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14 UNITED STATES DISTRICT COURT
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
16 EASTERN DIVISION
17

18 DARWIN ANTONIO AREVALO
19 MILLAN, on his own and on behalf of
20 others similarly situated,

21 Petitioner-Plaintiff,

22 v.

23 DONALD J. TRUMP, in his official
24 capacity as President of the United
25 States, *et al.*,

26 Respondents-Defendants.

No. 5:25-cv-01207-JWH-PD

**RESPONDENTS-DEFENDENTS'
OPPOSITION TO PETITIONER-
PLAINTIFF'S EX PARTE
EMERGENCY MOTION FOR
PERMANENT INJUNCTIVE RELIEF**

Honorable John W. Holcomb
United States District Judge

1 The Court should deny Petitioner's Ex Parte, Emergency Motion for Permanent
2 Injunctive Relief (ECF 68) for three reasons.

3 **First**, a district court likely does not have jurisdiction to give Petitioner the relief he
4 seeks. Petitioner was ordered removed following traditional INA removal proceedings.
5 *See* Ex. A (Order of Removal). Under 8 U.S.C. § 1252(b)(9), judicial review of "all
6 questions of law or fact, including interpretation and application of constitutional and
7 statutory provisions, arising from any action or proceeding brought to remove an alien
8 from the United States under this subchapter [8 U.S.C. §§ 1151 to 1382]" can only be
9 through a Petition for Review (PFR) in a federal court of appeals. *See* 8 U.S.C.
10 §1252(b)(9). The Ninth Circuit has characterized § 1252(b)(9) as "'breathhtaking' in scope
11 and 'vise-like' in grip." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016).
12 According to the court, "*any* issue—whether legal or factual—arising from *any* removal-
13 related activity can be reviewed *only* through the PFR process." *Id.* at 1031 (emphasis in
14 original). And to the extent Petitioner challenges the government's decision to initiate
15 removal proceedings, 8 U.S.C. § 1252(g) bars review. That provision provides that "no
16 court shall have jurisdiction" over claims "arising from the decision or action by the
17 Attorney General to commence proceedings, adjudicate cases, or execute removal orders
18 against any alien under this chapter." 8 U.S.C. § 1252(g); *see also* *Reno v. Am.-Arab Anti-*
19 *Discrimination Comm.*, 525 U.S. 471, 485 (1999).

20 **Second**, Petitioner has not established that ex parte, emergency relief is warranted.
21 *See* *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).
22 The Court has already preliminarily enjoined the government from removing Petitioner or
23 any putative class members under the Alien Enemies Act (AEA) or Proclamation 10903.
24 *See* ECF 29 (Amend. Order) at 25. The preliminary injunction is still in effect. *See id.*
25 But the government is not prevented from removing Petitioner or any class member
26 "pursuant to a removal order lawfully issued under the Immigration and Nationality Act."
27 *Id.* And Petitioner can seek relief from the removal order through a Motion to Reconsider
28 or an appeal to the Board of Immigration Appeals (BIA). *See* 8 C.F.R. § 1003.23,

1 1003.1(b).

2 Petitioner's characterization of the removal order as "unexpected" also does not
3 withstand scrutiny. *See* ECF 68 (Ex Parte Mot.) at 1. As previously noted, counsel for
4 the Department of Homeland Security (DHS) and Petitioner's counsel in removal
5 proceedings filed a Joint Motion to Remand with the BIA. *See* ECF 59-1. The parties
6 explained that Petitioner "no longer wished to remain in detention [during] the pendency
7 of the appeal, and instead wants to be removed from the United States as quickly as
8 possible." *Id.* The parties "agreed upon a plan to ask the BIA to remand the case to the
9 immigration judge, upon which a separate joint motion for stipulated removal will be
10 drafted and submitted." *Id.*

11 After the case was remanded, the parties appeared in immigration court on
12 September 30, 2025. *See* Ex. A; *see also* ECF 66 (Joint Status Report). Undersigned
13 counsel has not yet been able to review a transcript of the hearing. But undersigned
14 counsel has been informed that Petitioner was represented at the hearing on September 30,
15 2025. Petitioner also apparently withdrew his applications for relief knowing that he
16 would be removed to Venezuela, the removal country that was already designated at a
17 prior hearing. *See* Ex. A.

18 Petitioner's counsel and undersigned counsel had previously agreed to meet and
19 confer on October 1, 2025. *See* Ex. B. The parties could have discussed the issues raised
20 in Petitioner's emergency motion then. *See* ECF 68. Despite the lapse in Congressional
21 appropriations, *See* ECF 67, undersigned counsel still indicated a desire to meet and
22 confer. *See* Ex. B at 1. But Petitioner's counsel cancelled the meeting. *Id.* Instead, he
23 emailed the undersigned at 4:09 am (eastern) to give notice that an emergency motion
24 would "be filed in the next hour." Ex. C. The facts therefore simply do not warrant
25 emergency relief. *See Mission Power Eng'g Co.*, 883 F. Supp. at 492 (noting the moving
26 party must show he will "be irreparably prejudiced" and that he is "without fault in
27 creating the crisis").

28 ***Third***, the government disputes Petitioner's claim that it has "materially

1 misrepresented its basis for detaining Petitioner.” ECF 68 at 8. Petitioner has never been
2 designated for removal under the AEA or Proclamation 10903. *See W.M.M. v. Trump*, —
3 F. 4th —, 2025 WL 2508869, at *23 (5th Cir. Sept. 2, 2025) (discussing the procedure).
4 To the contrary, the government has alleged and the immigration judge found that
5 Petitioner is inadmissible to the United States based on his failure to have appropriate
6 immigration documents when he applied for admission in May 2024. *See ECF 68-1 at 16*
7 (Notice to Appear). And he has been properly ordered removed under the INA. *See Ex.*
8 *A*.

9 For the foregoing reasons, the government respectfully asks that Petitioner’s Ex
10 Parte, Emergency Motion for a Preliminary Injunction be denied.

11
12 DATED this 2nd day of October, 2025.

13 Respectfully submitted,

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17 Acting Director

18 JOHN W. BLAKELEY
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20 NANCY N. SAFAVI
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CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for the Federal Defendants certifies that this
brief contains 831 words which complies with the word limit of Local Rule 11-6.1.

/s/ Michael D. Ross

MICHAEL D. ROSS

Trial Attorney

U.S. Department of Justice