

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

NYYNKPAO BANYEE,

Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; PAMELA BONDI, in her official capacity as United States Attorney General; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director, United States Immigration and Customs Enforcement; PETE HEGSETH, in his official capacity as Secretary of Defense; PETER BERG, in his official capacity as the St. Paul Field Office Director for United States Immigration and Customs Enforcement; DANIEL HARTOG, in his official capacity as the Kandiyohi County Sheriff; and MATTHEW AKERSON, in his official capacity as Kandiyohi County Jail Administrator.

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

1. Petitioner, Nyynkpao Banyee, is a 27-year-old, long-term lawful permanent resident (“LPR”) of the United States who was admitted to as a refugee from the Ivory Coast at age six in 2004. His status was adjusted to LPR in 2005. An Immigration Judge (“IJ”) ordered Mr. Banyee removed to Ivory Coast in 2022. The Board of Immigration Appeals (BIA) affirmed that removal order in an administratively final decision dated

December 11, 2024.

2. The U.S. Department of Homeland Security (DHS) is holding Mr. Banyee in civil immigration custody at the Kandiyohi County Jail in Willmar, Minnesota. DHS has held Mr. Banyee at the Kandiyohi County Jail continuously since redetaining him in October 2024. DHS presently claims authority to jail Mr. Banyee under 8 U.S.C. § 1231(a), which governs the detention of noncitizens who have an administratively final order of removal.

3. It has now been well over six months since the BIA entered its final order that Mr. Banyee be removed to the Ivory Coast. Mr. Banyee asserts that his continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because there is not a substantial likelihood that DHS will be able to carry out his removal in the reasonably foreseeable future.

4. Despite Mr. Banyee's cooperation, DHS has been unable to timely procure a travel document to effectuate his removal order to the Ivory Coast, and it is evident that DHS is unlikely to obtain an Ivory Coast travel document for Mr. Banyee anytime in the reasonably foreseeable future. This is apparent in DHS's recent notice to Mr. Banyee indicating that it no longer intends to pursue his removal to the Ivory Coast at all, but is instead seeking a travel document to remove him to a third country, Liberia. But Mr. Banyee has never been to Liberia, and on information and belief he has no immigration status, citizenship, or other legal right to travel to that country. On information and belief, DHS does not presently have any Liberian travel document it can use to remove Mr. Banyee to that country either, and DHS is unlikely to procure a Liberian travel document

it could use to lawfully remove him to that third country in the reasonably foreseeable future.

5. In addition, Mr. Banyee has asserted to DHS that he fears persecution and torture if removed Liberia. Binding regulations, statutes, and due process all require DHS to afford Mr. Banyee a Reasonable Fear Interview (RFI) at which he can present his claims for mandatory protection from torture in any third country of intended removal, including Liberia. If DHS determines Mr. Banyee does not have a reasonable fear, it is legally bound to provide notice of that determination to Mr. Banyee and his pro bono counsel, and a fair opportunity thereafter (of at least 15 days) to seek reopening and consideration of his mandatory protection claims before an immigration judge. The law also requires that Respondents maintain Mr. Banyee unobstructed access to his pro bono counsel in pursuing these important procedures and rights.

6. In recent months, the Government has stopped complying with its legal obligations and it has deported other noncitizens to third countries without notice or opportunity to present their reasonable fear claims. The Government has also systematically obstructed the access of these noncitizens to counsel. A district court in Massachusetts issued a class-wide TRO and then a preliminary injunction to protect impacted noncitizens like Mr. Banyee facing summary removals to third countries where they have genuine CAT claims. *See D.V.D. v. DHS*, --- F. Supp. 3d ----, 2025 WL 1142968 (D. Mass. Apr. 18, 2025). But DHS then sought an end run around the *D.V.D.* complaint and TRO by quickly issuing an informal procedural policy memo that is blatantly inconsistent with regulations, statutes and due process principles governing third country

removals.¹ Even after the *D.V.D.* preliminary injunction was issued, the Government defied the district court's orders and sought to summarily remove individuals to third countries such as to a maximum security prison in El Salvador, to Libya, and to South Sudan—without affording them their legally required opportunity to seek mandatory protection from those third countries with assistance of counsel.

7. Last week, on June 23, 2025, the Supreme Court issued a summary order granting the government's application to stay the nationwide *D.V.D.* injunction. Therefore, at present, there is no longer a separate court order in place to help protect the rights of *D.V.D.* class members like Mr. Banyee to fully present their mandatory protection claims, with assistance of counsel, prior to removal to third countries. But when seeking a Supreme Court stay of the *D.V.D.* injunction, the Government's primary argument was that the district court lacked jurisdiction to enter class-based injunctive relief that it asserted would have the effect of enjoining the operation 8 U.S.C. § 1231 nationally. *See* 8 U.S.C. § 1252(f)(1) Individual litigants face no such jurisdictional obstacle, however, and neither the *D.V.D.* complaint and TRO nor the Supreme Court stay of the *D.V.D.* injunction present any obstacle to Mr. Banyee's habeas claim that DHS cannot apply its unlawful third-country policy memo to him. This Court can and should take interim steps to protect its own jurisdiction and Mr. Banyee's pursuit of his fundamental rights.

8. Accordingly, Mr. Banyee respectfully asks this Court to declare that his continued detention is unlawful under *Zadvydas* and to prohibit Respondents from further

¹ Memorandum of DHS Secretary Kristi Noem, *Guidance Regarding Third Country Removals*, March 30, 2025.

detaining him by ordering his release. In addition, Mr. Banyee asks this Court for an interim order prohibiting Respondents from transferring him out of the District of Minnesota, or removing him to Liberia, both to ensure this Court's jurisdiction over Mr. Banyee's habeas petition, and to protect Mr. Banyee's legal rights to fully pursue his claim of mandatory protection from Liberia with unobstructed assistance of his pro bono counsel.

JURISDICTION & VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, as Petitioner is currently in federal immigration custody and seeks habeas corpus relief for ongoing violations of the U.S. Constitution, federal statutes, and applicable regulations. The case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, the regulations implementing the INA, the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Pub. L. No. 103-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231), the regulations implementing the FARRA, the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*; and 5 U.S.C. § 552 *et seq.* Jurisdiction is also proper under 28 U.S.C. § 1331, as this action arises under the laws and Constitution of the United States. Additional jurisdiction exists under the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, which guarantees the right to petition for habeas corpus to challenge unlawful executive detention.

10. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, and the Court has supplemental remedial authority under the All Writs Act, 28 U.S.C. § 1651, to issue such writs as may be necessary to preserve its jurisdiction and protect Petitioner's rights. The government has waived its sovereign immunity pursuant to 5

U.S.C. § 702.

11. Venue is proper in this District pursuant to 28 U.S.C. § 2241 because Petitioner is detained within the District of Minnesota at Kandiyohi County Jail in Willmar, Minnesota. Venue is also proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events and omissions giving rise to this action occurred in this District. Venue further lies under 28 U.S.C. § 1391(e)(1), because Respondents are officers or employees of the United States acting in their official capacities and reside or may be found in this District. The St. Paul Field Office of Immigration and Customs Enforcement (ICE), located at Fort Snelling, is the agency responsible for Mr. Banyee. Additionally, the Kandiyohi County Sheriff and Jail Administrator, who maintain day-to-day custody over Mr. Banyee, are located within this District and are considered his immediate custodians for habeas purposes.

PARTIES

12. Petitioner, Nyynkpao Banyee, is a 27-year-old, long-term lawful permanent resident (“LPR”) of the United States with an administratively final order of removal to the Ivory Coast. Mr. Banyee’s removal order became final on December 11, 2024, when the Board of Immigration Appeals (“BIA”) dismissed his administrative appeal. He was admitted to the United States as a refugee from the Ivory Coast at age six on January 29, 2004, and his status was adjusted to LPR on November 15, 2005. His entire known family network is in the United States, including his mother and siblings and extended family members, almost all of whom are now U.S. citizens. His father is presumed to be deceased. Mr. Banyee is the father of an infant U.S. citizen son born to his partner in Fargo, North

Dakota, in March of this year, during Mr. Banyee's immigration detention.

13. Respondent Donald J. Trump is named in his official capacity as President of the United States. In this role, he is ultimately responsible for the policies and actions of the executive branch, including those of the U.S. Department of Homeland Security (DHS).

14. Respondent Pamela Bondi is named in her official capacity as Attorney General of the United States. As the head of the U.S. Department of Justice, she exercises oversight over immigration adjudications and prosecutions through delegated authority.

15. Respondent Kristi Noem is named in her official capacity as Secretary of the U.S. Department of Homeland Security. Under 8 U.S.C. § 1103(a), she is charged with the overall administration of the Immigration and Nationality Act, including implementation of immigration enforcement policies and detention protocols.

16. Respondent Todd Lyons is named in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of ICE. He exercises nationwide authority over the administration and enforcement of U.S. immigration laws and is responsible for all ICE custody decisions.

17. Respondent Pete Hegseth is named in his official capacity as Secretary of Defense. In this capacity, he oversees the Department of Defense and acts as the principal defense policy maker and advisor.

18. Respondent Peter Berg is named in his official capacity as the Field Office Director for ICE Enforcement and Removal Operations (ERO) in the St. Paul Field Office. He has direct and immediate custody over Mr. Banyee and is responsible for decisions

concerning his arrest, detention, and removal.

19. Respondents Daniel Hartog, Sheriff of Kandiyohi County, and Matthew Akerson, Kandiyohi County Jail Administrator, are named in their official capacities as Mr. Banyee's immediate custodians. They are responsible for his physical detention at Kandiyohi County Jail pursuant to an intergovernmental service agreement with ICE.

EXHAUSTION OF REMEDIES

20. Exhaustion is not required in this case because no alternative forum exists in which Petitioner can obtain relief on the claims presented here, nor is there any statutory requirement that Petitioner exhaust administrative remedies before seeking habeas relief under 28 U.S.C. § 2241. Courts have consistently recognized that constitutional claims are exempt from exhaustion requirements in the immigration context.

21. Moreover, even if some exhaustion doctrine were arguably applicable, it would be excused here because requiring further exhaustion would be futile, unavailable, and unreasonable. Petitioner challenges the legality of his post-final order detention and violation of his Fifth Amendment right to liberty. None of these claims can be meaningfully addressed or remedied through administrative processes.

LEGAL BACKGROUND

22. 8 U.S.C. § 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a noncitizen's removal order "becomes administratively final." 8 U.S.C. §

1231(a)(1)(B).² The removal period lasts for 90 days, during which ICE “shall remove the [non-citizen] from the United States” and “shall detain the [non-citizen]” as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen “*may* be detained beyond the removal period” if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

23. To avoid indefinite post removal detention that would raise “serious constitutional concerns,” the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), construed § 1231(a)(6) to contain an implicit time limit. *Id.* at 682. The Court held that § 1231(a)(6) authorizes detention only for “a period reasonably necessary to bring about the [non-citizen]’s removal from the United States.” *Id.* at 689. Six months of post-removal order detention is considered “presumptively reasonable.” *Id.* at 701. However, after six months of post-removal order detention, when a noncitizen provides “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the government to justify continued detention. *Zadvydas*, 533 U.S. at 701.

24. DHS regulations require that, before the end of the 90-day removal period, the ICE field office with jurisdiction over the noncitizen’s detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R.

² While not at issue here, if a detained noncitizen seeks judicial review of their administratively final removal order and a court stays their removal, the removal period then begins on the date of that court’s subsequent final order. 8 U.S.C. §1231(a)(1)(B)(ii).

§ 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), *id.* § 241.4(c)(2), which must then conduct a custody review before or at 180 days of post-removal order detention. *Id.* § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).

25. To comply with *Zadvydas*, DHS issued additional regulations in 2001 that established “special review procedures” to determine whether detained noncitizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See Continued Detention of Aliens Subject to Final Orders of Removal*, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4’s custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when “the [noncitizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [noncitizen] is not significantly likely in the reasonably foreseeable future.” *Id.* § 241.4(i)(7). Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE’s removal efforts to third countries. *See id.* § 241.13(f). If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on “special circumstances,” it must justify the detention based on narrow grounds such as national security or public health concerns, *id.* § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is “specially dangerous.”

Id. § 241.14(f).

Background on Protection Claims and Third-Country Removals

26. U.S. immigration law affords noncitizens in the United States three forms of protection from persecution and/or torture: asylum, withholding of removal, and protection under the Convention Against Torture (CAT). Asylum is a form of protection available in removal proceedings that may be granted in the exercise of discretion where the applicant demonstrates a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1101(a)(42), 1158(b)(1)(A).

27. For individuals determined to be ineligible for asylum, Congress further provided, with certain exceptions not relevant here, that “notwithstanding [8 U.S.C. §§ 1231(b)(1) and (2)], the Attorney General [i.e., DHS] may not remove [a noncitizen] to a country if the Attorney General [(i.e., an immigration judge)] decides that [the noncitizen’s] life or freedom would be threatened in that country because of [the noncitizen’s] race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. This form of protection, known as withholding of removal, is mandatory, i.e., it cannot be denied to eligible individuals in the exercise of discretion. Unlike asylum, the protection of withholding of removal is country-specific.

28. While statutes place certain restrictions on eligibility to seek asylum and withholding of removal, *see e.g.* 8 U.S.C. § 1158(c)(2), 8 U.S.C. § 1231(b)(3)(B), there are no restrictions on eligibility to apply for CAT deferral of removal. *See Foreign Affairs*

Reform Restructuring Act of 1998 (FARRA) (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1. Like withholding of removal under 8 U.S.C. § 1231(b)(3), CAT protection is mandatory and country-specific. *Id.* CAT prohibits removal to any country where there is a substantial risk of torture, 28 C.F.R. § 200.1, and individuals are eligible for CAT protection no matter the basis of their removal order. *See* 8 C.F.R. §§ 208.16–208.18, 208.31, 241.8(e), 1208.16–1208.18. A noncitizen can appeal the denial of an application for withholding of removal or CAT protection to the Board of Immigration Appeals (BIA) and later to the courts of appeals. *See* 8 U.S.C. § 1252(a); 8 C.F.R. §§ 208.31(e), 1003.6(a), 1208.31(e), (g)(2)(ii), 1240.15; *Nasrallah v. Barr*, 590 U.S. 573, 575 (2020).

29. As relevant here, 8 U.S.C. § 1231(b)(2) governs to which countries DHS is authorized remove noncitizens with final removal orders, and the statute requires DHS to pursue removal to countries in a specific sequence. *See Jama v. ICE*, 543 U.S. 335, 341 (2005). First, DHS must attempt removal to the country designated on the noncitizen’s order of removal. 8 U.S.C. § 1231(b)(2)(A)-(C). If this fails, DHS may next seek removal to an alternative country of which the noncitizen is a subject, national or citizen, followed by other countries to which the noncitizen has more limited connections, such as by birth or prior residence. 8 U.S.C. § 1231(b)(2)(D)-(E). Last, DHS may seek to removal to a willing country where the noncitizen has no connections, but this kind of third-country removal is allowed only when removal to all the other categories of countries prioritized by the statute is “impracticable, inadvisable, or impossible.” 8 U.S.C. § 1231(b)(2)(E)(vii).

30. Paragraphs (b)(1) and (b)(2) of 8 U.S.C. § 1231 make any designation of the

country of removal, whether by DHS or an immigration judge (IJ), “[s]ubject to paragraph (3).” *Id.* Paragraph (3), entitled “Restriction on removal to a country where [noncitizen’s] life or freedom would be threatened,” reads:

Notwithstanding paragraphs (1) and (2), the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen’s] life or freedom would be threatened in that country because of the [noncitizen’s] race, religion, nationality, membership in a particular social group, or political opinion.

Id. § 1231(b)(3)(A); *see also Jama*, 543 U.S. at 348. Likewise, where DHS seeks to remove a noncitizen to a country where the noncitizen has a lesser connection (or no connection), regulations implementing CAT prohibit deportation to a country where the noncitizen will face torture. 8 C.F.R. §§ 208.16(c)–208.18, 1208.16(c)–1208.18.

31. The statute and regulations implement Congress’ designation scheme in a way that ensures that noncitizens receive meaningful notice and an opportunity to present a fear-based claim. In removal proceeding under 8 U.S.C. § 1229a (commonly referred to as “Section 240” proceedings), individuals receive notice of all countries to which they may be deported. The regulations mandate that the immigration judge (IJ) “shall notify” the individual of the designated country of removal and “shall identify for the record” all alternative countries to which the person may be removed. 8 C.F.R. § 1240.10(f). Those who have been deported and subsequently return to the United States without inspection can have their removal orders reinstated by DHS officers. *See* 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8. The reinstatement regulations contemplate notice of a designated country. *See* 8 C.F.R. § 241.8(e) (referring to “the country designated in [the reinstatement] order”).

32. Likewise, DHS officers can issue an administrative removal order to

nonpermanent residents with an aggravated felony conviction. *See* 8 U.S.C. § 1228(b); 8 C.F.R. § 238.1. In this process, the noncitizen may designate “the country to which he or she chooses to be deported” and the “deciding [DHS] officer shall designate the country of removal.” 8 C.F.R. § 238.1(b)(2)(ii), (f)(2). Consistent with the United States’ commitment to *non-refoulement*, DHS must provide individuals who express a fear of return to the designated country with an opportunity to demonstrate a reasonable fear of persecution or torture in interviews before asylum officers, and those who do so, are eligible to apply for withholding of removal under 8 U.S.C. § 1231(b)(3) and/or CAT protection in what are known as withholding-only proceedings. *See* 8 C.F.R. §§ 241.8(e), 238.1(f)(3); *see also* 8 C.F.R. §§ 208.31, 1208.31.

33. Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States’ obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 “amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol”).

34. Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See e.g. Andriasian v. I.N.S.*, 180 F.3d

1033, 1041 (9th Cir. 1999). The federal government has repeatedly acknowledged these obligations in model notices of removal to other than designated countries. And, consistent with the above authorities and practices, at oral argument in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Assistant to the Solicitor General represented that the government must provide a noncitizen with notice and an opportunity to present fear-based claims, including claims for mandatory CAT protection, before that noncitizen can be deported to a non-designated third country. See Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

35. But in a break from decades of policy and practice, DHS under the current administration has abandoned its legal obligations and it has been unilaterally choosing where to remove people without providing them meaningful notice and an opportunity to contest removal on the basis of a fear prior to removal to that third country.

36. On March 23, 2025, a putative nationwide class challenged this government practice in *D.V.D. v. DHS*, and obtained a temporary restraining order and later a preliminary injunction for a certified class,³ blocking third country removals without

³ The certified *D-V-D*- class is:

All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

D.V.D. v. DHS, --- F. Supp. 3d ---, 2025 WL 1142968, at *11 (D. Mass. Apr. 18, 2025)

notice and a meaningful opportunity to seek CAT protection. Under the *D.V.D.* injunction, the government was required to provide class members the following:

- Written notice of the third country in a language that the noncitizen can understand to the individual and their attorney, if any,
- An automatic 10-day stay between notice and any actual removal,
- Ability to raise a fear-based claim for CAT protection prior to removal, and:
 - If the noncitizen demonstrates “reasonable fear” of removal to the third country, DHS must move to reopen the noncitizen’s immigration proceedings.
 - If the noncitizen does not demonstrate a “reasonable fear” of removal to the third country, DHS must provide a meaningful opportunity, and a minimum of fifteen days, for the noncitizen to seek reopening of their immigration proceedings.

See D.V.D. v. DHS, --- F. Supp. 3d ---, 2025 WL 1142968, at *24 (D. Mass. Apr. 18, 2025).⁴

37. At multiple points when the TRO and then later the injunction were in place, the government failed to comply with the district court’s orders.⁵ On March 31, 2025, at least six *D.V.D.* class members were removed from Guantanamo to El Salvador on a DOD plane, in violation of the TRO. The district court subsequently amended its preliminary

⁴ *See also* Electronic Order – Amended Preliminary Injunction, Dkt. 86 (clarifying applicability to Guantanamo); Memorandum and Order on Plaintiffs’ Motion for Emergency Relief Dkt. 91 (clarifying that removals without required protections to Libya would have violated the preliminary injunction); Memorandum on Preliminary Injunction, Dkt. 118 (providing a ten-day stay between notice and removal).

⁵ Soon after the *D.V.D.* complaint had been filed and one week after the district court entered its TRO, DHS responded with an informal policy memo implementing new procedures for conducting reasonable fear screenings and third-country removals that falling far short of the binding statutory, regulatory, and due process protections described above and enforced by the district court’s TRO. *See* Memorandum of DHS Secretary Kristi Noem, *Guidance Regarding Third Country Removals*, March 30, 2025 (March 30th memo). Available at: <https://immigrationlitigation.org/wp-content/uploads/2025/04/43-1-Exh-A-Guidance.pdf>.

injunction to clarify that Defendants must comply with the injunction prior to removing any class member from Guantanamo and prior to ceding custody or control to another agency in a manner that prevents provision of the procedural protections in the injunction. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. Apr. 30, 2025), ECF No. 86.

38. On May 7, 2025, the government attempted to deport a flight of class members to Libya without compliance with the preliminary injunction, leading to an emergency TRO motion. The district court promptly issued a memorandum reiterating the terms of its preliminary injunction and making clear that any such removals would violate it. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 7, 2025), ECF No. 91.

39. On May 20, 2025, while the government was again in the process of removing class members in violation of the preliminary injunction (this time to South Sudan), the plaintiffs moved for another emergency TRO, leading the district court order that the government to retain custody of the class members and provide the preliminary injunction's protections. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 20, 2025), ECF No. 116.

40. On June 23, 2025, the Supreme Court, issued a summary order that did not provide reasoning, but granted the government's request to stay the district court's preliminary injunction in *D.V.D. See DHS v. D.V.D.*, No. 24A1153, 2025 WL 1732103 (U.S. June 23, 2025). As a result, at this time, the district court's class-based preliminary injunction in *D.V.D.* is no longer constraining the government from carrying out more unlawful third country removals, as it had both during and after the district court entered

and restated its injunctive order.⁶

FACTUAL BACKGROUND

41. Mr. Banyee's habeas claim concerns his post-final order detention under 8 U.S.C. § 1231(a). However, for the Court's fuller understanding of the context in which this claim arises, the following summary also describes the course of Mr. Banyee's immigration detention and removal proceedings prior to his administratively final removal order of December 11, 2024.

42. Petitioner, Nyynkpao Banyee, is a 27-year-old, long term lawful permanent resident of the United States. ECF 2-1 at 1. He was admitted to the United States as a refugee from the Ivory Coast in 2004, and his status was adjusted to LPR in 2005. *Id.* His entire known family network is in the United States, including his mother and siblings and extended family, almost all of whom are U.S. citizens. *Id.* at 15-16. He has no remaining connections to the Ivory Coast and does not speak French. *Id.* His father is presumed to be deceased. *Id.*

43. Mr. Banyee attended school in this country until 12th grade, but soon after

⁶ On June 24, 2025, a former high-level official with the Department of Justice's Office of Immigration Litigation filed a protected whistleblower claim alleging that high-level DOJ officials conspired to violate the *D.V.D.* TRO. The disclosure describes efforts to feign ambiguity in an unambiguous order, failing to disseminate the fact and terms of the injunction, and purposefully failing to respond to Plaintiffs' inquiries. *Protected Whistleblower Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice* at 16- 21. Available at: <https://www.judiciary.senate.gov/imo/media/doc/06-24-2025> - [Protected Whistleblower Disclosure of Erez Reuveni Redacted.pdf](#)

turning eighteen was convicted of four misdemeanors: theft after taking \$30 from a cash register; false report to law enforcement after being pulled over on his bicycle and giving a false name; possession of drug paraphernalia for a cannabis grinder and a pipe; and possession of marijuana. ECF 2-1 at 20. Mr. Banyee also had one felony conviction. *Id.* In 2017, at the age of nineteen, he was arrested and charged with North Dakota class B robbery. He was convicted in 2018 and sentenced to four years, of which he served just over three before being released from state custody in 2021. ECF 2-4.

2021 -2022: ICE first detains Banyee under 8 U.S.C. 1226(c)

44. In March of 2021, at the end of his criminal sentence, DHS took Mr. Banyee into custody and placed him in immigration court removal proceedings. ECF 2-1 Based on his convictions, DHS held him in mandatory immigration detention pursuant to 8 U.S.C. 1226(c), at the Kandiyohi County Jail, in Willmar, Minnesota. The only country to which DHS sought Mr. Banyee's removal was his country of birth and citizenship—the Ivory Coast. ECF 2-1, 2-4

45. An IJ sustained DHS's charge that Mr. Banyee's misdemeanor theft and felony robbery convictions both qualified as immigration "crimes involving moral turpitude" which, taken together, made him deportable from the United States. ECF 2-1. Mr. Banyee did not contest this determination. While it rendered him deportable, it did not impact his statutory eligibility as a long-term lawful permanent resident to apply to the IJ for immigration relief, including discretionary cancellation of removal. ECF 2-1. If granted cancellation relief, Mr. Banyee would retain his lawful permanent resident status and remain in the United States with his family. *Id.*

46. However, DHS also charged that Mr. Banyee's North Dakota robbery conviction made him separately deportable for a federal "aggravated felony" theft offense. *Id.* Unlike the moral turpitude charge, a sustained aggravated felony theft charge would eliminate Mr. Banyee's statutory eligibility to apply for cancellation of removal and most other immigration relief. *Id.* Mr. Banyee contested the aggravated felony charge and the IJ set the case for a merits hearing to address both the threshold eligibility question of whether his North Dakota robbery conviction was an aggravated felony, and also Mr. Banyee's applications for immigration relief. *Id.* Mr. Banyee timely submitted his application for cancellation of removal, and also applied to the IJ for asylum, withholding of removal, and CAT protection from Ivory Coast. *Id.*

47. On July 15, 2021, following Mr. Banyee's merits hearing, the IJ ruled that the textual elements of North Dakota's robbery statute are on their face categorically broader than the elements of federal generic theft. ECF 2-1 On this basis, the IJ rejected DHS's charge that Mr. Banyee's state robbery conviction is an deportable aggravated felony theft offense, and she found that he remained eligible for discretionary cancellation of removal. *Id.* The IJ then examined Mr. Banyee's criminal history, extensive evidence of rehabilitation, long U.S. residence, and deep family ties in this country, and decided to grant him cancellation of removal in the exercise of discretion. The IJ denied Mr. Banyee's separate applications for asylum, withholding of removal and CAT relief, as to the Ivory Coast. *Id.*

48. Mr. Banyee remained in mandatory 1226(c) detention because DHS timely appealed the IJ's decision to the BIA, challenging both the dismissal of the aggravated

felony theft charge and the discretionary grant of Mr. Banyee's application for cancellation relief.⁷ On January 31, 2022, the BIA *affirmed* the IJ's determination that Mr. Banyee deserved a favorable exercise of discretion with respect to cancellation of removal relief. ECF 2-2. However, as to statutory eligibility for that same relief, the BIA remanded to the IJ with instructions that she conduct further analysis of the breadth of North Dakota's robbery statute. *Id.* In doing so, the BIA required the IJ to place a burden on Mr. Banyee to provide empirical case examples demonstrating a "realistic probability" that North Dakota actually applies its robbery statute to punish conduct broader than federal generic theft. *Id.*

49. On March 25, 2022, nearly one year after DHS had placed Mr. Banyee in mandatory 1226(c) detention, the IJ issued a new decision concluding that Mr. Banyee could not meet the empirical burden placed on him by the BIA under its onerous interpretation of the "realistic probability" test. ECF 2-3. Though the IJ noted her disagreement with the BIA's explanation and application of the realistic probability test, the IJ stated the BIA's decision compelled her to rule that Mr. Banyee's North Dakota robbery conviction was an aggravated felony theft offense disqualifying him from cancellation relief. *Id.* The IJ thus ordered Mr. Banyee removed from the United States to Ivory Coast. *Id.* at 5. This time, Mr. Banyee timely appealed the IJ's decision back up to the BIA. ECF 2-6.

⁷ Mr. Banyee did not file any cross appeal so the IJ's separate denial of his asylum, withholding, and CAT protection from the Ivory Coast (the only designated country of removal) were not before the BIA. ECF 2-2

2022-2024: Mr. Banyee's 1226(c) habeas and release on immigration bond

50. By the time Mr. Banyee appealed the IJ's removal order back up to the BIA, he had already filed a habeas petition presenting an as-applied due process challenge to his prolonged mandatory 1226(c) detention. On April 14, 2022, Judge Wilmena Wright ruled that the circumstances of Mr. Banyee's 1226(c) detention, including over one year in a county jail without access to any bond hearing, violated due process. *Nyynkpao B. v. Garland, No. 21-CV-1817 (WMW/BRT), 2022 WL 1115452, (D. Minn. Apr. 14, 2022)*. She granted the habeas petition and ordered that Mr. Banyee be provided a prompt bond hearing by an IJ with the burden on the government to justify his continued detention. *Id.*

51. On April 21, 2022, Mr. Banyee was provided his bond hearing in immigration court. ECF 2-4. The IJ found that Mr. Banyee was neither a danger to the community nor a flight risk, and she determined DHS had not met its burden to demonstrate otherwise. *Id.* The IJ considered Banyee's criminal history as a young adult in context with his deep family ties and strong evidence of his subsequent rehabilitation that included completing various programs on a voluntary basis, becoming a mentor to other inmates while serving his criminal sentence, earning a GED, and planning a future career. *Id.* The IJ ordered Mr. Banyee's release on \$7500 bond which he promptly posted, he was released, and he returned home to his family in Fargo. *Id.*

52. DHS timely appealed the IJ's bond ruling to the BIA while the Government timely appealed Judge Wright's habeas ruling to the Eighth Circuit. Mr. Banyee's appeal of the IJ's 2022 order that he be removed to the Ivory Coast also remained pending at the BIA. ECF 2-6. Over the next two and a half years, while Mr. Banyee awaited the

outcomes of these overlapping administrative and judicial appeals, he resumed his life in North Dakota and successfully reintegrated with the support of his family. ECF 2-7 at 5-18. He worked multiple jobs and provided support for his family, including his younger half-sister who had been diagnosed with epilepsy. *Id.*

53. During this same period, Mr. Banyee had a few contacts with police in Fargo, including a 2023 citation and misdemeanor plea for driving without a license, and a second misdemeanor plea in 2023 with a 10-day sentence and fine for preventing arrest, after he argued with police in confusion about a warrant that had issued in connection with his earlier driving-related citation. *Id.* Mr. Banyee was also the subject of a disputed civil order for protection entered against him at a hearing that he attended pro se in 2023. ECF 2-5. During this time, DHS imposed no reporting requirements on Mr. Banyee. *Id.*

54. In 2024, Mr. Banyee moved to a new full-time position at a Fargo restaurant whose manager soon asked him to train for a supervisory promotion. ECF 2-7 at 5-11. He moved from his family's home into a nearby apartment of his own, and he also entered into a committed relationship with the woman who would later give birth to their U.S. citizen son. ECF 2-10.

2024-2025: ICE redetains Banyee and custody shifts from 1226(c) to 1231(a)

55. On September 17, 2024, a three-judge panel of the Eighth Circuit issued an outlier opinion reversing Judge Wright's habeas order and holding that noncitizens subject to mandatory 1226(c) detention have no due process right to a bond hearing so long as removal proceedings remain in progress—however long they may last. *See Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), *rehearing and rehearing en banc denied by Banyee*

v. Bondi, 131 F.4th 823 (8th Cir. Mar. 18, 2025). Banyee's own removal proceedings were still ongoing at this point—by then for over three years—because the BIA still had not yet rendered a decision on Mr. Banyee's administrative appeal from the IJ's 2022 decision that ordered his removal to the Ivory Coast. ECF 2-6.

56. Weeks later, on October 30, 2024, even though the mandate had not issued from the Eighth Circuit and that habeas appeal remained in active rehearing litigation before that court, DHS unilaterally redetained Mr. Banyee without bond and asserted authority to recommence mandatory 1226(c) detention, returning him once again to the Kandiyohi County Jail. ECF 2-5. Banyee sought a hearing in the immigration court asserting that DHS lacked authority to redetain him without first proving to an IJ that he was now a danger to the community or flight risk. On November 14, 2024, the IJ convened a hearing but did not require DHS to carry this burden. *Id.* The IJ also refused to consider Mr. Banyee's supplemental evidence from multiple witnesses regarding the disputed civil order for protection that had been entered against him in 2023 as a pro se respondent. *Id.* Instead, the IJ determined that the incomplete records of Mr. Banyee's post-release contacts with the legal system constituted changed circumstances that entitled DHS to reinstate mandatory 1226(c) detention anew. *Id.* On this basis, the IJ ruled she lacked authority to provide Mr. Banyee any bond redetermination. Mr. Banyee filed a timely appeal to the BIA challenging the IJ's decision. *Id.*

57. However, on December 11, 2024, the BIA issued an administratively final order dismissing Banyee's long-pending appeal from the IJ's 2022 order that he be removed

to the Ivory Coast.⁸ ECF 2-6. This shifted DHS's asserted detention authority from 1226(c) to the post-removal detention statute 1231(a). Banyee's statutory 90-day removal period therefore began to run on December 11, 2024.

December 11, 2024 – present: 1231(a) post removal detention

58. DHS has continued to detain Mr. Banyee at the Kandiyohi County Jail since the beginning of his removal period on December 11, 2024, a period now exceeding 200 days. ECF 2-6, 2-7. On information and belief, DHS has not obtained a travel document to effect Mr. Banyee's removal to Ivory Coast. On information and belief, despite Mr. Banyee's cooperation, DHS is not likely to obtain a travel document to remove Mr. Banyee to Ivory Coast in the future and it has therefore ceased efforts to obtain an Ivory Coast travel document.

59. DHS officers conducted a 180-day *Zadvydas* review which included an in-person interview with Mr. Banyee and his counsel on May 29, 2025. ECF 2-10. To date, neither Mr. Banyee nor his counsel have received any decision from DHS regarding the 180-day review. Mr. Banyee has remained in DHS custody for three weeks beyond his 180th day of 1231(a) post-removal order detention. ECF 3.

60. On the morning of June 11, 2025, which was the exact date that Mr. Banyee's 1231(a) detention period reached six-months in length, a DHS officer emailed Mr. Banyee's counsel a one-page form titled "Notice of Removal," indicating that DHS

⁸ Banyee challenged the BIA's removal order in a petition for review presently pending before the U.S. Court of Appeals for the Eighth Circuit in Case Number 24-3590. The Court has not entered a stay of removal.

intended to remove Mr. Banyee to a third country, Liberia. ECF 2-11, 2-12 at 9. The email stated the form would be sent by certified mail to Mr. Banyee. However, that same morning, two DHS officers visited Mr. Banyee at the Kandiyohi County Jail in person, without Mr. Banyee's counsel present, showed him the same "Notice of Removal" form, and asked him to sign it. ECF 2-11, 3. Mr. Banyee wrote on the form and verbally informed the DHS officers that he feared being removed to Liberia, that he wanted to apply for CAT and other protection from Liberia, and that he wanted his counsel present to represent and assist him at all interviews with DHS. *Id.*

61. On information and belief, Mr. Banyee has no entitlement to immigration status, citizenship, or any other right to travel to or live in Liberia. On information and belief, DHS has not obtained a Liberian travel document for Mr. Banyee and DHS is unlikely to obtain one in the future.

62. On information and belief, Liberia has recently been reported to be one among more than 50 countries to which U.S. officials have inquired in some manner about potentially receiving third-country removals, but Liberia is not among the much smaller number of nations reported to have agreements in place to receive U.S. third country removals. *See Edward Wong et al., Inside the Global Deal-Making Behind Trump's Mass Deportations, N.Y. Times* (Jun. 25, 2025). The government of Liberia's Ministry of Foreign Affairs today issued a public statement in response to follow-on media coverage that said:

The Ministry of Foreign Affairs can emphatically state that the Government of Liberia has not been in any conversation or negotiations regarding third party nationals being sent from the United States to Liberia. Likewise, noting that there are no ongoing discussions related to 3rd party nationals, Liberia has not entered into any agreement formal or informal that obligates it to

receive individuals who are not Liberian citizens.⁹

63. Mr. Banyee has retained additional pro bono counsel from the University of Minnesota Law School who are volunteering with The Advocates for Human Rights to represent him in preparing and presenting DHS with his protection claims, including his CAT claim, at his requested Reasonable Fear Interview with respect to Liberia. ECF 2-12. As of June 25, 2025, Mr. Banyee's pro bono counsel have contacted DHS and taken all steps necessary to request and represent him at a Reasonable Fear Interview. *Id.* DHS has not yet provided Mr. Banyee or his counsel the time or place or other information about the Reasonable Fear Interview process that Mr. Banyee's counsel have requested.

64. Mr. Banyee remains detained by DHS at the Kandiyohi County Jail, causing ongoing, unnecessary hardship to him, to his partner, Paris, and to their now 3-month-old son. ECF 2-1 Paris' declaration prior to giving birth explained her financial and emotional struggles facing parenthood alone. "I really need Pao with me. Without his emotional and financial support it will be even more difficult when I give birth. I know this is hard on Pao as well. We have been talking every day since he was detained. We talk constantly about plans and how we want our baby to succeed." ECF 2-7 at 5-6. Mr. Banyee echoes these pleas to unite their family for the first time. "I need to be out of detention to be stable and get ready to be a father. I grew up without a father and I can't let my son go without one like I had to. I don't have another year of life to waste in detention, and my son and

⁹ *GOL Strongly Refutes Misleading Claims in Recent Media Article*, June 30, 2025. Available at: <https://www.mofa.gov.lr/index.php/media/press-releases/gol-strongly-refutes-misleading-claims-recent-media-article>

Paris and the rest of my family won't be able to afford that either.” ECF 2-7 at 9.

ARGUMENT

65. The Court should grant the petition and order release. DHS claims ongoing authority to detain Mr. Banyee under 8 U.S.C. § 1231(a), which governs the detention of noncitizens who have an administratively final order of removal. However, despite Mr. Banyee’s cooperation, it has now been more than 200 days since the BIA entered its final order that he be removed to the Ivory Coast. Mr. Banyee asserts that his continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because there is not a substantial likelihood DHS will be able to carry out his removal in the reasonably foreseeable future.

66. After well over six months of post-final order removal, the government must now bear the burden to justify Mr. Banyee’s continued detention because there are at least four independent “good reason[s] to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. First, DHS’s June 11, 2025 “Notice of Removal” document itself reflects that DHS has not and likely cannot obtain a travel document to Mr. Banyee’s only designated country of removal, the Ivory Coast. Any DHS determination to seek Mr. Banyee’s removal to a third country like Liberia that could only lawfully follow a predicate determination that his removal to Ivory Coast is “impracticable, inadvisable, or impossible.” 8 U.S.C. § 1231(b)(2)(E)(vii).

67. Second, on information and belief, Mr. Banyee has no immigration status, citizenship or other claim of right to travel to or live in Liberia, and as noted the Liberian government has today made its emphatic public statement disclaiming any agreements,

negotiations, or conversations with the United States to accept third country removals.

68. Third, DHS presented its “Notice of Removal” form to Mr. Banyee and his counsel on June 11, 2025—exactly sixth months following the date of his administratively final removal order of December 11, 2024. This means June 11, 2025 was also the precise expiration date of *Zadvydas*’ presumption that Mr. Banyee’s 1231(a) detention was constitutionally reasonable. This timing, coupled with the absence of any timely written decision from DHS regarding its formal 180 custody review, strongly suggests that DHS is merely papering Mr. Banyee’s file with documents it can later produce in habeas litigation to create some at least vague appearance of a likelihood of future removal to Liberia, even though no such likelihood in fact exists.

69. Any one of the above three reasons alone shift the burden to Respondents to justify their continued 1231(a) detention of Mr. Banyee, and taken together they easily clear *Zadvydas*’ bar for placing this burden onto the Government.

70. The legal process that DHS must afford Mr. Banyee to seek mandatory protection from torture and persecution in Liberia provides a distinct fourth reason to believe that his removal is unlikely in the reasonably foreseeable future. Mr. Banyee contends that the binding regulations, statutes, and due process discussed above require the Government to provide him—*as an individual*—with process as robust as that set forth in the now stayed *D.V.D.* class injunction. See ¶ 36 *supra*. DHS has not yet informed Mr. Banyee or his counsel when his Reasonable Fear Interview regarding Liberia will take place, but the law requires that DHS provide this in writing, and that DHS provide a written decision to Mr. Banyee and his counsel following the interview. If DHS determines Mr.

Banyee has a reasonable fear, it will be required to facilitate reopening so Mr. Banyee can present his claims of mandatory CAT protection to an immigration judge. Further, if DHS determines Mr. Banyee does not have a reasonable fear of removal to Liberia, it must still afford him a reasonable opportunity (at least 15 days, with notice to and assistance of counsel) to file his own motion to reopen seeking an immigration court hearing on his mandatory CAT claim. DHS is obligated by law to refrain from removing Mr. Banyee to Liberia while his motion to reopen is adjudicated, and Mr. Banyee's counsel are committed to vigorously pursuing all of his procedural rights. The time required for DHS's *lawful* compliance with required procedures for mandatory protection claims must be the measure of the prospective likelihood of Mr. Banyee's future removal to Liberia or any other third country.

71. The Supreme Court's stay order of June 23, 2025 means there is no longer a separate court order in place right now to help protect the rights of *D.V.D.* class members like Mr. Banyee seeking to fully present their mandatory protection claims. Based on the Government's past behavior it is likely DHS will again seek to apply the illegal standards of its May 30th policy memo to arbitrarily short-circuit the legally required process. The Supreme Court's stay order does not prevent this Court from acting to protect Mr. Banyee's rights. The Government's lead argument in seeking a Supreme Court stay of the *D.V.D.* injunction was that 8 U.S.C. § 1252(f)(1) deprived the district court of jurisdiction to enter *class-based* relief on a national basis, which the Government characterized as unlawfully enjoining the operation of the removal statute 8 U.S.C. § 1231. Individuals, however, face no such jurisdictional obstacle, and neither the *D.V.D.* complaint nor the Supreme Court

stay of the *D.V.D.* injunction encompass Mr. Banyee's habeas challenge to the application to him of its unlawful March 30, 2025 policy memo. This Court can and should take interim steps to protect its own jurisdiction and Mr. Banyee's fundamental rights. *See Brewer v. Swinson*, 837 F.2d 802, 804 (8th Cir. 1988) (Exercising concomitant jurisdiction over a class litigant's urgent individual habeas action, despite general rules against duplicative litigation, because "the determining factors should be equitable in nature, giving regard to wise judicial administration.").

72. DHS's March 30th memo, which is inconsistent with the required legal standards for processing third country protection claims, together with the Government's recent willingness to defy court orders enforcing those required standards, both leave Mr. Banyee at high risk that DHS will deprive him of his legal rights to pursue mandatory CAT protection from Liberia with assistance of his chosen pro bono counsel. For this reason, the Court should also enter a temporary order enjoining DHS from applying its unlawful memo, from transferring Mr. Banyee out of the district of Minnesota, and from removing him to Liberia (or any other third country) while he completes all steps of the process of seeking CAT protection afforded to him by law.

CLAIMS FOR RELIEF

COUNT I

UNLAWFUL DETENTION VIOLATION OF IMMIGRATION AND NATIONALITY ACT 8 U.S.C. § 1231(a)(6)

73. Mr. Banyee realleges and incorporates by reference the paragraphs above.

74. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for “a period reasonably necessary to bring about the alien’s removal from the United States.” 533 U.S. at 689, 701. Petitioner’s continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

COUNT II

UNLAWFUL DETENTION VIOLATION OF DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

75. Mr. Banyee realleges and incorporates by reference the paragraphs above.

76. The Fifth Amendment guarantees due process protections to all “persons” in the United States, including noncitizens, regardless of immigration status. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

77. *Zadvydas* authorizes detention only for “a period reasonably necessary to bring about the alien’s removal from the United States.” 533 U.S. at 689, 701. Petitioner’s continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates due process, and he must be immediately released.

COUNT III

WRONGFUL THIRD COUNTRY REMOVAL VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

78. Mr. Banyee realleges and incorporates by reference the paragraphs above.

79. The APA entitles “a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . to judicial review.” 5 U.S.C. § 702.

80. The APA compels a reviewing court to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . . otherwise not in accordance with law,” id. § 706(2)(A), or “short of statutory right,” id. § 706(2)(C).

81. Respondents have a policy or practice of failing to provide noncitizens who have final removal orders with meaningful notice and opportunity to present a fear-based claim prior to deportation to a third country.

82. Respondents’ policy or practice is arbitrary and capricious. It deprives Petitioner of meaningful notice of DHS’ intent to deport him to a third country and deprives him of an opportunity to present a fear-based claim to an immigration judge prior to deportation to a third country. It endangers his life and safety by subjecting him to the very persecution and torture they fear in the third country.

83. Respondents’ policy or practice is also not in accordance with law, short of statutory rights, and violates the INA, FARRA, and implementing regulations all of which mandate that Respondents refrain from removing Petitioner to a third country where he will likely be persecuted or tortured, thus requiring Respondents to provide meaningful notice of deportation to a third country and the opportunity to present a fear-based claims with assistance of counsel to an immigration judge before removing an individual to a third country, yet Respondents do not do so.

COUNT IV

**WRONGFUL THIRD COUNTRY REMOVAL
VIOLATION OF DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO
THE U.S. CONSTITUTION**

84. Mr. Banyee realleges and incorporates by reference the paragraphs above.

85. The INA, FARRA, and implementing regulations mandate meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

86. Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports a person to a third country.

87. Respondents' policy of removing people to third countries without meaningful notice or opportunity to present a fear-based claim with assistance of counsel violates Petitioner's substantive and procedural due process rights.

PRAYER FOR RELIEF

Accordingly, Banyee respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Issue an order prohibiting Respondents from transferring Petitioner outside of this judicial district or removing him from the United States to Liberia (or any third country) until at least such time that he has received, with the unobstructed assistance of his counsel, both his Reasonable Fear Interview from DHS, and thereafter his fair opportunity (and no less than 15 days) to

file a motion to reopen for a hearing before an immigration judge regarding his protection claims to Liberia, followed by the adjudication of that motion to reopen.

- 3) Declare that Respondents' continued detention of Mr. Banyee violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), and the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- 4) Grant a writ of habeas corpus directing Respondents to immediately release Mr. Banyee from custody;
- 5) Grant any other and further relief as the Court deems just and proper.

Dated: July 1, 2025

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