IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Emmanuel Blankson Marfo, Petitioner, vs. KEVIN RAYCRAFT, Acting Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; TODD BLANCHE, U.S. Attorney General, Respondents.	Case No. 26-cv-01293 JUDGE BENITA Y. PEARSON

PETITIONER'S BRIEF IN REPLY TO THE DEPARTMENT OF HOMELAND SECURITY'S OPPOSITION TO PRELIMINARY INJUNCTION

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STATEMENT OF THE ISSUES

Issue 1

Whether the preliminary injunction factors favor Petitioner?

Issue 2

Whether *D.V.D.* bars Petitioner's individual habeas petition?

Issue 3

Whether this Court has jurisdiction over Petitioner's detention and may preserve that jurisdiction by preventing his removal while this case is pending?

Issue 4

Whether Respondents have shown that 8 U.S.C. § 1231(b) authorizes Petitioner's removal to Sierra Leone?

Issue 5

Whether Petitioner is unlawfully detained?

Issue 6

Whether diplomatic assurances eliminate Petitioner's right to meaningful notice and an opportunity to be heard before removal to Sierra Leone?

SUMMARY OF THE ARGUMENT

Petitioner respectfully seek a preliminary injunction to prevent Respondents from removing him to Sierra Leone while this Court adjudicates his habeas petition. The preliminary injunction factors favor Petitioner. He has raised serious and substantial questions going to the merits, including whether Respondents may remove him to Sierra Leone without following the statutory sequence required by 8 U.S.C. § 1231(b), without meaningful notice, and without a meaningful opportunity to raise a country-specific fear-based claim. The threatened harm is immediate and irreparable because removal to Sierra Leone would deprive Petitioner of any meaningful opportunity to litigate these claims before the harm occurs.

Respondents' threshold arguments do not defeat relief. *D.V.D.* does not bar this individual habeas petition. The Supreme Court's orders in *D.V.D.* were stays, not merits rulings. They did not hold that individual habeas petitions are barred, that diplomatic assurances categorically satisfy due process, or that district courts lack jurisdiction over detention-based claims. Nor do the jurisdiction-stripping provisions of 8 U.S.C. § 1252 apply here. Petitioner is not challenging the validity of his underlying removal order. He challenges his current detention and Respondents' attempt to remove him to Sierra Leone, a third country designated after his immigration proceedings, without the process required by law.

Respondents also have not shown that § 1231(b) authorizes Petitioner's removal to Sierra Leone. Section 1231(b) establishes an ordered framework for removal, and the "willing country" provision on which Respondents rely is not a free-standing shortcut around that framework. This is especially significant because Petitioner had begun the process of removal to Canada, the country he selected, before Respondents detained him and pivoted to Sierra Leone. Respondents

have not explained why that route was abandoned, how they satisfied the statutory sequence, or what changed after Petitioner's recent A-10 employment authorization approval.

Finally, Respondents' reliance on diplomatic assurances does not eliminate Petitioner's right to meaningful notice and an opportunity to be heard. Respondents provide no individualized evidence showing that Sierra Leone will protect Mr. Marfo specifically, account for his grant of withholding based on persecution tied to sexual orientation, or prevent onward transfer to a country where he may face harm. Country-conditions evidence further supports Petitioner's fear of harm in Sierra Leone. Because Respondents have not shown that Petitioner received the process required before third-country removal, the Court should preserve its jurisdiction, maintain the status quo, and prohibit removal while this habeas petition remains pending.

BACKGROUND

Petitioner is a resident of Columbus, Ohio who entered the United States at or around Calexico, California in December of 2021. On June 7, 2024, Mr. Marfo was granted Withholding of Removal by an immigration Judge. (Ex. A - Order of the Immigration Judge, ECF No. 5-1 PageID #44-47.) On March 28, 2026, Mr. Marfo attended his ICE check-in appointment, where Petitioner began the process of removal to Canada, the country he selected, before Respondents pivoted to detention and proposed removal to Sierra Leone. On May 29, 2026, ICE officers detained Mr. Marfo outside of his home as he was leaving for work. (ECF No. 1 PageID # 2, at ¶ 4.) He was then transported to the Corrections Center of Northwest Ohio in Stryker, Ohio. This warrantless arrest and ensuing detention occurred nearly two years after being granted relief under the INA. Shortly after being detained, Mr. Marfo was informed that it is the Government's intention to effectuate third country removal in his case and deport him to Sierra Leone. (ECF No. 1 PageID # 2, at ¶ 6.)

On June 3, 2026, Petitioner filed a petition for Writ of Habeas Corpus in the Northern District of Ohio. (*Id.* at PageID # 11.) On June 13, 2026, Mr. Marfo was transported to Central Louisianna ICE Processing Center. (ECF No. 2 PageID # 21, at ¶ 5.) ICE has informed him that he has been approved for Third Country Deportation. (*Id.*)

On June 14, 2026, Mr. Marfo filed a temporary restraining order to preserve the Court's habeas jurisdiction and prevent irreparable harm arising from imminent alteration of Petitioner's custody status during the pendency of this habeas proceeding. (ECF No. 2.) On June 16, 2026, this Court issued an order prohibiting Petitioner's removal from the United States. (ECF No. 4 PageID # 29.) On June 17, 2026, the Court granted Petitioner's Motion for Temporary Restraining Order, prohibited the government from removing Petitioner from the United States, and ordered that

Petitioner be transferred back to the Northern District of Ohio. (ECF No. 6 PageID # 54.) Mr. Marfo was subsequently transferred to Mahoning County Jail. Mr. Marfo, at the time of this filing, has not had the opportunity to present a fear-based claim before an Immigration Judge regarding any potential third country of removal.

LAW AND ARGUMENT

I. The Preliminary Injunction Factors Favor Petitioner.

A preliminary injunction is warranted because Petitioner has shown at least serious, substantial merits questions and because the threatened harm is immediate and irreparable. In this Circuit, courts consider four familiar factors: (1) likelihood of success on the merits; (2) irreparable harm; (3) harm to others; (4) and the public interest. *See Memphis A. Philip Randolph Inst. v. Hargett*, 978 F.3d 378, 385 (6th Cir. 2020).

First, Petitioner has shown at minimum a strong likelihood that his claims raise serious and substantial questions going to the merits. As set forth above, Respondents have not shown that *D.V.D.* bars this individual habeas action, have not shown that the jurisdiction-stripping provisions of 8 U.S.C. § 1252 apply to Petitioner's detention and threatened third country removal claims, and have not established on the present record that 8 U.S.C. § 1231(b) authorizes his removal to Sierra Leone in the manner they propose. At the very least, those issues are sufficiently substantial to support preliminary relief preserving the status quo.

Second, the threatened harm is immediate and irreparable. Petitioner alleges that DHS seeks to remove him to Sierra Leone, a country where he fears persecution tied to his sexual orientation and with which he has no prior connection, without meaningful notice or a meaningful opportunity to be heard. If Petitioner is removed before this Court resolves his habeas petition, the deprivation of liberty and the risk of wrongful removal cannot be undone through ordinary *post hoc* relief. Courts confronting similar third country removal claims have recognized that such

threatened removal constitutes irreparable harm. *See Sanchez v. Noem,* 802 F. Supp. 3d 992, 1013 (S.D. Tex. 2025); *D.J.R.R. v. Genalo*, No. 26-CV-3124 (AMD), 2026 U.S. Dist. LEXIS 135280, at *12 (E.D.N.Y. June 17, 2026).

Third, preserving the status quo will not substantially harm Respondents. Petitioner asks only that Respondents be prohibited from removing him while this Court determines whether his detention and proposed third country removal are lawful. That relief does not vacate the underlying removal order or prevent Respondents from ultimately acting if they prevail on the merits; it merely ensures that Petitioner is not removed before the Court can exercise its habeas jurisdiction in a meaningful way.

Fourth, the public interest favors an injunction. The public has no interest in the execution of removals in a manner that violates governing statutes or the Due Process Clause. To the contrary, the public interest is served by ensuring that detention and removal decisions comply with the procedures Congress and the Constitution require, particularly where the consequences of error may include persecution or torture. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, 821 F. Supp. 3d 102, 165–67 (D. Mass. 2026) ("'[o]f course there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.'") (*quoting Nken v. Holder*, 556 U.S. 418, 436 (2009)).

Because the threatened harm is irreparable, the balance of equities favors preserving the status quo, and Petitioner has shown at least strongly substantial merits questions, preliminary injunctive relief should remain in place.

II. *D.V.D. v. Department of Homeland Security* Does Not bar the Petitioner's Habeas Petition.

Respondents' contention that this habeas action cannot proceed because Petitioner is a member of the certified class in *D.V.D. v. U.S. Department of Homeland Security* ("*D.V.D*") is

incorrect. Petitioner does not seek to relitigate or circumvent the claims at issue in *D.V.D.* Rather, he seeks individualized habeas relief from his current detention and from threatened removal to Sierra Leone, a third country newly designated after his underlying proceedings, without the process required by statute and due process. That is not the same claim, and membership in the *D.V.D.* class does not deprive this Court of authority to adjudicate it.

As an initial matter, Respondents overstate the present effect of *D.V.D.*. The District of Massachusetts entered final judgment on February 25, 2026, and granted declaratory and set-aside relief with respect to DHS's third country removal policy. *See D.V.D.*., 821 F. Supp. 3d at 167–68. But that judgment was stayed by the First Circuit pending expedited appeal. *See Order, D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 26-1212 (1st Cir. Mar. 16, 2026). Accordingly, whatever persuasive force the district court's analysis may have, the *D.V.D.* judgment is not presently operative class-wide relief that bars every individual class member from seeking habeas relief needed to prevent immediate detention-related or removal-related harm.

Respondents cannot simultaneously insist that the stayed *D.V.D.* judgment provides Petitioner with no presently enforceable protection, while also arguing that the same stayed judgment prevents him from seeking individualized relief necessary to stop his detention and threatened removal before the merits can be adjudicated. Courts confronting that precise circumstance have rejected the Government's position. In *Sanchez v. Noem*, for example, the court found it "counterintuitive" that non-opt-out class membership could prevent an individual from pursuing his own due process claim while the class-wide injunction was stayed and therefore unavailable to protect him. *Sanchez,* 802 F. Supp. 3d 992 at 1008 ("To dismiss Petitioner's claims for preliminary injunctive relief at this time would effectively preclude Sanchez from the relief he

seeks entirely and potentially foreclose any relief that he could be entitled to as part of the *D.V.D.* class if he is removed before the class-wide claims are resolved.").

Respondents also overread the significance of the Supreme Court's stay orders in *D.V.D.* A stay is not the same as a merits holding, and the Supreme Court did not hold that individual habeas petitions are barred, that diplomatic assurances categorically satisfy due process, or that district courts lack jurisdiction over detention-based claims like the ones presented here. Respondents' suggestion that the Supreme Court "sided with the Government – twice" is not a holding. At most, the stay orders paused class-wide relief pending further review; they did not supply a binding merits determination foreclosing this Court's adjudication of Petitioner's individualized habeas claims.

Nor is this action duplicative of *D.V.D.* in the sense required for dismissal or abstention. Petitioner's habeas petition is tied to his own custody, his own proposed third country removal, and his own claim that DHS seeks to remove him to Sierra Leone without meaningful notice and an opportunity to raise a country-specific fear-based claim. (*See* ECF No. 1.) Petitioner alleges that he was granted withholding of removal to Ghana because of persecution tied to his sexual orientation, that DHS later detained him, and that DHS now seeks to remove him to Sierra Leone despite the absence of the procedures he contends are required by law. (*Id.*) Those are individualized claims based on individualized facts and individualized harm, not a request for abstract or systemic programmatic relief on behalf of the nationwide class.

Courts have repeatedly recognized that *D.V.D.* does not automatically bar this kind of individualized habeas petition. In *D.J.R.R. v. Genalo*, the Eastern District of New York held that, although the petitioner was a member of the certified *D.V.D.* class, the court could still adjudicate his habeas petition because he asserted "individual claims, based on his individual circumstances,

rather than claims for systemic relief." *D.J.R.R.*, 2026 U.S. Dist. LEXIS 135280 at *22. The court further explained that, because the *D.V.D.* judgment was stayed, it did not presently prevent the Government from removing the petitioner to a third country without due process, and many district courts had continued to adjudicate similar claims after entry of the *D.V.D.* judgment "without evident concern that doing so encroached on the *D.V.D.* court's jurisdiction." *Id.* at *21.

That same reasoning applies here. Petitioner does not ask this Court to interfere with the First Circuit's review of *D.V.D.* or to impose conflicting class-wide relief. He asks only for individualized habeas relief preventing his own unlawful detention and threatened removal while this Court determines whether Respondents may lawfully remove him to Sierra Leone without the procedures he alleges are required by statute and due process. (ECF No. 1.) In *D.J.R.R.*, the court specifically concluded that *D.V.D.* did not prevent adjudication of an individual challenge where the petitioner was "not challenging—directly or indirectly—his final removal order," but instead was challenging detention and proposed removal to a country other than the one identified in the final removal order. *Id.* at *8. Similarly, the Petitioner does not challenge the validity of the underlying removal order. He challenges his detention and threatened removal to Sierra Leone, a third country not previously designated in his underlying proceedings.

Respondents' reliance on "first-to-file," "mandatory class," and "*res judicata*" terminology does not change that analysis. Whatever preclusive effect *D.V.D.* may or may not have after appellate review is complete, the stayed judgment does not presently furnish operative relief that can protect Petitioner from immediate detention and threatened third country removal. At minimum, it does not justify dismissal of an individual habeas petition where the petitioner remains subject to ongoing detention and imminent injury before any effective class-wide remedy is available. *See Sanchez*, 802 F. Supp. 3d at 1008; *D.J.R.R.*, 2026 U.S. Dist. LEXIS 135280, at *21.

For all of these reasons, *D.V.D.* does not bar this habeas petition. This Court retains authority to adjudicate Petitioner's individualized claims for relief from unlawful detention and threatened removal to Sierra Leone, and Respondents' contrary argument should be rejected.

III. The Court has Jurisdiction Over Petitioner's Detention and May Grant Relief Necessary to Preserve That Jurisdiction.

Respondents' jurisdictional argument fails because Petitioner does not ask this Court to review, vacate, or otherwise disturb his underlying removal order. He challenges something different: his present detention and Respondents' effort to remove him to Sierra Leone, a third country designated after his underlying proceedings, without the process required by statute and due process. That distinction matters. A district court statutorily has habeas jurisdiction to review whether a person is "in custody in violation of the Constitution or laws or treaties of the United States," 28 U.S.C. § 2241(c)(3), and habeas review has long encompassed statutory and constitutional challenges to executive detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001).

Respondents have already conceded that this Court retains jurisdiction to review the legality of Petitioner's detention. (*See* ECF No. 7 PageID # 77, at n.3 ("The government concedes that this Court has jurisdiction to review the length of Petitioner's detention, as discussed in Section VII."). Having conceded that point, Respondents cannot simultaneously argue that the jurisdiction-stripping provisions 8 U.S.C. § 1252 eliminate this Court's authority to adjudicate the core habeas issues presented here.

Section 1252(g) does not strip this Court of jurisdiction. That provision bars only claims "arising from the decision or action . . . to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). But Petitioner is not challenging the Government's decision to execute the removal order to Ghana, nor is he seeking review of the order itself. He challenges

his current detention and the threatened removal to Sierra Leone, a third country not previously designated in his underlying proceedings, without the procedural safeguards required by law.

Courts addressing materially similar claims have held that § 1252(g) does not bar jurisdiction in that circumstance. In *Sanchez v. Noem*, the court held that § 1252(g) did not bar habeas review where the petitioner challenged the lawfulness of his post-removal-order detention rather than the underlying removal order itself. *See Sanchez v. Noem,* No. 5:25-CV-00104, 2025 U.S. Dist. LEXIS 269065, at *11 (S.D. Tex. Nov. 14, 2025) (citing *Zadvydas*, 533 U.S. at 688). Likewise, in *D.J.R.R.*, the court held that § 1252(g) did not preclude review where the petitioner was not challenging the execution of the final removal order to the country identified in that order, but instead challenged detention and threatened removal to a different third country. *See D.J.R.R.*, 2026 U.S. Dist. LEXIS 135280, at *9-11. The same reasoning applies here. The Petitioner does not challenge the final order itself. Instead, he challenges detention and Respondents' proposed third country removal to Sierra Leone.

Nor do 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9) deprive this Court of jurisdiction. Those provisions channel review of direct and indirect challenges to final orders of removal into the petition-for-review process in the courts of appeals. But Petitioner is not seeking "judicial review of an order of removal," 8 U.S.C. § 1252(a)(5), and he does not challenge "any part of the process by which [his] removability [was] determined." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). Instead, he challenges post-order detention and a later decision to remove him to Sierra Leone without meaningful notice or an opportunity to raise a country-specific fear-based claim.

In *Sanchez*, the court relied on *Jennings* and *Nielsen v. Preap*, 586 U.S. 392, 402 (2019), in holding that §§ 1252(a)(5) and 1252(b)(9) do not strip district courts of jurisdiction over statutory and constitutional challenges to post-removal-order detention. *See Sanchez*, 2025 U.S.

Dist. LEXIS 269065, at *13. *D.J.R.R.* reached the same conclusion, explaining that § 1252(a)(5) and § 1252(b)(9) do not apply where a petitioner challenges detention and third country removal outside the original removal proceedings, rather than the validity of the final removal order itself. *See D.J.R.R.*, 2026 U.S. Dist. LEXIS 135280, at *7. Similarly, Petitioner's claims arise from Respondents' present custody and newly proposed third country removal, not from any effort to relitigate the underlying order of removal.

Respondents' reliance on 8 U.S.C. § 1252(a)(4) and FARRA is likewise misplaced. Petitioner was granted withholding of removal to Ghana under 8 U.S.C. § 1231(b)(3). He does not ask this Court to review the merits of his CAT denial, to adjudicate a CAT application in the first instance, or to revisit any final order of removal. Instead, he challenges detention and the denial of any meaningful opportunity to contest removal to a newly designated third country before that removal occurs.

Respondents also devote substantial space to CAT and FARRA arguments that do not fit this case. Mr. Marfo was granted withholding of removal to Ghana, and he does not ask this Court to review the denial of CAT relief, to adjudicate a CAT application in the first instance, or to revisit any CAT merits determination. To the extent Respondents attempt to analogize this case to a CAT merits challenge, they are addressing a different case than the one before the Court. This petition challenges detention and third-country removal without the process required by law.

Even where CAT-related concerns may be implicated by a threatened third country removal, courts have recognized that a challenge to the Government's foreclosure of any meaningful opportunity to raise such claims is not the same as judicial review of a CAT merits order. *See D.V.D.*, 821 F. Supp. 3d at 124 (holding that §§ 1252(a)(4), 1252(a)(5), 1252(b)(9), and FARRA did not bar claims challenging the Government's policy of foreclosing notice and

opportunity to raise third country fear-based claims). Petitioner's own case centers on withholding of removal and unlawful detention, making Respondents' attempt to recharacterize this habeas petition as an impermissible CAT merits challenge doubly inapt.

Because this Court has jurisdiction over Petitioner's detention, it also has authority to preserve that jurisdiction by maintaining the status quo while the habeas petition is adjudicated. If Respondents were free to remove Petitioner to Sierra Leone before this Court resolves the legality of his detention and the lawfulness of the proposed third country removal process, the Court's jurisdiction would be rendered largely hollow. That is why courts exercising habeas jurisdiction in analogous circumstances have granted relief preventing removal pending adjudication.

In this case, the Court has already entered orders prohibiting Petitioner's removal and directing that he be returned to this District while the matter is pending. (*See* ECF No. 4). And in *D.J.R.R.*, after concluding that the court had jurisdiction over detention and third country removal claims, the court prohibited respondents from removing the petitioner to a country other than the one identified in the underlying removal order without notice and a meaningful opportunity to be heard in reopened proceedings before an immigration judge. *See D.J.R.R.*, 2026 U.S. Dist. LEXIS 135280, at *23. A similar status quo–preserving order is appropriate here.

For all of these reasons, the jurisdiction-stripping provisions on which Respondents rely do not apply. Petitioner does not challenge the validity of the underlying removal order; he challenges his detention and Respondents' threatened removal of him to Sierra Leone without the process required by law. This Court therefore has jurisdiction over Petitioner's detention and may grant the relief necessary to preserve that jurisdiction while the habeas petition is adjudicated.

IV. Respondents Have Not Established That 8 U.S.C. § 1231(b) Authorizes Petitioner's Removal to Sierra Leone.

Respondents' merits argument begins from an incomplete reading of 8 U.S.C. § 1231(b). Their opposition asserts that Petitioner's removal to Sierra Leone is "authorized" because Sierra Leone has agreed to accept him, and because the statute permits removal to any country whose government will "accept the alien into that country." (ECF No. 7 PageID # 83-84.) But Respondents treat that language as if it were the first step in the statutory analysis. It is not. Section 1231(b) establishes an ordered sequence of possible countries of removal, and the willing-country provision on which Respondents rely is a last-resort option, not a free-floating grant of discretion to bypass the rest of the statutory scheme. That omission is especially notable here because Petitioner had already begun the process of removal to Canada, the country he selected, before Respondents detained him and pivoted to Sierra Leone. On this record, Respondents have not explained why that route was abandoned or how the statute permitted them to skip from Petitioner's chosen country to Sierra Leone without satisfying the rest of § 1231(b)'s sequence.

Respondents' own description of the statutory scheme confirms the problem with their position. Respondents acknowledge that "Congress has provided two means for an alien to challenge removal to a particular country where he may face persecution or torture," including statutory withholding under 8 U.S.C. § 1231(b)(3). (ECF No. 7 PageID # 69.) Respondents further acknowledge that statutory withholding "generally prohibits removing an alien to a country where he would face persecution because of his 'race, religion, nationality, membership in a particular social group, or political opinion.'" (*Id.*) They also recognize that withholding and CAT protection affect "where," not simply "whether," a person may be removed. (*Id.* at PageID # 70.) Congress created country-specific protections precisely so that a person like Mr. Marfo is not removed to a country where he faces persecution. Yet Respondents simultaneously argue that, after newly

designating Sierra Leone, they may bypass any meaningful process for Mr. Marfo to invoke those protections as to that country. DHS cannot rely on Congress's country-specific removal framework when it helps them execute removal, while denying Petitioner access to the very protections Congress built into that framework.

The District of Massachusetts explained that point directly in *D.V.D.*, holding that 8 U.S.C. § 1231(b) "governs the sequence of countries to which a noncitizen subject to a final order of removal may be removed," and that the Government may not simply remove a person to "any" country whenever other options are allegedly "impracticable, inadvisable, or impossible." *D.V.D.*, 821 F. Supp. 3d at 144. Rather, the court held that the statute and 8 C.F.R. § 1240.12(d) require the Government first to seek removal to the countries identified earlier in the statutory sequence before resorting to a country willing to accept the noncitizen. *Id.* at 144, 167–68.

Respondents' own brief confirms that Petitioner is a citizen of Ghana, that he was granted withholding of removal to Ghana, and that DHS therefore now seeks to remove him to Sierra Leone. (ECF No. 7 Page ID # 66.) Petitioner's habeas petition likewise alleges that he had legal ties to Ghana and no connection to Sierra Leone. (ECF No. 1 Page ID # 1-2.) Yet nowhere do Respondents show compliance with the statutory sequencing that must precede reliance on the catch-all willing-country provision. They do not identify any specified alternative country of removal from Petitioner's prior proceedings, do not explain what countries in the statutory hierarchy were actually pursued before Sierra Leone, and do not establish that each earlier option was "impracticable, inadvisable, or impossible" within the meaning of § 1231(b)(2)(E)(vii). That omission is fatal to their claim that Sierra Leone removal is presently "authorized" as a matter of law.

That defect matters because Petitioner's claims do not rest solely on an abstract request for more process. Petitioner was granted withholding of removal based on persecution tied to his sexual orientation and now DHS seeks to remove him to Sierra Leone, a country where same-sex relationships are criminalized, without providing him a meaningful opportunity to challenge that removal. (ECF No. 1 Page ID # 1 at ¶ 3); United States Department of State, *Country Reports on Human Rights Practices for 2023* 24 (2024). In *D.V.D.*, the court concluded that § 1231(b) and § 1231(b)(3) do not permit DHS to extinguish withholding-related claims against a newly proposed third country simply by announcing a new destination and carrying out removal before any meaningful opportunity to object exists. 821 F. Supp. 3d at 144-46. That reasoning applies with special force here, where Respondents seek to invoke statutory authority for third country removal while avoiding any meaningful mechanism for Petitioner to contest whether Sierra Leone is lawfully available under the statute or safe in light of his individual circumstances.

Respondents also attempt to bridge this gap by asserting that Sierra Leone accepted Petitioner on May 15, 2026, and that Sierra Leone supplied diplomatic assurances that persons removed there would not be persecuted or tortured. (ECF No. 7 Page ID # 66.) Even taking those assertions at face value, they do not answer the statutory sequencing problem. An agreement by Sierra Leone to accept Petitioner does not establish that DHS lawfully reached the catch-all stage of § 1231(b) in the first place. Nor do generalized diplomatic assurances alter the structure of the statute, which still requires the Government to proceed through the ordered sequence Congress prescribed before resorting to a willing third country.

Nor do Respondents' assertions about diplomatic assurances establish a presently lawful path to remove Petitioner to Sierra Leone. In *D.V.D.*, the district court rejected DHS's position that broad diplomatic assurances could substitute for notice and an opportunity to present country-

specific claims before third country removal. 821 F. Supp. 3d at 159, 161-62. The court explained that the challenged guidance "did nothing to safeguard" valid fear-based claims because it allowed removal before such claims could be raised and because notice periods as short as 24 hours, or, in some circumstances, six hours, were facially inadequate. *Id.* at 161-62. As *D.V.D.* recognized, broad assurances do not answer the individualized questions due process permits a person to raise before removal to an unfamiliar and potentially dangerous country, including whether the assurances actually protect the particular noncitizen and whether they protect against onward transfer. *See D.V.D.*, 821 F. Supp. 3d at 159, 161–62. Thus, even if Respondents possess some form of diplomatic assurance from Sierra Leone, that does not resolve whether Petitioner may lawfully be removed there without first being afforded a meaningful chance to challenge the lawfulness and safety of that proposed removal.

The present record therefore falls well short of establishing what Respondents claim it establishes. At most, the Government has alleged that Sierra Leone accepted Petitioner and that it has received diplomatic assurances regarding certain individuals removed there. (ECF No. 7 Page ID # 66.) But Respondents have not shown compliance with the statutory sequence required by § 1231(b), have not demonstrated that earlier statutory options were exhausted or unavailable, and have not shown that those asserted assurances eliminate Petitioner's right to contest removal to Sierra Leone before it occurs. On this record, Respondents have not carried their burden to show that removal to Sierra Leone is presently lawful or executable in the manner they propose.

For those reasons, Respondents' reliance on § 1231(b) does not defeat preliminary relief. The statute does not grant DHS unbounded discretion to select any willing country at any time. It imposes an ordered framework, and Petitioner has raised substantial questions and strong merits arguments, that Respondents have not complied with that framework before seeking to remove

him to Sierra Leone. The Court should preserve the status quo until Respondents can establish that the statutory prerequisites for third country removal have truly been satisfied and that Petitioner has received the process the law requires before any such removal occurs.

V. Petitioner Is Unlawfully Detained.

Petitioner's detention is unlawful because Respondents have not shown a presently lawful and reasonably foreseeable path to removal. Post-order detention must remain reasonably related to the purpose of effectuating removal; once removal is not reasonably foreseeable, continued detention is no longer authorized. *Zadvydas*, 533 U.S. at 699–701. Respondents argue that Petitioner's custody is presumptively reasonable because he has been detained for less than six months, but that argument assumes the very point in dispute: that DHS may lawfully and imminently remove him to Sierra Leone. As explained above, Respondents have not shown compliance with § 1231(b)'s statutory sequence, have not shown that Petitioner received meaningful notice or an opportunity to be heard, and have not shown that diplomatic assurances eliminate his right to contest removal to Sierra Leone before it occurs.

The six-month period discussed in *Zadvydas* is a presumption, not an absolute bar to habeas relief before six months have elapsed. Courts have rejected the argument that *Zadvydas* automatically precludes review before the six-month mark, especially where DHS re-detains a noncitizen after release or supervision and fails to show that removal is now significantly likely in the reasonably foreseeable future. *See Munoz-Saucedo v. Pittman*, No. 25-2258, 2025 WL 1750346 *6, *9 (D.N.J. June 24, 2025); *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501 (D.N.J. June 13, 2025). Here, DHS detained Petitioner nearly two years after he was granted withholding of removal, and

Respondents still have not established that removal to Sierra Leone is lawful, executable, or reasonably foreseeable.

Respondents also fail to explain what materially changed to justify Petitioner's sudden detention and proposed removal to Sierra Leone. Petitioner had begun the process of removal to Canada, the country he selected, before DHS pivoted to detention and third-country removal to Sierra Leone. Petitioner's A-10 employment authorization was also approved in June 2025 and does not expire until June 2030, further underscoring that the Government recently treated him as someone who remained effectively unremovable. Respondents do not explain what changed between that recent determination and their decision to detain him and pursue removal to Sierra Leone. Because Respondents have not shown a lawful and reasonably foreseeable removal path, Petitioner's continued detention is not justified and cannot defeat preliminary relief.

VI. Diplomatic Assurances Do Not Eliminate Petitioner's Right to Meaningful Notice and an Opportunity to Be Heard.

Respondents principally argue that no additional process is required here because Sierra Leone has provided diplomatic assurances and the Department of State has deemed those assurances credible. (ECF No. 7 Page ID # 66.) But even accepting those assertions for present purposes, they do not resolve the constitutional or statutory problem presented by this case. Petitioner challenges Respondents' attempt to use such assurances as a substitute for meaningful notice and a meaningful opportunity to contest removal to Sierra Leone before removal occurs.

The District of Massachusetts rejected that same premise in *D.V.D.* There, DHS's policy allowed removal "without the need for further procedures" when the United States received diplomatic assurances from a proposed third country. *D.V.D.*, 821 F. Supp. 3d at 155. The court held that this approach did not satisfy due process because it permitted removal before valid fear-based claims could meaningfully be raised or adjudicated. *Id.* at 156. The same reasoning applies

here. Procedural due process does not permit the Government to extinguish Petitioner's ability to seek protection simply by invoking assurances that he has had no meaningful chance to examine, test, or rebut. *See id.*; *Sanchez*, 802 F. Supp. 3d at 1012–13.

The Government's own description of the asserted assurances illustrates why process matters. Respondents state only that Sierra Leone has provided assurances that individuals removed pursuant to the third-country agreement "will not be subject to persecution or torture in Sierra Leone or in any country in which they may be transferred to by Sierra Leone." (ECF No. 7 PageID # 66.) But Respondents provide no meaningful detail about the content, scope, duration, or enforceability of those assurances as applied to Mr. Marfo specifically. Nor do they provide individualized evidence showing how those assurances account for his grant of withholding based on persecution tied to sexual orientation, or how they prevent onward transfer to another country where he may face harm. Without notice and a meaningful opportunity to be heard, Petitioner has no realistic way to test whether the asserted assurances are sufficient as applied to him.

While Respondents have offered only generalized assurances, publicly available country-conditions evidence supports Petitioner's fear that he may be harmed in Sierra Leone. The U.S. Department of State's 2023 Human Rights Report states that Sierra Leonean law "criminalized same-sex sexual activity between men," that LGBTQI+ advocates reported "violence and blackmail against LGBTQI+ persons," and that there were "no reports of action by government authorities to investigate or punish state or nonstate actors complicit in violence or abuses of LGBTQI+ persons." United States Department of State, *2023 Country Reports on Human Rights Practices: Sierra Leone* 24 (2024). The report further states that the law "did not prohibit discrimination by state or nonstate actors based on sexual orientation, gender identity or expression, or sex characteristics," and that LGBTQI+ persons faced "widespread discrimination"

in health care, housing, education, employment, family life, and policing. *Id.* at 24–25. This evidence is directly relevant to Petitioner's fear of removal to Sierra Leone because his grant of withholding was based on persecution tied to his sexual orientation, and Sierra Leone's country conditions show that LGBTQI+ persons face criminalization, violence, blackmail, and widespread discrimination. These conditions underscore why broad diplomatic assurances are insufficient without individualized notice and a meaningful opportunity to be heard.

Moreover, Respondents' position ignores the independent requirement of meaningful notice. The Due Process Clause requires notice that is reasonably calculated, under the circumstances, to permit a person to present objections before an asserted deprivation occurs. *See D.V.D.*, 821 F. Supp. 3d at 158; *see also D.J.R.R.*, 2026 U.S. Dist. LEXIS 135280, at *17–19 (holding that the Government may not remove a petitioner to a third country without notice and a meaningful opportunity to be heard in reopened removal proceedings). Here, Petitioner alleges that ICE officers informed him that he would be removed to Sierra Leone but did not show him any paperwork supporting that statement and did not provide him any meaningful opportunity to present a fear-based claim before seeking to effectuate his removal. (ECF No. 1 PageID # 8, at ¶ 32.) Respondents' opposition does not identify any meaningful notice procedure that was afforded to Petitioner before this litigation intervened.

The same is true as to the opportunity to be heard. Respondents' theory appears to be that diplomatic assurances, standing alone, eliminate any need for a meaningful hearing before third country removal. But courts considering analogous claims have concluded otherwise. In *Sanchez*, the court held that the *Mathews* factors favored the petitioner where he had a strong private interest in not being removed to a third country where he feared harm, where the risk of erroneous deprivation was high without adequate procedures, and where additional safeguards would not

impose an undue burden relative to the liberty interests at stake. 802 F. Supp. 3d at 1012–13. Likewise, *D.J.R.R.* held that respondents could not remove the petitioner to a country other than the one identified in his underlying removal order without notice and a meaningful opportunity to be heard in reopened proceedings before an immigration judge. *D.J.R.R.*, 2026 U.S. Dist. LEXIS 135280 at *17–19.

Those same considerations apply here. Petitioner's private interest is extraordinarily weighty. He alleges that he was granted withholding based on persecution tied to his sexual orientation, that DHS now seeks to send him to a country where same-sex relationships are criminalized, and that he has never lived in or traveled through Sierra Leone. (ECF No. 1 PageID # 8, at ¶ 32.) The risk of erroneous deprivation is correspondingly severe if Respondents may rely on broad assurances and remove him without first allowing him to challenge the lawfulness and safety of that removal. And whatever administrative interest Respondents have in expediency cannot override the constitutional requirement that Petitioner receive a meaningful opportunity to be heard before being removed to a new country where he alleges he faces grave harm. *See D.V.D.*, 821 F. Supp. 3d at 153; *Sanchez*, 802 F. Supp. 3d at 1012–13.

For those reasons, Respondents' invocation of diplomatic assurances does not defeat Petitioner's request for preliminary relief. The existence of such assurances does not eliminate Petitioner's right to meaningful notice and a meaningful opportunity to contest his removal to Sierra Leone before that removal is carried out. Because Respondents have not shown that Petitioner received either, the Court should preserve the status quo and prohibit his removal pending adjudication of this habeas petition.

CONCLUSION

For the foregoing reasons, this Court should issue an injunction enjoining Respondents from taking any action towards effectuating Mr. Marfo's deportation to Sierra Leone or any other third country while his Habeas petition is pending.

Dated: June 24, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Loc. R. 7.1(f), I certify that the foregoing Brief in Reply is twenty (20) pages in length and within the page limits for an unassigned matter.

Dated: June 24, 2026

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