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

M.T.M.,

Petitioner,

v.

TONYA ANDREWS, et al.,

Respondents.

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

**SUPPLEMENT IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Judge: Serena R. Murillo

Hearing: September 23, 2025, 1:30 PM

INTRODUCTION

1
2 1. On or around August 28, 2025, Respondents attempted to deport
3 Petitioner M.T.M., who has been granted protection against removal to Senegal, his
4 country of citizenship, to Ghana without any meaningful notice or opportunity to be
5 heard on his fears of removal to Ghana. During that third-country removal attempt,
6 Respondents denied M.T.M. the right to assert a fear-based claim, access to counsel,
7 and access to an interpreter. ECF No. 34, Order Granting Petitioner’s Emergency
8 Motion for Temporary Restraining Order (“TRO Motion Order”) at 2, 6–7, 10.
9 Accordingly, M.T.M. filed the present habeas petition and moved for a temporary
10 restraining order. *See* ECF No. 1, Petition for Writ of Habeas Corpus; ECF No. 2,
11 Emergency Motion for Temporary Restraining Order (“TRO Motion”).

12 2. Following briefing and oral argument, the Court granted M.T.M.’s TRO
13 Motion in full and ordered Respondents to show cause as to why a preliminary
14 injunction should not be issued. TRO Motion Order at 11–12. Given the “standard
15 for issuing a TRO and preliminary injunction . . . is the same,” M.T.M. stands on his
16 TRO Motion briefing and oral argument in support of the Court’s present
17 consideration of a preliminary injunction.

18 3. Therefore, M.T.M. offers a limited supplement in further support of
19 entry of a preliminary injunction, primarily providing a few additional authorities in
20 response to the jurisdictional and scope of relief arguments that Respondents raised
21 in their Opposition to Petitioner’s Motion for Temporary Restraining Order. ECF No.
22 26.

STATEMENT OF FACTS

I. Petitioner Has Expressed a Credible Fear of Removal to Ghana.

24 4. As the Court noted in its TRO Motion Order, M.T.M. provided
25 uncontested evidence that he maintains a credible fear of removal to Ghana because
26 if removed to Ghana, his life or freedom would likely be threatened because, at least
27 in part, of his protected status relating to sexual orientation. TRO Motion Order at 8–
28

9.

5. Ghana’s persecution of homosexuality is well-documented. *Id.* (citing Department of State’s “Ghana 2023 Human Rights Report”) (“significant human rights issues including . . . laws criminalizing consensual same-sex sexual conduct between adults . . . crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, or intersex persons”). Same-sex sexual conduct has been criminalized in Ghana since at least 1960 under Ghana’s Criminal Offences Act, which was inherited from British colonial law. *Ghana: Supreme Court Upholds Colonial-Era Anti-LGBT Law*, Human Rights Watch, July 29, 2004, <https://www.hrw.org/news/2024/07/29/ghana-supreme-court-upholds-colonial-era-anti-lgbt-law> (“violence against LGBT people is prevalent, and persecution has escalated in recent years”). Recently, in July 2024, the supreme court of Ghana rejected a challenge to that law, upholding criminalization of consensual same-sex sexual conduct. *Id.*

6. Earlier this year, Ghanaian lawmakers reintroduced a bill that would increase the current maximum penalty for same-sex sexual acts from three years in prison to five, while also imposing jail time for the “willful promotion, sponsorship, or support of LGBTQ+ activities.” Maxwell Adombila, *Ghana Lawmakers Reintroduce Anti-LGBTQ Legislation*, *Reuters*, Mar. 3, 2025, <https://www.reuters.com/world/africa/ghana-lawmakers-reintroduce-anti-lgbtq-legislation-2025-03-03/>. Ghana’s parliament approved the bill in February 2024, but then-President Nana Akufo-Addo did not sign the bill before his term ended and President John Dramani Mahama assumed office. *Id.* The legislation appears to be under consideration. *Id.* Regardless of whether the legislation is adopted, the “bill intensifies a crackdown on the rights of LGBTQ people and those accused of ‘promotion’ of sexual and gender minority rights.” *Id.* (“Past polling has shown a lack of tolerance for LGBTQ people in Ghana”).

7. The Department of State already found that Ghana violates human

rights by committing “refoulement of refugees to a country where they would face torture or persecution,” TRO Motion Order at 8–9, but now it appears the Department of Homeland Security (“DHS”) is knowingly deporting noncitizens ordered removed to other countries to third country Ghana, which then detains the immigrants before repatriating them to their home countries. Approximately a week ago, DHS deported a group of 14 immigrants to Ghana without providing meaningful notice or opportunity to contest the removal on the basis of a fear-based claim. *See ECF No. 2-1 at 1, D.A. vs. Noem*, No. 1:25-cv-03135 (D.D.C. Sep. 12, 2025). None of the deportees had ties or connections to Ghana. *Id.* at 2. None had Ghana designated as a possible country for removal. *Id.* At least 5 of the deported immigrants had “either withholding of removal under the Immigration and Nationality Act or deferral of removal under the Convention Against Torture,” and accordingly filed suit as soon as they could—which ended up being after DHS already deported them to Ghana and Ghana placed them in a detention camp with abysmal conditions. *Id.* at 2–3. According to the plaintiffs in that action, DHS knew that Ghana would repatriate the withholding and Convention Against Torture relief immigrants: “One plaintiff was told by an officer while en route to Ghana that he would arrive in Ghana and then Ghana would send him to his country of origin, and then I believe another officer told a Ghanaian official in the presence of one of the plaintiffs something to the same effect.” *ECF No. 32-3 at 7, D.A. v. Noem*, No. 1:25-cv-03135 (D.D.C. Sep. 14, 2025). On September 15, 2025, Ghana publicly confirmed that the “West Africans deported from the U.S. to Ghana have all been sent to their home countries of Nigeria and Gambia.” Edward Acquiah and Wilson McMakin, *West Africans Deported by US to Ghana Have All Been Sent to their Home Countries*, AP, Sep. 15, 2025, <https://apnews.com/article/us-ghana-deported-migrants-4b8e307a080735175229fd37fa6929c2>.

8. If Respondents had been successful in deporting M.T.M. to Ghana in the shroud of secrecy and in the deprivation of his statutory and constitutional right

1 to notice and opportunity to be heard, M.T.M. could have suffered the same fate and
2 been subjected to deplorable detention camp conditions in Ghana before being
3 repatriated to his home country, despite an immigration judge’s finding that he would
4 more likely than not be persecuted on the basis of a protected status.

5 LEGAL STANDARD

6 9. The standards for issuing a TRO and preliminary injunction are the same
7 under FRCP 65 and Ninth Circuit precedent, including the “sliding scale” and related
8 “serious questions” approaches. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
9 1131–35 (9th Cir. 2011).

10 ARGUMENT

11 **I. M.T.M.’s Statutory and Constitutional Claims Demanding Meaningful** 12 **Notice and Opportunity to be Heard Prior to Third-Country Removal** 13 **Properly Sound in Habeas.**

14 10. While the Court already correctly determined that M.T.M.’s claims
15 properly sound in habeas, *see* TRO Motion Order at 7, additional authorities are in
16 accord. In *Preiser v. Rodriguez*, the Supreme Court held that “habeas corpus relief is
17 not limited to immediate release from illegal custody, [and] that the writ is available
18 as well to attack future confinement and obtain future releases.” 411 U.S. 475, 487
19 (1973) (“even if restoration of respondents’ good-time credits had merely shortened
20 the length of their confinement, rather than required immediate discharge from that
21 confinement, their suits would still have been within the core of habeas corpus”).
22 District courts in this Circuit have recently applied this doctrine in holding habeas
23 jurisdiction lies for claims brought by petitioners who are not currently in physical
24 custody but sought to protect their rights prior to DHS unlawfully detaining them.
25 *See, e.g., Georges v. Kaiser*, No. 25-CV-07683, 2025 WL 2615063, at *3 (N.D. Cal.
26 Sept. 9, 2025) (granting TRO motion); *Ortega v. Kaiser*, No. 25-CV-05259-JST,
27 2025 WL 2243616, at *3 (N.D. Cal. Aug. 6, 2025) (granting preliminary injunction
28 motion).

1 11. Just so here. Instructive is the fact that M.T.M.’s *Zadvydas* habeas
2 claims for release ripened on September 11, 2025—six months after his withholding
3 of removal relief became administratively final. M.T.M. plans to seek leave to amend
4 his habeas petition accordingly. But that would not have been possible had
5 Respondents succeeded in circumventing the statutory and constitutional restraints
6 on their post-removal detention authority, *see* 8 U.S.C. § 1231, by unlawfully
7 effectuating a third country removal without notice and opportunity to be heard.

8 12. Moreover, Respondents’ scope of habeas argument is purely academic
9 for two reasons. First, as Judge Court recently held, the “question of whether a claim
10 is cognizable in habeas ‘is about a petitioner’s obligation to satisfy the elements of
11 his claim for habeas relief and not about a district court’s subject-matter
12 jurisdiction.’” *Mohammed v. Engleman*, No. 2:25-CV-01011-MWC-MBK, 2025 WL
13 1909836, at *6 (C.D. Cal. July 9, 2025), *report and recommendation adopted*, No.
14 2:25-CV-01011-MWC-MBK, 2025 WL 2294325 (C.D. Cal. Aug. 8, 2025) (citing
15 *Bean v. Matteucci*, 986 F.3d 1128, 1132 (9th Cir. 2021)). Second, “in addition to his
16 requests for habeas relief, ‘[M.T.M.] also pleaded federal question jurisdiction.’”
17 *Ortega*, 2025 WL 2243616 at *3. *See* ECF No. 1 at 2, 9. A “district court has authority
18 ‘both to entertain . . . constitutional challenges and to grant injunctive relief’ where a
19 plaintiff’s ‘due process claims arise under the Constitution, and [a plaintiff] invoke[s]
20 28 U.S.C. § 1331, which provides subject matter jurisdiction irrespective of the
21 accompanying habeas petition.’” *Id.* (citing *Roman v. Wolf*, 977 F.3d 935, 941 (9th
22 Cir. 2020)). Taken together, the Court correctly found M.T.M. “presents a valid
23 habeas claim, [but] even if he did not, the Court maintains federal question
24 jurisdiction over his claims.” *Id.*

25 **II. 8 U.S.C. § 1252(g) Does Not Apply to M.T.M.’s Claims Because He**
26 **Does Not Challenge Respondents’ Discretionary Removal Authority.**

27 13. Similarly, the Court correctly decided 8 U.S.C. § 1252(g) “would not
28 strip the Court of issuing [the requested] injunctive relief.” TRO Motion Order at 9–

1 10. Nevertheless, M.T.M. raises additional authorities that are in accord.

2 14. “Section 1252(g) was directed against a particular evil: attempts to
3 impose judicial constraints upon prosecutorial discretion.” *Reno v. Am.-Arab Anti-*
4 *Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999). That is why the Supreme Court
5 has “indicated that the [1252(g)] reference to ‘execut[ing] removal orders’ appearing
6 in that provision should be interpreted narrowly, and not as referring to the underlying
7 merits of the removal decision.” *Maharaj v. Ashcroft*, 295 F.3d 963, 965 (9th Cir.
8 2002) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–87
9 (1999)). Accordingly, the Ninth Circuit “ha[s] followed the Court’s instruction to
10 interpret § 1252(g) narrowly,” and held that a “district court may consider a purely
11 legal question that does not challenge the Attorney General’s discretionary authority,
12 even if the answer to that legal question—a description of the relevant law—forms
13 the backdrop against which the Attorney General later will exercise discretionary
14 authority.” *United States v. Hovsepien*, 359 F.3d 1144, 1155 (9th Cir. 2004).

15 15. For example, in *Garcia-Ayala v. Andrews*, the Government argued
16 similarly to its arguments here, that injunctive relief enjoining “removing [petitioner]
17 from the United States without notice and a hearing” was barred under 8 U.S.C. §
18 1252(g). No. 2:25-CV-02070-DJC-JDP, 2025 WL 2578167, at *2 (E.D. Cal. Sept. 5,
19 2025). That Court held that “Petitioner’s challenge is rooted in the legality of his
20 detention and potential removal, rather than the Attorney General’s prosecutorial
21 discretion decision to execute removal.” *Id.* (“there is no jurisdictional bar”). M.T.M.
22 likewise challenges the legality of his potential removal to a third country that was
23 not designated during removal proceedings without being afforded proper notice and
24 opportunity to be heard on a fear-based claim. *See also Doe v. Noem*, 781 F. Supp.
25 3d 1055, 1069 (E.D. Cal. 2025) (holding no jurisdictional bar where “plaintiff seeks
26 a temporary stay preventing removal, which is permitted under 8 U.S.C. § 1252(g)
27 where the basis for the stay is distinct from how the government’s prosecutorial
28 discretion was deployed”).

CONCLUSION

M.T.M. respectfully requests this Court issue a preliminary injunction in accord with the terms of its Temporary Restraining Order, ECF No. 34.

Dated: September 17, 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 1,936 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 17, 2025

Respectfully submitted,

/s/ Farida Chehata

Counsel for Petitioner