

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

O.G.

Petitioner,

v.

LaDeon FRANCIS, New York Field Office Director for U.S. Immigration and Customs Enforcement; Paul ARTETA, Director of Orange County Correctional Facility; Teresa L. RILEY, Chief Immigration Judge, Executive Office of Immigration Review; Daren K. MARGOLIN, Director, Executive Office of Immigration Review; Pamela BONDI, Attorney General of the United States; Kristi NOEM, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Civil Action No. 25-CV-8977 (JAV)

**APPLICATION FOR TEMPORARY
RESTRAINING ORDER TO
TEMPORARILY ENJOIN TRANSFER
OF PETITIONER DURING PENDENCY
OF COURT'S CONSIDERATION OF
MOTION TO ENJOIN TRANSFER**

PRELIMINARY STATEMENT

Petitioner O.G. (“Mr. G” or “Petitioner”) respectfully requests that Respondents be enjoined from transferring him outside of the jurisdiction of this court, pending the Court’s decision on whether to enjoin his transfer for the pendency of his petition for habeas corpus. Given the Government’s indication in its letter filed yesterday at ECF No. 18, that Immigration and Customs Enforcement (ICE) is unwilling to “voluntarily agree not to transfer Petitioner until the Court decides the anticipated motion[,]” it is critical that the Court issue an order to clarify the expectation established during Friday’s conference and ensure that the Court has adequate time to adjudicate the merits of Petitioner’s motion.

Counsel for Petitioner notified counsel for Respondents of the intent to file this application earlier today. Counsel for Respondents replied that their position was “that ICE opposes entry of a TRO for the reasons stated in my letter from yesterday.”

Petitioner requests that the Court issue a temporary restraining order forthwith to preserve the status quo while the Court considers the pending motion to enjoin transfer. Such an order is warranted under Fed. R. Civ. P 65(b), because “immediate and irreparable injury” would occur if Respondents were to move Petitioner outside of the jurisdiction prior to the Court’s ability to consider and rule on the pending motion to enjoin his transfer during consideration of the merits of the habeas petition. If Respondents were to move Petitioner prior to the Court’s ability to rule on that motion, it would moot the pending request and necessitate additional briefing regarding the Court’s authority to return Petitioner to the district. It would also subject Petitioner to irreparable injuries during transfer, as described below and in the concurrently filed letter brief, including disruption to his medical care, emotional distress and injury from the conditions of ICE transfers, and disruption of attorney-client communications.

The Court previously stated at the conference held on Friday November 7, 2025, that it expected Respondents would not move Petitioner during the short time that it was considering the instant motion. Given Respondents’ stated refusal to comply with that expectation, the Court should temporarily enjoin Respondents from transferring Petitioner to ensure that he is not transferred in the coming days prior to the Court’s ruling on the motion.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Petitioner O.G. filed his Petition for Writ of Habeas Corpus, ECF No. 1, on October 29, 2025, along with an accompanying Motion for Order to Show Cause, ECF No. 4. The Motion for Order to Show Cause requested that the Court enjoin Petitioner’s transfer from the jurisdiction

pending adjudication of the merits of his petition. *Id.* Although the Court issued an order enjoining Petitioner's removal the following day, ECF No. 9, the Court has yet to rule on Petitioner's request to enjoin his transfer from the jurisdiction.

At a conference held Friday, November 7, 2025, the Court sought briefing on the scope of its remedial authority to enjoin Petitioner's transfer. The Court ordered Petitioner to file a letter brief explaining the source of that authority by Tuesday, November 11, 2025,¹ and ordered the government to respond by Thursday, November 13, 2025.

The Court indicated that it expected the government would not transfer Petitioner while the Court was considering the motion, and requested that counsel for the government convey that to Immigration and Customs Enforcement (ICE). Counsel for the government indicated he would do so.

However, yesterday, Monday, November 10, 2025 Respondents filed a letter on the docket, asserting that "ICE cannot voluntarily agree not to transfer Petitioner until the Court decides the anticipated motion." ECF No. 18. According to Respondents, ICE claims that it is unable to do so because, "[t]hese bed spaces are subject to numerous other demands, including court orders in other immigration cases in this District, and aliens who need to be transferred or kept within the District to participate in court or other hearings." *Id.*

Petitioner has been detained at the Orange County Correctional Facility ("Orange County Jail" or "OCJ") for seven months, without being transferred. *See* ECF No. 1 at ¶ 32. Petitioner's counsel's review of the ICE detainee locator indicates that, for the moment, Mr. G is still detained at Orange County.

¹ The minute entry on the Court's docket indicates that Petitioner's letter brief is due on Wednesday, November 12, 2025. However, Petitioner files this application, along with the letter brief, on the date requested by the Court at the hearing.

LEGAL STANDARD

To obtain preliminary relief, “a movant must demonstrate 1) irreparable harm absent injunctive relief; 2) either a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial, with a balance of hardships tipping decidedly in the plaintiff’s favor, and 3) that the public’s interest weighs in favor of granting an injunction.” *Metro. Taxicab Bd. of Trade v. City of New York*, 615 F.3d 152, 156 (2d Cir. 2010) (cleaned up).

ARGUMENT

I. Petitioner Will Suffer Irreparable Harm if He Is Transferred from the Jurisdiction

ICE’s indication that it is “unable” to commit to not moving Mr. G for just a week or so, to allow this Court to consider Petitioner’s request, implies that it may plan to transfer him imminently.² Immediate action, formalizing this Court’s expectation into a written order is required in order to ensure that Mr. G does not suffer irreparable harm while the Court decides the merits of his request to enjoin his transfer during the pendency of the habeas petition.

As described in the Petition and in the concurrently filed letter brief in support of enjoining transfer, *see* ECF 1 at ¶ 35–36 & ECF 19, Mr. G faces serious health issues that can be

² This morning, for example, Petitioner’s removal defense attorney at Brooklyn Defender Services believed that Petitioner may have been moved by ICE, as he no longer appeared in the video conferencing system she used to communicate with Petitioner. She emailed ICE to inquire about this, including her understanding of the Court’s statement on Friday regarding the Court’s expectation ICE would not move Petitioner. ICE was unable to provide a clear response at first as to the status of Petitioner’s location, indicating that today was a holiday and she should therefore check the detainee locator tomorrow. *See* Ex. A (emails with ICE Officer Dawson on Nov. 11, 2025). Later, another ICE official explained that Petitioner was presently at OCJ and the issue counsel experienced was due to the conferencing platform, not because Petitioner had been transferred from OCJ. Ex. B (emails with ICE Officer Flynn on Nov. 11, 2025). At no time, however, did ICE officials provide any assurance that Petitioner would not be transferred, and in fact, at first would not even confirm whether Petitioner was or was not being moved today, indicating that the detainee locator may not update on the holiday. This adds to counsel’s concern that Respondents may move Petitioner in the coming days.

aggravated by change in environment and require particular daily treatment. He has been detained at Orange County Jail (“OCJ”) for seven months with no logistical need for transfer on the part of the government. Within his first month in detention, he was hospitalized after his health took a sudden turn due to lack of access to medication, resulting in the facility and officers taking his acute health needs more seriously. ECF 1 at ¶ 35–36 At this time, although his health conditions have worsened as a result of detention, he has been able to access his necessary treatments because of his established relationship with OCJ correctional officers. As described by others, transfers frequently occur in traumatic conditions (with individuals being shackled for hours or days during a transfer) and with disruptions in medical care. *See* ECF 19 (citing *Munoz Materano v. Arteta*, No. 25 CIV. 6137 (ER), 2025 WL 2630826, at *5 & *19 (S.D.N.Y. Sept. 12, 2025) (describing disruption in medical treatment during transfers between ICE detention centers, along with traumatic conditions of transfer, finding that this rose to the level of deliberate indifference to serious medical needs); Freedom for Immigrants, *Trafficked & Tortured: Mapping ICE Transfers*, at 16–20 (Feb. 2023), available at <https://www.freedomforimmigrants.org/trafficked-and-tortured-report> Accordingly, transfer poses a particular risk to Petitioner’s immediate safety and well-being.

Further, Mr. G has a protected interest in maintaining his ongoing attorney-client relationship with the clinical student team. Virtual visits are unreliable, as evidenced by difficulties undersigned counsel have repeatedly had in communicating with Petitioner via ICE’s video system. Transfer outside of this District would impede in-person communication with counsel or make it impossible if Petitioner is transferred to one of many ICE detention facilities that are outside driving distance of this district. As such, “[p]etitioner’s interests in participating in further proceedings before this Court and in maintaining adequate access to legal counsel

through these proceedings” warrant an order enjoining transfer. *Perez y Perez*, 2025 WL 1908284, at *2 (citing *Ozturk*, 136 F.4th at 402); *see also Orantes-Hernandez*, 685 F. Supp. 1488, 1509 (recognizing right to challenge transfer that would interfere with petitioners’ right to counsel and ordering that transferred immigration detainees be returned); *Hamama v. Adducci*, 261 F. Supp. 828, 838 (E.D. Mich. 2017) (holding that ICE’s transfer of detainees “severely disrupt[ed]” their right to counsel, where detention center was located a 4-hour drive from counsel, legal calls were limited to 15 minutes, and detainees were unable to make free calls to pro bono counsel).

Finally, transferring Mr. G from the jurisdiction may hamper the Court’s ability to grant him complete relief. One of the principal forms of relief that Mr. G seeks is a bond hearing conducted by the Court. He may wish to testify at such a hearing and, the Court may find his testimony critical to determining his eligibility for bond. If Mr. G is transferred across the country, it would be more difficult for him to provide this testimony and prepare for such a hearing with counsel. Accordingly, enjoining Mr. G’s transfer would be appropriate in aid of this Court’s authority to compel his presence and testimony. *See* 28 U.S.C. § 2243 (“Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.”); *id.* § 2241(c)(5) (habeas corpus *ad testificandum*).

II. Petitioner is Likely to Demonstrate That the Court Has Authority to Enjoin His Transfer or, at Least, Raises Serious Questions in that Regard

Mr. G is likely to succeed in showing that the Court has the authority to enjoin his transfer, or at least raises serious questions about the issue, combined with the significant hardship he would face if transferred.

The All Writs Act and the Court's inherent equitable powers provide this Court ample authority to issue this modest relief to maintain the status quo, following the lead of dozens of other courts in this circuit. Mr. G's ongoing medical needs, as well as his protected interest in maintaining adequate access to legal counsel, weigh in favor of the Court issuing such relief. The All Writs Act ("AWA") provides federal courts with a powerful tool to preserve the integrity of their jurisdiction to adjudicate claims before them. *See* 28 U.S.C. § 1651(a) (authorizing federal courts to "issue all writs necessary or appropriate *in aid of* their respective jurisdictions and agreeable to the usages and principles of law"). The Act encompasses a federal court's power to "maintain the status quo by injunction pending review of an agency's action." *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966), and courts have found that the Act should be broadly construed to "achieve all rational ends of law," *California v. M&P Investments*, 46 F. App'x 876, 878 (9th Cir. 2002) (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942)).

Courts in this district and circuit have regularly cited this authority, along with the "equitable and flexible nature of habeas relief," to enjoin transfer or facilitate return of habeas petitioners pending the final adjudication of a petition. *Perez y Perez v. Noem*, No. 25-CV-4828, 2025 WL 1908284 (S.D.N.Y. June 13, 2025) (ordering Petitioner not to be transferred outside of the District pending adjudication of the Petition); *see, e.g., Ozturk v. Trump*, No. 25 Civ. 374, 2025 WL 1145250, at *15 (D. Vt. Apr. 18, 2025) (ordering Petitioner's transfer from Louisiana to Vermont due, in part, to her pending habeas petition), stay and mandamus denied, *Ozturk v. Hyde*, 136 F.4th 382, 403 (2d Cir. 2025); *Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 WL 3085032 (W.D.N.Y. Nov. 4, 2025) (enjoining transfer out of the district to "maintain the status quo"); *Saamishvili v. Flanagan*, No. 25-CV-9181 (ER), 2025 WL 3090134 (S.D.N.Y. Nov. 5, 2025) (same); Order, *Sillah v. Barr*, No. 19 Civ. 1747 (S.D.N.Y. Feb. 25, 2019), ECF

No. 6 (enjoining Respondents from transferring Petitioner outside of the New York City area while Petitioner's habeas petition was pending).

Moreover, the reason provided by ICE for the supposed lack of bed space speaks volumes as to the merits of the Government's argument that enjoining Mr. G's transfer is beyond the Court's authority. The Government asserts that bed space is at such a premium because of "court orders in other immigration cases in this District" ECF No. 18.

Enjoining Mr. G's removal from the jurisdiction is thus not only well within the power of the Court, but also necessary to maintain the status quo and provide Mr. G. with full access to the relief he seeks. Because such a transfer, after seven months in the same facility, would prove unnecessarily punitive and interfere with his medical care and access to counsel and this Court, Mr. G is likely to succeed in showing that the Court has powerful remedial authority to prevent it.

III. The Public Interest Weighs in Favor of Temporarily Enjoining Mr. G's Transfer While the Court Decides Whether to Do So Permanently

"The purpose of a temporary restraining order is to preserve an existing situation *in statu quo* until the court has an opportunity to pass upon the merits." *Garcia v. Yonkers Sch. Dist.*, 561 F.3d 97, 107 (2d Cir. 2009) (quotation omitted). Issuing a TRO here would serve the important public interest of allowing the Court time to adjudicate Petitioner's request on the merits and with the benefit of the letter briefs from the parties.

Moreover, issuing a TRO is necessary in order to formalize the Court's expectation, set at the November 7, 2025 conference, that ICE would refrain from transferring Petitioner in order to allow the Court time to pass upon the issue. Because ICE is unwilling to do so voluntarily, a formal order is required to serve the Court's important public interest in fully weighing the merits.

Finally, the Government has no interest in retaining the ability to transfer Mr. G over the coming week, while the Court decides whether to enjoin his transfer. ICE's assertion that it is "unable" to comply with the Court's expectations, even for a week, because of limited bed space, *see* ECF No. 18, is belied by the seven months that Mr. G has spent detained at the same facility without ever being transferred. At the very least, it is unusual that the agency's operations require it to move Mr. G now, shortly after he filed a petition challenging his custody, and not during the previous seven months in which he had been detained. The Government does not explain what operational concerns require Mr. G to be transferred now, giving rise to a concern that any such transfer would be retaliatory. Nor does the letter claim that ICE would be unable to comply with a court order blocking Mr. G's transfer.

ICE's refusal to commit to keeping Petitioner at OCJ for the brief period while the Court considers whether to enjoin his transfer suggests that it plans to transfer Mr. G imminently. Mr. G's long detention in the same facility plainly shows that such a transfer is far from necessary, and the government provides no basis to believe that it would be necessary in the short-term. As such, it would interfere with Mr. G's medical care, access to counsel, and this Court, and would be needlessly punitive.

In addition, if ICE does move Petitioner while the Court decides the pending question, and the Court later determines that it has the authority to enjoin transfer, Petitioner would likely request to be transferred back into this jurisdiction, necessitating another round of briefing. The Court should thus formalize its expectation, set at the November 7, 2025 conference, the Mr. G not be removed from the jurisdiction while it decides whether to so order for the pendency of its consideration of his petition.

CONCLUSION

Petitioner respectfully requests that the Court enjoin ICE from transferring him from the jurisdiction for the limited amount of time it takes the Court to decide whether to enjoin his transfer for the duration of the litigation of the habeas petition.

Dated: November 11, 2025
New York, NY

Respectfully Submitted,

/s/ Alexandra Lampert
Alexandra Lampert
Brooklyn Defender Services
177 Livingston Street, 7th Fl
Brooklyn, NY 11201
T: (718) 254-0700 ext. 288
E: alampert@bds.org

Adjunct Professor of Clinical Law
Immigrant Rights Clinic
Washington Square Legal Services
245 Sullivan St., 5th Floor
New York, New York 10012

Pro Bono Counsel for Petitioner

Jason Radvany, Legal Intern
Mariel Gonzalez-Medellin, Legal Intern
Ryen Diaz, Legal Intern
Immigrant Rights Clinic
Washington Square Legal Services
245 Sullivan St., 5th Floor
New York, New York 10012