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10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON
12

13 GUSTAVO ORDUNO HERNANDEZ,
14 MARIA MAGDALENA CASTANADA
15 ROSALES, VALENTINA ORDUNO
16 CASTANEDA, RAFAEL ORDUNO
17 CASTANEDA

18 Plaintiffs,

19 vs.

20 TODD LYONS, Acting Director, U.S.
21 Immigration and Customs Enforcement, in
22 his official capacity as well as successors
23 and assigns,

24 KRISTI NOEM, Secretary for the U.S.
25 Department of Homeland, in her official
26 capacity as well as her successors and
27 assigns,

28 Defendants.

No. 1:25-cv-03081-RLP

RESPONSE OPPOSING EX
PARTE TEMPORARY
RESTRAINING ORDER

29 Defendants, through counsel, hereby enter this opposition to Plaintiffs'
30 Motion for Ex Parte Temporary Restraining Order (TRO). ECF No. 4.

31 RESPONSE OPPOSING EX PARTE TEMPORARY RESTRAINING ORDER - 1

1 Plaintiffs allege generally that Plaintiff Gustavo Orduno Hernandez has
2 been taken into custody of U.S. Immigration and Customs Enforcement (ICE) and
3 is at risk of imminent removal from the United States. ECF No. 1. Plaintiffs'
4 habeas petition seeks two discrete forms of relief: (1) an order prohibiting
5 Plaintiff's removal from the United States while his Board of Immigration
6 Appeals (BIA) appeal is pending, and (2) an order releasing Plaintiff from ICE
7 custody. *Id.* Regarding only the first request for relief (an order prohibiting
8 Plaintiff's removal from the United States), Plaintiffs seek an emergency TRO on
9 an ex parte basis. ECF No. 4.

13 The Court should deny Plaintiffs' ex parte motion for TRO. An ex parte
14 TRO is an extreme form of relief only available in limited circumstances which
15 Plaintiffs do not establish. First, there is no immediate risk of irreparable harm
16 because Defendants have already notified Plaintiffs that they will provide the
17 exact relief that the motion for TRO requests. Second, Plaintiffs fail to show
18 sufficient efforts that would justify the entry of a TRO without notice and a
19 meaningful opportunity for Defendants to respond.

22 Finally, if the Court is inclined to consider Plaintiffs' motion by converting
23 it to a different request for preliminary injunctive relief, Defendants request the
24 Court enter a briefing schedule so that they may have an opportunity to be fairly
25 heard on the merits of Plaintiff's motion. Defendants intend to raise additional
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1 defenses to the issues presented by Plaintiffs' petition and motion for TRO, which
2 they have not yet had adequate time to evaluate and present given the compressed
3 timeline of Plaintiffs' emergency motion.
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5 **I. An Ex Parte TRO is Only Available in Very Limited**
6 **Circumstances.**

7 To obtain a TRO, "the moving party must show: (1) a likelihood of success
8 on the merits; (2) a likelihood of irreparable harm to the moving party in the
9 absence of preliminary relief; (3) that the balance of equities tips in favor of the
10 moving party; and (4) that an injunction is in the public interest." *Leveron v.*
11 *Jenkins*, No. 2:23-cv-4914-RGK-MAR, 2023 WL 5506025 (C.D. Cal. June 22,
12 2023) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).
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14 Preliminary injunctive relief is "an extraordinary remedy that may only be
15 awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*,
16 555 U.S. at 22.
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19 To obtain a TRO without notice to the opposing party, a movant must
20 present "specific facts in an affidavit . . . show that immediate and irreparable
21 injury, loss, or damage will result to the movant before the adverse party can be
22 heard in opposition" and "the movant's attorney certifies in writing any efforts
23 made to give notice and the reasons why it should not be required." Fed. R. Civ.
24 P. 65(b)(1). There are "very few circumstances justifying the issuance of an ex
25 parte TRO." *Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th
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1 Cir. 2006). Such circumstances include when an adverse party is “unknown” or
2 “cannot be located,” or when there is a serious risk that evidence would be
3 destroyed if notice is given. *Id.* These requirements are “stringent” because they
4 “reflect the fact that our entire jurisprudence runs counter to the notion of court
5 action taken before reasonable notice and opportunity to be heard has been
6 granted both sides of a dispute.” *Granny Goose Foods, Inc. v. Brotherhood of*
7 *Teamsters*, 415 U.S. 423, 438-39 (1974).
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10 **II. Plaintiffs Do Not Make a Clear Showing of Risk of Irreparable**
11 **Harm Because Plaintiff is Not Facing Imminent Removal.**

12 Plaintiffs are not entitled to an ex parte TRO because they do not face an
13 immediate risk of irreparable harm. Fed. R. Civ. P. 65(b)(1)(A).
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15 There is no such risk of irreparable harm here because Plaintiff is not facing
16 imminent removal from the United States. As set forth in the attached Declaration
17 of Chris Hubbard, ICE Deportation Officer, ICE will not remove Plaintiff from
18 the United States while his immigration case appeal remains pending. Hubbard
19 Decl. ¶ 8. Because Plaintiff does not face an immediate risk of removal, he is not
20 facing the type of imminent irreparable injury which is required for an ex parte
21 TRO.¹ Plaintiffs do not make the “clear showing” of imminent irreparable harm
22 required to justify an ex parte TRO, so their motion should be denied.
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27 ¹ Plaintiffs’ sworn affidavits also allege that they are facing immediate harm
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1 **III. Plaintiffs Do Not Make a Clear Showing That Notice Should Not**
2 **Be Required**

3 Plaintiffs do not meet their high burden of showing that the case
4 circumstances and their efforts toward notice justify a TRO being issued ex parte.

5 A TRO may be issued without notice only if “the movant’s attorney
6 certifies in writing any efforts made to give notice and the reasons why it should
7 not be required.” Fed. R. Civ. P. 65(b)(1)(B). There are “very few circumstances
8 justifying the issuance of an ex parte TRO.” *Reno Air Racing Ass’n, Inc. v.*
9 *McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006). Such circumstances include when
10 an adverse party is “unknown” or “cannot be located,” or when there is a serious
11 risk that evidence would be destroyed if notice is given. *Id.* An ex parte TRO
12 might also be justified when “the movant could not have notified the opposing
13 side far enough in advance to allow them to be heard without causing irreparable
14 harm.” *Barrow v. New Res. Mortgage LLC*, No. CV-22-08160-PCT-DLR, 2022
15 WL 7710825, at *1 (D. Ariz. Sept. 9, 2022) (emphasis added).
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22 because Plaintiff is in ICE custody and away from his family. ECF No. 6. But
23 Plaintiffs seek a TRO only on the issue of Plaintiff’s *removal* from the United
24 States, not his detention status. ECF No. 4. Plaintiffs’ factual allegations about
25 hardship due to Plaintiff being in ICE custody are not relevant to the Court’s
26 inquiry into the risk of harm posed by the potential of removal.
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1 Here, Plaintiffs have not met this high burden necessary for an ex parte
2 TRO. As discussed above, there is no risk of irreparable harm because Plaintiff is
3 not facing imminent removal from the United States while his appeal remains
4 pending. *See* Hubbard Decl. ¶ 8. Moreover, Plaintiffs' counsel's second
5 declaration acknowledges that they were provided with Officer Hubbard's
6 declaration prior to it being filed on the Court's docket, and were thus aware that
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8 Plaintiff is not facing imminent removal. ECF No. 9 at 4.

10 Additionally, Plaintiffs have no basis to assert that the adverse party is
11 "unknown" or "cannot be located." Plaintiffs' counsel has now filed *two*
12 declarations indicating they have been in communication *with* defense counsel
13 *about* this exact TRO motion. ECF No. 6, Ex. 2 at 1 n.1; ECF No. 9 at 3-4.

15 Counsel's second declaration, combined with the Court's docket,
16 establishes the timeline that: (1) Plaintiffs filed their habeas petition on June 4,
17 2025; (2) Plaintiffs filed their ex parte TRO motion on June 5, 2025; (3) Plaintiffs
18 sent copies of both directly to ICE on the afternoon of June 5, 2025; and (4)
19 Plaintiffs did not make any effort to communicate the fact of this lawsuit to the
20 Department of Justice until undersigned defense counsel learned of the case and
21 contacted Plaintiffs' counsel on June 6, 2025. ECF No. 9. Despite Plaintiffs not
22 providing notice, defense counsel were able to provide Plaintiffs with a sworn
23 declaration that Plaintiff will not be removed from the United States while his
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1 immigration appeal is pending—within hours of initiating contact on this case.
2 ECF No. 9 at 3-4. Under these circumstances, Plaintiffs have not made a clear
3 showing that their efforts to provide notice of their TRO request are of the sort
4 that would justify proceeding with emergency *ex parte* relief.
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6 Although “notice” of the TRO motion may seem academic now that
7 counsel for Defendants are aware of and have appeared in this case, there is still
8 harm in proceeding on an emergency basis without allowing Defendants an
9 adequate opportunity to more thoroughly respond to Plaintiffs’ claims. That is
10 precisely why Rule 65’s notice requirements are so “stringent”— they “reflect the
11 fact that our entire jurisprudence runs counter to the notion of court action taken
12 before reasonable notice and opportunity to be heard has been granted both sides
13 of a dispute.” *Granny Goose Foods*, 415 U.S. at 438-39. Here, there is no
14 emergency which justifies proceeding further without notice and a more
15 meaningful opportunity for Defendants to respond. Plaintiffs’ request for a TRO
16 on an emergency *ex parte* basis should be denied.
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21 **IV. Defendants Request an Opportunity to be Fully Heard on**
22 **Plaintiff’s Motion**

23 If the Court is inclined to further consider Plaintiff’s Motion for TRO,
24 Defendants request an opportunity to be fully heard on the issue. Defendants’
25 instant opposition brief is being filed on the compressed timeline of Plaintiffs’ *ex*
26 *parte* motion and is focused on lack of justification for proceeding without
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1 providing Defendants with notice and a meaningful opportunity to respond.² Fed.
2 R. Civ. P. 65(b)(1). Even “[a]n otherwise meritorious TRO application may be
3 denied simply on the ground that there was no justifiable reason for issuing the
4 TRO without notice.” *Miramar Brands Group, Inc. v. Fonoimoana*, No. CV 16-
5 4224-PSG, 2016 WL 9308292, at *1 (C.D. Cal. June 16, 2016). If the Court is
6 inclined to review Plaintiffs’ request by converting it to another form of request
7 for preliminary injunctive relief, Defendants request a briefing schedule be issued
8 so that they may have a full and complete opportunity to respond to Plaintiffs’
9 motion.
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13 Additionally, “[t]he court may issue a preliminary injunction or a temporary
14 restraining order only if the movant gives security in an amount that the court
15 considers proper to pay the costs and damages sustained by any party found to
16 have been wrongfully enjoyed or restrained.” Fed. R. Civ. P. 65(c). The Court
17 should require Plaintiffs to post a bond as is required by Rule 65.
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24 ² Defendants explicitly reserve the right to assert other defenses to Plaintiffs’
25 request for preliminary injunctive relief, including on jurisdiction, improper
26 venue, and the merits of Plaintiffs’ claims.
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RESPECTFULLY SUBMITTED: June 7, 2025.

Richard R. Barker
Acting United States Attorney

s/Molly M.S. Smith
Molly M.S. Smith
Assistant United States Attorney
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2025, I caused the foregoing to be filed with the Clerk of the Court using the CM/ECF System and service of such filing will be sent by reliable electronic means to the registered CM/ECF Participant(s).

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s/Molly M.S. Smith
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