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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Case No.: '26CV2206 CAB BLM

MODU SARR,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, JEREMY CASEY, Warden of
Imperial Regional Detention Facility

Respondents.

**Petition for
Writ of
Habeas Corpus**

**[Civil Immigration Habeas,
28 U.S.C. § 2241]**

¹ Mr. Sarr's financial affidavit showing that he qualifies for CJA counsel is filed under separate cover.

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1 **I. Introduction**

2 Petitioner Modu Sarr of Gambia was ordered removed on August 13, 2019.
3 He meanwhile has been detained since November 2025. Thus, under any
4 standard, the government has detained him longer than it is permitted under
5 *Zadvydas v. Davis*, 533 U.S. 678 (2001).

6 And that is especially so because, since November, Mr. Sarr has asked
7 Respondents for updates on his pending deportation. All they tell him is that they
8 are having trouble getting him a travel document or that they “don’t want to give
9 [him] any more information.” Ex. A ¶ Tk. That is not surprising. Respondents
10 consider Gambia to be “at-risk of noncompliance” when it comes repatriating its
11 citizens. Ex. B at 7; *see also Drammeh v. Noem*, No. 25-CV-3412 JLS (JLB),
12 2026 WL 36078, at *3 (S.D. Cal. Jan. 6, 2026) (discussing in another § 2241 case
13 in which Respondents failed to obtain a travel document from Gambia). In other
14 words, there is “no significant likelihood of removal in the reasonably foreseeable
15 future.” *Zadvydas v. Davis*, 533 U.S. 678 (2001). Thus, Mr. Sarr must be released.

16 **II. Statement of facts and legal background.**

17 **A. Mr. Sarr comes to the United States.**

18 Mr. Sarr came to the United States in 2010. Ex. A ¶ 1. He had married an
19 American woman and got a green card. *Id.* They eventually divorced and his
20 green card expired. Ex. A ¶ 2. His ex-wife received a letter that he must appear in
21 immigration court, but did not inform Mr. Starr. *Id.* Mr. Sarr was ordered
22 removed on August 13, 2019. Ex. A ¶ 3.

23 In November 2025, Mr. Sarr got a speeding ticket. Ex. A ¶ 4. He was taken
24 into Respondents custody. *Id.* Respondents said that they still intended to remove
25 him to Gambia, but they had trouble obtaining a travel document. Ex. A ¶ 5.
26 Whenever Mr. Sarr asked for updates, he was told the same or that they “don’t
27 want to give [him] any more information.” *Id.*

B. Third-country removals for noncitizens granted CAT relief are rare, but as of July 2025, third-country removals can happen with no or little notice and result in noncitizens' return to their countries of origin.

In fiscal year 2024, about 2,500 people won withholding or deferral of removal under the Immigration Nationality Act or Convention Against Torture ("CAT"). *See* Ex. D at 2 (Congressional Research Service, *FY2024 Immigration Court Data: Case Outcomes* (Feb. 3, 2025)). Here is what that means:

When an immigration judge grants CAT relief, he issues a removal order and simultaneously issues an order restricting removal with respect to the country the person demonstrated a risk of persecution. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 535 (2021) (describing the mechanics of withholding or deferral of removal). While ICE can remove that person granted withholding to an alternative country, the removal statute specifies restrictive criteria for identifying appropriate countries. *See* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f). Further, "foreign governments 'routinely deny' requests to receive people who lack a connection to the would-be receiving country." *Puertas-Mendoza*, 2025 WL 3142089 at *3.

If ICE identifies an appropriate third country of removal, the noncitizen must then have notice and an opportunity to seek relief from removal to that new country. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) ("If [non-citizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture."); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (holding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process").

As a result of these restrictions and procedures, very few people who

1 receive CAT relief are deported to a third country. Between fiscal years 2020 and
2 2023, the most recent fiscal years for which complete and accurate data are
3 publicly available, ICE removed a total of three people granted withholding or
4 other CAT relief to alternative countries. Ex. E (ICE removal data).²

5 That said, last summer, ICE began removing more immigrants it could not
6 previously remove to third countries, which have often removed those people
7 back to their countries of origin. ICE implemented new policies to do so. On July
8 9, 2025, ICE rescinded previous guidance meant to give immigrants a
9 “‘meaningful opportunity’ to assert claims for protection under the Convention
10 Against Torture before initiating removal to a third country.” Ex. C (July 9, 2025,
11 ICE third-country removal guidance).

12 Now, ICE may remove an immigrant to a third country without any notice.
13 It may do so if, in the sole view of the State Department, the United States has
14 received “credible” “assurances” from that country that deportees will not be
15 persecuted or tortured. *Id.* at 1. ICE deported approximately twenty people to
16 Equatorial Guinea last month without notifying them that they were being
17 deported there under this provision. Third Country Deportation Watch, *Equatorial*
18 *Guinea*, Refugees International & Human Rights First (Jan. 21, 2026).³

20 ² The data in Exhibit E are collected from the Deportation Data Project, which
21 “collects and posts public, anonymized U.S. government immigration
22 enforcement datasets,” “primarily [obtained] through Freedom of Information Act
23 requests.” For the complete raw data, one can visit
24 <https://deportationdata.org/data/ice>, select “Removals,” and filter for each
25 removal classified as “[5C] Relief Granted – Withholding of Deportation /
26 Removal” or “[5D] Final Order of Deportation / Removal – Deferred Action
27 Granted.” The chart attached as Exhibit E highlights all such cases in which the
28 noncitizen was removed to a country other than their country of origin. The
remaining unhighlighted noncitizens either won withholding or CAT relief with
respect to a third country that was not their country of origin, including dual
citizens; had withholding or CAT relief terminated; or agreed to return to their
country of origin despite a grant of withholding or CAT relief.

³ Available at <https://www.thirdcountrydeportationwatch.org/equatorial-guinea>.

1 If a country fails to credibly promise not to persecute or torture releasees,
 2 ICE may remove immigrants with only 24 hours' notice. "In exigent
 3 circumstances," a removal may take place in six hours, "as long as the alien is
 4 provided reasonably means and opportunity to speak with an attorney prior to the
 5 removal." *Id.*

6 Regardless of how much notice noncitizens receive of the third country ICE
 7 intends to deport them to, ICE "will not affirmatively ask whether the alien is
 8 afraid of being removed to the country of removal." *Id.* (emphasis original). If the
 9 noncitizen "does not affirmatively state a fear of persecution or torture if removed
 10 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]
 11 may proceed with removal to the country identified on the notice." *Id.* at 2.

12 Under this policy, the United States has deported several dozen noncitizens
 13 to prisons and military camps in Rwanda, Eswatini, South Sudan, Ghana, and
 14 Equatorial Guinea. Those who have not been returned to their home countries are
 15 still detained, in countries to which they have never been, without charge.
 16 Nokukhanya Musi & Gerald Imray, *10 more deportees from the US arrive in the*
 17 *African nation of Eswatini*, Associated Press (Oct. 6, 2025)⁴; *see also* Gerald
 18 Imray, *A Cuban man deported by the US to Africa is on a hunger strike in prison,*
 19 *his lawyer says*, Associated Press (Oct. 23, 2025)⁵; Frank Chothia, *Eswatini*
 20 *confirms receiving \$5.1m from the US for accepting deportees*, BBC (Nov. 18,
 21 2025)⁶; Nick Alexandra, *The Toll of Trump's African Deportation Agreements*,
 22 New Lines Magazine (Dec. 10, 2025)⁷. Others have been returned to their home

23
 24 ⁴ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

25 ⁵ Available at <https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859>.

26 ⁶ Available at <https://www.bbc.com/news/articles/cq50vjdx368o>.

27 ⁷ Available at <https://newlinesmag.com/reportage/the-toll-of-trumps-african-deportation-agreements/>.
 28

1 countries, even though they had received orders protecting them against their
 2 return under the Convention Against Torture. *See* Third Country Deportation
 3 Watch, *Ghana*, Refugees International & Human Rights First (Dec. 5, 2025);⁸
 4 Heriff Bojang Jr., *Equatorial Guinea sends eight of Trump's nine deportees home,*
 5 *braces for new arrivals*, The Africa Report (Jan. 16, 2026).⁹

6 **III. This Court has jurisdiction.**

7 This Court has jurisdiction to consider Mr. Starr's claim of unlawful
 8 detention and unlawful third-country removal under 28 U.S.C. § 2241.

9 The government's recent argument otherwise, that 8 U.S.C. § 1252(g) strips
 10 this Court of jurisdiction, "has been repeatedly 'rejected as implausible' by the
 11 Supreme Court." *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS, 2025 WL
 12 316821, *1 (S.D. Cal. Nov. 8, 2025) (quoting *Department of Homeland Sec. v.*
 13 *Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). The government's argument
 14 "would eliminate judicial review of immigration [detainees'] claims of unlawful
 15 detention . . . inconsistent with *Jennings v. Rodriguez* and the history of judicial
 16 review of the detention of noncitizens under 28 U.S.C. § 2241." *Phan v. Noem*,
 17 No. 25-cv-2422-RBM, 2025 WL 2898977, *3 (S.D. Cal. Oct. 10, 2025)
 18 (collecting cases agreeing on this jurisdictional point).

19 Further, this Court has jurisdiction to consider and resolve constitutional
 20 questions of the process due to those threatened with removal in habeas
 21 proceedings. *See AARP v. Trump*, 605 U.S. 91, 94–99 (2025) (*per curiam*).

22 **IV. Claim 1: Mr. Starr's detention violates *Zadvydas* and 8 U.S.C. § 1231.**

23 **A. The statute renders detention mandatory for three months after**
 24 **removal is ordered, and allowable after six months after removal**
 25 **is ordered only if there is a significant likelihood of removal in**
 26 **the reasonably foreseeable future.**

27 Mr. Sarr acknowledges that ICE must detain him during the "removal
 28

⁸ Available at <https://www.thirdcountrydeportationwatch.org/ghana>.

⁹ Available at <https://www.theafricareport.com/405291/equatorial-guinea-sends-eight-of-trumps-nine-deportees-home-braces-for-new-arrivals/>.

1 period,” which typically spans the first 90 days after the immigrant is ordered
 2 removed. 8 U.S.C. § 1231(a)(1)–(2). After that, detention becomes discretionary.
 3 *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as
 4 removal happens within days or weeks.

5 But some detainees, like Mr. Starr, cannot be removed quickly. There are
 6 many reasons why this may be. Perhaps their removal “simply require[s] more
 7 time for processing,” or they are “ordered removed to countries with whom the
 8 United States does not have a repatriation agreement,” or their countries “refuse to
 9 take them,” or they are “effectively ‘stateless’ because of their race and/or place
 10 of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these
 11 and other circumstances, detained immigrants can find themselves trapped in
 12 detention for months, years, decades, or even the rest of their lives.

13 If federal law were understood to allow for “indefinite, perhaps permanent,
 14 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at
 15 699. In *Zadvydas*, the Supreme Court avoided constitutional concerns by
 16 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

17 *Zadvydas* held that detention is “presumptively reasonable” for six months.
 18 *Id.* at 701. After that, it operates under a burden-shifting framework. First, Mr.
 19 Sarr must provide “good reason to believe that there is no significant likelihood of
 20 removal in the reasonably foreseeable future.” *Id.* Then, “the Government must
 21 respond with evidence sufficient to rebut that showing.” *Id.* If it does not, Mr. Sarr
 22 must be released.

23 The *Zadvydas* standard can be broken down into two parts relevant here:

24 **“Significant likelihood of removal.”** This component focuses on *whether*
 25 Mr. Sarr will likely be removed: Continued detention is permissible only if it is
 26 “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533 U.S.
 27 at 701. This inquiry targets “not only the *existence* of untapped possibilities, but
 28 also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.

1 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added).

2 In other words, even if “there remains *some* possibility of removal,” a
3 petitioner can still meet its burden if successful removal is not significantly likely.
4 *Kacanvic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa.
5 Nov. 8, 2002) (emphasis added).

6 **“In the reasonably foreseeable future.”** This component of the test
7 focuses on *when* Mr. Sarr will likely be removed: Continued detention is
8 permissible only if removal is likely to happen “in the reasonably foreseeable
9 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
10 removal efforts.

11 If the Court has “no idea of when it might reasonably expect [Petitioner] to
12 be repatriated, this Court certainly cannot conclude that his removal is likely to
13 occur—or even that it might occur—in the reasonably foreseeable future.” *Palma*
14 *v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July
15 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss.
16 Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y.
17 2019)). Thus, even if this Court concludes that Mr. Sarr “would *eventually*
18 receive” a travel document, he can still meet his burden by giving good reason to
19 anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2
20 (E.D. Mich. Nov. 14, 2016).

21 **B. Mr. Sarr provides good reason to believe after nine months of**
22 **detention that there is no significant likelihood removal in the**
23 **reasonably foreseeable future.**

24 Mr. Starr’s order of removal was entered, August 13, 2019. *See* Ex. A ¶ 4.
25 The presumption that him detention is reasonable thus concluded in September or
26 October of 2019. Meanwhile, Mr. Starr’s personal experience and ICE’s historical
27 practice proves good reason to believe that he will not be removed in the
28 reasonably foreseeable future.

The *Zadvydas* removal period begins when an alien is ‘ordered removed,’

1 and the removal order becomes ‘administratively final.’” *Guzman Chavez*, 594 U.S.
2 at 533–34; 8 U.S.C. § 1231(a)(1)(B). It lasts for “*six months* after a final order of
3 removal—that is, *three months* after the statutory removal period has ended.” *Kim*
4 *Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Indeed, the statute
5 defining the beginning of the removal period is linked to the latest of several dates,
6 as relevant here, all tied to when the final removal order is issued. § 1231(a)(1)(B).¹⁰

7 Thus, the removal period began when Mr. Sarr was ordered removed. And
8 even if the government makes its typical argument that the removal period did not
9 begin until Mr. Sarr was detained, it makes no difference. That is because Mr.
10 Sarr was detained in November 2025. The removal period has thus run and Mr.
11 Sarr will likely have been detained for six months by the time briefing is
12 completed on this case.

13 Furthermore, *Zadvydas*’s six-month presumptively reasonable period is
14 “just that—a presumption,” which can be rebutted with evidence. *Trinh v.*
15 *Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018). “If there comes a point
16 during the six-month period at which it is ‘no longer reasonably foreseeable’ that
17 a person will actually be removed, then detention ‘is no longer authorized,’” and
18 the petitioner must be released. *Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 376
19 (D. Md. 2025) (quoting *Zadvydas*, 533 U.S. at 699–700).

20 “At no point did the *Zadvydas* Court preclude a noncitizen from
21 challenging their detention before the end of the presumptively reasonable six-
22 month period.” *Trinh*, 466 F. Supp. 3d at 1092. Instead, *Zadvydas* analogized to

24 ¹⁰ Those dates are, specifically, (1) “[t]he date the order of removal becomes
25 administratively final;” (2) “[i]f the removal order is judicially reviewed and if a
26 court orders a stay of the removal of the alien, the date of the court’s final order;”
27 or (3) “[i]f the alien is detained or confined (except under an immigration
28 process), the date the alien is released from detention or confinement.” *Id.* Those
“three specific triggers” of the removal period are exclusive. *Guzman Chavez*, 594
U.S. at 545.

1 the “similar” rule in *County of Riverside v. McLaughlin*, 500 U.S. 44, 56–58
2 (1991), in which the Court “adopt[ed] [a] presumption, based on lower court
3 estimate of time needed to process arrestee, that 48–hour delay in probable-cause
4 hearing after arrest is reasonable, hence constitutionally permissible.” *Zadvydas*,
5 533 U.S. at 701 (describing *Riverside*). *Riverside*’s 48-hour rule “is a rebuttable
6 presumption.” *Cesar*, 542 F. Supp. 2d at 904. It stands to reason that “the
7 *Zadvydas* presumption, like the *Riverside* presumption, is rebuttable.” *Munoz-*
8 *Saucedo*, 789 F. Supp. 3d at 397.

9 And Mr. Starr’s personal experience confirms that removal is not likely in
10 the reasonably foreseeable future. As discussed above, Respondents view Gambia
11 as “at-risk of noncompliance” when it comes repatriating its citizens. Ex. B at 7;
12 *see also Drammeh v. Noem*, No. 25-CV-3412 JLS (JLB), 2026 WL 36078, at *3
13 (S.D. Cal. Jan. 6, 2026) (discussing in another § 2241 case in which Respondents
14 failed to obtain a travel document from Gambia). In other words, there is “no
15 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*
16 *v. Davis*, 533 U.S. 678 (2001).

17 *Second*, in light of Mr. Starr’s statutory and international right to seek
18 protection from persecution and chain refoulement, there is no reason to think him
19 removal could happen in the reasonably foreseeable future. Even if ICE identified
20 a third country, Mr. Sarr “would be entitled to seek fear-based relief from removal
21 to that country, which would require additional, lengthy proceedings.” *Munoz-*
22 *Saucedo*, 789 F. Supp. 3d at 399; *accord Villanueva*, 2025 WL 2774610, at *10
23 (“[A]ny efforts to remove Villanueva to a third country would likely be delayed
24 by proceedings contesting his removal to the third country finally identified.”).

25 For all of these reasons, Mr. Sarr has shown good reason to believe that him
26 removal is not significantly likely in the reasonably foreseeable future. This Court
27 should grant the petition.
28

1 **V. Claim 2: ICE must provide adequate notice and an opportunity to be**
2 **heard before removing Mr. Sarr to a third country.**

3 In addition to unlawfully detaining him, ICE's policies threaten Mr. Starr's
4 unlikely, but potentially abrupt, removal to an unidentified third country without
5 adequate notice and an opportunity to be heard. These policies violate the Fifth
6 Amendment, the Convention Against Torture, and implementing regulations.

7 **A. Legal background: Due process requires notice and an**
8 **opportunity to be heard before deportation to third countries.**

9 As noted, U.S. law enshrines mandatory protections against dangerous and
10 life-threatening removal decisions through the withholding of removal statute and
11 implementations of the Convention Against Torture. *See* 8 U.S.C.

12 § 1231(b)(3)(A); 8 C.F.R. §§ 208.16, 1208.16 (withholding); FARRA 2681-822
13 (codified as 8 U.S.C. § 1231 note; 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18,
14 1208.16-1208.18 (CAT).

15 Further, the third country removal statute involves a “four-stage inquiry set
16 forth in § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash.
17 2019) (summarizing cases on this point); *see also Hadera v. Gonzales*, 494 F.3d
18 1154, 1156–59 (9th Cir. 2007) (explaining the stages). The first step is a
19 noncitizen designates “one country to which the noncitizen wants to be removed.”
20 *Aden*, 409 F. Supp. 3d at 1006. If the noncitizen does not designate a country, or
21 that country does not accept them, then “the IJ may at step two designate a
22 country of which the noncitizen is a subject, national, or citizen.” *Id.* at 1007. If
23 “no country satisfies” that requirement, the step three allows designation and
24 removal to a number of other countries. 8 U.S.C. § 1231(b)(2)(E). The
25 government can proceed to the fourth stage—removal to “another country”—only
26 if it determines it is “impracticable, inadvisable, or impossible to remove the alien
27 to each country described” in the third stage. 8 U.S.C. § 1231(b)(2)(E)(vii).

28 When pursuing a third-country removal subject to all the above constraints,
the government must provide notice of the third-country removal and an

1 opportunity to respond. Due process requires “written notice of the country being
2 designated” and “the statutory basis for the designation, i.e., the applicable
3 subsection of § 1231(b)(2).” *Aden*, 409 F. Supp. 3d at 1019.

4 The government must also “ask the noncitizen whether he or he fears
5 persecution or harm upon removal to the designated country and memorialize in
6 writing the noncitizen’s response. This requirement ensures DHS will obtain the
7 necessary information from the noncitizen to comply with section 1231(b)(3) and
8 avoids [a dispute about what the officer and noncitizen said].” *Id.* “Failing to
9 notify individuals who are subject to deportation that they have the right to apply
10 for asylum in the United States and for withholding of deportation to the country
11 to which they will be deported violates both INS regulations and the constitutional
12 right to due process.” *Andriasian*, 180 F.3d at 1041.

13 If the noncitizen claims fear, measures must be taken to ensure that the
14 noncitizen can seek asylum, withholding, and relief under CAT before an
15 immigration judge in reopened removal proceedings. The amount and type of
16 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
17 circumstances, he would have a reasonable opportunity to raise and pursue his
18 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
19 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
20 F.3d 405, 408 (7th Cir. 1998)).

21 “[L]ast minute” notice of the country of removal will not suffice,
22 *Andriasian*, 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App’x 724 (9th
23 Cir. 2016). For good reason: To have a meaningful opportunity to apply for fear-
24 based protection from removal, immigrants must have time to prepare and present
25 relevant arguments and evidence. Telling a person where they may be sent,
26 without giving them a chance to look into country conditions and the possibility
27 they may be deported to yet another country, does not give them a meaningful
28 chance to determine whether and why they have a credible fear.

B. The July 6, 2025, memo’s removal policies violate the Fifth Amendment, 8 U.S.C. § 1231, the Convention Against Torture, and implementing regulations.

The policies in the currently effective July 6, 2025, memo do not adhere to these requirements. The operative memo “contravenes Ninth Circuit law.” *Nguyen v. Scott*, __ F. Supp. 3d __, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit law on the process due to noncitizens in detail); *see also Azzo v. Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 3535208, *6–*8 (S.D. Cal. Dec. 10, 2025) (same).

Most critically, current policy does not require ICE to notify immigrants that they have a right to apply for withholding of deportation from the new third country to which they will be deported. *See* Ex. C (ICE ““will not affirmatively ask whether the alien is afraid of being removed to the country of removal”).

This is in direct conflict with controlling Ninth Circuit law. “Failing to notify individuals who are subject to deportation that they have the right to apply . . . for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process,” *Adriasian*, 180 F.3d at 1041.

Further, under the Convention Against Torture, Mr. Sarr is entitled to protection from deportation to a country that may subsequently deport him to his home country, known as protection against “chain refoulement.” *See* Inter-American Commission on Human Rights, *IACHR and United Nations Experts: States Must Protect the Rights of Persons in Human Mobility* (Sept. 18, 2025);¹¹ *see also* United Nations Committee Against Torture, *General comment No. 4 on the implementation of article 3 of the Convention in the context of article 22*, at

¹¹ Available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=class-dc

1 section II (12) (Sept. 4, 2028) (“the person at risk [of torture] should never be
2 deported to another State from which the person may subsequently face
3 deportation to a third State in which there are substantial grounds for believing
4 that the person would be in danger of being subjected to torture”).¹²

5 Next, under the policy, ICE need not give immigrants *any* notice or *any*
6 opportunity to be heard before removing them to a country that—in the State
7 Department’s estimation—has provided “credible” “assurances” against
8 persecution and torture. Ex. C. By depriving immigrants of any chance to
9 challenge the State Department’s view, this policy violates “[t]he essence of due
10 process,” “the requirement that a person in jeopardy of serious loss be given
11 notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*,
12 424 U.S. 319, 348 (1976) (cleaned up).

13 Then, even when the government has obtained no credible assurances
14 against persecution and torture, the government can still remove the person with
15 between 6 and 24 hours’ notice, depending on the circumstances. *See* Ex. C.
16 Practically speaking, there is not nearly enough time for a detained person to
17 assess their risk in the third country and marshal evidence to support any credible
18 fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may
19 know nothing about a third country, like Eswatini or South Sudan, when they are
20 scheduled for removal there.

21 If given the opportunity to investigate conditions, immigrants would find
22 credible reasons to fear persecution or torture—like patterns of deporting those
23 deportees back to their home countries, keeping deportees indefinitely and
24 without charge in solitary confinement, or extreme instability raising a high
25 likelihood of death—in many of the third countries that have agreed to removal of
26 thus far.

27
28 ¹² Available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf.

1 Immigrants may also have ample reason to challenge DHS's determination
2 under § 1231(b)(2)(E)(vii) that each other country with which the immigrant has
3 connections is "impracticable, inadvisable, or impossible to remove the alien to."
4 DHS must consider whether to remove him there before proceeding to the final
5 step of the third-country removal statute. *See Hadera*, 494 F.3d at 1156–59
6 (explaining this process).

7 Due process requires an adequate chance to identify and raise these threats
8 to health and life. Because "[f]ailing to notify individuals who are subject to
9 deportation that they have the right to apply . . . for withholding of deportation to
10 the country to which they will be deported violates both INS regulations and the
11 constitutional right to due process," *Adriasian*, 180 F.3d at 1041, this Court must
12 prohibit the government from removing Mr. Sarr without these due process
13 safeguards.

14 **VI. This Court must hold an evidentiary hearing on any disputed facts.**

15 Resolution of a prolonged-detention habeas petition may require an
16 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr.
17 Sarr hereby requests such a hearing on any material, disputed facts.

18 **VII. Prayer for relief**

19 For the foregoing reasons, Mr. Sarr respectfully requests that this Court:

- 20 1. Order and enjoin Respondents to immediately release Petitioner from
21 custody;
- 22 2. Enjoin Respondents from re-detaining Petitioner without first
23 following all applicable statutory and regulatory procedures;
- 24 3. Enjoin Respondents from removing Petitioner unless they provide
25 the following process:
 - 26 a. written notice to both Petitioner and Petitioner's counsel in a
27 language Petitioner can understand;

- b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
 - c. if Petitioner is found to have demonstrated “reasonable fear” of removal to the country, Respondents must move to reopen Petitioner’s immigration proceedings;
 - d. if Petitioner is not found to have demonstrated a “reasonable fear” of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.
4. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: April 8, 2026

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