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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ROBERT GEORGE HOGARTH,

Petitioner,

v.

ERNESTO M. SANTACRUZ JR., et al.,

Respondents.

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

RESPONDENTS' OPPOSITION AND OBJECTION TO PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER [DKT. 2]

Honorable Sherilyn Peace Garnett
United States District Judge

FEDERAL RESPONDENTS' OPPOSITION AND OBJECTION

Petitioner, through counsel, filed his *Ex Parte* Application for Temporary Restraining order [Dkt. no. 2] (the "*Ex Parte* Application") on October 3, 2025, which was the same day he filed his Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief. This Court subsequently issued an order on October 6, 2025 [Dkt. no. 9], setting a hearing date of October 8, 2025 at 11:00 a.m.

Although the *Ex Parte* Application claims to have been filed in compliance with Central District of California Local Civil Rule 7-19 and Federal Rule of Civil Procedure 65 (*see* Notice of Motion), that is not correct. The *Ex Parte* Application does not appear to identify any efforts that Petitioner's counsel allegedly made to comply with Local Civil Rule 7-19, nor any efforts made by Petitioner's counsel to meet the requirements for service on the government. Undersigned counsel is not aware of such efforts, and only received notice about this case after learning of the Court's order [Dkt. no. 9].

This Court's webpage further explains the requirements for *ex parte* applications, which were not met here.

https://apps.cacd.uscourts.gov/Jps/honorable-sherilyn-peace-garnett

Petitioner is represented by Keker, Van Nest & Peters LLP, and by the five attorneys of record listed on the Petition's caption. Petitioner's counsel is aware of Local Rule 7-19 and the Court's requirements; its filing cites them. Yet they filed a very long *Ex Parte* Application in a defective manner that maximizes the prejudice on the government's ability to respond. Immigration counsel is normally able to comply with these requirements when seeking TRO relief in this District—or at least they try to do so. Petitioner's counsel could have done the same, had it tried.

In aggravation, the Petition primarily complains about a decision that the Board of Immigration Appeals (BIA) issued back on **September 16, 2025,** and his *Ex Parte* Application now asks this Court to find that BIA decision was unlawful and threatens Petitioner with serious harm. *See* Petition, ¶ 4. Yet Petitioner's counsel waited almost ***three weeks*** after the BIA's decision before filing their *Ex Parte* Application on October

3, 2025 [Dkt. no. 2]. At that point, Petitioner's counsel then filed a voluminous mass of papers arguing that this BIA decision was in error and threatens Petitioner.

To the extent any extreme temporal crisis exists here, it was created by Petitioner's counsel delaying so long until filing their voluminous papers. Their *Ex Parte* Application falls far short of the high standard set for *ex parte* applications in this District by *Mission Power Engineering Co. v. Continental Cas. Co.*, 883 F. Supp. 488 (C.D. Cal. 1995), which has been summarized as follows:

> *Ex parte* applications are "rarely justified." The abbreviated procedures allowed by the granting of an *ex parte* application circumvent the "safeguards that have evolved over many decades [ ] built into the Federal Rules of Civil Procedure and the Local Rules." These safeguards include the timelines for "submission of responding papers and for the setting of hearings [ ] intended to provide a framework for the fair, orderly, and efficient resolution of disputes."

Paige, LLC v. Shop Paige LLC, No. 2:22-CV-07800-HDV, 2024 WL 4436899, at *1 (C.D. Cal. Aug. 1, 2024) (denying *ex parte* application to shorten time); *See also Arredondo v. Univ. of La Verne*, 618 F. Supp. 3d 937, 943 (C.D. Cal. Aug. 2, 2022) ("Ex parte applications are solely for extraordinary relief and are rarely justified."); *Est. of Wuxi Chenhwat Almatech Co. v. Prestige Autotech Corp.*, 2022 WL 17363058, at *2 (C.D. Cal. Nov. 3, 2022) ("Ex parte applications are nearly always improper, and the opportunities for legitimate ones are extremely limited"); *MAG Aerospace Indus., LLC v. Precise Aerospace Mfg., Inc.*, 2019 WL 1427272, at *1 (C.D. Cal. Jan. 25, 2019) ("[a]n ex parte application … is appropriate in only rare circumstances").

As *Mission Power* explained, to justify *ex parte* relief, the movant must demonstrate it "is without fault in creating the crisis that requires *ex parte* relief, or that the crisis occurred as a result of excusable neglect." *See id.* at 492.

Mission Power warned of how *ex partes* "pose a threat to the administration of justice," calling out situations where "the moving party's papers reflect days, even weeks, of investigation and preparation; the opposing party has perhaps a day or two ... The goal often appears to be to surprise opposing counsel or at least to force him or her

to drop all other work to respond on short notice." *Mission Power*, 883 F. Supp. at 490.

It is difficult to see why anybody would ever bother complying with the *Mission Power* standard if such *ex parte* application filings were accepted. Complying would only damage their interests. *See Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 489 (C.D. Cal. 1995) (noting that the "abusive use of ex parte motions . . . is detrimental to the administration of justice and, unless moderated, will increasingly erode the quality of litigation and present ever-increasing problems for the parties, their lawyers, and for the court").

The government is not able to substantively respond to such improper and voluminous *ex parte* filings on their merits on such short notice, particularly given that this District is inundated with an unprecedented volume of immigration TRO applications. The approach of drafting lengthy complaints and *ex parte* papers, often painstakingly assembled in secrecy over weeks, and then filing them with no (or minimal) advance has unfortunately become a preferred approach for *pro bono* counsel located in the Northern District of California. This *ex parte* tactic, by design, functions to railroad a predetermined result through the District Court.

In sum, the *Ex Parte* TRO Application is procedurally defective, and it fails to meet the *Mission Power* standard. It should be denied on that basis.

Dated: October 7, 2025

Respectfully submitted,

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/s/ Daniel A. Beck
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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for the Federal Respondents, certifies that the memorandum of points and authorities contains 972 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 7, 2025

/s/ *Daniel A. Beck*
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