

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

GEDEON MBOKO,
Petitioner,

v.

KEVIN JOYCE, et. al.
Respondents-Defendants.

Case No. 2:25-cv-00240-NT

**PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS**

The need for injunctive relief in this case is urgent. Petitioner faces an imminent threat of transfer to a distant immigration detention facility—a transfer that unlawfully interferes with his statutory and regulatory right to counsel and his constitutional right to due process. Respondents¹ are dismissive of Petitioner's right to counsel, arguing that no harm has yet occurred, but that position ignores the core purpose of the injunctive relief sought: to prevent irreparable harm before it happens. Court intervention is not only appropriate—it is necessary to preserve Petitioner's rights.

STATEMENT OF FACTS

Respondent U.S. Immigration and Customs Enforcement (ICE) engages in a pattern and practice of transferring immigrant detainees from Maine to remote locations irrespective of established attorney-client relationships. *See* Attachment 1, Zhuang Decl. ¶¶ 9-25; Attachment 2, Maloney Decl.; Attachment 3, Massell Decl. ¶¶ 2-7; Attachment 4, Mboko Decl. ¶¶ 16-17. These transfers occur despite ICE policy discouraging the transfer of immigrants who have an attorney in the area where they are detained. *See* Attachment 6, ICE Policy at 5.2(b). Transfers are carried out without prior notice to the detainees or legal counsel, severely disrupting and harming attorney-client relationships.

¹ For purposes of this traverse, "Respondents" refers to the federal officials sued here in their official capacities. These are Patricia Hyde, the Boston Field Office Director of U.S. Immigration and Customs Enforcement; Kristi Noem, Secretary of the U.S. Department of Homeland Security; and Pamela Bondi, Attorney General of the United States. This traverse does not address the position of Cumberland County Sheriff Kevin Joyce who has been named as a Respondent to satisfy the immediate custodian rule due to Petitioner's detention at the Cumberland County Jail.

Id. Transfers are swift, such that detained noncitizens are unable to seek court intervention beforehand. *See* Massell Decl. ¶ 3 (describing sudden transfer of a client from Maine to New Mexico “without any notice or opportunity to seek judicial review”).

Petitioner Gedeon Mboko is an immigrant detained by ICE at the Cumberland County Jail (CCJ) pending immigration court removal proceedings. *See* Attachment 5, Loeff. Decl. ¶¶ 13-14. Petitioner has been represented by his *pro bono* immigration lawyer since 2021. *Id.* ¶ 3. She has represented him in removal proceedings and before U.S. Citizenship & Immigration Services (USCIS). *Id.* ¶¶ 7, 12, 14.

On May 12, 2025, ICE officers took Petitioner from CCJ where he had recently finished serving time on criminal matters.² Mboko Decl. ¶ 11. Petitioner heard an ICE official say he was being transferred to another state.³ *Id.* Petitioner saw his clothing in a bucket as though readied for transfer. *Id.* ¶ 12. ICE took Petitioner to an ICE office and gave him notice that removal proceedings were being initiated. *Id.* ¶¶ 13-14. He was held for an estimated five hours before ICE returned him to CCJ. *Id.* Two days later, this habeas corpus petition was filed. ECF No. 1 at 1-10.

Petitioner does not know why he was returned to CCJ but has lived in fear of an out-of-state transfer ever since. *Id.* ¶ 18. He has witnessed the transfer of other detainees “suddenly and without warning.” *Id.* ¶ 15. He fears transfer as it will separate him and his lawyer with whom he has a trusting relationship and who knows his case. *Id.* ¶ 18; *see also* Loeff. Decl. ¶ 17. Petitioner’s legal case is at a critical juncture as, in addition to his active removal proceedings, he was recently scheduled for a USCIS interview regarding his Asylum Application. Loeff. Decl. ¶ 15. These proceedings will decide whether Petitioner will be deported to his home country where he fears for his life.

² The habeas petition inadvertently referred to resolution of a criminal “matter.” Petitioner does not dispute that he has had multiple criminal cases. Multiple matters were resolved through a single plea agreement on May 9, 2025.

³ Respondents question how Petitioner could have heard ICE officials discuss plans to transfer him out-of-state when Petitioner is a Lingala speaker. *See* ECF 9 at p. 38, footnote 5. Petitioner’s best language is Lingala, but he speaks and understands English fairly well. *See* Attachment 1, Mboko Decl. ¶ 2.

Respondents state that they have no plans to transfer Petitioner but reserve the right to transfer him if “operationally necessary.” *See* ECF No. 9 at 39; ECF No. 9-5 at 76. During a May 30 conference call with U.S. Magistrate Judge Nivison and undersigned counsel, Respondents’ counsel was unwilling to agree that Respondents would not transfer Petitioner out of state in the 11 days between the call and a District Court hearing.⁴ Respondents’ counsel also indicated that giving even 24 hours’ notice of a transfer would likely be unfeasible. These remarks underscore the precariousness of Petitioner’s situation: ICE asserts it has no current plans to transfer him, but it simultaneously refuses to commit to give even 24 hours’ notice when it decides to do so—leaving Petitioner vulnerable to sudden transfer without a meaningful opportunity to seek judicial relief. *See A.A.R.P. v. Trump*, ___US___, 145 S. Ct. 1364 (2025) (holding 24 hours’ notice of a removal was constitutionally insufficient as it did not allow time to seek habeas relief). Importantly, there is no necessity to transfer Petitioner, as he could be held in existing bedspace within Maine. *See* Zhuang Decl. ¶¶ 5, 16 (noting capacity for 88 ICE detainees at CCJ, and an estimated capacity of 25 ICE detainees at the Two Bridges Regional Jail in Wiscasset, Maine).⁵

ARGUMENT

I. This Court Has Jurisdiction to Order a Habeas Remedy

Respondents err in contending that 8 U.S.C. § 1252(a)(5) and (b)(9), which channel judicial review of removal orders via a petition for review to the courts of appeals, bar Petitioner’s writ. This is because the Petitioner is not challenging any removal order or underlying components. Instead, he challenges collateral action to detain him outside of this district, where he has an established relationship with counsel. Indeed, because neither immigration judges—who preside over removal proceedings—nor the Board of Immigration Appeals—the administrative appellate body for those

⁴ Following this conference, Magistrate Judge Nivison issued a Procedural Order instructing that Petitioner “shall not be moved out of the District of Maine pending the hearing.” ECF No. 12 at 78.

⁵ Alternatively, ICE could exercise its discretion to release Petitioner on parole. *See* ECF No. 9-5 at 76.

proceedings—have authority to determine the location of a noncitizen’s detention, Petitioner has no other avenue to seek judicial relief. *Matter of Rahman*, 20 I&N Dec. 480,484 (BIA 1992)(holding that an immigration judge has no authority over place of detention).

Respondents rely primarily on *Aguilar v. ICE*, 510 F.3d 1(1st Cir. 2007). But that position is not tenable given the Supreme Court’s later and controlling decision in *Jennings v. Rodriguez*, which significantly narrowed the scope of 8 U.S.C. § 1252(b)(9) and clarified that it does not apply to all claims tangentially related to removal proceedings. In *Jennings*, the Court squarely rejected the argument that 8 U.S.C. § 1252(b)(9) acts as a broad jurisdictional bar to all claims in any way related to removal. The Court emphasized that not all claims by noncitizens in detention arise from removal proceedings, even when an individual is in removal. Like the detention-related claims in *Jennings*, Petitioner’s claim here—seeking to prevent a transfer that would impede access to counsel—does not challenge an order of removal nor the decision-making process concerning removability. Instead, the claim concerns where Petitioner is held while those proceedings are pending. It is therefore outside of the scope of § 1252(b)(9)’s channeling provision. The government’s reliance on *Aguilar* fails to account for this critical development in the law. Under *Jennings*, this Court has jurisdiction to order a habeas remedy.

II. An Out of State Transfer Will Violate Petitioner’s Right to Counsel

Petitioner’s right to counsel is a statutory right granted by Congress under 8 U.S.C. § 1362 and 8 U.S.C. § 1229a(b)(4)(A) rooted in the Fifth Amendment due process requirement of a full and fair hearing. *See Reno v. Flores*, 507 U.S. 292, 306 (1993); *see also Bivot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005)(noting the right to counsel in immigration proceedings is rooted in the Due Process Clause). The plain language of these statutes provides that, so long as there is no cost to the government, a noncitizen in removal proceedings has the right to be represented by an attorney of his choice. *See* 8 U.S.C. §§ 1362, 1229a(b)(4)(A). In creating this right to counsel, Congress

recognized the extremely high stakes of removal proceedings and the importance of legal representation within them.

Respondents take an unduly narrow view of Petitioner's statutory right to counsel, arguing that immigration statutes and regulations *permit* representation but do not guarantee meaningful access to counsel. *See* ECF No. 9 at 35-36. The suggestion that meaningful access to counsel is superfluous and simply beside the point, not only defies logic, but is unsupported by law. While Respondents correctly observe that 8 U.S.C. § 1362 and § 1229a(b)(4)(B) do not specify the frequency or format of attorney-client communication, that absence does not justify interference with an ongoing attorney-client relationship—such as transferring individuals hundreds or thousands of miles from counsel while removal proceedings continue. *See Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 566 (9th Cir. 1990) (upholding injunction against transfers that “interfere[d] with established attorney-client relationships”).

Respondents' reliance on 8 C.F.R. § 1292.1 to minimize the right to counsel is likewise misplaced. That regulation, which permits non-attorney representatives in removal proceedings, reflects the recognition that noncitizens require help navigating a complex system. It does not diminish the importance of counsel—especially where an individual has already secured legal representation.

Regarding Petitioner's due process rights, Respondents argue that Petitioner cannot show a violation because he has not yet been prevented from presenting his case such that his removal proceeding has become fundamentally unfair. *See* ECF No. 9 at 36. They suggest that because a transfer has not yet violated Petitioner's due process rights, this Court need not be concerned with Petitioner's plight. Rather, the argument goes, he must passively wait and see if Respondents take threatened action that will effectively destroy his relationship with counsel. Given the potentially dire consequences of Respondents executing a transfer, Petitioner is not required to stand idly by and

wait to be stripped of his due process rights. *See Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1440 (9th Cir. 1985) (A significant burden on the attorney-client relationship, even absent a showing of resultant prejudice, may establish legal injury sufficient to justify injunctive relief).

Here, transfer to a remote location away from counsel will cause significant harm to Petitioner's attorney-client relationship. His attorney will be unable to hold in-person meetings with him. Loeff. Decl. ¶ 20. Instead, any communication between Petitioner and counsel will be subject to the often-harsh restrictions of a different detention facility. *See* Attachment 7, ACLU Report.⁶

In *Orantes-Hernandez v. Meese*, the court observed that INS, the predecessor to ICE, "routinely transfers" detained noncitizens "from areas where they are represented by counsel." 685 F. Supp. 1488, 1500 (C.D. Cal. 1988), *aff'd*, 919 F.2d 549 (9th Cir. 1990). The court noted that represented immigrants were frequently prejudiced by transfer and "[p]ro bono attorneys often cannot afford to travel to remote facilities to meet with clients or attend hearings." *Id.* The court therefore granted a permanent injunction limiting INS use of transfers to safeguard attorney-client relationships. *Id.* at 1513. Similarly, this Court should grant relief to prevent an ICE transfer that will unlawfully interfere with, if not destroy, Petitioner's relationship with *pro bono* counsel.

III. The Court Has Authority to Act on Petitioner's Habeas Claim

Petitioner's claim is ripe for judicial review. Determining ripeness, which Respondents challenge here, *see* ECF No. 9 at 37-39, requires the evaluation of both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration. *Abbott Labs. v. Gardner*, 387 U.S. 136 (1967). Petitioner's claim meets those requirements.

A case is fit for review when the injury, though not yet realized, is sufficiently imminent. *Mangual v. Rotger-Sabat*, 317 F.3d 45, 60 (1st Cir. 2003). Courts need not await the "consummation of

⁶ The ACLU notes at p. 6: "More often than not, detained immigrants are unable to make free, confidential outgoing phone calls to counsel. At many detention centers, attorneys cannot even schedule telephone calls with or leave messages for detained clients."

threatened injury” to provide relief. *Babbitt v. United Farm Workers*, 442 U.S. 289, 298 (1979). Here, Petitioner’s transfer to a remote detention facility is not hypothetical. ICE has previously attempted to transfer him, and transfers of similarly situated detainees at CCJ routinely occur without notice. See Mboko Decl. ¶¶ 11, 16; see also Attachments 1-3. Unlike the claim in *Ernst & Young v. Depositors Econ. Prot. Corp.*, 45 F.3d 530, 536 (1st Cir. 1995), where injury depended on a speculative chain of events, here, the risk of harm is immediate, and the harm will flow from a single, sudden transfer. Thus, the court should find this matter fit for review.

The hardship inquiry focuses on the consequences of denying judicial review. *Ernst & Young* at 536. Generally, the greater the hardship, the more likely a court is to find a claim ripe. *Id.* Here, denying judicial review would impose serious and irreparable harm on Petitioner. ICE transfers occur without prior notice, depriving individuals of any meaningful opportunity to seek judicial relief. See Zhuang Decl. ¶¶ 9–10, 18–25; Maloney Decl. ¶¶ 8–13; Massell Decl. ¶¶ 2–3. This situation stands in sharp contrast to *McInnis-Misenor v. Me. Med. Ctr.*, 319 F.3d 63 (1st Cir. 2003), where plaintiffs had sufficient time to initiate legal proceedings and obtain relief before any harm occurred. Here, by contrast, a sudden transfer would severely hinder, if not sever, Petitioner’s access to counsel and disrupt ongoing legal work, resulting in irreparable harm. See Loeff. Decl. ¶ 18; Maloney Decl. ¶¶ 4, 17. Without timely judicial review, this harm would unfold without any practical ability to prevent or mitigate it. For these reasons, the Court should find this matter ripe for review.

CONCLUSION

Based on the foregoing, the Court should grant the requested relief and enjoin any transfer outside of Maine.

Respectfully submitted on this 5th day of June 2025

/s/ Melissa Brennan

Melissa A. Brennan, Esq.

Counsel for Petitioner

P.O. Box 17917

Portland, ME 04112

207-699-4415/mbrennan@ilapmaine.org