No. 26-426

In The Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, ET AL.,
PETITIONERS,

v.

D.V.D., ET AL.,
RESPONDENTS.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR IMMIGRATION EQUALITY, ET AL., AS AMICI CURIAE SUPPORTING RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

Amici are nonprofit organizations that assist lesbian, gay, bisexual, transgender, and queer (LGBTQ) refugees through legal representation, advocacy, and other forms of community support. Amici write to address the third question presented: whether the Government's Guidance on third-country removals is unlawful under 8 U. S. C. §1231(b), the Due Process Clause, or FARRA/CAT and its implementing regulations. The experience of LGBTQ refugees shows that it is not lawful.

SUMMARY OF ARGUMENT

LGBTQ people face persecution and torture in many parts of the world. At least 65 countries criminalize consensual same-sex intimacy between adults, and 12 permit the death penalty for it. ILGA World, *Pride Month: New ILGA World Data and Maps on Laws Affecting LGBTI People Globally* (June 1, 2026), https://perma.cc/5XYJ-DYTP; Human Dignity Trust, *LGBT People and the Law*, https://perma.cc/HG5H-2897 (last visited Nov. 19, 2026). Some governments are expanding these laws. *See, e.g.*, U.S. Dep't of State, 2023 Country Reports on Human Rights Practices: Uganda § 6 (2024); Neil Nii Kanarku, *'Anti-LGBTQ+ Bill Will Be Law of the Land as Long as I'm Speaker' – Bagbin, Citi Newsroom* (Oct. 23, 2026),

[1] No counsel for a party authored this brief in whole or in part, and no counsel for a party (nor a party itself) made a monetary contribution intended to fund the preparation or submission of this brief. No entity or person, other than amici curiae, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

https://perma.cc/NC4C-PDHR. And even where such laws go unenforced, they invite abuse. In many countries, including those with some protective laws on the books, LGBTQ people are subjected to violence including "corrective" rape, forced conversion "therapy," kidnapping, torture, and murder, at the hands of families, mobs, and police alike, and they cannot turn to the state for protection. *See generally, e.g.*, Outright International, *Country Overviews*, https://perma.cc/3FH5-ANF5; Human Rights Watch, *LGBT Rights*, https://perma.cc/F8XB-H2Z5; ILGA World, *ILGA World Database*, https://perma.cc/DYE6-AWFQ; Immigration Equality, *Country Conditions Materials*, https://perma.cc/B76S-JTUX (compiling resources) (all last visited Nov. 19, 2026). For many, flight is the only way to survive.

Amici see these realities every day. They represent LGBTQ noncitizens in asylum, withholding, and Convention Against Torture (CAT) proceedings; help LGBTQ refugees abroad seek resettlement; and advise policymakers on the conditions LGBTQ people face in the countries at issue here.

The policy memorandum and implementing guidance (together, the Policy) promulgated by the Department of Homeland Security (DHS) now sends LGBTQ immigrants, including refugees who the U.S. has already determined warrant protection, to countries that its own reporting identifies as dangerous for them. It does so without the notice and opportunity to be heard that the law requires. Section 1231(b)(3) and the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) forbid removal to a country where a person would face persecution or torture. As the First Circuit held, those provisions require that, before a

third-country removal, the person must receive effective notice of the destination country and a meaningful opportunity to present a fear-based claim.

The experience of LGBTQ immigrants shows why this requirement is appropriate and important. First, the Government knows the danger: its own country-conditions reporting and grants of protection document the danger to LGBTQ people in many of the destination countries. Second, the Policy's short notice and demonstration of fear requirements are unworkable for LGBTQ immigrants, who would have to marshal, often within hours and from detention, country-specific evidence about a country they may know nothing about. Third, blanket diplomatic assurances cannot fill the gap. The Government cannot, in good faith, accept diplomatic assurances that LGBTQ people will not be persecuted or tortured in countries that still criminalize, harm, and fail to protect LGBTQ people.

Amici do not ask the Court to declare any country off-limits for removal. They ask only that, before the Government sends someone to a country no immigration judge has designated, it tells that person where they are going and gives them a real opportunity to show that they would be persecuted or tortured there. For LGBTQ people, that opportunity can be the difference between safety and the very harm the U.S. has already found they are likely to suffer.

ARGUMENT

I. THE GOVERNMENT VIOLATES APPLICABLE LAW BY SENDING LGBTQ PEOPLE TO COUNTRIES WHERE THEY ARE LIKELY TO FACE PERSECUTION OR TORTURE, AND IT DOES SO KNOWINGLY.

The withholding statute, FARRA/CAT, and implementing regulations forbid removal to any country where a person's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, or where they would likely be tortured. 8 U.S.C. § 1231(b)(3)(A); FARRA § 2242(a); 8 C.F.R. §§ 208.16, 1208.16. LGBTQ people fall squarely within that protection: the Government has long recognized that they constitute a particular social group. *See, e.g., Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 822–823 (B.I.A. 1990), *designated as precedent by* Att'y Gen. Order No. 1895–1894 (June 19, 1994); *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1094 (9th Cir. 2000). That protection is directly at stake in third-country removals. Many of the countries now receiving deported individuals are places where LGBTQ people are targeted pervasively for persecution and torture.

A country's willingness to accept deported people says nothing about whether it is safe for them. Some of the destination countries criminalize same-sex intimate relationships or nonconforming gender expression outright; others tolerate violence against LGBTQ people by state and non-state actors, exposing them to persecution and torture that withholding and CAT protection exist to prevent.

The U.S. knows of these dangers through multiple, reinforcing sources including the State

Department's human rights reporting, diplomatic efforts, travel advisories, and the Government's own adjudication of asylum, withholding, CAT, and refugee claims. These sources document the conditions that drive LGBTQ people to flee and the experiences of individuals whom the U.S. has found to warrant protection because of the persecution and torture they survived or would face in those countries. The country-conditions reports and individual accounts that follow show what is at stake when the Government deports LGBTQ people to unsafe countries without notice and a meaningful opportunity to be heard.

A. The Government Has Chosen Destination Countries That Its Own Reports Identify As Dangerous For LGBTQ People.

The U.S. has signed third-country deportation agreements with at least 37 countries[2] and, as of September 2026, had removed more than 25,000 noncitizens to these countries. *See* David Nakamura & Adam Taylor, *How Trump Turned a Refugee Bureau into a $410 Million Deportation Operation*, Wash. Post (Sept. 21, 2026), https://perma.cc/5J7J-869C; *see also Third Country Deportation Watch*, *supra* note 2.

The Government knows many of these countries are dangerous for LGBTQ people because its own State Department has documented it. In fact, third-

[2] The Government has not disclosed a complete list of these agreements, but public documentation compiled by Refugees International and Human Rights First identifies at least 37 as of November 2026. *See* Refugees International & Human Rights First, *Third Country Deportation Watch*, https://perma.cc/U82N-Z5AV (last visited Nov. 19, 2026) [hereinafter *Third Country Deportation Watch*].

country conditions for LGBTQ people are likely worse than even the most recent available State Department reporting indicates, as other independent, more comprehensive sources report yet more dangerous conditions in many of these countries.[3]

Nevertheless, the State Department's own 2023 human rights reporting[4] shows that LGBTQ people face significant danger in most of the countries to which they are being removed. At least 19 of the 37

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[3] Annual State Department reporting provides a summary snapshot of country-level human rights conditions at a particular moment in time; they are not exhaustive accounts of these conditions. More robust, independent reporting documents still graver conditions in many countries. *See, e.g.*, Outright International, *Country Overviews*, https://perma.cc/3FH5-ANF5; Human Rights Watch, *LGBT Rights*, https://perma.cc/F8XB-H2Z5; Human Dignity Trust, *Map of Jurisdictions that Criminalise LGBT+ People*, https://perma.cc/7WER-SP4M; ILGA World, *ILGA World Database*, https://perma.cc/DYE6-AWFQ; Immigration Equality, *Country Conditions Materials*, https://perma.cc/B76S-JTUX (compiling resources) (all last visited Nov. 19, 2026).

[4] The State Department has documented abuses against LGBTQ people in its annual country reports for more than 15 years. This section draws on the most recent year for which LGBTQ-specific reporting is available: the 2023 Country Reports on Human Rights Practices, published in 2024. *See* U.S. Dep't of State, 2023 Country Reports on Human Rights Practices (Apr. 22, 2024), https://perma.cc/6TKU-D2B9 [hereinafter "[Country] 2023 Report"]; *see also* App. B (collecting country-by-country citations). The 2023 Country Reports are the most recent to include LGBTQ-specific reporting because, beginning in 2025, the current administration's State Department began to omit that reporting, an editorial choice not based on improvement in conditions. *See* Graham Smith et al., *State Department Slashes its Annual Report on Human Rights*, NPR (Aug. 12, 2025), https://perma.cc/NCA8-BRP8.

countries criminalize same-sex intimacy.[5] In at least 25, police or security forces abuse LGBTQ people or fail to protect them,[6] and in 28 they face serious anti-LGBTQ societal violence.[7]

In many of these countries, the state itself is the persecutor. Uganda's 2023 Anti-Homosexuality Act punishes same-sex intimate conduct with life imprisonment and "aggravated homosexuality" with death; when a Kampala mob stripped a transgender woman and paraded her through the streets, police arrested her, not the mob. Uganda 2023 Report at 29, 43. Ugandan and Uzbek police conduct forced anal examinations to "prove" same-sex conduct, a practice that

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[5] The 19 countries that criminalize same-sex intimacy are Antigua and Barbuda, Burundi, Cameroon, Central African Republic, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Eswatini, Ghana, Grenada, Guyana, Jamaica, Liberia, Libya, Sierra Leone, St. Lucia, South Sudan, Uganda, and Uzbekistan. *See* App. B.

[6] Those 25 countries are Belize, Burundi, Cameroon, Democratic Republic of the Congo, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Ghana, Guatemala, Guyana, Honduras, Jamaica, Liberia, Libya, Mexico, Moldova, Panama, Paraguay, Rwanda, Sierra Leone, South Sudan, Uganda, and Uzbekistan. *See* App. B. For El Salvador and Guyana, the relevant findings appear principally in the 2020–2022 reports. *See* U.S. Dep't of State, El Salvador 2022 Human Rights Report at 27–28; U.S. Dep't of State, Guyana 2020 Human Rights Report at 14.

[7] Those 28 countries are Belize, Burundi, Cameroon, Central African Republic, Democratic Republic of the Congo, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eswatini, Ghana, Guatemala, Guyana, Honduras, Jamaica, Kosovo, Liberia, Libya, Mexico, Moldova, Panama, Paraguay, Rwanda, Sierra Leone, South Sudan, Uganda, and Uzbekistan. *See* App. B.

should be recognized as torture. *Id.* at 42; Uzbekistan 2023 Report at 40. In Libya, prison guards tortured two young men perceived as gay and raped one at gunpoint. Libya 2023 Report at 54 (describing findings of the U.N. Independent Fact-Finding Mission on Libya). South Sudan's security forces routinely beat and torture LGBTQ people. South Sudan 2023 Report at 50. Cameroonian police detain people for their perceived sexual orientation or gender identity, even crime victims seeking help. Cameroon 2023 Report at 5, 43–45. Liberian police charged two assault victims with sodomy instead of pursuing their attackers. Liberia 2023 Report at 25. Burundi arrested 24 people at an HIV organization's training; one died in custody despite his acquittal, and the President has said LGBTQ people should be stoned. Burundi 2023 Report at 45–46; Abdi Latif Dahir, *Burundi's President Says Gay People Should Be Stoned*, N.Y. Times (Dec. 31, 2023), https://perma.cc/J6S3-43NQ. The Central African Republic punishes same-sex "public expression of love." Central African Republic 2023 Report at 41. And Ghana, where police make false arrests to extort and "out" LGBTQ people, has moved to criminalize LGBTQ identity itself. Ghana 2023 Report at 24; Harry Sekulich & Thomas Naadi, *Ghana's parliament passes anti-LGBTQ bill*, BBC News (May 30, 2026), https://perma.cc/9X5T-8VKC; *see infra* Part I.B.2.

State abuse is not confined to countries that criminalize same-sex intimacy. Equatorial Guinea's police raped transgender women and girls in detention. Equatorial Guinea 2023 Report at 5; *see infra* Part I.B.2 (Michael's detention there). Congolese police incite, commit, or tolerate violence against LGBTQ people. Democratic Republic of the Congo ("DRC") 2023 Report at 51. Rwandan police have abused LGBTQ

detainees, especially transgender people, in so-called transit centers. Rwanda 2023 Report at 42; U.S. Dep't of State, Rwanda 2021 Human Rights Report at 40. And Guatemalan and Dominican police extort, harass, and arbitrarily arrest gay and transgender people. Guatemala 2023 Report at 44; Dominican Republic 2023 Report at 37–38.

Beyond persecuting LGBTQ people directly, many of these governments also fail to protect them from violence by others. In Sierra Leone, which criminalizes sex between men, police are reluctant to act on anti-LGBTQ violence, and "corrective" rape of lesbian and bisexual women is among the most prevalent abuses. Sierra Leone 2023 Report at 24; *see infra* Part I.B (removal of Abdou Latifou to Sierra Leone). Honduran officials have incited, perpetrated, or tolerated anti-LGBTQ violence with impunity; NGOs counted 47 violent deaths in 2023. Honduras 2023 Report at 25. Guatemalan activists report "conversion therapy" centers that use electroshock and "corrective" rape. Guatemala 2023 Report at 46. Mexico, which has received roughly 80 percent of third-country deportees, sees dozens of LGBTQ killings each year. Mexico 2023 Report at 44. And in Jamaica, which punishes consensual sex between men with up to 10 years of hard labor, criminals there use dating apps to lure, rob, beat, sexually assault, and sometimes kill LGBTQ people. Jamaica 2023 Report at 24.

These dangers are not abstract. The Government has already removed at least 310 people granted protection by U.S. immigration judges, including many LGBTQ people, to 15 third countries: Burundi, Cameroon, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Eswatini, Ghana,

Liberia, Mexico, Moldova, Rwanda, St. Kitts and Nevis, St. Lucia, Sierra Leone, and Uzbekistan.[8]

B. The Government Has Chosen Destination Countries From Which The U.S. Routinely Grants Protection To LGBTQ People, And It Has Deported LGBTQ Withholding Of Removal Recipients To Many Of Them.

The Government's knowledge extends beyond its country conditions reporting. U.S. asylum officers and immigration judges have repeatedly granted LGBTQ people from these countries asylum or withholding of removal, finding that they belong to a particular social group defined by sexual orientation or gender identity and face persecution on account of that membership. Immigration judges have also granted CAT protection, finding that applicants would more likely than not be tortured, often because of their LGBTQ identity, and that the receiving country's government would not protect them. The U.S. has also resettled LGBTQ refugees based on past persecution or a well-founded fear of persecution in their countries of origin. Amici have direct experience with these processes.

Although the Government does not publish statistics on LGBTQ-based protection claims, the records of a single amicus, Immigration Equality, show that at least 775 of its clients from the 37 countries with which the U.S. has entered agreements have received asylum, withholding of removal, or CAT protection. Records from amicus Oasis Legal Services show that

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[8] Human Rights First, *"In the Middle of the Night, They Come and Get You": Systematic U.S. Government Pursuit of Refugees and Torture Survivors Granted Protection by U.S. Judges*, at 4, 13 (Oct. 9, 2026), https://perma.cc/J5KS-V2EV.

at least 746 of its clients have been granted protection from Mexico alone.

Each grant reflects a determination by a U.S. adjudicator that the applicant had a credible fear of harm which was objectively reasonable and that the harm was likely to occur.

To grant asylum, the adjudicator must find that a reasonable person in the applicant's circumstances would fear persecution in that country on account of a protected ground. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987); *Matter of Mogharrabi*, 19 I. & N. Dec. 439, 445 (BIA 1987). The adjudicator must find that the persecution would come from the government or from actors the government is unable or unwilling to control, *Matter of Acosta*, 19 I. & N. Dec. 211, 222 (BIA 1985), overruled in part on other grounds by *Mogharrabi*, 19 I. & N. Dec. 439, and that the applicant could not reasonably avoid it by relocating within the country. 8 C.F.R. § 1208.13(b)(2)(ii), (b)(3). Each of these findings turns on evidence of how the country actually treats LGBTQ people: its laws, the conduct of its police and officials, and the violence its government tolerates. Withholding of removal and CAT protection require an even greater showing: that persecution or torture is more likely than not. *INS v. Stevic*, 467 U.S. 407, 429–430 (1984); 8 C.F.R. § 1208.16(b)(2), (c)(2); 8 C.F.R. § 1208.18(a)(1), (7). In CAT cases, the adjudicator also considers country conditions, including gross, flagrant, or mass violations of human rights. 8 C.F.R. § 1208.16(c)(3)(iii)–(iv).

Each grant of protection is an individualized determination about a particular applicant. But each one necessarily rests on evidence of how the country treats people who share the applicant's protected

characteristic. Taken together, these grants show that U.S. adjudicators, applying the Government's own legal standards, have repeatedly found that LGBTQ people face serious danger in these countries. Those findings give concrete form to dangers the Government has separately documented in its reporting and addressed through its diplomacy. They are precisely the dangers against which § 1231(b)(3) and FARRA protect.

The Government is now deporting LGBTQ people to many of those same countries, including people who have already proven to a U.S. adjudicator that they would likely be persecuted or tortured in their home countries because they are LGBTQ. Having established that danger once, they now face removal to a third country where the U.S. has recognized that LGBTQ people face similar dangers, without a meaningful opportunity to show the risk they would face there.

These dangers arise in different legal environments. For instance, in Cameroon and Ghana, laws criminalizing same-sex intimate conduct compound the risk of violence and make protection harder to obtain. *See* Cameroon 2023 Report § 6; Ghana 2023 Report § 6. In Mexico, formal legal protections coexist with pervasive violence and impunity. *See* Mexico 2023 Report § 6. People deported to third countries have faced indefinite detention, enforced disappearance, torture, inhumane conditions, denial of medical care, and incommunicado detention. *See Third Country Deportation Watch*, *supra* note 2. Some have then been sent onward to the very countries from which U.S. adjudicators protected them. As the examples below show, a country's willingness to accept deported

people cannot substitute for an opportunity to establish the risks a particular person would face there.

1. Cameroon

The State Department has documented that Cameroon criminalizes same-sex relations, that its police arrest and assault LGBTQ people, and that authorities fail to protect them from anti-LGBTQ violence. *See, e.g.*, Cameroon 2023 Report at 43–44. U.S. immigration judges and asylum officers have relied on such evidence to grant asylum to LGBTQ Cameroonians.

For example, Paul,[9] a gay man living with HIV and an advocate for sexual minorities, was granted asylum based on his sexual orientation, HIV status, and activism. After discovering he was gay, his family beat him unconscious and threw him into the street, where he awoke bleeding and was hospitalized. Neighbors and landlords who suspected he was gay repeatedly evicted and assaulted him; one mob beat and spat on him until a bystander intervened. During an HIV-awareness effort, police accused him of being gay, demanded a bribe, detained him overnight, and beat him with nightsticks while threatening him with imprisonment and death. Doctors denied him medical

[9] The individual accounts presented in this brief are drawn from declarations, filings, and other documents in clients' asylum, refugee or habeas proceedings, or from published reports and media accounts cited herein. Unless otherwise indicated, pseudonyms are used to protect the individuals' identities. Where an account is drawn from a published source, this brief preserves any pseudonym used in that source. Individuals identified by their actual names are identified as they appear in the cited public sources. For accounts drawn from amici clients' cases, the relevant amici retain confidential files containing the clients' identifying information and supporting case documents.

care for the same reasons. Relatives threatened him with death, and with a knife, to force him to marry a woman. A close friend and fellow activist was tortured and murdered in his own home. He was found hanged, with his face, hands, and feet burned with an iron and his neck and feet broken. Paul fled Cameroon and came to the U.S. to save his own life.

David, a bisexual Cameroonian man and Immigration Equality client, was about 17 when his community learned of his relationships with men. Neighbors stoned him and threatened to kill him. The police, accusing him of "polluting" the neighborhood, summoned him three times for interrogation and torture. The first time, the police commissioner accused him of being gay. He was beaten on the soles of his feet and punched, leaving injuries that made it difficult for him to stand after sitting. The second time, the commissioner detained him, beat him on his feet and chest with the flat side of a machete, and cut his left arm. The third time, he was summoned by security forces because he had "refused to change his ways." Officers bound his hands, beat him all over his body with a baton, and lashed him until he lost consciousness. One officer put out a lit cigarette on his inner ankle. He was hospitalized for internal bleeding. David fled to the U.S. and was granted asylum.

Despite these dangers, the Government is now deporting LGBTQ refugees (*i.e.*, those granted withholding of removal because of their LGBTQ identity) to Cameroon.

Thelma, a bisexual woman from Ghana, was granted withholding of removal based on her sexual orientation, and DHS waived appeal. She was nevertheless deported to Cameroon. Immigration Equality,

Delivered to Danger: How the Trump Administration's Third-Country Agreements Threaten the Lives of LGBTQ Refugees and Asylum Seekers, at 8 (June 2026), https://perma.cc/HFP5-LU6R [hereinafter *Delivered to Danger*].[10] In detention in Cameroon, she and others have been denied medical care and adequate food, sometimes going a full day without eating. *See id.* She has no connection to Cameroon, does not speak French, and cannot move freely. She fears for her safety in Cameroon and fears refoulement to Ghana, where a U.S. court has already found that she is at risk of persecution. *Id.*

Abina, another Immigration Equality client from Ghana, likewise received withholding of removal based on her sexual orientation but also was removed to Cameroon, where she has no connection. *Id.* at 6. She was jailed in dangerous, overcrowded conditions without sanitary supplies or medical care, and was allowed limited movement only after a hunger strike. *Id.* at 7. Officials told her to leave the country, though she had nowhere else to go. *Id.* Her father and the International Organization for Migration eventually arranged for her departure to Nigeria, where she is also unsafe and her sexual orientation is criminalized. She relies entirely on her father, whose disapproval of her sexual orientation leaves her terrified that he could cut off support and leave her homeless. Her relocation to Nigeria reflects not safety but her desperation to

[10] Information concerning Thelma, Abina and Michael is drawn from *Delivered to Danger*. To the extent certain information is not included in that report, it is based on additional information gathered by amicus Immigration Equality while assisting these individuals in preparing applications for refugee resettlement since the report's publication.

escape the dangers she faced as an LGBTQ refugee in Cameroon.

Another LGBTQ refugee deported to Cameroon was reportedly told that Cameroon would not consider asylum claims based on sexual orientation. *Id.* at 9. At least seven LGBTQ people have been deported to Cameroon, including six granted withholding of removal; one gay woman, fearing for her life there, returned to Morocco—where her family had beaten and threatened to kill her—and now lives in hiding. *See Third Country Deportation Watch: Cameroon* (updated Nov. 10, 2026), https://perma.cc/U3Y8-9LYG; *see also* J.A. 147–148. These transfers form part of a broader pattern: Reuters documented 40 LGBTQ refugees granted U.S. protection, but who were deported to African countries that criminalize same-sex relations or are otherwise hostile; some are still detained and others were returned to their dangerous home countries. *See* Robbie Corey-Boulet, *et al.*, *Trump's Deportation Push Forces Dozens of LGBT Migrants onto Hostile Terrain*, Reuters (Oct. 5, 2026), https://perma.cc/6UW5-Y57W. The Government even deported a queer South American woman granted CAT protection to the Democratic Republic of the Congo—another continent, and a country with which she had no ties—where police abuse of LGBTQ people is rampant. DRC 2023 Report at 51. *See also* Robert Stewart, *The U.S. Has Begun Deporting Immigrants to the Democratic Republic of Congo. A Woman Detained in Louisiana Was One of the First Sent Away*, Verite News (Apr. 17, 2026), https://perma.cc/XB5D-8MA7.

2. Ghana

LGBTQ people experience persecution and torture in Ghana, which criminalizes same-sex intimate conduct. *See* Ghana 2023 Report § 6. In May 2026, Parliament passed a bill that would also criminalize LGBTQ identity and advocacy. Franklin Asare-Donkoh, *Bagbin Orders Reconsideration of Anti-LGBTQ+ Bill in Parliament*, GBC (June 2, 2026), https://perma.cc/FM36-WSS2; Kanarku, *supra*. U.S. adjudicators regularly grant protection to LGBTQ Ghanaians based on such conditions.

Samuel, an Immigration Equality client, is a gay man from Ghana. After learning of his boyfriend, Samuel's stepfather beat him with a belt and threatened to kill him. His school principal and two teachers held him down on a desk in front of his classmates and parents and gave him 100 lashes with a cane because he was perceived as gay. When he tried to report the abuse, a police officer threatened to arrest him. An anti-gay group beat him and threatened to kill him, and without a police report he could not obtain hospital treatment. His family sent him to a prayer camp, where he was chained, tortured, and starved to change his sexual orientation. Even after he moved to another region, he was severely beaten again for a relationship with a man. Samuel was granted asylum.

Abina fled Ghana after suffering persecution and torture because of her sexual orientation and membership in her tribal group. When she was a teenager, her family threatened to kill her after catching her with another girl; at 14, they arranged her marriage to a 91-year-old man, which she barely escaped. Her mother was severely beaten for refusing to turn her over to a mob that wanted to kill her. The community

blamed Abina's sexual orientation on her grandmother, whom they had labeled a witch and killed. Abina became suicidal and did not leave home for years; when she finally did, she was homeless, and the family friend who then sheltered her locked her in a room. No one in Ghana could protect her. A U.S. immigration court granted her withholding of removal on this basis.

Thelma likewise fled Ghana after suffering persecution and torture because of her sexual orientation. Her father, an imam, violently attacked her and threatened to kill her if his suspicions about her sexual orientation were confirmed. When she and her girlfriend were later discovered together, a group armed with sticks, whips, and belts denounced them as a curse on the community. Fearing she would be killed, Thelma fled. She was granted withholding of removal on this basis.

Despite these dangers, the Government intentionally sends LGBTQ refugees to Ghana, where they face both those dangers and the risk of chain refoulement to the persecution or torture the U.S. protected them from. A bisexual man from The Gambia, for example, won CAT protection but was deported to Ghana and then returned to The Gambia. Ted Hesson, *U.S. Judge Questions Deportation of West African Migrants to Ghana*, Reuters (Sept. 13, 2025), https://perma.cc/Y44H-LSM2.

Chain refoulement has also returned LGBTQ Ghanaians to Ghana after the U.S. granted them protection but sent them to third countries. Michael, an Immigration Equality client, is a gay man who fled Ghana after suffering persecution and torture because of his sexual orientation. *Delivered to Danger*,

supra, at 4–5. When he was a teenager, police arrested him, charged him with homosexuality, and detained him for five days, beating him severely, starving him, and subjecting him to electric shocks. A local gang that learned of his same-sex relationship beat him with nail-studded sticks, breaking his leg, and causing lasting head and shoulder injuries. They threatened to mutilate and kill him; the police refused to control them.

An immigration judge granted Michael withholding of removal. *Id.* at 5. DHS waived appeal but kept him detained. When he filed a habeas petition, a judge ordered DHS to explain his continued detention. *Id.* DHS deported him without responding—and without notice of a third-country removal, so he had no opportunity to raise a fear-based claim. *Id.* He was shackled, told while boarding a flight that he was being transferred to another U.S. detention center, but was flown instead to Equatorial Guinea,[11] where police and military officers confined him in the notorious Bamy Hotel for a month. *See id.* Then, terrified but

[11] The government is also deporting HIV positive refugees to Equatorial Guinea. Immigration Equality client Josephine, a Cameroonian citizen and HIV-positive survivor of torture, was abducted at gunpoint, beaten, and repeatedly raped before fleeing to the U.S. An immigration judge denied her asylum based solely on the Circumvention of Lawful Pathways ("CLP") rule, 88 Fed. Reg. 31,314 (May 16, 2023), but granted withholding of removal. The government then deported her to Equatorial Guinea. After CLP was vacated, *East Bay Sanctuary Covenant v. Trump*, No. 4:18-cv-06810-JST, 2026 WL 1256873 (N.D. Cal. May 7, 2026), her case was reopened and she was granted asylum. Yet the government has not returned her. She remains in Equatorial Guinea, sick with typhoid and bleeding from her ear, without her medication, separated from her U.S. citizen mother, and at risk of refoulement to Cameroon.

having seen guards harm another refugee who resisted, he was forced onto a flight to Ghana. A family member helped him cross into Togo, which is also unsafe for him, but where he had not been tortured. *Id.*; *see also* Isobel Yeung & Mick Krever, *The US Deported LGBTQ Migrants to Countries Where Homosexuality Makes Them a Target*, CNN (Sept. 26, 2026), https://perma.cc/FY9W-52CF. Togo criminalizes his sexual orientation, and he has seen LGBTQ people severely beaten near his home. Fearing the same fate, he rarely leaves home. He suffers ongoing effects of the torture in Ghana, compounded by untreated medical issues and fear of further harm.

3. Mexico

The Government has acknowledged that Mexico's legal protections have not prevented high levels of violence against LGBTQ people or impunity for those who commit it. Mexico 2023 Report at 44. Its grants of asylum to LGBTQ Mexicans reflect the same understanding, as these representative examples show.

Alexandra, an Immigration Equality client, is a transgender woman from Mexico. She fled Mexico after surviving persecution and torture. In one incident, gang members saw her wearing women's clothing at a fundraiser she had organized for children with leukemia. They kidnapped her, held her captive for months, and raped her repeatedly. They hung her from the ceiling, sliced her with a knife, and cut her earlobes with scissors as punishment for wearing earrings. After she escaped, she needed multiple rectal surgeries in the U.S. to repair the damage from the rapes. She was granted asylum by a U.S. immigration court.

Maria, another transgender woman, fled Mexico to escape persecution and torture because of her gender identity. Abused from childhood for being feminine, she was later abducted at gunpoint from a nightclub, forced to strip, and left bound and blindfolded in the hills. In a later attack, armed men abducted her, called her trash, told her she was not a real woman, and beat her with a wooden plank for roughly an hour, leaving her covered in blood and incapacitated for months. When she sought police help after a separate assault, officers blamed her and did not pursue her attacker. She was granted asylum.

Isabel is a lesbian woman from Mexico. While she was driving home with her partner and their children, armed cartel members abducted her at gunpoint, bound her to a tree in a remote area, beat her, burned her with cigarettes, and spat on her while telling her that lesbians should not exist and that they would teach her to be a woman. Held captive for more than a year, she was repeatedly tortured—beaten, raped, shocked with tasers, forced to take drugs, stripped and kept naked, and branded on her back with her captors' initials to mark her as their property. When her family reported the kidnapping, police complicit with the cartel warned her captors and refused to advance the case. She fled and was granted asylum.

These examples reflect the well-documented pattern of extreme violence against LGBTQ people in Mexico and official failure to protect them—a pattern the Government itself recognizes each time it grants protection. *See* Mexico 2023 Report at 44.

Even so, Mexico has received roughly 80 percent of the people the Government has deported to third countries, including LGBTQ people whom U.S.

immigration judges protected from persecution elsewhere. *See Third Country Deportation Watch*, *supra* note 2 (approximately 19,000 of roughly 22,000 third-country deportees were sent to Mexico as of early August 2026). Named plaintiff O.C.G., a gay man from Guatemala who was kidnapped and raped in Mexico on his way to the U.S., was granted withholding of removal to Guatemala on February 19, 2025. J.A. 181–182, 293–294. He expressly stated his fear of Mexico, and the judge told him he could not be removed there. J.A. 294. Two days later, DHS deported him to Mexico without notice. Mexican authorities then sent him to Guatemala, where he went into hiding. J.A. 290–291, 294–295. Similarly, a transgender woman from Honduras who had been granted withholding of removal based on her gender identity was deported to Mexico and then returned to Honduras. *Delivered to Danger*, *supra*, at 9.

The same pattern extends beyond these countries. Abdou Latifou, a gay man from Togo, fled after a mob assaulted him and threatened to kill him for kissing a man. An immigration judge barred his removal to Togo. The Government instead deported him to Sierra Leone, where gay men face up to life imprisonment; after two weeks under police surveillance, he was flown back to Togo. Corey-Boulet *et al.*, *supra*. When third countries send deported refugees onward to another dangerous destination, the result is the removal that § 1231(b)(3) and FARRA forbid, accomplished in two steps instead of one.

II. THE POLICY DENIES LGBTQ REFUGEES THE NOTICE AND HEARING THE LAW REQUIRES.

A. LGBTQ Immigrants Must Receive Notice And A Meaningful Opportunity To Present A Fear-Based Claim Before Removal.

This brief does not ask the Court to declare any country categorically off-limits. The question is narrower and procedural: whether the Government may remove a person to a country not designated by an immigration judge in removal proceedings without first telling the person where they are being sent and giving them a meaningful opportunity to show whether they are likely to be persecuted or tortured there. The withholding statute, FARRA/CAT, and their implementing regulations forbid removal to any country where a person's life or freedom would be threatened on account of a protected ground or where the person would likely be tortured. 8 U.S.C. § 1231(b)(3)(A); FARRA § 2242(a); 8 C.F.R. §§ 208.16, 1208.16. These protections contemplate an individualized determination before removal, and that determination is meaningful only if the person learns the destination in time to prepare and present a claim before an immigration judge regarding the likelihood of persecution or torture in that country. The Government itself has told this Court that the law requires as much. Tr. of Oral Arg. at 33, *Riley v. Bondi*, No. 23-1270, 2025 WL 2258824 (U.S. Mar. 24, 2025); Tr. of Oral Arg. at 20, *Johnson v. Guzman Chavez*, No. 19-897, 2021 WL 134137 (U.S. Jan. 11, 2021).

B. The Experience Of LGBTQ Refugees Shows How The Third-Country Removal Process Fails To Meet That Standard.

The Policy gives as little as 24 hours' notice (six in "exigent circumstances") and none where the receiving country has given diplomatic assurances. J.A. 307, 311–312. Officers will not ask about fear; the person must raise it unprompted and then prove at a screening, usually within 24 hours, that persecution or torture is more likely than not. J.A. 307–308, 311–312. If they fail to do so, "the alien will be removed," with no review. *Id*.

LGBTQ immigrants are often granted withholding of removal because they are likely to be persecuted on account of their sexual orientation and/or gender identity in the designated country of removal. That grant rests on the immigration judge's factual findings that the person has established their identity, including as a member of the LGBTQ community, and is likely to suffer future persecution in the designated country on account of that identity. The judge also weighs witness testimony, expert reports, other country conditions evidence, and legal argument. Due process requires that an LGBTQ person already granted withholding on that basis receive meaningful notice and opportunity to present a fear-based claim before removal to a third country. When the immigrant has no ties, has never visited, and knows very little about that third country, this must include a reasonable opportunity to consult with counsel, gather country conditions evidence, seek a country conditions expert if needed, and present evidence and arguments to an impartial adjudicator, all of which is lacking under the Policy.

To raise a claim at all, an LGBTQ refugee facing third-country removal must disclose their sexual orientation or gender identity to an enforcement officer, often while still in detention and with no time to consult counsel. They frequently need country-specific evidence and expert testimony, but assembling that evidence within hours, from detention, is impossible. *See Delivered to Danger*, *supra*, at 12.

The Government argues that the countries designated for third-country removals "are ones where an alien is particularly unlikely to have a viable claim of torture or persecution: both require extreme abuse, with the government's involvement, going well beyond ordinary violence or crime, and aliens are unlikely to suffer that type of mistreatment in foreign countries where they lack prior connections." Pet'rs' Br. 6–7, 42, 44. This misstates both law and fact. *First*, on the law: a viable claim under 8 U.S.C. § 1231(b)(3) involves a likelihood of persecution and a failure of state protection; persecution is a defined legal term which encompasses more than just "extreme abuse" and a failure of state protection does not necessarily require "the government's involvement." *Second*, as to the facts: the Government is well-aware of country conditions for LGBTQ people in countries selected for third-country removals, as evidenced by State Department human rights reports and other materials discussed above. Violence rising to the level of persecution and torture is inflicted on members of the LGBTQ population in those countries, and "lack of prior connections" does not insulate anyone from those harms, as they are often inflicted by government officials or members of the community who target people based on pervasive antipathy to LGBTQ people and on perceived

sexual orientation or gender identity, and not because of prior connections.

C. In Practice, The Policy Has Not Provided Even The Minimal Process It Promises.

Abina expressed fear and was promised a fear interview that never happened. *Delivered to Danger*, *supra*, at 6. Thelma was told she would be sent to Cameroon whether or not she signed the consent. *Id.* at 8. A gay Jamaican man with withholding was deported to St. Kitts before his counsel could file anything to stop the removal. *Id.* at 9. Michael was never told his destination, then was subjected to chain refoulement when the U.S. sent him to a country which then returned him to Ghana, his country of persecution. *Id.* at 5. O.C.G. was removed directly to the country the immigration judge had decided he could not be sent to. J.A. 290–291, 294–295.

Thelma was held in immigration detention after she was granted withholding of removal to Ghana, her country of citizenship. *Id.* at 8. Detention officers told her to sign paperwork agreeing to her deportation to Cameroon, a country to which she had no connection. *Id*. When she asked to talk with her lawyer, the officer cursed at her and threw the papers in her face, saying they would send her back whether or not she signed. *Id*. She was denied access to her lawyer. *Id*. In the early morning, she was shackled, with chains on her waist, ankles, and wrists, then bussed to another detention center in Louisiana, after which she was forced onto an airplane bound for Cameroon. *Id*. She heard officers say on the flight that she and the others would be left in Senegal and Cameroon, which had accepted them for return to their home countries. *Id*.

Thelma was terrified to have been sent to "a country that doesn't even accept LGBTQ [people]" and fears that she could be killed there. *Id*. She also fears that the Cameroonian government will send her back to persecution in Ghana. Her case illustrates the dire consequences of the Government's failure to provide adequate notice and opportunity to present a fear-based claim. A hostile officer's threat and demand, while she was detained, that she sign papers agreeing to deportation, followed shortly by a deportation flight, was not meaningful notice. Thelma knew that Cameroon is "a country that doesn't even accept LGBTQ [people]," but she did not have a meaningful opportunity to seek protection from removal to Cameroon. *Id*. Uninformed of the process for making a fear-based claim, denied access to counsel, and intimidated, shackled, and transferred, she could not present a claim that she is likely to be persecuted or tortured there.

Abina suffered many of the same injustices. She was detained after an immigration judge granted her withholding of removal to Ghana, her country of citizenship, and then enforcement officers told her that she would be sent to Cameroon. *Id.* at 6. When she requested a fear interview and refused to sign deportation papers to Cameroon, a country where she feared persecution, the ICE officer told her: "Get the fuck out of my face." *Id*. Hours later, Abina and the other refugees selected for this flight were placed on an airplane, with shackles around their wrists, ankles, and waists. After a brief stopover in Louisiana, the plane traveled to Senegal, and then to Cameroon. *Id*. Abina and the others – traumatized refugees who had won their withholding of removal cases in a U.S. court – remained shackled throughout the flights. *Id*.

Abina was not given adequate notice and was denied an opportunity to make a fear-based claim about Cameroon.

The Government intentionally rushes this process to send Thelma, Abina and others to third countries where their lives and safety are in danger. In doing so the Government violates the statutes, regulations, and due process. The protections Congress enacted cannot serve their purpose if the Government can send people to newly selected countries without giving them real chances to show that the countries are dangerous for them.

III. THE RISKS FACING LGBTQ REFUGEES SHOW WHY BLANKET DIPLOMATIC ASSURANCES CANNOT SUBSTITUTE FOR INDIVIDUALIZED DETERMINATIONS.

No assurance about the safety of LGBTQ refugees is credible from a government that criminalizes LGBTQ people, persecutes them, or is unable or unwilling to protect them from persecution by others. The Policy permits removal without notice or process to any country that has given blanket diplomatic assurances, even though the governing statute and regulations contemplate only individualized assurances. J.A. 4–5, 32 n.14. The Government has not disclosed which countries have given such assurances, J.A. 32 n.15, but those countries whose names have been made public show why blanket assurances are especially unreliable for LGBTQ people. *See* Investigations Lab, *The Reading Room: Third Country Removal Agreements 2025–2026*, U.C. Berkeley Sch. of L., Hum. Rts. Ctr., https://perma.cc/SJX6-VK7M (last visited Nov. 19, 2026) [hereinafter *Reading Room*] (collecting 35 documents covering 29 countries and

noting that 6 additional countries' agreements remain unpublished). Many of these assurances promise treatment consistent with both the receiving state's international obligations and its own "constitution, laws, [and] regulations," including laws that make LGBTQ people criminals. A government cannot credibly promise not to persecute the people that its own laws target.

Cameroon illustrates the point. It assured the U.S. that it would treat transferees in accordance with the Refugee Convention, its Protocol, and the Convention against Torture, and with "its national constitution, laws, regulations, and immigration and visa policies," and that transferees "would not be subjected to persecution on account of . . . membership in a particular social group." Exchange of Notes Regarding the Transfer of Third-Country Nationals, U.S.–Cameroon, Note No. 492/25, accepted by Note No. 00615/DIPL, at 1–2, in *Reading Room*, *supra* [hereinafter *Cameroon Notes*].

But Cameroon punishes consensual same-sex activity with up to five years in prison and enforces that law: police often have detained LGBTQ people based solely on their perceived sexual orientation or gender identity, including crime victims who sought police help, and in May 2023 an appeals court affirmed five-year sentences for two transgender women. Cameroon 2023 Report at 43–44. An assurance that promises both compliance with those laws and freedom from persecution cannot mean what it says for LGBTQ refugees such as Abina and the other class members sent to Cameroon.

Cameroon is not an outlier. Other countries, including Burundi, Ghana, Guyana, and Sierra Leone,

all criminalize same-sex intimacy, and each made the same promise to follow its own laws. *See Reading Room*, *supra*, at Burundi (2025–2026) (Exchange of Notes Between the United States and Burundi); Ghana: *Note CC/7* (Aug. 1, 2025); Guyana: *Note No. 1649/2025* (Nov. 25, 2025); Sierra Leone: *Note Verbale No. 15277/10/Vol. 79* (Nov. 20, 2025). Where those laws are enforced, they are instruments of persecution: Burundi arrested 24 people at an HIV organization's training on homosexuality charges, and one later acquitted died in detention; Ghanaian police used theirs to detain, extort, and arbitrarily arrest LGBTQ people. Burundi 2023 Report § 6; Ghana 2023 Report § 6. Where they are not enforced, the state leaves LGBTQ people vulnerable to private violence and blackmail. Guyana 2023 Report § 6; Sierra Leone 2023 Report § 6.

Nor do the assurances or the Policy guard against chain refoulement. J.A. 5 n.2. Cameroon's assurances contemplate U.S. support for "assisted voluntary return programs" out of Cameroon, Cameroon Notes, *supra*, and Ghana, despite its promise, has already removed a Gambian man onward at ICE's direction. Human Rights First, *supra* note 8, at 22, 35.

Moreover, violence against LGBTQ people in the countries selected for third-country removals is often committed by families, mobs, and others, as the case examples herein show. Yet none of the publicly available agreements include assurances that even mention non-state actors, and the First Circuit rightly questioned how any receiving country could credibly give blanket assurances unless it intends to protect transferees affirmatively from rogue agents and non-

state actors, who can be both persecutors and torturers under governing law. J.A. 32 n.15.

These assurances thus fail LGBTQ refugees three times over: they pledge fidelity to the very laws that make these refugees criminals, ignore the private violence those laws invite, and do nothing to stop onward removal to the countries from which the refugees fled. A blanket promise cannot answer the question the law requires—whether this person, given who they are, will be safe in this country. Only an individualized determination can.

CONCLUSION

The Government's practice of deporting LGBTQ people, without reasonable notice or a fair chance to object, to countries whose laws punish them for who they are or whose known conditions are pervasively dangerous to them, defies federal law. The First Circuit correctly held that § 1231(b)(3) and FARRA/CAT require effective notice and a meaningful opportunity to present a fear-based claim before a third-country removal, and its judgment in that respect should be affirmed.

Respectfully submitted.

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APPENDIX A

Amici Curiae

Per Supreme Court 2026 Amicus Guide Rule 2(c), Amici Curiae are Immigration Equality, Lambda Legal Defense and Education Fund, Inc., Council for Global Equality, Oasis Legal Services, Organization for Refuge, Asylum, and Migration (ORAM), Outright International, and Rainbow Railroad.

APPENDIX B

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