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22 UNITED STATES DISTRICT COURT
23 FOR THE NORTHERN DISTRICT OF CALIFORNIA
24

25 EDWIN YOBANI ENAMORADO,

26 Petitioner-Plaintiff,

27 v.

28 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

**PETITIONER'S SUPPLEMENTAL
BRIEF IN SUPPORT OF A
TEMPORARY RESTRAINING
ORDER**

1 **I. INTRODUCTION**

2 Petitioner Edwin Yobani Enamorado (“Mr. Enamorado”) submits this supplemental brief
 3 in response to Respondents’ supplemental brief and this Court’s questions articulated in its July
 4 17, 2025 order.¹ As argued in Mr. Enamorado’s prior briefing, the Due Process Clause mandates
 5 that if Respondents wish to re-arrest him, revoke his order of supervision (“OSUP”), and re-
 6 detain him in order to remove him to a third country, *prior to doing so*, they must provide him
 7 adequate notice of the country they are designating, put forth evidence that the country will
 8 accept him, and then provide him with a plenary hearing on an application for fear-based relief
 9 before a neutral adjudicator in reopened removal proceedings. *See, generally*, ECF No. 16
 10 (Amended Petition/Complaint); ECF No. 18 (TRO Motion).

11 Respondents supplemental brief is frustrating as the brief either completely fails to
 12 provide the Court with answers it had six weeks to obtain, or it misrepresents the law. As such,
 13 for the reasons below and those in Mr. Enamorado’s prior briefing, this court should grant him a
 14 temporary restraining order (TRO) enjoining the government from re-arresting him pending
 15 further order of this Court.

16 **II. ARGUMENT**

17 **A. RESPONDENTS FAIL TO FILE STATEMENTS AS REQUESTED BY THE**
 18 **COURT**

19 Respondents had slightly over six weeks to obtain a statement from a Department of
 20 Homeland Security (DHS) official that would bind the agency with respect to (1) its plans for
 21 Mr. Enamorado now and in the future, and (2) why Mr. Enamorado’s bond was revoked. *See*
 22 ECF No. 24. Nonetheless, Respondents failed to do so. *See generally* ECF No. 31. Instead,
 23 Respondents incredulously assert, without citation, that they have “been unable to locate a
 24 declarant in a position to make a long-term commitment regarding [Mr. Enamorado’s]

25
 26
 27 ¹ Respondents have stated their response/return to Mr. Enamorado’s Amended
 28 Petition/Complaint is at ECF No. 21. *See* ECF No. 31 at 1. As previously discussed, Mr.
 Enamorado reserves the right to file a reply/traverse and is prepared to discuss a schedule for that
 at the October 1, 2025 hearing.

immigration status.” ECF No. 31 at 1.² Even more confounding is the fact that they provide no declaration regarding their efforts to “locate a declarant” or why they were ultimately unable to do so. *Id.*

Without citation to an affidavit or declaration, Respondents assert that they do not *presently* plan to detain Mr. Enamorado, while affirmatively stating that those plans can change at “any time in accordance with applicable removal statutes . . . and future direction from the Executive Branch.”³ *Id.* In other words, Respondents refuse to provide the Court with the information requested and continue to assert their position that they have unchecked authority to do as they please when they please.

With respect to the Government’s intentions, then, this Court finds itself in the *same* situation it was in on July 16, 2025—without a declarant that can bind Respondents and explain their intentions with respect to Mr. Enamorado. At the July 16, 2025 hearing, the following exchange ensued:

The Court: “So sitting here today, it sounds like we don’t have any kind of declaration or anybody who is prepared on behalf of the government to bind the government right now that is no intent today and going forward, without some change, without some further order, whether it’s an order of the Court or an order of an Immigration Judge to deport the petitioner is that right?”

Mr. Jeu: That’s right your honor. I don’t have anything as of today and I apologize for that.

See ECF No. 27 at 8:2-10 (Transcript of Hearing).

Similarly, Respondents fare no better with their inability to explain why Mr. Enamorado’s bond was cancelled. Again, despite having six weeks to obtain this information, they simply aver, without citation or explanation, that the “record of the May 28 proceedings do

² The page numbers refer to the internal page numbers, not the ECF page numbers.

³ Respondents cite to 5 U.S.C. § 1229 as an example of a removal statute with which they may need to comply. ECF No. 31 at 1. Assuming Respondents made a simple typo and intended to cite to 8 U.S.C. § 1229, it is unclear what bearing that would have on Mr. Enamorado’s removal as 8 U.S.C. § 1229 governs the *initiation* of removal proceedings, something that occurred years ago for Mr. Enamorado.

not reflect a reason for this discretionary decision.” ECF No. 31 at 1. And again, Respondents fail to explain their efforts to obtain an answer to this Court’s inquiries or to provide a “record of the May 28 proceedings.” *Id.*

Respondent’s abject failure to provide even the most basic of answers to this Court speaks for itself.

B. THE SUPREME COURT’S DECISIONS IN *JAMA v. ICE* AND *JOHNSON v. ARTEAGA-MARTINEZ* SAY NOTHING ABOUT AS-APPLIED DUE PROCESS CHALLENGES DESPITE RESPONDENT’S ASSERTIONS TO THE CONTRARY

Respondents assert that the Supreme Court’s decisions in *Jama v. Immigration & Customs Enforcement*, 543 U.S. 335 (2005), and *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022), support its view that “the Court should not invent new due process requirements that do not exist in statutes or regulations.” ECF No. 31 at 2. However, Respondents erroneously conflate the proper interpretation of a statute—what the Supreme Court articulated in *Jama* and *Arteaga-Martinez*—with as-applied due process challenges. Both *Arteaga-Martinez* and *Jama* concerned the Supreme Court’s reading of a statutory text but said *nothing* about what due process requires. *See generally Jama*, 543 U.S. 335; *Arteaga-Martinez*, 596 U.S. 573. Indeed, in *Arteaga-Martinez*, the Supreme Court remanded for the lower court to consider Mr. Arteaga-Martinez’s constitutional claims in the first instance.⁴ Respondents assertion that *Arteaga-Martinez* stands for the proposition that Mr. Enamorado “is not entitled to any processes that are not grounded in statute or regulations,” *see* ECF No. 31 at 2, is simply false.

Likewise, in *Jama*, the Court simply explained that there was no implicit statutory requirement that a country accept a noncitizen before he is deported there pursuant to 8 U.S.C. § 1231(b)(2)(E)(iv). 543 U.S. at 341-48. That decision says nothing about what due process requires for someone, like Mr. Enamorado, who would be deported to a country that is not their country of birth. *See generally id.* However, *Jama* is instructive on where Respondents could, in

⁴ Moreover, in *Arteaga-Martinez*, “the [g]overnment note[d] that as-applied constitutional challenges remain available.” 596 U.S. at 583.

theory, deport Mr. Enamorado. In *Jama*, the Supreme Court explained that 8 U.S.C. § 1231(b)(2) 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)).

543 U.S. at 341. Here, as explained in Mr. Enamorado’s Amended Petition/Complaint and supporting exhibits, during Mr. Enamorado’s initial removal proceedings he was ordered removed to Honduras as no other country was designated for removal. As such, Mr. Enamorado did not choose a country for removal and step one is inapplicable. *See* ECF No. 16-1 at 39 (BIA 10/14/03 Decision); ECF No. 16 at 17-18 (Amended Petition/Complaint). That order was executed and Mr. Enamorado was removed to Honduras. ECF No. 16-1 (Enamorado Dec.). That order was then reinstated after he attempted to re-enter the United States in 2018 fleeing from Honduras. *Id.* Mr. Enamorado was subsequently granted withholding of removal under 8 U.S.C. § 1231(b)(3) as to Honduras which makes step two inapplicable as Honduras is also his country of citizenship. *See* ECF No. 16-1 at 53 (Order Granting Withholding of Removal); ECF No. 16 at 19 (Amended Petition/Complaint). Step three is also inapplicable because he does not have any lesser connection with any other country. *See* 8 U.S.C. § 1231(b)(2)(E)(i)-(vi); ECF No. 16-1 at 10, ¶5 (Mr. Enamorado Decl.) (“I was born in Honduras, am a citizen of Honduras and not a citizen of any other country.”). As a result, Mr. Enamorado is currently in step four which requires a third country to be willing to accept Mr. Enamorado and is a country where he will not be persecuted or tortured. *See* 8 U.S.C. § 1231(b)(2)(E)(vii); 1231(b)(3); 8 C.F.R. § 1208.16.

Respondents assert that Mr. Enamorado has a plethora of options, provided by statute and regulation, that will allow him to avoid removal if Respondents attempt to remove him to a third country. *See* ECF No. 31 at 2. But, as discussed *infra* and in Mr. Enamorado's Complaint/Petition and Renewed Motion for a TRO, Respondents simply ignore that Mr. Enamorado has no possible way to exercise those options without proof that a country "will" accept him, and his proceedings being reopened so that he can apply for fear-based protection. *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 v. Ashcroft*, 378 F.3d 932, 939 (9th Cir. 2004); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019); ECF No. 16 at 37-39 (Amended Petition/Complaint); ECF No. 18 at 13-16 (TRO Motion).

C. MR. ENAMORADO IS ENTITLED TO ADEQUATE NOTICE OF ANY THIRD COUNTRY REMOVAL AND THE OPPORTUNITY TO APPLY FOR FEAR-BASED PROTECTION BEFORE A NEUTRAL ADJUDICATOR IN REOPENED REMOVAL PROCEEDINGS.

In their supplemental brief, Respondents note that there are regulations providing for some process before an individual is removed to a third country. *See* ECF No. 31 at 2. But this is largely beside the point as Mr. Enamorado does not dispute what the regulations state. Rather, Mr. Enamorado contends that the procedures outlined in those regulations, as well as the current Administration's directives and memos, *do not comport with due process in his case*.

First, the procedures cited by Respondents say nothing about how Mr. Enamorado's right to seek withholding of removal under 8 U.S.C. § 1231(b)(3) is protected because the Respondents' citations are all related to protection under the CAT. *Compare* 8 C.F.R. § 208.18(c)(1)-(3) (cited by Respondents) *with* 8 U.S.C. § 1231(b)(3) and 8 C.F.R. § 1208.16(a)-(b); *see also* *Sharma v. Garland*, 9 F.4th 1052, 1059 (9th Cir. 2021). Respondents' sole assertion with respect to a possible application for withholding of removal is that "[s]imilar considerations apply to [Mr. Enamorado's] case even though his withholding is under the INA rather than the CAT." ECF No. 31 at 3. Given that Respondents repeatedly advance the notion that Plaintiff is only entitled to what is provided for in the statute and regulations, it is fairly astounding that they fail entirely to grapple with the statute and regulations governing withholding of removal.

1 Second, as argued in Mr. Enamorado's prior briefing, due process requires that his
2 removal proceedings be reopened if Respondents assert that another country "will accept" him,
3 so that an IJ can officially designate a third country for removal and so that Mr. Enamorado can
4 then apply for withholding of removal under 8 U.S.C. § 1231(b)(3) and the Convention Against
5 Torture. *See* ECF No. 16 at 37-38, 40-41 (Amended Petition/Complaint); *see also* *Nguyen v.*
6 *Scott*, -- F.Supp.3d --, 2025 WL 2419288, at *18-19 (W.D. Wash. Aug. 21, 2025) (holding
7 Petitioner is likely to succeed on his claim that ICE's current third country removal policy
8 violates due process because Ninth Circuit precedent requires he receive adequate notice and
9 reopening of his proceedings to apply for fear-based protection); *Ortega v. Kaiser*, Case No. 25-
10 cv-05259-JST, 2025 WL 2243616, at *5-7 (N.D. Cal. Aug. 6, 2025) (holding Petitioner has
11 shown serious questions exist as to the merit of his claims that he cannot be re-detained or
12 removed to a third country without adequate notice and a hearing). The Constitution likewise
13 requires him to remain out of custody while this process plays out. *See id.*

14 Respondents simply fail to meaningfully respond to Mr. Enamorado's due process claims
15 regarding third country removal. *See* ECF No. 31 at 3. Moreover, Respondents again make no
16 arguments regarding Mr. Enamorado's detention claim. *See id.* As a result, as argued in his prior
17 briefing—and as explained in *Nguyen v. Scott* and *Ortega v. Kaiser*—Mr. Enamorado is likely to
18 succeed on the merits of his claims, and this Court should grant his Motion for a Temporary
19 Restraining Order.

20 **D. RESPONDENTS FAILED TO ADDRESS ICE'S JULY 9, 2025 GUIDANCE AS**
21 **REQUESTED BY MR. ENAMORADO AND THIS COURT.**

22 Respondents disingenuously state in their supplemental brief that "since the July 16, 2025
23 hearing...the [DHS] has not issued any additional formal guidance regarding third country
24 removals." ECF No. 31 at 3. Although Respondents' statement is technically correct, they fail to
25 acknowledge that the Court's July 17, 2025 order requested Respondents to address "whether
26 there is updated policy guidance from the Department of Homeland Security regarding third
27 country removals" after Mr. Enamorado raised the existence of the July 9, 2025 Memo, and
28 Respondent's attorney indicated that he knew nothing about this. *See* ECF No. 31 at 3-4; ECF

No. 27 at 20-21:22-25, 1-5. Nothing in the Court's order limited its inquiry to guidance post-dating its order, and particularly in light of the colloquy between the Court and the parties, it was clear that Respondents were to address the July 9, 2025 Memo. Nonetheless, Respondents failed to do so. *See* ECF No. 31 at 3-4.

Significantly, a District Court in this Circuit has already held that ICE's July 9, 2025 guidance "contravenes Ninth Circuit law," which requires that a noncitizen receive adequate notice that they are facing removal to a third country, be notified that they can apply for fear-based protection and requires reopening of their proceedings to apply for that protection. *Nguyen*, 2025 WL 2419288, at *18-19. By contrast, ICE's July 9th guidance allows execution of a removal order to a third country: (1) after receiving diplomatic assurances from the third country that noncitizens will not be "persecuted or tortured;" (2) within 24 hours of informing a noncitizen of such intended removal, which is reduced to six hours in "exigent circumstances;" (3) bars ICE officials from affirmatively asking if a noncitizen fears removal to the third country; and (4) if a noncitizen does not affirmatively state that they fear removal to the third country, then they will be removed without further process. *Id.* at *19; *see also* Dkt. No. 190-1, *D.V.D. v. U.S. Dept. of Homeland Security*, Case No. 1:25-cv-10676-BEM (D. Mass. July 15, 2025). As the District Court in *Nguyen* held, this guidance does not comport with due process, and this Court should similarly hold. *See Nguyen*, 2025 WL 2419288, at *18-19; *see also Ortega*, 2025 WL 2243616, at *8.⁵

⁵ Since the Amended Petition/Complaint were filed in this case, Respondents have continued third country removals, with some of those deportees being returned to countries where they face persecution or torture. *See, e.g.,* Associated Press, *Immigrants deported from US to Ghana are sent home, where lawyers say some could face torture*, CNN.com (Sept. 15, 2025), <https://www.cnn.com/2025/09/15/politics/immigrants-ghana-us-lawyers>; Giselle Ruhiyyih Ewing, *Trump launches next round of third country deportations with new flight to Eswatini*, Politico (Jul. 16, 2025; 10:20 a.m.), <https://www.politico.com/news/2025/07/16/trump-third-country-deportations-eswatini-00455757>.

III. CONCLUSION

For the foregoing reasons, and those in his initial motion and subsequent briefing, this Court should continue to enjoin Respondents from re-arresting Mr. Enamorado pending the outcome of his Petition. *See* ECF No. 16 at 40-44. Mr. Enamorado is likely to succeed on his claim that unless and until his removal proceedings are reopened, he is not subject to detention as his removal is not reasonably foreseeable and therefore it is no longer authorized by statute. *See Zadvydas*, 533 U.S. at 682 (citing 8 U.S.C. § 1231(a)(6)); *see also Nguyen*, 2025 WL 2419288 at *13-15; *See Ortega*, 2025 WL 2243616, at *6; *Tadros v. Noems*, Case No. 25CV4108 (EP), 2025 WL 1678501 (D.N.J. June 13, 2025).

Particularly given Respondents' assertion at the last hearing, *see* ECF No. 27 at 9:12-13, that he is neither a flight risk nor a danger—Mr. Enamorado is also likely to succeed on his claim that any re-detention would also violate his Due Process rights.

Mr. Enamorado is also likely to succeed on his claim that, in the event that his removal proceedings are reopened, due process prohibits Respondents from re-detaining Mr. Enamorado absent a hearing at which a neutral adjudicator could determine whether the government can prove by clear and convincing evidence that Mr. Enamorado's current release conditions should be modified. *See Ortega*, 2025 WL 2243616, at *5-7; *see Ortega*, 415 F. Supp. 3d at 969; *Jorge M.F.*, 534 F. Supp. 3d at 1055-56, 1057-58 (N.D. Cal. 2021).

Dated: September 19, 2025

Respectfully submitted,

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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 19th day of September 2025 in Martinez, California.

s/Heliodoro Moreno, Jr.

Heliodoro Moreno, Jr.

Attorney for Petitioner