official capacity.
24

25 17. Respondent Joseph B. Edlow is the director of U.S. Citizenship and Immigration
26 Services. As the Director of USCIS, he oversees the agency responsible for adjudicating
27
28

1 immigration benefits, including the I-130 and I-485 petitions pertinent to the petitioner's
2 case. He is sued in his official capacity.

3
4 18. Respondent Pamela Bondi is the Attorney General of the United States and head
5 of the U.S. Department of Justice. In that capacity, she oversees EOIR and the immigration
6 court system the agency administers. She is ultimately responsible for the agency's
7 operation. She is sued in her official capacity.
8

9
10 **V. STATEMENT OF FACTS**

11 19. Petitioner entered the United States with a tourist visa. She overstayed her visa,
12 and, unbeknownst to her, a Notice to Appear (NTA) was issued. When she did not appear
13 for the hearing held on November 21, 2019, at 5245 Pacific Concourse Dr #100, Los
14 Angeles, CA 90045, the Immigration Judge ordered her removal *in absentia*. Petitioner
15 was previously ordered removed in absentia due to lack of notice and intends to file a
16 motion to reopen under 8 C.F.R. § 1003.23(b)(4).
17
18

19 20. The Petitioner has resided in the United States for several years and has strong
20 family and community ties in Los Angeles. She is married to a U.S. citizen, Tucker May,
21 who filed an I-130 Petition for Alien Relative (Receipt# [REDACTED] on May 15,
22 2025, to help his wife obtain permanent residence.
23

24 21. On May 15, 2025, Petitioner also filed an I-485 Application to Adjust Status
25 (Receipt# [REDACTED]).
26

27 22. On September 16, 2025, while complying with USCIS requirements, the Petitioner
28

1 attended an interview for the I-130 with her attorney. She received a document stating that
2 her case was under review. After the interview, ICE officers separated her from her
3 attorney and subsequently detained her.
4

5 23. Petitioner has been detained since September 16, 2025. She has since been
6 transferred from the Los Angeles Federal Building to Adelanto East ICE Processing
7 Center, then to South Louisiana ICE Processing Center, and back to Adelanto East ICE
8 Processing Center. During her transfer to and while at the South Louisiana ICE Processing
9 Center, Petitioner endured twelve hours restrained in shackles, without a bed, during
10 which she was provided only with water and bread. Petitioner has a documented medical
11 condition affecting her back, and this treatment caused her significant pain and
12 exacerbated her condition.
13
14

15 24. Her transfer could occur within hours or days, consistent with ICE's regular
16 practices. Furthermore, there is no guarantee that Petitioner will remain at her current
17 location. ICE retains broad discretion to transfer detainees at any time and without prior
18 notice, which creates ongoing uncertainty and disruption for Petitioner. Such transfers can
19 impede her access to counsel, medical care, and the ability to prepare for her case, and
20 they contribute to the undue hardship and instability of her detention.
21
22

23 25. These repeated transfers, especially given her prior mistreatment and documented
24 medical condition, impose severe hardship and exacerbate the deprivation of her
25 fundamental rights.
26

27 26. If Petitioner is transferred, she will suffer irreparable harm, including the likely loss
28

1 of meaningful access to her attorney and family, medical care, and severe interference
2 with her ability to adequately prepare and present her defense in immigration
3 proceedings.
4

5 27. ICE frequently transfers detainees from Los Angeles to facilities hundreds or even
6 thousands of miles away, often providing little or no notice to counsel or family. Such a
7 transfer would irreparably harm the Petitioner by disrupting her ability to communicate
8 effectively with her attorneys, hindering the timely filing of necessary motions, and
9 separating her from her U.S. citizen husband and her broader support network. These
10 obstacles would significantly compromise both her legal representation and her access to
11 essential emotional and logistical support.
12

13
14 28. If Petitioner were to be transferred to a detention facility in Texas or Louisiana
15 again, she would face conditions that are significantly more severe than those at the East
16 Adelanto ICE Processing Center.
17

18 29. Petitioner poses no danger or flight risk, and there has been no individualized
19 determination of necessity for her continued detention.
20

21 30. Petitioner seeks relief from this Court through a writ of habeas corpus under 28
22 U.S.C. § 2241 and injunctive and declaratory relief under the Administrative Procedure
23 Act, to prevent her imminent transfer outside this District, which would deprive her of
24 access to counsel and the ability to pursue her motion to reopen. Although Petitioner
25 reserves the right to seek release should her detention later become prolonged or unlawful
26 under *Zadvydas v. Davis*, 533 U.S. 678 (2001), she does not presently seek release on that
27
28

1 basis.

2
3 **VI. CAUSES OF ACTION**

4
5 **Count I: Violation of Fifth Amendment Due Process Rights**

6 31. Petitioner realleges and incorporates by reference all preceding paragraphs as if
7 fully set forth herein.

8 32. The Fifth Amendment guarantees that no person shall be deprived of liberty
9 without due process of law. Prolonged detention without an individualized custody
10 determination by a neutral arbiter violates due process. See *Zadvydas v. Davis*, 533 U.S.
11 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 131
12 (2018).
13
14

15 33. The Due Process Clause applies to all persons in the United States, including non-
16 citizens, and prohibits government action that strips them of liberty without fair process.

17 34. Access to counsel is a cornerstone of due process in immigration proceedings. The
18 Ninth Circuit has recognized that the right to counsel in immigration proceedings is rooted
19 in the Due Process Clause and codified at 8 U.S.C. § 1362 and 8 U.S.C. § 1229a(b)(4)(A).
20

21 35. The Petitioner was deliberately separated from her attorney while attending a
22 USCIS interview for her pending application. The Ninth Circuit has held that, even
23 assuming a due process violation occurs when a petitioner is without counsel at the outset
24 of removal proceedings, the petitioner must demonstrate that she was prejudiced by the
25 violation. *Gomez-Velazco v. Sessions*, 879 F.3d 989, 994 (9th Cir. 2018). Here,
26
27
28

1 Respondents intentionally separated the Petitioner from her attorney while they were both
2 present at the USCIS building, demonstrating a clear bad faith intent to leave her
3 vulnerable. Had her attorney been present, she could have effectively presented critical
4 arguments, including her eligibility to file a motion to reopen her in absentia removal order
5 and the significance of her pending I-485 application, which allows her to lawfully remain
6 in the United States. This deliberate obstruction compromised her ability to meaningfully
7 participate in her case and violated her fundamental due process rights.
8

9
10 36. Transferring a detainee while a habeas petition is pending infringes upon due
11 process by depriving the petitioner of effective access to counsel, undermining the ability
12 to pursue pending claims, and frustrating the Court's ability to grant relief. See *Gomez-*
13 *Velazco v. Sessions*, 879 F.3d 989, 994 (9th Cir. 2018).
14

15 37. Petitioner has been in ICE custody since September 16, 2025, less than one month.
16 Accordingly, Petitioner does not presently seek release under *Zadvydas v. Davis*, 533 U.S.
17 678 (2001), which addresses detention beyond six months. Petitioner expressly reserves
18 the right to seek release should her detention later become prolonged or otherwise
19 unlawful under *Zadvydas*.
20

21
22 38. In light of the above, transferring the petitioner to a remote facility would not only
23 impede her access to counsel but also violate her constitutional right to due process. Such
24 an action would undermine the fairness of her removal proceedings and contravene
25 established legal precedents that safeguard the rights of individuals in immigration
26 proceedings.
27
28

Count II: Violation of the Administrative Procedure Act

39. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

40. The APA, 5 U.S.C. §§ 701–706, prohibits agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Specifically, 5 U.S.C. § 706(2)(A) mandates that a court shall "hold unlawful and set aside agency action, findings, and conclusions found to be... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

41. The actions of USCIS and ICE in this instance may be deemed arbitrary and capricious because they failed to provide adequate notice to Petitioner at the time the NTA was issued, depriving her of the opportunity to seek legal counsel or prepare adequately for the potential consequences of her appearance. Additionally, there was a lack of transparency in the procedures. A USCIS officer informed Petitioner's husband that his I-130 petition was approved moments before Petitioner was detained, creating confusion and undermining trust in the process. Furthermore, the detention itself may constitute a violation of procedural safeguards, as it was conducted without prior notice or explanation, potentially infringing upon Petitioner's rights and due process protections.

42. Transferring Petitioner without adequate notice, without opportunity for judicial review, and while her habeas petition is pending constitutes arbitrary and capricious agency action. Such a transfer would frustrate the purpose of habeas relief and deny her access to counsel and due process.

1 43. The Supreme Court has established that agency actions are arbitrary and capricious
2 if the agency has relied on factors which Congress has not intended it to consider, entirely
3 failed to consider an important aspect of the problem, offered an explanation for its
4 decision that runs counter to the evidence before the agency, or is so implausible that it
5 could not be ascribed to a difference in view or the product of agency expertise. (See
6 *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.*, 463
7 U.S. 29, 43 (1983)).
8

10 **Count III: Relief Under the All Writs Act**

11 44. Petitioner realleges and incorporates by reference all preceding paragraphs as if
12 fully set forth herein.
13

14 45. Under 28 U.S.C. § 1651 (the All Writs Act), this Court may issue “*all writs*
15 *necessary or appropriate in aid of its respective jurisdiction and agreeable to the usages*
16 *and principles of law.*”
17

18 46. Because Petitioner faces imminent transfer out of this District, which would place
19 her outside the Court’s jurisdiction or make it extremely difficult to enforce any relief this
20 Court might order, such a transfer would seriously undermine the ability of this Court to
21 grant habeas relief. Without being in the District (or effectively within its reach), the Court
22 may be powerless to ensure her appearance, to receive evidence, to provide access to
23 counsel, or to enforce any ordered release or protections.
24

25 47. Precedent supports this application of the All Writs Act where the preservation of
26 jurisdiction and the ability to render meaningful relief are at risk. “[W]hen the Government
27
28

1 moves a habeas petitioner after she properly files a petition naming her immediate
2 custodian, the District Court retains jurisdiction and may direct the writ to any respondent
3 within its jurisdiction who has legal authority to effectuate the prisoner's release.”
4

5 *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004).

6 48. Here, Petitioner has no adequate alternative remedy. If Respondents were
7 permitted to transfer her before this Court issues final habeas relief, the remedy could be
8 rendered meaningless, Petitioner may be beyond reach, separated from counsel, or held
9 under conditions that make legal access all but impossible. Under these circumstances, the
10 All Writs Act authorizes this Court to issue injunctive or other relief to prevent the transfer
11 and thereby preserve the jurisdiction necessary for meaningful habeas review.
12
13

14 **Count IV: Reservation of Rights Under *Zadvydas***

15 49. Petitioner realleges and incorporates by reference all preceding paragraphs as if
16 fully set forth herein.
17

18 50. Petitioner expressly reserves her right to seek relief under *Zadvydas v. Davis*, 533
19 U.S. 678 (2001), should her detention extend beyond the period considered reasonable
20 under law or otherwise become unlawful. At present, Petitioner’s request is limited to
21 preventing transfer, which would impede her access to counsel and judicial review.
22

23 **Count V: Judicial Review and Constitutional Limits on Transfer**

24 51. Petitioner realleges and incorporates by reference all preceding paragraphs as if
25 fully set forth herein.
26

27 52. Petitioner acknowledges that 8 U.S.C. § 1231(g)(1) confers broad discretionary
28

1 authority upon the Attorney General (now DHS/ICE) to determine the location of
2 immigration detention, including the transfer of detainees between facilities. See *Rios-*
3 *Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985) (“We are not saying that the petitioner
4 should not have been transported to Florida. That is within the province of the Attorney
5 General to decide.”); *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (“the Attorney
6 General’s discretionary power to transfer aliens from one locale to another...arises from
7 8 U.S.C. 1231(g)(1)...”).

10 53. Further, 8 U.S.C. § 1252(a)(2)(B)(ii) restricts federal court review over actions
11 committed to the Attorney General’s discretion “under this subchapter [including section
12 1231].”

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

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

27 56. The Supreme Court has similarly instructed that “[even] where Congress intends
28

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

6 57. Accordingly, while the Court may not review the mere fact or wisdom of transfer,
7 it has clear jurisdiction to review whether the transfer, as executed in this case, violated
8 Petitioner’s constitutional rights to due process, access to counsel, or humane treatment.
9 This is the basis of the present request for relief.
10
11

12 VII. PRAYER FOR RELIEF

13

14 WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:
15

- 16 1) Assume jurisdiction and proper venue over this matter;
- 17 2) Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents to
18 maintain Petitioner within this District pending adjudication of her motion to reopen
19 and related proceedings, in order to preserve this Court’s jurisdiction and ensure
20 Petitioner’s meaningful access to counsel and judicial review;
- 21 3) Restrain Respondents from transferring Petitioner to another facility or jurisdiction
22 until such time as this Court rules on her habeas petition;
- 23 4) Grant declaratory relief holding that any transfer of Petitioner would violate her
24 constitutional and statutory rights, given that she lawfully entered the United States
25
26
27
28

1 and has a pending I-485 adjustment of status application;

2 5) Grant such other and further relief as the Court deems just and proper, including
3 any relief appropriate should Petitioner's detention later become prolonged or
4 otherwise unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001);
5

6 6) Award Petitioner reasonable attorneys' fees and costs under the Equal Access to
7 Justice Act, 28 U.S.C. § 2412; and
8

9 7) Grant such other and further relief as this Court deems just and proper.

10 Date: October 8, 2025

11 Respectfully submitted,
12

13 /s/ Marcelo Gondim

14 _____
15 Marcelo Gondim (SBN 271302)
16 Gondim Law Corp.
17 1880 Century Park East, Suite 400
18 Los Angeles, CA 90067
19 Telephone: 323-282-777
20 Email: court@gondim-law.com
21 *Attorney for the Petitioner*
22
23
24
25
26
27
28