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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Ferdinand Kipkorir KIBOR,

Petitioner,

v.

Laura HERMOSILLO, Seattle Acting Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; Bruce SCOTT, Warden, Northwest ICE Processing Center; Kristi NOEM, Secretary of Homeland Security; Pamela BONDI, United States Attorney General; Todd LYONS, Acting Director of Immigration and Customs Enforcement,

Respondents.

Case No. 3:26-cv-5092

A. Number [redacted]

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

I. INTRODUCTION

1. Petitioner Ferdinand Kipkorir Kibor is a citizen of Kenya who has been detained at the Northwest ICE Processing Center ("NWIPC") since May 10, 2025. *See* Exh. A (detention status). On December 5, 2025, following a contested hearing that took place earlier on August 19, 2025, the Tacoma Immigration Court found that he testified credibly and granted him protection from removal based on his fear of persecution and torture [redacted] Neither the

Petitioner nor the Department of Homeland Security ("DHS") appealed from this decision, which is now administratively final.

2. In every removal hearing in the United States, the Immigration Court asks both the non-citizen and the Department of Homeland Security which country should be designated for removal. In the present case, the Petitioner declined to designate a country and the DHS designated Kenya. DHS did not designate any other country for prospective removal. Unsurprisingly, the Tacoma Immigration Court's final order in the case relates only to Kenya and does not authorize removal to any other country. *See* Exh. B, p. 13 ("the respondent shall be removed to **KENYA** but that this order shall be **WITHHELD** unless and until the court terminates its grant of withholding of removal.").

3. Rather than releasing Mr. Kibor, DHS now plans to deport him to Uganda, a country with, if possible, [redacted]. *See* U.S. State Department 2023 Human Rights Report for Uganda ([redacted]), *available at* https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/uganda (accessed 02/02/2026). DHS is doing so without any analysis of whether Mr. Kibor's life or freedom may be threatened in Uganda, as required by the Immigration and Nationality Act. Further, DHS has not evaluated whether Mr. Kibor will be subject to Torture in Uganda, as required by the United States' obligations under the Convention Against Torture.

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4. Mr. Kibor is detained pursuant to 8 U.S.C. § 1231, which governs the detention of non-citizens with a final order of removal that has been withheld or deferred by an IJ due to a substantial risk of persecution or torture in their home country. 8 U.S.C. § 1231(a)(1)(B)(i). Mr. Kibor's removal order and accompanying relief grant became final when DHS failed to timely appeal his relief grant. 8 C.F.R. § 1241.1.

5. Mr. Kibor's continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his removal is not reasonably foreseeable. He cannot be deported to his home country of because he was granted withholding of removal with respect to that country. ICE's half-hearted attempts to remove Mr. Kibor to a Uganda or any other random, unspecified alternative countries—to which he has no ties, and which have no policy or history of accepting non-citizen deportees—are speculative and futile. Further, a removal to a third country would not be authorized by the Tacoma Immigration Court's removal order, which only authorizes removal to Kenya, and then withholds execution of that order based on Mr. Kibor's credible fears of persecution.

6. Respondents' detention of Mr. Kibor past the date that his withholding order became final without prompt, individualized determinations of whether he should remain detained is inconsistent with DHS's own long-standing policy, further evidence that his detention is unreasonably prolonged in violation of the Due Process Clause.

7. Accordingly, this Court should grant the instant petition for a writ of habeas corpus and order Petitioners' immediate release.

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II. JURISDICTION

8. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

9. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

11. Venue is proper because the Petitioner is in Respondents' custody at the NWIPC in Tacoma, Washington. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the judicial district in which Petitioners are currently in custody.

12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington. Although the Petitioner is detained in Pierce County, the Court's Attorney Case Opening Guidelines dictate that the case should be filed in the Seattle sub-office.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless Petitioner is not entitled to relief. 28

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U.S.C. § 2243. If an OSC 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.*

14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (habeas corpus is "a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination").

V. PARTIES

15. Petitioner Ferdinand Kipkorir Kibor is a citizen of Kenya who has resided in the United States since 2004. Petitioner is currently detained at Northwest ICE Processing Center in Tacoma, Washington and may be transported away from Washington or deported to Uganda or another country at any moment.

16. Respondent Laura Hermosillo is the Acting Field Office Director for ICE's Seattle Field Office. The Seattle Field Office is responsible for local custody decisions relating to noncitizens charged with being removable from the United States. The Seattle Field Office's area of responsibility includes Alaska, Oregon, and Washington. Respondent Hermosillo is a legal custodian of Petitioner and is sued in her official capacity.

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17. Respondent Bruce Scott is employed by the private corporation The GEO Group, Inc., as Warden of the NWIPC, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioners's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

19. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice. She is sued in her official capacity.

VI. ESSENTIAL FACTS

20. DHS placed Mr. Kibor in removal proceedings on May 10, 2025. "On the recommendation of DHS, the court directed Kenya as the country of removal, should that be necessary."). Exh. B, at 1.

21. After a merits hearing, the Tacoma Immigration Court found the Petitioner to be credible, but found that his asylum application was untimely and thus denied asylum protection. However, the court granted his alternative request for withholding of removal, finding that it was more likely than not that he would suffer persecution on account of a protected ground if removed to Kenya. Exh. B at 8–12. Neither party filed an appeal and this decision became administratively final on January 5, 2026.

22. ICE either did not conduct a custody determination following the immigration court's grant of relief or chose to continue detaining Petitioner notwithstanding the grant of relief.

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23. DHS continues to detain the Petitioner without with no reasonable likelihood of removal in the foreseeable future, because there is no likelihood of his withholding of removal being terminated and therefore the Petitioner is entitled to release.

24. Petitioner is neither a flight risk nor a danger to the community.

25. Petitioner has been granted relief from removal in the form of withholding of removal. Petitioner has no citizenship or right to return to any other country.

26. On Friday, January 30, Petitioner had a visit with an ICE officer who informed him that ICE would seek to remove him to Uganda as soon as possible. Petitioner has no ties to Uganda and has never been there. Uganda has an atrocious human rights record with regard to [redacted]. *See* https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/uganda (accessed 02/02/2026).

27. Without relief from this court, Petitioner faces the prospect of months—or even years—in immigration custody, separated from family and community, and a risk of removal to Uganda or another third country without notice and an opportunity to present evidence regarding the risk of persecution or torture in the third country, in violation of the INA and the Convention Against Torture.

VII. LEGAL FRAMEWORK

A. Immigration Detention

28. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

29. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens who are in removal proceedings. See 8 U.S.C. § 1229a. *See also Jennings v. Rodriguez*, 583U.S. 281, 289 (2018)

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(explaining that § 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings"). Under § 1226(a), individuals who are taken into immigration custody pending a decision on whether they are to be removed can be detained but are generally entitled to seek release on bond. The bond may be set by ICE itself as part of an initial custody determination, *see* 8 C.F.R. § 1236.1(c)(8), and/or the individual may seek a bond hearing in immigration court at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d). Section 1226(a) is the statute that, for decades, has been applied to people like Petitioner who have been living in the United States and are charged with inadmissibility under § 1182(a)(6)(A)(i).

30. Second, the INA provides for mandatory detention of certain recently arrived noncitizens, namely those subject to expedited removal under 8 U.S.C. § 1225(b)(1), and other recent arrivals seeking admission under § 1225(b)(2). *See Jennings*, 583 U.S. at 287, 289 (explaining that § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry" to noncitizens "seeking admission into the United States.").

31. Third, the INA also provides for detention of noncitizens who have already been ordered removed, *see* 8 U.S.C. § 1231. Section 1231 governs the detention of non-citizens "during" and "beyond" the "removal period." 8 U.S.C. § 1231(a)(2)-(6). The "removal period" begins once a non-citizen's removal order "becomes administratively final." 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE "shall remove the [non-citizen] from the United States" and "shall detain the [non-citizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the non-citizen "may be detained beyond the removal period" if they meet certain

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criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

32. Longstanding ICE policy stretching back to April 21, 2000 and re-affirmed as recently as 2021 notes that, in cases where an individual has received withholding or CAT relief, ICE may consider release during the 90-day removal period. *See* Exh. C.

33. To avoid "indefinite detention" that would raise "serious constitutional concerns," the Supreme Court in Zadvydas construed § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. Zadvydas dealt with two non-citizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the [non-citizen]'s removal from the United States." *Id.* at 689. Six months of post-removal order detention is considered "presumptively reasonable." *Id.* at 701.

34. But the "Zadvydas Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable." *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). "Within the six-month window," the non-citizen bears the burden of "prov[ing] the unreasonableness of detention." *Id.* After six months of detention, if there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the Government to justify continued detention. Zadvydas, 533 U.S. at 701; *see also Cesar*, 542 F. Supp. 2d at 903 ("[T]he presumption scheme merely suggests that the burden the detainee must carry within the first six months of [post-order] detention is a heavier one than after six months has elapsed").

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35. DHS regulations provide that, before the end of the 90-day removal period that ensues upon a non-citizen's removal order becoming final, the local ICE field office with jurisdiction over the non-citizen's detention must conduct a custody review to determine whether the non-citizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the non-citizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters (ICE HQ), 8 C.F.R. § 241.4(c)(2), which must conduct a custody review before or at 180 days. 8 C.F.R. § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the non-citizen is likely to pose a danger to the community or a flight risk if released. *Id.* § 241.4(e). If the factors in § 241.4 are met, ICE must release the non-citizen under conditions of supervision. *Id.* § 241.4(j)(2).

36. To comply with Zadvydas, DHS issued additional regulations in 2001 that established "special review procedures" to determine whether detained non-citizens with final removal orders are likely to be removed in the reasonably foreseeable future. *See Continue Detention of Aliens Subject to Final Orders of Removal*, 66 Fed. Reg. 56,967 (Nov. 14, 2001). While 8 C.F.R. § 241.4's custody review process remained largely intact, subsection (i)(7) was added to include a supplemental review procedure that ICE HQ must initiate when "the [non-citizen] submits, or the record contains, information providing a substantial reason to believe that removal of a detained [non-citizen] is not significantly likely in the reasonably foreseeable future." *Id.* § 241.4(i)(7). Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing factors such as the history of ICE's removal efforts to third countries. 8 C.F.R. § 241.13(f).

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37. If ICE HQ determines that removal is not reasonably foreseeable but nonetheless seeks to continue detention based on "special circumstances," it must justify the detention based on narrow grounds such as national security or public health concerns, 8 C.F.R. § 241.14(b)-(d), or by demonstrating by clear and convincing evidence before an IJ that the non-citizen is "specially dangerous." 8 C.F.R. § 241.14(f).

38. Consistent with the statutory and regulatory scheme, long-standing ICE policy favors the prompt release of non-citizens who have been granted withholding or CAT relief. In 2000, the then-Immigration and Naturalization Service (INS) General Counsel issued a memorandum clarifying that 8 U.S.C. § 1231 authorizes but does not require the detention of non-citizens granted withholding of removal or CAT relief during the 90-day removal period. Exh. C, at 1. A 2004 ICE memorandum turned this acknowledgment of authority into a presumption, stating that "it is ICE policy to favor the release of [non-citizens] who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain." Exh. C, at 2.

39. ICE leadership subsequently reiterated this policy in a 2012 announcement, clarifying that the 2000 and 2004 ICE memorandums are "still in effect and should be followed" and that "[t]his policy applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period." Exh. C, at 3. Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all ICE employees reminding them of the "longstanding policy" that "absent exceptional circumstances, . . . noncitizens granted asylum withholding of removal, or CAT protection by an immigration judge should be released. . . "

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Exh. C, at 4. Director Johnson clarified that "in considering whether exceptional circumstances exist, prior convictions alone do not necessarily indicate a public safety threat of danger to the community." *Id.*

B. Withholding of Removal and Relief Under the Convention Against Torture

40. Non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and CAT relief. Non-citizens may be ineligible for asylum for several reasons, including failure to apply within one year of entering the United States. *See* 8 U.S.C. § 1158(a)(2). There are fewer restrictions on eligibility for withholding of removal, 8 U.S.C. § 1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16.

41. To be granted CAT relief, a non-citizen must show that "it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). An applicant for CAT relief must show a higher likelihood of torture than the likelihood of persecution an asylum applicant must demonstrate. *See* id.

42. When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 594 U.S. 523 (2021). Once withholding or CAT relief is granted, either party has the right to appeal that decision to the BIA within 30 days. *See* 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the withholding or CAT relief grant and the accompanying removal order become administratively final. 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1.

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43. When a non-citizen has a final withholding or CAT relief grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. See 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2). While ICE is authorized to remove non-citizens who were granted withholding or CAT relief to alternative countries, *see* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f), the removal statute specifies restrictive criteria for identifying appropriate countries. Non-citizens can be removed, for instance, to the country "of which the [non-citizen] is a citizen, subject, or national," the country "in which the [non-citizen] was born," or the country "in which the [non-citizen] has a residence" immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)-(E). Finally, where removal to one of the preceding countries is "impractical, inadvisable, or impossible," ICE may remove the non-citizen to a "country with a government that will accept the alien into the country's territory." 8 U.S.C. § 1231(b)(1)(C)(iv).

44. If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings in immigration court to effectuate removal to that country. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) ("If [non-citizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, see 8 CFR §§ 208.16(c)(4), 208.17(a) (2004) . . ."); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019).

45. As a result of these restrictions and procedures, "only 1.6% of noncitizens granted withholding-only relief were actually removed to an alternative country" in FY 2017. *Guzman Chavez*, 594 U.S. at 552.

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VIII. FIRST CAUSE OF ACTION – UNREASONABLE DETENTION

46. Petitioner has been granted withholding of removal and the DHS did not appeal. The decision is administratively final. There is no reasonable likelihood that Respondents will be able to remove Petitioner to a third-country. Accordingly, his continued detention is unreasonable under the Due Process Clause.

IX. SECOND CAUSE OF ACTION – NOTICE AND OPPORTUNITY TO BE HEARD

47. To the extent that Respondents intend to remove Petitioner to a third country, Respondents must first provide the Petitioner with notice and an opportunity to respond.

48. Respondents have indicated that they wish to deport Petitioner to Uganda, a country with a nightmarish human rights record [redacted]

49. If Respondents wish to designate a third country for removal, they must first reopen the removal proceedings to provide Petitioner an opportunity to seek relief from removal to any third country.

50. Respondents have provided no opportunity for Petitioner to be heard on his claim for withholding or CAT protection as to Uganda, or any other country.

51. Accordingly, to the extent that Respondents seek to prolong Petitioner's detention on the basis of possible removal to a third country, the Court should find that this is merely a pretext for prolonging the Petitioner's detention in violation of the Due Process Clause.

52. The Court should therefore enjoin Respondents from proceeding with any removal to any third country until and unless Respondents provide Petitioner with notice and an opportunity to respond before an Immigration Court capable of hearing Petitioner's claims for withholding of removal and relief under the Convention Against Torture.

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REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause within seven days as to why this Petition should not be granted as required by 28 U.S.C. § 2243, and ordering that they not transfer Petitioner out of this district during the pendency of the court's adjudication of this petition, or, alternatively, provide Petitioner and their habeas counsel with advance notice of any transfer or removal;
3. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody immediately and permanently enjoining his re-detention absent written notice and a hearing prior to re-detention where Respondents must prove by clear and convincing evidence that each Petitioner is a flight risk or danger to the community and that no alternatives to detention would mitigate those risks;
4. Issue an Order enjoining Petitioner's removal until and unless Respondents provide Petitioner with notice and an opportunity to seek withholding and relief under the Convention Against Torture before an Immigration Court;
5. Award Petitioners attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
6. Grant any further relief this Court deems just and proper.

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Respectfully submitted this 2nd day of February, 2026.

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