No. 26-2090

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CRUZ GAMEZ, et al.,

Plaintiffs-Appellees,

v.

TODD M. LYONS, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Oregon
No. 6:25-cv-02011 • Hon. Mustafa T. Kasubhai

APPELLANTS' MOTION TO SUPPLEMENT THE RECORD OR TAKE JUDICIAL NOTICE

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INTRODUCTION

The Attorney General of the United States, U.S. Department of Homeland Security (Department), U.S. Immigration and Customs Enforcement (ICE), and related federal officials (together, the "Government") respectfully request that this Court supplement the record or, alternatively, take judicial notice of the following documents:

Exhibit 1 – Form I-200 administrative warrant for the arrest of named plaintiff Victor C.G. issued by the Department; and

Exhibit 2 – Notice to Appear for named plaintiff Victor C.G. issued by the Department.

Those documents fit comfortably within the scope of supplementation permitted by the federal rules and are also proper subjects of judicial notice. The materials also bear directly on questions central to this appeal, and the Court should therefore consider them in resolving this case.[1]

BACKGROUND

This case involves an appeal of a preliminary injunction and provisional grant of class certification. According to the district court, ICE arrested named plaintiffs M-J-M-A- and Victor C.G. based on a supposed (and nonexistent) unwritten policy to conduct warrantless arrests without

[1] The parties conferred and Plaintiffs-Appellees oppose this motion.

probable cause, which clashes with ICE's actual *written* policy for warrantless arrests. The district court issued a sweeping statewide preliminary injunction that places routine immigration enforcement under the continuous supervision of federal courts and provisionally certified an amorphous warrantless-arrest class. In granting the preliminary injunction, the district court concluded that the named plaintiffs had standing because they were "vulnerable" to future warrantless arrests without probable cause. Dkt. 88 at 31-32.[2]

Victor C.G., one of the named plaintiffs, is a native and citizen of Mexico who unlawfully entered the United States in 1999 without inspection. Dkt. 62-1 at 2; 2/4/26 Hr'g 40:13-21. On October 14, 2025, immigration officers stopped Victor C.G. while he was driving home from work. Dkt. 62-1 at 2. The officers repeatedly asked him to confirm his identity, and when he finally did, they asked him to exit his vehicle. Dkt. 62-1 at 2; 2/4/26 Hr'g 25:13-17, 26:2-8, 44:6-9. Victor C.G. was arrested without a warrant and detained. The Department issued an administrative warrant for his arrest that same day on the ground that he was a removable alien. *See* Ex. 1. Because Victor C.G. was "an alien present in the United States who ha[d] not

[2] "Dkt." and "Hr'g" refer to documents filed and hearings conducted in the district court. *See M-J-M-A v. Wamsley*, No. 6:25-cv-02011 (D. Or.).

been admitted or paroled," the Department also served him with a Notice to Appear. *See* Ex. 2. The U.S. District Court for the Western District of Washington granted Victor C.G.'s subsequent petition for a writ of habeas corpus, concluding that, although Victor C.G. illegally entered the United States, he was eligible for release upon payment of a bond and not subject to mandatory detention. *See Cruz-Gamez v. Bondi*, 2:25-cv-02154-TMC, Dkt. 1, 11 (W.D. Wash.).

The Government appealed the district court's grant of a preliminary injunction and provisional class certification, and its opening brief in this Court is due on July 6, 2026.

ARGUMENT

This Court should supplement the record under Rule 10(e) of the Federal Rules of Appellate Procedure, which permits a court of appeals to correct gaps in the record. The proposed exhibits also refute the claim that Victor C.G. faces a realistic prospect of a future warrantless arrest, further supporting supplementation. Alternatively, this Court should take judicial notice of the proposed exhibits. Exhibits 1 and 2 fall squarely within the category of materials eligible for judicial notice and directly inform the resolution of a central question in this appeal.

I. THIS COURT SHOULD SUPPLEMENT THE RECORD

The Federal Rules of Appellate Procedure provide that the Court may supplement the record with "anything material to either party" that "is omitted from or misstated in the record by error or accident." Fed. R. App. 10(e)(2); *see Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003). This Court may similarly "exercise inherent authority to supplement the record in extraordinary cases." *Lowry*, 329 F.3d at 1024. And "[c]onsideration of new facts may even be mandatory, for example, when developments render a controversy moot and thus divest [a court of appeals] of jurisdiction." *Id.*

This Court should grant supplementation for multiple independent reasons. To start, Exhibits 1 and 2 address issues at the heart of this appeal—whether Victor C.G. is (i) removable and (ii) likely to be subjected to a future warrantless arrest without probable cause. His Form I-213 is already part of the district court record. *See* Dkt. 62-1. Rule 10(e) exists to permit this precise kind of supplementation.

The Court's inherent authority provides another basis to supplement the record. Although courts of appeals usually exercise that authority only in "extraordinary" circumstances, *see Lowry*, 329 F.3d at 1024, the Government readily satisfies that standard here because the proposed exhibits clarify disputed jurisdictional issues. Victor C.G.'s theory of future

injury, which the district court endorsed, rests on the premise that he will suffer a future warrantless arrest without probable cause. But the proposed exhibits undermine that premise by demonstrating that any future arrest would occur under warrant.

The issuance of an administrative warrant also renders Victor C.G.'s claims moot. Any ongoing or imminent injury tied to a subsequent arrest would arise from that *warrant*, not from some alleged unwritten policy authorizing *warrantless* arrests. Accordingly, this Court should consider the proposed exhibits, which directly implicate the Court's jurisdiction and the existence of a live controversy. *See id.*

II. IN THE ALTERNATIVE, THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE EXHIBITS

This Court "retain[s] discretion to take judicial notice of documents 'not subject to reasonable dispute.'" *Trigueros v. Adams*, 658 F.3d 983, 987 (9th Cir. 2011) (quoting Fed. R. Evid. 201(b)); *see Lowry*, 329 F.3d at 1024. In exercising that discretion, federal courts may judicially notice any material that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). And a court "must take judicial notice if a party requests it and the court is supplied with the necessary information." *Id.* 201(c)(2).

The proposed exhibits qualify for judicial notice. No reasonable party could dispute the authenticity or accuracy of the proposed exhibits. Exhibits 1 and 2—a Form I-200 administrative warrant and a Notice to Appear—are official agency records produced by the Government. This Court routinely takes judicial notice of government documents. *See, e.g.*, *Dent v. Holder*, 627 F.3d 365, 371 (9th Cir. 2010) (taking judicial notice of "official agency records" from A-File); *DeHoog v. Anheuser-Busch InBev SA/NV*, 899 F.3d 758, 762-63 n.5 (9th Cir. 2018) (same for "government documents"). And because those records will assist the Court in determining whether Victor C.G. has a cognizable stake in this litigation, judicial notice is particularly appropriate.

CONCLUSION

For the foregoing reasons, this Court should grant the motion.

Respectfully submitted,

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Dated: June 22, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27 and 32(g) and 9th Cir. Rule 32-3(2), I certify that this motion was prepared using 14-point Georgia type, is proportionally spaced, and contains 1,125 words, which, divided by 280, is less than the 20 pages authorized in 9th Cir. Rule 27 1(1)(d).

s/ A. Ashley Arthur
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CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system. Petitioners' counsel is a registered ACMS user and will be served electronically through that system.

s/ A. Ashley Arthur
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EXHIBIT 1

U.S. DEPARTMENT OF HOMELAND SECURITY **Warrant for Arrest of Alien**

File No. 236 000 280

Date: 10/14/2025

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that CRUZ-GAMEZ, VICTOR is removable from the United States. This determination is based upon:

☐ the execution of a charging document to initiate removal proceedings against the subject;

☐ the pendency of ongoing removal proceedings against the subject;

☐ the failure to establish admissibility subsequent to deferred inspection;

☒ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

☒ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

JORDAN REDDISH - SDDO
(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at ~~EWS~~ Por Hand, OR (Location)

on CRUZ-GAMEZ, VICTOR (Name of Alien) on 10/14/2025 (Date of Service), and the contents of this notice were read to him or her in the SPANISH / English (Language) language.

MATTHEW RANDALL
Deportation Officer
Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)

CRUZ-GAMEZ, VICTOR

Subject ID: 400399418
A#/BOP: 236 000 280
Classification Level:

Birth Date: 01/31/1970
COC: MEXIC
Apprehension Date: 10/14/2025

EXHIBIT 2

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

DOB: 01/31/1970

Event No: PO02610000199

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: 400399418

File No: 236 000 280

In the Matter of:

Respondent: VICTOR CRUZ-GAMEZ currently residing at:

1623 E J St Apt Ste 5, Tacoma, WASHINGTON 984211602

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☒ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of MEXICO and a citizen of MEXICO;
3. You entered the United States at or near unknown, on or about unknown date;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

1623 E J ST, STE 3 TACOMA, WASHINGTON 984211615. NORTHWEST DETENTION CENTER

(Complete Address of Immigration Court, including Room Number, if any)

on October 28, 2025 *(Date)* at 8:30 am *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

JORDAN REDDISH - SDDO

(Signature and Title of Issuing Officer)

Date: October 14, 2025

Portland, OR

(City and State)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at **www.uscis.gov/i-589**. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at **http://www.ice.gov/contact/ero**, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before: _____

_____
(Signature of Respondent)

_____ Date: _____
(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on OCT, 14, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

_____
(Signature of Respondent if Personally Served)

MATTHEW RANDALL - Deportation Officer
(Signature and Title of officer)

Privacy Act Statement

Authority:
The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:
You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:
For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at https://www.dhs.gov/system-records-notices-sorns. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at https://www.justice.gov/opcl/doj-systems-records. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:
Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.