

The Honorable Kymberly K. Evanson

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Naveen KUMAR,
Petitioner,

v.

Cammilla WAMSLEY, et al.,
Respondents.

Case No. 2:25-cv-02055-KKE

PETITIONER'S TRAVERSE

Noting Date: November 5, 2025

INTRODUCTION

Mr. Kumar's case presents a live controversy. Respondents did not designate Uganda—a country notorious for its treatment of LGBTQ+ persons—as a country of removal until *after* a final order of removal was issued in Mr. Kumar's case—an order that also granted him protection from deportation on account of being a gay man who has the human immunodeficiency virus (HIV). Dkt. 1 ¶ 73; Dkt. 3 ¶ 6; Dkt. 10 at 3. Respondents did not advise him of any process for seeking protection from removal to Uganda and did not even schedule a

TRAVERSE - 1
Case No. 2:25-cv-02055-KKE

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1 fear screening until after he filed the instant petition. Dkt. 3 ¶ 10; Dkt. 10-1 ¶¶ 14–
2 15. Respondents have also not confirmed what will occur after that screening takes place. *See*
3 Dkt. 10 at 3. As such, there is much for the Court to review in assessing Mr. Kumar’s habeas
4 petition. Additionally, Mr. Kumar’s membership in the certified class in *D.V.D. v. DHS*, No. 1:25-
5 cv-10676-BEM (D. Mass.), is no bar to this Court’s jurisdiction here, as this petition raises
6 claims for relief that are not encompassed by *D.V.D.*, especially given the stay of the preliminary
7 injunction in that case. The Court should thus exercise its jurisdiction here and grant Mr.
8 Kumar’s petition given Respondents’ unconstitutional processes and the very serious harm Mr.
9 Kumar faces if removed to Uganda or another country where being gay or HIV positive is
10 dangerous.

11 ARGUMENT

12 I. Mr. Kumar’s petition is not moot.

13 Respondents’ arguments that Mr. Kumar’s petition is moot are without merit.

14 As an initial matter, Respondents’ recitation of the facts neglects to acknowledge that
15 they scheduled Mr. Kumar for a reasonable fear interview (RFI) only *after* he filed the instant
16 petition. *Compare* Dkt. 10 at 3, *with* Dkt. 10-1 ¶¶ 14–16. They thus err in contending that there is
17 no basis for the habeas petition.

18 Moreover, this Court has much to address beyond Mr. Kumar’s right to an RFI. The crux
19 of Mr. Kumar’s petition is that Respondents’ policy for executing third-country removals violates
20 his right to procedural due process as well as his statutory rights to be protected from removal to
21 a country where he will likely be persecuted or tortured. *See* Dkt. 1 ¶¶ 82–95. Specifically, Mr.
22 Kumar alleges that Respondents’ “notice” is not meaningful because it contains no information

1 about a planned date of removal or about whether and how someone may raise a fear-based
2 claim for protection. *Id.* ¶ 88. There is no requirement that notice be provided with sufficient
3 time to allow a noncitizen to investigate the planned country of removal and adequately prepare
4 to meet the exacting standard of the RFI. *Id.* There is also no requirement that it be served on an
5 individual's attorney, despite the regulatory mandate establishing that it must be. *Id.* ¶ 89. And it
6 does not require that Respondents inquire as to an individual's fear of removal to the third
7 country. *Id.* ¶ 90.

8 Additionally, the RFI, when provided, does not afford "a meaningful opportunity to be
9 heard," for it requires that a noncitizen "demonstrate full entitlement to withholding or
10 [Convention Against Torture] protection," often hours after first learning of the possibility of
11 removal to that third country. *Id.* ¶ 95. To demonstrate full entitlement, an individual must show
12 they are "more likely than not" to be persecuted or tortured in a given country. *Id.* ¶ 51; *see also*
13 Dkt. 10 at 3 (explaining Mr. Kumar's RFI will assess "whether it is more likely than not he will
14 be persecuted on a statutorily protected ground or tortured in Uganda"). By contrast, regulatory
15 RFIs that screen for withholding of removal and CAT claims require that individuals demonstrate
16 there is a "reasonable possibility" of torture or persecution, Dkt. 1 ¶ 52; 8 C.F.R. § 208.31(c),
17 which is a lower standard of proof, Dkt. 1 ¶ 53. This distinction matters because in proceedings
18 before the immigration court where individuals *are* required to demonstrate that persecution or
19 torture is "more likely than not," a successful application "often includes hundreds of pages of
20 documentation" including country conditions evidence and testimony from them, witnesses, and
21 experts. *Id.* ¶ 95. Expecting a noncitizen to produce anything akin to that on a few hours'—or

1 even days’—notice is insufficient “to reasonably be able to contact counsel, file . . . , and pursue
2 appropriate relief.” *Id.* (quoting *A.A.R.P. v. Trump*, 605 U.S. 91, 95 (2025) (per curiam)).

3 Mr. Kumar also seeks other procedural protections. *See* Dkt. 1 at 22–23. For example,
4 Respondents’ policy establishes that if Mr. Kumar passes his RFI, they “may” move to reopen
5 his removal proceedings with the immigration court. Dkt. 4-1 at 2. Mr. Kumar requests that they
6 be required to so. Dkt. 1 at 22. This is because Mr. Kumar may only file one motion to reopen as
7 of right within 90 days of the entry of his final removal order. 8 C.F.R. § 1003.23(b)(1). He is not
8 entitled to file a new motion every time Respondents provide him a notice of third-country
9 removal. Respondents, however, are not limited in the number of motions to reopen they may
10 file in any noncitizen’s case. *Id.* Respondents’ policy also does not require them to provide Mr.
11 Kumar any information regarding what options *he* may have (or if he even has any) to pursue
12 protection from removal regarding the third country, including information regarding what steps
13 to take to present his claim before the immigration court. *See* Dk. 4-1 at 2; 4-2 at 2. Finally,
14 Respondents’ policy does not provide any path to administrative and judicial review of a
15 negative RFI. *See* Dkt. 4-1 at 2 (explaining noncitizen “will be removed” if they do not pass the
16 RFI). Accordingly, there are plenty of “due process violations [that] exist [in Respondents’
17 policy] that this Court could address.” Dkt. 10 at 6.¹

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21 ¹ Further, Mr. Kumar’s concerns regarding Respondents’ use of diplomatic assurances, *see*
22 Dkt. 1 ¶¶ 91–94, may come into play if Respondents try to remove him to a different third
23 country.

1 Respondents claim that Mr. Kumar has received sufficient process because they
2 scheduled his RFI more than two months after providing him the initial notice of intent of
3 removal. *See* Dkt. 10 at 7. However, this initial “notice” was inadequate because it did not
4 instruct him whether he could contest that intended removal and how to do so, much less provide
5 him with any timeline for submitting a request for protection. *See* Dkt. 4-6; Dkt. 3 ¶ 10.
6 Accordingly, it did not afford him a meaningful opportunity to prepare for an RFI, as he was
7 never advised that there *would* be such a screening, what it would entail, or that it was even a
8 possibility. *See Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) (explaining that
9 “Ninth Circuit case law suggests that” government’s failure to “notif[y] petitioner that he had a
10 right to apply for asylum or withholding of deportation to Somalia despite his earlier objections
11 to deportation to that country” “in and of itself, is also a violation of the constitutional right to
12 due process”). Moreover, because nothing prevents Respondents from designating another third
13 country if Mr. Kumar passes his RFI to Uganda, Dkt. 10 at 6, there is no guarantee that he will
14 not be given a similarly deficient notice in the future. This Court’s involvement is therefore
15 crucial to ensuring any notice is provided with enough time and includes sufficient information
16 to afford him a meaningful opportunity to be heard as to any fear of removal.

17 Second, Respondents allege that Mr. Kumar has “inexplicably chosen not to” file a
18 motion to reopen with the immigration court. Dkt. 10 at 7. However, their own policy implies
19 that the agency will file such a motion if the noncitizen passes the RFI. *See* Dkt. 4-1 at 2. They
20 also cite to the wrong reopening provision. *See* Dkt. 10 at 6, 7 (citing 8 C.F.R.
21 § 1003.23(b)(4)(i)). That provision sets no numerical or temporal limitations on someone’s
22 ability to file a motion to reopen to request fear-based protection from removal if that request “is

1 based on changed country conditions *arising in the country of nationality or the country to which*
2 *removal has been ordered.*” 8 C.F.R. § 1003.23(b)(4)(i) (emphasis added). Here, however, Mr.
3 Kumar fears removal to a third country, which means less generous rules apply: he may only file
4 one motion to reopen within 90 days of his final removal order. 8 C.F.R. § 1003.23(b)(1). He
5 only gets one bite at the apple, whereas Respondents may simply decide to remove him to a
6 different third country if the court grants his motion to reopen with respect to Uganda. There is
7 no guarantee, moreover, that the immigration court will grant a motion to reopen based on feared
8 removal to a third country, especially where that motion does not specify fear to a specific
9 country or is more open-ended. *See Aldana Madrid Decl., Ex. A* (immigration judge denial of
10 motion to reopen for feared third-country removal, explaining the court “is not persuaded that an
11 individual granted withholding of removal is entitled to a potentially endless series of
12 applications and full hearings before immigration judges with respect to a fear of torture in any
13 and all potential alternate or third countries for removal”). Mr. Kumar’s failure to file a motion to
14 reopen at this juncture is thus not “inexplicabl[e].” Dkt. 10 at 7.

15 Moreover, Respondents’ suggestion that the *potential* availability of reopening is a
16 procedural protection in these circumstances has been previously rejected by this Court. *See*
17 *Aden*, 409 F. Supp. 3d at 1010 (“Giving petitioner an opportunity to file a motion to reopen – a
18 motion which seeks discretionary relief that may be denied without any sort of hearing – is not
19 an adequate substitute for the process that is due in these circumstances.”); *Nguyen v. Scott*, No.
20 2:25-CV-01398, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21, 2025) (declaring that due
21 process and the government’s statutory obligations require “the removal proceedings [to] be
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1 reopened so that a hearing can be held”); *Baltodano v. Bondi*, No. C25-1958RSL, 2025 WL
2 2987766, at *3 (W.D. Wash. Oct. 23, 2025) (similar).

3 Finally, Respondents argue “any allegation” of future injury “is entirely speculative.” Dkt.
4 10 at 7. To the contrary, Mr. Kumar’s fear of being sent to a third country is very real: Respondents
5 have advised that he will be removed to Uganda, a country infamous for its mistreatment of
6 LTGBQ+ persons. Dkt. 3 ¶¶ 10, 12; Dkt. 4-6; Dkt. 1 ¶¶ 80–81. It is frankly outrageous that
7 Respondents would designate Uganda as a country of removal for an individual who was granted
8 protection from removal to his native country because of the persecution he faces due to his sexual
9 orientation and HIV positive status.

10 What is more, Respondents have recently sent scores of noncitizens to third countries
11 where they have been held in custody under oppressive conditions, sometimes for an indefinite
12 period, or sent back to their countries of origin despite having won protection from removal to
13 those very countries. *See, e.g., Edward Acquah, et al., Immigrants deported from U.S. to Ghana*
14 *are sent home, where lawyers say some could face torture*, PBS (Sept. 15, 2025),
15 [https://www.pbs.org/newshour/world/immigrants-deported-from-u-s-to-ghana-are-sent-home-](https://www.pbs.org/newshour/world/immigrants-deported-from-u-s-to-ghana-are-sent-home-where-lawyers-say-some-could-face-torture)
16 [where-lawyers-say-some-could-face-torture](https://www.pbs.org/newshour/world/immigrants-deported-from-u-s-to-ghana-are-sent-home-where-lawyers-say-some-could-face-torture) (reporting that five men who had won protection from
17 deportation to their home countries were sent to those countries by the Ghanaian government upon
18 being deported there); Amnesty International, *South Sudan: End four deportees’ arbitrary*
19 *detention* (Sept. 18, 2025), <https://www.amnesty.org/en/documents/afr65/0280/2025/en/>
20 (explaining that since their arrival to South Sudan more than two months prior, the men had been
21 in custody “in an undisclosed location”); Gerald Imray, *Men Deported by U.S. to Eswatini in Africa*
22 *Will Be Held in Solitary Confinement for Undetermined Time*, PBS (Jul. 18, 2025),

1 <https://www.pbs.org/newshour/politics/men-deported-by-u-s-to-eswatini-in-africa-will-be-held->
2 in-solitary-confinement-for-undetermined-time. The threat of deportation to Uganda is
3 particularly troubling given that Mr. Kumar is gay and HIV positive, while Uganda is notoriously
4 anti-LGBTQ+ and has been hard hit by cuts to aid programs serving HIV positive populations. *See*
5 Dkt. 1 ¶¶ 80–81 (quoting Human Rights Watch report that Ugandan government has taken
6 “crackdowns and discrimination against LGBT people” “to unprecedented heights”). Thus,
7 unlike the hypothetical feared future harms in *Spencer v. Kemna*, 523 U.S. 1, 14–16 (1998), the
8 prospect of removal to a country where Mr. Kumar’s life or freedom would be threatened is not
9 at all speculative, and Respondents’ assertion to the contrary is patently offensive. *See Y.T.D. v.*
10 *Andrews*, No. 1:25-CV-01100-JLT-SKO, 2025 WL 2675760, at *11 (E.D. Cal. Sept. 18, 2025)
11 (acknowledging “numerous examples of cases involving individuals who DHS has attempted to
12 remove to third countries with little or no notice or opportunity to be heard” before concluding
13 petitioner had demonstrated “a sufficiently imminent risk [of being] subjected to improper
14 process in relation to any third country removal”).

15 Further, the threat of removal without adequate procedural protections is also very real
16 for Mr. Kumar, for Respondents have not disavowed their constitutionally deficient third-country
17 removal policy, Dkt. 1 ¶¶ 48–64 (detailing Respondents’ policy), nor suggested they would not
18 apply it to Mr. Kumar, *see generally* Dkt. 10; *see also Salim Nizar Esmail v. Noem*, No. 2:25-CV-
19 08325-WLH-RAO, 2025 WL 3030589, at *5 (C.D. Cal. Sept. 26, 2025) (concluding petitioner
20 satisfied standing to challenge possible third-country removal because “[t]he fact that [the feared
21 violation of his constitutional right to due process] is directly traceable to a written policy” to
22 which he, “as a noncitizen with a removal order . . . is, therefore, inherently subject . . .

1 sufficiently demonstrate[s] that he is realistically threatened by a repetition of the violation”
2 (citation modified)).

3 Mr. Kumar’s case thus presents a controversy that necessitates the Court’s intervention.

4 **II. *D.V.D. v. DHS* is not an impediment to Mr. Kumar’s request for protection.**

5 Respondents err in arguing that the Supreme Court’s stay of the preliminary injunction in
6 *D.V.D.* prevents Mr. Kumar from seeking relief through an individual habeas petition.

7 Respondents first argue the injunction ruling “is both precedent and . . . binding” on Mr.
8 Kumar as a class member. Dkt. 10 at 8. But the Court’s order stayed *classwide* preliminary
9 injunctive relief with respect to procedural protections permitting class members to raise CAT
10 claims. *See D.V.D. v. DHS*, 145 S. Ct. 2153, 2153 (2025) (Mem.); *id.* at 2156 (Sotomayor, J.,
11 dissenting) (explaining the preliminary injunction “require[d] the Government to provide
12 noncitizens with . . . a meaningful opportunity to raise a claim under the Convention [Against
13 Torture]”); *see also D.V.D. v. DHS*, 778 F. Supp. 3d 355, 392 (D. Mass. 2025), *clarified*, 2025
14 WL 1323697 (May 7, 2025), and 2025 WL 1453640 (May 21, 2025). Notably, the Court did not
15 provide a rationale, nor purport to issue an order on the merits of the claims or about an
16 individual’s entitlement to the protections sought. *See* 145 S. Ct. at 2153 (stating simply the stay
17 request was “granted”).

18 For this reason, courts have rejected efforts by Respondents to use the stay order to deny
19 a habeas petitioner’s claims:

20 This Court cannot ascertain from the Supreme Court’s emergency order whether it
21 found the government likely to succeed on its jurisdictional or substantive claims.
22 This distinction is especially important in this case, where one of the
23 government’s primary arguments—that the *D.V.D.* court had no power to enter
24 *classwide* injunctive relief—would have no bearing on the merits of individual

habeas petitions.

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2 *Nguyen*, 2025 WL 2419288, at *22–23; *see also, e.g., Sagastizado v. Noem*, No. 5:25-CV-00104,
3 2025 WL 2957002, at *13 (S.D. Tex. Oct. 2, 2025) (explaining that “[i]n another case where the
4 Supreme Court stayed a district court’s preliminary injunction without an analysis of the merits,
5 Justice Kavanaugh emphasized that the stay order is not a ruling on the merits. . . . Therefore,
6 reading into the Supreme Court’s stay is an inherently speculative endeavor. Without clearer
7 direction, the Court will not deny relief this Court deems likely meritorious simply because the
8 class-wide injunction was stayed” (citation modified)); *id.* at *7 (“[R]es judicata requires a final
9 judgment on the merits in order to preclude a later suit.”). The Supreme Court’s order therefore
10 does not require dismissal of Mr. Kumar’s petition.

11 Second, the preliminary injunction the Supreme Court stayed did not afford “essentially
12 the same process that [Mr.] Kumar asks the Court to order here,” Dkt. 10 at 8, for while there is
13 overlap between the *D.V.D.* injunction and the protections Mr. Kumar seeks, there are crucial
14 differences, as this Court has recently recognized. *See Nguyen*, 2025 WL 2419288, at *20–21;
15 *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 n.2 (W.D. Wash. June 30,
16 2025).

17 First, the *D.V.D.* preliminary injunction concerned class-wide, “systemic relief,” not
18 individual relief. *Nguyen*, 2025 WL 2419288, at *21; *see also J.R.*, 2025 WL 1810210, at *3 n.2
19 (“This case does not involve universal injunctive relief, instead it is limited to the sole plaintiff,
20 J.R.”). The order did not in any way indicate the individuals should be unable to obtain
21 injunctive relief. To the contrary, Defendants in *D.V.D.* repeatedly argued that 8 U.S.C.
22 § 1252(f)(1) prevents a district court from providing classwide injunctive relief; but that very

1 statute expressly allows injunctive relief on behalf of individuals. *See* 8 U.S.C. § 1252(f)(1)
2 (permitting injunction “with respect to . . . an individual”); *see also* *D.V.D.*, 145 S. Ct. at 2160
3 (Sotomayor, J., dissenting) (clarifying that § 1252(f)(1) “undisputedly does not affect the District
4 Court’s authority to grant relief to the individual plaintiffs here; it affects only the classwide
5 injunction”).²

6 Second, the *D.V.D.* preliminary injunction only afforded the opportunity to seek
7 protection under CAT, and did not address the separate statutory protection of withholding of
8 removal under the Immigration and Nationality Act (INA). *D.V.D.*, 778 F. Supp. 3d at 392–93;
9 *see Sagastizado*, 2025 WL 2957002, at *8 (deciding to hear individual petitioner’s request for
10 immigration judge review of a negative RFI prior to third-country removal because, *inter alia*,
11 “relief for [him] here is distinguishable in part from *D.V.D.* because plaintiffs there did not seek
12 class-wide injunctive relief with respect to future claims for withholding of removal”).

13 Accordingly, Respondents’ authorities showing that “courts recognize that members of
14 class action lawsuits should not be permitted to bring separate actions where they seek to re-
15 litigate individually issues that were raised in the class action,” Dkt. 10 at 8, are inapposite. In
16 analyzing its holdings in *Crawford v. Bell*, 599 F.2d 890 (9th Cir. 1979), *Krug v. Lutz*, 329 F.3d

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19 ² Notably, Judge Cartwright found that “[t]he contradiction in [Respondents’] arguments”
20 in that case and in *D.V.D.*—namely, arguing in the latter “that injunctive relief cannot be granted
21 to the class, and may only be pursued (if at all) through individual cases, while arguing [in the
22 former] that Petitioner’s individual claim should be barred because his injunctive claims should
be adjudicated as part of the *D.V.D.* class”—“further undermine[d] Respondents’ position”
urging for dismissal of the individual petition given the *D.V.D.* class certification. *Nguyen*, 2025
WL 2419288, at *21.

1 692 (9th Cir. 2003), and *Frost v. Symington*, 197 F.3d 348 (9th Cir. 1999), the Ninth Circuit in
2 *Pride v. Correa* left clear that a district court “may not dismiss those allegations of the complaint
3 which go beyond the allegations and relief prayed for in the class action.” 719 F.3d 1130, 1133–
4 34 (9th Cir. 2013) (citation modified).³ As Judge Cartwright recognized in *Nguyen* when
5 reviewing the petitioner’s challenge to third-country removal despite *D.V.D.*, *Pride* explained
6 that “individual claims for injunctive relief related to” the same subject matter as that involved
7 in class litigation seeking “systemic reform” were “discrete” and “not duplicative,” and so could
8 be brought independently of the class litigation. *Nguyen*, 2025 WL 2419288, at *20–21 (citation
9 modified).

10 Dismissal would render Mr. Kumar, who presents a meritorious claim, “powerless to
11 petition the courts for redress of the violation until” the *D.V.D.* litigation is “fully resolved,”
12 resulting in “unwarranted delay.” *Pride*, 719 F.3d at 1137. Here, that delay could have
13 devastating and dangerous consequences given Mr. Kumar’s vulnerabilities as a gay man who is
14 HIV positive facing removal to Uganda or another third country. As another court recently
15 declared in declining to dismiss an individual’s habeas petition due to his membership in the

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18 ³ The Ninth Circuit also explained that dismissal was permitted, but not required, for
19 claims that were “duplicative” of those brought in class action litigation. *Pride*, 719 F.3d at 1137
20 n.10. Here, none of the claims are duplicative, as Mr. Kumar seeks only individual relief. But
21 even if that were not a sufficient distinguishing factor, the court should choose to exercise its
22 jurisdiction as to any duplicative claims given the stakes at issue and the fact that *D.V.D.* may not
23 be resolved until after Mr. Kumar suffers the threatened harm. *See Sagastizado*, 2025 WL
24 2957002, at *8 (finding “compelling circumstances” to consider petitioner’s claims because
25 “later relief in *D.V.D.* will not prevent [him] from being removed to Mexico without due process
26 in the meantime”).

1 *D.V.D.* class, it is “counterintuitive that non-opt-out class membership, for the purposes of
2 granting a preliminary injunction to prevent removal without due process, could prevent
3 individuals from making their own claims for due process while that injunction is stayed on a
4 class-wide basis.” *Sagastizado*, 2025 WL 2957002, at *8.

5 As dismissal of this petition would be contrary to Ninth Circuit law and inappropriate
6 given the stakes, the Court should decide the merits of Mr. Kumar’s claims.

7 **III. Mr. Kumar is entitled to the requested procedural protections.**

8 Critically, Respondents do not challenge Mr. Kumar’s argument that their third-country
9 removal policy violates his rights under the INA, the Foreign Affairs Reform Restructuring Act
10 of 1998 (FARRA), and the Fifth Amendment’s Due Process Clause. *Compare* Dkt. 1 ¶¶ 82–107,
11 *with* Dkt. 10. And, in fact, “[c]ourts in this district have recently found that challenges to
12 [Respondents’] policy on third country removals are likely to succeed on the merits.” *Baltodano*,
13 2025 WL 2987766, at *2 (citing *Nguyen*, 2025 WL 2419288 at *19; *J.R.*, 2025 WL 1810210, at
14 *3; *Phetsadakone v. Scott*, No. 2:25-CV-01678-JNW, 2025 WL 2579569, at *4 (W.D. Wash.
15 Sept. 5, 2025); and *Phaymany v. Northwest Immigration and Customs Enforcement Processing*
16 *Center*, 2:25-cv-00854-RAJ-MLP (W.D. Wash. Sept. 25, 2025), Dkt. 22 at *5); *cf. Aden*, 409 F.
17 Supp. 3d at 1009–11 (declaring “[a] noncitizen must be given sufficient notice of a country of
18 deportation that, given his capacities and circumstances, he would have a reasonable opportunity
19 to raise and pursue his claim for withholding of deportation” and ordering that noncitizen be
20 permitted to apply for asylum, withholding of removal, and CAT protection before the
21 immigration court prior to third-country removal).

1 Courts elsewhere in the Ninth Circuit have also agreed. *See, e.g., Salim Nizar Esmail,*
2 2025 WL 3030589, at *6–7 (explaining, inter alia, that “[i]n the context of country of removal
3 designations, last minute orders of removal to a country may violate due process if an immigrant
4 was not provided an opportunity to address his fear of persecution in that country” and
5 Respondents’ third-country removal policy raised due process concerns regardless of whether a
6 third country had offered diplomatic assurances (citation omitted)); *Nadari v. Bondi*, No. 2:25-
7 CV-07893-JLS-BFM, 2025 WL 2934514, at *3 (C.D. Cal. Sept. 3, 2025) (concluding that
8 petitioner “established a likelihood of success on the merits, or at least the presence of ‘serious
9 questions going to the merits’ as to th[e] claim” that a third-country removal “without notice and
10 an opportunity to be heard would be unlawful”); *Y.T.D.*, 2025 WL 2675760, at *8–11 (similar).

11 Respondents’ removal of Mr. Kumar to Uganda, or to any other third country, without
12 meaningful notice or an opportunity to be heard on a claim of fear of persecution or torture there
13 would violate the INA and FARRA’s protections against removal to a country where a
14 noncitizen would face persecution or torture. *See* 8 U.S.C. § 1231(b)(3)(A);
15 Pub. L. 105-277 Div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1999) (codified as
16 § 1231 statutory note); *see also* 8 C.F.R. §§ 208.16–208.18, 1208.16–1208.18. It would also
17 violate his due process rights, for “[t]he fundamental requisite of due process of law is the
18 opportunity to be heard,” which includes “timely and adequate notice.” *Goldberg v. Kelly*, 397
19 U.S. 254, 267 (1970) (citation modified). In the immigration context, that means “no person shall
20 be removed from the United States without opportunity, at some time, to be heard.” *A.A.R.P.*,
21 605 U.S. at 94 (citation modified). It also means that failing to timely inform a noncitizen that
22 they may need to seek protection from removal to a country different than the designated one

1 “violate[s] a basic tenet of constitutional due process: that individuals whose rights are being
2 determined are entitled to notice of the issues to be adjudicated, so that they will have the
3 opportunity to prepare and present relevant arguments and evidence.” *Andriasian v. INS*, 180
4 F.3d 1033, 1041 (9th Cir. 1999). Accordingly, Respondents’ third-country removal policy is
5 unlawful and Mr. Kumar is entitled to procedural protections ensuring he will have both
6 meaningful notice *and* an opportunity to be heard as to any fear of persecution or torture in
7 Uganda or any other third country. *See* Dkt. 1 at 21–23.

8 **CONCLUSION**

9 The Court should thus grant Mr. Kumar’s petition.

10 Respectfully submitted this 4th day of November, 2025.

11 s/ Glenda M. Aldana Madrid
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*I certify this motion contains 4195 words in
compliance with the Local Civil Rules.*

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