

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

T.A.,

Petitioner,

- against -

Jessica SAGE, in her official capacity as Warden of FCI Lewisburg; **David O'NEILL**, in his official capacity as Acting Field Office Director, Philadelphia Field Office, U.S. Immigration and Customs Enforcement; **Todd M. LYONS**, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; **Kristi NOEM**, in her official capacity as Secretary of the U.S. Department of Homeland Security; and **Pam BONDI**, in her official capacity as Attorney General of the United States;

Respondents.

No. 3:26-CV-00309

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

PRELIMINARY STATEMENT

1. Petitioner T.A.¹ is a Jamaican man who was granted withholding of removal under INA § 241(b)(3) on May 23, 2025. **Ex. A, Order Withholding Removal.** The Department of Homeland Security (“DHS”) did not appeal that decision and it became final on June 23, 2025. Accordingly, T.A. cannot be deported to Jamaica.

2. On February 4, 2026, DHS informed T.A. that it intends to remove him to Mexico, a country that the immigration judge (“IJ”) did not designate as either the country of removal or an alternative country of removal. *See Ex. B, ICE Emails at 3; Ex. C, Notice of Removal to Mexico.* Although T.A. fears he will be persecuted and tortured if deported to Mexico, an IJ has never adjudicated T.A.’s fear-based claims to Mexico.

¹ Motion For Leave to Proceed Under Pseudonym filed concurrently with this Petition.

3. On February 5, 2026, ICE informed T.A.'s immigration counsel that T.A. would be given a reasonable fear interview the following day, on February 6. **ICE Emails at 2**. The interview did not take place and is currently awaiting to be rescheduled in the coming days.

4. On February 6, 2026, T.A. moved to reopen his immigration proceedings to be able to seek protection from removal to Mexico.

5. Removal to Mexico without a full and fair opportunity to present a fear-based claim would violate Petitioner's statutory, regulatory, and due process rights, and the United States' commitment to non-refoulement under international law.

PARTIES

6. Petitioner T.A. is a Jamaican citizen who was brought to the United States in 2001 at the age of eleven. He has grown up in the United States and lived here for over the last two decades, primarily in Brooklyn, New York. T.A.'s removal proceedings were venued at Elizabeth Immigration Court in Elizabeth, New Jersey. On June 23, 2025, he was granted withholding of removal which became final on July 23, 2025. T.A. is currently being detained in Respondents' custody at FCI Lewisburg.

7. Respondent Jessica Sage is named in her official capacity as the Warden of FCI Lewisburg. She is an employee of the federal Bureau of Prisons, which recently began accepting civil immigration detainees at FCI Lewisburg. In her capacity as Warden, she oversees the administration and management of FCI Lewisburg, which is located at 2400 Robert F Miller Dr, Lewisburg, PA 17837. Accordingly, Respondent Sage is an immediate custodian of Petitioner. T.A. brings this action against Respondent Sage in her official capacity.

8. Respondent David O'Neill is named in his official capacity as the Acting Field Office Director of the U.S. Immigration and Customs Enforcement, Enforcement and Removal

Operations Philadelphia Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Pennsylvania, Delaware, and West Virginia and has the authority to make custody determinations regarding individuals detained there. Respondent O'Neill is a legal custodian of Petitioner. Respondent O'Neill's office is located at 114 North 8th St., Philadelphia, Pennsylvania 19107.

9. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of the immigration laws. Respondent Lyons' office is located at 500 12th St SW Washington, DC 20536.

10. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. In this capacity, she is responsible for administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), she routinely transacts business in the Middle District of Pennsylvania, she supervises Respondent O'Neill, and she is legally responsible for the pursuit of Petitioner's detention and removal. Respondent Noem's office is located at the United States Department of Homeland Security, Washington, D.C. 20528.

11. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for administration of the immigration laws as exercised by the Executive Office for Immigration Review (EOIR), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Middle District of Pennsylvania and is legally responsible for administering Petitioner's removal and custody redetermination proceedings and the standards used in those proceedings. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; and the Administrative Procedure Act, 5 U.S.C § 701.

13. This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (the Declaratory Judgment Act), to grant injunctive and declaratory relief.

14. Although only the Court of Appeals has jurisdiction to review removal orders directly through a petition for review, see 8 U.S.C. § 1252(a)(1), (b), district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 292-96 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. at 687.

15. Federal courts also have federal question jurisdiction, through the APA, to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable in habeas. *See* 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondents’ continued detention of Petitioner has adversely and severely affected Petitioner’s liberty and freedom.

16. Federal courts have broad power to fashion equitable remedies to address constitutional violations in prisons, *Hutto v. Finney*, 437 U.S. 678, 687 n.9 (1978), including “the

power to order bail in habeas proceedings,” which is “a legal and logical concomitant of the court’s habeas jurisdiction.” *Leslie v. Holder*, 865 F. Supp. 2d 627, 634 (M.D. Pa. 2012).

17. Venue is proper in the Middle District of Pennsylvania because T.A. is presently in the custody of Respondents in this District, at FCI Lewisburg, 2400 Robert F Miller Dr, Lewisburg, PA 17837. *See* 28 U.S.C. §§ 1391, 2241(c), 2242, 2243.

EXHAUSTION

18. T.A. has exhausted the administrative remedies which have been available to him to date. Even if T.A. had not exhausted the administrative remedies available to him, exhaustion is not required if administrative remedies would be futile, if the actions of the agency clearly and unambiguously violate statutory or constitutional rights, or if the administrative procedure is clearly shown to be inadequate to prevent irreparable injury. *Lyons v. U.S. Marshals*, 840 F.2d 202, at 205 (3d Cir. 1988).

LEGAL BACKGROUND

A. DHS’s Obligation to Provide Notice and Opportunity to Present a Fear-Based Claim Before Deportation to a Third Country

19. For individuals in removal proceedings, the designation of a country of removal (or, at times, countries in the alternative that the IJ designates) on the record provides notice and an opportunity to permit a noncitizen who fears persecution or torture in the designated country (or countries) to file an application for protection. *See* 8 C.F.R. § 1240.10(f) (stating that “immigration judge shall notify the [noncitizen]” of proposed countries of removal); 8 C.F.R. § 1240.11(c)(1)(i) (“If the [noncitizen] expresses fear of persecution or harm upon return to any of the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) . . . the immigration judge shall . . . [a]dvice [the noncitizen] that he or she may apply for asylum in the United States or withholding of removal to those countries[.]”).

20. Pursuant to § 1231(b)(3)(A), courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an IJ if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att’y Gen.*, 149 F. App’x. 947, 953 (11th Cir. 2005) (*per curiam*) (permitting designation of third country where individuals received ample notice and an opportunity to be heard.).

21. Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States’ obligations under international law. *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) . . .”) *See also* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 “amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol”); United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 114; FARRA at 2681–822 (codified at Note to 8 U.S.C. § 1231) (“It shall be the policy of the United States not to 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, regardless of whether the person is physically present in the United States); United Nations Committee Against Torture, General Comment No. 4 ¶ 12, 2017, Implementation of Article 3 of the Convention in the Context of Article 22, CAT/C/GC/4 (“Furthermore, the person at risk [of torture] should never be deported to another State where he/she may subsequently face deportation to a third State in which there are substantial grounds for believing that he/she would be in danger of being subjected to torture).

22. Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041; *Protsenko*, 149 F. App’x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Similarly, a last minute IJ designation of a country during removal proceedings that affords no meaningful opportunity to apply for protection violate[s] a basic tenet of constitutional due process. *Andriasian*, 180 F.3d at 1041.

23. An opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened. *See Aden*, 409 F. Supp. 3d at 1010 (holding that merely giving petitioner an opportunity to file a discretionary motion to reopen “is not an adequate substitute for the process that is due in these circumstances” and ordering reopening); *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (remanding to BIA to determinate whether designation is appropriate).

24. Whereas historically third-country removals were exceptionally rare, the Government began intensifying its efforts to remove noncitizens to third countries in early 2025. *See D.V.D.*, 2025 WL 1142968, at *3 (describing Executive Order 14165, entitled “Securing our

Borders.” 90 Fed. Reg. 8467 and the February 18, 2025, DHS directive to the Enforcement and Removal Operations (“ERO”) division of ICE).² Particularly notable have been third-country removals to El Salvador—where people are indefinitely detained incommunicado and without process at the Terrorism Confinement Center (“CECOT”), a mega-prison notorious for inhumane treatment and torture,³ and other foreign prisons—where both the U.N. and the U.S. State Department have issued warnings for armed conflict, human rights abuses, and violence.⁴ Other countries that have recently agreed to accept third country removals from the United States, have stated they will repatriate such people despite having withholding of removal or CAT protection due to the risk of persecution or torture if repatriated.⁵ See *Y.T.D. v. Andrews*, No. 1:25-cv-

² See also Whistleblower complaint filed on June 24, 2025, by Mr. Erez Reuveni, formerly the Acting Deputy Director for the Office of Immigration Litigation of the Department of Justice, https://www.judiciary.senate.gov/imo/media/doc/06-24-2025_-_Protected_Whistleblower_Disclosure_of_Erez_Reuveni_Redacted.pdf.

³ See, e.g., Laura Romero, *Venezuelan migrants deported to El Salvador despite order barring removal to third countries*, ABC NEWS (Apr. 1, 2025), <https://abcnews.go.com/Politics/venezuelan-migrant-recently-deported-el-salvador-final-order/story?id=120353709>; Rebecca Ingber and Scott Roehm, *The Trump Administration’s Recent Removals to El Salvador Violate the Prohibition on Transfer to Torture*, JUST SECURITY (March 20, 2025), <https://www.justsecurity.org/109284/non-refoulement-alien-enemies-act/>; Bryan Avelar, *Inmates in El Salvador tortured and strangled: A report denounces hellish conditions in Bukele’s prisons*, EL PAÍS (May 29, 2023), <https://english.elpais.com/international/2023-05-29/inmates-in-el-salvador-tortured-and-strangled-a-report-denounces-hellish-conditions-in-bukeles-prisons.html>.

⁴ See, e.g., Beatrice Peterson et. al., *Judge rules DHS violated court order in deporting 8 migrants to South Sudan*, ABC NEWS (May 21, 2025), <https://abcnews.go.com/Politics/8-migrants-south-sudan-deportation-flight-officials-confirm/story?id=122033692>; Maya Yang and Maanvi Singh, *Judge rules White House violated order by deporting migrants to South Sudan*, THE GUARDIAN (May 21, 2025), <https://www.theguardian.com/us-news/2025/may/21/trump-deportations-south-sudan>.

⁵ See, e.g., *Why African Countries Keep Making Deals to Accept U.S. Deportees*, NY Times (Sept. 23, 2025), <https://www.nytimes.com/2025/09/23/world/africa/african-countries-us-deportees.html> (Eswatini took in five migrants from third countries in July but has said they will be sent home. The migrants are being held in prison.); *West Africans Deported by the U.S. Sue*

01100, 2025 WL 2675760, at *2 (E.D. Cal. Sept. 18, 2025) (finding sufficiently imminent risk that petitioner will be subjected to improper process in relation to any third country removal to warrant imposition of an injunction requiring additional process).

25. On March 30, 2025, the Department of Homeland Security issued a memorandum titled Guidance Regarding Third Country Removals (“March 30 Guidance”).⁶ Under the protocol described in this memorandum, DHS first determines if a third country “has provided diplomatic assurances that [noncitizens] removed from the United States will not be persecuted or tortured.” March 30 Guidance at 1. If the Department of State is satisfied that the assurances are credible, DHS may deport the noncitizen to that country without any further procedure. However, if the Department of State does not believe the assurances are credible, DHS follows an alternate pathway. First, DHS notifies the noncitizen of its intent of deportation to the third country. “Immigration officers will not affirmatively ask whether the [noncitizen] is afraid of being removed to that country[,]” as DHS believes that affirmative questioning will provoke false claims of fear, which would create inefficiency, and will elicit accusations of torture against Government with which the United States has “diplomatic relationships.” *Id.* at 2. However, if the noncitizen affirmatively states that they have a fear, DHS will then refer them to a screening for withholding of removal and CAT protection before United States Citizenship and Immigration Services. USCIS then conducts a remote screening if the noncitizen will more likely

Ghana for Rights Violations, NY Times (“Justice Department lawyers did not dispute that Ghana sending the migrants to their home countries would violate their court-ordered protections. The lawyers instead argued that once a migrant had been removed from the United States and was in foreign custody, the issue was out of their hands.”); *African Nation Says It Will Repatriate Migrants Deported by U.S.*, NY Times (July 17, 2025), <https://www.nytimes.com/2025/07/16/world/africa/eswatini-trump-migrants-deportation.html>.

⁶ Available at https://lawprofessors.typepad.com/files/2025.03.30_dhs_guidance_regarding_third_country_removals.pdf.

than not persecuted under a protected ground or subject to torture. If USCIS makes a negative finding, DHS then deports the person to the designated third country.

26. On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the district court's nationwide preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025). In response, ICE issued a July 9, 2025 memo, titled "Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. 23, 2025) ("July 9 Guidance").⁷ In this memo, ICE directed adherence to the March 30, 2025 Guidance while expanded upon details of the procedure. For non-citizens to whom ICE provides a written Notice of Removal to a third country, the July 9 Guidance directs ICE Enforcement and Removal Operations ("ERO") to wait 24 hours before carrying out the deportation unless the noncitizen affirmatively states a fear or persecution or torture. However, the memo authorizes ICE to deport a person after six hours of service of the Notice of Removal in "exigent" circumstances with the approval of DHS General Counsel or the Principal Legal Advisor where the DHS General Counsel is not available.

27. The July 9 Guidance is inconsistent with due process and the United States's non-refoulement obligations. *Compare, e.g., Y.T.D.*, 2025 WL 2675760, at *10.

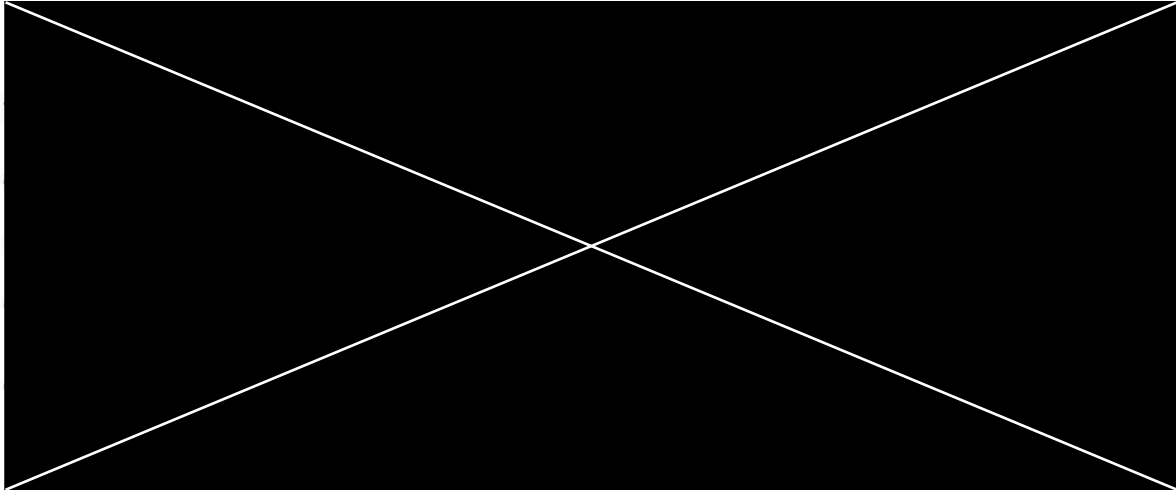
STATEMENT OF FACTS

A. T.A.'s Immigration History

28. T.A. was granted withholding of removal to Jamaica on May 23, 2025 when the Immigration Judge found that T.A.'s life or freedom would likely be threatened upon return to

⁷ Available at <https://immigrationlitigation.org/wp-content/uploads/2025/07/190-1-July-9-Guidance.pdf>.

Jamaica. *See Ex. A, Order Withholding Removal.* ICE did not appeal the favorable IJ decision, and T.A.'s removal order and accompanying relief grant became final on June 22, 2025. 8 C.F.R. § 1241.1.




30. [REDACTED] T.A.'s family decided that T.A. needed to leave Jamaica for his safety, and he immigrated to the United States to join his mother in Brooklyn at the age of eleven. [REDACTED]

31. T.A. met his wife, T.B., in 2010 and they subsequently married.

32. Shortly after their wedding, T.B. was diagnosed with multiple sclerosis. Multiple sclerosis (MS) is a disorder in which the body's immune system attacks the protective covering of nerves fibers leading to interrupted communication between the brain and the rest of the body and permanent damage to the nervous system. T.B.'s symptoms have manifested in the form of muscle atrophy and weakness in one leg stemming from lesions on her brain and spine. She also suffers from extreme fatigue and seizures due to her condition. The combination of these symptoms makes daily tasks challenging to do by herself, and she relies on T.A.'s support.

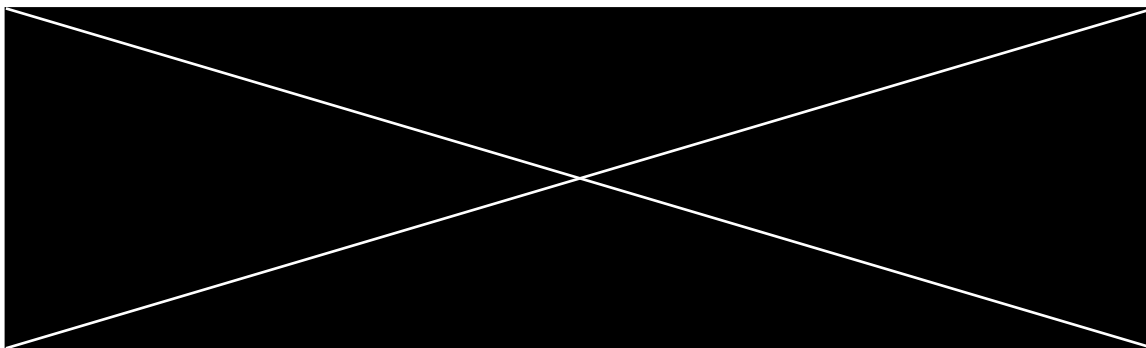
33. Prior to his detention, T.A. was T.B.'s primary medical caretaker. T.A. has been active in T.B.'s care consistently since her diagnosis. He regularly accompanies her to her hours-


long infusion appointments and cooks traditional Jamaican foods for her to maintain her nutrition. T.A. is also a vital financial provider, and the family has suffered significant financial strain without the support of his income. Since T.A. has been detained, T.B. has been forced to drive herself to and from her infusion appointments and to care for their son, without the support of his father. When T.A. speaks to T.B. nearly every day while detained, and he reports that her symptoms have significantly deteriorated as of late.

34. T.A.'s and T.B.'s son was born in  2017 and is currently eight years of age. T.A. supported T.B. throughout her pregnancy, which was made extremely uncomfortable and difficult because of her MS diagnosis. T.A. also speaks to his son most days while detained, and he reports that his son has seemed increasingly despondent on their recent calls.

A. T.A. is at risk of being deported to Mexico in violation of his statutory, regulatory, and due process rights, and the United States' commitment to non-refoulement under international law.

35. On February 4, 2026, DHS informed T.A. that it intends to remove him to Mexico, a country that the immigration judge ("IJ") did not designate as either the country of removal or an alternative country of removal. *See Ex. B, ICE Emails at 3; Ex. C, Notice of Removal to Mexico.*



 Further, T.A. fears that Mexico will simply remove him back to Jamaica—a country that the United States has already ordered he cannot

return to because of the likelihood of persecution and death. An IJ has never adjudicated T.A.'s fear-based claims to Mexico.

37. Despite T.A.'s fears that he will be persecuted and tortured if deported to Mexico, an IJ has never adjudicated T.A.'s fear-based claims to Mexico.

38. On February 5, 2026, at 5:59 p.m., ICE informed T.A.'s immigration counsel that T.A. would be given a fear interview the following day, on February 6, without providing any additional details to facilitate T.A.'s counsel's presence. **ICE Emails at 2.** T.A.'s immigration counsel followed up with ICE several more times on February 5 and February 6, requesting an adjournment to be able to attend the interview. *Id.* at 1–2. At 2:40 p.m. on February 6, ICE confirmed T.A.'s interview would be rescheduled.

39. On February 6, 2026, T.A. moved to reopen his immigration proceedings to be able to seek protection from removal to Mexico. That motion remains outstanding.

40. On the afternoon of February 6, 2026, in communications with the government, counsel for T.A. sought assurance that he would not be removed prior to being provided the fear interview that was going to be rescheduled. The government acknowledged that there was not a lawful way to remove him prior to providing the fear interview, but stated that they could not guarantee this as it would depend on whether ICE followed the proper procedures.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA and FARRA of 1998

(As A Result of Any Imminent Removal to a Third Country Without Notice or Opportunity to Respond)

41. The INA and the Foreign Affairs Reform and Restructuring Act of 1998 codify the principle of non-refoulement, guaranteeing noncitizens the non-discretionary protections of withholding of removal and withholding under the CAT, both of which prevent noncitizen from

being removed to a country where they fear torture or persecution. *See* 8 U.S.C. § 1231(3)(A) (withholding of removal); Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681–822 (1998) (codified as Note to 8 U.S.C. § 1231) (“It shall be the policy of the United States not to 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, regardless of whether the person is physically present in the United States”); *see also Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (U.S., 2013) (“the Attorney General has no discretion to deny [withholding of removal or deferral of removal under the CAT] to a noncitizen who establishes his eligibility”). Noncitizens facing third country removal have the right to seek fear-based protections such as withholding of removal and deferral of removal under CAT. *See D.V.D.*, 778 F. Supp. 3d at 367 (D. Mass.); *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. June 25, 2025).

42. ICE, under its current procedures, removes noncitizens to third countries without any notice to that noncitizen or their counsel if that third country has provided diplomatic assurances to the United States that received noncitizens will not be persecuted or tortured. *See* July 9 Guidance. A court may only question the constitutionality of these assurances, not their substance, if they are endorsed by the Executive. *See D.V.D.*, 778 F. Supp. 3d at 390. When effectuating a third country removal to a country that has not provided such assurances, ICE’s procedures allow for as little six hours’ notice before the removal. *Id.*

43. If Petitioner is removed to a third country under these procedures, he will be denied sufficient opportunity to communicate with counsel and prepare an application for protection under CAT or withholding of removal. Such summary removal constitutes an

unlawful deprivation of Petitioner's statutory right to apply for fear-based protection against removal to the third country.

COUNT TWO
Violation of Fifth Amendment Right to Procedural Due Process
(As a Result of Imminent Removal to a Third Country Without Meaningful Notice or Opportunity to Respond)

44. Noncitizens with a final order of removal have due process rights under the Fifth Amendment. *See Zadvydas*, 533 U.S. at 693 (“this Court has held that the Due Process Clause protects [a noncitizen] subject to a final order of deportation”) (citing *Wong Wing*, 163 U.S. at 238 (1986)); *Black*, 103 F.4th at 143 (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). In the context of removal, procedural due process requires that noncitizens receive notice “within a reasonable time and in such a manner as will allow them to actually seek... relief in the proper venue before such removal occurs.” *See Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Even if relevant statutes did not require notice and the meaningful opportunity to apply for fear-based protection for removal, such process is constitutionally required. *See Mathews*, 424 U.S. 319 at 332; *Zhu*, 2025 WL 2452352 at *9 n.4 (“Courts in this Circuit apply the three-factor balancing test set forth in [*Mathews*] in determining the adequacy of process in the civil immigration context”) (citing *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir, 2020)).

45. If ICE follows its current procedures in effectuating Petitioner's removal to a third country, it will likely remove him either without notice or with only twenty-four hours' notice prior to removal. *See* July 9 Guidance. Such short notice is insufficient time for someone to contact counsel and prepare an application for withholding of removal or protection pursuant to CAT. These procedures deny Petitioner the meaningful opportunity to challenge the decision to remove him to a third country. They are a clear violation of his due process rights.

COUNT THREE
Violation of Fifth Amendment Right to Substantive Due Process
(As a Result of Imminent Removal to a Third Country)

46. Under the Due Process Clause, the government may not impose punishment without “an adjudication of guilt in accordance with due process of law.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (collecting cases). The Supreme Court has long held that noncitizens subject to final orders of removal are subject to the guarantees of the Due Process Clause. *See Zadvydas*, 533 U.S. at 693. Moreover, the Due Process Clause prohibits the federal government from imposing punishment as part of its effectuation of noncitizen removal. *Wong Wing v. United States*, 163 U.S. 228, 237 (finding that Congress cannot add punishment to immigration detention or deportation without a prior adjudication of guilt).

47. The Trump Administration has expanded the use of third country removals in an explicit attempt to punish noncitizens and deter immigration. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *24 (W.D. Wash. Aug. 21, 2025) (citing official video of President Trump stating “[I]f illegal aliens choose to remain in America, they’re remaining illegally and they will face severe consequences. Illegal aliens who stay in America face *punishments*, including significant jail time, enormous financial penalties, confiscation of all property, garnishment of all wages, imprisonment and incarceration, and sudden deportation in a place and manner solely of our discretion.”) (emphasis added). The court in *Nguyen* found that the petitioner was likely to succeed on his claim “that ICE’s practice of removing noncitizens to countries where they face imprisonment violates the Constitution’s prohibition on ‘punitive’ third country removal.” *Id.* at 23.

48. By subjecting Petitioner to unconstitutionally punitive third country removal practices, Respondents violate his rights under the Due Process Clause.

WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Order Respondents and those with whom they contract to comply with the following: (1) provide written notice to Petitioner and his counsel of the third country to which Petitioner may be removed, in a language that Petitioner can understand; (2) following notice, provide meaningful opportunity, and a minimum of ten days, for Petitioner to raise a fear of return for eligibility for CAT and withholding protections; (3) if Petitioner demonstrates “reasonable fear,” move to reopen the proceedings; and (4) if Petitioner is not found to have demonstrated “reasonable fear,” provide meaningful opportunity, and a minimum of 15 days, for Petitioner to seek to move to reopen immigration proceedings;
- 3) Enjoin removal to a country not listed on Petitioner’s removal order as punitive;
- 4) Award Petitioner his costs and reasonable attorneys’ fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and
- 5) Grant any other and further relief that this Court deems just and proper.

Brooklyn, NY
February 6, 2025

Respectfully submitted,

/s/ Erica Rodarte

Erica Rodarte (PA Bar No. 332762) *
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E: erodarte@bds.org

** Application for admission pending*

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S
BEHALF PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am an attorney for Petitioner. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 6, 2025

Respectfully submitted,

/s/ Alexandra Lampert
Alexandra Lampert
Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

Jessica Sage, Warden
FCI Lewisburg
2400 Robert F Miller Dr
Lewisburg, PA 17837

David O'Neill, Field Office Director
U.S. Immigration and Customs Enforcement
Philadelphia Field Office
114 North 8th St
Philadelphia, PA 19107

Todd M. Lyons, Acting Director
U.S. Immigration and Customs Enforcement
500 12th St SW
Washington, DC 20536.

Kristi Noem, Secretary
U.S. Department of Homeland Security
c/o Office of the General Counsel
2707 Martin Luther King Jr. Ave,
SE Washington, DC 20528-0485

Pam Bondi, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Brian D. Miller, Assistant U.S. Attorney
United States Attorney's Office
William J. Nealon Federal Building and Courthouse
235 N. Washington Avenue, Suite 311
Scranton, PA 18503

Dated: February 6, 2026

/s/ Erica Rodarte
Erica Rodarte
Pro Bono Counsel for Petitioner