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

E.Q.,

Petitioner,

v.

John Cantu, et al.,

Respondents.

Case No. 2:25-cv-02442-KML (CDB)

**RESPONDENTS' OPPOSITION TO
PETITIONER'S MOTION FOR
PRELIMINARY INJUNCTION**

1 Respondents hereby file a response in opposition to Petitioner's motion for
2 preliminary injunction. Petitioner requests a preliminary injunction "so that he can remain
3 in the United States until he has a meaningful opportunity to apply for asylum and related
4 protection from persecution and torture, as required by 8 U.S.C. § 1225(b)(1)(B) and 8
5 C.F.R. § 208.30." See ECF No. 14 at 1-2. The Respondents oppose this requested relief
6 on three grounds.

7 **I. Petitioner's claims are barred by res judicata.**

8 First, Petitioner's claims are barred by *res judicata*. At the heart of Petitioner's
9 claims, he is challenging the validity of the two negative credible fear determinations
10 made and the resulting removal order—claims recently denied in an ongoing case in a
11 District of Columbia district court. See Exhibit A, *E.Q., et al. v. U.S. Dep't of Homeland*
12 *Sec., et al.*, Case No. 1:25-cv-00791 (D.D.C.), Memorandum and Order (June 12, 2025),
13 Dkt. No. 40; Exhibit B, *E.Q.*, Case No. 1:25-cv-00791, Opinion and Order (June 26,
14 2025), Dkt. No. 41;¹ see also ECF No. 1 at 9-11; ECF No. 14 at 7-8, 13-15. Under the
15 doctrine of *res judicata*, "a final judgment on the merits bars further claims by parties or
16 their privies based on the same cause of action." *Montana v. United States*, 440 U.S. 147,
17 153 (1979). *Res judicata* prevents litigation of all grounds for, or defenses to matters that
18 were previously available to the parties, regardless of whether they were asserted or
19 determined in the prior proceeding. *Chicot Cnty. Drainage Dist. v. Baxter State Bank*,
20 308 U.S. 371, 378 (1940). "Res judicata is applicable whenever there is (1) an identity of
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22 ¹ Although the court noted that Petitioner was not challenging the second credible fear
23 determination in that case, the result here is the same. The court found that the first
24 negative credible fear finding was lawful independent of the Rules Petitioner challenges.
25 See Exhibit A at 13 ("[E]ven absent application of the Rules, the outcome of E.Q.'s first
26 credible-fear interview—and therefore his associated removal order and the injury
27 underlying his claim—would have been the same."). The second credible fear finding
could not have rendered the first unlawful, nor does Petitioner allege that Respondents
issued a second removal order other than the one found lawful in the District of Columbia
district court.

1 claims, (2) a final judgment on the merits, and (3) privity between parties.” *Stratosphere*
2 *Litig. L.L.C. v. Grand Casinos, Inc.*, 298 F.3d 1137, 1143 n. 3 (9th Cir. 2002). The Ninth
3 Circuit has previously applied the doctrine of *res judicata* solely on the ground that the
4 two suits arise out of the same transactional nucleus of facts. *Int’l Union of Operating*
5 *Eng’rs-Emps. Const. Indus. Pension, Welfare & Training Tr. Funds v. Karr*, 994 F.2d
6 1426, 1430 (9th Cir. 1993). “One major function of claim preclusion is to force a plaintiff
7 to explore all the facts, develop all the theories, and demand all the remedies in the first
8 suit.” *Gary Fong, Inc. v. Halton*, 158 F. Supp. 2d 1012 (N.D. Cal. 2001) (quoting 18
9 Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, *Federal Practice and*
10 *Procedure*, § 4408 (3rd ed.)).

11 Here, in *E.Q., et al. v. U.S. Dep’t of Homeland Sec., et al.*, Case No. 1:25-cv-
12 00791 (D.D.C.), the U.S. District Court for the District of Columbia denied Petitioner’s
13 request for a stay of removal twice. *See* Ex. A at 19 (“E.Q.’s injury appears neither
14 traceable to the Rules nor redressable by this Court.”); *see also* Ex. B at 6 (denying
15 motion for reconsideration “because the Court’s prior analysis remains sound.”).

16 Additionally, there exists privity between the parties as the Petitioner and United States
17 Government entities and employees in their official capacity are parties to both suits.
18 Therefore, the second and third elements of *res judicata* are met.

19 Furthermore, the District of Columbia district court considered and rejected the
20 Petitioner’s allegation that the credible fear determination and the resulting removal order
21 are invalid. *See generally* Exs. A-B. In the *E.Q., et al. v. U.S. Dep’t of Homeland Sec., et*
22 *al* case, the Petitioner made this allegation on the ground that he was subject to
23 mandatory asylum bars in accordance with a new DHS rule, Application of Certain
24 Mandatory Bars in Fear Screenings, 89 Fed. Reg. 103,370 (Dec. 18, 2024), and the
25 accompanying Executive Office for Immigration Review (EOIR) companion rule, Bars to
26 Eligibility During Credible Fear and Reasonable Fear Review, 89 Fed. Reg. 105,392

1 (Dec. 27, 2024) (collectively, the “Rules”). *See* Ex. A at 5-6, 9. In rejecting this allegation
2 and denying a stay of removal, the Court found that the Petitioner likely lacked standing
3 because his injury—his first negative credible fear determination and associated removal
4 order— was neither fairly traceable to the challenged Rules nor redressable by the Court
5 in that suit. *Id.* at 18-19. The Court reasoned that,

6 While the Rules were one justification for his first negative credible fear
7 determination, they were not a but-for cause of it: E.Q.’s failure [to] establish
8 future persecution because of a protected ground (the “no-nexus finding” i.e.,
9 a reasonable probability that he would be harmed in the future due to a
protected characteristic he possesses) provided an independent and sufficient
legal basis to support the determination.

10 *Id.* at 13. Likewise, the Court reasoned that “holding the Rules unlawful would not
11 remedy E.Q.’s injury because, even without the Rules, he could still be removed based on
12 his failure to establish nexus.” *Id.*

13 The Petitioner then filed a motion for reconsideration, which the Court denied
14 because he “has not demonstrated any of the factors warranting reconsideration: an
15 intervening change in the law, newly discovered evidence that was previously
16 unavailable, a clear error in the first order, or a change in facts.” Ex. B at 4.

17 Now, in an effort to escape the auspices of *res judicata*, the Petitioner claims that
18 the credible fear determinations and resulting removal order were not done in accordance
19 with 8 U.S.C. § 1225(b)(1)(B) and 8 C.F.R. § 208.30, because they were based on the
20 Securing the Border Rule that was partially invalidated by a district court in May 2025.
21 *See Las Americas Immigr. Advoc. Ctr. v. DHS*, --- F. Supp. 3d ----, No. CV 24-1702
22 (RC), 2025 WL 1403811 (D.D.C. May 9, 2025); Securing the Border Rule, 89 Fed. Reg.
23 81156 (Oct. 7, 2024). But Petitioner’s assertion of another unlawful secondary ground, an
24 assertion he remains able to raise in his District of Columbia district court case, does not
25 overcome the independent grounds that court determined supported the denial of
26 Petitioner’s claims for relief from removal. *See supra*. Notably, the district court also
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1 addressed this concern without Petitioner having raised it. The district court found that,
2 while “parts of the Securing the Border Rule, including the limitation on asylum
3 eligibility, had been vacated . . . [t]he IJ, however, found that E.Q. had failed to rebut the
4 presumption of asylum ineligibility established by a different rule, the Circumvention of
5 Lawful Pathways Rule at 8 C.F.R. § 1208.33(a)(1)–(2).” Ex. A at 10-11 (citing *Las*
6 *Americas Immigr. Advoc. Ctr.*, 2025 WL 1403811 at *21). Petitioner does not allege that
7 the Circumvention of Lawful Pathways Rule is unlawful or was unlawfully applied to
8 him.

9 It is also worth noting that in *Las Americas Immigr. Advoc. Ctr. v. DHS*, the
10 district court found that one provision of the Securing the Border Rule Petitioner
11 challenges here, requiring noncitizens to demonstrate “reasonable probability of
12 persecution . . . or torture” to establish eligibility for statutory withholding of removal or
13 protection under CAT, was not arbitrary and capricious under the APA. *Id.* at *13 (“The
14 Court rejects Plaintiffs’ argument that the reasonable probability screening standard is
15 arbitrary and capricious.”). Therefore, contrary to Petitioner’s assertion, the first negative
16 credible fear determination finding that the Petitioner failed to demonstrate a “reasonable
17 probability” of harm to establish withholding of removal or protection under CAT was
18 not invalidated by the *Las Americas Immigr. Advoc. Ctr. v. DHS* court.

19 Moreover, even if the Court affords weight to the Petitioner’s claims, which it
20 should not, the Petitioner’s claims arise out of the same transactional nucleus of facts in
21 *E.Q., et al. v. U.S. Dep’t of Homeland Sec., et al.*, Case No. 1:25-cv-00791 (D.D.C.). In
22 fact, in denying the Petitioner’s request for a stay of removal twice, the U.S. District
23 Court for the District of Columbia found the first negative credible fear determination
24 and the resulting removal order to be lawful on independent grounds that Petitioner does
25 not challenge in this case. *See* Ex. A at 7-11; *see also* Ex. B at 2 n.1. Also, the U.S.
26 District Court for the District of Columbia denied the Petitioner’s stay of removal on June
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1 12, 2025, and again on June 26, 2025, more than a month after the *Las Americas Immigr.*
2 *Advoc. Ctr. v. DHS* decision was issued, providing the Petitioner with more than
3 sufficient time to raise the claims raised in this action in his motion for reconsideration
4 briefing.² Therefore, because at the heart of Petitioner's claims he is challenging the
5 validity of the two negative credible fear determinations made and the resulting removal
6 order, in light of the three elements, the Petitioner's claims are barred by the principles of
7 *res judicata*.

8 **II. Petitioner cannot show a likelihood of success.**

9 Alternatively, even if the Court found that *res judicata* does not preclude the
10 claims here, the Court should still deny Petitioner's motion for preliminary injunction
11 because he cannot show that he is likely to succeed on the merits of his claims. In a
12 motion for preliminary injunction, "[l]ikelihood of success on the merits is 'the most
13 important' factor; if a movant fails to meet this 'threshold inquiry,' we need not consider
14 the other factors." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018). Petitioner's
15 claims here focus on one aspect of Respondents' denials of his claims for relief from
16 removal, and he fails entirely to address the independent grounds for those denials that
17 led the District of Columbia district court to find he could not show likelihood of success
18 because he lacked standing. *See Ex. A* at 12-19.

19 As to the Petitioner's second negative credible fear determination, although the
20 asylum officer concluded that the Securing the Border limitation on asylum ineligibility
21 applied, the second negative credible fear determination was made on a different basis:
22 The asylum officer determined that the Petitioner was not credible based on
23 inconsistencies between statements in his first and second interview. *Ex. A* at 10. And, as
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25 ² Petitioner's response to the government's motion to dismiss is currently pending in that
26 case, allowing him another opportunity to raise this claim there. *See E.Q., et al.*, Case No.
27 1:25-cv-00791, Minute Order, July 18, 2025 (granting Petitioner and his co-Plaintiffs
until August 29, 2025, to file their opposition).

1 to withholding of removal and CAT, the Immigration Judge affirmed that E.Q. had not
2 established a reasonable possibility of persecution or torture. *See id.* at 13 (“E.Q. does not
3 point to any part of the no-nexus finding that turned on or was influenced by the Rules.”);
4 *see also supra*. Accordingly, for these reasons alone, the Court should summarily reject
5 the assertion that the negative credible fear determinations and resulting removal order
6 were not done in accordance with 8 U.S.C. §1225(b)(1)(B) and 8 C.F.R. §208.30,
7 because they were based on parts of the Securing the Border Rule.

8 **III. In the alternative, the Court should stay this action.**

9 Finally, in the alternative, the Court should stay this action pending resolution of
10 *E.Q., et al. v. U.S. Dep’t of Homeland Sec., et al.*, Case No. 1:25-cv-00791 (D.D.C.). A
11 district court “may, with propriety, find it is efficient for its own docket and the fairest
12 course for the parties to enter a stay of an action before it, pending resolution of
13 independent proceedings which bear upon the case.” *Leyva v. Certified Grocers of Cal.,*
14 *Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979) (“This rule applies whether the separate
15 proceedings are judicial, administrative, or arbitral in character, and does not require that
16 the issues in such proceedings are necessarily controlling of the action before the court.”).
17 The competing interests to be considered are: (1) the possible damage that may result
18 from the granting of a stay; (2) the hardship that the party seeking the stay may suffer by
19 being required to go forward; and (3) the orderly course of justice measured by
20 considering whether issues will be simplified or complicated, proof, and questions of law
21 which could be expected to result from a stay. *Lockyer v. Mirant Corp.*, 398 F.3d 1098,
22 1110 (9th Cir. 2005).

23 Here, the District of Columbia district court, in *E.Q., et al. v. U.S. Dep’t of*
24 *Homeland Sec., et al.*, has already considered and rejected the Petitioner’s stay of
25 removal twice, in which it took into consideration the same arguments Petitioner makes
26 here regarding his negative credible fear determinations and the resulting removal order
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1 that are at issue in this case. *See* Ex. A at 7-11; *see also* Ex. B at 2 n.1. Accordingly, the
2 Petitioner was afforded the precise opportunity to seek the stay of his removal that he
3 seeks here in a separate proceeding, relief another district court rejected. Therefore,
4 Petitioner's possible removal from the United States, if this case is stayed and the District
5 of Columbia case proceeds, should be afforded little to no weight.

6 On the other hand, if this case is not stayed, the Respondents will suffer hardship
7 by being required to go forward defending two identical cases by the same petitioner. For
8 one, as mentioned above, the District of Columbia district court has already considered
9 and rejected the Petitioner's stay of removal twice. Therefore, if this Court grants the
10 Petitioner's preliminary injunction, such a ruling would lead to inconsistent results
11 among two district courts. Likewise, if this case is not stayed, the Respondents will also
12 be forced to dissipate their resources and litigate the validity of the Petitioner's credible
13 fear determinations and the resulting removal order in two separate federal district court
14 proceedings. Accordingly, the harm that the Respondents will suffer by being required to
15 proceed with both cases concurrently weighs in favor of staying this case. Furthermore,
16 in *E.Q., et al. v. U.S. Dep't of Homeland Sec., et al.*, Case No. 1:25-cv-00791 (D.D.C.),
17 ECF No. 42, the Respondents filed a motion to dismiss the claims raised by the
18 Petitioner, which is currently pending with that court. For the reasons described above,
19 the claims raised in this action arise out of the same transactional nucleus of facts as the
20 claims in *E.Q., et al. v. U.S. Dep't of Homeland Sec., et al.*. Thus, the orderly course of
21 justice factor ways in favor of staying this case. Accordingly, if the Court does not find
22 res judicata bars this case entirely, it should still stay this action pending resolution of
23 *E.Q., et al. v. U.S. Dep't of Homeland Sec., et al.* in the District of Columbia district
24 court.

25 For the foregoing reasons, the Court should deny the Petitioner's motion for a
26 preliminary injunction.

1 Dated: August 11, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2025, I served an electronic copy of the foregoing on counsel for the Petitioner via the Court's CM/ECF system.

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