

Delia Salvatierra, AZ Bar No. 026400
SALVATIERRA LAW GROUP
1817 N 3rd Street
Phoenix, AZ 85004
Phone: (602) 274-1992
Email: ds@salvatierrallaw.com

Robert Pauw, WSBA No. 13613
GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
Seattle, WA 98104-1003
Phone: (206) 682-1080
Email: rpauw@ghp-law.net

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

E.Q.,

Petitioner,

v.

John Cantú, *et al.*,

Respondents.

Case No. cv-25-02442-PHX-KML (CDB)

**MOTION FOR PRELIMINARY
INJUNCTION**

INTRODUCTION

Petitioner E.Q. is currently in the custody of U.S. Immigration and Customs Enforcement (ICE) at the Eloy Detention Center in Eloy, Arizona. He is at risk of being deported from the United States – either to Afghanistan where he will likely be tortured or killed by the Taliban because a close family member worked as an interpreter for the prior Afghan government and U.S. military, or to an undesignated third country where he may be persecuted or tortured. Petitioner seeks a preliminary injunction so that he can

1 remain in the United States until he has a meaningful opportunity to apply for asylum
2 and related protection from persecution and torture, as required by 8 U.S.C.
3 §1225(b)(1)(B) and 8 C.F.R. §208.30.

4 **LEGAL BACKGROUND**

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

8 Asylum provides full protection against deportation to any country and a pathway
9 to lawful permanent resident status for individuals who have a well-founded fear of
10 persecution in their home country. 8 U.S.C. § 1158. This means the person cannot be
11 deported to their country of origin or to any other country.

12 Individuals who are deemed ineligible for asylum may qualify for withholding of
13 removal. 8 U.S.C. §1231(b)(3)(A). Withholding of removal is a mandatory form of
14 protection for those who would likely be persecuted. If a person is granted withholding
15 of removal as to a particular country, DHS is prohibited from removing that person to
16 that country. An individual is ineligible for withholding of removal if they have, among
17 other things, committed certain serious crimes or provided “material support” to terrorist
18 groups. *See* 8 U.S.C. §1231(b)(3)(B).

19 Pursuant to the Foreign Affairs Reform and Restructuring Act (FARRA),
20 Congress instructed that the U.S. government may not “expel, extradite, or otherwise
21 effect the involuntary return of any person to a country in which there are substantial
22

1 grounds for believing the person would be in danger of being subjected to torture.” Pub.
2 L. 105-277, §2242(a), 112 Stat. 2681, 2681-822 (1999) (codified as statutory note to 8
3 U.S.C. §1231). This mandate applies to all persons and has no exceptions.

4 **FACTUAL BACKGROUND**

5 Petitioner E.Q. is a native and citizen of Afghanistan. A close family member of
6 E.Q. worked in Afghanistan for several years as an interpreter for the prior Afghan
7 government and U.S. military. As a result, the Taliban suspected that E.Q. was working
8 with his family member as an American spy. While E.Q. was in Afghanistan, the Taliban
9 followed him and tried to collect information about him from his friends and relatives. In
10 the spring of 2024, the Taliban raided E.Q.’s home, where he lived with his family;
11 accused him of working with his family member as an “American spy”; confiscated his
12 family’s electronic devices; and broke their television. Dkt. 2-1, p. 58. The Taliban also
13 sent summonses to E.Q. directing him to report to a government security office for
14 questioning. Dkt No. 2-1, pp. 1-7. This puts him at significant risk of illegal detention,
15 interrogation, torture, and potentially even execution. Dkt. 2-1, p. 22, ¶29. *See also id.*,
16 p. 10, ¶9 (“[t]he security situation is still fluid, unstable, and violent”); pp. 17-19 (pattern
17 and practice of torturing and killing individuals suspected of having assisted the U.S.
18 government.). Thus, there are substantial grounds for believing that E.Q. would be in
19 danger of being persecuted and tortured if he is forced to return to Afghanistan.

20
21 After receiving the summonses, E.Q. feared for his life, went into hiding, and
22 ultimately fled Afghanistan in or about August 2024. He arrived in the United States on

1 or about January 16, 2025. Upon his arrival in the United States, E.Q. was apprehended
2 by U.S. Customs and Border Protection. Dkt. 2-1, pp. 58-60. After he expressed a fear
3 of removal to Afghanistan, he was referred for a credible fear interview (CFI) with an
4 asylum officer from U.S. Citizenship and Immigration Services (USCIS).

5 At the CFI, the asylum officer found E.Q. ineligible for asylum based on the so-
6 called “Securing the Border” regulations that were adopted in July 2024. Dkt. 2-1, pp.
7 48-49 (Record of Negative Credible Fear and Reasonable Probability Finding). See 89
8 Fed. Reg. 48710 (6/4/2024) (Interim Final Rule), 89 Fed. Reg. 81156 (10/7/2024) (Final
9 Rule), codified at 8 C.F.R. §208.35(a). The asylum officer denied withholding of removal
10 based at least in part on the finding that E.Q. would be subject to a “mandatory bar”
11 because he had been employed at a place of business in Afghanistan that provided
12 services to the general public, including members of the Taliban. *Id.*¹ And the asylum
13 officer denied E.Q.’s request for protection under the CAT on the basis that E.Q. did not
14 establish a reasonable probability that he would suffer severe physical or mental pain or
15 suffering if forced to return to Afghanistan. Dkt. 2-1, pp. 48-49 (Record of Negative
16 Credible Fear and Reasonable Probability Finding). The asylum officer’s decision was
17

18
19
20 ¹ On March 17, 2025, E.Q., along with three organizational plaintiffs, filed a lawsuit in
21 the U.S. District Court for the District of Columbia challenging DHS’s decision to apply
22 mandatory bars during credible fear screenings. The U.S. District Court for the District
of Columbia subsequently found that E.Q. does not have standing to challenge DHS’s
decision to apply mandatory bars in this manner. *E.Q. v. DHS*, Case No. 25-cv-791
(CRC) (D.D.C.), Order dated June 26, 2025.

1 affirmed by an immigration judge on February 25, 2025. Dkt. 2-1, pp. 50-53 (Decision
2 of IJ (2/25/2025)).²

3 The Securing the Border regulations, which were used as a basis for finding E.Q.
4 ineligible for asylum, have since been found unlawful and vacated. *Las Americas v. DHS*,
5 2025 U.S. Dist. LEXIS 94453, 2025 WL 1403811 (D.D.C. 2025).

6 ICE has designated Afghanistan as the country of removal. Dkt. 2-1, p. 45.
7 However, under ICE's current policies E.Q. may be deported to a country other than
8 Afghanistan.³ E.Q. fears that if removed to a third country, he could be subjected to
9 persecution or torture in that country. He is entitled, but has not had an opportunity, to
10 apply for withholding of removal and CAT protection as to any third country of
11 removal. He seeks an order that he cannot be removed to a third country unless he has
12 an opportunity to apply for withholding of removal and CAT protection as to such
13
14

15 ² On April 14, 2025, E.Q. was reinterviewed by an asylum officer. On April 30, 2025,
16 E.Q. received a second negative credible fear determination. The asylum officer found
17 E.Q. ineligible for asylum based on the Securing the Border regulations; his requests for
18 withholding of removal and CAT relief were denied on the basis that his testimony was
19 not credible. Dkt. 2-1, pp. 54-55 (Record of Negative Credible Fear and Reasonable
20 Probability Finding (4/30/2025)). That decision was affirmed by an immigration judge
21 on May 9, 2025. Dkt. 2-1, pp. 56-57 (Decision of IJ (5/9/2025)).

22 ³ On March 30 and July 9, 2025, ICE issued two independent memorandums purporting
to expand their authority as to third country removals. *See* DHS, Guidance Regarding
Third Country Removals, March 30, 2025, https://iptp-production.s3.amazonaws.com/media/documents/2025.03.30_DHS_Guidance_Regarding_Third_Country_Removals.pdf [hereinafter "March 30, ICE Memo"]; *see also* Reuters, *ICE may deport migrants to countries other than their own with just six hours notice, memo says*, July 14, 2025, <https://www.reuters.com/world/us/ice-may-deport-migrants-countries-other-than-their-own-with-just-six-hours-2025-07-13/> [hereinafter "Reuters, July 9 ICE Memo"].

country. He also seeks an order preventing his removal to Afghanistan because he is entitled to protection under the CAT.

LEGAL ARGUMENT

A. Standard for Preliminary Injunction

To obtain preliminary injunctive relief, a plaintiff must show (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1142 (9th Cir. 2018), citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). When the government is a party, the last two factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Alternatively, courts may issue a preliminary injunction based on a “sliding scale” test if there are “serious questions going to the merits . . . and the balance of hardships tips sharply in the plaintiff’s favor.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

B. Likelihood of Success on the Merits

Before the Respondents remove E.Q. either to Afghanistan or any third country, E.Q. is entitled to a lawful credible fear interview under 8 U.S.C. §1225(b)(1)(B) and 8 C.F.R. §208.30, at which an asylum officer decides whether E.Q. has a “credible fear of persecution” as defined in §1225(b)(1)(B)(v). To date, E.Q. has not been provided with

1 such an interview. His removal from the United States without such an interview would
2 violate the Immigration and Nationality Act, 8 U.S.C. §1225(b)(1), and the CAT.

3 1. Jurisdiction.

4 As an initial matter, Petitioner's claims are reviewable in habeas proceedings. *See*
5 28 U.S.C. §2241(c) (writ of habeas extends to persons who are detained in violation of
6 the Constitution or laws or treaties of the United States); *Trump v. J.G.G.*, 145 S. Ct.
7 1003, 1006 (2025) (an individual subject to detention and removal is entitled to judicial
8 review in habeas as to "questions of interpretation and constitutionality"). In addition,
9 this court has jurisdiction to issue a mandamus order under 28 U.S.C. §1361 to compel
10 the Respondents to perform a duty owed to E.Q. – namely to conduct a lawful credible
11 fear interview under §1225(b)(1)(B) and 8 C.F.R. §208.30.

12 According to §1225(b)(1)(A)(ii), if a person subject to expedited removal
13 expresses an intention to apply for asylum or a fear of persecution – as E.Q. has – then
14 the inspecting immigration officer "shall refer the [noncitizen] for an interview by an
15 asylum officer under subparagraph (B)." According to §1225(b)(1)(B)(i), the asylum
16 officer "shall conduct" a credible fear interview (CFI) to determine whether the person
17 has a "credible fear of persecution," which is defined as a "significant possibility" of
18 establishing eligibility for asylum. 8 U.S.C. § 1225(b)(1)(B)(v); 8 C.F.R. §208.30(e)(2).
19 Here, although an asylum officer conducted an interview, that interview was not
20 conducted in accordance with §1225(b)(1). Instead, it was conducted under procedures
21 that have since been found to be illegal and have been vacated. *See Las Americas v. DHS*,
22

1 2025 U.S. Dist. LEXIS 94453, 2025 WL 1403811 (D.D.C. 2025). Notably, under the
2 “Securing the Border” regulations in place at the time of E.Q.’s CFI, noncitizens were
3 categorically ineligible for asylum if they did not appear at a port of entry after scheduling
4 an appointment through CBP One or demonstrate “exceptionally compelling
5 circumstances” for appearing without an appointment. 89 Fed. Reg. 81156 (Oct. 7, 2024).
6 The Court in *Las Americas* found that, “[b]y conditioning asylum on a nonimmigrant’s
7 place of arrival, the Rule conflicts with the INA in a ‘noteworthy’ and ‘inharmonious’
8 way” and thus concluded that the limitation on asylum eligibility is unlawful. *Las*
9 *Americas*, 2025 WL 1403811 at 14-15.

10 Absent the “Securing the Border” rule, E.Q. would have been able to apply for
11 asylum. To have a credible fear of persecution, an applicant need only show a “significant
12 possibility” of eligibility for asylum. 8 U.S.C. § 1225(b)(1)(B)(v). An applicant is
13 eligible for asylum if they show only a 10% chance of future persecution. *INS v. Cardoza-*
14 *Fonseca*, 480 U.S. 421, 440 (1987). In contrast, E.Q. was required to show a “reasonable
15 probability” of eligibility for withholding of removal. 89 Fed. Reg. 81156 (Oct. 7, 2024).
16 The “reasonable probability” standard is, by Defendants’ own admission, higher than
17 “significant possibility,” and it also requires more detailed evidence. *Id.* Thus, E.Q. was
18 never given the CFI required by §1225(b)(1)(B) – one in which the applicant has an
19 opportunity to show a “significant possibility” of eligibility for asylum. Thus, there is no
20 lawful order of removal against E.Q. that the Respondents can execute. *See*
21 §1225(b)(1)(A)(i) (if the noncitizen indicates an intention to apply for asylum or a fear
22

1 of persecution, then the inspecting officer does not issue an order of removal but refers
2 the case to an asylum officer); §1225(b)(1)(B)(ii) and (iii) (if no credible fear interview
3 has been conducted as required under §1225(b)(1)(B), then an order of removal cannot
4 be issued). This court has jurisdiction under the mandamus statute to order Respondents
5 to provide E.Q. with a lawful credible fear interview as required under §1225(b)(1).

6 Section 1252(a)(2)(A) does not preclude jurisdiction. In *Mendoza-Linares v.*
7 *Garland*, 51 F.4th 1146 (9th Cir. 2022), the Ninth Circuit found that §1252(a)(2)(A)
8 deprived the district court of jurisdiction over the petitioner's claim that the credible fear
9 interview was unlawful. However, that case is distinguishable. After the expedited
10 removal order was issued in *Mendoza-Linares*, the petitioner filed a petition for review
11 under §1252 "seeking review of the expedited removal order and the IJ's determination."
12 *Mendoza-Linares*, 51 F.4th at 1153. Specifically, the petitioner sought review of the
13 credible fear determination. In order to grant relief, the court would have had to review
14 "the merits of a credible fear determination" *Id.* at 1155. But that is not required in this
15 case. There is a difference between reviewing the merits of an agency's decision (which
16 is precluded by *Mendoza-Linares*) and determining that the agency had no authority to
17 issue a removal order against E.Q. based on the "Securing the Border" regulation. In this
18 case, the U.S. District Court for the District of Columbia has determined that the agency
19 had no authority to issue the type of order that it issued against E.Q. *Las Americas, supra.*
20
21
22

1 The question whether the Respondents can enforce a removal order that they had no
2 authority to issue was neither presented to the court nor resolved in *Mendoza-Linares*.

3 This court's decision in *Tabatabaeifar v. Scott*, 2025 U.S. Dist. LEXIS 91554,
4 2025 WL 1397114 (D.Az. 5/14/2025), is more on point. In that case, as here, DHS failed
5 to provide a credible fear interview as required by §1225(b)(1)(B). "Rather than follow
6 the procedure mandated by 8 U.S.C. §1225(b) and 8 C.F.R. §208.30 for the expedited
7 removal of unauthorized [noncitizens] who claim asylum," the asylum officer deemed
8 the petitioner ineligible for asylum and assessed her only for CAT relief. *Id.* at *1. The
9 petitioner then filed a habeas petition alleging, *inter alia*, that DHS had failed to assess
10 her asylum claim in violation of 8 U.S.C. § 1225(b)(1) and 8 C.F.R. § 208.30. This court
11 held that "§1252(a)(2)(A) does not apply" because:

12 Respondents do not purport to follow Section 1225(b) in this case, nor do they purport
13 to remove Petitioner pursuant to Section 1225(b). ... Since Petitioner was not
14 subjected to any expedited removal proceedings pursuant to Section 1225(b), Section
1252(a)(2)(A) does not strip the court of jurisdiction over Petitioner's claims.

15 *Id.* at *4 (footnotes omitted). This court distinguished *Mendoza-Linares*, noting that it
16 stands for the proposition that "jurisdiction over the merits of individual expedited
17 removal orders" is precluded. *Id.* at n.4 (emphasis added). Jurisdiction is not precluded
18 where DHS takes action that it is not authorized to take.⁴

19 E.Q.'s claim challenging third-country removal is not precluded by
20 §1252. Because his third-country claim does not challenge any alleged final order of
21

22 ⁴ In *Tabatabaeifar*, the government did not purport to follow §1225(b)(1). Here, the
Respondents may claim that they purported to follow §1225(b)(1). But that is not

1 removal or credible fear decision (which relate to Afghanistan), it is not barred by
2 §1252(a)(2)(A). The claim that it is unlawful to deport a person to a previously
3 undesignated third country is not a challenge to an order of removal and thus not barred
4 by §1252(a)(5) or (b)(9). *See, e.g., Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007)
5 (“[b]y virtue of their explicit language, both §§1252(a)(5) and 1252(b)(9) apply only to
6 those claims seeking judicial review of orders of removal”); *Aden v. Nielsen*, 409 F. Supp.
7 3d 998, 1006 (W.D. Wash. 2019) (where DHS attempted to deport the petitioner to
8 Somalia without first reopening removal proceedings to provide an opportunity to apply
9 for withholding or CAT relief, “the Court does not need to review the removal order”).

10 Nor does §1252 bar Petitioner’s challenge to the denial of CAT relief. For persons
11 who have been ordered removed under §1225(b)(1), review of such claims occurs in
12 habeas proceedings, subject to the limitations in §1252(e)(2). *See* §1252(a)(4). Section
13 1252(e)(2) limits judicial review in habeas proceedings of “any determination made
14 under section [8 U.S.C. §1225(b)(1)].” There are two components to a determination
15 under §1225(b)(1): first, a decision to issue an order of removal, *see* 8 U.S.C.
16 §1225(b)(1)(A)(i) (order of removal not issued if noncitizen indicates an intention to
17 apply for asylum); and second, a decision on whether there is a “significant possibility”
18 that the person can establish eligibility for asylum under 8 U.S.C. §1158, *see*

19
20
21
22
determinative. The question is not what the government says it purported to do; rather,
the question is whether the government actually has authority to take action. And here,
another court has already determined that the government does not have the authority to
remove E.Q. based on an unlawful credible fear determination using procedures that have
been vacated. *See Las Americas v. DHS, supra.*

1 §1225(b)(1)(B)(v). Neither of those components has occurred in this case; thus a final
2 order of removal under §1225(b)(1) has not been issued and §1252(e)(2) does not apply.
3 Moreover, a decision denying CAT relief does not fall into either one of the
4 categories. As the Supreme Court recently explained:

5 [A] CAT order is not a final order of removal because “it is not an order
6 ‘concluding that the alien is deportable or ordering deportation.’” ... And what is
7 more, we held, a CAT order “does not disturb” or “affect the validity” of a final
8 order of removal. ... We therefore held that the BIA’s CAT order “d[id] not merge
into” a final order of removal for purposes of judicial review because only “rulings
that affect the validity of the final order of removal” merge into that order.

9 *Riley v. Bondi*, 222 L. Ed. 2d 497, 507 (June 26, 2025), quoting *Nasrallah v. Barr*, 590
10 U.S. 573, 582-583 (2020). And a CAT decision is separate from and distinct from a
11 determination regarding asylum. A CAT decision is made under FARRA § 2242, 112
12 Stat. 2681–822, not the asylum statute, 8 U.S.C. §1158. Simply put, there is nothing in
13 §1225(b)(1) that even mentions the Convention Against Torture. Thus, a decision on a
14 CAT claim cannot be made “under” §1225(b)(1), and review of a CAT claim is not
15 limited by §1252(e)(2).⁵

16 Section 1252(g) also does not preclude judicial review of Petitioner’s claims. That
17 provision is “directed against a particular evil: attempts to impose judicial constraints
18 upon prosecutorial discretion.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S.
19 471, 485 n.9 (1999). Accordingly, §1252(g) does not bar review of the lawfulness of
20

21 ⁵ A petition for review to the court of appeals is available only for a person who has been
22 ordered removed in proceedings under 8 U.S.C. §1229a. Thus, the only means for
judicial review of a CAT decision not issued under §1229a is by a habeas petition.

1 removal-related actions because such claims are collateral to ICE's discretionary
2 decisions. *See, e.g., United States v. Hovsepien*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en
3 banc) ("[t]he district court may consider a purely legal question that does not challenge
4 the Attorney General's discretionary authority"); *Arce v. United States*, 899 F.3d 796,
5 800–801 (9th Cir. 2018) ("we have limited the statute's jurisdiction-stripping power to
6 actions challenging the Attorney General's discretionary decisions to initiate
7 proceedings, adjudicate cases, and execute removal orders").

8 Here, E.Q. presents three claims, none of which challenges any exercise of
9 discretion by Respondents. Instead, (1) E.Q. challenges Respondents' authority to
10 designate new countries of removal not designated during the removal process, in
11 violation of the procedural protections mandated by the INA, Due Process Clause and the
12 FARRA; (2) he challenges a decision denying a request for protection under the
13 Convention Against Torture (which, the Supreme Court has held, is not a "final order of
14 removal" and "does not merge into a final order of removal for purposes of judicial
15 review," *Riley*, 222 L. Ed. 2d at 507); and (3) he claims that DHS does not have authority
16 to issue a removal order based on regulations that have been found to be unlawful and
17 void. The Supreme Court has held that §1252(g) is a "narrow" provision and has
18 "rejected as 'implausible' the Government's suggestion that §1252(g) covers 'all claims
19 arising from deportation proceedings' or imposes 'a general jurisdictional
20 limitation.'" *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). Here, none of
21 Petitioner's claims arises from the government's decision to commence proceedings,
22

1 adjudicate cases, or execute a removal order. Section 1252(g) thus does not preclude
2 judicial review of any of his claims.

3 2. Merits.

4 There is a strong likelihood that E.Q. will prevail on the merits of his
5 claims. Regarding Petitioner's claim for protection against removal to an undesignated
6 third country, several courts have held that such removal is unlawful. *See, e.g.,*
7 *Mahdejian v. Bradford*, Case No. 25-cv-00191 (E.D. Tex. July 3, 2025) (where petitioner
8 had been granted withholding of removal as to Iran, court issued injunction prohibiting
9 DHS from removing him to a third country without notice and a meaningful opportunity
10 to establish that his life or freedom would be threatened there); *Ortega v. Kaiser*, 2025
11 U.S. Dist. LEXIS 121997, *7, 2025 WL 1771438 (N.D. Cal. June 26, 2025) (where
12 petitioner was granted CAT relief as to El Salvador, "there are no countries to which
13 Ortega could currently be removed without his first being afforded notice and opportunity
14 to be heard on a fear-based claim as to that country, as the Fifth Amendment Due Process
15 Clause requires"); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019)
16 ("ICE's attempt to remove petitioner to Somalia [a previously undesignated country of
17 removal] without notice, much less an opportunity to be heard, violated petitioner's due
18 process rights."). *See also Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (INS
19 concedes that "the last minute designation of Armenia as a country of deportation
20 violated due process and that [petitioner] is entitled to a remand in order to present
21 additional evidence of the persecution that he would face if deported to that country");
22

1 *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) (all nine Supreme Court
2 justices agreed that “notice must be afforded within a reasonable time and in such a
3 manner as will allow [plaintiffs] to actually seek . . . relief in the proper venue before
4 such removal occurs”). These cases establish Petitioner’s likelihood of success on his
5 claim for protection against removal to an undesignated third country.

6 There is also a strong likelihood that Petitioner will succeed on his CAT claim
7 with respect to Afghanistan. His close family member worked as an interpreter for the
8 prior Afghan government and U.S. military; the Taliban have a widespread practice of
9 retaliating against family members of those associated with the prior government; the
10 Petitioner has been targeted by the Taliban, who have invaded his home and seized
11 electronic devices; and the Taliban have issued summonses against Petitioner. Dkt. 2-1,
12 pp. 8-36; pp. 58-60. Under these circumstances, Petitioner is very likely to be able to
13 establish that he is eligible for CAT relief.

14 Finally, Petitioner has a likelihood of success on his claim that his removal order
15 exceeded Respondents’ statutory authority. The U.S. District Court for the District of
16 Columbia vacated the regulation under which E.Q. was deemed ineligible for asylum,
17 making it clear that he has not been provided a credible fear interview as required under
18 §1225(b)(1). *Las Americas, supra*.

19 **C. Irreparable Harm**

20 There is no doubt about the likelihood of irreparable harm. E.Q. has been targeted
21 by the Taliban and accused of being an “American spy.” His close family member
22

1 worked as an interpreter for the prior Afghan government and U.S. military. The
2 Taliban's security office has summoned him for questioning. The threatened harm to the
3 Petitioner is clear: persecution, torture, and death. The Supreme Court has long
4 recognized that removal is a "particularly severe" injury, inflicting substantial harm on a
5 noncitizen. *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (quoting *Fong Yeu Ting v.*
6 *United States*, 149 U.S. 698, 740 (1893)). Certainly, E.Q. is facing irreparable injury. *See*
7 *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011) (threat of persecution, including
8 beatings, constitutes irreparable harm).

9 **D. Balance of Equities and the Public Interest**

10 The remaining two factors to be considered for a preliminary injunction – balance
11 of harms and public interest – merge when the government is the party opposing a motion
12 for preliminary injunction. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Government
13 will suffer no irreparable harm if the court stays removal while this lawsuit is pending. In
14 addition, it is in the public interest to prevent the Petitioner from being unlawfully
15 removed to a country where he would be persecuted or tortured, and to allow him to
16 pursue his claims for relief. According to the Supreme Court, "there is a public interest
17 in preventing [noncitizens] from being wrongfully removed, particularly to countries
18 where they are likely to face substantial harm." *Nken*, 556 U.S. at 436; *see also Alabama*
19 *Ass'n of Realtors v. HHS*, 594 U.S. 758, 766 (2021) ("our system does not permit
20 agencies to act unlawfully even in pursuit of desirable ends"); *Youngstown Sheet & Tube*
21 *Co. v. Sawyer*, 343 U.S. 579, 582 (1952) (affirming district court's preliminary injunction
22

1 of an illegal executive order even though a wartime president said his order was
2 “necessary to avert a national catastrophe”). The balance of the equities and the public
3 interest counsel in favor of granting a stay of removal. *See Tabatabaeifar*, 2025 U.S. Dist.
4 LEXIS 91554 at *27 (granting a stay of removal because petitioner risks removal to a
5 country where she could be tortured or otherwise persecuted and there is no evidence to
6 suggest that she poses a threat to the public; “the public has a strong interest in ensuring
7 that the nation’s immigration laws are robustly—and fairly—enforced”).

8 CONCLUSION

9 For the foregoing reasons, E.Q. requests that this Court issue a preliminary
10 injunction prohibiting his transfer out of this court’s jurisdiction and his removal from
11 the United States unless and until a lawful final order of removal has been issued.

12
13
14 Dated this 8th day of August, 2025.

15
16 /s/ Delia Salvatierra
Delia Salvatierra
SALVATIERRA LAW GROUP

17
18 Robert Pauw
GIBBS HOUSTON PAUW

19 Attorneys for Petitioner
20
21
22