IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRIC OF KANSAS

Mayom Poul Boj,

Petitioner,

v.

Samuel Olson, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement;

Kristi Noem, Secretary, Department of Homeland Security;

Todd Lyons, Acting Director, Immigration and Customs Enforcement;

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

Crystal Carter, Warden, FCI Leavenworth Detention Facility, Kansas

Respondents.

Civil No.: 26-3009-JWL

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

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1. Petitioner, Mayom Poul Boj, was granted protection under the Convention Against Torture eight months ago while in ICE custody. He petitions this Court to issue a Writ of Habeas Corpus or, alternatively, order Respondents to show cause for his continued detention "forthwith," within 3 days, or no later than 10 days, in accordance with 28 U.S.C. § 2243. Petitioner's continued detention bears no reasonable relation to any legitimate government purpose and is therefore unconstitutional. Because Respondents cannot justify Petitioner's

detention under the U.S. Constitution, he urges this Court to grant his petition and order Respondents to immediately release him from Immigration and Customs Enforcement (ICE) custody. 28 U.S.C. § 2241.

2. The Immigration and Nationality Act (INA) and the U.S. Constitution do not authorize Respondents to continue to detain Petitioner indefinitely while it searches for a country that would accept a person with no ties to that country. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("A statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem."). Respondents have had more than sufficient time to identify a country which would accept Petitioner but have failed to do so, and they should be ordered to immediately release him from ICE custody.

STATEMENT OF THE CASE

3. Petitioner is a Sudanese national who received a final grant of deferral of removal under the Convention Against Torture (CAT) on May 16, 2025. *See* Exh. A, May 16, 2025 Order of Immigration Judge. That decision became administratively final as of the immigration judge's (IJ) decision date when the Department of Homeland Security (DHS) waived appeal. *See id.*; 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 U.S. 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 of that country. 8 C.F.R. §§ 208.18; 1208.18.

5. Despite waiving appeal of the IJ's CAT deferral grant, DHS continues to detain Petitioner in civil immigration detention, without justification, now at the FCI Leavenworth Detention Facility in Leavenworth, Kansas. Petitioner has been detained by ICE for

approximately 20 months, since May 2024. Furthermore, he has been detained for more than six months since his grant of CAT deferral became administratively final on May 16, 2025. *See id.*

6. Petitioner does not have a removal order to any country apart from Sudan. Petitioner has received no notice that he is being transferred to any other country, nor has he been provided an opportunity to challenge any such efforts.

7. 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 asserts it 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 asserts the noncitizen should be immediately removed without any opportunity to provide evidence or seek judicial review. *Id.*

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

8. 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 unexplained emergency decision staying preliminary class-wide relief does not address, much less eliminate, DHS's obligations under the Immigration and Nationality Act (INA), 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* ¶¶ 69-71.

9. Nevertheless, 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 July ICE 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.* Following the Supreme Court's decision in *D.V.D.* and pursuant to the March and July ICE memos, DHS

[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

swiftly resumed removals to third countries, including removals to countries with a record of human rights violations.[3]

10. On information and belief, DHS purports to detain Petitioner while it seeks to remove him to an alternate country. *See* March ICE Memo; July ICE Memo.

11. Historically, the government has rarely removed individuals to alternate countries. Petitioner has no ties to any third country, *see* Exh. B, March 7, 2025 M. Boj Declaration, and cannot be removed to Sudan, the only country designated for removal. *See* Exh. A. Despite the unlikelihood of eventual removal to any third country, Respondents continue to detain Petitioner. The mere possibility of removal to a third country cannot justify continued detention now.

12. Further, having never designated any other country for removal, Respondents cannot lawfully remove Petitioner to some other country without properly giving him notice and an opportunity to be heard regarding removal to that country. Even assuming Respondents would be allowed by statute to remove him to a third country, and that it could find a country willing to accept him, Respondents would be obliged to give him a hearing before removal, which would mean restarting his removal proceedings. ICE's current policies unlawfully deny noncitizens this process prior to removal to a third country, permitting removal without any proceedings or even any *notice* in some cases, and with as little as six hours' notice to a country with a record of human rights abuses.

[3] *See generally* The New York Times, *Inside the Global Deal-Making Behind Trump's Mass Deportations* (June 25, 2025), https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html; Rolling Stone, *ICE is Deporting People to Africa on Nearly Un-Trackable Military Flights* (Sept. 21, 2025), https://www.rollingstone.com/politics/politics-features/ice-deporting-africa-military-flights-1235431848/.

13. Accordingly, because Respondents lack constitutional authority to continue to detain Petitioner, he asks this Court to order his immediate release from ICE detention via a writ of habeas corpus.

14. Petitioner also seeks to enjoin Respondents from removing him to a third country without the notice and opportunity to be heard, as is required by the U.S. Constitution and federal law.

15. Alternatively, this Court should schedule a hearing at the earliest practicable opportunity to hear argument and, if necessary, receive evidence on Petitioner'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); *Hussain v. Mukasey*, 510 F.3d 739, 742–43 (7th Cir. 2007).

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 Petitioner is presently detained at the FCI Leavenworth Detention Facility in Leavenworth, Kansas, within the jurisdiction of the District of Kansas. *See* 28 U.S.C. § 2241(d).

THE PARTIES

21. Petitioner is a 35-year-old Sudanese national. He has been in ICE custody since May 2024 and is currently detained at FCI Leavenworth Detention Facility in Leavenworth, Kansas.

22. Respondent Crystal Carter is sued in her official capacity as Warden of FCI Leavenworth Detention Facility, where Petitioner is detained. Warden Carter is the immediate custodian of Petitioner.

23. Respondent Samuel Olson is sued in his official capacity as the Chicago Field Office Director of U.S. ICE, which has administrative jurisdiction over Petitioner's detention and which contracts with the FCI Leavenworth Detention Facility where Petitioner is held. Mr. Olson is the legal custodian of Petitioner with authority to authorize his release.

24. 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.

25. Todd Lyons is named in his official capacity as Acting Director of Immigration and Customs Enforcement. Respondent Lyons is responsible for overseeing immigration detention, supervises Respondent Olson, and is a legal custodian of Petitioner.

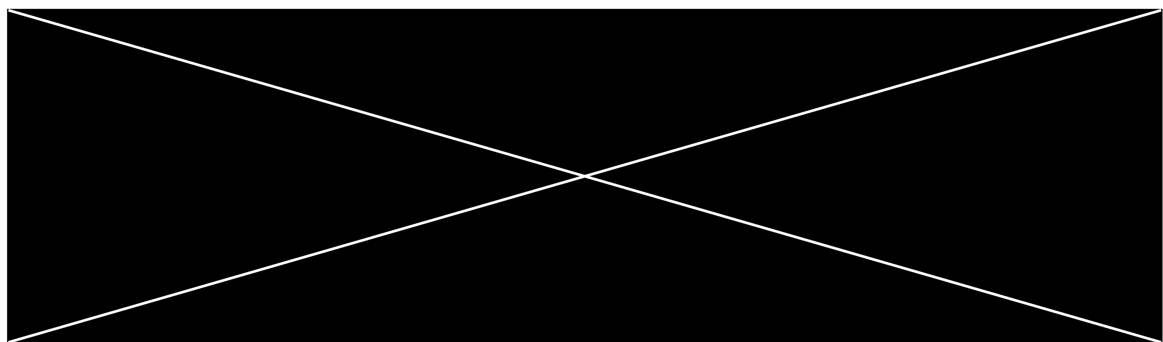
26. Respondent Pamela Bondi is named in her official capacity as U.S. Attorney General. Respondent Bondi is a legal custodian of Petitioner.

FACTS AND PROCEDURAL HISTORY

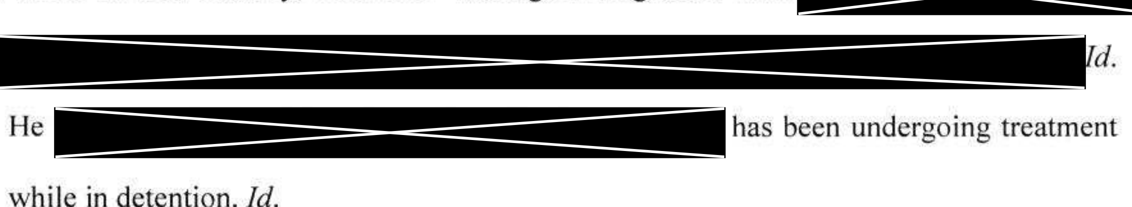
27. Petitioner is a 35-year-old Sudanese national who lived in Indianapolis, Indiana prior to his detention. Exh. B. He was born in Khartoum, Sudan, and his parents were physicians. *Id.* Petitioner's parents were killed when he was young by Sudanese government officials, and his brother was arrested and detained for approximately a year, during which time Petitioner lived with his aunt. Petitioner's brother escaped from prison, and he and his brother fled to Egypt, where they stayed for two years before coming to the United States. In approximately 2002, Petitioner entered the United States as a refugee. *Id.*

28. Petitioner is a Christian and belongs to the Ngok Dinka ethnic group. *Id.* In Sudan, if an individual is not Muslim, they are harmed and discriminated against. Petitioner cannot safely practice Christianity in Sudan, as Christians as well as the Ngok Dinka ethnic group are targeted and killed. *Id.*

29. Upon arrival in the United States in 2002, Petitioner lived with his brother and attended school. He completed middle school, high school, and two years of community college. *Id.*

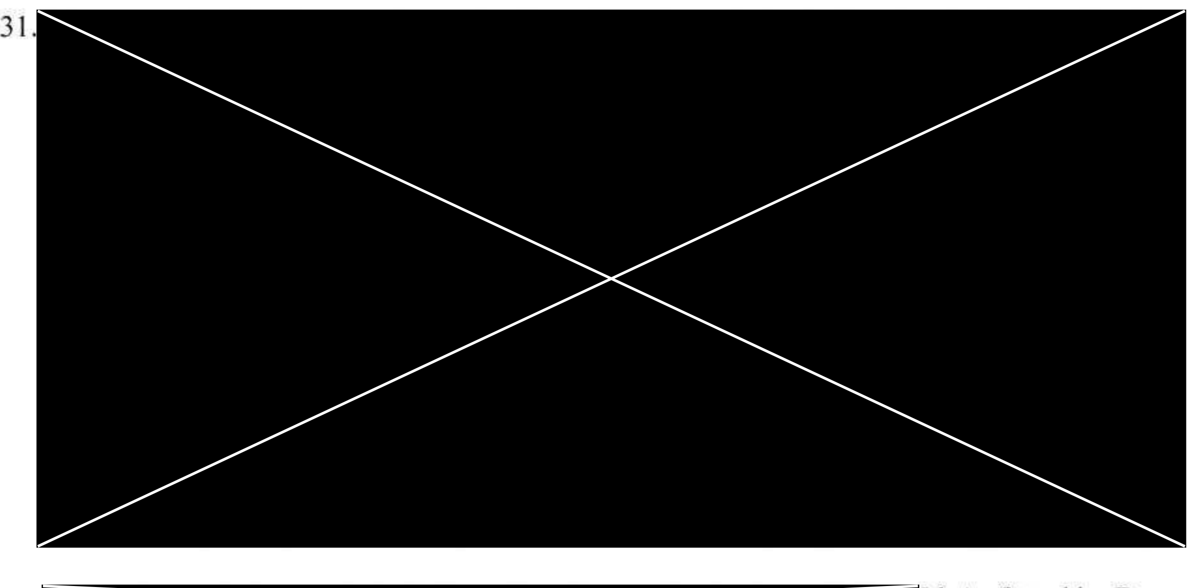


30. While in ICE custody, Petitioner was again diagnosed with

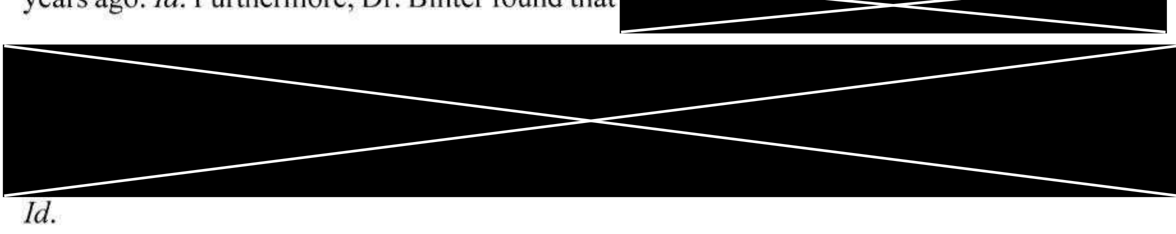


Id. He has been undergoing treatment while in detention. *Id.*

31.



Id. As found by Dr. Binter, Petitioner has a long history of trauma starting in his early childhood, from his parents being killed and his family farm being set on fire to the loss of his daughter three years ago. *Id*. Furthermore, Dr. Binter found that



Id.

32. Petitioner's and history of trauma has resulted in conduct that he is admittedly not proud of and various criminal convictions. *Id*. Petitioner, however, has served all time for those convictions and was released from criminal custody on May 23, 2024.

33. When released from criminal custody in May 2024, Petitioner was transferred to ICE custody. He has now been in ICE custody for almost 20 months.

34. In addition, Petitioner had previously been granted withholding of removal after being transferred to ICE custody around 2016. He maintained his withholding of removal status until his most recent arrest in 2022.

35. On March 31, 2022, the Department of Homeland Security filed a motion to reopen proceedings and terminate the withholding grant, but failed to serve Petitioner with this motion. On May 21, 2024, the Department of Homeland Security filed a second motion to reopen proceedings and terminate the withholding grant. The motion to reopen proceedings was granted on November 14, 2024.

36. On May 20, 2024, Petitioner was transferred to ICE custody and was detained in Boone County Jail by Chicago ICE. He has since been transferred to FCI Leavenworth Detention Facility in Leavenworth, Kansas, where he remains detained.

37. On May 15, 2025, Petitioner, with counsel, appeared for an individual merits hearing before the IJ. Petitioner has explained his fear of return to Sudan because he is a practicing Christian and because of his ethnicity as a member of the Ngok Dinka ethnic group. Exh. B. Christians, and in particular those of the Ngok Dinka ethnic group, face significant persecution due to the ongoing conflict. *Id.*; Exh. D, U.S. Dept. of State, *Sudan 2023 Int'l Religious Freedom Report* (2024); Exh. E, FREEDOM HOUSE, *Freedom in the World 2025: Sudan*; Exh. F, AMNESTY INTERNATIONAL, *Human Rights in Sudan: Sudan 2023*; Exh. G, UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, *Sudan* (2024); Exh. H, HUMAN RIGHTS WATCH, *Sudan* (2024); Exh. I, INTERNATIONAL RESCUE COMMITTEE, *Sudan Crisis Watch* (2024); Exh. J, BBC, Barbara Plett Usher, *Sudan civil war: UN Appalled by "Credible Reports" of Sudan civilian killings* (April 4, 2025); Exh. K, UNHCR, *Sudan: Global*

Appeal 2025 situation overview (2025); Exh. L, UNHCR, *Sudan Crisis Explained* (February 27, 2025); Exh. M, INTERNATIONAL ORGANIZATION FOR MIGRATION – UNITED NATIONS MIGRATION, *South Sudan Hits Record One Million New Arrivals from Sudan Crisis* (January 21, 2025); Exh. N, BBC, Barbara Plett Usher, *BBC finds fear, loss and hope in Sudan's ruined capital after army victory* (April 2, 2025); Exh. O, THE HILL, Kelsey Zorzi, *Sudan Religious freedom, along with everything else, is unraveling in Sudan* (Dec. 30, 2023); Exh. P, THE TAHRIR INSTITUTE FOR MIDDLE EAST POLICY, Mohaned Elnour, *The Forgotten War on Sudan's Christians* (May 9, 2024); Exh. Q, MINORITY RIGHTS GROUP, *Dinka in Sudan* (June 2019); Exh. R, MINORITY RIGHTS GROUP, *Sudan* (June 2019); Exh. S, ACLED, *Violence Rises Across South Sudan's Disputed Abyei State* | ACLED Insight (Feb. 9, 2024); Exh. T, COUNCIL ON FOREIGN RELATIONS, Center for Preventative Action, *Civil War in Sudan* | *Global Conflict Tracker* (March 26, 2025).

38. It was based on these fears that after a hearing, the IJ ordered Petitioner removed to Sudan but simultaneously granted his application for CAT deferral of removal. 8 C.F.R. §§ 208.18; 1208.18. Exh. A. This approach–issuing a removal order and adjudicating a claim for deferral of removal at the same time–is the standard approach for such cases. *See, e.g. Nasrallah v. Barr*, 590 U.S. 573 (2020).

39. DHS waived appeal of the IJ's decision. Exh. A.

40. Because no appeal has been pursued, Petitioner's grant of CAT deferral became administratively final as of the date of the IJ decision, May 16, 2025. *See* 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(1)(B), 1101(a)(47)(B)(ii).[4]

41. Despite this order prohibiting DHS from removing Petitioner to the only country to which he has ties, Respondents continue to detain him. *See, e.g.*, Exh. B.

42. Upon information and belief, DHS is detaining Petitioner following the IJ's CAT deferral grant so that it can attempt to remove him to a third country. However, Petitioner has no lawful status or ties to any third country. Exh. B.

43. Upon information and belief, on approximately November 25, 2025, DHS requested that Petitioner complete a travel document request to South Sudan as part of a potential effort to remove him to that country. However, upon being informed, Petitioner expressed a fear of removal to South Sudan and requested a reasonable fear interview. To date, DHS has not conducted a reasonable fear interview, and thus far, DHS has not requested that Petitioner fill out applications for travel documents to any other country, nor that he speak to any consulate. Further, Petitioner's immigration counsel has requested a copy of the purported travel document request to South Sudan, as well as a reasonable fear interview. DHS has not responded to this request. Exh. U, December 19, 2025 Email from Immigration Counsel to A. Wendler.

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[4] The removal period begins on the latest of three possible dates. 8 U.S.C. § 1231(a)(1)(B). For Petitioner, 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, Petitioner's removal order became administratively final on May 16, 2025, the date of the immigration judge's decision.

44. Nearly eight months after the IJ's decision, Respondents have failed to provide information or updates regarding any third country removal efforts. Petitioner has a right to notice and an opportunity to be heard in regard to any such third country designation.

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).

47. The Supreme 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; *see also id.* at 682 (noting that indefinite detention "would raise serious constitutional concerns"). Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. Further, the Court held that the presumptive reasonableness of detention under § 1231 expires once detention has reached six months after a removal order became administratively final. 533 U.S. at 701.

48. Once the 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; *Anyimu v. Department of Homeland Security*, 2017 WL 193180, at *2-3 (D. Kan. Jan. 18, 2017) (Lungstrum, J.) (applying this framework); *Vargas v. Noem*, 2025 WL 2770679, at *2-3 (D. Kan. Sept. 29, 2025) (Lungstrum, J.) (same); *Manago v. Carter*, 2025 WL 2841209, at *2-3 (D. Kan. Oct. 7, 2025) (Lungstrum, J.) (same); *Gutierrez v. Carter*, F. Supp. 3d, 2025 WL 3454295, at *2-3 (D. Kan. Dec. 2, 2025) (Lungstrum, J.) (same).

49. 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. *Zadvydas*, 533 U.S. at 702.

50. 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).

51. 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.

52. As discussed, 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).

53. 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."); *Gilali* 2019 WL 5191251, at *5.

54. 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; *Gutierrez*, 2025 WL 3454295, at *2.

55. For Petitioner, the presumptively reasonable 6-month period of post-removal-order detention has already expired with no steps whatsoever taken by Respondents to effectuate his removal.

56. Where there is no significant likelihood of removal in the reasonably foreseeable future, continued detention violates the constitution. *See Zadvydas*, 533 U.S. at 689–90

57. It is incredibly rare for DHS to remove individuals who have been granted protection from removal to their home country. In such circumstances, removal to a third country has historically been highly unlikely. For example, the Supreme Court previously noted that only 1.6% of noncitizens who were granted withholding of removal, a similar form of immigration benefit, were actually removed to an alternative country. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2286 (2021).

58. Here, the Immigration Court did not designate an alternate country for Petitioner's removal, nor does Petitioner have legal residence (or any other immigration status) in an alternate country. Exh. A; Exh. B. Nor have Respondents so much as sought to designate an appropriate alternate country for removal, much less initiate removal proceedings regarding an alternate country. *Id.* In short, there is not a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 699.

59. As such, Petitioner's continued detention is no longer reasonably related to its limited purpose and is therefore unlawful, under both the INA and the Constitution.

60. Additionally, even assuming DHS had the ability to remove Petitioner 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).

61. Indeed, DHS regularly utilizes orders of supervision when releasing individuals from its custody when a final order of removal is in place. An order of supervision operates like terms of probation, with the ability to impose "conditions of supervision" on individuals. *See* 8 C.F.R. § 214.15(a). For example, noncitizens released on such orders regularly are prohibited from leaving the state in which they reside without advance permission from an ICE officer. *Id.*(a)(4). They may also be required to report to an ICE officer in person or by telephone on a periodic basis. *See Fernandez Aguirre v. Barr*, No. 19-CV-7048 (VEC), 2019 WL 4511933, at *5 (S.D.N.Y. Sept. 18, 2019) (listing alternatives to detention, "such as home detention, electronic monitoring, and so forth"); *Mathon v. Searls*, 623 F. Supp. 3d 203, 218 (W.D.N.Y. 2022) ("[T]he form used by ICE to list the terms of supervision (Form I-220B) includes a section for 'other specified conditions', which implies that ICE has flexibility in imposing release terms.").

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

63. Finally, as discussed below, while ICE has attempted to expand its third country removal practices, these practices violate the INA, 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 by ICE for approximately 20 months, eighth of those with a final order of removal, and Respondents have taken no steps toward his removal to a third country lawfully or otherwise, the mere existence of ICE's *unlawful* policies expanding third country removals

does not displace the Supreme Court's decision in *Zadvydas* nor the requested relief in this case.

B. Procedural Due Process Limits to Detention

64. The Due Process Clause and the INA require Respondents to give a noncitizen notice and a hearing where the noncitizen 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 [noncitizen], to present evidence on the [noncitizen'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).

65. 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).

66. 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.").

67. 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).

68. 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.

69. Both the March and the July ICE Memos purport to expand their authority as to third country removals. However, both memos violate noncitizens' rights and DHS' 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" that noncitizens (allegedly) will not be persecuted or tortured. *See* March ICE Memo. Meanwhile, the July ICE Memo purports to allow ICE to move forward with a third country removal – to a country that has *not* provided any such assurances – 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 required by the INA, FARRA, and the Due Process Clause.

70. 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).

71. In June 2025, the U.S. Supreme Court granted the government's emergency motion to stay the district court's nationwide preliminary injunction pending appeal at the First Circuit. *See Dep't of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (2025). However, the Supreme

Court's decision – which was unexplained, arose in a distinguishable procedural context, and did not address the merits – neither precludes the availability of individual habeas actions to challenge illegal third-country removals nor eliminates Petitioner's rights and DHS's existing obligations under binding constitutional, statutory, and international law.

72. 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]").

73. The Supreme Court's unexplained stay of the nationwide injunction without any discussion of the merits does not eliminate Petitioner's rights or DHS's obligation to follow the law. Despite ICE's efforts to sidestep its obligations, the Due Process Clause, the INA, and FARRA require ICE to provide Petitioner with adequate notice and a meaningful opportunity to raise any reasonable fear claims before it can send him to far corners of the planet where he has no connection whatsoever and where he may face persecution or torture.

74. ICE's third country removal policies also ignore the risk that Petitioner may be unlawfully removed to Sudan following his removal to a third country. Petitioner has a final grant of deferral of removal as to Sudan, meaning an IJ found, and DHS did not appeal, that he will

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

more likely than not be tortured upon removal to Sudan. Should Petitioner be deported to a country to which he has no ties or lawful status, he fears that he would be removed to Sudan through a practice called "chain refoulement."[6] As the courts have recognized, "[r]emoval proceedings must be fundamentally fair" meaning a noncitizen must have "a reasonable opportunity to present evidence." *Gjeci v. Gonzales*, 451 F.3d 416, 421 (7th Cir. 2006).

75. 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.").

76. Thus, even in the entirely hypothetical circumstance that Respondents located a third country willing to accept Petitioner, and even if Petitioner's proceedings were reopened to seek protection from that alternative country, Respondents would be months if not years away from being able to lawfully remove Petitioner to a third country upon completion of removal proceedings for that country. This is particularly true here, where Petitioner suffers from serious [redacted] illnesses that would likely give rise to protection claims as to any

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[6] *See e.g.*, CNN, *Eswatini receives 10 third-country deportees from US*, Oct. 6, 2025, https://www.cnn.com/2025/10/06/africa/eswatini-deportees-united-states-intl-latam (describing how the Eswatini government is keeping noncitizens removed there from the United States "in correctional facilities until they could be repatriated to their home countries"); Inter-American Commission on Human Rights, *IACHR and United Nations Experts: States Must Protect the Rights of Persons in Human Mobility*, Sept. 18, 2025, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=class-dc.

potential third country. Absent this Court's intervention, Petitioner remains detained solely on the pretext of this hypothetical scenario, towards which Respondents have not even taken the first step.

77. This scenario is doubly hypothetical as Respondents' current policies contemplate *unlawful* procedures for the removal of noncitizens like Petitioner to third countries in violation of due process, the INA and binding treaty obligations.

***

78. In sum, Petitioner's post-removal-order detention has already exceeded seven months, and therefore is not presumptively reasonable. There is also no significant likelihood that Petitioner will be lawfully removed to a third country in the reasonably foreseeable future. The appropriate remedy for these violations of Petitioner's due process rights is to order Respondents to immediately release him from ICE custody. *See Gutierrez*, 2025 WL 3454295, at *3; *Nguyen v. Scott*, 2025 WL 2419288, at *23 (W.D.Wash., 2025); *Delkash v. Noem*, No. 5:25-CV-01675-HDV-AGR, 2025 WL 2683988, at *6 (C.D. Cal. Aug. 28, 2025).

79. Additionally, because Respondents' current policies contemplate unlawful procedures for removing a noncitizen like Petitioner to a third country without due process, Petitioner seeks to enjoin Respondents from removing him to a third country without adequate notice and an opportunity to be heard as required by the constitution and federal law.

CLAIMS FOR RELIEF

COUNT ONE

Respondents' Detention of Petitioner Violates the INA

80. Petitioner realleges and incorporates the allegations of all preceding paragraphs.

81. An Immigration Judge ordered Petitioner removed to Sudan but simultaneously granted him deferral of removal to that country.

82. DHS waived appeal of the Immigration Judge's decision, rendering the Immigration Judge's grant of CAT deferral administratively final as of the date it was issued. Thus Petitioner has been detained with a final order of removal for eight months, which is longer than the six-month period contemplated by the Supreme Court.

83. Respondents continue to detain Petitioner while purportedly exploring removal to an alternate country.

84. Petitioner does not have citizenship, legal status, or any connections with another country that might make his removal to an alternate country even remotely likely. *See* 8 U.S.C. § 1231(b)(2)(D)-(E). Nor has the U.S. Government alleged any such connections.

85. Here, Respondents cannot plausibly show that they will remove Petitioner to an alternate country.

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

87. Petitioner 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.

88. The burden is on the government to provide "evidence sufficient to rebut that showing." *Id.*

89. The INA does not permit Respondents to detain Petitioner more than 180 days while endlessly pursuing removal to a third country, and such detention violates Petitioner's statutory rights. *See Zadvydas*, 533 U.S. at 689–90.

90. 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 Respondents identify an alternative country for removal, they would be able to effectuate removal.

COUNT TWO

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

91. Petitioner realleges and incorporates the allegations of all preceding paragraphs.

92. An Immigration Judge ordered Petitioner removed to Sudan but simultaneously granted him deferral of removal to that country.

93. DHS waived appeal of the Immigration Judge's decision, rendering the Immigration Judge's grant of deferral of removal administratively final as of the date it was issued.

94. Respondents now continue to detain Petitioner while purportedly exploring removal to an alternate country.

95. Petitioner does not have citizenship, legal status, or any connections with another country that might make his removal to an alternate country even remotely likely. *See* 8 U.S.C. § 1231(b)(2)(D)-(E). Nor has the U.S. Government alleged any such connections.

96. Here, Respondents cannot plausibly show that they will remove Petitioner to an alternate country.

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

98. The due process clause does not permit Respondents to detain Petitioner indefinitely while endlessly pursuing removal to a third country, and such detention violates Petitioner's substantive due process rights. *See Zadvydas*, 533 U.S. at 689–90.

99. 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 Respondents identify an alternative country for removal, they would be able to effectuate removal.

COUNT THREE

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

100. Petitioner realleges and incorporates the allegations of all preceding paragraphs.

101. Respondents—having never designated any country other than Sudan for removal—cannot remove Petitioner to some other country without providing procedural protections.

102. Although Respondents are purportedly detaining Petitioner for the purposes of trying to remove him to another country, Petitioner has received no clear notice as to which countries Respondents may be considering and no opportunity to challenge those efforts. Over a month ago, Respondents requested Petitioner complete a purported travel document request to South Sudan, yet neither Petitioner nor his counsel have received any information or updates on that process, including any notice that he will in fact be removed there or confirmation that he will be afforded a reasonable fear interview.

103. 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 potential 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 federal law, regulations, and the Fifth Amendment.

104. Respondents have detained Petitioner since May 2024, approximately nineteen months, including eight months of post-order custody.

105. DHS could not, consistent with procedural due process and statutory obligations, deport Petitioner 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).

106. Petitioner fears deportation to other countries besides Sudan. Exh. B. In particular, his fear of removal to Sudan is based on his practice of Christianity and him being a member of the Ngok Dinka ethnic group, and that he will be targeted, tortured, and/or killed if he is returned there as a result. Thus, any lawful third country removal would at minimum

trigger additional hearings, new removal proceedings, and multiple additional months of detention.

107. Considering the slim likelihood of lawful removal to a third country, Respondents' failure to designate any third country in removal proceedings, the absence of any plausible third country for removal, Respondents' failure to identify to Petitioner any third country or countries under consideration, and the statutory regime created by Congress, procedural due process is offended by Petitioner's ongoing detention.

108. Where the sole permissible purpose of detention is to effectuate removal, and where Petitioner has already been granted deferral of removal to the only country designated for removal by DHS (and the IJ), and where DHS cannot indicate any plausible alternative country for removal, the likelihood of erroneous deprivation of liberty is at its apex.

109. Further, because Respondents could continue investigating a potential third country removal, and because Respondents would have ongoing access to Petitioner, as necessary, his release from ICE custody would impose no harm to the government.

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

111. The balance of these factors tips strongly in Petitioner's favor, such that Respondents' continued detention of him violates his procedural due process rights.

PRAYER FOR RELIEF

Petitioner prays this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Pursuant to 28 U.S.C. § 2243, issue an order directing Respondents to show cause within three days why the writ should not be granted;

3. Declare that Petitioner's continued detention violates the Immigration and Nationality Act because Respondents have not met their burden to demonstrate that there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future.
4. Declare that Petitioner'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.
5. Declare Petitioner's continued detention violates his procedural due process rights because Respondents have failed to provide Petitioner with adequate procedural safeguards to ensure that his continued detention is justified;
6. Declare that, if Respondents purport to identify any third country willing to accept Petitioner, that Respondents be required to provide Petitioner adequate notice and an opportunity to be heard regarding removal to that country;
7. Enjoin Respondents from removing Petitioner to a third country without adequate notice and an opportunity to be heard regarding removal to that country;
8. Grant the writ of habeas corpus and order that Respondents release Petitioner from ICE detention; and
9. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted this 15th day of January 2026,

s/ Sapna Lalmalani
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VERIFICATION

I am one of the attorneys who represent Petitioner, Mayom Poul Boj, and submit this verification on his behalf. I hereby declare under penalty of perjury pursuant to 28 U.S.C. § 2242 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 15, 2026

/s/Sapna Lalmalani