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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

G.A.A.,

Petitioner,

v.

TONYA ANDREWS, in her official capacity as Facility Administrator of Golden State Annex Detention Facility,

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

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

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

Respondents.

No.

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner G.A.A., by and through his undersigned counsel, hereby moves for a temporary restraining order enjoining Respondents from violating Petitioner's due process rights and circumventing this Court's jurisdiction by unlawfully removing him to a third country without a meaningful opportunity to be heard on a potential fear-based claim for relief. This motion is based upon Federal Rule of Civil Procedure 65, Local Rule 65, the incorporated memorandum of points and authorities, and the simultaneously filed Petition for Writ of Habeas Corpus and Exhibits, including Petitioner's declarations, as well as any further information presented to the Court in connection with this application.

Respectfully submitted,

Dated: August 29, 2025

/s/ Sean Lai McMahon

Counsel for Petitioner

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INTRODUCTION[1]

1. Petitioner G.A.A. (G.A.A. or Petitioner) brings a straight-forward habeas petition seeking relief pursuant to mandatory statutory, regulatory, and due process protections in connection with imminent removal to a third country without any meaningful opportunity to assert a fear-based claim for withholding of removal. G.A.A. is a Cameroonian national who has been in detention for over 14 months in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) (Government) at Golden State Annex Detention Facility (GSA) in McFarland, California, despite winning his immigration case more than six months ago. On February 6, 2025, an immigration judge (IJ) granted G.A.A. Withholding of Removal to Cameroon under § 241(b)(3) of the Immigration and Nationality Act (INA) because G.A.A. would likely be tortured and/or persecuted if deported there on the basis of a protected status related to political expression and social and/or ethnic group membership. Exhibit 2 (Release Request) at 11 (Exhibit B to Release Request: Order of IJ Granting Withholding of Removal).

2. Sometime after his Withholding of Removal Order became final, G.A.A. was informed by ICE that it would attempt to remove him to a third country. Ex. 2. ICE told G.A.A. that they would seek his removal to Brazil, Bolivia, Chad, Liberia, or Nigeria. *Id.* G.A.A. is not a citizen of and has no connection to any of those countries. Ex. 2 at 16 (Exhibit C to Release Request: Sworn Declaration of G.A.A.).

3. On August 6, 2025, G.A.A.'s counsel submitted a request to ICE for G.A.A.'s immediate release from ICE custody in accord with INA § 241(a)(3) and/or on parole under INA § 212(d)(5) and DHS Secretary Mayorkas's Memorandum, "Guidelines for the Enforcement of Civil Immigration Law," which went into effect on November 29, 2021. Ex. 2. Among other critical positions, that request explained G.A.A. fears removal to each of the three identified countries and demanded ICE comply with its obligations to provide him with sufficient notice and meaningful opportunity to reopen removal proceedings upon a potential designation of any third country for removal. *Id.* In other words, G.A.A.'s counsel asked that ICE give him his statutory and

[1] Petitioner's counsel apologizes for any errors in this filing. We are filing as quickly as possible given the circumstances.

constitutional opportunity to explain to an IJ why his life or freedom would be threatened by removal to a specific third country. *Id.* Respondents did not respond to G.A.A.'s counsel.

4. Instead, today, Respondents appeared ready to immediately remove G.A.A. out of GSA. Exhibit 1 (Affidavit of Madhavi Narayanan). They drained his commissary account, essentially blocking his access to counsel. Based on Petitioner's counsel's recent experiences with another client at GSA, this is a sign Respondents could remove him literally within hours. Respondents have not yet told G.A.A. if/where they plan on taking him or whether they seek to imminently remove him. Respondents did not even attempt to contact G.A.A.'s counsel despite knowing that he is represented by counsel. Ex. 2 at 6–9 (Exhibit A: Notice of Appearance). Respondents' failure to contact counsel is all the more egregious considering counsel recently submitted a release request and stated G.A.A. maintains a credible fear of removal on the basis of protected status.

5. G.A.A. has asserted a fear-based claim to several countries and would need proper notice and the opportunity to be heard if Respondents plan to deport him to a specific third country imminently.

6. Respondents appear likely to imminently and irreparably violate G.A.A.'s rights in brazen violation of their statutory, regulatory, and due process obligations. On July 9, 2025, DHS adopted a policy memorandum stating that it would remove non-citizens to third countries with only 24 hours or less notice and no meaningful opportunity to assert a fear-based claim—just as G.A.A. successfully did with respect to his home country. *See* Exhibit 3 (July 9, 2025 Third Country Removals Memo). Ninth Circuit precedent is clear: "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"). *See also Najjar v. Lynch*, 630 Fed. App'x. 724 (9th Cir. 2016) (same). This Court should join a host of other recent courts in enjoining Respondents from circumventing the Court's jurisdiction, INS regulations, and

due process by removing G.A.A. to a third country without mandatory protections. *See, e.g.*, *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *6 (C.D. Cal. June 25, 2025) (holding "third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings").

7. The stakes are real. G.A.A.'s protected status is likely to subject him to persecution and/or torture in a host of third countries that the Government has solicited to accept non-citizens subject to removal. Ex. 2. If Respondents indeed are seeking to remove him to a third country, G.A.A. would review upon proper notice of which country and likely assert a fear-based claim and demand a real opportunity to be heard, including by moving to reopen his immigration proceedings if necessary. G.A.A. must be given his statutory, regulatory, and constitutional right to be meaningfully heard on a fear-based claim prior to removal to a third country. Irreparable harm is obvious given the risk of persecution and torture. Moreover, it "is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). And "it is always in the public interest to prevent the violation of a party's constitutional rights." *Id.* (internal citation omitted).

STATEMENT OF FACTS

I. Legal Framework for Fear-Based Claims and Mandatory Obligations in Connection with Third Country Removals

8. Non-citizens in immigration removal proceedings may seek three main forms of relief based on a fear of returning to their home country: asylum, withholding of removal, and Convention Against Torture (CAT) relief. When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021).

9. In accord with the fear-based claim legal framework, the Government is obligated to provide non-citizens with mandatory statutory and due process protections prior to removing them to a third country. Since the current administration has taken office, it has been attempting to

increase its deportation of non-citizens to third countries by any means necessary—mostly blatantly unlawful ones.

10. 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, blocking third country removals without notice and a meaningful opportunity to seek CAT protection. *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 392–93 (D. Mass. Apr. 18, 2025). 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 non-citizen 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.

Id.

11. DHS's third-country removal policy pales in comparison to these statutorily and constitutionally necessary protections. On March 30, 2025, DHS issued "Guidance Regarding Third Country Removals" that "clarifie[d] DHS policy regarding the removal of aliens with final orders of removal . . . to countries other than those designated for removal in . . . removal orders (third country removals)." Exhibit 4 (March 30, 2025 Third Country Removals Memo) at 2. If DHS secures acceptance of a non-citizen's deportation to a third country by that country, DHS will inform the detainee of removal to that country, but "Immigration officers will not affirmatively ask whether the alien is afraid of being removed to that country." *Id* at 3. If the "alien affirmatively states a fear, USCIS will . . . screen the alien within 24 hours of referral." *Id.* In that scenario,

"USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal." *Id.* "If USCIS determines that the alien has not met this standard, the alien will be removed." *Id.*

12. Thereafter, the Government failed to comply with the *D.V.D.* district court's orders at multiple points while the TRO and preliminary injunction were in place. On March 31, 2025, at least six D.V.D. class members were removed from Guantanamo to El Salvador on a Department of Defense plane, in violation of the TRO. *See D.V.D. v. DHS*, No. 1:25-cv-10676- BEM (D. Mass. Apr. 30, 2025), ECF No. 86. 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. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 7, 2025), ECF No. 91. 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. On or around June 1, 2025, the Government deported a group of six individuals to third-country South Sudan without affording mandatory protections. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (Sotomayor, J., dissenting) ("In matters of life and death, it is best to proceed with caution. In this case, the Government took the opposite approach . . . in clear violation of a court order, it deported six more to South Sudan, a nation the State Department considers too unsafe for all but its most critical personnel.") 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).

13. On May 16, 2025, in another case, the Supreme Court considered the Government's attempt to remove two Venezuelan nationals who are members of a designated foreign terrorist organization on a day's notice. *See A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1368 (2025). There, the Supreme Court held: "notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *Id.*

14. Nevertheless, DHS felt emboldened by the Supreme Court's stay of the injunction in *D.V.D.* and adopted a third country removal policy that clearly runs afoul of mandatory statutory and constitutional protections and the Supreme Court's views in *A. A. R. P.* On July 9, 2025, ICE's Acting Director Todd Lyons issued a policy memo that states some non-citizens will be deported to third countries with ***literally no notice*** whatsoever: "If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures." Ex. 3. Otherwise, ICE's new standard procedure is:

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

Id.

15. Independent of the now-stayed *D.V.D.* injunction, an increasing number of courts across the country have enjoined the Government from effectuating unlawful third-country removals without adhering to mandatory statutory and constitutional protections. *Vaskanyan*, 2025 WL 2014208, at *6–9 (holding "Petitioner's removal to a third country without due process . . . *is* likely to result in irreparable harm" and enjoining Petitioner's removal to a third country without the same protections mandated in the D.V.D. injunction); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025) (granting TRO enjoining Government from removing petitioner to "any third country in the world absent prior approval from this Court"); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2097979, at *3 (W.D. Wash. July 25, 2025) (same); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D. Cal. July 16, 2025) (granting TRO and preliminary injunction enjoining removal of "Petitioner to a third country without notice and an opportunity to be heard"); *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 2201470, at *2 (S.D. Tex. Aug. 1, 2025) (granting TRO barring Government "from transferring, relocating, or removing Petitioner outside the Southern District of Texas without an Order from the Court"); *Gomez v. Chestnut*, No. 2:25-CV-00975-GMN-BNW, 2025 WL 1695359, at *4 (D. Nev. June 17, 2025) (ordering Government "shall provide 72-hours' notice to Petitioner's counsel before it is the Government's intent to remove Petitioner out of the country").

II. Petitioner's Immigration and Custody Status

16. Petitioner G.A.A. was born in Cameroon on October 20, 1996 and is a Cameroonian citizen. Ex. 2 at 16–19. He is not a citizen of any country besides Cameroon, nor does he have ties to any other country. *Id.*

17. G.A.A. suffered repeated persecution and torture in Cameroon on the basis of his protected status in connection with political expression and social group membership. *Id.* He fled Cameroon out of fear for his life. *Id.*

18. He came to the United States through the southern border while President Biden's Circumvention of Lawful Pathways rule was in effect from May 2023 to May 2025, presumptively disqualifying him from asylum. *Id.*; *see also* 88 Federal Register 31314, (May 16, 2023); 8 C.F.R.

§ 208.33(a). Promptly upon entry into the United States, he was brought into custody and has been in detention since then. Ex. 2. On July 5, 2024, DHS served him with a Notice to Appear (NTA), charging him as removable under two provisions of § 212(a) for being present in the United States without being admitted or paroled and without certain documents. Exhibit 5 (Notice to Appear). G.A.A. was brought to GSA, where he has been detained since. Ex. 2.

19. On February 6, 2025, an IJ granted G.A.A. withholding of removal to Senegal under § 241(b)(3) of the INA because G.A.A. would likely be tortured and/or persecuted if deported there on the basis of a protected status related to political expression and ethnic/social group membership. Ex. 2. G.A.A. was ordered removed to, and his removal withheld from, Cameroon. *Id.* On March 6, 2025, G.A.A.'s withholding of removal order became final because the appeal period expired. *See* 8 U.S.C § 1231(a)(l)(B)(i); 8 C.F.R. § 1241.l(c).

20. It is worth noting that given the "clear probability" standard required for withholding of removal is much more stringent than the "well-founded fear" standard for asylum, G.A.A. would have qualified for asylum had he entered the United States through the southern border before May 10, 2023 or after May 10, 2025—i.e., when President Biden's Circumvention of Lawful Pathways rule was not in effect. *See Navas v. INS*, 217 F.3d 646, 663 (9th Cir. 2000) (comparing asylum and withholding of removal standards). For reference, to be granted withholding of removal under the INA, a non-citizen must objectively establish that it is "more likely than not" (i.e. 50%+) that the applicant's race, religion, nationality, membership in a particular social group, or political opinion would be "a reason" his or her "life or freedom would be threatened" in the future. INA § 241(b)(3)(A); *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017).

21. Sometime after his Withholding of Removal Order became final, G.A.A. was informed by ICE that it would attempt to remove him to a third country. Ex. 2. ICE told G.A.A. that it would seek his removal to Brazil, Bolivia, Chad, Liberia, or Nigeria. *Id.* G.A.A. is not a citizen of and has no connection to any of those countries. Ex. 2.

22. On August 6, 2025, G.A.A.'s counsel submitted a request to ICE for immediate release from ICE custody in accord with INA § 241(a)(3) and/or on parole under INA § 212(d)(5) and a 2021 DHS Policy Memorandum. Ex. 2. That request explained that G.A.A. is not a flight risk

and is committed to complying with any order of supervision. *Id.* G.A.A.'s friend is his sponsor, a U.S. citizen, and a resident of Maryland. *Id.* G.A.A.'s friend declared that she would be willing to provide for and support G.A.A. comprehensively as G.A.A. acclimates to life in the United States if released. *Id.* (Exhibit D: Signed Sponsor Letter). G.A.A. has no criminal record in the U.S. or his country of origin. *Id.*

23. The release request explained that G.A.A.'s lawful removal does not seem to be imminent in part because G.A.A. fears removal to each of the identified countries and demanded ICE comply with its obligations to provide him with sufficient notice and meaningful opportunity to reopen removal proceedings upon a potential designation of any third country for removal. *Id.* at 5.

24. The request also demanded release for urgent humanitarian reasons pursuant to INA § 212(d)(5). *Id.* INA § 212(d)(5) provides that parole "would generally be justified" for individuals "who have serious medical conditions in which continued detention would not be appropriate." *Id.* *See* 8 CFR § 212.5(b)(1). G.A.A. has "serious mental and physical health conditions" relating, in part, to the persecution and torture he endured in Cameroon. Ex. 2. There are several noteworthy details, but out of fear of the exigent circumstances, Petitioner's counsel cannot recount them all on this quick record.

25. Tonight, Respondents cleared G.A.A.'s commissary account, depriving him of access to counsel and based upon information and belief (and very recent experience with another client) setting up imminent removal to a third country without any meaningful notice. Ex. 1.

III. Petitioner Has Expressed a Credible Fear of Removal to the Third Countries Respondents Have Identified, Including Ghana

26. Upon information and belief, it appears Respondents are preparing to remove G.A.A. to a third country without providing a meaningful opportunity to be heard on his fear-based claims. As Respondents were notified through the release request, G.A.A. would move to re-open his immigration case and apply for fear-based protection and withholding of removal as to certain third countries. Ex. 2. G.A.A. already expressed his fear of removal to each of the countries Respondents previously identified. *Id.* Respondents have not yet provided any meaningful notice—

and no notice to counsel, so it is difficult for G.A.A. to explain the basis for his fear-based claim as to a specific country. Nevertheless, it is obvious that G.A.A.'s protected status could subject him to persecution and torture in any number of third countries. *See, e.g., D.V.D.*, 778 F.Supp.3d at 388.

27. The United States Department of State issues Country Reports on Human Rights Practices for various countries. These Country Reports could illustrate part of the basis for Petitioner's hypothetical fear-based protection claims. If Respondents provide notice of a particular third country they seek to remove G.A.A. to, Petitioner's counsel will evaluate and supplement the record with G.A.A.'s basis for a fear-based claim if applicable.

28. Further, based on the statements and actions of countries that have recently accepted third country removals from the United States, G.A.A. would likely succeed on the claim that these countries would repatriate him to Cameroon where he would face torture and/or persecution, in violation of U.S. and international refugee law. *See, e.g.*, Exhibit 5 (New York Times Article Re: Eswatini Repatriating Deportees); Exhibit 6 (Reuters Article Re: Libya Repatriating Deportees).

LEGAL STANDARD

29. G.A.A. is entitled to a temporary restraining order (TRO) if he establishes: "(1) a likelihood of success on the merits, (2) that [he] will likely suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tip in [his] favor, and (4) that the public interest favors an injunction." *Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc.*, 758 F.3d 1069, 1071 (9th Cir. 2014) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). The Ninth Circuit has adopted a "sliding scale" approach wherein "the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another." *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012) (per curiam) (citations omitted). Thus, a temporary restraining order may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). To succeed under the "serious question" test, G.A.A. must show that he is likely to suffer irreparable injury and that an injunction is in the public's interest. *Id.* at 1132.

ARGUMENT

I. G.A.A. Is Likely to Succeed on the Merits

30. It is black letter law that G.A.A. must be provided with a meaningful opportunity to apply for protection prior to removal to a third country. The Ninth Circuit held that "[f]ailing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041 (finding that "last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"). *See also Najjar*, 630 Fed. App'x. 724 ("In the context of country of removal designations, last minute orders of removal to a country may violate due process if an immigrant was not provided an opportunity to address his fear of persecution in that country.") In practice, the "guarantee of due process includes the right to a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her particular claim." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) (ordering the same for non-citizen petitioner and holding ICE "has an affirmative obligation to make a determination regarding a noncitizen's claim of fear before deporting" them). This is because "third-country removals are subject to the same mandatory protections that exist in removal or withholding-only proceedings." *Vaskanyan*, 2025 WL 2014208, at *6 (citing *D.V.D.*, 778 F.Supp.3d).

31. While the Ninth Circuit decisions above clearly evince G.A.A.'s likelihood of success on the merits, a full constitutional analysis further illustrates his likelihood of success. To "establish a procedural due process violation, the plaintiff must identify a protected liberty or property interest and allege that the defendants, acting under color of state law, deprived [him] of that interest without constitutionally adequate process." *D.V.D.*, 778 F.Supp.3d at 387 (cleaned up). The "basic purport of the constitutional requirement is that, before a significant deprivation of liberty or property takes place at the state's hands, the affected individual must be forewarned and afforded an opportunity to be heard 'at a meaningful time and in a meaningful manner." *Id.* (cleaned up).

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

33. An increasingly large host of courts in this Circuit and across the country have found the Government's "policy or practice of executing third-country removals" fail to "provid[e] notice and a meaningful opportunity to present fear-based claims, and that such policy or practice constitutes a deprivation of procedural due process." *Id.* at 387–89 ("The Court finds it likely that Defendants have applied and will continue to apply the alleged policy of removing aliens to third countries without notice and an opportunity to be heard on fear-based claims—in other words, without due process.")

34. The Government's March 30, 2025 and July 9, 2025 policy memoranda are clear evidence of Respondents' intent to unlawfully effectuate a third country removal, just as they have done with many others already. ICE's new standard procedure for third-country removals is to not ask a non-citizen whether they are afraid of being removed to a specific third country. Ex. 3. If the non-citizen is provided a "reasonable means and opportunity to speak with an attorney," then they may be removed within as few as 6 hours after notice of removal. *Id.* If they cannot speak to an attorney, they may be removed in as few as 24 hours. *Id.* If the non-citizen affirmatively states a fear of removal, USCIS is to screen them within 24 hours and unless the non-citizen—again without any mention of counsel—fails to establish they "would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal," remove them as soon as

possible. *Id.*

35. Here, G.A.A. had his commissary account, cutting off access to counsel and setting up imminent transfer and removal, based on counsel's related experience with other clients. Ex. 1.

36. Accordingly, Respondents' actions here and their general policy guidance "violate[] both INS regulations and the constitutional right to due process," as enumerated by the Ninth Circuit and sister district courts. *Andriasian*, 180 F.3d at 1041 ("last minute" designation of alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process"); *see also Najjar*, 630 Fed. App'x. 724 (similar); *Aden*, 409 F. Supp. 3d at 1010; *Vaskanyan*, 2025 WL 2014208, at *6.

37. This Court should join its peers in finding that Respondents' third country removal process is unlawful. *D.V.D.*, 778 F.Supp.3d at 392–93 (granting preliminary injunction and mandating due process protections as discussed above and requested herein); *Vaskanyan*, 2025 WL 2014208, at *6–9 (holding "Petitioner's removal to a third country without due process … *is* likely to result in irreparable harm" and enjoining Petitioner's removal to a third country without the same protections mandated in the D.V.D. injunction); *J.R.*, 2025 WL 1810210, at *4 (granting TRO enjoining Government from removing petitioner to "any third country in the world absent prior approval from this Court"); *Nguyen*, 2025 WL 2097979, at *3 (same); *Phan*, 2025 WL 1993735, at *7 (enjoining third country removal "without notice and an opportunity to be heard"); *Misirbekov*, 2025 WL 2201470, at *2 (prohibiting "transferring, relocating, or removing Petitioner outside the Southern District of Texas without an Order from the Court"); *Gomez*, 2025 WL 1695359, at *4.

38. Taken together, G.A.A. easily meets his burden of demonstrating a likelihood of success on the merits of his due process and INA violation claims, or at least, serious questions going to the merits. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

II. Absent Immediate Relief, G.A.A. will Suffer Irreparable Harm

39. Respondents appear likely to imminently remove G.A.A. to a third country without providing G.A.A. mandatory statutory and constitutional protections. *See* Ex. 3 (explaining DHS's July 9, 2025 Third Country Removal policy memorandum setting forth *standard* procedure is to

remove non-citizens to third countries in as few as 24 hours without due process protections). Therefore, significant irreparable harm is obviously imminent. *Melendres*, 695 F.3d at 1002 ("the deprivation of constitutional rights 'unquestionably constitutes irreparable injury'"). As the *D.V.D.* District Court explained, the irreparable harm resulting from third country removal without sufficient opportunity to apply for fear-based protection "is clear and simple: persecution, torture, and death. It is hard to imagine harm more irreparable." *D.V.D.*, 778 F.Supp.3d at 391. The Supreme Court similarly held in a more unfavorable fact pattern involving detainees who are members of a designated foreign terrorist organization that "notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *A. A. R. P.*, 145 S. Ct. at 1368. Accordingly, an increasingly long list of courts in this district and throughout the country have held "removal to a third country without due process . . . *is* likely to result in irreparable harm" and issued TROs enjoining such removals. *Vaskanyan*, 2025 WL 2014208, at *6 (enjoining removal without protections mandated in the *D.V.D.* injunction). *Supra* p. 13 (discussing *J.R.*, 2025 WL 1810210, at *4; *Nguyen*, 2025 WL 2097979, at *3; *Phan*, 2025 WL 1993735, at *7; *Misirbekov*, 2025 WL 2201470, at *2; *Gomez*, 2025 WL 1695359, at *4). This Court should likewise enjoin Respondents from subjecting G.A.A. to irreparable harm and stripping the Court of its jurisdiction[2] via an unlawful third-country removal.

III. The Public Interest and Equities Favor Granting Relief

40. The balance of the equities and the public interest strongly favor granting G.A.A.'s requested relief. These two "merge where, as is the case here, the government is the opposing party." *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). At its core, "it is always in the public interest to prevent the violation of a party's

[2] The All Writs Act authorizes courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). In the immigration context, courts have recently invoked the All Writs Act to preserve their jurisdiction over constitutional challenges to lightning-fast deportations. *See, e.g., A.A.R.P.*, 145 S. Ct. at 1369 (noting that the Court "had the power to issue injunctive relief to prevent irreparable harm to the applicants and to preserve our jurisdiction over the matter," by ordering their continued presence in the United States until further order of the Court (citing 28 U.S.C. § 1651(a))); *Garcia v. Noem*, No. 8:25-CV-00951-PX, 2025 WL 2062203, at *6–10 (D. Md. July 23, 2025) (enjoining third-country removal proceedings in order to preserve jurisdiction pursuant to the All Writs Act); *Ozturk v. Trump*, 2025 WL 1145250, at *23 (D. Vt. Apr. 18, 2025) (ordering return of detainee from Louisiana to Vermont), stay and mandamus denied sub nom., *Ozturk v. Hyde*, 136 F. 4th 382 (2d Cir. 2025); *Perez v. Noem*, 2025 U.S. Dist. Lexis 113509, at *4–5 (S.D.N.Y. June 13, 2025) (enjoining detainee's transfer outside New York and New Jersey absent further court order).

constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citation omitted). In cases implicating removal, "there is a public interest in preventing [non-citizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken*, 556 U.S. at 436; *see also Vaskanyan*, 2025 WL 2014208, at *8 (holding and quoting same). In response, the Government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). For example, the *D.V.D.* Court "found it likely that these [third-country] deportations have or will be wrongfully executed … [and] that these circumstances countervail the public's normal and meaningful 'interest in prompt execution.'" 2025 WL 1142968, at *23. To boot, G.A.A.'s "'likelihood of success on the merits [further] lightens [Respondents'] stated interests.'" *Id.*

41. Moreover, in "comparison to the persecution Petitioner would face, Respondent would suffer little to no harm if Petitioner's Motion were granted." *Misirbekov*, 2025 WL 2201470, at *2. In other words, a "TRO would impose little to no prejudice on the Government, which is free at any time to execute the removal order by" *lawfully* removing G.A.A. *J.R.*, 2025 WL 1810210, at *4.

IV. If Necessary, an *Ex Parte* TRO Is Appropriate

42. G.A.A.'s undersigned counsel have taken efforts to ensure Respondents are on notice of Petitioner's motion for temporary restraining order, petition for writ of habeas corpus, and other filings. G.A.A.'s counsel are filing this and G.A.A.'s related submissions electronically in the Eastern District of California, which effectuates service on the U.S. Attorney's Office. Further, G.A.A.'s counsel emailed copies of G.A.A.'s file-ready submissions to the U.S Attorney's Office at the address of Edward.Olsen@usdoj.gov (Edward Olsen, Chief of Civil Division). In that email communication, G.A.A.'s counsel explained that they will request the Court set a hearing for as soon as practicably possible. Therefore, G.A.A. has provided Respondents with "actual" and "[a]ppropriate notice" pursuant to LR 231(a).

43. Nevertheless, given the exigent circumstances, the Court should issue an *ex parte* TRO upon movant's showing that "immediate and irreparable injury, loss, or damage will result to

the movant before the adverse party can be heard." Fed. R. Civ. P. 65(b)(1). G.A.A. "has met those requirements by demonstrating through specific facts in the supporting declarations that immediate and irreparable injury would result before full briefing could occur." *J.R.*, 2025 WL 1810210, at *4 (holding *ex parte* TRO is appropriate and necessary because of potential for third-country removal "with minimal notice"). The Court should issue the requested TRO expeditiously even if it finds G.A.A. has "raised serious questions going to the merits," as opposed to likelihood of success, so long as he establishes "'imminent threat of severe, irreparable harm.'" *Nguyen*, 2025 WL 2097979, at *3 (citing *A.A.R.P.*, 145 S. Ct. at 1369). Such an extraordinary measure is also necessary to ensure preservation of the "Court's jurisdiction." *Id.* (citing *A.A.R.P.*, 145 S. Ct. at 1369). Since Respondents appear determined to unlawfully remove G.A.A. to a third country, an *ex parte* TRO is more than appropriate here.

V. No Security Is Appropriate for an Indigent Petitioner

44. Although Federal Rule of Civil Procedure 65(c) can require a security for a temporary restraining order, a district court "has discretion as to the amount of security required, if any." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003). No security is appropriate where there is no quantifiable harm to the restrained party and where the order is in the public interest. *Save Our Sonoran, Inc v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005); *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). District courts routinely exercise this discretion to require no security in cases brought by indigent or incarcerated people. *See, e.g., Vaskanyan*, 2025 WL 2014208, at *8; *Diaz*, 2025 WL 1676854, at *3. Due to his prolonged detention, G.A.A. is indigent. Accordingly, the Court should not require him to post security.

CONCLUSION

G.A.A. respectfully requests this Court grant his Emergency Motion for a Temporary Restraining Order. In doing so, the Court should: enjoin Respondents from removing G.A.A. from this District or, at least, removing G.A.A. via a third-country deportation without providing him and his counsel meaningful notice and opportunity to assert a fear-based claim:

(1) a minimum of ten (10) days to raise a fear-based claim for protection prior to removal;

(2) if G.A.A. demonstrates reasonable fear of removal to the third country, Respondents

must move to reopen G.A.A.'s removal proceedings;

(3) if G.A.A. is not found to have demonstrated a reasonable fear of removal to the third country, Respondents must provide a meaningful opportunity, and a minimum of fifteen (15) days for G.A.A. to seek reopening of his immigration proceedings.

Respectfully submitted,

Dated: August 29, 2025

/s/ Sean Lai McMahon

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Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242 AND LR 190

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

Executed on this 29th day of August 2025 in Oakland, CA.

/s/ Sean Lai McMahon

Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure and L.R. 65-1, I hereby certify that on August 29, 2025, this was filed in the Eastern District of California, which effectuates service on the U.S. Attorney's Office.

Respectfully submitted,

Dated: August 29, 2025

/s/ Sean Lai McMahon

Counsel for Petitioner

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

G.A.A.,

Petitioner,

v.

TONYA ANDREWS, in her official capacity as Facility Administrator of Golden State Annex Detention Facility,

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

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

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

Respondents.

No.

[PROPOSED] ORDER GRANTING PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

Upon review of Petitioner G.A.A.'s Emergency Motion for Temporary Restraining Order, Petition for Writ of Habeas Corpus, all supporting affidavits and exhibits, and any response filed by Respondents, the Court HEREBY FINDS:

1. Petitioner is likely to succeed on the merits of his claims.
2. Petitioner G.A.A. is likely to suffer irreparable harm in the absence of a temporary restraining order, the balance of equities tips in his favor, and a temporary restraining order is in the public interest.

Therefore, Petitioner G.A.A.'s Emergency Motion for Temporary Restraining Order is GRANTED. THE COURT HEREBY ORDERS THAT:

1. Respondents are prohibited from removing G.A.A. from this District absent express order of this Court.
2. Respondents are further prohibited from removing G.A.A. via a third-country

deportation without providing him and his counsel with meaningful notice and opportunity to assert a fear-based claim by:

a. providing a minimum of ten (10) days to raise a fear-based claim for protection prior to removal;

b. moving to reopen G.A.A.'s removal proceedings if G.A.A. demonstrates reasonable fear of removal to the third country;

c. providing G.A.A. a meaningful opportunity, and a minimum of fifteen (15) days for G.A.A. to seek reopening of his immigration proceedings if G.A.A. is not found to have demonstrated a reasonable fear of removal to the third country.

3. No security shall be required.

4. Petitioner's Motion for Temporary Restraining Order shall also be considered a Motion for Preliminary Injunction. Respondents are to file any opposition no later than _____, 2025. Petitioner is to file a reply in support no later than _____, 2025. Petitioner's Motion for Preliminary Injunction shall be heard on _____, 2025 at _____ AM/PM [via video conference].

5. [If *ex parte*] Respondents may apply for the Court to modify or dissolve this temporary restraining order on two (2) days' notice or such shorter notice as the Court may allow. See LR 231 and FRCP 65(b).

Dated: _____, 2025

Time and Hour: _____ AM/PM

_____

United States District Court Judge