

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

KYAW, Kyaw,

Petitioner,

v.

Pamela Bondi, Attorney General, U.S.
Department of Justice;

Kristi Noem, Secretary, Department of
Homeland Security;

Todd Lyons, Director, Immigration and
Customs Enforcement;

Sam Olson, Director of Enforcement and
Removal Operations, St. Paul Field Office,
Immigration and Customs Enforcement;;

Ryan Shea, Sheriff, Freeborn County;

Respondents.

Civil No.:

PETITION FOR A WRIT OF HABEAS CORPUS

1. Petitioner, Kyaw Kyaw (“Petitioner” or “Mr. Kyaw”) 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. Kyaw’s continued detention bears no reasonable relation to *any* legitimate government purpose and is therefore unlawful. Because Respondents cannot justify Mr. Kyaw's detention under the Immigration and Nationality Act (INA) or 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.

2. Mr. Kyaw has been detained for 479 days – 283 since his grant of protection from removal to the only country designated in his removal proceedings – with no end in sight. DHS is not permitted by the U.S. Constitution or the INA to continue to detain Mr. Kyaw indefinitely while it searches for a country that would accept a person with no ties to that country, which is likely to be all but futile in Mr. Kyaw’s case. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“A statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem.”).

STATEMENT OF THE CASE

3. Mr. Kyaw is a Burmese citizen who received an administratively final grant of deferral of removal to Burma under the Convention Against Torture (CAT) by an Immigration Judge (IJ) on January 27, 2025. *See* Exh. A, Decision of the Immigration Judge, January 27, 2025. The IJ only designated Burma as the country of removal. *Id.* 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).
4. CAT deferral is a form of protection that prohibits the government from removing a noncitizen to a country where he has demonstrated that it is more likely than not that he would be tortured by or with the acquiescence of the government. 8 CFR §§ 208.18; 1208.18.

5. DHS detained Mr. Kyaw on or around July 15, 2024, and Mr. Kyaw has remained in DHS custody since then. Exh. G, Forensic Psychological Evaluation of Mr. Kyaw. On August 16, 2024, the IJ determined Mr. Kyaw was not competent to represent himself in immigration court and appointed him a Qualified Representative through the National Qualified Representative Program (“NQRP”).
6. The IJ initially designated Thailand as a country of removal for Mr. Kyaw, at DHS’s request, but at his individual hearing, the IJ revoked the prior designation of Thailand, ordered Mr. Kyaw removed to Burma, and simultaneously granted his application for CAT relief with respect to Burma. Exh. A. As such, Mr. Kyaw does not have a removal order to any country apart from Burma. *Id.*
7. Although Mr. Kyaw was born in a refugee camp in Thailand, he is not a citizen of Thailand. The only country he has citizenship to is Burma. *See* Exh. B, Affidavit of Mr. Kyaw. Thailand considers Mr. Kyaw a refugee, but this is not a permanent immigration status and gives him no right to live and work in the country outside of designated camps. *See* Exh. N, “Ad Hoc and Inadequate: Thailand’s Treatment of Refugees and Asylum Seekers” at 5, 10. Thus, Thailand is unlikely to agree to accept Mr. Kyaw into the country, should DHS attempt to remove him there. Removal there would be improper as the Government has provided no evidence that Thailand would accept him. *See Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *see also* 8 U.S.C. § 1231(b)(2)(D). Removal to Thailand would also be dangerous as Burmese refugees there face human rights violations, including refoulement. Exh. N at 13.

8. Despite waiving appeal, DHS continues to detain Mr. Kyaw in civil immigration detention, without justification, at the Freeborn County Adult Detention Center in Albert Lea, Minnesota. The Freeborn County Adult Detention Center imprisons people in criminal custody, as well as people in immigration custody. Mr. Kyaw has been detained for more than nine months, 283 days, after his grant of CAT deferral became administratively final.
9. 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 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

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

noncitizen to be immediately removed without any opportunity to provide evidence or seek judicial review. *Id.*

10. 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, the 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* ¶¶ 70-71.
11. Nevertheless, following 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.*

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

12. On information and belief, DHS purports to detain Mr. Kyaw while it seeks to remove him to an alternate country. *See* March ICE Memo; July ICE Memo.
13. Yet, a DHS officer has admitted that removal to an alternative country is unlikely in Mr. Kyaw's case. Exh. K. Historically, the Government has rarely removed individuals to alternate countries, especially in circumstances arising here—where the noncitizen was granted fear-based protection, suffers from mental illness, and due to that mental illness is likely to raise a fear-based claim as to any potential third country that DHS may identify. *See infra* ¶¶ 54-55. Removal to Thailand, the only country other than Burma and the United States where Mr. Kyaw has any ties, is exceedingly unlikely due to Thailand's posture towards Burmese refugees. Despite the unlikelihood of removal to any third country, the Government continues to detain Mr. Kyaw in conditions indistinguishable from criminal confinement.
14. Second, as no other country is currently designated for removal, the Government cannot remove Mr. Kyaw 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.
15. Accordingly, because the Government lacks constitutional authority to detain Mr. Kyaw, 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. Kyaw's Petition.

JURISDICTION AND VENUE

16. 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).
17. 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); *Shah v. Reno*, 184 F.3d 719, 723-724 (8th Cir. 1999); *Bah v. Cangemi*, 489 F. Supp. 2d 905, 914 (D. Minn. 2007); *Aditya W. H. v. Trump*, 782 F.Supp.3d 691, 703-706 (D. Minn. 2025).
18. This action also arises under the Due Process Clause of the Fifth Amendment to the United States Constitution.
19. 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.
20. Venue is proper under 28 U.S.C. § 1391(e) because Mr. Kyaw is presently detained at the Freeborn Adult Detention Facility in Albert Lea, Minnesota, within the jurisdiction of the District of Minnesota. *See* 28 U.S.C. § 2241(d).

THE PARTIES

21. Mr. Kyaw is a 27-year-old citizen of Burma. He is currently detained at the Freeborn Adult Detention Center in Albert Lea, Minnesota.
22. Respondent Pamela Bondi is named in her official capacity as U.S. Attorney General. Respondent Bondi is a legal custodian of Mr. Kyaw.
23. 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 Mr. Kyaw.
24. Todd Lyons is named in his official capacity as Director of Immigration and Customs Enforcement. Respondent Lyons is responsible for overseeing immigration detention, supervises Respondent Olson, and is a legal custodian of Mr. Kyaw.
25. Respondent Sam Olson is named in his official capacity as the Director of Removal and Enforcement Operations of the St. Paul Field Office of U.S. Immigration and Customs Enforcement (ICE), which has administrative jurisdiction over Mr. Kyaw's detention and which contracts with the Freeborn Adult Detention Center where Mr. Kyaw is held. Mr. Olson is a legal and immediate custodian of Mr. Kyaw with authority to authorize his release.
26. Respondent Ryan Shea is named in his official capacity as Sheriff of Freeborn Adult Detention Center, where Mr. Kyaw is detained. Sheriff Shea is an immediate custodian of Mr. Kyaw.

FACTS AND PROCEDURAL HISTORY

27. Mr. Kyaw is a 27-year-old Burmese citizen. *See* Exh. B at ¶¶ 1, 4. He was born in the Mae La refugee camp in Thailand and grew up there with his mother and maternal grandmother. *Id* at ¶ 5. When Mr. Kyaw was a child, his father, who was still in Burma, was murdered [REDACTED] *Id* at ¶ 6. Mr. Kyaw grew up speaking S'gaw, a Karen language, and practicing Buddhism. *Id* at ¶¶ 2, 7. Since arriving in the United States, Mr. Kyaw has learned English, which is now his preferred language. *Id* at ¶ 2. He also has begun practicing Christianity and now identifies as a Christian. *Id* at ¶ 7.
28. Mr. Kyaw is not a citizen of Thailand and never obtained any permanent immigration status in Thailand. *See* Exh. B at ¶ 15. Mr. Kyaw's Form I-590, Registration for Classification as a Refugee, lists his nationality as "Burmese" and reflects his status in Thailand as "refugee." *See* Exh. C. However, refugee status is not a permanent immigration status in Thailand, which prohibits registered refugees from working and from leaving the camps on the border with Burma and which persistently refouls refugees to Burma. Exh. N at 7, 11, 13.³ Thus, Thailand does not consider Mr. Kyaw a Thai national or citizen. The only citizenship Mr. Kyaw has is that of Burma because his parents were born in Burma. *See* Exh. B at ¶ 4.

³ It was not until the implementation of the 2010 Civil Registration Act that the Thai Government even began providing Thailand-born refugees with birth certificates, but even these certificates do not provide refugees with Thai nationality, according to a report by the United Nations High Commissioner for Refugees. *See* Exh. M, "10 Important Facts to Know About Refugees in Thailand," The Borgen Project (2017).

29. Mr. Kyaw was admitted to the United States as a refugee with his mother and grandmother on or around September 28, 2007, when he was nine years old. *See* Exh. D, Form I-213; Exh. E, Notice to Appear; Exh. C at ¶ 16. He later adjusted status to become a Lawful Permanent Resident (LPR) on or around April 1, 2010. Exh. D; Exh. E.
30. After growing up in a refugee camp, Mr. Kyaw had difficulty adjusting to cultural differences in the United States. Exh. B. at ¶¶ 17-18. Without adequate support from his mother and grandmother, he took himself to and from school and worked summer jobs to support himself. *Id.* at ¶ 21-23. He began using alcohol and marijuana around the age of 14 after a friend encouraged him to try it. *Id.* at ¶ 24. As he entered his later teen and young adult years, his emotions became more difficult to control. His mother did not assist him in accessing appropriate mental health care and was instead emotionally abusive and would intentionally agitate him. *Id.* at ¶ 30-32.
31. After Mr. Kyaw turned 18, following some altercations in the household, Mr. Kyaw's mother and grandmother kicked him out of the house. *Id.* at ¶ 32. Mr. Kyaw has remained homeless ever since as a result. *Id.* at ¶ 38. As a result of his untreated mental illness and criminalized homelessness, Mr. Kyaw accumulated a criminal record consisting largely of theft and assault offenses. *See* Exh. F, Criminal Records. Two of the assault convictions resulted from altercations with his mother. *Id.* On one occasion, Mr. Kyaw advised the police that his mother said she was going to get "the black people to kill [him]." Exh. F. A licensed psychologist found that given the murder of Mr. Kyaw's father early in his life, "the threat of death from his mother may have felt

imminent.” Exh. G. The same psychologist diagnosed Mr. Kyaw with severe Posttraumatic Stress Disorder (“PTSD”), finding that he demonstrates symptoms of severe disassociation, exaggerated emotional and physical reactions, vigilant mistrust, fear, and irritability. *Id.*

32. In May 2024, Mr. Kyaw was convicted of Indecent Exposure under Iowa Code § 709.9(2)(b) and two counts of Indecent Exposure under Iowa Code § 709.9(2)(a). Exh. F. He was sentenced to a total term of imprisonment not to exceed three years for all three counts imposed. *Id.* This conviction stemmed from an incident that occurred at a public park, where Mr. Kyaw was not aware that anyone could see him. Exh. G, Psychological Evaluation, at 9.
33. On or around July 15, 2024, Mr. Kyaw was transferred to ICE custody and placed in removal proceedings. *See* Exh. D; Exh. E.
34. On August 16, 2024, Mr. Kyaw appeared *pro se* before the Fort Snelling Immigration Court, and the IJ determined Mr. Kyaw was incompetent to represent himself. Exh. H, Decision of the Immigration Judge, Aug. 16, 2024. The National Immigrant Justice Center (“NIJC”) was appointed as his Qualified Representative to represent him in his removal proceedings.
35. On November 21, 2024, Mr. Kyaw appeared with counsel at his Master Calendar Hearing, where the IJ designated Thailand as the country of removal, with Burma designated as an alternative country for removal. *See* Exh. A (addressed to then-NIJC attorney Niki Iman); Exh. L.

36. On January 27, 2025, Mr. Kyaw, with counsel, appeared for an individual merits hearing before the IJ. *See* Exh. A; Exh. I, Scheduling Order, Nov. 21, 2024. Mr. Kyaw claimed a fear of removal to Burma based on his Christian religion, his Karen ethnicity, and his imputed anti-military junta political opinion. Exh. B at ¶ 44-46.
37. The IJ ordered Mr. Kyaw removed to Burma and simultaneously granted his application for deferral under CAT. Exh. A. This approach—issuing a removal order and adjudicating a claim for CAT deferral at the same time—is standard approach for such cases. *See, e.g., Nasrallah v. Barr*, 590 U.S. 573 (2020). At the same time, the IJ revoked her prior designation of Thailand as a country of removal. Exh. A.
38. DHS waived appeal of the IJ’s decision. *Id.* Thus, Mr. Kyaw’s grant of CAT deferral became administratively final as of the date of the IJ’s decision, January 27, 2025. *See* 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).⁴
39. Despite this order prohibiting DHS from removing Mr. Kyaw to the only country designated as a country of removal, the Government continues to detain him in conditions that are indistinguishable from penal confinement. *See, e.g.,* Exh. L.
40. Upon information and belief, DHS is detaining Mr. Kyaw following the IJ’s CAT grant so that it can attempt to remove him to an alternative country. However, Mr. Kyaw has

⁴ The removal period begins on the latest of three possible dates. 8 U.S.C. § 1231(a)(1)(B). For Mr. Kyaw, 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 both Mr. Kyaw and DHS waived appeal, Mr. Kyaw’s removal order became administratively final on January 27, 2025, the date of the immigration judge’s decision.

no legal status in any third country and no ties to any third country except Thailand, removal to which is unlikely and dangerous. *See supra* at ¶ 28 (discussing both Thailand's treatment of Burmese refugees and Mr. Kyaw's I-590, which lists his nationality as "Burmese" although he was born in Thailand).

41. DHS has not requested that Mr. Kyaw fill out applications for travel documents to any country, nor speak to any consulate. Exh. L. Furthermore, a DHS officer stated in email communications with Mr. Kyaw's counsel in March 2025 that it is unlikely that any alternative country will accept Mr. Kyaw. Exh. K. The officer also stated that he did not anticipate that Mr. Kyaw would be detained beyond the 90-day removal period. *Id.* DHS has provided no explanation for its continued detention of Mr. Kyaw despite these previous statements.

42. Further, the Government, months after the IJ's decision and over a year since Mr. Kyaw's removal proceedings were initiated, has not indicated any alternative country to which it is purportedly pursuing removal. Exh. L. Due to his mental illness, Mr. Kyaw would likely have a fear of removal to any country the Government may seek to designate, or a fear of refoulement to Burma from that third country, and has a right to notice and an opportunity to be heard regarding any such third country designation.

43. DHS conducted a Post Order Custody Review ("POCR") interview of Mr. Kyaw on July 22, 2025. 8 C.F.R. § 241.4(h)(1). However, months have passed, and DHS has still not provided any notice of a decision. 8 C.F.R. § 241.4(d) ("A copy of any decision. . .to release or to detain a [noncitizen] shall be provided to the detained [noncitizen].").

44. “At the expiration of the three-month period after the 90-day review or as soon thereafter as practicable,” DHS is required by regulation to conduct another custody review. 8 C.F.R. § 241.4(k)(2). Three months after the POCR was October 20, 2025, but this review has not occurred, and Mr. Kyaw has not received the required 30-day notice in advance of that review. *Id.*
45. During the 15 months that Mr. Kyaw has been in DHS’s custody, he has lived in conditions akin to those of penal confinement. For example, he sleeps in a cell with a roommate, has no access to outdoor spaces, has inadequate access to mental health treatment, and is detained along individuals awaiting criminal trials. *Id.*
46. Counsel for Petitioner has ensured Mr. Kyaw will have access to housing upon his release. *See* Exh. J, Release Plan from Francisco Garcia Regarding Social Services. Specifically, counsel for Petitioner has identified various shelters in the Twin Cities area which would be able to house Mr. Kyaw if space is available on the day of his arrival. *Id.* As Mr. Kyaw is an NQRP Respondent, NIJC is committed to ensuring he has safe housing upon release and will be able to cover any sliding scale fees for treatment and housing. *Id.*

LEGAL BACKGROUND

A. Statutory and Constitutional Limits to Detention.

45. The Due Process Clause provides that “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical

- restraint—lies at the heart of the liberty that” the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. The Due Process Clause ensures that “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). That fundamental constitutional protection applies to citizens and noncitizens alike. *See Padilla v. ICE*, 953 F.3d 1134, 1142 (9th Cir. 2020) (“The Supreme Court has made clear that all persons in the United States—regardless of their citizenship status, means or legality of entry, or length of stay—are entitled to the protections of the Due Process Clause.”); *see also Wong Wing v. United States*, 163 U.S. 228, 237–38 (1896); *Landon v. Plasencia*, 459 U.S. 21, 32–34 (1982).
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). The Court in *Zadvydas* determined that this statute governing the post-removal period does not authorize the Attorney General to detain a noncitizen indefinitely, but only for the period “reasonably necessary to secure the noncitizen’s removal.” 533 U.S. at 689. Thus, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.
47. Once a six-month period expires, and once the noncitizen “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable

future, the government must respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 699. The individual need not show “the absence of any prospect of removal—no matter how unlikely or unforeseeable,” but merely that removal is not reasonably foreseeable. *Id.* at 702. The Court also noted that “as the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Zadvydas*, 533 U.S. at 701.

48. Detention beyond the 90-day removal period must comport with a legitimate government purpose. Absent a legitimate government purpose for detention, immigration detention violates a noncitizen’s substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90; *see also Hussain v. Mukasey*, 510 F.3d 739, 743 (7th Cir. 2007).

49. 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.

50. Although “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; *see also 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 administratively final. 533 U.S. at 701.

51. 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.”).

52. Accordingly, if the Government is purporting to detain an individual beyond the 90-day period, it must show a legitimate government purpose; namely, 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 700. 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.

53. Where there is no possibility of removal—or only a small possibility of removal—there are statutory and substantive due process concerns in continuing an immigrant’s detention.

54. 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 in 2017, only 1.6% of noncitizens who were granted withholding of removal (a form of relief with similar consequences to CAT) were removed to an alternative country. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2286 (2021).

55. Here, the Immigration Court revoked the designation of Thailand, the only country besides Burma considered for Mr. Kyaw's removal. Exh. A. This was proper as Mr. Kyaw has no legal status in Thailand. *See supra* at ¶ 28 (discussing Thailand's treatment of Burmese refugees generally and Mr. Kyaw's I-590, which lists his nationality as "Burmese" although he was born in Thailand). Indeed, Mr. Kyaw's status as to Thailand is similar to one of the petitioners in *Zadvydas*. *See* 533 U.S. at 684 (noting that Zadvydas, born in a German refugee camp to Lithuanian parents, was not accepted by either country as he was a citizen of neither). Mr. Kyaw does not have legal status in any other country.
56. Since the IJ's grant of CAT relief, the Government has not so much as sought to designate an alternative country for removal, much less initiate removal proceedings regarding an alternative country. *Supra* at ¶ 42. Furthermore, ICE has not requested that Mr. Kyaw complete any paperwork or meet with consular officials from any alternative country. *Supra* at ¶ 41. And DHS itself has admitted to Mr. Kyaw's counsel that removal to a third country is unlikely. *Supra* at ¶ 41.
57. ICE has further not followed its own binding regulations, which require it to conduct an internal review of the likelihood of removal. *Supra* at ¶¶ 43-44.
58. Thus, Mr. Kyaw's continued detention is no longer reasonably related to its limited purpose and is therefore unlawful, under both the INA and the Constitution.
59. Additionally, even assuming DHS had the ability to remove Mr. Kyaw 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).

60. 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.”).

61. Such conditions of release would be sufficient to ensure Mr. Kyaw's presence in the unlikely event that removal to a third country becomes possible. If released, Mr. Kyaw will have access to housing. Exh. J.

62. 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 notice and an opportunity to make a fear-

based claim against removal to that country. Where, as here, the Petitioner has been detained for over nine months—283 days—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

63. The Due Process Clause and the INA require the Government to give a noncitizen notice and a hearing where they may present evidence on their behalf to defend against his or her removal. *See* U.S. Const., Amend. V; 8 U.S.C. § 1229a(b)(4) (a noncitizen 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”); *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.”); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976).
64. 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).

65. As multiple courts have recognized, due process is required as much for third country removals as for removal to a noncitizen’s country of origin. *See Kuhai v. INS*, 199 F.3d 909, 913 (7th Cir. 1999) (holding that a noncitizen must be given the opportunity to brief removal to a third country when there was no indication during removal proceedings that the noncitizen could be removed there); *Mahdejian v. Bradford*, No. 25-cv-00191, 2025 WL 226796 (E.D. Tex. July 3, 2025) (issuing temporary restraining order, where petitioner had been granted withholding of removal as to Iran, 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*, No. 25-cv-05259, 2025 U.S. Dist. LEXIS 121997, *7, 2025 WL 1771438, *3 (N.D. Cal. June 26, 2025) (finding that where petitioner was granted CAT relief as to El Salvador, “there are no countries to which [petitioner] 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”); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) (“ICE’s authority to remove a noncitizen to

a country not specified in the immigration judge's order of removal" comes with "an affirmative obligation to make a determination regarding a noncitizen's claim of fear before deporting him."); *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 (as opposed to an alternative country of removal).") (superseded by statute on other grounds); *Romero v. Evans*, 280 F. Supp. 3d 835, 847 n.24 (E.D. Va. 2017) ("DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims.").

66. A fair hearing provides a noncitizen "an adequate opportunity to defend themselves against ... deportation," including seeking protection from removal to an alternative country. *Kossov v. INS*, 132 F.3d 405, 408 (7th Cir. 1998); *see also Tun v. Gonzales*, 485 F.3d 1014 (8th Cir. 2007).
67. 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.
68. Both the March and July ICE Memos purport to expand DHS's 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’ 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.

69. 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*, 778 F.Supp.3d 355 (D. Mass. 2025).
70. 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.
71. 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]”).

72. 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.

73. Here, due to his mental illness and particular vulnerabilities, Mr. Kyaw is likely to have a fear of removal to any third country ICE may identify. As the Eight Circuit has recognized, after raising a fear claim, “[a]n applicant for withholding of removal or relief under CAT is entitled to a fair hearing under the Due Process Clause,” and fairness in that hearing requires a neutral arbiter and the opportunity to “present evidence, offer arguments, and develop the record.” *Tun*, 485 F.3d at 1025.

74. However, a detained noncitizen may not seek protection from any theoretical third country until the Government has affirmatively designated that country for removal.

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

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.”) (affirming prepermission of applications for asylum, withholding of removal, and CAT relief regarding Burma where the IJ had previously designated Burma and ultimately ordered the respondent removed to Taiwan); *Yakubov v. Att’y Gen.*, 586 F. App’x 86, 87 (3d Cir. 2014) (“Yakubov’s claim for [CAT] deferral [to Russia] will not become ripe unless and until the Government’s efforts to remove him to Israel prove unsuccessful.”).

75. Thus, even in the extraordinary and, in this case, entirely hypothetical circumstance that the Government located a third country willing to accept Mr. Kyaw, and even if Mr. Kyaw'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. Kyaw to a third country upon completion of removal proceedings for that country.
76. This is particularly true here, where Mr. Kyaw suffers from serious mental illnesses that would likely give rise to protection claims against removal to any potential third country. There is published evidence of third-country removals to nine countries in 2025. *See* Letter from Sen. Elizabeth Warren to Sec’y Kristi Noem, Sec’y Marco Rubio & Sec’y Pete Heston 3 (Sept. 24, 2025), https://www.warren.senate.gov/imo/media/doc/letter_on_third-country_deportations.pdf (listing El Salvador, Panama, Costa Rica, Honduras, Ghana, South Sudan, Eswatini, Uzbekistan, and Mexico as countries that have accepted deportations). Mr. Kyaw’s mental illness would likely put

him in danger of persecution or torture in each of these countries.⁶ Absent this Court's intervention, Mr. Kyaw remains detained solely on the pretext of this hypothetical scenario, towards which the Government has not even taken the first step.

⁶ See, e.g., *Living in Chains: Shackling of People with Psychosocial Disabilities Worldwide*, Hum. Rts. Watch (Oct. 6, 2020), <https://www.hrw.org/report/2020/10/06/living-chains/shackling-people-psychosocial-disabilities-worldwide> (finding that sixty countries—including El Salvador, Ghana, Honduras, Mexico, and South Sudan—engage in the practice of shackling as a means of controlling people with psychosocial disabilities). For the risks people with mental disabilities face in El Salvador, see *Alvarez-Gomez v. Garland*, 56 F.4th 582, 591-92 (8th Cir. 2022) (granting CAT petitioner's petition for review where BIA failed to consider findings demonstrating that "stigma, discrimination, and ignorance about disability" contribute to petitioner's risk of torture in El Salvador). For Panama, see U.N. P'ship on the Rts. of Persons with Disabilities & U.N. Panama, *Situational Analysis of the Rights of Persons with Disabilities in Panama 22* (2022) ("Persons with disabilities are victims of constant attitudinal barriers that hinder their effective participation in society . . . , the most vulnerable being persons with intellectual and psychosocial disabilities."). For Costa Rica, see *Costa Rica Falls Short in Providing Accessible Health Services for Disabled Individuals*, Tico Times (Mar. 31, 2024), <https://ticotimes.net/2024/03/31/costa-rica-falls-short-in-providing-accessible-health-services-for-disabled-individuals> ("[T]he UN underscored the persistent discrimination against persons with disabilities, especially . . . persons with psychosocial and intellectual disabilities, and the lack of accessible complaint and redress mechanisms for victims of discrimination."). For Honduras, see *Honduras: Events of 2020*, Hum. Rts. Watch, <https://www.hrw.org/world-report/2021/country-chapters/honduras#cb8fe4> (last visited Oct. 10, 2025) (noting that people with disabilities are often institutionalized and often "threatened and subjected to extortion. by criminal gangs). For Ghana, see U.S. Dep't of State, *Ghana 2023 Human Rights Report 27* ("Persons with both mental and physical disabilities, including children, were frequently subjected to abuse and intolerance."). For South Sudan, see U.S. Dep't of State, *South Sudan 2023 Human Rights Report 52* ("There were no mental-health hospitals or institutions, and persons with mental disabilities were often held in prisons."). For Eswatini, see U.S. Dep't of State, *Eswatini 2023 Human Rights Report 32-34* (noting cultural stigma against disabled people, denials of disabled people's freedom of movement, and systematic barriers to access). For Uzbekistan, see U.N. P'ship on the Rts. of Persons with Disabilities & U.N. Uzbekistan, *Situational Analysis of the Rights of Persons with Disabilities 12* (2023) (finding "stigma, negative stereotypes and rampant discrimination against persons with disabilities in all areas of life"). For Mexico, see *Guerra v. Barr*, 974 F.3d 909, 917 (9th Cir. 2020) (granting CAT claimant's petition for review because BIA did not properly consider "evidence of

77. The appropriate remedy for these violations of Mr. Kyaw'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 the INA

78. Mr. Kyaw realleges and incorporates the allegations of all preceding paragraphs.

79. On January 27, 2025, an Immigration Judge ordered Mr. Kyaw removed to Burma but simultaneously granted him deferral of removal to that country under the Convention Against Torture (CAT). The Government waived appeal of the Immigration Judge’s decision, rendering the Immigration Judge’s CAT grant administratively final as of the date it was issued.

80. The Government continues to detain Mr. Kyaw beyond the six-month period contemplated by the Supreme Court, but it cannot plausibly show that it will remove Mr. Kyaw in the reasonably foreseeable future.

regressive, primitive, and extremely harmful conditions” for people with psychological disabilities in Mexico).

81. Mr. Kyaw does not have citizenship, legal status, or any connections with another country that might make his removal to an alternative country even remotely likely. *See* 8 U.S.C. § 1231(b)(2)(D)-(E). The IJ revoked prior designation of Thailand, which does not provide legal status to Burmese refugees or their children and which frequently refouls Burmese refugees.
82. Detention is only lawful when “necessary to bring about that [noncitizen’s] removal.” *Zadvydas*, 533 U.S. at 689.
83. Mr. Kyaw has presented “good reason to believe that there is no significant likelihood of [his] removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.
84. The burden is on the government to provide “evidence sufficient to rebut that showing.” *Id.*
85. The INA does not permit the government to detain Mr. Kyaw more than 180 days while it endlessly pursues removal to a third country, and such detention violates the Immigration and Nationality Act. *See Zadvydas*, 533 U.S. at 689–90.
86. 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.
87. Considering the slim likelihood of removal to a third country, the absence of any plausible third country for removal, the Government’s failure to identify to Mr. Kyaw

any third country or countries currently under consideration, and the statutory regime created by Congress, Mr. Kyaw's detention violates the INA.

COUNT TWO

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

88. Mr. Kyaw realleges and incorporates the allegations of all preceding paragraphs.
89. The Government's continued detention of Mr. Kyaw is unconstitutional. The Government cannot plausibly show that it will remove Mr. Kyaw. He has been granted CAT deferral of removal to Burma – the only country designated in his removal proceedings. It is not reasonably foreseeable that Mr. Kyaw would be removed to a third country, given his lack of ties and the likelihood of persecution or torture he would face.
90. Detention is only lawful when “necessary to bring about that [noncitizen's] removal.” *Zadvydas*, 533 U.S. at 689.
91. The due process clause does not permit the government to detain Mr. Kyaw indefinitely while it endlessly pursues removal to a third country, and such detention violates Mr. Kyaw's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90.
92. 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.

93. Considering the slim likelihood of removal to a third country, the absence of any plausible third country for removal, the Government's failure to identify to Mr. Kyaw any third country or countries currently under consideration, and the statutory regime created by Congress, due process is offended by Mr. Kyaw's ongoing detention.

COUNT THREE

Third Country Removal Violates Petitioner's Fifth Amendment Procedural Due Process Rights, 8 U.S.C. § 1231, the Convention Against Torture, Implementing Regulations, and the Administrative Procedure Act

94. Mr. Kyaw realleges and incorporates the allegations of all preceding paragraphs.

95. The Government—having failed before now to designate any country other than Burma or Thailand for removal—cannot remove Mr. Kyaw to some other country without providing procedural protections.

96. 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 [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 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.

97. Mr. Kyaw has a fear-based claim against deportation to other countries besides Burma. Thailand, in particular, routinely refouls Burmese refugees and otherwise violates their human rights. Mr. Kyaw may also fear removal to many other countries where he may be refouled to Burma or institutionalized or tortured due to his mental illness. Prior to any third country removal, Petitioner must be provided with constitutionally and statutorily compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country in reopened removal proceedings.

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. Kyaw's continued detention is without a legitimate governmental purpose and violates the INA because Respondents cannot plausibly show that Mr. Kyaw will be removed in the reasonably foreseeable future;
4. Declare that Mr. Kyaw's continued detention is without a legitimate governmental purpose and violates his due process rights because Respondents cannot plausibly show that Mr. Kyaw will be removed in the reasonably foreseeable future;

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

Dated: November 6, 2025

s/ Mary Georgevich

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