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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: 5:25-cv-4072-NW

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

*Amended Petition for Writ of Habeas Corpus
and Complaint*

INTRODUCTION

1. Petitioner-Plaintiff Edwin Yobani Enamorado (“Mr. Enamorado”) brings this amended petition for writ of habeas corpus and complaint for injunctive and declaratory relief, and accompanying 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 after the Supreme Court’s June 23, 2025 stay of the preliminary injunction in *DVD v. U.S. Department of Homeland Security*, No. 1:25-cv-10676-BEM (D. Mass.), in violation of the Immigration and Nationality Act and 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

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 compliance with a prior reporting to ICE that lasted two years—has only bolstered the IJ’s
2 finding that he is neither a danger nor a flight risk.

3
4 3. On April 12, 2022, almost three years after Mr. Enamorado was released, an IJ in San
5 Francisco granted him the protection of withholding of removal under 8 U.S. Code (“U.S.C.”)
6 section 1231(b)(3), because Mr. Enamorado faced a clear probability of being persecuted if
7 removed to Honduras. The government did not appeal that decision.

8
9 4. Mr. Enamorado brings this lawsuit because in recent months, ICE has begun detaining
10 individuals like Mr. Enamorado and attempting to remove them to countries to which they have
11 no ties, without adherence to the law. On February 18, 2025, ICE officers were ordered to
12 review the case of anyone granted CAT protection “to determine the viability of removal to a
13 third country and accordingly whether the [noncitizen] should be re-detained.” On March 30,
14 2025, Respondent Kristi Noem, Secretary of Homeland Security, issued a memorandum setting
15 forth new procedures for DHS to pursue third country removals—procedures that do not
16 comport with the requirements of the law. In accordance with this new agency guidance, ICE
17 has arrested scores of individuals at, and between, regularly-scheduled check-ins over the past
18 months.
19

20
21 5. Mr. Enamorado was ordered to report in person at the San Francisco ICE Field Office on
22 May 14, 2025. However, after Mr. Enamorado filed a habeas petition and complaint with this
23 court, his report date was extended to May 28, 2025. On that date, his bond was cancelled, and
24 he was placed on an order of supervision (“OSUP”). He was also ordered to report to the San
25 Francisco Field Office in one year, on May 27, 2026. In response to Mr. Enamorado’s first
26 motion for a temporary restraining order, the government filed a Response in Opposition with
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1 an accompanying declaration from Thomas Auer, a deportation officer. *See* Dkts. 15, 15.1.

2 Notably, nowhere in that declaration do they state that they will not re-arrest Mr. Enamorado,
3 nor do they state that they will not process him for a third country removal.
4

5 6. Based on the February 18, 2025 ICE directive, the March 30, 2025 DHS policy memo, the
6 removal of the protections provided in *DVD*, the lack of assurances from the government
7 regarding his own re-detention, and extensive reports of the detention and removal of similarly-
8 situated noncitizens, Mr. Enamorado fears that the DHS will re-detain him at any time while
9 they attempt to find a third country to which they can remove him.
10

11 7. It is well-established, however, that Mr. Enamorado has a liberty interest in his current
12 freedom, and that the Fifth Amendment's Due Process Clause mandates that immigration
13 detention serve a legitimate purpose: to mitigate flight risk and/or prevent danger to the
14 community. Neither of these purposes would be served by Mr. Enamorado's detention.
15

16 8. Due process requires that Mr. Enamorado remain out of custody while the government
17 follows requisite procedures to determine if he can and will be removed to a third country.
18

19 JURISDICTION

20 9. This action arises under the Constitution of the United States, the Immigration and
21 Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, the regulations implementing the INA, the
22 Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105-277, div. G,
23 Title XXII, § 2242(a), 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231),
24 the regulations implementing the FARRA, and the Administrative Procedure Act ("APA"), 5
25 U.S.C. § 701 *et seq.*
26

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

11. This Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2241, 1651, 2201-02, and 5 U.S.C. §§ 702, 705-706. This Court also has broad equitable powers to grant relief to remedy a constitutional violation. *See Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir. 2020).

VENUE

12. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e)(1) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occurred or will occur in the Northern District of California; because one of the Respondents-Defendants resides in this District; and because there is no real property involved in this action.

INTRADISTRICT ASSIGNMENT

13. Assignment to the San Francisco or Oakland Division of this Court is proper under N.D. Local Rule 3-2(d) because Mr. Enamorado will be re-detained by the San Francisco ICE Field Office. Moreover, Mr. Enamorado is subject to an ICE monitoring program operated out of San Francisco, California.

PARTIES

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1 14. Petitioner-Plaintiff Mr. Enamorado was born in Honduras and has lived in the United
2 States for a total of nearly twelve years during two separate time periods. He last entered the
3 United States in 2018 and has resided here since that time. He was detained in ICE custody from
4 approximately December 3, 2018 until July 8, 2019, when he was freed on a \$8,000 bond. On
5 April 12, 2022, Mr. Enamorado was granted withholding of removal by an IJ in San Francisco.
6 On May 28, 2025, his bond was cancelled, and he was placed on an OSUP. He was ordered to
7 return to the San Francisco ICE Field Office on May 27, 2026.
8

9
10 15. Respondent-Defendant Polly Kaiser is the Acting Field Office Director of ICE in San
11 Francisco, California, and is named in her official capacity. She maintains her office in San
12 Francisco, California, within this judicial district. The San Francisco Field Office is responsible
13 for carrying out ICE's immigration detention operations throughout Northern California, where
14 Mr. Enamorado resides. Respondent Kaiser's office placed Mr. Enamorado on an OSUP on
15 May 28, 2025, and ordered him to appear at the San Francisco ICE Field Office on May 27,
16 2026. Respondent Kaiser is a legal custodian of Mr. Enamorado.
17

18 16. Respondent-Defendant Todd M. Lyons is the Acting Director of ICE, and is named in
19 his official capacity. ICE, a component of the DHS, is responsible for detaining and removing
20 noncitizens according to immigration law, and oversees custody determinations. Respondent
21 Lyons is responsible for ICE's policies, practices, and procedures, including those relating to
22 the civil detention of immigrants. Respondent Lyons is a legal custodian of Mr. Enamorado.
23

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

3
4 18. Respondent-Defendant Pamela Bondi is the Attorney General of the United States and
5 the most senior official at the Department of Justice, and is named in her official capacity. As
6 such, she is responsible for overseeing the implementation and enforcement of the federal
7 immigration laws. The Attorney General delegates this responsibility to the Executive Office for
8 Immigration Review (EOIR), which administers the immigration courts and the Board of
9 Immigration Appeals (BIA). Respondent Bondi is responsible for the administration of
10 immigration laws pursuant to 8 U.S.C. § 1103(g) and oversees EOIR.

12 LEGAL BACKGROUND

13 **Section 240 Removal Proceedings and the Statutory Scheme to Designate Countries of** 14 **Removal**

15 19. In standard removal proceedings (commonly referred to as “Section 240” proceedings),
16 an Immigration Judge is authorized to issue an order of removal against the noncitizen who is
17 the subject of the proceeding. “After determining that a noncitizen is removable, an IJ must
18 assign a country of removal.” *Hadera v. Gonzales*, 494 F.3d 1154, 1156 (9th Cir. 2007).

20 20. “The method by which [an Immigration Judge] may designate a country as the country
21 for removal for any given [noncitizen] is established in 8 U.S.C. § 1231(b).” *Himri v. Ashcroft*,
22 378 F.3d 932, 938 (9th Cir. 2004). Where removal proceedings are initiated after a noncitizen’s
23 arrival in the United States—as was the case for Mr. Enamorado—the multi-stage country
24

1 designation process is set forth in 8 U.S.C. § 1231(b)(2).³ *See also Hadera*, 494 F.3d at 1156;
 2 *Jama v. ICE*, 543 U.S. 335, 341 (2005).

3 21. First, the noncitizen is entitled to select a country of removal. 8 U.S.C. § 1231(b)(2)(A).
 4 If either the noncitizen does not select a country, or as an alternative in the event the
 5 noncitizen's designated country does not accept the individual, the IJ will designate the country
 6 where the person "is a subject, national, or citizen." 8 U.S.C. § 1231(b)(2)(D). The IJ may also
 7 designate the following additional countries, as specifically set forth in the statute:
 8

- 9 (i) The country from which the [noncitizen] was admitted to the United States.
- 10 (ii) The country in which is located the foreign port from which the [noncitizen] left
- 11 for the United States or for a foreign territory contiguous to the United States.
- 12 (iii) A country in which the [noncitizen] resided before the [noncitizen] entered the
- 13 country from which the [noncitizen] entered the United States.
- 14 (iv) The country in which the [noncitizen] was born.
- 15 (v) The country that had sovereignty over the [noncitizen's] birthplace when the
- 16 [noncitizen] was born.
- 17 (vi) The country in which the [noncitizen's] birthplace is located when the
- 18 [noncitizen] is ordered removed.
- 19 (vii) If impracticable, inadvisable, or impossible to remove the [noncitizen] to each
- 20 country described in a previous clause of this subparagraph, another country
- 21 whose government will accept the [noncitizen] into that country.
- 22

23
 24
 25 ³ References to the Attorney General in Section 1231(b) refer to the Secretary of DHS for
 26 functions related to carrying out a removal order and to the Attorney General for functions
 27 related to selection of designations and decisions about fear-based claims. 6 U.S.C. § 557. The
 28 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).

1 8 U.S.C. § 1231(b)(2)(E).

2 22. “Unlike clauses (i)-(vi), clause (vii) has an *explicit* requirement that the designated
3 country be *willing* to accept the [noncitizen].” *Himri*, 378 F.3d at 939 (emphasis added). This
4 means that, “at the time the government proposes a country of removal pursuant to
5 § 1231(b)(2)(E)(vii), the government must be able to show that the proposed country *will* accept
6 the [noncitizen].” *Id.* Where a country has been improperly designated as a country of removal,
7 a noncitizen “may not be removed there.” *Id.*
8

9 23. The IJ must notify the noncitizen of the designated country or countries of removal. 8
10 C.F.R. § 1240.10(f) (providing that “the immigration judge shall notify the respondent” of
11 designated countries of removal).
12

13 24. Federal regulations provide that if the DHS “is unable to remove the [noncitizen] to the
14 specified or alternative country or countries, the order of the immigration judge does not limit
15 the authority of [DHS] to remove the [noncitizen] to any other country *as permitted by*
16 *[§ 1231(b)]*.” 8 C.F.R. § 1240.12(d) (emphasis added).
17

18 **Requirement that Noncitizens Be Provided Notice and Opportunity to Present a Fear-**
19 **Based Claim Before Deportation to Any Country**

20 25. For individuals in removal proceedings, the designation of a country of removal (or, at
21 times, alternative countries) on the record provides notice and an opportunity for a noncitizen
22 who fears persecution or torture in the designated country (or countries) to file an application
23 for protection from removal. *See* 8 C.F.R. §§ 1240.10(f), 1240.11(c)(1)(i), 1208.16.
24

25 26. Indeed, removal to *any* country designated under 8 U.S.C. § 1231(b)(2) is “subject to”
26 restrictions on removal set forth in 8 U.S.C. § 1231(b)(3)(A), a form of protection of removal
27

1 known as withholding of removal. *See* 8 U.S.C. § 1231(b)(2). The government “may not
2 remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen’s] life or
3 freedom would be threatened in that country because of the [noncitizen’s] race, religion,
4 nationality, membership in a particular social group, or political opinion.” 8 U.S.C.
5 § 1231(b)(3)(A). *See also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory
6 protection.
7

8 27. Certain individuals in Section 240 proceedings are ineligible for withholding of removal,
9 for example, because of certain criminal convictions, but are still entitled to receive protection
10 from removal in the form of deferral of removal under the Convention Against Torture upon
11 demonstrating a likelihood of torture if removed to the designated country of removal. *See*
12 FARRA 2681–822 (codified as Note to 8 U.S.C. § 1231) (“It shall be the policy of the United
13 States not to expel, extradite, or otherwise effect the involuntary return of any person to a
14 country in which there are substantial grounds for believing the person would be in danger of
15 being subjected to torture, regardless of whether the person is physically present in the United
16 States.”). *See also* 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1.
17
18

19 28. Like withholding of removal, CAT protection is mandatory. *Id.* An individual granted
20 CAT protection as to the designated country of removal may not be removed to any other
21 country where he is “likely to be tortured.” 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).
22

23 29. In *Jama v. ICE*, 543 U.S. 335, the Supreme Court confirmed that noncitizens who “face
24 persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a
25 number of available remedies: asylum; withholding of removal; relief under an international
26

1 agreement prohibiting torture” *Jama*, 543 U.S. at 348 (citing 8 U.S.C. §§ 1158(b)(1),
2 1231(b)(3)(A); 8 C.F.R. §§ 208.16(c)(4), 208.17(a)).

3
4 30. An IJ may not make a “last minute” designation of an additional country of removal,
5 because that would deprive the individual of a meaningful opportunity to apply for fear-based
6 protection from removal. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). Such an
7 action “violate[s] a basic tenet of constitutional due process.” *Id.* “[I]ndividuals whose rights are
8 being determined are entitled to notice of the issues to be adjudicated, so that they will have the
9 opportunity to prepare and present relevant arguments and evidence.” *Id.*

10
11 31. Because withholding of removal and CAT protection are country-specific, a noncitizen
12 must be given notice of the designated country of removal *before* he can present a fear-based
13 claim as to that country. *See id.*; *Hadera*, 494 F.3d at 1159; 8 C.F.R. §§ 1208.16, 1208.17. A
14 noncitizen “is not entitled to adjudication of an application for withholding of removal to a
15 country that nobody is trying to send them to.” *She v. Holder*, 629 F.3d 958, 965 (9th Cir.
16 2010), *superseded by statute on other grounds*.

17
18 32. Individuals in Section 240 proceedings are entitled to an administrative appeal to the
19 BIA along with an automatic stay of deportation while the appeal is pending. 8 U.S.C.
20 § 1101(a)(47)(B); 8 C.F.R. §§ 1003.6(a), 1240.15. Such individuals may also seek judicial
21 review of an adverse administrative decision by filing a petition for review in the court of
22 appeals. *See* 8 U.S.C. § 1252(a); *Nasrallah v. Barr*, 590 U.S. 573 (2020) (holding that
23 noncitizens are entitled to judicial review of factual challenges to an IJ’s CAT determination).

24 **Reinstatement of Removal and Withholding-Only Proceedings**

1 33. Individuals who have been deported and subsequently return to the United States
2 illegally are subject to a summary removal process known as reinstatement of removal. *See* 8
3 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8. This summary process is carried out by DHS officers
4 who perform the ministerial function of simply reinstating the prior removal order. *See id.*
5 Individuals subject to reinstatement orders are barred from seeking most forms of relief from
6 removal, including asylum. *See id.*
7

8 34. However, consistent with the United States' commitment to non-refoulement—the
9 fundamental principle that no one should be returned to a country where they would face
10 persecution, torture, cruel, inhuman, or degrading treatment, or serious harm—critical
11 protections from removal remain available in reinstatement proceedings: withholding of
12 removal under 8 U.S.C. § 1231(b)(3) and Convention Against Torture (“CAT”) protection. *See*
13 8 C.F.R. § 241.8(e); *see also* 8 C.F.R. §§ 208.31, 1208.31. Individuals who “express[] a fear of
14 returning to the country designated in” their removal order are given the opportunity to
15 demonstrate a reasonable fear of persecution or torture in interviews before asylum officers. 8
16 C.F.R. § 241.8(e). *See also* 8 C.F.R. § 208.31(a), (c) (discussing fear-based claims with respect
17 to “the country of removal”) If the asylum officer determines their fear is not reasonable, the
18 individual can seek review of that determination before an IJ in reasonable fear proceedings. 8
19 C.F.R. §§ 208.31(g), 1208.31(g). An individual may seek judicial review of the IJ’s negative
20 reasonable fear determination in the circuit court of appeals. *See Alvarado-Herrera v. Garland*,
21 933 F.3d 1187, 1191 (9th Circ. 2021).
22

23 35. If either the asylum officer or the reviewing IJ finds the individual’s fear is reasonable,
24 the individual is placed in withholding-only proceedings before an IJ where they can seek
25
26
27
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1 protection from deportation by applying for withholding of removal and/or CAT protection as to
 2 “the country of removal.” 8 C.F.R. § 1208.31(g)(2)(i). *See also* 8 C.F.R. §§ 208.31(e), (g)(2),
 3 1208.31(e).
 4

5 36. If the IJ denies the withholding and/or CAT application, the individual may seek review
 6 before the BIA. 8 C.F.R. §§ 208.31(e), (g)(2)(ii), 1208.31(e), (g)(2)(ii). Judicial review of these
 7 orders and administrative decisions is available by filing a petition for review in the court of
 8 appeals. 8 U.S.C. § 1252(a); *see also Riley v. Bondi*, 606 U.S. ---, 2025 WL 175802 (2025).
 9

10 37. Individuals with a reinstated removal order—whether they are challenging their
 11 reinstated removal order or are in withholding only proceedings, or are seeking agency or
 12 judicial review of a decision by an IJ—are detained pursuant to 8 U.S.C. § 1231. *See Johnson v.*
 13 *Guzman Chavez*, 594 U.S. 523 (2021).
 14

15 **The DHS’s Statutory Detention Authority During and After Removal Proceedings**

16 38. “The statutory scheme governing the detention of [noncitizens] in removal proceedings
 17 is not static; rather, the [government’s] authority over a [noncitizen’s] detention shifts as the
 18 [noncitizen] moves through different phases of administrative and judicial review.” *Casas-*
 19 *Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 945 (9th Cir. 2008); *overruled on other*
 20 *grounds by Avilez v. Garland*, 69 F.4th 525, 529 (9th Cir. 2023).
 21

22 39. 8 U.S.C. § 1226 sets out a framework for the detention and release of noncitizens during
 23 their administrative removal proceedings.
 24

25 40. Section 1226(a) “sets out the default rule.” *Jennings v. Rodriguez*, 583 U.S. 281, 288
 26 (2018) (“*Rodriguez IV*”). The government may arrest and detain a noncitizen “pending a
 27 decision on whether the [noncitizen] is to be removed from the United States” and, “[e]xcept as
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1 provided in subsection (c) [of Section 1226] . . . may continue to detain” or “may release” the
2 noncitizen pending removal proceedings. 8 U.S.C. § 1226(a). Regulations provide that
3 noncitizens detained under Section 1226(a) “receive bond hearings at the outset of detention.”
4 *Rodriguez IV*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).
5

6 41. Section 1226(c) creates a narrow exception to the default rule of bond eligibility.
7 Paragraph (1) of Section 1226(c) provides that the government “shall take into custody any
8 [noncitizen] who” is removable on certain criminal and national security grounds, “when the
9 [noncitizen] is released” from criminal custody. 8 U.S.C. § 1226(c)(1). Section 1226(c) subjects
10 certain noncitizens to mandatory detention without the individualized bond hearing
11 contemplated by Section 1226(a).
12

13 42. A noncitizen placed in Section 240 removal proceedings remains subject to detention
14 under Section 1226 while their removal proceedings are pending before the IJ and the BIA.
15 Section 1226 also governs while such individuals seek judicial review of their removal order,
16 including judicial review of an IJ’s denial of an application for protection under the CAT. *See*
17 *Avilez*, 69 F.4th at 537-38.
18

19 43. 8 U.S.C. § 1231 authorizes the detention of noncitizens who have been issued a final
20 order of removal. “Section 1231(a) does not apply to detention during the pendency of
21 administrative or judicial removal proceedings.” *Avilez*, 69 F.4th at 530-31. “Section
22 1231 instead governs detention during a ninety-day ‘removal period’ after the conclusion of
23 removal proceedings. 8 U.S.C. § 1231(a)(1)–(2).” *Id.* For noncitizens who are not removed
24 during the ninety-day “removal period,” their detention is governed by Section 1231(a)(6). Such
25 individuals may not be detained beyond “a period reasonably necessary to secure removal.”
26
27

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1 *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). “Thus, if removal is not reasonably
2 foreseeable . . . continued detention [is] unreasonable and no longer authorized by statute.” *Id.*
3 at 699-700.
4

5 44. Even after a final order of removal has been issued, removal proceedings may be
6 reopened. 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.23(b)(1). If the IJ “grants a motion to
7 reopen . . . the final deportation order is vacated—that is, it is as if it never occurred.” *Bonilla v.*
8 *Lynch*, 840 F.3d 575, 589 (9th Cir. 2016). *See also Nken v. Holder*, 556 U.S. 418, 429 n.1
9 (2009).
10

11 STATEMENT OF FACTS

12 45. Mr. Enamorado is a forty-two-year-old husband, and the father of four children. Born in
13 Honduras, he first came to the United States in 1999. He lives in Martinez, California with his
14 wife of ten years, Yesmin Herrera Cruz, and their four children, Anthony (21-years-old), RCH
15 (19-years-old), DEH (14-years old), and EEH (10- years-old). *See* Declaration of Heliodoro
16 Moreno (hereinafter, “Moreno Dec.”), Ex. A (Declaration of Edwin Yobani Enamorado
17 “Enamorado Dec.”), Ex. B (Declaration of Yesmin Herrera Cruz “Herrera Dec.”).
18
19

20 46. Mr. Enamorado has his own landscaping business, and his two eldest children work with
21 him along with two other employees. As one of his client’s, and a family friend, has explained,
22 “Edwin is a man of strong character. In my interaction with him I have been impressed by his
23 intelligence and perseverance, his great capacity to communicate and problem solve, and his
24 desire to find meaning and joy in his life. As a landscaper, builder and contractor, Edwin was
25 great at working to design and build the garden features I needed. . . My wife and I
26 recommended Edwin to our neighbor who then hired Edwin and his crew for another large job.”
27

1 Moreno Dec., Ex. R (Letter from Steve Poling). Likewise the spouse of that same client noted
2 that "Edwin did an outstanding job over about eight weeks, and was very knowledgeable and
3 helpful in the design of the work, not just the labor. The resulting project, including rock
4 retaining walls, irrigation, ground cover, and plantings, is excellent." Moreno Dec., Ex. S
5 (Letter from Ellen Poling).

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

15 48. Mr. Enamorado has criminal convictions from when he lived in Michigan as an
16 adolescent. In 2003, he had two convictions for possession of marijuana. *See* Moreno Dec., Ex
17 A (Enamorado Dec.). In July 2005, he was convicted of driving with a false identification. *Id.*
18 This led to him being transferred to ICE custody and he was deported to Honduras in August
19 2005.

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

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

7 51. After Mr. Enamorado filed his initial Habeas petition and complaint, Respondents
8 rescheduled his report date to May 28, 2025. *See* Moreno Dec., Ex. A (Enamorado Dec.). On
9 May 28, 2025, Respondents cancelled his bond, and he was placed on an OSUP. He was also
10 ordered to report to the San Francisco Field Office in one year, on May 27, 2026. *See* Moreno
11 Dec., Ex. Y (I-290B). In their opposition to Mr. Enamorado's first motion for a temporary
12 restraining order, the government declined to provide any assurance they would not re-arrest
13 Mr. Enamorado. *See* Dkt. 15.1

16 52. Based on the government's internal directives and memos, news reports, the stay of the
17 preliminary injunction in *DVD*, as well as the arrest and detention of at least thirty other
18 individuals similarly situated to Mr. Enamorado, Mr. Enamorado is terrified that ICE will detain
19 him and try to remove him to a third country. *See* Moreno Dec., Ex A (Enamorado Dec.), Ex C
20 (Declaration of Etan Newman "Newman Dec."), Ex. D (Declaration of Laura Jones "Jones
21 Dec."), Ex E (Declaration of Simon Y. Sandoval-Moshenberg "Sandoval Dec."), Ex M (DHS
22 2/18/25 Directive); Ex. Z (DHS 3/30/25 Guidance). Mr. Enamorado is particularly terrified of
23 the government given his former ties to MS-13 and criminal history, given the Trump
24 Administration's hyper focus on removing anyone they believe has ties to gangs as
25

1 expeditiously as possible.⁴ He is especially fearful about being deported to a notoriously cruel
 2 prison in El Salvador given the news about the U.S. government flying alleged gang members
 3 or people with former ties to gangs there. *See* Moreno Dec., Ex A (Enamorado Dec.).

4
 5 **Mr. Enamorado's Initial Grant of Asylum, Reversal, and Removal to Honduras**

6 53. Mr. Enamorado first entered the United States in 1999 and he was charged as a
 7 noncitizen present in the United States without being admitted or paroled. *See* Moreno Dec., Ex.
 8 O (Notice to Appear). He applied for and was granted asylum by an Immigration Judge on
 9 November 22, 1999. *See* Moreno Dec., Ex. A (Mr. Enamorado Dec.). He had been forced to
 10 join the MS-13 gang in Honduras when he was about eleven years old and fled the gang when
 11 he was about fifteen years old. *See* Moreno Dec., Ex. A (Enamorado Dec.). The government
 12 appealed the Immigration Judge's decision, and the Board of Immigration Appeals (BIA)
 13 reversed the grant of asylum and ordered him removed to Honduras on October 9, 2003. *See*
 14 Moreno Dec., Ex. F (BIA reversal of Mr. Enamorado's asylum grant, October 14, 2003). No
 15 other country was designated as a country of removal, and Mr. Enamorado was deported to
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22 ⁴ *See, e.g.,* Ali Rogin and Harry Zahn, *New York Times investigation finds no evidence linking*
 23 *many deported Venezuelans to Tren de Aragua*, PBS News (May 3, 2025, 5:40 PM),
 24 [https://www.pbs.org/newshour/show/nyt-investigation-finds-no-evidence-linking-many-](https://www.pbs.org/newshour/show/nyt-investigation-finds-no-evidence-linking-many-deported-venezuelans-to-tren-de-aragua)
 25 *deported-venezuelans-to-tren-de-aragua*; Myah Ward, *Behind Trump's push to erode due process*
 26 *rights*, Politico (April 28, 2025, 5:30 AM), [https://www.politico.com/news/2025/04/28/trump-](https://www.politico.com/news/2025/04/28/trump-immigration-100days-due-process-00307435)
 27 *immigration-100days-due-process-00307435*; *see also Sanchez Punetes v. Grite*, No. EP-25-CV-
 28 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).
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1 Honduras in August 2005. Moreno Dec., Ex. F (BIA reversal of Mr. Enamorado's asylum grant,
2 October 14, 2003); Moreno Dec., Ex. A (Enamorado Dec.).

3 54. Just as he feared, in Honduras, sometime in 2006, MS-13 gang members severely beat
4 Mr. Enamorado, stabbed him several times, and left him for dead as retaliation for having fled
5 the gang. *Id.* Barely having survived the attack, he fled to another part of Honduras. *Id.* He met
6 his wife, Yesmin Herrera Cruz, in 2007 and they started living together, raising her two young
7 children as his own. *Id.*; Moreno Dec., Ex. B (Herrera Dec.). They had two children together,
8 DEH in 2010 and EEH in 2014, and officially married on April 24, 2015. *Id.*

9 55. In 2014, MS-13 gang members learned that Mr. Enamorado was alive and found him.
10 See Moreno Dec., Ex. A (Enamorado Dec.). They chased him and his family in a car and
11 fortunately, the family was able to get away. *Id.* In 2016, MS-13 gang members again
12 discovered his location and threatened to kill him and his family. *Id.* They fled that location. *Id.*
13 Terrified that he and his family would be killed, they fled Honduras in 2018 and entered the
14 United States on December 13, 2018. *Id.*

15 56. His wife and children were detained for about four days and released from custody. *Id.*
16 Mr. Enamorado was detained separately from his wife and children. *Id.* His prior 2003 removal
17 order was reinstated and he was kept in immigration detention. *Id.* On January 15, 2019, an
18 asylum officer determined that he had a reasonable fear of persecution or torture if he returned
19 to Honduras and he was referred to an Immigration Judge to apply for withholding of removal.
20 *Id.*; Moreno Dec., Ex. H (Notice of Referral to IJ, Jan. 15, 2019). During the course of his
21 reinstatement proceedings, the DHS did not designate an alternate country of removal.

22 **Mr. Enamorado's Detention, Bond Hearing, Release**

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24 *and Complaint*

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

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

23 59. On April 12, 2022, Immigration Judge Karen Schulz in San Francisco granted Mr.
24 Enamorado's application for withholding of removal to Honduras, and the government did not
25 appeal. *See* Moreno Dec., Ex. K (Mr. Enamorado's grant of Withholding of Removal, April 12,
26 2022). On August 23, 2022, his wife and children were granted asylum by an Immigration
27

1 Judge in San Francisco, California. *See* Moreno Dec., Ex. B (Herrera Dec.). On September 17,
2 2024, his wife and children became lawful permanent residents of the United States. *See*
3 Moreno Dec., Ex. L (LPR cards for wife and children).
4

5 **Life After Release from Custody**

6 60. It has been almost six years since Mr. Enamorado was released from detention on bond.
7 Since his release, he has been living in Northern California with his wife and children and they
8 have established a stable life and routine.
9

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

19 62. Mr. Enamorado has had no contact with the criminal justice system since being released
20 from ICE custody. And in fact, Mr. Enamorado has had no contact with the criminal justice
21 system, here or in Honduras, since 2005. One of his employers and friends confirms that
22 "Edwin is a man of strong character. In my interaction with him I have been impressed by his
23 intelligence and perseverance, his great capacity to communicate and problem solve, and his
24 desire to find meaning and joy in his life." Moreno Dec., Ex. R (Steve Poling).
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63. Sundays are days the family spends a lot of time together. *See* Moreno Dec., Ex. A (Enamorado Dec.), Ex. B (Herrera Dec.). They wake up and get coffee at Starbucks or Peets, go to church together, head to park to play sports, and eat dinner out. *Id.* Mr. Enamorado treasures spending time with his children and will go play soccer with them, take them bowling and to the arcades. *Id.* The family takes trips to Santa Cruz in the summer. *Id.* Mr. Enamorado goes to the children's extracurricular activities and school events. *Id.* His son's teacher notes how "[r]ight away, Edwin's captivating personality but more importantly the very obvious dedication to his sons and family as a whole became instantly apparent. Everything he does (literally) is to provide for them and allow them to attempt to achieve the so called American Dream. . . Hard working, dedicated, a family man, someone that should have the right to continue this path that he has worked so hard for." Moreno Dec., Ex. T (Pete Clauson).

Life Upended by Risk of Re-detention After Stay of *DVD* Injunction

64. It would be extremely hard for Ms. Herrera and her children if Mr. Enamorado were to be detained. *See* Moreno Dec., Ex. A (Enamorado Dec.), Ex. B (Herrera Dec.). After hearing the news of Mr. Enamorado's ICE "interview," Ms. Herrera had extreme anxiety where she had to go to the hospital twice and is now on medication. *Id.* The family was scared that Mr. Enamorado would be detained and deported to El Salvador or another country. *Id.* Mr. Enamorado and his wife were very relieved when they learned that this Court had enjoined the government from re-detaining Mr. Enamorado, but that relief was short lived after the Supreme Court stayed the *DVD* preliminary injunction and thus eliminated the procedural protections ordered by Judge Murphy. *See id.* They now are terrified again that, absent action from this Court, Mr. Enamorado can be re-detained at any time and quickly removed to a third country

1 without adequate notice or an opportunity to seek protection from removal to a third country.

2 *See id.*

3
4 65. It would be devastating to the family and their community if he were detained. *Id.* His
5 neighbor and friend explains that “Edwin and Yesmin are particularly hardworking individuals
6 who contribute not only to their household but also to the well-being of our community. Their
7 dedication to our neighborhood and their openness to assist others truly sets them apart. They
8 approach every situation with honesty and a strong work ethic, making them role models for
9 both their children and their neighbors.” Moreno Dec., Ex. V (Abdul Malik Formoli).

10
11 66. 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 Moreno Dec., Ex. U (Heather Rae Raser).

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

1 68. He also fears being re-detained due to the terrible experience he had the last time he was
2 detained. Moreno Dec, Ex A (Enamorado Dec.). Detention officials rarely answered detainee
3 questions or provided them with medical attention in a timely manner. *Id.* Even when detainees
4 did receive medical attention, medical staff did not provide sufficient pain medication which led
5 to the needless suffering of several detainees. *Id.* Food was also terrible and often inedible. *Id.*
6 When detainees complained they would be punished by being placed in solitary confinement.
7 *Id.* Mr. Enamorado does not want to go through that harrowing experience again. *Id.*
8

9
10 **The Trump Administration Begins an Unprecedented Campaign to Detain and Deport**
11 **Noncitizens Without Due Process, Including Those Who Have Been Granted Fear-Based**
12 **Protection from Removal**

13 69. Since January 2025, the federal government of the United States has begun a campaign
14 to deport large numbers of noncitizens from the United States at any cost. It has aggressively
15 acted to remove individuals to countries other than those designated for removal. This process is
16 known as “third country removals.” Historically, it has been very rare for the U.S. government
17 to attempt third country removals, especially to countries to which the individual has no ties.
18 *See* Moreno Dec.
19

20 70. On the campaign trail in 2024, Donald J. Trump promised 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.”⁵
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27 ⁵ Catherine E. Shoichet, *Trump’s mass deportation plans would be costly. Here’s why*, CNN
(Nov. 7, 2024), <https://www.cnn.com/2024/10/19/politics/trump-mass-deportation-cost-cec>.
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1 During his inauguration speech, Trump announced he would “begin the process of returning
2 millions and millions of criminal aliens back to places from which they came.”⁶

3
4 71. On January 20, 2025, President Trump signed an Executive Order, entitled Securing our
5 Borders, in which he instructed the Secretary of State, Attorney General, and DHS Secretary to
6 “take all appropriate action to facilitate additional international cooperation and
7 agreements, . . ., including [safe third country agreements] or any other applicable provision of
8 law.” Exec. Order No. 14165, 90 Fed. Reg. 8467, 8468 (Jan. 20, 2025). In February, Secretary
9 of State Marco Rubio visited several Central American countries to negotiate acceptance of
10 noncitizens from the United States, including individuals with final removal orders.⁷ News
11 outlets later reported that the administration had expanded its efforts to deport noncitizens from
12 the United States to war-torn countries known for brutality and human rights abuses, including
13 Libya.⁸ At a cabinet meeting, Secretary Rubio stated that the administration intends to use
14 foreign prisons as part of a mass deportation effort, stating, ““We are working with other
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21 ⁶ Donald J. Trump, *The Inaugural Address*, The White House (Jan. 20, 2025),
22 <https://www.whitehouse.gov/remarks/2025/01/the-inaugural-address/>.

23 ⁷ Camilo Montoya-Galvez, *Trump Eyes Asylum Agreement with El Salvador to Deport Migrants*
24 *There*, CBS News (Jan. 27, 2025), [https://www.cbsnews.com/news/trump-eyes-asylum-](https://www.cbsnews.com/news/trump-eyes-asylum-agreement-el-salvador-deportation-migrants/)
25 [agreement-el-salvador-deportation-migrants/](https://www.cbsnews.com/news/trump-eyes-asylum-agreement-el-salvador-deportation-migrants/); Matthew Lee, *Guatemala Gives Rubio a Second*
26 *Deportation Deal for Migrants Being Sent Home from the US*, AP News (Feb. 5, 2025),
27 [https://apnews.com/article/rubio-guatemala-trump-immigration-migrants-](https://apnews.com/article/rubio-guatemala-trump-immigration-migrants-3cae5b616e1535e480e4f68c2641868c)
28 [3cae5b616e1535e480e4f68c2641868c](https://apnews.com/article/rubio-guatemala-trump-immigration-migrants-3cae5b616e1535e480e4f68c2641868c).

⁸ Amanda Taub, *The Trump Administration is Lining Up More Countries to Take Its Deportees*,
New York Times (May 14, 2025), [https://www.nytimes.com/2025/05/14/world/trump-](https://www.nytimes.com/2025/05/14/world/trump-administration-deportees.html)
[administration-deportees.html](https://www.nytimes.com/2025/05/14/world/trump-administration-deportees.html).

1 countries to say, ‘We want to send you some of the most despicable human beings to your
2 countries.’”⁹

3
4 72. Within a week of Trump’s inauguration, the Washington Post reported that ICE officials
5 had been directed to increase arrests to meet daily quotas.¹⁰ Each field office was instructed to
6 make 75 arrests per day, with managers “held accountable” for failing to meet the targets. *Id.*
7 Nationally, this would increase daily ICE arrests from a few hundred per day to at least 1,200 to
8 1,500. *See id.* By early February, NBC News reported that Trump was “angry” that deportation
9 numbers were not higher, which placed “[a]gents at [ICE] [] under increasing pressure to boost
10 the number of arrests and deportations . . .”¹¹ NBC news further reported that in May, White
11 House Deputy Chief of Staff Stephen Miller threatened to fire senior ICE officials if they did
12 not begin detaining 3,000 immigrants per day.¹² Also in May, the DHS issued a press release
13 marking Respondent Noem’s first 100 days in office which announced that “Secretary Noem is
14 fulfilling President Trump’s promise to carry out mass deportations—starting with the worst of
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20 ⁹ Gregory Svirnovskiy, *White House looking for other countries to accept deportees*, Politico
21 (Apr. 30, 2025), [https://www.politico.com/news/2025/04/30/white-house-looking-other-](https://www.politico.com/news/2025/04/30/white-house-looking-other-countries-accept-deportees-00319541)
22 [countries-accept-deportees-00319541](https://www.politico.com/news/2025/04/30/white-house-looking-other-countries-accept-deportees-00319541).

23 ¹⁰ Nick Miroff and Maria Sacchetti, *Trump officials issue quotas to ICE officers to ramp up*
24 *arrests*, Washington Post, (Jan. 26, 2025),
25 <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

26 ¹¹ *See* Kristin Welker and Julia Ainsley, *Trump is 'angry' that deportation numbers are not*
27 *higher*, NBC News (Feb. 7, 20205, 1:28 PM), [https://www.nbcnews.com/politics/national-](https://www.nbcnews.com/politics/national-security/trump-angry-deportation-numbers-are-not-higher-rcna191273)
28 [security/trump-angry-deportation-numbers-are-not-higher-rcna191273](https://www.nbcnews.com/politics/national-security/trump-angry-deportation-numbers-are-not-higher-rcna191273).

¹² Julia Ainsley, et. al., *A sweeping new ICE operation shows how Trump’s focus on immigration*
is reshaping federal law enforcement, NBC News (Jun. 4, 2025),
[https://www.nbcnews.com/politics/justice-department/ice-operation-trump-focus-immigration-](https://www.nbcnews.com/politics/justice-department/ice-operation-trump-focus-immigration-reshape-federal-law-enforcement-rcna193494)
[reshape-federal-law-enforcement-rcna193494](https://www.nbcnews.com/politics/justice-department/ice-operation-trump-focus-immigration-reshape-federal-law-enforcement-rcna193494).

1 the worst,” including “criminal illegal aliens with convictions” and gang members.¹³ The DHS
2 boasted that the agency “has arrested over 168,000 illegal aliens in 2025” and “[d]eportations
3 have already exceeded 152,000—this is just the beginning.” *Id.*
4

5 73. As part of its efforts to ramp up arrests and deportations, on or about February 18, 2025,
6 DHS issued a national directive for ICE officers to “carefully review for removal all cases” of
7 all individuals—like Mr. Enamorado—who are not detained but who are periodically reporting
8 to ICE. The directive expressly instructs officers to review the cases of noncitizens—like Mr.
9 Enamorado—who have been granted protection under the CAT “to determine the viability of
10 removal to a third country and accordingly whether the [noncitizen] should be re-detained.”
11 Reuters published a copy of the February 18, 2025 directive on March 6, 2025.¹⁴
12

13 74. Meanwhile, the federal government has begun to remove noncitizens from the United
14 States to third countries without due process.
15

16 75. On March 15, 2025, The Trump administration invoked the Alien Enemies Act of 1798
17 (“AEA”) to send hundreds of Venezuelans, whom the government claimed were members of
18 the Tren de Aragua gang, from the United States directly to El Salvador’s mega prison, the
19 Center for Terrorism Confinement (“CECOT”), without providing the individuals any process
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24 ¹³ Press Release, *100 Days of Secretary Noem: Making America Safe Again*, U.S. Department of
25 Homeland Security (May 5, 2025), [https://www.dhs.gov/news/2025/05/05/100-days-secretary-](https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-safe-again)
26 [noem-making-america-safe-again](https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-safe-again).

27 ¹⁴ Ted Hesson and Kristina Cooke, *Trump Weighs Revoking Legal Status of Ukrainians as US*
28 *Steps Up Deportations*, Reuters (Mar. 6, 2025), [https://www.reuters.com/world/us/trump-plans-](https://www.reuters.com/world/us/trump-plans-revoke-legal-status-ukrainians-who-fled-us-sources-say-2025-03-06/)
revoke-legal-status-ukrainians-who-fled-us-sources-say-2025-03-06/. The article links to the
directive. (last visited Jun. 19, 2025).

1 by which they could challenge their expulsion and transfer to El Salvador.¹⁵ Respondents
 2 proceeded with the deportations despite an order from District Judge Boasberg—issued before
 3 the planes had landed in El Salvador—to return the planes to El Salvador. *See J.G.G. v. Trump*,
 4 No. 1:25-cv-00766-JEB, -- F.Supp.3d --, 2025 WL 1119481, at *1 (D.D.C. Apr. 16, 2025),
 5 *appeal filed, J.G.G. v. Trump* (D.C. Cir.). Judge Boasberg found probable cause existed for
 6 finding Trump administration officials in criminal contempt because “the Government’s actions
 7 on [March 15, 2025] demonstrate a willful disregard for [the court’s] Order....” *See id.* After the
 8 Supreme Court ruled that individuals subject to detention and removal under the Alien Enemies
 9 Act were entitled to due process and judicial review, *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006
 10 (2025), Trump stated: “I hope we get cooperation from the courts, because we have thousands
 11 of people that are ready to go out and you can’t have a trial for all of these people.”¹⁶ He issued
 12 a social media post stating, “[w]e cannot give everyone a trial, because to do so would take,
 13 without exaggeration, 200 years.” *Id.*

17 76. The federal government has also removed noncitizens from the United States who have
 18 been granted fear-based protection.

19 77. On March 15, 2025, the United States removed Salvadoran national Kilmar Armando
 20 Abrego Garcia to CECOT in El Salvador, even though an IJ had granted Mr. Abrego Garcia

24 ¹⁵ Myah Ward, *Behind Trump’s push to erode immigrant due process rights*, Politico (Apr. 28,
 25 2025), <https://www.politico.com/news/2025/04/28/trump-immigration-100days-due-process-00307435>.

26 ¹⁶ Luke Broadwater, *Trump Says Undocumented Immigrants Shouldn’t Get Trials Before*
 27 *Deportation*, New York Times, (Apr. 22, 2025), <https://www.nytimes.com/2025/04/22/us/politics/trump-undocumented-immigrants-trials-deportation.html>.

1 withholding of removal, which forbid his removal to El Salvador. *See Noem v. Abrego Garcia*,
 2 145 S.Ct. 1017 (2025) (per curiam). In response to a lawsuit challenging the removal as
 3 unlawful, the federal government argued that, notwithstanding the IJ's order granting
 4 withholding of removal as to El Salvador, 8 U.S.C. § 1252(g) barred a legal challenge to the
 5 removal because, according to the government, they had made an unreviewable "discretionary
 6 decision[]" to execute Abrego Garcia's removal order to El Salvador. *Abrego Garcia v. Noem*,
 7 Case No. 8:25-cv-00951-PX (D. Md), Dkt. No. 165 (Defendant's Motion to Dismiss, filed May
 8 27, 2025).¹⁷

11 78. In February 2025, an IJ granted withholding of removal to O.C.G., a noncitizen from
 12 Guatemala. The same day, the DHS deported O.C.G. to Mexico, a country where he had
 13 previously been held for ransom, without any advance notice and without providing him with
 14 opportunity to seek fear-based relief from Mexico. *See DVD v. U.S. Department of Homeland*
 15 *Security*, Case No. 1:25-CV-10676-BEM (D. Mass), Dkt. Nos. 1, 132.¹⁸

17 ***DVD v. DHS Class Action Lawsuit, March 30, 2025 DHS Memo, and Nationwide***
 18 ***Preliminary Injunction***

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 22 ¹⁷ The United States government returned Mr. Abrego Garcia to the United States and is holding
 23 him in criminal custody. *See Ximena Bustillo, Kilmar Abrego Garcia, wrongly deported to El*
 24 *Salvador, is back in the U.S. to face smuggling charges*, NPR (June 6, 2025),
<https://www.npr.org/2025/06/06/nx-s1-5425509/kilmar-abrego-garcia-el-salvador-deport-cecot-maryland-ice>.

25 ¹⁸ He was returned to the United States in early June, after District Judge Brian Murphy ordered
 26 the government to facilitate his return. *See Nate Raymond, Guatemalan deportee arrives in US*
 27 *after judge orders Trump to facilitate return*, Reuters (Jun. 4, 2025),
<https://www.reuters.com/world/us/guatemalan-deportee-arrives-us-after-judge-orders-trump-facilitate-return-2025-06-04/>.

1 79. On March 23, 2025, noncitizens D.V.D., M.M., E.F.D., and O.C.G., on behalf of
2 themselves and a proposed nationwide class of similarly situated individuals, filed a class action
3 complaint in the District of Massachusetts challenging the DHS's policy or practice of deporting
4 individuals to a third country (i.e., a country never designated for removal) without first
5 providing them with notice or opportunity to contest removal based on their fear of persecution
6 and torture in that third country. *DVD v. U.S. Department of Homeland Security*, Case No. 1:25-
7 CV-10676-BEM (D. Mass) (Mar. 23, 2025).
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10 80. On March 30, 2025, two days after the District Court issued a temporary restraining
11 order in *DVD*, the DHS issued a memorandum entitled, "Guidance Regarding Third Country
12 Removals." Moreno Dec., Exh. Z; *see also DVD v. DHS*, Case No. 1:25-CV-10676-BEM, Dkt.
13 43-1. The memo "clarifies DHS policy regarding the removal of aliens with final orders of
14 removal . . . to countries other than those designated for removal in those removal orders." *Id.* It
15 provides that DHS may remove noncitizens to a country "that had not previously been
16 designated as the country of removal," without notice to the noncitizen, and without an
17 opportunity for the individual to apply for withholding or CAT protection as to the third
18 country, so long as DHS has determined that the country "has provided diplomatic assurances
19 that aliens removed from the United States will not be persecuted or tortured" and "the
20 Department of State believes those assurances to be credible." *Id.* The memo does not require
21 any individualized assurances against mistreatment, as the statute and regulations require. *Id.*;
22 *see* FARRA 2681–822; 8 C.F.R. 208.17(b)(2); 1208.17(b)(2); *see also Jama*, 543 U.S. at 348.
23 Further, blanket assurances do not protect against torture by non-state actors, *see* 8 C.F.R.
24 208.17(a)(7), nor chain refoulement, whereby the third country proceeds to return an individual
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1 back to the noncitizen's country of origin. The memo provides for no avenue for the noncitizen
2 to seek review of the assurances, which violates due process. Moreno Dec., Exh. Z (March 30,
3 2025 DHS Memorandum). The memo does not require DHS to make the requisite showing
4 under § 1231(b)(2)(E)(vii) that a third country will accept the noncitizen. Further, even where
5 diplomatic assurances are not at issue, the memo does not ensure that a noncitizen will be able
6 to present a CAT claim to an Immigration Judge. *See id.* It also directs a reopening scheme that
7 purports to limit the IJ's ability to designate the country of removal and the noncitizen's ability
8 to contest the designation. *See id.*
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11 81. On April 18, 2025, Judge Brian Murphy issued an order certifying the following
12 nationwide class pursuant to Fed. R. Civ. P. 23(b)(2):
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14 All individuals who have a final removal order issued in proceedings under
15 Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only
16 proceedings) whom DHS has deported or will deport on or after February 18, 2025,
17 to a country (a) not 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.

18 *DVD v. DHS*, -- F. Supp. 3d --, 2025 WL 1142968, at *14-*19 (D. Mass. Apr. 18, 2025),
19 *opinion clarified on other grounds*, 2025 WL 1323697 (D. Mass. May 7, 2025), and 2025 WL
20 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. DVD v. DHS*, 2025 WL
21 1495517 (D. Mass. May 26, 2025); *appeal pending sub nom DVD v DHS* (1st Cir. Case No. 25-
22 1393); *order stayed on other grounds by DHS v. DVD*, Case No. 24A1153, 2025 WL 1732103
23 (June 23, 2025) (staying the preliminary injunction which was contained in the same order as
24 the class certification).
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1 82. In the present case, Mr. Enamorado is a *DVD* class member because he has a final
2 removal order to Honduras but was granted withholding of removal to that country. Moreno
3 Dec., Ex. K, Ex. H. No other country besides Honduras has been identified as a country of
4 removal or alternate country of removal. *Id.*; Moreno Dec., Ex. F, Ex. G. Yet he faces removal
5 to a third country. *See* Moreno Dec.

7 83. Also on April 18, 2025, Judge Murphy granted *DVD*'s motion for a preliminary
8 injunction in part, and granted class members certain interim relief. *See DVD*, 2025 WL
9 1142968, at *24. The Court ordered that, prior to removing any *DVD* class members, including
10 Mr. Enamorado, to a third country, i.e., any country not explicitly provided for on the
11 noncitizen's order of removal, the government must: "(1) provide written notice to the
12 [noncitizen]—and the [noncitizen]'s immigration counsel, if any—of the third country to which
13 the noncitizen may be removed, in a language the [noncitizen] can understand; (2) provide
14 meaningful opportunity for the [noncitizen] to raise a fear of return for eligibility for CAT
15 protections; (3) move to reopen the proceedings if the [noncitizen] demonstrates "reasonable
16 fear"; and (4) if the [noncitizen] is not found to have demonstrated "reasonable fear," provide
17 meaningful opportunity, and a minimum of 15 days, for that [noncitizen] to seek to move to
18 reopen immigration proceedings to challenge the potential third-country removal." *Id.*

22 84. On June 23, 2025, the United States Supreme Court stayed Judge Murphy's preliminary
23 injunction pending disposition of the government's appeal in the United States Court of Appeals
24 for the First Circuit and disposition of a petition for a writ of certiorari, if such writ is timely
25 sought. *Department of Homeland Security v. DVD*, ---S.Ct.---, 2025 WL 1732103 (June 23,
26 2025).

85. On or about May 20, 2025, prior to the Supreme Court’s stay of the *DVD* preliminary injunction, the federal government “rac[ed] to get six [*DVD*] class members onto a plane to unstable South Sudan, clearly in breach of the law and [Judge Murphy’s preliminary injunction].” *DVD v. DHS*, 2025 WL 1495517, at *1 (D. Mass. May 26, 2025). After the deportation flights had departed the United States, but before they reached South Sudan, Judge Murphy found the government in violation of the preliminary injunction. *Id.* On May 21, 2025, South Sudan’s police spokesperson told the Associated Press that no deportees had arrived in South Sudan, and that if they do, they would be “redeployed to their correct country” if found not to be South Sudanese.¹⁹ The federal government has refused to return these individuals to the United States, and as of June 6, NPR reported that they were still being detained in shipping containers in Djibouti.²⁰ *See also DVD v. DHS*, 2025 WL 1495517.

DHS Continues to Detain Noncitizens at Regularly Scheduled Check-Ins and Between, and Mr. Enamorado Faces Re-Arrest at Any Time

86. Consistent with the February 18, 2025 ICE directive, ICE is detaining noncitizens who appear at their scheduled check-ins at ICE Field Offices throughout the country, without advance notice that they will be detained.

¹⁹ Lindsay Whitehurst, et. al., ‘Unquestionably in violation,’ Judge says US government didn’t follow court order on deportations,” Associated Press (May 21, 2025), <https://www.ap.org/news-highlights/spotlights/2025/unquestionably-in-violation-judge-says-us-government-didnt-follow-court-order-on-deportations/>.

²⁰ Ximena Bustillo and Bill Chappell, *Deportees are being held in a converted shipping container in Djibouti, ICE says*, NPR (Jun. 6, 2025), <https://www.npr.org/2025/06/06/g-s1-71039/migrants-djibouti-ice-shipping-container>.

1 87. For example, in February 2025, a Salvadoran national who had been granted
2 withholding of removal as to El Salvador was re-detained at a scheduled reporting appointment
3 with ICE. *See* Moreno Dec., Exh. C (Newman Dec.). ICE served him with a notice stating that
4 his release was revoked due to “change in circumstances in [his] case,” but it was not explained
5 what those changed circumstances were. *Id.* About two weeks after he was detained, he was
6 informed that he could seek a reasonable fear interview for “Costa Rica, Guatemala, Honduras,
7 Mexico, and Panama,” but ICE did not confirm those were the countries they were attempting
8 to remove him to, or if there were other countries they were considering. *Id.* On March 13,
9 2025, Mr. Newman’s office filed a motion to reopen his client’s immigration court proceedings,
10 which was granted, but there is currently litigation in immigration court over where those
11 proceedings should take place. *Id.* To date, Mr. Newman’s client remains detained and the DHS
12 has not provided any evidence that there is actually a country which will accept the individual.
13 *Id.*

17 88. On March 3, 2025, ICE detained another Salvadoran national who had been granted
18 withholding of removal at a check-in even though he had no new criminal history nor had he
19 violated the terms of his release. *See* Moreno Dec., Exh. D (Jones Dec.). Four days later, ICE
20 informed Ms. Jones that her client would be deported to Mexico without providing him an
21 opportunity to seek protection from that country. *Id.* On March 8, 2025, ICE attempted to place
22 Ms. Jones’ client on a bus headed for Mexico, but due to his stern protestations, they did not
23 remove him that day. *Id.* On March 10, 2025, Ms. Jones filed a motion to reopen with an IJ,
24 which was denied. *Id.* Ms. Jones filed an appeal to the BIA, which granted a stay of removal,
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1 while the appeal remains pending. *Id.* On June 2, 2025, Ms. Jones requested that ICE release her
 2 client. ICE denied that request the following day and her client remains detained to this day. *Id.*

3 89. Similarly, Mr. Sandoval-Moshenberg, an attorney in Fairfax, Virginia, has filed or is in
 4 the process of filing ten different habeas petitions for noncitizen clients who were granted
 5 withholding or deferral of removal and who were subsequently arrested by ICE this year, either
 6 between or at a regularly scheduled check-ins. *See* Moreno Dec., Exh. E (Sandoval Dec.). In
 7 none of those ten cases did ICE serve Mr. Sandoval-Moshenberg's clients with notices of third
 8 country removal. *Id.* Of those ten individuals, eight remain in detention, and two have been
 9 ordered released by District Court Judges. *Id.* On top of those ten individuals, Mr. Sandoval-
 10 Moshenberg has three clients of his own who were detained in Louisiana under similar
 11 circumstances, and he has done consultations with ten other individuals who have experienced
 12 nearly identical re-detentions. *Id.* On top of that, he has consulted with at least six or seven
 13 attorneys with clients in similar circumstances. *Id.*²¹

14 90. In the first week of June 2025, news outlets across the country reported that ICE had
 15 arrested "hundreds" of noncitizens at scheduled check-ins.²² On one day that week, the San
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 22 ²¹ *See also, e.g.,* Dan Gooding, *ICE Detains 18 People Showing Up for Scheduled Immigration*
 23 *Appointments*, Newsweek (Mar. 21, 2025), <https://www.newsweek.com/cubans-arrested-ice-immigration-appointments-2048860>.

24 ²² *E.g.,* Julia Ainsley, Laura Strickler and Didi Martinez, *ICE arrests record number of*
 25 *immigrants in single day, including hundreds at scheduled appointments*, NBC News (June 4,
 26 2025), <https://www.nbcnews.com/politics/national-security/ice-arrests-record-number-immigrants-single-day-rcna210817>. *See also, e.g.,* Nidia Cavazos, *Immigrants at ICE check-ins*
 27 *detained, held in basement of federal building in Los Angeles, some overnight*, CBS News (June
 28 7, 2025), <https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/>; Sarah Whites-Koditschek, *ICE detains immigrants*
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1 Francisco Chronicle reported that ICE arrested fifteen noncitizens at their scheduled check-ins
 2 at the at the San Francisco ICE Field Office.²³ ICE stated that the individuals who had been
 3 arrested at check-ins had final orders of removal. *Id.*
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5 91. As Mr. Sandoval-Moshenberg notes, these detentions also occur in between check-ins.
 6 *See* Moreno Dec., Exh. E (Sandoval Dec.). For example, on March 12, 2025, Kilmar Abrego
 7 Garcia—who was granted withholding of removal by an immigration judge—was pulled over
 8 outside an Ikea in Baltimore, Maryland and detained by ICE officials.²⁴ He was subsequently
 9 erroneously deported to El Salvador, the country from which he received protection. *See id.*
 10 While detained in El Salvador, Mr. Abrego Garcia “was beaten, deprived of sleep, and
 11 psychologically tortured.”²⁵ In Oklahoma, ICE broke the window of Noe Chavez’s car and
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 17 during scheduled meetings in Birmingham: ‘False hope,’ AL.com (June 5, 2025),
 18 [https://www.al.com/news/2025/06/ice-detains-immigrants-during-scheduled-meetings-in-](https://www.al.com/news/2025/06/ice-detains-immigrants-during-scheduled-meetings-in-birmingham.html)
 19 [birmingham.html](https://www.al.com/news/2025/06/ice-detains-immigrants-during-scheduled-meetings-in-birmingham.html); Billal Rahman, *ICE Arrests Multiple People in Chicago After Tricking Them*
 20 *to Turn Up*, Newsweek (June 5, 2025), [https://www.newsweek.com/ice-arrests-multiple-people-](https://www.newsweek.com/ice-arrests-multiple-people-chicago-after-tricking-them-turn-2081246)
 21 [chicago-after-tricking-them-turn-2081246](https://www.newsweek.com/ice-arrests-multiple-people-chicago-after-tricking-them-turn-2081246); Armando Garcia, ‘Have mercy’: Families plead as
 22 *migrants arrested at routine DHS check-ins*, ABC News (June 6, 2025),
 23 [https://abcnews.go.com/US/mercy-families-plead-migrants-arrested-routine-dhs-](https://abcnews.go.com/US/mercy-families-plead-migrants-arrested-routine-dhs-check/story?id=122528525)
 24 [check/story?id=122528525](https://abcnews.go.com/US/mercy-families-plead-migrants-arrested-routine-dhs-check/story?id=122528525).

25 ²³ Jessica Flores, *ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates*
 26 *say*, San Francisco Chronicle (June 5, 2025), [https://www.sfchronicle.com/bayarea/article/ice-](https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php)
 27 [arrests-sf-immigration-trump-20362755.php](https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php).

28 ²⁴ Ben Finley, *Who is Kilmar Abrego Garcia, the man ICE mistakenly deported to an El*
Salvador prison?, AP News (Apr. 18, 2025), [https://apnews.com/article/who-is-abrego-garcia-](https://apnews.com/article/who-is-abrego-garcia-elb2af6528f915a1f0ec60f9a1c73cdd)
[elb2af6528f915a1f0ec60f9a1c73cdd](https://apnews.com/article/who-is-abrego-garcia-elb2af6528f915a1f0ec60f9a1c73cdd).

²⁵ Alan Feuer, *Abrego Garcia Was Beaten and Tortured in El Salvador Prison, Lawyers Say*,
 New York Times (Jul. 2, 2025), [https://www.nytimes.com/2025/07/02/us/politics/kilmar-abrego-](https://www.nytimes.com/2025/07/02/us/politics/kilmar-abrego-garcia-el-salvador-trump-deportation.html)
[garcia-el-salvador-trump-deportation.html](https://www.nytimes.com/2025/07/02/us/politics/kilmar-abrego-garcia-el-salvador-trump-deportation.html).

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1 detained him on June 28, 2025.²⁶ In Denver, Colorado, a 67-year-old Cuban grandfather was
2 detained by ICE while walking his dog, and soon thereafter deported to Mexico.²⁷

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4 92. Mr. Enamorado is currently under a DHS order to appear in-person at the San Francisco
5 ICE Field Office on May 27, 2026. *See* Moreno Dec., Ex. Y (I-220B).

6 93. Based on the February 18, 2025 ICE directive, the March 30, 2025 DHS policy memo,
7 and extensive reports of the detention and removal of similarly-situated noncitizens, Mr.
8 Enamorado and his family are back to living in near-paralyzing fear that ICE will detain Mr.
9 Enamorado at any time and remove him to El Salvador or a different third country. *See* Moreno
10 Dec., Exh. A-B. He is terrified of being deported directly from the United States to a Salvadoran
11 prison. He is likewise terrified that the United States will send him to a third country where he
12 would be at direct risk of torture. *Id.* Mr. Enamorado is further afraid that the United States will
13 send him to a third country that would then transfer him to Honduras, where an IJ has already
14 determined he is likely to be persecuted. *See id.*

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17 94. Mr. Enamorado's fear that he could be subjected to chain refoulement is objectively
18 reasonable as the New York Times recently reported that U.S. State Department employees
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24 ²⁶ Dylan Brown, *ICE breaks into OK man's car to send him to a country he hasn't seen in*
25 *decades*, Oklahoma's News 4 (Jul. 2, 2025), [https://kfor.com/news/local/ice-breaks-into-ok-](https://kfor.com/news/local/ice-breaks-into-ok-mans-car-to-send-him-to-a-country-he-hasnt-seen-in-decades/)
26 [mans-car-to-send-him-to-a-country-he-hasnt-seen-in-decades/](https://kfor.com/news/local/ice-breaks-into-ok-mans-car-to-send-him-to-a-country-he-hasnt-seen-in-decades/).

27 ²⁷ Gabriela Vidal, *Colorado grandfather detained by ICE while walking his dog; ICE points to*
28 *criminal record*, CBS News (Jul. 1, 2025), [https://www.cbsnews.com/colorado/news/colorado-](https://www.cbsnews.com/colorado/news/colorado-grandfather-detained-ice-walking-dog/)
[grandfather-detained-ice-walking-dog/](https://www.cbsnews.com/colorado/news/colorado-grandfather-detained-ice-walking-dog/).

were instructed to stop noting in annual human rights reports whether a nation had violated its obligations not to send anyone “to a country where they would face torture or persecution.”²⁸

MR. ENAMORADO MAY NOT BE REMOVED TO A COUNTRY OTHER THAN HONDURAS WITHOUT ADEQUATE NOTICE AND AN OPPORTUNITY TO APPLY FOR FEAR-BASED RELIEF

95. The DHS may not remove Mr. Enamorado to Honduras, the country to which he was ordered removed, because, as an IJ found, he is likely to suffer persecution there.

96. In order to remove Mr. Enamorado to a country other than Honduras, Respondents-Defendants must designate another country of removal. *See* 8 U.S.C. § 1231(b); *Himri v. Ashcroft*, 378 F.3d 932, 939 (9th Cir. 2004). To comport with the requirements of due process, Respondents-Defendants must provide Mr. Enamorado with meaningful notice of the identity of the third country. *See Andriasian*, 180 F.3d at 1041.

97. In Mr. Enamorado’s case, no countries other than Honduras meet the definitions for alternative countries of removal set forth in 8 U.S.C. §§ 1231(b)(2)(A), 1231(b)(2)(D), 1231(b)(2)(E)(i)-(vi). Therefore, in order for the DHS to remove Mr. Enamorado to a country other than Honduras, “at the time the government proposes” a third country for removal, it must prove, with evidence, that the country “will accept” him into that country. *See Himri*, 378 F.3d at 939; 8 U.S.C. § 1231(b)(2)(E)(vii). This must happen in reopened removal proceedings so that the IJ can designate the country of removal. *See Himri*, 378 F.3d at 939. In Mr. Enamorado’s case, reopening his withholding-only proceedings will not suffice as the

²⁸ Carol Rosenberg, *Trump’s Ambition Collides With Law on Sending Migrants to Dangerous Countries*, New York Times (Jun. 6, 2025), <https://www.nytimes.com/2025/06/06/us/politics/trump-deportations-migrants.html>.
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1 Immigration Judge has no authority in withholding-only proceedings to adjudicate anything
2 besides his claim of fear as to Honduras—which was already granted. 8 C.F.R.
3 § 1208.31(g)(2)(i). Mr. Enamorado’s withholding only proceedings are the product of a
4 regulation that is tied to his reinstated removal order and only allows for Mr. Enamorado to
5 express a fear of returning to the country of removal.” 8 CFR § 208.1(a). In order to comply
6 with due process and ensure that DHS provides evidence that a country “will accept” him, Mr.
7 Enamorado’s removal proceedings must be reopened.
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10 98. After the DHS has notified Mr. Enamorado of the third country and demonstrated that
11 the country “will accept” him, he must be provided the opportunity to present a claim for
12 withholding of removal or CAT protection as to that country. *See Jama*, 543 U.S. at 348
13 (explaining that for noncitizens who face mistreatment in a country designated under
14 § 1231(b)(2), they have the remedy of an “individualized determination[]” under CAT).
15 Because withholding of removal under 8 U.S.C. § 1231(b)(3) and CAT are country-specific
16 forms of relief, Mr. Enamorado can only apply for them to a designated country. *See* 8 C.F.R.
17 § 1208.16(c)(3) (defining CAT relief in relation to “the proposed country of removal”); *She*,
18 629 F.3d at 965 (explaining that a noncitizen “is not entitled to adjudication of an application
19 for withholding of removal to a country that nobody is trying to send them to”); *see also DVD*,
20 2025 WL 1732103, at *7 (“Without an applicable order of removal, individuals have no way to
21 raise their claims under the Convention.”) (Sotomayor, J., dissenting from order granting a stay
22 of the preliminary injunction).
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26 99. . In Mr. Enamorado’s case, this means that his removal proceedings must be reopened so
27 that he may present his section 1231(b)(3) and CAT case to the IJ, and so he may seek

1 administrative and judicial review. *See* 8 U.S.C. §§ 1229a, 1252(a); 8 C.F.R. §§ 1003.6(a),
2 1240.15. As Justice Sotomayor explained last week, the Government’s view that “once a
3 noncitizen has been found removable, [h]e can effectively be removed anywhere at any time
4 would render meaningless the countless statutory and regulatory provisions providing for notice
5 and a hearing. *DVD*, 2025 WL 1732103, at *8 (collecting and citing relevant statutory and
6 regulatory provisions) (Sotomayor, J., dissenting). This is likewise required as a matter of due
7 process. *See DVD*, 2025 WL 1732103, at *9 (“Due process requires reasonable notice and an
8 opportunity to be heard.”) (“Plaintiffs merely seek access to notice and process, so that, in the
9 event the Executive makes a determination in their case, they learn about it in time to seek an
10 immigration judge’s review. The Fifth Amendment *unambiguously guarantees that right.*”)
11 (Sotomayor, J., dissenting); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019)
12 (finding that removal proceedings “shall be reopened and a hearing shall be held before the
13 immigration judge so that petitioner may apply for relief from removal” as to a country that had
14 not been designated for removal in the noncitizen’s prior proceedings); *Sadychov v. Holder*, 565
15 F. App’x 648, 651 (9th Cir. 2014) (holding that should a new country of removal be designated,
16 “the agency must provide [the noncitizen] with notice and an opportunity to reopen his case for
17 full adjudication of his claim of withholding of removal from” the additional country).

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22 100. In *Ortega v. Kaiser*, a recent decision out of this district, Judge Tigar recently held that
23 there were serious questions as to this claim. 2025 WL 1771438, at *3 (N.D. Cal. June 26,
24 2025). On substantially similar facts, Judge Tigar concluded that “there are no countries to
25 which [the petitioner] currently could be removed without first being afforded notice and
26 opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due
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1 Process Clause requires.” *Id.* As such, Judge Tigar concluded there are serious questions as to
 2 the merits of petitioner’s claim regarding removal.” *Id.*

3 **MR. ENAMORADO’S REMOVAL IS NOT REASONABLY FORESEEABLE NOR IS**
 4 **HE A FLIGHT RISK OR A DANGER TO THE COMMUNITY, AND THUS, BOTH**
 5 **THE INA AND THE CONSTITUTION PROHIBIT HIS RE-DETENTION**

6 101. The Constitution establishes due process rights for “all ‘persons’ within the United
 7 States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
 8 permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533
 9 U.S. at 693). “Freedom from imprisonment—from government custody, detention, or other
 10 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
 11 protects.” *Zadvydas*, 533 U.S. at 690. In “our society, liberty is the norm,” and detention is the
 12 “carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

13 102. For individuals like Mr. Enamorado, who were ordered removed years ago, any current
 14 detention would purportedly be pursuant to 8 U.S.C. § 1231(a)(6), which authorizes detention
 15 for individuals beyond the ninety-day removal period in 8 U.S.C. § 1231(a)(2). But 8 U.S.C.
 16 § 1231(a)(6), only authorizes detention for “a period reasonably necessary to secure removal.”
 17 *Zadvydas*, 533 U.S. at 699. “Thus, if removal is not reasonably foreseeable . . . continued
 18 detention [is] unreasonable and no longer authorized by statute.” *Id.* at 699-700.

19 103. Here, given the due process clause, the INA, FARRA, and its implementing
 20 regulations, Mr. Enamorado’s removal is not reasonably foreseeable. *See* 8 U.S.C.
 21 § 1231(b)(2)(E); 8 U.S.C. § 1231(b)(3)(A); *Himri*, 378 F.3d at 939; *Aden v. Nielsen*, 409 F.
 22 Supp. 3d 998, 1004 (W.D. Wash. 2019); *see also Ortega*, 2025 WL 1771438, at *4 (finding
 23 serious questions as to the petitioner’s claims as to whether his detention was reasonable

foreseeable). Mr. Enamorado's withholding-only proceedings concluded in April 2022. To date, the government has not proven that a third country will accept Mr. Enamorado. Nor has the government provided Mr. Enamorado with an opportunity to present a claim for withholding of removal under section 1231(b)(3) and the Convention Against Torture as to that country, a process which cannot begin until an additional removal country is properly designated. *See id.* These multi-step processes—which includes administrative and judicial appellate review—are expected to take, at a minimum, a year to complete, and could take several years. *See Moreno Dec.*; *see also* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15. During the past several months, in instances where the federal government has re-detained individuals with withholding or CAT protection—purportedly to remove them to a third country—the government has not made a showing that those individuals can be removed to a third country. *See, e.g., Moreno Dec., Exhs. C-E (attorney declarations); Tadros v. Noems*, Case No. 25CV4108 (EP), 2025 WL 1678501 (D.N.J., June 13, 2025). They have languished in detention in the meantime. *See id.*

104. Moreover, because immigration detention is civil detention, it must “bear[] [a] reasonable relation to the purpose for which the individual was] committed,” *Zadvydas*, 533 U.S. at 690, and not be excessive in relation to that purpose. *Salerno*, 481 U.S. at 747. The Supreme Court has articulated that there are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See id.*²⁹ As such, Mr.

²⁹ Petitioner also acknowledges that the government may detain noncitizens for the brief period necessary to lawfully execute a removal order.

1 Enamorado's detention would need to serve those purposes and not be excessive in relation to
2 those purposes. Mr. Enamorado's conduct nearly six years since his release proves that his
3 detention would be without purpose. *See Ortega*, 2025 WL 1771438, at * 5 (enjoining Mr.
4 Ortega's arrest and finding that Mr. Ortega's conduct for the past seven years after release on
5 bond supports the conclusion that Mr. Ortega's detention is not reasonably necessary).

7 105. Here, an Immigration Judge already determined—six years ago—that the DHS failed
8 to prove by clear and convincing evidence that Mr. Enamorado is either a flight risk or a danger
9 to the community. *See Moreno Dec.*, Exh. J. Mr. Enamorado was released on July 8, 2019, after
10 paying a \$8,000 bond. *See id.* Mr. Enamorado's conduct since his release has only confirmed
11 the correctness of the IJ's decision to grant bond.

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

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

10
11 108. Mr. Enamorado is also not a danger to the community. Not only has he not been
12 arrested or had any problems with law enforcement during the past six years that he has been
13 released on bond but has not been arrested or had problems with law enforcement in the United
14 States or Honduras since 2005. Moreno Dec., Ex A (Enamorado Dec). As noted above, he has
15 been dedicated to supporting and providing for his LPR family. In addition, he has support from
16 several members of his community who attest to his character and dedication to his work and
17 family. *See, e.g.,* Moreno Dec., Ex Q (Tasha Scott Letter) (Mr. Enamorado “is a very reliable
18 handy man, landscaper, and has helped with many special projects at our home. Edwin is one of
19 the hardest workers I have ever known. I trust Edwin without hesitation to fully access our
20 house when we are not home.”); Ex R (Steven Poling Letter) (Edwin is a man of strong
21 character...I have been impressed by his intelligence and perseverance.... More significant that
22 his work experience, is Edwin’s commitment to his family and to living a productive and honest
23 life.”); Ex T (Peter Clauson Letter) (“I have had first hand experience with Edwin’s work ethic,
24
25
26
27

1 which is second to none. [He is] [h]ard working, dedicated, a family man, someone that should
 2 have the right to continue this path that he has worked so hard for.”).

3 109. Mr. Enamorado’s conduct the last six years proves that he is neither a flight risk nor a
 4 danger, and that any civil detention that occurs while Mr. Enamorado contests any removal to a
 5 third country would be illegitimate and unconstitutional, as it would bear no relationship to the
 6 two purposes immigration detention is meant to serve. *See Jones v. Blanas*, 393 F.3d 918, 933-
 7 34 (9th Cir. 2004), *cert. denied*, 546 U.S. 820 (2005) (“[A] civil detainee awaiting adjudication
 8 is entitled to conditions of confinement that are not punitive...[and] a restriction is ‘punitive’
 9 where it is intended to punish, or where it is ‘excessive in relation to [its non-punitive]
 10 purpose.’”); *see Ortega*, 2025 WL 1771438, at *3-4 (finding serious questions on Mr. Ortega’s
 11 claims that his detention would not serve a legitimate purpose); Dkt. 8 (temporarily enjoining
 12 the government from arresting Mr. Enamorado where there was nothing to “suggest that [the
 13 petitioner] is unlikely to appear for any scheduled immigration related proceedings, nor does
 14 [the petitioner] appear to pose any risk to the public”).

15
 16
 17
 18 **IF MR. ENAMORADO’S REMOVAL PROCEEDINGS ARE REOPENED, MR.**
 19 **ENAMORADO WOULD BE ENTITLED TO A HEARING IN FRONT OF A NEUTRAL**
 20 **ADJUDICATOR ON WHETHER THE CURRENT CONDITIONS OF HIS RELEASE**
 21 **SHOULD BE MODIFIED**

22 122. During the course of Mr. Enamorado’s withholding-only proceedings, when he was
 23 previously detained, an Immigration Judge already determined that he was neither a danger nor
 24 an unmitigable flight risk and ordered him released upon the posting of a bond. *See Moreno*
 25 *Dec.*, Exh. J. And, as detailed *supra*, his conduct over the past nearly six years has only
 26 reinforced the IJ’s conclusion.

123. As a result, were Mr. Enamorado's immigration court proceedings reopened, due process would require that he not be re-detained absent a hearing, with adequate notice, at which a neutral adjudicator could determine whether the government can prove by clear and convincing evidence that his current release conditions should be modified. *See Ortega*, 2025 WL 1771438, at * 3-4 (finding serious questions as to petitioner's claims regarding a hearing, and collecting cases concluding same); *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (enjoining the re-arrest of petitioner absent a hearing); *see also Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055-56, 1057-58 (N.D. Cal. 2021) (enjoining the government from re-arresting petitioner absent a hearing and holding that the government bears the burden by clear and convincing evidence); *Romero v. Kaiser*, 2022 WL 1443250, at *4 (N.D. Cal. May 6, 2022) (same); *Diaz v. Kaiser*, 2025 WL 1676854, at * 4 (N.D. Cal. June 14, 2025) (same).

CAUSES OF ACTION

COUNT ONE

Violation of Fifth Amendment Due Process Clause, the INA, FARRA, and Implementing Regulations and the Administrative Procedure Act

124. The allegations in the above-mentioned paragraphs are realleged and incorporated herein.

125. The INA, FARRA, and implementing regulations, and the Fifth Amendment of the United States Constitution mandate meaningful notice and opportunity to present a fear-based claim to an Immigration Judge before the DHS can deport an individual from the United States.

126. In order to effectuate the removal of Mr. Enamorado to a third county, Respondents-Defendants must reopen Mr. Enamorado's removal proceedings, provide evidence that a third

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country will accept Mr. Enamorado, and allow him to present a claim for withholding of removal under 8 U.S.C. § 1231(b)(3) and the Convention Against Torture as to that country. *See* 8 U.S.C. § 1231(b)(2)(E); 8 C.F.R. §§ 208.16(c)(4), 208.17(a); *Jama*, 543 U.S. at 348; *Himri*, 378 F.3d at 939; *Andriasian*, 180 F.3d at 1041; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Mr. Enamorado is also entitled to appeal any decision on removability and application for protection to the Board of Immigration Appeals and the Circuit Court of Appeals. *See* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15.

COUNT TWO

Violation of the Fifth Amendment Due Process Clause and Violation of the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6)

127. The allegations in the above-mentioned paragraphs are realleged and incorporated herein.

128. Respondents-Defendants' re-detention of Mr. Enamorado violates his rights guaranteed by the Due Process Clause of the Fifth Amendment of the U.S. Constitution and the INA.

129. "If removal is not reasonably foreseeable"—as is the case here—"detention is unreasonable and no longer authorized by statute." *See Zadvydas*, 533 U.S. at 682 (citing 8 U.S.C. § 1231(a)(6)). Here, given the procedural steps that would need to take place to effectuate a removal of Mr. Enamorado to a third country—*see* Count One, *supra*—Mr. Enamorado's removal is not reasonably foreseeable. Moreover, civil detention is warranted only to mitigate flight risk or prevent danger to the community. *See id.* As an Immigration Judge has already determined, and his conduct during the nearly six years since his release from custody overwhelmingly confirms, neither purpose would be met here if Mr. Enamorado were to be re-

1 detained. As such, Respondents-Defendants have no authority to detain Mr. Enamorado until his
2 removal proceedings are reopened.

3
4 130. In the event his removal proceedings are reopened, due process prohibits Respondents-
5 Defendants from re-detaining Mr. Enamorado absent a hearing at which a neutral adjudicator
6 could determine whether the government can prove by clear and convincing evidence that Mr.
7 Enamorado's current release conditions should be modified. *See Ortega*, 2025 WL 1771438, at
8 * 3-4; *see Ortega*, 415 F. Supp. 3d at 969; *Jorge M.F.*, 534 F. Supp. 3d at 1055-56, 1057-58
9 (N.D. Cal. 2021).

11 **PRAYER FOR RELIEF**

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

13 a. Exercise jurisdiction over this matter;

14
15 b. Enjoin Respondents-Defendants from designating a third country for Mr. Enamorado's
16 removal without reopening Mr. Enamorado's removal proceedings so that an Immigration
17 Judge can make the designation in the first instance and adjudicate Mr. Enamorado's
18 application for withholding of removal under Section 1231(b)(3) and the Convention Against
19 Torture as to that country, if any;

20
21 c. Declare that Respondents-Defendants may not designate a third country for Mr.
22 Enamorado's removal without reopening Mr. Enamorado's removal proceedings so that an
23 Immigration Judge can make the designation in the first instance and adjudicate Mr.
24 Enamorado's application for withholding of removal under Section 1231(b)(3) and the
25 Convention Against Torture as to that country, if any;

1 d. Enjoin Respondents-Defendants from re-arresting Mr. Enamorado unless and until his
2 removal proceedings have been reopened. If and when his proceedings are reopened, enjoin
3 Respondents-Defendants from re-arresting Mr. Enamorado unless and until he has received a
4 hearing in front of a neutral adjudicator at which the government must prove by clear and
5 convincing evidence that Mr. Enamorado's current release conditions should be modified;
6

7 e. Declare that Respondents-Defendants may not lawfully re-arrest Mr. Enamorado unless
8 and until his removal proceedings have been reopened. If and when his proceedings are
9 reopened, declare that Respondents-Defendants may not lawfully re-arrest Mr. Enamorado
10 unless and until he has received a hearing in front of a neutral adjudicator as to whether the
11 government can prove by clear and convincing evidence that Mr. Enamorado's current release
12 conditions should be modified;
13

14 f. Award reasonable costs and attorney fees; and
15

16 g. Grant further relief as the Court deems just and proper.

17 Dated: July 3, 2025

Respectfully submitted,

18 s/Heliodoro Moreno, Jr.
19 Heliodoro Moreno, Jr.

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

23 s/Judah Lakin
24 Judah Lakin

25 s/Amalia Wille
26 Amalia Wille
LAKIN & WILLE LLP

27
28 *Amended Petition for Writ of Habeas Corpus
and Complaint*

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 3rd day of July 2025 in Martinez, California.

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