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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUNIOR RODRIGUEZ
GONZALES,

Petitioner

v.

U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security;
TODD LYONS, Acting Director,
U.S. Immigration and Customs
Enforcement; CHRISTOPHER
CHESTNUT, Warden, California
City Detention Facility,
Respondents,

Respondents

Case No.: 1:25-cv-01948-TLN-SCR

**PETITIONER'S REPLY IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING
ORDER / PRELIMINARY
INJUNCTION**

I. INTRODUCTION

Respondents frame this case as a routine post-order detention matter in which removal is imminent and the only “obstacle” is this Court’s temporary restraining order. That framing omits the central point: Respondents’ own Return confirms the Final Administrative Removal Order (“FARO”) was issued because of a single predicate—Petitioner’s aggravated felony conviction—and that conviction has been vacated. Respondents seek to accelerate transfer and removal before the agency can address that intervening event through the very mechanism the Ninth Circuit identified: a motion to reopen before the Board of Immigration Appeals.

This Court’s limited, immediate task is not to adjudicate removability. It is to preserve the status quo so Petitioner is not removed (or transferred out of this District for removal staging) before the BIA can rule on the motion to reopen that Petitioner has now filed. If removal occurs first, the motion to reopen becomes a hollow exercise and the Court’s ability to afford meaningful relief is compromised. Equity does not permit that result.

II. RESPONDENTS’ OPPOSITION CONFIRMS THE REMOVAL ORDER RESTS ON A CONVICTION THAT HAS BEEN VACATED

Respondents concede: “ERO issued a final administrative removal order (“FARO”) against Petitioner, based on his qualifying aggravated felony conviction... for an attempt ... to commit a theft offense.” (Return at II.) That

1 concession matters because, as Petitioner has explained, the predicate conviction
2 has been vacated, extinguishing the factual basis Respondents cite as the reason the
3 FARO issued in the first place.
4

5 Respondents' Opposition attempts to sidestep that reality by arguing the Ninth
6 Circuit's mandate issued on December 23, 2025, and therefore removal is now
7 straightforward. But the mandate merely ended the Ninth Circuit's stay; it did not
8 resolve whether it is lawful or equitable to remove Petitioner after the predicate
9 conviction has been vacated and while agency reopening is being pursued.
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12 **III. THE NINTH CIRCUIT DID NOT REJECT PETITIONER'S**
13 **VACATUR-BASED THEORY; IT IDENTIFIED THE PROPER**
14 **PROCEDURAL VEHICLE—WHICH PETITIONER HAS NOW**
15 **INVOKED**
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18 Respondents rely heavily on the Ninth Circuit's December 10, 2025 order denying
19 remand, and they quote the court's explanation that remand is appropriate where the
20 BIA committed legal errors, while vacatur is an intervening change in the factual
21 predicate. Respondents treat that as a merits rejection. It is not.
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23 The Ninth Circuit's point was *procedural*: vacatur is addressed through
24 reopening in the agency, and the vacatur cases Respondents cite (*Cardoso-Tlaseca*
25 *v. Gonzales*, 460 F.3d 1102, 1107 (9th Cir. 2006), *Wiedersperg v. INS*, 896 F.2d
26 1179, 1182 (9th Cir. 1990), and *Estrada-Rosales v. INS*, 645 F.2d 819, 821 (9th Cir.
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28

1 1981) involved motions to reopen filed with the BIA first. That is *exactly* what
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 3 Petitioner has done here.

4 Respondents also assert “there is no allegation in the habeas petition that the
 5 petitioner has followed the process set forth in the Ninth Circuit’s order.” That
 6 contention is now obsolete. Petitioner has filed his motion to reopen. (See Exhibit
 7 1, true and correct copy of Motion to Reopen.) Respondents’ argument for
 8
 9 immediate removal rests in material part on the premise that Petitioner has not
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 11 pursued agency reopening; the record now shows the opposite.

12 **IV. THIS COURT HAS HABEAS JURISDICTION OVER**
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 14 **DETENTION-RELATED RELIEF AND EQUITABLE AUTHORITY**
 15 **TO PRESERVE THE STATUS QUO**

16 Respondents correctly recite that habeas contests the legality or duration of
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 18 confinement. (Return at III.A, citing *Badea v. Cox*, 931 F.2d 573 (9th Cir. 1991).)
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 20 Petitioner’s request for temporary relief fits squarely within that framework: he
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 22 seeks an order preventing transfer and removal so his detention and the legal
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 24 predicate for continued custody can be meaningfully reviewed in light of the
 25
 26 vacatur and the pending motion to reopen.

27 Respondents argue that this Court “lacks habeas jurisdiction over claims
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 challenging a noncitizen’s removability or removal.” Petitioner is not asking this
 Court to adjudicate removability. Petitioner is asking the Court to prevent

1 Respondents from mooted meaningful review by removing him before the agency
2
3 can decide whether the removal order—premised on a vacated conviction—should
4 be reopened and terminated.

5 Respondents cite *Jennings v. Rodriguez*, 583 U.S. 281 (2018) for the
6 proposition that § 1252(b)(9) does not bar jurisdiction in circumstances where
7 petitioners are not asking for review of an order of removal and are not challenging
8 the decision to seek removal. That is precisely why temporary relief is appropriate
9 here: Petitioner does not ask this Court to decide the removal order’s ultimate
10 validity; he asks the Court to ensure he is not removed on the strength of a
11 predicate Respondents concede was essential, while the agency process the Ninth
12 Circuit identified is actively underway.

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16 **V. THE COURT SHOULD CONVERT THE TRO MOTION TO A**
17 **PRELIMINARY INJUNCTION MOTION, AND THE PARTIES**
18 **SHOULD BE SET FOR HEARING**

19 Pursuant to the Court’s briefing order, Petitioner states as follows:

20
21 **A. Conversion to Preliminary Injunction**

22 Petitioner is amenable to converting the pending Motion for Temporary
23 Restraining Order into a Motion for Preliminary Injunction. Continued injunctive
24 relief is necessary to preserve the status quo and prevent transfer and removal while
25 the Court considers the merits of Petitioner’s detention-related claims and related
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1 requested relief.

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3 **B. Request for Hearing**

4 Petitioner requests a hearing on the motion. Given the time-sensitive nature of
5 the requested relief and the material disputes raised in Respondents' opposition, a
6 hearing will assist the Court in addressing the relevant legal and factual issues and
7 in setting an appropriate schedule for any further proceedings.
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10 **VI. THE WINTER FACTORS SUPPORT CONTINUED INJUNCTIVE**
11 **RELIEF**

12 **A. Likelihood of Success / Serious Questions**

13 At minimum, Petitioner raises serious questions going to the merits.
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15 Respondents' own narrative establishes (1) the FARO was issued based on a
16 qualifying aggravated felony conviction; (2) Petitioner now seeks reopening
17 because the conviction has been vacated; and (3) the Ninth Circuit identified
18 reopening before the BIA as the proper procedural mechanism for vacatur-based
19 relief. Those facts make it fundamentally inequitable to allow removal to occur
20 first, leaving Petitioner to litigate from abroad the consequences of a vacatur the
21 state court has already entered.
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24 The Ninth Circuit's vacatur cases Respondents cite underscore the practical
25 problem with Respondents' approach. In *Wiedersperg v. INS*, 896 F.2d 1179, 1181
26 (9th Cir. 1990), the petitioner filed a motion to reopen based on a vacated
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1 conviction; the BIA denied it; the petitioner then obtained relief from the Ninth
2 Circuit. Respondents' position would force Petitioner into the worst possible
3 version of that sequence: remove him first, then demand he pursue reopening—and,
4 if denied, pursue review—from outside the United States. That is not an orderly or
5 fair administration of justice; it is a race to deportation designed to make the
6 reopening process ineffectual.

7
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9 **B. Irreparable Harm**

10 If Petitioner is transferred out of this District for removal staging and removed
11 to Guatemala before the BIA rules, the harm is immediate and irreparable.
12 Petitioner's ability to consult with counsel, participate in his case, and obtain
13 meaningful agency review is severely undermined. The Court cannot later
14 "unremove" Petitioner to cure the injury that premature removal would cause.
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16 Respondents attempt to reduce the issue to *Zadvydas v. Davis*, 533 U.S. 678
17 (2001) and "foreseeability" of removal. That misses the point. Petitioner is not
18 arguing he is "unremovable" because Guatemala will not accept him. He is arguing
19 that removal now—given the vacatur and pending reopening—would inflict
20 irreparable harm by defeating the very process Respondents and the Ninth Circuit
21 identify as the proper avenue for addressing the intervening vacatur.
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C. Balance of Equities

The equities strongly favor maintaining the status quo. Petitioner seeks a limited order preventing transfer and removal long enough for the agency to decide the motion to reopen. If the BIA denies reopening, Respondents can promptly resume removal efforts. By contrast, if the Court lifts the TRO and Respondents remove Petitioner first, the harm to Petitioner and the integrity of the process is severe and potentially irreversible.

D. Public Interest

The public interest favors orderly adjudication and ensuring that removals are not executed on the basis of predicates that have been vacated, particularly where the agency is actively being asked to reopen proceedings based on that vacatur. Maintaining the TRO promotes administrative regularity, avoids needless litigation over post-removal complications, and ensures that the reopening mechanism the Ninth Circuit identified can operate in a meaningful way.

VII. CONCLUSION

Respondents' Opposition does not justify dissolving the TRO. The record confirms the FARO was issued based on a conviction that has been vacated, and Petitioner has filed the motion to reopen that the Ninth Circuit identified as the appropriate procedural mechanism. This Court should maintain injunctive relief

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1 preventing transfer and removal while the BIA considers the motion to reopen, so
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3 Petitioner is not removed first and left to litigate the consequences after the fact.

4 Dated: January 6, 2026

Respectfully submitted,

5 THE BROOKS LAW FIRM, APC

6 By: /s/ Carlo Brooks

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CERTIFICATE OF SERVICE

I certify that I served a copy of this document and its attachments on the Court and all parties by filing this document with the Clerk of the Court through the CM/ECF system, which will provide electronic notice and an electronic link to this document to all counsel of record.

DATED: January 6, 2026

Respectfully submitted,

/s/ Carlo Brooks
CARLO BROOKS