

District Judge Kymberly K. Evanson

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Naveen KUMAR,

Petitioner,

v.

Cammilla WAMSLEY, *et al.*,

Respondents.

CASE NO. 25-cv-02055-KKE

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

I. INTRODUCTION

Petitioner Naveen Kumar is a citizen of India who is unlawfully present in the United States and is subject to a final order removal. He is lawfully detained by the U.S. Immigration and Customs Enforcement (ICE) at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington, to facilitate his removal from the country.

Although the Immigration Judge ordered Kumar's removal to India be withheld, at the time of his prior removal proceedings, no other country was designated or identified as an alternative country of removal. Thereafter, ICE notified Kumar that it intended to remove Kumar to Uganda. Kumar has since expressed fear of removal to Uganda and to "any third country." Based on this claim, ICE referred Kumar for a reasonable fear interview with United States Citizenship and Immigration Services (USCIS), and USCIS has scheduled Kumar for an interview.

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 In his habeas petition, Kumar requests that the Court enjoin his removal from the
2 United States to a third country until Federal Respondents provide him with due process.
3 This is precisely what Federal Respondents are presently engaged in. Kumar is currently
4 undergoing the reasonable fear screening process that he demands. The screening process
5 is ongoing. Federal Respondents have not prevented him from filing any motion to
6 reopen his prior proceedings. Accordingly, there is no controversy for the Court to
7 resolve at this time, and the petition must be denied.

8 Furthermore, this Court may not issue the relief sought because Kumar is a
9 member of the plaintiff class in *D.V.D. v. Dep't of Homeland Sec.*, Civ. A. No. 25-10676
10 (D. Mass.). The plaintiff class in *D.V.D.* sought and received an injunction barring ICE
11 from removing members of the class to third countries. That injunction was stayed by
12 two orders of the Supreme Court. Kumar cannot end-run the Supreme Court's stay of an
13 injunction barring his removal to a third country by seeking the same relief in a different
14 court. Thus, Kumar's request for an injunction barring his removal to a third country and
15 an order requiring Federal Respondents to undertake a specific reasonable fear screening
16 process should be denied.

17 II. FACTUAL BACKGROUND

18 A. Kumar's Immigration History

19 Petitioner Naveed Kumar is a native and citizen of India, who entered the United
20 States without admission or parole on or about May 15, 2023. Exh. A (Du Declaration), ¶
21 4. Upon his unlawful entry, DHS apprehended Kumar and served him with a Notice to
22 Appear, thereby initiating removal proceedings against him, charging him with
23 inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) (alien present without admission or
24 parole). *Id.* DHS then released Kumar on an Order of Release on Recognizance (OREC).
25 *Id.*, ¶ 5.

26 On June 23, 2023, Kumar filed a Form I-589, Application for Asylum and for
27 Withholding of Removal with the immigration court and was awaiting his hearing on the

1 merits of those applications. *Id.*, ¶ 6. However, on March 31, 2025, Kumar was arrested
2 by the San Bernadino Police Department for Shoplifting, in violation of California Penal
3 Code Section 459.5(A). *Id.*, ¶ 7. On April 15, 2025, ICE took Kumar into custody and
4 transferred him to the Northwest ICE Processing Center in Tacoma, Washington, where
5 he remains detained. *Id.*, ¶ 8.

6 On August 25, 2025, Kumar appeared at his individual calendar merits hearing
7 before the Immigration Judge and testified regarding his fear of removal to India based
8 on him being gay and HIV positive. *Id.*, ¶ 11; Dkt. 3 (Decl. of Kumar), ¶ 6. The
9 Immigration Judge ultimately ordered Kumar removed, but granted him withholding of
10 removal to India. Exh. A, ¶ 11. No alternative country of removal was indicated in the
11 order. Dkt. 4-5, at 4 (IJ Order). Both Kumar and ICE waived appeal of that decision and
12 the removal order became final that same day. Exh. A, ¶ 11. To date, Kumar has not filed
13 a motion to reopen those proceedings. *Id.*, ¶ 17.

14 Although ICE could not remove Kumar to India, on September 2, 2025, ICE
15 served Kumar a notice advising him that it intended to remove him to a third country,
16 Uganda. *Id.*, ¶ 12. Thereafter, Kumar expressed a fear of removal to Uganda and “any
17 third country.” *Id.*, ¶ 14. On this basis, on October 28, 2025, ICE referred Kumar to
18 United States Citizenship and Immigration Services (USCIS) for a determination of
19 whether it is more likely than not he will be persecuted on a statutorily protected ground
20 or tortured in Uganda. *Id.*, ¶ 15. USCIS has scheduled Kumar for a reasonable fear
21 interview on this claim. *Id.*, ¶ 16.²

22 ***B. D.V.D. v. Dep’t of Homeland Security***

23 In March 2025, three plaintiffs instituted a putative class action suit challenging
24 their third country removals in the District of Massachusetts. *D.V.D. v. DHS*, No. 25-cv-

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26 ² Deportation Officer Du’s declaration indicates that on October 29, 2025, USCIS scheduled Kumar for a reasonable
27 fear interview on October 30, 2025. Exh. A at 3. However, after Deportation Officer Du’s declaration was authored
and signed, on October 30, 2025, USCIS advised Government Counsel that Kumar’s interview was rescheduled to a
later date. Government Counsel has not yet been informed of the rescheduled date and will file an update with the
Court once that information is known.

1 10676 (D. Mass.). On March 28, 2025, that court entered a TRO enjoining DHS and
2 others from “[r]emoving any individual subject to a final order of removal from the
3 United States to a third country, *i.e.*, a country other than the country designated for
4 removal in immigration proceedings” unless certain conditions were met. *D.V.D. v. U.S.*
5 *Dep’t of Homeland Sec.*, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025). On April 18,
6 2025, the court in *D.V.D.* issued an order granting the plaintiffs’ motion for class
7 certification and motion for preliminary injunction. *D.V.D. v. U.S. Dep’t of Homeland*
8 *Sec.*, 778 F. Supp. 3d 355, 394 (D. Mass. 2025). A class was certified pursuant to Rule
9 23(b)(2) of the Federal Rules of Civil Procedure without a provision for an opt out. *See*
10 *id.* at 386.2 The Preliminary Injunction was national in effect and established certain
11 procedures that DHS was required to follow before removing an alien with a final order
12 of removal to a third country. Specifically, the class in *D.V.D.* is defined as:

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

19 *Id.* at 378.

20 On May 21, 2025, the *D.V.D.* court issued a Memorandum on Preliminary
21 Injunction offering the following summary and clarification of its Preliminary Injunction:

22 All removals to third countries, *i.e.*, removal to a country other than the country or
23 countries designated during immigration proceedings as the country of removal on
24 the non-citizen’s order of removal, *see* 8 U.S.C. § 1231(b)(1)(C), must be
25 preceded by written notice to both the non-citizen and the non-citizen’s counsel in
26 a language the non-citizen can understand. Dkt. 64 at 46– 47. Following notice,
27 the individual must be given a meaningful opportunity, and a minimum of ten
days, to raise a fear-based claim for CAT protection prior to removal. *See id.* If the
non-citizen demonstrates “reasonable fear” of removal to the third country,
Defendants must move to reopen the non-citizen’s immigration proceedings. *Id.* If
the non-citizen is not found to have demonstrated a “reasonable fear” of removal
to the third country, Defendants must provide a meaningful opportunity, and a

1 minimum of fifteen days, for the non-citizen to seek reopening of their
2 immigration proceedings. *Id.*

3 *D.V.D. v. U.S. Dep't of Homeland Sec.*, 2025 WL 1453640, at *1 (D. Mass. May 21,
4 2025). The *D.V.D.* court indicated that the Order applied “to the Defendants, including
5 the Department of Homeland Security, as well as their officers, agents, servants,
6 employees, attorneys, any person acting in concert, and any person with notice of the
7 Preliminary Injunction.” *Id.*

8 On June 23, 2025, the United States Supreme Court stayed the District of
9 Massachusetts’ preliminary injunction pending appeal in the First Circuit Court of
10 Appeals. *Dep't of Homeland Sec. v. D.V.D.*, ___ U.S. ___, 145 S. Ct. 2153 (2025). That
11 same day, the District Court ordered that, notwithstanding the Supreme Court’s order, its
12 remedial order granting relief to eight individual class members DHS sought to remove to
13 South Sudan remained in effect. Order, *D.V.D.* (Dkt. 176). Defendants moved to clarify
14 the Supreme Court’s Order and, on July 3, 2025, the Supreme Court granted the motion,
15 allowing the eight individual aliens to be removed to South Sudan. *Dep't of Homeland*
16 *Sec. v. D. V. D.*, ___ U.S. ___, 145 S. Ct. 2627, 2629 (2025). The class certification in
17 *D.V.D.* remains in effect notwithstanding the Supreme Court’s stay. *See id.*

18 ***C. DHS Policy on Third-Country Removals***

19 On March 30, 2025, and then on July 9, 2025, DHS issued a guidance regarding
20 third country removals. Dkt. 43-1 (DHS memo). This guidance discusses DHS’ policies
21 and procedures regarding the removal of individuals with final orders of removals to
22 countries other than those designated for removal in those orders (referred to as “third
23 country removals”). *Id.* According to the guidance, if DHS has not received diplomatic
24 reassurances from the designated country, DHS will first inform the individual that DHS
25 seeks removal to that country. *Id.* at 2. If the individual expresses that they are afraid of
26 being removed to that country, DHS will refer them to USCIS for a reasonable fear
27 interview, to screen that person for protection against removal to that country. *Id.* at 3.

1 After the interview is conducted, USCIS will determine whether the individual
2 would more likely than not be persecuted or tortured in the country of removal. *Id.* If
3 USCIS finds that the individual has met this standard, if the person was previously in
4 removal proceedings, USCIS will inform ICE, and ICE can then file a motion to reopen
5 with the Immigration Court. *Id.* Alternatively, ICE can also choose to designate another
6 country of removal. If USCIS finds that the person has not met the standard, according to
7 DHS policy, they will be removed. *Id.* There is nothing in the memo or in ICE policy that
8 prevents an individual from filing a motion to their prior removal proceedings at any time
9 they so choose, based on a request for asylum, withholding of removal, or protection
10 under the Convention Against Torture. *See id.*; *see also* 8 C.F.R. § 1003.23(b)(4)(i).

11 III. ARGUMENT

12 1. Kumar is currently receiving the due process he requests; there is no 13 controversy in this case, and his request should be denied.

14 Kumar's petition should be denied as moot as Federal Respondents have notified
15 Kumar of their intent to remove him to Uganda and are actively engaged in allowing him
16 an opportunity to be heard regarding that decision.

17 Under Article III of the Constitution, federal courts may adjudicate only actual,
18 ongoing cases or controversies. *Deakins v. Monaghan*, 484 U.S. 193, 199, 108 S.Ct. 523,
19 528, 98 L.Ed.2d 529 (1988). "To invoke the jurisdiction of a federal court, a litigant must
20 have suffered, or be threatened with, an actual injury traceable to the defendant and likely
21 to be redressed by a favorable judicial decision." *Lewis v. Cont'l Bank Corp.*, 494 U.S.
22 472, 477, 110 S. Ct. 1249, 1253, 108 L. Ed. 2d 400 (1990). The foundation of the relief
23 that Kumar seeks through his petition is due process as it relates to his claim of fear of
24 removal to a third country. However, this is precisely what Federal Respondents have
25 provided and are actively providing to Kumar. It remains unclear what due process
26 violations exist that this Court could redress.

1 Although Kumar bases the urgency of his petition on a claim that ICE may remove
2 him potentially within hours, without notice, this is not what happened in his case. ICE
3 did not immediately remove Kumar to a third country. Rather, ICE provided Kumar
4 notice of their intent to remove him to Uganda almost two months ago. This notice
5 allowed Kumar to claim fear of removal to that country. Accordingly, ICE referred
6 Kumar to USCIS, and USCIS has since scheduled Kumar for an interview to determine
7 whether it is more likely than not that he will be persecuted or tortured in Uganda.

8 In other words, the reasonable fear screening and subsequent process that Kumar
9 so seeks has already been put in motion. In his petition, Kumar unreasonably requests
10 that the Court prescribe a precise timeline under which DHS should be required to engage
11 in its reasonable fear review process. However, foundationally, due process is in process,
12 and the outcome of Kumar's reasonable fear determination remains pending at this time.
13 Additionally, as noted above, there is nothing preventing Kumar from going straight to
14 the Immigration Court himself and requesting that his prior proceedings be reopened
15 based on a new fear or removal to Uganda or any other country. *See* 8 C.F.R. §
16 1003.23(b)(4)(i). Thus far, he has inexplicably chosen not to do so.

17 Kumar has suffered no injury and any allegation that he is likely to face an injury
18 in the future is entirely speculative. In fact, at this time, it is just as likely that USCIS will
19 find that Kumar meets the reasonable fear standard and that his claim should proceed
20 before the Immigration Judge, as any other possible outcome in his case. Accordingly,
21 Kumar has failed meet the case-or-controversy requirement, and his petition must be
22 denied. *Cf.* *Spencer v. Kemna*, 523 U.S. 1, 16 (1998) (rejecting the petitioner's alleged
23 consequences as “a possibility rather than a certainty or even a probability” and as
24 “purely a matter of speculation”).
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1 **2. Kumar is a member of the plaintiff Class in *D.V.D. v. Dep't of Homeland***
2 ***Sec.* and is bound by the proceedings in that case.**

3 Furthermore, as an individual subject to a final order of removal who fears
4 removal to a third country that was not previously described as an alternative country of
5 removal, Kumar is undisputedly a member of the plaintiff class in *D.V.D.* Dkt. 1 ¶ 43. As
6 a member of the plaintiff class in *D.V.D.*, he is bound by the proceedings in that case the
7 same as all other class members. The plaintiff class in *D.V.D.*, of which Kumar is a
8 member, sought an injunction precluding their removal to a third country unless they
9 were first afforded essentially the same process that Kumar asks the Court to order here.
10 The Supreme Court's stay of the preliminary injunction entered in that case is both
11 precedent and the result is binding on Kumar here by virtue of his status as a member of
12 the *D.V.D.* plaintiff class.

13 Additionally, courts recognize that members of class action lawsuits should not be
14 permitted to bring separate actions where they seek to re-litigate individually issues that
15 were raised in the class action. *See Wynn v. Vilsack*, 2021 WL 7501821, at *3 (M.D. Fla.
16 Dec. 7, 2021) (collecting cases) (“Multiple courts of appeal have approved the practice of
17 staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a
18 member of a parallel class action.”) (internal quotations omitted). This prevents class
19 members from avoiding the binding results of the class action. *Goff v. Menke*, 672 F.2d
20 702, 704 (8th Cir. 1982).

21 This is also the rule in this Circuit. A district court may properly dismiss an
22 individual complaint where the plaintiff is a member in a class action, to the extent the
23 individual action duplicates the claims and seeks the same relief as the class action. *Pride*
24 *v. Correa*, 719 F.3d 1130, 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d
25 890, 892 (9th Cir. 1979)). Such a dismissal is within the court's discretion based on its
26 inherent power to control its own docket. *Crawford*, 599 F.2d at 893. But it is
27 “imperative to avoid concurrent litigation in more than one forum whenever consistent

1 with the rights of the parties.” *Id.*; see *Frost v. Symington*, 197 F.3d 348, 359 (9th Cir.
2 1999) (“To the extent that a class action involving the same issues raised by [plaintiff] is
3 currently pending . . . [he] may have to bring all of his related claims for equitable relief .
4 . . through . . . class counsel.”).

5 This Court should decline to exercise jurisdiction over Kumar’s third country
6 removal claim as a matter of comity because the District of Massachusetts has certified a
7 class action that includes the same claim Petitioner is pursuing here. *Pacesetter Systems,*
8 *Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) (“There is a generally
9 recognized doctrine of federal comity which permits a district court to decline jurisdiction
10 over an action when a complaint involving the same parties and issues has already been
11 filed in another district.”).

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Federal Respondents respectfully requests that this
3 Court deny the Petition.

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5 DATED this 30th day of October, 2025.

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7 Respectfully submitted,

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I certify that this memorandum contains 2,757 words, in compliance with the Local Civil Rules.