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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

**REPLY IN SUPPORT OF MOTION
FOR LEAVE TO AMEND AND FOR
AMENDED TEMPORARY
RESTRAINING ORDER**

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INTRODUCTION

Petitioner Edwin Yobani Enamorado (“Mr. Enamorado”) fears being ripped from his wife, children, and community and removed to a country to which he has no ties, including many where he fears persecution or torture. Respondents process for removing Mr. Enamorado involves either no process at all—where the United States has received a blanket diplomatic assurance that individuals will not be persecuted or tortured—or, allows for a screening interview, conducted remotely within 24 hours if Mr. Enamorado affirmatively expresses a fear. Ex. Z. In that interview, a single immigration officer will decide whether Mr. Enamorado can establish he will more likely than not be tortured or persecuted in the third country. If that officer determines that Mr. Enamorado has failed to meet that standard he will be removed. *Id.*

Without injunctive relief from this Court, this is the fate awaiting Mr. Enamorado. Respondents claim this Court is powerless to stop them. This Court should reject Respondents arguments¹ and grant Mr. Enamorado’s Motion for Leave to Amend and Amended Motion for a Temporary Restraining Order. *See* Dkts. 17, 18.

ARGUMENT

I. THIS COURT SHOULD GRANT LEAVE TO AMEND

Courts apply a “policy of favoring amendments to pleadings . . . with extreme liberality.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). This standard applies equally to habeas petitions and civil complaints. *See* 28 U.S.C. § 2242; Fed. R. Civ. P. 15(a).

¹ Respondents style their Opposition as a Return. Dkt. 21 at 7. Mr. Enamorado declines to treat this as his Traverse/Reply for his Petition/Complaint and reserves the right to file a Traverse/Reply.

1 Respondents oppose amendment on two grounds, neither of which overcomes the policy
2 favoring leave to amend.
3

4 First, Respondents appear to argue that Petitioner's amendment would be futile because,
5 according to Respondent, "Petitioner's claim is not a cognizable habeas petition." Dkt. 21 at 9.
6 As set forth below in Section II.A., Respondent is incorrect. In addition, the two district court
7 cases Respondent cites to support his futility argument are inapposite, as they involve individuals
8 who sought leave to amend to bring a time-barred claim. Dkt. 21 at 15. Moreover, as explained
9 *infra*, Respondent ignores that Petitioner also brought a complaint for declaratory and injunctive
10 relief, which independently provides jurisdiction for his claims. *See* Dkt. 2, 16.
11

12 Second, without citation or meaningful argument, Respondent opposes amendment
13 because Petitioner "could have addressed the effect of the *D.V.D.* decision in his reply." *See* Dkt.
14 21 at 15. But this ignores the meaningful ways in which the fact of the lifting of the *DVD* stay
15 affects Petitioner's case. Petitioner's original petition included a prayer for relief that was
16 tethered to his then-extant protections under the *DVD* preliminary injunction. When the Supreme
17 Court stayed those protections on June 23, 2025, without legal reasoning, this changed relevant
18 facts: Petitioner no longer has the protection of the *DVD* preliminary injunction. Amendment to
19 permit Petitioner to advance related legal claims, but ones that are not tethered to a now-
20 inoperative court order, is appropriate. *See Sonoma Cnty. Ass'n of Retired Emps. v. Sonoma*
21 *Cnty.*, 708 F.3d 1109, 1118 (9th Cir. 2013). Moreover, Petitioner acted diligently following the
22 Supreme Court's order in *DVD* by contacting Respondent's counsel within two days, and
23 preparing and filing his amended petition the following week. Respondent, who had not yet filed
24 a return, suffered no prejudice. No factors counseling against amendment, such as "undue delay,
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1 bad faith, . . . repeated failure to cure deficiency . . . [or] undue prejudice” are present here. *See*
 2 *Foman v. Davis*, 371 U.S. 178, 182 (1962).
 3

4 Further, additional intervening facts counsel towards permitting amendment. At the time
 5 the original petition was filed, Petitioner’s IJ bond order was still in place, and thus Petitioner
 6 pled Count Two of his complaint emphasizing his “current conditional release.” Dkt. 2 at ¶ 79.
 7 However, on May 28, 2025, the DHS cancelled Petitioner’s bond. *See* Dkt. 16 at 17; Dkt. 21 at
 8 14. Accordingly, Petitioner’s amended petition asserts his claims against re-detention in a way
 9 that do not depend on the IJ’s bond order. The Court should grant leave to amend.
 10

11 **II. THERE ARE NO JURISDICTIONAL BARS TO MR. ENAMORADO’S CLAIMS**

12 **A. Habeas is the Proper Vehicle for Mr. Enamorado’s Claims and Regardless,** 13 **This Court Has Jurisdiction Under 28 U.S.C. § 1331**

14 Respondents do not seriously contest the “in custody” requirement, *see* Dkt. 21 at 15-16,
 15 nor could they given Mr. Enamorado’s placement on an Order of Supervision which restricts his
 16 liberty in numerous ways including “that [he] appear in person at the time and place specified,
 17 upon *each and every* request of the agency for identification . . .” (emphasis added); *see* Ex. Y
 18 (Order of Supervision); *see Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019).
 19

20 Instead, Respondents aver that Mr. Enamorado’s claim is not cognizable in habeas
 21 because instead of seeking release from current custody, it requests injunctive relief against
 22 future arrest and detention. Dkt. 21 at 15-16. But, the Supreme Court has directly stated that “the
 23 writ is available...to attack *future* confinement and obtain future releases.” *Prieser v. Rodriguez*,
 24 411 U.S. 475, 487 (1973) (emphasis added); *see also Braden v. 30th Judicial Circuit Court of*
 25 *Kentucky*, 410 U.S. 484, 488-89 (1973) (explaining that the prior Supreme Court law that
 26 permitted an individual “to attack on habeas corpus only his current confinement, and not
 27
 28

1 confinement that would be imposed in the future” had been overruled). The Ninth Circuit
 2 likewise has made clear that “an action sounds in habeas ‘no matter the relief sought (damages or
 3 equitable relief), no matter the target of the prisoner’s suit . . . *if* success in that action would
 4 necessarily demonstrate the invalidity of confinement or its duration.’” *Pinson v. Carvajal*, 69
 5 F.4th 1059, 1071 (9th Cir. 2023) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)).
 6

7 Here, as Mr. Enamorado challenges his future confinement as violative of Due Process,
 8 his claims clearly sound in habeas. District courts in this district regularly grant relief for
 9 individuals who are seeking to prevent future physical confinement. *See e.g., Ortega v. Kaiser*,
 10 2025 WL 1771438, at *4 (N.D. Cal. June 26, 2025) (collecting cases). Thus, a Habeas petition is
 11 the proper vehicle for Mr. Enamorado’s claims.
 12

13 Even assuming *arguendo* that Habeas relief were improper, Mr. Enamorado’s claims are
 14 properly before this court because he also pleaded federal question jurisdiction, 28 U.S.C.
 15 § 1331, over his request for injunctive and declaratory relief. *See* Dkt. 16 at 4; *see also Roman v.*
 16 *Wolf*, 977 F.3d 935, 941 (9th Cir. 2020) (holding that because “Plaintiffs invoked 28 U.S.C.
 17 § 1331, [there was] subject matter jurisdiction [and authority for the district court to order
 18 injunctive relief] irrespective of the accompanying habeas petition.”).
 19
 20

21 **B. 8 U.S.C. § 1252(g) Does Not Bar Mr. Enamorado’s Claims**

22 Despite Respondent’s assertions to the contrary, *see* Dkt. 21 at 17-18, Section 1252(g)
 23 does not apply to Mr. Enamorado’s claim regarding the procedures necessary to effectuate a
 24 lawful third country removal because he does not challenge any discretionary “decision or action
 25 by the Attorney General to commence proceedings, adjudicate cases, or execute removal
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orders[.]” 8 U.S.C. § 1252(g) (emphasis added).² As the Supreme Court has explained, this narrow provision is tethered solely to the Attorney General’s decisions with respect to these “three discrete actions.” *Reno v. Am-Arab Discrimination Comm.*, 525 U.S. 471, 482 (1999). Section 1252(g) does not alter this Court’s jurisdiction to review “the many other decision or actions that may be part of the deportation process.” *Id.* at 483. As the en banc Ninth Circuit explained, “The district court may consider a purely legal question that does not challenge the Attorney General’s discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority.” *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc).

Here, Mr. Enamorado’s claims do not arise from Respondents’ discretionary decision to execute his removal order. Nor, as Respondents’ falsely claim, does Mr. Enamorado seek a stay of his removal order from this Court. *See* Dkt. 21 at 17. As such, Respondents reliance on *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) is misplaced. *See* Dkt. 21 at 17-18. What Mr. Enamorado challenges is Respondents’ authority to *depart from the removal order* by designating a new country for removal outside of immigration proceedings and, in doing so, circumventing his due process rights and the scheme that Congress has set forth. *See* Dkt. 16; *see also DVD v. DHS*, -- F. Supp. 3d --, 2025 WL 1142968, at *10-*11 (D. Mass. Apr. 18, 2025), *order stayed on other grounds by DHS v. DVD*, Case No. 24A1153, 2025 WL 1732103

² This authority has been re-delegated, and is now exclusively exercised by the Secretary of Homeland Security, 6 U.S.C. § 202(3), such that 1252(g)’s reference to “Attorney General” now denotes the DHS Secretary.

1 (June 23, 2025). As numerous district courts around the country have recognized, Section
2 1252(g) “shield only discretionary decisions concerning the three stages of the deportation
3 process.” *Id.* at 11 (collecting cases). Thus, section 1252(g) does not bar Mr. Enamorado’s
4 claim.
5

6 **C. Neither Section 1252(a)(5) nor (b)(9) Bars Mr. Enamorado’s Claims**

7 Respondents’ arguments that 1252(a)(5) and (b)(9) strip this Court of jurisdiction over
8 Mr. Enamorado’s misconstrues those claims and advances an extreme interpretation squarely
9 foreclosed by Supreme Court and Ninth Circuit precedent. Dkt. 21 at 18-19.
10

11 As a threshold matter, Mr. Enamorado does not seek “judicial review of an order of
12 removal entered or issued,” 8 U.S.C. § 1252(a)(5): Mr. Enamorado’s claims “are independent of
13 his removal order” and “he does not challenge the IJ’s determination that he is removable or
14 claim any deficiency in the removal order itself.” *See Aden v. Nielsen*, 409 F. Supp. 3d 998,
15 1006. “Rather, he challenges DHS’s [ability], outside of removal proceedings, to designate [a
16 third country] without reopening his proceedings so that an IJ [can] make the designation in the
17 first instance and/or determine whether petitioner’s life or freedom would be threatened in that
18 country.” *See id*; *see also DVD*, 2025 WL 1142968, at * 7. Mr. Enamorado could not have
19 brought these claims during his immigration proceedings and Respondents’ assertion that Mr.
20 Enamorado should file a Motion to Reopen is both “legally insufficient and logistically
21 impossible.” *DVD*, 2025 WL 1142968, at * 7-8 (explaining, *inter alia*, that “until an individual
22 receives notice of the country to which he is being deported, he has no basis for reopening his
23 immigration case and no merits basis to seek withholding from a hypothetical third country.”). It
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1 is likewise contrary to Supreme Court and Ninth Circuit precedent. *See* Dkt. 16 at ¶ 98 (citing
2 relevant case law).
3

4 Respondents further contend that Mr. Enamorado's claims fall under the scope of
5 § 1252(b)(9). Dkt. 21 at 18-19. Defendants' argument that Mr. Enamorado's claims arise from
6 his removal proceedings distorts both the claims and settled authority confirming the narrow
7 scope of 1252(b)(9). *See* Dkt. 21 at 18-19. Where, as here, a claim cannot be meaningfully
8 reviewed through a petition for review, applying 1252(b)(9) to bar that claim would transform a
9 channeling provision into a jurisdiction-stripping provision, defying the statutory structure.
10 *E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir. 2020) ("[T]he point
11 of the provision is to channel claims into a single petition for review, not to bar claims that do
12 not fit within that process."). The channeling-vs-stripping distinction is compelled by the
13 Supreme Court's narrow interpretation of what claims "arise from" proceedings: it has dismissed
14 as "extreme" and "absurd" broader readings, such as Defendants' here, that would render valid
15 claims "effectively unreviewable." *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018). Neither
16 Section 1252(a)(5) nor (b)(9) bars Mr. Enamorado's claims.
17
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19

20 **D. The Foreign Affairs Reform and Restructuring Act of 1998 Does Not**
21 **Preclude Petitioner's Claims**

22 Respondents' reliance on the Foreign Affairs Reform and Restructuring Act of 1998
23 ("FARRA") is misplaced. Respondents assert that "judicial review of any claim arising under
24 CAT is available exclusively on an individualized basis 'as part of the review of a final order of
25 removal' in the courts of appeals." Dkt. 21 at 20. However, Mr. Enamorado's claims arise after
26 removal proceedings concluded and concerns removal to countries that are not identified in any
27 order of removal. His claims could not have been raised earlier and thus are not "reviewable 'as
28

1 part of the review of a final order of removal' under 8 U.S.C. § 1252." *Nasrallah v. Barr*, 590
 2 U.S. 582, 573 (2020) (emphasis added) (quoting FARRA § 2242(d)). Mr. Enamorado is not
 3 challenging the outcome of a CAT claim; rather, he seeks adequate notice and an opportunity to
 4 present a fear-based claim before DHS can remove him to a third country.
 5

6 FARRA § 2242(d) bars review of "regulations adopted to implement [CAT]" but Mr.
 7 Enamorado is not challenging the validity of any regulation promulgated to implement CAT. To
 8 the contrary, Mr. Enamorado wants Respondents to comply with FARRA and the CAT
 9 regulations prior to executing any potential third-country removal in his case.
 10

11 **III. MR. ENAMORADO'S CLAIMS ARE NOT FORECLOSED BY THE**
 12 **LITIGATION IN *D.V.D. V. U.S. DEPARTMENT OF HOMELAND SECURITY*.**

13 Respondents request that "[t]his Court should dismiss [Mr. Enamorado's] claims . . .
 14 because those claims are already being adjudicated" in the pending *D.V.D.* class action litigation.
 15 Dkt. 21 at 20. Not so. Dismissal of a potentially duplicative suit is committed to the discretion of
 16 the district court, and here this Court should decline to exercise that discretion. *See Crawford v.*
 17 *Bell*, 599 F.2d 890, 893 (9th Cir. 1979).
 18

19 This Court's discretionary decision requires two determinations. First, this Court must
 20 assess whether the individual suit is, in fact, duplicative of a class action. To do so, it analyzes
 21 three factors: whether (1) the individual is a member of the class action, (2) the suit duplicates
 22 the factual allegations of the class action, and (3) the suit duplicates the prayer for relief of the
 23 class action. *See Pride v. Correa*, 719 F.3d 1130, 1133-34 (9th Cir. 2013); *Crawford*, 599 F.2d at
 24 893. The party moving for dismissal bears the burden to demonstrate, with specific information,
 25 that the suit is duplicative. *See, e.g., Anderson v. California Dept. of Corrections &*
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 28

1 *Rehabilitation*, 2016 WL 7013246, at *4 (Dec. 1, 2016) (explaining that it is not the Court’s duty
2 to wade through the pleadings to determine whether the suit is duplicative)
3

4 Second, if this Court concludes that the suit is duplicative, it must then consider whether
5 dismissal of the suit will promote judicial economy and ensure respect for the rights of the
6 litigants. *See Crawford*, 599 F.2d at 893. Here, Respondents fail to apply the relevant legal tests
7 and fail to acknowledge, let alone carry, their burden. *See* Dkt. 21 at 20-23.
8

9 **A. Mr. Enamorado’s Factual Allegations and Claims Are Distinct from those in**
10 **DVD**

11 Here, Respondents fail to apply the relevant legal tests and fail to acknowledge, let alone
12 carry, their burden. *See* Dkt. 21 at 20-23. Discretionary dismissal of Mr. Enamorado’s petition
13 and complaint is unwarranted because it does not “duplicate the [*D.V.D.*] allegations and prayer
14 for relief.” *Crawford*, 599 F.2d at 893. Whereas the *D.V.D.* class asserts *categorical* allegations
15 and seeks ongoing *systemic* relief—that fails to take into account the individual circumstances of
16 each member of the class—Mr. Enamorado alleges violation of *his* right to due process based on
17 *his* unique circumstances and he, in turn, requests a *singular*, personalized remedy, which goes
18 beyond what the class members seek in DVD. *See Pride v. Correa*, 719 F.3d 1130, 1133-38 (9th
19 Cir. 2013); *Compare* Dkt.1 in Case No. 1:25-cv-10676 at ¶¶ 101-138, and Prayer for Relief *with*
20 Dkt. 18.
21

22 For example, the class requests that Defendants are enjoined from “failing to provide
23 class members with written notice and a meaningful opportunity to present a fear-based claim
24 under the Convention Against Torture to an immigration judge prior to deportation to a third
25 country.” Dkt.1 in Case No. 1:25-cv-10676 at 37. But, the class members in DVD do not specify
26 how those proceedings should occur, make any claim as to the designation of a third country
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28

1 aside from notice, or request relief in the form of withholding of removal. *See id.* Mr.

2 Enamorado, by contrast, seeks an injunction that prevents Respondents from designating a third
3 country “without reopening [his] removal proceedings so that an Immigration Judge can make
4 the designation in the first instance and adjudicate Mr. Enamorado’s application for withholding
5 of removal under Sections 1231(b)(3) and the Convention Against Torture as to that Country.
6

7 Likewise, while the class members in DVD challenge their detention pursuant to the
8 February 18, 2025, memo³, Mr. Enamorado brings a constitutional challenge to his detention
9 predicated on the specific facts of his case and his conduct since release from immigration
10 detention. *Compare* Dkt.1 in Case No. 1:25-cv-10676 at 37 *with* Dkt. 18.
11

12 Respondents have failed to carry *their* burden to “identify the specific factual claims and
13 relief requested by” *D.V.D.* that are identical to those at issue here “that would bar [Mr.
14 Enamorado’s] Petition.” *Sanchez-Chavez v. Ponce*, 2022 WL 1433535, at *3 (C.D. Cal. Mar. 15,
15 2022), 2022 WL 143273, adopting Report & Recommendation.
16

17 **B. Dismissal of Mr. Enamorado’s Petition and Complaint Would Not Promote**
18 **Judicial Economy and Would Undermine his Rights**

19 Even if this Court were to conclude that Mr. Enamorado’s allegations and requested relief
20 are duplicative of those in *D.V.D.*, discretionary dismissal would not promote judicial economy
21 and would be inconsistent with protection of Mr. Enamorado’s rights.
22

23 The *D.V.D.* action just began and remains unresolved, with no signs of an impending
24 resolution. That action is currently in the discovery phase with deadlines throughout the summer.
25

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27
28 ³ Count Five of the Complaint in DVD contains a constitutional challenge to re-detention, but it
is limited to Plaintiffs E.F.D, D.V.D., and M.M.

1 See *D.V.D.*, No. 25-cv-10676-BEM (D. Mass. Mar. 23, 2025), Dkt. 156 (Stip. Amend. Disc.
2 Sched.) at 2.

3
4 Mr. Enamorado has no alternative pathway to seek the relief he requests while *D.V.D.*
5 remains pending. For individuals such as Mr. Enamorado who are at risk of re-detention and
6 removal to a country to which they have no tie, no process exists to seek additional relief through
7 the class litigation. As such, dismissal would leave Mr. Enamorado without effective access to
8 judicial review and deprive him of the opportunity to vindicate his rights. See *Preiser*, 411 U.S.
9 at 487; U.S. Const. art. I, § 9, cl. 2 (“The Privilege of the Writ of Habeas Corpus shall not be
10 suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”).

11
12 Moreover, given Mr. Enamorado’s claims, this Court’s discretionary dismissal of his
13 petition would constitute an effective denial of his claim. Absent intervention from this Court, he
14 can be detained and swiftly removed to a country to which he has no ties. See *Exs. M, Z. In*
15 *Pride*, the Ninth Circuit cautioned against depriving individual litigants of their right to vindicate
16 their individual claims where no effective relief is available in the class action: “To preclude an
17 inmate from proceeding on a claim for injunctive relief for his individual medical care would
18 lead to unwarranted delay.” 719 F.3d at 1137.

19
20 In short, Respondents have failed to carry their burden to show that discretionary
21 dismissal is warranted because Mr. Enamorado’s petition is not duplicative of the *D.V.D.* action,
22 and, even if it were, dismissal would not promote judicial efficiency. Therefore, the Court should
23 decline to exercise its discretion to dismiss Mr. Enamorado’s petition and complaint.

24 25 26 **IV. MR. ENAMORADO IS ENTITLED TO INJUNCTIVE RELIEF**

27 **A. Mr. Enamorado is Likely to Succeed on the Merits of His Claims**

28

1 As a threshold matter, the government is mistaken in asserting that Mr. Enamorado seeks
2 a mandatory injunction because he seeks to alter the status quo. *See* Dkt. 21 at 13014. Mr.
3 Enamorado seeks to *preserve* the status quo by obtaining a prohibitory injunction that would
4 forbid the government from detaining him or removing him to a third country absent certain
5 procedural protections. An injunction that “prevents future constitutional violations” is “a classic
6 form of prohibitory injunction”—even if it requires the government to take some
7 action. *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017) (holding that injunction
8 requiring immigration judges to consider ability to pay at new bond hearings was prohibitory).
9 Even if this Court deems the requested injunction mandatory, Mr. Enamorado has demonstrated
10 that the law and facts clearly favor his position and that very serious damage will result if he is
11 not granted relief. *See* generally Dkts. 16, 18.

12 On the merits, despite opposing the Amended TRO and styling their Opposition as a
13 Return, *See* Dkt. 21 at 7, 24, Respondents essentially declined to address Mr. Enamorado’s
14 claims in his Amended Petition/Complaint and Motion for a Temporary Restraining Order. *See*
15 *id.* 23-28. Mr. Enamorado’s Amended Motion for a Temporary Restraining Order argued that he
16 was likely to succeed on two claims: (1) that he may not be removed to a country other than
17 Honduras without adequate notice and an opportunity to apply for fear-based relief, and (2) that
18 the INA and the Constitution require that he remain out of custody because his removal is not
19 reasonably foreseeable and he is neither a flight risk nor a danger. Respondents do not address
20 the first claim at all, and as to the second claim, they briefly argue that the INA does authorize
21 Mr. Enamorado’s detention but do not discuss at all Mr. Enamorado’s constitutional claim.
22 Instead, Respondents devote three and a half pages to Mr. Enamorado’s pre-deprivation hearing
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1 claim, which is not brief in his Amended Motion for a Temporary Restraining Order. Mr.
2 Enamorado briefly addresses Respondents' arguments regarding 8 U.S.C. § 1231(a)(6) but
3 otherwise relies on the arguments in his Amended Motion for a Temporary Restraining Order as to
4 the likelihood of success on the merits.
5

6 In essence, Respondents assert that 8 U.S.C. § 1231(a)(6) authorizes Mr. Enamorado's
7 detention because its "purpose is to effectuate removal." But they ignore that "if removal is not
8 reasonably foreseeable . . . continued detention [is] unreasonable and no longer authorized by
9 statute." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). Given Mr. Enamorado's claims regarding
10 the procedures necessary to effectuate a third country removal, and his conduct over the last six
11 years, he has "shown at least that there are serious questions regarding whether his removal is
12 reasonably foreseeable at this juncture or whether detention by ICE would be reasonably
13 necessary to secure his removal." *See Ortega v. Kaiser*, 2025 WL 1771438, at *4-5 (N.D. Cal.
14 June 26, 2025).
15

16 Finally, although Mr. Enamorado did not move on his pre-deprivation hearing claim in
17 his Amended Motion for a Temporary Restraining order, to the extent this Court wants to
18 consider it, there is no question he has established serious questions as to that claim. *See Jorge*
19 *M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. 2021) (finding that "[Jorge] is entitled to a
20 pre-deprivation hearing before an immigration judge if he is re-arrested"); *Ortega v. Bonnar*, 415
21 F. Supp. 3d 963, 969–70 (N.D. Cal. 2019) (enjoining defendants from "re-arresting Ortega
22 unless and until a hearing, with adequate notice, is held in Immigration Court to determine
23 whether his bond should be revoked or altered); *Romero v. Kaiser*, 2022 WL 1443250, at *3-4
24 (N.D. Cal. 2022); *Ortiz Vargas v. Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. 2020)).
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B. MR. ENAMORADO HAS ESTABLISHED THAT HE WILL SUFFER IRREPARABLE HARM.

Respondents contend that Mr. Enamorado's motion should be denied because his claims do not rise to the level of immediate injury that is required to obtain injunctive relief. Dkt. 21 at 28-29. While Respondents aver that Mr. Enamorado's detention is speculative and simply based on his "awareness of other individuals who have been removed," Dkt. 21 at 29, they fail to acknowledge the *copious* evidence that Mr. Enamorado put forth establishing the targeting of individuals like him by the Trump Administration, including, but limited to, a directive and memo directing Respondents to do exactly what he fears. *See* Dkt. 18 at 12-16; *see also* Exs. M, Z.

Moreover, Respondents own declaration from Deportation Officer Thomas Auer does not state that Respondents will not detain Mr. Enamorado or are not seeking his removal to a third country. *See generally* Auer Dec. Instead, Respondents argue that they have the right to detain Mr. Enamorado. *See* Amend Opp. at 23-28; *see also* *Ortega*, 415 F. Supp. 3d at 969 (finding petitioner's claim ripe where the government "refused to provide assurance" that the petitioner would not be re-arrested.)

Respondents also contend that Mr. Enamorado will not suffer irreparable harm because "there is no constitutional infringement if restrictions imposed are but an incident of some other legitimate government purpose." Dkt. 21 at 29. But this assertion assumes that Mr. Enamorado's constitutional claims will fail. As Mr. Enamorado has already demonstrated, however, *see supra* and Dkt. 18, he is either likely to succeed, or has raised serious questions, on the merits of his claims. *See Ortega*, 2025 WL 1771438, at *5.

C. THE BALANCE OF THE HARDSHIPS TIP SHARPLY IN MR. ENAMORADO'S FAVOR.

1 Respondents fail to meaningfully respond to Mr. Enamorado's arguments regarding the
2 balance of hardships. Instead, they rely exclusively on their assertion that Mr. Enamorado has
3 not shown a likelihood of success on the merits, and therefore there can be no public interest in
4 protecting Mr. Enamorado's constitutional rights. Dkt. 21 at 30. As argued *supra*, and in his
5 Amended Motion for a Temporary Restraining order, Respondents are mistaken. *See* Dkt. 18. As
6 articulated in his Amended Motion for a Temporary Restraining Order, the balance of hardships
7 tip sharply in his favor. *See* Dkt. 18 at 22-24.
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10 The government ends by arguing that Mr. Enamorado's detention is permissible because
11 of his undisputed criminal history. Dkt. 21 at 30. After his last criminal arrest in 2005—20 years
12 ago—Mr. Enamorado has lived peacefully with his family. Since his release from ICE custody
13 nearly six years ago, Mr. Enamorado has once again joined his family and community, and has
14 lived a law-abiding life. The DHS neither moved to stay the IJ's July 2019 bond decision in
15 order to prevent Mr. Enamorado's release, *see* 8 C.F.R. § 1003.19(i), nor did it appeal the IJ's
16 decision granting him bond. *See* Amend Moreno Dec., Ex. A (Enamorado Dec.). The
17 government cannot credibly assert that permitting Mr. Enamorado's detention would serve the
18 public interest.
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21 CONCLUSION

22 For the reasons set forth above and in Mr. Enamorado's motions, Dkts. 17, 18, this Court
23 should enjoin Respondents from re-arresting him pending further of this Court.⁴
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1 Dated: July 11, 2025

Respectfully submitted,

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3 Judah Lakin

4 s/Amalia Wille

5 Amalia Wille

LAKIN & WILLE LLP

7 s/Heliodoro Moreno, Jr.

8 Heliodoro Moreno, Jr.

9 s/Jane Lee

Jane Lee

10 OFFICE OF THE PUBLIC DEFENDER
11 CONTRA COSTA COUNTY

12 *Attorneys for Petitioner*

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

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

18 s/Judah Lakin

19 Judah Lakin

Attorney for Petitioner