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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,

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

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

**AMENDED PETITION FOR A
WRIT OF HABEAS CORPUS**

Judge: Serena R. Murillo

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

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

5
6 *Respondents.*

7
8 Petitioner M.T.M., by and through his undersigned counsel, hereby petitions
9 for a writ of habeas corpus seeking (1) his immediate release from immigration
10 detention, pursuant to 28 U.S.C. § 1331, 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. §
11 2241, the Immigration and Nationality Act, the Administrative Procedure Act, the
12 Due Process Clause of the Fifth Amendment to the U.S. Constitution, and the
13 Suspension Clause of Article I, Section 9, Clause 2 to the U.S. Constitution; and (2)
14 a permanent injunction barring Respondents from violating Petitioner's due process
15 rights and circumventing this Court's jurisdiction by unlawfully removing him to a
16 third country without a meaningful opportunity to be heard on a potential fear-based
17 claim for relief, pursuant to 28 U.S.C. § 1331, 28 U.S.C. §§ 2201 and 2202, 28 U.S.C.
18 § 2241, the Immigration and Nationality Act, and the Due Process Clause of the Fifth
19 Amendment to the U.S. Constitution.

20 Respectfully submitted,

21 Dated: October 9, 2025

/s/ Pirzada Ahmad

22 **Counsel for Petitioner**
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INTRODUCTION

1
2 1. The Supreme Court in *Zadvydas v. Davis* held that “indefinite
3 detention” of a non-citizen in removal proceedings is unconstitutional. 533 U.S. 678
4 (2001). Civil detention must be “nonpunitive in purpose and effect,” and the “Due
5 Process Clause applies to ‘all persons’ within the United States, including [non-
6 citizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
7 *Id.* at 690, 693–94. Accordingly, post-removal detention is only statutorily and
8 constitutionally permissible for “a period reasonably necessary to bring about the
9 [non-citizen]’s removal from the United States.” *Id.* at 689. After six months of post-
10 removal detention, if there is “good reason to believe that there is no significant
11 likelihood of removal in the reasonably foreseeable future,” a non-citizen’s continued
12 detention is presumptively unlawful, and the Government must provide sufficient
13 evidence to rebut that presumption. *Id.* at 701.

14 2. Petitioner M.T.M. is a 32-year-old citizen and national of Senegal who
15 was repeatedly violently persecuted in Senegal by the Mouride Brotherhood, a
16 religious-political group with significant power in West Africa, because he was
17 perceived as gay and expressed political opinions in support of LGBTQ individuals’
18 human rights. See Exhibit 1 (Asylum and Withholding of Removal Application) at
19 20–24 (M.T.M.’s Asylum Declaration). The Mouride Brotherhood tried to kill
20 M.T.M. and relentlessly hunted for him even after he went into hiding. *Id.* Therefore,
21 M.T.M. had no choice but to leave Senegal out of fear for his life, ultimately entering
22 the United States, where he was immediately detained. *Id.* Unfortunately, M.T.M.
23 entered while former President Biden’s Circumvention of Lawful Pathways rule was
24 in effect from May 2023 to May 2025, presumptively disqualifying him from asylum.
25 See 88 Federal Register 31314, (May 16, 2023); 8 C.F.R. § 208.33(a). Nevertheless,
26 on February 11, 2025, an immigration judge (IJ) granted M.T.M. withholding of
27 removal to Senegal under § 241(b)(3) of the Immigration and Nationality Act (INA)
28 because M.T.M. established he would likely be tortured and/or persecuted if deported

1 there on the basis of a protected status related to sexual orientation. Exhibit 4 (Release
2 Request) at 13 (Exhibit B to Release Request: Order of IJ Granting Withholding of
3 Removal).

4 3. M.T.M. has now been in detention and in the custody of the Department
5 of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), for
6 more than 19 months, despite winning final withholding relief in removal
7 proceedings almost eight months ago. While M.T.M.’s award of relief by an IJ
8 preserves ICE’s statutory authority under 8 U.S.C. § 1231 to lawfully remove him to
9 a country other than Senegal—i.e., a third country—Congress, as interpreted by the
10 Supreme Court in *Zadvydas*, established concrete limits to ICE’s authority to detain
11 immigrants while it tries to effectuate a lawful removal.

12 4. It is incredibly unlikely that M.T.M. will ever be lawfully removed to a
13 third country, let alone significantly likely that he will be removed in the reasonably
14 foreseeable future. *See Zadvydas*, 533 U.S. at 701. Empirically, ICE has managed to
15 remove very few non-citizens granted withholding relief to third countries. *See*
16 *Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021) (“alternative-country removal
17 is rare”); *Munoz-Saucedo v. Pittman*, No. 25-2258-CPO, 2025 WL 1750346, at *6–
18 7 (D.N.J. June 24, 2025) (finding “Respondents seemingly recognize the low success
19 rate” and “the data . . . supports the general inference that removal for this particular
20 class of detainees is substantially more difficult”). As to M.T.M., Respondents have
21 failed to provide notice of any progress that has been made over the past almost eight
22 months to effectuate a third-country removal. Rather, Respondents appear to concede
23 they have been unable to remove M.T.M. to at least seven third countries, if not
24 several more. Even if Respondents secured a third country’s permission for M.T.M.’s
25 removal, M.T.M. would likely succeed on a fear-based claim barring removal to that
26 third country for either the same sexual orientation-related reasons underlying his
27 Senegal withholding relief or out of fear of repatriation to Senegal by that third
28 country.

1 5. Perhaps frustrated by their statutory and constitutional obligations, ICE
2 recently tried to unlawfully remove M.T.M. to Ghana in the shroud of secrecy while
3 actively denying him his statutory and constitutional rights. *See ECF No. 34* (TRO
4 Order) at 2, 6–10 (recounting M.T.M.’s experience and Ghana’s country conditions);
5 *ECF No. 39* (PI Order) at 2 (incorporating TRO Order). An Eastern District of
6 California Court’s and this Court’s lightning quick efforts halted that injustice,
7 probably saving M.T.M.’s life. Ghana’s persecution of homosexuality and LGBTQ
8 support is both well-documented and getting worse. *See ECF No. 35* (Supplement
9 ISO PI) at 2–5. Underscoring the danger here, DHS recently deported 14 West
10 African immigrants to Ghana without any real opportunity to allege fear-based
11 claims, despite at least five having withholding-style relief and DHS knowing Ghana
12 would repatriate all 14 to their origin countries. *See Exhibit 9* (PBS Article Re:
13 Immigrants Deported from U.S. to Ghana Are Sent Home); *ECF No. 2-1, D.A. vs.*
14 *Noem*, No. 1:25-cv-03135 (D.D.C. Sep. 12, 2025). M.T.M. likely would have
15 suffered the same unlawful, unconstitutional, and inhumane fate but for the Court’s
16 efforts.

17 6. Now that Respondents are preliminarily enjoined from again denying
18 M.T.M. his procedural rights in connection with a third-country removal, M.T.M.
19 almost certainly would succeed in winning withholding relief from Ghana if
20 Respondents ever properly notice such a removal. Therefore, Respondents cannot
21 rebut the presumption that M.T.M.’s continued detention is unlawful by pointing to
22 their prior Ghana efforts or by simply showing “‘good faith efforts to effectuate . . .
23 deportation continue.’” *Zadvydas*, 533 U.S. at 702 (statutorily rejecting such a
24 standard).

25 7. In addition to release from custody, M.T.M. is constitutionally and
26 statutorily entitled to meaningful notice and opportunity to pursue a fear-based claim
27 ahead of any third-country removal. As this Court found at the TRO and PI stages,
28 Respondents are likely to deny such rights, as shown by their public statements,

1 policy memoranda, and conduct towards M.T.M. *See* [ECF No. 34](#); [ECF No. 39](#).

2 8. Therefore, M.T.M. petitions this Court for a writ of habeas corpus
3 pursuant to [28 U.S.C. § 2241](#) to enjoin Respondents from (1) prolonging his unlawful
4 detention, and (2) denying his mandatory statutory, regulatory, and due process
5 protections in effectuating a third-country removal.

6 **JURISDICTION AND VENUE**

7 9. This Court has subject matter jurisdiction pursuant to [28 U.S.C. § 2241](#),
8 as M.T.M. is currently in federal immigration custody and seeks habeas corpus relief
9 for ongoing violations of the U.S. Constitution, federal statutes, and applicable
10 regulations. *See, e.g., Zadvydas*, [533 U.S. at 687–88](#) (“We conclude that § 2241
11 habeas corpus proceedings remain available as a forum for statutory and
12 constitutional challenges to post-removal-period detention.”) This case arises under
13 the INA, [8 U.S.C. § 1101](#) et seq., the regulations implementing the INA, the Foreign
14 Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 103-277, div.
15 G, Title XXII, § 2242(a), [112 Stat. 2681, 2681–822](#) (1998) (codified as Note to [8](#)
16 [U.S.C. § 1231](#)), and the regulations implementing the FARRA. Jurisdiction also
17 exists under [28 U.S.C. § 1331](#), as this action arises under the laws and Constitution
18 of the United States.

19 10. Declaratory and injunctive relief are authorized by [28 U.S.C. §§ 2201](#)
20 and [2202](#), and the Court has supplemental remedial authority under the All Writs Act,
21 [28 U.S.C. § 1651](#), to issue such writs as may be necessary to preserve its jurisdiction
22 and protect Petitioner’s rights. The Government has waived its sovereign immunity
23 pursuant to [5 U.S.C. § 702](#).

24 11. Venue is proper in this district and division pursuant to [28 U.S.C. §](#)
25 [2241\(c\)\(3\)](#) and [28 U.S.C. § 1391\(b\)\(2\)](#) and [\(e\)\(1\)](#) because M.T.M. was confined
26 within the Central District of California at the time of initial filing. *See* [ECF No. 14](#)
27 (Order) (finding jurisdiction to lie in the Central District of California); [ECF No. 28](#)
28 (Order) (same).

PARTIES

12. Petitioner M.T.M. is a native and citizen of Senegal who has been in DHS custody since February 8, 2024, and is currently detained at Golden State Annex Detention Facility (GSA) in McFarland, California.

13. Respondent Tonya Andrews is the Facility Administrator of GSA. She is an employee of GEO Group, the private company that contracts with ICE to run GSA. In her capacity as Facility Administrator, she oversees the administration and management of GSA. Accordingly, Respondent Andrews is the immediate custodian of M.T.M. M.T.M. brings this action against Respondent Andrews in her official capacity.

14. Respondent Sergio Albarran is the Acting Field Office Director of the ICE Enforcement and Removal Operations (ERO) San Francisco Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Northern California, Hawaii, Guam, and Saipan and has the authority to make custody determinations regarding individuals detained there. Respondent Albarran is a legal custodian of M.T.M. M.T.M. brings this action against Respondent Albarran in his official capacity.

15. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. DHS oversees ICE, which is responsible for the administration and enforcement of immigration laws and has supervisory responsibility for and authority over the detention and removal of non-citizens throughout the United States. Respondent Noem is the ultimate legal custodian of M.T.M. M.T.M. brings this action against Respondent Noem in her official capacity.

16. Respondent Pam Bondi is the Attorney General of the United States. As the Attorney General, she oversees the immigration court system, including all IJs and the Board of Immigration Appeals, and has authority over immigration detention. M.T.M. brings this action against Respondent Bondi in her official capacity.

LEGAL FRAMEWORK

I. Withholding of Removal and Relief Under the Immigration and Nationality Act

17. Non-citizens in immigration removal proceedings may seek three main forms of relief based on a fear of returning to their home country: asylum, withholding of removal, and Convention Against Torture (CAT) relief. While a grant of asylum requires you to establish a fear of persecution that is “well-founded,” meaning it is subjectively genuine and objectively reasonable, the legal standard for earning withholding of removal is more demanding and requires establishing that it is “more likely than not” (i.e. 50%+) that your life or freedom would be threatened in your home country. INA § 241(b)(3)(A); *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017); *Navas v. INS*, 217 F.3d 646, 663 (9th Cir. 2000).

18. Usually, all individuals who enter the country without inspection and assert a fear of removal to their country of origin can apply for all three forms of relief. Under President Biden’s Circumvention of Lawful Pathways Final Rule, individuals who entered the United States without inspection from May 11, 2023 through May 11, 2025, and through a country other than their origin country—i.e. individuals from countries other than Mexico who entered through the southern border—became presumptively ineligible for asylum. *See* 88 Federal Register 31314, (May 16, 2023); 8 C.F.R. § 208.33(a). As a result, withholding of removal and relief under CAT were the only forms of relief available to most individuals who entered the United States without inspection between May 11, 2023, and May 11, 2025.

19. When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson*, 594 U.S. at 531–32. Relevant here, an “order of removal made by the immigration judge . . . shall become final . . . upon waiver of appeal.” 8 C.F.R. § 1241.1. When a non-citizen has a final withholding or CAT relief

1 grant, they cannot be removed to the country or countries for which they
2 demonstrated a sufficient likelihood of persecution or torture. *See* 8 U.S.C. §
3 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2).

4 II. Detention of Non-Citizens Granted Withholding of Removal

5 a. Statutory and Constitutional Framework

6 20. 8 U.S.C. § 1231 governs the detention of non-citizens “during” and
7 “beyond” the “removal period.” 8 U.S.C. § 1231(a)(2)–(6). The “removal period”
8 begins once a non-citizen’s removal order “becomes administratively final.” *Id.* §
9 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE “shall remove
10 the [non-citizen] from the United States” and “shall detain the [non-citizen]” as it
11 carries out the removal. *Id.* § 1231(a)(1)–(2). If ICE does not remove the non-citizen
12 within the 90-day removal period, the non-citizen “*may* be detained beyond the
13 removal period” if they meet certain criteria, such as being inadmissible or deportable
14 under specified statutory categories. *Id.* § 1231(a)(6) (emphasis added).

15 21. To avoid “indefinite detention” that would raise “serious constitutional
16 concerns,” the Supreme Court in *Zadvydas* construed § 1231(a)(6) to contain an
17 implicit time limit. 533 U.S. at 682. The Court held that § 1231(a)(6) authorizes
18 detention only for “a period reasonably necessary to bring about the [non-citizen]’s
19 removal” because “[f]reedom from imprisonment—from government custody,
20 detention, or other forms of physical restraint—lies at the heart of the liberty that [the
21 Due Process] Clause protects.” *Id.* at 689. “Congress previously doubted the
22 constitutionality of detention for more than six months” and, therefore, six months of
23 post-removal order detention is considered “presumptively reasonable.” *Id.* at 701.
24 After six months of detention, if there is “good reason to believe that there is no
25 significant likelihood of removal in the reasonably foreseeable future, the
26 Government must respond with evidence sufficient to rebut that showing.” *Id.* *See*
27 *also Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006) (holding same).
28 For detention to remain reasonable, “as the period of prior postremoval confinement

1 grows, what counts as the ‘reasonably foreseeable future’ conversely would have to
2 shrink.” *Id.* If the Government fails to carry its burden, then “the court should hold
3 continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–
4 701.

5 22. *Zadvydas* claims “challenge the extent of the Attorney General’s
6 authority under the post-removal-period detention statute [and] the extent of that
7 authority is not a matter of [executive] discretion.” *Id.* at 688. The Supreme Court
8 rejected the idea that “a federal habeas court would have to accept the Government’s
9 view about whether the implicit statutory limitation is satisfied in a particular case,”
10 because it is the “federal courts authority to” determine whether there is presently
11 statutory (and constitutional) authorization for continued post-removal detention. *Id.*
12 at 699. In devising the six-month burden-shifting framework, the Court took
13 “appropriate account of the greater immigration-related expertise of the Executive
14 Branch, of the serious administrative needs and concerns inherent in the necessarily
15 extensive INS efforts to enforce this complex statute, and the Nation’s need to ‘speak
16 with one voice’ in immigration matters.” *Id.* at 700–01. Therefore, the statutory
17 inquiry is an evidentiary one on the “significant likelihood of removal in the
18 reasonably foreseeable future,” not a referendum on executive discretion. *Id.* at 701.

19 23. Courts throughout the Ninth Circuit have repeatedly relied upon
20 *Zadvydas* in ordering individuals’ release from immigration custody. *See, e.g.,*
21 *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, [ECF No. 27](#) (C.D. Cal. July
22 18, 2025) (ordering release); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, [2025](#)
23 [WL 1993771](#) (E.D. Cal. July 16, 2025) (same); *Nguyen v. Scott*, No. 2:25-CV-01398,
24 [2025 WL 2419288](#), at *15-18 (W.D. Wash. August 21, 2025) (same).

25 **b. Regulations**

26 24. To comply with *Zadvydas*, DHS established “special review
27 procedures” to determine whether detained non-citizens with final removal orders are
28 likely to be removed in the reasonably foreseeable future. *See* [66 Fed. Reg. 56,967](#)

1 (Nov. 14, 2001). A review procedure is required when “the [non-citizen] submits, or
2 the record contains, information providing a substantial reason to believe that
3 removal of a detained [non-citizen] is not significantly likely in the reasonably
4 foreseeable future.” *Id.* 8 C.F.R. § 241.4(i)(7).

5 25. Under this procedure, ICE evaluates the foreseeability of removal by
6 analyzing factors such as the history of ICE’s removal efforts to third countries. *See*
7 *id.* § 241.13(f). If ICE determines that removal is not reasonably foreseeable but
8 nonetheless seeks to continue detention, such detention must be based on “special
9 circumstances,” and must be justified only on narrow grounds such as national
10 security concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing
11 evidence before an IJ that the non-citizen is “especially dangerous.” *Id.* § 241.14(f).

12 **III. Requirements for and Reasonable Foreseeability of Lawful Third-** 13 **Country Removal**

14 **a. Legal Requirements for Third-Country Removals**

15 26. While ICE is authorized to remove non-citizens who were granted
16 withholding or CAT relief to alternative countries, *see* 8 U.S.C. § 1231(b); 8 C.F.R.
17 § 1208.16(f), the removal statute specifies restrictive criteria for identifying
18 appropriate countries. Non-citizens may be removed, for instance, to the country “of
19 which the [non-citizen] is a citizen, subject, or national,” the country “from which
20 the [non-citizen] was admitted to the United States,” or a country “in which the [non-
21 citizen] resided” before entering the United States. 8 U.S.C. § 1231(b)(2)(D)–(E).
22 Importantly, ICE may not remove non-citizens to other countries unless it is
23 “impracticable, inadvisable, or impossible to remove the [non-citizen] to each
24 country described in a previous clause of” 8 U.S.C. § 1231(b)(2)(E).

25 27. Regardless of whether a non-citizen who is subject to a removal order
26 and withholding or deferral relief is in ICE detention or not, ICE may remove them
27 to a third country provided that ICE comports with its mandatory constitutional and
28 statutory obligations. To start, if ICE identifies an alternative country of removal, the

1 “[non-citizen] must be given sufficient notice of a country of deportation that, given
2 his capacities and circumstances, he would have a reasonable opportunity to raise
3 and pursue his claim for withholding of deportation.” *Aden v. Nielsen*, 409 F. Supp.
4 3d 998, 1009 (W.D. Wash. 2019). *See Jama v. ICE*, 543 U.S. 335, 348 (2005) (“If
5 [non-citizens] would face persecution or other mistreatment in the country designated
6 under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1);
7 withholding of removal, § 1231(b)(3)(A); [and] relief under an international
8 agreement prohibiting torture, *see* 8 CFR §§ 208.16(c)(4), 208.17(a) (2004)”).

9 28. Ninth Circuit precedent is clear: “Failing to notify individuals who are
10 subject to deportation that they have the right to apply for asylum in the United States
11 and for withholding of deportation to the country to which they will be deported
12 violates both INS regulations and the constitutional right to due process.” *Andriasian*
13 *v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that “last minute” designation
14 of alternative country without meaningful opportunity to apply for protection
15 “violate[s] a basic tenet of constitutional due process”). *See also Najjar v. Lynch*, 630
16 Fed. App’x. 724 (9th Cir. 2016) (“In the context of country of removal designations,
17 last minute orders of removal to a country may violate due process if an immigrant
18 was not provided an opportunity to address his fear of persecution in that country.”)
19 In practice, the “guarantee of due process includes the right to a full and fair hearing,
20 an impartial decisionmaker, and evaluation of the merits of his or her particular
21 claim.” *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) (ordering the
22 same for non-citizen petitioner and holding ICE “has an affirmative obligation to
23 make a determination regarding a noncitizen’s claim of fear before deporting” them).
24 This is because “third-country removals are subject to the same mandatory
25 protections that exist in removal or withholding-only proceedings.” *Vaskanyan*, 2025
26 WL 2014208, at *3–9 (citation omitted). *See also A. A. R. P. v. Trump*, 145 S. Ct.
27 1364, 1368 (2025) (“notice roughly 24 hours before removal, devoid of information
28 about how to exercise due process rights to contest that removal, surely does not pass

1 muster”).

2 29. Of course, an opportunity to present a fear-based claim is only
3 meaningful if the non-citizen is not deported before removal proceedings are
4 reopened. *See Aden*, 409 F. Supp. 3d at 1010 (holding that merely giving petitioner
5 an opportunity to file a discretionary motion to reopen “is not an adequate substitute
6 for the process that is due in these circumstances”); *Dzyuba v. Mukasey*, 540 F.3d
7 955, 957 (9th Cir. 2008) (remanding to BIA to determinate whether designation is
8 appropriate).

9 **b. DHS’ Third-Country Removal Policy**

10 30. Yet, since the current administration has taken office, it has been
11 attempting to increase its deportation of non-citizens to third countries by any means
12 necessary—mostly blatantly unlawful ones.

13 31. On March 23, 2025, a putative nationwide class challenged this
14 government practice in *D.V.D. v. DHS* and obtained a temporary restraining order
15 and later a preliminary injunction for a certified class, blocking third-country
16 removals without notice and a meaningful opportunity to seek CAT protection.
17 *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 392–93 (D. Mass. Apr.18, 2025). Under the
18 *D.V.D.* injunction, the government was required to provide class members the
19 following:

- 20 • Written notice of the third country in a language that the non-citizen can
21 understand to the individual and their attorney, if any,
- 22 • An automatic 10-day stay between notice and any actual removal,
- 23 • Ability to raise a fear-based claim for CAT protection prior to removal, and:
 - 24 ○ If the non-citizen demonstrates “reasonable fear” of removal to the
25 third country, DHS must move to reopen the non-citizen’s
26 immigration proceedings.
 - 27 ○ If the non-citizen does not demonstrate a “reasonable fear” of
28 removal to the third country, DHS must provide a meaningful

1 opportunity, and a minimum of fifteen days, for the non-citizen to
2 seek reopening of their immigration proceedings.

3 *Id.*

4 32. DHS's third-country removal policy pales in comparison to these
5 statutorily and constitutionally necessary protections. On March 30, 2025, DHS
6 issued "Guidance Regarding Third Country Removals" that "clarified DHS policy
7 regarding the removal of [non-citizens] with final orders of removal . . . to countries
8 other than those designated for removal in . . . removal orders (third country
9 removals)." Exhibit 7 (March 30, 2025 DHS Third Country Removals Memo). If
10 DHS secures acceptance of a non-citizen's deportation to a third country by that
11 country, DHS will inform the detainee of removal to that country, but "Immigration
12 officers will not affirmatively ask whether the [non-citizen] is afraid of being
13 removed to that country." *Id.* If the "[non-citizen] affirmatively states a fear, USCIS
14 will . . . screen the [non-citizen] within 24 hours of referral." *Id.* In that scenario,
15 "USCIS will determine whether the [non-citizen] would more likely than not be
16 persecuted on a statutorily protected ground or tortured in the country of removal."
17 *Id.* "If USCIS determines that the [non-citizen] has not met this standard, the [non-
18 citizen] will be removed." *Id.*

19 33. Thereafter, the Government failed to comply with the *D.V.D.* district
20 court's orders at multiple points while the TRO and preliminary injunction were in
21 place. On March 31, 2025, at least six D.V.D. class members were removed from
22 Guantanamo to El Salvador on a DOD plane, in violation of the TRO. *See D.V.D. v.*
23 *DHS*, No. 1:25-cv-10676- BEM (D. Mass. Apr. 30, 2025), ECF No. 86. On May 7,
24 2025, the government attempted to deport a flight of class members to Libya without
25 compliance with the preliminary injunction, leading to an emergency TRO motion.
26 *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 7, 2025), ECF No. 91.
27 On May 20, 2025, while the government was again in the process of removing class
28 members in violation of the preliminary injunction (this time to South Sudan), the

1 plaintiffs moved for another emergency TRO, leading the district court order that the
2 government to retain custody of the class members and provide the preliminary
3 injunction's protections. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass.
4 May 20, 2025), ECF No. 116. On or around June 1, 2025, the Government deported
5 a group of six individuals to third-country South Sudan without affording mandatory
6 protections. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 3153 (2025)
7 (Sotomayor, J., dissenting) ("In matters of life and death, it is best to proceed with
8 caution. In this case, the Government took the opposite approach . . . in clear violation
9 of a court order, it deported six more to South Sudan, a nation the State Department
10 considers too unsafe for all but its most critical personnel.") On June 23, 2025, the
11 Supreme Court issued a summary order that did not provide reasoning, but granted
12 the Government's request to stay the district court's preliminary injunction in *D.V.D.*
13 *See DHS v. D.V.D.*, No. 24A1153, 2025 WL 1732103 (U.S. June 23, 2025).

14 34. On May 16, 2025, in another case, the Supreme Court considered the
15 Government's attempt to remove two Venezuelan nationals who are members of a
16 designated foreign terrorist organization on a day's notice. *See A. A. R. P.*, 145 S. Ct.
17 at 1368. There, the Supreme Court held: "notice roughly 24 hours before removal,
18 devoid of information about how to exercise due process rights to contest that
19 removal, surely does not pass muster." *Id.*

20 35. Nevertheless, DHS felt emboldened by the Supreme Court's stay of the
21 injunction in *D.V.D.* and adopted a third-country removal policy that clearly runs
22 afoul of mandatory statutory and constitutional protections and the Supreme Court's
23 views in *A. A. R. P.*

24 36. On July 9, 2025, ICE's Acting Director Todd Lyons issued a policy
25 memo that states some non-citizens will deported to third countries with ***literally no***
26 ***notice*** whatsoever: "If the United States has received diplomatic assurances from the
27 country of removal that [non-citizens] removed from the United States will not be
28 persecuted or tortured, and if the Department of State believes those assurances to be

1 credible, the [non-citizen] may be removed without the need for further procedures.”
2 Exhibit 8 (July 9, 2025 DHS Third Country Removals Memo). Otherwise, ICE’s new
3 standard procedure is:

- 4 • serve a notice of removal on the detainee—not their counsel if they have
5 any;
- 6 • not affirmatively ask whether the non-citizen is afraid of being removed to
7 the third country;
- 8 • if the non-citizen was “provided reasonable means and opportunity to speak
9 with an attorney,” then remove them to the third country in as few as **6**
10 **hours** after serving the notice of removal;
- 11 • if the non-citizen does not affirmatively state a fear of persecution or
12 torture, regardless of whether they had the opportunity to speak to counsel,
13 then remove them in as few as 24 hours after serving the notice of removal;
- 14 • if the non-citizen does affirmatively state a fear if removed to the third
15 country, USCIS will screen the non-citizen within 24 hours and unless the
16 non-citizen—again without any mention of counsel—fails to establish they
17 “would more likely than not be persecuted on a statutorily protected ground
18 or tortured in the country of removal,” remove them as soon as possible;
- 19 • only if a non-citizen affirmatively states a fear of removal to a third country
20 and they on less than 24 hours notice establish they are more likely than not
21 to be persecuted or tortured upon removal will USCIS refer the matter to
22 immigration court for further proceeding . . . or “[a]lternatively, ICE may
23 choose to designate another country for removal.

24 *Id.*

25 37. Independent of the now-stayed *D.V.D.* injunction, an increasing number
26 of courts across the country have enjoined the Government from effectuating
27 unlawful third-country removals without adhering to mandatory statutory and
28 constitutional protections. *Vaskanyan*, 2025 WL 2014208, at *6–9 (holding

1 “Petitioner’s removal to a third country without due process . . . is likely to result in
2 irreparable harm” and enjoining Petitioner’s removal to a third country without the
3 same protections mandated in the D.V.D. injunction); *Nadari v. Bondi*, No. 2:25-CV-
4 07893-JLS-BFM, ECF No. 9 (C.D. Cal Sep. 3, 2025) (same); *id.*, ECF No. 12 (C.D.
5 Cal. Sep. 10, 2025) (same); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL
6 1810210, at *4 (W.D. Wash. June 30, 2025) (granting TRO enjoining Government
7 from removing petitioner to “any third country in the world absent prior approval
8 from this Court”); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL
9 1993735, at *7 (E.D. Cal. July 16, 2025) (granting TRO and preliminary injunction
10 enjoining removal of “Petitioner to a third country without notice and an opportunity
11 to be heard”); *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 2201470, at *2
12 (S.D. Tex. Aug. 1, 2025).

13 STATEMENT OF FACTS

14 **I. Third-Country Removals Are Rare**

15 38. As the Supreme Court found, “alternative-country removal is rare” for
16 several reasons. *Johnson*, 594 U.S. at 537. First, countries routinely reject acceptance
17 of any third-country deportations from the United States presumably because such
18 non-citizens have no ties or connections to those third countries. *See, e.g., Exhibit 14*
19 (NPR Article Re: Nigeria pushes back on U.S. deportation demands) (Nigeria
20 publicly rejecting the Government’s ask for Nigeria to accept deportees from third
21 countries); Exhibit 22 (Reuters Article Re: Palau lawmakers reject US request to
22 accept third-country refugees).

23 39. Second, the Ninth Circuit has held that given how rarely withholding of
24 removal and similar CAT relief is awarded, the award of such relief “is a powerful
25 indication of the improbability of [those non-citizens’] foreseeable removal, by any
26 objective measure,” recognizing another obstacle to third-country removals is that
27 similar fear-based relief could be awarded as to a third country. *Nadarajah*, 443 F.3d
28 1081 (ordering release on *Zadvydas* claim).

1 40. Third, publicly available data demonstrates how rare such third-country
2 removals are because of these obstacles. As Justice Breyer explained, “[s]tudies have
3 also found that, once withholding-only relief is granted, the [non-citizen] is ordinarily
4 not sent to another, less dangerous country. Rather, the [non-citizen] typically
5 remains in the United States for the foreseeable future.” *Johnson*, 594 U.S. at 552–
6 53 (Breyer, J., dissenting). In 2017, “only 1.6% of noncitizens granted withholding-
7 only relief were actually removed to an alternative country.” *Id.* More recently, a
8 District of New Jersey Court found that “deportation data from fiscal years 2020
9 through 2023 . . . appears to show that in those years, ‘ICE removed . . . only five
10 non-citizens granted withholding or CAT relief to alternative countries.’” *Munoz-*
11 *Saucedo v. Pittman*, No. 25-2258-CPO, 2025 WL 1750346, at *6–7 (D.N.J. June 24,
12 2025). That Court held that “Respondents [including DHS Secretary Noem]
13 seemingly recognize the low success rate” and “the data . . . supports the general
14 inference that removal for this particular class of detainees is substantially more
15 difficult.” *Id.*

16 41. Against this backdrop of extremely limited opportunities for third-
17 country removals, the Government has publicly repeatedly said it is prioritizing
18 immigrants with criminal records for third-country deportations:

- 19 • To “justif[y]” a recent unlawful third-country deportation to South Sudan,
20 ICE Acting Director Todd Lyons pointed to the deportees’ criminal
21 records: “These are the ones that you don’t want in your community. These
22 are the ones that we prioritize every day.” Exhibit 10 (NPR Article Re: The
23 White House Is Deporting People to Countries They’re Not From).
- 24 • On June 19, 2025, Tom Homan, the Government’s official “Border Czar,”
25 said: “We’re prioritizing public safety threats and national security threats.
26 That is our priority.” Exhibit 11 (New York Times Article Re: An Interview
27 With Trump’s Border Czar, Tom Homan). On third-country deportations:
28 “If it’s a significant public safety threat and their country won’t take them

1 back, well, they're not staying here." *Id.*

- 2 • On June 23, 2025, DHS issued a press release: "DHS can finally exercise
3 its undisputed authority to deport criminal illegal aliens—who are not
4 wanted in their home country—to third countries that have agreed to accept
5 them." Exhibit 12 (DHS – DHS Releases Statement on Major Victory for
6 Trump Administration).
- 7 • On July 21, 2025, Lyons reiterated as to third-country deportations: "Prime
8 example, if we had a country that won't take a homicide suspect back, and
9 **under the Supreme Court ruling of *Zadvydas*, we don't hold punitively,**
10 **so we can only hold someone for six months to effectuate their removal**
11 . . . my main focus, like I said, is the safety and security in the United
12 States." Exhibit 13 (CBS – Transcript: Acting ICE director Todd Lyons on
13 Face the Nation) at 14 (emphasis added).

14 II. M.T.M.'s Immigration and Custody Status

15 42. Petitioner M.T.M. was born in Senegal on March 9, 1993 and is a
16 Senegalese citizen. Ex. 1 at 21–24.

17 43. The Mouride Brotherhood is a religious-political group with significant
18 influence in Senegal and throughout West Africa that violently enforces a
19 fundamentalist interpretation of Islamic law, especially concerning homosexuality,
20 which is also generally condemned in Senegal. *Id.* Gay Senegalese individuals and
21 their allies are ostracized and persecuted, living in fear of violence and death. *Id.*

22 44. From 2016 until he fled, M.T.M. co-owned and managed a clothing
23 store in Kafrin, Senegal. *Id.* M.T.M. is a strong believer in fundamental human rights
24 for all, regardless of gender, sexual orientation, and religious belief. *Id.* In Senegal,
25 he was a political and social advocate for equal rights and practiced as much in
26 welcoming all customers to his clothing business. *Id.*

27 45. Perceived as gay and being an LGBTQ advocate, M.T.M. was seen by
28 the Brotherhood as a threat to their interpretation of Islamic principles. *Id.* The

1 Brotherhood repeatedly threatened him with violence and death. *Id.* On February 12,
2 2023, a few gay men came to M.T.M.'s store, and members of the Brotherhood
3 noticed and identified the men. *Id.* The Brotherhood then brutally assaulted M.T.M.
4 and his customers because they perceived them as gay and/or LGBTQ advocates. *Id.*
5 One of the assailants attempted to stab M.T.M., and as a result of the assault, M.T.M.
6 was badly beaten, left bleeding, and survived only because others got him medical
7 attention at a clinic. *Id.*

8 46. Senegalese police were influenced by the Brotherhood and refused to
9 protect M.T.M. or respond in any way to the Brotherhood's attacks, and, instead,
10 themselves assaulted M.T.M.'s co-owner. *Id.* On December 31, 2023, the
11 Brotherhood launched another attack on M.T.M. and his customers at his store. *Id.*
12 They again brutally assaulted M.T.M., leaving him with severe injuries and
13 threatening to both burn his store down and kill him. *Id.*

14 47. Following the second assault, the Brotherhood continuously harassed
15 and threatened M.T.M. over the phone, warning him that they would kill him if they
16 ever found him again. *Id.* M.T.M. went into hiding more than 150 miles away with
17 the aid of his brother and a friend. *Id.*; Exhibit 2 (Asylum Application Evidence
18 Supplement) at 15 (M.T.M.'s Brother Declaration), 23 (M.T.M. Friend Declaration).
19 But the Brotherhood continued to hunt M.T.M. down, harassing his friends and
20 relatives to reveal his whereabouts so the Brotherhood could murder M.T.M. *Id.*

21 48. M.T.M. had no choice but to flee Senegal and the Brotherhood's sphere
22 of influence in West Africa out of fear for his life. Ex. 1 at 21–24. Even after he left
23 Senegal, the Brotherhood pressured his relatives and friends for information about
24 M.T.M.'s whereabouts, vowing to track him down and kill him. *Id.* As evidence of
25 their relentless persecution, the Brotherhood tracked down and murdered one of
26 M.T.M.'s friends for similar reasons related to sexual orientation. *Id.*

27 49. From Senegal, M.T.M. took a long, winding journey in search of refuge.
28 *Id.* He went from Senegal to Morocco, Spain, El Salvador, Nicaragua, Honduras,

1 Guatemala, and Mexico, from which he then entered the United States on February
2 8, 2024. *Id.* at 7 (I-589 Application).

3 50. Upon entering the United States, M.T.M. immediately expressed a fear
4 of return to Senegal and sought asylum. Exhibit 3 (DHS Asylum Application
5 Evidence) at 5. DHS placed M.T.M. in an ICE detention facility in California. Ex. 1
6 at 9. On April 17, 2024, DHS served him with a Notice to Appear (NTA), charging
7 him as removable under § 212(a) of the INA for being present in the United States
8 without being admitted or paroled and without certain documents. Exhibit 6 (Notice
9 to Appear). M.T.M. was eventually brought to GSA, where he is currently detained.
10 Ex. 4 at 17–20 (M.T.M. Release Request Declaration).

11 51. On February 11, 2025, an IJ granted M.T.M. withholding of removal to
12 Senegal under § 241(b)(3) of the INA because M.T.M. would likely be tortured
13 and/or persecuted if deported there on the basis of a protected status related to sexual
14 orientation. *Id.* at 12. M.T.M. was ordered removed to, and his removal withheld
15 from, Senegal. *Id.* M.T.M.’s counsel previously represented that M.T.M.’s
16 withholding of removal order became final on March 11, 2025 when the customary
17 appeal period expired, as is typical. That was incorrect. M.T.M.’s removal order
18 became final on February 11, 2025 when the IJ’s order was entered because both
19 DHS and M.T.M. waived the right to appeal. *Id.* at 15. See 8 C.F.R. § 1241.1 (“An
20 order of removal made by the immigration judge . . . shall become final: . . . (b) Upon
21 waiver of appeal”). Therefore, M.T.M. entered the “removal period” on February 11,
22 2025. See 8 U.S.C. § 1231(a)(1)(B)(i).

23 52. Given the evidentiary standard required for withholding relief is much
24 more stringent than the standard for asylum, M.T.M. likely would have qualified for
25 asylum had he entered the United States through the southern border before May 11,
26 2023 or after May 11, 2025—i.e., when President Biden’s Circumvention of Lawful
27 Pathways rule was not in effect. *Supra* ¶ 18.

28 53. Months ago, soon after his Withholding of Removal Order became final,

1 M.T.M. was informally told by an ICE officer that ICE would attempt to remove him
2 to a third country, specifically El Salvador or Morocco—two countries that M.T.M.
3 went through prior to entering the United States—or Benin. Ex. 4 at 4. See 8 U.S.C.
4 § 1231(b)(2)(E) (explaining ICE cannot remove M.T.M. to a random third country
5 unless it is “impracticable, inadvisable, or impossible” to remove him to a country in
6 which he previously was, e.g. El Salvador and Morocco). M.T.M. is not a citizen of
7 and has no connection to any of those or any other third countries. Ex. 4 at 17.

8 54. On August 26, 2025, M.T.M.’s immigration counsel submitted a request
9 to ICE for immediate release from ICE custody in accord with INA § 241(a)(3) and/or
10 on parole under INA § 212(d)(5) and a 2021 DHS Policy Memorandum. Ex. 4. The
11 request explained that M.T.M. is not a flight risk and is committed to complying with
12 any order of supervision. *Id.* at 3. M.T.M.’s friend is his sponsor, a U.S. citizen, and
13 a resident of New York. *Id.* His sponsor declared that he would be willing to provide
14 for and support M.T.M. comprehensively as M.T.M. acclimates to life in the United
15 States if released. *Id.* at 21–22 (Signed Sponsor Letter). M.T.M. has no criminal
16 record in the U.S. or his country of origin and has never had any dealings with drugs,
17 firearms, or violence. *Id.* at 18.

18 55. The release request also explained that M.T.M.’s lawful removal does
19 not seem to be imminent in part because M.T.M. fears removal to each of the three
20 identified countries and demanded ICE comply with its obligations to provide him
21 with sufficient notice and meaningful opportunity to reopen removal proceedings
22 upon a potential and lawful designation of any third country for removal. *Id.* at 4–5.

23 56. The request further demanded release for urgent humanitarian reasons
24 pursuant to INA § 212(d)(5), which provides that parole “would generally be
25 justified” for individuals “who have serious medical conditions in which continued
26 detention would not be appropriate.” *Id.* See 8 CFR § 212.5(b)(1). M.T.M. has
27 “serious mental and physical health conditions” relating, in part, to the persecution
28 and torture he endured in Senegal. Ex. 4 at 4. For example, “he has thoughts of death

1 and suicide, which he has spoken to the detention facility officials about.” *Id.* at 4,
2 18–19. A licensed social worker found that M.T.M.’s psychological symptoms are
3 “highly consistent with symptoms of Post-Traumatic Stress Disorder and Major
4 Depressive Disorder.” *Id.* at 4, 30–42 (Social Worker’s Psychological Evaluation).
5 M.T.M.’s counsel also relayed studies that show “increased length of imprisonment
6 . . . directly exerts harm” and that “detention lasting 6 months or longer . . . [results
7 in] even higher rates of poor [health], mental illness, and PTSD.” *Id.* at 4, 43–53
8 (Study on Health Harms in Immigration Detention). In addition to M.T.M.’s mental
9 health conditions, since arriving in detention, M.T.M. has experienced increasing
10 eyesight issues—which have not been sufficiently treated at GSA. *Id.* at 4, 18–19.

11 57. To this day, M.T.M.’s immigration counsel has not received a response
12 from ICE on M.T.M.’s Release Request. Exhibit 5 (Affidavit of Madhavi Narayanan)
13 at 3.

14 **III. ICE Unlawfully Attempted to Remove M.T.M. to Ghana**

15 58. On August 27, 2025, ICE told M.T.M. that he would be imminently
16 removed from GSA. Ex. 5 at 3–4. Initially, ICE did not inform M.T.M. of where or
17 why they planned to move M.T.M. *Id.* Upon information and belief, ICE brought
18 M.T.M. to an ICE field office in the early morning of August 27, 2025. *Id.* At the
19 ICE field office, ICE demanded that M.T.M. sign a document consenting to removal
20 to Ghana, a country for which neither he nor his counsel ever received prior notice
21 of. *Id.* M.T.M. is not an English speaker but he understands and can speak a little. *Id.*
22 He asked ICE to provide an interpreter in an accessible language, but ICE did not.
23 *Id.* More importantly, using phrases taught by counsel, M.T.M. repeatedly and
24 affirmatively expressed a fear of removal to Ghana on the basis of a protected status.
25 *Id.* ICE refused to acknowledge M.T.M.’s affirmative expressions of a fear-based
26 claim. *Id.* M.T.M. also repeatedly asked to speak to his counsel. *Id.* ICE also refused
27 to provide M.T.M. access to counsel while they harassed him to sign a document
28 consenting to removal to Ghana. *Id.*

1 59. ICE continued to detain M.T.M. at their field office on little sleep and
2 under poor conditions for approximately 12 hours. *Id.* During this time, ICE
3 repeatedly harassed M.T.M. to sign the paper consenting to removal to Ghana and,
4 apparently, threatened to make his situation even worse if he did not comply. *Id.* At
5 no point during the field office incident did ICE provide M.T.M. with an accessible
6 language interpreter or access to counsel. *Id.* And at no point did ICE acknowledge
7 M.T.M.'s affirmative fear-based claims as to removal to Ghana. *Id.* In the end,
8 M.T.M. held his ground in recognition of his rights and refused to sign away his
9 consent to removal to Ghana. *Id.* ICE returned M.T.M. to GSA later that day. *Id.*

10 60. In the middle of the night, in the early hours of August 28, 2025, ICE
11 transported M.T.M. from GSA to another facility. *Id.* He was then transported to an
12 airport in Victorville, California. *Id.* During these transfers, M.T.M. repeatedly asked
13 to speak to counsel but was denied access. *Id.* In the afternoon of August 28, 2025,
14 ICE put M.T.M. on a plane and strapped him down in an incredibly rough and
15 uncomfortable manner. *Id.* ICE's rough and uncomfortable handling of M.T.M.
16 caused him significant pain and he vomited several times during the short flight from
17 Victorville, California to Florence, Arizona. *Id.*

18 61. In the afternoon of August 28, 2025, M.T.M.'s counsel filed this action,
19 and with incredible speed, Judge Thurston of the Eastern District of California
20 enjoined ICE from removing M.T.M. from the United States and transferring him out
21 of the Eastern District. ECF No. 6 (Emergency Order). M.T.M.'s counsel promptly
22 provided Respondents' counsel with the Order, Respondents' counsel confirmed they
23 passed on the order to ICE. ECF No. 9 (Supplemental Ahmad Affidavit ISO TRO).
24 At the time ICE was on notice of the Order, M.T.M. was either en route from
25 California to Arizona or was in Arizona. *Id.* Thereafter, instead of transferring
26 M.T.M. back to the Eastern District, ICE inexplicably transferred M.T.M. from
27 Arizona to Alexandria Staging Facility in Alexandria, Louisiana. ECF No. 11
28 (Officer Gallenkamp Declaration). Upon information and belief, ICE often transports

1 immigrant detainees to Alexandria Staging Facility in order to promptly effectuate a
2 removal from the United States. ECF No. 9.

3 62. Upon consideration of briefing and oral argument, the Court ordered
4 ICE to return M.T.M. to a detention facility in either the Eastern District or this
5 District. ECF No. 28 (Order) at 4. ICE thereafter returned M.T.M. to GSA, where he
6 remains detained.

7 **IV. Respondents Concede M.T.M. Cannot Be Removed to Various**
8 **Countries and M.T.M. Has a Credible Fear of Removal to Many Other**
9 **Third Countries**

10 63. The fact that Respondents attempted to unlawfully remove M.T.M. to
11 Ghana is important because Ghana is not a third country that ICE was authorized to
12 remove him to under 8 U.S.C. § 1231(b)(2)(E)(i)–(vi), e.g. M.T.M. did not reside in
13 Ghana at any point before entering the United States. In order for ICE to remove
14 M.T.M. to a third country not authorized under 8 U.S.C. § 1231(b)(2)(E)(i)–(vi), it
15 must have been “impracticable, inadvisable, or impossible to remove [M.T.M.] to
16 each country described in” 8 U.S.C. § 1231(b)(2)(E)(i)–(vi). 8 U.S.C. §
17 1231(b)(2)(E)(vii). As DHS is aware from M.T.M.’s Asylum Application, M.T.M.
18 was in Morocco, Spain, El Salvador, Nicaragua, Honduras, and Guatemala prior to
19 entering Mexico and the United States. Ex. 1 at 7. Therefore, ICE’s attempted
20 removal of M.T.M. to Ghana appears to be an admission that ICE tried to but could
21 not remove M.T.M. to, at least, Morocco, Spain, El Salvador, Nicaragua, Honduras,
22 Guatemala, or Mexico because it would have been “impracticable, inadvisable, or
23 impossible” to do so. 8 U.S.C. § 1231(b)(2)(E)(vii).

24 64. Notably, months ago, an ICE officer informally, without any type of
25 written notice, told M.T.M. that ICE was attempting to remove him to El Salvador,
26 Morocco, and Benin. Ex. 4 at 4. Because of the Ghana removal attempt, we assume
27 ICE failed in its efforts as to El Salvador and Morocco (among others). Given the
28 Ghana removal attempt, it appears ICE failed in its efforts as to Benin as well. That

1 is unsurprising given the administration approached Benin to accept third-country
2 deportees from the United States months ago, but to date, counsel has been unable to
3 find public reporting evidencing Benin has accepted *any* such third-country
4 deportees. Exhibit 14 (NPR Article Re: Nigeria pushes back on U.S. deportation
5 demands) (“The U.S. has also reportedly approached at least three other African
6 nations — Benin, Eswatini, and Libya— to accept deported migrants – something
7 that Libya’s UN backed government in the west and the military government in that
8 controls the east denied.”)

9 **V. M.T.M. Has Strong Fear-Based Claims**

10 65. Regardless, once provided with proper notice of removal to a consenting
11 third country, M.T.M.’s immigration counsel is prepared to represent him in a fear-
12 based claim for relief from removal. Ex. 5 at 4–5. To start, it is painfully obvious that
13 M.T.M.’s protected status relating to sexual orientation could subject him to
14 persecution and torture in any number of third countries. *See D.V.D.*, 778 F.Supp.3d
15 at 388 (“Listing all the countries in the world as to which an individual might have a
16 reasonable fear is also impractical: doing so would potentially require, for example,
17 a person with a same-sex sexual orientation to list, at least, all 64 countries where
18 such an orientation is illegal such that the individual fears torture. *See*
19 *Homosexuality: The countries where it is illegal to be gay*, BBC (Mar. 31, 2023),
20 <https://perma.cc/32KN-RH6Q>.”)

21 66. Since it appears none of the countries ICE informally identified months
22 ago (or the other countries M.T.M. traveled through before the United States) are still
23 being considered, M.T.M. will briefly address Ghana only.

24 67. The United States Department of State issues Country Reports on
25 Human Rights Practices for various countries. In a recent report on Ghana, the State
26 Department determined Ghana is plagued by “significant human rights issues”
27 including “credible reports of cruel, inhuman, or degrading treatment or punishment
28 by the government or on behalf of the government; arbitrary arrest or detention;

1 serious restrictions on freedom of expression and media freedom, including violence
2 . . . ; refoulement of refugees to a country where they would face torture or
3 persecution; serious government corruption; . . . laws criminalizing consensual same-
4 sex sexual conduct between adults, although not fully enforced; crimes involving
5 violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, or
6 intersex persons.” Exhibit 15 (2023 Ghana State Department Country Report) at 2.
7 The State Department also found Ghana committed various “acts of violence,
8 criminalization, and other abuses based on sexual orientation, gender identity or
9 expression, or sex characteristics.” *Id.* at 25.

10 68. Same-sex sexual conduct has been criminalized in Ghana and subject to
11 prison terms of three years since at least 1960 under Ghana’s Criminal Offences Act,
12 which was inherited from British colonial law. Exhibit 16 (Human Rights Watch
13 Article Re: Ghana: Supreme Court Upholds Colonial-Era Anti-LGBT Law)
14 (“violence against LGBT people is prevalent, and persecution has escalated in recent
15 years”). Recently, in July 2024, the supreme court of Ghana rejected a challenge to
16 that law, upholding criminalization of consensual same-sex sexual conduct. *Id.*
17 Earlier this year, Ghanaian lawmakers reintroduced a bill that would increase the
18 current maximum penalty for same-sex sexual acts from three years in prison to five,
19 while also imposing jail time for the “willful promotion, sponsorship, or support of
20 LGBTQ+ activities.” Exhibit 17 (Reuters Article Re: Ghana Lawmakers
21 Reintroduce Anti-LGBTQ Legislation). Ghana’s parliament approved the bill in
22 February 2024, but then-President Nana Akufo-Addo did not sign the bill before his
23 term ended and President John Dramani Mahama assumed office. *Id.* The legislation
24 appears to now be under consideration. *Id.* Regardless of whether the legislation is
25 adopted, the “bill intensifies a crackdown on the rights of LGBTQ people and those
26 accused of ‘promotion’ of sexual and gender minority rights.” *Id.* (“Past polling has
27 shown a lack of tolerance for LGBTQ people in Ghana”).

28 69. Ghana’s country conditions relating to sexual orientation, though, are

1 somewhat irrelevant because Ghana has repatriated all 14 West African third-country
2 deportees recently deported there from the United States to their home countries. Ex.
3 9. At least five of those deportees had “either withholding of removal under the
4 Immigration and Nationality Act or deferral of removal under the Convention
5 Against Torture,” and accordingly filed suit as soon as they could—which ended up
6 being after DHS already deported them to Ghana and Ghana placed them in a
7 detention camp with abysmal conditions. ECF No. 2-1 at 1–3, *D.A. vs. Noem*, No.
8 1:25-cv-03135 (D.D.C. Sep. 12, 2025). According to the plaintiffs in that action,
9 DHS knew that Ghana would repatriate the withholding and Convention Against
10 Torture relief immigrants: “One plaintiff was told by an officer while en route to
11 Ghana that he would arrive in Ghana and then Ghana would send him to his country
12 of origin, and then I believe another officer told a Ghanaian official in the presence
13 of one of the plaintiffs something to the same effect.” ECF No. 32-3 at 7, *D.A. v.*
14 *Noem*, No. 1:25-cv-03135 (D.D.C. Sep. 14, 2025). But for the Court’s incredibly
15 quick emergency orders, M.T.M. likely would have suffered the same fate as those
16 immigrants. Instead, M.T.M. stands to argue a virtually iron-clad fear-based removal
17 claim against Ghana both because of Ghana’s sexual orientation-related persecution
18 and Ghana’s repatriation of third-country deportees in violation of U.S. and
19 international law.

20 70. Based on the statements and actions of the few other countries that have
21 recently accepted third-country removals from the United States, M.T.M. would also
22 likely succeed on the claim that other third countries would similarly repatriate him
23 to Senegal where he would face torture and/or persecution. *See, e.g., Exhibit 18* (New
24 York Times Article Re: Eswatini Repatriating Deportees).

25 71. If Respondents provide notice of a particular third country they seek to
26 remove M.T.M. to, Petitioner’s counsel will evaluate and supplement the record with
27 M.T.M.’s specific basis for a fear-based claim if applicable.
28

VI. Conditions Reported at Golden State Annex Detention Facility

72. Pursuant to California Assembly Bill 103 (2017), the California Department of Justice (Cal DOJ) has regularly reviewed and reported on ICE detention facilities in California. Exhibit 19 (Cal. DOJ ICE Detention Facilities Report). In May 2025, Cal DOJ published their most recent report in which they provided a facility-specific review of Golden State Annex. *Id.* As to GSA, “Cal DOJ’s review resulted in the following key findings with respect to mental health care, medical care, and other conditions of confinement:

- The quality of mental health care was impacted by the quality of psychotherapy, inconsistent documentation of psychiatric diagnoses, lack of non-medication interventions, and inadequate medication management.
- Mental health and medical staff did not engage in appropriate treatment planning or multidisciplinary treatment to address detainee needs.
- Suicide prevention and interventions were insufficient due to inconsistent suicide risk assessments, facility related risks, and lack of safety planning . . .
- Detainees were over-disciplined, including punishment for making complaints.
- The facility failed to adequately assess the mental health of disciplined detainees before placement in restricted housing.”

Id. at 53.

73. On April 18, 2024, DHS’s Office of Inspector General issued a report with “Results of an Unannounced Inspection of ICE’s Golden State Annex in McFarland, California. Exhibit 20 (DHS OIG Results of an Unannounced Inspection). The government itself found “facility staff did not always provide timely action of medical grievances and did not properly record paper grievances.” *Id.* at 5. The government also concluded “Golden State Did Not Comply with Cleanliness and

1 Sanitation Standards.” *Id.* at 8.

2 74. In accord with above, in July and August 2024, more than 60 detainees
3 at Mesa Verde and Golden State Annex ICE Detention Facilities participated in labor
4 and hunger strikes to protest dangerous and neglectful conditions at the facilities.
5 Exhibit 21 (Guardian Article Re: More than 60 ICE detainees on hunger strike over
6 ‘inhumane’ living conditions). Detainees at the facilities reported “medical neglect,
7 poor food quality that they say has resulted in food poisoning, unavailability of water
8 for up to 12 hours, unpalatable tap water, a working wage of \$1 a day and unsanitary
9 conditions that have led to people contracting ringworm from the showers.” *Id.* at 1.

10 75. GSA’s deplorable conditions continue to cause M.T.M. immense
11 suffering and injury as he remains indefinitely detained. *See* Ex. 4 at 18–19. *Supra* ¶
12 56.

13 **ARGUMENT**

14 **I. M.T.M.’s Continued Detention Is Unlawful Under *Zadvydas* Because** 15 **His Removal Is Not Reasonably Foreseeable**

16 **a. M.T.M.’s Removal Is Not Reasonably Foreseeable Under** 17 ***Zadvydas***

18 76. The “Due Process Clause applies to all ‘persons’ within the United
19 States, including [non-citizens], whether their presence here is lawful, unlawful,
20 temporary, or permanent.” *Zadvydas*, 533 U.S. at 693–94 (“Indeed, this Court has
21 held that the Due Process Clause protects [a non-citizen] subject to a final order of
22 deportation.”). For the below five reasons, M.T.M. has met his burden of proof under
23 *Zadvydas* to “provide[] good reason to believe that there is no significant likelihood
24 of removal in the reasonably foreseeable future,” shifting the burden to the
25 Government to “respond with evidence sufficient to rebut that showing.” 533 U.S. at
26 701.

27 77. First, as the Supreme Court and Ninth Court have both found, publicly
28

1 available data establishes that it is simply unlikely that ICE can successfully remove
2 a non-citizen with withholding relief like M.T.M. to a third country. *See Johnson*,
3 594 U.S. at 537 (“alternative-country removal is rare”). Despite the current
4 administration’s efforts, few countries ever accept any third-country deportations
5 from the United States. *See, e.g.*, Ex. 14 (Nigeria rejecting); Ex. 22 (Palau rejecting).
6 Moreover, the Ninth Circuit found that the rare award of withholding-style relief “is
7 a powerful indication of the improbability of [those non-citizens’] foreseeable
8 removal, by any objective measure.” *Nadarajah*, 443 F.3d 1081 (ordering release).
9 Historically, ICE managed to remove less than two percent of non-citizens granted
10 withholding relief to third countries. *Johnson*, 594 U.S. at 552–53 (Breyer, J.,
11 dissenting). From 2020 to 2023, ICE removed only five non-citizens with such relief
12 to third countries, and Respondent DHS Secretary Noem has “seemingly
13 recognize[d] the low success rate.” *Munoz-Saucedo*, 2025 WL 1750346, at *7.

14 78. Second, recognizing that there are very few opportunities for third-
15 country removals, the Government has made repeated public statements that it is
16 prioritizing non-citizens with criminal records for third-country removals. *Supra* ¶
17 41. M.T.M. has no criminal record in any country. Ex. 4 at 18.

18 79. Third, while ICE attempted to unlawfully remove M.T.M. to Ghana,
19 ICE to date has provided no formal written notice or evidence of any efforts to
20 remove M.T.M. to a third country, including in the prior temporary restraining order
21 and preliminary injunction briefing. Unlike many *Zadvydas* cases as discussed
22 below, here Respondents have failed to provide notice of any progress that has been
23 made over the past almost eight months to effectuate M.T.M.’s removal since his
24 withholding grant became final. Without any evidence of progress, M.T.M.’s
25 continued detention has become indefinite, with no reasonably foreseeable plan for
26 his removal.

27 80. Fourth, ICE has already apparently failed in their efforts to remove
28 M.T.M. to at least Morocco, Spain, El Salvador, Nicaragua, Honduras, Guatemala,

1 Mexico, and, likely, Benin. *Supra* ¶ 63. ICE’s unlawful attempt to remove M.T.M.
2 to Ghana indicates that it was “impracticable, inadvisable, or impossible to remove”
3 M.T.M. to, at least, the first seven countries, evidencing the unlikelihood of lawful
4 removal. 8 U.S.C. § 1231(b)(2)(E).

5 81. Fifth, even if Respondents secured permission from a third country,
6 M.T.M. would likely succeed on a fear-based claim depending on the country.
7 M.T.M. could again have strong claims that he is entitled to mandatory statutory
8 withholding relief because his life or freedom would be threatened on the basis of a
9 protected status related to sexual orientation and political opinion. 8 U.S.C. §
10 1231(b)(3)(A). *See Nadarajah*, 443 F.3d at 1081–82 (“relief under withholding of
11 removal is mandatory”). For example, M.T.M. is almost certainly unremovable to
12 Ghana because, there, homosexuality (and soon, possibly, LGBTQ advocacy) is
13 criminalized and LGBTQ individuals and their advocates are routinely persecuted.
14 Ex. 17. *Supra* ¶¶ 67–68.

15 82. As part of fear-based protections, Respondents are barred from
16 deporting M.T.M. to a third country that would repatriate him to Senegal, and there
17 is strong evidence that Respondents have recently deported non-citizens to third
18 countries that repatriate them to their origin countries, including notably here, Ghana.
19 *See, e.g.*, Ex. 18 (Eswatini repatriating deportees); Ex. 9 (Ghana repatriating
20 deportees). *See also D.A. vs. Noem*, No. 1:25-cv-03135, ECF No. 2-1 at 1–3 (D.D.C.
21 Sep. 12, 2025) (DHS deported at least five non-citizens with withholding or deferral
22 relief to third country Ghana despite knowing Ghana would repatriate them); *id.*, ECF
23 No. 32-3 at 7 (D.D.C. Sep. 14, 2025) (same); *Misirbekov v. Venegas*, No. 1:25-CV-
24 00168, 2025 WL 2201470, at *1 (S.D. Tex. Aug. 1, 2025) (finding “Petitioner is
25 likely to be successful on the merits” in part because “attempts to remove Petitioner
26 to third countries are likely to fail since such action would likely result in him being
27 extradited to Kyrgyzstan and facing political persecution”).

28 83. On the totality of this evidence, M.T.M. easily meets his burden of

1 demonstrating a likelihood of success on the merits of his due process and statutory
2 *Zadvydas* claims, or at least, serious questions going to the merits. *All. for the Wild*
3 *Rockies*, 632 F.3d at 1131. Indeed, he need only show “good reason to believe there
4 is no significant likelihood of removal in the reasonably foreseeable.” *Zadvydas*, 533
5 U.S. at 701. Conversely, Respondents’ evidentiary burden to rebut M.T.M.’s
6 showing increases with each passing day in detention. *Id.* (“as the period of prior
7 postremoval confinement grows, what counts as the ‘reasonably foreseeable future’
8 conversely would have to shrink”).

9 84. The Supreme Court explained that Respondents cannot satisfy their
10 burden by simply establishing “good faith efforts to effectuate . . . deportation
11 continue” because “this standard would seem to require [a non-citizen] seeking
12 release to show the absence of *any* prospect of removal—no matter how unlikely or
13 unforeseeable—which demands more than our reading of the statute can bear.” *Id.* at
14 702. *See Nguyen*, 2025 WL 2419288, at *3 (“Courts in [the Ninth] circuit have
15 regularly refused to find Respondents’ burden met where Respondents have offered
16 little more than generalizations regarding the likelihood that removal will occur”).

17 85. For example, Judge Almadani recently held: “at best, the government
18 has shown that ‘good faith efforts’ to effectuate . . . deportation continue” when it
19 provided evidence that it was “pursuing the possibility of removing Petitioner to
20 [third-country] Armenia” and that “ICE now expects to receive an answer from the
21 Armenian consulate within approximately two weeks.” *Vaskanyan*, 2025 WL
22 2014208, at *5; *id.*, ECF No. 27 (ordering release three weeks after entry of TRO).
23 An Eastern District Court similarly found Respondents failed to meet their burden
24 even though they showed “a pending updated travel document request,” “a ‘2020
25 treaty memorandum of understanding”’ from the foreign country, and that removals
26 to that country “have occurred recently.” *Hoac*, 2025 WL 1993771 (ordering release
27 on PI). Likewise, in *Nguyen*, the Government provided several declarations showing
28 Vietnam had not formally denied any ICE request for a travel document in 10 months,

1 had not taken more than 30 days to issue a travel document in 6 months, and had
2 recently accepted “a meaningful increase in the total number of removals compared
3 to historical practice.” 2025 WL 2419288, at *15–18. But because the Government
4 did not provide sufficient evidence individualized to the petitioner, the Court held it
5 failed to carry its burden. *Id.* at *18. These cases offer guidance on what is *not*
6 sufficient for the Government to carry its evidentiary burden, demanding
7 Respondents show even more here.

8 86. Thus, M.T.M. meets his burden under *Zadvydas* to establish that his
9 detention has become indefinite because there is “good reason to believe that there is
10 no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
11 at 701.

12 **b. M.T.M. Should Be Immediately Released**

13 87. Because M.T.M.’s removal is not reasonably foreseeable, the Due
14 Process Clause and INA require that he be immediately released. *See Zadvydas*, 533
15 U.S. at 700–01 (describing release as the appropriate remedy); 8 U.S.C. § 1231(a)(6)
16 (authorizing release “subject to . . . terms of supervision”). M.T.M.’s ongoing civil
17 detention is “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690. There
18 is no “sufficiently strong special justification for indefinite civil detention” under any
19 statute or law. *Id.* To order his immediate release, this Court need only determine that
20 M.T.M.’s removal is not reasonably foreseeable under *Zadvydas*; it need not analyze
21 whether he poses a danger to the community or a flight risk. *See id.* at 699–700 (“[I]f
22 removal is not reasonably foreseeable, the court should hold continued detention
23 unreasonable and no longer authorized by statute.”).

24 88. *Zadvydas* explicitly held that flight risk is already baked into the
25 reasonable foreseeability analysis, *see id.* at 690 (observing that the “justification . .
26 . [of] preventing flight . . . is weak or nonexistent where removal seems a remote
27 possibility at best”) and that dangerousness cannot unilaterally justify indefinite civil
28 detention barring “special circumstances,” which may include the non-citizen being

1 a “suspected terrorist[.]” but do not include the non-citizen’s “removable status
2 itself.” *Id.* at 691; *see also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) (“A finding
3 of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to
4 justify indefinite involuntary [civil detention].”). With respect to M.T.M.’s detention,
5 ICE has not invoked the regulations governing these “special circumstances”
6 determinations. *See* 8 C.F.R. § 241.14. Nor could it, given his absence of any criminal
7 record in this country or his home country of Senegal.

8 89. Even if factors outside of the foreseeability of M.T.M.’s removal were
9 relevant, there exist significant equities that warrant M.T.M.’s release, including his
10 serious medical conditions that continue to deteriorate in detention. *Supra* ¶ 56.

11 90. Lastly, this Court or ICE is free to impose conditions on release to
12 mitigate any potential concerns regarding flight risk or danger. *See Zadvydas*, 533
13 U.S. at 700 (“[T]he [non-citizen]’s release may and should be conditioned on any of
14 the various forms of supervised release that are appropriate in the circumstances.”).

15 **II. Removal of M.T.M. to Any Third Country Without Mandatory**
16 **Procedural Protections Is Unlawful and a Violation of Procedural Due**
17 **Process**

18 91. The “Due Process Clause applies to all ‘persons’ within the United
19 States, including [non-citizens], whether their presence here is lawful, unlawful,
20 temporary, or permanent.” *Zadvydas*, 533 U.S. at 693-94 (“Indeed, this Court has
21 held that the Due Process Clause protects [a non-citizen] subject to a final order of
22 deportation.”) Accordingly, it is black letter law that M.T.M. must be provided a
23 meaningful opportunity to apply for protection prior to removal to a third country.

24 92. To “establish a procedural due process violation, the plaintiff must
25 identify a protected liberty or property interest and allege that the defendants, acting
26 under color of state law, deprived [him] of that interest without constitutionally
27 adequate process.” *D.V.D.*, 778 F.Supp.3d at 387 (cleaned up). The “basic purport of
28 the constitutional requirement is that, before a significant deprivation of liberty or

1 property takes place at the state's hands, the affected individual must be forewarned
2 and afforded an opportunity to be heard at a meaningful time and in a meaningful
3 manner.” *Id.* (cleaned up).

4 93. In the immigration context, “Congress clearly established the right to
5 deferral or withholding of removal based on a legitimate fear-based claim.” *Id.* See
6 also *Jama v. ICE*, 543 U.S. 335, 348 (2005) (explaining that individuals who “face
7 persecution or other mistreatment in the country designated” as their place of removal
8 “have a number of available remedies,” by statute, regulation, and under international
9 law, to “ensur[e] their humane treatment”). Moreover, “[i]t is well established that
10 the Fifth Amendment entitles [non-citizens] to due process of law’ in the context of
11 removal proceedings.” *Trump v. J. G. G.*, 145 S. Ct. 1003, 1006 (2025) (citing *Reno*
12 *v. Flores*, 507 U.S. 292, 306 (1993)). This means “notice must be afforded within a
13 reasonable time and in such a manner as will allow them to actually seek habeas relief
14 in the proper venue before such removal occurs.” *Id.* To be sure, “there can be no
15 disagreement that the same constitutional guarantees apply to withholding-only
16 relief.” *D.V.D.*, 778 F.Supp.3d at 387.

17 94. That is why the Ninth Circuit held that “[f]ailing to notify individuals
18 who are subject to deportation that they have the right to apply for asylum in the
19 United States and for withholding of deportation to the country to which they will be
20 deported violates both INS regulations and the constitutional right to due process.”
21 *Andriasian*, 180 F.3d at 1041 (finding that “last minute” designation of alternative
22 country without meaningful opportunity to apply for protection “violate[s] a basic
23 tenet of constitutional due process”). See also *Najjar*, 630 Fed. App’x. 724 (“In the
24 context of country of removal designations, last minute orders of removal to a country
25 may violate due process if an immigrant was not provided an opportunity to address
26 his fear of persecution in that country.”)

27 95. In practice, the “guarantee of due process includes the right to a full and
28 fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her

particular claim.” *Aden*, 409 F. Supp. 3d at 1010 (ordering the same for non-citizen petitioner and holding ICE “has an affirmative obligation to make a determination regarding a noncitizen's claim of fear before deporting” them). This is because “third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings.” *Vaskanyan*, 2025 WL 2014208, at *6 (citing *D. V.D.*, 778 F.Supp.3d).

96. The Government’s March 30, 2025, and July 9, 2025 policy memorandums evince Respondents’ intent to unlawfully effectuate a third-country removal, just as they have done with many others already. ICE’s new standard procedure for third-country removals is to not ask a non-citizen whether they are afraid of being removed to a specific third country. Ex. 8. If the non-citizen is provided a “reasonable means and opportunity to speak with an attorney,” then they may be removed within as few as 6 hours after notice of removal. *Id.* If they cannot speak to an attorney, they may be removed in as few as 24 hours. *Id.* If the non-citizen affirmatively states a fear of removal, USCIS is to screen them within 24 hours and unless the non-citizen—again without any mention of counsel—fails to establish they “would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal,” remove them as soon as possible. *Id.*

97. As detailed above, the Government has repeatedly attempted to unlawfully remove deportees to third countries:

- a. March 31, 2025: unlawfully removed at least six non-citizens to El Salvador. *D.V.D. v. DHS*, No. 1:25-cv-10676- BEM (D. Mass. Apr. 30, 2025), ECF No. 86;
- b. May 7, 2025: attempted to deport a flight of non-citizens to Libya without mandatory due process protections, leading to an emergency TRO motion. *D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 7, 2025), ECF No. 91;
- c. May 16, 2025: attempted to remove two Venezuelan nationals on a

day's notice. *A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1368 (2025);

d. May 20, 2025: attempted to deport non-citizens to South Sudan without mandatory process. *D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 20, 2025), ECF No. 116;

e. June 1, 2025: deported six non-citizens to South Sudan without mandatory process. *D.V.D.*, 145 S. Ct. at 2153 (Sotomayor, J., dissenting).

This list is not exhaustive, as Courts around the country have enjoined the Government from effectuating similarly unlawful third-country removals.

98. Respondents are and have been on notice of M.T.M.'s fear-based claims—in writing—and M.T.M.'s representation by counsel in connection with such fear-based claims. Ex. 4. But that did not stop them from attempting to unlawfully remove M.T.M. to Ghana without meaningful notice or any opportunity to assert a fear-based claim. *Supra* ¶¶ 58–62. Instead, Respondents repeatedly refused to acknowledge M.T.M.'s affirmative expression of a fear-based claim as to Ghana, evidencing that Respondents do not adhere to even their own deficient policy considering their refusal to acknowledge his assertion of a fear-based claim. *Id.*

99. If Respondents ever formally notice a third country for removal, M.T.M. would move to reopen his immigration proceedings for designation of a new country of removal and seek to present his fear-based claim to an IJ if applicable. Ex. 4 at 4. M.T.M. would likely succeed in asserting such a fear-based claim given his protected status and previous grant of withholding of removal relief. *See D.V.D.*, 778 F.Supp.3d at 388. Further, based on the statements and actions of countries that have recently accepted third-country removals from the United States, M.T.M. would likely succeed on the claim that these countries would repatriate him to Senegal where he would face torture and/or persecution, in violation of U.S. and international refugee law. *See, e.g.*, Ex. 18 (Eswatini repatriating deportees); Ex. 9 (Ghana doing the same). But there is no indication that Respondents intend to provide M.T.M. with the process

1 that he is due absent a permanent injunction.

2 100. Accordingly, there can be no debate that Respondents' actions here and
3 general policy guidance "violates both INS regulations and the constitutional right to
4 due process," as enumerated by the Ninth Circuit and sister district courts.
5 *Andriasian*, 180 F.3d at 1041 ("last minute" designation of alternative country
6 without meaningful opportunity to apply for protection "violate[s] a basic tenet of
7 constitutional due process"). *See also Najjar*, 630 Fed. App'x. 724 (similar); *Aden*,
8 409 F. Supp. 3d at 1010; *Vaskanyan*, 2025 WL 2014208, at *6.

9 101. Recently, an increasing number of courts in this Circuit and across the
10 country have found the Government's "policy or practice of executing third-country
11 removals" fails to "provid[e] notice and a meaningful opportunity to present fear-
12 based claims, and that such policy or practice constitutes a deprivation of procedural
13 due process." *D.V.D.*, 778 F.Supp.3d at 387–89 ("The Court finds it likely that
14 Defendants have applied and will continue to apply the alleged policy of removing
15 [non-citizens] to third countries without notice and an opportunity to be heard on
16 fear-based claims—in other words, without due process.")

17 102. This Court should join its peers in finding Respondents' third-country
18 removal process is unlawful. *D.V.D.*, 778 F.Supp.3d at 392–93 (mandating due
19 process protections as discussed above and requested herein); *Nadari*, No. 2:25-CV-
20 07893-JLS-BFM, ECF No. 9 (same); *id.*, ECF No. 12 (same); *Vaskanyan*, 2025 WL
21 2014208, at *6–9 (holding "Petitioner's removal to a third country without due
22 process . . . is likely to result in irreparable harm" and enjoining Petitioner's removal
23 to a third country without the same protections mandated in the D.V.D. injunction);
24 *J.R.*, 2025 WL 1810210, at *4 (enjoining Government from removing petitioner to
25 "any third country in the world absent prior approval from this Court"); *Phan*, 2025
26 WL 1993735, at *7 (enjoining third-country removal "without notice and an
27 opportunity to be heard"); *Misirbekov*, 2025 WL 2201470, at *2 (prohibiting
28 "transferring, relocating, or removing Petitioner outside the Southern District of

1 Texas without an Order from the Court”).

2 **CLAIMS FOR RELIEF**

3 **COUNT I**

4 **VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. §**
5 **1231(a)(6)**

6 103. M.T.M. realleges and incorporates by reference the paragraphs above.

7 104. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*,
8 authorizes detention only for “a period reasonably necessary to bring about the [non-
9 citizen’s] removal from the United States.” 533 U.S. at 689, 701.

10 105. M.T.M.’s continued detention has become unreasonable because his
11 removal is not reasonably foreseeable. Therefore, his continued detention violates 8
12 U.S.C. § 1231(a)(6), and he must be immediately released.

13 **COUNT II**

14 **VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. §**
15 **1231(a)(6)**

16 106. M.T.M. realleges and incorporates by reference the paragraphs above.

17 107. The INA and its enacting regulations mandate that a non-citizen be
18 provided the right to assert a fear-based claim for relief from removal. *See Jama*, 543
19 U.S. at 348 (2005) (“If [non-citizens] would face persecution or other mistreatment
20 in the country designated under § 1231(b)(2), they have a number of available
21 remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and]
22 relief under an international agreement prohibiting torture, *see* 8 CFR §§
23 208.16(c)(4), 208.17(a) (2004)”); *Andriasian*, 180 F.3d at 1041 (“Failing to notify
24 individuals who are subject to deportation that they have the right to apply for asylum
25 in the United States and for withholding of deportation to the country to which they
26 will be deported violates . . . INS regulations”).

27 108. Respondents’ third-country removal procedures generally and as
28 applied to M.T.M. run afoul of the INA’s statutory and regulatory protections for

1 asserting a fear-based claim in connection with removal. Therefore, Respondents
2 have violated and intend to further violate the INA.

3 **COUNT III**

4 **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH**
5 **AMENDMENT TO THE U.S. CONSTITUTION**

6 109. M.T.M. realleges and incorporates by reference the paragraphs above.

7 110. The Due Process Clause of the Fifth Amendment forbids the
8 government from depriving any person of liberty without due process of law. U.S.
9 Cont. amend. V. To comply with the Due Process Clause, civil detention must “bear[]
10 a reasonable relation to the purpose for which the individual was committed,” which
11 for immigration detention is removal from the United States. *Demore v. Kim*, 538
12 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Furthermore, “[t]he
13 fundamental requirement of due process is the opportunity to be heard at a
14 meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319,
15 333 (1976) (internal quotations omitted).

16 111. Respondents have violated M.T.M.’s due process rights by continuing
17 to detain him even though his removable is not reasonably foreseeable. Second,
18 Respondents’ third-country removal procedures generally and as applied to M.T.M.
19 violate the Due Process Clause because they provide for third-country removal
20 without affording M.T.M. mandated due process protections, including the
21 opportunity to be heard on a fear claim.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, M.T.M. respectfully requests that this Court:

- 24 a. Assume jurisdiction over this matter;
- 25 b. Declare that M.T.M.’s continued detention violates the Immigration and
- 26 Nationality Act, 8 U.S.C. § 1231(a)(6) and/or the Due Process Clause of the
- 27 Fifth Amendment to the U.S. Constitution;
- 28 c. Order M.T.M.’s immediate release from custody;

1 d. Issue a permanent injunction:

2 (1) Declaring that removal of M.T.M. without meaningful notice and
3 opportunity to assert a fear-based claim violates the Immigration and
4 Nationality Act, 8 U.S.C. § 1231(a)(6) and/or the Due Process Clause
5 of the Fifth Amendment to the U.S. Constitution;

6 (2) Enjoining Respondents from removing M.T.M. to a third country
7 unless Respondents adhere to the following procedures:

8 (a) provide M.T.M. and his counsel a minimum of ten (10) days
9 to raise a fear-based claim for protection prior to removal;

10 (b) if M.T.M. demonstrates reasonable fear of removal to the third
11 country, Respondents must move to reopen M.T.M.'s removal
12 proceedings;

13 (c) if M.T.M. is not found to have demonstrated a reasonable fear
14 of removal to the third country, Respondents must provide a
15 meaningful opportunity, and a minimum of fifteen (15) days for
16 M.T.M. to seek reopening of his immigration proceedings.

17 e. Award M.T.M. all costs incurred in maintaining this action, including
18 attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504, 28
19 U.S.C. § 2412, and on any other basis justified by law; and

20 f. Grant any other further relief this Court deems just and proper.
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Dated: October 9, 2025

Respectfully submitted,
/s/ Pirzada Ahmad

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Counsel for Petitioner

VERIFICATIONS PURSUANT TO 28 U.S.C. § 2242 AND LR 83-16.2

I am submitting this verification concurrently on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition in a language accessible to Petitioner. Based on those discussions, I hereby verify that the factual statements made in this Amended Petition for Writ of Habeas Corpus are true and correct to the best of my and Petitioner's knowledge.

Executed on this 6th day of October 2025 in New York, NY.

Respectfully submitted,
Dated: October 6, 2025 /s/ Pirzada Ahmad
Counsel for Petitioner

I, Petitioner, have discussed with my counsel the events described in this Amended Petition and verify that the factual statements therein are true and correct to the best of my knowledge.

Executed on this 6th day of October 2025 in McFarland, CA.

Dated: October 6, 2025 /s/ M.T.M.
Petitioner