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9 **Counsel for Petitioner**

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**

12
13 G.A.A.,

14 *Petitioner,*

15 v.

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

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

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

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

25 *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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INTRODUCTION¹

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

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

19 3. On August 6, 2025, G.A.A.'s counsel submitted a request to ICE for G.A.A.'s
20 immediate release from ICE custody in accord with INA § 241(a)(3) and/or on parole under INA §
21 212(d)(5) and DHS Secretary Mayorkas's Memorandum, "Guidelines for the Enforcement of Civil
22 Immigration Law," which went into effect on November 29, 2021. Ex. 2. Among other critical
23 positions, that request explained G.A.A. fears removal to each of the three identified countries and
24 demanded ICE comply with its obligations to provide him with sufficient notice and meaningful
25 opportunity to reopen removal proceedings upon a potential designation of any third country for
26 removal. *Id.* In other words, G.A.A.'s counsel asked that ICE give him his statutory and

27
28 ¹ Petitioner's counsel apologizes for any errors in this filing. We are filing as quickly as possible given the circumstances.

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

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

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

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

1 due process by removing G.A.A. to a third country without mandatory protections. *See, e.g.,*
 2 *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *6 (C.D. Cal. June
 3 25, 2025) (holding “third-country removals are subject to the same mandatory protections that exist
 4 in removal or withholding-only proceedings”).

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

17 STATEMENT OF FACTS

18 **I. Legal Framework for Fear-Based Claims and Mandatory Obligations in** 19 **Connection with Third Country Removals**

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

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

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

3 10. On March 23, 2025, a putative nationwide class challenged this government practice
4 in *D.V.D. v. DHS* and obtained a temporary restraining order and later a preliminary injunction for
5 a certified class, blocking third country removals without notice and a meaningful opportunity to
6 seek CAT protection. *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 392–93 (D. Mass. Apr. 18, 2025). Under
7 the *D.V.D.* injunction, the government was required to provide class members the following:

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

19 *Id.*

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

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

4 12. Thereafter, the Government failed to comply with the *D.V.D.* district court’s orders
 5 at multiple points while the TRO and preliminary injunction were in place. On March 31, 2025, at
 6 least six *D.V.D.* class members were removed from Guantanamo to El Salvador on a Department
 7 of Defense plane, in violation of the TRO. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass.
 8 Apr. 30, 2025), ECF No. 86. On May 7, 2025, the government attempted to deport a flight of class
 9 members to Libya without compliance with the preliminary injunction, leading to an emergency
 10 TRO motion. *See D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass. May 7, 2025), ECF No. 91.
 11 On May 20, 2025, while the government was again in the process of removing class members in
 12 violation of the preliminary injunction (this time to South Sudan), the plaintiffs moved for another
 13 emergency TRO, leading the district court order that the government to retain custody of the class
 14 members and provide the preliminary injunction’s protections. *See D.V.D. v. DHS*, No. 1:25-cv-
 15 10676-BEM (D. Mass. May 20, 2025), ECF No. 116. On or around June 1, 2025, the Government
 16 deported a group of six individuals to third-country South Sudan without affording mandatory
 17 protections. *See Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (Sotomayor, J.,
 18 dissenting) (“In matters of life and death, it is best to proceed with caution. In this case, the
 19 Government took the opposite approach . . . in clear violation of a court order, it deported six more
 20 to South Sudan, a nation the State Department considers too unsafe for all but its most critical
 21 personnel.”) On June 23, 2025, the Supreme Court issued a summary order that did not provide
 22 reasoning, but granted the Government’s request to stay the district court’s preliminary injunction
 23 in *D.V.D.* *See DHS v. D.V.D.*, No. 24A1153, 2025 WL 1732103 (U.S. June 23, 2025).

24 13. On May 16, 2025, in another case, the Supreme Court considered the Government’s
 25 attempt to remove two Venezuelan nationals who are members of a designated foreign terrorist
 26 organization on a day’s notice. *See A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1368 (2025). There, the
 27 Supreme Court held: “notice roughly 24 hours before removal, devoid of information about how to
 28 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."

1 *Id.*

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

19 **II. Petitioner’s Immigration and Custody Status**

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

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

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

1 § 208.33(a). Promptly upon entry into the United States, he was brought into custody and has been
 2 in detention since then. Ex. 2. On July 5, 2024, DHS served him with a Notice to Appear (NTA),
 3 charging him as removable under two provisions of § 212(a) for being present in the United States
 4 without being admitted or paroled and without certain documents. Exhibit 5 (Notice to Appear).
 5 G.A.A. was brought to GSA, where he has been detained since. Ex. 2.

6 19. On February 6, 2025, an IJ granted G.A.A. withholding of removal to Senegal under
 7 § 241(b)(3) of the INA because G.A.A. would likely be tortured and/or persecuted if deported there
 8 on the basis of a protected status related to political expression and ethnic/social group membership.
 9 Ex. 2. G.A.A. was ordered removed to, and his removal withheld from, Cameroon. *Id.* On March
 10 6, 2025, G.A.A.'s withholding of removal order became final because the appeal period expired.
 11 *See* 8 U.S.C § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(c).

12 20. It is worth noting that given the “clear probability” standard required for withholding
 13 of removal is much more stringent than the “well-founded fear” standard for asylum, G.A.A. would
 14 have qualified for asylum had he entered the United States through the southern border before May
 15 10, 2023 or after May 10, 2025—i.e., when President Biden’s Circumvention of Lawful Pathways
 16 rule was not in effect. *See Navas v. INS*, 217 F.3d 646, 663 (9th Cir. 2000) (comparing asylum and
 17 withholding of removal standards). For reference, to be granted withholding of removal under the
 18 INA, a non-citizen must objectively establish that it is “more likely than not” (i.e. 50%+) that the
 19 applicant’s race, religion, nationality, membership in a particular social group, or political opinion
 20 would be “a reason” his or her “life or freedom would be threatened” in the future. INA §
 21 241(b)(3)(A); *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017).

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

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

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

6 23. The release request explained that G.A.A.'s lawful removal does not seem to be
 7 imminent in part because G.A.A. fears removal to each of the identified countries and demanded
 8 ICE comply with its obligations to provide him with sufficient notice and meaningful opportunity
 9 to reopen removal proceedings upon a potential designation of any third country for removal. *Id.* at
 10 5.

11 24. The request also demanded release for urgent humanitarian reasons pursuant to INA
 12 § 212(d)(5). *Id.* INA § 212(d)(5) provides that parole "would generally be justified" for individuals
 13 "who have serious medical conditions in which continued detention would not be appropriate." *Id.*
 14 See 8 CFR § 212.5(b)(1). G.A.A. has "serious mental and physical health conditions" relating, in
 15 part, to the persecution and torture he endured in Cameroon. Ex. 2. There are several noteworthy
 16 details, but out of fear of the exigent circumstances, Petitioner's counsel cannot recount them all
 17 on this quick record.

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

21 **III. Petitioner Has Expressed a Credible Fear of Removal to the Third Countries** 22 **Respondents Have Identified, Including Ghana**

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

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

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

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

14 LEGAL STANDARD

15 29. G.A.A. is entitled to a temporary restraining order (TRO) if he establishes: "(1) a
 16 likelihood of success on the merits, (2) that [he] will likely suffer irreparable harm in the absence
 17 of preliminary relief, (3) that the balance of equities tip in [his] favor, and (4) that the public interest
 18 favors an injunction." *Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc.*, 758 F.3d 1069, 1071 (9th
 19 Cir. 2014) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). The Ninth Circuit
 20 has adopted a "sliding scale" approach wherein "the elements of the preliminary injunction test are
 21 balanced, so that a stronger showing of one element may offset a weaker showing of another."
 22 *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012) (per curiam) (citations omitted). Thus, a
 23 temporary restraining order may issue where "serious questions going to the merits [are] raised and
 24 the balance of hardships tips sharply in [plaintiff's] favor." *All. for the Wild Rockies v. Cottrell*, 632
 25 F.3d 1127, 1131 (9th Cir. 2011). To succeed under the "serious question" test, G.A.A. must show
 26 that he is likely to suffer irreparable injury and that an injunction is in the public's interest. *Id.* at
 27 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

1 possible. *Id.*

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

4 36. Accordingly, Respondents' actions here and their general policy guidance "violate[]"
5 both INS regulations and the constitutional right to due process," as enumerated by the Ninth
6 Circuit and sister district courts. *Andriasian*, 180 F.3d at 1041 ("last minute" designation of
7 alternative country without meaningful opportunity to apply for protection "violate[s] a basic tenet
8 of constitutional due process"); *see also Najjar*, 630 Fed. App'x. 724 (similar); *Aden*, 409 F. Supp.
9 3d at 1010; *Vaskanyan*, 2025 WL 2014208, at *6.

10 37. This Court should join its peers in finding that Respondents' third country removal
11 process is unlawful. *D.V.D.*, 778 F.Supp.3d at 392–93 (granting preliminary injunction and
12 mandating due process protections as discussed above and requested herein); *Vaskanyan*, 2025 WL
13 2014208, at *6–9 (holding "Petitioner's removal to a third country without due process ... is likely
14 to result in irreparable harm" and enjoining Petitioner's removal to a third country without the same
15 protections mandated in the D.V.D. injunction); *J.R.*, 2025 WL 1810210, at *4 (granting TRO
16 enjoining Government from removing petitioner to "any third country in the world absent prior
17 approval from this Court"); *Nguyen*, 2025 WL 2097979, at *3 (same); *Pham*, 2025 WL 1993735,
18 at *7 (enjoining third country removal "without notice and an opportunity to be heard");
19 *Misirbekov*, 2025 WL 2201470, at *2 (prohibiting "transferring, relocating, or removing Petitioner
20 outside the Southern District of Texas without an Order from the Court"); *Gomez*, 2025 WL
21 1695359, at *4.

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

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

26 39. Respondents appear likely to imminently remove G.A.A. to a third country without
27 providing G.A.A. mandatory statutory and constitutional protections. *See* Ex. 3 (explaining DHS's
28 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 jurisdiction² 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).

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

12 41. Moreover, in “comparison to the persecution Petitioner would face, Respondent
 13 would suffer little to no harm if Petitioner’s Motion were granted.” *Misirbekov*, 2025 WL 2201470,
 14 at *2. In other words, a “TRO would impose little to no prejudice on the Government, which is free
 15 at any time to execute the removal order by” *lawfully* removing G.A.A. *J.R.*, 2025 WL 1810210, at
 16 *4.

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

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

27 43. Nevertheless, given the exigent circumstances, the Court should issue an *ex parte*
 28 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. Cassidy*, 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

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

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

5 Respectfully submitted,

6 Dated: August 29, 2025

/s/ Sean Lai McMahon

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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

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA
3

4 G.A.A.,

No.

5 *Petitioner,*

6 v.

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

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

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

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

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

16 *Respondents.*

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

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

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

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

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

- 3 a. providing a minimum of ten (10) days to raise a fear-based claim for protection
4 prior to removal;
5 b. moving to reopen G.A.A.'s removal proceedings if G.A.A. demonstrates
6 reasonable fear of removal to the third country;
7 c. providing G.A.A. a meaningful opportunity, and a minimum of fifteen (15) days
8 for G.A.A. to seek reopening of his immigration proceedings if G.A.A. is not
9 found to have demonstrated a reasonable fear of removal to the third country.

10 3. No security shall be required.

11 4. Petitioner's Motion for Temporary Restraining Order shall also be considered a Motion
12 for Preliminary Injunction. Respondents are to file any opposition no later than _____,
13 2025. Petitioner is to file a reply in support no later than _____, 2025. Petitioner's
14 Motion for Preliminary Injunction shall be heard on _____, 2025 at _____
15 AM/PM [via video conference].

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

19
20 Dated: _____, 2025

21 Time and Hour: _____ AM/PM

22 _____
23 United States District Court Judge
24
25
26
27
28