

In the
Supreme Court of the United States

U.S. DEPARTMENT OF HOMELAND SECURITY ET AL.,

Applicants,

v.

D.V.D. ET AL.,

Respondents.

ON APPLICATION FOR A STAY OF THE ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS AS AFFIRMED BY THE U.S. COURT OF APPEALS FOR THE FIRST
CIRCUIT AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

OPPOSITION TO APPLICATION TO STAY

Matt Adams
Leila Kang
Aaron Korthuis
NORTHWEST IMMIGRANT
RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104

Anwen Hughes
HUMAN RIGHTS FIRST
121 W. 36th St., PMB 520
New York, NY 10018

Trina Realmuto
Counsel of Record
Kristin Macleod-Ball
Mary Kenney
NATIONAL IMMIGRATION
LITIGATION ALLIANCE
10 Griggs Terrace
Brookline, MA, 02446
(617) 819-4447
trina@immigrationlitigation.org

TABLE OF CONTENTS

INTRODUCTION.....	1
STATEMENT.....	2
I. Legal Background.....	2
A. Defendants’ Legal Obligations.....	2
B. Defendants’ Statements to This Court That Notice and Opportunity to Apply for Protection Are Required Prior to Third-Country Removal.....	4
C. Defendants’ Third-Country Removal Policy.....	5
II. Factual and Procedural Background.....	6
A. Named Plaintiffs.....	6
B. Procedural History	7
C. Defendants’ Treatment of Class Members.....	9
STANDARD OF REVIEW.....	12
ARGUMENT.....	13
I. Plaintiffs Are Likely to Succeed on the Merits.....	13
A. The District Court Properly Exercised Jurisdiction.....	13
1. Section 1252(f)(1) does not prohibit declaratory relief or vacatur.....	13
2. Section 1252 and FARRA do not bar review of Plaintiffs’ claims.....	17
3. Section 1231(h) does not apply.....	21
B. The Lower Courts Properly Held that the Law Requires Meaningful Notice and Opportunity to Be Heard Prior to Any Third-Country Removal.....	22
1. Class members’ statutory rights.....	22
2. Class members’ due process rights.....	25
a. <i>The fundamental requirements of due process apply here</i>	25
b. <i>Defendants’ due process arguments fail</i>	27
3. DHS’s policy does not comport with the law.....	29
II. All Other Factors Weigh Heavily in Plaintiffs’ Favor.....	32
A. The Court May Grant Certiorari, But Prior Rulings Are Not Dispositive.....	32
B. Defendants Have Not Demonstrated Irreparable Harm.....	33
1. Defendants’ unsubstantiated harm is not caused by the judgment.....	33
2. Defendants cannot presume harm or rely on the 2025 stay.....	35
C. The Balance of Equities Strongly Favors Plaintiffs.....	37
CONCLUSION.....	40

INTRODUCTION

Defendants-Petitioners (Defendants) seek to relitigate the now-dissolved preliminary injunction (PI) that this Court stayed in 2025, rather than confront the fundamentally different posture of the case today. The 2025 order concerned only injunctive relief on Plaintiffs-Respondents (Plaintiffs) claims under the Convention Against Torture (CAT) and did not address their withholding of removal claims under 8 U.S.C. § 1231(b). The district court now has issued a final judgment declaring that class members have rights to meaningful notice and an opportunity to be heard on any withholding or CAT claim before removal to any third country and setting aside as unlawful Defendants' third-country removal policy, App'x 81a, and the First Circuit affirmed, App'x 152a. Defendants nevertheless treat the case as though none of this happened: they claim that the 2025 stay already resolved the merits and equities; try to recast declaratory relief and vacatur as the functional equivalent of the PI; and ignore the significant harm resulting from deporting thousands of longtime U.S. residents, many with no criminal history, to third countries without regard to the persecution or torture they face there.

Defendants are unlikely to succeed on the arguments the lower courts have rejected. The final judgment did not include injunctive relief, so 8 U.S.C. § 1252(f)(1) is inapplicable. And because Plaintiffs do not challenge their removal orders or any discretionary decision to execute them, 8 U.S.C. §§ 1252(g), 1252(a)(5), 1252(b)(9), and 1252(a)(4) do not bar review of Plaintiffs' claims. Defendants cannot reconcile their policy with the Immigration and Nationality Act (INA), namely, 8 U.S.C. § 1231(b), the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), and their implementing regulations, which prohibit removal to any country where a person faces likely persecution or torture. Yet Defendants' policy permits removal to *any* newly selected third country without meaningful notice of the destination or a meaningful

opportunity to raise a country-specific fear claim. And, where the Department of Homeland Security (DHS) relies on a non-individualized diplomatic assurance, the policy permits removal without any notice or process *at all*.

Defendants' asserted harms are neither irreparable nor caused by the judgment: the judgment does not require release from detention, prohibit third-country removals, or undo existing arrangements. Defendants can avoid any resulting delays by timely providing the notice and opportunity to be heard that the law requires. Nor can Defendants credibly feign surprise at the First Circuit's decision: the ruling was neither unexpected nor unforeseeable. In fact, earlier this month, both parties urged the court to decide the appeal, and consistent with circuit precedent, Defendants should have treated the court's decision as controlling when issued.

The equities strongly favor Plaintiffs because Defendants' policy causes grave and irreversible harms. The record shows that class members removed without meaningful notice or an opportunity to present country-specific protection claims have faced prolonged and arbitrary detention, beatings and sexual assault, disappearance, and chain refoulement to countries from which the United States had already granted them protection. These harms cannot be undone. Denying a stay does not prevent third-country removals; rather, it simply requires them to do so lawfully. The Court should deny the application.

STATEMENT

I. Legal Background

A. Defendants' Legal Obligations

Sections 1231(b)(1) and (b)(2) govern the countries to which DHS is authorized to remove noncitizens with final removal orders. However, the INA, through 8 U.S.C. § 1231(b)(3), bars removal to countries where a noncitizen faces a likelihood of persecution. It reads:

Notwithstanding paragraphs (1) and (2), the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion.

Id. § 1231(b)(3)(A) (emphasis added).¹ Withholding of removal is thus mandatory for noncitizens who can show they are more likely than not to face persecution in the designated country. 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Separately, Article 3 of the Convention Against Torture (CAT), implemented in 1998 through FARRA, Pub. L. 105-277, div. G, § 2242, 112 Stat. 2681 (1998), bars removal to a country where a noncitizen faces a likelihood of torture. Through FARRA, Congress instructed that the U.S. government may not “expel, extradite, or otherwise effect the involuntary return of *any person* to a country” where they likely would face torture. *Id.* § 2242(a), 112 Stat. at 2681-822 (emphasis added) (codified as statutory note to 8 U.S.C. § 1231). Congress directed CAT’s implementation through regulations. *Id.* § 2242(b), 112 Stat. at 2681-822. *See generally* 8 C.F.R. §§ 208.17-.18, 1208.17-.18; *see also* 28 C.F.R. § 200.1 (mandating that a Title V removal order cannot violate CAT).

The statute and regulations require the government, including DHS, to provide noncitizens with meaningful notice of the country to which it intends to remove them. In proceedings under 8 U.S.C. § 1229a, the IJ “shall notify” the individual of their designated country of removal, and “shall also identify for the record” all alternative countries to which the person may be removed. 8 C.F.R. § 1240.10(f). DHS officers issuing reinstatement orders under 8 U.S.C. § 1231(a)(5) must provide notice of the designated country. *See* 8 C.F.R. § 241.8(e) (referring to “the country designated in [the reinstatement] order”). Likewise, DHS officers

¹ Congress delegated enforcement of final removal orders to the DHS Secretary. 8 U.S.C. § 1103(a)(1). Statutory references to the Attorney General pertain to the DHS Secretary for carrying out removals, and to the Attorney General—through the immigration courts—for selecting countries for removal and decisions about fear-based claims. *See* 6 U.S.C. § 557.

issuing removal orders under 8 U.S.C. § 1228(b) “shall designate the country of removal[.]” 8 C.F.R. § 238.1(f)(2); *see also id.* § 238.1(b)(2)(ii).

The government also must provide noncitizens an opportunity to raise any fear-based claims. In § 1229a proceedings, noncitizens may apply for withholding under § 1231(b)(3) and/or CAT protection before an immigration judge (IJ). *See generally* 8 C.F.R. §§ 208.16-.18, 1208.16-.18. In §§ 1228(b) and 1231(a)(5) proceedings, those who articulate and demonstrate a reasonable fear of persecution or torture to an asylum officer are eligible to apply for withholding under § 1231(b)(3) and/or CAT protection in what is known as a “withholding-only” hearing before an IJ. *See* 8 C.F.R. §§ 241.8(e), 238.1(f)(3); *id.* §§ 208.31, 1208.31.

In all protection hearings, the “trier of fact [IJ] shall determine whether the [noncitizen] has sustained [their] burden of proof, and shall make credibility determinations.” 8 U.S.C. § 1231(b)(3)(C); *see also* 8 C.F.R. § 208.16(a), (c)(4) (providing for IJ hearings on CAT claims), 1208.16(a), (c)(4) (same); FARRA § 2242(a), (d) (channeling review of CAT “determination[s]” to federal appellate courts).

B. Defendants’ Statements to This Court That Notice and Opportunity to Apply for Protection Are Required Prior to Third-Country Removal

Defendants have twice assured this Court that, prior to third-country removals, the government provides adequate notice and a meaningful opportunity to present a fear-based claim. In March 2025, the Solicitor General’s Office explained to this Court:

MR. McDOWELL: We do think we have the legal authority to [send people to a third country while withholding-only and CAT proceedings are pending], with the following caveat: We would have to give the person notice of the third country and give them the opportunity to raise a reasonable fear of torture or persecution in that third country. If they raise that reasonable fear, the withholding-only proceedings would simply continue. They would just focus on the new country, rather than the original one.

JUSTICE KAGAN: But you don’t have the legal power to remove the person to the country for which there is a pending CAT claim?

MR. McDOWELL: That’s exactly right. The regulate—the regulations prohibit that. Transcript of Oral Argument at 33, *Riley v. Bondi*, 606 U.S. 259 (2025) (No. 23-1270). In 2021, the Solicitor General’s Office similarly affirmed that for third-country removals, “[DHS] would have to provide [the noncitizen] notice, and if he had a fear of persecution or torture in that country, he would be given an opportunity to contest his removal to that country.” Transcript of Oral Argument at 20, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) (No. 19-897).

C. Defendants’ Third-Country Removal Policy

In February 2025, U.S. Immigration and Customs Enforcement (ICE) issued guidance directing the review of cases of person granted withholding of removal or CAT protection by the immigration court. D. Ct. Doc. 1-4 at 2. DHS directed agents to “determine the viability of removal to a third country” for such persons. *Id.*

On March 30, 2026, Defendants issued “Guidance Regarding Third Country Removals” (March Memo), governing third-country removals of individuals with final removal orders pursuant to 8 U.S.C. §§ 1229a, 1231(a)(5), and 1228(b). App’x 84a-85a. It authorizes DHS to remove class members to a third country without notice or any process whatsoever if DHS received “credible,” non-individualized “diplomatic assurances that [any noncitizen] will not be persecuted or tortured.” *Id.* Defendants have not disclosed which countries have provided alleged diplomatic assurances. For all other countries, the March Memo instructs DHS to inform the person of the intended third country. App’x 85a. It does not require DHS to ask if the person has a fear; if a noncitizen “affirmatively states” fear, DHS will refer them to an asylum officer for a screening. *Id.* That screening generally occurs within 24 hours and requires the individual to show that it is “more likely than not” that they would be persecuted or tortured. *Id.* If they fail, DHS will remove them with no opportunity for administrative or judicial review. *Id.* If they meet

that standard, the officer will refer those not previously in removal proceedings to an IJ; for everyone else, ICE will “consider” filing a motion to reopen or will select another third country.

Id.

On July 9, 2025, ICE issued supplemental guidance regarding the March Memo. App’x 86a-87a. It elaborates on the March Memo by providing that, where diplomatic assurances do not exist, an officer will serve a “Notice of Removal” with language interpretation. *Id.* DHS may effectuate removal 24 hours after serving notice—and, “[i]n exigent circumstances,” after only six hours if ICE provides “reasonable means and opportunity to speak with an attorney.” *Id.*

II. Factual and Procedural Background

A. Named Plaintiffs

Plaintiff D.V.D., a citizen of Cuba, has severe mental illnesses currently controlled by psychiatric treatment. In 2017, he was ordered removed to Cuba. He fears removal to countries where he will be deprived of access to psychiatric treatment or where he will be imprisoned on arrival. *See* D. Ct. Doc. 1 ¶¶ 62-67; D. Ct. Doc. 8-1 ¶¶ 4-13. Plaintiff M.M., a citizen of Honduras, fled that country after her husband severely beat her and their children. She has no criminal history. An IJ granted M.M. withholding of removal to Honduras. She fears that her husband would find her in a third country, as he previously did in Mexico, where he attacked her. *See* D. Ct. Doc. 1 ¶¶ 68-73; D. Ct. Doc. 8-2 ¶¶ 3-13. Plaintiff E.F.D., a citizen of Ecuador, fled after the Ecuadorian police robbed and beat him for refusing to transport drugs for them. En route to the United States, E.F.D. was kidnapped and robbed in Guatemala and Mexico. An IJ granted him CAT protection to Ecuador. He fears removal to countries engaged in chain refoulement (i.e., deportation to a third country that then deports the individual to the country from which they won protection). *See* D. Ct. Doc. 1 ¶¶ 74-77; D. Ct. Doc. 8-3 ¶¶ 3-16.

Plaintiff O.C.G. is a gay man from Guatemala who has faced multiple death threats on account of his sexual orientation. He has no criminal history. In March 2024, DHS refused to give him a credible fear interview and deported him. He again fled Guatemala and entered Mexico in April 2024, where he was kidnapped and raped. He then fled to the United States. On February 19, 2025, an IJ granted O.C.G. withholding of removal to Guatemala. During the proceedings, O.C.G. expressly stated his fear of removal to Mexico, and the IJ told him he could not be removed there. Two days later, without notice, DHS deported O.C.G. to Mexico. Mexican authorities then removed him to Guatemala, where he went into hiding. *See* D. Ct. Doc. 1 ¶¶ 78-89; D. Ct. Doc. 8-4 ¶¶ 2-10; D. Ct. Doc. 132 at 1, 4-5. After the district court ordered his return, Defendants returned O.C.G. to the United States. *See* D. Ct. Doc. 233-16 ¶ 3.

B. Procedural History

On March 23, 2025, Plaintiffs filed this suit and moved for a temporary restraining order (TRO), PI, and class certification. D. Ct. Docs. 1, 4, 6. Defendants responded that *no* notice or opportunity to make a fear-based claim was required. Hr’g Tr. 29:2-18, Mar. 28, 2025; D. Ct. Doc. 40 at 4. On March 28, the court issued a TRO requiring notice and an opportunity to present a CAT claim prior to any third-country removal. D. Ct. Docs. 34, 40. Defendants appealed, and the First Circuit denied their motion to stay the TRO. *D.V.D. v. DHS*, No. 25-1311 (1st Cir. Apr. 7, 2025). Defendants then issued the March Memo. App’x 84a-85a.

At an April 10 hearing, Defendants reiterated that removal is lawful, without notice or without process to a country where the individual fears death. Hr’g Tr. 12:5-23, 14:9-16, Apr. 10, 2025. On April 18, the district court granted class certification and the PI. D. Ct. Doc. 64.²

² The court certified the following class:
All individuals who have a final removal order issued in proceedings under [8 U.S.C. §§ 1229a, 1231(a)(5), or 1228(b)] (including withholding-only

The PI ordered notice and an opportunity to make a claim for CAT protection prior to any third-country removal. *Id.* at 46-47. The court later modified and clarified the PI in response to Defendants’ efforts to effectuate third-country deportations to El Salvador, Libya, and South Sudan without the PI’s protections. D. Ct. Docs. 86, 91, 118, 119. On June 23, 2025, after the First Circuit denied Defendants’ motion to stay the PI, this Court granted their application for an emergency stay without a decision. *DHS v. D.V.D.*, 145 S. Ct. 2153, 2153 (2025). Later that day, the district court held that its earlier remedial order as to the eight class members Defendants had attempted to deport to South Sudan remained in effect. D. Ct. Doc. 176. This Court subsequently granted Defendants’ motion to clarify the remedial order. *DHS v. D.V.D.*, 145 S. Ct. 2627 (2025).

Plaintiffs sought an indicative ruling to dissolve the PI, which the lower courts allowed. D. Ct. Docs. 191, 192, 212; *D.V.D. v. DHS*, Nos. 25-1393, 25-1631 (1st Cir. Feb. 28, 2026). On July 15, 2025, Plaintiffs moved for partial summary judgment. *See* D. Ct. Docs. 193, 194. On February 25, 2026, the district court granted summary judgment in part. The district court declared that class members are entitled to meaningful notice and an opportunity to raise country-specific protection claims, and it set aside DHS’ third-country removal policy as unlawful under 5 U.S.C. § 706(2)(A). App’x 80a-81a. No injunction was issued.

Defendants appealed to the First Circuit and sought a stay, 1st Cir. Doc. No. 00118413580, which the First Circuit granted “pending appeal.” 1st Cir. Doc. No. 00118417272. On September 18, 2026, the First Circuit affirmed the district court’s summary judgment ruling

proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.
Id. at 23, 48.

in part. App’x 99a-153a. On September 23, after confirming that Defendants were not giving effect to the decision and learning that DHS intended to deport class members to Burundi, Rwanda, and the Central African Republic the next day, Plaintiffs filed an emergency motion, 1st Cir. No. Doc. 00118513219, which the First Circuit granted in part, ordering that “[c]onsistent with [the First Circuit’s] September 18, 2026, Judgment, the March 16, 2026, stay pending appeal is dissolved.” App’x 154a. This application followed.

C. Defendants’ Treatment of Class Members

Defendants have continued to deport class members to third countries without meaningful notice or an opportunity to seek withholding or CAT protection. Many, like Plaintiffs O.C.G. and M.M., have no criminal history, and IJs have found that they are more likely than not to be persecuted or tortured in their countries of origin. Many have also lived in this country for years. Upon removal, class members have faced indefinite detention by foreign governments, chain refoulement, disappearance, and abuse in detention, including beatings, sexual assault, inhumane conditions, and being held incommunicado. As one U.S. official explained, “[t]he point [of the third country-removal policy] is to scare people.” *See* D. Ct. Doc. 240-1 at 14.

By one estimate, DHS has deported more than 25,000 people to at least 28 third countries in 2025 and 2026.³ On March 31 and April 13, 2025, after the district court entered its TRO, putative class members were removed to El Salvador, via Naval Station Guantánamo Bay, without receiving the TRO’s protections. *See* D. Ct. Docs. 49 at 18-19, 81, 86, 72, 72-1, 81-86.⁴

³ *See* David Nakamura & Adam Taylor, *How Trump Turned a Refugee Bureau into a \$410 Million Deportation Operation*, Wash. Post (Sept. 21, 2026), <https://www.washingtonpost.com/politics/interactive/2026/09/21/how-trump-turned-refugee-bureau-into-410-million-deportation-operation/>.

⁴ A corroborated whistleblower complaint alleges that high-level officials conspired to violate the TRO. *See* Press Release, S. Comm. on the Judiciary, *Senate Judiciary Democrats Request Hearing with Whistleblower Erez Reuveni* (July 10, 2025),

Class members on deportation flights to El Salvador were sent to Centro de Confinamiento del Terrorismo (CECOT), a maximum-security prison notorious for daily beatings, sexual assault, inhumane conditions, and psychological torment, where they were held incommunicado for months and told they would “never leave alive.”⁵ On May 7, 2025, DHS attempted to remove thirteen class members to Libya without meaningful notice or an opportunity to make a fear-based claim and returned them to DHS custody only after an emergency motion and further order from the district court. *See* D. Ct. Docs. 89, 91, 99-2, 99-3.

On May 20, 2025, DHS began removing eight class members to South Sudan, on less than 24 hours’ notice, outside business hours, and on a form written in English, even though all eight men refused to sign it. D. Ct. Docs. 111, 118, 132-2 ¶¶ 8-10. DHS did not treat the refusal as an expression of fear. D. Ct. Doc. 130-2 ¶ 10. The district court required Defendants to retain custody to provide the PI protections, D. Ct. Docs. 116, 118, 119, but DHS deported them to South Sudan on July 4, 2025, after this Court stayed the PI and the remedial order. *D.V.D.*, 145 S. Ct. at 2627. To this day, five of the eight remain indefinitely detained in a guarded complex in sweltering heat with little electricity.⁶

In July 2025, DHS began deporting class members to Eswatini without *any* notice. There, they were detained in a maximum-security prison and denied access to local counsel for nine months, until a local court ordered access; most remain indefinitely detained without charge. D.

<https://www.judiciary.senate.gov/press/dem/releases/durbin-releases-documents-corroborating-justice-department-whistleblowers-allegations-against-embattled-trump-judicial-pick-emil-bove>.

⁵ Hum. Rts. Watch & Cristosal, “*You Have Arrived in Hell*”: *Torture and Other Abuses Against Venezuelans in El Salvador’s Mega Prison* 41, 52-53, 63, 66-67, 70-73, (Nov. 12, 2025), https://www.hrw.org/sites/default/files/media_2025/12/elsalvador1125%20web.pdf; *see also* D. Ct. Doc. 233-9.

⁶ *See* Hum. Rts. First & Refugees Int’l, *Third Country Deportation Watch: South Sudan* (last Sept. 26, 2026), <https://www.thirdcountrydeportationwatch.org/south-sudan>; D. Ct. Doc. 233-1 ¶¶ 7-12, 46; D. Ct. Doc. 233-2.

Ct. Docs. 233-1, 233-2, 233-3, 233-6. Others have been pressured to return to countries from which IJs granted them protection. Eswatini officials told one individual with CAT protection that they did not believe the United States had granted him protection from removal to Chad and threatened him with years of prison time if he did not agree to be deported there. D. Ct. Doc. 233-17.

DHS has also removed thousands of class members to Mexico. Mexican officials bus class members to areas with a high risk of kidnapping, extortion, violence, and other harms, and fail to provide them a meaningful opportunity to seek legal status in Mexico.⁷ A woman who was granted protection from Honduras based on her gender identity and sexual orientation was deported to Mexico despite its “silent epidemic” of transfemicide—the killing of trans women.⁸ A man with CAT protection based on torture by Salvadoran gangs and police was deported to Mexico although he had reported that Mexican police had previously kidnapped, beaten, and extorted him; prior to deportation, U.S. officials punched and kicked him so severely that he needed a wheelchair. D. Ct. Doc. 233-10. A 67-year-old wheelchair-bound man died several months after deportation to a third country. Linthicum, *supra* n.7.

The record reflects that third countries regularly force or pressure class members with protection to return to their countries. One woman with protection from Sierra Leone based on her political opinion was deported to Ghana and then immediately returned to Sierra Leone, where she was forced into hiding. Before the chain refoulement, Ghanaian officials physically

⁷ See Kate Linthicum, *Homeless and Stateless: Deportees from U.S. Are Trapped in Mexico*, L.A. Times (Mar. 21, 2026), <https://www.latimes.com/worldnation/story/2026-03-21/mexico-deportations>.

⁸ Megan Janetsky, *Wave of Transgender Slayings in Mexico Spurs Anger and Protests by LGBTQ+ Community*, Associated Press (Jan. 15, 2024), <https://apnews.com/article/mexico-transgender-killings-lgbtq-violence-samanthagomez-266056d1f8a811b30ce69ef69741c26a>; D. Ct. Doc. 233-14.

overpowered the woman as she pled for a chance to seek protection in Ghana and told her they were “acting on instructions” to return her to Sierra Leone. D. Ct. Doc. 233-8 ¶¶ 11-13.

Similarly, a man with protection from The Gambia due to his sexual orientation was told by Ghanaian officials that, under ICE’s orders, his “final destination” was The Gambia; he was then deported there where he went into hiding. D. Ct. Doc. 233-7, Ex. A. A man with protection from deportation to Iran was deported to Nicaragua, where officials told him he would be deported to Iran under an agreement with the U.S. government. The official kicked him in the stomach until he signed paperwork agreeing to be deported to Iran. D. Ct. Doc. 233-18. Class members deported to Equatorial Guinea have faced either indefinite detention in unsafe conditions or return to a country from which they had received protection; several of the detained individuals were hospitalized due to malaria, typhoid, or food poisoning.⁹ The same happened to at least 17 class members deported to Cameroon.¹⁰

STANDARD OF REVIEW

Stay applicants must show a likelihood of success on the merits, “a reasonable probability” of obtaining certiorari, and a likelihood of irreparable harm. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Defendants do not satisfy and are not entitled to an administrative stay, whose purpose is “to minimize harm while an appellate court deliberates.”

United States v. Texas, 144 S. Ct. 797, 798 (2024) (Barrett, J., concurring).

⁹ See Monika Pronczuk, *Secretive Deal Leaves Deportees from the U.S. Stuck in Equatorial Guinea with “No More Hope,”* Associated Press (Mar. 21, 2026), <https://apnews.com/article/equatorial-guinea-deportations-trump-asylum-migrants-9d0a623b83288f5c7b1d1a71443d04cd>; Nicolas Roll & Samuel Obiang, *African Migrants Won Legal Protections – Then Trump Deported Them*, Barron’s (Feb. 25, 2026), <https://www.barrons.com/news/african-migrants-won-legal-protections>.

¹⁰ Hamed Aleaziz & Pranav Baskar, *In Secret Deportation Deal, U.S. Leveraged Favors and Funds*, N.Y. Times (Mar. 25, 2026), <https://www.nytimes.com/2026/03/25/world/africa/in-secret-deportation-deal-usleveraged-favors-and-funds.html>.

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits.

A. The District Court Properly Exercised Jurisdiction.

1. Section 1252(f)(1) does not prohibit declaratory relief or vacatur.

Defendants conflate classwide injunctive relief with classwide declaratory relief and vacatur under the Administrative Procedure Act (APA). They argue that the district court's grant of classwide declaratory relief and vacatur violates 8 U.S.C. § 1252(f)(1), even though that provision expressly addresses only injunctions. Appl. 17-22. Defendants acknowledge that some classwide declaratory actions are permitted under § 1252(f)(1) but argue that any declaratory relief that may later be enforced by individual injunctions is necessarily coercive. Appl. 19. That argument does not square with the statutory text or this Court's holdings addressing § 1252(f)(1).

“By its plain terms,” § 1252(f)(1) “is nothing more or less than a limit on injunctive relief.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999) (*AADC*). Its text nowhere mentions declaratory relief. Section 1252(f)(1) is titled “Limit on injunctive relief,” without reference to declaratory relief or vacatur. *See Biden v. Texas*, 597 U.S. 785, 798 (2022) (Section 1252(f)'s “title ... makes clear the narrowness of its scope”). The legislative history likewise refers only to “injunctive relief.” H.R. Rep. No. 104-469, pt. 1, at 161 (1996).

Defendants also ignore that Congress expressly barred declaratory relief in the preceding subsection, § 1252(e)(1)(A), but chose not to bar classwide declaratory relief in § 1252(f)(1). *See* App'x 148a-149a (discussing bar to declaratory relief in 8 U.S.C. § 1252(e)(1)(A); *see also Nken v. Holder*, 556 U.S. 418, 430 (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” (citation modified))). The

presumption is strongest where, as here, Congress enacted both provisions in the same legislation. *Kucana v. Holder*, 558 U.S. 233, 249 (2010).

Nor does the term “restrain” in § 1252(f)(1) do the work Defendants claim. Appl. 21. “Restrain and enjoin” is a “common doublet” referring to the most common forms of injunctive relief: injunctions and restraining orders. Bryan A. Garner, *Garner’s Dictionary of Legal Usage* 295-96 (3d ed. 2011); *see also* Fed. R. Civ. P. 65 (providing for “injunctions and restraining orders”); *California v. Arizona*, 452 U.S. 431, 432 (1981) (using “enjoined and restrained” to describe an injunction). As this Court explained in *Garland v. Aleman Gonzalez*, “[p]utting these terms together, § 1252(f)(1) generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions.” 596 U.S. 543, 550 (2022).

Aleman Gonzalez pointedly declined to consider whether § 1252(f)(1) reaches “any other form of relief that is practically similar to an injunction, including class-wide declaratory relief.” 596 U.S. at 551 n.2 (citation modified). But shortly thereafter, in *Biden v. Texas*, this Court confirmed, that declaratory relief remains available under § 1252(f)(1) even if class-wide injunctive relief is barred. 597 U.S. at 800-01 & n.4 (citing *Nielsen v. Preap*, 586 U.S. 392 (2019)). There, the Court reached the merits because the district court retained jurisdiction to consider declaratory relief, whatever the validity of the injunction. *Id.*

Ultimately, Defendants concede that § 1252(f)(1)’s text does not bar all classwide declaratory relief. Appl. 19 (“Some declaratory judgments are not coercive, such as those that clarify whether the plaintiff may act (or not act) in a certain way. . . . Such declarations do not ‘check, hold back, or prevent’ the defendant.” (citing *Aleman Gonzalez*, 596 U.S. at 549)). Instead, Defendants assert that § 1252(f)(1) bars declaratory relief where the declaration could

later support individual injunctions—that is, they argue, accomplishing through two steps what the statute forbids in one. *See* Appl. 17. But the text of the statute does not mention declaratory relief, let alone provide a basis to permit some declaratory judgments and not others. Nor does the possibility that a declaratory judgment may later support an individual injunction transform the declaration itself into an injunction; if it did, the distinction between the two remedies would disappear. *See Steffel v. Thompson*, 415 U.S. 452, 461 n.11 (1974) (a declaratory judgment may “serve as the basis for issuance of a later injunction to give effect to the declaratory judgment”). Indeed, § 1252(f)(1) expressly *preserves* injunctive relief “with respect to . . . an individual [noncitizen] against whom proceedings . . . have been initiated.” *Aleman Gonzalez* recognized that this provision makes clear that the bar to classwide injunctive relief “does not extend to individual cases.” 596 U.S. at 550 (quoting *AADC*, 525 U.S. at 481-82).

Nor does § 1252(f) cover declaratory relief even if it may have practically similar results. “The express purpose of the Federal Declaratory Judgment Act was to provide a milder alternative to the injunction remedy.” *Steffel*, 415 U.S. at 467. While not as invasive as an injunction, declaratory relief is nonetheless binding on the parties, who must then act accordingly. While a “declaratory judgment might serve as the basis for issuance of a later injunction to give effect to the declaratory judgment,” *id.* at 461 n.11, any “follow-up injunction” is still a separate remedy, and Defendants err in conflating the two.

Defendants invoke *California v. Grace Brethren Church*, 457 U.S. 393 (1982), as authority that a bar to injunctive relief may encompass declaratory judgments. Appl. 20-21. But as the First Circuit explained, *Grace Brethren* rested in large part on federalism concerns raised in the statute at issue—the Tax Injunction Act—rendering that case of “limited relevance.” App’x 149a (noting that those “federalism concerns . . . are not present in the immigration-law

context”). The Tax Injunction Act also is broader, barring orders that suspend tax collection, not just injunctions that enjoin or restrain it. *See Alli v. Decker*, 650 F.3d 1007, 1014 (3d Cir. 2011) (distinguishing *Grace Brethren* because the Tax Injunction Act bars courts from “*enjoin[ing]*, *suspend[ing]* or *restrain[ing]*” tax collection). Finally, *Grace Brethren* did not address a statute that explicitly barred declaratory relief in one section, but omitted that bar in another, as here.

Defendants briefly claim that § 1252(f)(1) also bars vacatur because it restrains the DHS action. Appl. 21. First, the same textual reasoning forecloses that argument: § 1252(f)(1) says nothing about the APA’s vacatur or set aside authority. Vacatur also differs from an injunction: it operates on the unlawful agency action itself, not on the officials who implement it. *See Nat’l Mining Ass’n v. U.S. Army Corps of Eng’rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) (“When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed.” (citation omitted)). In addition, vacatur is “a less drastic remedy” than an injunction. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165-66 (2010); *see also* App’x 151a.¹¹ Defendants complain that setting aside the unlawful policy “leaves officials without instructions about how to act—and thereby practically leave them with little choice but to act in compliance with the court’s rationale for the vacatur.” Appl. 21-22. But it is well established that vacatur simply “reinstat[es] the rules previously in force.” *Action on Smoking & Health v. C.A.B.*, 713 F.2d 795, 797 (D.C. Cir. 1983).¹²

¹¹ *See also Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022) (“a vacatur . . . neither compels nor restrains further agency decision-making.”); *Immig. Defenders Law Center v. Noem*, 145 F.4th 972, 990 (9th Cir. 2025) (vacatur “does not compel or restrain” agency action); *Refugee & Immig. Ctr. for Educ. & Legal Srvs. v. Mullin*, 174 F.4th 81, 118-19 (D.C. Cir. 2026) (vacatur does not “enjoin” or “restrain” agency action).

¹² Defendants portray the First Circuit’s order as a nefarious middle-of-the-night action, *see* Appl. 20, but the court was simply confirming its judgment was already in effect.

2. Section 1252 and FARRA do not bar review of Plaintiffs' claims.

Sections 1252(g), (a)(5), and (b)(9) do not bar Plaintiffs' claims because Plaintiffs do not challenge their removal orders or DHS's discretionary decisions to execute those orders. Section 1252(g) applies to claims "arising from" three discrete actions—decisions or actions "to commence proceedings, adjudicate cases, or execute removal orders." Plaintiffs challenge none of those actions; indeed, no class member has a removal order *to* a third country. Plaintiffs challenge DHS's policy denying them mandatory protections of notice and an opportunity to be heard prior to removal to newly-designated third countries, not DHS's discretionary decision to execute their removal orders. App'x 117a (finding the class "does not challenge the validity of its removal orders, seek to delay or thwart the execution of those orders, or deny that its members can be removed lawfully to third countries based on those orders"); *see also Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025) (holding § 1252(g) did not bar noncitizen's claim that "he had a right to meaningful notice and an opportunity to present a fear-based claim before he was removed to [a third country]").

The lower courts correctly relied on this Court's decision in *AADC*. App'x 115a; 119a; 19a-20a. Despite § 1252(g)'s seemingly broad language, its reach is "much narrower" considering the statute's text, structure, and history. 525 U.S. at 482. Congress sought to channel and insulate from litigation the immigration authorities' "exercise of [their] discretion" with respect to the three specified actions. *Id.* at 483-84. Section 1252(g) thus "seems clearly designed to give some measure of protection to 'no deferred action' decisions and similar discretionary determinations." *Id.* at 485; *see also id.* at 487 (§ 1252(g) is a "discretion-protecting provision"); *INS v. St. Cyr*, 533 U.S. 289, 311 n.34 (2001) (§ 1252(g) applies to "three types of discretionary decisions"); *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (§ 1252(g) is "narrow").

Defendants’ reading of § 1252(g) to cover any action taken in the course of executing a removal order, whether discretionary or not, is irreconcilable with this precedent.¹³ Moreover, the district court rightly reasoned that “[t]he facts of *AADC*,”—which involved a selective-prosecution claim—“bear no resemblance to the policy challenge at issue here,” because no such “subjective inquiry” is required “to determine the meanings of statutes, regulations, or the Constitution.” App’x 20a-21a (citations omitted).

The district court correctly found that, as a policy challenge, this case is akin to *DHS v. Regents of the University of California*, App’x, 21a-22a, where this Court held that § 1252(g)’s “narrow” scope did not bar its review of a policy challenge to DHS’s decision to end the Deferred Action for Childhood Arrivals (DACA) program. 591 U.S. at 19. Although DACA also conveyed substantive immigration benefits, “the defining feature of deferred action is the decision to defer removal.” *Id.* at 27. *Regents*’ holding that § 1252(g) did not apply to a policy challenge involving prosecutorial discretion further demonstrates that § 1252(g) does not apply here, where Plaintiffs allege violations of mandatory protections.

Defendants also err in their reliance on *Aleman Gonzalez* and *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998). Appl. 23. Whether § 1252(g) applies depends on the nature of the challenged action, not on whether the challenged conduct is ultimately lawful. Because Plaintiffs challenge the process by which third countries are selected and the procedures for raising fear-based claims *before* removal, their claims fall outside § 1252(g) and do not depend on the merits.

¹³ Likewise, Defendants’ reliance on *Rauda v. Jennings*, 55 F.4th 773, 777-78 (9th Cir. 2022), and *E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021), is misplaced. In those cases, the petitioners sought to stay execution of their removal orders while awaiting adjudication of discretionary applications. See App’x 121-122a n.5 (distinguishing cases).

Sections 1252(a)(5) and (b)(9) likewise do not apply. As the lower courts held, *see* App’x 126a-129a, 22a-31a, they channel review of removal orders and claims arising from actions taken in removal proceedings; they do not transform every related claim into a challenge to a removal order. *Jennings*, 583 U.S. at 293-94 (plurality opinion) (rejecting an “extreme” reading of § 1252(b)(9) that would render claims “effectively unreviewable”); *Regents*, 591 U.S. at 19 (holding § 1252(b)(9) “is certainly not a bar where . . . the parties are not challenging any removal proceedings”). Plaintiffs challenge only DHS’s post-removal-proceeding process for third-country removals. Because Plaintiffs’ claims arise entirely *after* removal proceedings conclude, they are not part of an “order of removal” reviewable only on petitions for review. *See* 8 U.S.C. § 1252(a)(5), (b)(9); *see also id.* § 1252(b)(4)(A) (“the court of appeals shall decide the petition only on the administrative record on which the order of removal is based”); *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020) (explaining that final removal orders include only rulings by the IJ or BIA affecting the removal order’s validity). Third-country removal challenges concern actions “taken after [the] removal proceedings before the IJ and BIA ha[ve] ended” and thus “neither [§ 1252(a)(5) nor (b)(9)] applies.” *Ibarra-Perez*, 154 F.4th at 1000.¹⁴

The lower courts also correctly concluded that neither 8 U.S.C. § 1252(a)(4) nor FARRA § 2242(d) bar review. App’x 122a-126a, 31a-34a. These statutes *only* channel review of certain CAT claims (*not* withholding claims) to the courts of appeals in petitions for review. *See, e.g.,*

¹⁴ The district court detailed why Plaintiffs’ claims practically cannot be raised in a petition for review. App’x 23a-30a (explaining inter alia, that: (i) class members in removal proceedings cannot obtain protection from a country “nobody is trying to send them to” and DHS regulations limit protection to “the proposed country of removal”; (ii) changing country conditions make it “impossible” to assess future fears of persecution or torture; (iii) “indirect refoulement. . . and ever-shifting diplomatic relations” make future risk assessments unfeasible; (iv) the asylum/withholding application (Form I-589) does not require listing third countries; and (v) motions to reopen do not safeguard the ability to raise third-country protection claims). The First Circuit noted that the district court’s functional analysis has “considerable force.” App’x 128a.

Nasrallah, 590 U.S. at 582. But Plaintiffs do not challenge any CAT determination or CAT regulation or assert entitlement to CAT protection and thus do not raise “any cause or claim under [CAT]” or “under [FARRA § 2242].” 8 U.S.C. § 1252(a)(4); FARRA § 2242(d). Instead, they bring a collateral APA challenge to agency policy and practice that make it impossible to invoke CAT protections at all. App’x 101a-102a, 123a, 18a. If read as Defendants propose, “under CAT” would preclude review of claims that seek merely to provide access to CAT in the first place. Section 1252(a)(4) confirms that Congress intended some avenue for judicial review of *denied* CAT claims; here, but Defendants would deny class members any opportunity to present such claims as to third countries, much less obtain later review.

It is irrelevant that CAT is “a non-self-executing treaty,” Appl. 27, because FARRA § 2242(d) is not implicated where “no challenge is made. . . to the FARRA regulations.” *Saint Fort v. Ashcroft*, 329 F.3d 191, 201 (1st Cir. 2003); *cf. Nasrallah*, 590 U.S. at 580. And Plaintiffs do not challenge “any other determination made with respect to application of the policy [in FARRA § 2242(a)].” Defendants’ argument, Appl. 26-28, rests on “two premises”—that Plaintiffs raise a CAT claim, and that the courts somehow construed the INA to permit review of CAT claims outside the INA—and “[n]either premise is accurate.” App’x 125a.¹⁵

Plaintiffs’ claim could not have been raised earlier and thus are not “reviewable ‘as part of the review of a final order of removal’ under 8 U.S.C. § 1252.” *Nasrallah*, 590 U.S. at 582 (emphasis added) (quoting FARRA § 2242(d)). As the district court aptly stated, “the entire thrust of this litigation is that Defendants have foreclosed Plaintiffs’ ability to create an

¹⁵ Defendants citation to *Ardestani v. INS*, 502 U.S. 129 (1991), to broaden the reading of “under” is misplaced. Appl. 27. *Ardestani* did not involve a jurisdictional statute and thus does not implicate the “strong” “presumption favoring judicial review.” *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (quotation omitted); *Kucana*, 558 U.S. at 251 (same).

administrative record on which CAT claims might be based.” App’x 32a; *see also* App’x 23a-33a (detailing practical and legal impossibility of raising “hypothetical” or “speculative” third-country claims during removal proceedings).¹⁶

3. Section 1231(h) Does Not Bar Enforcement of § 1231.

As to Plaintiffs’ rights under the withholding statute, Defendants misconstrue 8 U.S.C. § 1231(h). Appl. 28-29.¹⁷ As this Court has held, it does not prohibit using other statutes to enforce § 1231. In *Zadvydas v. Davis*, the Court explained that § 1231(h) “forbids courts to construe” § 1231 itself as creating a cause of action but does not foreclose reliance on another statute that independently authorizes judicial review. 533 U.S. 678, 687-88 (2001) (§ 1231(h) “does not deprive [a noncitizen] of the right to rely on 28 U.S.C. § 2241” to challenge detention unauthorized by § 1231(a)). *Zadvydas* did not turn on the particular right asserted but on the distinction between a right created by § 1231 and a different statutory cause of action. Here, the APA supplies the cause of action for Plaintiffs’ challenge. *See also* App’x 139a; *Texas v. United States*, 515 F. Supp. 3d 627, 634 (S.D. Tex. 2021) (holding § 1231(h) does not bar an APA challenge regarding § 1231(a)(1)(A)).

The First Circuit applied that distinction. *See* App’x 138a-140a. The court noted Defendants admit that § 1231(h) cannot foreclose all judicial review of rights under § 1231(b)(2) and (b)(3), because § 1252(a)(5) and (b)(4) permit review of some such rights through a petition for review. App’x 138a. Defendants also could not explain why § 1231(h) would permit review

¹⁶ Defendants’ claim that the lower courts “disregarded entirely” a phrase from this Court’s 2025 stay order as involving noncitizens “seek[ing] relief under [CAT]”, Appl. 27, conflates injunctive relief with the merits judgment (again) and is inaccurate because both considered and rejected Defendants’ FARRA and § 1252(a)(4) argument. App’x 122a-126a, 31a-34a.

¹⁷ Under § 1231(h), “[n]othing in [§ 1231] shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.”

under those provisions while barring claims under other statutes, including the APA and 28 U.S.C. § 2241. App.’x. 139a-40a (citing cases).

B. The Lower Courts Properly Held that the Law Requires Meaningful Notice and Opportunity to Be Heard Prior to Any Third-Country Removal.

1. Class members’ statutory rights

Defendants cannot remove class members to any country where they would likely be tortured or killed. *See supra* Stmt. I.A. But that obligation—and noncitizens’ corresponding right to present their fear-based claims—is illusory unless they are provided meaningful notice of the country to which they will be removed and an opportunity to seek protection from that country. As the lower courts recognized, those protections arise from the INA, FARRA, and regulations. Defendants contest only the statutory basis for class members’ right to seek withholding of removal, *see* Appl. 30-31, but even those objections are unavailing.

The withholding statute prohibits removal to a country in which the individual’s “life or freedom would be threatened” based on a protected ground. 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16; 1208.16. FARRA likewise prohibits removal to a country where an individual faces a likelihood of torture. FARRA § 2242(a); 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2). These statutes and regulations include no exception for third-country removals. Their prohibitions are mandatory: Defendants have “no discretion to deny relief” to an eligible noncitizen. *Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (2013).

The statutory scheme entitles class members to a meaningful opportunity to present a fear-based claim for withholding or CAT protection to an IJ in an evidentiary hearing prior to any third-country removal. *See* 8 U.S.C. § 1231(b)(3)(C); 8 C.F.R. §§ 208.16(b), (c)(2), (c)(3), 1208.16(b), (c)(2), (c)(3). Section 1231(b)(3)(C) requires a “trier of fact”—an IJ—to assess whether the applicant has met their burden and to make credibility determinations “in the manner

described in [8 U.S.C. § 1158(b)(1)(B)(ii) and (iii)],” which, in turn, address testimony, corroboration, and credibility. *See also* 8 C.F.R. §§ 208.16(b), 1208.16(b). Only IJs have the authority to hold such hearings. *See generally* 8 U.S.C. § 1229a; *see also* 8 C.F.R. §§ 208.16(a) (USCIS officers must refer withholding claims to IJ to make final eligibility determination), 1208.16(a) (same), 208.16(c)(4) (USCIS must refer cases to an IJ to decide CAT claims); 208.17(b) (detailing information IJ must provide after CAT grant), 1208.17(b) (same). By channeling review of individual “determination[s]” to the PFR process, FARRA similarly envisions that IJs will issue CAT decisions. FARRA § 2242(d). The regulations also require CAT claims to be resolved through IJ factfinding. *See* 8 C.F.R. §§ 208.16(c)(2)-(3), 1208.16(c)(2)-(3) (burden of proof, testimony, and evidence); *id.* §§ 208.17, 1208.17 (CAT procedures). Reasonable fear claims also must go to an IJ for full adjudication of the person’s withholding or CAT claim. *Id.* §§ 208.31(e), 1208.31(e).

The district court correctly concluded that these statutes and regulations necessarily provide class members with the right to notice and an opportunity to present a withholding of removal claim before an IJ prior to any third-country removal. App’x 48a-49a. Specifically, § 1231(b)(3), which is written “[i]n the imperative voice,” requires “[o]n its face” that the Government “make a pre-[removal] decision, and that the decision . . . be accurate” and also “sets the terms for how that decision is to be made.” App’x 48a (quoting *Califano v. Yamasaki*, 442 U.S. 682, 693 (1979)) (third and fourth alterations in original). That decision requires notice and an opportunity to make a claim; without those basic elements, it would be impossible for a noncitizen to participate, and “the Court ‘do[es] not see how [risk of persecution] can be evaluated absent’ the noncitizen’s involvement, or at least his meaningful abstention.” App’x 49a (quoting *Califano*, 442 U.S. at 697) (alterations in original).

The First Circuit agreed. App’x 133a-141a (affirming the district court’s “conventional analysis” of the statute, which is based on “[t]he statute and regulations [which] prescribe hearing-related procedures for fear-of-persecution claims with no exception for third-country removals”). It also held that FARRA, CAT, and its implementing regulations contain the same requirement. App’x 143a-146a. This interpretation “coheres with the FARRA § 2242(d)’s textual contemplation of an administrative hearing and judicial review” and reads the regulations consistently across the withholding of removal and CAT contexts. App’x 144a (citing *Clark v. Martinez*, 543 U.S. 371, 380 (2005)).

Defendants’ arguments to the contrary—raised only regarding the right to seek withholding of removal, not CAT protection—are incorrect. They claim that the lower courts “did not identify *any* text in Section 1231(b)(2) or 1231(b)(3) creating such an entitlement.” Appl. 30. But § 1231(b)(3) bars removal to a country where the noncitizen would face persecution and assigns the relevant determinations to a “trier of fact.” Contrary to Defendants’ claim that “*the [government]*” writ large decides whether a class member’s “life or freedom would be threatened,” Appl. 30-31 (alterations in original), Congress assigned that responsibility to “the Attorney General,” who has delegated this function to IJs and the BIA. *See* 8 C.F.R. §§ 208.16-.17, 1208.16-.17, 1208.31, 1240.1(a)(1)(iii). Congress never transferred the authority to make fear-based determinations to DHS or the Secretary of Homeland Security. *See* 6 U.S.C. § 557.

Defendants next claim that “the government’s” role as the adjudicator of withholding claims gives DHS limitless discretion to fashion a separate process for such claims in the third-country removal context. Appl. 31. As the First Circuit explained, “[t]his argument assumes what

the class disputes: that the duly enacted statutes and regulations applicable to fear-of-persecution claims leave room for [a] ‘more streamlined’ third-country removal process . . . without notice and a meaningful opportunity to assert fear-of-persecution claims.” App’x 140a. Both courts properly rejected that notion. App’x 141a, 48a-49a. The executive has no discretion to violate statutory requirements. *See, e.g., Payne v. Cent. Pac. Ry. Co.*, 255 U.S. 228, 236 (1921).

2. Class members’ due process rights.

a. The fundamental requirements of due process apply here.

The Due Process Clause also protects class members’ right to notice and an opportunity to be heard on their claims to protection under the withholding and CAT statutes.¹⁸ First, it is “well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). And such protection extends to class members, as “the Due Process Clause protects [a noncitizen] subject to a final order of deportation.” *Zadvydas*, 533 U.S. at 693-94 (citation omitted).

Second, Plaintiffs have a protected liberty interest. The parties agree that Congress stated in unequivocal, mandatory terms that class members—i.e., those subject to a final order of removal—may *not* be removed to a country where it more likely than not they will be persecuted or tortured. Appl. 3. Yet Defendants accuse the district court of “impos[ing] [procedures] by fiat,” Appl. 31, but once Congress “grants . . . a right or expectation that adverse action will not be taken . . . the minimum requirements of procedural due process appropriate for the

¹⁸ While the district court addressed whether DHS’ policy violates the Due Process Clause, the Court of Appeals declined to reach that question. App’x 147a n.20. That does not prevent this Court from considering the issue. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 38 (1989) (“Without cross-petitioning for certiorari, a prevailing party may, of course, defend its judgment on any ground properly raised below whether or not that ground was relied upon, rejected, or even considered by the District Court or the Court of Appeals.” (citation modified)).

circumstances must be observed.” *Vitek v. Jones*, 445 U.S. 480, 490-91 (1980) (quotation marks and citation omitted); *see also Meachum v. Fano*, 427 U.S. 215, 226 (1976) (explaining that, for statutory rights to be meaningful, “the minimum requirements of procedural due process . . . must be observed”) (quotation marks and citation omitted); *Califano*, 442 U.S. at 693 (“[T]his Court has been willing to assume a congressional solicitude for fair procedure, absent explicit statutory language to the contrary.”). This Court has long applied that principle to noncitizens, reading removal statutes to guarantee the fundamental requirements of due process in carrying out removals. *See Yamataya v. Fisher*, 189 U.S. 86, 98-100 (1903) (concluding that, even though what Congress provided for exclusion proceedings was “due process of law,” the statute at issue must be interpreted to provide “notice and . . . an opportunity to be heard” that the person was not subject to deportation). The statute here explicitly requires certain procedures, *supra* Arg. I.B.1, which merely underscores that Congress intended meaningful procedure prior to a third-country removal.

Third, the district court’s final judgment recognized that class members are entitled to the most basic due process protections: “timely and adequate notice” and “the opportunity to be heard.” *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (citation modified); *see also* App’x 80a-81a. Notice, of course, is “[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). And in the immigration context, as in other contexts, this notice must be provided “within a reasonable time and in such a manner as will allow [the noncitizen] to actually seek . . . relief in the proper venue.” *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (*per curiam*); *see also Mullane*, 339 U.S. at 315 (“The means employed [to provide notice] must be such as one desirous of actually informing the [other party] might reasonably adopt to

accomplish it.”). The same is true for the opportunity to be heard. This Court has “long held that ‘no person shall be’ removed from the United States ‘without opportunity, at some time, to be heard.’” *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (quoting *Yamataya*, 189 U.S. at 101); *see also* *A.A.R.P.*, 605 U.S. at 97-98 (holding that the named plaintiffs were “entitled to constitutionally adequate notice prior to any removal, in order to pursue appropriate relief”).

b. Defendants’ due process arguments fail.

Defendants resist these due process principles on three grounds. First, they contend that the district court erred because “due process requires no more process than what the political branches provide.” Appl. 35. But even if the Court were to accept that principle, it overlooks two key points. The INA and FARRA plainly mandate that class members not be removed to countries where they face persecution or torture and specify that a “trier of fact” will adjudicate their protection claims, including credibility assessments. *Supra* Arg. I.B.1.

Second, Defendants make the remarkable claim that all “[noncitizens] who evade detection in crossing the border likewise are treated the same as those stopped at the border in the first place,” and are therefore entitled to no rights beyond what Congress provides. Appl. 35. Again, Defendants overlook what the statute *does* provide; to make effective the rights Congress has provided, class members are “entitled to constitutionally adequate notice prior to any removal, in order to pursue appropriate relief.” *A.A.R.P.*, 605 U.S. at 97-98. But this claim also flatly contradicts this Court’s precedent. The class here *excludes* individuals detained at ports of entry or immediately upon entry who receive expedited removal orders under 8 U.S.C. § 1225(b)(1). As such, Defendants’ reliance on *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020), is misplaced. Appl. 35. There, the petitioner—whom DHS immediately apprehended within 25 yards of the border—sought habeas review of his expedited removal order and adverse credible

fear determination. 591 U.S. at 115. By contrast, the situation here is the same as the one in *Zadvydas*, where individuals have entered the United States and received a final order of removal. In *Zadvydas*, this Court reaffirmed that “the Due Process Clause protects [a noncitizen] subject to a final [removal] order,” as “once [a noncitizen] enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” 533 U.S. at 693-94.¹⁹

Zadvydas did not break new ground. “Whatever his status under the immigration laws, [a noncitizen] is surely a ‘person’ in any ordinary sense of that term. [Noncitizens], even [noncitizens] whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.” *Plyler v. Doe*, 457 U.S. 202, 210 (1982) (citations omitted); *see also Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (additional rights apply to those within the United States, regardless of entry legality); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[Noncitizens] who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.”); *cf. Thuraissigiam*, 591 U.S. at 140 (“[A noncitizen] who is detained *shortly after unlawful entry* cannot be said to have ‘effected an entry.’”). The Court’s recent decision in *A.A.R.P.* confirms this point, because there—as here—the putative class included noncitizens who entered unlawfully, and yet this Court affirmed their right to notice and opportunity to be heard as to

¹⁹ Notably, many class members have received protection orders as to their country of origin and have lived here for years and even decades, working lawfully, marrying U.S. citizens and having U.S. citizen children, and forming deep ties to this country. Yet Defendants claim that these individuals have no due process rights *at all*. Appl. 35.

whether they could be lawfully removed.

Finally, Defendants criticize the district court, Appl. 36, for distinguishing *Thuraissigiam* by noting that it concerned only “the due process rights of [a noncitizen] seeking initial entry.” 591 U.S. at 139. But that observation was correct. Here, Plaintiffs’ claims do not challenge their removal orders or the outcome of their removal proceedings, so their claims in no way implicate admissibility or entry. Instead, they seek the process that the INA, FARRA, implementing regulations, and due process guarantee them as persons “subject to a final deportation order,” *Zadvydas*, 533 U.S. at 694—persons this Court has said the Due Process Clause protects, *see id.*

3. DHS’s policy does not comport with the law.

Defendants’ policy does not safeguard the basic protections required by the INA, FARRA, the regulations, and due process. For countries that provide a blanket diplomatic assurance that they “will not persecute or torture anyone,” Appl. 3, the “[noncitizen] may be removed without the need for further procedures.” App’x 84a-85a, 86a.²⁰ This is unlawful. First, the withholding statute and regulations do not provide an exception even for individualized diplomatic assurances. App’x 134a; *see also* 8 C.F.R. §§ 208.16(b), 1208.16(b). The CAT regulations provide only an exception for individualized diplomatic assurances—not blanket assurances—and require the Attorney General, in consultation with the Secretary of State, to determine whether such assurances are “sufficiently reliable.” *See* 8 C.F.R. §§ 208.18(c)(2), 1208.18(c)(2); *see also* Regulations Concerning the Convention Against Torture, 64 Fed. Reg. 8478, 8484 (Feb. 19, 1999) (stating that use of diplomatic assurances “will be rare”). Here, the policy relies on blanket assurances as to both withholding and CAT and delegates responsibility

²⁰ In fact, Defendants have not revealed in this case or publicly which third countries have given diplomatic assurances. *See* App’x 136a n.15.

for them to the State Department. App’x 84a-86a.

Second, even for CAT, blanket diplomatic assurances cannot provide the individualized assessment required by the statutory and regulatory framework. The First Circuit explained that nothing in the framework governing fear-based claims permits substituting blanket diplomatic assurances “for the detailed, individualized procedures” those claims require. App’x 135a n.14.

Third, the assurances are no substitute for notice and an opportunity to be heard. As the First Circuit observed, it is difficult to see how a receiving country could credibly provide blanket assurances that ensures that *any* person removed to that country will be free from persecution or torture, independent of their individualized situation. *See* App’x 135a-136a. The policy also fails to account for persecution or torture by non-state actors, *see* App’x 136a n.16, 65a & n.89, and against chain *refoulement* (such as in Plaintiff O.C.G.’s case). *See* Stmt. II.A & C. And class members’ experiences demonstrate that assurances are not preventing such harms. *Id.* In fact, in some cases where assurances have been provided, that very government has detained people indefinitely. *Supra* Stmt II.C; *see also* Pet’rs’ Reply in Supp. of Mot. to Clarify at 4, No. 24A1153 (S. Ct. June 24, 2025) (“[T]he State Department has received credible diplomatic assurances from South Sudan.”).

Munaf v. Geren, 553 U.S. 674 (2008), and *Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009), which Defendants cite, Appl. 32-33, are inapposite. Neither involved blanket assurances. *See* App’x 68a-71a. Moreover, as the district court found, *Munaf* was “careful to clarify that no [CAT] claim had been raised” and *Kiyemba* concluded the petitioners “could not raise CAT claims in habeas.” App’x 69a-70a.²¹ Unlike here, both cases involved individualized assurances

²¹ *Munaf* involved the transfer of two criminal defendants within Iraq for prosecution, reasoning that “[t]hose who commit crimes within a sovereign’s territory may be transferred to that sovereign’s government for prosecution.” 553 U.S. at 700. *Kiyemba*, for its part, involved

concerning particular detainees. *Munaf*, 553 U.S. at 700; *Kiyemba*, 561 F.3d at 514. Here, by contrast, the executive has not “determine[d] a country will not torture or persecute” a *particular* person, so whether such a determination would be “conclusive” is not at issue. Appl. 32. Similarly, the district court did not “question the Government’s determination that a potential recipient country is not likely to torture a detainee,” *id.* (quotation omitted) but instead assessed whether blanket diplomatic assurances absolve Defendants of assessing class members’ individual claims as a general matter. D. Ct. Doc. 64 at 42. Here, DHS does not even disclose which countries have offered these categorical diplomatic assurances.

The policy is independently unlawful where no diplomatic assurance is obtained. It provides between 6 and 24 hours’ notice of the intended third country, during which class members immediately and spontaneously must raise fear claims regarding countries they may never have heard of. App’x 85a-87a. Where they “affirmatively state a fear” of removal to the third country, the policy provides less than 24 hours for them to satisfy the exacting burden of proof for withholding or CAT relief—that is, by demonstrating that they “would more likely than not be persecuted on a protected ground or tortured in the country of removal.” App’x 87a.

That procedure does not provide the meaningful notice, as this Court recently explained: notice requires “sufficient time and information to reasonably be able to contact counsel . . . and pursue appropriate relief.” *A.A.R.P.*, 605 U.S. at 95. There, the Court held that notice of roughly 24 hours, without information about how to exercise the right to challenge removal, does not suffice. *Id.*; see also *Las Americas Immigrant Advoc. Ctr. v. DHS*, 783 F. Supp. 3d 200, 225-26 (D.D.C. 2025) (invalidating rule requiring noncitizens to affirmatively manifest fear). The policy

the “transfer of wartime [noncitizen] detainees,” 561 F.3d at 519 (Kavanaugh, J., concurring), and addressed the use of *individualized* diplomatic assurances after an assessment of “whether a particular country is likely to torture a particular detainee,” *id.* at 514.

also does not require notice to counsel, which DHS is *required* to provide “[w]henver a person is required” by immigration regulations to receive notice. 8 C.F.R. §§ 292.5(a), 1292.5(a).

Requiring individuals to meet a “more likely than not” standard at an expedited screening is similarly contrary to law, which is the ultimate standard for eligibility for withholding or CAT protection. *See* 8 C.F.R. §§ 1208.16(b)(2), (c)(2). Nor can individuals investigate an unfamiliar country and amass detailed evidence—like a declaration, corroborating evidence, and expert affidavits—to mount a full defense to third-country removal within 24 hours “surely does not pass muster” under the INA, FARRA, or due process. *A.A.R.P.*, 605 U.S. at 95. The policy also forecloses any path to judicial review, which is essential where the stakes are life and death, *cf.* *Nasrallah*, 590 U.S. at 585-86. In sum, the lower court correctly concluded that Defendants’ policy denies class members any meaningful opportunity to invoke the protections that the governing statutes and regulations require before removal to a third country.

II. All Other Factors Weigh Heavily in Plaintiffs’ Favor.

A. The Court May Grant Certiorari, But Prior Rulings Are Not Dispositive.

Defendants’ certiorari argument, Appl. 37-38, rests on a false premise: that this Court’s 2025 stay of the PI resolved the merits of this case. It did not. An unexplained emergency stay ruling does not establish that the stayed party is likely to prevail on the merits; indeed, this Court has affirmed rulings after staying them, *see, e.g., Allen v. Milligan*, 599 U.S. 1, 17-19 (2023), and reversed rulings it declined to stay, *see, e.g., United States v. Texas*, 143 S. Ct. 51 (2022) (Mem.) (denying stay of district court order halting DHS Secretary’s enforcement priorities guidance), *reversed by* 599 U.S. 670 (2023); *Biden v. Texas*, 142 S. Ct. 926 (2021) (Mem.) (denying stay for failure to show likelihood of success on challenge to DHS’s rescission of the Migrant Protection Protocols), *reversed by* 597 U.S. 785 (2022). The posture is also materially different: the PI is

dissolved, the statutory withholding claims are now before the Court, and the district court issued a final judgment that the First Circuit affirmed.

And, contrary to Defendants' contention, Appl. 37-38, neither the final judgment nor judicial review is an intrusion on Presidential power; it is a constitutional check on that power. The Executive may execute immigration laws, but only within the limits Congress enacted, and determining whether it has done so is the judiciary's responsibility. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Invoking presidential authority does not answer whether the policy comports with the law. The final judgment answers that question, and Defendants must show a likelihood of reversal on it, not on the PI this Court addressed last year.

B. Defendants Have Not Demonstrated Irreparable Harm.

Relying on stale or no evidence at all, Defendants assert "chaos," Appl. 2, and harms that flow *not* from the judgment but from their own conduct. Any claim of harm from "scrambling to comply" before the mandate issued, Appl. 39, is unfounded because the First Circuit's decision became binding when issued. These self-inflicted harms are preventable and reparable.

1. Defendants' unsubstantiated harm is not caused by the judgment.

The judgment does not cause the harms Defendants claim; it declares the rights of class members and vacates the unlawful policy. App'x 81a. It does not "undermine[]" the Executive Branch's authority, or "indefinitely" suspend third-country removals. Appl. 39. Compliance may mean that third-country removals "will be delayed somewhat," but such "delay alone is not, on these facts, irreparable injury." *Ruckelshaus v. Monsanto Co.*, 453 U.S. 1315, 1317 (1983) (quotation omitted). Even minimal delay may be avoided where Defendants plan accordingly.

First, any resulting delays do not compel the "release into the interior" of noncitizens with serious criminal records. Appl. 41. The judgment says nothing about release from detention.

Indeed, the Schultz Declaration confirms that post-final order detention is not governed by the judgment but by a separate “legal constraint” concerning the “likelihood of removal in the reasonably foreseeable future,” App’x 94a; *see Zadvydas*, 533 U.S. at 701.

Second, Defendants’ own evidence undermines their claim that the judgment will “upend international agreements.” Appl. 38. In his March 2026 declaration, Secretary Rubio acknowledged that the district court’s vacatur of the policy “would not set aside any resulting arrangements or mean that United States cannot send [noncitizens] to third countries.” App’x 89a ¶ 6. Instead, he predicted that partners may “question the legitimacy of our policies” and that “additional processes” will cause “significant delays.” *Id.* ¶¶ 6-7. And here, Defendants fail to explain why any resulting delays constitute irreparable harm.

Third, Defendants’ complaints of cancelled flights and “chaos” rely entirely on what counsel has been “informed” of by DHS. Appl. 41. Even taking counsel’s statements at face value, the “information” does not indicate how many of those on the cancelled flight or pulled from flights were class members. More importantly, the judgment was not “unexpected,” *id.*, where both parties had recently urged the First Circuit to rule, *see, e.g.*, 1st Cir. Doc. Nos. 00118501064, 00118509072. And Defendants were “expected to treat [it] as good law, notwithstanding the ministerial fact that the mandate had not yet issued.” *Global NAPs, Inc. v. Verizon New Eng., Inc.*, 489 F.3d 13, 19 (1st Cir. 2007); *cf. Sup. Ct. R. 13.3* (“The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate . . .”). Moreover, the rights declared by the district court, which Defendants decry, are those that their own lawyer previously told this Court the law requires. *See Oral. Arg. 33, Riley v. Bondi*, 606 U.S. 259 (2025) (“We would have to give the person notice of the third country and give them the opportunity to raise a reasonable

fear . . .”).

The cancelled flights and resulting delays were also preventable because DHS’s own timeline does not necessitate last-minute notice: charter flights for these removals “can take 30 days or more to coordinate,” D. Ct. Doc. 130-2 ¶ 24, and ICE nominates noncitizens before the receiving country accepts them, App’x 96a-97a ¶ 14. Yet DHS routinely gives notice at the last minute despite identifying the third country well in advance. *See, e.g.*, App’x 11a (noting that DHS gave “fewer than 16 hours’ notice . . . , most of which were non-waking hours” (citation omitted)). Whatever costs DHS incurred by failing to plan for the First Circuit’s decision are therefore “of [its] own making” and “not properly the subject of inquiry on a motion for stay.” *Dep’t of Educ. v. California*, 604 U.S. 650, 651 (2025) (internal quotation omitted). Defendants can avoid future costs by providing required protections before placing class members on flights.

Defendants also claim that the “open-ended terms” of the judgment will allow the district court “to continually revise its invented removal policy.” Appl. 39 (citation omitted). But the judgment did not invent or prescribe a new removal policy; it declared Defendants’ existing policy unlawful and set it aside. App’x 152a. In sum, Defendants have not carried their burden to show irreparable harm. *See Nken*, 556 U.S. at 433-34.

2. Defendants cannot presume harm or rely on the 2025 stay.

Defendants err in asking this Court to presume irreparable harm. First, this Court has never adopted a rule that “[w]henver a court issues broad relief against an Executive Branch policy, the United States suffers a form of irreparable harm.” Appl. 39. The holding in *Trump v. CASA, Inc.* certainly did not. There, “[t]he plaintiffs—individuals, organizations, and States—sought to enjoin the implementation and enforcement of” Executive Order No. 14160, the birthright-citizenship order. *CASA*, 606 U.S. 831, 837 (2025). None of those cases proceeded as a

certified class. Yet each district court entered “a ‘universal injunction’—an injunction barring executive officials from applying the Executive Order to anyone, not just the plaintiffs.” 606 U.S. at 837. The Court’s irreparable harm finding rested on its holding that a universal injunction “prevents the Government from enforcing its policies against *nonparties*,” 606 U.S. at 859 (emphasis added), because such injunctions may “exceed the authority conferred by the Judiciary Act,” *id.* at 860. The Court therefore stayed the injunctions only “to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue,” and the plaintiffs themselves would “remain protected.” *Id.* at 861. Here, by contrast, the declaratory judgment here applies to the certified class and not to any non-party. *See* App’x 111a. The judgment, furthermore, is not an injunction, App’x 78a; it is a declaration and a vacatur under the APA, a remedy *CASA* expressly left open. 606 U.S. at 847 n.10.

Defendants also incorrectly claim that lower court judgments deal “a serious setback” to the Executive’s goals constitute irreparable harm. Appl. 39 (quoting *Trump v. California*, No. 26A124, 2026 WL 2473573, at *4 (Aug. 24, 2026)). In *Trump v. California*, this Court found irreparable harm from an injunction barring any enforcement *at all*, particularly because it concerned “the 2026 midterms.” 609 U.S. ----, 2026 WL 247357, at *4. Here, Defendants face no injunction or prohibition against third-country removals.

Defendants’ authorities also fail to show that the harms are “even more pronounced” because this case involves “immigration and removal,” and thus, “foreign policy.” Appl. 39. *Kiobel v. Royal Dutch Petroleum Co.* concerned the Alien Tort Statute’s extraterritorial reach, and it cited foreign policy concerns only in discussing “the presumption against extraterritoriality,” and did not address irreparable harm. 569 U.S. 108, 116 (2013). *Fiallo v. Bell*, 430 U.S. 787 (1977), is similarly inapposite: the government’s “broad power over immigration

and naturalization” does *not* render DHS’ policies “immune from judicial control.” Appl. 36.

Second, Defendants cannot rely on this Court’s prior stay to avoid their burden to show irreparable harm. Appl. 2 (asserting that “the parties’ legal arguments and relative harms generally have not” changed (quoting *Noem v. Nat’l TPS All.*, 146 S. Ct. 23, 24 (2025))). In *Boyle*, this Court explained that interim orders may “inform” equitable discretion by carrying forward an irreparable-harm finding from an analogous case. *Boyle*, 145 S. Ct. at 2654. The 2025 stay order contained no reasoning, so there is no interim order containing language that “inform[s]” the irreparable harm analysis.²²

C. The Balance of Equities Strongly Favors Plaintiffs.

The U.S. government’s own reporting validates the lower courts’ concerns with respect to the countries from which Defendants received blanket assurances. Those reports document serious human rights abuses in receiving countries. The State Department’s most recent human rights report on South Sudan flagged “credible reports of: arbitrary and unlawful killings; disappearances; torture . . . ; arbitrary arrest or detention” and “trafficking in persons,” among other serious violations.²³ In Equatorial Guinea, the State Department noted credible reports of “torture,” “arbitrary arrest or detention,” and “trafficking in persons, including forced labor,” and that “[t]he law did not provide for the granting of asylum or refugee status, and the government

²² *National TPS Alliance* is also distinguishable as the final judgment did what the earlier interim order had done: set aside Venezuela’s TPS designation. 146 S. Ct. at 24. Here, the 2025 stay order was to a PI enforceable by contempt. Here, the judgment, a declaration and a vacatur, has none of the preliminary injunction’s requirements. *Trump v. IRAP*, 582 U.S. 571 (2017) (per curiam), is the only case cited in which the orders were entered after courts of appeals had ruled, and in it, this Court granted certiorari and left the injunctions in place *pending review* for those with “a bona fide relationship with a person or entity in the United States.” *Id.* at 582. Here, the First Circuit heard the full appeal, affirmed, and then dissolved its own stay. App. 154a.

²³ U.S. Dep’t of State, *2024 Country Reports on Human Rights Practices—South Sudan 1*; see also *id.* at 2 (describing “widespread extrajudicial killings,” including by security forces), https://www.state.gov/wp-content/uploads/2025/07/624521_SOUTH-SUDAN-2024-HUMAN-RIGHTS-REPORT.pdf.

did not have a system for providing protection to refugees.”²⁴ These conditions bear out the First Circuit’s concern over the reliability of blanket assurances, particularly its doubt that any receiving country could credibly assure that *all persons* removed to that country will avoid persecution or torture, especially with respect to rogue agents and non-state actors. App’x 136a n.15. Moreover, the policy does *nothing* to address chain refoulment. *See* App’x 105a n.2.

The experiences of deported class members echo this record. *See supra* Stmt. II.C. Class members deported to South Sudan remain subject to indefinite detention. *Id.* Third-country nationals removed to Ghana after being granted protection against return to their countries of origin were nonetheless refouled. Plaintiffs’ Emergency Motion for Interim Relief, *D.A. v. Noem*, No. 1:25-cv-03135, Doc. 18 (D.D.C. Sept. 12, 2025). Official statements and reporting show that Defendants’ purported ignorance of harm to class members is deliberate. With respect to initial third-country removals to Ghana, a State Department official stated that, beyond receiving blanket diplomatic assurances, he was “not aware” of “any additional efforts” by the State Department “to keep [the deported individuals] from being removed from Ghana to their country of origin or other countries where they fear persecution or torture.” Decl. of Jonathan G. Pratt at ¶ 5, *D.A. v. Noem*, No. 1:25-cv-03135, Doc. 50 (D.D.C. Sept. 13, 2025). A minority staff report by the Senate Foreign Relations Committee concluded that the State Department is not tracking compliance with diplomatic assurances by foreign governments or enforcing agreement terms and that, in at least one country, U.S. officials told Committee Minority staff that Trump Administration officials instructed them “not to follow up on the treatment of deportees.” D. Ct.

²⁴ U.S. Dep’t of State, *2024 Country Reports on Human Rights Practices—Equatorial Guinea* 1, 12; *id.* at 12 (describing deportation of hundreds of Cameroonian nationals, including those fleeing violence), https://www.state.gov/wp-content/uploads/2025/07/62451_EQUATORIAL-GUINEA-2024-HUMAN-RIGHTS-REPORT.pdf.

Doc. 240-1 at 20.

For countries that have given no blanket diplomatic assurances, Defendants' stated disbelief that people could face "any realistic risk" of persecution or torture in third countries "where they have little or no preexisting connection," Appl. 42, is both logically perplexing and already disproven. First, a "preexisting connection" to a country is not a prerequisite for a fear of harm. For example, a gay person would understandably fear persecution in a country that systematically persecutes gay people, yet Defendants have tried to carry out such third-country removals. *See, e.g., Kumar v. Wamsley*, 817 F. Supp. 3d 1059 (W.D. Wash. 2025); *supra* Stmt. II.C; *cf.* D. Ct. Doc. 233-14 ¶¶ 2-3. The policy also strips them of any opportunity to determine if such a risk exists: most know little or nothing about the third country, yet the policy's timeline leaves them no chance to investigate conditions or present a fear claim. App'x 84a-87a.

Moreover, this argument ignores record evidence showing that third countries engages in chain refoulment to the very countries to which individuals were granted protection. That happened to Plaintiff O.C.G., who was forced into hiding in Guatemala for months. *Supra* Stmt. II.A. Another class member, a Salvadoran previously granted protection against removal to El Salvador, was deported to Mexico without notice in October 2025, only to be removed to Guatemala and thereafter refouled to El Salvador, where he was able to reach his wife in the United States and stated to her that the police had told him that he was being sent to CECOT. Over a month later, she had no news of him. D. Ct. Doc. 233-20 ¶¶ 3-9.

Class members subject to third-country removal also face abuses in the third country other than refoulment. *See supra* Stmt. II.C. Defendants transferred Venezuelan nationals to El Salvador, where they were detained in a maximum-security prison with a notorious human rights record. D. Ct. Doc. 233-9. Defendants removed to Nicaragua an Iranian national granted

protection based on torture by the Iranian government. D. Ct. Doc. 233-18 ¶¶ 5-8. He expressed fear based on the close relationship between the Nicaraguan and Iranian governments, including his fear of chain refoulement—which Nicaraguan agents attempted to effect. He only avoided this fate by ducking out of the airport while in transit—but they also knocked him to the floor while he was handcuffed and kicked him in the stomach. *Id.* ¶¶ 7, 15-18, 21, 24.

These harms are irreparable, and they will continue unless the stay is denied. Meaningful notice and an opportunity to be heard on fear claims are necessary to avoid them. Defendants’ asserted harms are neither irreparable nor comparable to the harms to class members, and their reliance on this Court’s 2025 stay does not alter that analysis. *See supra* Arg. II.B.

CONCLUSION

The Court should deny Defendants’ stay application.

Respectfully submitted,

Matt Adams
Leila Kang
Aaron Korthuis
NORTHWEST IMMIGRANT
RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104

Anwen Hughes
HUMAN RIGHTS FIRST
121 W. 36th St., PMB 520
New York, NY 10018

Trina Realmuto
Counsel of Record
Kristin Macleod-Ball
Mary Kenney
NATIONAL IMMIGRATION
LITIGATION ALLIANCE
10 Griggs Terrace
Brookline, MA, 02446
(617) 819-4447
trina@immigrationlitigation.org

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