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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 Juan Carlos Hernandez Hernandez;

Case No. 8:25-cv-01928-SVW-MAA

12
13 Plaintiff,

14 v.

15 Department of Homeland Security; Kristi
16 Noem, in her official capacity as Secretary,
17 Department of Homeland Security, et al.,

18 Defendants.

**PLAINTIFF'S NOTICE OF
OPPOSITION AND OPPOSITION
TO MOTION TO DISMISS
PLAINTIFF'S PETITION AND
COMPLAINT; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

19 The Honorable Stephen V. Wilson
20 United States District Judge

21 Hearing Date: October 20, 2025

22 Hearing Time: 1:30 p.m.

23 Courtroom: 10A

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27 **TO THE HONORABLE COURT, TO ALL PARTIES AND THEIR**
28 **ATTORNEY OF RECORD:**

1 PLEASE TAKE NOTICE THAT, on October 20, 2025 at 1:30 pm, or as
2 soon thereafter as the matter may be heard in the above-mentioned Court, the
3 Plaintiff will and hereby opposes to Defendant's Motion to Dismiss.

4 Despite that Plaintiff is no longer in federal custody or in the United States,
5 Plaintiff is asserting proper claims under *Bivens* against federal agents that arrested
6 him for the violation of his Fourth Amendment rights. The amount of physical
7 force used against the Plaintiff during his arrest was so excessive that they
8 fractured his leg. A situation where federal officers used excessive force during an
9 arrest in violation of the Fourth Amendment is not a new *Bivens* context.

10 Plaintiff's opposition is based on this Notice, on the attached Memorandum
11 of Points and Authorities filed herewith, on the records and file herein; and on
12 such evidence and arguments that may be presented at the hearing of the motion.
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16 Date: 09/25/2025



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18 By: /S/ Jesus Eduardo Arias Esq. LL.M.
19 Law Office of Jesus Eduardo Arias
20 Attorney for the Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On the morning of August 20, 2025, Plaintiff was working at a car wash located in Huntington Beach, CA, when suddenly, several masked and armed federal agents arrived and started to stop and make warrantless arrests based on the mere physical appearance of the people at the car wash. One of the people arrested was the Plaintiff, who was violently thrown to the ground without any objective reason by Defendant Doe 1 “ICE agent” during the incident. The Plaintiff shows no resistance at all, however the agent used such physical brutal force that he fractured Plaintiff’s leg. The above is captured on Exhibit 1 lodged to the docket of this matter. (Video)

As a result, the Plaintiff had to be taken to a hospital for emergency medical care, including surgeries. While in the hospital, he was not permitted visitors or access to Counsel. Therefore, on August 28, 2025, the Plaintiff filed a Petition for Writ of Habeas Corpus, a Complaint for Damages under *Bivens*, and an Ex Parte Application for Temporary Restraining Orders (“Application”). Plaintiff was trying to obtain relief from this court by an order to prevent further prejudice and harm. Being forcefully removed from the country despite his injured health status.

On September 2, 2025, the Defendant’s removed Plaintiff from the United States to Mexico. As a result, when Plaintiff’s matter was heard before this Court on September 8, 2025, the Defendants had already removed him from the country.

We concede that the injunctive relief that was being pursued by habeas is no longer possible. However, this matter contained additional claims and forms of relief. i.e Declaratory Relief, as well as compensatory relief by way of Biven’s claims. For those reasons and as explained here below, we respectfully ask the court to deny Defendant’s motion to dismiss.

1 **II. LEGAL STANDARD**

2 To survive a motion to dismiss under Federal Rule of Civil Procedure
3 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to
4 state a plausible claim to relief on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
5 A claim is facially plausible “when the plaintiff pleads factual content that allows
6 the court to draw the reasonable inference that the defendant is liable for the
7 misconduct alleged.” *Id.*

8 Furthermore, “in deciding a motion to dismiss, a court must accept as true
9 the allegations of the complaint and must construe those allegations in the light
10 most favorable to the nonmoving party.” *Grenell v. Ups Health & Welfare Package*
11 (C.D.Cal. 2005) 390 F.Supp.2d 932.

12 Lastly, under Fed. R. Civ. P. 12(b)(6), a complaint should not be dismissed
13 unless it appears beyond doubt that the plaintiff can prove no set of facts in support
14 of his claim which would entitle him to relief. *Wylar Summit Pshp. v. Turner Broad. Sys.*
15 (9th Cir. 1998) 135 F.3d 658.

16
17 **III. ARGUMENT**

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19 **A. The Court has Jurisdiction to adjudicate Plaintiff’s Action, because his**
20 **harm and causes of action do not verse upon matters under 8 U.S.C. §**
21 **1252. The subject of this matter is judicial redress for serious injuries**
22 **he sustained in the illegal arrest. Not cancellation of removal orders.**
23

24 The Defendant’s argument regarding the Court lack of jurisdiction is
25 inapplicable because the challenged conduct that gave rise to Plaintiff’s claims does
26 not arise from a decision or action to commence or execute removal proceedings
27 under 8 U.S.C. § 1252(g) and (b)(9).
28

1 This action was not filed to contests the authority of the Homeland Security
2 Dpt to deport Mr. Hernandez. No allegation is made that the immigration
3 proceedings were illegitimate. Instead, the matter at hand is an action for damages
4 under Bivens for the injuries Mr. Hernandez sustained as result of Defendant's
5 unconstitutional conduct.

6 The Defendant's reliance in *Sissoko v. Rocha*, 509 F.3d 947 (9th Cir. 2007) is
7 misplaced, because in *Sissoko*, the Plaintiffs claims directly challenged a decision to
8 commence expedited removal proceedings. Here, the Plaintiff is not challenging a
9 removal proceeding, the actual removal proceeding had even commenced at the
10 time Plaintiff filed his Petition-Complaint. The Plaintiff is not challenging a removal
11 proceeding, but an unlawful detention made in violation of his Fourth Amendment
12 Rights, as well as the unnecessary use of physical force that the agents wrongfully
13 used against the Plaintiff's person during the arrest causing serious injuries.

14 Furthermore, the Defendants cite *Alvarez v. United States Immigration &*
15 *Customs Enforcement* (11th Cir. 2016) 818 F.3d 1194, which actually favors the
16 Plaintiff. In *Alvarez* the court determined that *Bivens* does extend to apprehensions
17 and detentions alleging unconstitutionally excessive use of force, even in the
18 immigration context. See also *De La Paz v. Coy*, 786 F.3d 367 (5th Cir. 2015).

19
20 **B. The Plaintiff's Request for injunctive Relief (liberation of Mr.**
21 **Hernandez) is now Moot because he is in Mexico.**

22 The Plaintiff is indeed now in Mexico; therefore, there is no point in seeking
23 an order demanding that the Plaintiff be released from custody because he is no
24 longer in federal custody. However, the Plaintiff still has a valid *Bivens* claim against
25 the federal agents that injured him as argued herein. Thus, the court should exercise
26 its discretion and jurisdiction.

1 **C. The Courts have held that a Petition-Complaint can be Construed as**
2 **both a Habeas Petition and as a *Bivens* Action.**

3 The Plaintiff's initiating case document was meant to be both a Habeas
4 Petition and a Complaint for damages under *Bivens*. This can be verified by the court
5 on the first page of Plaintiff's pleading, which is why the Plaintiff decided to name
6 "PETITION FOR WRIT OF HABEAS CORPUS; & COMPLAINT FOR
7 DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES UNDER
8 BIVENS". A literal reading of the pleading is *res ipsa loquitur*.

9 Even when it is not a common practice, it is not one that is forbidden nor
10 incorrect. There are precedents that support this nature of action. See *Hassain v.*
11 *Johnson*, 790 F.2d 1420, 1420-21 (9th Cir. 1986). In *Hassain*, the district court
12 construed a federal prisoner's civil rights complaint as both a petition for habeas
13 corpus and a *Bivens* action for civil rights violations.

14 Then, in *Tucker v. Carlson* (9th Cir. 1991) 925 F.2d 330, the Court of Appeals
15 for the Ninth Circuit also determined, based on *Greene v. Meese*, 875 F.2d 639, 641
16 (7th Cir. 1989); *Spina v. Aaron*, 821 F.2d 1126, 1128 (5th Cir. 1987); and *Hassain*, 790
17 F.2d at 1420-21; that to the extent the Plaintiff challenged the fact or duration of
18 his confinement, his complaint was construed as a petition for habeas corpus under
19 28 U.S.C. § 2241. And to the extent his complaint sought damages for civil rights
20 violations, his complaint was construed as a *Bivens* action. After making that
21 determination, the Court then proceeded to analyze the merits of Plaintiff's
22 claims. *Tucker v. Carlson* (9th Cir. 1991) 925 F.2d 330, 331-332.

23 Thus, Plaintiff's Petition-Complaint should be construed here as both a
24 Habeas Petition and as a *Bivens* Action; and as such, this Court has the authority and
25 the power to adjudicate all claims.

D. The Plaintiff's Claims do not Represent a New *Bivens* Context because they Arise from an Unreasonable Seizure that Violated the Plaintiff's Fourth Amendment Rights.

In the United States, a Plaintiff can file a *Bivens* claim when they allege that a federal official, acting under the color of federal authority, violated their constitutional rights. The U.S. Supreme Court has recognized *Bivens* claims in three specific contexts: (1) a Fourth Amendment violation for an unlawful search and arrest without a warrant (*Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics* (1971) 403 U.S. 388 [91 S.Ct. 1999, 29 L.Ed.2d 619].)), (2) a Fifth Amendment violation for sex discrimination in the workplace (*Davis v. Passman*, 442 U.S. 228, 99 S. Ct. 2264, 60 L. Ed. 2d 846 (1979)), and (3) an Eighth Amendment violation for deliberate indifference to an inmate's medical needs (*Carlson v. Green*, 446 U.S. 14, 100 S. Ct. 1468, 64 L. Ed. 2d 15 (1980)).

The Plaintiff argues that this case falls within the original *Bivens* context because it involves an *unreasonable arrest* that was carried out in violation of the Fourth Amendment, which "protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. Persons seized by a federal agent in an unreasonable manner, such as by excessive force, may sue the agent personally and recover monetary damages against him, see *Bivens*, 403 U.S. at 389." *Schultz v. Braga* (4th Cir. 2006) 455 F.3d 470, 479-480.

The purpose of the Court when it established the *Bivens* precedent was clear, it was to allow anyone protected by the Fourth Amendment to bring a federal cause of action for damages consequent upon federal agent's unconstitutional conduct. The Supreme Court intended to grant people with a way to challenge the unlawful conduct of federal agents that was otherwise immune from judicial review. After all, "'where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Bell v. Hood*, 327 U.S., at 684; see *Bemis Bros. Bag Co. v. United States*,

1 289 U.S. 28, 36 (1933) (Cardozo, J.); *The Western Maid*, 257 U.S. 419, 433 (1922)
2 (Holmes, J.). (*Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics* (1971)
3 403 U.S. 388, 392 [91 S.Ct. 1999, 2002, 29 L.Ed.2d 619, 624].)

4 The Defense relies heavily on *Egbert*. In *Egbert* the Supreme Court turned its
5 back on *Bivens* and on judicial review itself when it held that the question whether a
6 given remedy is adequate is a legislative determination that must be left to Congress,
7 not the federal courts. See *Egbert v. Boule* (2022) 596 U.S. 482 [142 S.Ct. 1793, 213
8 L.Ed.2d 54]. Following that reasoning, they denied the Plaintiff's Fourth
9 Amendment excessive use of force claim because they decided that Congress was
10 better positioned to authorize such a damages remedy against the CBP agents
11 because of national-security implications.

12 This decision, instead of deterring unconstitutional conduct by federal law
13 enforcement officers involved in the national security context, encourages it. Part
14 of the reasoning used in *Egbert*, to further support the Court's position, was that
15 regulating the conduct of federal immigration agents has national security
16 implications and a "*Bivens* cause of action may not lie where [] national security is at
17 issue." *Id* at 494 (citing *Haig v. Agee*, 453 U.S. 280, 292 (1981)).

18 When one analyzes the above reasoning cautiously, one can easily conclude
19 that is not the case here. The fact that ICE or CBP, are involved does not necessarily
20 nor conclusively involve an issue of national security. Thus, their conduct cannot
21 be absolute immune. To do so, would be to allow them to not simply arrest people,
22 but perhaps shot and kill people. No questions asked. Total immunity applies.

23 A *Bivens* claim does not purport to limit a federal immigration agent's power,
24 it is only aimed to redress the damage caused by the unlawful conduct of the agents
25 involved. Just like the case at hand.

26 The Supreme Court made no such distinctions in *Bivens* when it decided to
27 provide the people with a judicial tool to seek relief arising out of the wrongful
28 conduct of all federal officers.

1 For all of the above reasons, we ask the Court to allow the Plaintiff to proceed
2 with his *Bivens* claims even though the agents involved in Plaintiff's arrest were ICE
3 and/or CBP officers. Like in *Bivens*, the agents here did not have an individualized
4 warrant for the Plaintiff. Despite that, they unlawfully arrested and subjected Mr.
5 Hernandez to unreasonable amounts of force during the arrest. Thus, this case is
6 not reasonably different from the claims in *Bivens*.

7 The 2 step inquiry is only proper when the Court is asked to extend *Bivens* to
8 a new context, but that is not the case here. See *Hernandez v. Mesa*, 140 S. Ct. 735,
9 743 (2020). This was not and it is not a new context situation.

10 **E. Leave to Amend Should be Granted to the Plaintiff in the Interest of**
11 **Justice.**

12 Under Federal Rule of Civil Procedure 15(a)(2), courts should "freely give
13 leave. [to amend] when justice so requires." *Carrico v. City & County of San Francisco*,
14 656 F.3d 1002. The liberal amendment policy reflects the federal courts' preference
15 for resolving disputes on the merits rather than on procedural technicalities. This
16 standard suggests that courts should engage in meaningful analysis rather than
17 accepting conclusory assertions about futility.

18 In that regard, the Defendants fail to overcome the strong presumption that
19 favors the granting of leave to amend, which places the burden on the moving party
20 to demonstrate why amendment should be denied. *Carrico v. City & County of San*
21 *Francisco*, 656 F.3d 1002. The mere assertion that the habeas claim is moot, does not
22 automatically satisfy this burden.

23 Denying leave to amend without providing an opportunity to address any
24 identified deficiencies by the court, may violate principles of procedural fairness.
25 The liberal amendment standard exists precisely to allow parties to cure pleading
26 defects and present their claims on the merits. Even if some claims face challenges,
27 this does not necessarily render all potential amendments futile in the absolute.
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1
2 **IV. CONCLUSION**

3 For all of the foregoing reasons, the Plaintiff respectfully asks this Court to
4 deny Defendants' motion to dismiss, with exception of the injunctive relief which
5 is not longer feasible nor required.
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8 Dated: 09/25/2025

Respectfully Submitted by:

9
10 S/ Jesus Eduardo Arias LL.M. Esq.
11 Attorney for Plaintiff Juan Carlos Hernandez
12 LAW OFFICES OF JESUS EDUARDO ARIAS
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