UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Mohammad Muzami YOUSUFI,

Petitioner,

v.

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

Respondents.

Case No. 25-2098

PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner Mohhamad Yousufi is in the physical custody of Respondents at the Northwest Immigration and Customs Enforcement (ICE) Processing Center (NWIPC). Mr. Yousufi is a citizen of Afghanistan, but he now faces removal to an unknown third country. Respondents seek to remove him to an unknown country without any opportunity to apply for humanitarian-based protection from removal to that country, even though the immigration laws and due process require otherwise.

Mr. Yousufi was ordered removed to Afghanistan, but granted withholding of removal to Afghanistan, on July 9, 2025 by an immigration judge (IJ) in the Tacoma, Washington, immigration court.

A grant of withholding of removal means that Mr. Yousufi demonstrated that his "life or freedom would be threatened" in his home country due to his "race, religion, nationality, membership in a particular social group, or political opinion," and as a result Respondents may not remove him there. 8 U.S.C. § 1231(b)(3)(A).

Mr. Yousufi satisfied this standard because of his status as one who [redacted]

[redacted]

While Respondents may not remove Mr. Yousufi to Afghanistan, they may seek to remove him to another country. This prerogative, however, is not boundless. The Immigration

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and Nationality Act (INA) provides a hierarchal list of countries to which a person may be removed. In most cases, the INA commands that a person be removed to the place they choose, or some other country to which they have a close connection. *See id.* § 1231(b)(2). Only if removal to one of these countries is "impracticable, inadvisable, or impossible" may the Department of Homeland Security (DHS) remove a person to some other, third country—a country that is not designated in the removal order. *Id.* § 1231(b)(2)(E)(vii).

On October 24, 2025 Respondents notified Mr. Yousufi that they intend to seek to remove him to Mexico.

Mr. Yousufi is afraid of being deported to Mexico given his complete lack of resources, lack of ability to speak the language, and the well-known known criminal danger, especially targeting those removed from the U.S.. Indeed, Mexico will be particularly dangerous to him due to his current mental condition. (See Exhibit 1)

The INA, the Foreign Affairs Reform Restructuring Act of 1998 (FARRA), and their implementing regulations ensure that prior to any removal, Respondents must provide Mr. Yousufi have an opportunity to present a claim of fear of torture or persecution as to the third country.

Specifically, pursuant to 8 U.S.C. § 1231(b)(3), Respondents may not remove persons who are more likely than not to face persecution if removed. And pursuant to the Convention Against Torture (CAT), which is codified as a statutory note to § 1231, Respondents may not remove persons to a country where they are likely to face torture.

The Due Process Clause of the Fifth Amendment also requires that, prior to a third-country removal, Mr. Yousufi receive meaningful notice and opportunity to access these mandatory statutory protections. As the Supreme Court recently held in A.A.R.P. v. Trump, this means a person "must receive notice" that "they are subject to removal" (here, to a third country), and such notice must be provided "within a reasonable time and in such a

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manner as will allow the [noncitizen] to actually seek . . . relief." 605 U.S. 91, 95 (2025) (per curiam) (quoting Trump v. J.G.G., 604 U.S. 670, 673 (2025)).

Respondents have not provided any meaningful notice or opportunity for Mr. Yousufi to present a fear-based claim here. Today, he has learned of the respondent's intention, and the removal can be expected at any time. On information and belief a DHS officer has handed Mr. Yousufi a written Notice of Removal to Mexico, which provided no specific information as to when he would be removed nor any mechanism to raise his statutory rights for protections.

Accordingly, Mr. Yousufi seeks an order that employs existing DHS screening mechanisms and requires Respondents (1) to inform him and counsel in writing of any planned removal to Mexico (or any other third country) at least ten days prior to removal, (2) to provide a reasonable fear interview (RFI) given Mr. Yousifi's expressed fear of removal, and (3) if the RFI is denied, to provide fifteen days to file a motion to reopen with the immigration court.

JURISDICTION

Mr. Yousifi is in the physical custody of Respondents. Mr. Yousufi is detained at the NWIPC in Tacoma, Washington.

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

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

Specifically, § 1252(a)(5) and (b)(9) do not apply here. Mr. Yousufi does not seek "judicial review of an order of removal entered or issued," 8 U.S.C. § 1252(a)(5), because Mr. Yousufi's final removal order here designates a country different than the one to which Respondents now seek to remove him. The challenged action and planned removal here arise

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after removal proceedings were complete. *See Ibarra-Perez v. United States*, No. 24-631, --- F. 4th , 2025 WL 2461663, at *9–10 (9th Cir. Aug. 27, 2025).

Similarly, § 1252(b)(9) "consolidates" a "noncitizen's various challenges arising from the removal proceeding" into "a petition for review [before] the courts of appeals." *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (quoting *INS v. St. Cyr*, 533 U.S. 289, 313 n. 37 (2001)).

However, again, Mr. Yousufi challenges only Respondents' actions to seek removal to a new, third country *after* removal proceedings were completed. Such an action cannot be challenged via a petition for review, because there is no final removal order designating the third country for removal that a court of appeals could review. *Ibarra-Perez*, 2025 WL 2461663, at *9–10.

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

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

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

VENUE

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Mr. Yousufi is not entitled to relief. 28 U.S.C. § 2243.

If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

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

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PARTIES

Mr. Yousufi is a citizen of Afghanistan. On July 9, 2025, Mr. Yousufi became subject to a final order of removal directing removal to Afghanistan and simultaneously granting him withholding of removal to that country.

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

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

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

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

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

LEGAL FRAMEWORK

The INA's Scheme for Determining the Country of Removal

Most noncitizens facing removal are placed into removal proceedings under 8

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U.S.C. § 1229a. Typically, at the outset of such a removal proceeding, the parties or the immigration judge designates a country of removal. *See* Imm. Ct. Prac. Manual § 4.15(i).

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

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

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

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

Finally, only where it is "impracticable, inadvisable, or impossible to remove the [noncitizen] to each country described" above may DHS seek removal to some other

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alternative country. *See id.* § 1231(b)(2)(E)(vii).

Withholding of Removal and the Convention Against Torture

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

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

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

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

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

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

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

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

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

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

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

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

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

At the same time, the court issued a classwide injunction that required the

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

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

Respondents' Policy as to Third-Country Removals

On March 30, 2025, after the Plaintiffs in *D.V.D.* filed their case, DHS issued anew memo entitled "Guidance Regarding Third Country Removals," which the *D.V.D.* defendants claimed satisfies the INA, FARRA, and due process. *See D.V.D.*, No. CV 25-10676-BEM, ECF No. 43-1 (D. Mass. Mar. 30, 2025).

Pursuant to the memo, Respondents do not need to provide any notice or process whatsoever to a noncitizen prior to their removal if the United States has received "diplomatic assurances [from the country of removal] that [noncitizens] removed from the United States

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will not be persecuted or tortured."

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

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

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

A "reasonable possibility" is a lower standard of proof than the "more likely than not" standard required to win a grant of withholding of removal or CAT protection. *Dominguez Ojeda v. Garland*, 112 F.4th 1241, 1245 n.1 (9th Cir. 2024) (explaining that the "reasonable possibility" standard "has been defined to require a ten percent chance" of persecution or torture (citation omitted)).

On July 9, 2025, following the Supreme Court's stay of the *D.V.D.* preliminary injunction, ICE issued guidance regarding how to implement DHS's now-operative March 30Memo. *See D.V.D.*, No. CV 25-10676-BEM, ECF No. 190-1 (D. Mass. July 15, 2025).

The July 9 Guidance is identical to the March 30 Memo except that, in cases where

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diplomatic assurances do not exist, it provides that an officer will serve a "Notice of Removal" with interpretation. *Id.* at 1.

DHS may effectuate removal 24 hours after serving notice; however, "[i]n exigent circumstances," with approval from chief counsel of DHS or ICE, DHS may execute removal to the third country with a mere six hours' notice if ICE provides the noncitizen "means and opportunity to speak with an attorney." *Id.* Respondents' March 30 memo, July 9 guidance, and their practice as to other third-country removals demonstrate that DHS's policy permits the government to provide a slip of paper listing the country of removal mere hours before a planned third-country of removal .In fact, in the *D.V.D.* litigation, DHS has taken the position that the law does not require them to provide any notice whatsoever:

> **THE COURT:** In this posture, where it is the discretionary decision of the department that's changing the [country] designation, does the person who's going to be deported have a right to be informed and be given an opportunity to be heard as to the dangerousness of that third country designation?
>
> **[DHS COUNSEL]:** DHS's position is no.
>
> **THE COURT:** They don't have to be told anything and given no opportunity to be heard?
>
> **[DHS COUNSEL]:** DHS's position is no.
>
> Tr. at 10-11, No. 1:25-cv-10676-BEM, ECF No. 44 (D. Mass. Mar. 28, 2025).

Respondents' extreme position has been born out in several instances.

First, on May 7, 2025, the D.V.D. defendants attempted to remove several *D.V.D.* class members to Libya—a country torn apart by active armed conflict—after providing them at most only hours' notice of removal. *D.V.D.*, No. 1:25-cv-10676-BEM, ECF No. 99-2 & 99-3 (D. Mass. May 14, 2025).

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

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

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

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

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

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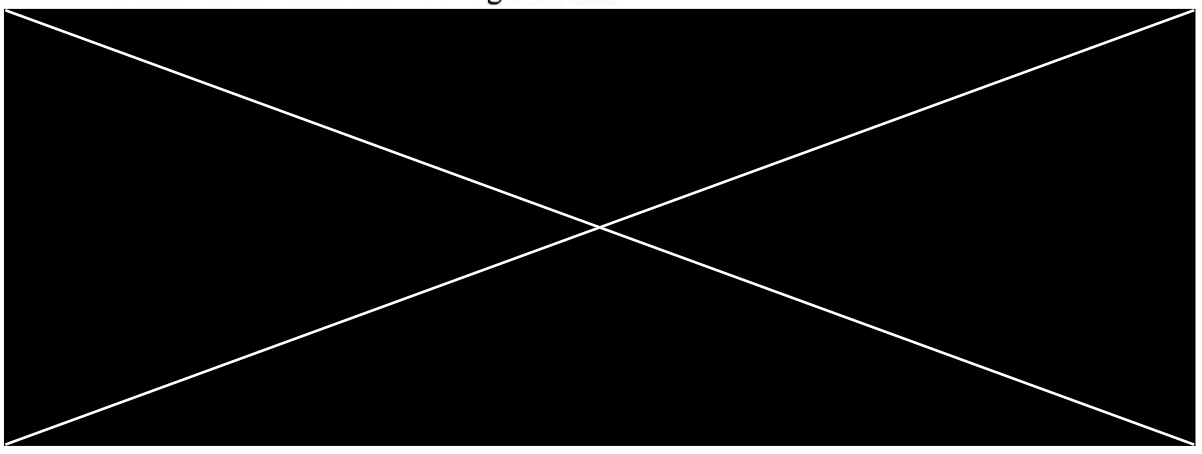
Mr. Yousufi's Individual Factual Allegations

Mr.Yousufi is a citizen of Afghanistan.



He and his family – his father, mother, and two younger sisters – fled Afghanistan as Winter approached in 2021. They spent several months in Iran while trying to obtain permission to enter Brazil. As their visitor status in Iran ran out, eventually they were able to enter Mexico and then apply for asylum at the U.S. border on November 11, 2023.

The family was admitted to the U.S. and given a hearing date of July 16, 2024, with an Immigration Court in Virginia.

After he and his family landed in Virginia, Mohammad remained troubled. Seeking solace away from his family and the memories of Afghanistan, he travelled to Vancouver, Canada prior to the family's Immigration Court hearing and was not present when they were granted Withholding of Removal. He decided to rejoin his family in early December of 2024.

In the early afternoon of April 12, 2025, he presented himself at the U.S. border in Blaine, Washington. He told Customs and Border Patrol that he had been granted refugee status along with his family. He believed this to be true, but it was not, since he wasn't present at the hearing.

He has been detained since April 12, 2025. He was granted Withholding of Removal in a hearing separate from his family's, more than 90 days ago.

Mr. Yousufi suffers from severe PTSD due [redacted]

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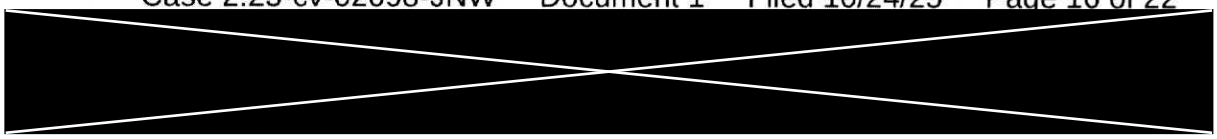

lack of freedom and close proximity with other detainees. He is often unable to control this anxiety and he is not fluent enough in English to comprehend everything that is communicated by the staff and other detainees. His family has retained a psychologist who is arranging to evaluate him and provide treatment. (See Exhibit 1)

LEGAL ARGUMENT

The INA, FARRA, and the Due Process Clause demand far more than Respondents' policy requires.

For the INA's and FARRA's statutory protections against persecution and torture to be meaningful, there must be a means of accessing those procedures. "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). Thus, "no person shall be removed from the United States without opportunity, at some time, to be heard." A.A.R.P., 605 U.S. at 94 (citation modified). The Supreme Court has long applied this principle to people facing removal.

See *Yamataya v. Fisher*, 189 U.S. 86, 99–101 (1903) (holding that, even though what Congress provided as to exclusion was "due process of law," the statute must be interpreted to provide "notice and . . . an opportunity to be heard" as to whether a person is in the United States "in violation of law").

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

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These principles are well established in the Ninth Circuit in the context of third-country removals. See *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) ("Failing to notify individuals who are subject to deportation that they have the right to apply for . . . withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process."); *Ibarra-Perez v. United States*, --- F.4th , No. 24-631, 2025 WL 2461663, at *5 (9th Cir. Aug. 27, 2025) (affirming "there are restrictions on DHS's removal authority" and DHS "violates [noncitizens'] constitutional right to due process" where it fails to notify them of their right to apply for withholding of removal to the country of removal); *see also Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21, 2025) (listing cases). Respondents' policy does not remotely comport with these instructions.

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

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

Respondents' notice also does not require notice to counsel, which DHS is required to provide "[w]henever a person is required" by the immigration regulations to receive notice. 8 C.F.R. §§ 292.5(a), 1292.5(a)

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

Respondents' policy is also deficient in other ways. The withholding statute,

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FARRA, and their implementing regulations envision individualized consideration of feared persecution or torture. See 8 U.S.C. § 1231(b)(3); id. (note); 8 C.F.R. §§ 208.31, 1208.16-1208.18. Yet Respondents' policy authorizes the agency to deem all claims invalid simply if a country provides a categorical diplomatic assurance to the United States that no persecution or torture will occur as to all noncitizens removed to it.

Importantly, the regulations concerning withholding of removal do not even permit diplomatic assurances at all to satisfy the mandatory withholding protections in the INA.

As for CAT claims, the regulations allow diplomatic assurances, but only in individual cases. See 8 C.F.R. § 1208.18(c)(1); see also Regulations Concerning the Convention Against Torture, 64 Fed. Reg. 8478, 8484 (Feb. 19, 1999) (noting that cases of assurances are meant to be "rare").

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

Similarly, Respondents' policy does nothing to safeguard against persecution or torture by non-state actors. By definition, diplomatic assurances are meaningless where there are non-state actors responsible.

Finally, requiring a person to demonstrate full entitlement to withholding or CAT protection in a screening hours after receiving the initial notice about removal to a third country does not provide a meaningful opportunity to be heard. As noted above, in standard § 1229a proceedings or in "withholding-only" proceedings before the immigration court, the evidence often includes hundreds of pages of documentation that detail the noncitizen's own testimony, the testimony of witnesses, expert reports, and other country conditions. Expecting a noncitizen to produce such an application mere hours or a day or two after finding out about the new country to which DHS plans to remove them does not provide a person with "sufficient

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time and information to reasonably be able to contact counsel, file . . . , and pursue appropriate relief." A.A.R.P., 605 U.S. at 95.

CLAIMS FOR RELIEF

Count I

Writ of Habeas Corpus – Violation of the INA

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

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

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

- Accordingly, Mr. Yousufi's planned third country removal is unlawful.

Count II

Writ of Habeas Corpus – Violation of FARRA

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

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

- Notwithstanding this statutory mandate, Respondents seek to remove Mr. Yousufi to a third country without providing Mr. Yousufi the opportunity to

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access the protections required pursuant to FARRA and CAT.

- Accordingly, Mr. Yousufi's planned third-country removal is unlawful.

Count III

Writ of Habeas Corpus – Violation of the Due Process Clause

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

- The Due Process Clause requires Respondents to provide Mr. Yousufi meaningful notice and a meaningful opportunity to be heard regarding the statutory protections to which Mr. Yousufi is entitled.

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

- Accordingly, Mr. Yousufi's planned third country removal is unlawful.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Enjoin Mr. Yousufi's removal until Respondents provide him access to his statutory rights to protection and due process of law:

   i. With respect to any removal to Mexico, Respondents must provide Mr. Yousufi with a reasonable fear interview and provide him at least ten days' notice of such interview to allow him to prepare for it, and notice

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must be provided in Mr. Yousufi's native language;

ii. If Mr. Yousufi is found to have a reasonable fear of removal, then Respondents must move to reopen Mr. Yousufi's removal proceedings to allow Mr. Yousufi to present a full claim for relief under § 1231(b)(3) and FARRA;

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

iv. With respect to removal to any other third country (any country other than Afghanistan), Respondents must provide written notice of removal to that country at least ten days prior to the removal, and notice to Mr. Yousufi must be in Mr. Yousufi's native language;

v. If, after inquiring whether Mr. Yousufi has a fear of removal to that third country, and Mr. Yousufi expresses such a fear, then Respondents must provide a reasonable fear interview to screen for Mr. Yousufi's fear of persecution and torture, consistent with § 208.31;

vi. If Mr. Yousufi is found to have a reasonable fear of removal, then Respondents must move to reopen Mr. Yousufi's removal proceedings to allow Mr. Yousufi to present a full claim for relief under § 1231(b)(3) and FARRA;

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

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

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under law; and

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

DATED this 24th of October 2025.

s/ William Frick
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Counsel for Petitioner

Attorney Verification Pursuant to Local Court Rule 100 (e)

The facts and information brought forth in this petition has been learned through my phone conversations with the petitioner, his brother in law, his former counsel and an ICE officer. I have reviewed the administrative records. I have also consulted with a psychologist on Mr. Yousufi's behalf.

I have not asked Mr. Yousufi to sign the petition because he is currently detained at the Northwest Immigration Detention Center and this document needed to be prepared as quickly as possible.

For the above listed reasons, on my information and belief the facts put forth in this petition are true.

Dated October 24, 2025 at Mercer Island, Wash.

/s/ William Frick

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