

Heliodoro Moreno, Jr. (SBN 275930)
heliodoro.moreno@pd.cccounty.us
Jane Lee (SBN 296021)
jane.lee@pd.cccounty.us
OFFICE OF THE PUBLIC DEFENDER
Contra Costa County
800 Ferry Street
Martinez, CA 94553
Telephone: (925) 608-9600
Facsimile: (925) 608-9610

Judah Lakin (SBN 307740)
judah@lakinwille.com
Amalia Wille (SBN 293342)
amalia@lakinwille.com
LAKIN & WILLE LLP
1939 Harrison Street, Suite 420
Oakland, CA 94612
Telephone: (510) 379-9216
Facsimile: (510) 379-9219

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EDWIN YOBANI ENAMORADO,

Petitioner-Plaintiff,

v.

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

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

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

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

Respondents-Defendants.

Case No: 3:25-cv-4072

**EX PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER; POINTS AND
AUTHORITIES IN SUPPORT
OF MOTION**

TABLE OF CONTENTS

EX PARTE MOTION.....	1
MEMORANDUM OF POINTD AND AUTHORITIES	1
I. INTRODUCTION	1
II. STATEMENT OF FACTS	2
III. ARGUMENT	9
A. MR. ENAMORADO IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM THAT THE CONSTITUTION REQUIRES THAT HE REMAIN OUT OF CUSTODY WHILE THE DHS DETERMINES IF HE SHOULD BE REMOVED TO A THIRD COUNTRY	9
1. Withholding Only Protection, Third Country Removals, and Protections under <i>DVD v. U.S. Department of Homeland Security</i>	9
2. Mr. Enamorado is Neither a Flight Risk Nor a Danger to the Community and Therefore His Detention Would be Unconstitutional	14
B. 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 IS ALSO LIKELY TO SUCCEED ON HIS CLAIM THAT HE HAS A CONSTITUTIONAL RIGHT TO A PRE- DEPRIVATION HEARING PRIOR TO ANY POSSIBLE RE-DETENTION	16
1. Mr. Enamorado Has a Protected Liberty Interest in His Conditional Release	16
2. Mr. Enamorado's Liberty Interest Requires that He Receive a Hearing Before Any Re-arrest and Revocation of Bond	18
C. MR. ENAMORADO WILL SUFFER IRREPERABLE HARM ABSENT INJUNCTIVE RELIEF	22
D. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR GRANTING A TRO	23
IV. CONCLUSION	25

TABLE OF AUTHORITIES

<u>Cases</u>	Page(s)
<i>Alliance for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011)	9
<i>Am. Trucking Ass'ns v. City of Los Angeles</i> , 559 F.3d 1046 (9th Cir. 2009)	9
<i>Ariz. Dream Act Coal. v. Brewer</i> , 757 F.3d 1053 (9th Cir. 2014)	24
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972)	22
<i>Doe v. Becerra</i> , No. 23-cv-05327-RMI, 2024 WL 1018519 (N.D. Cal. Mar. 7, 2024)	21
<i>DVD v. U.S. Department of Homeland Security</i> , 2025 WL 1142968 (D. Mass. Apr. 18, 2025)	11, 12, 13, 20
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	23
<i>Gagnon v. Scarpelli</i> , 411 U.S. 778 (1973)	16, 17, 18, 19, 21
<i>Golden Gate Rest. Ass'n v. City & Cty. of San Francisco</i> , 512 F.3d 1112 (9th Cir. 2008)	24
<i>Gonzalez-Fuentes v. Molina</i> , 607 F.3d 864 (1st Cir. 2010)	17, 18
<i>Haygood v. Younger</i> , 769 F.2d 1350 (9th Cir. 1985)	19
<i>Hernandez v. Sessions</i> , 872 F.3d 976 (9th Cir. 2017)	14, 22, 24
<i>Hilario M.R. v. Warden</i> , No. 1:24-cv-00998-EPG-HC, 2025 WL 1158841 (E.D. Cal. Apr. 21, 2025)	22
<i>Hurd v. District of Columbia</i> , 864 F.3d 671 (D.C. Cir. 2017)	17, 18, 25
<i>J.G.G. v. Trump</i> , No. 1:25-cv-00766-JEB (D. D.C. April 16, 2025)	5
<i>Jones v. Blanas</i> , 393 F.3d 918 (9th Cir. 2004)	16, 19, 20
<i>Jorge M.F. v. Wilkinson</i> , 2021 WL 783561 (N.D. Cal. 2021)	21
<i>Juarez v. Choate</i> , No. 1:24-cv-00419-CNS, 2024 WL 1012912 (D. Colo. Mar. 8, 2024)	22
<i>Lopez v. Heckler</i> , 713 F.2d 1432 (9th Cir. 1983)	24
<i>Lynch v. Baxley</i> , 744 F.2d 1452 (11th Cir. 1984)	19
<i>Mata v. Lynch</i> , 576 U.S. 143 (2015)	13

1	<i>Melendres v. Arpaio</i> ,	
2	695 F.3d 990 (9th Cir. 2012)	23
3	<i>Meza v. Bonnar</i> ,	
4	No. 18-cv-02708-BLF at ECF-15, 2018 WL 2554572 (N.D. Cal. June 4, 2018)	21
5	<i>Morrissey v. Brewer</i> ,	
6	408 U.S. 471 (1972).....	16, 17, 18, 19, 20, 21, 25
7	<i>Nken v. Holder</i> ,	
8	556 U.S. 418 (2009).....	24
9	<i>Ortega v. Bonnar</i> ,	
10	415 F.Supp.3d 963 (N.D. Cal. 2019)	16, 19, 20, 21, 22
11	<i>Ortiz Vargas v. Jennings</i> ,	
12	2020 WL 5074312 (N.D. Cal. 2020)	21
13	<i>Romero v. Kaiser</i> ,	
14	No. 22-cv-02508-TSH, 2022 WL 1443250 (N.D. Cal. May 6, 2022)	21
15	<i>Saravia v. Sessions</i> ,	
16	280 F. Supp. 3d 1168 (N.D. Cal. 2017)	16
17	<i>Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.</i> ,	
18	240 F.3d 832 (9th Cir. 2001)	9
19	<i>Valle del Sol Inc. v. Whiting</i> ,	
20	732 F.3d 1006 (9th Cir. 2013)	24
21	<i>Winter v. Natural Res. Def. Council, Inc.</i> ,	
22	555 U.S. 7 (2008).....	9
23	<i>Young v. Harper</i> ,	
24	520 U.S. 143 (1997).....	16, 17, 18
25	<i>Youngberg v. Romeo</i> ,	
26	457 U.S. 307 (1982).....	19
27	<i>Zadvydas v. Davis</i> ,	
28	533 U.S. 678 (2001).....	14, 16, 17
	<i>Zepeda v. I.N.S.</i> ,	
	753 F.2d 719 (9th Cir. 1983)	25
	<i>Zinerman v. Burch</i> ,	
	494 U.S. 113 (1990).....	18, 19
	 <u>Administrative Decisions</u>	
	<i>Matter of Sugay</i> ,	
	17 I&N Dec. 637 (BIA 1981)	16
	 <u>Statutes</u>	
	8 U.S.C. § 1231(b)(2)(C)	10
	8 U.S.C. § 1231(b)(2)(D)	10
	8 U.S.C. § 1231(b)(2)(E)	10

Rules

Fed. R. Civ. Pro. 65(b)(1) 1

Regulations

8 C.F.R. § 1003.2 13
8 C.F.R. § 1003.23 13
8 C.F.R. § 1003.23(b)(1)..... 20
8 C.F.R. § 1208.16..... 13

EX PARTE MOTION

Pursuant to Local Civil Rules 7-1 and 7-10, Petitioner hereby moves this Court for a temporary restraining order to be issued ex parte. Petitioner moves for an order enjoining Respondents from re-detaining him pending further order of this Court. Petitioner requests that the Court rule on this Motion as soon as possible, and without a response from the government. As outlined below, and explained in the attached Declaration of Heliodoro Moreno, Jr., absent action from this Court, there is a substantial and immediate risk that Mr. Enamorado will be re-detained by Respondents at 8 am on May 14, 2025, when he is currently required to report to ICE, given the government's directive to go after people like Mr. Enamorado and the fact that Mr. Enamorado is aware of nearly ten individuals like him who have been arrested and detained by ICE. Because that re-detention will result in immediate irreparable injury, and because notice to Respondents of the filing of this motion may, in fact, trigger Respondents to immediately detain Petitioner, an ex parte temporary restraining order is appropriate in this case. *See* Fed. R. Civ. Pro. 65(b)(1); Declaration of Heliodoro Moreno, Jr ("Moreno Dec.").

Should the Court decline to issue a temporary restraining order on an ex parte basis, Petitioner respectfully requests that the Court set a briefing schedule on the motion, and that the Court hear the matter as expeditiously as possible.

This motion is supported by the following Memorandum of Points and Authorities, by the Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, and by a declaration of Petitioner and other exhibits, all of which are filed contemporaneously.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

1 Petitioner-Plaintiff Edwin Yobani Enamorado ("Mr. Enamorado") brings the
2 accompanying ex parte motion for a temporary restraining order ("TRO") to enjoin Respondents-
3 Defendants U.S. Immigration and Customs Enforcement ("ICE"), from re-detaining him while
4 he proceeds with his claims before this Court.
5

6 **II. STATEMENT OF FACTS AND CASE**
7

8 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 with his wife of ten
10 years, Yesmin Herrera Cruz, and their four children, Anthony (21-years-old), RCH (19-years-
11 old), DEH (14-years old), and EEH (10- years-old). *See* Ex. A (Declaration of Edwin Yobani
12 Enamorado "Enamorado Dec."), Ex. B (Declaration of Yesmin Herrera Cruz "Herrera Dec.").
13

14 Mr. Enamorado has his own landscaping business, and his two eldest children work with
15 him along with two other employees. He is the family's sole breadwinner and able to support his
16 family financially through his business. His wife, does not work as she cares for their four
17 children. Their two younger children receive special educational services and supports at school.
18 Ex. B (Herrera Dec.). At home, Mr. Enamorado enjoys spending time with his family, supports
19 his children's extracurricular activities, and attends church with his family. *Id.*, Ex. A
20 (Enamorado Dec.).
21

22 Mr. Enamorado has criminal convictions from when he was a young man. In 2003, he
23 had two convictions for possession of marijuana. *See* Ex A. In July 2005, he was convicted of
24 driving with a false identification. *Id.* This led to him being transferred to ICE custody and he
25 was deported to Honduras in August 2005. *Id.*
26
27
28

1 Mr. Enamorado has not had any criminal arrests or convictions for almost twenty years.
2 He is a man devoted to his family and community as the letters of support attached to this
3 Complaint/Petition attest. *See* Ex A, B, P-W.
4

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

11 Based on the government's internal directive, news reports, as well as the arrest and
12 detention of at least nine other individuals similarly situated to Mr. Enamorado, Mr. Enamorado
13 is terrified that ICE will detain him and try to remove him to a third country. *See* Ex A, Ex C
14 (Declaration of Etan Newman "Newman Dec."), Ex. D (Declaration of Laura Jones "Jones
15 Dec."), Ex E (Declaration of Simon Y. Sandoval-Moshenberg "Sandoval Dec."), Ex M (DHS
16 2/18/25 Directive). For example, in February 2025, Mr. Newman's Salvadoran client was re-
17 detained at a scheduled reporting appointment with ICE. *See* Ex C (Newman Dec.). About two
18 weeks after he was detained, he was informed that he could seek a reasonable fear interview for
19 "Costa Rica, Guatemala, Honduras, Mexico, and Panama." *Id.* On March 13, 2025, Mr.
20 Newman's office filed a motion to reopen his client's removal proceedings, which was granted,
21 but his client has no hearing currently scheduled and he continues to remain detained. *Id.*
22
23

24 On March 3, 2025, ICE detained Ms. Jones' Salvadoran client, who was also granted
25 withholding of removal, at a check-in even though he had no new criminal history or violated the
26 terms of his release. *See* Ex D (Jones Dec.). Four days later, ICE informed Ms. Jones that her
27 client would be deported to Mexico without providing him an opportunity to seek protection
28

1 from that country. *Id.* On March 8, 2025, ICE attempted to place Ms. Jones' client on a bus
2 headed for Mexico, but due to his stern protestations, they did not remove him that day. *Id.* On
3 March 10, 2025, Ms. Jones filed a motion to reopen with an Immigration Judge, which was
4 denied. *Id.* Ms. Jones filed an appeal to the BIA, which remains pending. *Id.* Her client remains
5 detained. *Id.*

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

14
15 Mr. Enamorado is particularly terrified of the government given his former ties to MS-13
16 and criminal history: the Trump Administration has had a laser focus on removing anyone they
17 believe has ties to gangs as expeditiously as possible and without due process. Myah Ward,
18 *Behind Trump's push to erode due process rights*, Politico (April 28, 2025, 5:30 AM),
19 <https://www.politico.com/news/2025/04/28/trump-immigration-100days-due-process-00307435>;
20 *J.G.G. v. Trump*, No. 1:25-cv-00766-JEB, at *1 (D. D.C. April 16, 2025) (memorandum
21 opinion). He is especially fearful about being deported to a notoriously cruel prison in El
22 Salvador given the U.S. government's actions in flying alleged gang members or people with
23 former ties to gangs there. *See* Ex A (Enamorado Dec.); Jillian Smith, *Trump administration has*
24 *\$15M deal with El Salvador to accept deportees, MD senator says*, Fox5 (April 18, 2025, 10:39
25
26
27
28

1 PM), [https://www.fox5dc.com/news/trump-administration-has-15m-deal-el-salvador-accept-](https://www.fox5dc.com/news/trump-administration-has-15m-deal-el-salvador-accept-deportees-md-senator-says)
2 [deportees-md-senator-says](https://www.fox5dc.com/news/trump-administration-has-15m-deal-el-salvador-accept-deportees-md-senator-says).
3

4 Mr. Enamorado first entered the United States in 1999 and was granted asylum by an
5 Immigration Judge on November 22, 1999. *See* Ex A. He had been forced to join the MS-13
6 gang in Honduras when he was about eleven years old and fled the gang when he was about
7 fifteen years old. *See* Ex. A. The government appealed the Immigration Judge's decision, and the
8 Board of Immigration Appeals (BIA) reversed the grant of asylum and ordered him removed to
9 Honduras on October 9, 2003. *See* Ex. F (BIA reversal of asylum grant). Mr. Enamorado was
10 deported to Honduras in August 2005. *See* Ex. A.
11

12 Just as he feared, in Honduras, sometime in 2006, MS-13 gang members severely beat
13 Mr. Enamorado, stabbed him several times, and left him for dead as retaliation for having fled
14 the gang. *Id.* Barely having survived the attack, he fled to another part of Honduras. *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.*; Ex. B. They had two children together, DEH in 2010 and EEH in 2014,
17 and officially married on April 24, 2015. *Id.*
18
19

20 In 2014, MS-13 gang members learned that Mr. Enamorado was alive and found him. *See*
21 Ex. A. They chased him and his family in a car and fortunately, the family was able to get away.
22 *Id.* In 2016, MS-13 gang members again discovered his location and threatened to kill him and
23 his family. *Id.* They fled that location. *Id.* Terrified that he and his family would be killed, they
24 fled Honduras in 2018 and entered the United States on December 13, 2018. *Id.*
25

26 While his wife and children were briefly detained Mr. Enamorado's prior 2003 removal
27 order was reinstated and he was kept in immigration detention. *Id.* On January 15, 2019, an
28 asylum officer determined that he had a reasonable fear of persecution or torture if he returned to

1 Honduras and he was referred to an Immigration Judge to apply for withholding of removal. *Id.*;
2
3 Ex. H (Referral to IJ).

4 On July 3, 2019, after seven months in detention, an IJ granted Mr. Enamorado's release
5 from custody on an \$8,000 bond, finding that he was neither a danger to the community nor a
6 flight risk. *See* Ex. J (IJ Bond Order). On July 8, 2019, Mr. Enamorado was released from
7 custody and was able to reunite with his wife and children. *See* Ex. A (Enamorado Dec.).
8

9 Mr. Enamorado's family suffered greatly while he was detained from December 2018 to
10 July 2019. *See* Ex. A, Ex. B. The family had just fled Honduras and they did not have anything.
11 *Id.* Ms. Herrera found help from a church and went into a shelter for her and the younger
12 children. *Id.* Anthony, who was fifteen-years-old at the time was too old to be in the women's
13 shelter with them so he was separated. *Id.* A church helped them to get a trailer and she got food
14 from the shelter. *Id.* The children cried a lot, asking where their father was and when he was
15 coming out. *Id.* Ms. Herrera and the children missed Mr. Enamorado greatly and their
16 circumstances were extremely challenging without him. *Id.*
17

18 On April 12, 2022, Immigration Judge Karen Schulz in San Francisco granted Mr.
19 Enamorado's application for withholding of removal to Honduras, and the government did not
20 appeal. *See* Ex. K (IJ order granting withholding of removal). On August 23, 2022, his wife and
21 children were granted asylum by an Immigration Judge in San Francisco, California. *See* Ex. B.
22 On September 17, 2024, his wife and children became lawful permanent residents of the United
23 States. *See* Ex. L (LPR Cards for wife and children).
24

25 It has been almost six years since Mr. Enamorado was released from detention on bond.
26 Since his release, he has been living in Northern California with his wife and children and they
27 have established a stable life and routine. *See* Ex. A. Mr. Enamorado has his own landscaping
28

1 business where his oldest two sons work with him and his wife helps out when she can. *See* Ex.
2 A; Ex. B. The partner of one of his children's teacher, and family friend, notes how "[h]e is a
3 very reliable handy man, landscaper, and has helped with many special projects at our home.
4 Edwin is one of the hardest workers I have ever known. . . I trust Edwin without hesitation to
5 fully access our house when we are not home." Ex. P (Tasha Scott). His son's teacher, and
6 family friend explains how he has "first hand experience with Edwin's work ethic, which is
7 second to none." Ex. S (Pete Clauson).
8

9
10 Mr. Enamorado has had no contact with the criminal justice system since being released
11 from ICE custody. And in fact, Mr. Enamorado has had no contact with the criminal justice
12 system, here or in Honduras, since 2005. One of his employers and friends confirms that "Edwin
13 is a man of strong character. In my interaction with him I have been impressed by his
14 intelligence and perseverance, his great capacity to communicate and problem solve, and his
15 desire to find meaning and joy in his life." Ex. Q (Steve Poling).
16

17 Sundays are days the family spends a lot of time together. *See* Ex. A, Ex. B. They wake
18 up and get coffee, go to church together, head to park to play sports, and eat dinner out. *Id.* Mr.
19 Enamorado treasures spending time with his children and will go play soccer with them, take
20 them bowling and to the arcades. *Id.* Mr. Enamorado goes to the children's extracurricular
21 activities and school events. *Id.* His son's teacher notes how "[r]ight away, Edwin's captivating
22 personality but more importantly the very obvious dedication to his sons and family as a whole
23 became instantly apparent. Everything he does (literally) is to provide for them and allow them
24 to attempt to achieve the so called American Dream." Ex. S (Pete Clauson).
25

26
27 It would be extremely hard for Ms. Herrera and her children if Mr. Enamorado were to be
28 detained. *See* Ex. A, Ex. B. Since hearing the news of Mr. Enamorado's ICE "interview," Ms.

1 Herrera has been having extreme anxiety where she had to go to the hospital twice and is now on
2 medication. *Id.* The family is scared that Mr. Enamorado will be detained and deported to El
3 Salvador or another country. *Id.* It would be devastating to the family and their community if he
4 were detained. *Id.* His neighbor and friend explains that “Edwin and Yesmin are particularly
5 hardworking individuals who contribute not only to their household but also to the well-being of
6 our community. Their dedication to our neighborhood and their openness to assist others truly
7 sets them apart. They approach every situation with honesty and a strong work ethic, making
8 them role models for both their children and their neighbors.” Ex. U (Abdul Malik Formoli).

11 Mr. Enamorado’s detention would greatly impact their children who are still young. His
12 son DEH’s high school counselor posits that “[a]s an educator and someone who works closely
13 with Mr. Enamorado’s son DEH, I can attest firsthand to the vital role Mr. Enamorado plays in
14 his child’s life, both emotionally and educationally. . . the looming threat of losing a parent to
15 deportation is having, and will continue to have, a profound negative impact on his well-being
16 and academic performance. . . Removing Mr. Enamorado from DEH’s life would create
17 significant trauma, disrupt his emotional development, and compromise his educational future.”
18 Ex. T (Heather Rae Raser).

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

He also fears being re-detained due to the terrible experience he had the last time he was detained. Ex A. 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.*

III. ARGUMENT

The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain a TRO, Mr. Enamorado must demonstrate that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Even if he does not show a likelihood of success on the merits, the Court may still grant a TRO if Mr. Enamorado raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

A. MR. ENAMORADO IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM THAT THE CONSTITUTION REQUIRES THAT HE REMAIN OUT OF CUSTODY WHILE THE DHS DETERMINES IF HE SHOULD BE REMOVED TO A THIRD COUNTRY

1. Withholding Only Protection, Third Country Removals, and Protections under DVD v. U.S. Department of Homeland Security

1 As articulated above, Mr. Enamorado was granted withholding of removal to Honduras.
 2
 3 See Ex K (IJ order granting withholding). However, that only protects him against removal to
 4 Honduras but, in theory, allows for the possibility of removal to a third country.¹ See 8 U.S.C.
 5 § 1231(b)(2)(C) (disregarding designation), 1231(b)(2)(D) (alternative country), 1231(b)(2)(D)
 6 (alternative countries), 1231(b)(2)(E) (additional removal countries).

7
 8 Historically, it has been very rare for the U.S. government to attempt third country
 9 removals. See Moreno Dec. (“During my nearly fourteen years of practicing immigration law, I
 10 have not seen a third country removal after a noncitizen is granted withholding of removal or
 11 CAT protection. My co-counsel, Judah Lakin, has likewise never seen a third country removal in his
 12 ten years of practice.”). However, the Trump administration has been clear that they are going to
 13 try and remove people to third countries, and is in the process of doing so. See Ex C (Newman
 14 Dec.), Ex. D (Jones Dec.), Ex. E (Sandoval Dec.), Ex M (DHS 2/18/25 Directive). No doubt this
 15 is due to the administration trying to meet a stated goal of deporting one million noncitizens
 16 within the first year. See Maria Sacchetti and Jacob Bogage, ‘One million.’ *The private goal*
 17 *driving Trump’s push for mass deportations*, Washington Post (April 12, 2025),
 18 <https://www.washingtonpost.com/immigration/2025/04/12/one-million-deportations-goal/>. As
 19 noted in their February 18th directive, the administration wants ICE officers to review the case of
 20 every single individual who has been granted withholding of removal or Protection under the
 21 CAT to determine the viability of a third county removal as well as the possibility of re-detaining
 22 those individuals. See Ex M (DHS 2/18/25 Directive) (emphasis added). And, as the attached
 23
 24
 25

26
 27
 28 ¹ For a more fulsome discussion and explanation of withholding of removal proceedings as well
 as third country removals, see Complaint at 21-25.

1 declarations demonstrate, in accordance with their directive, ICE has begun arresting individuals
2 who have withholding of removal or protection under the CAT and trying to execute third
3 country removals. *See* Ex C, D, and E. In addition, the administration has been actively working
4 to create agreements with other countries to accept deportees from the United States. *See, e.g.,*
5 Priscilla Alvarez and Kylie Atwood, *Trump administration weighs sending migrants to Libya*
6 *and Rwanda, sources say*, CNN (May 1, 2025, 2:54 PM), [https://www.cnn.com/2025/04/30/](https://www.cnn.com/2025/04/30/politics/migrants-libya-rwanda-trump)
7 [https://www.cnn.com/2025/04/30/](https://www.cnn.com/2025/04/30/politics/migrants-libya-rwanda-trump)
8 [https://www.cnn.com/2025/04/30/](https://www.cnn.com/2025/04/30/politics/migrants-libya-rwanda-trump)
9 [https://www.cnn.com/2025/04/30/](https://www.cnn.com/2025/04/30/politics/migrants-libya-rwanda-trump) politics/migrants-libya-rwanda-trump; Smith, *Trump admin has \$15M deal*, Fox5, *supra*.

10 As a result of the Administration's actions in trying to swiftly deport people to third
11 countries, four Plaintiffs, on behalf of a purported class, challenged the Administration's actions,
12 specifically its "policy or practice of designating aliens for removal to any country other than the
13 country or alternative country of removal designated and identified in writing in their prior
14 immigration proceedings without first providing notice and an opportunity to apply for
15 protection from removal to that 'third' country." *DVD v. U.S. Department of Homeland Security*,
16 2025 WL 1142968, at *3 (D. Mass. Apr. 18, 2025) (Class Certification and Preliminary
17 Injunction Order). As the District Judge explained, the government argued that "the United
18 States may send a deportable [noncitizen] to a country not of their origin, not where an
19 immigration judge has ordered, where they may be immediately tortured and killed, without
20 providing that person any opportunity to tell the deporting authorities that they face grave danger
21 or death because of such a deportation." *DVD*, 2025 WL 1142968, at *1.

22 The district court was not persuaded by the government's position and held that the
23 "small modicum of process" that the Plaintiffs request—to be told they are going to be deported
24 to a new country before they are taken to such a country, and be given an opportunity to explain
25 why such a deportation will likely result in their persecution, torture, and/or death—is "mandated

1 by the Constitution of the United States.” *Id.* Thus, the court granted the plaintiffs’ motion for
2 class certification and for a preliminary injunction. *Id.*

3
4 *D.V.D.* class members include:

5 All individuals who have a final removal order issued in proceedings under Section
6 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom
7 DHS has deported or will deport on or after February 18, 2025, to a country (a) not
8 previously designated as the country or alternative country of removal, and (b) not
identified in writing in the prior proceedings as a country to which the individual
would be removed.

9 *DVD*, 2025 WL 1142968, at *11. For class members, “prior to removing any [noncitizen] to a
10 third country, *i.e.*, any country not explicitly provided for on the [noncitizen]’s order of removal,
11 Defendants must: (1) provide written notice to the [noncitizen]—and the [noncitizen]’s
12 immigration counsel, if any—of the third country to which the [noncitizen] may be removed, in a
13 language the [noncitizen] can understand; (2) provide meaningful opportunity for the
14 [noncitizen] to raise a fear of return for eligibility for CAT protections; (3) move to reopen the
15 proceedings if the [noncitizen] demonstrates ‘reasonable fear’; and (4) if the [noncitizen] is not
16 found to have demonstrated ‘reasonable fear,’ provide meaningful opportunity, and a minimum
17 of 15 days, for that [noncitizen] to seek to move to reopen immigration proceedings to challenge
18 the potential third-country removal.” *Id.* at *24. Relevant here, the injunction does not protect
19 against re-detention.

20
21
22 In the present case, Mr. Enamorado is a *DVD* class member because he has a final
23 removal order to Honduras but was granted withholding of removal to that country. *See* Ex. K.
24 Thus, it is theoretically possible that he could be removed to a third country, but one was never
25 previously designated in his prior proceedings. *See* Ex F (2003 BIA Decision); Ex. G (Reinstated
26 Removal Order). As a result, Mr. Enamorado must now be informed in writing of any third
27
28

1 country to which he may be removed. *DVD*, 2025 WL 1142968, at *24. Then, he must be
2 provided with a meaningful opportunity to express a fear of return to that country. *Id.* If he
3 expresses a fear, the DHS must provide Mr. Enamorado with a reasonable fear interview, *see* 8
4 C.F.R. § 1208.31, and if he is found to have a reasonable fear, the DHS must reopen his removal
5 proceedings to allow him time to seek protection from removal to the third country. *DVD*, 2025
6 WL 1142968, at *24. Even if Mr. Enamorado is not found to have a reasonable fear, the DHS
7 must provide him with fifteen days in which to file a motion to reopen his proceedings. *Id.* If the
8 motion is granted, Mr. Enamorado will be able to seek protection from the third country. *See* 8
9 C.F.R. § 1208.16 (procedures for noncitizens applying for withholding of removal under the INA
10 and CAT). If the motion is denied, Mr. Enamorado will be able to appeal that decision to the
11 BIA. *See* 8 C.F.R. §§ 1003.2, 1003.23. He would also be able to seek judicial review of any BIA
12 decision with the appropriate circuit court. *See Mata v. Lynch*, 576 U.S. 143, 147 (2015)
13 (“[C]ircuit courts have jurisdiction when [a noncitizen] appeals from the Board’s denial of a
14 motion to reopen a removal proceeding.”). This is a multi-step process that can take, at a
15 minimum, several weeks or months to complete, and could possibly take years. *See Moreno Dec.*
16 (“In my experience, appeals to the BIA of motions to reopen for a detained noncitizen takes
17 about six months to a year. Judicial review of denied motions to reopen for detained noncitizens
18 can take about 10 months to a year.”). At a minimum, as a class member of the *DVD* lawsuit, Mr.
19 Enamorado is entitled to all the protections outlined in the order granting a preliminary
20 injunction, and Mr. Enamorado may have additional claims of his own, separate and apart from
21 the class, that provide for more process than that afforded the class under the *DVD* lawsuit.
22
23
24
25
26
27
28

1 As explained below, the Constitution requires Mr. Enamorado not to be re-detained
2 during that process because he has a protected liberty interest in his conditional release and the
3 DHS cannot prove that he is either a flight risk or a danger to the community.
4

5 **2. Mr. Enamorado Is Neither a Flight Risk Nor a Danger to the Community and**
6 **Therefore His Detention Would be Unconstitutional**

7 The Constitution establishes due process rights for “all ‘persons’ within the United States,
8 including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
9 permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v.*
10 *Davis*, 533 U.S. 678, 693 (2001)). There are only two legitimate purposes for immigration
11 detention: mitigating flight risk and preventing danger to the community. *See id.* Mr. Enamorado
12 presents neither concern.
13

14 Here, an Immigration Judge already determined—nearly six years ago—that the DHS
15 failed to prove by clear and convincing evidence that Mr. Enamorado is either a flight risk or a
16 danger to the community. Ex A, Ex J (IJ Order Granting Bond). Thus, Mr. Enamorado was
17 released after paying a \$8,000 bond on July 8, 2019. *See id.* Mr. Enamorado’s conduct since his
18 release has only confirmed the correctness of the IJ’s decision to grant bond.
19

20 After his release from custody, Mr. Enamorado dutifully checked in with ICE in
21 accordance with his supervised release until his Immigration Court hearing. Ex A. He also
22 attended all his hearings. *Id.* Then, on April 12, 2022, an Immigration Judge granted Mr.
23 Enamorado withholding of removal under 8 USC section 1231(b)(3). Ex A, Ex K. The DHS then
24 waived its right to appeal that decision and made no attempt to deport Mr. Enamorado to any
25 other country. *See id.* It also removed his reporting requirement. Ex A.
26
27
28

1 Moreover, Mr. Enamorado's wife and four children have all been granted asylum and
2 lawful permanent resident status in the intervening six years. *See* Ex. B (Herrera Dec.), Ex L
3 (LPR cards of family). They all reside together in a home they rent in Martinez, California. Ex
4 A, Ex B. Mr. Enamorado has been gainfully employed during that time and has a landscaping
5 business where he employs four people, including his two eldest children. *See id.* His family
6 depends on him for emotional support and his income for survival. *See id.* Thus, Mr. Enamorado
7 has every incentive to follow the law, so that he can continue to provide for his family. *See id.*
8 Moreover, if the DHS is ultimately able to secure an executable removal order to a third
9 country—something far from certain—Mr. Enamorado has sworn under penalty of perjury that
10 he will report for removal. *See id.* Based on his prior history of attending his hearings and ICE
11 check-ins, his ties to his LPR wife, children, and community, Mr. Enamorado is not a flight risk.
12

13
14
15 Mr. Enamorado is also not a danger to the community. Not only has he not been arrested
16 or had any problems with law enforcement during the past six years that he has been released on
17 bond but he has not been arrested or had problems with law enforcement in the United States or
18 Honduras since 2005. Ex A. As noted above, he has been dedicated to supporting and providing
19 for his LPR family. In addition, he has support from several members of his community who
20 attest to his character and dedication to his work and family. *See, e.g.,* Ex P (Tasha Scott Letter)
21 (Mr. Enamorado "is a very reliable handy man, landscaper, and has helped with many special
22 projects at our home. Edwin is one of the hardest workers I have ever known."); Ex Q (Steven
23 Poling Letter) (Edwin is a man of strong character...I have been impressed by his intelligence
24 and perseverance.... More significant that his work experience, is Edwin's commitment to his
25 family and to living a productive and honest life."); Ex S (Peter Clauson Letter) ("I have had first
26 hand experience with Edwin's work ethic, which is second to none.").

1 Mr. Enamorado's conduct the last six years proves that he is neither a flight risk nor a
 2 danger, and that any civil detention that occurs while Mr. Enamorado contests his deportation to
 3 a third country would be illegitimate and unconstitutional as it would bear no relationship to the
 4 two purposes immigration detention serves. *See Jones v. Blanas*, 393 F.3d 918, 931-34 (9th Cir.
 5 2004), *cert. denied*, 546 U.S. 820 (2005) (“[A] civil detainee awaiting adjudication is entitled to
 6 conditions of confinement that are not punitive...[and] a restriction is ‘punitive’ where it is
 7 intended to punish, or where it is ‘excessive in relation to [its non-punitive] purpose.’”).

10 **B. EVEN IF MR. ENAMORADO COULD BE SUBJECT TO RE-DETENTION**
 11 **WHILE THE GOVERNMENT ATTEMPTS TO FIND A THIRD COUNTRY TO**
 12 **REMOVE HIM TO, MR. ENAMORADO IS ALSO LIKELY TO SUCCEED ON**
 13 **HIS CLAIM THAT HE HAS A CONSTITUTIONAL RIGHT TO A PRE-**
 14 **DEPRIVATION HEARING PRIOR TO ANY POSSIBLE RE-DETENTION**

15 **1. Mr. Enamorado Has a Protected Liberty Interest in His Conditional Release**

16 “Freedom from imprisonment—from government custody, detention, or other forms of
 17 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
 18 *Zadvydas*, 533 U.S. at 690. For the last nearly six years, Mr. Enamorado has exercised that
 19 freedom under the IJ's July 3, 2019 Bond Grant after posting an \$8,000 bond. *See* Ex. J. While
 20 that freedom *may* ultimately be revocable should circumstances materially change, *see Matter of*
 21 *Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) and *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196-
 22 97 (N. D. Cal. 2017), he nonetheless retains a weighty liberty interest under the Due Process
 23 Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143,
 24 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408
 25 U.S. 471, 482-83 (1972); *see also Ortega v. Bonnar*, 415 F.Supp.3d 963, 969-70 (N.D. Cal.
 26 2019) (holding that a noncitizen has a protected liberty interest in remaining out of custody
 27 following an IJ's bond determination).

1 In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has
2 in “his continued liberty.” 408 U.S. at 481-82. The Court observed that subject to parole
3 conditions, “[a parolee] can be gainfully employed and is free to be with family and friends and
4 to form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that
5 when freed, “the parolee has relied on at least an implicit promise that parole will be revoked
6 only if he fails to live up to the parole conditions.” *Id.* Given this, the Court reasoned that “the
7 liberty of a parolee, although indeterminate, includes many of the core values of unqualified
8 liberty and its termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn,
9 “[b]y whatever name, the liberty is valuable and *must* be seen within the protection of the
10 [Constitution].” *Id.* (emphasis added).

11 *Morrissey*’s basic principle—that individuals have a liberty interest in their conditional
12 release—has been reinforced by both the Supreme Court and circuit courts on numerous
13 occasions. *See Young*, 520 U.S. at 152 (holding that individuals released into a pre-parole
14 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
15 deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony
16 probation have a protected liberty interest requiring pre-deprivation process); *Zadvydas*, 533 U.S.
17 at 690 (holding that due process protects “all ‘persons’ within the United States . . . whether their
18 presence here is lawful, unlawful, temporary or permanent” who face immigration detention). As
19 the First Circuit has explained, when analyzing the issue of whether a specific conditional release
20 rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing
21 the specific conditional release in the case before them with the liberty interest in parole as
22 characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010)
23 (internal quotation marks and citation omitted); *see also, e.g., Hurd v. District of Columbia*, 864
24

1 F.3d 671, 683 (D.C. Cir. 2017) (noting that “a person who is in fact free of physical
2 confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him
3 to constitutional due process before he is re-incarcerated) (citing *Young*, 520 U.S. at 152,
4 *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

6 Here, when this Court “compar[es] the specific conditional release in [Mr. Enamorado’s
7 case], with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are on
8 all fours. *See Gonzalez-Fuentes*, 60 F.3d at 887. Just as in *Morrissey*, Mr. Enamorado’s release
9 “enables him to do a wide range of things open to persons” who have never been in custody or
10 convicted of any crime, including to live at home, work, attend church, and “be with family and
11 friends and to form the enduring attachments of normal life.” *See Morrissey*, 408 U.S. at 482.
12 Since his release from immigration custody nearly six years ago, Mr. Enamorado has been
13 working hard to support his family. Ex. B (Herrera Dec.). He is the sole provider for his family.
14 *Id.* Since his release, he has strengthened his relationships with his wife and four children,
15 spending as much time with them as possible, including going to church. *Id.*; Ex. A. His overall
16 behavior post-release has bolstered the IJ’s original findings that he is neither a danger nor a
17 significant flight risk. *See generally*, Ex. A; Ex. P-W (work and character letters). As the
18 following section makes clear, the process he is entitled to must occur *prior* to any re-detention.
19

20
21
22 **2. Mr. Enamorado’s Liberty Interest Requires that He Receive a Hearing Before**
23 **Any Re-arrest and Revocation of Bond**

24 The Supreme Court “usually has held that the Constitution requires some kind of a
25 hearing before the State deprives a person of liberty or property” *Zinerman v. Burch*, 494 U.S.
26 113, 127 (1990) (emphasis in original). This is so even in cases where that freedom is lawfully
27 revocable. *See Hurd*, 864 F.3d at 683 (emphasis added) (citing *Young*, 520 U.S. at 152 (re-
28

1 detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon*,
2 411 U.S. at 782 (holding the same, in context of probation); *Morrissey*, 408 U.S. 471 (holding
3 the same, in context of parole). Only in a “special case,” where post-deprivation remedies are
4 “the only remedies the State could be expected to provide,” can post-deprivation process satisfy
5 the requirements of due process. *Zinerman*, 494 U.S. at 128.
6

7 Because in this case, the provision of a pre-deprivation hearing is both possible and
8 valuable to prevent an erroneous deprivation of liberty, Mr. Enamorado must be provided with
9 both notice and a hearing prior to any re-incarceration and revocation of his bond. *See Morrissey*,
10 408 U.S. at 481-82; *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985); *Jones*, 393
11 F.3d at 932; *Zinerman*, 494 U.S. at 985; *See also Youngberg v. Romeo*, 457 U.S. 307, 321-24
12 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting
13 involuntary civil commitment proceedings may not constitutionally be held in jail unless and
14 until there has been a determination as to whether they can ultimately be recommitted). Mr.
15 Enamorado has a protected liberty interest in his freedom, and before Respondents may deprive
16 him of that, the Fifth Amendment requires they first prove that they have a lawful basis to do so.
17

18 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 entitled
25
26
27
28

1 to protections at least as great as those afforded to an individual . . . accused but not convicted of
2 a crime.” *See Jones*, 393 F.3d at 932.
3

4 Thus, before the DHS may again deprive Mr. Enamorado of his liberty, Mr. Enamorado
5 is entitled to a hearing at which he can argue why such detention would be unlawful. Here, that
6 would mean a hearing before Judge Schulz—the Judge who previously granted him withholding
7 of removal—at which she can evaluate Mr. Enamorado’s current flight risk and dangerousness
8 on a current record—i.e., a record that includes new evidence with respect to his conduct since
9 being released. Since IJ Schulz is the IJ who will ultimately determine whether the government
10 can establish a third country to remove Mr. Enamorado² to, it only makes sense that she would
11 also decide if he should remain out on bond while she makes the determination on removal. Any
12 motion to reopen would have to be filed with IJ Schulz because she granted him withholding of
13 removal and there was no appeal. *See Ex G (IJ Withholding Order)*; 8 C.F.R. § 1003.23(b)(1).
14

15 Multiple courts in this district have found that in certain cases, due process requires
16 granting a hearing before the DHS may re-detain a noncitizen who they have already freed. In
17 *Ortega v. Bonnar*, another court in this district held that a petitioner was entitled to a pre-
18 deprivation hearing in front of an IJ prior to being re-detained. In *Ortega*, the petitioner was
19 released on a \$35,000 bond, and after the Board of Immigration Appeals affirmed his removal
20 order, the DHS claimed that this constituted a material change in circumstances such that they
21 could unilaterally re-detain him without any process. 415 F. Supp. 3d 963, 971 (N.D. Cal. 2019).
22
23
24

25
26 ² 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.

1 The court in *Ortega* disagreed, explaining that “just as people on preparole, parole, and probation
2 status have a liberty interest, so too does [petitioner] have a liberty interest in remaining out of
3 custody on bond.” *Id.* at 969 (citing *Morrissey*, 408 U.S. at 482; *Gagnon*, 411 U.S. at 782). As a
4 result, having already granted a preliminary injunction, the court permanently enjoined ICE from
5 re-arresting the petitioner “unless and until a hearing, with adequate notice, is held in
6 Immigration Court to determine whether his bond should be revoked or altered.” *Id.* at 970.
7

8
9 In *Jorge M.F.*, the petitioner was released on a \$3,000 bond after the IJ determined that
10 he was neither a danger to the community nor a flight risk. *Jorge M.F. v. Wilkinson*, 2021 WL
11 783561, at *1 (N.D. Cal. 2021) (order granting temporary restraining order). Six months after
12 being released on bond, the Board vacated the IJ’s decision and ordered the Petitioner “detained
13 on no bond.” *Id.* In *Jorge M.F.*, the court held that the Petitioner “has a substantial private
14 interest in remaining on bond” even though his bond had been revoked by the Board. *Id.* at *3;
15 see also *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6,
16 2022); *Ortiz Vargas v. Jennings*, 2020 WL 5074312, at *1 (N.D. Cal. 2020); *Meza v. Bonnar*,
17 No. 18-cv-02708-BLF at ECF-15, 2018 WL 2554572, at *1 (N.D. Cal. June 4, 2018).
18
19

20 Like the cases above, Mr. Enamorado is entitled to a hearing prior to any re-detention by
21 ICE. Given that Mr. Enamorado was already granted protection from removal, and that he has
22 been at liberty for nearly six years, his right to a pre-deprivation hearing prior to any re-arrest is
23 even more compelling than that of *Ortega*, *Ortiz Vargas*, *Jorge M.F.*, *Meza* or *Romero*.³
24

25
26
27 ³ At any such hearing the government would bear the burden of proving by clear and convincing
28 evidence that a material change in circumstances has occurred such that bond should be
revisited, and in turn, whether Mr. Enamorado is a danger to the community or a flight risk such
that bond should be altered or revoked. See, e.g., *Doe v. Becerra*, No. 23-cv-05327-RMI, 2024
Ex Parte Motion for TRO and Points
and Authorities in Support of TRO

1 **C. MR. ENAMORADO WILL SUFFER IRREPERABLE HARM ABSENT**
2 **INJUNCTIVE RELIEF.**

3 Imminent re-detention will irreparably harm Mr. Enamorado. Given ICE's directive, the
4 arrest and detention of at least 9 other individuals, and the demand that he report to ICE on May
5 14, 2025, ICE is likely to re-detain Mr. Enamorado on that date and, thus, a TRO is necessary to
6 prevent irreparable harm.

7
8 First, re-detention will separate Mr. Enamorado from his family, causing them severe
9 economic hardship. As the Supreme Court has recognized, incarceration "has a detrimental
10 impact on the individual" because "it often means loss of a job" and "disrupts family life."
11 *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972). And as the Ninth Circuit has further explained,
12 the "irreparable harms" of immigration detention include the "economic burdens imposed on
13 detainees and their families as a result of detention, and the collateral harms to children of
14 detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. Because his wife does not
15 work and takes care of the children and must oversee the schooling of their two youngest
16 children who have Individualize Education Plans ("IEP") due to learning disabilities, Mr.
17 Enamorado is the sole breadwinner for his family and is working very hard to provide for them.
18 Ex A; Ex B. If re-detained, he and his family will lose their only source of income. *Id.* When he
19 was previously detained from December 2018 to July 2019, the family was separated and had to
20 live in a shelter. *Id.* They depended on the Shelter for food, and did not have enough money to
21 even wash their clothing. *Id.*
22
23
24
25
26

27
28 WL 1018519, at *6 (N.D. Cal. Mar. 7, 2024); *Hilario M.R. v. Warden*, No. 1:24-cv-00998-EPG-
HC, 2025 WL 1158841, at *11 (E.D. Cal. Apr. 21, 2025); *See Juarez v. Choate*, No. 1:24-cv-
00419-CNS, 2024 WL 1012912, at *8 (D. Colo. Mar. 8, 2024).

1 Second, re-detention threatens to inflict psychological and emotional harm on Mr.
2 Enamorado's family again. During his previous detention, his wife and children suffered
3 tremendously without his care. As his wife describes, "[i]t would be devastating for our family if
4 he were detained again after almost six years." Ex B. "Our children were so sad when their father
5 was detained." *Id.* "The kids would cry at night and come into bed with me in the middle of the
6 night crying and asking when their father was coming out." *Id.* As soon as Mr. Enamorado's
7 wife learned that he had to check in with ICE on May 14, 2025 and faced a serious risk of him
8 being detained, she "felt so sick and anxious that [she] had to go to the hospital." *Id.* She "wasn't
9 able to sleep and [her] blood pressure was high." *Id.* Although she "was given medication for
10 anxiety and sleep", she "kept thinking about what would happen to [Mr. Enamorado] and what
11 [her family] would do without him." *Id.* As result, she "went to the emergency room again." *Id.*
12 Mr. Enamorado's 14-year-old son's school counselor, Heather Rae Raser, makes clear that
13 "[r]emoving Mr. Enamorado from DEH's life would create significant trauma, disrupt his
14 emotional development, and compromise his educational future." Ex T.

15 Third, "the deprivation of constitutional rights 'unquestionably constitutes irreparable
16 injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427
17 U.S. 347, 373 (1976)). As detailed above, Mr. Enamorado's re-arrest would violate his due
18 process rights under the Constitution.⁴

19 **D. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR**
20 **GRANTING A TRO.**

21
22
23
24
25
26
27
28 ⁴ Even if Mr. Enamorado were ultimately re-released on bond, *any* detention would nonetheless result in irreparable harm, and the process of getting him re-released on bond could take weeks or months. *See* Moreno Dec.

1 Where the government is the opposing party, balancing the harm and the public interest
2 merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Mr. Enamorado faces grave
3 hardships absent a TRO, and the public has strong interests in ensuring that the executive branch
4 follows the law, avoiding collateral hardship to Mr. Enamorado's family, and benefiting from
5 Mr. Enamorado's continued productive membership in his community—all of which
6 resoundingly outweigh any government interests.
7

8 For Mr. Enamorado, the hardships could not be more serious. Absent injunctive relief, he
9 faces arrest and detention in violation of his constitutional rights, a separation from his family,
10 and severe economic harm, among other things. *See Ex A (Enamorado Dec)*. Faced with
11 “preventable human suffering, [the Ninth Circuit has] little difficulty concluding that the balance
12 of hardships tips decidedly in plaintiffs’ favor.” *Hernandez*, 872 F.3d at 996 (quoting *Lopez v.*
13 *Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983). This Court should find the same.
14

15 The public likewise has a strong interest in ensuring that Mr. Enamorado is not re-
16 detained without first receiving the due process he is owed before any attempt to remove him to
17 a third country, as “it would not be equitable or in the public’s interest to allow [a party] . . . to
18 violate the requirements of federal law, especially when there are no adequate remedies
19 available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle*
20 *del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). Without an injunction, the
21 government would effectively be granted permission to detain Mr. Enamorado in violation of the
22 Constitution, as argued throughout this motion. Like all other individuals, and despite its
23 protestations otherwise, the government is not simply free to ignore the law.
24

25 Moreover, a TRO serves the public interest by avoiding “indirect hardship to [Mr.
26 Enamorado’s] family members,” which here would be substantial. *See also Golden Gate Rest.*
27

1 *Ass'n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008) (finding that courts
2 may consider hardship to families when determining public interest); Ex A (Enamorado Dec.);
3 Ex B (Herrera Dec.); Ex T (Raser letter).

4
5 In addition, a TRO favors the public interest because it allows Mr. Enamorado to
6 continue contributing productively to his community. Mr. Enamorado has a landscaping business
7 where he employes four people. Ex A. Through his business, he has worked hard and provided
8 benefit to several employers who trust him wholeheartedly and find his work exemplary. *See* Ex
9 Q (Steven Poling Letter); Ex P (Tasha Scott letter). The public therefore has a strong interest in
10 Mr. Enamorado continuing to perform the exemplary landscaping service he provides. *See Hurd*,
11 864 F.3d at 683 (citing *Morrissey*, 408 U.S. at 484) (finding that for released prisoners and
12 parolees, “society has a stake in whatever may be the chance of restoring the individual to
13 normal and useful life” and that society thus “has an interest in not having parole revoked”
14 erroneously (internal brackets omitted)).

15
16
17 The government, on the other hand, cannot suffer harm from an injunction that simply
18 requires it to follow the law. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS
19 cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from
20 constitutional violations.”). Here, specifically, the government cannot claim harm from a TRO
21 that enjoins it from re-arresting Mr. Enamorado and orders the due process required by the
22 Constitution and existing precedent. *See supra*, Section III(A)-(B) *supra* (explaining why Mr.
23 Enamorado’s detention would violate due process).

24 **IV. CONCLUSION**

25
26 For the foregoing reasons, Mr. Enamorado respectfully requests that the Court enter a
27 TRO enjoining ICE from re-arresting him pending further order of this Court.
28

1 Dated: May 12, 2025

Respectfully submitted,

2 s/Heliodoro Moreno, Jr.
3 Heliodoro Moreno, Jr.

4 s/Jane Lee
5 Jane Lee
6 OFFICE OF THE PUBLIC DEFENDER
7 CONTRA COSTA COUNTY

8 s/Judah Lakin
9 Judah Lakin

10 s/Amalia Wille
11 Amalia Wille
12 LAKIN & WILLE LLP

13 *Attorneys for Petitioner*

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

15 As the filer of this document, I attest that concurrence in the filing was obtained from the other
16 signatories. Executed on this 12th day of May 2025 in Martinez, California.

17 s/Heliodoro Moreno, Jr.
18 Heliodoro Moreno, Jr.
19 *Attorney for Petitioner*