UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

E.Q., et al., Plaintiffs, v. **U.S. DEPARTMENT OF HOMELAND SECURITY, et al.**, Defendants.	Case No. 25-cv-791 (CRC)

OPINION AND ORDER

Plaintiff E.Q. is a native and citizen of Afghanistan who entered the United States illegally. He was ordered removed in expedited-removal proceedings based on his failure to establish a reasonable probability of persecution and the application of two mandatory bars to asylum and withholding of removal. He joined with three organizations (collectively, "Plaintiffs") to challenge the Department of Homeland Security ("DHS") and Executive Office for Immigration Review ("EOIR") Rules allowing for consideration of mandatory bars in expedited-removal proceedings. In a previous memorandum opinion and order, the Court denied Plaintiffs' motion to stay E.Q.'s removal while the case was being litigated because it concluded he likely lacked standing. E.Q. now moves for reconsideration of that ruling based on what he claims is new evidence. But the evidence in question is not new; it was previously available and in E.Q.'s possession. And, even if the Court were to consider it, it would not change the outcome. The Court will therefore deny E.Q.'s motion for reconsideration.

I. Background

The Court incorporates the factual and procedural background from its memorandum opinion denying Plaintiffs' motion to stay E.Q.'s removal. See ECF 40 ("Mem. Op. & Order")

at 6–11. In brief, E.Q. is a native and citizen of Afghanistan who entered the United States illegally across the Mexican border in January 2025. Compl. ¶ 11; ECF 25 ("Opp'n to Mot. to Stay") at 6; ECF 24-1 (First Credible-Fear Interview Record ("First CFI Record")) at 21 (page numbers designated by CM/ECF). He was ordered removed after receiving a negative credible-fear determination in the first of two expedited-removal proceedings.[1] See First CFI Record at 2, 12. The asylum officer based her negative determination on two grounds: (1) E.Q.'s failure to establish a nexus between any reasonable probability of persecution and a protected ground and (2) the application of two mandatory bars to asylum and withholding of removal. See id. at 1–2, 12, 37; Mem. Op. & Order at 13–17. E.Q. then joined with three immigrants' rights organizations to file this lawsuit challenging the DHS and EOIR rules that allow for consideration of the mandatory bars in expedited-removal proceedings ("the Rules"). Plaintiffs moved to stay E.Q.'s removal while the case was litigated. See ECF 23.

The Court denied Plaintiffs' motion to stay E.Q.'s removal because it concluded that he likely lacked standing to challenge the Rules and thus was unlikely to succeed on the merits of his claim. Mem. Op. & Order at 12–13. It determined that E.Q.'s alleged injury—his first negative credible-fear determination and associated removal order—was neither fairly traceable to the Rules nor likely redressable by a court order invalidating them. Id. at 13. Specifically, E.Q.'s failure to establish future persecution because of a protected ground (the asylum officer's "no-nexus" finding) "provided an independent and sufficient legal basis" to support his first negative credible-fear determination, so "even absent application of the Rules," E.Q.'s injury

[1] E.Q.'s first credible-fear interview and negative determination are the bases for his claim in this lawsuit. After the suit was filed, he received a second interview and negative determination, see Renewed Mot. at 6, which are not relevant for purposes of this motion but are the reason why government alternatively argues that his claim is moot, see Opp'n to Mot. to Stay at 29–33.

would have been the same. Id. Accordingly, the challenged Rules were not a but-for cause of his injury. Id.

E.Q. now moves for reconsideration of that ruling because he claims to have discovered previously unavailable evidence: the February 25, 2025, Immigration Judge ("IJ") decision affirming E.Q.'s first negative credible-fear determination. See ECF 36 ("Mot.") at 1. He argues that this decision suggests he does in fact have standing to challenge the Rules because it comes by way of an unexplained "check-the-box" form stating merely that E.Q. failed to establish a reasonable probability of persecution. Id. at 2. As a result, he reasons, the Court should construe the decision to encompass affirmance based on "the mandatory bars, the no-nexus finding, both findings, or different grounds altogether." Id.

For the following reasons, the Court will deny E.Q.'s motion for reconsideration of its order denying the motion to stay his removal.

II. Legal Standards

"[C]ourts in this jurisdiction have reached different conclusions as to whether Rule 54(b) or Rule 59(e) governs a motion seeking reconsideration of an order granting or denying preliminary injunctive relief," and "[t]he D.C. Circuit does not appear to have ruled directly on which standard applies." Banks v. Booth, 518 F. Supp. 3d 57, 62 (D.D.C. 2021) (collecting cases).

Under Rule 54(b), the more lenient standard, a court may reconsider an interlocutory order "only when the movant demonstrates: (1) an intervening change in the law; (2) the discovery of new evidence not previously available; or (3) a clear error in the first order." Id. (quoting Dunlap v. Presidential Advisory Comm'n on Election Integrity, 319 F. Supp. 3d 70, 81 (D.D.C. 2018)). Reconsideration may also be appropriate where "a controlling or significant

change in the . . . facts has occurred since the submission of the issue to the court." Id. (alteration in original) (quoting McLaughlin v. Holder, 864 F. Supp. 2d 134, 141 (D.D.C. 2012)). The burden rests on the moving party to show that denying reconsideration would cause some harm. Id. (quoting United States v. Dynamic Visions, Inc., 321 F.R.D. 14, 17 (D.D.C. 2017)). Similar considerations guide a Rule 59(e) analysis, but such motions are particularly "disfavored," and "the moving party bears the burden of establishing *extraordinary circumstances* warranting relief." Id. at 62–63 (citation modified).

The Court need not resolve which standard applies here because it concludes E.Q. has not satisfied even the more flexible Rule 54(b) standard.

III. Analysis

The Court will deny E.Q.'s motion because he has not demonstrated any of the factors warranting reconsideration: an intervening change in the law, newly discovered evidence that was previously unavailable, a clear error in the first order, or a change in facts.

E.Q. premised his reconsideration motion on the discovery of evidence he alleged was previously unavailable: the IJ decision affirming his first negative credible-fear determination. See Mot. at 1, 6. But E.Q. now concedes that the IJ decision is not newly discovered, previously unavailable evidence. ECF 39 ("Reply") at 1. To the contrary, the IJ decision has been in E.Q.'s possession since at least May 14, 2025,[2] more than two weeks before the Court's May 29, 2025, hearing on Plaintiffs' motion to stay his removal and more than a month before the Court issued its opinion and order denying that motion. See id.; Mem. Op. & Order at 19 (dated June 12, 2025); ECF 35 (sealed version of memorandum opinion and order dated June 12, 2025).

[2] The government maintains that the IJ decision was served on E.Q. as early as February 25, 2025, at the conclusion of the IJ hearing. ECF 38 at 1, 7.

E.Q. urges the Court to exercise its discretion to consider this evidence anyway because it is necessary to "correct a clear error or prevent manifest injustice." Reply at 1 (citation omitted). The Court disagrees—even considering E.Q.'s motion under the more lenient standard of Rule 54(b) *and* treating the IJ decision as newly discovered evidence would not change the outcome of the motion. The IJ decision simply affirmed the asylum officer's determination that E.Q. "had not established a reasonable possibility of persecution." See Mot. at 5. The Court reads this decision to affirm the asylum officer's denial of relief on both grounds: the no-nexus finding and the application of the mandatory bars. As the Supreme Court has recognized in the habeas context:

> The maxim is that silence implies consent, not the opposite—and courts generally behave accordingly, affirming without further discussion when they agree, not when they disagree, with the reasons given below. The essence of unexplained orders is that they say nothing. We think that a presumption which gives them *no* effect—which simply "looks through" them to the last reasoned decision—most nearly reflects the role they are ordinarily intended to play.

Ylst v. Nunnemaker, 501 U.S. 797, 804 (1991); see also Suce v. Taylor, 572 F. Supp. 2d 325, 334 (S.D.N.Y. 2008) ("An appellate court that affirms a ruling without comment is presumed to have relied on the same grounds as the lower court."); Moody v. Harrington, No. 13 C 4119, 2016 WL 2897402, at *4 (N.D. Ill. May 18, 2016) ("[A]s a general matter, when a lower state court bases its ruling on a particular line of reasoning and the appellate court affirms the judgment without a ruling, the presumption is that the affirming court did so based on the same grounds articulated by the trial court."). E.Q., who bears the burden of showing both that he is entitled to reconsideration and that he has standing, has not identified anything in the IJ's decision to rebut this presumption and suggest the affirmance was on only one of the two grounds offered by the asylum officer.

Reconsideration is not warranted because the Court's prior analysis remains sound: E.Q. likely lacks standing, and nothing in his motion alters that conclusion. The Court will therefore deny his motion.[3]

IV. Conclusion

For the foregoing reasons, it is hereby

ORDERED that [ECF 36] Plaintiff E.Q.'s Emergency Motion to Alter the June 12, 2025, Memorandum Denying his Stay of Removal is DENIED.

SO ORDERED.

CHRISTOPHER R. COOPER
United States District Judge

Date: June 26, 2025

[3] The Court further notes that, even if E.Q. were correct that the IJ decision impacted the standing analysis, to prevail on the ultimate removal motion, he would also have to show a likelihood that (1) his claim is not moot even though he received a second negative credible-fear determination and removal order that were unrelated to the Rules and (2) he would succeed on the merits of his challenge to the Rules.