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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

M.T.M.,

Petitioner,

v.

TONYA ANDREWS, in her official
capacity as Facility Administrator of
Golden State Annex Detention
Facility,

MOISES BECERRA, in his official
capacity as Acting Field Office
Director of the Immigration and
Customs Enforcement, Enforcement
and Removal Operations, San
Francisco,

KRISTI NOEM, in her official
capacity as Secretary of the
Department of Homeland Security;

No. 2:25-cv-08208-SRM-PD

**REPLY IN SUPPORT OF
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER**

Judge: Serena R. Murillo

Hearing: September 5, 2025, 1:00 PM

1 and
2 PAM BONDI, in her official
3 capacity as Attorney General of the
4 United States,

Respondents.

INTRODUCTION

6 1. Petitioner M.T.M. seeks relief pursuant to mandatory statutory,
7 regulatory, and due process protections in connection with imminent removal to a
8 third country without any meaningful opportunity to assert a fear-based claim for
9 withholding of removal. Respondents have not provided any evidence rebutting
10 M.T.M.'s evidentiary showing on the written and oral record that Respondents
11 sought to remove him to third-country Ghana without any meaningful notice—and
12 zero notice to counsel—or an opportunity to be heard on a fear-based claim prior to
13 removal to a third country. Worse yet, Respondents brazenly ignored M.T.M.'s
14 repeated affirmations that he had a fear-based claim in connection with removal to
15 Ghana relating to sexual orientation, requests for Respondents to provide an
16 interpreter, and demands to speak to counsel prior to removal. Therefore, it is
17 uncontested that Respondents violated M.T.M.'s rights under the Immigration and
18 Nationality Act (INA), related regulations, and the Due Process Clause. ECF No. 2 ¶
19 6. See *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (“Failing to notify
20 individuals who are subject to deportation that they have the right to apply for asylum
21 in the United States and for withholding of deportation to the country to which they
22 will be deported violates both INS regulations and the constitutional right to due
23 process”).

24 2. M.T.M.'s INA and Due Process Claims relating to notice and
25 opportunity to be heard prior to effectuating third country removal properly sound in
26 habeas. It is black-letter law that “‘release [is not] the only remedy under the federal
27 writ of habeas corpus.’” *Trump v. J. G. G.*, 145 S. Ct. 1003, 1005–06 (2025) (citing
28

1 *Peyton v. Rowe*, 391 U.S. 54, 67 (1968)). The Supreme Court’s recent decision in
2 *Trump v. J. G. G.* is instructive. *Id.* (“Regardless of whether the detainees formally
3 request release from confinement,” due process challenges “in the context of removal
4 proceedings” relating to “entitle[ment] to notice and opportunity to be heard” “fall
5 within the ‘core’ of the writ of habeas corpus and thus must be brought in habeas”).

6 3. Nothing about M.T.M.’s third country removal notice and opportunity
7 to be heard requests for relief are “prospective” because (1) DHS’s undisputed third
8 country removal policy violates the INA and Due Process Clause and (2)
9 Respondents literally already attempted to remove M.T.M. to Ghana without notice
10 and an opportunity to be heard. *See Bilbrey by Bilbrey v. Brown*, 738 F.2d 1462, 1470
11 (9th Cir. 1984) (Declaratory relief is appropriate ““(1) when the judgment will serve
12 a useful purpose in clarifying and settling the legal relations in issue, and (2) when it
13 will terminate and afford relief from the uncertainty, insecurity, and controversy
14 giving rise to the proceeding”) (internal citation omitted). As Courts in this Circuit
15 and others have increasingly held, M.T.M.’s requested procedures—which mirror
16 those already ordered in several of those cases—are necessary and appropriate. ECF
17 No. 2 ¶¶ 15, 37. As many courts in this Circuit have already held, 8 U.S.C. § 1252(g)
18 does not and cannot bar M.T.M.’s claims because he does not challenge
19 Respondents’ “discretionary decisions concerning the deportation process . . . and
20 the Government has a non-discretionary duty to withhold removal . . . if the applicant
21 demonstrates eligibility, therefore, the court ‘has jurisdiction to hear’ the question of
22 what Constitutional and statutory right individuals have to seek withholding of
23 removal from a third country.” *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL
24 1810210, at *3 (W.D. Wash. June 30, 2025).

25 4. As to M.T.M.’s habeas request for permanent enjoinder of transfer
26 from the District, M.T.M. withdraws that request, which was mistakenly included in
27 the habeas petition under the rush to file prior to Respondents’ effectuating an
28 irreparable third-country removal to Ghana. However, M.T.M. properly moved at

1 oral argument for temporary transfer back to the District pending resolution of the
2 TRO motion pursuant to the All Writs Act. For the reasons stated on the record and
3 below, the Court rightly decided that issue. Respondents have not properly moved
4 for reconsideration of that Order. M.T.M.’s TRO motion should be granted.

5 **ARGUMENT**

6 **I. M.T.M.’s Statutory and Constitutional Claims Demanding Meaningful**
7 **Notice and Opportunity to be Heard Prior to Third-Country Removal**
8 **Properly Sound in Habeas.**

9 5. Almost all of Respondents’ arguments on this front are directed toward
10 habeas coverage for the withdrawn enjoinder of transfer from the District claim. As
11 to M.T.M.’s core third-country removal notice and opportunity to be heard claims,
12 they properly sound in habeas.

13 6. “[H]abeas corpus is, at its core, an equitable remedy.” *Schlup v. Delo*,
14 513 U.S. 298, 319 (1995). “[T]he statute does not deny the federal courts power to
15 fashion appropriate relief other than immediate release.” *Peyton*, 391 U.S. at 67
16 (collecting cases where habeas was properly brought even though petitioner “would
17 not be released if he prevailed”). *J. G. G.* was decisive on this issue. 145 S. Ct. at
18 1005–06. There, the Government invoked the Alien Enemies Act (AEA) to deport a
19 group of Venezuelan nationals believed to be members of a foreign terrorist
20 organization. *Id.* The non-citizens sought equitable relief preventing removal prior to
21 proper due notice and opportunity to be heard under the AEA. *Id.* The Supreme Court
22 held that in accord with the fact “[i]t is well established that the Fifth Amendment
23 entitles aliens to due process of law’ in the context of removal proceedings,” such a
24 challenge “must be brought in habeas” “[r]egardless of whether the detainees
25 formally request release from confinement.” *Id.* (citing *Reno v. Flores*, 507 U.S. 292,
26 306 (1993)). *See also, e.g., E.D.Q.C. v. Warden, Stewart Det. Ctr.*, No. 4:25-CV-50-
27 CDL-AGH, 2025 WL 1829416, at *2, n.1 (M.D. Ga. July 2, 2025) (holding habeas
28 was proper vehicle for a claim seeking an “order to facilitate Petitioner’s return” to

1 the U.S. following an alleged unlawful third-country removal).

2 7. Finding habeas proper here comports with broader habeas principles.
3 Habeas has been found to be the proper vehicle for immigrant detainees challenging
4 consideration of the ability to pay bond; use of electronic monitoring for supervised
5 release; and by non-detained non-citizens seeking due process *prior* to confinement
6 by ICE. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017); *Gozo v.*
7 *Mayorkas*, No. 1:23-CV-159, 2024 WL 2027510 (S.D. Tex. Mar. 4, 2024); *Qian Sun*
8 *v. Ernesto Santacruz Jr et al.*, No. 5:25-cv-02198-JLS-JC, Dkt. 13 (C.D. Cal. Aug.
9 26, 2025). As noted by the Supreme Court in *J.G.G.* and in a host of other
10 immigration habeas actions, “[the Great Writ] can do more.” *Jones v. Cunningham*,
11 371 U.S. 236, 238 1963.

12 8. The only case Respondents cite for their extraordinary position is
13 inapposite.¹ First, Mr. Thuraissigiam was stopped 25-yards from the border, having
14 no prior ties to the United States and seeking initial entry. *Dep’t of Homeland Sec. v.*
15 *Thuraissigiam*, 140 S. Ct. 1959, 1968 (2020); *see also id.* at 1990 (Breyer J.,
16 concurring in the judgment) (noting that these factors “are among the ‘circumstances’
17 that inform the ‘scope’ of any habeas review that the Suspension Clause might
18 guarantee respondent”). *Thurassigiam* preserved, rather than overturning, the Court’s
19 more than a century-long distinction between the due process rights afforded to
20 people apprehended at the border, and those like M.T.M. who are inside the United
21 States. [cite] Second, Mr. Thuraissigiam conceded in litigation that the scope of the
22 writ was as it existed in 1789, so the Court did not need to and indeed did not make

23
24 ¹ The government’s reading of *Thuraissigiam* is also inconsistent with longstanding
25 Supreme Court precedent and conveniently ignores important limiting principles in
26 the case. The decision cannot and should not be read as broadly as the government
27 contends: its broad reading would abrogate the Court’s decisions in *Boumediene* and
28 *St. Cyr*, something that the Supreme Court explicitly did not do in its decision. *See*
Dep’t of Homeland Sec. v. Thuraissigiam, 140 S. Ct. 1959, 1981 (2020) (citing *I.N.S.*
v. St. Cyr, 533 U.S. 289, 300 (2001))

1 a determination whether the scope should be considered as it has evolved since. *See*
2 *id.* at 1969. Given these factual constraints on the scope of *Thuraissigiam* and long-
3 standing precedent emphasizing that “some ‘judicial intervention in deportation
4 cases’ is unquestionably ‘required by the Constitution,’” *Thuraissigiam*, 140 S. Ct.
5 at 1981 (citation omitted), M.T.M.’s claims unquestionably fall within the scope of
6 the writ. *Thuraissigiam* was careful to preserve exactly the kind of habeas review at
7 issue in this case, involving individuals seeking judicial review of government action
8 which intrudes on their *existing* rights, rather than those seeking to gain new rights.

9 9. Moreover, M.T.M.’s claims actually do implicate release because
10 M.T.M. is in post-removal detention pursuant to 8 U.S.C. § 1231 and will have a
11 *Zadvydas* habeas release claim ripen just next week. *See Zadvydas v. Davis*, 533 U.S.
12 678 (2001). Being afforded proper notice and the opportunity to be heard will be
13 central to his forthcoming *Zadvydas* habeas claim. *See, e.g., Misirbekov v. Venegas*,
14 No. 1:25-CV-00168, 2025 WL 2201470, at *1 (S.D. Tex. Aug. 1, 2025) (“Petitioner
15 is likely to be successful on the merits of his [*Zadvydas*] habeas corpus petition . . .
16 [in part because] attempts to remove Petitioner to third countries are likely to fail
17 since such action would likely result in him being extradited to Kyrgyzstan and facing
18 political persecution.”)

19 10. Regardless, it is unclear why dismissal would be appropriate even if
20 Respondents were correct about their scope of habeas arguments. The “question of
21 whether a claim is cognizable in habeas ‘is about a petitioner’s obligation to satisfy
22 the elements of his claim for habeas relief and not about a district court’s subject-
23 matter jurisdiction.’” *Mohammed*, 2025 WL 1909836, at *6 (citation omitted).
24 Therefore, if necessary, M.T.M. should be granted leave to amend his claim to the
25 proper procedural vehicle.

II. M.T.M.’s All Writs Act Motion for Temporary Transfer Back to California Was Properly Granted and M.T.M. Does Not Challenge Respondents’ General Authority to Transfer M.T.M.

11. As explained above, M.T.M. withdraws his habeas request for permanent enjoinder of transfer from the District. That request was inadvertently included in M.T.M.’s emergency habeas petition filing. M.T.M. does not challenge Respondents’ alleged general authority to transfer non-citizen detainees between facilities and Districts. He only sought such *temporary* relief in connection with the exercise of the All Writs Act to aid in the efficient and effective administration of justice for his TRO motion. The Court has already decided that issue at oral argument upon M.T.M.’s All Writs Act motion. Respondents’ arguments on the transfer relief are brought only as to M.T.M.’s habeas petition request and therefore are no longer before the Court on M.T.M.’s TRO motion.

12. Regardless, the Court properly decided that issue at oral argument for the reasons stated on the record, including the already realized harms of limited access to counsel, medical care, interpretation services, and other harms. *See, e.g., Ozturk v. Hyde*, 136 F.4th 382, 402 (2d Cir. 2025) (“Permitting Öztürk’s transfer will provide her ready access to legal and medical services, address concerns about the conditions of her confinement, and expedite resolution of this matter—all of which are required, as the court below noted, to proceed expeditiously.”)

III. M.T.M.’s Third-Country Removal Notice and Opportunity to be Heard TRO Requests Does Not Generally Challenge Respondents’ Discretionary Removal Authority and Should be Granted.

13. Respondents concede that the Supreme Court has already “recognized a Due Process concern” implicated in his third-country removal notice and opportunity to be heard claims. ECF No. 26 at 8. Respondents provide virtually no response to the merits of M.T.M.’s statutory and due process claims at ECF No. 2 ¶¶ 30–38 that are grounded in black-letter law.

1 14. Respondents’ first argument that M.T.M.’s third-country removal
2 claims are “speculative” is, to put it mildly, obviously inapplicable. Respondents
3 have not provided any evidence rebutting M.T.M.’s evidentiary showing on the
4 written and oral record that Respondents sought to remove him to third-country
5 Ghana without any meaningful notice or an opportunity to be heard on a fear-based
6 claim prior to removal to a third country. Even if they did, M.T.M. necessarily
7 requires a declaratory judgement to clarify his rights and reasonable expectations
8 regarding how Respondents may effectuate his removal to a third country, and how
9 they may not. While Respondents may claim otherwise, it is long established that for
10 any “dispute which affects the behavior of the defendant[s] towards the plaintiff”
11 then a declaratory judgement is “proper judicial resolution of a ‘case or
12 controversy[.]’” *Trinh v. Homan*, 466 F.Supp.3d 1077, 1094 (C.D. Cal. June 11,
13 2020) (citing *Hewitt v. Helms*, 482, U.S. 755, 761, 106 S.Ct. 2672, 96 L.Ed.2d 654
14 (1987)). Respondents’ third-country removal policies and actions conclusively
15 establish the ripeness of M.T.M.’s claims. See ECF No. 2 ¶¶ 11–15 (explaining
16 DHS’s March 30, 2025 and July 9, 2025 Third Country Removal policy memoranda
17 show DHS’s *standard* procedure is to remove non-citizens to third countries in as
18 few as 24 hours without due process protections); *id.*, Exs. 3, 4. See also *A. A. R. P.*
19 *v. Trump*, 145 S. Ct. 1364, 1368 (2025) (“notice roughly 24 hours before removal,
20 devoid of information about how to exercise due process rights to contest that
21 removal, surely does not pass muster”); *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 387–
22 89 (D. Mass. Apr. 18, 2025) (“The Court finds it likely that Defendants have applied
23 and will continue to apply the alleged policy of removing aliens to third countries
24 without notice and an opportunity to be heard on fear-based claims—in other words,
25 without due process”).

26 15. Respondents’ argument about the specific notice and opportunity to be
27 heard protections requested is unsupported by any case law and has been rejected by
28 several courts (including by Judge Almadani) already in granting the very relief

1 M.T.M. requests here. *See, e.g., Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-
2 AS, 2025 WL 2014208 (C.D. Cal. June 25, 2025); *D.V.D.*, 778 F. Supp. 3d.

3 16. Respondents' last argument is a half-hearted jurisdictional one under 8
4 U.S.C. § 1252(g) which limits jurisdiction for claims "arising from the decision of
5 action by the Attorney General to commence proceedings, adjudicate cases, or
6 execute removal orders." First, M.T.M. is not challenging the government's
7 discretionary decision to execute a removal order. Rather, he challenges the
8 government's actions to remove him to a third country without the required lawful
9 process under the due process clause of the Constitution and the applicable statutes
10 and regulations.²

11 17. Second, 8 U.S.C. § 1252(g) does not strip the Court of jurisdiction.
12 Consistent with the presumption in favor of judicial review, in *Reno v. Am.-Arab*
13 *Anti-Discrimination Comm.*, 525 U.S. 471 (1999) ("AADC"), the Supreme Court
14 interpreted the scope of § 1252(g) and emphasized its narrow application to three
15 discrete actions that the Attorney General may take: "her 'decision or action' to
16 'commence Proceedings, adjudicate cases, or execute removal orders.'" *Id.* at 482
17 (internal citations omitted). The reasoning for this limitation makes sense because it
18 is focused on prosecutorial discretion vested in the Executive. *See id.* 483–84 ("There
19 was good reason for Congress to focus special attention upon, and make special
20 provision for, judicial review of the Attorney General's discrete acts . . . which
21 represent the initiation or prosecution of various stages in the deportation process");
22 *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19

23
24 ² In any case, the Supreme Court has held that a TRO blocking removal is proper:
25 "this Court may properly issue temporary injunctive relief to the putative class in
26 order to preserve our jurisdiction . . . A. A. R. P. and W. M. M. assert that they are at
27 imminent risk of being classified as alien enemies and removed from the United
28 States, but the record does not indicate that they have received any formal notice of
removal . . . class members, are entitled to constitutionally adequate notice prior to
any removal." *A. A. R. P.*, 145 S. Ct. at 1369.

(2020) (reiterating that “Section 1252(g) is . . . narrow” and rejecting as “implausible” the “Government’s suggestion that §1252(g) covers all claims arising from deportation proceedings or imposes a general jurisdictional limitation”) (internal quotations omitted). As the Fourth Circuit recently explained in a high-profile case, “§ 1252(g) strips the federal courts of jurisdiction only to review the Attorney General’s exercise of *lawful* discretion,” and the “Attorney General’s decision to remove Abrego Garcia to El Salvador was not one that was within her lawful discretion.” *Abrego Garcia v. Noem*, No. 25-1345, [2025 WL 1021113](#), at *2-3 (Thacker, J., concurring). Here, it is not within the Government’s lawful discretion to utilize a removal order for one country to remove Petitioner to a different country.

18. Ultimately, several Courts in this Circuit and others have rejected such [8 U.S.C. § 1252\(g\)](#) jurisdictional arguments for these reasons. *See, e.g., Ortega v. Kaiser*, No. 25-CV-05259-JST, [2025 WL 2243616](#), at *3 (N.D. Cal. Aug. 6, 2025) (“Ortega does not challenge the execution of the final removal order entered against him, which provided for his removal *only to El Salvador* and deferred his removal there in light of his CAT claim . . . Section 1252(g) does not bar the Court’s review of his claims”); *Arostegui-Maldonado v. Baltazar*, No. 25-CV-2205-WJM-STV, [2025 WL 2280357](#), at *13 (D. Colo. Aug. 8, 2025) (“even assuming Respondents are correct that § 1252(g) would prevent the Court from enjoining Maldonado’s removal full stop, it does not preclude it from fashioning the narrow relief that Maldonado seeks here: an injunction requiring Respondents to adhere to their *non-discretionary* obligation to provide Maldonado with notice and an opportunity to seek withholding of removal before he is deported to any third country”); *Aden v. Nielsen*, [409 F. Supp. 3d 998, 1006](#) (W.D. Wash. 2019) (rejecting jurisdictional argument because “Petitioner does not challenge the IJ’s determination that he is removable or claim any deficiency in the removal order itself. Rather, he challenges DHS’s attempts, *outside* of removal proceedings, to designate Somalia without reopening his proceedings so that an IJ could make the designation in the first instance and/or

determine whether petitioner's life or freedom would be threatened in that country"); *J.R.*, 2025 WL 1810210, at *3. This Court should join them in holding the same.

IV. The Other Factors Weigh in Favor of Granting Relief.

19. M.T.M.'s irreparable harm resulting from third country removal without sufficient opportunity to apply for fear-based protection "is clear and simple: persecution, torture, and death. It is hard to imagine harm more irreparable." *D.V.D.*, 778 F.Supp.3d at 391. *See also Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (Sotomayor, J., dissenting) ("In matters of life and death, it is best to proceed with caution. In this case, the Government took the opposite approach . . . it deported six more to South Sudan, a nation the State Department considers too unsafe for all but its most critical personnel").

20. The general public interest in enforcement of immigration laws pales in comparison to the "public interest in preventing [non-citizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken v. Holder*, 556 U.S. 418, 436 (2009)). Moreover, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citation omitted). Therefore, a "TRO would impose little to no prejudice on the Government, which is free at any time to execute the removal order by" *lawfully* removing M.T.M. *J.R.*, 2025 WL 1810210, at *4.

21. Lest Respondents forget, any logistical burdens they now face in complying with the Court's transfer Order or potential Order granting M.T.M.'s TRO motion is entirely of their own wrongdoing because they violated M.T.M.'s statutory and constitutional rights in trying to effectuate an unlawful third-country removal.

CONCLUSION

M.T.M. respectfully requests this Court grant his Emergency Motion for a Temporary Restraining Order.

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Dated: September 4, 2025

Respectfully submitted,

/s/ Farida Chehata

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CERTIFICATE OF COMPLIANCE WITH LR 11-6.2

The undersigned, counsel of record for Petitioner, certifies that the memorandum of points and authorities contains 3,294 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 4, 2025

Respectfully submitted,

/s/ Farida Chehata

Counsel for Petitioner