TEMPLATE THIRD-COUNTRY REMOVAL HABEAS PETITION

Users are advised to check local rules to ensure compliance, including with caption requirements, fonts size/type, format (pleading paper), and what, if any, information should be contained in a footer.

Users are also advised to modify this template to reflect any changes in the docket in *D.V.D. v. DHS*, Case No. 26-1212 (1st Cir.), available here: https://www.courtlistener.com/docket/72347392/dvd-v-us-department-of-homeland-security/, and to make modifications as required by the individual facts and developments in a case.

[Attorney Information and Bar No.,
if Required by Local Rule]

Attorney/s for Petitioner

UNITED STATES DISTRICT COURT
______ DISTRICT OF [STATE]
____ DIVISION

Name, Petitioner, v. U.S. DEPARTMENT OF HOMELAND SECURITY; Name, Warden/Superintendent, [Name of Facility]; Name, Acting/Director of [City] Field Office, U.S. Immigration and Customs Enforcement; Kristi NOEM / Markwayne MULLIN, Secretary, U.S. Department of Homeland Security; and Pamela BONDI, U.S. Attorney General, in their official capacities, Respondents.	Case No. ___________ **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

#. Petitioner Full Name is in the physical custody of Respondents at Facility Name. Name is a citizen of Country with a final order of removal to Country and now faces removal to Third Country. Respondent U.S. Department of Homeland Security (DHS) seeks to remove he/she/them to Third Country based on an unlawful policy that violates the immigration laws and due process.

#. In *D.V.D. v. DHS*, a nationwide class action, the District of Massachusetts set aside DHS' third-country removal policy—pursuant to which Respondents seek to remove Name—as unlawful, finding it did not satisfy class members' statutory and constitutional rights requiring meaningful notice and opportunity to raise fear-based claims against removal to that third country. *D.V.D. v. DHS*, No. CV 25-10676-BEM, ---F. Supp. 3d ----, 2026 WL 521557 (D. Mass. Feb. 25, 2026) (summary judgment order); *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 378 (D. Mass. 2025) (class certification order).

#. Name is a member of the certified *D.V.D.* class. Although the final judgment in *D.V.D.* has not yet taken effect, the court's analysis is determinative, and Name is entitled to the declaratory relief and set aside relief afforded by the district court to *D.V.D.* class members.

#. Even absent the court's judgment in *D.V.D.*, the court's rationale demonstrates that the law entitles Name to the procedural protections afforded by the declaratory relief and set aside relief that the district court ordered.

JURISDICTION

#. Name is in the physical custody of Respondents. Name is detained at the Facility Name in City, State.

#. This action arises under the Immigration and Nationality Act (INA), 8 U.S.C. §

1101 *et seq*., the Foreign Affairs Reform Restructuring Act of 1998 (FARRA), Pub. L. 105-277 Div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1999) (codified as statutory note to § 1231), and the Constitution of the United States.

#. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

#. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court's inherent equitable powers.

VENUE

#. Venue is proper because Name is detained at Name of Facility in City, State, which is within the jurisdiction of this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Add applicable case if petition filed in the First, Third, or Ninth Circuits *see also Thompson v. Barr*, 959 F.3d 476, 491 (1st Cir. 2020); *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 444-45 (3d Cir. 2021); *Doe v. Garland*, 109 F.4th 1188, 1192 (9th Cir. 2024).

#. Venue is also proper 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 this district. *See also Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 493–500 (1973) (applying traditional venue considerations).

REQUIREMENTS OF 28 U.S.C. § 2243

#. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Name is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

#. 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) (emphasis added) (citation omitted).

PARTIES

#. Name is a resident of City, State who is subject to a final order of removal directing removal to Country. Note: Add any country designated in the alternative. If applicable, add: Name has been granted protection from removal to Country under 8 U.S.C. § 1231(b)(3) or the United Nations Convention Against Torture (CAT).

#. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

#. Respondent Name is employed by Name of Facility, as Warden of the Name of Facility, where Name is detained. He/She/They is a legal custodian of Name and is sued in his/her/their official capacity.

#. Respondent Name is the Acting Field Office Director for the City Field Office of the Enforcement and Removal Operations (ERO) division of U.S. Immigration and Customs Enforcement (ICE). As such, Respondent Name is a legal custodian of Name. He/She/They is sued in his/her/their official capacity.

#. Respondent Kristi Noem / Markwayne Mullin is the Secretary of the Department of Homeland Security. She/He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Name's detention. Respondent Name is a legal custodian of Name and is sued in her/his official capacity.

#. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

LEGAL FRAMEWORK

Withholding of Removal and the Convention Against Torture

#. U.S. immigration law affords noncitizens in the United States three forms of protection from persecution and/or torture: asylum, withholding of removal, and protection under the Convention Against Torture (CAT). Asylum typically provides full protection against deportation to any country. *See* 8 U.S.C. § 1158(c). This means the person cannot be deported.

#. Individuals who are not eligible for asylum, e.g., because they did not apply within one year of entering the country, *see id.* § 1158(a)(2)(B), may qualify for withholding of removal, *id.* § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a "mandatory" protection that prohibits removal to a designated country where a noncitizen establishes that they are more likely than not to face persecution. *INS. v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999). Withholding of removal also contains exceptions for, inter alia, individuals who have committed certain serious crimes. *See* 8 U.S.C. § 1231(b)(3)(B).

#. Finally, pursuant to FARRA, Congress instructed that the U.S. government may not "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." Pub. L. 105-277 Div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1999) (codified as statutory note to § 1231). This mandate applies to all persons and contains no exceptions.

#. DHS has implemented withholding and CAT protections via regulation. *See generally* 8 C.F.R. §§ 208.16–208.18, 1208.16–1208.18.

#. Individuals can appeal the denial of an application for withholding of removal or CAT protection to the Board of Immigration Appeals (BIA) and later to the courts of appeals. *See* 8 U.S.C. § 1252(a); 8 C.F.R. §§ 208.31(e), 1208.31(e), (g)(2)(ii), 1240.15; *Nasrallah v. Barr*, 590 U.S. 573, 575 (2020).

#. No matter where DHS seeks to remove a person, the INA's protections against removal to a country where a person may face persecution and FARRA's protections against removal to a country where a person may face torture apply. *See* 8 U.S.C. § 1231(b); FARRA § 2242(b); 8 C.F.R. §§ 208.16(c)–208.18, 1208.16(c)–1208.18; *see also, e.g.*, *Jama v. ICE*, 543 U.S. 335, 341, 348 (2005).

#. The statute specifies that, in assessing a noncitizen's claim of withholding of removal, "the trier of fact shall determine whether the [noncitizen] has sustained the [noncitizen's] burden of proof, and shall make credibility determinations." 8 U.S.C. § 1231(b)(3)(C).

The INA's Scheme for Determining the Country of Removal

#. As relevant here, the INA "provides four consecutive removal commands" about where to remove a noncitizen. *Jama*, 543 U.S. at 341.

#. First, in most cases, the noncitizen must be provided the opportunity to "designate one country to which the [noncitizen] wants to be removed." 8 U.S.C. § 1231(b)(2)(A)(i).

#. Second, if the noncitizen declines to designate a country—which often occurs where the noncitizen fears return to their country of origin—DHS then designates the "country of which the [noncitizen] is a subject, national, or citizen" for removal, as required by statute. *Id.* § 1231(b)(2)(D). The statute requires DHS to attempt removal to these countries before seeking alternatives. *See id.* § 1231(b)(1), (b)(2)(A), (D) (repeatedly instructing where DHS "shall" remove someone by order of priority).

#. Third, if DHS is unable to remove the individual to either the country of their designation or the country of which they are a subject, national, or citizen, then the government is required to remove them to any of the following options: (1) "[t]he country from which the [noncitizen] was admitted to the United States;" (2) "[t]he country in which is located the foreign port from which the [noncitizen] left for the United States or for a foreign territory contiguous to the United States;" (3) "[a] country in which the [noncitizen] resided before [they] entered the country from which [they] entered the United States;" (4) "[t]he country in which the [noncitizen] was born;" (5) "[t]he country that had sovereignty over the [noncitizen's] birthplace when the [noncitizen] was born;" or (6) "the country in which the [noncitizen's] birthplace is located when the [noncitizen] is ordered removed." *Id*. § 1231(b)(2)(E).

#. Finally, only where it is "impracticable, inadvisable, or impossible to remove the [noncitizen] to each country described" above may DHS seek removal to some other alternative country. *See id.* § 1231(b)(2)(E)(vii).

The Nationwide Class Action *D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass.).

#. On March 23, 2025, four noncitizens filed *D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass.), a putative nationwide class action challenging, inter alia, DHS's practice of failing to provide noncitizens with certain final orders of removal with meaningful notice and opportunity to raise a fear-based claim before DHS could deport them to any country not designated on their removal order (aka third country). Plaintiffs alleged that they are entitled to such protections pursuant to 8 U.S.C. § 1231(b)(3), FARRA, and the Due Process Clause prior to any third-country removal.

#. On March 30, 2025, in response to the court's issuance of a temporary protective order (TRO) ensuring protections, DHS issued a memo entitled "Guidance Regarding Third Country Removals." *Guidance Regarding Third Country Removals*, (Mar. 30, 2025), https://immigrationlitigation.org/wp-content/uploads/2025/04/43-1-Exh-A-Guidance.pdf (hereinafter, "March 30 Memo").

#. Pursuant to the March 30 Memo, DHS does not need to provide any notice or process whatsoever to a noncitizen prior to their removal if the United States has received "diplomatic assurances [from the country of removal] that [noncitizens] removed from the United States will not be persecuted or tortured." March 30 Memo at 1.

#. If the United States has not received such assurances, a deportation officer must "inform the [noncitizen] of removal to [the third] country." *Id.* at 2. "Immigration officers will not affirmatively ask whether the [noncitizen] is afraid of being removed to that country." *Id.* If a noncitizen states a fear, then U.S. Citizenship and Immigration Services (USCIS) must screen the noncitizen "within 24 hours of referral from the immigration officer." *Id.* At the screening, the noncitizen must prove that it is "more likely than not" they will be persecuted or tortured upon removal.

#. This process differs dramatically from the typical standard of review applied in reopened removal proceedings in which an immigration judge can assess an individual's fear-based claim in the first instance.

#. The process also differs from the reasonable fear process, where USCIS assesses only if there is a "reasonable possibility" the noncitizen could establish they are likely to face persecution or torture if provided the opportunity to present their full case to an immigration judge. *See* 8 C.F.R. § 208.31(c) (outlining reasonable fear interview procedure for persons with reinstatement orders or administrative removal orders under 8 U.S.C. §§ 1231(a)(5), 1228(b), respectively). A "reasonable possibility" is a lower standard of proof than the "more likely than not" standard required to win a grant of withholding of removal or CAT protection.

#. On April 18, 2025, the district court in *D.V.D.* certified a nationwide class of noncitizens as follows:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

D.V.D. v. DHS, 778 F. Supp. 3d 355, 378 (D. Mass. 2025).

#. The district court also issued a classwide injunction requiring the government to undertake certain procedures before removing a person to a third country, rejecting the March 30 Memo policy as sufficient. *Id.* at 392–93. *D.V.D. v. DHS.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025). The *D.V.D.* defendants subsequently obtained a stay of the preliminary injunction from the Supreme Court on June 23, 2025 but the Court did not provide any reasoning. *See DHS v. D.V.D.*, 145 S. Ct. 2153 (2025). The preliminary injunction was later dissolved. *See D.V.D. v. DHS*, No. CV 25-10676-BEM, ---F. Supp. 3d---, 2026 WL 521557 (D. Mass. Feb. 25, 2026).

#. Following that decision, on July 9, 2025, ICE issued guidance regarding how to implement the March 30 Memo. ICE, *Third Country Removals Following the Supreme Court's Order in Department of Homeland Security v. D.V.D., No. 24A1153 (U.S. June 23, 2025)* (July 9, 2025), https://immigrationlitigation.org/wp-content/uploads/2025/07/190-1-July-9-

Guidance.pdf (hereinafter, "July 9 Guidance"). The July 9 Guidance is identical to the March 30 Memo except that, in cases where diplomatic assurances do not exist, it provides that an officer will serve a "Notice of Removal" with interpretation. July 9 Guidance at 1.

#. It further provides that DHS may effectuate removal 24 hours after serving notice; however, "[i]n exigent circumstances," with approval from chief counsel of DHS or ICE, DHS may execute removal to the third country with a mere six hours' notice if ICE provides the noncitizen "means and opportunity to speak with an attorney." *Id.*

#. On February 25, 2026, the district court in *D.V.D.* entered a final judgment on the class's claims. *D.V.D. v. DHS*, No. CV 25-10676-BEM, ---F. Supp. 3d ----, 2026 WL 521557 (D. Mass. Feb. 25, 2026).

#. The court granted the plaintiffs' motion for summary judgment in part, setting aside as "unlawful" DHS' third-country removal policy, as embodied in the March 30 Memo and July 9 Guidance *Id.* at *44. The court further declared that class members have the right to both "meaningful notice before removal to any third country" as well as "a meaningful opportunity to raise a country-specific claim against removal before removal to any third country." *Id.* at *44; *id.* at *27–40 (analyzing both statutory and constitutional bases for these rights and how DHS' policy violated them).

#. The court concluded that "the March Guidance extinguishes valid challenges to third-country removal by effecting removal before those challenges can be raised," for the guidance "does nothing to safeguard" withholding of removal claims and is at best "insufficient" in safeguarding CAT claims. *Id.* at *39.

#. The court also declared that, prior to a third-country removal, Respondents are required to follow 8 C.F.R. § 1240.12(d) by "first seek[ing] removal to that class member's designated country of removal or specified alternative country or countries of removal, as provided in that class member's final order of removal," as well as 8 U.S.C. § 1231(b) by "first seek[ing] removal to that class member's designated country of removal or country or countries of citizenship, if any." *Id.* at *44; *see also id.* at *24–26 (providing its reasoning).

#. Defendants filed an appeal of the district court's decision and requested an emergency stay of the district court's order. *See D.V.D., et al v. U.S. Department of Homeland Security, et al.*, Case No. 26-1212 (1st Cir.).

#. On March 16, 2026, the First Circuit granted an emergency stay of the district court's order, and sua sponte issued an expedited scheduling order on the underlying appeal, with briefing to be completed by April 20, 2026, and instructions that arguments would be set soon thereafter.

STATEMENT OF FACTS

#. On Month Day, 2026, Name, was placed in Select one removal proceedings pursuant to 8 U.S.C. § 1229a / reinstatement proceedings pursuant to 8 U.S.C. § 1231(a)(5) / administrative removal proceedings pursuant to 8 U.S.C. § 1228(b).

#. Select either in reinstatement / administrative removal proceedings, DHS designated Country as the country of removal. or In those proceedings, an immigration judge designated Country as the country of removal if applicable and Country as an alternative country of removal.

#. If applicable During those proceedings, Name expressed a fear of removal to Country. If applicable, address the outcome of removal proceedings, including any fear-based proceedings (reasonable fear or withholding-only proceedings) and any appeal to the BIA.

#. Address facts about detention. If applicable, address continued detention after grant of protection and/or prior release due to failure to execute removal order. If the client was re-detained or detained since being granted protection, state facts about whether client was not or has not been informed of where DHS seeks to remove them.

#. If applicable On information and belief, DHS intends to remove Name to a third country, i.e., a country other than the one designated in his/her/their removal order.

#. If notice has been received Because Name has a final order or removal under 8 U.S.C. either § 1229a / § 1231(5) / § 1228(b) and DHS is seeking to deport him/her/them to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed, he/she/they is a member of the certified *D.V.D.* class.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

#. The allegations in the above paragraphs are realleged and incorporated herein.

#. 8 U.S.C. § 1231(b)(3) and the implementation regulations prevents removal to a country where a noncitizen is more likely than not to face persecution.

#. Notwithstanding this statutory mandate, DHS seeks to remove Name to a third country without providing Name meaningful notice and opportunity to access the protections required pursuant to 8 U.S.C. § 1231(b)(3) and its implementing regulations.

#. Accordingly, because Respondents are violating o 8 U.S.C. § 1231(b)(3) and its implementing regulations and for the reasons provided by the district court in *D.V.D.*, DHS' attempt to remove Name to a third country is unlawful.

COUNT II

Violation of FARRA

#. The allegations in the above paragraphs are realleged and incorporated herein.

#. FARRA and the implementing regulations prevent removal to a country where a noncitizen is more likely than not to face torture.

#. Notwithstanding this statutory mandate, DHS seeks to remove Name to a third country without providing Name meaningful notice and opportunity to access the protections required pursuant to FARRA and the CAT regulations.

#. Accordingly, Respondents are violating FARRA and the CAT regulations and for the reasons provided by the district court in *D.V.D.*, DHS' attempt to remove Name to a third country is unlawful.

COUNT III

Violation of the Due Process Clause

#. The allegations in the above paragraphs are realleged and incorporated herein.

#. The Due Process Clause requires DHS to provide Name with meaningful notice and a meaningful opportunity to be heard regarding the statutory protections to which Name is entitled.

#. Respondents seek to remove Name to a third country without providing meaningful notice or a meaningful opportunity to seek protection under the mandatory provisions of 8 U.S.C. § 1231(b)(3) and FARRA's provisions with respect to CAT.

#. Accordingly, Respondents are violating the Due Process Clause of the Constitution and for the reasons provided by the district court in *D.V.D.*, DHS' attempt to remove Name to a third country is unlawful.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

c. Enjoin Respondents from removing Name outside this District during the pendency of this action;

d. Order Respondents to provide him/her/them access to their statutory rights to protection and due process of law prior to any third country removal;

e. Order that, with respect to any third country removal, Respondents must provide written notice to Name and their counsel in writing and in a language that Name understands and that DHS may not effect removal for at least fifteen days to allow Petitioner a meaningful opportunity to investigate and contest removal to the newly designated third country;

Select one

f. If client has a reinstatement or § 238(b) order Upon expression of a fear of removal to any third country, DHS must reissue Name's § 1231(a)(5) order / § 1228(b) order and must provide Name with a reasonable fear interview in which an asylum officer shall ascertain whether there is a "reasonable possibility" Name could establish a likelihood of persecution or torture, seek review of any adverse determination, and/or present his/her/their full application for withholding of removal and/or CAT protection to an immigration judge, consistent with 8 C.F.R. § 208.31;

f. If client has an IJ/BIA removal order Upon expression of a fear of removal to any third country, DHS must move to reopen removal proceedings under 8 U.S.C. § 1229a in order to designated the third-country and permit Name the opportunity to present his/her/their full application for withholding of removal and/or CAT protection to an immigration judge;

g. Award attorney's fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

h. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted,

/s/ Attorney Name
Attorney Name
Signature block

Counsel for Petitioner

Dated: [Month Day, Year]

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Name, and submit this verification on his/her/their behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this ___ day of ____, 2026.

/s/ Attorney Name
Attorney Name