

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

ABRAHIM BUSH ABRAHIM MANAGO,

Petitioner,

v.

CRYSTAL CARTER, *et al.*,

Respondents.

Case No. 5:25-cv-03183-JWL

MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR TEMPORARY
RESTRAINING ORDER

INTRODUCTION

This Motion for Temporary Restraining Order “presents a simple question: before the United States forcibly sends [Mr. Manago] to a country other than [his] country of origin, must [he] be told where [he is] going and be given a chance to tell the United States that [he] might be killed if sent there?” *D.V.D. v. U.S. Dep’t. of Homeland Security*, 778 F. Supp. 3d 355, 364 (D. Mass. 2025) (“*D.V.D. I*”), at *1.

As alleged in his Verified Petition for Writ of Habeas Corpus (ECF No. 1), Mr. Manago is a Sudanese political refugee who was detained and subjected to 10 days of physical and psychological torture because of his opposition to the current regime, and he was granted withholding of removal under the Immigration and Nationality Act because he demonstrated that he faced a likelihood of persecution if returned to his homeland. As a result of the immigration court’s decision, Respondents cannot lawfully deport Mr. Manago to Sudan. However, pursuant to a March 30, 2025 guidance document issued by the Department of Homeland Security (DHS), Mr. Manago faces the risk of deportation to an unspecified third country, with which he has no ties whatsoever, and Respondents have said that they will provide him with no notice and no review,

“meaning that deportations to a third country can occur without any consideration of the individual risks facing a particular alien.” *D.V.D. I*, 778 F. Supp. 3d at 368.

The relief Mr. Manago seeks by this motion is extremely narrow: he only asks the Court to preserve the status quo and prevent him from being deported without due process before the Court can consider the merits of his habeas petition. For the reasons below, he respectfully suggests that his motion should be granted.

BACKGROUND

A. Mr. Manago’s withholding of removal case and prolonged detention

In Sudan, Mr. Manago participated in a nonviolent student protest march in December 2018. Pet. ¶ 21. During this march, the protesters were surrounded by security forces and attacked with tear gas and bullets. *Id.* Mr. Manago and some of the other students were detained by security forces and sequestered in a secret facility in Khartoum. *Id.* Mr. Manago was held in this secret facility for ten days, during which time he was hog-tied, repeatedly hosed down with ice-cold water, and subjected to other physical and psychological torture. Pet. ¶ 22. He was only able to secure his release because his uncle had connections with the Sudanese police. *Id.* After his torture ordeal, Mr. Manago tried to lie low, but armed conflict reached his family’s town and his father’s business was burned, which made him realize he had to flee Sudan. Pet. ¶ 23. He subsequently fled his native country for the United States, entering on or about July 10, 2024, and was detained by ICE shortly thereafter. *Id.* He has been detained ever since, a period of about one year. *Id.*

Mr. Manago’s immigration court merits hearing was held on January 28, 2025, and he proved to the immigration judge’s satisfaction, by a preponderance of the evidence, that he faced persecution if returned to Sudan. Pet. ¶ 24; *see also* 8 C.F.R. § 208.16(b)(1)-(2) (setting out standard for grant of withholding of removal under the INA). The immigration judge’s decision

specified the country of removal to be Sudan, but withheld removal to that country due to the risk of persecution Mr. Manago faced there. ECF No. 1-1. “Withholding of removal is a mandatory form of protection preventing deportation to the country or countries where an IJ finds that the individual is more than likely to be persecuted.” *D.V.D. I*, 778 F. Supp.3d at 366 (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 208.16). The immigration court’s order did not specify any other countries to which the United States could remove Mr. Manago. ECF No. 1-1. DHS did not appeal that decision, and therefore it became final thirty days later, on February 27, 2025. 8 C.F.R. §§ 1003.38-1003.39. Mr. Manago has now been detained in excess of six months past the date of the immigration court’s order, in contravention of the Supreme Court’s decision in *Zadvydas*, and he has filed a petition for writ of habeas corpus requesting his release from detention.

B. Third-country removal

“In certain circumstances, where the Government may not remove an alien to any country covered by that alien’s order of removal, the Government may still remove the alien to any ‘country whose government will accept the alien into that country.’” *D.V.D. I*, 778 F. Supp. 3d at 367 (citing 8 U.S.C. § 1231(b)(2)(E)(vii)). These are called “third-country removals.” *Id.* However, “third-country removals are subject to the same mandatory protections that exist in removal [...] proceedings”; in other words, the United States may not remove a noncitizen to a third country where they would face torture or persecution. *Id.*

On March 30, 2025, DHS issued updated guidance on third-country removals, dictating that noncitizens can be removed to a third country without any notice whatsoever. *See D.V.D. I*, 778 F. Supp. 3d at 368. Respondents’ use of third-country removals in recent months has ranged from merely aggressive to downright lawless. In one high-profile case, one of the plaintiffs in *D.V.D.*, referred to in court filings as O.C.G., was granted withholding of removal to Guatemala

by an immigration judge, and the immigration court's order did not name Mexico as a country of removal. *Id.* Nonetheless, Respondents removed O.C.G. to Mexico, which then promptly returned him to Guatemala, the very place a U.S. immigration judge said he could not be sent. *D.V.D. v. U.S. Dep't of Homeland Security*, --- F. Supp.3d ---, 2025 WL 1487238 (D. Mass. May 23, 2025) ("*D.V.D. III*"), at *1. The court in that case found that "O.C.G. is likely to succeed in showing that his removal lacked any semblance of due process." *Id.* In another now-notorious case, Respondents deported Venezuelans to a "Salvadoran mega-prison" in "willful disregard for" an order of the U.S. District Court for the District of Columbia. *J.G.G. v. Trump*, 2025 WL 1119481 (D.D.C. April 16, 2025), at *1. Those Venezuelans were subsequently refouled to Venezuela in a prisoner swap, despite the fact that some of them had pending asylum or fear-based claims pending in immigration court. See Aaron Reichlin-Melnick, *United States Frees Venezuelans Held in El Salvador Following Prisoner Swap*, July 21, 2025, <https://www.americanimmigrationcouncil.org/blog/united-states-frees-venezuelans-el-salvador-prisoner-swap/> (noting that "many of the men had previously fled Venezuela seeking asylum in the United States and were sent to El Salvador before their U.S. asylum cases had been decided.")¹

¹ It may seem contradictory for Mr. Manago to argue in his Petition that there is no significant likelihood of his removal in the reasonably foreseeable future while at the same time seeking emergency relief to prevent such removal. However, Respondents have shown the ability to rush noncitizens onto planes and out of the country when they wish. Just a few days ago, a federal district court in D.C. was forced to intervene and grant a TRO when Respondents attempted to deport 600 Guatemalan children to Guatemala, some of them with pending claims in immigration court, in the dead of night on a Sunday over a holiday weekend. See NPR, "Hundreds of unaccompanied Guatemalan children can stay in the U.S. for now, judge says" (Aug. 31, 2025) <https://www.npr.org/2025/08/31/nx-s1-5524312/federal-judge-block-guatemalan-children-deportation> (noting that "the U.S. government was planning to quickly remove as many as 600 Guatemalan children ... before allowing the children to have their cases heard in court"). In another high-profile case, Respondents announced a sudden intention and ability to deport Kilmar Abrego Garcia to Uganda on 72 hours' notice. See Devan Cole, "Trump administration might deport Kilmar Abrego Garcia to Uganda" (Aug. 23, 2025) <https://www.cnn.com/2025/08/23/politics/kilmar-abrego-garcia-uganda-deport>.

In two other widely reported cases, migrants were deported to South Sudan and Eswatini. In *D.V.D.*, the South Sudan case, “the non-citizens at issue had fewer than 24 hours’ notice, and zero business hours’ notice, before being put on a plane and sent to a country as to which the U.S. Department of State issues the following warning: ‘Do not travel to South Sudan due to **crime, kidnapping, and armed conflict.**’” *D.V.D. v. U.S. Dep’t of Homeland Security*, 2025 WL 1453640 (D. Mass. May 21, 2025) (“*D.V.D. II*”), at *1 (citing U.S. Department of State travel advisory) (emphasis in original). Meanwhile, the mainstream media reported that noncitizens sent to the small African nation of Eswatini would simply be refouled to their home countries. See “5 immigrants deported by the US to Eswatini in Africa are held in solitary confinement,” July 17, 2025, <https://www.politico.com/news/2025/07/17/5-immigrants-deported-by-the-us-to-eswatini-in-africa-are-held-in-solitary-confinement-00461712>.

Mr. Manago reasonably fears that he could be deported without notice to a country where his life would be directly endangered (e.g., by violent civil war in South Sudan or confinement in a notorious torture prison in El Salvador), or that he will be sent to a country which will simply then refool him to Sudan, where an immigration judge has already ruled that he faces politically motivated persecution. With this motion, he seeks only reasonable notice and a chance to have any fear claim heard by an immigration judge before he is removed.

LEGAL STANDARD

To obtain a TRO, a plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). To establish a likelihood of success on the merits, a plaintiff

need not demonstrate “a certainty of success”, but only a “reasonable likelihood.” *Diné Citizens Against Ruining Our Environment v. Jewell*, 839 F.3d 1276, 1282 (10th Cir. 2016).

ARGUMENT

I. Mr. Manago Is Likely to Succeed on the Merits

In analogous cases, district courts around the country have not hesitated to conclude that petitioners like Mr. Manago are likely to succeed on the merits of their challenge to third-country removals without notice or due process. In the leading case on this issue, *D.V.D. I*, the court concluded that “Plaintiffs have established they are likely to succeed in showing that Defendants have a policy or practice of executing third-country removals without providing notice and a meaningful opportunity to present fear-based claims, and that such policy or practice constitutes a deprivation of procedural due process.” *D.V.D. I*, 778 F. Supp. 3d at 387. The court relied in part on the Supreme Court’s decision in *Trump v. J.G.G.*, 604 U.S. --, 2025 WL 1024097, at *2, in which “all nine Supreme Court justices agreed” that “notice must be afforded within a reasonable time and in such a manner as will allow [noncitizens] to actually seek ... relief in the proper venue before such removal occurs.” *D.V.D. I*, 778 F. Supp. 3d at 387. Although the Government argued that the noncitizens “could have brought up, during their initial removal proceedings, all the countries where they have concerns that they will be tortured,” the court rejected this as “impossible as a practical matter, since the immigration court does not normally consider claims about countries not proposed as a country of removal.” *Id.* at 388. The court also found that “the procedures outlined in DHS’s March Guidance” do not “satisfy due process. The March Guidance provides no process whatsoever to individuals whom DHS plans to remove to a third country from which the United States has received blanket diplomatic assurances.” *Id.* at 389-90. Significantly,

as the court noted, “blanket assurances offer no protection against ... chain refoulement, whereby the third country proceeds to return an individual to his country of origin.” *Id.* at 390.

In another case, *J.R. v. Bostock*, 2025 WL 1810210 (W.D. Wash. June 30, 2025), at *1, the court granted an ex parte TRO where the plaintiff “face[d] imminent deportation to a country that is neither his country of origin nor the country where the immigration judge ordered [him] to be sent.” The court found that “as the Government has not notified [the noncitizen] what country to which it intends to deport him, he has been denied an opportunity to seek withholding under CAT. Thus the Court has serious questions about the merits of his due process claim that the Government violated his rights by attempting third-country removals without providing him notice and an opportunity to seek CAT protection.” *Id.* at *3.

Recently, other courts have also granted TRO relief in legally indistinguishable cases. In *Misirbekov v. Venegas*, -- F. Supp. 3d --, 2025 WL 2201470 (S.D. Tex. Aug. 1, 2025), for example, the court enjoined third-country removal, noting that “Petitioner fears that he will be removed to a third country, without due process, before this Court has an opportunity to rule on his petition” and holding that he was “likely to be successful on the merits of his habeas corpus petition” because “it has been more than six months since the removal period began [and] Petitioner has also provided good reason to believe there is no significant likelihood of removal in the foreseeable future.” *Id.* at *1-2. In a similar case, *Ambila v. Joyce*, 2025 WL 1534852 (D. Me. May 28, 2025), the petitioner, like Mr. Manago in this case, sought relief under *Zadvydas* after he was detained by ICE for eight months. He sought a TRO to “prohibit Respondents from transferring Petitioner to a facility outside of this Court’s jurisdiction and from removing Petitioner from the continental United States during the pendency of this proceeding,” or, alternatively, to be provided “with at least 2 business days’ notice of any scheduled transfer or removal.” *Ambila*, 2025 WL 1534852, at

*3. In discussing the petitioner’s likelihood of success on the merits, the court found a likelihood of success on the underlying *Zadvydas* claim because the court could not “reach the conclusion that the Petitioner’s removal ... is significantly likely to occur in the reasonably foreseeable future.” *Id.* at *4 (citing *Zadvydas*, 533 U.S. at 701). Similarly, in *Vaskanyan v. Janecka*, 2025 WL 2014208 (C.D. Cal. June 25, 2025) at *5, the petitioner had filed a habeas petition under *Zadvydas* and sought a TRO to prevent his “removal to an undesignated third country without notice and an opportunity to be heard.” The court found he was likely to succeed on his *Zadvydas* claim since his “detention has exceeded the presumptively reasonable six-month period, and he has ‘good reason to believe’ that there is no significant likelihood of his removal in the reasonably foreseeable future.” *Id.* at *4-*5.

In short, the numerous district court cases discussed above demonstrate that there is ample authority supporting a grant of injunctive relief to Mr. Manago under these circumstances.

II. Mr. Manago Faces Irreparable Harm

“The irreparable harm factor likewise weighs in [Mr. Manago’s] favor. Here, the threatened harm is clear and simple: persecution, torture and death. It is hard to imagine harm more irreparable.” *D.V.D. I*, 778 F. Supp. 3d at 391. Respondents “contend that they may remove aliens to third countries with no possibility for review. It is undoubtedly ‘irreparable injury to reduce to a shell game the basic lifeline of due process before an unprecedented and potentially irreversible removal occurs.’” *Id.*, citing *J.G.G. v. Trump*, 2025 WL 914682, at *30 (D.C. Cir. March 26, 2025) (Millett, J., concurring) (internal citation omitted). *See also Misirbekov*, 2025 WL 2201470, at *2 (“Petitioner would suffer irreparable harm if Respondents were allowed to transfer, relocate or remove Petitioner from this Court’s jurisdiction. Petitioner would lose the opportunity for his petition to be heard and, considering the procedures outlined in DHS’ March Guidance, likely face

extradition [], political persecution, torture, and death”) *Vaskanyan*, 2025 WL 2014208, at *6 (“Petitioner’s removal to a third country without due process ... is likely to result in irreparable harm at this time [...] [T]he Court is persuaded by Petitioner’s argument that Respondents may try to remove him to a third country without affording him adequate notice and an opportunity to be heard. This is irreparable harm, plain and simple.”)

III. Balance of Equities and Public Interest

The third and fourth *Winter* factors “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). In cases implicating removal, “there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.” *Id.* at 436; *see also E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 678 (9th Cir. 2021) (“the public has an interest in ensuring that we do not deliver aliens into the hands of their persecutors”) (internal quotation marks omitted); *Nunez v. Boldin*, 537 F. Supp. 578, 587 (S.D. Tex. 1982) (protecting people who face persecution abroad “goes to the very heart of the principles and moral precepts upon which this country and its Constitution were founded”). The public interest weighs in favor of injunctive relief, since “DHS has no ‘interest in the perpetuation of unlawful agency action.’” *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022) (quoting *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)). “To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *Id.* (internal quote marks omitted). Furthermore, “neither equity nor the public’s interest are furthered by allowing violations of federal law to continue.” *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022).

Courts in cases like this one have found that the last two *Winter* factors tip in a petitioner’s favor. *Misirbekov*, 2025 WL 2201470, at *2 (noting that “[i]n comparison to the persecution

Petitioner would face, Respondent would suffer little to no harm if Petitioner's Motion were granted. Respondent would merely be required to obtain an Order from this Court before transferring, relocating, or removing Petitioner from this Court's jurisdiction"); *Ambila*, 2025 WL 1534852, at *5; *Vaskanyan*, 2025 WL 2014209, at *7; *D.V.D. I*, 778 F. Supp. 3d at 391-92. In short, all four factors weigh in Mr. Manago's favor.

CONCLUSION

Mr. Manago seeks only very limited relief here: adequate notice of any intended third-country removal so that, if necessary, he can seek relief from this court or an immigration judge to prevent his deportation to a place his life would be in danger or which would deport him back to Sudan. Mr. Manago respectfully requests this Court preserve the status quo and prevent Respondents from removing him without due process while his habeas case is pending.

Dated: September 3, 2025

Respectfully submitted,

/s/ James D. Jenkins

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's CM/ECF system this 3rd day of September, 2025, and that a true copy of the foregoing was served pursuant to Fed. R. Civ. P. 4(i) via certified United States mail, sent this 3rd day of September, 2025 to the Respondents at the following addresses, and a courtesy copy was sent via electronic mail to the U.S. Attorney's Office for the District of Kansas at russell.keller@usdoj.gov.

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