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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GIOVANNY HERNAN ORTEGA,

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: 4:25-cv-05259-JST

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

*Amended Petition for Writ of Habeas Corpus
and Complaint*

i

Case No. 4:25-cv-05259-JST

INTRODUCTION

1. Petitioner-Plaintiff Giovanni Hernan Ortega (“Mr. Ortega”) brings this petition for writ of habeas corpus and complaint for injunctive and declaratory relief, and accompanying motion for a temporary restraining order, to prevent Respondents-Defendants, the Department of Homeland Security (“DHS” or “the Department”) and its Immigration and Customs Enforcement (“ICE”) division, from unlawfully re-detaining him at a scheduled appearance in San Francisco on July 9, 2025, or thereafter, in violation of the Immigration and Nationality Act and the Fifth Amendment to the U.S. Constitution.

2. Mr. Ortega was previously in ICE custody for nine months, from April 2017 to January 2018. He was granted release on bond after an Immigration Judge (“IJ”) found that he was neither a danger nor a flight risk. Mr. Ortega paid his bond and was freed from immigration detention on January 31, 2018. Since then, he has been living with his U.S. Citizen wife in Arcata, California, working hard at Adventure’s Edge (an outdoor retailer), volunteering in his community, and establishing a trusted and close circle of friends. His behavior during the past seven-and-a-half-years since his release—which includes *no* contact with the criminal justice system and *full* compliance with all reporting to ICE—has only bolstered the IJ’s original finding that he is neither a danger nor a flight risk.

3. In 2022, almost four years after Mr. Ortega was released, an IJ in San Francisco granted him protection from removal to his native El Salvador under the Convention Against Torture (“CAT”), because Mr. Ortega is likely to be tortured if removed to El Salvador. The government did not appeal that decision.

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

12 5. Mr. Ortega has been ordered to report in person at the San Francisco ICE Field Office on
13 July 9, 2025. This will be his first check-in with ICE since the February 18, 2025 Directive, and
14 the current federal administration’s practice of arresting individuals at such check-ins. Mr.
15 Ortega fears that the DHS will re-detain him at this check-in, or at another time, while they
16 attempt to find a third country to which they can remove him.
17

18 6. It is well-established, however, that Mr. Ortega has a liberty interest in his current
19 freedom, and that the Fifth Amendment’s Due Process Clause mandates that immigration
20 detention serve a legitimate purpose: to mitigate flight risk and/or prevent danger to the
21 community. Neither of these purposes would be served by Mr. Ortega’s detention.
22

23 7. Due process requires that Mr. Ortega remain out of custody while the government follows
24 requisite procedures to determine if he can and will be removed to a third country.
25

JURISDICTION

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

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

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

VENUE

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

INTRADISTRICT ASSIGNMENT

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

PARTIES

13. Petitioner-Plaintiff Giovanni Hernan Ortega was born in El Salvador and has resided in the United States since 1990. He lives in Arcata, California. He has lived safely in his California community since being freed from immigration detention on January 31, 2018. He has complied with all ICE reporting requirements since his release on January 31, 2018. On December 21, 2022, an IJ ordered Mr. Ortega removed to El Salvador, and granted him deferral of removal under the Convention Against Torture as to El Salvador. ICE has ordered Mr. Ortega to appear in person at the San Francisco ICE Field Office on July 9, 2025. He faces imminent re-detention and removal to a third country (i.e., not El Salvador, the country the IJ designated for his removal).

14. Respondent-Defendant Polly Kaiser is the Acting Field Office Director of ICE in San Francisco, California, and is named in her official capacity. She maintains her office in San Francisco, California, within this judicial district. The San Francisco Field Office is responsible for carrying out ICE's immigration detention operations throughout Northern California, where Mr. Ortega resides. Respondent Kaiser's office issued the order for Mr. Ortega to appear at the San Francisco ICE Field Office on July 9, 2025. Respondent Kaiser is a legal custodian of Mr. Ortega.

1 15. Respondent-Defendant Todd M. Lyons is the Acting Director of ICE, and is named in
2 his official capacity. ICE, a component of the DHS, is responsible for detaining and removing
3 noncitizens according to immigration law, and oversees custody determinations. Respondent
4 Lyons is responsible for ICE's policies, practices, and procedures, including those relating to
5 the civil detention of immigrants. Respondent Lyons is a legal custodian of Mr. Ortega.
6

7 16. Respondent-Defendant Kristi Noem is the Secretary of the DHS, and is named in her
8 official capacity. She has authority over the detention and departure of noncitizens, because she
9 administers and enforces immigration laws pursuant to Section 402 of the Homeland Security
10 Act of 2002. Given this authority, Respondent Noem is the ultimate legal custodian over Mr.
11 Ortega and is empowered to carry out any administrative order against him.
12

13 17. Respondent-Defendant Pamela Bondi is the Attorney General of the United States and
14 the most senior official at the Department of Justice, and is named in her official capacity. As
15 such, she is responsible for overseeing the implementation and enforcement of the federal
16 immigration laws. The Attorney General delegates this responsibility to the Executive Office for
17 Immigration Review (EOIR), which administers the immigration courts and the Board of
18 Immigration Appeals (BIA). Respondent Bondi is responsible for the administration of
19 immigration laws pursuant to 8 U.S.C. § 1103(g) and oversees EOIR.
20
21

22 LEGAL BACKGROUND

23 **Section 240 Removal Proceedings and the Statutory Scheme to Designate Countries of** 24 **Removal**

25 18. In standard removal proceedings (commonly referred to as "Section 240" proceedings),
26 an Immigration Judge is authorized to issue an order of removal against the noncitizen who is
27

1 the subject of the proceeding. “After determining that a noncitizen is removable, an IJ must
2 assign a country of removal.” *Hadera v. Gonzales*, 494 F.3d 1154, 1156 (9th Cir. 2007).

3 19. “The method by which [an Immigration Judge] may designate a country as the country
4 for removal for any given [noncitizen] is established in 8 U.S.C. § 1231(b).” *Himri v. Ashcroft*,
5 378 F.3d 932, 938 (9th Cir. 2004). Where removal proceedings are initiated after a noncitizen’s
6 arrival in the United States—as was the case for Mr. Ortega—the multi-stage country
7 designation process is set forth in 8 U.S.C. § 1231(b)(2).¹ See also *Hadera*, 494 F.3d at 1156;
8 *Jama v. ICE*, 543 U.S. 335, 341 (2005).
9

10 20. First, the noncitizen is entitled to select a country of removal. 8 U.S.C. § 1231(b)(2)(A).
11 If either the noncitizen does not select a country, or as an alternative in the event the
12 noncitizen’s designated country does not accept the individual, the IJ will designate the country
13 where the person “is a subject, national, or citizen.” 8 U.S.C. § 1231(b)(2)(D). The IJ may also
14 designate the following additional countries, as specifically set forth in the statute:
15
16

- 17 (i) The country from which the [noncitizen] was admitted to the United States.
- 18 (ii) The country in which is located the foreign port from which the [noncitizen]
19 left for the United States or for a foreign territory contiguous to the United
20 States.
- 21 (iii) A country in which the [noncitizen] resided before the [noncitizen] entered the
22 country from which the [noncitizen] entered the United States.

23
24
25 ¹ References to the Attorney General in Section 1231(b) refer to the Secretary of DHS for
26 functions related to carrying out a removal order and to the Attorney General for functions
27 related to selection of designations and decisions about fear-based claims. 6 U.S.C. § 557. The
28 Attorney General has delegated the latter functions to the immigration courts and Board of
Immigration Appeals. See 8 C.F.R. §§ 1208.16, 1208.17, 1208.31, 1240.10(f), 1240.12(d).
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1 (iv) The country in which the [noncitizen] was born.

2 (v) The country that had sovereignty over the [noncitizen's] birthplace when the
3 [noncitizen] was born.

4 (vi) The country in which the [noncitizen's] birthplace is located when the
5 [noncitizen] is ordered removed.

6 (vii) If impracticable, inadvisable, or impossible to remove the [noncitizen] to each
7 country described in a previous clause of this subparagraph, another country
8 whose government will accept the [noncitizen] into that country.

8 8 U.S.C. § 1231(b)(2)(E).

9 21. “Unlike clauses (i)-(vi), clause (vii) has an *explicit* requirement that the designated
10 country be *willing* to accept the [noncitizen].” *Himri*, 378 F.3d at 939 (emphasis added). This
11 means that, “at the time the government proposes a country of removal pursuant to
12 § 1231(b)(2)(E)(vii), the government must be able to show that the proposed country *will* accept
13 the [noncitizen].” *Id.* Where a country has been improperly designated as a country of removal,
14 a noncitizen “may not be removed there.” *Id.*

15 22. The IJ must notify the noncitizen of the designated country or countries of removal. 8
16 C.F.R. § 1240.10(f) (providing that “the immigration judge shall notify the respondent” of
17 designated countries of removal).
18

19 23. Federal regulations provide that if the DHS “is unable to remove the [noncitizen] to the
20 specified or alternative country or countries, the order of the immigration judge does not limit
21 the authority of [DHS] to remove the [noncitizen] to any other country *as permitted by*
22 [*§ 1231(b)*].” 8 C.F.R. § 1240.12(d) (emphasis added).
23
24
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27

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

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

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

26. Certain individuals in Section 240 proceedings are ineligible for withholding of removal, for example, because of certain criminal convictions, but are still entitled to receive protection from removal in the form of deferral of removal under the Convention Against Torture upon demonstrating a likelihood of torture if removed to the designated country of removal. *See* FARRA 2681–822 (codified as Note to 8 U.S.C. § 1231) (“It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of

1 being subjected to torture, regardless of whether the person is physically present in the United
 2 States.”). *See also* 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1.

3
 4 27. Like withholding of removal, CAT protection is mandatory. *Id.* An individual granted
 5 CAT protection as to the designated country of removal may not be removed to any other
 6 country where he is “likely to be tortured.” 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

7 28. In *Jama v. ICE*, 543 U.S. 335, the Supreme Court confirmed that noncitizens who “face
 8 persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a
 9 number of available remedies: asylum; withholding of removal; relief under an international
 10 agreement prohibiting torture” *Jama*, 543 U.S. at 348 (citing 8 U.S.C. §§ 1158(b)(1),
 11 1231(b)(3)(A); 8 C.F.R. §§ 208.16(c)(4), 208.17(a)).

12
 13 29. An IJ may not make a “last minute” designation of an additional country of removal,
 14 because that would deprive the individual of a meaningful opportunity to apply for fear-based
 15 protection from removal. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). Such an
 16 action would “violate[s] a basic tenet of constitutional due process.” *Id.* “[I]ndividuals whose
 17 rights are being determined are entitled to notice of the issues to be adjudicated, so that they will
 18 have the opportunity to prepare and present relevant arguments and evidence.” *Id.*

19
 20 30. Because withholding of removal and CAT protection are country-specific, a noncitizen
 21 must be given notice of the designated country of removal *before* he can present a fear-based
 22 claim as to that country. *See id.*; *Hadera*, 494 F.3d at 1159; 8 C.F.R. §§ 1208.16, 1208.17. A
 23 noncitizen “is not entitled to adjudication of an application for withholding of removal to a
 24 country that nobody is trying to send them to.” *She v. Holder*, 629 F.3d 958, 965 (9th Cir.
 25 2010), *superseded by statute on other grounds*.

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1 31. Individuals in Section 240 proceedings are entitled to an administrative appeal to the
 2 BIA along with an automatic stay of deportation while the appeal is pending. 8 U.S.C.
 3 § 1101(a)(47)(B); 8 C.F.R. §§ 1003.6(a), 1240.15. Such individuals may also seek judicial
 4 review of an adverse administrative decision by filing a petition for review in the court of
 5 appeals. *See* 8 U.S.C. § 1252(a); *Nasrallah v. Barr*, 590 U.S. 573 (2020) (holding that
 6 noncitizens are entitled to judicial review of factual challenges to an IJ’s CAT determination).
 7

8 **The DHS’s Statutory Detention Authority During and After Removal Proceedings**
 9

10 32. “The statutory scheme governing the detention of [noncitizens] in removal proceedings
 11 is not static; rather, the [government’s] authority over a [noncitizen’s] detention shifts as the
 12 [noncitizen] moves through different phases of administrative and judicial review.” *Casas-*
 13 *Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 945 (9th Cir. 2008); *overruled on other*
 14 *grounds by Avilez v. Garland*, 69 F.4th 525, 529 (9th Cir. 2023).
 15

16 33. 8 U.S.C. § 1226 sets out a framework for the detention and release of noncitizens during
 17 their administrative removal proceedings.
 18

19 34. Section 1226(a) “sets out the default rule.” *Jennings v. Rodriguez*, 583 U.S. 281, 288
 20 (2018) (“*Rodriguez IV*”). The government may arrest and detain a noncitizen “pending a
 21 decision on whether the [noncitizen] is to be removed from the United States” and, “[e]xcept as
 22 provided in subsection (c) [of Section 1226] . . . may continue to detain” or “may release” the
 23 noncitizen pending removal proceedings. 8 U.S.C. § 1226(a). Regulations provide that
 24 noncitizens detained under Section 1226(a) “receive bond hearings at the outset of detention.”
 25 *Rodriguez IV*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).
 26

1 35. Section 1226(c) creates a narrow exception to the default rule of bond eligibility.

2 Paragraph (1) of Section 1226(c) provides that the government “shall take into custody any
3 [noncitizen] who” is removable on certain criminal and national security grounds, “when the
4 [noncitizen] is released” from criminal custody. 8 U.S.C. § 1226(c)(1). Section 1226(c) subjects
5 certain noncitizens to mandatory detention without the individualized bond hearing
6 contemplated by Section 1226(a).
7

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

14 37. 8 U.S.C. § 1231 authorizes the detention of noncitizens who have been issued a final
15 order of removal. “Section 1231(a) does not apply to detention during the pendency of
16 administrative or judicial removal proceedings.” *Avilez*, 69 F.4th at 530-31. “Section
17 1231 instead governs detention during a ninety-day ‘removal period’ after the conclusion of
18 removal proceedings. 8 U.S.C. § 1231(a)(1)–(2).” *Id.* For noncitizens who are not removed
19 during the ninety-day “removal period,” their detention is governed by Section 1231(a)(6). Such
20 individuals may not be detained beyond “a period reasonably necessary to secure removal.”
21 *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). “Thus, if removal is not reasonably
22 foreseeable . . . continued detention [is] unreasonable and no longer authorized by statute.” *Id.*
23 at 699-700.
24

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

STATEMENT OF FACTS

39. Mr. Ortega is forty-nine years old and was born El Salvador. He has lived in the United States for nearly thirty-five years. He now resides in Arcata, California with his U.S. citizen wife of twenty-four years, Carolyn Ortenburger. Mr. Ortega’s community in California includes Mr. Ortega’s U.S. citizen mother, his extended family, his employer and colleagues, his therapist, and many supportive friends. *See* Declaration of Giovanni Hernan Ortega (“Ortega Decl.”); Declaration of Carolyn Deam Ortenburger (“Ortenburger Decl.”); Declaration of Amalia Wille (“Wille Decl.”), Exhs. E-X, DD.

40. Mr. Ortega is a citizen of El Salvador. He does not have citizenship in any other country. *See* Ortega Decl.

41. Mr. Ortega has lived in the United States since 1990, when, as a teenager, he entered the United States on a plane from El Salvador as a derivate asylee through his mother’s approved asylum application. *See* Ortega Decl. He subsequently became a permanent resident of the United States. *Id.*; Wille Decl., Exh. A (Notice to Appear).

42. As a teenager, Mr. Ortega had trouble adjusting to life in the United States and processing the violence he had lived through during El Salvador’s civil war. As a young teen, he

1 joined a gang called Sureños and, subsequently, got large and prominent gang-related tattoos on
2 his shoulder and stomach. *See Ortega Decl.*

3 43. In January of 1993, at the age of sixteen, Mr. Ortega made a terrible decision that he
4 deeply and incurably regrets: he participated in a drive-by shooting of seven members of a rival
5 gang. *Id.* Although he was a minor, he was charged and convicted as an adult. In March 1994,
6 he plead nolo contendere to seven counts of violating Cal. Penal Code § 664/187(A) (Attempted
7 Murder) in San Mateo County, California. *Id.* In 1995, he was sentenced to thirty-one years in
8 prison. *Id.*

9 44. Mr. Ortega made tremendous efforts to turn his life around while incarcerated. *Id.* He
10 worked to disaffiliate from any gangs. In 2001, he married his U.S. citizen wife, Carolyn
11 Ortenburger, who has provided Mr. Ortega with extensive and ongoing support over the past
12 twenty-four years of their marriage. *Id.*; Ortenburger Decl.

13 45. Despite his efforts to disassociate from any gang activity, while he was serving his
14 criminal sentence, the California prison “validated” Mr. Ortega as an associate of the Mexican
15 Mafia, a high-profile prison gang, in part based on Mayan drawings found in Mr. Ortega’s cell,
16 which were not actually gang-related. Thus, his U.S. prison records show Mr. Ortega as being
17 gang-affiliated. During his incarceration, Mr. Ortega continued getting tattoos—including of his
18 wife and Mayan and Native American myths—and now he has tattoos covering his chest, right
19 arm, and lower legs. *See Ortega Decl.*; *See Wille Decl.* at Exh. B (IJ decision granting CAT
20 protection).

1 46. Mr. Ortega served over twenty-four years in criminal incarceration—two years in
2 juvenile hall and county jail and twenty-two years in prison, fifteen of which were in solitary
3 confinement. *See* Ortega Decl.

4
5 **Mr. Ortega is Placed in INA 240 Removal Proceedings, and Granted Release on Bond**

6 47. After finishing his criminal sentence, Mr. Ortega was transferred to ICE custody on
7 April 20, 2017. *See* Ortega Decl. The DHS placed Mr. Ortega in Section 240 removal
8 proceedings. *See* 8 U.S.C. § 1229a. The DHS served a Notice to Appear (“NTA”) charging Mr.
9 Ortega as removable from the United States pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii), INA
10 § 237(a)(2)(A)(iii), for having been convicted of an aggravated felony under 8 U.S.C.
11 § 1101(a)(43)(U), INA § 101(a)(43)(U). Wille Decl. at Exh. A (Notice to Appear).
12

13
14 48. The Notice to Appear alleged Mr. Ortega to be a native and citizen of El Salvador. *Id.*
15 On May 1, 2017, before the Immigration Judge, Mr. Ortega admitted the allegations in the
16 Notice to Appear and conceded that he was removable from the United States. Mr. Ortega
17 declined to designate a country of removal. The ICE attorney present in court designated El
18 Salvador as the country of removal. *See* Wille Decl.
19

20 49. At no time during Mr. Ortega’s removal proceedings did any party designate a country
21 for removal other than El Salvador. *See id.*

22 50. Mr. Ortega’s criminal conviction rendered him ineligible for protection in the form of
23 asylum or withholding of removal. *See* 8 U.S.C. §§ 1158(b)(2)(B)(i), 1231(b)(3)(B). Mr. Ortega
24 sought CAT protection from El Salvador before the IJ. Wille Decl., Exh. B (IJ decision). On
25
26
27

1 October 2, 2017, the IJ denied Mr. Ortega relief under the CAT. *Id.* Mr. Ortega filed an appeal
2 to the BIA. *Id.*

3 51. After having spent more than nine months in immigration custody, Mr. Ortega appeared
4 before an IJ for a “Rodriguez”² bond hearing on January 30, 2018. *See* Ortega Decl. At the
5 conclusion of the hearing, after considering all of the evidence, including that Mr. Ortega’s
6 CAT application had been denied by the IJ and was on appeal, the IJ concluded that the
7 government had not demonstrated that Mr. Ortega was a danger to the community nor such a
8 flight risk that he could be held in continued detention without bond. *See Ortega v. Bonnar*, 415
9 F. Supp. 3d 963, 966 (N.D. Cal. 2019). The IJ ordered that Mr. Ortega be released from custody
10 upon the posting of a bond in the amount of \$35,000 and conditioned on periodic reporting to
11 the DHS and his compliance with all laws. *Id.*

12 52. On January 31, 2018, upon the posting of bond, Mr. Ortega was released from
13 immigration custody and united with his wife. *See* Ortenburger Decl. He has been living in the
14 community in Arcata, California since his parole was transferred to Humboldt County about six
15 weeks later. *See id*; *see also* Ortega Decl.

16 53. Upon release from custody, Mr. Ortega reported to his California parole officer, and
17 complied with all parole check-ins. He successfully completed parole in April 2020. *See* Ortega
18 Decl.; Ortenburger Decl.

26
27 ² *See Rodriguez v. Robbins* (“Rodriguez IIF”), 804 F.3d 1060 (9th Cir. 2015), *rev’d sub nom.*
28 *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) (“Rodriguez IV”).
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1 54. In addition, the DHS continued to monitor Mr. Ortega through the Intensive Supervision
2 Appearance Program (“ISAP”), including via a GPS ankle monitoring device, and later a phone
3 app device. Like with parole, he maintained a perfect record of compliance with all ISAP check-
4 ins. *See* Ortega Decl., Ortenburger Decl.

6 55. The DHS did not appeal the IJ’s bond order to the BIA.

7 56. On May 3, 2018, the BIA dismissed Mr. Ortega’s appeal of the IJ’s decision denying
8 CAT protection. Wille Decl. at Exh. B (IJ decision). Mr. Ortega filed a petition for review to the
9 Ninth Circuit Court of Appeals. The Ninth Circuit issued a judicial stay of removal. *See Ortega*
10 *v. Garland*, Ninth Circuit Case No. 18-71548, Dkt. Nos. 1-3, 13.

12 57. Nevertheless, ICE refused to agree that they would not re-arrest Mr. Ortega pending
13 judicial review of his removal order. In their view, the BIA’s denial of his CAT application
14 constituted a material change in circumstances that warranted his re-arrest. *See Ortega*, 415 F.
15 Supp. 3d at 969, 970.

17 **2018-2020 Habeas Proceedings Before This Court Result in an Injunction Preventing ICE**
18 **from Re-Arresting Mr. Ortega Absent Pre-Deprivation Process**

19 58. On May 30, 2018, Mr. Ortega brought an as-applied due process challenge to the DHS’s
20 ability to re-arrest him absent adequate process, given that an IJ had already determined he did
21 not pose a danger to the community or an unmitigable flight risk. *See Ortega*, 415 F. Supp. 3d at
22 967. Judge Orrick issued a temporary restraining order and later a preliminary injunction
23 enjoining ICE “from re-arresting Ortega unless and until a hearing, with adequate notice, was
24 held in Immigration Court to determine whether his bond should be revoked or altered.” *Id.*
25
26

1 59. On November 22, 2019, Judge Orrick granted Mr. Ortega's habeas petition. *Ortega*, 415
2 F. Supp. 3d at 970. Judge Orrick permanently enjoined ICE "from re-arresting Ortega unless and
3 until a hearing, with adequate notice, is held in Immigration Court to determine whether his bond
4 should be revoked or altered." *Id.*

6 60. Judge Orrick concluded that Mr. Ortega had a constitutionally protected liberty interest,
7 and that due process entitled him to a hearing before a neutral adjudicator before DHS could
8 effectuate his re-arrest.

10 61. Applying the balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Judge
11 Orrick found that Mr. Ortega had a "substantial private interest in remaining on bond, and that
12 the interest has only grown in the 18 months since [the Court] granted a preliminary injunction."
13 *Ortega*, 415 F. Supp. at 970. The Court noted that, during the then-nearly-two-years since his
14 release from custody, Mr. Ortega had worked at an outdoor retailer and completed training to
15 become a bike mechanic. *Id.* at 967. Mr. Ortega had been living with his wife and deepened his
16 relationship with her. *Id.* He developed close friendships in his community. *Id.* He remained
17 "active in his community, from volunteering to participating in cycling events." *Id.* Further, Mr.
18 Ortega had supported numerous family members, and had "helped [his mother] through her
19 husband's death." *Id.* The Court noted that Mr. Ortega had continued to work weekly with his
20 longtime therapist and had "maintained perfect compliance with the requirements of ICE's
21 Intensive Supervision Alien Program." *Id.* The Court concluded that without the procedural
22 safeguard of a pre-deprivation hearing before an IJ, he faced a high risk of erroneously being
23 deprived of his liberty, given that DHS believed it was justified in re-arresting Mr. Ortega based
24 on the sole fact that the BIA had affirmed the IJ's denial of CAT—an event that had occurred
25
26
27
28 *Amended Petition for Writ of Habeas Corpus*
and Complaint

1 nearly a year and a half earlier—and since that time, Mr. Ortega had “strictly complied with all
2 the requirements of his release.” *Id.* at 970.

3 62. On January 20, 2020, the parties stipulated, and Judge Orrick so ordered, that the Court’s
4 order granting Petitioner’s writ of habeas corpus only implicated the government’s authority
5 pursuant to 8 U.S.C. § 1226. Case No. 3:18-cv-03228-WHO, Dkt. No. 45.

6 63. Although the government initially filed an appeal of Judge Orrick’s order, it voluntarily
7 dismissed that appeal. *Ortega v. Bonnar*, 2021 WL 1590193 (9th Cir. 2021) (order granting
8 government’s unopposed motion for voluntary dismissal).
9

10
11 **Following a Remand from the Ninth Circuit Court of Appeals in 2022, the Immigration**
12 **Judge Grants Mr. Ortega Protection from Removal to El Salvador Under the Convention**
13 **Against Torture**

14 64. While he remained at home in the community, Mr. Ortega’s challenge to his CAT denial
15 proceeded at the Ninth Circuit Court of Appeals. After Mr. Ortega filed his Opening Brief, the
16 Attorney General filed an unopposed motion to remand his case to the BIA for further
17 consideration of his CAT application. Ninth Circuit Case No. 18-71548, Dkt. No. 44. The Ninth
18 Circuit remanded Mr. Ortega’s case to the BIA on January 4, 2021. *Id.*, Dkt. No. 46.
19

20 65. In December 2021, the BIA, in turn, remanded Mr. Ortega’s case to the IJ. Wille Decl.,
21 Exh. B (IJ decision).
22

23 66. In March 2022, while Mr. Ortega’s immigration case was pending further consideration
24 before the IJ, El Salvador President Nayib Bukele declared a State of Exception in his country as
25 a reaction to a particularly violent outburst of gang violence. Bukele suspended civil liberties and
26 began mass-round-ups of individuals precisely like Mr. Ortega—tattooed individuals with any
27

1 alleged or suspected connections to gangs, even if they had rehabilitated and disassociated from
2 gangs. By June 2022, it was reported that the Salvadoran government had apprehended more
3 than 43,000 people under the State of Exception. *See* Wille Decl., Exh. B (IJ decision). The
4 Salvadoran government imprisoned suspected gang members indefinitely without trial, and
5 engaged in torture and extrajudicial killings. An expert witness described Mr. Ortega as “the
6 poster child” for those being targeted by the Salvadoran government under the emergency
7 decree. *Id.*

8
9
10 67. Following an evidentiary hearing in immigration court, on December 21, 2022, the IJ
11 issued a final decision in Mr. Ortega’s removal proceedings. He ordered Mr. Ortega removed to
12 El Salvador, and simultaneously ordered that his removal to El Salvador be deferred pursuant to
13 the Convention Against Torture. The IJ highlighted “[e]xtensive evidence” of “human rights
14 violations committed by the Salvadoran government” in connection to the State of Exception,
15 and found that Mr. Ortega faced a “clear likelihood of torture by the police or other government
16 officials in El Salvador” since he was a former gang member with tattoos and a criminal history.
17 *See id.* (IJ Decision at 3). Accordingly, the IJ found that Mr. Ortega had “demonstrated he is
18 more likely than not to suffer future torture by or with the acquiescence of the Salvadoran
19 government if removed to El Salvador.” *Id.*

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22 68. The DHS did not appeal the IJ’s order granting Mr. Ortega protection under the CAT.
23 *See* Wille Decl.

24
25 69. At no time during his immigration court proceedings—which spanned from 2017 until
26 2022—did the DHS provide Mr. Ortega with notice, or any indication whatsoever, that it may
27 seek to remove him to a country other than El Salvador. *See* Wille Decl.

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

Mr. Ortega Continues to Follow the Law and Deepen His Ties to the Community

70. Nearly seven-and-a-half years have passed since Mr. Ortega was released from ICE custody.

71. Other than successfully completing his parole requirements, Mr. Ortega has had *no contact* with the criminal justice system since being released from ICE custody. He has had no new arrests or convictions. *See Ortega Decl., Ortenburger Decl.*

72. At ICE's request, Mr. Ortega appeared in person at the ICE San Francisco Field Office on March 17, 2023. There, ICE cancelled the \$35,000 bond Mr. Ortega had paid in 2018 because ICE "determined that the conditions of the immigration bond . . . have been satisfied." Wille Decl., Exh. C (Notice of Bond Cancellation).

73. Also on March 17, 2023, ICE issued an Order of Supervision, Form I-220B, requiring Mr. Ortega to annually report to the ICE San Francisco Field Office. Wille Decl., Exh. D (Order of Supervision). In accordance with the order, Mr. Ortega appeared at the ICE San Francisco ICE Office one year later in March 2024, where he was ordered to appear again the following year, in March 2025. *Id.* Unfortunately, however, Mr. Ortega's wife was diagnosed with recurrent breast cancer in early 2025, and related medical appointments conflicted with the scheduled check-in date. Through counsel, Mr. Ortega requested that the March 2025 appearance be postponed due to his wife's health treatment. ICE rescheduled Mr. Ortega's in-person reporting date to July 9, 2025. *See Ortega Decl.; Ortenburger Decl.; Wille Decl., Exh. D* (Order of Supervision, listing next reporting date).

74. Mr. Ortega has complied with all reporting requirements from the DHS since he was granted CAT. *See Ortega Decl.; Ortenburger Decl.*

1 75. Since his release, Mr. Ortega and his wife have continued to build their stable life and
 2 have only further deepened their ties to their community in Arcata. Mr. Ortega has been
 3 promoted to become the Arcata store manager of Adventure's Edge, the outdoor where he has
 4 worked for several years. Ortega Decl. He is now a lead bike mechanic at the store, and he also
 5 volunteers his time teaching high school students and Native youth how to maintain their bikes.
 6 Ortega Decl. He and his wife love to explore the outdoors through bike riding and hiking, and
 7 they have adopted a second cat together. *Id.* Mr. Ortega expresses:
 8

9
 10 Things have been going well for us, especially since I was granted
 11 protection from deportation under the CAT. We have been able to
 12 focus on our lives and the lives of our friends, family, and
 13 community. We have potlucks with [my wife's] co-workers and get
 together with our friends for bike rides and meals. We visit our
 families. We live in a community that cares for us, and us for them.

14 *Id.*

15 76. As Christel Shaughnessy, a longtime friend and resident of Arcata describes, "Giovanny
 16 has become a full member of our community, working full time and volunteering." Wille Decl.,
 17 Exh. I (Shaughnessy Letter). A Recreation Supervisor for the City of Arcata notes the role
 18 Giovanny "plays in connecting with so many different community members to each other and
 19 sharing his love for recreation activities, art, and social interactions." *Id.*, Exh. J (Groom Letter).
 20

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

24 77. Since January 2025, the federal government of the United States has begun a campaign
 25 to deport large numbers of noncitizens from the United States at any cost. It has aggressively
 26 acted to remove individuals to countries other than those designated for removal. This process is
 27

known as “third country removals.” Historically, it has been very rare for the U.S. government to attempt third country removals, especially to countries to which the individual has no ties. *See Wille Decl.*

78. On the campaign trail in 2024, Donald J. Trump promised that “[a]s soon as I take the oath of office . . . we will begin the largest deportation operation in the history of our country.”³ During his inauguration speech, Trump announced he would “begin the process of returning millions and millions of criminal aliens back to places from which they came.”⁴

79. On January 20, 2025, President Trump signed an Executive Order, entitled *Securing our Borders*, in which he instructed the Secretary of State, Attorney General, and DHS Secretary to “take all appropriate action to facilitate additional international cooperation and agreements, . . . , including [safe third country agreements] or any other applicable provision of law.” Exec. Order No. 14165, 90 Fed. Reg. 8467, 8468 (Jan. 20, 2025). In February, Secretary of State Marco Rubio visited several Central American countries to negotiate acceptance of noncitizens from the United States, including individuals with final removal orders.⁵ News outlets later reported that the administration had expanded its efforts to deport noncitizens from

³ Catherine E. Shoichet, *Trump’s mass deportation plans would be costly. Here’s why*, CNN (Nov. 7, 2024), <https://www.cnn.com/2024/10/19/politics/trump-mass-deportation-cost-cec>.

⁴ Donald J. Trump, *The Inaugural Address*, The White House (Jan. 20, 2025), <https://www.whitehouse.gov/remarks/2025/01/the-inaugural-address/>.

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

1 the United States to war-torn countries known for brutality and human rights abuses, including
 2 Libya.⁶ At a cabinet meeting, Secretary Rubio stated that the administration intends to use
 3 foreign prisons as part of a mass deportation effort, stating, ““We are working with other
 4 countries to say, ‘We want to send you some of the most despicable human beings to your
 5 countries.’”⁷

7 80. Within a week of Trump’s inauguration, the Washington Post reported that ICE officials
 8 had been directed to increase arrests to meet daily quotas.⁸ Each field office was instructed to
 9 make 75 arrests per day, with managers “held accountable” for failing to meet the targets. *Id.*
 10 Nationally, this would increase daily ICE arrests from a few hundred per day to at least 1,200 to
 11 1,500. *See id.* By early February, NBC News reported that Trump was “angry” that deportation
 12 numbers were not higher, which placed “[a]gents at [ICE] [] under increasing pressure to boost
 13 the number of arrests and deportations . . .”⁹ NBC news further reported that in May, White
 14 House Deputy Chief of Staff Stephen Miller threatened to fire senior ICE officials if they did
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20 ⁶ Amanda Taub, *The Trump Administration is Lining Up More Countries to Take Its Deportees*,
 21 New York Times (May 14, 2025), [https://www.nytimes.com/2025/05/14/world/trump-](https://www.nytimes.com/2025/05/14/world/trump-administration-deportees.html)
 22 [administration-deportees.html](https://www.nytimes.com/2025/05/14/world/trump-administration-deportees.html).

23 ⁷ Gregory Svirnovskiy, *White House looking for other countries to accept deportees*, Politico
 24 (Apr. 30, 2025), [https://www.politico.com/news/2025/04/30/white-house-looking-other-](https://www.politico.com/news/2025/04/30/white-house-looking-other-countries-accept-deportees-00319541)
 25 [countries-accept-deportees-00319541](https://www.politico.com/news/2025/04/30/white-house-looking-other-countries-accept-deportees-00319541).

26 ⁸ Nick Miroff and Maria Sacchetti, *Trump officials issue quotas to ICE officers to ramp up*
 27 *arrests*, Washington Post, (Jan. 26, 2025),
 28 <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

⁹ *See* Kristin Welker and Julia Ainsley, *Trump is 'angry' that deportation numbers are not*
higher, NBC News (Feb. 7, 20205, 1:28 PM), [https://www.nbcnews.com/politics/national-](https://www.nbcnews.com/politics/national-security/trump-angry-deportation-numbers-are-not-higher-rcna191273)
[security/trump-angry-deportation-numbers-are-not-higher-rcna191273](https://www.nbcnews.com/politics/national-security/trump-angry-deportation-numbers-are-not-higher-rcna191273).

1 not begin detaining 3,000 immigrants per day.¹⁰ Also in May, the DHS issued a press release
 2 marking Respondent Noem's first 100 days in office which announced that "Secretary Noem is
 3 fulfilling President Trump's promise to carry out mass deportations—starting with the worst of
 4 the worst," including "criminal illegal aliens with convictions" and gang members.¹¹ The DHS
 5 boasted that the agency "has arrested over 168,000 illegal aliens in 2025" and "[d]eportations
 6 have already exceeded 152,000—this is just the beginning." *Id.*

8 81. As part of its efforts to ramp up arrests and deportations, on or about February 18, 2025,
 9 DHS issued a national directive for ICE officers to "carefully review for removal all cases" of
 10 all individuals—like Mr. Ortega—who are not detained but who are periodically reporting to
 11 ICE. The directive expressly instructs officers to review the cases of noncitizens—like Mr.
 12 Ortega—who have been granted protection under the CAT "to determine the viability of
 13 removal to a third country and accordingly whether the [noncitizen] should be re-detained."
 14 Reuters published a copy of the February 18, 2025 directive on March 6, 2025.¹²

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 21 ¹⁰ Julia Ainsley, et. al., *A sweeping new ICE operation shows how Trump's focus on immigration*
 22 *is reshaping federal law enforcement*, NBC News (Jun. 4, 2025),
 23 <https://www.nbcnews.com/politics/justice-department/ice-operation-trump-focus-immigration-reshape-federal-law-enforcement-rcna193494>.

24 ¹¹ Press Release, *100 Days of Secretary Noem: Making America Safe Again*, U.S. Department of
 25 Homeland Security (May 5, 2025), <https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-safe-again>.

26 ¹² Ted Hesson and Kristina Cooke, *Trump Weighs Revoking Legal Status of Ukrainians as US*
 27 *Steps Up Deportations*, Reuters (Mar. 6, 2025), <https://www.reuters.com/world/us/trump-plans-revoke-legal-status-ukrainians-who-fled-us-sources-say-2025-03-06/>. The article links to the
 28 directive. (last visited Jun. 19, 2025).

1 82. Meanwhile, the federal government has begun to remove noncitizens from the United
2 States to third countries without due process.

3 83. On March 15, 2025, The Trump administration invoked the Alien Enemies Act of 1798
4 (“AEA”) to send hundreds of Venezuelans, whom the government claimed were members of
5 the Tren de Aragua gang, from the United States directly to El Salvador’s mega prison, the
6 Center for Terrorism Confinement (“CECOT”), without providing the individuals any process
7 by which they could challenge their expulsion and transfer to El Salvador.¹³ Respondents
8 proceeded with the deportations despite an order from District Judge Boasberg—issued before
9 the planes had landed in El Salvador—to return the planes to El Salvador. *See J.G.G. v. Trump*,
10 No. 1:25-cv-00766-JEB, -- F.Supp.3d --, 2025 WL 1119481, at *1 (D.D.C. Apr. 16, 2025),
11 *appeal filed, J.G.G. v. Trump* (D.C. Cir.). Judge Boasberg found probable cause existed for
12 finding Trump administration officials in criminal contempt because “the Government’s actions
13 on [March 15, 2025] demonstrate a willful disregard for [the court’s] Order....” *See id.* After the
14 Supreme Court ruled that individuals subject to detention and removal under the Alien Enemies
15 Act were entitled to due process and judicial review, *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006
16 (2025), Trump stated: “I hope we get cooperation from the courts, because we have thousands
17 of people that are ready to go out and you can’t have a trial for all of these people.”¹⁴ He issued
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24 ¹³ Myah Ward, *Behind Trump’s push to erode immigrant due process rights*, Politico (Apr. 28,
25 2025), <https://www.politico.com/news/2025/04/28/trump-immigration-100days-due-process-00307435>.

26 ¹⁴ Luke Broadwater, *Trump Says Undocumented Immigrants Shouldn’t Get Trials Before*
27 *Deportation*, New York Times, (Apr. 22, 2025), <https://www.nytimes.com/2025/04/22/us/politics/trump-undocumented-immigrants-trials-deportation.html>.

1 a social media post stating, “[w]e cannot give everyone a trial, because to do so would take,
2 without exaggeration, 200 years.” *Id.*

3
4 84. The federal government has also removed noncitizens from the United States who have
5 been granted fear-based protection.

6 85. On March 15, 2025, the United States removed Salvadoran national Kilmar Armando
7 Abrego Garcia to CECOT in El Salvador, even though an IJ had granted Mr. Abrego Garcia
8 withholding of removal, which forbid his removal to El Salvador. *See Noem v. Abrego Garcia*,
9 145 S.Ct. 1017 (2025) (per curiam). In response to a lawsuit challenging the removal as
10 unlawful, the federal government argued that, notwithstanding the IJ’s order granting
11 withholding of removal as to El Salvador, 8 U.S.C. § 1252(g) barred a legal challenge to the
12 removal because, according to the government, they had made an unreviewable “discretionary
13 decision[]” to execute Abrego Garcia’s removal order to El Salvador. *Abrego Garcia v. Noem*,
14 Case No. 8:25-cv-00951-PX (D. Md), Dkt. No. 165 (Defendant’s Motion to Dismiss, filed May
15 27, 2025).¹⁵

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18 86. In February 2025, an IJ granted withholding of removal to O.C.G., a noncitizen from
19 Guatemala. The same day, the DHS deported O.C.G. to Mexico, a country where he had
20 previously been held for ransom, without any advance notice and without providing him with
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25 ¹⁵ The United States government returned Mr. Abrego Garcia to the United States and is holding
26 him in criminal custody. *See* Ximena Bustillo, *Kilmar Abrego Garcia, wrongly deported to El*
27 *Salvador, is back in the U.S. to face smuggling charges*, NPR (June 6, 2025),
<https://www.npr.org/2025/06/06/nx-s1-5425509/kilmar-abrego-garcia-el-salvador-deport-cecot-maryland-ice>.

1 opportunity to seek fear-based relief from Mexico. *See DVD v. U.S. Department of Homeland*
 2 *Security*, Case No. 1:25-CV-10676-BEM (D. Mass), Dkt. Nos. 1, 132.¹⁶

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

5
 6 87. On March 23, 2025, noncitizens D.V.D., M.M., E.F.D., and O.C.G., on behalf of
 7 themselves and a proposed nationwide class of similarly situated individuals, filed a class action
 8 complaint in the District of Massachusetts challenging the DHS's policy or practice of deporting
 9 individuals to a third country (i.e., a country never designated for removal) without first
 10 providing them with notice or opportunity to contest removal based on their fear of persecution
 11 and torture in that third country. *DVD v. U.S. Department of Homeland Security*, Case No. 1:25-
 12 CV-10676-BEM (D. Mass) (Mar. 23, 2025).

13
 14 88. On March 30, 2025, two days after the District Court issued a temporary restraining
 15 order in *DVD*, the DHS issued a memorandum entitled, "Guidance Regarding Third Country
 16 Removals." Wille Decl., Exh. Z; *see also DVD v. DHS*, Case No. 1:25-CV-10676-BEM, Dkt.
 17 43-1. The memo "clarifies DHS policy regarding the removal of aliens with final orders of
 18 removal . . . to countries other than those designated for removal in those removal orders." *Id.* It
 19 provides that DHS may remove noncitizens to a country "that had not previously been
 20 designated as the country of removal," without notice to the noncitizen, and without an
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 25 ¹⁶ He was returned to the United States in early June, after District Judge Brian Murphy ordered
 26 the government to facilitate his return. *See* Nate Raymond, *Guatemalan deportee arrives in US*
 27 *after judge orders Trump to facilitate return*, Reuters (Jun. 4, 2025),
[https://www.reuters.com/world/us/guatemalan-deportee-arrives-us-after-judge-orders-trump-](https://www.reuters.com/world/us/guatemalan-deportee-arrives-us-after-judge-orders-trump-facilitate-return-2025-06-04/)
[facilitate-return-2025-06-04/](https://www.reuters.com/world/us/guatemalan-deportee-arrives-us-after-judge-orders-trump-facilitate-return-2025-06-04/).

1 opportunity for the individual to apply for withholding or CAT protection as to the third
2 country, so long as DHS has determined that the country “has provided diplomatic assurances
3 that aliens removed from the United States will not be persecuted or tortured” and “the
4 Department of State believes those assurances to be credible.” *Id.* The memo does not require
5 any individualized assurances against mistreatment, as the statute and regulations require. *Id.*;
6 *see* FARRA 2681–822; 8 C.F.R. 208.17(b)(2); 1208.17(b)(2); *see also Jama*, 543 U.S. at 348.
7 Further, blanket assurances do not protect against torture by non-state actors, *see* 8 C.F.R.
8 208.17(a)(7), nor chain refoulement, whereby the third country proceeds to return an individual
9 back to the noncitizen’s country of origin. The memo provides for no avenue for the noncitizen
10 to seek review of the assurances, which violates due process. Wille Decl., Exh. Z. The memo
11 does not require DHS to make the requisite showing under § 1231(b)(2)(E)(vii) that a third
12 country will accept the noncitizen. Further, even where diplomatic assurances are not at issue,
13 the memo does not ensure that a noncitizen will be able to present a CAT claim to an
14 Immigration Judge. *See id.* It also directs a reopening scheme that purports to limit the IJ’s
15 ability to designate the country of removal and the noncitizen’s ability to contest the
16 designation. *See id.*

17 89. On April 18, 2025, Judge Brian Murphy issued an order certifying the following
18 nationwide class pursuant to Fed. R. Civ. P. 23(b)(2):
19

20 All individuals who have a final removal order issued in proceedings
21 under Section 240, 241(a)(5), or 238(b) of the INA (including
22 withholding-only proceedings) whom DHS has deported or will
23 deport on or after February 18, 2025, to a country (a) not previously
24 designated as the country or alternative country of removal, and (b)
25 not identified in writing in the prior proceedings as a country to
26 which the individual would be removed.
27

1 *DVD v. DHS*, -- F. Supp. 3d --, 2025 WL 1142968, at *14-*19 (D. Mass. Apr. 18, 2025),
 2 *opinion clarified on other grounds*, 2025 WL 1323697 (D. Mass. May 7, 2025), and 2025 WL
 3 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. DVD v. DHS*, 2025 WL
 4 1495517 (D. Mass. May 26, 2025); *appeal pending sub nom DVD v DHS* (1st Cir. Case No. 25-
 5 1393); *order stayed on other grounds by DHS v. DVD*, Case No. 24A1153, 2025 WL 1732103
 6 (June 23, 2025) (staying the preliminary injunction which was contained in the same order as
 7 the class certification).
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10 90. In the present case, Mr. Ortega is a *DVD* class member because he has a final removal
 11 order to El Salvador. Wille Decl., Exh. B. No other country besides El Salvador has been
 12 identified as a country of removal or alternate country of removal. *Id.*; Wille Decl. Yet he faces
 13 removal to a third country. *See* Wille Decl., Exhs. Y-Z.
 14

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

3
4 92. On June 23, 2025, the United States Supreme Court stayed Judge Murphy’s preliminary
5 injunction pending disposition of the government’s appeal in the United States Court of Appeals
6 for the First Circuit and disposition of a petition for a writ of certiorari, if such writ is timely
7 sought. *Department of Homeland Security v. DVD*, ---S.Ct.---, 2025 WL 1732103 (June 23,
8 2025).

9
10 93. On or about May 20, 2025, prior to the Supreme Court’s stay of the *DVD* preliminary
11 injunction, the federal government “rac[ed] to get six [*DVD*] class members onto a plane to
12 unstable South Sudan, clearly in breach of the law and [Judge Murphy’s preliminary
13 injunction].” *DVD v. DHS*, 2025 WL 1495517, at *1 (D. Mass. May 26, 2025). After the
14 deportation flights had departed the United States, but before they reached South Sudan, Judge
15 Murphy found the government in violation of the preliminary injunction. *Id.* On May 21, 2025,
16 South Sudan’s police spokesperson told the Associated Press that no deportees had arrived in
17 South Sudan, and that if they do, they would be “redeployed to their correct country” if found
18 not to be South Sudanese.¹⁷ The federal government has refused to return these individuals to
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25 ¹⁷ Lindsay Whitehurst, et. al., ‘Unquestionably in violation,’ *Judge says US government didn’t*
26 *follow court order on deportations*, Associated Press (May 21, 2025),
27 [https://www.ap.org/news-highlights/spotlights/2025/unquestionably-in-violation-judge-says-us-](https://www.ap.org/news-highlights/spotlights/2025/unquestionably-in-violation-judge-says-us-government-didnt-follow-court-order-on-deportations/)
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1 the United States, and as of June 6, NPR reported that they were still being detained in shipping
2 containers in Djibouti.¹⁸ *See also DVD v. DHS*, 2025 WL 1495517.

3 **DHS Continues to Detain Noncitizens at Regularly Scheduled Check-Ins, and Mr. Ortega**
4 **Faces Re-Arrest at his July 9, 2025 ICE Appointment**

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

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10 95. For example, in February 2025, a Salvadoran national who had been granted
11 withholding of removal as to El Salvador was re-detained at a scheduled reporting appointment
12 with ICE. *See Wille Decl.*, Exh. AA (Attorney Newman Declaration). ICE served him with a
13 notice stating that his release was revoked due to “change in circumstances in [his] case,” but it
14 was not explained what those changed circumstances were. *Id.* About two weeks after he was
15 detained, he was informed that he could seek a reasonable fear interview for “Costa Rica,
16 Guatemala, Honduras, Mexico, and Panama,” but ICE did not confirm those were the countries
17 they were attempting to remove him to, or if there were other countries they were considering.
18 *Id.* On March 13, 2025, Mr. Newman’s office filed a motion to reopen his client’s immigration
19 court proceedings, which was granted, but there is currently litigation in immigration court over
20 where those proceedings should take place. *Id.* To date, Mr. Newman’s client remains detained
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26 ¹⁸ Ximena Bustillo and Bill Chappell, *Deportees are being held in a converted shipping*
27 *container in Djibouti, ICE says*, NPR (Jun. 6, 2025), <https://www.npr.org/2025/06/06/g-s1-71039/migrants-djibouti-ice-shipping-container>.

1 and the DHS has not provided any evidence that there is actually a country which will accept
2 the individual. *Id.*

3 96. On March 3, 2025, ICE detained another Salvadoran national who had been granted
4 withholding of removal at a check-in even though he had no new criminal history nor had he
5 violated the terms of his release. *See* Wille Decl., Exh. BB (Attorney Jones Declaration). Four
6 days later, ICE informed Ms. Jones that her client would be deported to Mexico without
7 providing him an opportunity to seek protection from that country. *Id.* On March 8, 2025, ICE
8 attempted to place Ms. Jones' client on a bus headed for Mexico, but due to his stern
9 protestations, they did not remove him that day. *Id.* On March 10, 2025, Ms. Jones filed a motion
10 to reopen with an IJ, which was denied. *Id.* Ms. Jones filed an appeal to the BIA, which granted a
11 stay of removal, while the appeal remains pending. *Id.* On June 2, 2025, Ms. Jones requested
12 that ICE release her client. ICE denied that request the following day and her client remains
13 detained to this day. *Id.*

14 97. Similarly, Mr. Sandoval-Moshenberg, an attorney in Fairfax, Virginia, has filed or is in
15 the process of filing ten different habeas petitions for noncitizen clients who were granted
16 withholding or deferral of removal and who were subsequently arrested by ICE this year, either
17 between or at a regularly scheduled check-ins. *See* Wille Decl., Exh. CC (Attorney Sandoval
18 Declaration). In none of those ten cases did ICE serve Mr. Sandoval-Moshenberg's clients with
19 notices of third country removal. *Id.* Of those ten individuals, eight remain in detention, and two
20 have been ordered released by District Court Judges. *Id.* On top of those ten individuals, Mr.
21 Sandoval-Moshenberg has three clients of his own who were detained in Louisiana under
22 similar circumstances, and he has done consultations with ten other individuals who have
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1 experienced nearly identical re-detentions. *Id.* On top of that, he has consulted with at least six
 2 or seven attorneys with clients in similar circumstances. *Id.*¹⁹

3 98. In the first week of June 2025, news outlets across the country reported that ICE had
 4 arrested “hundreds” of noncitizens at scheduled check-ins.²⁰ On one day that week, the San
 5 Francisco Chronicle reported that ICE arrested fifteen noncitizens at their scheduled check-ins
 6 at the at the San Francisco ICE Field Office.²¹ ICE stated that the individuals who had been
 7 arrested at check-ins had final orders of removal. *Id.*

8 99. Mr. Ortega is currently under a DHS order to appear in-person at the San Francisco ICE
 9 Field Office on July 9, 2025. *See* Wille Decl, Exh. D (I-220B).
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15 ¹⁹ *See also, e.g.,* Dan Gooding, *ICE Detains 18 People Showing Up for Scheduled Immigration*
 16 *Appointments*, Newsweek (Mar. 21, 2025), <https://www.newsweek.com/cubans-arrested-ice-immigration-appointments-2048860>.

17 ²⁰ *E.g.,* Julia Ainsley, Laura Strickler and Didi Martinez, *ICE arrests record number of*
 18 *immigrants in single day, including hundreds at scheduled appointments*, NBC News (June 4,
 19 2025), <https://www.nbcnews.com/politics/national-security/ice-arrests-record-number-immigrants-single-day-rcna210817>. *See also, e.g.,* Nidia Cavazos, *Immigrants at ICE check-ins*
 20 *detained, held in basement of federal building in Los Angeles, some overnight*, CBS News (June
 21 7, 2025), <https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/>; Sarah Whites-Koditschek, *ICE detains immigrants*
 22 *during scheduled meetings in Birmingham: ‘False hope,’* AL.com (June 5, 2025),
 23 <https://www.al.com/news/2025/06/ice-detains-immigrants-during-scheduled-meetings-in-birmingham.html>; Billal Rahman, *ICE Arrests Multiple People in Chicago After Tricking Them*
 24 *to Turn Up*, Newsweek (June 5, 2025), <https://www.newsweek.com/ice-arrests-multiple-people-chicago-after-tricking-them-turn-2081246>; Armando Garcia, *‘Have mercy’: Families plead as*
 25 *migrants arrested at routine DHS check-ins*, ABC News (June 6, 2025),
 26 <https://abcnews.go.com/US/mercy-families-plead-migrants-arrested-routine-dhs-check/story?id=122528525>.

27 ²¹ Jessica Flores, *ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates*
 28 *say*, San Francisco Chronicle (June 5, 2025), <https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php>.

1 100. Based on the February 18, 2025 ICE directive, the March 30, 2025 DHS policy memo,
2 and extensive reports of the detention and removal of similarly-situated noncitizens, Mr. Ortega
3 and his wife are currently living in near-paralyzing fear that ICE will detain Mr. Ortega on July
4 9, 2025 and remove him to El Salvador or a third country. *See* Ortega Decl.; Ortenburger Decl.
5 He is terrified of being deported directly from the United States to a Salvadoran prison. He is
6 likewise terrified that the United States will send him to a third country where he would be at
7 direct risk of torture. *Id.* Mr. Ortega is further afraid that the United States will send him to a
8 third country that would then transfer him to El Salvador, where an IJ has already determined he
9 is likely to be tortured. *See id.*

12 101. Mr. Ortega's fear that he could be subjected to chain refoulement is objectively
13 reasonable as the New York Times recently reported that U.S. State Department employees
14 were instructed to stop noting in annual human rights reports whether a nation had violated its
15 obligations not to send anyone "to a country where they would face torture or persecution."²²

17 **MR. ORTEGA MAY NOT BE REMOVED TO A COUNTRY OTHER THAN EL**
18 **SALVADOR WITHOUT ADEQUATE NOTICE AND AN OPPORTUNITY TO APPLY**
19 **FOR FEAR-BASED RELIEF**

20 102. The DHS may not remove Mr. Ortega to El Salvador, the country to which he was
21 ordered removed, because, as an IJ found, he is likely to suffer torture there, by or with the
22 acquiescence of the Salvadoran government.

26 ²² Carol Rosenberg, *Trump's Ambition Collides With Law on Sending Migrants to Dangerous*
27 *Countries*, New York Times (Jun. 6, 2025),
28 <https://www.nytimes.com/2025/06/06/us/politics/trump-deportations-migrants.html>.
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1 103. In order to remove Mr. Ortega to a country other than El Salvador, Respondents-
2 Defendants must designate another country of removal. *See* 8 U.S.C. § 1231(b); *Himri*, 378
3 F.3d at 939. To comport with the requirements of due process, Respondents-Defendants must
4 provide Mr. Ortega with meaningful notice of the identity of the third country. *See Andriasian*,
5 180 F.3d at 1041.
6

7 104. In Mr. Ortega's case, no countries other than El Salvador meet the definitions for
8 alternative countries of removal set forth in 8 U.S.C. §§ 1231(b)(2)(A), 1231(b)(2)(D),
9 1231(b)(2)(E)(i)-(vi). Therefore, in order for the DHS to remove Mr. Ortega to a country other
10 than El Salvador, "at the time the government proposes" a third country for removal, it must
11 prove, with evidence, that the country "will accept" him into that country. *See Himri*, 378 F.3d
12 at 939; 8 U.S.C. § 1231(b)(2)(E)(vii). This must happen in reopened removal proceedings so
13 that the IJ can designate the country of removal. *See Himri*, 378 F.3d at 939.
14
15

16 After the DHS has notified Mr. Ortega of the third country and demonstrated that the
17 country "will accept" him, he must be provided the opportunity to present a claim for deferral of
18 removal as to that country under the Convention Against Torture. *See Jama*, 543 U.S. at 348
19 (explaining that for noncitizens who face mistreatment in a country designated under
20 § 1231(b)(2), they have the remedy of an "individualized determination[]" under CAT).
21 Because CAT is a country-specific form of relief, Mr. Ortega can only apply for CAT relief to a
22 designated country. *See* 8 C.F.R. § 1208.16(c)(3) (defining CAT relief in relation to "the
23 proposed country of removal"); *She*, 629 F.3d at 965 (explaining that a noncitizen "is not
24 entitled to adjudication of an application for withholding of removal to a country that nobody is
25 trying to send them to"); *see also DVD*, 2025 WL 1732103, at *7 ("Without an applicable order
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1 of removal, individuals have no way to raise their claims under the Convention.”) (Sotomayor,
2 J., dissenting from order granting a stay of the preliminary injunction).

3 105. . In Mr. Ortega’s case, this means that his Section 240 proceedings must be reopened
4 so that he may present his CAT case to the IJ, and so he may seek administrative and judicial
5 review. *See* 8 U.S.C. §§ 1229a, 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15. As Justice Sotomayor
6 explained this week, the Government’s view that “once a noncitizen has been found removable,
7 [h]e can effectively be removed anywhere at any time would render meaningless the countless
8 statutory and regulatory provisions providing for notice and a hearing. *DVD*, 2025 WL
9 1732103, at *8 (collecting and citing relevant statutory and regulatory provisions) (Sotomayor,
10 J., dissenting). This is likewise required as a matter of due process. *See DVD*, 2025 WL
11 1732103, at *9 (“Due process requires reasonable notice and an opportunity to be heard.”)
12 (“Plaintiffs merely seek access to notice and process, so that, in the event the Executive makes a
13 determination in their case, they learn about it in time to seek an immigration judge’s review.
14 The Fifth Amendment *unambiguously guarantees that right.*”) (Sotomayor, J., dissenting); *Aden*
15 *v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) (finding that removal proceedings
16 “shall be reopened and a hearing shall be held before the immigration judge so that petitioner
17 may apply for relief from removal” as to a country that had not been designated for removal in
18 the noncitizen’s prior proceedings); *Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014)
19 (holding that should a new country of removal be designated, “the agency must provide [the
20 noncitizen] with notice and an opportunity to reopen his case for full adjudication of his claim
21 of withholding of removal from” the additional country).

MR. ORTEGA'S REMOVAL IS NOT REASONABLY FORESEEABLE NOR IS HE A FLIGHT RISK OR A DANGER TO THE COMMUNITY, AND THUS, BOTH THE INA AND THE CONSTITUTION PROHIBIT HIS RE-DETENTION

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

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

108. Here, given the due process clause, the INA, FARRA, and its implementing regulations, Mr. Ortega’s removal is not reasonably foreseeable. *See* 8 U.S.C. § 1231(b)(2)(E); 8 U.S.C. § 1231(b)(3)(A); *Himri*, 378 F.3d at 939; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Mr. Ortega’s removal proceedings concluded in December 2022. To date, the government has not proven that a third country will accept Mr. Ortega. Nor has the government provided Mr. Ortega with an opportunity to present a claim under the Convention Against Torture as to that country, a process which cannot begin until an additional removal

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country is properly designated. *See id.*; *See also* Wille Decl. These multi-step processes—which includes administrative and judicial appellate review—are expected to take, at a minimum, a year to complete, and could take several years. *See* Wille Decl.; *see also* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15. During the past several months, in instances where the federal government has re-detained individuals with withholding or CAT protection—purportedly to remove them to a third country—the government has not made a showing that those individuals can be removed to a third country. *See, e.g.*, Wille Decl., Exhs. AA-CC (attorney declarations); *Tadros v. Noems*, Case No. 25CV4108 (EP), 2025 WL 1678501 (D.N.J., June 13, 2025). They have languished in detention in the meantime. *See id.*

109. Moreover, because immigration detention is civil detention, it must “bear[] [a] reasonable relation to the purpose for which the individual was] committed,” *Zadvydas*, 533 U.S. at 690, and not be excessive in relation to that purpose. *Salerno*, 481 U.S. at 747. The Supreme Court has articulated that there are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See id.*²³ As such, Mr. Ortega’s detention would need to serve those purposes and not be excessive in relation to those purposes. Mr. Ortega’s conduct over the more than seven years since his release proves that his detention would be without purpose.

110. In granting Mr. Ortega’s previous habeas petition, Judge Orrick found that “Mr. Ortega has a substantial private interest in remaining on bond, and that interest has only grown in the

²³ Petitioner also acknowledges that the government may detain noncitizens for the brief period necessary to lawfully execute a removal order.

1 18 months since [the Court granted] a preliminary injunction.” *Ortega*, 415 F. Supp. 3d at 970.
2 That was in 2019, and at that time Judge Orrick noted that Mr. Ortega “was living with his wife,
3 spending time with his mother and other family members, working as a bicycle mechanic, and
4 developing friendships in his community.” *Id.* Mr. Ortega’s liberty interest has only grown
5 substantially as he has continued those same activities and enjoyed his freedom. *See Ortega*
6 *Decl.*, *Ortenburger Decl.*, *Wille Decl.*, Exhs. E-X, DD (community support letters).
7

8 111. Here, an Immigration Judge already determined—over seven years ago—that the DHS
9 failed to prove by clear and convincing evidence that Mr. Ortega is either a flight risk or a
10 danger to the community. *See Ortega*, 415 F. Supp. 3d at 966. And at that point, Mr. Ortega’s
11 CAT application had been denied, and thus his ultimate ability to avoid removal to the
12 designated country of removal was uncertain. Nevertheless, the IJ determined that he should be
13 released from custody, and Mr. Ortega was released on January 31, 2018, after paying a
14 \$35,000 bond. *See id.* Mr. Ortega’s conduct since his release has only confirmed the correctness
15 of the IJ’s decision to grant bond.
16

17 112. As noted by Judge Orrick in 2019 in granting Mr. Ortega’s first petition for habeas
18 corpus, Mr. Ortega “strictly complied with all the requirements of his release.” *Ortega*, 415 F.
19 Supp. 3d at 970; *see also Ortega Decl.*; *Ortenburger Decl.* He attended all his hearings, and all
20 reporting requirements with ICE. *Id.* Then, on December 21, 2022, the IJ granted Mr. Ortega
21 deferral of removal under the CAT. *Wille Decl.*, Exh. B (IJ decision). The DHS did not appeal
22 that decision to the BIA, and made no attempt to deport Mr. Ortega to any other country. *See*
23 *Wille Decl.* In April 2020, Mr. Ortega successfully completed his parole requirements, and in
24 March 2023, ICE cancelled his bond, as the conditions were satisfied. The agency placed Mr.
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1 Ortega on an Order of Supervision with a yearly reporting requirement. Wille Decl. As before,
2 he has dutifully complied with his reporting requirements, which require him to drive over five
3 hours (each way) from his home in Arcata to the ICE office in San Francisco. Ortega Decl.;
4 Ortenburger Decl.

6 113. Moreover, Mr. Ortega's community ties have continued to grow, further demonstrating
7 that he is not a flight risk. He lives with his wife of twenty-four years in Arcata, where they
8 recently purchased a home together. Ortega Decl.; Ortenburger Decl. Mr. Ortega is currently the
9 manager of the Arcata Adventure's Edge, a local outdoor store, with locations in Arcata and
10 Eureka. His boss, Jennifer Johnson, describes Mr. Ortega as a "model employee" and a "pillar
11 of the store." Wille Decl., Exh. O (Johnson Letter). Mr. Ortega's wife, Carolyn, continues at
12 her stable job as the office manager at the Schatz Energy Research Center at California State
13 Polytechnic University, Humboldt. *See* Ortenburger Decl.

16 114. As detailed in the attached declarations, multiple individuals depend on Mr. Ortega for
17 support. First and foremost, Mr. Ortega's wife, Carolyn, depends on him for emotional,
18 psychological, and logistical support, particularly now when she is undergoing treatment for a
19 recurrence of breast cancer. Ortenburger Decl. As Mr. Ortega's wife describes their
20 relationship: "We are each other's best friends in addition to being husband and wife. He is
21 everything to me . . . our lives are completely intertwined." *Id.* Mr. Ortega's mother also
22 depends on him as she ages: "Giovanny helps me make decisions in my life and helps me
23 during difficult times." Wille Decl., Exh. M (Wall Letter). She writes that "[Giovanny] and
24 Carolyn came to spend time with me when husband was in the hospital dying after he had a
25 stroke." *Id.* Mr. Ortega further provides support to his mother-in law, helping her with her latest
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1 projects, including cleaning out her garage and shed and gardening. Wille Decl., Exh. N
2 (Beardsley Letter).

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4 115. In addition to his family, Mr. Ortega is enmeshed in the fabric of the Arcata
5 community—as a trusted employee, highly regarded colleague, valued friend and civically-
6 engaged community member. *See generally* Wille Decl., Exhs. E-X. As the Mayor of Arcata
7 describes, “Mr. Ortega is known in our community as someone with integrity and the ability to
8 provide community support by being a part of the Arcata community.” *Id.*, Exh. E (Stillman
9 Letter). A Humboldt County Supervisor has likewise noted Mr. Ortega’s contributions to
10 Arcata, describing him as a “deeply involved and caring community member.” *Id.*, Exh. S
11 (Wilson Letter).

12
13 116. Thus, Mr. Ortega has every incentive to follow the law, so that he can continue to
14 support his wife, family, friends and the broader community. *See id.*; Ortega Decl.; Ortenburger
15 Decl. Moreover, if the DHS is ultimately able to secure an executable removal order to a third
16 country—at this point, a dubious proposition—Mr. Ortega has sworn under penalty of perjury
17 that he will report for removal. *See* Ortega Decl. Based on his prior history of attending his
18 hearings as well as parole and ICE check-ins, and his ties to his U.S. Citizen wife, his job, and
19 his community—including now owning a house in Arcata—Mr. Ortega is not a flight risk. *See*
20 *id.*

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23 117. Mr. Ortega is also not a danger to the community. As an initial matter, he has not been
24 arrested or had any problems with law enforcement during the past over-seven years since he
25 was released from custody. Ortega Decl. As noted above, he has been dedicated to his wife, his
26 career, his family members, his friends, and the broader community. And, as the detailed and
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1 myriad letters submitted in support of this petition demonstrate, Mr. Ortega has the support of
2 so many individuals who attest to his character—all of whom understand he made mistakes in
3 the past, but speak highly of his genuine reformation and rehabilitation.
4

5 118. As his boss describes Mr. Ortega: “It is not often you find an employee who is more
6 than willing to do his job, continue to strive to be better at his job and always willing to do extra
7 work to help his coworkers.” Wille Decl., Exh. O (Johnson Letter). His colleague and friend,
8 Marc Rossi notes that, “[i]f the goal of our penal system is to see people reintegrated into
9 society as helpful, compassionate, caring, and responsible citizens, then Giovanni is a stellar
10 example of what we should hope for. He is an honest, reliable, and talented coworker, a loving
11 husband, and a valued friend.” *Id.*, Exh. Q (Rossi Letter).
12

13 119. Dimitrios Tagarapoulos, a local law enforcement officer, highlights that Mr. Ortega
14 “embodies the values of hard work, resilience, and community mindedness. His determination
15 to better himself and inspire others is exactly the kind of example we need more of—not less.”
16 *Id.*, Exh. K (Tagaropoulos Letter). Mike Wilson, a county supervisor in Humboldt County,
17 notes that Mr. Ortega has worked “incredibly hard to turn his life around” and observes that Mr.
18 Ortega is “now someone we are proud to stand beside: a role model, a good neighbor, and a
19 compassionate person.” *Id.*, Exh. S (Wilson Letter).
20

21 120. Friend after friend lauds Mr. Ortega for the man he has become. “Giovanni is a
22 hardworking, thoughtful and caring man.” *Id.*, Exh. H (Lehman Letter). “Giovanni is a
23 profoundly kind and gentle man.” *Id.*, Exh. R (Montagna Letter). “Giovanni is a dear friend, a
24 loving and supportive husband, and a very generous and kind addition to our community.” *Id.*,
25 Exh. L (Ingle Letter). Noting his “competence, warmth, and generosity of spirit” one friend
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describes Mr. Ortega as exemplifying the “proverb a friend in need is a friend indeed.” *Id.*, Exh. P (McNulty Letter). “Giovanny is a compassionate man who actively looks to care for the needs of others in his personal and professional life.” *Id.*, Exh. DD (Williams Letter).

121. Mr. Ortega’s conduct the last seven years proves that he is neither a flight risk nor a danger, and that any civil detention that occurs while Mr. Ortega contests any removal to a third country would be illegitimate and unconstitutional, as it would bear no relationship to the two purposes immigration detention is meant to serve. *See Jones v. Blanas*, 393 F.3d 918, 933-34 (9th Cir. 2004), *cert. denied*, 546 U.S. 820 (2005) (“[A] civil detainee awaiting adjudication is entitled to conditions of confinement that are not punitive...[and] a restriction is ‘punitive’ where it is intended to punish, or where it is ‘excessive in relation to [its non-punitive] purpose.’”); *see also Enamorado v. Kaiser*, 2025 WL 1382859, at * 2 (N.D. Cal. May 12, 2025) (temporarily enjoining the government from arresting noncitizen petitioner where there was nothing to “suggest that [the petitioner] is unlikely to appear for any scheduled immigration related proceedings, nor does [the petitioner] appear to pose any risk to the public”).

IF MR. ORTEGA’S REMOVAL PROCEEDINGS ARE REOPENED, MR. ORTEGA WOULD BE ENTITLED TO A HEARING IN FRONT OF A NEUTRAL ADJUDICATOR ON WHETHER THE CURRENT CONDITIONS OF HIS RELEASE SHOULD BE MODIFIED

122. In the event that Mr. Ortega’s removal proceedings are reopened, any purported statutory authority to detain Mr. Ortega would be pursuant to 8 U.S.C. § 1226(c). But, during the course of Mr. Ortega’s initial removal proceedings, when he was previously detained pursuant to 8 U.S.C. § 1226(c), an Immigration Judge already determined that he was neither a danger nor an unmitigable flight risk and ordered him released upon the posting of a bond. *See Amended Petition for Writ of Habeas Corpus and Complaint*

1 *Ortega*, 415 F. Supp. 3d at 966. And, as detailed *supra*, his conduct over the past seven-and-a-
 2 half years has only reinforced the IJ's conclusion.

3 123. As a result, were Mr. Ortega's removal proceedings reopened, due process would
 4 require that he not be re-detained absent a hearing, with adequate notice, at which a neutral
 5 adjudicator could determine whether the government can prove by clear and convincing
 6 evidence that his current release conditions should be modified. *See Ortega*, 415 F. Supp. 3d at
 7 969 (enjoining the re-arrest of Mr. Ortega absent a hearing); *see also Jorge M.F. v. Jennings*,
 8 534 F. Supp. 3d 1050, 1055-56, 1057-58 (N.D. Cal. 2021) (enjoining the government from re-
 9 arresting petitioner absent a hearing and holding that the government bears the burden by clear
 10 and convincing evidence); *Romero v. Kaiser*, 2022 WL 1443250, at *4 (N.D. Cal. May 6, 2022)
 11 (same); *Diaz v. Kaiser*, 2025 WL 1676854, at * 4 (N.D. Cal. June 14, 2025) (same).
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15 CAUSES OF ACTION

16 **COUNT ONE**

17 **Violation of Fifth Amendment Due Process Clause, the INA, FARRA, and Implementing** 18 **Regulations and the Administrative Procedure Act**

19 124. The allegations in the above-mentioned paragraphs are realleged and incorporated
 20 herein.
 21

22 125. The INA, FARRA, and implementing regulations, and the Fifth Amendment of the
 23 United States Constitution mandate meaningful notice and opportunity to present a fear-based
 24 claim to an Immigration Judge before the DHS can deport an individual from the United States.
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 26
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1 126. In order to effectuate the removal of Mr. Ortega to a third country, Respondents-
2 Defendants must reopen Mr. Ortega's removal proceedings, provide evidence that a third
3 country will accept Mr. Ortega, and allow him to present a claim under the Convention Against
4 Torture as to that country. *See* 8 U.S.C. § 1231(b)(2)(E); 8 C.F.R. §§ 208.16(c)(4), 208.17(a);
5 *Jama*, 543 U.S. at 348; *Himri*, 378 F.3d at 939; *Andriasian*, 180 F.3d at 1041; *Aden v. Nielsen*,
6 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Mr. Ortega is also entitled to appeal any
7 decision on removability and application for CAT relief to the Board of Immigration Appeals
8 and the Circuit Court of Appeals. *See* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R.
9 §§ 1003.6(a), 1240.15.

12 COUNT TWO

13 Violation of the Fifth Amendment Due Process Clause and Violation of the Immigration 14 and Nationality Act, 8 U.S.C. § 1231(a)(6)

15
16 127. The allegations in the above-mentioned paragraphs are realleged and incorporated
17 herein.

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

20
21 129. "If removal is not reasonably foreseeable"—as is the case here—"detention is
22 unreasonable and no longer authorized by statute." *See Zadvydas*, 533 U.S. at 682 (citing 8
23 U.S.C. § 1231(a)(6)). Here, given the procedural steps that would need to take place to
24 effectuate a removal of Mr. Ortega to a third country—*see* Count One, *supra*—Mr. Ortega's
25 removal is not reasonably foreseeable. Moreover, civil detention is warranted only to mitigate
26 flight risk or prevent danger to the community. *See id.* As an Immigration Judge has already
27
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1 determined, and his conduct during the nearly seven-and-a-half years since his release from
2 custody overwhelmingly confirms, neither purpose would be met here if Mr. Ortega were to be
3 re-detained. As such, Respondents-Defendants have no authority to detain Mr. Ortega until his
4 removal proceedings are reopened.
5

6 130. In the event his removal proceedings are reopened, due process prohibits Respondents-
7 Defendants from re-detaining Mr. Ortega absent a hearing at which a neutral adjudicator could
8 determine whether the government can prove by clear and convincing evidence that Mr.
9 Ortega's current release conditions should be modified. *See Ortega*, 415 F. Supp. 3d at 969;
10 *Jorge M.F.*, 534 F. Supp. 3d at 1055-56, 1057-58 (N.D. Cal. 2021).
11

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Mr. Ortega requests this Court grant the following relief:

- 15 a. Exercise jurisdiction over this matter;
16
17 b. Enjoin Respondents-Defendants from designating a third country for Mr. Ortega's
18 removal without reopening Mr. Ortega's removal proceedings so that an Immigration Judge can
19 make the designation in the first instance and adjudicate Mr. Ortega's application under the
20 Convention Against Torture as to that country, if any;
21
22 c. Declare that Respondents-Defendants may not designate a third country for Mr. Ortega's
23 removal without reopening Mr. Ortega's removal proceedings so that an Immigration Judge can
24 make the designation in the first instance and adjudicate Mr. Ortega's application under the
25 Convention Against Torture as to that country, if any;
26
27

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

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

14 f. Award reasonable costs and attorney fees; and

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

16 Dated: June 25, 2025

17 Respectfully submitted,

18 s/Judah Lakin
19 Judah Lakin

20 s/Amalia Wille
21 Amalia Wille
22 LAKIN & WILLE LLP

23 *Attorneys for Petitioner*

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

25 As the filer of this document, I attest that concurrence in the filing was obtained from the other
26 signatories. Executed on this 25th day of June 2025 in Oakland, California.

27 s/Judah Lakin
28 Judah Lakin

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and Complaint*