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Attorneys for Petitioner Lidia Hernandez Ancelmo

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LIDIA HERNANDEZ ANCELMO,

Petitioner,

v.

POLLY KAISER, Acting San Francisco
Field Office Director, Enforcement
and Removal Operations, United States
Immigration and Customs Enforcement
(ICE); CHRISTOPHER CHESTNUT,
Warden, California City Correctional
Facility; MARKWAYNE MULLIN,
Secretary, United States Department of
Homeland Security; TODD BLANCHE,
Attorney General of the United States;
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW,

Respondents.

No. 1:26-cv-05579-DJC-CSK (HC)

**REPLY TO RESPONDENTS' RESPONSE TO
MOTION FOR TEMPORARY
RESTRAINING ORDER AND PETITION
FOR WRIT OF HABEAS CORPUS
AND MOTION TO COMPEL RETURN OF
PETITIONER**

* Application for Pro Hac Vice Admission Pending

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EXHIBIT LIST

A. Sworn Affidavit of Jacob Maughan regarding BIA APPEAL

B. Redacted Printout of EOIR submission page showing Petitioner's BIA appeal
submitted on July 16, 2026

I. INTRODUCTION

Petitioner contends that the Petition is not moot because Respondents removed Petitioner unlawfully in violation of this Court's order (ECF No. 6), that Petitioner's BIA appeal remained pending due to the tolling provision, that the Petition is not an abuse of the Writ and must be heard to serve the ends of justice, and that Petitioner's substantive Due Process claims are properly brought in Habeas Corpus. Furthermore, Petitioner moves this Court to compel the return of Petitioner to the United States.

Respondent's opposition relies on an incomplete administrative record and seeks to benefit from their own direct violation of this Court's Order. Respondents concede that this Court issued an Order administratively staying Petitioner's removal at 5:35 P.M. on July 22, 2026, (ECF No. 6) and that they received this order at 5:58 P.M. *See* ECF No. 6, at 1-2. Respondents' counsel submitted to the Court that the Order was transmitted to DHS on July 22, 2026. *Id.* at 2. Despite this explicit Court Order, Respondents executed Petitioner's removal the following day on July 23, 2026. Respondents now argue that this petition is moot because Petitioner is no longer in their custody. However, the government cannot moot a habeas petition by removing a petitioner in violation of an active federal court stay. Petitioner contends that this Court retains full jurisdiction to order Petitioner's immediate return to the United States to restore the status quo.

Furthermore, Respondents assert that no regulatory stay was in effect and submitted a Board of Immigration Appeals (BIA) rejection notice dated July 16, 2026, implying Petitioner had no pending appeal. *See* ECF No. 7-4, at 1. This omits the critical fact that the rejection notice expressly provided a 15-day cure period during which "any applicable filing deadline will be tolled..." *Id.* Because Petitioner cured the defect and refiled the appeal on that exact same day,

1 Petitioner contends that her appeal remained pending, and her removal was independently stayed
2 under binding federal regulations. *See Exhibit A*, Declaration of Jacob Maughan, ¶ 5.

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4 Finally, the Court should firmly reject Respondents' attempts to dismiss Petitioner's
5 medical claims on procedural grounds. Respondents characterize this petition as an "abuse of the
6 writ". However, Petitioner contends that prior petition was filed *pro se* and was dismissed purely
7 on procedural grounds without any review of the merits. More importantly, Petitioner is suffering
8 from an active medical condition—including a recent myocardial infarction, unmedicated
9 pancreatic cancer remission, and severe uterine bleeding—which compels this Court's review
10 under the "ends of justice" exception. *See generally* ECF No. 1-2, 1-66 (Medical Records).
11 Because the California City Processing Center is incapable of providing the life-sustaining
12 medical care necessary for her survival, and because Petitioner was detained in violation of her
13 procedural and substantive due process rights, no set of conditions can cure the ongoing Fifth
14 Amendment violation. Therefore, immediate release is the only legally available remedy, placing
15 her claim squarely within the core of habeas corpus under 28 U.S.C. § 2241.
16

17 **II. RESPONSES TO GOVERNMENT ARGUMENTS**

18 **A. The Petition Is Not Moot Because Respondents Removed Petitioner Unlawfully in** 19 **Violation of This Court's Order** 20

21 Respondents' assertion that this Court may find the action moot because Petitioner is no
22 longer in physical custody must be firmly rejected. A habeas petition is not mooted when the
23 government removes a petitioner in direct violation of an active federal court stay.

24 Under Ninth Circuit precedent, a petitioner's physical departure from the United States
25 does not strip a federal court of jurisdiction or moot a pending habeas petition if the removal was
26 unlawful. *Singh v. Waters*, 87 F.3d 346, 349 (9th Cir. 1996). When the government deports an
27 individual in violation of a judge's stay order, the departure is legally invalid, and the court retains
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1 full jurisdiction to order the government to return the petitioner to the United States. *Id.* at 349-50.
2 Furthermore, a habeas petition remains a live controversy following removal if the petitioner was
3 in custody at the time the petition was filed and continues to suffer actual collateral consequences
4 from the removal. *Zegarra-Gomez v. INS*, 314 F.3d 1124, 1127 (9th Cir. 2003).
5

6 The factual timeline provided by Respondents confirms a direct and unlawful violation of
7 this Court's order. Respondents conceded that this Court issued an administrative stay of removal
8 on July 22, 2026, at 5:35 P.M., and that they received this order at 5:58 P.M. Despite having
9 explicit notice of the stay, Respondents proceeded to execute Petitioner's removal to Mexico the
10 following day on July 23, 2026. ECF No. 7, at 2. Because Petitioner's removal was executed
11 contrary to this Court's order, the physical removal is legally void and does not moot her claims.
12 *See Singh*, 87 F.3d at 349. Additionally, Petitioner was in custody when she filed her petition on
13 July 18, 2026, and she continues to suffer severe collateral consequences, including the statutory
14 bar to reentry, loss of access to counsel, removal from her children (one who is a five year old
15 autistic male), and the life-threatening deprivation of her necessary medical care. *See Zegarra-*
16 *Gomez*, 314 F.3d at 1127.
17

18 Respondents acknowledge in their own filing that they are currently "working on
19 coordinating Petitioner's return". ECF No. 7, at 2. This admission demonstrates that effectual
20 relief is not only possible but actively underway. Therefore, the case is not moot, and the Court
21 should formally order Respondents to immediately return Petitioner to the United States to restore
22 the status quo and cure the violation of the stay.
23

24 **B. Petitioner's BIA Appeal Remained Pending Due to the Tolling Provision**

25 Respondents' assertion that no regulatory stay was in effect relies on a material omission
26 of fact regarding the status of Petitioner's administrative appeal.
27

28 Under 8 C.F.R. § 1003.6(a), the timely filing of an appeal with the Board of Immigration

1 Appeals automatically stays the execution of an Immigration Judge's removal decision. When a
2 petitioner submits an appeal that is rejected for a procedural defect—such as an issue with the
3 filing fee—the Board's standard practice, as explicitly stated in its notices, is to provide a cure
4 period. During this period, all applicable filing deadlines are tolled. The legal effect of this tolling
5 provision is that it preserves the timeliness and the pending status of the appeal, provided the
6 petitioner cures the defect within the allotted timeframe.
7

8 Here, Respondents attempt to justify their actions by submitting a rejection notice dated
9 July 16, 2026, arguing that Petitioner's appeal was rejected and, by implication, no longer
10 pending. This presents an incomplete and misleading record. The very exhibit provided by
11 Respondents explicitly states that Petitioner had "15 days from the date of this notice to re-file the
12 rejected document with the filing fee or new fee waiver request". ECF No. 7-4, at 1. Crucially, the
13 notice guarantees that "any applicable filing deadline will be tolled during the 15-day cure
14 period". *Id.*
15

16 To be clear, the BIA's initial rejection of the appeal was entirely procedural and was not
17 based on any substantive defect in Petitioner's claims. Because Petitioner was detained and unable
18 to gather the necessary funds for the filing fee of \$1000 in time, she initially submitted her appeal
19 with a fee waiver request. The BIA's rejection was based exclusively on its denial of that fee
20 waiver request, which necessitated the immediate refiling of the appeal with the proper fee.
21

22 Petitioner cured the fee defect and refiled the appeal on that *exact same day*, July 16,
23 2026. *See* Exhibit A Declaration of Jacob Maughan, ¶¶ 5-8; and Exhibit B, at 1-2. Because the
24 deadline was expressly tolled by the Board of Immigration Appeals and the appeal was promptly
25 refiled within the prescribed window, Petitioner maintained a pending, timely appeal. Therefore,
26 the automatic stay of removal under 8 C.F.R. § 1003.6(a) remained continually in effect.
27

28 Respondents' execution of her removal on July 23, 2026, was an *ultra vires* act that violated

1 binding federal regulations, in addition to their violation of this Court's order of an administrative
2 stay.

3 **C. The Petition Is Not an Abuse of the Writ and Must Be Heard to Serve the Ends of Justice**

4 Respondents argue that Petitioner's challenge to her conditions of confinement constitutes
5 an "abuse of the writ" under 28 U.S.C. § 2244(a) because she previously filed a habeas petition.
6 This argument is legally erroneous and relies on a statute that does not apply to Petitioner's
7 circumstances.
8

9 The Ninth Circuit has explicitly held that while 28 U.S.C. § 2244(a) prevents a federal
10 inmate from using a § 2241 petition to call into question a conviction or sentence that has already
11 been subject to collateral review, it "cannot apply to a § 2241 petition filed by an INS detainee"
12 because the statute strictly bars successive petitions seeking review of detention "pursuant to a
13 judgment of a court of the United States." *Barapind v. Reno*, 225 F.3d 1100, 1111 (9th Cir.
14 2000).
15

16 Because Petitioner is a civil immigration detainee and her detention is not pursuant to a
17 judgment of a United States court, the gatekeeping provisions of § 2244(a) do not apply to her
18 petition.
19

20 Furthermore, the abuse of the writ doctrine examines a petitioner's conduct to determine if
21 there was a conscious decision to deliberately withhold claims, pursue piecemeal litigation, or vex
22 and harass the court or the state. *Farmer v. McDaniel*, 98 F.3d 1548, 1558-59 (9th Cir. 1996).

23 There is no evidence of such conduct here. Petitioner's prior petition was filed *pro se*. It
24 was denied on July 7, 2026, strictly on procedural grounds because Petitioner—detained,
25 unrepresented, and navigating a language barrier—failed to file a technical legal reply contesting
26 mandatory detention under 8 U.S.C. § 1226(c). The prior court never reached the merits of her
27 detention, nor did it evaluate her medical vulnerability. This habeas brings an entirely new claim
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1 of a violation of Due Process concerning the conditions of her detention due to her untreated
2 medical condition and Respondents' inability to provide for her medical needs. Furthermore,
3 federal courts hold *pro se* pleadings to less stringent standards, and a *pro se* litigant's failure to
4 perfectly navigate complex habeas corpus procedures does not constitute a bad-faith abuse of the
5 writ. *See Woods v. Carey*, 525 F.3d 886, 889-90 (9th Cir. 2008).

7 Finally, the "ends of justice" strictly require this Court to hear the present petition. *See*
8 *Clark v. Lewis*, 1993 U.S. App. LEXIS 26284, *17 (9th Cir. 1993). It is entirely unreasonable to
9 expect an unrepresented, critically ill noncitizen to have effectively litigated a substantive due
10 process claim regarding her conditions of confinement while actively suffering from those very
11 conditions. These extreme, life-threatening medical developments render her current custody
12 unconstitutional, creating a compelling and urgent ground for relief that satisfies any equitable
13 exception to the successive petition bar.
14

15 **D. Petitioner's Substantive Due Process Claims Are Properly Brought in Habeas Corpus**

16 Respondents erroneously assert that Petitioner's challenge to her medical deprivation is
17 merely a "conditions of confinement" claim that must be brought as a civil rights lawsuit rather
18 than a habeas petition under 28 U.S.C. § 2241. This argument misapprehends the law governing
19 civil immigration detainees.
20

21 When the government detains an individual pursuant to an immigration violation, that
22 person is a civil detainee. *Almeida v. Barr*, 452 F. Supp. 3d 978, 985 (W.D. Wash. 2020). Under
23 the Fifth Amendment, the government violates the Due Process Clause if it fails to provide civil
24 detainees with basic necessities, including adequate medical care and reasonable safety. *Id.* at
25 986. To evaluate the constitutionality of civil detention conditions, a court must determine
26 whether those conditions "amount to punishment of the detainee." *Id.* A detainee can establish
27 unconstitutional punishment by demonstrating that the challenged government actions are not
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1 reasonably or rationally related to a legitimate government objective, or are excessive in relation
2 to that purpose. *Id.*

3 Generally, challenges to the validity or duration of confinement fall within the exclusive
4 province of habeas corpus. *Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016) (en banc);
5 *Wilson v. Ponce*, 465 F. Supp. 3d 1037, 1047 (C.D. Cal. 2020). Conversely, constitutional claims
6 that merely turn on the circumstances or conditions of confinement fall outside the core of habeas
7 and must generally be brought in a civil rights action. *Nettles*, 830 F.3d at 927; *Wilson*, 465 F.
8 Supp. 3d at 1047. However, while the Ninth Circuit has established strict exclusivity rules for
9 state prisoners, holding that a civil rights action is the exclusive vehicle for any claim not
10 necessarily spelling speedier release, *Nettles*, 830 F.3d at 930; *Wilson*, 465 F. Supp. 3d at 1047,
11 these restrictions do not automatically bar civil immigration detainees from seeking release from
12 unconstitutional conditions of confinement under 28 U.S.C. § 2241. *See Gutierrez-Lopez v.*
13 *Figueroa*, 462 F. Supp. 3d 973, 982-83 (D. Ariz. 2020); *Perez v. Wolf*, 445 F. Supp. 3d 275, 293
14 (N.D. Cal. 2020). In the absence of binding Supreme Court authority to the contrary, the Ninth
15 Circuit and its district courts have recognized that a civil immigrant detainee may utilize a § 2241
16 petition to challenge unconstitutional conditions of confinement. *Gutierrez-Lopez*, 462 F. Supp.
17 3d at 983; *Perez*, 445 F. Supp. 3d at 293.

18 A civil immigration detainee challenging the constitutionality of her medical care may
19 properly seek immediate release through a petition for writ of habeas corpus where she alleges
20 that her conditions of confinement amount to unconstitutional punishment and immediate release
21 is the only adequate remedy to abate the threat to her life. *See Pinson v. Carvajal*, 69 F.4th 1059,
22 1072-73 (9th Cir. 2023); *Gutierrez-Lopez*, 462 F. Supp. 3d at 983. The proper analytical inquiry
23 is why release from confinement is necessary to remedy the underlying constitutional violation.
24 *Pinson*, 69 F.4th at 1072. When immediate release is the only adequate remedy to address a life-
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1 threatening failure to provide necessary medical care, the claim directly strikes at the fact of
2 confinement and is cognizable under habeas. *Id.* at 1072-73; *Gutierrez-Lopez*, 462 F. Supp. 3d at
3 983. The fact that the court must consider the conditions of detention to resolve the claim does
4 not preclude habeas jurisdiction. *Gutierrez-Lopez*, 462 F. Supp. 3d at 983.

5
6 Petitioner satisfies this exact standard. She is asserting that the California City Processing
7 Center's failure to provide life-sustaining medical care constitutes unconstitutional punishment.
8 Petitioner's husband has attempted to coordinate with the facility to get her this required
9 medication while she has been detained but was unsuccessful. *See* ECF No. 1-3, at 2 (Declaration
10 of Petitioner's Husband).

11 Because Respondents are structurally unable or subjectively unwilling to provide
12 essential oncology treatment the facility has demonstrated that no set of conditions within its
13 walls can cure this severe Fifth Amendment violation. Because Petitioner is a civil immigration
14 detainee alleging that the facility's failure to provide life-sustaining medical care constitutes
15 unconstitutional punishment, and because she seeks immediate release as the only effective
16 remedy to abate the threat to her life, her claim challenges the fact of her physical confinement
17 and is fully cognizable under 28 U.S.C. § 2241. *Pinson*, 69 F.4th at 1072-73; *Gutierrez-Lopez*,
18 462 F. Supp. 3d at 983.
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21 III. CONCLUSION

22 For the foregoing reasons, Respondents' arguments are without merit and fail to justify
23 their violation of this Court's administrative stay. Petitioner's administrative appeal remained
24 pending due to the Board of Immigration Appeals' explicit tolling provision, rendering her
25 removal an *ultra vires* act. Furthermore, the ends of justice compel this Court to review her
26 substantive due process claims regarding the deprivation of life-sustaining medical care, which
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1 are properly brought before this Court in a habeas corpus petition because immediate release is
2 the only adequate remedy to abate the threat to her life.

3 Petitioner respectfully requests that this Court deny Respondents' request to dismiss the
4 petition as moot or as an abuse of the writ. Petitioner further requests that this Court order
5 Respondents to immediately return Petitioner to the United States to cure their violation of the
6 July 22, 2026, stay order, award Petitioner her reasonable costs and attorney's fees under the
7 Equal Access to Justice Act, 28 U.S.C. § 2412, grant Petitioner's Writ of Habeas Corpus, and
8 grant such further relief as this Court deems just and equitable to remedy the harms to Petitioner.

9
10 DATED: July 24, 2026

Respectfully Submitted,

11
12 /s/ Mihret Getabicha

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* Application for Pro Hac Vice Admission Pending

Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's Attorneys. I have discussed with Petitioner's family all the events described in this Petition. I hereby verify that the statements made in the attached Petitioner's Reply to Respondents' Response are correct to the best of my knowledge.

DATED: July 24, 2026

Respectfully Submitted,

/s/ Mari Alvarado

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