No. 26-426

IN THE

Supreme Court of the United States

U.S. 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 OF AMICI CURIAE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., MUSLIM ADVOCATES, THE BLACK ALLIANCE FOR JUST IMMIGRATION, AND THE HAITIAN BRIDGE ALLIANCE IN SUPPORT OF RESPONDENTS

JANAI S. NELSON
President & Director-Counsel
ALON GOLDFINGER
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector St. 5th Floor
New York, NY 10006

MELISSA KEANEY
DAAD SHARFI
MUSLIM ADVOCATES
1763 Columbia Rd. N.W.
14324
Washington, DC 20009

CHRISTOPHER KEMMITT
KACEY MORDECAI
Counsel of Record
AMIA TRIGG
AYOMIDE ODUNSI
CHLOE MILLER
HAYLEY HAHN
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
700 14th St. N.W.
Ste. 600
Washington, DC 20005
(202) 682-1300
kmordecai@naacpldf.org

COUNSEL FOR AMICI CURIAE

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF AMICI CURIAE 1

INTRODUCTION AND SUMMARY OF ARGUMENT 4

ARGUMENT 9

I. DHS's Policy on Third-Country Removals Fails to Comply with Due Process. 9

A. Noncitizens Are Entitled to Due Process Protections Regardless of Their Immigration Status. 10

B. Diplomatic Assurances Provide No Substitute for Due Process Protections. 11

i. Executive Discretion Does Not Absolve DHS of its Due Process Obligations. 12

ii. Blanket Determinations Deprive Individuals of Constitutionally-Required Notice and Opportunity to Be Heard. 14

C. Even Where the Deportee Is Informed of the Third Country, the Policy Fails to Comply with Due Process. 18

II. Disregarding Due Process Requirements Will Facilitate the Policy's Discriminatory Enforcement. 20

A. Black Immigrants and Other Immigrants of Color Bear the Brunt of this Administration's Policies..... 20

B. Third-Country Removals Lay Bare Similar Disparities and the Vulnerability of Third-Country Deportees..... 28

CONCLUSION..... 33

TABLE OF AUTHORITIES

Page(s)

Cases

A.A.R.P. v. Trump,
605 U.S. 91 (2025).....5, 7, 9, 10, 18, 19, 20

Adame v. Holder,
762 F.3d 667 (7th Cir. 2014) 12

Aden v. Nielsen,
409 F. Supp. 3d 998 (W.D. Wash. 2019) 16

Afr. Cmtys. Together v. Noem,
No. 26-cv-11201-ADB, 2026 WL 710666 (D. Mass. Mar. 13, 2026).....3

Allen v. Milligan,
599 U.S. 1 (2023).....1

Andriasian v. Immigr. Naturalization. Serv.,
180 F.3d 1033 (9th Cir. 1999).....16

Anibowei v. Blanche,
petition for cert. pending, No. 26-208 (filed Aug. 14, 2026).....3

Baker v. Carr,
369 U.S. 186 (1962).....13

Bolling v. Sharpe,
347 U.S. 497 (1954).....1, 21

Bridges v. Wixon,
326 U.S. 135 (1945).....11

Brown v. Bd. of Educ. of Topeka,
347 U.S. 483 (1954).....1

Buck v. Davis,
580 U.S. 100 (2017).....1

Cath. Legal Immigr. Network, Inc. v. Rubio,
840 F. Supp. 3d 209 (S.D.N.Y. 2026) 25, 28

D.V.D. v. U.S. Dep't of Homeland Sec.,
192 F.4th 74 (1st Cir. 2026) 10

D.V.D. v. U.S. Dep't of Homeland Sec.,
821 F. Supp. 3d 102 (D. Mass. 2026) 10, 14

Daniels v. Williams,
474 U.S. 327 (1986).....20

Dep't of Homeland Sec. v. D.V.D.,
No. 26-426, 26A406, 2026 WL 2917860 (U.S. Sep. 29, 2026).....10

Dep't of Homeland Sec. v. Regents of the Univ. of Cal.,
591 U.S. 1 (2020).....2

Goldberg v. Kelly,
397 U.S. 254 (1970).....7, 11, 18

Hamdi v. Rumsfeld,
542 U.S. 507 (2004).....13

J.G.G. v. Trump,
604 U.S. 670 (2025).....18, 19

J.G.G. v. Trump,
772 F. Supp. 3d 18 (D.D.C. 2025).....19

Jones v. Flowers,
547 U.S. 220 (2006).....15

Khouzam v. Att'y Gen. of U.S.,
549 F.3d 235 (3d Cir. 2008) 12, 15

Kiyemba v. Obama,
561 F.3d 509 (D.C. Cir. 2009).....14

Landon v. Plasencia,
459 U.S. 21 (1982).....11, 13

Lewis v. City of Chi.,
560 U.S. 205 (2010).....1

Mathews v. Eldridge,
424 U.S. 319 (1976).....7, 11

Mullin v. Al Otro Lado,
609 U.S. 258, 277 (2026).....6

Mullin v. Doe,
609 U.S. 324 (2026).....1, 2, 3, 6

Munaf v. Geren,
553 U.S. 674 (2008).....14

Nasrallah v. Barr,
590 U.S. 573 (2020).....5

Reno v. Flores,
507 U.S. 292 (1993).....10

Schuette v. Coal. to Def. Affirmative Action,
572 U.S. 291 (2014).....1

Shaughnessy v. United States ex rel. Mezei,
345 U.S. 206 (1953).....5, 10

Swarthout v. Cooke,
562 U.S. 216 (2011).....9

Trump v. Barbara,
609 U.S. 719 (2026).....1, 2, 3, 21

Trump v. Hawaii,
585 U.S. 667 (2018).....2

Wilkinson v. Austin,
545 U.S. 209 (2005).....18

Youngberg v. Romeo,
457 U.S. 307 (1982).....11

Zadvydas v. Davis,
533 U.S. 678, 693 (2001) 5, 6, 9, 11

Statutes and Regulations

8 C.F.R. § 1208.16(b) 12, 16

8 C.F.R. § 1208.16(c)(2) 12, 16

8 C.F.R. § 1208.16(c)(3) 12, 16

8 U.S.C. § 1231(b)(3)(C) 12, 16

90 Fed. Reg. 13033 (Mar. 20, 2025) 18

90 Fed. Reg. 13034 (Mar. 20, 2025) 18

Other Authorities

Adam Mahoney, *Deportee Attempts Suicide as U.S.–Ghana Transfer Deal Unravels*, In These Times (Nov. 18, 2025), https://inthesetimes.com/article/west-african-attempts-suicide-deportation-immigration-trump-ghana-migrants [https://perma.cc/7TDU-QTGC] .32

Alyssa Chen, *2,300 immigrants arrested in Operation Metro Surge were deported or left country*, Minn. Reformer (Sep. 15, 2026), https://minnesotareformer.com/2026/09/15/2300-immigrants-arrested-in-operation-metro-surge-were-deported-or-left-country/ [https://perma.cc/C5CE-SUAP] 27

Annaelle Lafontant, *Twice Marked: Anti-Blackness in U.S. Immigration Law*, Geo. J. L. & Mod. Critical Race Persps. (Jan. 30, 2026), https://www.law.georgetown.edu/mcrp-journal/blog/twice-marked-anti-blackness-in-u-s-immigration-law/ [https://perma.cc/XF3T-8HF7] .22

Black All. for Just. in Immigr. et. al., *Shadow Report to the Committee on the Elimination of Racial*

Discrimination (CERD),(https://cdn.sanity.io/files/1e7vpawz/production/b6528edce9e45ca79fe8980c0d0d9e290fb0050f.pdf [https://perma.cc/6A75-8VBY]) 23

Black All. for Just. in Immigr., *CERD & BAJI One Pager* (https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/forums/forum-african-descent/sessions/session1/statements/2023-01-05/Black-Alliance-for-Just-Immigration.pdf [https://perma.cc/6HBA-8748]).....21, 22

Christopher Magan, *Sharp rise in deportation orders for Somalis in Minnesota*, Star Trib. (Oct. 2, 2026), https://www.startribune.com/sharp-rise-in-deportation-orders-for-somalis-in-minnesota/601890878.....28

Comm. on the Elimination of Racial Discrimination, *Concluding Observations of the Comm.: United States* ¶¶ 51, U.N. Doc. CERD/C/USA/CO/10-12 (Sep. 21, 2022).....23

Damita Menezes & Ali Bradley, *Trump on Springfield Haitian Migrants: 'They have to be removed'*, NewsNation (Oct. 2, 2024), https://www.newsnationnow.com/politics/2024-election/trump-springfield-haitian-migrants-removed/.....26

David J. Bier, *Legal Immigration from Majority-Muslim Nations Was Cut 96% Since 2024*, Cato Inst. (Sep. 28. 2026), https://www.cato.org/blog/legal-immigration-majority-muslim-nations-was-cut-96-2024 [https://perma.cc/3BJ8-DLXV] 25

David Nakamura & Adam Taylor, *How Trump Turned a Refugee Bureau into a $410 Million Deportation Operation*, Wash. Post (Sep. 21, 2026), https://www.washingtonpost.com/politics/interactive/2026/09/21/how-trump-turned-refugee-bureau-into-410-million-deportation-operation/ 17

Donald J. Trump (@realDonaldTrump), Truth Soc. (Jul. 6, 2026, at 10:5 53 AM), https://truthsocial.com/@realDonaldTrump/posts/116873600928684662 28

Edward Wong et al., *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times (June 26, 2025), https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html 29

Emily Ryo et al., *Racial Disparities in Crime-Based Removal Proceedings*, 109 Minn. L. Rev. 1997, 2006 (2025).....22

Hamed Aleaziz et al., *Immigrants Are Being Systematically Returned Home Despite Court Orders*, N.Y. Times (Nov. 9, 2026), https://www.nytimes.com/2026/11/09/world/africa/trump-deportations-court-orders-refoulement.html 31, 32, 33

Hum. Rts. Watch, "To Scare People": US Expulsions of Third-Country Nations to Countries in Africa (https://www.hrw.org/report/2026/10/08/to-scare-people/us-expulsions-of-third-country-nationals-to-countries-in-africa) 4, 5, 16, 30, 31

John Drury, *ICE Detention in Ohio After the Trump Administration Ended TPS for Haiti*, Ohio Immigrant All., AT 5 (Sep. 17 2026), https://static1.squarespace.com/static/68460a37f90

3140728c2ab29/t/6aac299a98f9422054ed704a/1789667741272/ICE+Detention+Trends+-+August+2026.pdf [https://perma.cc/54D4-5U7H] at 5 27

Juhakenson Blaise, *US deports 530 to Haiti in month since TPS ended*, The Haitian Times (Sep. 25, 2026), https://haitiantimes.com/2026/09/25/530-haitians-deported-in-six-deportation-flight/ [https://perma.cc/2CGD-ADPQ] 27

Karla McKanders, *Immigration and Racial Justice: Enforcing the Borders of Blackness*, 37 Ga. St. U. L. Rev. 1139, 1160-1162 (2021) 21

Letter from Representative Yvette D. Clarke, Chair, Cong. Black Caucus, to President Donald J. Trump, (Mar. 5, 2026), 3.5.26_cbc_letter_to_the_white_house.pdf [https://perma.cc/X4J4-3V9Q] 21, 25

Maggie Astor, *Trump Says He Would Try Again to Revoke Haitian Immigrants' Protections*, N.Y. Times (Oct. 3, 2024), https://www.nytimes.com/2024/10/03/us/politics/trump-haitian-immigrants-legal-status.html 26

Maggie Haberman & Michael Gold, *Trump, at Fund-Raiser, Says He Wants Immigrants From 'Nice' Countries,* N.Y. Times (Apr. 7. 2024), https://www.nytimes.com/2024/04/07/us/politics/trump-immigrants-nice-countries.html?eafs_enabled=false 26

Mariel Ferragamo, *A Guide to Trump's Travel Ban and Visa Pause, by Country,* Council on Foreign Rels. (Sep. 1. 2026), https://www.cfr.org/articles/guide-countries-

trumps-travel-ban-list [https://perma.cc/6HP8-DB7E].....24

Megha Rajagopalan et al., *Immigrants Are Being Systematically Returned Home Despite Court Orders*, N.Y. Times (Nov. 10, 2026), https://www.nytimes.com/2026/11/09/world/africa/trump-deportations-court-orders-refoulement. .5, 17

Miranda Jeyaretnam & Chad de Guzman, *In Thanksgiving Message, Trump Rants Against Immigration, Announces 'Permanent Pause' From 'Third World Countries'*, Time (Nov. 28, 2025), https://time.com/7337279/trump-thanksgiving-message-immigration-pause-third-world-travel-ban-afghanistan/ [https://perma.cc/PR7Q-QYB3] 29

Nicholas Kristof, *Trump 'Disappeared' Them in 2025. I Found Them, Locked Up and Famished*, N.Y. Times (Nov. 18, 2026), https://www.nytimes.com/2026/11/18/opinion/trump-deportation-south-sudan.html?unlocked_article_code=1.RlE.RAi5.X8qBHxiv-ReM&smid=nytcore-ios-share 4, 17

Nicholas Roll et al., *How US Is Using Cash And Threats To Dump Migrants in Africa*, Barron's (July 6, 2026), https://www.barrons.com/news/how-us-is-using-cash-and-threats-to-dump-migrants-in-africa-dcb3b313 [https://perma.cc/A8DE-LG5W] .30

Peniel Ibe, *Immigration is a Black Issue*, Am. Friends Serv. Comm. (Feb. 16, 2021), https://afsc.org/news/immigration-black-issue [https://perma.cc/CD4D-QGBA] 22, 23

Rebecca Santana & Mike Balsamo, *Homeland Security plans 2,000 officers in Minnesota for its 'largest immigration operation ever,'* Associated

Press (Jan. 6, 2026), https://apnews.com/article/immigration-enforcement-ice-noem-minnesota-somalidb661df6de1131a034da2bda4bb3d817 27

Refugees Int'l and Hum. Rts. First, *Third Country Deportation Watch*, (https://www.thirdcountrydeportationwatch.org/ [https://perma.cc/M9WS-KEX8]).....8, 32

Timantha Goff et. al., *Uncovering the Truth: Violence and Abuse Against Black Migrants in Immigration Detention*, Freedom for Immigrants et. al. (Oct. 2022), https://www.freedomforimmigrants.org/report-uncovering-the-truth [https://perma.cc/KX2Q-H928].....23

Tobi Raji et. al. *All the countries affected by Trump's expanded travel ban,* Wash. Post (Dec. 17, 2025), https://www.washingtonpost.com/world/2025/12/16/trump-travel-ban-countries-list/ 24

U.S. Comm. for Refugees and Immigrants, *Third Country Deportations Tracker* (https://refugees.org/tcdtracker/ [https://perma.cc/LM4H-4ST2]) 8, 28, 29

U.S. Dep't of State, *Immigrant Visa Processing Updates for Nationalities at High Risk of U.S. Public Benefits Reliance* (https://travel.state.gov/en/newsroom/visas/2026/immigrant-visa-processing-updates-for-nationalities-at-high-risk-of-public-benefits-usage.html) 25

INTEREST OF AMICI CURIAE[1]

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation's first and foremost civil rights organization. Since its founding in 1940, LDF has fought to secure equal justice under the law for all people in America. Through litigation, advocacy, and public education, LDF strives to enforce the United States Constitution's promise of equal protection and due process for all and eliminate barriers that prevent Black people in America from realizing their basic civil and human rights. LDF has participated as counsel of record in numerous significant cases before this Court, including last term's *Trump v. Barbara*, 609 U.S. 719 (2026), which upheld the constitutional guarantee to birthright citizenship. LDF has also led litigation successfully challenging various forms of racial discrimination, see *also*, *Allen v. Milligan*, 599 U.S. 1 (2023); *Buck v. Davis*, 580 U.S. 100 (2017); *Schuette v. Coal. to Def. Affirmative Action*, 572 U.S. 291 (2014); *Lewis v. City of Chi.*, 560 U.S. 205 (2010); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

Consistent with its opposition to all forms of discrimination, LDF has also participated as amicus curiae in cases in this Court defending the rights and dignity of noncitizens. *See, e.g.*, *Mullin v. Doe*, 609 U.S. 324 (2026); *Dep't of Homeland Sec. v. Regents of*

---

[1] Pursuant to Supreme Court Rule 37.6, counsel for amici curiae state that no counsel for a party authored this brief in whole or in part and that no person other than amici curiae, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

the Univ. of Cal., 591 U.S. 1 (2020); *Trump v. Hawaii*, 585 U.S. 667 (2018).

Muslim Advocates is a national civil rights non-profit organization that uses litigation, policy engagement, and public outreach strategies to promote justice and equity while protecting the diverse spectrum of Muslim communities from anti-Muslim discrimination in all of its forms. Muslim Advocates has represented parties in litigation before the United States Supreme Court on important cases involving immigration, civil rights, and constitutional law. *See, e.g*, *Mullin v. Doe*, 609 U.S. 324 (2026) (action challenging termination of Temporary Protected Status (TPS) for Syria).

The Black Alliance for Just Immigration (BAJI) is a national racial justice and migrant rights non-profit organization that fights for the rights of Black migrants and African Americans through legal advocacy, research, policy, organizing, and narrative-building to improve the conditions of Black communities. BAJI leverages direct legal representation, impact litigation, and legal education to combat the criminalization and deportation of Black immigrants and fight against anti-Black immigration systems. BAJI has participated as amicus curiae in litigation before the United States Supreme Court defending the rights of immigrants who experience racial bias during immigration proceedings in the United States. *See, e.g.*, *Trump v. Barbara*, 609 U.S. 719 (2026).

The Haitian Bridge Alliance (HBA) is a grassroots and community-based nonprofit organization that provides migrants and immigrants with humanitarian, legal, and social services, with a

particular focus on Black immigrants, the Haitian community, women and girls, LGBTQIA+ individuals, and survivors of torture and other human rights abuses.

Since 2020, HBA has operated a legal department with a small staff of attorneys who provide direct representation to Haitian and other Black people in United States immigration matters, including people who have been granted withholding of removal but face potential third-country removals by the Government. The challenged agency actions directly affect the stability and safety of the communities HBA serves as well as HBA's ability to provide its legal services.

HBA has participated as amicus curiae in several matters before this Court concerning noncitizens rights and constitutional issues affecting legal services to noncitizens. *See, e.g.*, *Mullin v. Doe*, 609 U.S. 324 (2026); *Trump v. Barbara*, 609 U.S. 719 (2026); *Anibowei v. Blanche*, petition for cert. pending, No. 26-208 (filed Aug. 14, 2026).

Together, Amici have a strong interest in ensuring that the constitutional rights of all people in the United States are respected in our legal system, including in our immigration system, and regularly litigate to defend these rights for Black people, people of color, and those who experience marginalization in the United States. *See, e.g.*, *Afr. Cmtys. Together v. Noem*, No. 26-cv-11201-ADB, 2026 WL 710666 (D. Mass. Mar. 13, 2026) (LDF, Muslim Advocates, and HBA representing TPS recipients and applicants from Somalia).

INTRODUCTION AND SUMMARY OF ARGUMENT

Since 2025, the Department of Homeland Security ("DHS") has deported tens of thousands of noncitizens to "third countries"—countries other than the deportees' countries of origin—to discharge DHS's *non-refoulement* obligation, which prohibits it from expelling an individual to a country where they may face persecution or torture. DHS does so under a policy that relies on blanket diplomatic assurances devoid of any process or, in the case where diplomatic assurances are not available, a severely truncated process that does not provide a meaningful opportunity to assert a fear of persecution or torture. Unsurprisingly, third-country deportees report being subject to arbitrary detention, ill-treatment, and other dangerous conditions in these third countries.[2] In many cases, the third country sends deportees back to their country of origin, or the deportees, facing untenable conditions and having no other choice, return there themselves. As a result, third-country deportees face the likelihood of persecution or torture in their country of origin—the very reason they could

---

[2] "To Scare People": US Expulsions of Third-Country Nations to Countries in Africa, Hum. Rts. Watch, (Oct. 8, 2026), https://www.hrw.org/report/2026/10/08/to-scare-people/us-expulsions-of-third-country-nationals-to-countries-in-africa; Nicholas Kristof, *Trump 'Disappeared' Them in 2025. I Found Them, Locked Up and Famished*, N.Y. Times (Nov. 18, 2026), https://www.nytimes.com/2026/11/18/opinion/trump-deportation-south-sudan.html?unlocked_article_code=1.RlE.RAi5.X8qBHxiv-ReM&smid=nytcore-ios-share (on file with the Legal Defense Fund).

not legally be removed there in the first place.[3] Yet, DHS's stance is "that it has no say in, or responsibility for, what happens to deportees once they leave the United States."[4]

The Due Process Clause of the Fifth Amendment protects "against 'the mistaken or unjustified deprivation of life, liberty, or property.'" *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025). It "applies to all 'persons' within the United States, including [noncitizens]," irrespective of their legal status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). This Court has consistently held that deportees "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).

DHS's February 2025 third-country removal guidance, March 2025 "Guidance Regarding Third Country Removals" memorandum, and July 2025 supplement (collectively "Policy") set out the Administration's policy regarding the removal to "third countries" of noncitizens for whom U.S. immigration law and the Constitution prohibit removal to their country of origin due to the likelihood that they would face torture, *Nasrallah v. Barr*, 590 U.S. 573, 575 (2020), or where their life or freedom would be threatened on account of certain protected

---

[3] *See* Hum. Rts. Watch, *supra* note 2.

[4] Megha Rajagopalan et al., *Immigrants Are Being Systematically Returned Home Despite Court Orders*, N.Y. Times (Nov. 10, 2026), https://www.nytimes.com/2026/11/09/world/africa/trump-deportations-court-orders-refoulement.html (on file with the Legal Defense Fund).

grounds, *Mullin v. Al Otro Lado,* 609 U.S. 258, 277 (2026). Despite the weighty interests at stake in third-country removals, the Policy fails to provide adequate procedures to safeguard them.

Although this removal process is subject to the strictures of immigration statutes, regulations, and the Due Process Clause, the Policy eschews any effort to provide procedural protections consistent with the government's statutory, regulatory, and constitutional obligations. Instead, the Policy seemingly avoids any process around third-country removals at all. If the third country has "provided diplomatic assurances that [third-country deportees] removed from the United States will not be persecuted or tortured," the Policy permits DHS to remove any individual to that country with no "further procedures" and without so much as telling the individual where they are being sent. J.A. 306-07.

Third-country deportees are told where they will be sent only when there is no assurance from the receiving country that the individual will not be persecuted or tortured there. But, under the terms of the Policy, this knowledge is unlikely to make any practical difference. To stave off deportation, deportees must raise a fear of removal—unprompted—regarding a country they may not know or are unfamiliar with and then must present a defense to the removal within six to twenty-four hours, which this Court has held as recently as last year does not comport with the Due Process Clause.

This Court should reject DHS's attempts to deviate from well-established due process principles.

First, due process protections unquestionably apply to third-country deportees. *Zadvydas*, 533 U.S. at 693. This Court has consistently extended the

fundamental due process requirements of "timely and adequate notice," *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970), and "the opportunity to be heard at a meaningful time and in a meaningful manner," *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), to removal proceedings, regardless of the reason for the noncitizen's removal. These procedures safeguard against the substantial risks to personal security and liberty at stake in removal proceedings, especially to a country where individuals may face persecution or torture.

Both scenarios the Policy contemplates for third-country removals fail to adhere to due process requirements. To start, DHS's position that blanket diplomatic assurances permit it to avoid any "further procedures" is incorrect. *See* J.A. 307. Reliance on these assurances must still comport with the Due Process Clause. In failing to provide sufficient notice and opportunity to be heard, these blanket assurances rob noncitizens of any due process at all. Moreover, diplomatic assurances fail to adequately protect the significant liberty interests at risk in third-country removals, including freedom from imprisonment, torture, persecution, and family separation.

In the second scenario, where diplomatic assurances are absent, the third-country deportee is expected to raise an unprompted fear of return to this unfamiliar country and show complete entitlement to protection from removal within twenty-four hours. This Court has recently ruled that similar circumstances failed to provide "a reasonable time" or "a manner as will allow [individuals] to actually seek" relief, violating basic due process requirements. *A.A.R.P.*, 605 U.S. at 95.

Finally, given this Administration's well-documented history of targeting immigrants of color

for expulsion from the country, Black immigrants and other immigrants of color bear the brunt of the Policy. Reports show third-country deportees are vulnerable to persecution or torture, because the Policy's lack of procedures fails to ensure their safety and security in the third country or prevent their return to their country of origin. Black immigrants and other immigrants of color are already disproportionately at risk of being targeted for immigration enforcement, prolonged detention, and inhumane treatment once detained. Third-country removal data already reveal similar racial disparities: more than half of third-country deportees are from Africa, the Americas, or the Caribbean.[5] Deportees describe experiencing inhumane detention conditions in third countries—including beatings, food deprivation and total restriction on outside contact—or being sent back to their home countries. These reports, coupled with longstanding trends, indicate that the Policy will disproportionately harm immigrants of color if it remains in effect.

Allowing the Policy to stand would contravene longstanding precedent and betray this nation's fundamental notions of fairness and equality. For these reasons, we urge this Court to reject DHS's claims and affirm the decision below.

---

[5] *See Third Country Deportations Tracker*, U.S. Comm. for Refugees and Immigrants https://refugees.org/tcdtracker/, https://refugees.org/tcdtracker/ [https://perma.cc/LM4H-4ST2]; *see also Third Country Deportation Watch*, Refugees Int'l and Hum. Rts. First, https://www.thirdcountrydeportationwatch.org/ [https://perma.cc/M9WS-KEX8].

ARGUMENT

I. DHS's Policy on Third-Country Removals Fails to Comply with Due Process.

The Due Process Clause of the Fifth Amendment protects "against 'the mistaken or unjustified deprivation of life, liberty, or property.'" *A.A.R.P.*, 605 U.S. at 94 (citing *Carey v. Piphus*, 435 U.S. 247, 259 (1978)). This guarantee "applies to all 'persons' within the United States, including [noncitizens]." *Zadvydas*, 533 U.S. at 693. And the Constitution makes no distinction based on "whether [a person's] presence here is lawful, unlawful, temporary, or permanent." *Id.* To determine what process is due, this Court must first "ask whether there exists a liberty or property interest" and, if such an interest exists, "ask whether the procedures followed by the [government] were constitutionally sufficient." *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011). Here, the liberty interests at stake in removal to a country where individuals are likely to be persecuted or tortured are paramount. And DHS has failed to provide even minimal procedures to safeguard them.

Neither of the scenarios that the Policy contemplates adheres to the requirements of the Due Process Clause. DHS's reliance on blanket diplomatic assurances to forego all further process does not pass constitutional muster because such assurances do not satisfy due process requirements. Further, under the Policy, total reliance on blanket diplomatic assurances denies notice or opportunity to present a fear-based claim and fails to properly protect against the interests at stake in the removal. Where DHS provides notice of the third country prior to removal, it is wholly inadequate: this Court held last year that the roughly twenty-four hours' notice and lack of

information to contest that removal fail to provide adequate process. *A.A.R.P.*, 605 U.S. at 95.

Both the District Court and the First Circuit correctly concluded that the Policy was unlawful because it authorizes third-country removals without effective notice and a meaningful opportunity to assert fear of removal claims. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 821 F. Supp. 3d 102, 167 (D. Mass. 2026), *aff'd in part, vacated in part*, 192 F.4th 74 (1st Cir. 2026), and *cert. granted sub nom. Dep't of Homeland Sec. v. D.V.D.*, No. 26-426, 26A406, 2026 WL 2917860 (U.S. Sep. 29, 2026); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 192 F.4th 74, 100 (1st Cir. 2026).

This Court should affirm those determinations here.

A. Noncitizens Are Entitled to Due Process Protections Regardless of Their Immigration Status.

For well over a century, this Court has fastidiously required due process in removal proceedings. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993) (citing *The Japanese Immigration Case*, 189 U.S. 89, 100–01 (1903)). The rationale for the removal is immaterial for due process purposes. "[Noncitizens] who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Shaughnessy*, 345 U.S. at 212.

These protections recognize the weighty interests at stake in removal proceedings. DHS mischaracterizes and dismisses deportees' interest as one "in how the United States chooses to discharge its

own obligations." Pet'rs' Br. 38. To the contrary, removal involves constitutionally protected liberty interests. Deportation "visits a great hardship on the individual" and necessitates "[m]eticulous care . . . lest the procedure by which" the individual "is deprived of that liberty not meet the essential standards of fairness." *Bridges v. Wixon*, 326 U.S. 135, 154 (1945). These interests are even more acute when an individual may face harm in the country where they are removed. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. In addition to the risk of detention, possible persecution or torture implicates "the historic liberty interest" of "the right to personal security" and safe conditions. *See Youngberg v. Romeo*, 457 U.S. 307, 315 (1982) (citing *Ingraham v. Wright*, 430 U.S. 651, 673 (1977)). Moreover, removal also endangers the precious interests in remaining with one's family and retaining an established life in the United States. *See, e.g.*, *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982); *Bridges*, 326 U.S. at 154.

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews*, 424 U.S. at 333. An individual must also have "timely and adequate notice" of the risk of deprivation of a protected interest to be able to contest it. *Goldberg*, 397 U.S. at 267. Neither of the Policy's scenarios meet these requirements.

B. Diplomatic Assurances Provide No Substitute for Due Process Protections.

The Policy's first scenario—reliance on blanket diplomatic assurances that individuals will not be persecuted or tortured—fails to comply with due

process obligations. First, despite DHS's assertion that such assurances are conclusive and exempt the government from "the need for further procedures," J.A. 307, DHS's removal decisions must still comply with due process as informed by relevant statutes. Second, blanket reliance on diplomatic assurances not only robs individuals of any notice or opportunity to be heard, but the assurances fail to properly protect individuals from possible persecution and torture.

i. Executive Discretion Does Not Absolve DHS of its Due Process Obligations.

DHS's position that diplomatic assurances from third countries preclude "the need for further procedures," J.A. 307, and that "[w]hen the Executive credits [a diplomatic] assurance, that decision is conclusive," Pet'rs' Br. 38, is baseless.

First, the statutory framework provided in the Immigration and Nationality Act ("INA") and under the Convention Against Torture ("CAT") and its implementing regulations set out an individual's entitlement to an adjudication of their specific claims for protection from removal by an immigration judge and require both notice and an opportunity to be heard. 8 U.S.C. § 1231(b)(3)(C); 8 C.F.R. § 1208.16(b), (c)(2), (c)(3); *see also Khouzam v. Att'y Gen. of U.S.*, 549 F.3d 235, 259 (3d Cir. 2008) (holding noncitizen must be afforded due process prior to removal based on diplomatic assurances). These statutory requirements inform what process is constitutionally due prior to removal to ensure protection from possible persecution or torture. *See, e.g.*, *Adame v. Holder*, 762 F.3d 667, 672 (7th Cir. 2014) ("[S]tatutorily required procedures [can] assure compliance with constitutional due process requirements.").

Second, even accepting that the Executive has discretion to accept diplomatic assurances, this does not permit DHS to deprive deportees of their constitutional right to due process. Although the Executive may have important interests in the administration of immigration laws or other functions, the judiciary retains its obligation to "determin[e] whether the procedures meet the essential standard of fairness under the Due Process Clause . . . ." *Landon*, 459 U.S. at 34–35. Courts must ensure that the government respects due process, even in the foreign relations context, and particularly where there are significant concerns about individual liberties. *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004) ("Whatever power the United States Constitution envisions for the Executive in its exchanges with other nations . . . it most assuredly envisions a role for all three branches when individual liberties are at stake."); *see also Baker v. Carr*, 369 U.S. 186, 211 (1962) (stating that whether the action of another branch of government "exceeds whatever authority has been committed [to it], is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution"). Although due process assessments may "pay keen attention" to the Executive's decisions, "it would turn our system of checks and balances on its head to suggest" an individual "could not make his way to court with a challenge to the factual basis for" Executive action. *Hamdi*, 542 U.S. at 536–37. This Court has cautioned that the right to receive both meaningful notice and an opportunity to be heard are "essential constitutional promises" that "may not be eroded." *Id.* at 533. "[C]ourts must evaluate the particular circumstances and determine what procedures would satisfy the minimum requirements of due process." *Landon*, 459 U.S. at 35.

The case law DHS relies on to support its broad claim to deference for diplomatic assurances is unavailing. Although both cases involve deference to diplomatic assurances, as the District Court concluded, neither case "involved removal in the immigration context," the specific context at issue here. *D.V.D.*, 821 F. Supp. 3d at 160. Those cases discuss individualized, and not blanket, diplomatic assurances which do not raise the same due process concerns. Further, these cases do not address the failure to provide notice of where the person will be removed because, unlike here, those cases involved assurances about countries that were known and familiar to the individuals. *See Munaf v. Geren*, 553 U.S. 674, 702 (2008); *Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009). Ensuring the Policy's reliance on blanket diplomatic assurances complies with due process cannot be distorted into a request for the judiciary to simply "second-guess" such assurances. *Cf. Munaf*, 553 U.S. at 702; *contra* Pet'rs' Br. 38.

ii. Blanket Determinations Deprive Individuals of Constitutionally-Required Notice and Opportunity to Be Heard.

DHS's reliance on blanket assurances violates the Due Process Clause in two separate respects.

First, reliance on such assurances fails to provide any meaningful notice to individuals at risk of removal. The Policy states that if the United States has received "diplomatic assurances that [deportees] removed from the United States will not be persecuted or tortured . . . the [deportee] may be removed without the need for further procedures." J.A. 307. DHS contends that the government's receipt of this

diplomatic assurance from a third country is all that the Constitution requires; there is no need to notify the individual that they will be subject to removal to this particular country or provide any additional information. Pet'rs' Br. 38. This contention is incorrect. As this Court has explained, "due process requires the government to provide notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (citation modified). A blanket diplomatic assurance to the United States provides no such notice to deportees.

Boilerplate assurances that any individual who may be removed to that country will be free from persecution or torture, absent any specific findings regarding the risk to the individual subject to removal, provides the individual with no basis to present their objections. *See Khouzam*, 549 F.3d at 259 (stating individual subject to removal based on diplomatic assurances must "be afforded an individualized determination of the matter based on a record disclosed to the [individual]"). Additionally, blanket diplomatic assurances fail to account for all relevant circumstances because they solely address potential persecution or torture from *government* actors. Resp'ts' Br. 33 (citing J.A. 32 n.15, 129 & n.89). They provide no guarantee of protection from torture by non-state actors, who fall outside diplomatic assurances, notwithstanding that the lack of such a guarantee may entitle individuals to protection from removal. *See* Pet'rs' Br. 49a (describing withholding of removal eligibility assessment for "cases in which the persecutor is not the government").

Second, DHS's reliance on blanket diplomatic assurances deprives deportees of any opportunity to be heard. Without notice of the country to which they will be removed, they cannot compile evidence and present a fear-based protection from removal claim. Typically, under both the INA and the CAT, an evidentiary hearing is required to determine if an individual is eligible for protection from removal. *See* 8 U.S.C. § 1231(b)(3)(C); 8 C.F.R. § 1208.16(b), (c)(2), (c)(3). In the removal context, courts have held that the meaningful opportunity for a hearing must include sufficient time for a noncitizen to take the steps necessary to "raise and pursue his claim for withholding of deportation," including by "prepar[ing] and present[ing] relevant arguments and evidence." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019); *Andriasian v. Immigr. Naturalization. Serv.*, 180 F.3d 1033, 1041 (9th Cir. 1999).

In addition, blanket assurances are inadequate because there is considerable evidence that individuals deported to third countries that have provided diplomatic assurances are nevertheless subject to conditions that either are or may amount to persecution or torture. For example, a Human Rights Watch report found that five individuals who were deported to South Sudan, a nation which has provided diplomatic assurances, have been subject to arbitrary and indefinite detention there since July 2025.[6] Another recent New York Times investigation found that five other individuals deported and held in South Sudan are "nearly starving," and have been denied clean water and held indefinitely with no means of

---

[6] Hum. Rts. Watch, *supra* note 2.

communicating with their families or attorneys.[7] The Washington Post's recent compilation of various interviews and legal complaints also indicates an alarming pattern of inhumane treatment of third-country deportees: many individuals report they have been beaten, denied food, and held incommunicado while detained.[8]

Moreover, another investigation revealed that even though third-party deportation agreements purportedly included *non-refoulement* obligations, some third countries failed to abide by these obligations, returning individuals to their country of origin where they face persecution or torture.[9] This same reporting indicates that despite relying on the third country's diplomatic assurance to discharge the Administration's statutory *non-refoulement* duty, the Administration takes the position "that it has no say in, or responsibility for, what happens to deportees once they leave the United States."[10] Defendants' blanket diplomatic assurance policy does not comport with constitutional due process in theory or in practice.

---

[7] Kristof, *supra* note *2*.

[8] David Nakamura & Adam Taylor, *How Trump Turned a Refugee Bureau into a $410 Million Deportation Operation*, Wash. Post (Sep. 21, 2026), https://www.washingtonpost.com/politics/interactive/2026/09/21/how-trump-turned-refugee-bureau-into-410-million-deportation-operation/ (on file with the Legal Defense Fund).

[9] Rajagopalan, *supra* note 4.

[10] *Id.*

C. Even Where the Deportee Is Informed of the Third Country, the Policy Fails to Comply with Due Process.

In the context of removal proceedings, this Court recently reaffirmed that notice must be provided "within a reasonable time and in such a manner as will allow [noncitizens] to actually seek" relief. *A.A.R.P.*, 605 U.S. at 95. The Court applied these requirements to removals of a class of Venezuelan nationals who were categorically determined to be deportable under the Alien Enemies Act ("AEA"). *See, e.g.*, *J.G.G. v. Trump*, 604 U.S. 670, 671 (2025). (quoting Presidential Proclamation No. 10903, 90 Fed. Reg. 13033, 13034 (2025)); *A.A.R.P.*, 605 U.S. at 92 (citing Presidential Proclamation No. 10903, 90 Fed. Reg. 13033 (2025)). This Court has also applied due process protections to other categorical determinations and policies affecting groups. *See, e.g.*, *Wilkinson v. Austin*, 545 U.S. 209, 225–26 (2005) (applying *Mathews*'s procedural due process test to a prisoner class's procedural due process challenge to a prison supermax placement policy); *Goldberg*, 397 U.S. at 262–66 (concluding that New York public-benefit termination procedures denied benefit recipients procedural due process).

In the AEA cases, the Administration proposed a policy where "all Venezuelan citizens 14 years of age or older who are members of [alleged transnational criminal organization Tren de Aragua], . . . are liable to be apprehended, restrained, secured, and removed as Alien Enemies." Proclamation No. 10903, 90 Fed. Reg. 13033, 13034 (Mar. 20, 2025). In both cases, DHS deported or prepared to deport individuals under this proclamation with less than twenty-four hours' notice, and, in *J.G.G.*, before the proclamation was even published. *A.A.R.P.*, 605 U.S. at 93; *J.G.G. v. Trump*,

772 F. Supp. 3d 18, 26 (D.D.C. 2025). In *A.A.R.P.*, this Court noted that the plaintiffs' interests were "particularly weighty" due to the potentially incurable removal because "[t]he Government has represented elsewhere that it is unable to provide for the return of an individual deported in error to a prison in El Salvador" where that individual faced significant harm. *A.A.R.P.*, 605 U.S. at 95 (citing Declaration of Joseph N. Mazzara, *Abrego Garcia v. Noem*, No. 25–cv–951 (D. Md. 2025), ECF Nos. 74, 77). Under these circumstances, this Court found that "notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster" under the Constitution. *A.A.R.P.*, 605 U.S. at 95. This Court ruled against the rushed deportations in both cases. *J.G.G.*, 604 U.S. at 673–74; *A.A.R.P.*, 605 U.S. at 94–96, 98–99.

Applying the principles of those cases here, even if individuals are notified about the third country to which they will be removed, DHS's process fails to comply with minimal due process requirements. Deportees may not be immediately familiar with the third country or the conditions there. J.A. 307. They are not affirmatively asked about a fear of removal and must raise any fear unprompted to receive any further process. J.A. 307. If they do voice a fear, they are expected to mount a case "within 24 hours of referral from the immigration officer" that they are "more likely than not" to be persecuted or tortured. J.A. 308. If they cannot accomplish a compelling case in the limited timeframe, without counsel and while being detained, they "will be removed." *Id.* As in *A.A.R.P* and *J.G.G.*, this does not constitute "a reasonable time" or "a manner as will allow them to actually seek" relief and thus fails to meet basic due

process requirements. *A.A.R.P.*, 605 U.S. at 95. *See, e.g.*, J.A. 124–32 (describing lack of appropriate notice or opportunity to be heard for individuals subject to the Policy). DHS's arguments to the contrary defy this Court's prior interpretation of the requirements of the Due Process Clause.

II. Disregarding Due Process Requirements Will Facilitate the Policy's Discriminatory Enforcement.

Due process protections exist precisely to safeguard individuals against the "arbitrary exercise of the powers of government." *Daniels v. Williams*, 474 U.S. 327, 331 (1986) (citation omitted). This safeguard is particularly important for society's marginalized groups because they are more likely to be targeted by this kind of arbitrary exercise of power. As discussed *infra* Sec. II(A), this Administration has a well-documented history of targeting Black immigrants and other immigrants of color for expulsion from the country, which has continued with the third-country removal policy. Permitting DHS to flout its due process obligations will not only deprive individuals of fundamental liberties without adequate process, but it will also bolster a regime of arbitrary, racially disparate immigration enforcement.

A. Black Immigrants and Other Immigrants of Color Bear the Brunt of this Administration's Policies.

Reducing procedural protections for third-country removals and increasing these deportations will disproportionately harm Black immigrants and other immigrants of color. Black immigrants are already present in the immigration enforcement

system at disproportionate levels,[11] they are most vulnerable to inhumane treatment, and this Administration has specifically targeted Black immigrants and other immigrants of color for immigration enforcement.[12] The third-country removal policy is used as a similar vehicle for discriminatory enforcement. Such harm underscores the gravity of the Policy's due process violations, which directly undermine "our American ideal of fairness." *Bolling*, 347 U.S. at 499 (holding that racial segregation in Washington, D.C. public schools violates the Due Process Clause of the Fifth Amendment).

Existing racial disparities in immigration enforcement show that the Policy is likely to fall more heavily on Black immigrants and other immigrants of color. Black immigrants are three times more likely to

---

[11] *See* Karla McKanders, *Immigration and Racial Justice: Enforcing the Borders of Blackness*, 37 Ga. St. U. L. Rev. 1139, 1160-1162 (2021). For more detail on the history of racialized exclusion in the U.S. immigration system *see* Br. of Black Immigrants' Rights Organizations as *Amici Curiae* in Supp. of Resp'ts, *Trump v. Barbara*, 609 U.S. 719 (2026) at 11-17; *see also CERD & BAJI One Pager*, Black All. for Just. in Immigr., (last accessed Nov. 11, 2026), https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/forums/forum-african-descent/sessions/session1/statements/2023-01-05/Black-Alliance-for-Just-Immigration.pdf [https://perma.cc/6HBA-8748] (documenting the disproportionately high removal rate of Black immigrants).

[12] *See* Letter from Representative Yvette D. Clarke, Chair, Cong. Black Caucus, to President Donald J. Trump, at 2 (Mar. 5, 2026), 3.5.26_cbc_letter_to_the_white_house.pdf [https://perma.cc/X4J4-3V9Q] (detailing "[t]he Trump administration's persecution of Black immigrant communities").

be detained and deported due to an alleged criminal offense than all other immigrant groups.[13] Despite making up only 5.4 percent of the undocumented population in the country, Black individuals represent 20.3 percent of immigrants facing removal due to a criminal conviction.[14] Once detained, Black immigrants with criminal convictions have a seventy-six percent chance of being deported, compared to forty-five percent for the immigrant population overall.[15] Hispanic immigrants are also subject to significant racial disparities in immigration enforcement; for certain charges related to controlled substances, Hispanic immigrants have the highest rate of removal orders and the lowest levels of release from immigration detention.[16]

Additionally, Black immigrants swept up into immigration proceedings are among those most vulnerable to prolonged detention and inhumane treatment. Data indicates that Black immigrants are detained for longer and are less likely to be released

---

[13] Peniel Ibe, *Immigration is a Black Issue*, Am. Friends Serv. Comm. (Feb. 16, 2021), https://afsc.org/news/immigration-black-issue [https://perma.cc/CD4D-QGBA].

[14] Annaelle Lafontant, *Twice Marked: Anti-Blackness in U.S. Immigration Law*, Geo. J. L. & Mod. Critical Race Persps. (Jan. 30, 2026), https://www.law.georgetown.edu/mcrp-journal/blog/twice-marked-anti-blackness-in-u-s-immigration-law/ [https://perma.cc/XF3T-8HF7]; Black All. for Just. in Immigr., *supra* note 11.

[15] *Id.*

[16] Emily Ryo et al., *Racial Disparities in Crime-Based Removal Proceedings*, 109 Minn. L. Rev. 1997, 2006 (2025).

on bond or parole than non-Black immigrants.[17] Immigration officials are six times more likely to place Black immigrants in solitary confinement compared to all other groups.[18] And a 2022 study found that Black immigrants accounted for twenty-eight percent of all abuse-related reports to a national immigration detention hotline, despite making up only six percent of the ICE detention population at the time.[19] The same study found that Black immigrants accounted for more than fifty-three percent of the "high-intensity and life-threatening cases" requiring intervention.[20] As the United Nations' Committee on the Elimination of Racial Discrimination (CERD) found in its 2022 concluding observations on the United States, there is a troubling pattern of federal immigration officials using excessive force, including deadly force, particularly against noncitizens of African and Caribbean descent.[21]

The second Trump administration has also implemented a host of policies that single out Black

---

[17] *Shadow Report to the Committee on the Elimination of Racial Discrimination (CERD)*, Black All. for Just. in Immigr. et. al., (Aug. 30, 2022), https://cdn.sanity.io/files/1e7vpawz/production/b6528edce9e45ca79fe8980c0d0d9e290fb0050f.pdf [https://perma.cc/6A75-8VBY].

[18] Ibe, *supra* note 13.

[19] Timantha Goff et. al., *Uncovering the Truth: Violence and Abuse Against Black Migrants in Immigration Detention*, Freedom for Immigrants et. al. (Oct. 2022), https://www.freedomforimmigrants.org/report-uncovering-the-truth [https://perma.cc/KX2Q-H928].

[20] *Id.*

[21] Comm. on the Elimination of Racial Discrimination, *Concluding Observations of the Comm.: United States* ¶¶ 51, U.N. Doc. CERD/C/USA/CO/10-12 (Sep. 21, 2022).

immigrants and other immigrants of color for deportation, detention, and removal, further underscoring the need to adequately safeguard immigrants' due process rights. These policies include targeted travel and visa bans, immigration enforcement operations, and the termination of temporary protected status (TPS), all of which have overwhelmingly impacted Black immigrants and other immigrants of color.

Since taking office, President Trump has enacted a full or partial travel ban impacting thirty-nine countries, all of which are predominantly non-white nations.[22] The overwhelming majority of the targeted countries are African (twenty-six) and Caribbean (four) nations, and almost all of these countries are majority-Black in their demographic makeup.[23] Nearly half of the targeted countries are Muslim-majority nations.[24]

In January 2026, the Administration announced it would suspend issuing immigrant visas to people from seventy-five nations, including thirty-nine

---

[22] Tobi Raji et. al. *All the countries affected by Trump's expanded travel ban,* Wash. Post (Dec. 17, 2025), https://www.washingtonpost.com/world/2025/12/16/trump-travel-ban-countries-list/ (on file with the Legal Defense Fund).

[23] Mariel Ferragamo, *A Guide to Trump's Travel Ban and Visa Pause, by Country,* Council on Foreign Rels. (Sep. 1. 2026), https://www.cfr.org/articles/guide-countries-trumps-travel-ban-list [https://perma.cc/6HP8-DB7E].

[24] Raji et. al, *supra* note 22.

African and eleven Caribbean nations.[25] Twenty-eight of these countries are majority-Muslim.[26] The policy, which a federal court later struck down as "patently unlawful" in violation of the INA's ban on nationality-based discrimination in issuance of immigrant visas, *Cath. Legal Immigr. Network, Inc. v. Rubio*, 840 F. Supp. 3d 209, 230 (S.D.N.Y. 2026), would have barred almost ninety percent of African immigrant visas.[27]

In the TPS context, the Administration has terminated TPS for many countries that are predominantly Black or non-white despite ongoing armed conflict, political crises, and instability in these nations—reflecting an overwhelmingly pretextual, anti-immigrant agenda. Simultaneously, the administration has created refugee protections for white South African Afrikaners[28] and expressed preferences for welcoming immigrants from "nice," predominantly white countries in Scandinavia.[29] The

---

[25] *Immigrant Visa Processing Updates for Nationalities at High Risk of U.S. Public Benefits Reliance*, U.S. Dep't of State (Aug. 28, 2026), https://travel.state.gov/en/newsroom/visas/2026/immigrant-visa-processing-updates-for-nationalities-at-high-risk-of-public-benefits-usage.html.

[26] David J. Bier, *Legal Immigration from Majority-Muslim Nations Was Cut 96% Since 2024*, Cato Inst. (Sep. 28. 2026), https://www.cato.org/blog/legal-immigration-majority-muslim-nations-was-cut-96-2024 [https://perma.cc/3BJ8-DLXV].

[27] *See* Representative Yvette D. Clarke, *supra* note 12.

[28] Exec. Order No. 14204, 90 Fed. Reg. 9,497 (Feb. 12, 2025).

[29] Maggie Haberman & Michael Gold, *Trump, at Fund-Raiser, Says He Wants Immigrants From 'Nice' Countries*, N.Y. Times (Apr. 7, 2024),

TPS terminations came on the heels of President Trump making repeated derogatory remarks about Black immigrant communities. For example, while campaigning for his second term, President Trump said he would "[a]bsolutely . . . revoke" TPS for Haitians, noting, "[y]ou have to remove the people; you cannot destroy – we cannot destroy our country . . . . In my opinion, it's not legal."[30]

This Administration has also launched aggressive immigration enforcement actions that have targeted Black immigrant communities, including recent actions against Haitians in Springfield, Ohio, and Somalis in Minneapolis. Both operations coincided with DHS's actions aiming to terminate TPS for those countries. In the one-month period after the termination of Haiti's TPS, four immigration centers in Ohio saw a 142.3 percent increase in Haitian detainees as compared to total detentions for the prior seven months.[31] Since the

---

https://www.nytimes.com/2024/04/07/us/politics/trump-immigrants-nice-countries.html?eafs_enabled=false (on file with the Legal Defense Fund).

[30] Damita Menezes & Ali Bradley, *Trump on Springfield Haitian Migrants: 'They have to be removed'*, NewsNation (Oct. 2, 2024), https://www.newsnationnow.com/politics/2024- election/trump-springfield-haitian-migrants-removed/ (starting at approximately 12:00); *see also* Maggie Astor, *Trump Says He Would Try Again to Revoke Haitian Immigrants' Protections*, N.Y. Times (Oct. 3, 2024), https://www.nytimes.com/2024/10/03/us/politics/trump-haitian-immigrants-legal-status.html (on file with the Legal Defense Fund).

[31] John Drury, *ICE Detention in Ohio After the Trump Administration Ended TPS for Haiti*, Ohio Immigrant All., AT 5

termination of Haiti's TPS took effect in July 2026, the government has deported more than 500 Haitians.[32]

Similarly, from late 2025 to early 2026, thousands of federal agents surged through Minneapolis in the "largest immigration enforcement operation ever carried out" by DHS, after unsubstantiated claims surfaced about Somali "fraud" in Minnesota.[33] Ultimately, the surge led to the deportation of more than 2,000 immigrants.[34] And, since February 2026, the government has ordered the deportation of more than 1,000 Somali immigrants, with more than 500 of those impacted from

---

(Sep. 17 2026), https://static1.squarespace.com/static/68460a37f903140728c2ab29/t/6aac299a98f9422054ed704a/1789667741272/ICE+Detention+Trends+-+August+2026.pdf [https://perma.cc/54D4-5U7H] at 5.

[32] Juhakenson Blaise, *US deports 530 to Haiti in month since TPS ended*, The Haitian Times (Sep. 25, 2026), https://haitiantimes.com/2026/09/25/530-haitians-deported-in-six-deportation-flight/ [https://perma.cc/2CGD-ADPQ].

[33] Rebecca Santana & Mike Balsamo, *Homeland Security plans 2,000 officers in Minnesota for its 'largest immigration operation ever,'* Associated Press (Jan. 6, 2026), https://apnews.com/article/immigration-enforcement-ice-noem-minnesota-somalidb661df6de1131a034da2bda4bb3d817 (on file with the Legal Defense Fund).

[34] Alyssa Chen, *2,300 immigrants arrested in Operation Metro Surge were deported or left country*, Minn. Reformer (Sep. 15, 2026), https://minnesotareformer.com/2026/09/15/2300-immigrants-arrested-in-operation-metro-surge-were-deported-or-left-country/ [https://perma.cc/C5CE-SUAP].

Minnesota.[35] Somalis, who are predominantly Muslim, have also faced discriminatory rhetoric from President Trump for displays of their faith.[36]

B. Third-Country Removals Lay Bare Similar Disparities and the Vulnerability of Third-Country Deportees.

The Administration's discriminatory focus on Black immigrants and other immigrants of color is also evident in the context of third-country removals. Of approximately 206 known transfers to third countries under the Policy in July 2026 alone, at least thirty-nine percent of individuals impacted were from African, Caribbean, and Latin American countries.[37] In August 2026, out of 118 known third-country transfers more than half (sixty percent) were of individuals from Africa, the Americas or the Caribbean. *Id.* And of the six third-country removals recorded in September 2026, all are of individuals from the Caribbean and Afghanistan.[38] In contrast, there have been *no* reports of European nationals

---

[35] Christopher Magan, *Sharp rise in deportation orders for Somalis in Minnesota*, Star Trib. (Oct. 2, 2026), https://www.startribune.com/sharp-rise-in-deportation-orders-for-somalis-in-minnesota/601890878 (on file with the Legal Defense Fund).

[36] *See, e.g.*, Donald J. Trump (@realDonaldTrump), Truth Soc. (Jul. 6, 2026, at 10:5 53 AM), https://truthsocial.com/@realDonaldTrump/posts/116873600928684662 (on file with the Legal Defense Fund).

[37] U.S. Comm. for Refugees and Immigrants, *supra* note 5.

[38] *Id.*

subject to third-country removals in the last three months.[39]

The Policy appears to be driven by racist, anti-immigrant motives. For example, in a cabinet meeting, Secretary of State Marco Rubio plainly stated that the Administration is entering third-country agreements with other countries because it wants to send "some of the most despicable human beings" to these countries, "and the farther away from America the better."[40] Months later, President Trump echoed the same discriminatory tones in a long public message promising the deportation of foreign nationals who are "non-compatible with Western Civilization,"[41] seemingly a reference to white, European values as the model for the communities the government prefers.

The Administration has signed third-country transfer agreements with nations that lack any clear indication they will serve as a safe third country.

---

[39] *Id.*

[40] *See* Edward Wong et al., *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times (June 26, 2025), https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html (on file with the Legal Defense Fund).

[41] See Miranda Jeyaretnam & Chad de Guzman, *In Thanksgiving Message, Trump Rants Against Immigration, Announces 'Permanent Pause' From 'Third World Countries'*, Time (Nov. 28, 2025), https://time.com/7337279/trump-thanksgiving-message-immigration-pause-third-world-travel-ban-afghanistan/ [https://perma.cc/PR7Q-QYB3].

Indeed, some of the countries are patently unsafe.[42] Reporting reveals the Administration's "us[e of] visa bans and restrictions on African countries to strongarm them into taking people from third countries as part of Donald Trump's crackdown on immigration."[43] As discussed earlier, of the thirty-nine countries listed in the Administration's full or partial travel ban, two-thirds are African. And so are nearly half of the nations that have "struck murky deportation deals with Washington."[44] A former State Department official even noted the absence of "a single country that managed to move off the [travel and visa ban] list because of stuff they did besides an agreement to take third-country deportees or asylum seekers."[45] The coercive nature of these third-country agreements, and the particular targeting of African nations for the Administration's quid-pro-quo arrangement, was confirmed when Burkina Faso refused to accept third-country deportees from the United States and was subsequently made subject to the travel ban.[46] These intimidation tactics are closely

---

[42] Hum. Rts. Watch, *supra* note 2. Indeed, as a DHS Spokesperson noted in August 2025: "If you come to our country illegally and break our laws, you could end up in CECOT, Alligator Alcatraz, Guantánamo Bay, or South Sudan or another third country." *Id.* (citation omitted).

[43] Nicholas Roll et al., *How US Is Using Cash And Threats To Dump Migrants in Africa*, Barron's (July 6, 2026), https://www.barrons.com/news/how-us-is-using-cash-and-threats-to-dump-migrants-in-africa-dcb3b313 [https://perma.cc/A8DE-LG5W].

[44] *Id.*

[45] *Id.* (internal quotations omitted) (emphasis added).

[46] *Id.*

interwoven with the Administration's overarching anti-immigrant agenda.

Third-country removals are also prone to abuse by government officials. A recent report described numerous incidents where ICE agents told detained immigrants that they were being deported to a specific third country before sending them to an entirely different country.[47] In one instance, ICE told a group of detained migrants that it was transferring them from Texas to Louisiana, but once the plane was in the air, the detainees were actually sent to South Sudan, where others removed under the Policy have been subject to arbitrary and indefinite detention.[48] Another deportee raised a fear of removal to Ghana when he was given written notice that he would be removed there.[49] After speaking with an immigration officer, the officer determined that he "didn't have any fear of going to [the continent of] Africa," and not Ghana specifically.[50] He was ultimately sent to a wholly distinct African country: the Democratic Republic of Congo.[51]

DHS does not track what happens to deportees after they are sent to third countries.[52] In many

---

[47] Hum. Rts. Watch, *supra* note 2.

[48] *See id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] Hamed Aleaziz et al., *Immigrants Are Being Systematically Returned Home Despite Court Orders*, N.Y. Times (Nov. 9, 2026), https://www.nytimes.com/2026/11/09/world/africa/trump-deportations-court-orders-refoulement.html (on file with the Legal Defense Fund).

instances, receiving countries end up deporting individuals back to their countries of origin, exactly where the United States itself would have been legally prohibited from sending them.[53] One investigation found that more than 110 individuals who were deported to third countries and had court-ordered protection from *refoulement* were later returned to their countries of origin.[54]

For instance, in July 2026, the Administration deported thirty individuals, many of African descent, under a third-country agreement with Ghana. Once they arrived, the deportees were detained in a military camp with no consistent power or running water.[55] Many were later sent back to their countries of origin in Africa, despite earlier being granted protection from country of origin removal in the United States, and the Ghanaian government's assurances otherwise.[56] One West African woman sent to Ghana attempted suicide due to her intense fear of being sent back to her country of origin.[57] After her hospitalization, Ghana deported the woman back to her country of origin.[58] Another report indicated that 179 of 299 deportees sent to Panama under a

---

[53] *Id.*

[54] *Id.*

[55] Refugees Int'l and Hum. Rts. First, *Ghana*, *supra* note 5.

[56] *Id.*

[57] Adam Mahoney, *Deportee Attempts Suicide as U.S.–Ghana Transfer Deal Unravels*, In These Times (Nov. 18, 2025), https://inthesetimes.com/article/west-african-attempts-suicide-deportation-immigration-trump-ghana-migrants [https://perma.cc/7TDU-QTGC].

[58] Refugees Int'l and Hum. Rts. First, *Ghana*, *supra* note 5.

third-country agreement in 2025 were returned to their countries of origin within a month of their arrival.[59]

***

The Policy not only blatantly deprives third-country deportees of their due process rights and removes a bulwark against their persecution and torture, but will further facilitate DHS's agenda of discriminatory immigration enforcement. By simply enforcing minimum due process requirements, this Court can avert such abuse and underscore the Fifth Amendment's promise that "all persons," and especially those who are made most vulnerable, deserve the Constitution's protections.

CONCLUSION

For all the reasons set forth above, the decision below should be affirmed.

---

[59] Aleaziz et al., *supra* note 52.

Respectfully submitted,

JANAI S. NELSON
President & Director-Counsel
ALON GOLDFINGER
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector St.
5th Floor
New York, NY 10006

CHRISTOPHER KEMMITT
KACEY MORDECAI
Counsel of Record
AMIA TRIGG
AYOMIDE ODUNSI
CHLOE MILLER
HAYLEY HAHN
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
700 14th St. N.W.
Ste. 600
Washington, DC 20005
(202) 682-1300
kmordecai@naacpldf.org

Counsel for Amicus Curiae NAACP Legal Defense and Educational Fund, Inc.

MELISSA KEANEY
DAAD SHARFI
MUSLIM ADVOCATES
1763 Columbia Rd. N.W.
14324
Washington, DC 20009

Counsel for Amicus Curiae Muslim Advocates

November 23, 2026