

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

M.M.

*Plaintiff,*

v.

KRISTI NOEM, Secretary of Homeland Security, in her official capacity; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity; PAMELA BONDI, Attorney General, in her official capacity; and MARCO RUBIO, Secretary of State, in his official capacity

*Defendants.*

Civil Action No.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND VERIFIED  
PETITION FOR WRIT OF HABEAS CORPUS**

**INTRODUCTION**

1. Defendants know that they may not, consistent with U.S. immigration law, directly deport non-citizens to countries from which they have been granted fear-based protection. As an end-run around this prohibition, Defendants have enlisted the government of Ghana to do their dirty work. Despite the minimal, pass-through involvement of the Ghanaian government, Defendants' objective is clear: deport individuals who have been granted fear-based relief from being sent to their countries of origin to those countries anyway, in contravention to the rulings of U.S. immigration judges and U.S. immigration law.
2. Plaintiff is a noncitizen who has been granted withholding of removal under the Immigration and Nationality Act ("INA"), 8 CFR § 1208.16 by an immigration judge. He is now in immediate danger of being sent on to his country of origin at the direction and

acquiescence of the United States, notwithstanding orders from a U.S. Immigration Judge that he may not be sent to his country of origin because he will be persecuted or tortured there.

3. Plaintiff is not a Ghanaian citizen, has no ties to Ghana, nor has Ghana been designated as a potential country for removal during the course of his immigration proceedings. Nevertheless, in the middle of the night on November 5, 2025, Plaintiff was taken from his cells in U.S. Immigration and Customs Enforcement (“ICE”) custody in Alexandria, Louisiana and put on a U.S. plane.
4. By removing Plaintiff to Ghana without notice or an opportunity to be heard, and by directing the transportation of Plaintiff to the Gambia and enlisting Ghana to do its bidding in the process, Defendants are circumventing U.S. immigration law. Plaintiff files this Complaint to prevent his unlawful transfer to the country from which he has been granted withholding of removal under the INA.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction to hear this case under 28 U.S.C. § 2201, the Declaratory Judgment Act, and 28 U.S.C. § 1331, Federal Question Jurisdiction; and because the individual Defendants are United States officials. 28 U.S.C. § 1346(a)(2).
6. Jurisdiction is also proper under 28 U.S.C. § 2241(a), as Plaintiff (also Petitioner) is a civil detainee, but in any event, if considered a prisoner, he would be eligible for habeas under § 2241(c)(1) and (3), in that Plaintiff is in the Respondents’ custody under or by color of law under the authority of the United States, and in violation of the Constitution or laws of the United States, as more fully set forth below. See also, Art. I, § 9, Cl. 2 of the United States Constitution (the Suspension Clause).

7. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act, and the Court's inherent equitable powers.
8. Venue lies in this District because each Defendant is an agency or officer of the United States sued in his or her official capacity, and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. 28 U.S.C. § 1391(e)(1).

### **PARTIES**

9. Plaintiff M.M. is a native and citizen of the Gambia. An Immigration Judge granted him withholding of removal on August 1, 2019 due to his public activism in support of the LGBTQ community, and criticism of the Gambia's criminalization and persecution of this population. Plaintiff has lived in the United States for over 20 years and is married to a US Citizen, with four children and one, recently born grandchild. Defendants are seeking to deport him to Ghana without any meaningful legal process.
10. Defendant Kristi Noem is the U.S. Department of Homeland Security ("DHS") Secretary. She is the cabinet-level secretary responsible for DHS, including all immigration enforcement in the United States. Furthermore, DHS is the federal agency responsible for implementing and enforcing the INA and is an agency within the meaning of the APA, 5 U.S.C. § 551(1). DHS oversees its component agencies, including ICE, U.S. Customs and Border Protection, and U.S. Citizenship and Immigration Services. DHS is headquartered in Washington, D.C.

11. Defendant Todd Lyons is the Acting Director of ICE, which is headquartered in Washington, D.C. In that role, he is responsible for overseeing all operations of ICE, the federal agency responsible for all immigration enforcement in the United States.
12. Defendant Pamela Bondi is the Attorney General of the United States. She is responsible for overseeing all operations of the U.S. Department of Justice, which is headquartered in Washington, D.C. The Immigration Judges who decide removal cases and applications for relief from removal do so as designees of Defendant Bondi.
13. Defendant Marco Rubio is the Secretary of the U.S. State Department (“State Department”), which is headquartered in Washington, D.C. He is responsible for overseeing all State Department operations. On information and belief, he, or his subordinates, is responsible for facilitating the agreement with Ghana resulting in Plaintiff’s unlawful removal there.
14. All government defendants are sued in their official capacities.

#### **FACTUAL BACKGROUND**

15. Plaintiff is a noncitizen from the Gambia who was granted withholding of removal under the INA on August 1, 2019. In so granting, and immigration judge found a clear probability that he would face persecution in the Gambia due to his pro-LGBT activism. Evidence in the Immigration Court records demonstrated that Gambian police targeted Plaintiff’s family due to Plaintiff’s activism and that Gambian officials were actively seeking to arrest Plaintiff. Independent evidence showed a practice of human rights abuses against LGBT individuals and those advocating for LGBT rights.
16. Six years later, in June 2025, Immigration and Customs Enforcement (ICE) re-detained Plaintiff. On October 31, 2025, three months after his re-detention, Plaintiff was presented

with a notice of intent to remove him to Ghana. On November 3, 2025, he was called for a fear screening. Counsel was not notified or present.

17. On the evening of November 4, 2025, Plaintiff was moved from the Farmville Detention Center. He was not told where he was being moved.
18. Immigration counsel prepared an emergency Motion to Reopen and Stay of Removal on November 5, 2025, and paper filed on November 6, 2025 per court instruction.
19. In the morning of November 6, the Plaintiff was no longer on the ICE detainee locator. Immigration counsel, Ana Dionne-Lanier called Washington ICE Office Assistant Field Office Director (AFOD) Joseph Simon to confirm the location of the client. AFOD Simon informed counsel that the respondent was not in an ICE detention facility and that notes indicated he was transferred to the Alexandria Staging Facility and then to Harlingen for the purpose of getting on a charter flight. The ICE official informed counsel that Plaintiff was “booked out” which generally means they are not in an ICE detention facility. He confirmed however that the case was open and remained in the Washington ERO office.
20. Given this information, immigration counsel also called the Harlingen Field Office, where an officer confirmed that their system showed that the plaintiff was no longer in an ICE detention facility. She confirmed that the notes on Plaintiff’s case indicated that he had been moved to Alexandria but that there was no information about Harlingen. She could not confirm if the Plaintiff was on a flight or where they were. She indicated if the Immigration Judge Ruled on the Stay Motion, to notify the Washington ICE Office.
21. The ICE Flight Monitor, housed by Human Rights First, confirmed an ICE deportations flight departing from Alexandria, LA and on route to Senegal. The Tracker flagged the

flight as a potential for Third Country Transfer. The most recent update indicates that this flight has stopped in Senegal and Guinea, with more stops expected.

### LEGAL FRAMEWORK

22. Congress authorized only the DHS Secretary with “enforcement [of final removal orders] and all other laws relating to immigration . . . of [noncitizens] . . . .” 8 U.S.C. § 1103(a)(1). Paragraphs (b)(1) and (b)(2) of 8 U.S.C. § 1231 govern the countries to which DHS is authorized to remove noncitizens with final removal orders. The statutory scheme consists of “four consecutive removal commands.” *Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 341 (2005). DHS must attempt to remove the individual first to the country of choice (designated on the removal order), then their country of origin, next a country to which they have a lesser connection, and finally, if, and only if, removal to any of those countries is “impracticable, inadvisable, or impossible,” may DHS remove a person to another country “whose government will accept” them. *Id.* (citing 8 U.S.C. § 1231(b)(2)).<sup>1</sup>
23. Before removal to any country where a noncitizen fears persecution or torture, U.S. law guarantees the right to raise a claim under the withholding of removal statute, 8 U.S.C. § 1231(b)(3) and/or Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”). First, 8 U.S.C. § 1231(b)(1) and (b)(2) make any country of removal “[s]ubject to paragraph (3).” Paragraph (3), entitled “Restriction on removal to a country where [noncitizen’s] life or freedom would be threatened,” reads:

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<sup>1</sup> For noncitizens placed in removal proceedings upon “arriv[ing] in the United States,” the designated country is the one from which they departed, or, alternatively, to which they have a connection. *Id.* § 1231(b)(1)(A)-(C). Another country is permitted only if removal to each of those countries “is impracticable, inadvisable, or impossible.” *Id.* § 1231(b)(1)(C)(iv).

*Notwithstanding paragraphs (1) and (2), the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion.*

*Id.* § 1231(b)(3)(A) (emphasis added);<sup>2</sup> *see also Jama*, 543 U.S. at 348. Congress also enacted the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”) to implement CAT, instructing that the U.S. government may not “expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture.” Pub. L. 105-277, Div. G, § 2242(a), 112 Stat. 2681, 2681-822 (1998) (codified as statutory note to 8 U.S.C. § 1231). Congress directed that the government “shall prescribe regulations to implement the obligations of the United States under Article 3 of the [CAT],” *id.* § 2242(b), 112 Stat. at 2681-822, which the government did, *see, e.g.*, 28 C.F.R. § 200.1 (explaining that a Title V removal order “shall not be executed in circumstances that would violate Article 3 of [CAT]”).<sup>3</sup>

24. The statute and regulations implement Congress’ designation scheme to ensure that noncitizens receive meaningful notice and an opportunity to present a fear-based claim. In standard removal proceedings under 8 U.S.C. § 1229a, the regulations mandate that the immigration judge (IJ) “shall notify” the individual of the designated country of removal, and “shall also identify for the record” all alternative countries to which the person may be removed. 8 C.F.R. § 1240.10(f). Likewise, DHS officers can issue an administrative

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<sup>2</sup> Withholding of removal is a “mandatory” protection for noncitizens who are ineligible for asylum but can establish that they are more likely than not to face persecution in the designated country. *Id.* § 231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16; *INS v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999). Withholding of removal contains exceptions for, inter alia, individuals who have committed certain serious crimes. *See* 8 U.S.C. § 1231(b)(3)(B).

<sup>3</sup> Individuals are eligible for CAT protection no matter the basis of their removal order. *See* 8 C.F.R. §§ 208.16-208.18, 208.31, 241.8(e), 1208.16-1208.18

removal order to nonpermanent residents with an aggravated felony conviction. See 8 U.S.C. § 1228(b); 8 C.F.R. § 238.1. In this process, the noncitizen may designate “the country to which he or she chooses to be deported,” 8 C.F.R. § 238.1(b)(2)(ii), and the “deciding [DHS] officer shall designate the country of removal.” *Id.* § 238.1(f)(2) (emphasis added). Consistent with the United States’ commitment to non-refoulement, DHS must provide individuals who express a fear of return to the designated country an opportunity to demonstrate a reasonable fear of persecution or torture to an asylum officer, and those who pass this threshold are eligible to apply for withholding under 8 U.S.C. § 1231(b)(3) and/or CAT protection in withholding-only proceedings. *See id.* §§241.8(e), 238.1(f)(3); *see also id.* §§ 208.31, 1208.31.

25. On March 30, 2025, DHS issued a memorandum outlining its policy on third country removals. Memorandum, U.S. Dep’t of Homeland Sec., Guidance Regarding Third Country Removals (Mar. 30, 2025) (“March 30 Memo”). The policy states that before the government can remove a non-citizen to a country that had not previously been designated as the country of removal, DHS must determine whether that country has provided diplomatic assurances that non-citizens removed from the U.S. will not be persecuted or tortured. If the government does not receive such assurances, then it must follow the procedures outlined in the March 30 Memo, which includes providing the non-citizen with notice and a reasonable fear interview.

26. Accordingly, because Defendants did not provide Plaintiff or his counsel with notice prior to a fear interview, they were required to have credible diplomatic assurances from Ghana that Plaintiffs would not be subjected to torture or persecution. Any diplomatic assurances provided by the Ghanaian government (if provided at all) could not have been reliable, as – upon

information and belief and based upon credible reports from media outlets - Ghana has within days of receiving non-citizens deported from the U.S. transported at least one to a country that an Immigration Judge determined he was likely to be tortured or persecuted in.

27. As a result, even if Plaintiff is not ultimately transported to the Gambia, Defendants' actions of deporting Plaintiff to Ghana violates his statutory and constitutional rights.

28. Plaintiff also respectfully requests a petition for a Writ of Habeas Corpus for his immediate release from detention, upon his return to the USA, or for this court to take ameliorative actions to prevent and enjoin Respondents from further violations of law.

29. The Court must grant a petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC cause is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

### **CAUSES OF ACTION**

#### **COUNT I**

#### **Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C)**

30. The allegations in the above paragraphs are realleged and incorporated herein.

31. The APA entitles "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . to judicial review." 5 U.S.C. § 702.

32. The APA compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . . or otherwise not in accordance with law," *id.* § 706(2)(A), or "short of statutory right." *Id.* § 706(2)(C).

33. Defendants' decision to deport Plaintiff to Ghana with the intention that he be removed to the Gambia is arbitrary and capricious. It endangers Plaintiff's life and safety by subjecting him to the very persecution and torture that the immigration judge determined warranted protection under the INA.
34. Defendants' actions are also not in accordance with law, short of statutory right, and violate the INA, FARRA, and implementing regulations, all of which mandate that Defendants refrain from removing Plaintiffs to a country where they will likely be persecuted or tortured.

## COUNT II

### Fifth Amendment Due Process Clause

35. The allegations in the above paragraphs are realleged and incorporated herein.
36. The Fifth Amendment of the U.S. Constitution provides that no person be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Removing a person to a country without giving him a meaningful opportunity to address his fear of persecution in that country violates due process. "The essence of due process is the requirement that 'a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.'" *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 171-72 (Frankfurter, J., concurring)); *Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 517 (D. Md. 2025) ("the statutory scheme which conferred withholding of removal also entitled [petitioner] to not be returned to El Salvador absent process.").
37. Defendants' decision to deport Plaintiff to Ghana with the intention that he be removed to the Gambia violates his due process rights under the Fifth Amendment. It endangers his

life and safety by subjecting him to the very persecution and torture that immigration judges determined warranted protection under the INA.

38. Even if Plaintiff is ultimately not transported to the Gambia, deporting him to Ghana in the absence of credible diplomatic assurances and without providing him with a counseled reasonable fear interview for which he received adequate notice and an opportunity to prepare violates his due process rights under the Fifth Amendment.

### **COUNT III**

#### **Declaratory Judgment, 28 U.S.C. § 2201**

39. The allegations in the above paragraphs are realleged and incorporated herein.
40. Under 28 U.S.C. § 2201(a), a court “may declare the rights and other legal relations of any interested party seeking such declaration.”
41. Plaintiffs seek a declaration that Defendants’ actions violate the Immigration and Nationality Act, the Foreign Affairs Reform and Restructuring Act of 1998, implementing regulations, the Due Process Clause of the Fifth Amendment, and the treaty obligations of the United States.
42. Accordingly, Plaintiffs request that the Court declare their rights and legal relations under the INA, the FARRA and implementing regulations, and the Due Process Clause of the Fifth Amendment.

### **COUNT IV**

#### **VIOLATION OF THE WITHHOLDING OF REMOVAL STATUTE, 8 U.S.C. § 1231(b)(3)(A)**

43. The allegations in the above paragraphs are realleged and incorporated herein.

44. The Withholding of Removal statute, 8 U.S.C. § 1231(b)(3)(A), prohibits Defendants from removing a noncitizen to any country from which they have been granted withholding of removal, unless such grant is formally terminated by lawful means.
45. As set forth above, Defendants have arranged for the removal, by way of Ghana, of Plaintiffs M.M. to the country from which he has been granted withholding of removal, without formally terminating his grant of withholding of removal, thus violating the Withholding of Removal statute.
46. Defendants' violation of law, as set forth herein, is causing irreparable harm with each day that they spend outside the United States, where he faces removal to his country of origin.
47. Plaintiff asks the Court to immediately order Defendants to take all steps reasonably available, and proportionate to the gravity of the ongoing harm, to return Plaintiff to the United States.

#### **COUNT V**

#### **Violation of FOIA, 5 U.S.C. § 552 Failure to Proactively Disclose Records (Against Defendant DHS)**

48. The allegations in the above paragraphs are realleged and incorporated herein.
49. Defendant DHS is obligated under 5 U.S.C. § 552(a)(2)(B) and (a)(2)(C) to proactively disclose “those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register” and “administrative staff manuals and instructions to staff that affect a member of the public.”
50. Defendant DHS may not “rel[y] on, use[], or cite[] as precedent” any “final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public” against a party unless the material is “indexed and either made available or published

as provided by [5 U.S.C. § 552(a)(2)(E)]” or “the party has actual and timely notice of the terms thereof.” 5 U.S.C. § 552(a)(2)(E).

51. The agreement that exists between Defendant and the government of Ghana (“the Ghana Agreement”) is a statement of policy adopted by DHS but not published in the Federal Register and an instruction to staff which affects members of the public. On information and belief, Defendant DHS has similar statements of policy, instruction, or guidance covered by 5 U.S.C. § 552(a)(2)(E) related to Defendants’ increased efforts to deport noncitizens to third countries.

52. Defendant DHS has failed to proactively disclose the Ghana Agreement and/or related statements of policy, instruction, or guidance covered by 5 U.S.C. § 552(a)(2)(E), and no legal basis exists for Defendant DHS’s failure to proactively disclose these materials.

53. Defendant DHS has nonetheless relied upon the Ghana Agreement, and has possibly relied on other statements of policy or instruction or guidance covered by 5 U.S.C. § 552(a)(2)(E), against Plaintiff.

54. Defendant DHS’s failure to proactively disclose the Ghana Agreement and other statements of policy, instruction, or guidance covered by 5 U.S.C. § 552(a)(2)(E), is in violation of 5 U.S.C. § 552(a)(2). Defendant DHS’s reliance on these materials against Plaintiff is a violation of 5 U.S.C. § 552(a)(2)(E).

55. For these reasons, Defendants cannot rely on or use the Ghana Agreement to detain people in Ghana prior to their removal to their country of origin or another third country.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Assume jurisdiction over this action;

- b. Immediately enjoin Defendants from removing—or facilitating, enabling, or encouraging the removal—of Plaintiff to the Gambia;
- c. Declare that Defendants have violated Plaintiff's statutory, regulatory, and constitutional rights by facilitating their removal to his country of origin;
- d. Declare that Defendants had, and have, a mandatory duty to provide Plaintiff with meaningful notice and opportunity to present a fear-based claim to an immigration judge prior to deportation to Ghana;
- e. Preliminarily and permanently enjoin Defendants from failing to provide Plaintiffs with written notice and a meaningful opportunity to present a fear-based claim under 8 U.S.C. § 1231(b)(3) and/or under the Convention Against Torture to an immigration judge prior to deportation to Ghana;
- f. Order Defendants to immediately facilitate the return of Plaintiff to the United States and provide him with a meaningful opportunity to present a fear-based claim under 8 U.S.C. § 1231(b)(3) and/or under the Convention Against Torture to an immigration judge prior to any effort to again deport him to Ghana or any other country of which he is not a citizen;
- g. Enjoin Defendants from relying on or using Ghana as a transit hub in removal proceedings pursuant to 5 U.S.C. § 552(a)(2);
- h. Issue a Writ of Habeas Corpus ordering Defendants to release Plaintiff immediately upon return to the USA;
- i. Award costs and reasonable attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- j. Order all other relief that the Court deems just and proper.

Dated: November 6, 2025

Respectfully submitted,

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*\*Motions for admission pro hac vice forthcoming*

VERIFICATION BY COUNSEL PURSUANT TO 28 U.S.C. § 2242

I hereby solemnly affirm, under penalty of perjury, that I am an attorney for the Plaintiff in the foregoing Supplemental Complaint, and I affirm the truth of the contents contained therein based upon personal knowledge and from the records I have reviewed and the communication I have had with the Plaintiff and other knowledgeable individuals. I further state that the facts in the foregoing Complaint are true and correct, to the best of my knowledge and belief.

/s/ Ana Dionne-Lanier

Date: 11/06/2025