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

11 NAHOM HAFTOM BERHE,
12
13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary of
16 the Department of Homeland Security, et
17 al.

18 Respondents.

CASE NO.: 26-cv-2828-JES-VET

**Response in Opposition to
Respondent's Motion to Vacate
Order to Show Cause**

19 **INTRODUCTION**

20 On May 18, 2026, Respondents filed a Motion to Vacate the Order to Show
21 Cause. ECF No. 6. In short Respondent's claim (1) Cameroon has been identified
22 as suitable third country to remove Mr. Berhe based on "credible" "diplomatic
23 assurances" that he will not be subject to persecution or torture, and (2) Mr. Berhe's
24 placement on a manifest for a charter flight bound for Cameroon On May 26, 2026,
25 suffices as a "travel document for removal." ECF. No. 6. Based on the above the
26 Respondent's move this Court to (1) vacate the portion of the Order enjoining the
27 transfer of Mr. Berhe outside of the Southern District of California; (2) confirm
28 Respondents are not precluded from removing Mr. Berhe to Cameroon during the

1 pendency of this habeas action¹; and (3) require Respondents provide a status to
2 the Court by June 5, 2026.

3 This Court should deny Respondents Motion to Vacate for the reasons
4 previously stated in Mr. Berhe's Petition for Writ of Habeas Corpus and those stated
5 below.

6 **I. Mr. Berhe is Bi-Sexual and Same-Sex Sexual Activity is Criminalized
in Cameroon**

7 In Cameroon, homosexuality it illegal and lesbian, gay and bi-sexual
8 individuals face persecution. As stated in a warning by the United States
9 Department of State:

10 "LGB Travelers: Consensual same-sex sexual activity is illegal and
11 punishable by a prison sentence of six months to five years and a fine ranging
12 from 20,000 to 200,000 CFA francs (\$35-\$353). LGB individuals face social
13 stigmatization, harassment, and discrimination. Police and civilians may
14 extort money from presumed LGB individuals with the threat of exposure or
arrest. Suspected members of the LGB community have received anonymous
threats by phone, text, and email."(emphasis in original)²

15 While Respondent's declare the Department of State determined through
16 diplomatic assurances that immigrants removed from the U.S. pursuant to a Third
17 Country Removal agreement will not be subject to persecution or torture, they have
18 provided zero detail or rational for their determination. ECF No. 6-1 ¶ 5. The
19 proposed assumption is that this Court will believe that Cameroon will suspend its
20 own penal code in perpetuity, for a certain class of immigrants, for an indefinite
21 period. Meanwhile, the United States warns their own travelers of the dangers of
22 being LGB in Cameroon.

23 In addition, the same State Department, in their most recent Country Report
24

25 ¹ While the proposed Order accompanying the Respondent's Motion allows for Mr.
26 Berhe's removal to Pakistan during the pendency of the habeas action, it is
27 understood based on the Respondent's Motion that Cameroon is the intended
destination.

28 ² <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Cameroon.html>

1 on Human Rights in Cameroon, determined that while Cameroon has laws that
2 provide asylum and refugee status, that implementation of the system is weak and
3 local authorities do not always recognize it. Exh. A, pg. 22.

4 In Cameroon, there exists a dangerous combination of criminal laws that
5 prohibit same-sex sexual activity and an acknowledgement of non-compliant local
6 authorities, as established by the United States Department of State itself. As such,
7 the Respondent's proffer that Mr. Berhe will be safe from persecution and torture
8 in Cameroon should be met with healthy skepticism as it defies information
9 provided by the Department of State.

10 Further, due process requires the stay on Mr. Berhe's removal to a third
11 country should not be lifted until he is provided a credible fear interview regarding
12 his removal to Cameroon.

13 **II. A Removal to Cameroon Presents a Realistic Risk of Chain**
14 **Refoulement**

15 United States law does not allow for refoulement, the forcible return of refugees
16 or asylum seekers to a country where they face persecution, torture, or severe
17 danger. Non-refoulement is codified the Immigration and Nationality Act (asylum
18 and withholding of removal) and The Convention Against Torture (CAT).

19 Chain refoulement, or indirect refoulement, occurs when an immigrant is
20 removed to third country and that country then removes them to a country where
21 they face persecution, torture, or severe danger.

22 In 2026, it has been reported that Cameroon has participated in forced
23 repatriation (refoulement) of individuals that were removed to Cameroon as a third
24 country by the United States after an immigration judge granted them withholding
25 of removal or CAT. Exh. B, Third Country Deportation Watch. The individuals
26 reported intense pressure from Cameroonian officials to repatriate to countries
27 where they face persecution, and some remain in a Cameroonian government
28 owned detention facility. *Id.* Journalists and lawyers attempting to investigate the
treatment of individuals transferred to Cameroon have been detained and their

1 equipment seized. *Id.*; See also Exh. C, Statement of Ranking Member of the Senate
2 Foreign Relations Committee, Senator Shaheen, February 19, 2026.

3 Mr. Berhe has a legitimate fear that a removal to Cameroon raises a risk of chain
4 refoulement as a means to by-pass the legal protections that he has received in the
5 United States though withholding of removal.

6 **III. Mr. Berhe has Not Been Provided with a Valid Travel Document**

7 Respondent's states that placing Mr. Berhe's name the manifest of a chartered
8 flight to Cameroon serves as a valid travel document. ECF No. 6, pg.2. Mr. Berhe
9 contests that placing his name on a manifest is a valid travel document.

10 **CONCLUSION**

11 Mr. Berhe is bisexual. Removing Mr. Berhe to Cameroon, a country that
12 criminalizes same-sex sexual activity and is known to stigmatize, harass and
13 discriminate against lesbian, gay and bi-sexual people would subject him to
14 persecution and severe danger. Further, a removal to Cameroon places Mr. Berhe
15 at risk of chain refoulement. This Court should deny the Respondent's Motion to
16 Vacate.

17
18 Respectfully submitted,

19 Dated: May 21, 2026

s/ Danielle R. Peay

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