IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Mohamed Ibrahim HASSAN, *Petitioner*, v. **Jacob Welsh,** Warden, Chase County Jail **Sam Olson**, Deputy Field Office Director, Chicago Field Office, Immigration and Customs Enforcement; **Kristi Noem,** Secretary of the Department of Homeland Security *Respondents.*	Civil No.: 25-3239-JWL

PETITION FOR A WRIT OF HABEAS CORPUS

1. Petitioner, Mohamed Ibrahim Hassan ("Petitioner" or "Mr. Hassan") petitions this Court to issue a Writ of Habeas Corpus or, alternatively, 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. Hassan's continued detention bears no reasonable relation to *any* legitimate government purpose and is therefore unconstitutional. Because Respondents cannot justify Mr. Hassan's detention under the U.S. Constitution, he urges this Court to grant his petition and order Respondents to immediately release him from custody.

STATEMENT OF THE CASE

2. Mr. Hassan is a Somali national who received an administratively final grant of Withholding of Removal by an Immigration Judge (IJ) on December 12, 2024. *See* Exh. A, Decision of the Immigration Judge (December 12, 2024). 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. 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); *Elzour v. Ashcroft*, 378 F.3d 1143, 1150 (10th Cir. 2004).

4. Mr. Hassan has been detained in ICE custody since June 2024, while he pursued his claims for relief before the IJ. *See* Exh. B, DHS's Form I-830E – Notice to EOIR of Alien Address (June 19, 2024). At no point during proceedings did DHS indicate it intended to remove Mr. Hassan to any other country besides Somalia, and Mr. Hassan does not have a removal order to any country apart from Somalia. Exh. A.

5. Despite waiving appeal, DHS continues to detain Mr. Hassan in civil immigration detention, without justification, at the Chase County Jail in Cottonwood Falls, Kansas. Mr. Hassan has been detained for more than ten 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 30 DHS 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 process. *Id.* If there are no such "assurances," the policy instructs DHS to "first inform the alien 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' 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* ¶¶ 14-15.

8. Nevertheless, emboldened by the Supreme Court's decision, on July 9, 2025, ICE issued a second new memo instructing staff to adhere to DHS' March memo when seeking to remove a noncitizen to a third country. *See*, ICE, Third Country Removals Following the Supreme

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

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 alien 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. Hassan 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. Hassan indefinitely while it conducts this exercise, which is likely to be all but futile in Mr. Hassan's case. *See infra* ¶¶ 15-16 (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. Hassan'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 noncitizen was granted fear-based protection and is likely to raise a similar claim 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. Hassan's entitlement to release. As a result, Mr. Hassan's detention cannot continue when the Government is barred from removing him to his

[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

native country of Somalia 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. Hassan 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. Accordingly, because the Government lacks constitutional authority to detain Mr. Hassan, 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. Hassan'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 v. Davis*, 533 U.S. at 687; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Hernandez-Carrera v. Carlson*, 547 F.3d 1237 (10th Cir. 2008).

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 Mr. Hassan is presently detained at the Chase County Jail in Cottonwood Falls, Kansas, within the jurisdiction of the District of Kansas. *See* 28 U.S.C. § 2241(d).

THE PARTIES

18. Mr. Hassan is a 26-year-old Somali national. He has been in ICE custody since June 2024 and is currently detained at the Chase County Jail in Cottonwood Falls, Kansas.

19. Respondent Jacob Welsh is sued in his official capacity as warden of the Chase County Jail in Cottonwood Falls, Kansas, where Mr. Hassan is detained. Warden Welsh is the immediate custodian of Mr. Hassan.

20. Respondent Sam Olson is sued in his official capacity as the Chicago Field Office Director of U.S. ICE, which has administrative jurisdiction over Mr. Hassan's detention and which contracts with the Chase County Jail in Cottonwood Falls, Kansas, where Mr. Hassan is held. Mr. Olson is the legal custodian of Mr. Hassan with authority to authorize his release.

21. Respondent Kristi Noem is named in her official capacity as Secretary of the Department of Homeland Security. Respondent Noem is responsible for the enforcement of immigration laws and supervises Respondent Olson. She is a legal custodian of Petitioner.

FACTS AND PROCEDURAL HISTORY

22. Mr. Hassan is a 26-year-old individual, who was born in a refugee camp in Kenya. *See* Exh. C, Mr. Hassan's Affidavit[3].

23. He is a member of the Bantu clan, which is a minority clan in Somalia. *Id.*

24. Sometime in the early 1990s during Somalia's civil war, his parents fled Somalia after being targeted for being Bantu. *Id.* His maternal grandfather was killed, and his grandmother and mother were beaten. *Id.* His paternal grandparents were also killed. *Id.*

25. On September 22, 2005, his family and he immigrated to the United States as refugees. *Id.* Soon after, he adjusted his refugee status to a Lawful Permanent Resident, which is retroactive to the date of his refugee admission. *Id.*; *see also* INA § 209(a)(2).

26. His family settled in the Louisville, Kentucky area, where he attended Iroquois High School. *Id.*

27. He is married to Magalo Mohamed, and they have two daughters (ages 5 and 4), who are all United States citizens. *Id.*

28. Approximately on October 1, 2022, DHS detained Mr. Hassan for the first time and initiated removal proceedings. *See* Exh. E, DHS's Form I-862, Notice to Appear.

29. The DHS charged Mr. Hassan with removability under INA § 237(a)(2)(A)(iii), for being convicted of an aggravated felony receipt of stolen property offense pursuant to INA § 101(a)(43)(G) and attempt to commit an enumerated aggravated felony under INA §

[3] Despite being born in Kenya, he is a national and citizen of Somalia. According to the Kenyan Citizenship and Immigration Act of 2011, a person is a citizen by birth if on the day of the person's birth either the mother or father of the person is or was at the date of his or her birth a citizen of Kenya. *See* Exh. D, Kenyan Directorate of Immigration Services. Foreign nationals born in refugee camps to parents who lack Kenyan citizenship are not considered citizens of Kenya. *Id.* In this case, both of his parents were born in Somalia, and they do not have Kenyan citizenship, and thus Mr. Hassan is not a Kenyan citizen or national.

101(a)(43)(U)[4]. Specifically, the DHS alleged that Hassan's conviction in Jefferson County, Kentucky for attempt to receive stolen property, KRS §§ 514.110 and 506.010, a Class A misdemeanor, qualified as an aggravated felony offense making him removable. *Id.*; *see also* Exh. E, Criminal History Chart and Documents.

30. On February 9, 2023, after briefing from DHS and Mr. Hassan's immigration attorney, the IJ terminated his removal proceedings, finding that his Kentucky offense for attempt to receive stolen property did not categorically qualify as an aggravated felony receipt of stolen property offense. *See* Exh. G, IJ Or. Granting Termination of Removal Proceedings (February 9, 2023).

31. The DHS appealed the IJ's decision terminating removal proceedings on March 13, 2023.

32. Subsequently, on May 8, 2023, the IJ conducted a *Matter of Joseph* bond hearing[5], and concluded that the DHS could not demonstrate that it is substantially likely that it would prevail on its sole charge of removability because his offense was not an aggravated felony and that he did not pose a danger to the community or flight risk such that no amount of bond was reasonable, and ordered his release under a $1,500 bond. *See* Exh. H, First IJ Bond Or. (May 8, 2023).

33. A year after being released from custody, on June 19, 2024, Mr. Hassan was re-detained by the DHS after he was released from criminal custody. *See* Exh. B.

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[4] Although Mr. Hassan has other criminal offenses, DHS solely charged him with removability under INA § 237(a)(2)(A)(iii) for being convicted of an aggravated felony receipt of stolen property offense pursuant to INA § 101(a)(43)(G) and attempt to commit an enumerated aggravated felony under INA § 101(a)(43)(U). *Id.*

[5] A *Joseph* hearing permits noncitizens to contest whether they are subject to mandatory custody under Section 236(c)(1). To determine whether the noncitizen is considered "properly included" in a mandatory detention category, the IJ considers whether DHS is "substantially unlikely" that it will prevail on the charge or charges of removability that would otherwise subject the noncitizen to mandatory detention under Section 236(c)(1) of the Immigration and Nationality Act (INA). *Matter of Joseph*, 22 I&N Dec. 799, 800 (BIA 1999).

34. Mr. Hassan's immigration counsel requested a second *Matter of Joseph* bond hearing. However, this time the IJ denied his release on bail on September 10, 2024. *See* Exh. I, Second IJ Bond Or. (September 10, 2024).

35. On the same day, the Board of Immigration Appeals (BIA) concluded that Mr. Hassan's Kentucky conviction for attempt to receive stolen property qualified as an aggravated felony receipt of stolen property offense pursuant to INA § 101(a)(43)(G). *See* Exh. J, BIA Dec. (September 10, 2024).

36. The BIA's decision—finding his offense qualified as an aggravated felony—essentially stripped him of Lawful Permanent Resident status and barred his eligibility for certain forms of relief except for withholding of removal and protection under the Convention Against Torture.

37. On December 12, 2024, the IJ held a hearing on the merits of Mr. Hassan's application for Withholding of Removal and concluded that it is "more likely than not" that he will be persecuted if removed to Somalia on account of his membership in the Bantu clan by the Somali security forces or Al-Shabaab. *See* Exh. A. DHS waived appeal of the IJ's decision. *Id.*

38. The IJ ordered Mr. Hassan removed to Somalia and simultaneously granted his application for Withholding of Removal under 8 U.S.C. § 1231(b)(3). *Id.* This approach—issuing a removal order and adjudicating a claim for Withholding of Removal at the same time—is the standard approach for such cases. *See, e.g. Nasrallah v. Barr*, 590 U.S. 573 (2020)[6].

39. At no point during proceedings did DHS name another country besides Somalia to which it would try to remove Mr. Hassan if removal to Somalia was not possible. *Id.*

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[6] Mr. Hassan has filed a petition for review (PFR) with the Seventh Circuit Court of Appeals, arguing the BIA erred in concluding that his Kentucky conviction for attempt to receive stolen property does not qualify as an attempt aggravated felony receipt of stolen property offense under pursuant to INA §§ 101(a)(43)(G), 101(a)(43)(U). The PFR is pending.

40. Because no appeal has been pursued, Mr. Hassan's grant of Withholding of Removal became administratively final as of the date of the IJ decision, December 12, 2024. *See* 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).[7]

41. Despite this order prohibiting DHS from removing Mr. Hassan to the only country to which he has ties, the Government continues to detain him in conditions that are indistinguishable from penal confinement. *See, e.g.* Exh. C.

42. Upon information and belief, DHS is detaining Mr. Hassan following the IJ's Withholding grant so that it can attempt to remove him to a third country. However, Mr. Hassan has no lawful status or ties to any third country. *Id.* DHS has neither requested that Mr. Hassan fill out applications for travel documents to any country, nor speak to any consulate. *Id.*

43. Further, the Government, months after the IJ's decision and over a year since his removal proceedings were initiated, has not indicated any countries to which it is purportedly pursuing removal. *Id.*

44. On July 25, 2025, DHS stated it had sent third country requests to Canada, Belize, Dominican Republic, and El Salvador and all have returned negative responses. *See* Exh. K, Email Communications with Petitioner's ICE Deportation Officer.

45. Upon release, Mr. Hassan plans to live with his family in Kentucky. Exh. C. Mr. Hassan will also have the support of his siblings and family members who live in Kentucky. *Id.*

[7] The removal period begins on the latest of three possible dates. 8 U.S.C. § 1231(a)(1)(B). For Mr. Hassan, 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 [noncitizen] is permitted to seek review of" the removal order. 8 U.S.C. § 1101(a)(47)(B). Because DHS waived appeal, Mr. Hassan's removal order became administratively final on December 12, 2024, the date of the immigration judge's decision.

LEGAL BACKGROUND

A. Substantive Due Process Limits to Detention.

46. 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).

47. Detention beyond the 90-day removal period must comport with a legitimate government purpose. Absent a legitimate government purpose, immigration detention violates an immigrant's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90.

48. 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.

49. Although the "basic purpose [of] effectuating [a noncitizen'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).

50. 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.").

51. 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.

52. 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.

53. 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 a source saying 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).

54. Here, the Immigration Court did not designate an alternate country for Mr. Hassan's removal, nor does Mr. Hassan have legal residence (or any other immigration status) in an alternate country. Exh. C. Nor has the Government so much as sought to designate an alternate country for removal, much less initiate removal proceedings regarding an alternate country. *Id.* Finally, ICE has attempted to seek removal to four countries (Canada, Belize, Dominican Republic, and El Salvador), all of which have declined to accept Mr. Hassan. Exh. K. Therefore, it is unlikely that DHS will be able to remove Mr. Hassan to any other country.

55. As such, Mr. Hassan's continued detention is no longer reasonably related to its statutorily limited purpose and is therefore unconstitutional.

56. Additionally, even assuming DHS had the ability to remove Mr. Hassan 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).

57. 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. § 241.5(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.").

58. Such conditions of release would be sufficient to ensure Mr. Hassan's presence in the unlikely event that removal to a third country becomes possible.

59. 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 CAT, 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 nearly ten months with a final order of removal, no ICE memo or practice authorizes the noncitizen's indefinite detention while the government purportedly pursues removal to a third country, particularly in this case where four countries have already denied the government's attempts. 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

60. 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 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 alien, to present evidence on the alien's 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).

61. 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).

62. 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.").

63. 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).

64. 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 DHS Memo; July ICE Memo.

65. Both the March DHS Memo and the July ICE Memo purport to expand the authority as to third country removals. However, both memos fail to uphold DHS' obligations to provide adequate notice and the opportunity to be heard and are therefore unlawful. For example, the March DHS 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 DHS Memo. Meanwhile, the July ICE Memo purports to allow ICE to move forward with a third country of removal with as little as six-hours' notice to the noncitizen. *See* July ICE Memo. As such, DHS' 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.

66. 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' obligations under the Convention Against Torture. *D.V.D. v. Dep't of Homeland Security*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025).

67. 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).[8] 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.

68. 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. 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); 8 U.S.C. § 1252(f)(1) (limiting injunctive power "other than with respect to the application of such provisions to an individual [noncitizen]").

69. 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.

70. 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 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.").

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

71. Thus, even in the extraordinary, and in this case, hypothetical circumstance that the Government located a third country willing to accept Mr. Hassan, and even if Mr. Hassan's proceedings were reopened to seek protection from that alternative country, the Government would be at least months away from being able to remove Mr. Hassan to a third country upon completion of removal proceedings for that country. Absent this Court's intervention, Mr. Hassan remains detained solely on the pretext of this hypothetical scenario, towards which the Government has failed in their attempts to remove him to four different countries.

72. The appropriate remedy for these violations of Mr. Hassan'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

73. Mr. Hassan realleges and incorporates the allegations of all preceding paragraphs.

74. An Immigration Judge ordered Mr. Hassan removed to Somalia but simultaneously granted him Withholding of Removal to that country.

75. 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.

76. The Government is now continuing to detain Mr. Hassan while it purportedly explores removal to an alternate country. The Government has already been denied by four different countries.

77. The Government cannot show that it routinely removes Somali nationals to alternate countries, particularly those individuals with no ties to any alternate country. The Government's four failed attempts affirmatively shows that it cannot remove Mr. Hassan to any alternate country.

78. Mr. Hassan does not have citizenship, legal status, or any connections with another country that would have supported designation of alternate countries for removal. *See* 8 U.S.C. § 1231(b)(2)(D)-(E).

79. Here, the Government cannot plausibly show that it will remove Mr. Hassan to an alternate country.

80. Detention is only lawful when "necessary to bring about that [noncitizen's] removal." *Zadvydas*, 533 U.S. at 689.

81. The possibility of removal to a hypothetical alternate country does not justify ongoing detention, particularly since locating a different country would trigger further procedural protections prior to such removal. Such detention violates Mr. Hassan's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90.

82. 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

83. Mr. Hassan realleges and incorporates the allegations of all preceding paragraphs.

84. The Government—having failed before now to designate any country other than Somalia for removal—cannot remove Mr. Hassan to some other country without providing procedural protections.

85. Although the Government is purportedly detaining Mr. Hassan for the purposes of trying to remove him to another country, the Government has been unsuccessful on four different occasions. In addition, no immigration officer has asked him to participate in submitting an application for travel documents to another country or countries.

86. The Due Process Clause, the INA, the Convention Against Torture, and 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 alien, to present evidence on the alien'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 violate all of these laws because these policies 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.

87. ICE has detained Mr. Hassan since December 12, 2024, more than ten months after his removal order and grant of withholding of removal.

88. The Government could not, consistent with procedural due process, 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).

89. 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 four failed attempts to remove Mr. Hassan to a third country, and the statutory regime created by Congress, procedural due process is offended by Mr. Hassan's ongoing detention.

90. Where the sole permissible purpose of detention is to effectuate removal, and where Mr. Hassan 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.

91. Further, the Government regularly employs conditions of release by utilizing Orders of Supervision. *See* 8 C.F.R. § 214.15(a). Because the Government could continue investigating potential third country removal, and because the Government would have ongoing access to Mr. Hassan, as necessary, his release from custody would impose no harm to the Government.

92. By contrast, Mr. Hassan's ongoing deprivation of liberty in immigration detention imposes an ongoing and very heavy cost on him.

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

PRAYER FOR RELIEF

94. Petitioner prays this Court grant the following relief:

95. Assume jurisdiction over this matter;

96. 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;

97. Declare that Mr. Hassan's continued detention is without a legitimate governmental purpose and violates his substantive due process rights because Respondents cannot show any plausibility that Petitioner will be removed to an alternate country.

98. Declare that Mr. Hassan's continued detention violates his procedural due process rights because Respondents have failed to provide Mr. Hassan with adequate procedural safeguards to ensure that his continued detention is justified;

99. Declare that, if the Government purports to identify any third country willing to accept Mr. Hassan, that the Government be required to provide Mr. Hassan adequate notice and an opportunity to be heard regarding removal to that country;

100. Grant the writ of habeas corpus and order that Respondents release Mr. Hassan from detention; and

101. Grant any other and further relief that this Court deems just and proper.

Dated: November 4, 2025

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

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