

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON**

Mor Maty Ndiaye,

Petitioner,

v.

Sam Olson, in his official capacity as Deputy Director, Chicago Field Office, Immigration and Customs Enforcement;

Kristi Noem, Secretary, in her official capacity as U.S. Department of Homeland Security;

Todd M. Lyons, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;

Pamela Bondi, in her official capacity as Attorney General of the United States;

Jason Maydak, in his official capacity as Warden of the Boone County Jail.

Respondents.

Civil No.: 2:25-cv-145-DCR

PETITION FOR A WRIT OF HABEAS CORPUS

1. Petitioner, Mor Maty Ndiaye (Mr. Ndiaye), petitions this Court to issue a Writ of Habeas Corpus or order Respondents to show cause for his continued detention within 3 days, or no later than 10 days, in accordance with 28 U.S.C. § 2243. Mr. Ndiaye's continued detention bears no reasonable relation to *any* legitimate government purpose and is therefore unconstitutional. Because Respondents cannot justify Mr. Ndiaye's detention

under the U.S. Constitution, he urges this Court to grant his petition and order Respondents to immediately release him from custody. 28 U.S.C. § 2241.

STATEMENT OF THE CASE

2. Mr. Ndiaye is a Senegalese national who received an administratively final grant of withholding of removal under 8 U.S.C. § 1231(b)(3) by an Immigration Judge (IJ) on February 14, 2025. *See* Exh. C, Decision of the Immigration Judge (February 14, 2025). That decision became administratively final as of the IJ's decision date when the Department of Homeland Security (DHS) waived appeal. *See* 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).
3. Statutory withholding of removal is a form of protection that prohibits the government from removing a noncitizen to his home country where he has demonstrated that it is "more likely than not" that he will be persecuted on account of a protected ground if removed. 8 U.S.C. § 1231(b)(3); *INS v. Stevic*, 467 U.S. 407, 430 (1984); *INS v. Cadroza-Fonseca*, 40 U.S. 421, 443- 44 (1987); *Shkulaku-Purballori v. Mukasey*, 514 F.3d 499 (6th Cir. 2007).
4. Mr. Ndiaye has been detained in Immigrations and Enforcement (ICE) custody since September 2024, while he pursued his claims to relief before the IJ. Exh. A at ¶ 17; Exh. B at ¶ 17. At no point during proceedings did DHS indicate it intended to remove Mr. Ndiaye to any other country besides Senegal, and Mr. Ndiaye does not have a removal order to any country other than Senegal. Exh. B at ¶ 14; Exh. C.
5. Despite waiving appeal, DHS continues to detain Mr. Ndiaye in civil immigration detention, without justification, at the Boone County Detention Facility in Burlington, Kentucky. Mr. Ndiaye has been detained for more than six months after his grant of withholding of removal became administratively final.

6. On March 30, 2025, DHS issued a memo establishing new procedures for third-country removals. *See*, DHS, Guidance Regarding Third Country Removals, March 30, 2025 [hereinafter “March ICE Memo”].¹ Under this policy, if a country provides the United States with what DHS believes to be “credible” “assurances that noncitizens removed from the United States will not be persecuted or tortured,” then DHS may remove the noncitizen to that country without any due process. *Id.* If there are no such “assurances,” the policy instructs DHS to “first inform the [noncitizen] of removal to that country” but explicitly prohibits officers from affirmatively inquiring about the noncitizen’s fear of removal to said country. *Id.* Only where a noncitizen “states a fear of removal” unprompted will they be given a “screening” interview, which USCIS will conduct “within 24 hours of referral.” *Id.* If USCIS determines that the noncitizen has not established that it is “more likely than not” that they will be “persecuted on a statutorily protected ground or tortured in the country of removal,” the policy allows for the noncitizen to be immediately removed without any opportunity to provide evidence or seek judicial review. *Id.*
7. On June 23, 2025, a nationwide preliminary injunction halting DHS from carrying out these illegal third-country removals was stayed by the Supreme Court. *See Dep’t of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (2025). The Supreme Court’s decision does not, however, eliminate DHS’s obligations under the Immigration and Nationality Act, U.S. Constitution, and binding treaty obligations, to provide adequate notice and a meaningful opportunity to be heard, nor does it preclude the availability of individual habeas actions challenging unlawful third-country removals. *See infra* ¶¶ 51-53.

¹ https://iptp-production.s3.amazonaws.com/media/documents/2025.03.30_DHS_Guidance_Regarding_Third_Country_Removals.pdf.

8. Nevertheless, emboldened by the Supreme Court’s decision, on July 9, 2025, ICE issued a second memo instructing staff to adhere to its March memo when seeking to remove a noncitizen to a third country. *See*, ICE, Third Country Removals Following the Supreme Court’s Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025) [hereinafter “July ICE Memo”].² In addition, the new memo adds that, where the country of removal has not provided “assurances,” ICE will “generally wait at least 24 hours” before removing a noncitizen, but that “[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided reasonable means and opportunity to speak with an attorney prior to removal.” *Id.*
9. On information and belief, DHS purports to detain Mr. Ndiaye while it seeks to remove him to an alternate country. *See* March ICE Memo; July ICE Memo. The U.S. Constitution, however, does not authorize DHS to continue to detain Mr. Ndiaye indefinitely while it conducts this exercise, which is likely to be all but futile in Mr. Ndiaye’s case. *See infra* ¶¶ 45-46 (discussing challenges of third-country removal); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“A statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem.”).
10. First, Mr. Ndiaye’s continued detention violates his substantive due process rights under the Fifth Amendment because the Government cannot legally or plausibly remove him to an alternate country to which he has no ties, which means there is no legitimate government purpose for his continued detention. Historically, the Government has rarely removed individuals to alternate countries, especially in circumstances arising here—where the

² https://iptp-production.s3.amazonaws.com/media/documents/2025.07.09_ICE_-_Third_Country_Removals_Following_Dept_of_Homeland_Sec._v._D.V.D..pdf.

noncitizen was granted fear-based protection and is likely to raise a similar claim as to any potential third country. While the Government has attempted to expand its third-country removal practices in recent months, those efforts are unlawful and do not change Mr. Ndiaye's entitlement to release. As a result, Mr. Ndiaye's detention cannot continue when the Government is barred from removing him to his native Senegal and there is no foreseeable possibility that he will be removed to another country.

11. Second, having never designated any other country, the Government cannot remove Mr. Ndiaye to some other country without properly giving him notice and an opportunity to be heard regarding removal to that country. Even assuming the Government would be allowed by statute to remove him to a third country, and that it could find a country willing to accept him, the Government would be obliged to give him a hearing before removal, which would mean restarting his removal proceedings. The mere possibility of removal after hypothetical future additional proceedings cannot justify continued detention now.
12. Because the Government lacks constitutional authority to detain Mr. Ndiaye, he asks this Court to order his immediate release from detention via a writ of habeas corpus. Alternatively, this Court should schedule a hearing at the earliest practicable opportunity to hear argument and, if necessary, receive evidence on Mr. Ndiaye's Petition.

JURISDICTION AND VENUE

13. This Court has jurisdiction under Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241 (the general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

14. The district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *See Zadvydas*, 533 U.S. at 687; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Diaz-Calderon v. Barr*, No. 2:20-CV-11235-TGB, 2020 WL 5645191 (E.D. Mich. Sept. 22, 2020).
15. This action also arises under the Due Process Clause of the Fifth Amendment to the United States Constitution.
16. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 2241(a); and Fed. R. Civ. P. 57 and 65.
17. Venue is proper under 28 U.S.C. § 1391(e) because Petitioner is presently detained at the Boone County Detention Facility in Hebron, Kentucky, within the jurisdiction of the Eastern District of Kentucky. *See* 28 U.S.C. § 2241(d).

THE PARTIES

18. Mr. Ndiaye is a 32-year-old Senegalese national who entered the United States in 2000 on a B2 visa and later adjusted to lawful permanent resident status. In September 2024, DHS arrested Mr. Ndiaye and detained him at Boone County Jail in Burlington, Kentucky. He has been in DHS custody in conditions indistinguishable from penal confinement ever since.
19. Respondent Sam Olson is sued in his official capacity as Chicago Field Director of U.S. Immigration and Customs Enforcement (ICE), which has administrative jurisdiction over Mr. Ndiaye's detention and which contracts with the Boone County Jail where Mr. Ndiaye is held. Mr. Olson is the legal custodian of Mr. Ndiaye with authority to authorize his release.

20. Respondent Kristi Noem is the Secretary of Homeland Security. She is sued in her official capacity. In that capacity, Defendant Noem is responsible for overseeing the enforcement of federal immigration policies, including those that resulted in the detention of Mr. Ndiaye.
21. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Mr. Ndiaye. As such, he is also a legal custodian of Mr. Ndiaye.
22. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the Executive Office for Immigration Review (“EOIR”), pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering removal and bond proceedings as well as the procedural standards used in those proceedings. She is therefore a legal custodian of Mr. Ndiaye.
23. Respondent Jason Maydak is sued in his official capacity as Jailer of Boone County Jail, where Mr. Ndiaye is detained. Mr. Maydak is the immediate custodian of Mr. Ndiaye.

FACTS AND PROCEDURAL HISTORY

24. Mr. Ndiaye, a 32-year-old citizen of Senegal, has lived in the United States since he was about seven years old. Exh. A at ¶ 1. He entered the United States in August 2000 on a B2 visitor visa. *Id.* at ¶ 3. Two years later, he was separated from his mother and placed in the foster care system after experiencing domestic violence inflicted by his stepfather on him and the rest of his household. *Id.* at ¶ 8.
25. Mr. Ndiaye remained in foster care until he began university. Exh. A at ¶ 10. While in foster care, he applied for Special Immigrant Juvenile Status and thereafter adjusted his status to that of a lawful permanent resident (LPR) on or around October 25, 2011. Exh. B

at ¶ 3. His years in foster care were marked by instability and loneliness, challenges that continued to affect him well into adulthood. Exh. A at ¶ 9.

26. Since 2015, Mr. Ndiaye has experienced several mental health episodes with inconsistent periods of stability and instability. Exh. A at ¶ 12. During this time, Mr. Ndiaye did not have access to appropriate mental health care, leading to contact with the criminal justice system. *Id.*

27. Following a serious mental health episode in 2022, Mr. Ndiaye was charged with multiple criminal offenses and incarcerated at Scott County Jail in Georgetown, Kentucky. Exh. A at ¶¶ 13-14. He remained there for approximately seven months before being transferred to Clark County Jail in Winchester, Kentucky, where he spent an additional fourteen months. *Id.*

28. It was during his detention at Clark County Jail that Mr. Ndiaye first received any meaningful mental health treatment. Exh. A at ¶ 14. Despite numerous hospitalizations prior to his involvement with the criminal legal system, Mr. Ndiaye had never received formal diagnoses or medication until this period. *Id.* At Clark County, Mr. Ndiaye was formally diagnosed with bipolar disorder and prescribed medication for the first time. *Id.*

29. In the summer of 2024, Mr. Ndiaye was offered plea agreements. Exh. A at ¶ 16. Although he initially did not wish to plead guilty for actions that occurred while he was experiencing a mental health crisis, he ultimately accepted a plea deal under which he pled guilty to the charges in exchange for a sentence of time already served. *Id.*; Exh. D at 38.

30. As a result of the plea agreement, in August 2024, Mr. Ndiaye was convicted of assault in the second degree, in violation of KRS 508.040(2)(A), assault in the third degree on police, in violation of KRS 508.025, attempted burglary in the second degree in violation of KRS

506.010 & 511.030, attempted theft in violation of KRS .010 & 514.030, and assault in the third degree, in violation of KRS 508.025. *See* Exh. F. By that point, Mr. Ndiaye had already served approximately seven months at Scott County Jail and fourteen months at Clark County Jail. Exh. B at ¶ 5.

31. Mr. Ndiaye was then transferred into ICE custody and detained at Boone County Jail. Exh. A at ¶ 17. On August 31, 2024, DHS charged Mr. Ndiaye as removable to Senegal based on his 2024 assault and attempted burglary convictions. Exh. B at ¶ 8.

32. On October 22, 2024, Mr. Ndiaye, with the assistance of *pro bono* counsel, filed an application for withholding of removal and protection under the Convention Against Torture, citing a fear of return based on his mental health and the risk that he would be institutionalized or tortured if removed to Senegal. Exh. B at ¶ 10.

33. At no point during proceedings did DHS name another country to which it would try to remove Mr. Ndiaye if removal to Senegal was not possible. Exh. B at ¶ 14.

34. On February 14, 2025, the immigration judge ordered Mr. Ndiaye removed to Senegal and simultaneously granted his application for withholding of removal. Exh. C. This approach—issuing a removal order and adjudicating a claim for CAT protection at the same time—is standard approach for such cases. *See, e.g. Nasrallah v. Barr*, 590 U.S. 573 (2020). After issuing the oral decision, both parties waived appeal.

24. Because no appeal has been pursued, Petitioner’s grant of withholding of removal became administratively final as of the date of the IJ decision, February 14, 2025. *See* 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).³

³ The removal period begins on the latest of three possible dates. 8 U.S.C. § 1231(a)(1)(B). For Mr. Ndiaye, his removal period began as soon as his removal order became “administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). A removal order becomes “final upon ... the expiration of the period in which the alien is permitted to seek review of” the removal order. 8 U.S.C. § 1101(a)(47)(B). Because Mr. Ndiaye could not appeal any issue, and because DHS did

25. Despite this order prohibiting DHS from removing Mr. Ndiaye to Senegal, the only country to which he has ties, the Government continues to detain Mr. Ndiaye in conditions that are indistinguishable from penal confinement. *See, e.g.* Exh. A ¶¶ 19-23.
26. Immediately after he was granted protection, his assigned ICE officer stated that Mr. Ndiaye would remain detained until ERO conducted a post-order custody review, which was expected to occur after approximately 90 days. Exh. B at ¶ 15. At the 90-day mark, upon follow-up, the ICE officer informed counsel that the review had been completed but that the decision remained pending with ICE headquarters. *Id.* at ¶ 16. That update was provided on May 15, 2025. *Id.* On September 17, 2025, four months later, counsel for Mr. Ndiaye was informed that the decision is still pending.⁴ Exh. G. ICE has not requested that Mr. Ndiaye fill out applications for travel documents to any country, nor speak to any consulate. *Id.*
27. During the 12 months that Mr. Ndiaye has been in the Government’s custody, he has endured harsh conditions indistinguishable from penal confinement. Exh. A ¶¶ 19-23. Mr. Ndiaye lives in a small housing pod with approximately ten people, sharing one television, one shower, and one toilet. Exh. A ¶ 20. The crowded conditions and frequent waiting often leads to tension and arguments among detained individuals. *Id.* He reports there is very little privacy, even when using the shower facilities. *Id.*
28. He has also faced other concerns while in detention. For example, throughout the winter, the detention facility was extremely frigid – so much so that he could see his breath indoors

not file a notice of appeal, Mr. Ndiaye’s removal order became administratively final on February 14, 2025, the date of the immigration judge’s decision.

⁴ In email communications, ICE stated that Mr. Ndiaye was “mistakenly” served with an “internal memo” that had not been approved by ICE headquarters. Exh. G. ICE provided Mr. Ndiaye’s counsel a copy of the “memo” that was served. *Id.* That memo states that, on February 28, 2025, ICE submitted a “Request for Acceptance of Alien, Form I-241, to Mexico, El Salvador and Guatemala” and that “[a]ll countries sent negative responses.” *Id.*

– and he was not provided with an additional blanket until February, long after the coldest period had passed. Exh. A ¶ 21.

29. Mr. Ndiaye reports no missed doses or complaints regarding his medication. Exh. A ¶ 22.

However, medical care can often be delayed. For example, he submitted a sick call request on August 6, 2025 for a sore throat and as of September 2, 2025, he has not yet been seen by medical staff. *Id.* This is not an isolated incident; on at least three other occasions, he requested to see medical staff and either experienced extreme delays or was not seen at all. *Id.*

30. Furthermore, Mr. Ndiaye has only limited access to the outdoors. Exh. A ¶ 23. Detained individuals have outdoor access only when temperatures exceed 65 degrees. *Id.*

31. Upon release, Mr. Ndiaye will reunite with his family, including his mother, brother, foster father, and family friends, who have all expressed their willingness to support his reentry into society and help with his commitment to recovery. Exh. A ¶ 27; Exh. E at 1. Mr. Ndiaye plans to live with his mother in Gaithersburg, Maryland. *Id.*

32. In Gaithersburg, Mr. Ndiaye will have access to numerous organizations that will provide him with a range of mental health and medical support. Exh. A ¶ 29-32; Exh. E. Pro Bono Counseling, an organization that helps people of all backgrounds in Maryland find the right mental health professional to meet their needs regardless of income, has agreed to ensure Mr. Ndiaye is connected with a licensed therapist. Exh. A ¶ 29; Exh. E at 1-2.

33. He will also receive assistance in accessing primary care and medical services through the Montgomery County Department of Health, which works closely with local hospitals and clinics to provide support for low-income and uninsured patients. Exh. A ¶ 30; Exh. E at 1-2.

34. Furthermore, Mr. Ndiaye will have support from Proyecto Salud Clinic, who has confirmed that they will help ensure Mr. Ndiaye maintains consistent access to his current mental health medication. Exh. A ¶ 31; Exh. E at 2.
35. Lastly, Mr. Ndiaye will work with the National Alliance on Mental Illness to access periodic mental health education, enabling him to better understand himself and learn how to best navigate challenges related to his mental health. Exh. A ¶ 32; Exh. E at 2.
36. Upon release, Mr. Ndiaye plans to seek employment and explore longer term education opportunities to achieve his career goals. Exh. A ¶ 33; Exh. E at 2. He will reach out to local organizations for assistance in finding jobs and obtaining the necessary training. *Id.* In the short term, he intends to work with his previous employer in the moving business, while also collaborating with employment support organizations to secure a permanent position. *Id.* Mr. Ndiaye is also interested in completing his college education. *Id.* He is interested in pursuing music engineering and content creation. *Id.*
37. In his free time, Mr. Ndiaye hopes to volunteer with underprivileged youth to raise awareness about mental healthcare in society. Exh. A ¶ 34; Exh. E at 3.

LEGAL BACKGROUND

A. Substantive Due Process Limits to Detention.

38. When a noncitizen is ordered removed, the government ordinarily must secure the noncitizen's removal from the United States within a period of 90 days, known as the "removal period." 8 U.S.C. § 1231(a)(1)(A). As relevant here, the removal period begins on "[t]he date the order of removal becomes administratively final". *Id.* § 1231 (a)(1)(B)(i)-(iii). If not removed within the removal period, the noncitizen is normally to be released under the government's supervision. *Id.* § 1231(a)(3).

39. Detention beyond the 90-day removal period must comport with a legitimate government purpose. Absent a legitimate government purpose for detention, immigration detention violates an immigrant's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90; *see also Hussain*, 510 F.3d at 743.
40. The Supreme Court has stated that the purpose of Section 1231 post-final-order detention is to “bring about the [noncitizen’s] removal from the United States.” *Zadvydas*, 533 U.S. at 689.
41. Although the “basic purpose [of] effectuating an [non-citizen’s] removal” is a legitimate government purpose, *Zadvydas*, 533 U.S. at 697, detention for this purpose may only be for a “very limited time.” *Demore*, 538 U.S. at 529 n.12; *Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005). In *Zadvydas*, the Supreme Court cast doubt on the “constitutionality of detention for more than six months” after a removal order became final. *Zadvydas*, 533 U.S. at 701.
42. Additionally, the Supreme Court has repeatedly affirmed that detention must be constitutional as-applied to individuals regardless of what is authorized, or even mandated by a detention statute. *Jennings v. Rodriguez*, 138 S. Ct. 830, 851 (2018) (explicitly declining to reach “constitutional arguments on their merits” after finding no statutory limit on the length of mandatory immigration detention under 8 U.S.C. § 1226(c)); *see also Nielsen v. Preap*, 139 S. Ct. 954, 972 (2019) (“Our decision today on the meaning of [section 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it.”).
43. Accordingly, if the Government is purporting to detain an individual beyond the 90-day period, it must show that it is seeking to effectuate the individual’s removal and that

removal is likely to occur in the “reasonably foreseeable future”. *Zadvydas*, 533 U.S. at 699. Further, “for detention to remain reasonable, as the period of [] postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Id.* at 701 *see also Ali v. Byers*, No. CV 23-177-DLB, 2024 WL 188445, *3 (E.D. Ky. Jan. 17, 2024) (recognizing that Petitioner’s “continued detention is subject to the due process standards set forth in *Zadvydas*”).

44. Where there is no possibility of removal—or only a small possibility of removal—there are substantive due process concerns in continuing an immigrant’s detention.
45. It is incredibly rare for DHS to remove individuals who have been granted protection from removal to their home country. In such circumstances, removal to a third country has historically been highly unlikely. For example, the Supreme Court previously noted that only 1.6% of noncitizens who were granted withholding of removal were actually removed to an alternative country. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2286 (2021).
46. Here, the Immigration Court did not designate an alternate country for Mr. Ndiaye’s removal, nor has the Government so much as sought to designate a third country, much less initiate removal proceedings regarding an alternate country. Exh. B ¶ 14. ICE also has not requested that Mr. Ndiaye complete any paperwork or meet with consular officials from any third country. *Id.* Without such requests, and given that Mr. Ndiaye does not have any ties or legal status in an alternate country, it is unlikely that DHS intends to try to remove Mr. Ndiaye to any other country. Indeed, in a memo dated September 4, 2025, the government indicated it had requested removal to Mexico, El Salvador, and Guatemala, but that all three countries “sent negative responses.” Exh. G at 7. As such, his continued

detention is no longer reasonably related to its statutorily limited purpose and is therefore unconstitutional.

47. Additionally, even assuming DHS was actively seeking to remove Mr. Ndiaye to a third country, his continued detention is not reasonably related to its stated purpose when alternative conditions of release could mitigate flight risk. *Bell v. Wolfish*, 441 U.S. 520, 536-39 (1979) (observing that pretrial detention not reasonably related to a legitimate government purpose would constitute punishment in violation of Due Process).
48. DHS regularly utilizes orders of supervision when releasing individuals from its custody when a final order of removal is in place. An order of supervision operates like terms of probation, with the ability to impose “conditions of supervision” on individuals. *See* 8 C.F.R. § 214.15(a). For example, noncitizens released on such orders regularly are prohibited from leaving the state in which they reside without advance permission from an ICE officer. *Id.*(a)(4). They may also be required to report to an ICE officer in person or by telephone on a periodic basis. *See Fernandez Aguirre v. Barr*, No. 19-CV-7048 (VEC), 2019 WL 4511933, at *5 (S.D.N.Y. Sept. 18, 2019) (listing alternatives to detention, “such as home detention, electronic monitoring, and so forth”); *Mathon v. Searls*, 623 F. Supp. 3d 203, 218 (W.D.N.Y. 2022) (“[T]he form used by ICE to list the terms of supervision (Form I-220B) includes a section for ‘other specified conditions’, which implies that ICE has flexibility in imposing release terms.”).
49. Such conditions of release would be sufficient to ensure Mr. Ndiaye’s presence in the unlikely event that removal to a third country becomes possible.
50. Finally, as discussed below, while ICE has attempted to expand its third-country removal practices, these practices fail to follow statutory procedures outlined in the INA, the

requirements of due process, and binding treaty obligations under the Convention Against Torture, which ensure an individual has a meaningful opportunity to make a fear-based claim against removal to that country. Where, as here, the Petitioner has been detained for over six months with a final order of removal, no ICE memo or practice authorizes the noncitizen's indefinite detention while the government endlessly pursues removal to a third country. ICE's efforts to expand third-country removals do not displace the Supreme Court's decision in *Zadvydas* nor the requested relief in this case.

B. Procedural Due Process Limits to Detention

51. The Due Process Clause and the INA require the Government to give a noncitizen notice and a hearing where the immigrant can present evidence on his or his behalf in defense of removal. *See* U.S. Const., Amend. V; 8 U.S.C. § 1229a(b)(4) (an immigrant in removal proceedings “shall have a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen] own behalf, and to cross-examine witnesses presented by the Government”); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976).
52. Further, “[n]oncitizens facing removal of any sort are entitled under international and domestic law to raise a claim under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J., dissenting) (citing Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U. N. T. S. 113). “Article 3 of the Convention prohibits returning any person ‘to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.’” *Id.* The United States is a party to the Convention and passed the Foreign Affairs Reform and Restructuring Act (FARRA) and subsequent

regulations “to implement its commands.” *Id.* Regulations implementing the Convention provide, among other things, that “[a] removal order ... shall not be executed in circumstances that would violate Article 3.” 28 C.F.R. § 200.1 (2024).

53. Multiple courts have held—including in the context of purported removals to third countries—that “affirming a deportation order without a fair hearing concerning that deportation violates due process.” *Kuhai v. INS*, 199 F.3d 909, 913 (7th Cir. 1999) (holding that the noncitizen must be given the opportunity to brief removal to a third country when there was no indication during removal proceedings that she could be removed there); *Mahdejian v. Bradford*, Case No. 25-cv-00191 (E.D. Tex. July 3, 2025) (where petitioner had been granted withholding of removal as to Iran, court issued injunction prohibiting DHS from removing him to a third country without notice and a meaningful opportunity to establish that his life or freedom would be threatened there); *Ortega v. Kaiser*, 2025 U.S. Dist. LEXIS 121997, *7, 2025 WL 1771438 (N.D. Cal. June 26, 2025) (where petitioner was granted CAT relief as to El Salvador, “there are no countries to which Ortega could currently be removed without his first being afforded notice and opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due Process Clause requires”); *Su Hwa She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010) (“It follows that a failure to provide notice and, upon request, stay removal or reopen the case for adjudication of [the noncitizen’s] applications as to Burma would constitute a due process violation *if* Burma becomes the proposed country of removal.”); *Romero v. Evans*, 280 F. Supp. 3d 835, 847 n.24 (E.D. Va. 2017) (“DHS could not immediately remove petitioner to a third country, as DHS would first need to give petitioner notice and the opportunity to raise any reasonable fear claims.”)

54. A fair hearing provides a noncitizen “an adequate opportunity to defend themselves against that deportation,” including seeking protection from removal to that alternate country. *Kossov v. INS*, 132 F.3d 405, 408 (7th Cir. 1998).
55. Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third-country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *See* March ICE Memo; July ICE Memo.
56. Both the March and July ICE Memos purport to expand their authority as to third country removals. However, both memos fail to uphold DHS’s obligations to provide adequate notice and the opportunity to be heard and are therefore unlawful. For example, the March ICE Memo provides no notice and no opportunity to apply for protection to noncitizens whom DHS seeks to remove to a country that it determines has provided “credible” “diplomatic assurances.” *See* March ICE Memo. Meanwhile, the July ICE Memo purports to allow ICE to move forward with a third country removal with as little as six-hours’ notice to the noncitizen. *See* July ICE Memo. As such, DHS’s third-country removal policy fails to provide noncitizens with adequate notice and an opportunity to be heard, as is required by the INA, FARRA, and the Due Process Clause.
57. In April 2025, the U.S. District Court for the District of Massachusetts issued a nationwide preliminary injunction blocking such third-country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government’s policy violates due process and the United States’s obligations under the Convention Against Torture. *D.V.D. v. Dep’t of Homeland Security*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025).

58. In June 2025, the U.S. Supreme Court granted the government’s motion to stay the district court’s nationwide preliminary injunction. *See Dep’t of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (2025). However, the Supreme Court’s decision neither precludes the availability of individual habeas actions to challenge illegal third-country removals nor eliminates ICE’s existing obligations under binding constitutional, statutory, and international law.
59. The Supreme Court’s order in *D.V.D.*, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction.⁵ The government’s lead argument—that 8 U.S.C. § 1252(f)(1) deprived the district court of jurisdiction to enter class-based relief on a national basis—has no bearing on individual, as-applied habeas claims. *See* Application for a Stay at 19, *Dep’t of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S. May 27, 2025); § 1252(f)(1) (limiting injunctive power “other than with respect to the application of such provisions to an individual [noncitizen]”).
60. Moreover, the Supreme Court’s stay of the nationwide injunction does not eliminate ICE’s obligation to follow the law. Despite ICE’s efforts to sidestep its obligations, the Due Process Clause, the INA, and FARRA still require ICE to provide noncitizens with adequate notice and a meaningful opportunity to raise any reasonable fear claims before it can send them to far corners of the planet where they have absolutely no connection whatsoever.
61. A detained noncitizen may not seek protection from any theoretical third country until the Government has affirmatively designated that country for removal. *See Hwa She*, 629 F.3d

⁵ Just days later, the Supreme Court published *Trump v. Casa*, No. 24A884 (U.S. June 27, 2025), in which it limited nationwide injunctions.

at 965 (“Under the plain wording of 8 C.F.R. § 1208.16, an applicant is not entitled to adjudication of an application for withholding of removal to a country that nobody is trying to send them to.”); *Yakubov v. Att’y Gen.*, 586 F. App’x 86, 87 (3d Cir. 2013) (“Yakubov’s claim for deferral [to Russia] will not become ripe unless and until the Government’s efforts to remove him to Israel prove unsuccessful.”).

62. Thus, even in the extraordinary, and to date, entirely hypothetical circumstance that the Government located a third country willing to accept Mr. Ndiaye’s removal, and even if Mr. Ndiaye’s proceedings were reopened to seek protection from that alternative country, the Government would be months if not years away from being able to remove Mr. Ndiaye to a third country upon completion of removal proceedings for that country. This is particularly true here, where Mr. Ndiaye suffers from serious mental illnesses that would likely give rise to protection claims as to *any* potential third country. Absent this Court’s intervention, Mr. Ndiaye remains detained solely on the pretext of this hypothetical scenario, towards which the Government has not even taken the first step.

63. The appropriate remedy for these violations of Mr. Ndiaye’s substantive and procedural due process rights is to order the government to immediately release him. *See Malam v. Adducci*, 452 F. Supp. 3d 643, 661 (E.D. Mich. 2020), as amended (Apr. 6, 2020) (*citing Swann v. Charlotte–Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15–16 (1971) (“Once a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”))).

CLAIMS FOR RELIEF

COUNT ONE

Respondents' Detention of Petitioner Violates His Fifth Amendment Substantive Due Process Rights

64. Mr. Ndiaye realleges and incorporates the allegations of all preceding paragraphs.
65. An Immigration Judge ordered Mr. Ndiaye removed to Senegal but simultaneously granted him withholding of removal to that country.
66. The Government waived appeal of the Immigration Judge's decision, rendering the Immigration Judge's grant of withholding of removal administratively final as of the date it was issued.
67. The Government is now continuing to detain Mr. Ndiaye while it purportedly explores removal to an alternate country.
68. Mr. Ndiaye does not have citizenship, legal status, or any connections with another country that might make his removal to an alternate country even remotely likely. *See* 8 U.S.C. § 1231(b)(2)(D)-(E). Nor has the U.S. Government alleged any such connections.
69. Here, the Government cannot plausibly show that it will remove Mr. Ndiaye to an alternate country.
70. Detention is only lawful when "necessary to bring about that [noncitizen's] removal." *Zadvydas*, 533 U.S. at 689. Where, as here, removal is not significantly likely in the reasonably foreseeable future, continued detention is unconstitutional.
71. The due process clause does not permit the government to detain Mr. Ndiaye indefinitely while it endlessly pursues removal to a third country, and such detention violates Mr. Ndiaye's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90.

72. Additionally, detention is not reasonably related to its purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell*, 441 U.S. at 538. If necessary, an Order of Supervision would mitigate any risk of flight such that, in the highly unlikely event that the Government identifies an alternative country for removal, the Government would be able to effectuate removal.

COUNT TWO

Respondents' Detention of Petitioner Violates His Fifth Amendment Procedural Due Process Rights, the Convention Against Torture and its Implementing Regulations, and the Administrative Procedure Act

73. Mr. Ndiaye realleges and incorporates the allegations of all preceding paragraphs.
74. The Government—having failed before now to designate any country other than Senegal for removal—cannot remove Mr. Ndiaye to some other country without providing procedural protections.
75. Mr. Ndiaye has received no notice that the Government intends to remove him to another country. Nor have immigration officers asked him to participate in submitting an application for travel documents to another country or countries.
76. The Due Process Clause, the INA, the Convention Against Torture, and its implementing regulations, require the Government to give a noncitizen notice and an opportunity to respond to any third-country removal in reopened removal proceedings. *See* U.S. Const., Amend. V; 8 U.S.C. § 1229a(b)(4) (an immigrant in removal proceedings “shall have a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen’s] own behalf, and to cross-examine witnesses presented by the Government”); *Mathews*, 424 U.S. at 332–33; *see also Kuhai*, 199 F.3d at 913; 28 C.F.R. § 200.1 (“[a] removal order ... shall not be executed in circumstances that would

violate Article 3 [of the CAT]”). Respondents’ March and July Memos for third-country removals direct ICE agents to remove individuals to third countries without any notice or process at all where diplomatic assurances are received and, where no diplomatic assurances are received, to provide flagrantly insufficient notice (6-24 hours) and opportunity to respond, in violation of the statute, regulations, and Fifth Amendment.

77. ICE has detained Mr. Ndiaye since September 1, 2024, more than 12 months, including 383 days after his removal order, and grant of withholding of removal.
78. The Government cannot, consistent with procedural due process and statutory obligations, deport him to any third country without telling him where he will be removed and giving him at least an opportunity to file a protection-based claim. *See Kossov*, 132 F.3d at 408 (a fair hearing provides a noncitizen “an adequate opportunity to defend themselves against that deportation,” including seeking protection from the alternate country).
79. Mr. Ndiaye fears that deportation to any country, not just Senegal, would expose him to persecution or torture due to his lack of access to necessary mental healthcare and support. Exh. A ¶ 6. Thus, any possible third-country removal would at minimum trigger additional hearings, new removal proceedings, and multiple additional months of detention.
80. Considering the slim likelihood of removal to a third country, the Government’s failure to designate any third country in removal proceedings, the absence of any plausible third country for removal, the Government’s failure to identify to Mr. Ndiaye any third country or countries currently under consideration, and the statutory regime created by Congress, Mr. Ndiaye’s ongoing detention violates his right to procedural due process.
81. Where the sole permissible purpose of detention is to effectuate removal, and where Mr. Ndiaye has already been granted withholding of removal to the only country designated

for removal by the Government, and where the Government cannot indicate any plausible alternative country for removal, the likelihood of erroneous deprivation of liberty is at its apex.

82. Further, the Government regularly employs conditions of release by utilizing Orders of Supervision. *See* 8 C.F.R. § 214.15(a). By releasing Mr. Ndiaye on an Order of Supervision, the Government could continue investigating potential third-country removal and would have ongoing access to Mr. Ndiaye, as necessary. Therefore, his release from custody under such conditions would impose no harm on the Government.

83. By contrast, Mr. Ndiaye's ongoing detention of liberty in immigration detention imposes an ongoing and very heavy cost on Mr. Ndiaye.

84. The balance of these factors tips strongly in Mr. Ndiaye's favor, such that the Government's continued detention of Mr. Ndiaye violates his procedural due process rights.

PRAYER FOR RELIEF

Petitioner prays this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Pursuant to 28 U.S.C. § 2243, issue an order directing Respondents to show cause within three days why the writ should not be granted;
3. Declare that Mr. Ndiaye's continued detention is without a legitimate governmental purpose and violates his substantive due process rights because Respondents cannot show any plausibility that Mr. Ndiaye will be removed to an alternate country;

4. Declare Mr. Ndiaye's continued detention violates his procedural due process rights because Respondents have failed to provide Mr. Ndiaye with adequate procedural safeguards to ensure that his continued detention is justified;
5. Declare that, if the Government purports to identify any third country willing to accept Mr. Ndiaye, that the Government be required to provide Mr. Ndiaye adequate notice and an opportunity to be heard regarding removal to that country;
6. Grant the writ of habeas corpus and order that Respondents release Mr. Ndiaye from detention; and
7. Grant any other and further relief that this Court deems just and proper.

Dated: September 19, 2025

s/ Sarah C. Larcade

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VERIFICATION

I, s/ Sarah C. Larcade, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 2242 that, on information and belief, the factual statements in the foregoing Petition for Habeas Corpus are true and correct.

Dated: September 19, 2025