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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EDWIN YOBANI ENAMORADO,

Petitioner-Plaintiff,

V.

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

Respondents-Defendants.

CASE NO. 5:25-cv-04072-NW

**RESPONDENTS-DEFENDANTS'
SUPPLEMENTAL BRIEF IN OPPOSITION TO
TEMPORARY RESTRAINING ORDER**

Judge: Hon. Noël Wise

1 Respondents-Defendants Polly Kaiser, Todd M. Lyons, Kristi Noem, and Pamela Bondi
2 (“Respondents”) respectfully submit this supplemental brief in response to the questions in the Court’s
3 July 17, 2025 Order (ECF No. 24). To the extent that the Court requests a response to Plaintiff Edwin
4 Yobani Enamorado’s amended complaint and petition, ECF No. 17, Respondents incorporate by
5 reference their previously filed opposition, ECF No. 21.

6 **I. The Government’s Intentions Regarding Plaintiff’s Immigration Status**

7 Mr. Enamorado is a native and citizen of Honduras whose prior order of removal to that country
8 was reinstated in December 2018 upon his return to the United States from Honduras. ECF No. 15-1
9 ¶ 5; ECF No. 18-2 Ex. G. The immigration court granted withholding of removal to Honduras. ECF
10 No. 18 at 6; ECF No. 18-2 Ex. K. Respondents have been unable to locate a declarant in a position to
11 make a long-term commitment regarding Plaintiff’s immigration status. Respondents’ present intention
12 is for Mr. Enamorado to report in person at the DHS Enforcement and Removal Operations field office
13 in San Francisco on May 26, 2026. Respondents do not presently plan to detain Plaintiff or remove him
14 from the United States before that time, but Respondents might change those plans at any time in
15 accordance with applicable removal statutes, *see, e.g.*, 5 U.S.C. § 1229, and future direction from the
16 Executive Branch.

17 **II. Why Plaintiff’s Bond Status Changed**

18 The Department of Homeland Security may secure the attendance of an alien subject to potential
19 future removal using a bond order or an order of supervision. On May 28, 2025, Plaintiff appeared at
20 the ERO San Francisco Field Office. In DHS’s discretion, Plaintiff was placed on an Order of
21 Supervision, and the bond amount he previously posted was to be returned to his obligor. *See* ECF No.
22 15-1. Records of the May 28 proceedings do not reflect a reason for this discretionary decision.

23 **III. Relevance of *Jama v. Immigration & Customs Enforcement***

24 In *Jama v. Immigration & Customs Enforcement*, 543 U.S. 335 (2005), the U.S. Supreme Court
25 held that 8 U.S.C. § 1231(b)(2)(E)(iv) permits an alien to be removed to a country without the advance
26 consent of that country’s government. The Court did not make any rulings regarding due process
27 requirements specific to third country removals under 8 U.S.C. § 1231(b)(2)(E)(vii), and so the Court’s
28 holding does not directly control this case.

1 The decision does, however, contain some general principles that support Respondents' position
 2 in this case. First, the Supreme Court warned that courts should not "lightly assume that Congress has
 3 omitted from its adopted text requirements that it nonetheless intends to apply." 543 U.S. at 341. This
 4 warning is consistent with Respondents' view that the Court should not invent new due process
 5 requirements that do not exist in statutes or regulations. *See* ECF No. 21 at 19; *see also Johnson v.*
 6 *Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into
 7 8 U.S.C. § 1231(a)(6) because "reviewing courts . . . are generally not free to impose [additional
 8 procedural rights] if the agencies have not chosen to grant them").

9 Second, the Court listed several potential options that aliens can take to avoid removal if they
 10 fear persecution in a destination country:

11 If aliens would face persecution or other mistreatment in the country
 12 designated under § 1231(b)(2), they have a number of available remedies:
 13 asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); relief
 14 under an international agreement prohibiting torture, see 8 CFR §§
 208.16(c)(4), 208.17(a) (2004); and temporary protected status, 8 U.S.C.
 § 1254a(a)(1).

15 *Jama*, 543 U.S. at 348. These options, provided by statutes and regulations, apply to third country
 16 removals under 8 U.S.C. § 1231(b)(2)(E)(vii) just as they would apply to other removals under Section
 17 1231(b)(2).

18 **IV. The Due Process Mr. Enamorado is Owed**

19 Based on past immigration court orders, Plaintiff would be subject to removal to Honduras, but
 20 for the fact that an immigration judge granted withholding of removal. ECF No. 18 at 6; ECF No. 18-2
 21 Ex. K.

22 It is possible that Plaintiff could be removed to Honduras in the future if conditions change there.
 23 As the Supreme Court explained in the similar context of relief from removal under the Convention
 24 Against Torture, "[a]n order granting CAT relief means only that, notwithstanding the order of removal,
 25 the noncitizen may not be removed to the designated country of removal, at least until conditions change
 26 in that country." *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). Procedural regulations related to CAT
 27 state, in relevant part: "The Secretary of State may forward to the Attorney General assurances that the
 28 Secretary has obtained from the government of a specific country that an alien would not be tortured

there if the alien were removed to that country,” and “the Attorney General shall determine, in consultation with the Secretary of State, whether the assurances are sufficiently reliable to allow the alien’s removal to that country consistent with Article 3 of the Convention Against Torture.” 8 C.F.R. § 208.18(c)(1), (2). Further, “[o]nce assurances are provided under paragraph (c)(2) of this section, the alien’s claim for protection under the Convention Against Torture shall not be considered further by an immigration judge, the Board of Immigration Appeals, or an asylum officer.” 8 C.F.R. § 208.18(c)(3). Similar considerations apply to Plaintiff’s case even though his withholding is under the Immigration and Nationality Act rather than the CAT.

It is also possible that Plaintiff may be removed to a third country at some point in the future. As the Supreme Court explained in *Nasrallah*, even an alien who fears torture if removed to a particular country “may be removed at any time to another country where he or she is not likely to be tortured.” 590 U.S. at 582. *Jama* provides a helpful summary of the process for determining the countries to which an inadmissible alien may be removed under 8 U.S.C. § 1231(b)(2):

The statute thus provides four consecutive removal commands: (1) An alien shall be removed to the country of his choice (subparagraphs (A) to (C)), unless one of the conditions eliminating that command is satisfied; (2) otherwise he shall be removed to the country of which he is a citizen (subparagraph (D)), unless one of the conditions eliminating that command is satisfied; (3) otherwise he shall be removed to one of the countries with which he has a lesser connection (clauses (i) to (vi) of subparagraph (E)); or (4) if that is “impracticable, inadvisable, or impossible,” he shall be removed to “another country whose government will accept the alien into that country” (clause (vii) of subparagraph (E)).

Jama, 543 U.S. at 341.

Plaintiff is not entitled to any processes that are not grounded in statutes or regulations. *See Arteaga-Martinez*, 596 U.S. at 580–82.

V. Policy Guidance from DHS Regarding Third Country Removals

Since the July 16, 2025 hearing in this matter, the Department of Homeland Security has not issued any additional formal guidance regarding third country removals. The text of 8 U.S.C. § 1231(b)(2)(E)(i) - (vii) governs third country removals. This is, of course, subject to the limitation that the government “may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality,

1 membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A).

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3 DATED: August 29, 2025

Respectfully submitted,

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6 ROMAN A. SWOOPES
7 Assistant United States Attorney
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