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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

YAMRAJ KHADKA,

Petitioner,

vs.

MARKWAYNE MULLIN, Secretary, Department of Homeland Security; DAVID VENTURELLA, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; NANCY GONZALEZ, Acting Director, Bakersfield, ICE Field Office; and CHRISTOPHER CHESTNUT, Warden, California City Correctional Facility; TODD BLANCHE, Acting Attorney General of the United States; Executive Office of Immigration Review,

Respondent(s)

Case No.: 1:26-CV-052256-JLT-CDB

PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO MODIFY JUDGEMENT

I. INTRODUCTION

HARBOR JUSTICE LAW, APC
LONG BEACH, CA

Petitioner to the Central African Republic ("CAR") before this Court can adjudicate the Petition. Mot. at 1–2; Karan Decl. ¶ 7. A movant cannot satisfy Rule 60(b)(5) by demonstrating its own readiness to commit the act the order enjoins.

The motion fails for an independent and equally dispositive reason, and Respondents' own papers supply the proof: nothing in the Karan Declaration states that Petitioner was ever notified CAR had been designated as his country of removal, or that he was given any opportunity to raise a fear-based claim as to that country before Respondents arranged for his removal there. Karan Decl. ¶¶ 5–8. The record confirms the gap in Respondents' own evidence. CAR was not designated at Petitioner's December 31, 2025, merits hearing. [Ramnaney Decl., Exh. A.] It was not raised at his June 23, 2026, custody review interview — the only interview ICE has conducted with him in eighteen months of detention. [Khadka Decl. ¶¶ 3–4; Pet. ¶ 36.] And no notice of any kind identifying CAR as an intended destination reached Petitioner before Respondents filed this motion. [Khadka Decl. ¶¶ 4–5.] The Fifth Amendment does not permit that. A noncitizen must receive notice of a proposed third-country removal and a meaningful opportunity to raise a fear-based claim before removal occurs. *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Ibarra-Perez v. United States,* 154 F.4th 989, 995 (9th Cir. 2025). Because Respondents' own evidence shows that process never happened, the motion should be denied.

II. LEGAL STANDARD

Rule 60(b)(5) permits relief from a final judgment or order when "applying it prospectively is no longer equitable" because of "a significant change either in factual conditions or in law." *Horne*, 557 U.S. at 447; *see also Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383–84 (1992). The moving party bears the burden of establishing that changed circumstances make continued enforcement inequitable. *Horne*, 557 U.S. at 447. Respondents cannot meet that burden here.

III. ARGUMENT

A. Change in Circumstances That Would

HARBOR JUSTICE LAW, APC
LONG BEACH, CA

circumstance Rule 60(b)(5) requires. Mot. at 1–2. That inverts the standard. A circumstance warranting relief from a jurisdiction-preserving order is one that eliminates the risk the order guards against — for example, if Respondents had abandoned their plan to remove Petitioner to CAR. Instead, the Karan Declaration confirms the opposite: a removal flight is scheduled for the last week of July, days away. Karan Decl. ¶ 7. That is the very event Dkt. 4 exists to prevent pending adjudication of the Petition. Where the moving party's only proffered change is its own increased capacity to inflict the harm an order was designed to prevent, Rule 60(b)(5) affords no relief.

B. Due Process Independently Bars Respondents' Requested Relief Because Petitioner Has Not Received the Notice and Opportunity to Be Heard the Constitution Requires Before Third-Country Removal.

1. Governing Law.

"It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003); accord *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). That guarantee extends to the process due before removal to a country not designated in a noncitizen's removal order. "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum ... and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041. The Ninth Circuit reaffirmed this rule last year: "DHS must also 'notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported'; otherwise, DHS violates their constitutional right to due process." *Ibarra-Perez*, 154 F.4th at 995 (quoting *Andriasian*, 180 F.3d at 1041). Notice supplied only after the noncitizen is already in custody and removal is imminent does not satisfy this standard. *Andriasian,* 180 F.3d at 1041.

HARBOR JUSTICE LAW, APC
LONG BEACH, CA

is substantial. *See* 8 U.S.C. § 1231(b)(3)(A) (barring removal to a country where the noncitizen's life or freedom would be threatened); *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 348 (2005). The risk of erroneous deprivation is high because no process *whatsoever* has been afforded. And the government's burden is minimal: Petitioner already received a full merits hearing before an immigration judge on his withholding claim, Pet. ¶ 32, so extending an equivalent opportunity as to CAR imposes no significant additional cost.

This conclusion follows a consistent and growing line of authority within this Circuit applying *Andriasian* to the identical DHS third-country removal framework at issue here. *See, e.g.*, *Vishal v. Chestnut*, 811 F. Supp. 3d 1179, 1186–88 (E.D. Cal. 2025) (holding the policy "violates due process and is contrary to Ninth Circuit precedent"); *A.A.M. v. Andrews*, 815 F. Supp. 3d 1124, 1137–39 (E.D. Cal. 2025) (applying *Mathews* and enjoining third-country removal absent an opportunity to present a fear-based claim to an immigration judge); *Hoang v. Chestnut*, No. 1:26-cv-04023-JLT-CDB, 2026 WL 1875880, at *6 (E.D. Cal. June 30, 2026), adopted, 2026 WL 1965614 (E.D. Cal. July 7, 2026); *Berrios v. Albarran*, No. 1:25-cv-01544-TLN-CSK, 2025 WL 3171140, at *2 (E.D. Cal. Nov. 13, 2025); *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025); *Y.T.D. v. Andrews*, No. 1:25-cv-01100-JLT-SKO, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025); *Khan v. Noem*, No. 1:25-cv-014110-EPG-HC, 2025 WL 3089352, at *5-6 (E.D. Cal. Nov. 5, 2025); *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341, at *9 (E.D. Cal. Nov. 6, 2025); *Nguyen v. Scott*, 796 F. Supp. 3d 703, 728 (W.D. Wash. 2025).

2. Application

Respondents' own evidence confirms Petitioner has received none of the process *Andriasian* and *Ibarra-Perez* require. The Karan Declaration describes CAR's acceptance of Petitioner and a scheduled removal flight, Karan Decl. ¶¶ 5–7, but nowhere states that Petitioner was notified of CAR's designation

HARBOR JUSTICE LAW, APC
LONG BEACH, CA

Opportunity to Be Heard.

Respondents' reliance on the Department of State's letter regarding CAR, Dkt. 7-2, does not cure this deficiency. That letter, and the DHS policy Respondents invoke to justify removal without further process, Karan Decl. ¶ 8, treat a general, country-level assurance as sufficient to remove a noncitizen without any individualized notice or opportunity to be heard. Courts applying *Andriasian* have rejected that approach. See *Vishal*, 811 F. Supp. 3d at 1187–88 (finding the policy "violates due process and is contrary to Ninth Circuit precedent" and collecting cases reaching the same conclusion); *Nguyen*, 796 F. Supp. 3d at 728 (...); *Ffriend v. Albarran*, No. 3:26-cv-03942-WHO, Order Granting TRO at 4–6 (N.D. Cal. May 2, 2026), Dkt. 5. A generalized assurance obtained more than two months before this motion, Dkt. 7-2 (dated May 4, 2026), is not a substitute for the individualized notice and opportunity to be heard *Andriasian* requires.

4. Respondents Have Not Shown CAR Is Even a Permissible Removal Destination Under 8 U.S.C. § 1231(b)(2).

Section 1231(b)(2) establishes a mandatory hierarchy for designating a country of removal: first, a country the noncitizen designates; second, the country of the noncitizen's citizenship; third, an enumerated list of countries tied to the noncitizen's travel or birth history; and only if removal to each of those is "impracticable, inadvisable, or impossible" may the government resort to "another country whose government will accept" the noncitizen. 8 U.S.C. § 1231(b)(2)(A)–(E); 8 C.F.R. § 1240.12(d) ("When a respondent is ordered removed from the United States, the immigration judge shall identify a country, or countries in the alternative, to which the alien's removal may in the first instance be made, pursuant to [8 U.S.C. § 1231(b)(2)]."). It is the immigration judge, not DHS unilaterally, who identifies that country in the first instance. *Id.* Because withholding of removal is "'country specific'" relief, that hierarchy remains operative even after withholding is granted, and "nothing prevents DHS 'from

HARBOR JUSTICE LAW, APC
LONG BEACH, CA

alternative country by an immigration judge at Petitioner's removal hearing, as § 1240.12(d) contemplates. Respondents' motion does not address this gap.

C. *Nken v. Holder* Does Not Control.

Respondents invoke *Nken v. Holder*, 556 U.S. 418 (2009), for the propositions that there is always a public interest in prompt removal and that post-removal relief cures any harm. Mot. at 2. *Nken* addressed a stay pending a petition for review of a final removal order under 8 U.S.C. § 1252 — a fundamentally different posture from a § 2241 habeas petition challenging the process due before removal to a country never designated in that order. *Nken*'s "facilitated return" rationale presumes removal to the country actually adjudicated in the noncitizen's proceedings; it says nothing about removal to an undesignated third country where the noncitizen has had no opportunity to raise a fear-based claim at all. Respondents identify no authority applying *Nken* to excuse the absence of any third-country notice process, and, as set forth above, courts confronting that precise question have declined to do so.

D. The Equities Continue to Favor Maintaining the Status Quo Pending Resolution of the Petition

Respondents' Motion to Modify Judgment was filed one day before their Response to the Order to Show Cause, Dkt. 8, and asks the Court to authorize Petitioner's removal before the Petition can be adjudicated. Respondents' Response does not change that calculus. It disputes Petitioner's claims, but the Court has not yet ruled on them, and the case remains pending. If Petitioner is removed before that occurs, the Petition will likely be mooted and this Court will lose any practical ability to grant relief — the precise outcome the July 7, 2026 order was entered to prevent. Petitioner, having learned of CAR's designation only through this motion, now faces a concrete and particular fear of removal there, Khadka Decl. ¶ 7, a fear Respondents' own policy would permit them to disregard entirely on the

HARBOR JUSTICE LAW, APC
LONG BEACH, CA

equities plainly favor leaving the order in place.

IV. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court deny Respondents' Motion to Modify Judgment. In the alternative, Petitioner requests that any modification be conditioned on Respondents first: (1) providing Petitioner and his counsel written notice of the proposed removal to the Central African Republic, the statutory basis for that designation, and a minimum of ten days to raise a fear-based claim for protection prior to removal; (2) if Petitioner demonstrates reasonable fear of removal to CAR, moving to reopen his removal proceedings; (3) if Petitioner is not found to have demonstrated reasonable fear, providing him a meaningful opportunity, and a minimum of fifteen days, to seek reopening of his removal proceedings on his own initiative; and (4) in the event Petitioner asserts a fear-based claim, affording him a meaningful opportunity to be heard on that claim before an immigration judge, consistent with the process required by *Andriasian*, *Ibarra-Perez,* and the authorities cited above, before any removal to CAR.

Date: July 23, 2026

Respectfully Submitted,

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HARBOR JUSTICE LAW, APC
LONG BEACH, CA