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

16 EDWIN YOBANI ENAMORADO,

17 Petitioner-Plaintiff,

18 v.

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

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

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

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

28 Respondents-Defendants.

Case No: 5:25-cv-4072-NW

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

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NOTICE OF MOTION

PLEASE TAKE NOTICE that, as soon as he may be heard, Petitioner-Plaintiff will and hereby does move, pursuant to Civil L.R. 7-1 and 65-1, for a temporary restraining order, directing that he not be detained pending further order of this Court. Petitioner-Plaintiff previously obtained a Temporary Restraining Order from this Court whose protections have been extended via a stipulated order on June 12, 2025. *See* Dkt. 14. The parties had stipulated to alter the briefing schedule on Petitioner-Plaintiff's Motion for a Temporary Restraining order previously ordered by the Court. *See id.* Petitioner Plaintiff's Reply was due by 5 pm on Thursday, July 3, 2025. On Monday June 23rd, the Supreme Court issued a ruling in *Department of Homeland Security v. DVD*, ---S.Ct.---, 2025 WL 1732103 (June 23, 2025), staying protections that had been afforded to Petitioner-Plaintiff. On Wednesday June 25, 2025, undersigned counsel reached out to opposing counsel to set up a meet and confer regarding how to proceed in light of the Supreme Court's order, given that Petitioner-Plaintiff's original Petition/Complaint had relied on the now-stayed protections provided by the district court's preliminary injunction in *DVD*. Over the course of the following week, the parties attempted to reach an agreement on a stipulated briefing schedule for an Amended Complaint and new Motion for a Temporary Restraining order while keeping the existing protections in place. To date, the parties have not been able to reach an agreement. As a result, in lieu of filing his Reply, Mr. Enamorado files an Amended Complaint and superseding Motion for a Temporary Restraining order and respectfully requests that the existing argument currently scheduled for July 16 at 9 am remain in place. Pursuant to Docket 14, this "Court's May 12, 2025 order remains in place until the earlier of the date of the Court's TRO hearing, at 5:00 pm, or further order of this Court."

1 This motion is supported by the following Memorandum of Points and Authorities, by his
2 Amended Petition for Writ of Habeas Corpus/Complaint for Injunctive and Declaratory Relief
3 and supporting exhibits, dated July 3, 2025.
4

5 Undersigned counsel hereby declares and certifies that on July 1, 2025, undersigned
6 counsel advised, via email, Assistant United States Attorney Christopher F. Jeu at the U.S.
7 Attorney's Office for the Northern District of California that Petitioner-Plaintiff would be filing
8 this motion for a temporary restraining order by 5 pm on July 3. As Mr. Jeu has entered in
9 appearance in this matter, he will receive all of the documents filed via ECF.
10

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13 Petitioner-Plaintiff Edwin Yobani Enamorado ("Mr. Enamorado") brings the
14 accompanying motion for a temporary restraining order ("TRO") to enjoin Respondents-
15 Defendants U.S. Immigration and Customs Enforcement ("ICE"), from re-detaining him while
16 he proceeds with his claims before this Court.
17

18 **II. STATEMENT OF FACTS AND CASE**

19 Mr. Enamorado is a forty-two-year-old husband, and the father of four children. Born in
20 Honduras, he first came to the United States in 1999. He lives in Martinez with his wife of ten
21 years, Yesmin Herrera Cruz, and their four children, Anthony (21-years-old), RCH (19-years-
22 old), DEH (14-years old), and EEH (10- years-old). *See* Ex. A (Declaration of Edwin Yobani
23 Enamorado "Enamorado Dec."), Ex. B (Declaration of Yesmin Herrera Cruz "Herrera Dec.").
24

25 Mr. Enamorado has his own landscaping business, and his two eldest children work with
26 him along with two other employees. He is the family's sole breadwinner and able to support his
27 family financially through his business. His wife does not work as she cares for their four
28

1 children. Their two younger children receive special educational services and supports at school.
2
3 Ex. B (Herrera Dec.). At home, Mr. Enamorado enjoys spending time with his family, supports
4 his children's extracurricular activities, and attends church with his family. *Id.*, Ex. A
5 (Enamorado Dec.).

6 Mr. Enamorado has criminal convictions from when he was a young man. In 2003, he
7
8 had two convictions for possession of marijuana. *See* Ex A. In July 2005, he was convicted of
9 driving with a false identification. *Id.* This led to him being transferred to ICE custody and he
10 was deported to Honduras in August 2005. *Id.*

11 Mr. Enamorado has not had any criminal arrests or convictions for almost twenty years.
12 He is a man devoted to his family and community as the letters of support attached to this
13 Complaint/Petition attest. *See* Ex A, B, P-W.
14

15 On April 10, 2025, three years after being granted withholding of removal, and nearly six
16 years after being released on bond, ICE sent a notice to the obligor who posted the bond for Mr.
17 Enamorado's release. *See* Ex A, Ex. N (Notice to Obligor). The notice demanded that he present
18 himself for an "interview" at 8:00 am on May 14, 2025 at the San Francisco ICE Field Office,
19 located at 630 Sansome Street. *Id.* After filing a Habeas Petition and Complaint with this Court,
20 Respondents-Defendants rescheduled Mr. Enamorado's report date to May 28, 2025. *See* Ex. A,
21 (Enamorado Dec.). On that date, his bond was cancelled and he was placed on an order of
22 supervision ("OSUP"), with a scheduled report date of May 27, 2026. *See* Moreno Dec., Exh. Y
23 (I-290B).
24

25 Mr. Enamorado is particularly terrified of the government 
26 and criminal history: the Trump Administration has had a laser focus on removing anyone they
27
28

1 believe has ties to gangs as expeditiously as possible and without due process.¹ He is especially
2 fearful about being deported to a notoriously cruel prison in El Salvador given the U.S.
3 government's actions in flying alleged gang members or people with former ties to gangs there.
4
5 *See* Ex A (Enamorado Dec.).²

6 Mr. Enamorado first entered the United States in 1999 and was granted asylum by an
7 Immigration Judge on November 22, 1999. *See* Ex A. He had been forced to join the MS-13
8 gang in Honduras when he was about eleven years old and fled the gang when he was about
9 fifteen years old. *See* Ex. A. The government appealed the Immigration Judge's decision, and the
10 Board of Immigration Appeals (BIA) reversed the grant of asylum and ordered him removed to
11 Honduras on October 9, 2003. *See* Ex. F (BIA reversal of asylum grant). Mr. Enamorado was
12 deported to Honduras in August 2005. *See* Ex. A.
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17 *Id.* He met
18 his wife, Yesmin Herrera Cruz, in 2007 and they started living together, raising her two young
19 children as his own. *Id.*; Ex. B. They had two children together, DEH in 2010 and EEH in 2014,
20 and officially married on April 24, 2015. *Id.*
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25 ¹ *See* Myah Ward, *Behind Trump's push to erode due process rights*, Politico (April 28, 2025,
26 5:30 AM), <https://www.politico.com/news/2025/04/28/trump-immigration-100days-due-process-00307435>; *J.G.G. v. Trump*, No. 1:25-cv-00766-JEB, at *1 (D. D.C. April 16, 2025)
27 (memorandum opinion).

28 ² *See* Jillian Smith, *Trump administration has \$15M deal with El Salvador to accept deportees*,
MD senator says, Fox5 (April 18, 2025, 10:39 PM), <https://www.fox5dc.com/news/trump-administration-has-15m-deal-el-salvador-accept-deportees-md-senator-says>.

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8 While his wife and children were briefly detained, Mr. Enamorado's prior 2003 removal
9 order was reinstated and he was kept in immigration detention. *Id.* On January 15, 2019, an
10 asylum officer determined that he had a reasonable fear of persecution or torture if he returned to
11 Honduras and he was referred to an Immigration Judge to apply for withholding of removal. *Id.*;
12 Ex. H (Referral to IJ).

13
14 On July 3, 2019, after seven months in detention, an IJ granted Mr. Enamorado's release
15 from custody on an \$8,000 bond, finding that he was neither a danger to the community nor a
16 flight risk. *See* Ex. J (IJ Bond Order). On July 8, 2019, Mr. Enamorado was released from
17 custody and was able to reunite with his wife and children. *See* Ex. A (Enamorado Dec.).

18 Mr. Enamorado's family suffered greatly while he was detained from December 2018 to
19 July 2019. *See* Ex. A, Ex. B. The family had just fled Honduras and they did not have anything.
20 *Id.* Ms. Herrera found help from a church and went into a shelter for her and the younger
21 children. *Id.* Anthony, who was fifteen-years-old at the time was too old to be in the women's
22 shelter with them so he was separated. *Id.* A church helped them to get a trailer and she got food
23 from the shelter. *Id.* The children cried a lot, asking where their father was and when he was
24 coming out. *Id.* Ms. Herrera and the children missed Mr. Enamorado greatly and their
25 circumstances were extremely challenging without him. *Id.*
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1 On April 12, 2022, Immigration Judge Karen Schulz in San Francisco granted Mr.
2 Enamorado's application for withholding of removal to Honduras, and the government did not
3 appeal. *See* Ex. K (IJ order granting withholding of removal). On August 23, 2022, his wife and
4 children were granted asylum by an Immigration Judge in San Francisco, California. *See* Ex. B.
5 On September 17, 2024, his wife and children became lawful permanent residents of the United
6 States. *See* Ex. L (LPR Cards for wife and children).
7
8

9 It has been nearly six years since Mr. Enamorado was released from detention on bond.
10 Since his release, he has been living in Northern California with his wife and children and they
11 have established a stable life and routine. *See* Ex. A. Mr. Enamorado has his own landscaping
12 business where his oldest two sons work with him and his wife helps out when she can. *See* Ex.
13 A; Ex. B. The partner of one of his children's teacher, and family friend, notes how "[h]e is a
14 very reliable handy man, landscaper, and has helped with many special projects at our home.
15 Edwin is one of the hardest workers I have ever known. . . I trust Edwin without hesitation to
16 fully access our house when we are not home." Ex. P (Tasha Scott). His son's teacher, and
17 family friend explains how he has "first hand experience with Edwin's work ethic, which is
18 second to none." Ex. S (Pete Clauson).
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21 Mr. Enamorado has had no contact with the criminal justice system since being released
22 from ICE custody. And in fact, Mr. Enamorado has had no contact with the criminal justice
23 system, here or in Honduras, since 2005. One of his employers and friends confirms that "Edwin
24 is a man of strong character. In my interaction with him I have been impressed by his
25 intelligence and perseverance, his great capacity to communicate and problem solve, and his
26 desire to find meaning and joy in his life." Ex. Q (Steve Poling).
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28

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

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

19 Mr. Enamorado's detention would greatly impact their children who are still young. His
20 son DEH's high school counselor posits that "[a]s an educator and someone who works closely
21 with Mr. Enamorado's son DEH, I can attest firsthand to the vital role Mr. Enamorado plays in
22 his child's life, both emotionally and educationally. . . the looming threat of losing a parent to
23 deportation is having, and will continue to have, a profound negative impact on his well-being

1 and academic performance. . . Removing Mr. Enamorado from DEH's life would create
2 significant trauma, disrupt his emotional development, and compromise his educational future.”
3 Ex. T (Heather Rae Raser).
4

5 Since the stay of the *DVD* injunction, Mr. Enamorado now fears being re-detained at any
6 time. If he is re-detained, he fears that his family “would suffer terribly” and “[e]motionally, it
7 would be very difficult for us to be separated.” Ex A (Enamorado Dec.). His wife states, “Edwin
8 is the head of our household and he is fundamental to our lives. He is a hard worker and his
9 clients admire his work and highly recommend him. He is not a danger to society at all.” Ex A.
10

11 He also fears being re-detained due to the terrible experience he had the last time he was
12 detained. Ex A. Detention officials rarely answered detainee questions or provided them with
13 medical attention in a timely manner. *Id.* Even when detainees did receive medical attention,
14 medical staff did not provide sufficient pain medication which led to the needless suffering of
15 several detainees. *Id.* Food was also terrible and often inedible. *Id.* When detainees complained
16 they would be punished by being placed in solitary confinement. *Id.* Mr. Enamorado does not
17 want to go through that harrowing experience again. *Id.*
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20 As part of its efforts to ramp up arrests and deportations, on or about February 18, 2025,
21 ICE issued a national directive for its officers to “carefully review for removal all cases” of all
22 individuals—like Mr. Enamorado—who are not detained but who are periodically reporting to
23 ICE. The directive expressly instructs officers to review the cases of noncitizens—like Mr.
24 Enamorado—who have been granted withholding of removal or protection under CAT “to
25 determine the viability of removal to a third country and accordingly whether the [noncitizen]
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1 should be re-detained.” Reuters published a copy of the February 18, 2025 directive on March
2 6, 2025.³

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4 On March 30, 2025, the DHS issued a memorandum entitled, “Guidance Regarding
5 Third Country Removals.” Exh. Z; *DVD v. U.S. Department of Homeland Security*, Case No.
6 1:25-CV-10676-BEM, Dkt. 43-1. The memo provides that DHS may remove noncitizens to a
7 country “that had not previously been designated as the country of removal,” without notice to
8 the noncitizen, and without an opportunity for the individual to apply for withholding or CAT
9 protection as to the third country, so long as DHS has determined that the country “has provided
10 diplomatic assurances that aliens removed from the United States will not be persecuted or
11 tortured” and “the Department of State believes those assurances to be credible.” *Id.* The memo
12 does not require any individualized assurances against mistreatment, as the statute and
13 regulations require. *Id.*; see FARRA 2681–822; 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2); see
14 also *Jama v. ICE*, 543 U.S. 335, 348 (2005). Further, blanket assurances do not protect against
15 torture by non-state actors, see 8 C.F.R. § 208.17(a)(7), nor chain refoulement, whereby the
16 third country proceeds to return an individual back to the noncitizen’s country of origin. The
17 memo provides for no avenue for the noncitizen to seek review of the assurances, which
18 violates due process. Exh. Z. The memo does not require DHS to make the requisite showing
19 under § 1231(b)(2)(E)(vii) that a third country will accept the noncitizen. Further, even where
20 diplomatic assurances are not at issue, the memo does not ensure that a noncitizen will be able
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27 ³ Ted Hesson and Kristina Cooke, Trump Weighs Revoking Legal Status of Ukrainians as US
28 Steps Up Deportations, Reuters (Mar. 6, 2025). The article links to the directive:
https://fingfx.thomsonreuters.com/gfx/legaldocs/gkpljxxoqpb/ICE_email_Reuters.pdf (last
visited Jun. 19, 2025)

1 to present a withholding or CAT claim to an Immigration Judge. *See id.* It also directs a
 2 reopening scheme that purports to limit the IJ's ability to designate the country of removal and
 3 the noncitizen's ability to contest the designation. *See id.*⁴

4 Consistent with the February 18, 2025 ICE directive, ICE has begun detaining
 5 noncitizens who appear at their scheduled check-ins at ICE Field Offices throughout the
 6 country, without advance notice that they will be detained. Mr. Enamorado is aware of at least
 7 thirty individuals who have been re-detained in situations similar to his. *See* Moreno Dec., Exhs.
 8 C (Attorney Newman Declaration), D (Attorney Jones Declaration), E (Attorney Sandoval
 9 Declaration). Moreover, in the first week of June 2025, news outlets across the country reported
 10 that ICE had arrested "hundreds" of noncitizens at scheduled check-ins.⁵ On one day that week,
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14
 15 ⁴ As discussed in Mr. Enamorado's concurrently filed Amended Petition/Complaint, there is
 16 ongoing, class action litigation in the District of Massachusetts and the First Circuit Court of
 17 Appeals regarding the government's attempts to remove noncitizens to third countries. *See DVD*
 18 *v. U.S. Department of Homeland Security*, Case No. 1:25-CV-10676-BEM (D. Mass). On June
 19 23, 2025, the protections that had been afforded to individuals like Mr. Enamorado, through a
 20 class-wide preliminary injunction, were stayed pending the First Circuit appeal and any writ of
 21 certiorari that may be timely filed with the Supreme Court. *See Department of Homeland*
 22 *Security v. DVD*, ---S.Ct.---, 2025 WL 1732103 (June 23, 2025).

23 ⁵ *E.g.*, Julia Ainsley, Laura Strickler and Didi Martinez, "ICE arrests record number of
 24 immigrants in single day, including hundreds at scheduled appointments" (June 4, 2025),
 25 [https://www.nbcnews.com/politics/national-security/ice-arrests-record-number-immigrants-](https://www.nbcnews.com/politics/national-security/ice-arrests-record-number-immigrants-single-day-rcna210817)
 26 [single-day-rcna210817](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 detained,
 27 held in basement of federal building in Los Angeles, some overnight," *CBS News* (June 7, 2025),
 28 [https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-](https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/)
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[people-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 migrants arrested at routine DHS check-ins," *ABC News* (June 6, 2025),
[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)
[check/story?id=122528525](https://abcnews.go.com/US/mercy-families-plead-migrants-arrested-routine-dhs-check/story?id=122528525).

the San Francisco Chronicle reported that ICE arrested fifteen noncitizens at their scheduled check-ins at the at the San Francisco ICE Field Office.⁶ In a statement to the Chronicle, ICE stated that the individuals who had been arrested at check-ins had final orders of removal.⁷

As Mr. Sandoval-Moshenberg notes, these detentions also occur in between check-ins. *See Moreno Dec., Exh. E (Sandoval Dec.)*. For example, on March 12, 2025, Kilmar Abrego Garcia—who was granted withholding of removal by an immigration judge—was pulled over outside an Ikea in Baltimore, Maryland and detained by ICE officials.⁸ He was subsequently erroneously deported to El Salvador, the country from which he received protection. *See id.* While detained in El Salvador, Mr. Abrego Garcia “was beaten, deprived of sleep, and psychologically tortured.”⁹ In Oklahoma, ICE broke the window of Noe Chavez’s car and detained him on June 28, 2025.¹⁰ In Denver, Colorado, a 67-year-old Cuban grandfather was detained by ICE while walking his dog, and soon thereafter deported to Mexico.¹¹

⁶ Jessica Flores, *ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates say*, San Francisco Chronicle (June 5, 2025), <https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php>.

⁷ *Id.*

⁸ 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-elb2af6528f915a1f0ec60f9a1c73cdd>.

⁹ 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-garcia-el-salvador-trump-deportation.html>.

¹⁰ Dylan Brown, *ICE breaks into OK man’s car to send him to a country he hasn’t seen in decades*, Oklahoma’s News 4 (Jul. 2, 2025), <https://kfor.com/news/local/ice-breaks-into-ok-mans-car-to-send-him-to-a-country-he-hasnt-seen-in-decades/>.

¹¹ Gabriela Vidal, *Colorado grandfather detained by ICE while walking his dog; ICE points to criminal record*, CBS News (Jul. 1, 2025), <https://www.cbsnews.com/colorado/news/colorado-grandfather-detained-ice-walking-dog/>.

1 Mr. Enamorado is currently under a DHS order to appear in-person at the San Francisco
2 ICE Field Office on May 27, 2026. *See* Moreno Dec., Exh. Y (I-220B). Although ICE set out
3 Mr. Enamorado's reporting date for a year, it did so while this litigation was pending, under a
4 temporary restraining order from this Court, and prior to the DVD stay from the Supreme Court.
5 *See id.* Moreover, in its opposition to Petitioner's motion for a temporary restraining order,
6 Respondents also filed a declaration that made no assurances that ICE would not arrest Mr.
7 Enamorado prior to his check-in. *See* Dkt. 15.1, DO Auer Dec. Based on the February 18, 2025
8 ICE directive, the March 30, 2025 DHS policy memo, the stayed *DVD* injunction, the lack of
9 assurances from Respondents, and extensive reports of the detention and removal of similarly-
10 situated noncitizens, Mr. Enamorado and his wife are currently living in near-paralyzing fear
11 that ICE will detain Mr. Enamorado at any time and remove him to El Salvador or a third
12 country. *See* Moreno Dec., Ex A-B. He is terrified of being deported directly from the United
13 States to a Salvadoran prison. This fear is very reasonable since Mr. Abrego Garcia "was
14 beaten, deprived of sleep, and psychologically tortured" when he was illegally deported and
15 detained in El Salvador.¹² Mr. Enamorado is likewise terrified that the United States will send
16 him to a third country where he would be at direct risk of torture. *Id.* He is further afraid that the
17 United States will send him to a third country that would then transfer him to Honduras, where
18 an IJ has already determined he is likely to be tortured. *See id.* And, Mr. Enamorado's fear is
19 objectively reasonable as the *New York Times* recently reported that U.S. State Department
20 employees were instructed to stop noting in annual human rights reports whether a nation had
21

22 ¹² Alan Feuer, *Abrego Garcia Was Beaten and Tortured in El Salvador Prison, Lawyers Say*,
23 *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)
24 [garcia-el-salvador-trump-deportation.html](https://www.nytimes.com/2025/07/02/us/politics/kilmar-abrego-garcia-el-salvador-trump-deportation.html).
25

1 violated its obligations not to send anyone “to a country where they would face torture or
 2 persecution.”¹³
 3

4 **III. ARGUMENT**

5 The standard for issuing a TRO is the same as the standard for issuing a preliminary
 6 injunction. *See Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir.
 7 2001). To obtain a TRO, Mr. Enamorado must demonstrate that (1) he is likely to succeed on the
 8 merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the
 9 balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v.*
 10 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Am. Trucking Ass'ns v. City of Los*
 11 *Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Even if he does not show a likelihood of success
 12 on the merits, the Court may still grant a TRO if Mr. Enamorado raises “serious questions” as to
 13 the merits of his claims, the balance of hardships tips “sharply” in his favor, and the remaining
 14 equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir.
 15 2011).
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19 **A. MR. ENAMORADO IS LIKELY TO SUCCEED ON THE MERITS OF HIS** 20 **CLAIM THAT HE MAY NOT BE REMOVED TO A COUNTRY OTHER THAN** 21 **HONDURAS WITHOUT ADEQUATE NOTICE AND AN OPPORTUNITY TO** 22 **APPLY FOR FEAR-BASED RELIEF**

23 The DHS may not remove Mr. Enamorado to Honduras, the country to which he was
 24 ordered removed, because, as an IJ found, he is likely to suffer persecution there. In order to
 25 remove Mr. Enamorado to a country other than Honduras, Respondents-Defendants must
 26

27 ¹³ Carol Rosenberg, “Trump’s Ambition Collides With Law on Sending Migrants to Dangerous
 28 Countries,” *New York Times* (Jun. 6, 2025),
<https://www.nytimes.com/2025/06/06/us/politics/trump-deportations-migrants.html>.

1 designate another country of removal. *See* 8 U.S.C. § 1231(b); *Himri v. Ashcroft*, 378 F.3d 932,
2 939 (9th Cir. 2004). To comport with the requirements of due process, Respondents-Defendants
3 must provide Mr. Enamorado with meaningful notice of the identity of the third country. *See*
4 *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

5
6 In Mr. Enamorado's case, no countries other than Honduras meet the definitions for
7 alternative countries of removal set forth in 8 U.S.C. §§ 1231(b)(2)(A), 1231(b)(2)(D),
8 1231(b)(2)(E)(i)-(vi). Therefore, in order for the DHS to remove Mr. Enamorado to a country
9 other than Honduras, "at the time the government proposes" a third country for removal, it must
10 prove, with evidence, that the country "will accept" him into that country. *See Himri*, 378 F.3d
11 at 939; 8 U.S.C. § 1231(b)(2)(E)(vii). This must happen in reopened removal proceedings so
12 that the IJ can designate the country of removal. *See Himri*, 378 F.3d at 939. In Mr.
13 Enamorado's case, reopening his withholding-only proceedings will not suffice as the
14 Immigration Judge has no authority in withholding-only proceedings to adjudicate anything
15 besides his claim of fear as to Honduras—which was already granted. 8 C.F.R.
16 § 1208.31(g)(2)(i). Mr. Enamorado's withholding only proceedings are the product of a
17 regulation that is tied to his reinstated removal order and only allows for Mr. Enamorado to
18 express a fear of returning to the country of removal." 8 CFR § 208.1(a). In order to comply
19 with due process and ensure that DHS provides evidence that a country "will accept" him, Mr.
20 Enamorado's removal proceedings must be reopened.

21
22 After the DHS has notified Mr. Enamorado of the third country and demonstrated that
23 the country "will accept" him, he must be provided the opportunity to present a claim for
24 withholding of removal or CAT protection as to that country. *See Jama*, 543 U.S. at 348
25 (explaining that for noncitizens who face mistreatment in a country designated under

1 § 1231(b)(2), they have the remedy of an “individualized determination[]” under CAT).
2
3 Because withholding of removal under 8 U.S.C. § 1231(b)(3) and CAT are country-specific
4 forms of relief, Mr. Enamorado can only apply for them to a designated country. *See* 8 C.F.R.
5 § 1208.16(c)(3) (defining CAT relief in relation to “the proposed country of removal”); *She v.*
6 *Holder*, 629 F.3d 958, 965 (9th Cir. 2010) (explaining that a noncitizen “is not entitled to
7 adjudication of an application for withholding of removal to a country that nobody is trying to
8 send them to”); *see also DVD*, 2025 WL 1732103, at *7 (“Without an applicable order of
9 removal, individuals have no way to raise their claims under the Convention.”) (Sotomayor, J.,
10 dissenting from order granting a stay of the preliminary injunction).

11
12 In Mr. Enamorado’s case, this means that his removal proceedings must be reopened so
13 that he may present his section 1231(b)(3) and CAT case to the IJ, and so he may seek
14 administrative and judicial review. *See* 8 U.S.C. §§ 1229a, 1252(a); 8 C.F.R. §§ 1003.6(a),
15 1240.15. As Justice Sotomayor explained last week, the Government’s view that “once a
16 noncitizen has been found removable, []he can effectively be removed anywhere at any time
17 would render meaningless the countless statutory and regulatory provisions providing for notice
18 and a hearing. *DVD*, 2025 WL 1732103, at *8 (collecting and citing relevant statutory and
19 regulatory provisions) (Sotomayor, J., dissenting). This is likewise required as a matter of due
20 process. *See DVD*, 2025 WL 1732103, at *9 (“Due process requires reasonable notice and an
21 opportunity to be heard.”) (“Plaintiffs merely seek access to notice and process, so that, in the
22 event the Executive makes a determination in their case, they learn about it in time to seek an
23 immigration judge’s review. The Fifth Amendment *unambiguously guarantees that right.*”)
24 (Sotomayor, J., dissenting); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019)
25 (finding that removal proceedings “shall be reopened and a hearing shall be held before the
26 Motion for TRO and Points and
27 Authorities in Support of TRO
28

1 immigration judge so that petitioner may apply for relief from removal” as to a country that had
2 not been designated for removal in the noncitizen’s prior proceedings); *Sadychov v. Holder*, 565
3 F. App’x 648, 651 (9th Cir. 2014) (holding that should a new country of removal be designated,
4 “the agency must provide [the noncitizen] with notice and an opportunity to reopen his case for
5 full adjudication of his claim of withholding of removal from” the additional country).
6

7 In *Ortega v. Kaiser*, a recent decision out of this district, Judge Tigar recently held that
8 there were serious questions as to this claim. 2025 WL 1771438, at *3 (N.D. Cal. June 26,
9 2025). On substantially similar facts, Judge Tigar concluded that “there are no countries to
10 which [the petitioner] currently could be removed without first being afforded notice and
11 opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due
12 Process Clause requires.” *Id.* As such, Judge Tigar concluded there are serious questions as to
13 the merits of petitioner’s claim regarding removal.” *Id.*
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15

16 **B. MR. ENAMORADO IS LIKELY TO SUCCEED ON THE MERITS OF HIS**
17 **CLAIM THAT BOTH THE INA AND THE CONSTITUTION REQUIRE**
18 **THAT HE REMAIN OUT OF CUSTODY, BECAUSE HIS REMOVAL IS**
19 **NOT REASONABLY FORESEEABLE AND HE IS NEITHER A FLIGHT**
20 **RISK NOR A DANGER**

21 The Constitution establishes due process rights for “all ‘persons’ within the United
22 States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
23 permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v.*
24 *Davis*, 533 U.S. 678, 693 (2001)). “Freedom from imprisonment—from government custody,
25 detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due
26 Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. In “our society, liberty is the norm,” and
27 detention is the “carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755
28 (1987).

1 For individuals like Mr. Enamorado, who were ordered removed years ago, any current
2 detention would purportedly be pursuant to 8 U.S.C. § 1231(a)(6), which authorizes detention
3 for individuals beyond the ninety-day removal period in 8 U.S.C. § 1231(a)(2). But 8 U.S.C.
4 § 1231(a)(6), only authorizes detention for “a period reasonably necessary to secure removal.”
5 *Zadvydas*, 533 U.S. at 699. “Thus, if removal is not reasonably foreseeable . . . continued
6 detention [is] unreasonable and no longer authorized by statute.” *Id.* at 699-700.
7

8
9 Here, given the due process clause, the INA, FARRA, and its implementing regulations,
10 Mr. Enamorado’s removal is not reasonably foreseeable. *See* 8 U.S.C. § 1231(b)(2)(E); 8 U.S.C.
11 § 1231(b)(3)(A); *Himri*, 378 F.3d at 939; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D.
12 Wash. 2019); *see also Ortega*, 2025 WL 1771438, at *4 (finding serious questions as to the
13 petitioner’s claims as to whether his detention was reasonably foreseeable). Mr. Enamorado’s
14 withholding-only proceedings concluded in April 2022. To date, the government has not proven
15 that a third country will accept Mr. Enamorado. Nor has the government provided Mr.
16 Enamorado with an opportunity to present a claim for withholding for removal under section
17 1231(b)(3) and the Convention Against Torture as to that country, a process which cannot begin
18 until an additional removal country is properly designated. *See id.* These multi-step processes—
19 which includes administrative and judicial appellate review—are expected to take, at a
20 minimum, a year to complete, and could take several years. *See Moreno Dec.*; *see also* 8 U.S.C.
21 §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15. During the past several months, in
22 instances where the federal government has re-detained individuals with withholding or CAT
23 protection—purportedly to remove them to a third country—the government has not made a
24 showing that those individuals can be removed to a third country. *See, e.g., Moreno Dec., Exhs.*
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1 C-E (attorney declarations); *Tadros v. Noems*, Case No. 25CV4108 (EP), 2025 WL 1678501
2 (D.N.J., June 13, 2025). They have languished in detention in the meantime. *See id.*
3

4 Moreover, because immigration detention is civil detention, it must “bear[] [a]
5 reasonable relation to the purpose for which the individual was] committed,” *Zadvydas*, 533
6 U.S. at 690, and not be excessive in relation to that purpose. *Salerno*, 481 U.S. at 747. The
7 Supreme Court has articulated that there are only two legitimate purposes for immigration
8 detention: mitigating flight risk and preventing danger to the community. *See id.*¹⁴ As such, Mr.
9 Enamorado’s detention would need to serve those purposes and not be excessive in relation to
10 those purposes. Mr. Enamorado’s conduct nearly six years since his release proves that his
11 detention would be without purpose. *See Ortega*, 2025 WL 1771438, at * 5 (enjoining Mr.
12 Ortega’s arrest and finding that Mr. Ortega’s conduct for the past seven years after release on
13 bond supports the conclusion that Mr. Ortega’s detention is not reasonably necessary); *see also*
14 Dkt. 8 (finding serious questions going to the merits of Mr. Enamorado’s claims under the Due
15 Process Clause).
16
17

18 Here, an Immigration Judge already determined—six years ago—that the DHS failed to
19 prove by clear and convincing evidence that Mr. Enamorado is either a flight risk or a danger to
20 the community. *See Moreno Dec.*, Exh. J. Mr. Enamorado was released on July 8, 2019, after
21 paying a \$8,000 bond. *See id.* Mr. Enamorado’s conduct since his release has only confirmed
22 the correctness of the IJ’s decision to grant bond.
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28 ¹⁴ Petitioner-Plaintiff also acknowledges that the government may detain noncitizens for the brief
period necessary to lawfully execute a removal order.

1 After his release from custody, Mr. Enamorado dutifully checked in with ICE in
2 accordance with his supervised release until his Immigration Court hearing. Moreno Dec., Ex A
3 (Enamorado Dec.). He also attended all his hearings. *Id.* Then, on April 12, 2022, an
4 Immigration Judge granted Mr. Enamorado withholding of removal under 8 USC section
5 1231(b)(3). Moreno Dec., Ex A (Enamorado Dec.), Ex K (IJ Order granting withholding). The
6 DHS then waived its right to appeal that decision and made no attempt to deport Mr.
7 Enamorado to any other country. *See id.* It also removed his reporting requirement. Moreno
8 Dec., Ex A (Enamorado Dec.)

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

26 Mr. Enamorado is also not a danger to the community. Not only has he not been arrested
27 or had any problems with law enforcement during the past six years that he has been released on
28 bond but has not been arrested or had problems with law enforcement in the United States or

1 Honduras since 2005. Moreno Dec., Ex A (Enamorado Dec). As noted above, he has been
2 dedicated to supporting and providing for his LPR family. In addition, he has support from
3 several members of his community who attest to his character and dedication to his work and
4 family. *See, e.g.*, Moreno Dec., Ex Q (Tasha Scott Letter) (Mr. Enamorado “is a very reliable
5 handy man, landscaper, and has helped with many special projects at our home. Edwin is one of
6 the hardest workers I have ever known. I trust Edwin without hesitation to fully access our
7 house when we are not home.”); Ex R (Steven Poling Letter) (Edwin is a man of strong
8 character...I have been impressed by his intelligence and perseverance.... More significant that
9 his work experience, is Edwin’s commitment to his family and to living a productive and honest
10 life.”); Ex T (Peter Clauson Letter) (“I have had first hand experience with Edwin’s work ethic,
11 which is second to none. [He is] [h]ard working, dedicated, a family man, someone that should
12 have the right to continue this path that he has worked so hard for.”).

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16 Mr. Enamorado’s conduct the last six years proves that he is neither a flight risk nor a
17 danger, and that any civil detention that occurs while Mr. Enamorado contests any removal to a
18 third country would be illegitimate and unconstitutional, as it would bear no relationship to the
19 two purposes immigration detention is meant to serve. *See Jones v. Blanas*, 393 F.3d 918, 933-
20 34 (9th Cir. 2004), *cert. denied*, 546 U.S. 820 (2005) (“[A] civil detainee awaiting adjudication
21 is entitled to conditions of confinement that are not punitive...[and] a restriction is ‘punitive’
22 where it is intended to punish, or where it is ‘excessive in relation to [its non-punitive]
23 purpose.’”); *see Ortega*, 2025 WL 1771438, at * (finding serious questions on Mr. Ortega’s
24 claims that his detention would not serve a legitimate purpose); Dkt. 8 (temporarily enjoining
25 the government from arresting Mr. Enamorado where there was nothing to “suggest that [the
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petitioner] is unlikely to appear for any scheduled immigration related proceedings, nor does [the petitioner] appear to pose any risk to the public”).

C. MR. ENAMORADO WILL SUFFER IRREPERABLE HARM ABSENT INJUNCTIVE RELIEF.

Imminent re-detention will irreparably harm Mr. Enamorado. Given ICE’s February 18th directive, March 30th policy memo, the lack of any assurances against re-detention from Respondents-Defendants, the arrest and detention of at least thirty other individuals, and the stay of the *DVD* injunction, ICE is likely to re-detain Mr. Enamorado at any time and, thus, a TRO is necessary to prevent irreparable harm.

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

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

15 Third, "the deprivation of constitutional rights 'unquestionably constitutes irreparable
16 injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427
17 U.S. 347, 373 (1976)). As detailed above, Mr. Enamorado's re-arrest would violate his due
18 process rights under the Constitution. *See* Dkt. 8 (finding Mr. Enamorado would suffer
19 irreparable harm if he were detained right now).

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24 **D. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR**
25 **GRANTING A TRO.**

26 Where the government is the opposing party, balancing the harm and the public interest
27 merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Mr. Enamorado faces grave
28

1 hardships absent a TRO, and the public has strong interests in ensuring that the executive branch
2 follows the law, avoiding collateral hardship to Mr. Enamorado's family, and benefiting from
3 Mr. Enamorado's continued productive membership in his community—all of which
4 resoundingly outweigh any government interests. *See* Dkt. 8 (finding the balance of equities tips
5 in Mr. Enamorado's favor).
6

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

15 The public likewise has a strong interest in ensuring that Mr. Enamorado is not re-
16 detained without first receiving the due process he is owed before any attempt to remove him to
17 a third country, as “it would not be equitable or in the public's interest to allow [a party] . . . to
18 violate the requirements of federal law, especially when there are no adequate remedies
19 available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle*
20 *del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). Without an injunction, the
21 government would effectively be granted permission to detain Mr. Enamorado in violation of the
22 Constitution, as argued throughout this motion. Like all other individuals, and despite its
23 protestations otherwise, the government is not simply free to ignore the law.
24
25

26 Moreover, a TRO serves the public interest by avoiding “indirect hardship to [Mr.
27 Enamorado's] family members,” which here would be substantial. *See also Golden Gate Rest.*
28 *Ass'n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008) (finding that courts

1 may consider hardship to families when determining public interest); Ex A (Enamorado Dec.);
2 Ex B (Herrera Dec.); Ex T (Raser letter).
3

4 In addition, a TRO favors the public interest because it allows Mr.
5 Enamorado to continue contributing productively to his community. Mr. Enamorado has a
6 landscaping business where he employs four people. Ex A. Through his business, he has
7 worked hard and provided benefit to several employers who trust him wholeheartedly and find
8 his work exemplary. *See* Ex Q (Steven Poling Letter); Ex P (Tasha Scott letter). The public
9 therefore has a strong interest in Mr. Enamorado continuing to perform the exemplary
10 landscaping service he provides. *See Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir.
11 2017) (citing *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972)) (finding that for released prisoners
12 and parolees, “society has a stake in whatever may be the chance of restoring the individual to
13 normal and useful life” and that society thus “has an interest in not having parole revoked”
14 erroneously (internal brackets omitted)).
15

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

24 IV. CONCLUSION

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

1
2 Dated: July 3, 2025

Respectfully submitted,

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

5 s/Jane Lee
6 Jane Lee
7 OFFICE OF THE PUBLIC DEFENDER
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15 **ATTESTATION PURSUANT TO CIVIL L.R. 5.1(i)(3)**

16 As the filer of this document, I attest that concurrence in the filing was obtained from the other
17 signatories. Executed on this 3rd day of July 2025 in Martinez, California.

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