

1 Judah Lakin (SBN 307740)
judah@lakinwille.com
2 Amalia Wille (SBN 293342)
amalia@lakinwille.com
3 LAKIN & WILLE LLP
4 1939 Harrison Street, Suite 420
Oakland, CA 94612
5 Telephone: (510) 379-9216
6 Facsimile: (510) 379-9219

7 UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 GIOVANNY HERNAN ORTEGA,

10 Petitioner-Plaintiff,

11 v.

12 POLLY KAISER, in her official capacity, Acting
13 San Francisco Field Office Director, U.S.
14 Immigration and Customs Enforcement;

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

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

19 PAMELA BONDI, in her official capacity,
20 Attorney General of the United States,

21 Respondents-Defendants.
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Case No: 4:25-cv-05259-JST

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

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NOTICE OF MOTION

PLEASE TAKE NOTICE that, as soon as he may be heard, Petitioner-Plaintiff will and hereby does move, pursuant to Civil L.R. 7-1 and 65-1, for a temporary restraining order, directing that he not be detained pending further order of this Court. This motion is supported by the following Memorandum of Points and Authorities, and by his Amended Petition for Writ of Habeas Corpus/Complaint for Injunctive and Declaratory Relief and supporting exhibits, dated June 25, 2025. This motion supersedes the Motion for a TRO filed at Docket No. 4.

Undersigned counsel hereby declares and certifies that on June 25, 2025, immediately after filing this motion with the Court, he emailed Deputy Civil Division Chief Kenneth Brakebill at the U.S. Attorney's Office for the Northern District of California to advise him that Petitioner-Plaintiff is filing this motion for a temporary restraining order. That email also contained copies of (1) Amended Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief, (2) Motion for Temporary Restraining Order, (3) Declaration of Giovanni Hernan Ortega, Declaration of Carolyn Ortenburger, and Declaration of Amalia Wille and Exhibits in Support of Complaint/Petition and Motion for Temporary Restraining Order, (4) Proposed Order on Motion for TRO, and (5) Proposed Summons.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner-Plaintiff Giovanni Hernan Ortega ("Mr. Ortega") brings the accompanying motion for a temporary restraining order ("TRO") to enjoin Respondents-Defendants U.S. Immigration and Customs Enforcement ("ICE"), from re-detaining him while he proceeds with his claims before this Court.

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

2 Mr. Ortega is a forty-nine-year-old who was born El Salvador. He has lived in the
3 United States for nearly thirty-five years. He now resides in Arcata, California with his U.S.
4 citizen wife of twenty-four years, Carolyn Ortenburger. Mr. Ortega's community in California
5 includes Mr. Ortega's U.S. citizen mother, extended family, his therapist, employer, and many
6 supportive friends. *See* Declaration of Giovanni Hernan Ortega ("Ortega Decl."); Declaration
7 of Carolyn Deam Ortenburger ("Ortenburger Decl."); Declaration of Amalia Wille ("Wille
8 Decl.") at Exhs. E-X.
9

10
11 Mr. Ortega has lived in the United States since 1990, when, as a teenager, he entered the
12 United States on a plane from El Salvador as a derivative asylee through his mother's approved
13 asylum application. *See* Ortega Decl. He subsequently became a permanent resident of the
14 United States. *Id.*; Wille Decl., Exh. A (Notice to Appear).
15

16 As a teenager, Mr. Ortega had trouble adjusting to life in the United States and
17 processing the violence he had lived through during El Salvador's civil war. He joined a gang
18 called Sureños and, subsequently, got large and prominent gang-related tattoos on his shoulder
19 and stomach. *See* Ortega Decl.
20

21 In January of 1993, at the age of sixteen, Mr. Ortega made a terrible decision that he
22 deeply and incurably regrets: he participated in a drive-by shooting of seven members of a rival
23 gang. *See* Ortega Decl. Although he was a minor, he was charged and convicted as an adult. In
24 March 1994, he plead nolo contendere to seven counts of violating Cal. Penal Code
25 § 664/187(A) (Attempted Murder) in San Mateo County, California. *Id.* In 1995, he was
26 sentenced to thirty-one years in prison. *Id.*
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1 Mr. Ortega made tremendous efforts to turn his life around while incarcerated. Ortega
2 Decl. He worked to disaffiliate from any gangs. In 2001, he married his U.S. citizen wife,
3 Carolyn Ortenburger, who has provided Mr. Ortega with extensive and ongoing support over
4 the past twenty-four years of their marriage. *Id.*; Ortenburger Decl.
5

6 Mr. Ortega served over twenty-four years in criminal incarceration—two years in
7 juvenile hall and county jail and twenty-two years in prison, fifteen of which were in solitary
8 confinement. *See* Ortega Decl. After finishing his criminal sentence, Mr. Ortega was transferred
9 to ICE custody on April 20, 2017. *See* Ortega Decl. The DHS placed Mr. Ortega in Section 240
10 removal proceedings. *See* 8 U.S.C. § 1229a. The DHS served a Notice to Appear (“NTA”)
11 charging Mr. Ortega as removable from the United States pursuant to 8 U.S.C.
12 § 1227(a)(2)(A)(iii), INA § 237(a)(2)(A)(iii), for having been convicted of an aggravated felony
13 under 8 U.S.C. § 1101(a)(43)(U), INA § 101(a)(43)(U). Wille Decl. at Exh. A (Notice to
14 Appear).
15

16 The Notice to Appear alleged Mr. Ortega to be a native and citizen of El Salvador. *Id.*
17 On May 1, 2017, before the Immigration Judge, Mr. Ortega admitted the allegations in the
18 Notice to Appear and conceded that he was removable from the United States. Mr. Ortega
19 declined to designate a country of removal. The ICE attorney present in court designated El
20 Salvador as the country of removal. *See* Wille Decl. At no time during Mr. Ortega’s removal
21 proceedings did any party designate a country for removal other than El Salvador. *See id.*
22

23 Mr. Ortega’s criminal conviction rendered him ineligible for protection in the form of
24 asylum or withholding of removal. Mr. Ortega sought relief from removal before the IJ in the
25 form of an application for protection pursuant to the Convention Against Torture (“CAT”).
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1 Wille Decl. at Exh. B (IJ decision). On October 2, 2017, the IJ denied Mr. Ortega relief under
2 the CAT. *Id.* Mr. Ortega filed an appeal to the Board of Immigration Appeals. *Id.*

3
4 After having spent more than nine months in immigration custody, Mr. Ortega appeared
5 before an IJ for a “Rodriguez”¹ bond hearing on January 30, 2018. *See* Ortega Decl. At the
6 conclusion of the hearing, the IJ concluded that the government had not demonstrated that Mr.
7 Ortega was a danger to the community nor such a flight risk that he could be held in continued
8 detention without bond. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 966 (N.D. Cal. 2019). The
9 IJ ordered that Mr. Ortega be released from custody upon the posting of a bond in the amount of
10 \$35,000 and conditioned on periodic reporting to the DHS and his compliance with all laws. *Id.*

11
12 On January 31, 2018, upon the posting of bond, Mr. Ortega was released from
13 immigration custody and united with his wife. *See id.* Despite being released from civil
14 incarceration, DHS continued to monitor Mr. Ortega through the Intensive Supervision
15 Appearance Program (“ISAP”), including via a GPS ankle monitoring device, and later a phone
16 app device. He had a perfect record of compliance with all ISAP check-ins, as mandated by the
17 DHS and the IJ. *See* Ortega Decl., Ortenburger Decl.

18
19 On May 3, 2018, the BIA dismissed Mr. Ortega’s appeal of the IJ’s decision denying
20 CAT protection. Wille Decl., Exh. B (IJ decision). Mr. Ortega filed a petition for review to the
21 Ninth Circuit Court of Appeals of the BIA’s decision denying CAT relief on May 30, 2018. The
22 Ninth Circuit issued a judicial stay of removal. *See Ortega v. Garland*, Ninth Circuit Case No.
23 18-71548, Dkt. Nos. 1-3, 13. Nevertheless, ICE refused to agree that they would not re-arrest
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27 ¹ *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”).

1 Mr. Ortega pending judicial review of his removal order. In their view, the Board's denial of his
2 application for CAT constituted a material change in circumstances that warranted his re-arrest.
3 *See Ortega*, 415 F. Supp. 3d at 969-70.
4

5 Because he feared re-detention, on May 30, 2018, Mr. Ortega brought an as-applied due
6 process challenge to the DHS's ability to re-arrest him absent adequate process, given that an
7 Immigration Judge had already determined he did not pose a danger to the community or an
8 unmitigable flight risk. *See Ortega*, 415 F. Supp. 3d at 967. Judge Orrick issued a temporary
9 restraining order and later a preliminary injunction enjoining ICE "from re-arresting Ortega
10 unless and until a hearing, with adequate notice, was held in Immigration Court to determine
11 whether his bond should be revoked or altered." *Id.* On November 22, 2019, Judge Orrick
12 granted Mr. Ortega's habeas petition. *Id.* at 970. Judge Orrick permanently enjoined ICE "from
13 re-arresting Ortega unless and until a hearing, with adequate notice, is held in Immigration
14 Court to determine whether his bond should be revoked or altered." *Id.*
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17 While he remained at home in the community, Mr. Ortega's challenge to his CAT denial
18 proceeded at the Ninth Circuit Court of Appeals. After Mr. Ortega filed his Opening Brief, the
19 Attorney General filed an unopposed motion to remand his case to the Board of Immigration
20 Appeals for further consideration of his CAT application. Ninth Circuit Case No. 18-71548,
21 Dkt. No. 44. The Ninth Circuit remanded Mr. Ortega's case to the BIA on January 4, 2021. *Id.*,
22 Dkt. No. 46. Ultimately, following an evidentiary hearing in immigration court, on December
23 21, 2022, an IJ in San Francisco issued a final decision in Mr. Ortega's removal proceedings.
24 He ordered Mr. Ortega removed to El Salvador, and simultaneously ordered that his removal to
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1 El Salvador be deferred pursuant to the Convention Against Torture. The DHS did not appeal
2 the IJ's order granting Mr. Ortega protection under the CAT. *See* Wille Decl.

3
4 At no time during his immigration court proceedings—which spanned from 2017 until
5 2022—did the DHS provide Mr. Ortega with notice, or any indication whatsoever, that it may
6 seek to remove him to a country other than El Salvador. *See* Wille Decl.

7 Nearly seven-and-a-half years have passed since Mr. Ortega was released from ICE
8 custody. Other than successfully completing his parole requirements in April 2020, Mr. Ortega
9 has had *no contact* with the criminal justice system since being released from ICE custody. He
10 has had no new arrests or convictions. *See* Ortega Decl., Ortenburger Decl.

11
12 At ICE's request, Mr. Ortega appeared in person at the ICE San Francisco Field Office
13 on March 17, 2023. There, ICE cancelled the \$35,000 bond Mr. Ortega had paid in 2018
14 because ICE "determined that the conditions of the immigration bond . . . have been satisfied."
15 Wille Decl., Exh. C (Notice of Bond Cancellation).

16
17 Also on March 17, 2023, ICE issued an Order of Supervision, Form I-220B, requiring
18 Mr. Ortega to annually report to the ICE San Francisco Office. Wille Decl., Exh. D (Order of
19 Supervision). Mr. Ortega appeared at the San Francisco ICE Office on March 19, 2024, where
20 he was ordered to appear again on March 19, 2025. *Id.* Through counsel, Mr. Ortega requested
21 that the March 2025 appearance be postponed due to his wife's recent cancer diagnosis and
22 treatment. She had a cancer-related medical appointment the day of the scheduled check-in,
23 which Mr. Ortega needed to accompany her to, and she was scheduled for surgery at the end of
24 March 2025. *See* Ortega Decl.; Ortenburger Decl. ICE rescheduled Mr. Ortega's in-person
25 reporting date to July 9, 2025. *Id.*; *See* Wille Decl., Exh. D (Order of Supervision, listing next
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1 reporting date). Mr. Ortega has complied with all reporting requirements from the DHS. *See*
2 Ortega Decl.; Ortenburger Decl.

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

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

18 Since January 2025, the federal government of the United States has begun a campaign
19 to deport large numbers of noncitizens from the United States at any cost. It has aggressively
20 acted to remove individuals to countries other than those designated for removal. This process is
21 known as "third country removals." Historically, it has been very rare for the U.S. government
22 to attempt third country removals, especially to countries to which the individual has no ties.
23 *See* Wille Decl.

26 As part of its efforts to ramp up arrests and deportations, on or about February 18, 2025,
27 ICE issued a national directive for its officers to "carefully review for removal all cases" of all
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1 individuals—like Mr. Ortega—who are not detained but who are periodically reporting to ICE.
2 The directive expressly instructs officers to review the cases of noncitizens—like Mr. Ortega—
3 who have been granted withholding of removal or protection under CAT “to determine the
4 viability of removal to a third country and accordingly whether the [noncitizen] should be re-
5 detained.” Reuters published a copy of the February 18, 2025 directive on March 6, 2025.²

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

1 assurances, which violates due process. Wille Decl., Exh. Z. The memo does not require DHS
 2 to make the requisite showing under § 1231(b)(2)(E)(vii) that a third country will accept the
 3 noncitizen. Further, even where diplomatic assurances are not at issue, the memo does not
 4 ensure that a noncitizen will be able to present a CAT claim to an Immigration Judge. *See id.* It
 5 also directs a reopening scheme that purports to limit the IJ's ability to designate the country of
 6 removal and the noncitizen's ability to contest the designation. *See id.*³

8 Consistent with the February 18, 2025 ICE directive, ICE has begun detaining
 9 noncitizens who appear at their scheduled check-ins at ICE Field Offices throughout the
 10 country, without advance notice that they will be detained. Mr. Ortega is aware of at least thirty
 11 individuals who have been re-detained in situations similar to his. *See* Wille Decl., Exhs. AA
 12 (Attorney Newman Declaration), BB (Attorney Jones Declaration), CC (Attorney Sandoval
 13 Declaration). Moreover, in the first week of June 2025, news outlets across the country reported
 14 that ICE had arrested "hundreds" of noncitizens at scheduled check-ins.⁴ On one day that week,
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 19 ³ As discussed in Mr. Ortega's concurrently filed Amended Petition/Complaint, there is ongoing,
 20 class action litigation in the District of Massachusetts and the First Circuit Court of Appeals
 21 regarding the government's attempts to remove noncitizens to third countries. *See DVD v. U.S.*
 22 *Department of Homeland Security*, Case No. 1:25-CV-10676-BEM (D. Mass). On June 23,
 23 2025, the protections that had been afforded to individuals like Mr. Ortega, through a class-wide
 24 preliminary injunction, were stayed pending the First Circuit appeal and any writ of certiorari
 25 that may be timely filed with the Supreme Court. *See Department of Homeland Security v. DVD*,
 26 ---S.Ct.---, 2025 WL 1732103 (June 23, 2025).

27 ⁴ *E.g.*, Julia Ainsley, Laura Strickler and Didi Martinez, "ICE arrests record number of
 28 immigrants in single day, including hundreds at scheduled appointments" (June 4, 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 detained, held in basement of federal building in Los Angeles, some overnight," *CBS News* (June 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 during scheduled meetings in Birmingham: 'False hope,'" *AL.com* (June 5, 2025),

1 the San Francisco Chronicle reported that ICE arrested fifteen noncitizens at their scheduled
 2 check-ins at the at the San Francisco ICE Field Office.⁵ In a statement to the Chronicle, ICE
 3 stated that the individuals who had been arrested at check-ins had final orders of removal.⁶
 4

5 Mr. Ortega is currently under a DHS order to appear in-person at the San Francisco ICE
 6 Field Office on July 9, 2025. *See* Wille Decl, Exh. D (I-220B). Based on the February 18, 2025
 7 ICE directive, the March 30, 2025 DHS policy memo, and extensive reports of the detention
 8 and removal of similarly-situated noncitizens, Mr. Ortega and his wife are currently living in
 9 near-paralyzing fear that ICE will detain Mr. Ortega on July 9, 2025 and remove him to El
 10 Salvador or a third country. *See* Ortega Decl., Ortenburger Decl. He is terrified of being
 11 deported directly from the United States to a Salvadoran prison. He is likewise terrified that the
 12 United States will send him to a third country where he would be at direct risk of torture. *Id.* Mr.
 13 Ortega is further afraid that the United States will send him to a third country that would then
 14 transfer him to El Salvador, where an IJ has already determined he is likely to be tortured. *See*
 15 *id.* And, Mr. Ortega's fear is objectively reasonable as the *New York Times* recently reported
 16 that U.S. State Department employees were instructed to stop noting in annual human rights
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 22 [https://www.al.com/news/2025/06/ice-detains-immigrants-during-scheduled-meetings-in-](https://www.al.com/news/2025/06/ice-detains-immigrants-during-scheduled-meetings-in-birmingham.html)
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 25 [people-chicago-after-tricking-them-turn-2081246](https://abcnews.go.com/US/mercy-families-plead-migrants-arrested-routine-dhs-check/story?id=122528525); Armando Garcia, "'Have mercy': Families
 26 [plead as migrants arrested at routine DHS check-ins,"](https://abcnews.go.com/US/mercy-families-plead-migrants-arrested-routine-dhs-check/story?id=122528525) ABC News (June 6, 2025),
 27 [https://abcnews.go.com/US/mercy-families-plead-migrants-arrested-routine-dhs-](https://abcnews.go.com/US/mercy-families-plead-migrants-arrested-routine-dhs-check/story?id=122528525)
 28 [check/story?id=122528525](https://abcnews.go.com/US/mercy-families-plead-migrants-arrested-routine-dhs-check/story?id=122528525).

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

⁶ *Id.*

1 reports whether a nation had violated its obligations not to send anyone “to a country where
2 they would face torture or persecution.”⁷

3 **III. ARGUMENT**

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5 The standard for issuing a TRO is the same as the standard for issuing a preliminary
6 injunction. *See Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir.
7 2001). To obtain a TRO, Mr. Ortega must demonstrate that (1) he is likely to succeed on the
8 merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the
9 balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v.*
10 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Am. Trucking Ass’n v. City of Los*
11 *Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Even if he does not show a likelihood of success
12 on the merits, the Court may still grant a TRO if Mr. Ortega raises “serious questions” as to the
13 merits of his claims, the balance of hardships tips “sharply” in his favor, and the remaining
14 equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35
15 (9th Cir. 2011).

16 17 18 **A. MR. ORTEGA IS LIKELY TO SUCCEED ON THE MERITS OF HIS** 19 **CLAIM THAT HE MAY NOT BE REMOVED TO A COUNTRY OTHER** 20 **THAN EL SALVADOR WITHOUT ADEQUATE NOTICE AND AN** 21 **OPPORTUNITY TO APPLY FOR FEAR-BASED RELIEF**

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

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27 ⁷ Carol Rosenberg, “Trump’s Ambition Collides With Law on Sending Migrants to Dangerous
28 Countries,” *New York Times* (Jun. 6, 2025),
<https://www.nytimes.com/2025/06/06/us/politics/trump-deportations-migrants.html>.

1 than El Salvador, Respondents-Defendants must designate another country of removal. *See* 8
2 U.S.C. § 1231(b); *Himri v. Ashcroft*, 378 F.3d 932, 939 (9th Cir. 2004). Moreover, to comport
3 with the requirements of due process, Respondents-Defendants must provide Mr. Ortega with
4 meaningful notice of the identity of the third country. *See Andriasian v. INS*, 180 F.3d 1033,
5 1041 (9th Cir. 1999).

7 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); *see also* 8 C.F.R. § 1240.10(f) (in removal hearing, the
13 Immigration Judge "shall ... identify for the record a country, or countries in the alternative, to
14 which the alien's removal may be made"). This must happen in reopened removal proceedings
15 so that the IJ can designate the country of removal. *See Himri*, 378 F.3d at 939.

18 After the DHS has notified Mr. Ortega of the third country and demonstrated that the
19 country "will accept" him, he must be provided the opportunity to present a claim for deferral of
20 removal as to that country under the Convention Against Torture. *See Jama v. ICE*, 543 U.S.
21 335, 348 (2005) (explaining that for noncitizens who face mistreatment in a country designated
22 under § 1231(b)(2), they have the remedy of an "individualized determination[]" under CAT).
23 Because CAT is a country-specific form of relief, Mr. Ortega can only apply for CAT relief to a
24 designated country. *See* 8 C.F.R. § 1208.16(c)(3) (defining CAT relief in relation to "the
25 proposed country of removal"); *Su Hwa She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010)

1 (explaining that a noncitizen “is not entitled to adjudication of an application for withholding of
2 removal to a country that nobody is trying to send them to”); *see also Department of Homeland*
3 *Security v. DVD*, ---S.Ct.---, 2025 WL 1732103, at *7 (June 23, 2025) (“Without an applicable
4 order of removal, individuals have no way to raise their claims under the Convention.”)
5 (Sotomayor, J., dissenting from order granting a stay of the preliminary injunction).
6

7 In Mr. Ortega’s case, this means that his Section 240 proceedings must be reopened so
8 that he may present his CAT case to the IJ, *see Himri*, 378 F.3d at 939, and so he may seek
9 administrative and judicial review. *See* 8 U.S.C. §§ 1229a, 1252(a); 8 C.F.R. §§ 1003.6(a),
10 1240.15. As Justice Sotomayor explained this week, the Government’s view that “once a
11 noncitizen has been found removable, [h]e can effectively be removed anywhere at any time
12 would render meaningless the countless statutory and regulatory provisions providing for notice
13 and a hearing. *DVD*, 2025 WL 1732103, at *8 (collecting and citing relevant statutory and
14 regulatory provisions) (Sotomayor, J., dissenting). This is likewise required as a matter of due
15 process. *See DVD*, 2025 WL 1732103, at *9 (“Due process requires reasonable notice and an
16 opportunity to be heard.”) (“Plaintiffs merely seek access to notice and process, so that, in the
17 event the Executive makes a determination in their case, they learn about it in time to seek an
18 immigration judge’s review. The Fifth Amendment *unambiguously guarantees that right.*”)
19 (Sotomayor, J., dissenting) (emphasis added); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009
20 (W.D. Wash. 2019) (finding that removal proceedings “shall be reopened and a hearing shall be
21 held before the immigration judge so that petitioner may apply for relief from removal” as to a
22 country that had not been designated for removal in the noncitizen’s prior proceedings);
23 *Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014) (holding that should a new country
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1 of removal be designated, “the agency must provide [the noncitizen] with notice and an
 2 opportunity to reopen his case for full adjudication of his claim of withholding of removal
 3 from” the additional country).
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5 **B. MR. ORTEGA IS LIKELY TO SUCCEED ON THE MERITS OF HIS**
 6 **CLAIM THAT BOTH THE INA AND THE CONSTITUTION REQUIRE**
 7 **THAT HE REMAIN OUT OF CUSTODY, BECAUSE HIS REMOVAL IS**
 8 **NOT REASONABLY FORESEEABLE AND HE IS NEITHER A FLIGHT**
 9 **RISK NOR A DANGER**

10 The Constitution establishes due process rights for “all ‘persons’ within the United
 11 States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
 12 permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v.*
 13 *Davis*, 533 U.S. 678, 693 (2001)). “Freedom from imprisonment—from government custody,
 14 detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due
 15 Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. In “our society, liberty is the norm,” and
 16 detention is the “carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755
 17 (1987).

18 For individuals like Mr. Ortega, who were ordered removed years ago, any current
 19 detention would purportedly be pursuant to 8 U.S.C. § 1231(a)(6), which authorizes detention
 20 for individuals beyond the ninety-day removal period in 8 U.S.C. § 1231(a)(2). But 8 U.S.C.
 21 § 1231(a)(6), only authorizes detention for “a period reasonably necessary to secure removal.”
 22 *Zadvydas*, 533 U.S. at 699. “Thus, if removal is not reasonably foreseeable . . . continued
 23 detention [is] unreasonable and no longer authorized by statute.” *Id.* at 699-700.
 24

25 Here, as discussed *supra*, given the due process clause, the INA, the Foreign Affairs
 26 Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 105–277, div. G, Title XXII,
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1 § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231), and the
2 implementing regulations, Mr. Ortega’s removal is not reasonably foreseeable. *See* 8 U.S.C.
3 § 1231(b)(2)(E); 8 U.S.C. § 1231(b)(3)(A); *Himri v. Ashcroft*, 378 F.3d 932, 939 (9th Cir.
4 2004); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Mr. Ortega’s removal
5 proceedings concluded in December 2022. To date, the government has not proven that a third
6 country will accept Mr. Ortega. Nor has the government provided Mr. Ortega with an
7 opportunity to present a claim under the Convention Against Torture as to that country, a
8 process which cannot begin until an additional removal country is properly designated. *See id.*;
9 *See also* Wille Decl. These multi-step processes—which include administrative and judicial
10 appellate review—are expected to take, at a minimum, a year to complete, and could take
11 several years. *See* Wille Decl.; *see also* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R.
12 §§ 1003.6(a), 1240.15. During the past several months, in numerous instances where the federal
13 government has re-detained individuals with withholding or CAT protection—purportedly to
14 remove them to a third country—the government has not made a showing that those individuals
15 can be removed to a third country. *See, e.g.*, Wille Decl., Exhs. AA-CC (attorney declarations);
16 *Tadros v. Noem*, Case No. 25CV4108 (EP), 2025 WL 1678501 (D.N.J., June 13, 2025). They
17 have languished in detention in the meantime. *See id.*

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19 Moreover, because immigration detention is civil detention, it must “bear[] [a]
20 reasonable relation to the purpose for which the individual was] committed,” *Zadvydas*, 533
21 U.S. at 690, and not be excessive in relation to that purpose. *Salerno*, 481 U.S. at 747. The
22 Supreme Court has articulated that there are only two legitimate purposes for immigration
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1 detention: mitigating flight risk and preventing danger to the community. *See id.*⁸ As such, Mr.
2 Ortega's detention would need to serve those purposes and not be excessive in relation to those
3 purposes. Mr. Ortega's conduct over the more than seven years since his release proves that his
4 detention would be without purpose.
5

6 In granting Mr. Ortega's previous habeas petition, Judge Orrick found that "Mr. Ortega
7 has a substantial private interest in remaining on bond, and that interest has only grown in the
8 18 months since [the Court granted] a preliminary injunction." *Ortega*, 415 F. Supp. 3d at 970.
9 That was in 2019, and at that time Judge Orrick noted that Mr. Ortega "was living with his wife,
10 spending time with his mother and other family members, working as a bicycle mechanic, and
11 developing friendships in his community." *Id.* Mr. Ortega's liberty interest has only grown
12 substantially as he has continued those same activities and enjoyed his freedom. *See Ortega*
13 *Decl.*, *Ortenburger Decl.*, *Wille Decl.*, Exhs. E-X, DD (community support letters).
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16 Here, an Immigration Judge already determined—over seven years ago—that the DHS
17 failed to prove by clear and convincing evidence that Mr. Ortega is either a flight risk or a
18 danger to the community. *See Ortega*, 415 F. Supp. 3d at 966. And at that point, Mr. Ortega's
19 CAT application had been denied, and thus his ultimate ability to avoid removal to the
20 designated country of removal was uncertain. Nevertheless, the IJ determined that he should be
21 released from custody, and Mr. Ortega was released on January 31, 2018, after paying a
22 \$35,000 bond. *See id.* Mr. Ortega's conduct since his release has only confirmed the correctness
23 of the IJ's decision to grant bond.
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27 ⁸ Petitioner also acknowledges that the government may detain noncitizens for the brief period
28 necessary to lawfully execute a removal order.

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

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

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

11
12 In addition to his family, Mr. Ortega is enmeshed in the fabric of the Arcata
13 community—as a trusted employee, highly regarded colleague, valued friend and civically-
14 engaged community member. *See generally* Wille Decl., Exhs. E-X. As the Mayor of Arcata
15 describes, "Mr. Ortega is known in our community as someone with integrity and the ability to
16 provide community support by being a part of the Arcata community." *Id.*, Exh. E (Stillman
17 Letter). A Humboldt County Supervisor has likewise noted Mr. Ortega's contributions to
18 Arcata, describing him as a "deeply involved and caring community member." *Id.*, Exh. S
19 (Wilson Letter).

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

5
6 Mr. Ortega is also not a danger to the community. As an initial matter, he has not been
7 arrested or had any problems with law enforcement during the past over-seven years since he
8 was released from custody. Ortega Decl. As noted above, he has been dedicated to his wife, his
9 career, his family members, his friends, and the broader community. And, as the detailed and
10 myriad letters submitted in support of this petition demonstrate, Mr. Ortega has the support of
11 so many individuals who attest to his character—all of whom understand he made mistakes in
12 the past, but speak highly of his genuine reformation and rehabilitation.

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

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23 Dimitrios Tagaropoulos, a local law enforcement officer, highlights that Mr. Ortega
24 “embodies the values of hard work, resilience, and community mindedness. His determination
25 to better himself and inspire others is exactly the kind of example we need more of—not less.”
26 *Id.*, Exh. K (Tagaropoulos Letter). Mike Wilson, a county supervisor in Humboldt County,
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1 notes that Mr. Ortega has worked “incredibly hard to turn his life around” and observes that Mr.
2 Ortega is “now someone we are proud to stand beside: a role model, a good neighbor, and a
3 compassionate person.” *Id.*, Exh. S (Wilson Letter).
4

5 Friend after friend lauds Mr. Ortega for the man he has become. “Giovanny is a
6 hardworking, thoughtful and caring man.” *Id.*, Exh. H (Lehman Letter). “Giovanny is a
7 profoundly kind and gentle man.” *Id.*, Exh. R (Montagna Letter). “Giovanny is a dear friend, a
8 loving and supportive husband, and a very generous and kind addition to our community.” *Id.*,
9 Exh. L (Ingle Letter). Noting his “competence, warmth, and generosity of spirit” one friend
10 describes Mr. Ortega as exemplifying the “proverb a friend in need is a friend indeed.” *Id.*, Exh.
11 P (McNulty Letter). “Giovanny is a compassionate man who actively looks to care for the needs
12 of others in his personal and professional life.” *Id.*, Exh. DD (Williams Letter).
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15 Mr. Ortega’s conduct the last seven years proves that he is neither a flight risk nor a
16 danger, and that any civil detention that occurs while Mr. Ortega contests any removal to a third
17 country would be illegitimate and unconstitutional, as it would bear no relationship to the two
18 purposes immigration detention is meant to serve. *See Jones v. Blanas*, 393 F.3d 918, 933-34
19 (9th Cir. 2004), *cert. denied*, 546 U.S. 820 (2005) (“[A] civil detainee awaiting adjudication is
20 entitled to conditions of confinement that are not punitive...[and] a restriction is ‘punitive’
21 where it is intended to punish, or where it is ‘excessive in relation to [its non-punitive]
22 purpose.’”); *see also Enamorado v. Kaiser*, 2025 WL 1382859, at * 2 (N.D. Cal. May 12, 2025)
23 (temporarily enjoining the government from arresting noncitizen petitioner where there was
24 nothing to “suggest that [the petitioner] is unlikely to appear for any scheduled immigration
25 related proceedings, nor does [the petitioner] appear to pose any risk to the public”).
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1 **C. MR. ORTEGA WILL SUFFER IRREPERABLE HARM ABSENT INJUNCTIVE**
2 **RELIEF**

3 Imminent re-detention will irreparably harm Mr. Ortega. Given ICE's February 18, 2025
4 directive, *see* Wille Decl., Exh. Y, DHS's March 30, 2025 Policy, *see* Wille Decl., Exh. Z, the
5 arrest and detention of at least thirty individuals similarly situated to Mr. Ortega, *see* Wille Dec.,
6 Exhs. AA-CC (attorney declarations), and his upcoming check-in with ICE in San Francisco,
7 Wille Decl., Exh. D (Order of Supervision), ICE is likely to re-detain Mr. Ortega on that date
8 and, thus, a TRO is necessary to prevent irreparable harm.

9 First, Mr. Ortega's re-detention will cause Mr. Ortega irreparable harm because "any
10 "loss of liberty is fundamental and substantial." *Perera v. Jennings*, 2021 WL 2400981, at *5
11 (N.D. Cal. 2021). The harm is particularly clear here, as Mr. Ortega has already been through
12 nine months of civil incarceration by the DHS. *See* Ortega Decl. As Mr. Ortega describes, "[t]he
13 pain of being taken from the life that I have now, being placed in handcuffs, and detained far
14 from my loved ones is indescribable [and] I know this because I lived through it before and I
15 dread to think that I would have to endure it again. I don't want to be confined to a cage ever
16 again." Ortega Decl. Although Mr. Ortega spent 15 years in solitary confinement in prison,
17 where he notes conditions were "exceptionally harsh," he states that nothing "prepared [him] for
18 the conditions in immigration detention." *Id.* Mr. Ortega describes ICE detention conditions as
19 involving overcrowding, filthy bedding, rotten food, abusive guards, and constant sleep
20 deprivation due to security checks and guards kicking doors open. *Id.* As the Ninth Circuit has
21 held—after noting the subpar medical and psychiatric care in ICE detention facilities, as well as
22 the abuse of detainees at the hands of guards—anyone subject to immigration detention suffers
23 "irreparable harm." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

1 Second, Mr. Ortega's wife would suffer tremendously—economically, emotionally, and
2 psychologically—if Mr. Ortega were re-detained. As the Supreme Court has recognized,
3 incarceration “has a detrimental impact on the individual” because “it often means loss of a job”
4 and “disrupts family life.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972). And as the Ninth
5 Circuit has further explained, the “irreparable harms” of immigration detention include the
6 “economic burdens imposed on detainees and their families as a result of detention.” *Hernandez*,
7 872 F.3d at 995. As Mr. Ortega's wife, Carolyn explains, she will not be able to pay the
8 mortgage on their new house without Mr. Ortega's income, and her expenses would increase
9 with Mr. Ortega in detention, while her income would decrease without his financial
10 contributions to the household. *See Ortenburger Decl.*

11 Perhaps even more critically, Mr. Ortega's wife will be left without her primary caretaker
12 during a time when she needs him most due to the recurrence of breast cancer. *See id.* As
13 Carolyn describes, “[t]he fear I feel about his possible re-detention is so all consuming that I
14 have not truly come to terms with my new cancer diagnosis, let alone been able to focus on my
15 healing.” *Id.* She is paralyzed by anxiety related to Mr. Ortega's possible re-detention and she
16 does not know what she would do without him. *See id; see also Jorge M.F. v. Wilkinson*, 2021
17 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021) (recognizing the severe economic hardship and
18 psychological harm family members of detainees can face).

19 Third, the greater community of Arcata would likewise suffer irreparable harm. As Mike
20 Wilson, a District County Supervisor for Humboldt County, explains best, if Giovanni were
21 detained now, “it would be a collective punishment for our community, and an immeasurable
22 loss for Carolyn at a time when she needs him the most.” Wille Decl., Exh. S (Wilson Letter).

1 Nearly two dozen letters of support underscore that same sentiment. *See generally* Wille Decl.,
 2 Exhs. E-X, DD.

3
 4 Fourth, “[t]he deprivation of constitutional rights ‘unquestionably constitutes irreparable
 5 injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427
 6 U.S. 347, 373 (1976)). As detailed above, Mr. Ortega is likely to succeed on his claim that his re-
 7 arrest would violate his due process rights under the Constitution. As such, he has “carried [his]
 8 burden as to irreparable harm.” *Hernandez*, 872 F.3d at 995.

9
 10 **D. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR**
 11 **GRANTING A TRO**

12 Where the government is the opposing party, balancing the equities and the public
 13 interest merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the balance of equities
 14 weighs strongly in favor of Mr. Ortega. Mr. Ortega faces grave hardships absent a TRO. Absent
 15 injunctive relief, he faces arrest and detention in violation of his constitutional rights, separation
 16 from his wife, family, and community, and severe psychological harm, as well as economic
 17 hardship, among other things. *See* Ortega Decl., Ortenburger Decl., Wille Decl., Exhs. E-X.
 18 Faced with “preventable human suffering, [the Ninth Circuit has] little difficulty concluding that
 19 the balance of hardships tips decidedly in plaintiffs’ favor.” *Hernandez*, 872 F.3d at 996
 20 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983). This Court should find the
 21 same.
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 24 The public likewise has a strong interest in ensuring that Mr. Ortega is not re-detained as
 25 “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the
 26 requirements of federal law, especially when there are no adequate remedies available.” *Ariz.*
 27 *Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v.*
 28

1 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). Without an injunction, the government would
2 effectively be granted permission to detain Mr. Ortega in violation of the Constitution and the
3 INA. Like all other individuals, the government is not simply free to ignore the law. Moreover,
4 were Mr. Ortega re-detained, he would not be statutory eligible for a bond hearing under 8
5 U.S.C. § 1231(a)(6), *see Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) nor, if his
6 proceedings were reopened, under 8 U.S.C. § 1226(c), *see Jennings v. Rodriguez*, 583 U.S. 281
7 (2018).
8

9
10 Moreover, a TRO serves the public interest by avoiding “indirect hardship to [Mr.
11 Ortega’s] family members,” which here would be substantial. *See also Golden Gate Rest. Ass’n*
12 *v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008) (finding that courts may
13 consider hardship to families when determining public interest). Ortega Decl.; Ortenburger
14 Decl.; Wille Decl., Exhs. M (Wall Letter), N (Beardsley Letter), V (Ortenburger Letter).
15

16 In addition, a TRO favors the public interest because it allows Mr. Ortega to continue
17 contributing productively to his community. Mr. Ortega is the manager of an outdoor retail store
18 in Arcata and regularly volunteers his time to help others. *See Wille Decl.*, Exhs. O (Johnson
19 Letter) (describing Mr. Ortega as a “critical part” of her business functions); Ortega Decl.
20 (describing his various volunteer activities). As the Mayor of Arcata describes Mr. Ortega, he is
21 “now part of the fabric of our community.” Wille Decl., Exh.E. The public therefore has a strong
22 interest in Mr. Ortega continuing to perform the exemplary service he provides in managing
23 Adventure’s Edge and serving his community. *Cf. Hurd v. District of Columbia*, 864 F.3d 671,
24 683 (D.C. Cir. 2017) (citing *Morrissey v Brewer*, 408 U.S. 471, 484 (1972)) (finding that for
25 released prisoners and parolees, “society has a stake in whatever may be the chance of restoring
26
27
28

the individual to normal and useful life” and that society thus “has an interest in not having parole revoked” erroneously (internal brackets omitted)).

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

IV. CONCLUSION

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

Dated: June 25, 2025

Respectfully submitted,

s/Judah Lakin
Judah Lakin

s/Amalia Wille
Amalia Wille
LAKIN & WILLE LLP

Attorneys for Petitioner

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 25th day of June 2025 in Oakland, California.

s/Judah Lakin
Judah Lakin
Attorney for Petitioner