

1 Chris Duran (California Bar #110899)
cduran@CHIRLA.org
2 Matthew K. Toyama (CA Bar #310015)
mtoyama@CHIRLA.org
3 COALITION FOR HUMANE IMMIGRANT RIGHTS
2533 West Third Street, Suite 101
4 Los Angeles, CA 90057
Telephone: (213) 843-1407
5 Facsimile: (213) 353-1344

6
7 *Attorneys for Petitioner-Plaintiff*

8
9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11

12 Francisco CARRILLO-GARCIA,

13 Petitioner-Plaintiff,

14 v.
15

16 Ernesto SANTACRUZ JR., Acting Director, Los
Angeles Field Office, Immigration and Customs
17 Enforcement, Enforcement and Removal Operations ;
Todd M. LYONS, Acting Director, Immigration and
18 Customs Enforcement; Kristi NOEM, Secretary, U.S.
Department of Homeland Security; Pamela BONDI,
19 U.S. Attorney General; Fereti SEMAIA, Warden,
Adelanto ICE Processing Center,
20

21 Respondents-Defendants.
22
23
24
25
26
27
28

Case No. 2:25-cv-10581-MWC-PD

**PETITIONER'S REPLY TO
RESPONDENT'S
OPPOSITION TO
PETITIONER'S *EX PARTE*
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO
SHOW CAUSE**

Honorable Michelle Williams Court
United States District Judge

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ARGUMENT.....	2
	A. <u>8 U.S.C. § 1252(b)(9)</u> Does Not Preclude Review of Petitioner’s Claims.....	2
	B. <u>8 U.S.C. § 1252(g)</u> Does Not Preclude Review of Petitioner’s Claims.....	3
	C. <u>8 U.S.C. § 1252(a)</u> Does Not Preclude Review of Petitioner’s Claims.....	4
	D. Respondent’s Re-Detention Violated Due Process Despite Petitioner’s Arrest . . .	4
	E. Delay in Filing this Application Does not Diminish Its Urgency	5
III.	CONCLUSION.....	5

TABLE OF AUTHORITIES

DESCRIPTION **PAGE**

FEDERAL CASES

Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al,
5:25-cv-01873-SSS-BFM (C.D. Cal July 28, 2025).....1

Reno v. Am.-Arab Anti-Discrimination Comm.,
525 U.S. 471, 482 (1999).....4

Mission Power Eng'g Co.v. Cont'l Cas. Co.
833 F. Supp. 488 (C.D. Cal 1995) 5

FEDERAL STATUTES

8 U.S.C. § 1225.....*passim*

8 U.S.C. § 1226(a).....*passim*

8 U.S.C. § 1252.....*passim*

FEDERAL REGULATIONS

8 C.F.R. 235.3(b)(1)(ii).....3

OTHER AUTHORITIES

Matter of Jonathan Javier Yajure Hurtado,
29 I. & N. Dec. 216 (BIA 2025).....2

**REPLY TO OPPOSITION TO EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

I. INTRODUCTION

Respondents oppose Petitioner's Ex Parte Application for Temporary Restraining Order and Order to Show Cause (the "TRO Application") by reiterating the government's legal position taken in its opposition to the *ex parte* TRO application filed in another case in U.S. District Court in the Central District of California, *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873-SSS-BFM (ECF 8). In its opposition, Respondents contend, *inter alia*, that as a threshold jurisdictional matter 8 U.S.C. §§ 1252(g) and (b)(9) should be understood to preclude review of Petitioner's claims, such that this Court would lack jurisdiction to entertain Petitioner's action under 8 U.S.C. § 1252. (*Id.* at 5-9.) However, Petitioner encourages this Court to adopt the same reasoning taken by the District Court in *Bautista* via its order granting the *ex parte* TRO application¹, wherein it was determined that, as applicable here: a) 8 U.S.C. § 1252(b)(9) alone does not bar this Court from reviewing Petitioner's TRO challenging the legality of his detention because no order of removal has been issued against him; b) Petitioner's claims do not fall under 8 U.S.C. § 1252(g)'s prohibition on judicial review because his claims challenge whether he is subject to mandatory detention during the pendency of removal proceedings and do not, rather, arise from any decision or action by the Attorney General "to commence proceedings, adjudicate cases, or execute removal orders against any alien under [Section 1252(g)]"; and c) finally, no part of 8 U.S.C. § 1252 deprives this Court of jurisdiction because even a further review of Section 1252(a), which contains a provision detailing "[m]atters not subject to judicial review",² reveals that the specified statutory provisions do not cite to § 1225(b)(2)(A) or § 1226(a), which are the two provisions which Petitioner's claims challenge.

¹ See Ex. A, Order Granting Petitioners' Ex Parte Application for TRO & OSC in *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873-SSS-BFM, Dated July 28, 2025.

² See 8 U.S.C. § 1252, § 1252(a)(2).

II. ARGUMENT

A. 8 U.S.C. § 1252(b)(9) Does Not Preclude Review of Petitioner's Claims.

Respondents cite to 8 U.S.C. § 1252(b)(9) as channeling “[j]udicial review of all questions of law . . . including interpretation and application of constitutional and statutory provisions, arising from any action taken . . . to remove an alien from the United States” to the appropriate federal court of appeals. (ECF 8 at 6-9, citing Section 1252(b)(9)). However, section 1252(b)(9) exists under section 1252(b), which lists “[r]equirements for review of orders of removal.” *See* 8 U.S.C. § 1252(b). Therefore, section 1252(b)(9) should be understood plainly by its terms regarding review of “orders of removal” to channel review of “*final orders of removal*” to federal courts of appeal.

Here, the Petitioner continues in active removal proceedings before the Adelanto Immigration Court of the Executive Office for Immigration Review (EOIR), and he is currently scheduled for an Individual Calendar Hearing (merits hearing) on December 24, 2025, before the immigration judge (IJ). *See* Ex. B, EOIR Automated Case Information Print Out for Francisco Carrillo-Garcia. Accessed 10/30/2025. Therefore, Petitioner has not yet had his day in court to determine the merits of his immigration relief, and he certainly has not been issued any order of removal, and nothing in the record indicates otherwise. Rather, Respondents initially set bond for Petitioner's release in the sum of \$10,000 pursuant to 8 U.S.C. §1226(a) which was subsequently redetermined by an IJ who granted reduction of the bond amount to \$8,000. Petitioner has since been returned to the custody of Respondents because DHS re-detained him at his first and only ICE check-in on or about May 16, 2025, with no hearing before depriving him anew of his liberty. Respondents then rejected Petitioner's request for redetermination of bond and release on September 10, 2025, pursuant to *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), when the IJ found that he lacked authority to hear the Petitioner's request for a bond because Petitioner is an “applicant for admission” and is subject to mandatory detention under section

1 235(b)(2)(A) of the Immigration & Nationality Act (INA), 8 U.S.C. 1225(b)(2)(A), and the regulation
2 at 8 C.F.R. 235.3(b)(1)(ii). Therefore, Petitioner's TRO Application concerns the legality of his
3 continued detention, not the merits of his removal proceedings case in chief, which has not yet been
4 decided.

5 Without an order of removal, Petitioner submits that Section 1252(b)(9) alone does not bar
6 this Court from reviewing his TRO Application regarding the legality of the new DHS policy and
7 EOIR interpretation of the INA applying § 1225 rather than § 1226(a) to govern his detention.
8

9 **B. 8 U.S.C. § 1252(g) Does Not Preclude Review of Petitioner's Claims.**

10 Respondents also point to 8 U.S.C. § 1252(g) as a bar to review by this Court. (ECF 8 at 5-
11 6). Section 1252(g), unless other laws provide jurisdiction, strips all courts of jurisdiction to hear
12 "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney
13 General to commence proceedings, adjudicate cases, or execute removal orders against any alien
14 under this chapter." § 1252(g).
15

16 However, Petitioner's claims in the TRO Application do not fall under 8 U.S.C. § 1252(g)'s
17 prohibition on judicial review because his claims challenge whether he is subject to mandatory
18 detention during the pendency of removal proceedings and rather do not arise from any decision or
19 action by the Attorney General "to commence proceedings, adjudicate cases, or execute removal
20 orders against any alien under [Section 1252(g)]". This is because, despite the Respondents' creative
21 arguments to the contrary, the government's decision to commence removal proceedings against a
22 noncitizen is not universally inseparable from or synonymous with its determination to detain a
23 noncitizen; were it otherwise, every single noncitizen in this country in removal proceedings would
24 be without their physical liberty, which is perhaps the outcome the government desires by its
25 aggressive expansion of the scope of mandatory detention, born of the second Trump
26
27
28

1 administration, but this is not currently and has not been the status quo pursuant to the INA and
2 due process protections to date.

3 Petitioner's position in this regard is supported by Supreme Court precedent, wherein it
4 previously characterized Section 1252(g) as a narrow provision, applying "only to three discrete
5 actions that the Attorney General may take: her 'decision or action' to 'commence proceedings,
6 *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471,
7 482 (1999) (emphasis in original). Thus, the Supreme Court found it "implausible that the mention
8 of *three discrete events* along the road to deportation was a shorthand way to referring to *all claims arising*
9 *from* deportation proceedings." *Id.* (emphasis added).

11 Pursuant to the Supreme Court's guidance in *Reno*, Petitioner submits that his claims
12 regarding whether he is subject to mandatory detention during the pendency of his removal
13 proceedings do not fall under Section 1252(g)'s prohibition on judicial review.

15 **C. 8 U.S.C. § 1252(a) Does Not Preclude Review of Petitioner's Claims.**

16 Finally, review of Section 1252, titled "Judicial Review of Orders of Removal," reveals a
17 provision detailing "[m]atters not subject to judicial review." *See* 8 U.S.C. § 1252, § 1252(a)(2).
18 Section 1252(a)(2) contains four subsections, which outline categories of claims that are not subject
19 to judicial review. *See* § 1252(a)(2)(A)–(D). However, none of these subsections precluding judicial
20 review apply to the instant TRO Application by Petitioner, as the specified statutory provisions do
21 not cite to Section 1225(b)(2)(A) or Section 1226(a), which are the two provisions Petitioner's claims
22 challenge. Thus, Petitioner submits that no part of Section 1252 deprives this Court of jurisdiction.

24 **D. Respondents' Re-Detention of Petitioner Violated Due Process Despite**
25 **Petitioner's Criminal Arrest.**

26 The Respondents' second ground listed in opposition to Petitioner's TRO Application
27 erroneously suggests that the timing of the filing of criminal charges against Petitioner, before his re-
28 detention, somehow absolves them from providing a bond hearing with a neutral adjudicator prior

1 to such re-detention. Respondents do not revisit this assertion anywhere in their opposition or
2 support it with any authority.

3 **E. Delay in Filing This Application Does Not Diminish Its Urgency.**

4 Respondents assert that the absence of Petitioner's participation in the ongoing therapy
5 required to support his Autistic son's progress does not constitute an emergency where his son's
6 condition is worsened by severe transitions like the sudden absence of a devoted father. It is
7 therefore submitted that the extreme circumstances resulting from Petitioner's re-detention meet the
8 standard of "There Better be a Fire" as set forth in *Mission Power Eng'g Co. v. Cont'l Cas. Co.* 833 F.
9 Supp. 488 (C.D. Cal.1995).
10

11 It is finally noted that the Petitioner cooperated in the preparation of a bond hearing request,
12 the compiling of a comprehensive bond packet, attempted communication with ICE Officers, and
13 the scheduling of a hearing to exhaust all his previously available routes to release, all of which
14 required additional time due to counsel's health issues including a bout with COVID 19.
15

16 **III. CONCLUSION**

17 For the foregoing reasons, Petitioner respectfully prays that this Court take jurisdiction over
18 this matter and grant the Petitioner's TRO Application.
19

20
21 DATED: November 7, 2025

Respectfully submitted,

22 /s/Christopher Duran
23 CHRISTOPHER DURAN
24 COALITION FOR HUMANE IMMIGRANT
25 RIGHTS

26 *Attorney for Petitioner*
27
28