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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Naveen KUMAR,

Petitioner,

v.

Cammilla WAMSLEY, Field Office Director of
Enforcement and Removal Operations, Seattle
Field Office, Immigration and Customs
Enforcement (ICE); Kristi NOEM, Secretary,
U.S. Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S. Attorney
General; Bruce SCOTT, Warden of Northwest
ICE Processing Center,

Respondents.

Case No. 2:25-cv-2055

**PETITION FOR WRIT OF
HABEAS CORPUS**

1 INTRODUCTION

2 1. Petitioner Naveen Kumar is in the physical custody of Respondents at the
3 Northwest Immigration and Customs Enforcement (ICE) Processing Center (NWIPC). Mr.
4 Kumar is a citizen of India, but he now faces removal to Uganda. Respondents seek to remove
5 him to Uganda without any opportunity to apply for humanitarian-based protection from removal
6 to that country, even though the immigration laws and due process require otherwise.

7 2. Mr. Kumar was ordered removed to India, but granted withholding of removal to
8 India, on August 25, 2025, by an immigration judge (IJ) in the Tacoma, Washington,
9 immigration court. A grant of withholding of removal means that Mr. Kumar demonstrated that
10 his “life or freedom would be threatened” in his home country due to his “race, religion,
11 nationality, membership in a particular social group, or political opinion,” and as a result
12 Respondents may not remove him there. 8 U.S.C. § 1231(b)(3)(A). Mr. Kumar satisfied this
13 standard because of his status as a gay man who has the human immunodeficiency virus (HIV).

14 3. While Respondents may not remove Mr. Kumar to India, they may seek to
15 remove him to another country. This prerogative, however, is not boundless. The Immigration
16 and Nationality Act (INA) provides a hierarchal list of countries to which a person may be
17 removed. In most cases, the INA commands that a person be removed to the place they choose,
18 or some other country to which they have a close connection. *See id.* § 1231(b)(2). Only if
19 removal to one of these countries is “impracticable, inadvisable, or impossible” may the
20 Department of Homeland Security (DHS) remove a person to some other, third country—a
21 country that is not designated in the removal order. *Id.* § 1231(b)(2)(E)(vii).

22 4. Respondents seek to remove Mr. Kumar to a third country. On September 2,
23 2025, DHS presented Mr. Kumar with a “Notice of Removal” to Uganda, informing Mr. Kumar
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1 that they intend to remove him there. Mr. Kumar refused to sign the document because he is
2 afraid of being deported given his sexual orientation and HIV positive status. Indeed, Uganda is
3 known for being particularly hostile to homosexuality.

4 5. The INA, the Foreign Affairs Reform Restructuring Act of 1998 (FARRA), and their
5 implementing regulations ensure that prior to any removal, Respondents must provide Mr. Kumar an
6 opportunity to present a claim of fear of torture or persecution as to the third country. Specifically,
7 pursuant to 8 U.S.C. § 1231(b)(3), Respondents may not remove persons who are more likely than
8 not to face persecution if removed. And pursuant to the Convention Against Torture (CAT), which is
9 codified as a statutory note to § 1231, Respondents may not remove persons to a country where they
10 are likely to face torture.

11 6. The Due Process Clause of the Fifth Amendment also requires that, prior to a third-
12 country removal, Mr. Kumar receive meaningful notice and opportunity to access these mandatory
13 statutory protections. As the Supreme Court recently held in *A.A.R.P. v. Trump*, this means a person
14 “must receive notice” that “they are subject to removal” (here, to a third country), and such notice
15 must be provided “within a reasonable time and in such a manner as will allow the[] [noncitizen] to
16 actually seek . . . relief.” 605 U.S. 91, 95 (2025) (per curiam) (quoting *Trump v. J.G.G.*, 604 U.S.
17 670, 673 (2025)).

18 7. Respondents have not provided any meaningful notice or opportunity for Mr. Kumar
19 to present a fear-based claim here. On September 2, 2025, more than a week after the IJ issued the
20 final order of removal and grant of withholding, a DHS officer handed Mr. Kumar a written Notice
21 of Removal to Uganda, which provided no information as to when he would be removed nor any
22 mechanism to raise his statutory rights for protections.

23 8. Accordingly, Mr. Kumar seeks an order that employs existing DHS screening
24 mechanisms and requires Respondents (1) to inform him and counsel in writing of any planned

1 removal to Uganda (or any other third country) at least ten days prior to removal, (2) to provide a
2 reasonable fear interview (RFI) given Mr. Kumar's expressed fear of removal, and (3) if the RFI is
3 denied, to provide fifteen days to file a motion to reopen with the immigration court.

4 JURISDICTION

5 9. Mr. Kumar is in the physical custody of Respondents. Mr. Kumar is detained at
6 the NWIPC in Tacoma, Washington.

7 10. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C.
8 § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the
9 Suspension Clause).

10 11. Nothing in 8 U.S.C. § 1252 deprives this Court of jurisdiction.

11 12. Specifically, § 1252(a)(5) and (b)(9) do not apply here. Mr. Kumar does not seek
12 "judicial review of an order of removal entered or issued," 8 U.S.C. § 1252(a)(5), because Mr.
13 Kumar's final removal order here designates a country different than the one to which
14 Respondents now seek to remove him. The challenged action and planned removal here arise
15 after removal proceedings were complete. *See Ibarra-Perez v. United States*, No. 24-631, --- F.
16 4th ---, 2025 WL 2461663, at *9-10 (9th Cir. Aug. 27, 2025).

17 13. Similarly, § 1252(b)(9) "consolidates" a "noncitizen's various challenges arising
18 from the removal proceeding" into "a petition for review [before] the courts of appeals."
19 *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (quoting *INS v. St. Cyr*, 533 U.S. 289, 313 n. 37
20 (2001)). However, again, Mr. Kumar challenges only Respondents' actions to seek removal to a
21 new, third country *after* removal proceedings were completed. Such an action cannot be
22 challenged via a petition for review, because there is no final removal order designating the third
23 country for removal that a court of appeals could review. *Ibarra-Perez*, 2025 WL 2461663, at
24 *9-10.

1 14. Subsection 1252(g), which bars claims that challenge DHS’s decision to “execute
2 [a] removal order[],” also does not prevent relief. This “narrow” subsection, *DHS v. Regents of*
3 *the Univ. of Calif.*, 591 U.S. 1, 19 (2020), does not “sweep in any claim that can technically be
4 said to ‘arise from’ the three listed actions” in § 1252(g), *Jennings v. Rodriguez*, 583 U.S. 281,
5 294 (2018). Rather than encompass “all deportation-related cases,” *Reno v. Am.-Arab Anti-*
6 *Discrimination Comm. (AADC)*, 525 U.S. 471, 478 (1999), § 1252(g) was “designed to give
7 some measure of protection to ‘no deferred action’ decisions and similar discretionary
8 determinations,” *id.* at 485. Here, Mr. Kumar does not challenge any exercise of discretion by
9 Respondents. Instead, all Mr. Kumar seeks is an order requiring Respondents to comply with
10 their mandatory duties to afford protection procedures pursuant to 8 U.S.C. § 1231(b)(3) and the
11 Convention Against Torture. *See Ibarra-Perez*, 2025 WL 2461663, at *6–8.

12 15. Finally, nothing in FARRA bars this case. Section 2242(d) of FARRA limits
13 review of “regulations adopted to implement [CAT].” Here, however, Mr. Kumar does not
14 challenge the CAT regulations. Instead, he seeks only an order that requires Respondents to
15 provide him with a process to access withholding and CAT, as federal law requires.

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

19 **VENUE**

20 17. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484,
21 493–500 (1973), venue lies in the United States District Court for the Western District of
22 Washington, the judicial district in which Mr. Kumar is currently in custody.

1 18. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
2 Respondents are employees, officers, and agencies of the United States, and because a
3 substantial part of the events or omissions giving rise to the claims occurred in this district.

4 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

9 20. Habeas corpus is “perhaps the most important writ known to the constitutional
10 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
11 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added) (citation omitted). “The
12 application for the writ usurps the attention and displaces the calendar of the judge or justice who
13 entertains it and receives prompt action from him within the four corners of the application.”
14 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v.*
15 *Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (habeas corpus is “a speedy remedy, entitled by
16 statute to special, preferential consideration to insure expeditious hearing and determination”).

17 **PARTIES**

18 21. Mr. Kumar is a citizen of India. On August 25, 2025, Mr. Kumar became subject
19 to a final order of removal directing removal to India and simultaneously granting him
20 withholding of removal to that country.

21 22. Respondent Cammilla Wamsley is the Field Office Director for the Seattle Field
22 Office of ICE’s Enforcement and Removal Operations (ERO) division. As such, Respondent
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1 Wamsley is Mr. Kumar's immediate custodian and is responsible for Mr. Kumar's detention and
2 removal. She is named in her official capacity.

3 23. Respondent Kristi Noem is the Secretary of the Department of Homeland
4 Security. She is responsible for the implementation and enforcement of the INA, and oversees
5 ICE, which is responsible for Mr. Kumar's detention. Ms. Noem has ultimate custodial authority
6 over Mr. Kumar and is sued in her official capacity.

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

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

14 26. Respondent Bruce Scott is employed by the private corporation The GEO Group,
15 Inc., as Warden of the NWIPC, where Mr. Kumar is detained. He has immediate physical
16 custody of Mr. Kumar. He is sued in his official capacity.

17 LEGAL FRAMEWORK

18 **The INA's Scheme for Determining the Country of Removal**

19 27. Most noncitizens facing removal are placed into removal proceedings under 8
20 U.S.C. § 1229a.

21 28. Typically, at the outset of such a removal proceeding, the parties or the
22 immigration judge designates a country of removal. *See Imm. Ct. Prac. Manual* § 4.15(i).

1 29. As relevant here, the INA “provides four consecutive removal commands” about
2 where to remove a noncitizen. *Jama v. ICE*, 543 U.S. 335, 341 (2005).

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

5 31. Second, if the noncitizen declines to designate a country—which often occurs
6 where the noncitizen fears return to their country of origin—DHS then designates the “country of
7 which the [noncitizen] is a subject, national, or citizen” for removal, as required by statute. *Id.*
8 § 1231(B)(2)(D). The statute requires DHS to attempt removal to these countries before seeking
9 alternatives. *See id.* § 1231(b)(1), (b)(2)(A), (D) (repeatedly instructing where DHS “shall”
10 remove someone by order of priority).

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

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

1 **Withholding of Removal and the Convention Against Torture**

2 34. U.S. immigration law affords noncitizens in the United States three forms of
3 protection from persecution and/or torture: asylum, withholding of removal, and protection under
4 the Convention Against Torture (CAT).

5 35. Asylum typically provides full protection against deportation to any country. *See*
6 8 U.S.C. § 1158(c). This means the person cannot be deported not only to their country of origin,
7 but also any other country. Asylum also provide a host of other benefits, including a pathway to
8 citizenship.

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

16 37. Finally, pursuant to FARRA, Congress instructed that the U.S. government may
17 not “expel, extradite, or otherwise effect the involuntary return of *any person* to a country in
18 which there are substantial grounds for believing the person would be in danger of being
19 subjected to torture.” Pub. L. 105-277 Div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822
20 (1999) (codified as statutory note to § 1231). This mandate applies to all persons and contains no
21 exceptions.

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

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

5 40. No matter where DHS seeks to remove a person, the INA’s protections against
6 removal to a country where a person may face persecution and FARRA’s protections against
7 removal to a country where a person may face torture apply.

8 41. Removals pursuant to § 1231(b) are “subject to paragraph (3),” which, as noted,
9 provides the framework for withholding of removal. See 8 U.S.C. § 1231(b); see also, e.g., *Jama*,
10 543 U.S. at 348.

11 42. Similarly, FARRA and the regulations implementing CAT prohibit deportation to
12 a country where the noncitizen will face torture. See FARRA § 2242(b); 8 C.F.R. §§ 208.16(c)–
13 208.18, 1208.16(c)–1208.18.

14 **FACTUAL ALLEGATIONS**

15 **The Litigation in *D.V.D. v. Department of Homeland Security (D. Mass.)*.**

16 43. Until June 23, 2025, individuals like Mr. Kumar were entitled to receive notice
17 and an opportunity to apply for CAT relief prior to removal due to a temporary restraining order,
18 and later, a preliminary injunction, in *D.V.D. v. DHS*, No. 1:25-cv-10676-BEM (D. Mass.).

19 44. The *D.V.D.* litigation challenges, inter alia, DHS’s failure to provide certain
20 noncitizens with final orders of removal the statutory and constitutional process they are entitled
21 to receive pursuant to 8 U.S.C. § 1231(b)(3), FARRA, and the Due Process Clause.

22 45. On April 18, 2025, the district court in *D.V.D.* certified a nationwide class of
23 noncitizens with final removal orders entered in removal proceedings under 8 U.S.C. § 1229a
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1 and certain other administrative removal processes. *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 378,
2 394 (D. Mass. 2025).

3 46. At the same time, the court issued a classwide injunction that required the
4 government to undertake certain procedures before removing a person to a third country. *Id.* at
5 392–93. Specifically, the court ordered that prior to any third-country removal, noncitizens and
6 their counsel, if any, must receive written notice of the country of removal in a language the
7 noncitizen understands and a meaningful opportunity to assert a claim for CAT protection related
8 to that third country. *Id.* at 392. The court’s framework adopted DHS’s existing process of
9 scheduling RFIs to screen people for a fear, and then provided those did not pass the interview a
10 window of fifteen days to move to reopen their removal cases. *Id.* at 392–93.

11 47. On May 21, 2025, after the government violated the preliminary injunction order,
12 the district court clarified that noncitizens must receive at least ten days’ notice prior to removal
13 to a third country. *D.V.D. v. DHS*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass.
14 May 21, 2025). The *D.V.D.* defendants subsequently sought a stay of the preliminary injunction
15 with the U.S. Supreme Court. Their application for a stay emphasized, inter alia, that the district
16 court lacked jurisdiction to provide classwide injunctive relief because of 8 U.S.C. § 1252(f)(1).
17 *See App. for a Stay, DHS v. D.V.D.*, No. 24A1153, at 19–22 (U.S. May 27, 2025). On June 23,
18 2025, the Court granted the stay application without providing any reasoning. *See DHS v.*
19 *D.V.D.*, 145 S. Ct. 2153 (2025).

20 **Respondents’ Policy as to Third-Country Removals**

21 48. On March 30, 2025, after the Plaintiffs in *D.V.D.* filed their case, DHS issued a
22 new memo entitled “Guidance Regarding Third Country Removals,” which the *D.V.D.*
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1 defendants claimed satisfies the INA, FARRA, and due process. *See D.V.D.*, No. CV 25-10676-
2 BEM, ECF No. 43-1 (D. Mass. Mar. 30, 2025); *see also* Ex. A.¹

3 49. Pursuant to the memo, Respondents do not need to provide any notice or process
4 whatsoever to a noncitizen prior to their removal if the United States has received “diplomatic
5 assurances [from the country of removal] that [noncitizens] removed from the United States will
6 not be persecuted or tortured.” Ex. A at 1.

7 50. If the United States has not received such assurances, then the memo simply
8 provides that a deportation officer must “inform the [noncitizen] of removal to [the third]
9 country.” *Id.* at 2. “Immigration officers will not affirmatively ask whether the [noncitizen] is
10 afraid of being removed to that country.” *Id.*

11 51. If a noncitizen states a fear, then U.S. Citizenship and Immigration Services
12 (USCIS) must screen the noncitizen “within 24 hours of referral from the immigration officer.”
13 *Id.* At the screening, the noncitizen must prove that it is “more likely than not” they will be
14 persecuted or tortured upon removal.

15 52. This process differs dramatically from the typical RFI process, where USCIS
16 assesses only if there is a “reasonable possibility” the noncitizen could establish they are likely to
17 face persecution or torture if provided the opportunity to present their full case to an immigration
18 judge. *See* 8 C.F.R. § 208.31(c) (outlining reasonable fear interview procedure for other persons
19 with final removal orders, like those with reinstatement orders or administrative removal orders).

20 53. A “reasonable possibility” is a lower standard of proof than the “more likely than
21 not” standard required to win a grant of withholding of removal or CAT protection. *Dominguez*

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24 ¹ All exhibit citations are to the exhibits included with the declaration of Aaron Korthuis, which
Petitioner has filed concurrently with the petition for writ of habeas corpus.

1 *Ojeda v. Garland*, 112 F.4th 1241, 1245 n.1 (9th Cir. 2024) (explaining that the “reasonable
2 possibility” standard “has been defined to require a ten percent chance” of persecution or torture
3 (citation omitted)).

4 54. On July 9, 2025, following the Supreme Court’s stay of the *D.V.D.* preliminary
5 injunction, ICE issued guidance regarding how to implement DHS’s now-operative March 30
6 Memo. *See D.V.D.*, No. CV 25-10676-BEM, ECF No. 190-1 (D. Mass. July 15, 2025); *see also*
7 Ex. B.

8 55. The July 9 Guidance is identical to the March 30 Memo except that, in cases
9 where diplomatic assurances do not exist, it provides that an officer will serve a “Notice of
10 Removal” with interpretation. *Id.* at 1.

11 56. DHS may effectuate removal 24 hours after serving notice; however, “[i]n exigent
12 circumstances,” with approval from chief counsel of DHS or ICE, DHS may execute removal to
13 the third country with a mere six hours’ notice if ICE provides the noncitizen “means and
14 opportunity to speak with an attorney.” *Id.*

15 57. Respondents’ March 30 memo, July 9 guidance, and their practice as to other
16 third-country removals demonstrate that DHS’s policy permits the government to provide a slip
17 of paper listing the country of removal mere hours before a planned third-country of removal.

18 58. In fact, in the *D.V.D.* litigation, DHS has taken the position that the law does not
19 require them to provide any notice whatsoever:

20 THE COURT: In this posture, where it is the discretionary decision of the department
21 that’s changing the [country] designation, does the person who’s going to be deported
22 have a right to be informed and be given an opportunity to be heard as to the
23 dangerousness of that third country designation?

24 [DHS COUNSEL]: DHS’s position is no.

THE COURT: They don’t have to be told anything and given no opportunity to be heard?

1 [DHS COUNSEL]: DHS's position is no.

2 Tr. at 10-11, No. 1:25-cv-10676-BEM, ECF No. 44 (D. Mass. Mar. 28, 2025).

3 59. Respondents' extreme position has been born out in several instances. First, on
4 May 7, 2025, the *D.V.D.* defendants attempted to remove several *D.V.D.* class members to
5 Libya—a country torn apart by active armed conflict—after providing them at most only hours'
6 notice of removal. *See* Declarations of Johnny Sinodis and Tin Thanh Nguyen, *D.V.D.*, No. 1:25-
7 cv-10676-BEM, ECF No. 99-2 & 99-3 (D. Mass. May 14, 2025).

8 60. Second, on May 21, 2025, "several class members were [placed on a plane] to
9 South Sudan after having received less than 24 hours' notice of their impending deportations."
10 *D.V.D.*, 145 S. Ct. at 2157 (Sotomayor, J., dissenting). South Sudan, like Libya, is the subject of
11 grave U.S. Department of State warnings against travel and is similarly on the verge of open
12 armed conflict.

13 61. These examples, which occurred despite the *D.V.D.* court's preliminary
14 injunction, reflect that Respondents seek to remove individuals to third countries with only
15 hours' notice of removal.

16 62. Other examples since the *D.V.D.* injunction was lifted continue also reflect the
17 Respondents' extreme position. For example, recently, five members of the *D.V.D.* certified class
18 were removed to Ghana, notwithstanding the fact that all five had won withholding of removal as
19 to their countries of origin. *See* Order, *D.A. v. Noem*, No. 1:25-cv-03135-TSC (D.D.C. Sept. 15,
20 2025), Dkt. 41 at 2. They were put on a U.S. military plane to Ghana without any notice or
21 opportunity to challenge removal to that country. *Id.* Upon arrival there, one *D.V.D.* class
22 member was removed almost immediately to their country of origin, notwithstanding the
23 withholding order from a U.S. immigration judge. *Id.* at 3. The examples of these *D.V.D.* class
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1 members show how Respondents are also using third country removals to facilitate the return of
2 people like Mr. Kumar to their country of origin, in direct violation of the withholding orders
3 such people have received.

4 63. Even where notice is provided, DHS's policy is to provide not more than 24 hours
5 following referral to USCIS for a person to prepare their entire defense against removal to that
6 third country.

7 64. In typical withholding and CAT cases, individuals have months to prepare and
8 often submit applications with hundreds of pages of supporting evidence, including testimony,
9 expert witness declarations, and country conditions evidence to explain why a person fears
10 persecution or torture.

11 **Mr. Kumar's Individual Factual Allegations**

12 65. Mr. Kumar is a citizen of India.

13 66. He entered the United States on May 15, 2023, seeking asylum. Ex. C; Decl. of
14 Naveen Kumar ¶ 2.

15 67. He was apprehended by Border Patrol, issued a Notice to Appear, and
16 subsequently released from custody. Ex. C; Ex. D; Kumar Decl. ¶ 2.

17 68. Following his release, on June 23, 2023, Mr. Kumar filed a timely application for
18 asylum and withholding of removal. Kumar Decl. ¶ 3. In early 2024, he received a work permit.
19 *Id.* Mr. Kumar then worked as an Uber driver and delivery driver. *Id.*

20 69. On April 15, 2025, Mr. Kumar was are-arrested at an ICE check-in. *Id.* ¶ 4; *see*
21 *also* Ex. C.

22 70. At a merits hearing on August 25, 2025, an IJ in Tacoma, Washington ordered
23 Mr. Kumar removed and granted withholding of removal. Ex. E; Kumar Decl. ¶ 5.

1 71. The IJ found that Mr. Kumar satisfied the requirements for withholding of
2 removal because of his status as a gay man with HIV and the harm he therefore faced in India.
3 Kumar Decl. ¶ 6.

4 72. Neither he nor DHS appealed the IJ's order ordering removal and granting him
5 withholding of removal. Ex. E.

6 73. On September 2, 2025, one week after the IJ granted withholding, ICE gave Mr.
7 Kumar a "Notice of Removal" to Uganda. Ex. F; Kumar Decl. ¶ 9.

8 74. The notice contains no additional information regarding DHS's intention to
9 remove Mr. Kumar to Uganda, including an expected date of removal. Ex. F.

10 75. The notice also contains no additional information of Mr. Kumar's right to seek
11 protection from removal to Uganda or how to seek that protection. *Id.*

12 76. Mr. Kumar refused to sign the form, stating that he was afraid of being removed
13 to Uganda on account of his status as a gay man with HIV. Kumar Decl. ¶ 10.

14 77. Since then, ICE has not provided Mr. Kumar with any additional information
15 regarding its plans to remove him to Uganda.

16 78. Respondents have not scheduled Mr. Kumar for a fear screening despite being
17 aware of his fear of deportation.

18 79. Mr. Kumar remains detained.

19 80. Notably, human rights groups have denounced the Ugandan government's
20 "crackdowns and discrimination against LGBT [lesbian, gay, bisexual, and transgender] people,"
21 which the current government has purportedly taken "to unprecedented heights, culminating in
22 the enactment of the Anti-Homosexuality Act, one of the world's harshest anti-LGBT laws, in
23 May 2023." Human Rights Watch, *"They're Putting Our Lives at Risk": How Uganda's Anti-*
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1 *LGBT Climate Unleashes Abuse*, 1 (2025), [https://www.hrw.org/report/2025/05/26/theyre-](https://www.hrw.org/report/2025/05/26/theyre-putting-our-lives-risk/how-ugandas-anti-lgbt-climate-unleashes-abuse)
2 [putting-our-lives-risk/how-ugandas-anti-lgbt-climate-unleashes-abuse](https://www.hrw.org/report/2025/05/26/theyre-putting-our-lives-risk/how-ugandas-anti-lgbt-climate-unleashes-abuse).

3 81. The country’s LGBT community has been additionally particularly hard-hit by
4 cuts to programs funded by U.S. foreign assistance, including programs providing resources for
5 those suffering from HIV. *See* Abdi Latif Dahir, *Where Being Gay Is Punishable by Death, Aid*
6 *Cuts Are “Heartbreaking,”* N.Y. Times, Mar. 4, 2025,
7 <https://www.nytimes.com/2025/03/04/world/africa/usaid-africa-uganda-lgbtq.html> (on file with
8 counsel).

9 **LEGAL ARGUMENT**

10 82. The INA, FARRA, and the Due Process Clause demand far more than
11 Respondents’ policy requires.

12 83. For the INA’s and FARRA’s statutory protections against persecution and torture
13 to be meaningful, there must be a means of accessing those procedures. “It is well established
14 that the Fifth Amendment entitles [noncitizens] to due process of law in deportation
15 proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). Thus, “no person shall be removed from
16 the United States without opportunity, at some time, to be heard.” *A.A.R.P.*, 605 U.S. at 94
17 (citation modified). The Supreme Court has long applied this principle to people facing removal.
18 *See Yamataya v. Fisher*, 189 U.S. 86, 99–101 (1903) (holding that, even though what Congress
19 provided as to exclusion was “due process of law,” the statute must be interpreted to provide
20 “notice and . . . an opportunity to be heard” as to whether a person is in the United States “in
21 violation of law”).

22 84. Just earlier this year, the Supreme Court explained that for these due process
23 rights to be meaningful, a person must actually receive notice of their planned removal with
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1 sufficient time before it occurs so that the person has a genuine chance to seek relief from that
2 removal. *A.A.R.P.*, 605 U.S. at 94–95. “[N]otice roughly 24 hours before removal, devoid of
3 information about how to exercise due process rights to contest that removal, surely does not
4 pass muster.” *Id.* at 95.

5 85. These principles are well established in the Ninth Circuit in the context of third-
6 country removals. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (“Failing to notify
7 individuals who are subject to deportation that they have the right to apply for . . . withholding of
8 deportation to the country to which they will be deported violates both INS regulations and the
9 constitutional right to due process.”); *Ibarra-Perez v. United States*, --- F.4th ----, No. 24-631,
10 2025 WL 2461663, at *5 (9th Cir. Aug. 27, 2025) (affirming “there are restrictions on DHS’s
11 removal authority” and DHS “violates [noncitizens’] constitutional right to due process” where it
12 fails to notify them of their right to apply for withholding of removal to the country of removal);
13 *see also Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21,
14 2025) (listing cases).

15 86. Respondents’ policy does not remotely comport with these instructions.

16 87. As detailed above, Respondents seek to bypass the process entirely as to many
17 claimants via diplomatic assurances.

18 88. As to all others, Respondents’ “notice” provides no information about a planned
19 date of removal or about a person’s right to apply for protection from that removal. The notice
20 can also be provided mere hours before placement on a plane. Due process demands far more.

21 89. Respondents’ notice also does not require notice to counsel, which DHS is
22 *required* to provide “[w]henever a person is required” by the immigration regulations to receive
23 notice. 8 C.F.R. §§ 292.5(a), 1292.5(a)

1 90. Due process also demands that the government “ask the noncitizen whether he or
2 she fears persecution or harm upon removal to the designated country and memorialize in writing
3 the noncitizen’s response. This requirement ensures DHS will obtain the necessary information
4 from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and
5 noncitizen said].” *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019).

6 91. Respondents’ policy is also deficient in other ways. The withholding statute,
7 FARRA, and their implementing regulations envision *individualized* consideration of feared
8 persecution or torture. *See* 8 U.S.C. § 1231(b)(3); *id.* (note); 8 C.F.R. §§ 208.31, 1208.16-
9 1208.18. Yet Respondents’ policy authorizes the agency to deem all claims invalid simply if a
10 country provides a categorical diplomatic assurance to the United States that no persecution or
11 torture will occur as to all noncitizens removed to it.

12 92. Importantly, the regulations concerning withholding of removal do not even
13 permit diplomatic assurances *at all* to satisfy the mandatory withholding protections in the INA.
14 As for CAT claims, the regulations allow diplomatic assurances, but only in *individual* cases. *See*
15 8 C.F.R. § 1208.18(c)(1); *see also* Regulations Concerning the Convention Against Torture, 64
16 Fed. Reg. 8478, 8484 (Feb. 19, 1999) (noting that cases of assurances are meant to be “rare”).

17 93. In addition, Respondents’ diplomatic assurances do not protect against chain
18 refolement, which ultimately results in the removal of a noncitizen to their country of origin,
19 despite an immigration judge order that the person not be returned to their country of origin.

20 94. Similarly, Respondents’ policy does nothing to safeguard against persecution or
21 torture by non-state actors. By definition, diplomatic assurances are meaningless where there are
22 *non-state* actors responsible.

1 95. Finally, requiring a person to demonstrate full entitlement to withholding or CAT
2 protection in a screening hours after receiving the initial notice about removal to a third country
3 does not provide a meaningful opportunity to be heard. As noted above, in standard § 1229a
4 proceedings or in “withholding-only” proceedings before the immigration court, the evidence
5 often includes hundreds of pages of documentation that detail the noncitizen’s own testimony,
6 the testimony of witnesses, expert reports, and other country conditions. Expecting a noncitizen
7 to produce such an application mere hours or a day or two after finding out about the new
8 country to which DHS plans to remove them does not provide a person with “sufficient time and
9 information to reasonably be able to contact counsel, file . . . , and pursue appropriate relief.”
10 *A.A.R.P.*, 605 U.S. at 95.

11 **CLAIMS FOR RELIEF**

12 **Count I**
13 **Writ of Habeas Corpus – Violation of the INA**

14 96. Mr. Kumar repeats and re-alleges the allegations contained in the preceding
15 paragraphs of this Petition as if fully set forth herein.

16 97. 8 U.S.C. § 1231(b)(3) prevents removal to a country where a noncitizen is more
17 likely than not to face persecution.

18 98. Notwithstanding this statutory mandate, Respondents seek to remove Mr. Kumar
19 to a third country without providing Mr. Kumar the opportunity to access the protections
20 required pursuant to 8 U.S.C. § 1231(b)(3) and its implementing regulations.

21 99. Accordingly, Mr. Kumar’s planned third country removal is unlawful.

22 **Count II**
23 **Writ of Habeas Corpus – Violation of FARRA**

24 100. Mr. Kumar repeats and re-alleges the allegations contained in ¶¶ 1–95 as if fully
set forth herein.

1 101. FARRA prevents removal to a country where a noncitizen is more likely than not
2 to face torture.

3 102. Notwithstanding this statutory mandate, Respondents seek to remove Mr. Kumar
4 to a third country without providing Mr. Kumar the opportunity to access the protections
5 required pursuant to FARRA and CAT.

6 103. Accordingly, Mr. Kumar's planned third country removal is unlawful.

7 **Count III**
8 **Writ of Habeas Corpus – Violation of the Due Process Clause**

9 104. Mr. Kumar repeats and re-alleges the allegations contained in ¶¶ 1–95 as if fully
10 set forth herein.

11 105. The Due Process Clause requires Respondents to provide Mr. Kumar meaningful
12 notice and a meaningful opportunity to be heard regarding the statutory protections to which Mr.
13 Kumar is entitled.

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

17 107. Accordingly, Mr. Kumar's planned third country removal is unlawful.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Mr. Kumar prays that this Court grant the following relief:

- 20 a. Assume jurisdiction over this matter;
- 21 b. Enjoin Mr. Kumar's removal until Respondents provide him access to his
22 statutory rights to protection and due process of law:
- 23 i. With respect to any removal to Uganda, Respondents must provide Mr.
24 Kumar with a reasonable fear interview and provide him at least ten days'

1 notice of such interview to allow him to prepare for it, and notice must be
2 provided in Mr. Kumar's native language;

3 ii. If Mr. Kumar is found to have a reasonable fear of removal, then

4 Respondents must move to reopen Mr. Kumar's removal proceedings to
5 allow Mr. Kumar to present a full claim for relief under § 1231(b)(3) and
6 FARRA;

7 iii. If Mr. Kumar is not found to have such a fear, then Respondents must

8 allow a further fifteen days for Mr. Kumar to file a motion to reopen with
9 the immigration court or Board of Immigration Appeals, as appropriate;

10 iv. With respect to removal to any other third country (any country other than

11 India), Respondents must provide written notice of removal to that country
12 at least ten days prior to the removal, and notice to Mr. Kumar must be in
13 Mr. Kumar's native language;

14 v. If, after inquiring whether Mr. Kumar has a fear of removal to that third

15 country, Mr. Kumar express such a fear, then Respondents must provide a
16 reasonable fear interview to screen for Mr. Kumar's fear of persecution
17 and torture, consistent with § 208.31;

18 vi. If Mr. Kumar is found to have a reasonable fear of removal, then

19 Respondents must move to reopen Mr. Kumar's removal proceedings to
20 allow Mr. Kumar to present a full claim for relief under § 1231(b)(3) and
21 FARRA;

1 vii. If Mr. Kumar is not found to have such a fear, then Respondents must
2 allow a further fifteen days for Mr. Kumar to file a motion to reopen with
3 the immigration court or Board of Immigration Appeals, as appropriate;

4 c. Award Mr. Kumar attorney's fees and costs under the Equal Access to Justice Act
5 ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under
6 law; and

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

8 DATED this 21st of October, 2025.

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