


1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 SEATTLE, WASHINGTON

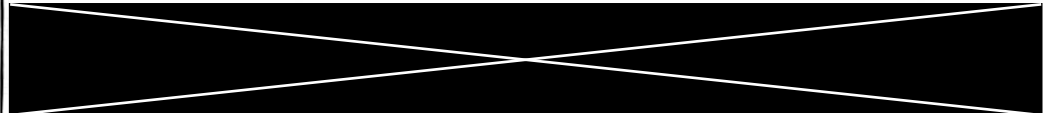
4 Mohammad Muzamil YOUSUFI,
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6 Petitioner,
7
8 v.
9 WAMSLEY, *et al.*

No. 25-02098

**PETITIONER'S REPLY TO
FEDERAL RESPONDENT'S
RETURN MEMORANDUM**

10 Introduction and Background

11 Mr. Yousufi is a member of 

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14 escaped from Afghanistan. He was granted withholding of removal to
15 Afghanistan by an immigration court in July 2025.

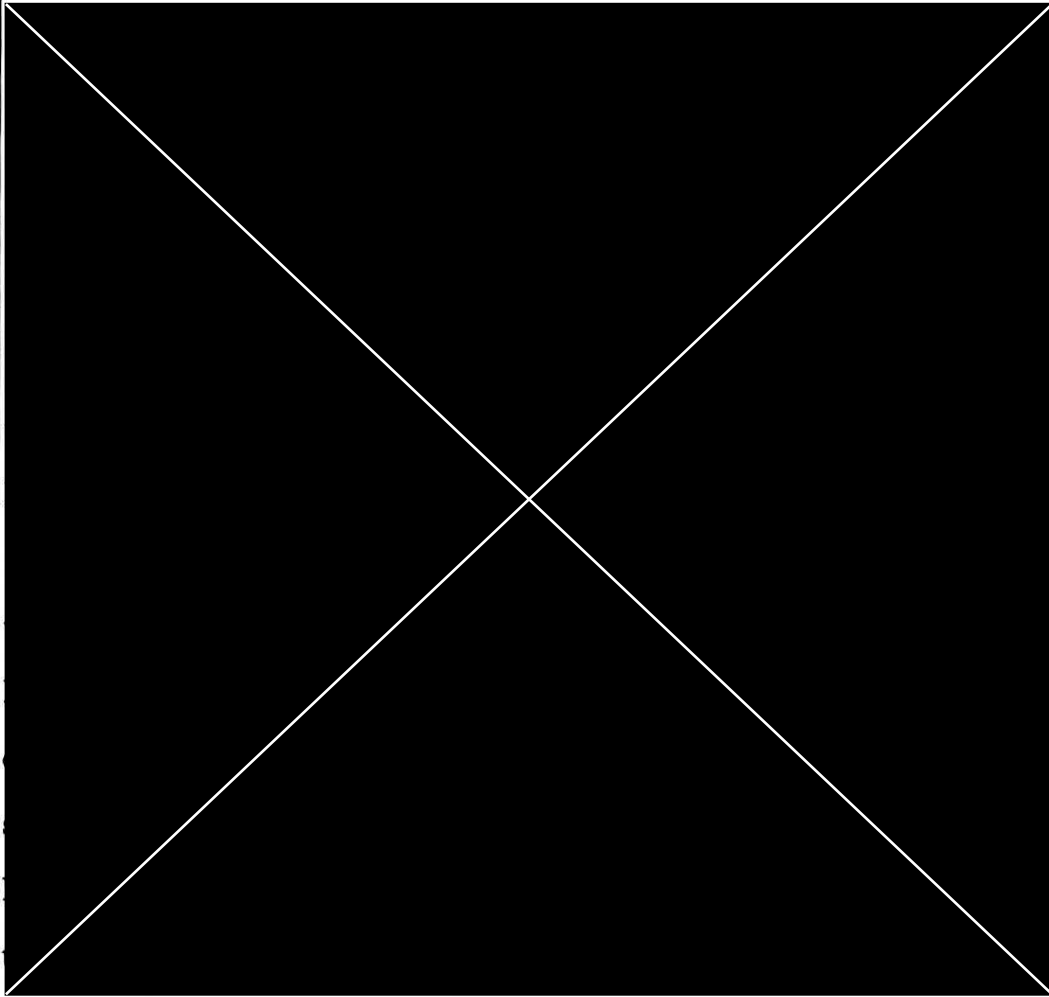
16 The immigration court found him ineligible for asylum because
17 he and his family – his mother, father, brother, and sister – walked into
18 the port of entry at San Ysidro, California and requested asylum at 3:30
19 p.m. on November 7, 2023, without having an appointment to do so. As
20 documented below, it now appears that he is eligible for asylum, and a
21 motion to reopen his administrative removal proceedings will be
22 appropriate.

23 Although the San Ysidro U.S. immigration agents decided to
24 allow the family into the U.S., and issued them a collective notice to
25 appear in immigration court, the fact that the family did not have pre-
approval to enter the port of entry precluded their eligibility for asylum

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1 under what is known as the Circumvention of Lawful Pathways (CLP)
2 rule, 8 C.F.R. § 1208.33.

3 At the time, then-22-year-old Mohammad, was significantly
4 scarred from  approximately a year
5 earlier.



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21 Mohammad's family now realized that they must flee
22 Afghanistan. Together – with the older brother – they entered Iran,

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24 ¹ Mohammad's elder brother is named Mohammad *Shabir* Yosufi.

25 ² Federal Respondent's Return Memorandum points out that the petitioner was only able to offer Mr. Yosufi's mother's statement regarding his mental state, at the time of the initial filing. The family has subsequently obtained an initial assessment from a licensed psychologist. A copy is attached as Exhibit 2.

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1 where they were safe for some time, but then unwelcome. They
2 managed to obtain tourist visas to enter Brazil but rightly realized that
3 they would not be able to remain there safely, and feared being deported
4 to Afghanistan.

5 With the last of their money the family trekked north to the U.S.
6 border where they hoped and expected that [REDACTED]
7 [REDACTED] would allow them entry and safety. Which it did.

8 In December of 2023 the family arrived in northern Virginia – the
9 suburbs of DC – where there is an Afghan community of ex-U.S.
10 contractors.

11 At this point, with the family safe from physical harm,
12 Mohammad's trauma began to emerge, and manifested in his leaving
13 his family in the summer of 2024, in an effort to deal with what he had
14 been through as prisoner of the Taliban. He travelled to British
15 Columbia and lived on his own in Vancouver for several months until he
16 was ready to reunite with his family in December 2024.

17 On December 4, 2024 at 1:50 p.m. Mohammad arrived at the port
18 of entry in Blaine, Washington and asked to reenter the U.S. He told the
19 officers that he believed he had been granted refugee status along with
20 his family. He was detained and was eventually granted withholding of
21 removal by the Tacoma Washington Immigration Court on July 9, 2025.
22 He remained detained until the immigration court ordered his release
23 on a \$10,000 bond on November 6, 2025.

24 Mohammad's elder brother was granted Withholding of Removal
25 after an immigration court hearing in Annandale Virginia on October
23, 2025.

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1 Petitioner Is Likely Now Eligible For Asylum

2 On November 2, 2025 the immigration judge, who granted
3 withholding to the petitioner’s brother, acted *sua sponte* and issued a
4 revised decision finding that the extraordinary circumstance of
5 Mohammad’s elder brother’s entry met the high burden of showing that
6 “exceptional and compelling circumstances” had prevented him from
7 obtaining the appointment required under the Circumvention of Lawful
8 Pathways (CLP) rule, 8 C.F.R. § 1208.33.

9 The immigration judge therefore found that the presumption of
10 ineligibility for asylum had been rebutted, and granted Mohammad
11 Shabir Yosufi asylum. (See Exhibit 1)

12 Because all of the family members’ stories are substantially tied
13 to the elder brother – and because the circumstances of their entering
14 the U.S. are identical, it’s clear that the immigration judge’s reasoning
15 is applicable to Mohammad’s case and that a reopening of his removal
16 proceedings is warranted to allow for consideration of his eligibility for
17 asylum.

18 Legal Analysis and Argument

19 The Federal Respondents allege that the due process prescribed
20 in a March 30, 2025 memorandum (Dkt. 8-1) is sufficient to meet the
21 requirements of the Fifth Amendment. It is not.

22 The memorandum states that:

23 “Prior to the alien’s removal to a country that had not previously
24 been designated as the country of removal, DHS must determine
25 whether that country has provided diplomatic assurances that
aliens removed from the United States will not be persecuted or
tortured. If the United States has received such assurances, and
if the Department of State believes those assurances to be

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1 credible, the alien may be removed without the need for further
2 procedures.”

3 *Guidance Regarding Third Country Removals;*
4 Memorandum from Kristi Noem, Secretary of Homeland
5 Security, dated March 30, 2025 (Dkt. 8-1 pp. 2-3)

6 The memorandum substitutes the judgment of DHS and the
7 Department of State, for the due process that should be granted to Mr.
8 Yousufi pursuant to the Fifth Amendment.

9 According to the memorandum, only if the agencies have “not
10 received those assurances, or if the Department of State does not believe
11 them to be credible” is Mr. Yousufi granted any due process procedure.

12 “DHS will first inform the alien of removal to that country.
13 Immigration officers will not affirmatively ask whether the alien
14 is afraid of being removed to that country. DHS is taking this
15 approach in line with its determination in mid-2024 that such
16 questioning may be suggestive and that asking them leads to false
17 claims rendering the immigration system as a whole less efficient.
18 Securing the Border, 89 Fed. Reg. 48710, 48743 (June 7, 2024)
19 (noting that aliens are “more likely to respond in the affirmative,
20 even if they do not in fact have a fear of return or intention of
21 seeking asylum” when asked affirmative fear questions);
22 Securing the Border, 89 Fed. Reg. 81156, 81235 (Oct. 7, 2024). [...] In cases where the alien affirmatively states a fear, USCIS will generally screen the alien within 24 hours of referral from the immigration officer. This screening may be done remotely. 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.”

23 *Guidance Regarding Third Country Removals;*
24 Memorandum from Kristi Noem, Secretary of Homeland
25 Security, dated March 30, 2025 (DKT. 8-1 p. 3)

In practice, the agency tasked with removing Mr. Yousufi frequently notifies a foreign national of the impending removal in early or mid-evening. A time of day when it is difficult to reach legal counsel

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1 and not possible to thoughtfully assess the conditions in a newly-
2 proposed third country.

3 Usually the initial notice is followed up within four or five hours
4 with the subject being moved to an airfield and then flown to a staging
5 location to await removal to the third country. Even if the actual
6 removal from U.S. territory is not accomplished until 24 hours have
7 passed, the agency actions during that 24-hour period are severely
8 interruptive of any meaningful ability for the alien to consult with legal
9 counsel or research the third country conditions.³

10 The due process described in Secretary Noem's memorandum is
11 not sufficient to provide ample notice, and the right to be heard in
12 opposition to the proposed removal.

13
14 ³ The Declaration of Brett Booth (Dkt. 8) states that third country removal to
15 "Switzerland, Canada, Brazil, and Mexico have been considered." None of these
16 countries are likely to accept Mr. Yousufi, and none have agreed to do so during the four
17 months since his Withholding of Removal was granted. In 2025 the Trump
18 administration has conducted third country removals to South Sudan, El Salvador,
19 Rwanda, and Uzbekistan. The administration has attempted third country removals to
20 Libya, but was stopped by the now-stayed injunction in *D.V.D. v. DHS*, 1:25-cv-10676
(D. Mass.). See *Third Country Deportation Watch*;
<https://www.thirdcountrydeportationwatch.org>.

21 Additionally, the 1951 Refugee Convention and the U.N. Convention Against Torture bar
22 countries from sending someone to a country that will then send them back to the country
23 of persecution or torture, a phenomenon known as "chain refoulement."

24 According to the American Immigration Council, many of the countries who have
25 received third-country deportees from the United States have proceeded to send them
back to their home countries—including people, such as this petitioner, who have
specifically received protection in the United States from being sent back to the country
of persecution. Officials in countries who have agreed to accept third-country migrants
have said that the aim of the agreement is to take them temporarily before sending them
home. See *What Are Third-Country Removals? Understanding Their Use In U.S.*
Immigration Policy Fact Sheet; <https://www.americanimmigrationcouncil.org/fact-sheet/what-are-third-country-removals-factsheet/>

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1 Mr. Yousufi asks the Court to find that due process requires the
2 following minimum procedural protections.

- 3 1. That he be notified at least seven (7) days in advance of
4 removal to any third country, including the name of the third
5 country.
- 6 2. That he be informed of his right to raise an issue of his
7 reasonable fear of being removed to the third country at the
8 time of the notice.
- 9 3. That he be given the opportunity to raise issues of reasonable
10 fear of being removed to that third country before a USCIS
11 Asylum Officer.
- 12 4. That he be afforded the due process accorded under 8 C.F.R.
13 208.31 including the right to review by an immigration judge.
14

15 Notice of removal to a third country should trigger reasonable
16 fear protections based upon that country's particular conditions and
17 possible threats. Mr. Yousufi was not informed of removal to a
18 particular third country during the proceedings at which he was granted
19 withholding of removal. Had a particular third country been stated to
20 him during those proceedings he would have had the process and
21 opportunity to address any issues of danger in that particular country.

22 Because he has not had notice and the opportunity to address
23 conditions in a particular third country to which he is about to be
24 removed, due process requires that he be allowed to raise any reasonable
25 fear prior to removal. *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 LX
344191 (W.D. Wash. July 30, 2025)

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1 Foreign nationals who have been granted withholding of removal
2 under U.S. immigration law are entitled to due process rights under the
3 Fifth Amendment, which guarantees procedural protections during
4 deportation proceedings. In the 9th Circuit these rights include the right
5 to a full and fair hearing, as well as the right to present their case
6 without fundamental unfairness. A violation of due process occurs if the
7 proceedings are so fundamentally unfair that the individual is
8 prevented from reasonably presenting their case. An individual must
9 demonstrate both a violation of rights and resulting prejudice to succeed
10 on a due process claim. *See Campos-Sanchez v. INS*, 164 F.3d 448, (9th
11 Cir. 1999); *Padilla-Martinez v. Holder*, 770 F.3d 825 (9th Cir. 2014).

12 Lastly, Mr. Yousufi does not rely on the arguments raised in
13 *D.V.D. v. United States Dep't of Homeland Sec.*, Civil Action No. 25-
14 10676-BEM, 2025 LX 176890 (D. Mass. Mar. 29, 2025), as the sole basis
15 for his request for due process. The procedures in the March 30, 2025
16 memorandum that Federal Respondents rely on, do not comply with the
17 Due Process Clause of the Fifth Amendment. Mr. Yousufi respectfully
18 asks the Court to require the agencies to comply.

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1
2 Certificate of Service

3
4 I William Frick do hereby declare that I caused to be delivered,
5 via electronic filing, the following listed documents to:

6
7 United States Attorney
8 700 Stewart Street, Suite 5220
9 Seattle, WA 98101
10 Telephone: (206) 553-7970

11 Documents:

12 1. Petitioner's Reply

13 Dated this 9th day of December 2025

14
15 /s/ William Frick

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