

District Judge Jamal N. Whitehead
Magistrate Judge Michelle L. Peterson

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

MOHAMMAD MUZAMI YOUSUFI,

Petitioner,

v.

LAURA HERMOSILLO,¹ Acting Field Office
Director of Enforcement and Removal Operations,
Seattle Field Office, Immigration and Customs
Enforcement (ICE); KRISTI NOEM, Secretary of
the Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND SECURITY,
PAMELA BONDI, U.S. Attorney General; BRUCE
SCOTT,² Warden of Northwest ICE Processing
Center,

Respondents.

Case No. C25-2098-JNW-MLP

**FEDERAL RESPONDENTS'
RETURN MEMORANDUM**

Noted for Consideration:
December 16, 2025

INTRODUCTION

This Court should deny Petitioner Mohammad Muzami Yousufi's Petition for a Writ of Habeas Corpus. Mr. Yousufi, a citizen of Afghanistan who has unlawfully entered and reentered

¹ Laura Hermosillo is the Acting Field Office Director for ICE/ERO's Seattle Field Office and, pursuant to Rule 25(d) Federal Rule of Civil Procedure, is hereby substituted as Defendant for Camilla Wamsley.

² Bruce Scott is not a federal employee and is not represented by the undersigned in these proceedings. All other respondents, which are represented by the undersigned, are referred to as "Federal Respondents."

1 the United States, seeks an order preventing Federal Respondents from removing him to Mexico
2 or any other third country unless Federal Respondents follow procedures required of them in an
3 injunction issued in a class action filed in the U.S. District Court for the District of Massachusetts.
4 Because that injunction has been stayed by the U.S. Supreme Court, and for the other reasons set
5 forth in this memorandum, the Petitioner is not entitled to the relief he seeks. Accordingly, the
6 Petition should be denied.

7 **STATEMENT OF FACTS**

8 Yousufi is a native and citizen of Afghanistan. Declaration of Booth, ¶ 3. He unlawfully
9 entered the United States without inspection or admission on November 6, 2023, and was
10 apprehended shortly thereafter. *Id.* Soon thereafter, he was released from custody on his own
11 recognizance with a notice to appear at a future removal proceeding in Virginia. *Id.* at ¶ 4.

12 The Petitioner failed to appear at his removal proceeding on July 16, 2024. *Id.* at ¶ 5.
13 Accordingly, an Immigration Judge entered an order of removal on that date *in absentia* directing
14 that the Petitioner be removed to Afghanistan. *Id.*

15 On or about August 7, 2024, the Petitioner voluntarily departed the U.S., travelling to
16 Vancouver, Canada. Dkt. # 1, p. 15; Declaration of Booth, ¶ 6.

17 On December 4, 2024, a Customs and Border Patrol (CBP) officer again encountered the
18 Petitioner in the United States in Blaine, Washington. Declaration of Booth, ¶ 6. Upon
19 questioning, the Petitioner stated that he had refugee status in the United States. *Id.* However,
20 CBP ascertained that the Petitioner was attempting to enter the U.S. without documentation and
21 was the subject of a prior order of removal. *Id.* Accordingly, following his arrest, he was issued
22 a notice of intent to reinstate his prior removal order and placed in Withholding-Only proceedings

1 while remaining in detention at the Northwest ICE Processing Center in Tacoma. *Id.*³

2 On July 9, 2025, withholding of removal to Afghanistan was granted to Petitioner under
3 INA § 241(b)(3) and the Convention Against Torture (CAT), *see* 8 U.S.C. § 1231 note.⁴ *Id.* at ¶ 7.

4 On November 6, 2025, the Immigration Judge authorized the Petitioner's release subject
5 to the posting of a \$10,000 bond. *Id.* at ¶ 8.

6 ICE is seeking to remove Petitioner to a third country since withholding of removal was
7 granted. *Id.* at ¶ 9. Switzerland, Canada, Brazil, and Mexico have been considered. Petitioner
8 has been given the opportunity to nominate a third country for removal as well, but he has chosen
9 to not do so. *Id.* Although ICE is still actively seeking to remove the Petitioner to a third country,
10 there are no definitive removal plans at this time. *Id.*

11 At some point, Yousufi was either notified or learned of ICE's interest in removing him to
12 Mexico. Dkt. # 1 at p. 3. He objects to any such removal because he "is afraid of being deported
13 to Mexico given his complete lack of resources, lack of ability to speak the language, and the well-
14 known criminal danger, especially targeting those removed from the U.S." *Id.*⁵ Yousufi also
15 asserts that, "Mexico will be particularly dangerous to him due to his current mental condition,"
16 *id.*, although he puts forward no competent evidence with his Petition to support the allegation that
17 he has any particular noteworthy mental condition. Nor is there any evidence that he would be put

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20 ³ Petitioner's contrary version of the facts is not borne out by the record.

21 ⁴ Withholding of removal is country specific. If an immigration judge grants an application for withholding of
removal, he prohibits DHS from removing the alien to that particular country, not from the United States. *Johnson v.*
Guzman Chavez, 594 U.S. 523, 536 (2021).

22 ⁵ It should be noted that none of these concerns are grounds for relief. Applicants for CAT relief must prove that they
are likely to suffer torture "inflicted by or at the instigation of or with the consent or acquiescence of a public official
or other person acting in an official capacity." 8 CFR § 1208.18(a)(1); *Edgar G.C. v. Bondi*, 136 F.4th 832, 845 (9th
23 Cir. 2025). The concerns expressed by Yousufi do not describe persecution or torture, nor official involvement in
such. That the Petitioner would prefer to remain in the United States rather than being removed to Mexico for the
24 reasons stated in his Petition are not grounds for relief in administrative proceedings.

1 in any particular danger on that account by being removed to Mexico.⁶


2 **REGULATORY BACKGROUND**

3 On March 30, 2025, DHS issued updated guidance (the “March Guidance”) on its policy
4 for removals of aliens to third countries. Exhibit A. This guidance provides, among other things,
5 that aliens may be removed to a third country without notice if the United States has received
6 assurances from that country that aliens removed from the United States will not be persecuted or
7 tortured. *Id.*

8 Thereafter, on July 9, 2025, ICE issued a memorandum updating agency officials on its
9 policy regarding third country removals following the Supreme Court’s order in *Dep’t of*
10 *Homeland Sec. v. D.V.D.*, ___ U.S. ___, 145 S. Ct. 2153 (2025), staying an injunction issued in a
11 class action challenging the March Guidance.⁷ Exhibit B. The memorandum states:

12 Effective immediately, when seeking to remove an alien with a final order of
13 removal—other than an expedited removal order under Section 235(b) of the
14 Immigration and National Act (INA)—to an alternative country as identified in
15 section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland
16 Security Kristi Noem’s March 30, 2025 memorandum, *Guidance Regarding Third*
17 *Country Removals*, as detailed below. A “third country” or “alternative country”
18 refers to a country other than that specifically referenced in the order of removal.

19 If the United States has received diplomatic assurances from the country of removal
20 that aliens removed from the United States will not be persecuted or tortured, and
21 if the Department of State believes those assurances to be credible, the alien may
22 be removed without the need for further procedures. ICE will seek written
23 confirmation from the Department of State that such diplomatic assurances were
24 received and determined to be credible. HSI and ERO will be made aware of any
such assurances.

6 To the extent Yousufi is relying on the declaration of his mother,  (Dkt. # 1-1), to establish that he has a mental condition that is relevant to his Petition, her declaration does not establish that she is qualified to render such an opinion, and her testimony is not reliable evidence on that point. Moreover, Petitioner does not offer any evidence to support his allegation that any mental condition he may have makes him particularly susceptible to persecution or torture in Mexico.

7 The *D.V.D.* case is discussed extensively in this memorandum, *infra*, at pp. 8-10.

1 *Id.* In all other cases, ICE must comply with the following procedures:

- 2 • An ERO officer will serve on the alien the attached Notice of Removal. The notice
3 includes the intended country of removal and will be read to the alien in a language
4 he or she understands.
- 5 • ERO will not affirmatively ask whether the alien is afraid of being removed to the
6 country of removal.
- 7 • ERO will generally wait at least 24 hours following service of the Notice of
8 Removal before effectuating removal. In exigent circumstances, ERO may execute
9 a removal order six (6) or more hours after service of the Notice of Removal as
10 long as the alien is provided reasonable means and opportunity to speak with an
11 attorney prior to removal.
- 12 ○ Any determination to execute a removal order under exigent circumstances less,
13 than 24 hours following service of the Notice of Removal must be approved by
14 the DHS General Counsel, or the Principal Legal Advisor where the DHS
15 General Counsel is not available.
- 16 • If the alien does not affirmatively state a fear of persecution or torture if removed
17 to the country of removal listed on the Notice of Removal within 24 hours, ERO
18 may proceed with removal to the country identified on the notice. ERO should
19 check all systems for motions as close in time as possible to removal.
- 20 • If the alien does affirmatively state a fear if removed to the country of removal
21 listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and
22 Immigration Services (USCIS) for a screening for eligibility for protection under
23 section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS
24 will generally screen the alien within 24 hours of referral.
- USCIS will determine whether the alien would more likely than not be
persecuted on a statutorily protected ground or tortured in the country of
removal.
- If USCIS determines that the alien has not met this standard, the alien will be
removed.
- If USCIS determines that the alien has met this standard and the alien was not
previously in proceedings before the immigration court, USCIS will refer the
matter to the immigration court for further proceedings. In cases where the
alien was previously in proceedings before the immigration court, USCIS will
notify the referring immigration officer of its finding, and the immigration
officer will inform ICE. In such cases, ERO will alert their local Office of the
Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with
the immigration court or the Board of Immigration Appeals, as appropriate, for
further proceedings for the sole purpose of determining eligibility for protection

1 under section 241(b)(3) of the INA and CAT for the country of removal.
2 Alternatively, ICE may choose to designate another country for removal.

3 *Id.* The policy also indicates that the “Supreme Court’s stay of removal does not alter any decisions
4 issued by any other courts as to individual aliens regarding the process that must be provided
5 before removing that alien to a third country.” *Id.*

6 ARGUMENT⁸

7 **I. Yousufi is not entitled to seek broad injunctive relief interfering with the 8 Executive Branch’s authority to remove him to any third country in this 9 court**

10 Yousufi’s Petition does not ask for his release from custody.⁹ Instead, having learned that
11 ICE may remove him to Mexico, Yousufi seeks injunctive relief prohibiting his removal unless
12 and until ICE follows certain judicially imposed constraints imposed by a preliminary injunction
13 in a class action in the District of Massachusetts.

14 While immediate physical release is not the only remedy available under the federal writ
15 of habeas corpus, Yousufi is still required to demonstrate an entitlement to a permanent injunction
16 under the relevant standards. First, it is not sufficient that Yousufi demonstrate a likelihood of
17 success on the merits. Rather, Yousufi must actually succeed on the merits. *See Amoco Prod. Co.*
18 *v. Vill. of Gambell*, 480 U.S. 531, 546, n.12 (1987). Additionally, he must show that he has
19 suffered an irreparable injury, that, considering the balance of hardships between the plaintiff and
20 defendant, a remedy in equity is warranted; and that the public interest would not be disserved by
21 a permanent injunction. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). Once a

22 ⁸ Federal Respondents do not dispute that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241.
23 None of the other supposed jurisdictional grounds identified in the Petition supply this Court with subject matter
24 jurisdiction to hear Yousufi’s claims against Federal Respondents.

⁹ As noted in Federal Respondents’ statement of facts, an Immigration Judge has ordered that Yousufi be released
from detention upon posting a \$10,000 bond.

1 plaintiff or petitioner demonstrates an entitlement to prevail on the merits and that his or her harm
2 is irreparable, the final two factors, *i.e.*, assessing the harm to the opposing party and weighing the
3 public interest, merge when the Government is the opposing party. *See Nken v. Holder*, 556 U.S.
4 418, 435 (2009). The decision to grant or deny permanent injunctive relief is an act of equitable
5 discretion by a district court, reviewable on appeal for abuse of discretion. *See, e.g., Weinberger*
6 *v. Romero-Barcelo*, 456 U.S. 305, 320 (1982).

7 Under these standards, Yousufi's Petition should be denied. As a member of the plaintiff
8 class in an ongoing class action in the District of Massachusetts, he is bound by the results in that
9 Court and should not be permitted to individually prosecute the same claims here that he is
10 pursuing as a class member in that case. Because the preliminary injunction issued in that case
11 has been stayed by the U.S. Supreme Court, Yousufi's petition here is, in effect, seeking relief
12 from the Supreme Court's order. This should not be permitted. Moreover, the Petitioner has not
13 demonstrated that he entitled to the injunctive relief he seeks here on the merits.

14 *i. As a member of the plaintiff class certified in D.V.D. v. DHS, Yousufi*
15 *must obtain the relief he seeks in the District of Massachusetts*

16 Yousufi does not contest that it is within the authority of Federal Respondents to remove
17 him to any third country, including Mexico, pursuant to 8 U.S.C. § 1231(b)(2)(E)(vii). Indeed, as
18 the Ninth Circuit has held, “[a]fter immigration court proceedings have ended, ‘DHS retains the
19 authority to remove the alien to any other country authorized by the statute.’” *Ibarra-Perez v.*
20 *United States*, 2025 WL 2461663, at *5 (9th Cir. Aug. 27, 2025) (quoting *Johnson v. Guzman*
21 *Chavez*, 594 U.S. 523, 536 (2021)). Thus. “[i]f DHS is unable to remove the alien to the specified
22 or alternative country or countries, the order of the [IJ] does not limit the authority of [DHS] to
23 remove the alien to any other country as permitted by [§ 1231(b)].” *Id.* (internal quotation
24 omitted).

1 Yousufi contends that before this removal power can be exercised, Federal Respondents
2 should be required to go through elaborate and detailed procedural steps and be subject to timelines
3 that are different and in excess of those steps that DHS has determined are appropriate and
4 sufficient. The injunction Yousufi seeks would require Federal Respondents to follow those
5 additional steps and endure additional delays in exercising their authority to remove him, thereby
6 prolonging the Petitioner's unlawful presence in the United States.

7 Petitioner's arguments for the due process protections to which he claims entitlement rely
8 heavily on a preliminary injunction entered in a class action lawsuit certified in the District of
9 Massachusetts, *D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.). Dkt. # 1, pp. 10-11. Indeed, Yousufi
10 is unquestionably a member of the plaintiff class in *D.V.D.*¹⁰

11 In *D.V.D.*, three plaintiffs instituted a putative class action suit in the U.S. District Court
12 for the District of Massachusetts challenging their third-country removals. *D.V.D. v. DHS*, No. 25-
13 cv-10676 (D. Mass.). On March 28, 2025, that court entered a TRO enjoining DHS and others
14 from "[r]emoving any individual subject to a final order of removal from the United States to a
15 third country, *i.e.*, a country other than the country designated for removal in immigration
16 proceedings" unless certain conditions were met. *D.V.D. v. U.S. Dep't of Homeland Sec.*,
17 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025). On April 18, 2025, the District Court in *D.V.D.*
18 issued an order granting the plaintiffs' motions for class certification and a preliminary injunction.
19 *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 394 (D. Mass. 2025). A class was

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21 ¹⁰ Specifically, the class in *D.V.D.* is defined as:

22 All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or
23 238(b) of the INA (including withholding-only proceedings) who 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.

24 *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 378 (D. Mass. 2025).

1 certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure without a provision for
2 an opt out. *See id.* at 386. The preliminary injunction was national in effect and established certain
3 procedures that DHS was required to follow before removing an alien with a final order of removal
4 to a third country.

5 On May 21, 2025, the District Court issued an order containing the following summary
6 and clarification of its Preliminary Injunction:

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

19 *D.V.D. v. U.S. Dep't of Homeland Sec.*, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025)
20 (emphasis added).

21 On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts'
22 preliminary injunction pending the disposition of the Government's appeal from the order in the
23 First Circuit Court of Appeals. *Dep't of Homeland Sec. v. D.V.D.*, __ U.S. __, 145 S. Ct. 2153
24 (2025).¹¹

¹¹ As of the present day, the First Circuit has not decided the appeal. Also, later that same day, the District Court ordered that, notwithstanding the Supreme Court's stay, its remedial order granting relief to the eight individual class members DHS sought to remove to South Sudan remained in effect. Order, *D.V.D.* (Dkt. # 176). On the Government's subsequent motion to the Supreme Court for clarification of its prior order, the Supreme Court held that its prior order applied to the eight individual aliens, clearing the way for their removal to South Sudan. *Dep't of Homeland Sec. v. D. V. D.*, __ U.S. __, 145 S. Ct. 2627, 2629 (2025). Thus, while Yousufi implies that the Supreme Court's decision to stay the preliminary injunction was based entirely on the Government's arguments that class relief was improper, Dkt. # 1, p. 11, the Supreme Court's subsequent order clarifying that the stay also applied to the individual plaintiffs in the case fully rebuts that inference.

1 Because the Supreme Court stayed the preliminary injunction issued by the District Court
2 in *D.V.D.*, thereby allowing USCIS' March Guidance to remain in effect, the preliminary relief
3 granted by the District Court in *D.V.D.*, and specifically the due process procedures to which
4 Yousufi claims to be entitled, do not apply. To the extent that the Petitioner seeks to compel
5 Federal Respondents to follow those same procedures here, because he is a *D.V.D.* class member,
6 he must instead seek such relief in the District of Massachusetts as he is bound by the proceedings
7 that have already occurred in that case. He is not entitled to a second bite of the apple here. *See,*
8 *e.g. Qasemi v. Kurzdorfer*, 2025 WL 2938607, at *6 (W.D.N.Y. Oct. 16, 2025); *Sanchez v. Bondi*,
9 2025 WL 2550646, at *2 (D. Colo. Aug. 20, 2025) (petitioners' claims were foreclosed from
10 individual assertion based on *D.V.D.*'s class certification order); *Ghamelian v. Baker*, 2025 WL
11 2049981, at *3 (D. Md. July 22, 2025), *reconsideration denied*, 2025 WL 2074155 (D. Md. July
12 23, 2025) ("In light of Plaintiff's apparent class membership, claims relating to his potential third
13 country removal are more appropriately resolved in the *D.V.D.* case and will not be addressed in
14 this Court.") (footnote omitted); *Tanha v. Warden*, 2025 WL 2062181, at *5 (D. Md. July 22,
15 2025) (matters pertaining to Petitioner's removal destination are more properly addressed by the
16 District of Massachusetts); *compare Nguyen v. Scott*, 2025 WL 2419288, at *25 (W.D. Wash. Aug.
17 21, 2025) (claim for stay of removal to third country on ground that Administration's third country
18 removal policy was unconstitutionally punitive was not precluded by Supreme Court's stay in
19 *D.V.D.* because that specific claim was not before the district court in *D.V.D.*).

20 Accordingly, the Petitioner's efforts to secure his release by relying on the preliminary
21 injunction issued in *D.V.D.* should be rejected. The Supreme Court stayed that preliminary
22 injunction and, as a *D.V.D.* plaintiff class member, he is bound by the Supreme Court's ruling.
23 He may not circumvent an order of the Supreme Court by seeking the same relief individually here
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1 that the Supreme Court denied him as a plaintiff class member in *D.V.D.*

2 ii. *Yousufi should not be permitted to individually prosecute the same*
3 *claims here as he is advancing as a member of the plaintiff class in*
4 *D.V.D. v. U.S. Dep't of Homeland Sec.*

5 As a member of the plaintiff class in *D.V.D.*, Yousufi must obtain his requested relief in
6 that case and should not be permitted to individually pursue the same claim here. First, as a
7 member of the plaintiff class in *D.V.D.*, he is bound by the proceedings in that case the same as all
8 other class members. The plaintiff class in *D.V.D.* sought an injunction precluding their removals
9 to third countries unless they were first afforded essentially the same process that Yousufi asks the
10 Court to order here.

11 The Supreme Court's stay of the preliminary injunction entered in that case is not only
12 precedent, but the result is binding on Yousufi here by virtue of his status as a member of the
13 *D.V.D.* plaintiff class. This is true even though the two orders in *D.V.D.* were entered on requests
14 for interim relief. A grant of interim relief "squarely control[s]" like cases and binds lower courts
15 as a matter of vertical stare decisis. *Trump v. Boyle*, ___ U. S. ___, 145 S. Ct. 2653, 2654 (2025).
16 Even though a decision regarding interim relief is not necessarily "conclusive as to the merits,"
17 *id.* at 2654, its "reasoning—its ratio decidendi"—carries precedential weight, *Nat'l Insts. of*
18 *Health v. Am. Pub. Health Ass'n*, ___ U.S. ___, 145 S. Ct. 2658, 2663-2664 (2025) (Gorsuch, J.,
19 and Kavanaugh, J., concurring in part and dissenting in part) (*quoting Ramos v. Louisiana*,
20 590 U.S. 83, 104 (2020)). *See also Bucklew v. Precythe*, 587 U.S. 119, 136 (2019) ("[J]ust as
21 binding as [a] holding is the reasoning underlying it."). "[E]ven probabilistic holdings—such as
22 California's top-line conclusion that 'the Government is likely to succeed in showing the District
23 Court lacked jurisdiction to order the payment of money under the APA,' must 'inform how a
24 [lower] court' proceeds 'in like cases.'" 2025 WL 2415669, at *4 (Gorsuch, J., and Kavanaugh,
J., concurring in part and dissenting in part) (internal citations omitted).

1 Additionally, courts recognize that members of class action lawsuits should not be
2 permitted to bring separate actions where they seek to litigate individually issues that are at issue
3 in the class action. *See Wynn v. Vilsack*, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021)
4 (collecting cases) (“Multiple courts of appeal have approved the practice of staying a case, or
5 dismissing it without prejudice, on the ground that the plaintiff is a member of a parallel class
6 action.”) (internal quotations omitted). This prevents class members from litigating the same
7 claims individually at the same time in different *fora*. *See Thompson v. Transamerica Life Ins.*
8 *Co.*, 2020 WL 6145105, at *9 (C.D. Cal. Sept. 16, 2020). It also prevents class members from
9 avoiding the binding results of the class action. *See Goff v. Menke*, 672 F.2d 702, 704 (8th Cir.
10 1982).

11 This is also the rule in this Circuit. A district court may properly dismiss an individual
12 complaint where the plaintiff is a member in a class action, to the extent the individual action
13 duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d 1130,
14 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such a
15 dismissal is within the court’s discretion based on its inherent power to control its own docket.
16 *Crawford*, 599 F.2d at 893. It is “imperative to avoid concurrent litigation in more than one forum
17 whenever consistent with the rights of the parties.” *Id.*; *see Frost v. Symington*, 197 F.3d 348, 359
18 (9th Cir. 1999) (“To the extent that a class action involving the same issues raised by [plaintiff] is
19 currently pending . . . [he] may have to bring all of his related claims for equitable relief . . . through
20 . . . class counsel.”).

21 This Court should decline to exercise jurisdiction over Yousufi’s claims as a matter of
22 comity because the District of Massachusetts has certified a class action that includes the same
23 claims Petitioner is attempting to pursue here. *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d
24

1 93, 94-95 (9th Cir. 1982) (“There is a generally recognized doctrine of federal comity which
2 permits a district court to decline jurisdiction over an action when a complaint involving the same
3 parties and issues has already been filed in another district.”). He must pursue relief as a class
4 member there and may not also simultaneously seek to pursue the same remedies here as an
5 individual.

6 **II. Yousufi is incorrect on the merits**

7 Those problems aside, Yousufi’s Petition should be denied on the merits. To the extent
8 that Yousufi asserts that the policy of the DHS as reflected in the March 30 and July 9 memoranda,
9 if applied to Yousufi, would violate his rights to due process, Federal Respondents respectfully
10 disagree. The Government’s procedures for implementing the Convention Against Torture (CAT),
11 *see* 8 U.S.C. § 1231 note, in this context are fully consistent with due process and, notwithstanding
12 Yousufi’s demands, a federal district court had no legal basis to order that those procedures be
13 supplemented with ones that Yousufi would find more preferable.¹²

14 Yousufi is subject to a final order of removal. He has had an opportunity to raise a CAT
15 claim in prior proceedings, may voice fears as to any potential countries of removal, and may move
16 to reopen past proceedings as new fears arise. Indeed, Yousufi has already successfully obtained
17 protection from removal to his home country of Afghanistan in withholding-only proceedings
18 before an Immigration Judge.

19 The March and July DHS Guidance memoranda explain that the government provides
20 aliens with additional process before removal to a third country. That process, as detailed below,
21 ensures that an alien will only be sent to countries where the United States has received adequate

22 _____
23 ¹² Similarly, under FARRA, Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681–822 (1998) (codified as
24 Note to 8 U.S.C. § 1231)), which codified CAT protections, an alien may not be removed to any country where they
would be tortured. Because the Petitioner refers to these protections interchangeably throughout his Petition, Federal
Respondents will do the same in this Return unless there is a reason to differentiate.

1 assurance the alien will not be tortured, or that the alien will be given notice and an opportunity to
2 be heard regarding any fear as to his country of removal.

3 1. The March Guidance provides that an alien may be removed to a “country [that]
4 has provided diplomatic assurances that aliens removed from the United States will not be
5 persecuted or tortured.” Exhibit A. If the State Department finds the country’s assurances
6 credible, “the alien may be removed without the need for further procedures.” *Id.*

7 The Constitution requires nothing further. Indeed, the Supreme Court has held that when
8 the Executive determines a country will not torture a person on his removal, that is conclusive.
9 *Munaf v. Geren*, 553 U.S. 674, 702-703 (2008); *see Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C.
10 Cir. 2009) (federal courts “may not question the Government’s determination that a potential
11 recipient country is not likely to torture a detainee”), *cert. denied*, 559 U.S. 1005 (2010). The
12 “*Munaf* decision applies here *a fortiori*: That case involved transfer of American citizens, whereas
13 this case involves transfer of alien detainees with no constitutional or statutory right to enter the
14 United States.” *Kiyemba*, 561 F.3d at 517-518 (Kavanaugh, J., concurring). When the Executive
15 decides an alien will not be tortured abroad, courts may not “second-guess [that] assessment,” at
16 least unless Congress has specifically authorized judicial review of that decision. *Id.* at 517
17 (citation omitted); *see Munaf*, 553 U.S. at 703 n.6.

18 It is not necessary for the Executive Branch to make an individualized assessment to satisfy
19 due process. Indeed, federal courts may not “second-guess” the scope of the Executive’s
20 conclusion any more than its substance. *See Kiyemba*, 561 F.3d at 517-518 (Kavanaugh, J.,
21 concurring). The decision that a foreign government’s categorial assurance against torture is
22 sufficient to be accepted for all aliens is itself a “foreign policy” judgment the Judiciary “is not
23 suited” to question. *Munaf*, 553 U.S. at 702.

1 Relatedly, the objection to the government’s reliance on a categorical assurance from a
2 foreign government does not sound in procedural due process at all. It is a substantive objection
3 that an assurance alone provides insufficient basis for the government to find that an alien is not
4 likely to be tortured. Attempts to “recast in ‘procedural due process’ terms” what is really a
5 challenge to the “‘substantive’” criteria that the government has adopted have been rejected.
6 *Reno v. Flores*, 507 U.S. 292, 308 (1993) (rejecting similar argument for “individual[ized]”
7 procedure). For good reason: It makes no sense to require the Government to provide additional
8 process with respect to potential evidence that is immaterial under the substantive standard the
9 government has adopted. When the government is satisfied based on foreign assurances that no
10 alien will be tortured in the receiving country, a further “individualized” assessment serves no
11 rational purpose.¹³

12 2. For aliens being removed to a third country not covered by an adequate assurance,
13 the Guidance memoranda state that DHS will first inform the alien of removal to that country and
14 then give him an opportunity to affirmatively state that he fears removal there. Exh. B. If the alien
15 does so, immigration officials will generally screen the alien within 24 hours to determine whether
16 he “would more likely than not” be tortured if sent to that country. *Id.* If not, the alien will be
17 removed; if so, the alien will be placed in further administrative proceedings—or if appropriate,
18 the government “may choose to designate another country for removal.” *Id.*

19 _____
20 ¹³ *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999), cited by the Petitioner is distinguishable. The case involved
21 a denial of asylum under circumstances in which the Petitioner was not given advance notice before his asylum hearing
22 that Armenia would be designated as a possible alternative country for his removal. The case did not concern removal
23 to a country that the Executive determines will not torture a person upon his removal. Moreover, *Andriasian* involved
24 a specific fact pattern in which adequate advance notice was denied the asylum applicant. Those circumstances do
not exist here. *Ibarra-Perez v. United States*, 154 F.4th 989, 991 (9th Cir. 2025) is also distinguishable. The case
involved another applicant for asylum who was allegedly removed to Mexico in contravention of ICE’s procedures.
The Court held that the Plaintiff was not jurisdictionally barred from by 8 U.S.C § 1252(g) from prosecuting a lawsuit
for damages against the United States for negligently removing him to Mexico without allowing him to seek
administrative relief. The district court cases cited by the Petitioner are not precedent and are not binding on this
Court.

1 Yousufi apparently believes these procedures are also constitutionally inadequate. To the
2 contrary, they are entirely consistent with established immigration law. Most analogous, in
3 expedited-removal proceedings, aliens are expected to raise fears of removal “almost
4 immediately,” and are often processed in a matter of hours. *See, e.g.*, 8 U.S.C. § 1225(b)(1)(B)(i).
5 If the asylum officer decides the alien does not have a credible fear, any review by an immigration
6 judge must be completed within seven days after that finding was made. 8 U.S.C.
7 § 1225(b)(1)(B)(iii)(III); 8 C.F.R. § 1003.42(e). The expedited-removal statute does not limit the
8 countries to which an alien can be removed pursuant to Section 1231(b), *see* 8 U.S.C. § 1225(b),
9 so its expedited procedures for raising and assessing fear claims apply even when an alien is
10 removed somewhere other than his home country, *see, e.g.*, 8 U.S.C. § 1231(b)(1)(A)-(C) (listing
11 alien’s country of birth or citizenry as alternatives only where removal to the country from which
12 the alien arrived is unavailable).

13 Nor does the Petitioner’s preferred policy even make sense on its own terms. Yousufi
14 would have this Court order that he receive at least 15 days to move to reopen proceedings after
15 an adverse “reasonable fear” finding. Dkt. # 1, p. 21. But when the government makes a decision
16 to accept an individualized assurance from a foreign nation that an alien would not be tortured
17 upon removal that determination is conclusive for the Executive Branch. *See* 8 C.F.R. § 208.18(c).
18 Yet if the Government opts to take that course, the Petitioner’s proposed injunction still requires
19 two plus weeks for him to file a futile motion to reopen. While the Petitioner may welcome the
20 manufactured delay, public policy does not favor such protraction.

21 3. The creation of the novel due-process requirements for which the Petitioner
22 advocates is particularly misguided here because in his case, the Due Process Clause requires no
23 more process than what the political branches provide. The Supreme Court has long held that “the
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1 due process rights of an alien seeking initial entry” are no greater than “[w]hatever the procedure[s]
2 authorized by Congress.” *Thuraissigiam*, 591 U.S. at 139 (citation omitted). For Yousufi, who
3 has never been admitted “the decisions of executive or administrative officers, acting within
4 powers expressly conferred by Congress, are due process of law.” *Nishimura Ekiu v.*
5 *United States*, 142 U.S. 651, 660 (1892) (emphasis added); accord *Thuraissigiam*, 591 U.S. at 138-
6 140. To this end, the Supreme Court has also long applied the so-called “entry fiction” that all
7 “aliens who arrive at ports of entry * * * are treated for due process purposes as if stopped at the
8 border.” *Thuraissigiam*, 591 U.S. at 139 (citation omitted). Indeed, that is so, “even [for] those
9 paroled elsewhere in the country for years pending removal.” *Ibid*. The Court has applied the
10 entry fiction to aliens with highly sympathetic claims to having “entered” and developed
11 significant ties to this country. *See, e.g., Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (holding that a
12 mentally disabled girl paroled into the care of relatives for nine years must be “regarded as stopped
13 at the boundary line” and “had gained no foothold in the United States”); *Shaughnessy v.*
14 *United States ex rel. Mezei*, 345 U.S. 206, 214-215 (1953) (holding that an alien with 25 years of
15 lawful presence who sought to reenter enjoyed “no additional rights” beyond those granted by
16 “legislative grace”). Compared to these cases, it follows *a fortiori* that an unlawful entrant who
17 violates our laws and evades detection must, once found, be “treated as if stopped at the border.”
18 *Mezei*, 345 U.S. at 215.

19 Accordingly, the Supreme Court’s precedents indicate that aliens who evade detection in
20 crossing the border should be treated the same as those who are stopped at the border in the first
21 place. *See Thuraissigiam*, 591 U.S. at 138-140. While aliens who have been admitted may claim
22 due-process protections beyond what Congress has provided, even when their legal status changes
23 (*e.g.*, an alien who overstays a visa, or is later determined to have been admitted in error), *see*

1 *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49-50 (1950), the Supreme Court has never held that
2 aliens who have “entered the country clandestinely” are entitled to such additional rights, *The*
3 *Japanese Immigrant Case*, 189 U.S. 86, 100 (1903). Put differently, “once an alien gains
4 admission to our country and begins to develop the ties that go with permanent residence”—a
5 status that, by definition, unlawful entrants are legally barred from obtaining—“his constitutional
6 status changes accordingly.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). But before then, an
7 alien who clandestinely enters “does not become one of the people to whom these things are
8 secured by our Constitution by an attempt to enter, forbidden by law.” *United States ex rel. Turner*
9 *v. Williams*, 194 U.S. 279, 292 (1904); accord *Wong Yang Sung*, 339 U.S. at 49-50.

10 Congress has codified that distinction by treating all aliens who have not been admitted—
11 including unlawful entrants who evade detection for years—as “applicants for admission.”
12 8 U.S.C. 1225(a)(1) (“An alien present in the United States who has not been admitted * * * shall
13 be deemed for purposes of [the INA] an applicant for admission.”). That rule comports with the
14 Constitution. The Due Process Clause does not offer a windfall for those who successfully
15 circumvent our laws and evade detection. For constitutional purposes, it should not matter whether
16 an alien was apprehended “25 yards into U.S. territory” or 25 miles; nor should it matter whether
17 he was here unlawfully and evades detection for 25 minutes or 25 years. *See Thuraissigiam*,
18 591 U.S. at 139. When an alien has never been admitted to this country by immigration officers,
19 his constitutional status for due-process objections to removal is no different from an alien stopped
20 at the border.

21 The Due Process Clause does not give such aliens a constitutional entitlement to any extra
22 removal procedures beyond what the political branches have provided. *See Thuraissigiam*,
23 591 U.S. at 138-140. But that is precisely what Yousufi is requesting. Again, the INA is silent as
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1 to any specific process that aliens must be afforded under CAT before they are removed to a third
2 country, and FARRA delegates that decision to the Executive Branch. *See* 8 U.S.C. § 1231 note.
3 The March and July Guidance thus constitute the political branches' reasoned judgment as to what
4 that process should be in these circumstances, for aliens who have a final order of removal. For
5 aliens who were never admitted to the United States, the Executive's policies and decisions made
6 under FARRA "are due process of law." *Nishimura Ekiu*, 142 U.S. at 660 (emphasis added). And
7 as detailed, far from some exercise of "arbitrary power," *Japanese Immigrant*, 189 U.S. at 101,
8 that Guidance is exceedingly reasonable, and provides aliens with more than ample process to
9 effectuate their responsible removal. The Constitution requires nothing further.

10 **III. The Non-Merits Factors Likewise Support the Government, Not the**
11 **Petitioner**

12 The remaining considerations favor Federal Respondents. The Petitioner has not
13 established irreparable harm that warrants extraordinary relief. The Court may not assume that
14 "the burden of removal alone ... constitute[s] the requisite irreparable injury." *Leiva-Perez v.*
15 *Holder*, 640 F.3d 962, 969 (9th Cir. 2011) (quoting *Nken*, 556 U.S. at 435). Instead, a noncitizen
16 must show that there is a reason specific to his or her case, as opposed to a reason that would apply
17 equally well to all aliens and all cases, that removal would inflict irreparable harm. *Id.*

18 With respect to Yousufi's specific complaints, the Secretary of State already has the
19 authority to obtain "assurances" from a foreign country that an alien will not be tortured if removed
20 there, and those assurances are already dispositive with regard to CAT protection. 8 C.F.R.
21 § 208.18(c). The Petitioner has not identified any sort of imminent or irreparable harm from the
22 Government's ability to obtain these assurances categorically versus one-by-one. Nor could he:
23 Because either decision would rest on the same basis (*i.e.*, that no alien will be tortured), any
24 requirement for an "individualized" determination would amount to a paperwork demand.

1 Likewise, before Yousfui can be removed to a country who has not provided assurances, the March
2 and July Guidance already provides for notice and an eminently reasonable opportunity to raise a
3 fear of removal. Exhs. A and B. And the Petitioner cannot justify why the added measures that
4 he seeks—which, as noted, go well beyond the typical timeframe in expedited removal
5 proceedings—are necessary to forestall irreparable harm here. That is especially so given the lack
6 of any realistic risk that he will be tortured with the concurrence of foreign governments in third
7 countries where he has little or no preexisting connection.

8 By contrast, as underscored by the Supreme Court’s recent trio of stays in similar cases
9 involving immigration policy, the government suffers irreparable harm when the Executive Branch
10 is barred from implementing its immigration policies. *See Noem v. Nat’l TPS All.*, ___ U.S. ___,
11 145 S. Ct. 2728, 221 L. Ed. 2d 981 (2025); *Noem v. Doe*, 145 S. Ct. 1524 (2025); *D.V.D.*, 2025
12 WL 1732103. The government suffers an irreparable sovereign harm whenever its policy is
13 blocked by a court order. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in
14 chambers); *cf. Trump v. CASA, Inc.*, 2025 WL 1773631 at * 24 (holding that the Executive Branch
15 is irreparably harmed by an injunction that exceeds a district court’s power and improperly intrudes
16 on executive prerogatives). That harm is even more acute in the immigration context, where the
17 Constitution assigns preeminent power to the political branches. *See Galvan v. Press*, 347 U.S.
18 522, 531 (1954).

19 Moreover, the practical consequences of the injunction sought by the Petitioner only
20 underscore why the Constitution assigns immigration policy to the political branches. The
21 injunction would afford the Petitioner at least 25 days worth of delay if he decides to voice a fear
22 under CAT—regardless of how frivolous his claim. Because ICE often has only a short window
23 to remove an alien—including because travel documents are not valid indefinitely—this
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1 unfounded delay can scuttle an alien’s entire removal process, forcing ICE to start anew. And
2 because ICE has both limited legal authority and practical ability to detain him, the result may be
3 that the Petitioner indefinitely perpetuates his unlawful presence in the United States while it
4 restarts removal.

5 Nor are these costs in service of any public benefit. The United States relies on third
6 countries to facilitate the removal of aliens who are difficult to otherwise remove. Absent an
7 effective third-country removal policy, the United States is forced to retain (and often, release)
8 aliens into the community, some of whom may pose a danger. The public is not served by an
9 injunction that hollows the efficacy of this policy. *See Nken*, 556 U.S. at 436 (recognizing the
10 “public interest in prompt execution of removal orders”).

11 **CONCLUSION**

12 For the foregoing reasons, Federal Respondents respectfully requests that this Court deny
13 the Petition.

14 **CERTIFICATION**

15 I certify that this memorandum contains 7,118 words, in compliance with Local Civil Rule
16 LCR 7(e)(2).

17 DATED this 18th day of November, 2025.

18 Respectfully submitted,

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