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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KAJI DOUSA,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND  
SECURITY (“DHS”); U.S. IMMIGRATION  
AND CUSTOMS ENFORCEMENT  
 (“ICE”); U.S. CUSTOMS AND BORDER  
PROTECTION (“CBP”) KEVIN K.  
MCALEENAN, Acting Secretary of DHS;  
MATTHEW T. ALBENCE, Acting Director  
of ICE; MARK A. MORGAN, Acting  
Commissioner of CBP; AND PETER  
FLORES, Director of Field Operations for  
CBP, San Diego,

Defendants.

Case No. 19-cv-01255 (LAB)

**PLAINTIFF’S  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF MOTION FOR  
PRELIMINARY  
INJUNCTION**

Date: September 23, 2019  
Time: 11:30 a.m.  
Place: Courtroom 14A  
Judge: Hon. Larry Alan Burns

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## INTRODUCTION

1  
2 In March 2019, a Department of Homeland Security (“DHS”) whistleblower  
3 released secret government documents that depict Plaintiff Kaji Dousa, a prominent  
4 Christian minister, immigrant rights advocate, and U.S. citizen, with a yellow “X” over  
5 her face. The whistleblower collected these documents, which also include identifying  
6 personal information, from a database compiled as part of a sweeping multi-agency  
7 investigation called “Operation Secure Line.” The documents purport to list  
8 “Suspected Organizers, Coordinators, Instigators, and Media” associated with the so-  
9 called “migrant caravan.” Pastor Dousa did nothing unlawful to land herself in the  
10 government’s crosshairs. Instead, DHS, U.S. Immigration and Customs Enforcement  
11 (“ICE”), U.S. Customs and Border Protection (“CBP”), and the individuals in charge  
12 of those agencies (collectively, “Defendants”) have targeted Pastor Dousa, as they  
13 have many others, simply because she exercised her First Amendment rights.

14 Pastor Dousa believes that responding to the needs of refugees, asylum-seekers,  
15 and other migrants is a requirement of her Christian faith. She acts on that belief by  
16 providing pastoral care to migrants, both in the United States and across the Southern  
17 Border in Mexico, officiating migrants’ weddings, and leading prayerful vigils in  
18 opposition to U.S. immigration policy. The First Amendment safeguards her right to  
19 engage in this activity, as it “occupies the same high estate under the First Amendment  
20 as do worship in the churches and preaching from the pulpits.” *Watchtower Bible &*  
21 *Tract Soc’y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 161 (2002).

22 Yet, in response to Pastor Dousa’s exercise of her First Amendment rights,  
23 Defendants have illegally revoked border-crossing privileges they once provided her,  
24 and subjected her to unwarranted surveillance, detention, interrogation, and  
25 harassment. Defendants’ actions already have severely harmed Pastor Dousa’s  
26 ministry and will continue to inflict further irreparable harm if not enjoined. Quite  
27 simply, Pastor Dousa is not able to freely exercise her religion because of the  
28 government’s actions. She has significantly decreased her ministry in Mexico because

1 she fears prolonged detention at the border. Her ability to cross the border to minister  
2 to migrants is impeded by revocation of her status as a “trusted traveler” as part of the  
3 Secure Electronic Network for Travelers Rapid Inspection (“SENTRI”) program. She  
4 has refrained from blessing additional marriages, even though such blessings are a  
5 fundamental part of pastoral care, because the migrants whom she has married have  
6 been subject to questioning based on their association with her.

7 The harm to Pastor Dousa is not limited to her work at the Southern Border.  
8 The church Pastor Dousa leads in New York City reversed plans to house an asylum-  
9 seekers clinic, and to restrict the provision of sanctuary to individual refugees because  
10 Defendants’ unwarranted targeting of Pastor Dousa would put migrants receiving this  
11 pastoral care at risk of detention, separation from their families, and even deportation.  
12 Defendants also have interfered with Pastor Dousa’s existing congregation by  
13 deterring immigrant parishioners from attending and participating in church and other  
14 religious events. Defendants’ actions particularly interfere with Pastor Dousa’s ability  
15 to provide the sacred pastoral rites of confession and absolution, which depend on  
16 confidentiality.

17 To be clear, Pastor Dousa is not alone. Defendants’ targeting of Pastor Dousa  
18 is part of a disturbing pattern and practice of surveillance, harassment, and other  
19 adverse treatment, described in detail in Pastor Dousa’s Complaint, designed to stifle  
20 opposition to U.S. immigration policy, and to punish those who offer comfort, aid, or  
21 ministry to migrants. Several of Pastor Dousa’s associates, along with scores of other  
22 advocates and journalists, have been singled out for adverse treatment based on their  
23 exercise of First Amendment rights. Indeed, other courts already have expressed  
24 “grave concern” that Defendants have targeted these individuals “as a result of [their]  
25 speech and political advocacy on behalf of immigrants’ rights and social justice.” *See*  
26 *Ragbir v. Sessions*, No. 18-cv-236 (KBF), 2018 WL 623557, at \*1 n.1 (S.D.N.Y. Jan.  
27 29, 2018).

28 Pastor Dousa now seeks this Court’s intervention in vindicating her rights. The

1 First Amendment’s Free Exercise and Free Speech Clauses prohibit Defendants from  
 2 discriminating or retaliating against a person based on religious exercise or protected  
 3 expression. The Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb  
 4 *et seq.*, prohibits Defendants from substantially burdening a person’s exercise of her  
 5 chosen religion. To be sure, the government has an interest in securing our borders,  
 6 and may detain individuals at the border, subject them to secondary screening, and  
 7 conduct appropriate surveillance to advance that interest. But “[e]ven at the border,  
 8 [courts] have rejected an ‘anything goes’ approach.” *Askins v. DHS*, 899 F.3d 1035,  
 9 1045 (9th Cir. 2018). The First Amendment draws a clear line: The government’s  
 10 powers may not be used to target and punish individuals for exercising their First  
 11 Amendment rights at the border or anywhere else. This is the hallmark of a free and  
 12 democratic society.

13 This Court should order Defendants to comply with the United States  
 14 Constitution and federal law, to cease their adverse treatment of Pastor Dousa and  
 15 restore her SENTRI pass, and to restrain Defendants from taking any future adverse  
 16 action against her based on her protected expression, association, or religious exercise.

## BACKGROUND

### **I. PASTOR DOUSA AND HER MINISTRY**

19 Pastor Dousa is a U.S. citizen who serves as the Senior Pastor at Park Avenue  
 20 Christian Church (“The Park”) in New York City. Ex. 1, Decl. of Kaji Dousa ¶¶ 1–2  
 21 (July 24, 2019) (“Dousa Decl.”). She is also the co-chair of the New Sanctuary  
 22 Coalition (“New Sanctuary”), a faith-based network of congregations, organizations,  
 23 and individuals dedicated to immigrant rights. *Id.* ¶ 3. She is chair of the Yale Divinity  
 24 School Alumni Board, a trustee of the Yale Theological Seminary, and a member of  
 25 the United Church of Christ (“UCC”) Board of Directors and Executive Council. *Id.*  
 26 ¶ 4.  
 27

28 As a Christian and UCC leader, Pastor Dousa must follow Jesus Christ, who

1 himself was a refugee, by mirroring his ministry to the vulnerable and the  
2 dispossessed. *Id.* ¶ 9. Her faith teaches her to see Jesus Christ in those who suffer as  
3 he did, and to view actions that cause further harm to the suffering as acts causing  
4 harm to Christ himself. *Id.* Pastor Dousa is thus required by her faith to pray with,  
5 protect, and serve refugees, asylum-seekers, and other migrants. *Id.*

6 Through her leadership in New Sanctuary, which is housed in Judson Memorial  
7 Church in New York City, Pastor Dousa has organized and led weekly interfaith prayer  
8 vigils, or “Jericho Walks,” near federal immigration buildings. *Id.* ¶¶ 3, 5. Pastor  
9 Dousa also regularly accompanies and prays with immigrants who have court dates  
10 and ICE check-ins, as part of New Sanctuary’s Accompaniment Program. *Id.* ¶ 6.

11 For several years, Pastor Dousa also has ministered to migrants at the U.S.  
12 Southern Border with Mexico. *Id.* ¶¶ 7–8. In 2018, through New Sanctuary, Pastor  
13 Dousa helped organize a “Sanctuary Caravan,” a mobile clinic of faith leaders,  
14 congregants, and humanitarian workers who provided pastoral services, including  
15 prayer and church-blessed marriage ceremonies, to migrants seeking asylum in the  
16 United States. *Id.* ¶ 8. Lasting 40 days and 40 nights, a period of Biblical significance,  
17 the Sanctuary Caravan included dozens of volunteers ministering to several hundred  
18 asylum-seekers. *Id.* Late last fall and again in January of this year, Pastor Dousa  
19 traveled to Tijuana, Mexico, to pray with, preach to, marry, and provide confession  
20 and absolution to scores of migrants and their advocates. *Id.* ¶¶ 13–15.

21 The pastoral covenant of confidentiality is central to Pastor Dousa’s ministry.  
22 Worshippers come to her for religious guidance related to intensely personal matters  
23 like sexual assault, family violence, and fear of political persecution. *Id.* ¶ 12. Pastor  
24 Dousa has a religious and moral obligation to keep the information she receives  
25 confidential, except in the most extraordinary circumstances. *Id.* Without the ability  
26 to ensure confidentiality, Pastor Dousa cannot minister freely as her faith commands.  
27 *Id.*

1 **II. DEFENDANTS’ RETALIATION AGAINST PASTOR DOUSA**

2 In response to Pastor Dousa’s ministry to migrants and advocacy in opposition  
3 to U.S. immigration policy, Defendants have subjected Pastor Dousa to surveillance,  
4 detention, and harassment. Defendants have tracked Pastor Dousa’s ministry across  
5 thousands of miles, subjected her to extended interrogation, and revoked expedited  
6 border-crossing privileges afforded to “low risk” travelers. Compl. ¶¶ 44–74 (July 8,  
7 2019) [Dkt. 1].

8 In January 2019, when Pastor Dousa attempted to cross into the United States  
9 from Mexico, Defendants detained her for “secondary screening,” an enhanced  
10 questioning of travelers with alerts on their passports or who otherwise present cause  
11 for additional investigation. Ex. 1, Dousa Decl. ¶ 19. Pastor Dousa had previously  
12 crossed the border several times using her TSA-issued Global Entry card without  
13 incident. *Id.* After Pastor Dousa was confined to the waiting area for several hours,  
14 an officer directed Pastor Dousa to a cubicle for interrogation. *Id.* ¶¶ 21–22. The  
15 officer wore a different uniform than the CBP officers Pastor Dousa typically  
16 encountered at the border, which she understood to mean he worked in a different unit  
17 or held a different rank. *Id.* ¶ 22. He asked Pastor Dousa intrusive questions about  
18 her pastoral care for refugees traveling from the Central American countries of  
19 Guatemala, Honduras, and El Salvador (“the Northern Triangle”) in what media  
20 dubbed a “migrant caravan,” and why she ministered to “the aliens.” *Id.* He also asked  
21 questions about Pastor Dousa’s work with New Sanctuary that revealed that he had  
22 access to detailed information about her ministry to migrants and their advocates in  
23 New York City. *Id.* ¶ 23. The officer asked Pastor Dousa if she was involved in illegal  
24 activity; she reiterated that she was not doing anything illegal and was in Tijuana to  
25 provide pastoral services. *Id.* ¶ 24. Pastor Dousa ultimately crossed the border and  
26 returned to New York City. *Id.* ¶ 28.

27 On March 6, 2019, NBC 7 San Diego published internal DHS documents  
28 provided by a whistleblower showing that the government was targeting Pastor Dousa,

1 along with numerous journalists, attorneys, and immigrant rights advocates, as part of  
2 a program called “Operation Secure Line.” Compl. ¶ 56. The documents, titled “San  
3 Diego Sector Foreign Operations Branch: Migrant Caravan FY-2019, Suspected  
4 Organizers, Coordinators, Instigators and Media,” are dated January 9, 2019 (just days  
5 after Defendants interrogated Pastor Dousa regarding her lawful activities) and detail  
6 a coordinated intelligence-gathering effort by U.S. and Mexican authorities, targeting  
7 at least 59 people allegedly associated with the “migrant caravan.” *Id.* Defendants  
8 also created a secret database containing information on these individuals, whom  
9 Defendants targeted for enhanced screening and interrogation at the border. *Id.* ¶ 58.

10 The released documents contain photographs of each target—usually from a  
11 passport but in some cases from a social media account, indicating surveillance of  
12 those accounts—and other personal information, including date of birth, and any  
13 suspected connection to migrants. *Id.* ¶ 59. The documents also noted whether  
14 Defendants had placed an alert on the individual’s passport, and in some cases whether  
15 the individual was arrested, interviewed, or subjected to an adverse immigration  
16 action, such as having a visa or SENTRI pass revoked. *Id.* ¶ 60.<sup>1</sup> According to a  
17 source within DHS, investigative authorities also created dossiers for each person on  
18 the list that contain even more detailed personal information. *Id.* ¶ 61. Pastor Dousa  
19 appears on the Operation Secure Line list with a yellow “X” over her face and an  
20 accompanying note stating “Disposition: SENTRI Revoked.” *Id.* ¶ 62; Ex. 1, Dousa  
21 Decl. ¶¶ 29–30. Defendants have not restored Pastor Dousa’s SENTRI status. Ex. 1,  
22 Dousa Decl. ¶ 32.

23 Meanwhile, in New York, regional ICE officials tracked prayer vigils and other  
24 religious events led by Pastor Dousa on a list of so-called “Anti-Trump Protests.”  
25 Compl. ¶ 68. These officials targeted Pastor Dousa for surveillance because she  
26 prayed with migrants and called attention to the effects of U.S. immigration policy on  
27

28 <sup>1</sup> SENTRI is a CBP program that allows for expedited clearance of pre-approved  
travelers who are deemed to be “low risk.” *Id.* ¶ 64.



1 migrants and their families. *Id.* ¶ 11. Among the events Defendants surveilled was an  
 2 annual Ash Wednesday prayer vigil, which Pastor Dousa frequently leads. Ex. 1,  
 3 Dousa Decl. ¶¶ 33–34. According to emails obtained by *The Nation* and published in  
 4 a March 6, 2019, report, a regional ICE official remarked that the Ash Wednesday  
 5 event “saves us the trip of going over to the church,” indicating that ICE was  
 6 surveilling the Judson Memorial Church where Pastor Dousa often works with New  
 7 Sanctuary. *Id.* Another surveilled event was a “Suitcase Rally,” led by Pastor Dousa,  
 8 which invited participants to consider what they would pack if they were deported. *Id.*  
 9 ¶ 34; Compl. ¶ 70.

10 The government’s purported justifications for surveilling Pastor Dousa are  
 11 pretextual. Shortly after NBC 7 San Diego published the Operation Secure Line story,  
 12 CBP officials told reporters “that the names in the database are all people who were  
 13 present during violence that broke out at the border in November [2018].” Compl.  
 14 ¶ 72. But Pastor Dousa was not present for any violence near the border, and when  
 15 she was detained, she was not even asked about confrontations between migrants and  
 16 immigration authorities. Ex. 1, Dousa Decl. ¶¶ 17, 25.

### 17 **III. DEFENDANTS’ PATTERN AND PRACTICE OF TARGETING** 18 **IMMIGRANT RIGHTS ACTIVISTS AND THOSE WHO REPORT ON** 19 **MIGRATION TO THE SOUTHERN BORDER**

20 Defendants have engaged in a pattern and practice of surveillance, harassment,  
 21 and other adverse treatment designed to stifle opposition to U.S. immigration policy  
 22 and punish those who offer comfort, aid, or ministry to migrants. Defendants also  
 23 have targeted journalists who cover the migrant journey from Central America’s  
 24 Northern Triangle to the U.S. Compl. ¶ 88. Among other things, Defendants have  
 25 arrested immigrants who speak out about their experiences with federal authorities;  
 26 detained spokespeople and directors of immigrant advocacy organizations; surveilled  
 27 the organizations’ headquarters and members; identified immigrants who advocate for  
 28 themselves and others as enforcement priorities even before a final order of removal  
 is in place; instructed non-citizens that associating with organizations that advocate

1 for or serve the migrant community may negatively impact their immigration status;  
2 and detained journalists covering migration to the Southern Border. *Id.* ¶ 89. The  
3 activities that led Defendants to target these individuals are not only lawful, but  
4 constitutionally protected. *Id.* ¶ 90.

5 For example, Defendants have targeted Pastor Dousa’s New Sanctuary  
6 colleagues, including Executive Director Ravi Ragbir and co-founder Jean Montrevil,  
7 specifically because of their work with migrants and opposition to U.S. immigration  
8 policy. *Id.* ¶ 92. On January 3, 2018, ICE agents arrested Mr. Montrevil at his New  
9 York home, seeking to deport him based on a decades-old drug charge incurred as a  
10 teenager. Ex. 1, Dousa Decl. ¶ 46. Mr. Montrevil is a Haitian national, immigrant  
11 rights-activist, and lawful permanent resident who had lived in this country for over  
12 20 years. *Id.* ¶ 47. In a January 5, 2018 meeting to discuss Mr. Montrevil’s sudden  
13 change of status, ICE New York Field Office Deputy Director Scott Mechkowski told  
14 Pastor Dousa directly that “[n]obody gets beat up in the news more than we do, every  
15 single day. It’s all over the place, . . . how we’re the Nazi squad, we have no  
16 compassion. . . . The other day Jean [Montrevil] made some very harsh statements. . .  
17 I’m like, ‘Jean, from me to you . . . you don’t want to make matters worse by saying  
18 things.’” *Id.* ¶ 48.

19 During this meeting, Mr. Mechkowski also told Pastor Dousa, “I know exactly  
20 how to find you. You’re on the web. You’re all over the documents that I have.” *Id.*  
21 ¶ 49. He further stated, “We all know the network of people that you have at your  
22 disposal. You have City Hall in your pocket. Like, we get it. Trust me, I know your  
23 network just as good as you do.” *Id.* ICE deported Mr. Montrevil days later. *Id.* ¶ 47.  
24 Mr. Mechkowski also complained about Mr. Ragbir’s statements to the press and  
25 stated that he felt “resentment” about prayer vigils led by Pastor Dousa outside a  
26 federal building where Mr. Ragbir’s ICE check-in occurred. Compl. ¶ 96. Shortly  
27 thereafter, ICE detained Mr. Ragbir and processed him for deportation. *Id.* ¶ 97. Mr.  
28 Ragbir filed a petition for a writ of habeas corpus in the U.S. District Court for the

1 Southern District of New York seeking to bar his abrupt removal without allowing  
2 him time for an orderly departure. *Id.* ¶ 98. In granting the petition, the court  
3 expressed “grave concern . . . that petitioner has been targeted as a result of his speech  
4 and political advocacy on behalf of immigrants’ rights and social justice.” *Ragbir*,  
5 2018 WL 623557, at \*1 n.1.

6 Mr. Ragbir has since filed a separate action to block his deportation on the  
7 ground that execution of his final removal order reflected unconstitutional retaliation  
8 against protected speech. *Id.* ¶ 99. In April 2019, the Second Circuit held that Mr.  
9 Ragbir stated a valid claim and had strong evidence to support it. *See Ragbir v.*  
10 *Homan*, 923 F.3d 53 (2d Cir. 2019). The court reasoned that “[t]o allow this retaliatory  
11 conduct to proceed would broadly chill protected speech, among not only activists  
12 subject to final orders of deportation *but also those citizens and other residents who*  
13 *would fear retaliation against others.” Id.* at 71 (emphasis added).

14 The detention, arrests, and other adverse actions taken against those connected  
15 with New Sanctuary are not unique. As detailed in Pastor Dousa’s Complaint,  
16 Defendants have targeted many who write about, serve, counsel, or advocate for  
17 migrants, including the 58 other individuals in the Operation Secure Line database.  
18 Compl. ¶¶ 101–19. Defendants have engaged in a pattern and practice of targeting  
19 individuals who exercise their First Amendment rights to criticize immigration policy  
20 and minister to migrants. Pastor Dousa filed this lawsuit to end Defendants’ unlawful  
21 actions, and seeks preliminary injunctive relief to prevent further, irreparable harm.

## 22 ARGUMENT

23 A plaintiff seeking preliminary injunctive relief must demonstrate  
24 “(1) likelihood of success on the merits; (2) likelihood of suffering irreparable harm  
25 absent a preliminary injunction; (3) the balance of equities tips in the plaintiff’s favor;  
26 and (4) injunctive relief is in the public interest.” *Leigh v. Salazar*, 677 F.3d 892, 896  
27 (9th Cir. 2012). Each of these factors favors the entry of a preliminary injunction here.  
28

1 **I. PASTOR DOUSA IS LIKELY TO SUCCEED ON THE MERITS**

2 **A. Pastor Dousa Has Standing to Assert Her Claims**

3 To establish Article III standing, a plaintiff must show that (1) she suffered an  
4 injury-in-fact, (2) a causal connection exists between the injury and the challenged  
5 conduct (that is, the injury has to be fairly traceable to the defendants' conduct), and  
6 (3) it is likely that the injury will be redressed by a favorable decision. *Lujan v.*  
7 *Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). The injury-in-fact must  
8 constitute “an invasion of a legally protected interest which is (a) concrete and  
9 particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Id.* at 560  
10 (citations omitted).<sup>2</sup> At the same time, “the deprivation of a valuable government  
11 benefit for the purpose of discouraging the exercise of First Amendment rights need  
12 not be particularly great in order to find that rights have been violated.” *Ariz. Students’*  
13 *Ass’n v. Ariz. Bd. of Regents*, 824 F.3d 858, 870 (9th Cir. 2016).

14 “Constitutional challenges based on the First Amendment present unique  
15 standing considerations,” which, in most cases, “tilt[] dramatically toward a finding of  
16 standing.” *Ariz. Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1006  
17 (9th Cir. 2003). “The touchstone for determining injury in fact is whether the plaintiff  
18 has suffered an injury or threat of injury that is credible, not ‘imaginary or  
19 speculative.’” *Lopez v. Candaele*, 630 F.3d 775, 786 (9th Cir. 2010) (quoting *Babbitt*  
20 *v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979)).

21 Pastor Dousa has suffered concrete injuries and has credible fear that  
22 Defendants’ injury to her First Amendment rights will persist. *First*, Defendants  
23 revoked Pastor Dousa’s SENTRI status. The revocation of a government benefit is  
24 sufficient to support standing in a First Amendment case. *Ariz. Students Ass’n*, 824  
25 F.3d at 870. *Second*, Pastor Dousa has been subject to detention and intensive  
26

27 \_\_\_\_\_  
28 <sup>2</sup> These same standing principles apply to Pastor Dousa’s RFRA claim. *See United States v. Adeyemo*, 624 F. Supp. 2d 1081, 1085 (N.D. Cal. 2008).

1 questioning of her beliefs in secondary inspection at the U.S.-Mexico border. This,  
2 too, is a cognizable injury sufficient to support standing. *See Arjmand v. DHS*, No.  
3 14-cv-7960, ECF No. 74 (N.D. Cal. 2015); *Cherri v. Mueller*, 951 F. Supp. 2d 918,  
4 931-33 (E.D. Mich. 2013) (forgoing travel to avoid secondary inspection and  
5 questioning about one’s religious beliefs is a cognizable injury for standing).<sup>3</sup>

6 *Third*, Pastor Dousa’s “actual and well-founded fear” of future adverse  
7 treatment has chilled her from engaging in constitutionally protected conduct. That  
8 too constitutes a constitutionally cognizable injury. *Human Life of Washington Inc. v.*  
9 *Brumsickle*, 624 F.3d 990, 1001 (9th Cir. 2010). The fact that the government took  
10 past adverse action against Pastor Dousa based on the same conduct is “strong  
11 evidence” that her fear of future adverse action is reasonable. *See Lopez*, 630 F.3d at  
12 786–87; *see also Smith v. Brady*, 972 F.2d 1095, 1098 (9th Cir. 2002); *American-Arab*  
13 *Anti-Discrimination Comm. v. Thornburgh*, 970 F.2d 501, 508 (9th Cir. 1991).  
14 Further, the government’s targeting of similarly-situated individuals strengthens the  
15 objective reasonableness of Pastor Dousa’s fear. *See Lopez*, 630 F.3d at 786–87;  
16 *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014); *American-Arab Anti-*  
17 *Discrimination Committee*, 970 F.2d at 508.

18 Pastor Dousa has canceled one planned trip to Mexico, and her ministry at the  
19 Southern Border will continue to be curtailed for fear that she will be detained because  
20 of her ministry to migrants and criticism of U.S. immigration policy. Ex. 1, Dousa  
21 Decl. ¶ 42. She has refrained from blessing further marriages of migrants, because  
22 migrants that she has married have been subject to questioning based on her  
23 participation in their marriage. *Id.* ¶ 45. Her performance of the necessarily  
24 confidential pastoral rites of confession and absolution also has been impeded. *Id.*  
25

26  
27  
28 <sup>3</sup> The court in *Cherri* ultimately dismissed plaintiffs’ claims on the merits because, unlike Pastor Dousa, plaintiffs failed to allege that their detention and secondary screening had any adverse impact on their religious exercise. *See* 951 F. Supp. 2d at 935.

1 ¶¶ 39–40, 44; *cf. Mockaitis v. Harcleroad*, 104 F.3d 1522, 1530 (9th Cir. 1997)  
 2 (“safeguards [surrounding the sacrament of penance] have the evident reason that the  
 3 knowledge, belief, or suspicion that freely-confessed sins would become public would  
 4 operate as a serious deterrent to participation in the sacrament and an odious detriment  
 5 accompanying participation”), *overruled on other grounds by City of Boerne v. Flores*,  
 6 521 U.S. 507 (1997). Further, the fear of ongoing surveillance has stoked fear and  
 7 reticence among members of her church, deterred participation in worship services by  
 8 refugees and asylum-seekers, and led her church to make a difficult decision not to  
 9 host a clinic for asylum seekers or make public offers of additional, formal support to  
 10 individual refugees. Ex. 1, Dousa Decl. ¶¶ 37–38. The Ninth Circuit has held that  
 11 similar injuries are sufficient to establish standing for a First Amendment claim. *See*  
 12 *Presbyterian Church (U.S.A.) v. United States*, 870 F.2d 518, 521–22 (9th Cir. 1989)  
 13 (surveillance of churches that led to reduced participation by members and reluctance  
 14 to seek pastoral counseling caused injury cognizable for purposes of standing).

15 **B. Pastor Dousa is Likely to Prevail on Her First Amendment**  
 16 **Retaliation Claim**

17 Retaliation by the government for the exercise of a constitutional right “offends  
 18 the Constitution [because] it threatens to inhibit exercise of the protected right.”  
 19 *Crawford-El v. Britton*, 523 U.S. 574, 588 n.10 (1998). The law thus “is settled that  
 20 as a general matter the First Amendment prohibits government officials from  
 21 subjecting an individual to retaliatory actions . . . for speaking out.” *Hartman v.*  
 22 *Moore*, 547 U.S. 250, 256 (2006). Even if the government could lawfully take such  
 23 actions for other reasons, it may not take action against an individual “*because of* [her]  
 24 constitutionally protected speech,” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972), or  
 25 because of her free exercise of religion, *Hamilton v. Hernandez*, 500 F. App’x 592,  
 26 595 (9th Cir. 2012). “For if the government could deny a benefit to a person because  
 27 of his constitutionally protected speech or associations, his exercise of those freedoms  
 28 would in effect be penalized and inhibited.” *Rutan v. Republican Party of Ill.*, 497 U.S.

1 62, 72 (1990).

2 To succeed on a First Amendment retaliation claim, a plaintiff must show that:  
3 (1) she engaged in constitutionally protected conduct; (2) Defendants took adverse  
4 action against her; and (3) her speech was a “substantial or motivating” factor in the  
5 adverse action. *Posey v. Lake Pend Oreille Sch. Dist. No. 84*, 546 F.3d 1121, 1126  
6 (9th Cir. 2008). Pastor Dousa is likely to establish these elements.

7 **i. Pastor Dousa’s Conduct Is Constitutionally Protected**

8 As part of her ministry, Pastor Dousa has provided pastoral care and guidance  
9 to migrants, officiated weddings for migrant communities, and administered the sacred  
10 rites of confession and absolution. These activities are protected by the First  
11 Amendment. *See Watchtower Bible*, 536 U.S. at 161; *see, e.g., Mockaitis*, 104 F.3d at  
12 1530 (“no question” Catholic priest was exercising his religion in seeking to  
13 administer Sacrament of Penance and Reconciliation); *Jaffe v. Alexis*, 659 F.2d 1018,  
14 1020 (9th Cir. 1981) (same, regarding religious ritual).

15 Pastor Dousa also has contributed to the national debate on immigration policy  
16 and participated in events that are critical of U.S. policy, including Jericho walks in  
17 the vicinity of federal immigration buildings and other prayerful vigils. Her advocacy  
18 “involves interactive communication concerning political change,” and thus  
19 constitutes “core political speech,” where “First Amendment protection . . . . is at its  
20 zenith.” *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 186–87  
21 (1999). Because “debate on public issues should be uninhibited, robust, and wide-  
22 open,” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964), this type of political  
23 speech on topics like immigration policy “occupies the highest rung of the hierarchy  
24 of First Amendment values, and is entitled to special protection.” *Snyder v. Phelps*,  
25 562 U.S. 443, 452 (2011).<sup>4</sup>

26  
27 <sup>4</sup> Further, while the freedom of association is not explicitly set out in the First  
28 Amendment, it has long been held to be implicit in the freedoms of speech, assembly,  
and petition. *Healy v. James*, 408 U.S. 169, 181 (1972). Thus, the Constitution also

(continued...)

1                   **ii. Defendants Took Adverse Action Against Pastor Dousa**

2           Defendants have taken adverse actions against Pastor Dousa in response to her  
3 core protected speech, her exercise of religion, and her association with migrant and  
4 activist communities. *First*, Defendants’ revocation of Pastor Dousa’s SENTRI status  
5 constitutes an adverse action for purposes of the First Amendment. In *Arizona*  
6 *Students’ Association*, a student association alleged that the Arizona Board of Regents  
7 revised its policies with respect to collection of fees that funded the association’s  
8 activities in retaliation for the association’s support for a ballot initiative the Board  
9 opposed. 824 F.3d at 863. The Ninth Circuit held that although the association was  
10 not entitled to the collection of fees, the Board could not simply retract this benefit as  
11 retaliation for the association’s First Amendment activity. *Id.* at 869. So too here.  
12 Pastor Dousa may not be entitled to SENTRI status, but Defendants violated the  
13 constitution when they revoked her status in retaliation for her protected First  
14 Amendment speech and religious exercise.

15           *Second*, the fact that Defendants detained and questioned Pastor Dousa  
16 regarding her beliefs at the U.S.-Mexico border is an adverse action. In *Duran v. City*  
17 *of Douglas, Arizona*, the Ninth Circuit recognized that a single instance of detention  
18 may give rise to a First Amendment claim. 904 F.2d 1372, 1377-78 (9th Cir. 1990).

19           *Third*, Defendants’ targeting of Pastor Dousa and those with whom she  
20 associates (including migrants) for surveillance and interrogation is also an adverse  
21 action. *See White v. Lee*, 227 F.3d 1214, 1228–29 (9th Cir. 2000) (months-long  
22 investigation regarding plaintiffs’ advocacy in opposition to housing project, which  
23 included interrogation of plaintiffs about their protected speech, “would have chilled  
24 or silenced a person of ordinary firmness from engaging in future First Amendment  
25

26 \_\_\_\_\_  
27 protects Pastor Dousa’s right to associate with others in furtherance of her beliefs.  
28 *See Widmar v. Vincent*, 454 U.S. 263, 269 (1981) (“[R]eligious worship and  
discussion . . . are forms of speech and association protected by the First  
Amendment.”).



1 activities”). These actions have inhibited her ministry by reducing migrants’  
 2 participation in The Park’s religious services and making her congregants reluctant or  
 3 unwilling to seek her counsel. The Plaintiffs in *Presbyterian Church*, alleged harms  
 4 nearly identical to those in Pastor Dousa’s complaint—members withdrew “from  
 5 active participation in the churches, a bible study group has been canceled for lack of  
 6 participation, clergy time has been diverted from regular pastoral duties, support for  
 7 the churches has declined, and congregants have become reluctant to seek pastoral  
 8 counseling and are less open in prayers and confessions”—and the Ninth Circuit easily  
 9 concluded that these harms amounted to cognizable injury to the plaintiff church’s  
 10 First Amendment rights. 870 F.2d at 521–22.

11 **iii. Pastor Dousa’s Protected Conduct Was a Substantial or**  
 12 **Motivating Factor in Defendants’ Adverse Actions Against**  
 13 **Her**

14 Pastor Dousa’s exercise of her First Amendment rights is “a substantial or  
 15 motivating factor” for Defendants’ adverse actions. In at least one instance of  
 16 retaliatory behavior, Defendants targeted Pastor Dousa for retaliatory action almost  
 17 immediately after she began her work with New Sanctuary’s mobile faith clinic, the  
 18 Sanctuary Caravan. *See Coszalter v. City of Salem*, 320 F.3d 968, 977 (9th Cir. 2003)  
 19 (close proximity in time between the protected action and the allegedly retaliatory  
 20 action raises strong inference of retaliation). Beginning in November 2018, Pastor  
 21 Dousa and other faith leaders ministered to migrants and those providing them with  
 22 humanitarian aid. Ex. 1, Dousa Decl. ¶¶ 13–17. On January 2, 2019, Defendants  
 23 interrogated Pastor Dousa at the San Ysidro port of entry regarding her work as a  
 24 minister, both at the Southern Border and in New York City. *Id.* ¶¶ 19–28. Days later,  
 25 on or about January 9, 2019, Defendants revoked Pastor Dousa’s SENTRI pass and  
 26 placed her on a list of “Suspected Organizers, Coordinators, Instigators and Media,”  
 27 subjecting her to surveillance, detention, and other adverse actions. Compl. ¶¶ 56–62;  
 28 Ex. 1, Dousa Decl. ¶¶ 29–32.

Clear evidence also demonstrates that Defendant’s purported justifications for

1 their investigation of Pastor Dousa and others are pretextual. *See Coszalter*, 320 F.3d  
2 at 977. For example, minutes after San Diego NBC 7 published Operation Secure  
3 Line documents to its website, CBP officials told the station “that the names in the  
4 database are all people who were present during violence that broke out at the border  
5 in November.” Compl. ¶ 72. But Pastor Dousa was not present for confrontations  
6 between migrants and CBP in November or at any other time, and Defendants *never*  
7 *asked her* about that violence during her interrogation at San Ysidro. Ex. 1, Dousa  
8 Decl. ¶¶ 17, 25.

9 Elsewhere, Defendants have been remarkably forthcoming regarding their  
10 reasons for targeting Pastor Dousa and her colleagues. In January 2018, ICE officers  
11 stated that they felt “resentment” about prayer vigils led by Pastor Dousa and about  
12 New Sanctuary’s criticism of their implementation of U.S. immigration policy.  
13 Compl. ¶ 96. ICE also cautioned Pastor Dousa that her non-citizen colleagues at New  
14 Sanctuary should not “make matters worse by saying things.” Ex. 1, Dousa Decl. ¶ 48.  
15 Such “expressed opposition” to Pastor Dousa’s conduct is strong evidence that  
16 Defendants’ motivations were unlawful. *See Coszalter*, 320 F.3d at 977. For all these  
17 reasons, Pastor Dousa is likely to prevail on her First Amendment retaliation claim.

### 18 **C. Pastor Dousa is Likely to Prevail on Her Free Exercise Claim**

19 Defendants also violated the First Amendment by implementing policies and  
20 practices that impair Pastor Dousa’s free exercise of genuinely-held religious beliefs.  
21 *United States v. Lee*, 455 U.S. 252, 256–57 (1982); *Malik v. Brown*, 16 F.3d 330, 333  
22 (9th Cir. 1994), *supplemented*, 65 F.3d 148 (9th Cir. 1995).

23 As an initial matter, there is no question that Pastor Dousa’s religious belief is  
24 genuine. Her long-held Christian faith compels her to provide pastoral services to  
25 refugees, asylum seekers, and other migrants, and she practices that faith by offering  
26 spiritual counsel, comfort and sacraments to the immigrant community and its  
27 advocates. Ex. 1, Dousa Decl. ¶ 9. She has preached that “to oppose an immigrant is  
28 to oppose Jesus” and warned that “if we do not stand on the side of immigrants right

1 now, history will find us as the ones who were complicit in their persecution.” *Id.*  
2 ¶ 10.

3 Defendants have targeted individuals who, like Pastor Dousa, provide comfort,  
4 care, and aid to migrants (as well as journalists who cover migration) for adverse  
5 action. As a DHS whistleblower revealed in March 2019, Defendants (1) created and  
6 maintain a database of activists and religious leaders associated with immigrant rights  
7 organizations, as well as journalists who report on migration to the Southern Border;  
8 (2) designated those individuals for interrogation and enhanced screening procedures  
9 at the border; and (3) took punitive actions such as revocation of visas and SENTRI  
10 passes. Compl. ¶¶ 56–66. Further, Defendants developed dossiers on these  
11 individuals including information regarding their lawful activities both at the Southern  
12 Border and hundreds of miles away in churches and at vigils, as well as online. *Id.*  
13 ¶ 61. As Deputy ICE Director Scott Mechkowski told Pastor Dousa in January 2018,  
14 “I know exactly how to find you. You’re on the web. You’re all over the documents  
15 that I have.” Ex. 1, Dousa Decl. ¶ 49. Further, Defendants have used this information  
16 to question individuals, including Pastor Dousa, regarding their beliefs, religious  
17 practice and private lives.

18 This retaliatory pattern and practice implemented by Defendants is not content  
19 neutral, because it reflects a discretionary decision to target individuals based on their  
20 beliefs and lawful actions, including the provision of pastoral services. *See, e.g.,*  
21 *Askins v. DHS*, No. 12-CV-2600 W (BLM), 2013 WL 5462296, at \*6 (S.D. Cal.  
22 Sept. 30, 2013) (CBP rule is content-based where “authorization depends on whether  
23 or not the CBP believe[d] the content of the photography compromise[d] the  
24 DHS/CBP mission”), *supplemented*, 2015 WL 12434362 (S.D. Cal. Jan. 29, 2015).  
25 Defendants have targeted Pastor Dousa because of her pastoral service to migrants and  
26 her outspoken criticism of U.S. immigration policy, “uniquely burdening” Pastor  
27 Dousa on account of her religious beliefs. *See Manning v. Powers*, 281 F. Supp. 3d  
28 953, 962 (C.D. Cal. 2017). Defendants’ actions are, therefore, subject to strict

1 scrutiny. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520,  
 2 531–32 (1993). Under these circumstances “the Government bears the burden of  
 3 proving the constitutionality of its actions.” *Askins*, 899 F.3d at 1045. Defendants’  
 4 practices are constitutional only if they advance “interests of the highest order and  
 5 [are] narrowly tailored in pursuit of those interests.” *Church of the Lukumi Babalu*  
 6 *Aye, Inc.*, 508 U.S. at 546.

7 To date, Defendants have not identified a compelling government interest to  
 8 support their efforts to target Pastor Dousa, and others like her. They represented “that  
 9 the names in the [Operation Secure line] database are all people who were present  
 10 during violence that broke out at the border in November” and that their actions related  
 11 to an investigation of that alleged violence. Compl. ¶ 72. But Pastor Dousa was not  
 12 present at any instances of violence along the Southern Border. Ex. 1, Dousa Decl.  
 13 ¶ 17. And, notably, Defendants have never questioned Pastor Dousa regarding that  
 14 alleged violence, although they continue to target her as part of this purported  
 15 “investigation.” *Id.* ¶ 25. Thus, Defendants’ purported interest plainly is pretextual.

16 Any argument that Defendants’ actions are justified by a general interest in  
 17 border security and immigration enforcement should fail. To allow Defendants to  
 18 engage in the challenged conduct based on such a generalized interest would  
 19 effectively give the government *carte blanche* to pursue retaliatory investigations. To  
 20 be clear, the government has broad power to detain and question people at the border;  
 21 but that power is still subject to the constraints imposed by the First Amendment. So  
 22 while the government could have detained and questioned Pastor Dousa because they  
 23 legitimately suspected that she was involved in criminal activity, or even as part of  
 24 randomly applied enhanced screening, they *cannot* do so on the basis of protected First  
 25 Amendment activity. See *Perry v. Sindermann*, 408 U.S. at 597; *Hamilton*, 500 F.  
 26 App’x at 595. Constitutional protections apply, even at the border, where courts have  
 27 “rejected an ‘anything goes approach.’” *Askins*, 899 F.3d at 1045 (quoting *United*  
 28 *States v. Cotterman*, 709 F.3d 952, 957 (9th Cir. 2013) (en banc)).

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1           **D. Pastor Dousa is Likely to Prevail on Her Hybrid First Amendment**  
2           **Rights Claim**

3           Where a Free Exercise claim is brought in conjunction with a claim alleging a  
4           separate constitutional violation for the same communicative activity, strict scrutiny is  
5           triggered and the governmental policy, custom or practice in question must be justified  
6           by a compelling governmental interest and narrowly tailored to advance that interest.  
7           *See San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004).

8           Here, Pastor Dousa’s Free Exercise claim is brought in conjunction with her  
9           First Amendment retaliation claim and thus Defendants’ conduct is subject to strict  
10          scrutiny. For the reasons discussed above, Defendants cannot survive strict scrutiny  
11          because their practice of subjecting Pastor Dousa to, among other things, heightened  
12          surveillance and extensive interrogation is not justified by a compelling governmental  
13          interest and is not narrowly tailored to achieve that interest.

14           **E. Pastor Dousa is Likely to Prevail on Her RFRA Claim**

15          Under RFRA, a plaintiff must first provide evidence sufficient to allow a trier  
16          of fact to find that (1) the activities the plaintiff claims are burdened by the government  
17          action are an exercise of religion and (2) the government action substantially burdens  
18          the plaintiff’s exercise of religion. *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058,  
19          1068 (9th Cir. 2008). Where a plaintiff demonstrates a substantial burden on her  
20          religious exercise, “the burden of persuasion shifts to the government to prove that the  
21          challenged government action is in furtherance of a ‘compelling governmental  
22          interest’ and is implemented by ‘the least restrictive means.’” *Id.* If the government  
23          cannot meet its burden, the court *must* find a RFRA violation. *Id.*

24          Pastor Dousa’s activities in ministering to migrants in Mexico and the United  
25          States constitute an exercise of religion based on sincerely held religious beliefs. *See*  
26          *supra* at 13. Religiously motivated charitable work, such as Pastor Dousa’s  
27          religiously-motivated counsel and advocacy on behalf of migrants, are also well within  
28          the scope of RFRA. For example, in *Western Presbyterian Church v. Board of Zoning*

1 *Adjustment*, 862 F. Supp. 538, 544, 547 (D.D.C. 1994), a federal district court held  
 2 that a Presbyterian church’s feeding program was protected under RFRA, calling it “a  
 3 form of worship akin to prayer” and noting that “the concept of acts of charity as an  
 4 essential part of religious worship is a central tenet of all major religions.”  
 5 Accordingly, a zoning board decision that prohibited the church from feeding the  
 6 homeless on their premises substantially burdened the church’s right to free exercise  
 7 of religion in violation of RFRA. *Id.* at 545–47; *see also Fifth Ave. Presbyterian*  
 8 *Church v. City of New York*, No. 01 Civ. 11493 (LMM), 2004 WL 2471406, at \*2  
 9 (S.D.N.Y. Oct. 29, 2004) (that a “Church’s practice of allowing homeless persons to  
 10 sleep out-of-doors on its property is an ‘exercise of sincerely held religious beliefs’ . . .  
 11 cannot be seriously disputed.”) (citation omitted), *aff’d*, 177 F. App’x 198 (2nd Cir.  
 12 2006).

13 A substantial burden exists “when individuals are forced to choose between  
 14 following the tenets of their religion and receiving a government benefit,” or,  
 15 alternatively, when individuals are “coerced to act contrary to their religious beliefs  
 16 by the threat of civil or criminal sanctions.” *Navajo Nation*, 535 F.3d at 1070. In this  
 17 case, Pastor Dousa’s religion requires her to honor “a covenant to serve the oppressed  
 18 and those pushed to the margins,” such as migrants in the United States and Mexico.<sup>5</sup>  
 19 To fulfill that mission, before January 2019, her ministry regularly took her to the  
 20 Southern Border to provide pastoral care to migrants and their advocates. Ex. 1, Dousa  
 21 Decl. ¶¶ 7–8, 13–16. But Defendants’ conduct, including revocation of her SENTRI  
 22 pass, has impeded Pastor Dousa’s ministry in Mexico and diminished her ability to  
 23 engage in activities with fellow clergy and religious leaders in Mexico. *Id.* ¶¶ 41–43,  
 24 45. Every time Pastor Dousa travels to Mexico she must weigh the added burden of  
 25 secondary screening and the uncertainty of a timely return to the U.S. against the value  
 26

27  
 28 <sup>5</sup> Park Avenue Christian Church, *Social Justice*, available at:  
<https://parkavenuechristian.com/social-justice/>.

1 of her ministry to migrants and their advocates.

2 Defendants also burden Pastor Dousa’s exercise of her deeply held religious  
 3 beliefs by intruding on the confidentiality of her communications with parishioners,  
 4 penitents, and others. Courts recognize that confidentiality is critical to the  
 5 relationship between a minister and those she serves. *See Trammel v. United States*,  
 6 445 U.S. 40, 51 (1980); *Mockaitis*, 104 F.3d at 1533. Pastor Dousa cannot simply  
 7 overlook the potential loss of privacy in her communications with the faithful, lest she  
 8 endanger the very individuals to whom she is compelled to offer support, aid, and  
 9 counsel. In order to provide religious counsel, Pastor Dousa must first caution those  
 10 who seek it to take concrete actions to safeguard communications, which limits  
 11 communications with her and injects suspicion into a relationship which depends on  
 12 trust. Ex. 1, Dousa Decl. ¶¶ 43–44; *see Mockaitis*, 104 F.3d at 1533 (surveillance of  
 13 conversation between priest and parishioner “invades the[] free exercise of religion [of  
 14 those seeking penance] and . . . makes it impossible for [priest] to minister the  
 15 sacrament to those who seek it . . .”).

16 Defendants cannot establish a compelling interest for surveilling and targeting  
 17 Pastor Dousa in this manner. As the Supreme Court explained in *Burwell v. Hobby*  
 18 *Lobby Stores, Inc.*, the compelling interest/least-restrictive-means standard is  
 19 “exceptionally demanding.” 573 U.S. 682, 728 (2014). It requires a “focused inquiry”  
 20 under which the government must “demonstrate that the compelling interest test is  
 21 satisfied through application of the challenged law ‘to the person’—the particular  
 22 claimant whose sincere exercise of religion is being substantially burdened.” *Id.* at  
 23 726; *United States v. Christie*, 825 F.3d 1048, 1056–57 (9th Cir. 2016). Accordingly,  
 24 Defendants must affirmatively demonstrate that they have a compelling interest in the  
 25 continued surveillance and targeting of Pastor Dousa (a New York-based, U.S. citizen  
 26 who has not been accused of posing any threat to security), and in denying her SENTRI  
 27 privileges. Defendants cannot meet this burden. Surveillance and detention of Pastor  
 28 Dousa for the simple act of providing pastoral services to asylum seekers is hardly the

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1 least restrictive means to achieve border security.

2 **II. PASTOR DOUSA WILL SUFFER IRREPARABLE HARM ABSENT A**  
3 **PRELIMINARY INJUNCTION**

4 There is little doubt that, if left unchecked, Defendants’ campaign of  
5 intimidation and retaliation will continue, irreparably harming Pastor Dousa, those she  
6 serves, and the public at large.

7 The deprivation of constitutional rights, for even a minimal amount of time,  
8 “unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990,  
9 1002 (9th Cir. 2012) (holding that the likely possibility that plaintiffs would be  
10 detained in the future was irreparable injury) (quoting *Elrod v. Burns*, 427 U.S. 347,  
11 373 (1976)); *see also Manning*, 281 F. Supp. 3d at 964 (confirming the principle  
12 articulated in *Elrod* applies to religious as well as political speech). Likewise,  
13 restrictions that render speech less effective—even if speech is not banned  
14 altogether—may impermissibly burden expression. In *McCullen v. Coakley*, 573 U.S.  
15 464 (2014), for example, the Court invalidated a law imposing a buffer zone around  
16 abortion clinics. The law did not prohibit the plaintiffs—individuals who sought to  
17 counsel women on alternatives to abortion—from speaking. But the law rendered their  
18 speech “far less frequent” and “far less successful” by preventing them from engaging  
19 in personal conversations with the women they wished to counsel. The loss of these  
20 “primary methods” of expression “effectively stifled” the plaintiffs’ speech. *Id.* at  
21 489–90; *Sorrell v. IMS Health Inc.*, 564 U.S. 522, 564 (2011).

22 Although Pastor Dousa has continued to speak out and perform ministerial  
23 functions, her speech has been rendered far less frequent and its reach has been  
24 diminished. Her ability to function as a pastor has been compromised by the constant  
25 specter of surveillance. And her ability to associate with others to further her beliefs,  
26 to pray, and to provide sacraments has been burdened. She also no longer has access  
27 to the expedited screening she received as a SENTRI holder, which makes it more  
28 difficult for her to cross the border to access migrants in need of ministry. Ex. 1, Dousa



1 Decl. ¶¶ 37–45. In short, Defendants’ actions have restricted Pastor Dousa’s speech  
2 and exercise of religion, and constrained its reach.

3 Moreover, Defendants’ targeting of Pastor Dousa will result in irreparable harm  
4 to a host of third parties who are also chilled by these retaliatory actions. *Cf.*  
5 *Garcia v. Lawn*, 805 F.2d 1400, 1405–06 (9th Cir. 1986) (remanding with the  
6 suggestion that third party chilling can constitute irreparable harm); *Holt v. Cont’l*  
7 *Grp., Inc.*, 708 F.2d 87, 91 (2d Cir. 1983) (the risk that other employees may be  
8 deterred from protecting their rights may constitute irreparable injury). “[C]ourts will  
9 more readily grant [injunctive] relief where allegations of retaliation are involved,  
10 because such conduct is likely to cause irreparable harm to the public interest in  
11 enforcing the law by deterring others from” exercising their rights. *Garcia*, 805 F.2d  
12 at 1405; *see also Manning*, 281 F. Supp. 3d at 965.

13 Here, the nearly 60 other individuals targeted as part of Operation Secure Line  
14 also will be irreparably harmed by further enforcement and surveillance actions. *See*  
15 *Compl.* ¶¶ 101–19. In addition, Pastor Dousa’s church is independently harmed by  
16 Defendants’ retaliatory actions. It has lost congregants and abandoned plans to house  
17 a pro se clinic for asylum seekers and to publicly offer sanctuary as part of outreach to  
18 the migrant community because of Defendants’ surveillance of Pastor Dousa and  
19 retaliation against her. Defendants’ conduct also creates fear in The Park’s members  
20 and those it serves, undoubtedly leading many who desire to seek ministry from Pastor  
21 Dousa to refrain from doing so for fear of identification, detention, family separation,  
22 and deportation. Ex. 1, Dousa Decl. ¶¶ 37–45.

### 23 **III. THE BALANCE OF HARDSHIPS AND THE PUBLIC INTEREST** 24 **SUPPORT A PRELIMINARY INJUNCTION**

25 The balance of hardships and the public interest weigh in favor of a preliminary  
26 injunction. “These [two] factors merge when the Government is the opposing party.”  
27 *Nken v. Holder*, 556 U.S. 418, 435 (2009).

1 Here, the balance of hardships tips sharply in favor of Pastor Dousa. There is a  
2 “significant public interest in upholding First Amendment principles.” *Doe v. Harris*,  
3 772 F.3d 563, 583 (9th Cir. 2014); *Sammartano v. First Judicial Dist. Court*, 303 F.3d  
4 959, 974 (9th Cir. 2002) (“Courts considering requests for preliminary injunctions  
5 have consistently recognized the significant public interest in upholding First  
6 Amendment principles.”), *abrogated on other grounds by Winter v. Nat. Res. Def.*  
7 *Council, Inc.*, 555 U.S. 7 (2008).

8 Conversely, neither Defendants nor the public will face any substantial hardship  
9 as a result of the injunctive relief Pastor Dousa seeks. Defendants likely will argue  
10 that their actions serve the interest of, generally, national security, border security, and  
11 immigration enforcement. This argument warrants close examination. “[C]oncerns  
12 of national security and foreign relations do not warrant abdication of the judicial  
13 role.” *Holder v. Humanitarian Law Project*, 561 U.S. 1, 34 (2010). And this Court  
14 must be skeptical of claims that the security of the nation will suffer if individuals are  
15 allowed to exercise their First Amendment rights. *See N.Y. Times Co. v. United States*,  
16 403 U.S. 713, 719 (1971) (“The word ‘security’ is a broad, vague generality whose  
17 contours should not be invoked to abrogate the fundamental law embodied in the First  
18 Amendment.”) (Black, J., concurring).

19 In any event, in this case, Pastor Dousa is not asking that Defendants be enjoined  
20 from all surveillance, detention, or screening of individuals at the border. The  
21 government is permitted to engage in legitimate law enforcement activities such as  
22 surveillance and secondary screening at the border. But it cannot use those tools to  
23 punish individuals for exercising their fundamental rights. Pastor Dousa merely seeks  
24 an injunction preventing Defendants from conducting those actions in a manner that  
25 violates the Constitution of the United States and federal law.

### 26 CONCLUSION

27 For the foregoing reasons, the Court should grant a preliminary injunction  
28 ordering Defendants to cease surveilling, detaining, and otherwise targeting Pastor

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1 Dousa; ordering Defendants to restore her SENTRI status; restraining Defendants  
2 from taking any future adverse action against her based on her protected expression,  
3 association, or religious exercise; and restoring Pastor Dousa to the *status quo ante*.  
4

5 Dated: July 25, 2019

Respectfully submitted,  
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*\*Amended pro hac vice application  
forthcoming*