

Mari Alvarado, Esq.* (UT SBN 15445)
mari@ath.law
Brixton Hakes, Esq. (UT SBN 15613)
brixton@ath.law
ALVARADO TSOSIE & HAKES, PLLC
825 S 220 E
Orem, UT 84058
Telephone: (801) 375-0301
Cell Phone: (385) 625-8486

Mihret Getabicha (CA SBN 326787)
mihret@caleilaw.com
CALIFORNIA LABOR EMPLOYMENT
& IMMIGRATION LAW PRACTICE, P.C.
8885 Rio San Diego Dr., Ste. 237
San Diego, California 92108
Telephone: (619) 923-4249
Facsimile: (619) 704-3971

Attorneys for Petitioner Lidia Hernandez Ancelmo

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

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)

**PETITIONER'S EMERGENCY MOTION
TO COMPEL RETURN AND PAROLE OF
PETITIONER AND FOR ENTRY OF
DEFAULT**

EXHIBIT LIST

A. Sworn affidavit of VICTORINO GARCIA GINEZ regarding circumstances of removal

B. Sworn Oral Affidavit of LIDIA HERNANDEZ ANCELMO regarding the conversation she had with ICE agents

I. INTRODUCTION

Petitioner Lidia Hernandez Ancelmo, by and through undersigned counsel, respectfully moves this Court to compel Respondents to immediately facilitate her return to the United States and grant her parole. Petitioner further moves for an Entry of Default against Respondents pursuant to Rule 55 of the Federal Rules of Civil Procedure due to noncompliance with this Court's orders.

Respondents executed Petitioner's removal on July 23, 2026, after this Court issued a July 22, 2026 Order (ECF No. 6) staying the removal. Petitioner was transported to the border between Mexico and Guatemala and left without identification, funds, mobile phone or medication. Following this, the Court issued a July 25, 2026 Amended Minute Order mandating that Respondents facilitate Petitioner's return by July 31, 2026. Respondents did not return Petitioner by this deadline. Furthermore, on August 1, 2026, ICE agents informed Petitioner that the agency would not fund her return travel and advised her that she would face prolonged detention if she returned to pursue her legal claims.

Court intervention is required to restore the *status quo ante*, ensure Petitioner has access to necessary medical care, and preserve her right to pursue her immigration appeal.

II. FACTS

On July 22, 2026, at 5:35 P.M., this Court issued an administrative stay of Petitioner's removal pending the resolution of her Temporary Restraining Order (ECF No. 6). Respondents acknowledged receiving this order at 5:58 P.M. Notwithstanding this Court's active stay, Respondents executed Petitioner's removal the following day on July 23, 2026, transporting Petitioner to the remote southern border between Mexico and Guatemala and left her there without any form of identification, money, phone, or medication.

On July 25, 2026, this Court issued an Amended Minute Order instructing Respondents to

1 "facilitate Petitioner's return to the United States on or before July 31, 2026." Subsequently, on
2 July 28, 2026, Respondents filed a Status Report asserting they had made contact with Petitioner
3 and that "transportation arrangements are pending" (ECF No. 13). The Court-mandated deadline
4 of July 31, 2026, passed without Respondents returning Petitioner to the United States.
5
6 On Saturday, August 1, 2026, Petitioner was able to contact Attorney Mari Alvarado and reported
7 her last conversation with ICE. ICE agents called Petitioner and explicitly stated they would not
8 pay for her flight from Mexico. Instead, they instructed Petitioner to present herself at the U.S.
9 border at the San Ysidro border crossing approximately 1,957 miles away from her current
10 location in Puebla. During the same call, ICE agents suggested that Petitioner renounce her
11 application, warning her that she would likely be detained for many more months before a
12 decision from the Board of Immigration Appeals (BIA) would be made, and telling her she would
13 most likely be deported anyway.
14

15 Since her removal, Petitioner's health has declined. Deprived of her prescribed medications
16 and cut off from her regular medical care, her symptoms have worsened while she remains
17 stranded without resources. Her untreated uterine hemorrhaging, ongoing pancreatic cancer
18 remission needs, and recent cardiac complications place her at imminent risk of further medical
19 emergencies, making her immediate return to the United States an urgent medical necessity.
20

21 **III. ARGUMENT**

22 **A. The Court Should Compel Respondents to Return and Parole Petitioner**

23 A district court retains jurisdiction to order the government to return an individual to the
24 United States when that individual was removed in violation of an active stay order. *Singh v.*
25 *Waters*, 87 F.3d 346, 349 (9th Cir. 1996). When a petitioner is removed contrary to a stay, the
26 physical removal does not constitute a lawful departure. *Id.* at 349-50. To effectuate a court-
27 ordered return, the agency has the statutory authority to parole the petitioner back into the United
28

1 States. *Brown v. Holder*, 763 F.3d 1141, 1147 n.3 (9th Cir. 2014). Under 8 U.S.C. § 1182(d)(5),
2 the Attorney General may parole an individual into the United States on a case-by-case basis for
3 urgent humanitarian reasons or significant public benefit. *Walters v. Reno*, 145 F.3d 1032, 1051
4 (9th Cir. 1998). Remedying a legal violation and allowing an individual to pursue judicial
5 remedies constitute a significant public benefit. *Id.*

6
7 Paroling Petitioner into the United States is also necessary to preserve her administrative
8 remedies. Under 8 C.F.R. § 1003.4, a departure from the United States generally constitutes a
9 withdrawal of a pending appeal. However, the Ninth Circuit has held that this withdrawal
10 sanction is triggered only when a petitioner engages in volitional conduct that establishes a
11 "considered" and "intelligent" waiver of the right to appeal. *Lopez-Angel v. Barr*, 946 F.3d 527,
12 530-31 (9th Cir. 2019); *see also Chavez-Garcia v. Sessions*, 871 F.3d 991, 996-97 (9th Cir.
13 2017). Because Petitioner was involuntarily removed in violation of a court order, she did not
14 validly waive her appellate rights. Nevertheless, without an affirmative order of parole, there is a
15 substantial administrative risk that the BIA will treat her physical absence as an abandonment of
16 her appeal. Ordering her return and parole is therefore required to ensure her application remains
17 pending and to allow her to participate in the process. *See Walters*, 145 F.3d at 1050-51.

18
19 Equitable considerations heavily favor an order of parole rather than mere return to
20 detention. Petitioner is experiencing documented health complications. Furthermore, ICE has
21 indicated to Petitioner that a return to the United States will result in prolonged detention pending
22 her appeal. Ordering her parole ensures that she can obtain the medical treatment she requires and
23 mitigates the harm caused by the premature execution of her removal.

24 **B. Entry of Default is Warranted for Noncompliance**

25
26 In addition to compelling Petitioner's return, entry of default against Respondents is
27 warranted. Under Federal Rule of Civil Procedure 55, a default judgment may be entered against
28

1 the United States or its agencies if the claimant establishes a claim or right to relief by evidence
2 satisfactory to the court. While this rule restricts the entry of default judgments against the
3 government for mere procedural delays, the Ninth Circuit has established that this protection does
4 not shield the government from severe sanctions when it disobeys judicial mandates. In
5 *Giampaoli v. Califano*, 628 F.2d 1190, 1193-94 (9th Cir. 1980), the court clarified that the rule is
6 directed at defaults in the narrow sense of the government's failure to answer and does not place
7 the government in a "privileged position" immune from sanctions for defying court orders.

8
9 When the government exhibits a disregard for orders of the Court, the district court has
10 the authority to impose necessary sanctions. As noted in *United States v. Sumitomo Marine &*
11 *Fire Ins. Co.*, 617 F.2d 1365, 1370 (9th Cir. 1980), the public interest requires that governmental
12 agencies set an example of compliance with court orders. Furthermore, a promise of belated
13 compliance does not preclude the imposition of sanctions, nor does it cure the prejudice suffered
14 by the opposing party. *See Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002).

15
16 Here, Respondents executed a removal after a federal court stay was issued and
17 subsequently failed to return Petitioner by the Court's July 31, 2026 deadline. On August 1, 2026,
18 ICE representatives informed Petitioner that the agency would not fund her transit and instructed
19 her to travel 1,000 miles independently. This places an undue burden on a medically vulnerable
20 individual and fails to satisfy the Court's mandate to "facilitate" her return. Under *Fair Housing of*
21 *Marin*, Respondents' earlier indication that transportation arrangements were "pending" is
22 insufficient to cure the prejudice suffered by Petitioner. Based on this procedural history,
23 Petitioner requests that the Court exercise its authority to enter default as a sanction for the
24 ongoing noncompliance.
25

26 IV. CONCLUSION AND PRAYER FOR RELIEF

27
28

Respondents removed Petitioner after an administrative stay was issued, failed to return her by the July 31, 2026 deadline, and have informed her they will not cover the costs of her travel. Due to Petitioner's medical needs and the necessity of preserving her appellate rights, Court intervention is required.

WHEREFORE, Petitioner respectfully requests that this Court:

1. Order Respondents to locate and transport Petitioner to the United States at the government's sole expense;
2. Order Respondents to parole Petitioner into the United States pending the final adjudication of her habeas corpus proceedings and BIA appeal;
3. Enter Default against Respondents pursuant to Fed. R. Civ. P. 55 for failing to comply with the Court's July 25, 2026 Order;
4. Award Petitioner her reasonable costs and attorney's fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412; and
5. Grant any other relief the Court deems just and proper.

RESPECTFULLY SUBMITTED this 3rd day of August, 2026.

/s/ Mari Alvarado

Mari Alvarado, Esq.* (UT SBN 15445)

mari@ath.law

Brixton Hakes, Esq. (UT SBN 15613)

brixton@ath.law

ALVARADO TSOSIE & HAKES, PLLC

825 S 220 E

Orem, UT 84058

Telephone: (801) 375-0301

Cell Phone: (385) 625-8486

/s/ Mihret Getabicha

Mihret Getabicha (CA SBN 326787)

mihret@caleilaw.com

CALIFORNIA LABOR EMPLOYMENT
& IMMIGRATION LAW PRACTICE, P.C.

8885 Rio San Diego Dr., Ste. 237
San Diego, California 92108
Telephone: (619) 923-4249
Facsimile: (619) 704-3971

Attorneys for Petitioner Lidia Hernandez Ancelmo