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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 ROBERT GEORGE HOGARTH,
13
14 Petitioner,
15 v.
16 ERNESTO M. SANTACRUZ JR., et
al.,
17 Respondents.

No. 2:25-cv-09472-SPG-MAR

**RESPONDENTS' RESPONSE TO
ORDER TO SHOW CAUSE**

**[Declaration of John Park filed
concurrently herewith]**

Honorable Sherilyn Peace Garnett
United States District Judge

FEDERAL RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

The Federal Respondents hereby respectfully respond to the Order to Show Cause [[Dkt. no. 13](#)], which the Court issued on October 9, 2025. For the reasons set forth below, a preliminary injunction should not issue, because no substantive controversy threatens to cause likely irreparable harm to Petitioner.

I. ARGUMENT

Petitioner filed his *Ex Parte* Application for Temporary Restraining order [[Dkt. no. 2](#)] on October 3, 2025, the same day he filed his Petition [[Dkt. 1](#)]. Respondents opposed [[Dkt. 10](#)] on the narrow procedural grounds that Petitioner had not provided the requisite notice, and had instead filed his *Ex Parte* Application in violation of the requirements of Central District of California Local Civil Rule 7-19 and [Federal Rule of Civil Procedure 65](#). As Respondents' opposition noted, this made it impossible for the government to reasonably respond to the issues raised in Petitioner's lengthy opening papers, which challenged a September 16, 2025 decision by the BIA.

The Court, however, subsequently issued an order on October 9, 2025 granting a TRO [[Dkt. 13](#)], and setting a briefing schedule for an order to show cause re: Preliminary Injunction. Petitioner then filed a motion for a preliminary injunction the next day, October 10, 2025 [[Dkt. 14](#)] (the "PI Motion").¹

On the central point, there is in fact no dispute requiring judicial intervention, much less any harm meeting the very high standard required for granting a preliminary injunction. Specifically, Respondents agree that Petitioner should not be taken into immigration detention at this juncture, given the Ninth Circuit's current stay of his removal order pending his appeal of the BIA's decision against him. While understanding that Petitioner does not want to be arrested, ICE—in turn—does not want

¹ Respondents note that Petitioner's unnecessarily long and voluminous PI Motion fails to comply with Local Rule 11-6.1—again continuing a theme of attempting to out-paper the government, rather than focusing on the disputed issues.

1 to arrest him. ICE thus does not intend to arrest Petitioner so until or unless his appeal
2 and its stay are resolved (or if he should in the future violate his supervised released
3 conditions). *See* John Park Declaration, ¶¶ 15-16. Indeed, while his removal is stayed,
4 Respondents want to avoid expending even more public resources detaining Petitioner,
5 who has to date consumed more than his fair share of such public resources.

6 During the parties' October 7, 2025 teleconference, Respondents' counsel thus
7 informed Petitioners' counsel that the government lacked interest in detaining Petitioner
8 at this juncture (given the current appellate stay of his removal order), and would look
9 into making a statement to that effect, but it would take time to obtain—particularly
10 given the rapid ambush nature of the proceedings to date, and the inordinate volume of
11 Petitioner's filings. The timing prejudice is especially difficult at this juncture because
12 this District is currently inundated with habeas petitions and TRO applications, most of
13 which (unlike this case) involve actual detention and/or imminent removal.²

14 In any event, a sworn statement by ICE disavowing intent to arrest during the
15 pendency of the appellate stay of removal was ultimately signed on October 10, 2025,
16 and is submitted by Respondents herewith. *See* John Park Declaration.

18 ² As Respondents' TRO Opposition [Dkt. explained, filing a voluminous *ex parte*
19 TRO Application against the government with little or no advance notice—a tactic
20 common in the Northern District of California, but increasingly surfacing in the Central
21 District—causes serious damage to civil justice and the public good. The artificially
22 intensified crisis makes resolving the dispute inordinately difficult. Rather than the
23 government being timely and openly notified when the dispute first emerges, massive
24 filings are instead drafted, under rigorous secrecy over a prolonged period, so as to
25 maximize the government's inability to respond. And while it does not appear to be an
26 issue in this case (thankfully), the tactic often has a truly sinister component: Associated
27 demands for attorney fee awards, from public funds. Fortunately, the Northern District
28 has recently begun rejecting such efforts at appropriating public funds via preliminary
relief in ostensibly *pro bono* litigation. *See Ramos v. Nielsen*, [2025 WL 1953463](#) (N.D.
Cal. July 16, 2025) (rejecting claim for \$3,684,282.56 in EAJA fees allegedly warranted
by obtaining preliminary injunctive relief).

1 In similar circumstances where ICE has stated its lack of intention to arrest,
2 counsel has voluntarily withdrawn the request for exigent relief, since it is mooted (or at
3 minimum fails to meet the extremely high standard for obtaining preliminary injunctive
4 relief). *See, e.g., Luis Alberto Yboy Flores v. Ernesto Santacruz, Jr., et al.*, 2:25-cv-
5 07882-JWH-AJR. The Flores petitioner filed an “*Ex Parte* Motion for Temporary
6 Restraining Order” [[Dkt. 2](#)], complaining he faced potential detention at an upcoming
7 scheduled physical appointment with ICE. Responding, ICE stated that since the
8 petitioner had obtained a stay of removal, ICE would not detain that petitioner at his
9 upcoming appointment.³ The *Flores* petitioner thus withdrew their *Ex Parte* application
10 [[Dkt. 8](#)] on August 22, 2025. Consistent with ICE’s statement on this point, the *Flores*
11 petitioner was not thereafter arrested, and he continues to be free of arrest.

12 By contrast, where ICE has stated its intention not to arrest via a court filing—
13 and yet a petitioner’s counsel nonetheless still does not withdraw a request for injunctive
14 relief—that injunctive relief is properly denied, since no irreparable harm is proven, and
15 also because the issue is too speculative and unripe. Judge Slaughter thus recently denied
16 a “threatened detention” preliminary injunction motion complaining of an immigrant’s
17 potential re-arrest, since the appointment complained of had already come-and-gone and
18 no future likely arrest was proven. *See J.P. v. Ernesto Santacruz Jr. et al.*, 8:25-cv-
19 01640-FWS-JC, “Order Denying Motion for Preliminary Injunction Following Order to
20 Show Cause,” [[Dkt. 20](#)] (Hon. Judge Slaughter) (attached as Exhibit A hereto). Indeed,
21 the *J.P.* case had at least involved *some* evidence of intent to arrest, unlike this case. But
22 a preliminary injunction was still properly denied. *Id.*

23 As the Hon. Judge Holcomb likewise explained in another recent immigration
24 case seeking a prospective bar on re-detention, while “The Court is not convinced that it
25 has jurisdiction over Dam’s habeas petition, as it is not clear that Dam is “in custody” for
26 the purpose of [28 U.S.C. § 2241\(c\)](#) However, the Court need not reach the issue of

27 ³ Unlike here, the petitioner’s counsel in *Flores* complied with Local Rule 7-19.

1 habeas jurisdiction because Dam’s petition for an injunction barring re-detainment is not
2 ripe.” *Hai Chieu Dam v. Timothy Robbins et al.*, 2:25-cv-08133-JWH-MAA, “Order
3 Denying Plaintiff’s Application for Temporary Restraining Order” (Sept. 16, 2025) [[Dkt.](#)
4 [7](#)] (Exhibit B hereto)(rejecting preliminary TRO relief because “in their Opposition,
5 Respondents proclaim that ‘ICE does not intend to detain the Petitioner.’”).

6 Other Judges in this District have ruled similarly. *See Tatiana Zaiko v. James*
7 *Janecka, et al.*, 2:25-cv-08646-MWC-AGR, “Order DENYING Petitioner’s Motion for
8 Preliminary Injunction (Sept. 25, 2025) [[Dkt. 16](#)] (Hon. Judge Court denying
9 preliminary injunction where petitioner was already released from ICE custody,
10 explaining why ‘capable of repetition but evading review’ theory for re-detention bar
11 was defective) (Exhibit C hereto); *Jose Angel Morales Sanchez v. Pam Bondi et al.*,
12 5:25-cv-02530-AB-DTB, “Order Denying Petitioner’s Application for Temporary
13 Restraining Order” (Oct. 3, 2025) [[Dkt. 12](#)] at pp. 5-6 (Hon. Judge Birotte Jr., explaining
14 that ICE had written that it would provide advance notice to counsel of any third country
15 removal, rendering speculative and unripe the complaint that petitioner required
16 preliminary injunctive relief against removal with lack of notice) (Exhibit D hereto).

17 Accordingly, consistent with the authorities cited above, as well as with basic
18 principles of federal injunction law, a preliminary injunction should be denied. There is
19 no evidence that Petitioner is likely to suffer irreparable harm from being arrested. To
20 the contrary, ICE has stated that it does not intend to arrest him while his appellate stay
21 of his removal order is operative. *See Park Decl.*, ¶¶ 15-16.

22 **II. CONCLUSION**

23 The PI Motion should be denied.
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1 Dated: October 1, 2025

Respectfully submitted,

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12 **CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2**

13 The undersigned, counsel of record for the Federal Respondents, certifies that the
14 memorandum of points and authorities contains 1,079 words, which complies with the
15 word limit of L.R. 11-6.1.

16
17 Dated: October 14, 2025

/s/ Daniel A. Beck

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