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 OF *AMICI CURIAE* NATIONAL IMMIGRANT JUSTICE CENTER, AMICA CENTER FOR IMMIGRANT RIGHTS, FLORENCE IMMIGRANT & REFUGEE RIGHTS PROJECT, AND NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD SUPPORTING RESPONDENTS

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INTERESTS OF *AMICI CURIAE*[1]

The National Immigrant Justice Center (NIJC) is a non-profit corporation headquartered in Chicago, Illinois. NIJC is dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum seekers. By partnering with more than 2,000 attorneys from the Nation's leading law firms, NIJC provides direct legal services to approximately 11,000 people annually. This experience informs NIJC's advocacy, litigation, and educational initiatives, as it promotes human rights on a local, regional, national, and international stage.

NIJC has a substantial interest in the issue before the Court, both as an advocate for the rights of immigrants generally and as the leader of a network of pro bono attorneys who regularly represent immigrants. Among those NIJC serves are noncitizens who have been granted withholding of removal or other protection from persecution or torture, but who nevertheless face removal to third countries where their safety may depend on receiving meaningful notice and an opportunity to present their protection claims.

The Amica Center for Immigrant Rights (Amica Center) is an immigrant rights non-profit headquartered in Washington, D.C. Amica Center provides legal services to indigent noncitizen adults and children held in immigration detention throughout the United States. Amica Center runs know-your-rights presentations, conducts pro se workshops, and provides legal advice and assistance to people in immigration detention. It also provides in-house direct representation,

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[1] No counsel for any party authored this brief in whole or in part. No entity or person, other than *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

secures pro bono representation, and brings impact litigation on behalf of such noncitizens.

Amica Center has a substantial interest in ensuring that noncitizens are not removed to persecution, torture, or death and denied the due process required by law. Amica Center has represented and provided pro se assistance to many people subject to DHS's third-country removal policy, including many who had already been granted withholding of removal or Convention Against Torture (CAT) protection. Through that work, it has seen firsthand how DHS's policy operates in practice.

The **Florence Immigrant & Refugee Rights Project** (Florence Project) provides free legal and social services to adults and children detained in immigration custody in Arizona. Every year, the Florence Project provides free legal services to thousands of noncitizens facing removal, including thousands who are seeking asylum or withholding of removal. Since its founding in 1989, the Florence Project has sought to ensure that all people facing removal have access to counsel, understand their rights, and are treated fairly and humanely.

The **National Immigration Project of the National Lawyers Guild** ("National Immigration Project") is a non-profit membership organization of immigration attorneys, legal workers, jailhouse lawyers, grassroots advocates, and others working to defend the rights of immigrants and to secure due process in the immigration system. The National Immigration Project provides technical assistance to attorneys and advocates, litigates on behalf of noncitizens and as amicus curiae in the federal courts, hosts continuing legal education seminars on the rights of noncitizens, and authors numerous practice advisories and treatises. Through its membership network and its litigation,

the National Immigration Project is acutely aware of the problems faced by detained noncitizens facing removal to third countries.

SUMMARY OF ARGUMENT

Amici fully agree with Respondents' analysis of DHS's March 2025 guidance. The guidance renders illusory the congressionally mandated protection against removing a person to a country where they will likely face persecution, torture, or death.

Amici submit this brief to explain how DHS's third-country removal policy operates in practice. In particular, they explain how the policy deprives noncitizens of meaningful opportunities to seek legally mandated protection, exposing them to the risk of persecution, torture, or death.

First, DHS's policy is designed to effectively bar class members from meaningfully seeking protection. So long as DHS has received vague, undefined "diplomatic assurances" from a third country, it may remove any person to that country with no advance notice. Real-world experience confirms that these "diplomatic assurances" are insufficient, resulting in people with CAT protection being sent into dangerous situations. In particular, DHS's policy does not require the government to assess whether a third country will simply send a person back to the country from which they won protection.

Second, even when notice is provided, DHS's policy is designed to neuter any possible opportunity to seek relief in response. DHS's guidance expressly provides that "immigration officers will not affirmatively ask whether the alien is afraid of being removed" to the newly identified third country. J.A. 307. The person may not know anything about that third country, their ability to contest removal thereto, the process for doing

so, or how to invoke that process. And the person will likely be deported before they can learn any of this: DHS's July 9, 2025 guidance provides that ICE generally need only wait 24 hours "before effectuating removal." J.A. 311.

If a person nonetheless articulates a fear of removal and somehow knows to request a fear interview, DHS often ignores those requests. And even if the request is not ignored, the person—who is likely detained, without internet access, and barely able to communicate with the outside world—will often have only 24 hours to find counsel, investigate conditions in a likely unfamiliar country, assemble the evidence necessary to establish a likelihood of persecution or torture, and prepare for a fear interview. That would be challenging enough under any circumstances; detention makes it essentially impossible. Against this backdrop, even experienced immigration lawyers often have trouble preparing for interviews.

Third, as of September 2026, DHS has made immigration lawyers' job even more challenging by making it difficult for attorneys even to locate their clients—particularly clients with final orders subject to the third-country policy—and for clients to contact their attorneys. At the same time, DHS has continued its policy of regularly moving people between detention centers, making location and communication that much harder.

Finally, other potential avenues for relief—motions to reopen, habeas petitions, and seeking withholding of removal in the initial immigration proceedings—are insufficient to provide protection. DHS has a pattern of deporting people with pending motions to reopen or habeas petitions. And DHS's official policy is to play whack-a-mole: If a noncitizen wins withholding of

removal, it just keeps choosing another third country until it succeeds.

ARGUMENT

I. DHS's policy, by design, makes it near-impossible for class members to meaningfully seek congressionally mandated protection against third-country removals.

By law, the government "may not remove an alien to a country" where they face persecution on account of a protected ground. *Johnson* v. *Guzman Chavez*, 594 U.S. 523, 530–31 (2021); 8 U.S.C. § 1231(b)(3)(A). The CAT likewise prohibits the United States from "effect[ing] the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture." Foreign Affairs Reform and Restructuring Act of 1998, 112 Stat. 2681, 2681–822; see *Johnson*, 594 U.S. at 530–31.

DHS's policy all but nullifies these congressionally mandated protections. Under DHS guidance, people may be removed without ever learning where they are being sent, or with so little notice that they have no real chance to contest removal. This systematic denial of the "opportunity . . . to be heard," *A.A.R.P.* v. *Trump*, 605 U.S. 91, 94 (2025) (per curiam) (citation omitted), produces devastating consequences.

And DHS's policy affects countless people because many classes of noncitizens are barred from seeking asylum. For these people, the only recourse to avoid persecution or torture is generally withholding of removal or CAT protection. See Resp. Br. 45 n.7 (noting categories of noncitizens erroneously deemed ineligible for asylum). Noncitizens are statutorily barred from asylum for many reasons, including merely due to filing more than one year after entering the United

States. 8 U.S.C. § 1158(a)(2)(B). Many are barred because they returned to the United States after a prior deportation—even if the earlier removal was erroneous or even if following deportation, conditions change in their home country, giving rise to a new fear of persecution or torture. See 8 C.F.R. § 1208.31(e); *Garcia* v. *Sessions*, 856 F.3d 27, 33 (1st Cir. 2017). Indeed, on one basis or another, most noncitizens facing removal from the United States over the past eight years have found asylum unavailable to them as a defense against removal. See, e.g., Circumvention of Lawful Pathways, 88 Fed. Reg. 31314, 31449-52 (May 16, 2023), vacated by *E. Bay Sanctuary Covenant* v. *Biden*, 683 F. Supp. 3d 1025 (N.D. Cal. 2023). Only withholding of removal or CAT protection have remained as possible remedies. And even those who prevailed and obtained protection have found that the challenged third country removal policies allow the Department to simply undo whatever remedies were granted to those seeking safety in this country.

A. DHS can circumvent notice altogether by relying on vague and toothless "diplomatic assurances."

Under DHS's March 2025 guidance, the agency need not provide *any* notice of third-country removal to a noncitizen if the third country "has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured." J.A. 307. The guidance neither defines nor explains the term "diplomatic assurances," nor allows any review of the State Department determination to accept such assurances—in contrast to the Department's opinions on specific asylum applications, which are not conclusive, *e.g.*, *Niam* v. *Ashcroft*, 354 F.3d 652, 658 (7th Cir. 2004) (Posner, J.). In practice, "diplomatic assurances" often provide only "generalized assurances that people

will not be persecuted or tortured," and "are non-specific to the individuals who are forcibly deported under these agreements." Human Rights First, *Systematic U.S. Government Pursuit of Refugees and Torture Survivors Granted Protection by U.S. Judges* 16, 33–34 (Oct. 2026), https://shorturl.at/8qtHV.

The flaws of that approach are obvious. If a country persecutes gay people or people of a certain religion, it cannot credibly provide assurances to *all* noncitizens. Noncitizens thus lose their right to notice—and the substantive rights the notice protects—based on empty promises.

This policy has resulted in precisely the sort of situations the law was designed to prevent. Consider Michael, a native and citizen of Ghana who was tortured by his family, community members, and authorities because he is gay. See Immigr. Equal., *How the Trump Administration's Third-Country Agreements Threaten the Lives of LGBTQ Refugees and Asylum Seekers* 4 (June 2026), https://shorturl.at/aUiuc. Michael was granted withholding of removal after an immigration judge found he would likely face persecution in Ghana. *Id.* at 4–5. DHS nevertheless deported him without notice to Equatorial Guinea—a country where LGBTQ people face severe violence and abuse. *Id.* Indeed, DHS officials told Michael only that he was being transferred, without disclosing where. *Id.* at 5. He did not learn he was being sent to Equatorial Guinea until the plane was already in flight. *Id.* Equatorial Guinea then forcibly returned Michael to Ghana. *Id.*

The deprivation of notice also creates serious, entirely preventable administrative errors. In March 2025, T.N., a Laotian national who has lived in the United States since he was three years old, was detained by ICE. Joint Appendix at 283, *D.V.D.* v. *U.S. Dep't of Homeland Sec.*, No. 26-1212 (1st Cir. Apr. 6,

2026) [hereinafter C.A. J.A.]. In July 2025, ICE deported him without notice to South Sudan—even though Laos had already agreed to accept him and issued travel documents authorizing his return. *Id.* at 283–84, 290. Because T.N. received no notice, he had no chance to alert DHS to its mistake. *Id.* He remains by himself in South Sudan, "isolated" and "lonely." *Id.* at 284.

Worse still, the no-notice policy fosters increased violence and deception. For example, in July 2025, DHS detained a Haitian class member who was previously granted withholding of removal in 2015, is married to a U.S. citizen, and has three U.S. citizen children. C.A. J.A. 449. DHS officials tried to convince him to sign papers consenting to deportation to Mexico, but he refused because he feared removal there. *Id.* In September 2025, DHS officers then told him he was being transferred to a facility in Louisiana, only to send him and several others to Nogales, Arizona, just over the U.S.-Mexico border. *Id.* at 450. As soon as their van arrived, immigration officers "started spraying [them] with pepper spray" to force them out of the van. *Id.* The class member, who has asthma, choked and passed out. *Id.* He and his fellow noncitizens were then removed to Mexico. *Id.*

B. Even when DHS provides notice, it is functionally meaningless.

When DHS actually provides notice, it still does not give noncitizens a meaningful chance to be heard on their protection claims.

1. To start, DHS's notice process does not inform noncitizens of their right to request a fear interview—and DHS often fails to honor those requests even when people know to make them. In fact, DHS guidance provides that "immigration officers will not affirmatively

ask whether the alien is afraid of being removed" to the newly identified third country. J.A. 307; see also *id.* at 311. In other words, DHS need not and does not tell people they can seek relief from removal to a place where they may face torture or persecution. See *A.A.R.P.*, 605 U.S. at 95 (detainee must have sufficient "information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief").

To see how this often plays out, consider the story of E.A.H. With less than a day's notice, DHS told E.A.H. he would be deported to South Sudan. C.A. J.A. 291–95. But when officers brought him to the airport, they told him he was going to Ireland. *Id.* The plane merely refueled in Ireland, however, before continuing to Djibouti, where DHS terminated E.A.H.'s court-ordered fear interview before its completion. *Id.* DHS then deported him to South Sudan without ever completing the interview or issuing a decision, leaving him detained under armed guard. *Id.*

In another case, a Guatemalan national who had received CAT protection was told that DHS intended to deport him to Mexico, a country with which he had no connection. C.A. J.A. 452–53. He expressed fear of removal and twice asked to speak with a deportation officer about obtaining a fear interview. *Id.* But DHS never provided an interview. *Id.* Instead, officers transported him to Mexico without warning, even though he repeatedly expressed fear of removal. *Id.*

2. Even when noncitizens happen to get a supposed chance to contest removal, DHS's notice policy affords virtually no time to prepare or present a fear-based protection claim. DHS's July 2025 guidance provides that ICE generally need only wait "24 hours following service of the Notice of Removal before effectuating removal." J.A. 311. If there are purported "exigent circumstances"—which the guidance does not define—

ICE may execute a removal order as soon as six hours after the Notice, so long as the noncitizen is given "reasonable means and opportunity to speak with an attorney" first. *Id.*

If a noncitizen affirmatively claims fear of persecution or torture, ICE must refer them to USCIS, which generally conducts a fear interview (usually by phone) "within 24 hours of referral." J.A. 312; see Human Rights First, *supra*, at 17. At that interview, the noncitizen must show they "more likely than not" would be persecuted on a protected ground or tortured in the third country. J.A. 308, 312. That is the *full merits standard* for withholding of removal and CAT protection, see *Johnson*, 594 U.S. at 530–31—not the lower threshold ordinarily applied in preliminary fear screenings, see 8 U.S.C. § 1225(b)(1)(B)(v); 8 C.F.R. § 208.31(c). In other words, DHS expects noncitizens to establish a merits-level protection claim within a day of referral, without even knowing the governing procedures and requirements. Moreover, this protection claim must be specific to the conditions in the proposed country of removal and individualized to the person asserting a fear.

That is simply not possible. It is not feasible, within that timeline, to find counsel, investigate conditions in a likely unfamiliar country, and assemble the evidence necessary to establish a likelihood of persecution or torture. That is particularly true for people in detention, who lack immediate access to counsel, records, or country-conditions evidence. See Human Rights First, *supra*, at 17; ACLU, *No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers* 8–12 (2022), https://shorturl.at/1dqC2. These difficulties are compounded by language barriers, as many noncitizens facing third-country removal do not speak English and lack adequate access to

interpreters. Human Rights First, *supra*, at 17. And all these roadblocks make it equally difficult for attorneys to effectively advocate for people facing removal. See *infra* § II. The result is a system structured not to facilitate the presentation of protection claims, but to ensure that removal occurs before those claims can meaningfully be heard.

Take, for example, the story of N.M., a Myanmar national. In May 2025, DHS told N.M. he would be deported to South Africa, only to change his destination to South Sudan later the same day. C.A. J.A. 232. Both notices were read to him in English, without an interpreter, even though his English proficiency is limited. *Id.* at 231–32. And though his attorney had arranged to meet with him the following morning, DHS deported N.M. before that meeting could happen, depriving him of any chance to consult with counsel or make his case. *Id.* at 232–33.

N.M.'s story is far from unique. In another case, DHS provided only sixteen hours' notice—mostly "non-waking hours" outside the normal business day—to a group of class members before they were removed to South Sudan. J.A. 60–61. As a result, they had no meaningful chance to investigate "the repercussions of being removed to South Sudan" and "limited, if any, ability to communicate with family or legal representatives." *Id.* They thus had no realistic chance to prepare or pursue claims for protection before their removal.

C. DHS's screening procedures do not account for the risk that third countries will return people to origin countries where they face persecution or torture.

Worse still, DHS's current screening framework does not require the government to consider whether

a third country will just send someone back to the country from which they won protection.

For example, E.L.V. is a native of Guatemala who arrived in this country when he was just sixteen years old, after years of torture and harassment by gang members. See E.L.V. Decl. ¶¶ 2–7, Add. to Br. of Amica Ctr. for Immigrant Rts. as Amicus Curiae Supporting Petitioner, *Fils-Aime* v. *Blanche*, Nos. 25-1083 & 25-1733 (1st Cir. Apr. 27, 2026) (*Fils-Aime* Amica Addendum). E.L.V. was granted CAT protection against removal to Guatemala after an immigration judge found he would likely face torture there. *Id.* ¶ 18. When he was later detained, he expressed (in a phone interview) his fear of deportation to Mexico and the possibility of return to Guatemala. *Id.* ¶¶ 22–23. That interview lasted only a few minutes and was conducted without counsel—even though an immigration judge had previously found E.L.V. incompetent to represent himself. *Id.* ¶¶ 17, 23. During the interview, E.L.V. explained that the gangs he feared in Guatemala also operated in Mexico. He was never informed of the interview's outcome or whether any decision had been made. *Id.* ¶ 23. DHS ultimately deported him to Mexico, *id.* ¶¶ 27–29, and Mexico returned him to Guatemala, *id.* ¶ 31. It did not take long for gang members to begin threatening him with severe violence again. *Id.* ¶ 33. Today, E.L.V. is largely trapped in his home, fearful that if he steps outside he will be attacked or killed. *Id.* ¶ 34.

E.L.V.'s story is not rare. See Human Rights First, *supra*, at 24. For example, since November 2025, Equatorial Guinea has returned approximately 30 people deported there to their countries of origin. See Human Rights Watch, *"To Scare People:" US Expulsions of Third-Country Nationals to Countries in Africa* (Oct. 8, 2026), https://shorturl.at/BbyO2. Human

Rights First separately documented at least 22 such returns involving people granted withholding of removal or CAT protection. Human Rights First, *Systematic U.S. Government Pursuit of Refugees*, *supra*, at 35. Those forcibly returned to their countries of origin include a gay Ghanaian man and a Mauritanian man who escaped hereditary slavery. *Id.* Others detained in Equatorial Guinea have faced armed threats, assaults, and apparent retaliatory arrests for speaking out against their treatment. *Id.*

The government cannot say it is unaware of these practices. On the contrary, "[a]ccording to court filings, U.S. officials told migrants headed to Ghana they would be sent onward to their home countries despite having protections." Minority Staff of S. Comm. on Foreign Rels., *At What Cost?: Inside the Trump Administration's Secret Deportation Deals*, 27 (Feb. 13, 2026), https://shorturl.at/ONFBr (collecting court testimony from deportees). Thus, outcomes that flatly violate congressionally mandated protections are not a bug in DHS's policies, but a feature.

Other deportees have reported similar accounts. In one case, a Salvadoran woman with withholding of removal was detained by ICE. See V.R.G. Decl. ¶¶ 1–7, *Fils-Aime* Amica Addendum. According to her sworn declaration, an ICE officer told her she would be deported to Mexico and that "Mexico would send [her] back to El Salvador." *Id.* ¶ 8. Yet ICE waited more than seven months to provide her with a fear interview. *Id.* ¶¶ 7, 13–14. And when an asylum officer finally called her, the officer barred her attorney from participating, warning that if V.R.G. did not proceed immediately, the officer would report that she declined an interview. *Id.* ¶ 13. V.R.G. therefore proceeded without counsel—in an interview conducted in English. *Id.* Despite knowing from the outset that "Mexico

would send [her] back to El Salvador," DHS failed to provide a timely fear interview and, even after finally conducting one, did not issue a timely decision. *Id.* ¶¶ 8, 13–15. In the end, only a judicial stay saved V.R.G. from removal. *Id.* ¶ 15.

II. DHS's policy, by design, impedes class members' access to counsel and counsel's ability to pursue relief.

A. It is challenging or impossible to obtain counsel in 24 hours.

Many people facing removal to an unfamiliar third country in less than 24 hours do not currently have any immigration attorney. Indeed, only 37% of immigrants overall—and just 14% of detained immigrants—have legal counsel. Am. Immigr. Council, *Right to Counsel*, https://shorturl.at/qGXgq (last visited Nov. 23, 2026).

Even if someone had a lawyer at their original immigration hearing where they secured withholding of removal, they may no longer have counsel. Many detained people facing third-country removal received withholding of removal years before, and were just living their lives before DHS tore them away from their communities. Human Rights First, *Systematic U.S. Government Pursuit of Refugees*, *supra*, at 15 (noting that "ICE officers have systematically arrested people who are living in U.S. communities."). These people had no need for, and likely do not have, immigration counsel. Other people in detention won withholding of removal or CAT protection while representing themselves before immigration judges; these people never had lawyers to begin with.

It is challenging, if not impossible, to obtain counsel from detention in less than 24 hours. To start, even if someone knows whom to call—and they may well

not—making a call from ICE detention is not easy. At best, there are long lines and detainees must pay to make calls. Maria Sacchetti & Liam Bowman, *Immigrants with Final Deportation Orders Disappear from ICE Detainee Locator*, Wash. Post (Sep. 21, 2026), https://shorturl.at/zGBCn. At other times, detainees may not even be able to make calls or know whom to contact.

One example is Thelma, a Ghanaian LGBTQ woman granted withholding of removal after immigration judges found that she faced persecution because of her sexual orientation. After she received withholding of removal, she remained detained for months until she was abruptly told that she would be sent to Cameroon. Thelma was pressured to sign deportation paperwork. "When Thelma insisted on speaking with a lawyer before signing anything, the officer responded by telling Thelma to 'fuck off,' and then threw the documents in her face." Ultimately, she was deported to Cameroon, where she was detained with inadequate food, inadequate medical care, and little information about her legal status. Immigr. Equal., *supra*, at 8.

Another example is someone who fled political persecution in Iran and was granted withholding of removal. Around a month after a judge held he cannot be removed to Iran, he was told he would be sent to Nicaragua. ICE refused to give him a paper notice of removal or to let him consult his lawyer. Even so, he said he was afraid of removal to Nicaragua because it had a close relationship with Iran. He later reiterated these fears in an interview with an asylum officer, but the officer told him Nicaragua would not risk "jeopardizing" its relationship with the United States by removing him to Iran. Without the assistance of counsel—who could have researched whether Nicaragua is doing exactly that, or at least objected to the officer's

baseless assertion—the class member had no recourse. Eventually, guards said he would be released, but they instead handcuffed him, drove him to an airport in Louisiana, and flew him to Nicaragua. In Nicaragua, he was beaten until he gave in and consented to returning to Iran. C.A. J.A. 434–37.

Other challenges include language barriers. Many detained people speak little if any English, and others cannot read, have physical disabilities, or face physical or mental health problems. Human Rights First, *Systematic U.S. Government Pursuit of Refugees*, *supra*, at 27. Consider a deaf asylum seeker from Cuba who was detained in Louisiana; even though the detention center staff knew he was deaf, he received no form of interpretation. Human Rights First, *"You Suffer a Lot:" Immigrants with Disabilities Face Barriers in Immigration Court*, https://shorturl.at/qixo6 (last visited Nov. 23, 2026).

And even if a person is able to obtain counsel despite all these obstacles, doing so can take much of the 24-hour notice window—leaving counsel even less time to actually prepare a case.

B. It is challenging or impossible for lawyers to locate clients in detention with final orders of removal.

Even if a detained person is lucky enough to have counsel already, counsel is not useful unless attorney and client can communicate with each other. Yet they generally cannot communicate—or at least cannot do so in a timely fashion—thanks to other DHS policies and practices. This problem compounds class members' harms.

To start, attorneys cannot provide legal assistance to detained clients unless they can locate them. Unfortunately, DHS practices often make that impossible.

ICE's own statistics confirm ICE has over 200 different detention facilities. See U.S. Immigr. & Customs Enf't, *ICE Alternatives to Detention Data, FY26*, https://shorturl.at/Qmo6w.

Detainees are often moved to new facilities, both to find bed space and to prepare for deportation. Ryan J. Foley, *ICE Hides Locations of Thousands of Detainees with Final Removal Orders*, Associated Press (Sep. 21, 2026), https://tinyurl.com/ysvzb3ym. In September 2026, ICE conducted over 1,200 domestic transfer flights across 54 U.S. cities, with an average of 42 flights per day. Human Rights First, *ICE Flight Monitor: September 2026 Report*, 8–9 (Oct. 19, 2026), https://perma.cc/F3WP-P3RB. So even knowing where a client *was* detained does not guarantee being able to find them now.

And DHS has changed its policies to make locating soon-to-be-deported people even harder. DHS maintains an "[o]nline [d]etainee [l]ocator [s]ystem" (ODLS), which generally allows lawyers or family members to "locate a detainee who is currently in ICE custody or who has been in U.S. Customs and Border Protection's custody for more than 48 hours," U.S. Immigr. & Customs Enf't, *Online Detainee Locator System*, https://shorturl.at/tqhez (last visited Nov. 20, 2026). Since mid-September 2026, however, people subject to final deportation orders are no longer included in ODLS (with the exception of four exempt facilities). Foley, *supra*. Nor can counsel obtain information about their own clients by phone—the new policy bars that too. Maria Sacchetti & Liam Bowman, *supra*. Under this policy, DHS has removed thousands of people—including those with withholding and CAT grants—from its detainee locator system. Human Rights First, *Systematic U.S. Government Pursuit of Refugees*, *supra*, at 18; see also Foley, *supra* (nearly

16,000 people who were detained in July of this year were subject to final removal orders).[2]

DHS's new policy has serious consequences for people with just 24 hours to fight removal to a third country. As one attorney explained: "If you can't find your client, don't know what's happening to your client, you can't get that information to the court to stop their removal." Foley, *supra*. As another attorney said: "Especially when you factor in the speed at which they're moving people around, even just within the United States, it's a very serious problem to not be able to locate these people." Sacchetti & Bowman, *supra.* Consider Mohamed—in the space of five days, he was sent from Massachusetts to Mississippi to Louisiana and then to Texas, before ultimately being removed to Somalia. Aala Abdullahi & Geoff Hing, *ICE Detained Them, and Then They Vanished*, The Marshall Project (June 1, 2026), https://shorturl.at/cZaTt.

Unable to communicate with their clients, attorneys cannot know which unrelated third country has been chosen as their client's destination, so they cannot meaningfully prepare a withholding or CAT claim. To succeed, a CAT claim must articulate the specific conditions in the country of removal and persuasively articulate why the person is afraid of being persecuted, tortured, or killed there. This necessarily requires both knowing the country and having time to discuss with the client what dangers they would face there. DHS's policies make that impossible.

DHS's shell game also impedes petitioning for habeas relief, which generally must be done where the detained person is located. Foley, *supra*. In fact, to show that a judge has jurisdiction over a habeas

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[2] A challenge to DHS's new policy is pending. See *Greater Bos. Leg. Servs.* v. *Mullin*, No. 26-14869 (D. Mass. filed Oct. 28, 2026).

petition, attorneys often attach ODLS records to their habeas petitions. Sacchetti & Bowman, *supra*. Now that detainees are no longer listed in ODLS, attorneys cannot do that even if they are able to locate their clients. And attorneys cannot rely on their clients contacting them, for the reasons discussed above.

C. It is challenging or impossible for lawyers to provide proper legal assistance within the 24-hour window.

Even when lawyers can locate their clients, they often face substantial delays before they can actually speak to them, thanks to detention facility procedures, call scheduling requirements, transfers, and staff availability. Even if contact is made, seeking meaningful relief takes longer than DHS allows. And relief is often unavailable in any event.

1. Legal visits or calls must often be scheduled in advance. For example, Plymouth County Correctional Facility in Massachusetts explains that "Detainees cannot receive incoming calls." Instead, it provides virtual call times from 8:00 a.m. to 10:00 p.m. every day, but requires attorneys to schedule these calls 24 hours in advance. U.S. Immigr. & Customs Enf't, *Plymouth County Correctional Facility,* https://shorturl.at/FiMUo (last visited Nov. 23, 2026). Other facilities may have even longer wait times. At some facilities, the process to have an attorney's phone number listed as privileged takes days, and then there is a further, multi-day wait to be scheduled for a privileged call or video visit. C.A. J.A. 143. It can even take days for facility staff just to respond to a lawyer's request for a call. *Id.* These hurdles often make any representation illusory.

For example, in 2015, C.O. won CAT protection from being removed to El Salvador. C.A. J.A. 443–44.

After he was detained in 2025, C.O. and his wife tried to contact his lawyer, but ICE moved him between detention facilities so often that arranging a call was impossible. *Id.* at 443. In early October 2025, C.O. called his wife from Mexico and told her that—with no warning—"immigration officers drove him from a U.S. detention center to the Mexico border and handed him over to Mexican authorities." *Id.*

Against this backdrop, DHS's policy of providing just 24 hours' notice makes it impossible for lawyers to provide real legal assistance. And even if a lawyer has the full 24 hours—which they often won't—meaningfully preparing for a fear interview in that time is impossible. See Part I.B, *supra*.

2. Moving to reopen the underlying immigration proceeding is not a solution; practically speaking, this cannot be done within 24 hours. A motion to reopen requires extensive factual development, legal analysis, and procedural coordination, including preparing an accompanying withholding application and supporting evidence. This is difficult even for attorneys, and effectively impossible for people without lawyers, let alone detained people. C.A. J.A. 136–137.

To complete this process, one must compile a sworn statement in English, gather and translate supporting evidence, complete applications for protection, and establish prima facie eligibility at the time of filing. C.A. J.A. 136. This demands resources like internet access, document retrieval, and translation services that detained individuals lack. Obtaining and reviewing immigration court records to understand the case history and identify viable claims takes additional time. *Id.* at 143 (noting it can take 15–30 hours of work for a lawyer to just review a client's record).

And detained *pro se* people must use paper filing, which produces still more delays. C.A. J.A. 137. Mail must first go through the detention center's mail procedures and then be delivered by the postal service. Even once received, a motion is not immediately processed by the immigration court. In recent years, lawyers have seen delays of several weeks for docketing paper motions to reopen in multiple immigration courts. *Id.*

Even for non-detained people, *pro se* motions to reopen often fail because of missing required applications, key facts, evidence, or accurate translations. C.A. J.A. 137. The legal framework is complex, involving strict deadlines and numerical bars, with complex legal standards for exceptions. Satisfying these standards requires nuanced claims like lack of notice, changed country conditions, or equitable tolling, and there are additional barriers for sua sponte reopening. *Id.* Even a seasoned attorney with ample resources cannot complete this process in the 24 hours—at best—that DHS provides before executing third-country removals.

Adding insult to injury, even somehow filing a motion to reopen within 24 hours would not stave off deportation—a pending motion to reopen does not automatically stay removal. C.A. J.A. 137. As a result, people can be removed before even meritorious motions are considered.

Take the story of a Turkish refugee who was only denied asylum due to a regulation that was later invalidated. Because he fled to safety without scheduling an appointment through an oversubscribed government mobile app, he was found eligible only to seek withholding of removal. Even though he received withholding of removal from Turkey, he was forcibly removed to the Central African Republic—despite the pendency of his motion to reopen his immigration case

and an emergency motion in his federal habeas case. Human Rights First, *Systematic U.S. Government Pursuit of Refugees*, *supra*, at 14.

And that all assumes a motion to reopen is even theoretically available. People can generally only file one motion to reopen. See 8 U.S.C. § 1229a(c)(7)(A). DHS, however, is free to serially designate different third countries as removal destinations. So even if a person could somehow file a motion to reopen in response to the first third-country removal attempt, any further such motions would be barred—leaving no way to seek statutorily available protection.

Beyond that, even legally permissible motions may be denied for reasons other than the merits. Reopening is left to the immigration judge's discretion. 8 C.F.R. § 1003.23(b)(1)(iv). Immigration judges have denied motions to reopen to challenge removal to an unrelated third country for lack of jurisdiction. Human Rights First, *supra*, at 17. For example, an attorney filed a motion to reopen for a client facing removal to a third country (El Salvador), but the immigration court rejected that motion because the client had "been ordered removed to Venezuela . . . not El Salvador." C.A. J.A. 151. Another lawyer recounted that the court denied her motion to reopen with no reasoning at all. *Id.* at 93.

3. Nor can lawyers protect their clients by preemptively requesting withholding of removal in the initial immigration proceedings. Although DHS's third-country removal policy allows deportation to any unrelated country, noncitizens cannot legally apply for protection against removal to any country other than the one the government is *currently* trying to send them to. See *Matter of B-S-A-N-*, 30 I&N Dec. 145, 148 (2026). Nor would such a showing be feasible anyway; no lawyer or pro se person could preemptively prove a risk of

harm for every country where they could possibly be deported at some unknown time.

Finally, the risk of deportation is never-ending. Even if a noncitizen overcomes all the hurdles created by the 24-hour notice process to successfully show a fear of persecution in an unknown third country, DHS can just start over and "choose to designate another country for removal." Memorandum from Kristi Noem, Sec'y, U.S. Dep't of Homeland Sec., to Kika Scott, Senior Off. Performing the Duties of the Dir., U.S. Citizenship & Immigr. Servs., et al., *Guidance Regarding Third Country Removals* 2 (Mar. 30, 2025), https://shorturl.at/b7rkA. In this way, DHS's policy virtually guarantees that it will eventually be able to deport any noncitizen to a third country *regardless* of whether they face torture, persecution, or death there.

CONCLUSION

For the reasons above and in Respondents' brief, the Court should affirm.

Respectfully submitted,

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