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[redacted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NAHOM HAFTOM BERHE,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, et al.

Respondents.

CASE NO.: 26-cv-2828-JES-VET

(1)MOTION TO ENFORCE ORDER ENJOINING PETITIONER'S REMOVAL TO THIRD COUNTRY [ECF No.12]

(2) MOTION FOR PETITIONER'S IMMEDIATE RELEASE UNDER *ZADVYDAS* [ECF No. 1]

INTRODUCTION

On July 20, 2026, Respondents Status Report ("Status Report") stated an intent to remove Petitioner, Nahom Behre, to a third country, Central African Republic ("CAR"). ECF No. 13. Respondents reiterate their intent for ICE to "follow the March 30, 2025 DHS memorandum entitled Guidance Regarding Third Country Removals to effectuate Petitioner's removal." *Id.* at 3. Respondents acknowledge this Court has previously found DHS's March 30, 2025, memorandum unlawful and set forth certain procedures and requirements for Respondents to follow before removing Petitioner to a third country, and they now request the Court to reconsider its previous order. *Id; see generally* ECF No. 12.

First, Petitioner moves this Court to deny Respondent's request to reconsider its previous order which enjoined the removal of Petitioner to Cameroon or any other third country without complying with the procedures set forth in Section IV of the Courts Order from June 8, 2026 ("Courts Order"). ECF No.12.

Second, Petitioner moves for his immediate release under *Zadvydas* as six months have passed since the final order of removal became administratively final on January 20, 2026, and due to Respondent's failure to comply with the Court's Order to provide adequate due process there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

I. RESPONDENTS HAVE NOT COMPLIED WITH THE COURTS ORDER

This Court previously enjoined Respondents from removing Petitioner to any third country without complying with the following procedures specified in Section IV of the Courts Order:

> (a) Respondents must provide written notice to Petitioner and Petitioner's counsel, in a language Petitioner understands, identifying the intended country of removal;
>
> (b) Petitioner must be afforded a minimum of ten (10) days to raise a fear-based claim for protection under the Convention Against Torture prior to removal;
>
> (c) If Petitioner demonstrates a reasonable fear of removal to the designated country, Respondents must move to reopen Petitioner's immigration proceedings; and
>
> (d) If Petitioner is not found to have demonstrated a reasonable fear of removal to the designated country, Respondents must provide a meaningful opportunity, and a minimum of fifteen (15) days, for Petitioner to seek reopening of his immigration proceedings. ECF No. 12.

To the best of undersigned counsel's knowledge, as of the time of filing of the instant motions, none of the Courts's Orders have been adhered to.

Significantly, Petitioner has not received written notice identifying the intended country of removal. Petitioner has been informed via telephone by undersigned counsel of the contents of Respondent's Status Report, and Petitioner has since attempted to raise a fear-based claim of removal to CAR for protection under the Convention Against Torture ("CAT"). Petitioner is housed at the Imperial Regional Detention Center and ICE has not responded to Petitioner's requests to raise a fear-based claim.

A. Petitioner has a legitimate fear-based claim for protection under CAT to prevent his removal to CAR

Petitioner, an Ethiopian national, applied for asylum based on a fear of persecution on account of his sexual orientation. ECF no. 1-2 ("Berhe Dec."), ¶ 1. On December 19, 2025, an immigration judge denied Petitioner's claim for asylum, ordered him removed, but granted him withholding of removal to Ethiopia. ECF No. 4-4 at 1. This Court previously held that "Petitioner was granted withholding of removal to Ethiopia based on the IJ's finding that Petitioner is more likely than not to face persecution due to his sexual orientation…[Petitioner] has the right to assert those same grounds with respect to any proposed country removal." ECF No. 12 at 6.

Respondents first stated an intent to remove Petitioner to Cameroon, a third country removal. Petitioner filed a brief in Opposition. ECF No. 7. Respondents now state "ICE no longer intends to remove Petitioner to the third country of Cameroon. Instead, ICE intends to remove Petitioner to Central African Republic…" ECF No. 13 at 1. Again, Respondents assert vague "diplomatic assurances" that Petitioner will not be subjected to persecution or torture. *Id; see also* ECF No. 13-1 ¶ 5, Declaration of Cam Vu.

This Court should note that imbedded Cam Vu's Declaration is an acknowledgment of the possibility/eventuality of chain refoulment. The

Declaration states, "the Central African Republic provided diplomatic assurances that the aliens removed from the United States pursuant to this arrangement will not be subjected to persecution or torture **nor in any country the Central African Republic may further transfer them to.** On May 4, 2026, the Department of State determined that the diplomatic assurances were credible and reliable." ECF No. 13-1 ¶ 5, emphasis added. In this Declaration, Respondents acknowledge and embrace illegal refoulment. There is a zero percent chance CAR can guarantee that if Petitioner is removed to another, unnamed country, they can or will guarantee he will not be subjected to persecution or torture. Petitioner, herein, incorporates all arguments against illegal chain refoulment made in Section II of his brief in Opposition. ECF No. 7.

Further, it is more unlikely than not that CAR cannot safeguard Petitioner is not subject to persecution or torture. CAR is an extraordinarily dangerous country, especially for foreigners, bi-sexual individuals, and Muslims. Petitioner, if removed to CAR, would be a foreign, bi-sexual Muslim in a country hostile to him. The legitimate risks of persecution and torture that Petitioner would face if removed to CAR are detailed by Anjli Parrin, J.D., the Director of the Global Human Rights Clinic and Associate Clinical Professor of Law at the University of Chicago Law School who also has extensive experience working in CAR over the past decade. *See attached* Declaration of Anjli Parrin (Parrin Decl.).

The Declaration details that the U.S. State Department advises U.S. citizens not to travel to the country due to risks of unrest, crime, kidnappings, landmines, health and terrorism. Parrin Decl. ¶ 7. Further, the "risks are heightened for individuals who are members of marginalized groups, including those who identify as LGBTQ+, are perceived as political opponents, and lack local support networks." *Id.* ¶ 8. Corruption is rampant in CAR, "individuals seeking protection from abuses often face significant barriers to obtaining meaningful assistance,

accountability, or legal remedies from state authorities." *Id.* ¶ 22.

Significantly, CAR law states "public expressions of affection between members of the same sex are criminalized, and subject to both a prison sentence of 6 months to 2 years and a fine. No such equivalent provision exists for similar acts between persons of the opposite sex." *Id.* ¶ 25. The declaration also details instances wherein individuals were arrested for participating in private, consensual homosexual acts despite there being no law to prohibit such private acts. *Id.*

In addition to facing persecution for being a foreigner and for his sexual orientation, Petitioner would also face persecution for being a Muslim. The Muslim minority in CAR "have faced pervasive discrimination in healthcare, employment, and housing; arbitrary detentions; and even extrajudicial killings." *Id.* ¶ 31.

For all the above reasons, Respondents should continue to be enjoined from removing Petitioner to CAR.

B. *D.V.D. v. DHS* Class Action

This Court has judicial discretion on whether to stay or dismiss individual actions that overlap with pending class actions. *Pride v. Correa*, 719 F.3d 1130 (9th Cir. 2013). The pending class action in *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 378 (D. Mass. 2025), has yet to be resolved. *See D.V.D. v. D.H.S., 821 F. Supp. 3d 102 (D. Mass. Feb. 25, 2026); D.V.D., et al v. U.S. Department of Homeland Security, et al, Case No. 26-1212, Doc No. 00118417272 (1st Cir. Mar. 16, 2026)*

Here, Petitioner faces immediate and irreparable harm if he is removed to CAR. Respondents state, "ICE scheduled Petitioner for removal to Central African Republic via charter flight, to occur on or about July 30, 2026." ECF No. 13 at 2. There is an immediacy of the risk of harm and due process violations that Petitioner will endure if he is removed to CAR.

II. PETITIONER SHOULD BE IMMEDIATELY RELEASED UNDER *ZADVYDAS*

Petitioner has now been detained for over six months since his removal order became final on January 20, 2026. Petitioner's presumptively reasonable period of detention has ended. *Zadvydas*, 533 U.S. at 701. Respondents now have the burden to establish Petitioner's removal is significantly likely in the reasonably foreseeable future. *Id.*

Respondents stated intent to remove Petitioner, without having complied with the Courts Order, to CAR on or about July 30, 2026, does not satisfy this burden. *See* ECF No.12; ECF No. 13. In fact, Respondents acknowledge that if the court does not reconsider its previous Order the "government acknowledges that Respondents are unable to demonstrate a significant likelihood of removing Petitioner to a third country in the reasonably foreseeable future and defers to the Court for the appropriate relief." ECF No. 13 at 3.

Petitioner respectfully requests the appropriate relief is immediate release from custody.

Respectfully submitted,

Dated: July 24, 2026

s/ Danielle R. Peay

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