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14 UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 EDWIN YOBANI ENAMORADO,

17 Petitioner-Plaintiff,

18 v.

19 POLLY KAISER, in her official capacity, Acting
20 San Francisco Field Office Director, U.S.
Immigration and Customs Enforcement;
21

22 TODD M. LYONS, in his official capacity, Acting
Director, U.S. Immigration and Customs
23 Enforcement;

24 KRISTI NOEM, in her official Capacity, Secretary
of the U.S. Department of Homeland Security; and
25

26 PAMELA BONDI, in her official capacity,
Attorney General of the United States,
27

28 Respondents-Defendants.

Case No: 3:25-cv-4072

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Petition for Writ of Habeas Corpus and Complaint
For Declaratory and Injunctive relief

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Case No. 3:25-cv-4072

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INTRODUCTION

1. Petitioner-Plaintiff Edwin Yobani Enamorado (“Mr. Enamorado”) brings this petition for writ of habeas corpus and complaint for injunctive and declaratory relief, and accompanying ex parte motion for a temporary restraining order, to prevent Respondents-Defendants, the Department of Homeland Security (“DHS” or “the Department”) and its Immigration and Customs Enforcement (“ICE”) division, from unlawfully re-detaining him at a scheduled interview at 8 am on May 14, 2025, in violation of the Fifth Amendment to the U.S. Constitution.

2. Mr. Enamorado was previously in ICE custody for seven months, from December 2018 to July 2019. He was granted release on a \$8,000 bond in a hearing held pursuant to *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018)¹, *aff’d*, 955 F.3d 762 (9th Cir. 2020), *rev’d*, 596 U.S. 543 (2022), after an Immigration Judge (“IJ”) found that he was neither a danger nor a flight risk. Mr. Enamorado paid his bond and was freed from immigration detention on July 8, 2019.² Since then, he has been living with his lawful permanent resident wife and four lawful permanent resident children in Martinez, California, helping to care for them, and providing for them financially through his hard work in his landscaping business. His behavior since his release—which includes no contact with the criminal justice system and full compliance with a prior reporting to ICE that lasted two years—has only bolstered the IJ’s finding that he is neither a danger nor a flight risk.

¹ The District Court injunction currently remains in place. *See Aleman Gonzalez v. Whitaker*, No. 3:18-cv-01869 (N.D. Cal. Mar. 17, 2025) (order continuing case management conference).

² The DHS did not appeal the IJ’s bond decision to the Board of Immigration Appeals after Mr. Enamorado was released.

1 3. After Mr. Enamorado was released, on April 12, 2022, an IJ in San Francisco granted
2 Mr. Enamorado the protection of withholding of removal under 8 U.S. Code (“USC”) Section
3 1231(b)(3), and the government waived appeal.

4 4. Nearly three years later to the day, on April 10, 2025, the DHS sent a notice to Mr.
5 Enamorado’s bond obligor demanding that Mr. Enamorado appear for an interview at the San
6 Francisco ICE Field Office on May 14, 2025.

7 5. Mr. Enamorado now fears that the DHS will re-detain him at the interview on May 14,
8 2025 while they attempt to find a third country to which they can remove him.

9 6. It is well established, however, that Mr. Enamorado has a liberty interest in his current
10 freedom, and the Fifth Amendment’s Due Process Clause mandates that detention serve a
11 legitimate purpose—to mitigate flight risk and/or prevent danger to the community—neither of
12 which would be served by Mr. Enamorado’s detention. Moreover, even assuming that his
13 detention could possibly serve a legitimate purpose, given the nearly six years of freedom that
14 he has enjoyed without issue, he is entitled to certain procedural protections before any possible
15 re-detention.
16

17 7. Thus, due process requires that he remain out of custody while the government follows
18 certain procedures to determine if he can and will be removed to a third country. In the
19 alternative, due process requires that he receive notice and a hearing prior to the deprivation of
20 his liberty. He brings this petition and complaint to enforce these rights, among others.
21

22 JURISDICTION

23 8. This action arises under the Constitution of the United States, the INA, 8 USC Section
24 1101 *et seq.*, and the Administrative Procedure Act (“APA”), 5 USC Section 500 *et seq.*
25
26
27
28

1 9. Jurisdiction is proper under 28 USC Section 1331 (federal question), 28 USC Section
2 2241, Article I, Section 9, Clause 2 of the United States Constitution (habeas corpus), 28 USC
3 Sections 2201-2202 (Declaratory Judgement Act), and the Suspension Clause of Article 1 of the
4 U.S. Constitution. The United States has waived its sovereign immunity pursuant to 5 USC
5 Section 702.
6

7 10. This Court may grant declaratory and injunctive relief pursuant to 28 USC Sections
8 2241, 1651, 2201-02, and 5 USC Section 702. This Court also has broad equitable powers to
9 grant relief to remedy a constitutional violation. *See Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir.
10 2020).
11

12 VENUE

13 11. Venue is properly before this Court pursuant to 28 USC Section 1391(e) because the
14 Respondents are employees or officers of the United States, acting in their official capacity;
15 because a substantial part of the events or omissions giving rise to the claim occurred or will
16 occur in the Northern District of California; because one of the Respondents resides in this
17 District; and because there is no real property involved in this action. *See* 28 USC §
18 1391(e)(1)(A).
19

20 INTRADISTRICT ASSIGNMENT

21 12. Mr. Enamorado will be re-detained by the San Francisco Field Office of ICE. Therefore,
22 the assignment to the San Francisco or Oakland Division of this Court is proper under N.D.
23 Local Rule 3-2(d).
24

25 PARTIES

26 13. Petitioner Mr. Enamorado was born in Honduras and has lived in the United States for a
27 total of nearly twelve years during two separate time periods. He last entered the United States
28

1 in 2018 and has resided here since that time. He was detained in ICE custody from
2 approximately December 3, 2018 until July 8, 2019, when he was freed on a \$8,000 bond. On
3 April 12, 2022, Mr. Enamorado was granted withholding of removal by an IJ in San Francisco.
4 On April 10, 2025, he was ordered to appear for an interview at the San Francisco ICE Field
5 Office on May 14, 2025.
6

7 14. Respondent Polly Kaiser is the Acting Field Office Director of ICE, in San Francisco,
8 California, and is named in her official capacity. She maintains her office in San Francisco,
9 California, within this judicial district. The San Francisco Field Office is responsible for
10 carrying out ICE's immigration detention operations throughout Northern California, where Mr.
11 Enamorado currently resides. Respondent Kaiser's office issued the notice to the obligor of Mr.
12 Enamorado's bond demanding that Mr. Enamorado appear for an interview at 630 Sansome
13 Street in San Francisco, CA on May 14, 2025. Respondent Kaiser is a legal custodian of Mr.
14 Enamorado.
15

16 15. Respondent Todd M. Lyons is the Acting Director of ICE, and is named in his official
17 capacity. ICE, a component of the DHS, is responsible for detaining and removing noncitizens
18 according to immigration law, and oversees custody determinations. Respondent Lyons is
19 responsible for ICE's policies, practices, and procedures, including those relating to the civil
20 detention of immigrants. Respondent Lyons is a legal custodian of Mr. Enamorado.
21

22 16. Respondent Kristi Noem is the Secretary of the DHS, and is named in her official
23 capacity. She has authority over the detention and departure of noncitizens, because she
24 administers and enforces immigration laws pursuant to Section 402 of the Homeland Security
25 Act of 2002. Given this authority, Respondent Noem is the ultimate legal custodian over Mr.
26 Enamorado and is empowered to carry out any administrative order against him.
27
28

1 17. Respondent Pamela Bondi is the Attorney General of the United States and the most
2 senior official at the Department of Justice, and is named in her official capacity. As such, she is
3 responsible for overseeing the implementation and enforcement of the federal immigration laws.
4 The Attorney General delegates this responsibility to the Executive Office for Immigration
5 Review ("EOIR"), which administers the immigration courts and the BIA.
6

7 **STATEMENT OF FACTS**

8 18. Mr. Enamorado is a forty-two-year-old husband, and the father of four children. Born in
9 Honduras, he first came to the United States in 1999. He lives in Martinez, California with his
10 wife of ten years, Yesmin Herrera Cruz, and their four children, Anthony (21-years-old), RCH
11 (19-years-old), DEH (14-years old), and EEH (10- years-old). *See* Declaration of Heliodoro
12 Moreno (hereinafter, "Moreno Dec."), Ex. A (Declaration of Edwin Yobani Enamorado
13 "Enamorado Dec."), Ex. B (Declaration of Yesmin Herrera Cruz "Herrera Dec.").
14

15 19. Mr. Enamorado has his own landscaping business, and his two eldest children work with
16 him along with two other employees. As one of his client's, and a family friend, has explained,
17 "Edwin is a man of strong character. In my interaction with him I have been impressed by his
18 intelligence and perseverance, his great capacity to communicate and problem solve, and his
19 desire to find meaning and joy in his life. As a landscaper, builder and contractor, Edwin was
20 great at working to design and build the garden features I needed. . . My wife and I
21 recommended Edwin to our neighbor who then hired Edwin and his crew for another large job."
22 Moreno Dec., Ex. R (Letter from Steve Poling). Likewise the spouse of that same client noted
23 that "Edwin did an outstanding job over about eight weeks, and was very knowledgeable and
24 helpful in the design of the work, not just the labor. The resulting project, including rock
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1 retaining walls, irrigation, ground cover, and plantings, is excellent.” Moreno Dec., Ex. S
2 (Letter from Ellen Poling).

3 20. He is the family’s sole breadwinner and able to support his family financially through
4 his business. His wife, Yesmin Larony Herrera Cruz, does not work as she cares for their four
5 children. Their two younger children receive special educational services and supports at
6 school. Moreno Dec., Ex. B (Herrera Dec.). At home, Mr. Enamorado enjoys spending time
7 with his family, supports his children’s extracurricular activities, and attends church with his
8 family. *Id.*, Moreno Dec., Ex. A (Enamorado Dec.).

9
10 21. Mr. Enamorado has criminal convictions from when he lived in Michigan as an
11 adolescent. In 2003, he had two convictions for possession of marijuana. *See* Moreno Dec., Ex
12 A (Enamorado Dec.). In July 2005, he was convicted of driving with a false identification. *Id.*
13 This led to him being transferred to ICE custody and he was deported to Honduras in August
14 2005.

15
16 22. Mr. Enamorado has not had any criminal arrests or convictions for almost twenty years.
17 He is a man devoted to his family and community as the letters of support attached to this
18 Complaint/Petition attest. “Edwin was very honest about his childhood struggles and his
19 gratitude for those who helped him survive in Honduras and thrive in America. He does not take
20 for granted the blessings he has received; he makes it his mission to pass on these same gifts
21 and blessings to his wife and his four boys.” Moreno Dec., Ex. R (Letter from Steve Poling).

22
23 23. On April 10, 2025, three years after being granted withholding of removal, and nearly
24 six years after being released on bond, ICE sent a notice to the obligor who posted the bond for
25 Mr. Enamorado’s release. *See* Moreno Dec., Ex A (Enamorado Dec.), Ex. N (ICE Notice to
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27
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Obligor). The notice demanded that he present himself for an “interview” at 8:00 am on May 14, 2025 at the San Francisco ICE Field Office, located at 630 Sansome Street. *Id.*

24. Based on the government’s internal directive, news reports, as well as the arrest and detention of at least nine other individuals similarly situated to Mr. Enamorado, Mr. Enamorado is terrified that ICE will detain him and try to remove him to a third country. *See* Moreno Dec., Ex A (Enamorado Dec.), Ex C (Declaration of Etan Newman “Newman Dec.”), Ex. D (Declaration of Laura Jones “Jones Dec.”), Ex E (Declaration of Simon Y. Sandoval-Moshenberg “Sandoval Dec.”), Ex M (DHS 2/18/25 Directive). Mr. Enamorado is particularly terrified of the government [REDACTED] given the Trump Administration’s hyper focus on removing anyone they believe has ties to gangs as expeditiously as possible. *See, e.g.,* Ali Rogin and Harry Zahn, *New York Times investigation finds no evidence linking many deported Venezuelans to Tren de Aragua*, PBS News (May 3, 2025, 5:40 PM), <https://www.pbs.org/newshour/show/nyt-investigation-finds-no-evidence-linking-many-deported-venezuelans-to-tren-de-aragua>; Myah Ward, *Behind Trump’s push to erode due process rights*, Politico (April 28, 2025, 5:30 AM), <https://www.politico.com/news/2025/04/28/trump-immigration-100days-due-process-00307435>; *see also Sanchez Punetes v. Grite*, No. EP-25-CV-00127-DB, 2025 WL 1203179, at *15 (W.D. Texas Apr. 25, 2025) (finding no evidence that Petitioners are members of Tren de Aragua gang); *J.G.G. v. Trump*, No. 1:25-cv-00766-JEB, at *1 (D. D.C. April 16, 2025) (memorandum opinion). He is especially fearful about being deported to a notoriously cruel prison in El Salvador given the news about the U.S. government flying alleged gang members or people with former ties to gangs there. *See* Moreno Dec., Ex A (Enamorado Dec.)

Mr. Enamorado’s Initial Grant of Asylum, Reversal, and Removal to Honduras

1 25. Mr. Enamorado first entered the United States in 1999 and was granted asylum by an
2 Immigration Judge on November 22, 1999. *See* Moreno Dec., Ex. A (Mr. Enamorado Dec.). He
3 had been forced to join the MS-13 gang in Honduras when he was about eleven years old and
4 fled the gang when he was about fifteen years old. *See* Moreno Dec., Ex. A (Enamorado Dec.).
5 The government appealed the Immigration Judge's decision, and the Board of Immigration
6 Appeals (BIA) reversed the grant of asylum and ordered him removed to Honduras on October 9,
7 2003. *See* Moreno Dec., Ex. F (BIA reversal of Mr. Enamorado's asylum grant, October 14,
8 2003). Mr. Enamorado was deported to Honduras in August 2005. *See* Moreno Dec., Ex. A
9 (Enamorado Dec.).
10

11 26. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] *Id.* He met
15 his wife, Yesmin Herrera Cruz, in 2007 and they started living together, raising her two young
16 children as his own. *Id.*; Moreno Dec., Ex. B (Herrera Dec.). They had two children together,
17 DEH in 2010 and EEH in 2014, and officially married on April 24, 2015. *Id.*
18

19 27. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED] *Id.* Terrified that he and his
23 family would be killed, they fled Honduras in 2018 and entered the United States on December
24 13, 2018. *Id.*
25

26 28. His wife and children were detained for about four days and released from custody. *Id.*
27 Mr. Enamorado was detained separately from his wife and children. *Id.* His prior 2003 removal
28

1 order was reinstated and he was kept in immigration detention. *Id.* On January 15, 2019, an
2 asylum officer determined that he had a reasonable fear of persecution or torture if he returned to
3 Honduras and he was referred to an Immigration Judge to apply for withholding of removal. *Id.*;
4 Moreno Dec., Ex. – (Reasonable Fear Interview, January 4, 2019).

5
6 **Mr. Enamorado's Detention, Bond Hearing, Release**

7 29. On July 3, 2019, after seven months in detention, Immigration Judge Molly Frazer,
8 granted Mr. Enamorado's release from custody on an \$8,000 bond, finding that he was neither a
9 danger to the community nor a flight risk. *See* Moreno Dec., Ex. J (IJ Bond Order, July 3, 2019).
10 On July 8, 2019, Mr. Enamorado was released from custody and was finally able to reunite with
11 his wife and children.
12

13 30. Mr. Enamorado's family suffered greatly while he was detained from December 2018 to
14 July 2019. *See* Moreno Dec., Ex. A (Enamorado Dec.), Ex. B (Herrera Dec.). The family had just
15 fled Honduras and they did not have anything. *Id.* The children were fifteen, thirteen, seven and
16 four at the time. *Id.* Ms. Herrera found help from a church and went into a shelter for her and the
17 younger children. *Id.* Anthony, who was fifteen-years-old at the time was too old to be in the
18 women's shelter with them so he was separated. *Id.* A church helped them to get a trailer and she
19 got food from the shelter. *Id.* She could not work because she had four minor children to take
20 care of but Mr. Enamorado's former foster mother helped them financially by sending money
21 every month. *Id.* The children cried a lot, asking where their father was and when he was coming
22 out. *Id.* Ms. Herrera and the children missed Mr. Enamorado greatly and their circumstances
23 were extremely challenging without him. *Id.*

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26 **Mr. Enamorado's Grant of Withholding of Removal and Family's Grant of Asylum and**
27 **Lawful Permanent Resident Status**
28

1 31. On April 12, 2022, Immigration Judge Karen Schulz in San Francisco granted Mr.
2 Enamorado's application for withholding of removal to Honduras, and the government did not
3 appeal. *See* Moreno Dec., Ex. K (Mr. Enamorado's grant of Withholding of Removal, April 12,
4 2022). On August 23, 2022, his wife and children were granted asylum by an Immigration Judge
5 in San Francisco, California. *See* Moreno Dec., Ex. B (Herrera Dec.). On September 17, 2024,
6 his wife and children became lawful permanent residents of the United States. *See* Moreno Dec.,
7 Ex. L (LPR cards for wife and children).
8

9 **Life After Release from Custody**

10 32. It has been almost six years since Mr. Enamorado was released from detention on bond.
11 Since his release, he has been living in Northern California with his wife and children and they
12 have established a stable life and routine.
13

14 33. Mr. Enamorado has his own landscaping business where his oldest two sons work with
15 him and his wife helps out when she can. *See* Moreno Dec., Ex. A (Enamorado Dec.); Ex. B
16 (Herrera Dec.). The partner of one of his children's teacher, and family friend, notes how "[h]e
17 is a very reliable handy man, landscaper, and has helped with many special projects at our
18 home. Edwin is one of the hardest workers I have ever known. . . I trust Edwin without
19 hesitation to fully access our house when we are not home." Moreno Dec., Ex. Q (Tasha Scott).
20 His son's teacher, and family friend explains how he has "first hand experience with Edwin's
21 work ethic, which is second to none." Moreno Dec., Ex. T (Pete Clauson).
22

23 34. Mr. Enamorado has had no contact with the criminal justice system since being released
24 from ICE custody. And in fact, Mr. Enamorado has had no contact with the criminal justice
25 system, here or in Honduras, since 2005. One of his employers and friends confirms that
26 "Edwin is a man of strong character. In my interaction with him I have been impressed by his
27
28

1 intelligence and perseverance, his great capacity to communicate and problem solve, and his
 2 desire to find meaning and joy in his life.” Moreno Dec., Ex. R (Steve Poling).

3 35. Sundays are days the family spends a lot of time together. *See* Moreno Dec., Ex. A
 4 (Enamorado Dec.), Ex. B (Herrera Dec.). They wake up and get coffee at Starbucks or Peets, go
 5 to church together, head to park to play sports, and eat dinner out. *Id.* Mr. Enamorado treasures
 6 spending time with his children and will go play soccer with them, take them bowling and to the
 7 arcades. *Id.* The family takes trips to Santa Cruz in the summer. *Id.* Mr. Enamorado goes to the
 8 children’s extracurricular activities and school events. *Id.* His son’s teacher notes how “[r]ight
 9 away, Edwin’s captivating personality but more importantly the very obvious dedication to his
 10 sons and family as a whole became instantly apparent. Everything he does (literally) is to
 11 provide for them and allow them to attempt to achieve the so called American Dream. . . Hard
 12 working, dedicated, a family man, someone that should have the right to continue this path that
 13 he has worked so hard for.” Moreno Dec., Ex. T (Pete Clauson).

14
 15
 16 **Trump Administration Begins Unprecedented Campaign to Detain and Deport**
 17 **Noncitizens with Alleged Gang Ties Without Due Process, Including Those With**
 18 **Withholding and CAT Protection**

19 36. Even before President Trump won last year’s election, he promised to quickly deport
 20 high numbers of noncitizens at any cost. As a candidate, he said that “[a]s soon as I take the
 21 oath of office...we will begin the largest deportation operation in the history of our country.”
 22 Catherine E. Shoichet, *Trump’s mass deportation plans would be costly. Here’s why*, CNN
 23 (Nov. 7, 2024, 3:08 PM), [https://www.cnn.com/2024/10/19/politics/trump-mass-deportation-](https://www.cnn.com/2024/10/19/politics/trump-mass-deportation-cost-ccc)
 24 [cost-ccc](https://www.cnn.com/2024/10/19/politics/trump-mass-deportation-cost-ccc). During his inauguration speech, President Trump promised to “begin the process of
 25 returning millions and millions of criminal aliens back to places from which they came.”
 26 Donald J. Trump, *The Inaugural Address*, White House (Jan. 20, 2025; 12:10 PM),
 27
 28

1 <https://www.whitehouse.gov/remarks/2025/01/the-inaugural-address/>. According to the
2 Washington Post, Trump officials directed senior ICE officials to increase arrests to meet daily
3 quotas. *See* Nick Miroff and Maria Sacchetti, *Trump officials issue quotas to ICE officers to*
4 *ramp up arrests*, Washington Post, (Jan. 26, 2025), [https://www.washingtonpost.com/](https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/)
5 [immigration/2025/01/26/ice-arrests-raids-trump-quota/](https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/). Each field office has been instructed to
6 make 75 arrests per day, with managers “held accountable” for failing to meet the targets. *See*
7 *id.* Nationally, this would increase daily ICE arrests from a few hundred per day to at least
8 1,200 to 1,500. *See id.*

9
10 37. Soon after President Trump’s inauguration, he became angry that more people are not
11 being deported, and he passed that message on to Defendant Noem, among others in his
12 administration. *See* Kristin Welker and Julia Ainsley, *Trump is 'angry' that deportation numbers*
13 *are not higher*, NBC News (Feb. 7, 20205, 1:28 PM), [https://www.nbcnews.com/politics/](https://www.nbcnews.com/politics/national-security/trump-angry-deportation-numbers-are-not-higher-rcna191273)
14 [national-security/trump-angry-deportation-numbers-are-not-higher-rcna191273](https://www.nbcnews.com/politics/national-security/trump-angry-deportation-numbers-are-not-higher-rcna191273). This has placed
15 “[a]gents at [ICE] [] under increasing pressure to boost the number of arrests and deportations
16 of undocumented immigrants....” *Id.*

17
18 38. Soon after, the federal government began targeting noncitizens with gang ties for
19 removal to third countries. *See, e.g.,* Nicolas Riccardi and Regina Garcia Cano, *Trump*
20 *administration deports hundreds of immigrants even as a judge orders their removals be*
21 *stopped*, AP News (Mar. 17, 2025, 7:21 AM), [https://apnews.com/article/trump-venezuela-el-](https://apnews.com/article/trump-venezuela-el-salvador-immigration-dd4f61999f85c4dd8bcaba7d4fc7c9af)
22 [salvador-immigration-dd4f61999f85c4dd8bcaba7d4fc7c9af](https://apnews.com/article/trump-venezuela-el-salvador-immigration-dd4f61999f85c4dd8bcaba7d4fc7c9af). The Administration continues to
23 target these noncitizens even though news outlets and courts have determined that most of the
24 gang allegations are exaggerated or unfounded. *See, e.g.,* Ali Rogin and Harry Zahn, *New York*
25 *Times investigation finds no evidence linking many deported Venezuelans to Tren de Aragua*,
26
27
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1 PBS News (May 3, 2025, 5:40 PM), [https://www.pbs.org/newshour/show/nyt-investigation-](https://www.pbs.org/newshour/show/nyt-investigation-finds-no-evidence-linking-many-deported-venezuelans-to-tren-de-aragua)
 2 [finds-no-evidence-linking-many-deported-venezuelans-to-tren-de-aragua](https://www.pbs.org/newshour/show/nyt-investigation-finds-no-evidence-linking-many-deported-venezuelans-to-tren-de-aragua); *see also Sanchez*
 3 *Punetes v. Grite*, No. EP-25-CV-00127-DB, 2025 WL 1203179, at *15 (W.D. Texas Apr. 25,
 4 2025) (finding no evidence that Petitioners are members of Tren de Aragua gang).

5
 6 39. On March 15, 2025, The Trump administration invoked a wartime law—the Alien
 7 Enemies Act of 1978 (“AEA”)—to deport “hundreds of immigrants the administration accused
 8 of gang membership” to a third country, El Salvador, without any due process. Myah Ward,
 9 *Behind Trump’s push to erode immigrant due process rights*, Politico (Apr. 28, 2025, 5:30
 10 AM), [https://www.politico.com/news/2025/04/28/trump-immigration-100days-due-process-](https://www.politico.com/news/2025/04/28/trump-immigration-100days-due-process-00307435)
 11 [00307435](https://www.politico.com/news/2025/04/28/trump-immigration-100days-due-process-00307435). A class action lawsuit was filed the same day in U.S. District Court for the District
 12 of Columbia on behalf of five Venezuelans to stop the third country deportations because the
 13 invocation of the AEA was unlawful. *See J.G.G. v. Trump*, No. 1:25-cv-00766-JEB (D. D.C.
 14 March 15, 2025) (complaint). Although District Judge Boasberg orally ordered the government
 15 the same day not to deport any noncitizens from the United States under the AEA and turn any
 16 planes around that were currently in flight, the government disobeyed that order, and over two
 17 hundred persons were deported to El Salvador’s mega prison the Center for Terrorism
 18 Confinement (“CECOT”). *See J.G.G. v. Trump*, No. 1:25-cv-00766-JEB, at *1 (D. D.C. April
 19 16, 2025) (memorandum opinion). As result, Judge Boasberg found probable cause existed for
 20 finding Trump administration officials in criminal contempt because “the Government’s actions
 21 on [March 15, 2025] demonstrate a willful disregard for [the court’s] Order....” *See J.G.G. v.*
 22 *Trump*, No. 1:25-cv-00766-JEB, at *1 (D. D.C. April 16, 2025) (memorandum opinion).

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 26 40. Kilmar Armando Abrego Garcia, a Salvadoran national who was granted withholding of
 27 removal to El Salvador, was one of those who was erroneously deported to El Salvador. *See*
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1 *Noem v. Abrego Garcia*, 145 S.Ct. 1017, 1018 (2025) (*per curiam*). On April 11, 2025, after his
2 family filed a lawsuit, U.S. District Judge Paula Xinis again ordered that the government
3 facilitate Mr. Abrego Garcia's return to the United States. *See Abrego Garcia v. Noem*, No.
4 8:25-cv-00951-PX, at *1 (D. MD. April 11, 2025) (order). The Trump Administration has
5 refused to bring Mr. Abrego Garcia to the United States. *See Ben Finley, Judge orders Trump*
6 *officials to report efforts, if any, to return Kilmar Abrego Garcia to U.S.*, PBS News (Apr. 30,
7 2025, 6:49 PM), [https://www.pbs.org/newshour/politics/judge-orders-trump-officials-to-report-](https://www.pbs.org/newshour/politics/judge-orders-trump-officials-to-report-efforts-if-any-to-return-kilmar-abrego-garcia-to-u-s)
8 [efforts-if-any-to-return-kilmar-abrego-garcia-to-u-s](https://www.pbs.org/newshour/politics/judge-orders-trump-officials-to-report-efforts-if-any-to-return-kilmar-abrego-garcia-to-u-s).
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11 41. In addition, the DHS, who would be directly responsible for Mr. Enamorado's detention
12 and removal, has publicly expressed its disdain for due process and court orders when it posted
13 on its official X.com account that Mr. Abrego Garcia's "removal from the United States should
14 have occurred under the Biden Administration. He will not return to our country under the
15 Trump Administration." DHS, X.com Post, 5/2/25
16 (<https://x.com/DHSGov/status/1918265519414661237>).
17

18 42. Recently, President Trump stated that he did not know if noncitizens were entitled to
19 due process and asserted that noncitizens should not receive trials because they take too long.
20 Luke Broadwater, *Trump Says Undocumented Immigrants Shouldn't Get Trials Before*
21 *Deportation*, New York Times, (Apr. 22, 2025), [https://www.nytimes.com/2025/04/22/us/](https://www.nytimes.com/2025/04/22/us/politics/trump-undocumented-immigrants-trials-deportation.html)
22 [politics/trump-undocumented-immigrants-trials-deportation.html](https://www.nytimes.com/2025/04/22/us/politics/trump-undocumented-immigrants-trials-deportation.html). He complained that "I hope
23 we get cooperation from the courts, because we have thousands of people that are ready to go
24 out and you can't have a trial for all of these people." *Id.*
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1 43. It is no surprise then, that in a matter of days, Petitioner-Plaintiff became aware of the
2 detention of nine noncitizens—all of whom granted withholding of removal or CAT protection—
3 and the government’s attempting to remove them to third countries.

4 44. For example, in February 2025, Mr. Newman’s Salvadoran client was re-detained at a
5 scheduled reporting appointment with ICE. *See* Moreno Dec., Ex C (Newman Dec.). ICE served
6 him with a notice stating that his release was revoked due to “change in circumstances in [his]
7 case,” but it was not explained what those changed circumstances were. *Id.* About two weeks
8 after he was detained, he was informed that he could seek a reasonable fear interview for “Costa
9 Rica, Guatemala, Honduras, Mexico, and Panama,” but ICE did not confirm those were the
10 countries they were attempting to remove him to or if there were other countries they were
11 considering. *Id.* On March 13, 2025, Mr. Newman’s office filed a motion to reopen his client’s
12 removal proceedings, which was granted, but his client has no hearing currently scheduled and
13 he continues to remain detained. *Id.*

14 45. On March 3, 2025, ICE detained Ms. Jones’ Salvadoran client, who was also granted
15 withholding of removal, at a check-in even though he had no new criminal history or violated the
16 terms of his release. *See* Moreno Dec., Ex D (Jones Dec.). Four days later, ICE informed Ms.
17 Jones that her client would be deported to Mexico without providing him an opportunity to seek
18 protection from that country. *Id.* On March 8, 2025, ICE attempted to place Ms. Jones’ client on
19 a bus headed for Mexico, but due to his stern protestations, they did not remove him that day. *Id.*
20 On March 10, 2025, Ms. Jones filed a motion to reopen with an Immigration Judge, which was
21 denied. *Id.* Ms. Jones filed an appeal to the BIA, which granted a stay of removal, while the
22 appeal remains pending. *Id.* Her client continues to remain detained to this day. *Id.*

1 46. Similarly, Mr. Sandoval has three clients, who were granted withholding or deferral of
2 removal, who were subsequently arrested by ICE, either between or at a regularly scheduled
3 check-in. *See* Ex E (Sandoval Dec.). In none of those cases did ICE serve his clients with notices
4 of third-country removal. *Id.* One was erroneously removed to the country to which he had
5 protection, and the other two remain detained as Mr. Sandoval seeks due process protections for
6 his clients in federal court. *Id.* Mr. Sandoval is also aware of five other attorneys who each have
7 a client who was also detained after being granted withholding or deferral of removal. *Id.*

8
9 47. Under this backdrop, Mr. Enamorado was suddenly ordered to report to ICE in San
10 Francisco, California on May 14, 2025. *See* Ex N (Notice to Report to ICE).

11
12 **Life Upended by Demand for Mr. Enamorado to Report to ICE**

13 48. It would be extremely hard for Ms. Herrera and her children if Mr. Enamorado were to
14 be detained. *See* Moreno Dec., Ex. A (Enamorado Dec.), Ex. B (Herrera Dec.). Since hearing
15 the news of Mr. Enamorado's ICE "interview," Ms. Herrera has been having extreme anxiety
16 where she had to go to the hospital twice and is now on medication. *Id.* The family is scared that
17 Mr. Enamorado will be detained and deported to El Salvador or another country. *Id.* It would be
18 devastating to the family and their community if he were detained. *Id.* His neighbor and friend
19 explains that "Edwin and Yesmin are particularly hardworking individuals who contribute not
20 only to their household but also to the well-being of our community. Their dedication to our
21 neighborhood and their openness to assist others truly sets them apart. They approach every
22 situation with honesty and a strong work ethic, making them role models for both their children
23 and their neighbors." Moreno Dec., Ex. V (Abdul Malik Formoli).

24 49. Mr. Enamorado's detention would greatly impact their children who are still young. His
25 son DEH's high school counselor posits that "[a]s an educator and someone who works closely
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with Mr. Enamorado's son DEH, I can attest firsthand to the vital role Mr. Enamorado plays in his child's life, both emotionally and educationally. . . the looming threat of losing a parent to deportation is having, and will continue to have, a profound negative impact on his well-being and academic performance. . . Removing Mr. Enamorado from DEH's life would create significant trauma, disrupt his emotional development, and compromise his educational future." Moreno Dec., Ex. U (Heather Rae Raser).

50. Since he received his ICE interview notice, Mr. Enamorado now fears being re-detained at his May 14, 2025 interview date. If he is re-detained, he fears that his family "would suffer terribly" and "[e]motionally, it would be very difficult for us to be separated." Moreno Dec., Ex A (Enamorado Dec.). His wife states, "Edwin is the head of our household and he is fundamental to our lives. He is a hard worker and his clients admire his work and highly recommend him. He is not a danger to society at all." Moreno Dec., Ex A (Herrera Dec.).

51. He also fears being re-detained due to the terrible experience he had the last time he was detained. Moreno Dec, Ex A (Enamorado Dec.). Detention officials rarely answered detainee questions or provided them with medical attention in a timely manner. *Id.* Even when detainees did receive medical attention, medical staff did not provide sufficient pain medication which led to the needless suffering of several detainees. *Id.* Food was also terrible and often inedible. *Id.* When detainees complained they would be punished by being placed in solitary confinement. *Id.* Mr. Enamorado does not want to go through that harrowing experience again. *Id.*

LEGAL FRAMEWORK

I. Withholding-Only Proceedings and Third Country Removals

A. Withholding-Only Proceedings

1 52. Individuals who have been deported and subsequently return to the United States
2 without inspection are subject to a summary removal process known as reinstatement of
3 removal. *See* 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8. This summary process is carried out by
4 DHS officers. Individuals subject to reinstatement orders are barred from seeking most forms of
5 relief from removal, including asylum.
6

7 53. However, consistent with the United States' commitment to non-refoulement—the
8 fundamental principle that no one should be returned to a country where they would face
9 persecution, torture, cruel, inhuman, or degrading treatment, or serious harm—critical
10 protections from removal remain available in reinstatement proceedings: withholding of
11 removal under 8 U.S.C. § 1231(b)(3) and Convention Against Torture (“CAT”) protection. *See*
12 8 C.F.R. §§ 241.8(e), 238.1(f)(3); *see also* 8 C.F.R. §§ 208.31, 1208.31. Individuals who
13 express a fear of return to their countries of origin are given the opportunity to demonstrate a
14 reasonable fear of persecution or torture in interviews before asylum officers. *Id.* If the asylum
15 officer determines their fear is not reasonable, the individual can seek review of that
16 determination before an IJ in reasonable fear proceedings. 8 C.F.R. §§ 208.31(g), 1208.31(g). If
17 either the asylum officer or the reviewing IJ finds their fear is reasonable, the individual is
18 placed in withholding-only proceedings before an IJ where they can seek protection from
19 deportation by applying for withholding of removal and/or CAT protection. 8 C.F.R. §§
20 208.31(e), (g)(2), 1208.31(e), (g)(2).
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24 54. If the IJ denies the withholding and/or CAT application, the individual may seek review
25 before the BIA. 8 C.F.R. §§ 208.31(e), (g)(2)(ii), 1208.31(e), (g)(2)(ii). Judicial review of these
26 orders and administrative decisions is available by filing a petition for review in the court of
27 appeals. 8 U.S.C. § 1252(a).
28

B. Statutory Scheme for Removal to a Third Country

55. Congress established the statutory process for designating countries to which noncitizens may be removed, 8 U.S.C. § 1231(b)(1)-(3).³

56. Subsection (b)(1) applies to noncitizens “[a]rriving at the United States,” including from a contiguous territory, but expressly contemplates arrival via a “vessel or aircraft.” It designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C. § 1231(b)(1)(B) (removal to contiguous country from which the noncitizen traveled), § 1231(b)(1)(C) (alternative countries).

57. Subsection (b)(2) applies to all other noncitizens, and like Subsection (b)(1), designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C. § 1231(b)(2)(A) (noncitizen’s designation of a country of removal), 1231(b)(2)(B) (limitation on designation), 1231(b)(2)(C) (disregarding designation), 1231(b)(2)(D) (alternative country), 1231(b)(2)(D) (alternative countries), 1231(b)(2)(E) (additional removal countries).

58. Critically, both Subsections (b)(1) and (b)(2), have a specific carve-out provision prohibiting removal of persons to countries where they face persecution or torture. Specifically, § 1231(b)(3)(A), entitled “Restriction on removal to a country where [noncitizen’s] life or freedom would be threatened,” reads:

Notwithstanding paragraphs [b](1) and [b](2), the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen’s] life or freedom would be threatened in that country because of the

³ References to the Attorney General in Section 1231(b) refer to the Secretary of DHS for functions related to carrying out a removal order and to the Attorney General for functions related to selection of designations and decisions about fear-based claims. 6 U.S.C. § 557. The Attorney General has delegated the latter functions to the immigration courts and Board of Immigration Appeals. *See* 8 C.F.R. §§ 1208.16, 1208.17, 1208.31, 1240.10(f), 1240.12(d). Petition for Writ of Habeas Corpus and Complaint For Declaratory and Injunctive relief

1 [noncitizen's] race, religion, nationality, membership in a particular social group,
2 or political opinion.

3 *Id.* § 1231(b)(3)(A) (emphasis added).

4 59. Similarly, with respect to the Convention Against Torture, the implementing regulations
5 allow for removal to a third country, but only “where he or she is not likely to be tortured.” 8
6 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

7 60. In *Jama v. Immigr. & Customs Enf't*, the Supreme Court addressed the designation
8 procedure under Subsection (b)(2). 543 U.S. 335 (2005). Critically, the Court stated that
9 noncitizens who “face persecution or other mistreatment in the country designated under §
10 1231(b)(2), . . . have a number of available remedies: asylum; withholding of removal; relief
11 under an international agreement prohibiting torture” *Jama*, 543 U.S. at 348 (citing 8
12 U.S.C. §§ 1158(b)(1), 1231(b)(3)(A); 8 C.F.R. §§ 208.16(c)(4), 208.17(a)).
13
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15 61. Although individuals granted CAT protection may be removed to a third country, the
16 regulations provide that they may not be removed to a country where they are likely to be
17 tortured: “The immigration judge shall also inform the [noncitizen] that removal has been
18 deferred only to the country in which it has been determined that the [noncitizen] is likely to be
19 tortured, and that the [noncitizen] may be removed at any time to another country where he or
20 she is not likely to be tortured.” 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).
21

22 62. Historically, it has been very rare for the U.S. government to attempt third country
23 removals. *See* Moreno Dec. (“During my nearly fourteen years of practicing immigration law, I
24 have not seen a third country removal after a noncitizen is granted withholding of removal or
25 CAT protection. My co-counsel, Judah Lakin, has likewise never seen a third country removal in
26 his ten years of practice.”). However, the Trump administration has been clear that they are going
27 to try and remove people to third countries. *See* Moreno Dec., Ex C (Newman Dec.), Ex D
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(Jones Dec.); Ex E (Sandoval Dec.), Ex M (DHS 2/18/25 Directive). No doubt this is due to the administration trying to meet a stated goal of deporting one million noncitizens within the first year. *See* Maria Sacchetti and Jacob Bogage, ‘One million.’ *The private goal driving Trump’s push for mass deportations*, Washington Post (April 12, 2025), <https://www.washingtonpost.com/immigration/2025/04/12/one-million-deportations-goal/>. As noted in their February 18th directive, the administration wants ICE officers to review the case of every single individual who has been granted withholding of removal or Protection under the CAT to determine the viability of a third country removal as well as the possibility of re-detaining those individuals. *See* Moreno Dec., Ex M (DHS 2/18/25 Directive). In addition, the administration has been actively working to create agreements with other countries to accept deportees from the United States. *See, e.g.,* Priscilla Alvarez and Kylie Atwood, *Trump administration weighs sending migrants to Libya and Rwanda, sources say*, CNN (May 1, 2025, 2:54 PM), <https://www.cnn.com/2025/04/30/politics/migrants-libya-rwanda-trump>; Jillian Smith, *Trump administration has \$15M deal with El Salvador to accept deportees, MD senator says*, Fox5 (April 18, 2025, 10:39 PM), <https://www.fox5dc.com/news/trump-administration-has-15m-deal-el-salvador-accept-deportees-md-senator-says>.

C. Nationwide Preliminary Injunction

63. On January 20, 2025, President Donald J. Trump issued an Executive Order entitled “Securing our Borders.” 90 Fed. Reg. 8467. On February 18, 2025, DHS issued a directive to ICE which instructs its officers “to review cases of [persons] granted withholding of removal or protection under CAT to determine the viability of removal to a third country and accordingly whether the alien should be re-detained and, in cases of persons who previously could not be removed because the designated countries were unwilling to receive them, review for re-

1 detention in light of the Administration’s significant gains with regard to previously recalcitrant
2 countries and the potential for third country removals.” *DVD v. U.S. Department of Homeland*
3 *Security*, -- F. Supp. 3d --, 2025 WL 1142968, at *3 (D. Mass. Apr. 18, 2025) (Class
4 Certification and Preliminary Injunction Order) (internal quotations omitted; cleaned up); *see*
5 *also* Moreno Dec., Ex. S (DHS 2/18/25 Directive).

7 64. Four Plaintiffs, on behalf of a purported class, challenged that directive seeking an order
8 “guaranteeing them the opportunity to show—before being removed to countries not included
9 on their removal orders—that they will suffer persecution, torture, and/or death in those
10 countries.” *Id.* They also challenged the DHS’s “policy or practice of designating aliens for
11 removal to any country other than the country or alternative country of removal designated and
12 identified in writing in their prior immigration proceedings without first providing notice and an
13 opportunity to apply for protection from removal to that ‘third’ country.” *Id.* Two of the
14 plaintiffs had been granted protection from removal, but one was detained despite being granted
15 protection and the other was ordered to report to ICE three weeks after his last check-in. *DVD v.*
16 *U.S. Department of Homeland Security*, 1:25-cv-10676-BEM (D. Mass Mar.23, 2025)
17 (complaint). A third plaintiff with a removal order was also ordered to report to ICE within
18 three weeks of his last check-in, and the fourth plaintiff was deported to Mexico without any
19 notice or ability to challenge his removal, even though an Immigration Judge had only ordered
20 him removed to Guatemala. *Id.*

24 65. On March 20, 2025, the DHS issued updated guidance on removals to third countries
25 which dictates that persons “may be removed to a third country without notice if the United
26 States has received assurances from that country that aliens removed from the United States will
27 not be persecuted or tortured.” *DVD*, 2025 WL 1142968, at *4. However, “these assurances are
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1 not individualized, and the March Guidance provides for no review, meaning that deportations
2 to a third country can occur without any consideration of the individual risks facing a particular
3 alien.” *Id.* “According to the March Guidance, DHS will provide the alien with notice of the
4 third country (and an opportunity to affirmatively assert a fear of return to that third country)
5 only if the United States has not received assurances, or if the Department of State does not
6 believe those assurances to be credible.” *Id.*

8 66. As the District Judge explained, the government argued that “the United States may send
9 a deportable [noncitizen] to a country not of their origin, not where an immigration judge has
10 ordered, where they may be immediately tortured and killed, without providing that person any
11 opportunity to tell the deporting authorities that they face grave danger or death because of such
12 a deportation.” *DVD*, 2025 WL 1142968, at *1. The district court was not persuaded by the
13 government’s position, and held that the “small modicum of process” that the Plaintiffs
14 request—to be told they are going to be deported to a new country before they are taken to such
15 a country, and be given an opportunity to explain why such a deportation will likely result in
16 their persecution, torture, and/or death—is “mandated by the Constitution of the United States.”
17 *Id.* Thus, the court granted the plaintiffs’ motion for class certification and for a preliminary
18 injunction. *Id.*

21 67. *D.V.D.* class members include:

22 All individuals who have a final removal order issued in proceedings under Section
23 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom
24 DHS has deported or will deport on or after February 18, 2025, to a country (a) not
25 previously designated as the country or alternative country of removal, and (b) not
26 identified in writing in the prior proceedings as a country to which the individual
would be removed.

27 *DVD*, 2025 WL 1142968, at *11. For class members, “prior to removing any [noncitizen] to a
28 third country, *i.e.*, any country not explicitly provided for on the [noncitizen]’s order of

1 removal, Defendants must: (1) provide written notice to the [noncitizen]—and the [noncitizen]’s
2 immigration counsel, if any—of the third country to which the [noncitizen] may be removed, in
3 a language the [noncitizen] can understand; (2) provide meaningful opportunity for the
4 [noncitizen] to raise a fear of return for eligibility for CAT protections; (3) move to reopen the
5 proceedings if the [noncitizen] demonstrates ‘reasonable fear’; and (4) if the [noncitizen] is not
6 found to have demonstrated ‘reasonable fear,’ provide meaningful opportunity, and a minimum
7 of 15 days, for that [noncitizen] to seek to move to reopen immigration proceedings to challenge
8 the potential third-country removal.” *Id.* at *24.
9

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11 68. In the present case, Mr. Enamorado is a *DVD* class member because he has a final
12 removal order to Honduras but was granted withholding of removal to that country. *See* Moreno
13 Dec., Ex. K (IJ Withholding Order), Ex. H (Referral to IJ). Thus, it is theoretically possible that
14 he could be removed to a third country, but one was never previously designated in his prior
15 proceedings. *See* Moreno Dec., Ex F (2003 BIA Decision); Ex. G (Intent to Reinstate Removal
16 Order). As a result, Mr. Enamorado must be informed in writing of any third country to which
17 he may be removed. *DVD*, 2025 WL 1142968, at *24. Then, he must be provided with a
18 meaningful opportunity to express a fear of return to that country. *Id.* If he expresses a fear, the
19 DHS must provide Mr. Enamorado with a reasonable fear interview, *see* 8 C.F.R. section
20 1208.31, and if he is found to have a reasonable fear, the DHS must reopen his removal
21 proceedings to allow him time seek protection from removal to the third country. *DVD*, 2025
22 WL 1142968, at *24. Even if Mr. Enamorado is not found to have a reasonable fear, the DHS
23 must provide him with fifteen days in which to file a motion to reopen his proceedings. *Id.* If the
24 motion is granted, Mr. Enamorado will be able to seek protection from the third country. *See* 8
25 C.F.R. § 1208.16 (procedures for noncitizens applying for withholding of removal under the
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1 INA and CAT). If the motion is denied, Mr. Enamorado will be able to appeal that decision to
2 the BIA. *See* 8 C.F.R. §§ 1003.3, 1003.23. He would also be able to seek judicial review of any
3 BIA decision with the appropriate circuit court. *See Mata v. Lynch*, 576 U.S. 143, 147 (2015)
4 (“[C]ircuit courts have jurisdiction when [a noncitizen] appeals from the Board’s denial of a
5 motion to reopen a removal proceeding.”). This is a multi-step process that can take, at a
6 minimum, several weeks or months to complete, and could possibly take years. *See Moreno*
7 *Dec.* (“In my experience, appeals to the BIA of motions to reopen for a detained noncitizen
8 takes about six months to a year. Judicial review of denied motions to reopen for detained
9 noncitizens can take about 10 months to a year.”). At a minimum, as a class member of the
10 DVD lawsuit, Mr. Enamorado is entitled to all the protections outlined in the order granting a
11 preliminary injunction, and Mr. Enamorado may have additional claims of his own, separate
12 and apart from the class, that provide for more process than that afforded the class under the
13 DVD lawsuit.

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16 69. As explained below, the Constitution requires Mr. Enamorado not to be re-detained
17 during that process because he has a protected liberty interest in his conditional release and the
18 DHS cannot prove that he is either a flight risk or a danger to the community.
19

20 **II. Mr. Enamorado Is Neither a Flight Risk nor a Danger to the Community, and**
21 **Thus, The Constitution Prohibits His Re-detention**

22 70. The Constitution establishes due process rights for “all ‘persons’ within the United
23 States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
24 permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v.*
25 *Davis*, 533 U.S. 678, 693 (2001)); *see also Zadvydas*, 533 U.S. at 690 (“Freedom from
26 imprisonment—from government custody, detention, or other forms of physical restraint—lies
27 at the heart of the liberty that [the Due Process] Clause protects.”). There are only two
28

1 legitimate purposes for immigration detention: mitigating flight risk and preventing danger to
2 the community. *See id.* Mr. Enamorado presents neither concern.

3 71. Here, an Immigration Judge already determined—nearly six years ago—that the DHS
4 failed to prove by clear and convincing evidence that Mr. Enamorado is either a flight risk or a
5 danger to the community. Moreno Dec., Ex A (Enamorado Dec.), Ex J (IJ Order Granting
6 Bond). Thus, Mr. Enamorado was released after paying a \$8,000 bond on July 8, 2019. *See id.*
7 Mr. Enamorado’s conduct since his release has only confirmed the correctness of the IJ’s
8 decision to grant bond.
9

10 72. After his release from custody, Mr. Enamorado dutifully checked in with ICE in
11 accordance with his supervised release until his Immigration Court hearing. Moreno Dec., Ex A
12 (Enamorado Dec.). He also attended all his hearings. *Id.* Then, on April 12, 2022, an
13 Immigration Judge granted Mr. Enamorado withholding of removal under 8 USC section
14 1231(b)(3). Moreno Dec., Ex A (Enamorado Dec.), Ex K (IJ Order granting withholding). The
15 DHS then waived its right to appeal that decision and made no attempt to deport Mr.
16 Enamorado to any other country. *See id.* It also removed his reporting requirement. Moreno
17 Dec., Ex A (Enamorado Dec.)
18

19 73. Moreover, Mr. Enamorado’s wife and four children have all been granted asylum and
20 lawful permanent resident status in the intervening six years. *See* Moreno Dec., Ex B (Herrera
21 Dec.), Ex L (LPR cards of family). They all reside together in a home they rent in Martinez,
22 California. Moreno Dec., Ex A (Enamorado Dec.), Ex B (Herrera Dec.). Mr. Enamorado has
23 been gainfully employed during that time and has a landscaping business where he employs
24 four people, including his two eldest children. *See id.* His family depends on him for emotional
25 support and his income for survival. *See id.* Thus, Mr. Enamorado has every incentive to follow
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1 the law, so that he can continue to provide for his family. *See id.* Moreover, if the DHS is
2 ultimately able to secure an executable removal order to a third country—a dubious
3 proposition— Mr. Enamorado has sworn under penalty of perjury that he will report for
4 removal. *See id.* Based on his prior history of attending his hearings and ICE check-ins, and his
5 ties to his LPR wife and children, demonstrate that Mr. Enamorado is not a flight risk.
6

7 74. Mr. Enamorado is also not a danger to the community. Not only has he not been arrested
8 or had any problems with law enforcement during the past six years that he has been released on
9 bond but has not been arrested or had problems with law enforcement in the United States or
10 Honduras since 2005. Moreno Dec., Ex A (Enamorado Dec). As noted above, he has been
11 dedicated to supporting and providing for his LPR family. In addition, he has support from
12 several members of his community who attest to his character and dedication to his work and
13 family. *See, e.g.,* Moreno Dec., Ex Q (Tasha Scott Letter) (Mr. Enamorado “is a very reliable
14 handy man, landscaper, and has helped with many special projects at our home. Edwin is one of
15 the hardest workers I have ever known. I trust Edwin without hesitation to fully access our
16 house when we are not home.”); Ex R (Steven Poling Letter) (Edwin is a man of strong
17 character...I have been impressed by his intelligence and perseverance.... More significant that
18 his work experience, is Edwin’s commitment to his family and to living a productive and honest
19 life.”); Ex T (Peter Clauson Letter) (“I have had first hand experience with Edwin’s work ethic,
20 which is second to none. [He is] [h]ard working, dedicated, a family man, someone that should
21 have the right to continue this path that he has worked so hard for.”).
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25 75. Mr. Enamorado’s conduct the last six years proves that he is neither a flight risk nor a
26 danger, and that any civil detention that occurred while Mr. Enamorado contests his deportation
27 to a third country would be illegitimate and unconstitutional as it would bear no relationship to
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the two purposes immigration detention is meant to serve. *See Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), *cert. denied*, 546 U.S. 820 (2005) (“[A] civil detainee awaiting adjudication is entitled to conditions of confinement that are not punitive...[and] a restriction is ‘punitive’ where it is intended to punish, or where it is ‘excessive in relation to [its non-punitive] purpose.’”).

III. Even if Mr. Enamorado Could Be Subject to Re-Detention while the Government Attempts to Find a Third Country to Remove Him To, Mr. Enamorado Still has a Constitutional Right to a Pre-Deprivation Hearing Prior to any Possible Re-Detention

A. Mr. Enamorado Has a Protected Liberty Interest in His Conditional Release

76. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. For the last nearly six years, Mr. Enamorado has exercised that freedom under the IJ’s July 8, 2019 Bond Grant after posting a \$8,000 bond. *See Moreno Dec.*, Ex. G. While that freedom *may* ultimately be revocable should circumstances materially change, *see Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) and *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196-97 (N. D. Cal. 2017), he nonetheless retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-83 (1972); *see also Ortega v. Bonnar*, 415 F.Supp.3d 963, 969-70 (N.D. Cal. 2019) (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ’s bond determination).

77. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has in “his continued liberty.” 408 U.S. at 481-82. The Court observed that subject to parole conditions, “[a parolee] can be gainfully employed and is free to be with family and friends and

1 to form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that
2 when freed, “the parolee has relied on at least an implicit promise that parole will be revoked
3 only if he fails to live up to the parole conditions.” *Id.* Given this, the Court reasoned that “the
4 liberty of a parolee, although indeterminate, includes many of the core values of unqualified
5 liberty and its termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn,
6 “[b]y whatever name, the liberty is valuable and *must* be seen within the protection of the
7 [Constitution].” *Id.* (emphasis added).

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9 78. *Morrissey*’s basic principle—that individuals have a liberty interest in their conditional
10 release—has been reinforced by both the Supreme Court and circuit courts on numerous
11 occasions. See *Young*, 520 U.S. at 152 (holding that individuals released into a pre-parole
12 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
13 deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony
14 probation have a protected liberty interest requiring pre-deprivation process); *Zadvydas*, 533
15 U.S. at 690 (holding that due process protects “all ‘persons’ within the United States . . .
16 whether their presence here is lawful, unlawful, temporary or permanent” who face immigration
17 detention). As the First Circuit has explained, when analyzing the issue of whether a specific
18 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the
19 issue by comparing the specific conditional release in the case before them with the liberty
20 interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864,
21 887 (1st Cir. 2010) (internal quotation marks and citation omitted); *see also, e.g., Hurd v.*
22 *District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (noting that “a person who is in fact
23 free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest
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1 that entitles him to constitutional due process before he is re-incarcerated) (citing *Young*, 520
 2 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

3 79. Here, when this Court “compar[es] the specific conditional release in [Mr. Enamorado’s
 4 case], with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are
 5 on all fours. *See Gonzalez-Fuentes*, 60 F.3d at 887. Just as in *Morrissey*, Mr. Enamorado’s
 6 release “enables him to do a wide range of things open to persons” who have never been in
 7 custody or convicted of any crime, including to live at home, work, attend church, and “be with
 8 family and friends and to form the enduring attachments of normal life.” *See Morrissey*, 408
 9 U.S. at 482. Since his release from immigration custody nearly six years ago, Mr. Enamorado
 10 has been working hard to support his family. Moreno Dec, Ex. B (Herrera Dec.). He is the sole
 11 provider for his family. *Id.* Since his release, he has strengthened his relationships with his wife
 12 and four children, spending as much time with them as possible. *Id.*; Moreno Dec, Ex. A
 13 (Enamorado Dec.). His overall behavior post-release has bolstered the IJ’s original findings that
 14 he is neither a danger nor a significant flight risk. *See generally*, Moreno Dec, Ex. A
 15 (Enamorado Dec.); Ex. Q-X (work reference and character letters).

16 80. As the following section makes clear, the process he is entitled to must occur prior to
 17 any re-detention.

18
 19 **B. Mr. Enamorado’s Liberty Interest Requires that He Receive a Hearing Before**
 20 **Any Re-arrest and Revocation of Bond**

21 81. The Supreme Court “usually has held that the Constitution requires some kind of a
 22 hearing before the State deprives a person of liberty or property” *Zinerman v. Burch*, 494 U.S.
 23 113, 127 (1990) (emphasis in original). This is so even in cases where that freedom is lawfully
 24 revocable. *See Hurd*, 864 F.3d at 683 (emphasis added) (citing *Young*, 520 U.S. at 152 (re-
 25 detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon*,

1 411 U.S. at 782 (holding the same, in context of probation); *Morrissey*, 408 U.S. 471 (holding
2 the same, in context of parole). Only in a “special case,” where post-deprivation remedies are
3 “the only remedies the State could be expected to provide,” can post-deprivation process satisfy
4 the requirements of due process. *Zinerman*, 494 U.S. at 128.

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6 82. Because in this case, the provision of a pre-deprivation hearing is both possible and
7 valuable to prevent an erroneous deprivation of liberty, Mr. Enamorado must be provided with
8 both notice and a hearing prior to any re-incarceration and revocation of his bond. *See*
9 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932;
10 *Zinerman*, 494 U.S. at 985; *See also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch*
11 *v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil
12 commitment proceedings may not constitutionally be held in jail unless and until there has been
13 a determination as to whether they can ultimately be recommitted). Mr. Enamorado has a
14 protected liberty interest in his freedom, and before Respondents may deprive him of that, the
15 Fifth Amendment requires they first prove that they have a lawful basis to do so.

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18 83. As detailed above, Mr. Enamorado’s release pending a determination of whether he can
19 be removed to a third country “includes many of the core values of unqualified liberty,” such as
20 the ability to wake up in his own home, to live with his family, to work and support his children,
21 and to receive adequate medical care. *See Morrissey*, 408 U.S. at 482. Moreover, because Mr.
22 Enamorado faces *civil detention*, “his liberty interest is arguably greater than the interest of the
23 parolees in *Morrissey*.” *See Ortega v. Bonnar*, 415 F.Supp.3d 963, 970 (N.D. Cal. 2019). As
24 someone at risk of civil detention, therefore, “it stands to reason that [Mr. Enamorado] is
25 entitled to protections at least as great as those afforded to an individual . . . accused but not
26 convicted of a crime.” *See Jones*, 393 F.3d at 932.

1 84. Thus, before the DHS may again deprive Mr. Enamorado of his liberty, Mr. Enamorado
2 is entitled to a hearing at which he can argue why such detention would be unlawful. Here, that
3 would mean a hearing before Judge Schulz—the Judge who previously granted him withholding
4 of removal—at which she can evaluate Mr. Enamorado’s current flight risk and dangerousness
5 on a current record—i.e., a record that includes new evidence with respect to his conduct since
6 being released. Since IJ Schulz is the IJ who will ultimately determine whether the government
7 can establish a third country to remove Mr. Enamorado⁴ to, it only makes sense that she would
8 also decide if he should remain out on bond while she makes the determination on removal.
9
10 Any motion to reopen would have to be filed with IJ Schulz because she granted him
11 withholding of removal and there was no appeal. *See* Moreno Dec., Ex K (IJ Withholding
12 Order); 8 C.F.R. § 1003.23(b)(1).
13

14 85. Multiple courts in this district have found that in certain cases, due process requires
15 granting a hearing before the DHS may re-detain a noncitizen who they have already freed. In
16 *Ortega v. Bonnar*, another court in this district held that a petitioner was entitled to a pre-
17 deprivation hearing in front of an IJ prior to being re-detained. In *Ortega*, the petitioner was
18 released on a \$35,000 bond, and after the Board of Immigration Appeals affirmed his removal
19 order, the DHS claimed that this constituted a material change in circumstances such that they
20 could unilaterally re-detain him without any process. 415 F. Supp. 3d 963, 971 (N.D. Cal.
21 2019). The court in *Ortega* disagreed, explaining that “just as people on preparole, parole, and
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25
26 ⁴ Under the *DVD* settlement, if Mr. Enamorado were to pass an RFI before DHS to the stated
27 third country, the government would be forced to reopen his proceedings before IJ Schulz. If Mr.
28 Enamorado were to fail his RFI before DHS, he would be afforded the opportunity to file a
motion to IJ Schulz. Either way, if the government moves forward with attempting to remove
him to a third country, IJ Schulz will be involved. *See DVD*, 2025 WL 1142968, at *24.
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1 probation status have a liberty interest, so too does [petitioner] have a liberty interest in
2 remaining out of custody on bond.” *Id.* at 969 (citing *Morrissey*, 408 U.S. at 482; *Gagnon*, 411
3 U.S. at 782). As a result, having already granted a preliminary injunction, the court permanently
4 enjoined ICE from re-arresting the petitioner “unless and until a hearing, with adequate notice,
5 is held in Immigration Court to determine whether his bond should be revoked or altered.” *Id.* at
6 970.
7

8 86. More recently, in *Ortiz Vargas*, the court considered the case of a petitioner who was
9 released on a \$10,000 bond after the IJ determined that he was not subject to mandatory
10 detention, and was neither a danger nor such a flight risk that no amount of money could
11 mitigate. *Ortiz Vargas v. Jennings*, 2020 WL 5074312, at *1 (N.D. Cal. 2020) (order granting
12 temporary restraining order). A month after being released on the bond, the IJ sua sponte issued
13 an order reconsidering her decision and revoking bond, concluding that she had erred in
14 concluding that the petitioner was not subject to mandatory custody. *Id.* Mr. Ortiz sought
15 injunctive relief to avoid his re-arrest and the court granted a preliminary injunction on behalf of
16 the petitioner finding that there were “serious questions going to the merits of his claim that he
17 has a protectable liberty interest in his conditional release under *Morrissey* and that he must be
18 afforded a pre-deprivation hearing if respondents seek to re-arrest him.” 2020 WL 5517277, at
19 *2 (N.D. Cal. 2020) (order granting preliminary injunction). As a result, the court enjoined
20 Respondents from “re-arresting or re-detaining petitioner . . . unless and until an administrative
21 hearing, with adequate notice, is held to determine whether petitioner is subject to mandatory
22 detention.” *Id.* at *3.
23

24 87. Then, in *Jorge M.F.*, the petitioner was released on a \$3,000 bond after the IJ
25 determined that he was neither a danger to the community nor a flight risk. *Jorge M.F. v.*
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1 *Wilkinson*, 2021 WL 783561, at *1 (N.D. Cal. 2021) (order granting temporary restraining
2 order). Six months after being released on bond, the Board vacated the IJ's decision and ordered
3 the Petitioner "detained on no bond." *Id.* In *Jorge M.F.*, the court held that the Petitioner "has a
4 substantial private interest in remaining on bond" even though his bond had been revoked by
5 the Board. *Id.* at *3; *see also Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at
6 *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and
7 required notice and a hearing before any re-detention); *Meza v. Bonnar*, No. 18-cv-02708-BLF
8 at ECF-15, 2018 WL 2554572, at *1 (N.D. Cal. June 4, 2018) (Petitioner "ha[d] a vested liberty
9 interest in her current conditional release," and required a pre-deprivation hearing at which she
10 could argue why such re-detention would be unlawful.).
11

12
13 88. Just as in the above cases, Mr. Enamorado is entitled to a hearing prior to any re-
14 detention by ICE. Given that Mr. Enamorado was already granted protection from removal, and
15 that he has been at liberty for nearly six years, his right to a pre-deprivation hearing prior to any
16 re-arrest is all the more compelling than that of *Ortega*, *Ortiz Vargas*, *Jorge M.F.*, *Meza*, or
17 *Romero*.
18

19 89. In ordering the hearing in *Jorge M.F.*, the district court made clear that the government
20 bears the burden of proving by clear and convincing evidence that a noncitizen should be re-
21 detained. *See Jorge M.F. v. Jennings*, 534 F.Supp.3d 1050, 1057 (N.D. Cal. Apr. 14 (2021)).
22

23 90. In addition, a great weight of authority has confirmed that the government bears the
24 burden of proving by clear and convincing evidence that a noncitizen should be re-detained.
25 *See, e.g., Doe v. Becerra*, No. 23-cv-05327-RMI, 2024 WL 1018519, at *6 (N.D. Cal. Mar. 7,
26 2024) (holding that "the government shall bear the burden of proving by clear and convincing
27 evidence that Petitioner's continued detention is warranted"); *Hilario M.R. v. Warden*, No. 1:24-
28

cv-00998-EPG-HC, 2025 WL 1158841, at *11 (E.D. Cal. Apr. 21, 2025) (“The Court holds that the government must justify Petitioner's continued confinement under § 1231(a) by clear and convincing evidence that Petitioner is a flight risk or a danger to the community.”); *See Juarez v. Choate*, No. 1:24-cv-00419-CNS, 2024 WL 1012912, at *8 (D. Colo. Mar. 8, 2024) (holding that “the government will bear the burden to show by clear and convincing evidence that continued detention is justified” at bond hearing ordered for § 1231(a) detainee). This court should come to the same conclusion.

CAUSES OF ACTION

COUNT ONE

Violation of the Substantive Component of the Due Process Clause of the Fifth Amendment

91. Mr. Enamorado re-alleges and incorporates by reference the paragraphs above.

92. Respondents’ re-detention of Mr. Enamorado violates Mr. Enamorado’s rights guaranteed by the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

93. Civil detention is warranted only to mitigate flight risk or prevent danger to the community. *See Zadvydas*, 533 U.S. at 682 (citing 8 USC § 1231(a)(6)). As an Immigration Judge has already determined, and his conduct during the nearly six years since his release from custody confirms, neither purpose would be met here if Mr. Enamorado were to be detained.

94. As such, Respondents have no authority to re-detain Mr. Enamorado.

COUNT TWO

Violation of the Procedural Component of the Due Process Clause of the Fifth Amendment

95. Mr. Enamorado re-alleges and incorporates by reference the paragraphs above.

1 96. The Due Process Clause of the Fifth Amendment forbids the government from depriving
2 any person of liberty without due process of law. U.S. Const. Amend. V.

3 97. Mr. Enamorado has a vested liberty interest in his current conditional release, and Due
4 Process does not permit the government to strip him of that liberty without first having the
5 opportunity to argue against his re-detention prior to that re-detention taking place. *See*
6 *Morrissey*, 408 U.S. at 487-488. Specifically, Mr. Enamorado would be entitled to a hearing
7 before Immigration Judge Schulz—the IJ who will ultimately determine whether he can be
8 removed to a third country and is therefore best positioned to conduct a pre-deprivation
9 hearing—at which she would decide, whether the government has shown by clear and
10 convincing evidence that there has been a material change in circumstances since his release,
11 and second, assuming there is a material change, whether the government can show by clear and
12 convincing evidence that such a change warrants a revocation or alteration of the bond. *See*
13 *Sugay*, 17 I&N Dec. at 640; *Ortega*, 415 F.Supp.3d at 969-70.

14 98. For these reasons, Mr. Enamorado’s re-detention without a pre-deprivation hearing
15 would violate the Constitution.

16 PRAYER FOR RELIEF

17 WHEREFORE, Mr. Enamorado requests this Court grant the following relief:

- 18 1. Exercise jurisdiction over this matter;
- 19 2. Enjoin Respondents from re-arresting Mr. Enamorado during the pendency of any and all
20 determinations of whether the government can produce an executable order to a third
21 country, including, but not limited to the protections provided pursuant to the nationwide
22 preliminary injunction in *DVD v. DHS*;

3. Declare that Respondents may not re-arrest Mr. Enamorado during the pendency of any and all determinations of whether the government can produce an executable order to a third country, including, but not limited to the protections provided pursuant to the nationwide preliminary injunction in *DVD v. DHS*;
4. In the alternative, enjoin Respondents from re-arresting Mr. Enamorado, unless and until he is afforded a hearing before IJ Schulz on the question of whether the government can prove by clear and convincing evidence that there has been a material change in circumstances, and, if so, whether the government can prove by clear and convincing evidence whether such a change warrants a revocation or alteration of Mr. Enamorado's bond;
5. In the alternative, declare that Respondents may not re-arrest Mr. Enamorado, unless and until he is afforded an hearing before IJ Schulz on the question of whether the government can prove by clear and convincing evidence that there has been a material change in circumstances, and, if so, whether the government can prove by clear and convincing evidence whether such a change warrants a revocation or alteration of Mr. Enamorado's bond;
6. Award reasonable costs and attorney fees; and
7. Grant further relief as the Court deems just and proper.

Dated: May 11, 2025

Respectfully submitted,

s/Heliodoro Moreno, Jr.
Heliodoro Moreno, Jr.

s/Jane Lee
Jane Lee
OFFICE OF THE PUBLIC DEFENDER
CONTRA COSTA COUNTY

s/Judah Lakin
Judah Lakin

s/Amalia Wille
Amalia Wille
LAKIN & WILLE LLP

Attorneys for Petitioner

ATTESTATION PURSUANT TO CIVIL L.R. 5.1(i)(3)

As the filer of this document, I attest that concurrence in the filing was obtained from the other signatories. Executed on this 11th day of May 2025 in Martinez, California.

s/Heliodoro Moreno, Jr.
Heliodoro Moreno, Jr.
Attorney for Petitioner