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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 FERNANDO CATZIN AKE and)
14 GUADALUPE ESCOBEDO CHAN,)

No. 10-05258 CW

15 Petitioners,)

RESPONDENTS' STATEMENT OF NON-
OPPOSITION TO A PRELIMINARY
INJUNCTION AND REQUEST FOR A
BRIEFING SCHEDULE

16 v.)

17 JANET NAPOLITANO, Secretary,)
Department of Homeland Security, *et al.*,)

18 Respondents.)
19 _____)

20 On November 19, 2010, Petitioners filed a habeas petition, in which they asserted Petitioner
21 Fernando Catzin Ake would enter Respondents' custody on Monday, November 22, 2010, and be
22 removed from the United States shortly thereafter. Petitioners admit that Petitioner Ake is currently
23 in state custody, but argue that the existence of an immigration detainer creates "constructive
24 custody."¹ The Court has issued an order temporarily enjoining and restraining Respondents from
25 removing Petitioners from the United States to Mexico. Elec. Dkt. No. 9. The Court ordered
26 Respondents to file an opposition to entry of a preliminary injunction by November 22, 2010.

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28 ¹Respondents contend that the existence of an immigration detainer alone does not vest
the Court with jurisdiction over this matter. *Campos v. INS*, 62 F.3d 311, 314 (9th Cir. 1995).

1 It appears that Petitioner Ake will enter Respondents' custody on Tuesday,
2 November 23, 2010. Accordingly, Respondents agree that they will not remove Petitioners to
3 Mexico until this habeas petition is resolved. Respondents suggest the following briefing schedule:

4 Government's Return: December 20, 2010
5 Traverse: January 3, 2011
6 Dated: November 22, 2010 Respectfully submitted,
7 MELINDA HAAG
8 United States Attorney

9 /s/
10 MELANIE L. PROCTOR
11 Assistant United States Attorney
12 Attorneys for Respondents

12 **PROPOSED ORDER**

13 There being no opposition, Respondents are hereby enjoined from removing Petitioners until
14 the habeas petition is resolved. Respondents' return is due December 20, 2010. Petitioners' traverse
15 shall be due January 3, 2011.

16 Dated: 11/22/2010

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18 CLAUDIA WILKEN
19 United States District Judge
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