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8
9 **UNITED STATES DISTRICT COURT**
FOR THE DISTRICT OF ARIZONA

10
11 E.Q.,

Petitioner,

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

12 v.

13 John Cantú, Field Office Director, *et al.*,

**MOTION FOR PRELIMINARY
INJUNCTION**

14 Respondents.
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16 **INTRODUCTION**

17 Petitioner E.Q. is currently in detention at the Eloy Detention Center. He is at
18 risk of being deported from the United States – either to Afghanistan where he will
19 likely be tortured or killed by the Taliban because a close family member worked as an
20 interpreter for the prior Afghan government and U.S. military, or to an undesignated
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1 third country where he may be persecuted or tortured. Petitioner seeks a preliminary
2 injunction so that he will have an opportunity for a lawful credible fear interview, as
3 required by 8 U.S.C. §1225(b)(1)(B) and 8 C.F.R. §208.30. He maintains that there is
4 no valid removal order that can be enforced against him, and that removing him from
5 the United States would violate the Immigration and Nationality Act, including 8
6 U.S.C. §1225(b)(1) and 8 U.S.C. §1231(b)(3), as well as the Foreign Affairs Reform
7 and Restructuring Act (FARRA), which implements the Convention Against Torture.

8 **LEGAL BACKGROUND**

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

12 Asylum provides full protection against deportation to any country and a
13 pathway to lawful permanent resident status. 8 U.S.C. § 1158. This means the person
14 cannot be deported to their country of origin or to any other country.

15 Individuals who are deemed ineligible for asylum may qualify for withholding of
16 removal. 8 U.S.C. §1231(b)(3)(A). Withholding of removal is a mandatory protection;
17 if a person is eligible for withholding of removal as to a particular country, DHS is
18 prohibited from removing the person to that country. An individual is ineligible for
19 withholding of removal if they have, among other things, committed certain serious
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1 crimes or provided “material support” to terrorist groups. *See* 8 U.S.C.
2 §1231(b)(3)(B).

3 Pursuant to the Foreign Affairs Reform and Restructuring Act (FARRA),
4 Congress instructed that the U.S. government may not “expel, extradite, or otherwise
5 effect the involuntary return of any person to a country in which there are substantial
6 grounds for believing the person would be in danger of being subjected to torture.”
7 Pub. L. 105-277, §2242(a), 112 Stat. 2681, 2681-822 (1999) (codified as statutory note
8 to 8 U.S.C. §1231). This mandate applies to all persons and has no exceptions.

9 **FACTUAL BACKGROUND**

10 Petitioner E.Q. is a native and citizen of Afghanistan. A close family member of
11 E.Q. worked in Afghanistan for several years as an interpreter for the prior Afghan
12 government and U.S. military. As a result, the Taliban suspected that E.Q. was working
13 with his family member as an American spy. While E.Q. was in Afghanistan, the
14 Taliban followed him and tried to collect information about him from his friends and
15 relatives. In the spring of 2024, the Taliban raided E.Q.’s home, where he lived with
16 his family; accused him of working with his family member as an “American spy”;
17 confiscated his family’s electronic devices; and broke their television.

18 About the same time, the Taliban sent summonses to E.Q. directing him to report
19 to a government security office for questioning. Dkt No. 2-1, pp. 1-7. The fact that the
20 Taliban know that E.Q.’s family member worked for the prior Afghan government and
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1 U.S. military and have summoned him for questioning puts him at significant risk of
2 illegal detention, interrogation, torture, and potentially even execution. Dkt. 2-1, p. 22,
3 ¶29; p. 34, ¶54. The Taliban have a pattern and practice of torturing and killing
4 individuals they suspect of having assisted the U.S. government. Dkt. 2-1, pp. 17-19,
5 ¶¶19-21. Thus, there are substantial grounds for believing that E.Q. would be in danger
6 of being persecuted and tortured if he is forced to return to Afghanistan.

7 After receiving the summonses, E.Q. feared for his life, went into hiding, and
8 ultimately fled Afghanistan in or about August 2024. He arrived in the United States on
9 or about January 16, 2025. Upon his arrival in the United States, E.Q. was apprehended
10 by U.S. Customs and Border Protection and an expedited removal order was issued
11 against him. Dkt. 2-1, pp. 58-60. Afghanistan was designated as the country of
12 removal. Dkt. 2-1, p. 44 (Notice and Order of Expedited Removal); pp. 45-47 (SB
13 Reasonable Probability Worksheet).

14 After E.Q. expressed a fear of removal to Afghanistan, he was referred for a
15 credible fear interview with an asylum officer from U.S. Citizenship and Immigration
16 Services (USCIS). The asylum officer found E.Q. ineligible for asylum because he had
17 entered without inspection, based on the so-called "Securing the Border" regulations
18 that were adopted in July 2024. Dkt. 2-1, pp. 48-49 (Record of Negative Credible Fear
19 and Reasonable Probability Finding). *See* 89 Fed. Reg. 48710 (6/4/2024) (Interim Final
20 Rule), 89 Fed. Reg. 81156 (10/7/2024) (Final Rule), codified at 8 C.F.R. §208.35(a).
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1 The asylum officer denied withholding of removal based at least in part on the finding
2 that E.Q. would be subject to a “mandatory bar” because he had been employed at a
3 place of business in Afghanistan that provided services to the general public, including
4 members of the Taliban. *Id.* That decision was affirmed by an immigration judge on
5 February 25, 2025. Dkt. 2-1, pp. 50-53 (Decision of IJ (2/25/2025)).¹

6 The mandatory bars that apply to withholding of removal applications do not
7 apply to requests for protection under the Convention Against Torture. On February 20,
8 2025, an asylum officer denied E.Q.’s request for protection under the CAT on the basis
9 that E.Q. did not establish a reasonable probability that he would suffer severe physical
10 or mental pain or suffering if forced to return to Afghanistan. Dkt. 2-1, pp. 48-49
11 (Record of Negative Credible Fear and Reasonable Probability Finding). The asylum
12 officer’s decision denying CAT relief was affirmed by an immigration judge on
13 February 25, 2025. Dkt. 2-1, pp. 50-53 (Decision of IJ (2/25/2025)).²

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

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

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

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

12 LEGAL ARGUMENT

13 A. Standard for Preliminary Injunction

14 To obtain preliminary injunctive relief, Plaintiff must show (1) likelihood of
15 success on the merits; (2) likelihood of irreparable harm in the absence of preliminary
16 relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in
17 the public interest. *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1142 (9th Cir. 2018),
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19 ³ In recent months, Respondents have vastly increased the use of third-country removals
20 against noncitizens with removal orders. *See e.g.*, Gabe Whisnant and Peter Aitken,
21 *Kristi Noem Reveals New Countries Now Taking Deported Asylum Seekers*,
22 NEWSWEEK (Jun. 26, 2025), <https://www.newsweek.com/kristi-noem-honduras-guatemala-deported-asylum-seekers-2091384>.

1 citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). When the
2 government is a party, the last two factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747
3 F.3d 1073, 1092 (9th Cir. 2014). Alternatively, courts may issue a preliminary
4 injunction based on a “sliding scale” test in which there are “serious questions going to
5 the merits . . . and the balance of hardships tips sharply in the plaintiff’s favor.” *All. for*
6 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

7 **B. Likelihood of Success on the Merits**

8 Before the Respondents remove E.Q. either to Afghanistan or any third country,
9 E.Q. is entitled to a lawful credible fear interview under 8 U.S.C. §1225(b)(1)(B) and 8
10 C.F.R. §208.30, at which an asylum officer decides whether E.Q. has a “credible fear of
11 persecution” as defined in §1225(b)(1)(B)(v). To date, E.Q. has not been provided with
12 such an interview. His removal from the United States without such an interview
13 would violate the Immigration and Nationality Act, 8 U.S.C. §1225(b)(1), and the CAT.

14 As an initial matter, Petitioner’s claims are reviewable in habeas proceedings.
15 See 28 U.S.C. §2241(c) (writ of habeas extends to persons who are detained in
16 violation of the Constitution or laws or treaties of the United States); *Trump v. J.G.G.*,
17 145 S. Ct. 1003, 1006 (2025) (an individual subject to detention and removal is entitled
18 to judicial review in habeas as to “questions of interpretation and constitutionality”).
19 See also *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (en banc) (28
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1 U.S.C. § 2241 “makes the writ of habeas corpus available to all persons ‘in custody in
2 violation of the Constitution or laws or treaties of the United States’”).

3 In addition, this court has jurisdiction to issue a mandamus order under 28
4 U.S.C. §1361 to compel the Respondents to perform a duty owed to E.Q. – namely to
5 conduct a lawful credible fear interview under §1225(b)(1)(B) and 8 C.F.R. §208.30.
6 According to §1225(b)(1)(A)(ii), if a person subject to expedited removal indicates an
7 intention to apply for asylum or a fear of persecution – as E.Q. has – then the inspecting
8 immigration officer “shall refer the [noncitizen] for an interview by an asylum officer
9 under subparagraph (B).” According to §1225(b)(1)(B)(i), the asylum officer “shall
10 conduct” the interview and determine whether the person has a “credible fear of
11 persecution,” which is defined as a “significant possibility” of establishing eligibility
12 for asylum. 8 U.S.C. § 1225(b)(1)(B)(v); 8 C.F.R. §208.30(e)(2). Although an asylum
13 officer conducted an interview, that interview was not conducted in accordance with
14 §1225(b)(1). Instead it was conducted under procedures that have been found to be
15 illegal and have been vacated. *See Las Americas v. DHS*, 2025 U.S. Dist. LEXIS
16 94453, 2025 WL 1403811 (D.D.C. 2025) (finding that the procedures applied by the
17 Respondents under the “Securing the Border” regulations were unlawful and ordering
18 that they be vacated and set aside). Thus, there is no lawful order of removal against
19 E.Q. that the Respondents can execute. *See* §1225(b)(1)(A)(i) (if the noncitizen
20 indicates an intention to apply for asylum or a fear of persecution, then the inspecting
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1 officer does not issue an order of removal but refers the case to an asylum office);
2 §1225(b)(1)(B)(ii) and (iii) (if no credible fear interview has been conducted as
3 required under §1225(b)(1)(B), then an order of removal cannot be issued). This court
4 has authority under the mandamus statute to order Respondents to provide E.Q. with a
5 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
9 fear 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 [immigration
12 judge's] determination." 51 F.4th at 1153. Specifically, the petitioner sought review of
13 the credible fear determination. In order to grant relief, the court would have had to
14 review "the merits of a credible fear determination" *Id.* at 1155. But that is not required
15 in this case. There is a difference between reviewing the merits of an agency's decision
16 (which is precluded by *Mendoza-Linares*) and determining that the agency had no
17 authority to issue a removal order against E.Q. based on the "Securing the Border"
18 regulation. In this case, the district court in the District of Columbia has determined
19 that the agency had no authority to issue the type of order that it issued against E.Q.
20 *Las Americas, supra*. The question whether the Respondents can enforce a removal
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1 order that they had no authority to issue was neither presented to the court nor resolved
2 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
5 failed to provide a credible fear interview as required by §1225(b)(1)(B). "Rather than
6 follow the procedure mandated by 8 U.S.C. §1225(b) and 8 C.F.R. §208.30 for the
7 expedited removal of unauthorized [noncitizens] who claim asylum," the asylum officer
8 deemed the petitioner ineligible for asylum and assessed her only for CAT relief. *Id.* at
9 *1. The petitioner then filed a habeas petition alleging, *inter alia*, that DHS failed to
10 assess her asylum claim in violation of 8 U.S.C. § 1225(b)(1) and 8 C.F.R. § 208.30.
11 This court 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
13 purport to remove Petitioner pursuant to Section 1225(b). ... Since Petitioner
14 was not subjected to any expedited removal proceedings pursuant to Section
15 1225(b), Section 1252(a)(2)(A) does not strip the court of jurisdiction over
16 Petitioner's claims.

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

21 ⁴ In *Tabatabaeifar*, the government did not purport to follow §1225(b)(1). Here, the
22 Respondents may claim that they purported to follow §1225(b)(1). But that is not
determinative. The question is not what the government says it purports to do; rather,

1 E.Q.'s claim challenging third-country removal is not precluded by §1252. His
2 third-country challenge applies to potential actions that post-date his alleged removal
3 order and credible fear interview. Petitioner was told that the designated country of
4 removal was Afghanistan. But under ICE's current policies, he may be removed
5 without notice to an undesignated third country. *See, e.g.,* Gabe Whisnant and Peter
6 Aitken, *supra* note 4. The claim that it is unlawful to deport a person to a previously
7 undesignated third country is not a challenge to an order of removal and thus not barred
8 by §1252(a)(5) or (b)(9). *See, e.g., Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir.
9 2007) (“[b]y virtue of their explicit language, both §§1252(a)(5) and 1252(b)(9) apply
10 only to those claims seeking judicial review of orders of removal”); *Aden v. Nielsen*,
11 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019) (where petitioner challenged DHS's
12 attempts, outside removal proceedings, to designate Somalia as the country of removal
13 without first reopening his proceedings to provide an opportunity to apply for relief
14 from removal to that country, §1252(a)(5) did not preclude jurisdiction; “the Court does
15 not need to review the removal order”).

16 Nor is Petitioner's challenge to the denial of CAT relief barred by §1252(e)(2).
17 For persons who have been ordered removed under §1225(b)(1), review of such claims
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19 the question is whether the government actually has authority to take action. And here,
20 another court has already determined that the government does not have the authority to
21 remove E.Q. based on an unlawful credible fear determination using procedures that
22 have been vacated. *See Las Americas v. DHS*, 2025 U.S. Dist. LEXIS 94453, 2025 WL
1403811 (D.D.C. 2025).

1 occurs in habeas proceedings, subject to the limitations in §1252(e)(2). *See* §1252(a)(4)
2 (petition for review in court of appeals shall be sole and exclusive means for judicial
3 review of CAT claims, except as provided in §1252(e)). Section 1252(e)(2) limits
4 judicial review in habeas proceedings of “any determination made under section [8
5 U.S.C. 1225(b)(1)].” There are two components to a determination under §1225(b)(1):
6 first, a decision to issue an order of removal, *see* 8 U.S.C. §1225(b)(1)(A)(i) (order of
7 removal not issued if noncitizen indicates an intention to apply for asylum); and second,
8 a decision on whether the petitioner is eligible to pursue an application for asylum
9 under 8 U.S.C. §1158, *see* §1225(b)(1)(B). Neither of those components have occurred
10 in this case; thus a final order of removal under §1225(b)(1) has not been issued and
11 §1252(e)(2) does not apply. Moreover, a decision denying CAT relief does not fall into
12 either one of those categories. As the Supreme Court recently explained:

13 [A] CAT order is not a final order of removal because “it is not an order
14 ‘concluding that the alien is deportable or ordering deportation.’” ... And what is
15 more, we held, a CAT order “does not disturb” or “affect the validity” of a final
16 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.

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

4 Section 1252(g) also does not preclude judicial review of Petitioner’s claims.
5 That provision is “directed against a particular evil: attempts to impose judicial
6 constraints upon prosecutorial discretion.” *Reno v. Am.-Arab Anti-Discrimination*
7 *Comm.*, 525 U.S. 471, 485 n.9 (1999). Accordingly, §1252(g) does not bar review of
8 the lawfulness of removal-related actions because such claims are collateral to ICE’s
9 discretionary decisions. *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir.
10 2004) (en banc) (“[t]he district court may consider a purely legal question that does not
11 challenge the Attorney General’s discretionary authority”); *Arce v. United States*, 899
12 F.3d 796, 800–801 (9th Cir. 2018) (“we have limited the statute’s jurisdiction-stripping
13 power to actions challenging the Attorney General’s discretionary decisions to initiate
14 proceedings, adjudicate cases, and execute removal orders”); *Madu v. United States*
15 *AG*, 470 F.3d 1362, 1368 (11th Cir. 2006) (§1252(g) “does not proscribe substantive
16 review of the underlying legal bases for those discretionary decisions and actions.”).

17 Here, E.Q. presents three claims, none of which challenges an order of removal
18 or any exercise of discretion by Respondents. Instead, E.Q. challenges Respondents’
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21 ⁵ A petition for review to the court of appeals is available only for a person who has
22 been 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 authority to designate new countries of removal not designated during the removal
2 process, in violation of the procedural protections mandated by the INA and the
3 FARRA; he challenges a decision denying a request for protection under the
4 Convention Against Torture as implemented by statute (which, the Supreme Court has
5 held, is not a “final order of removal” and “does not merge into a final order of removal
6 for purposes of judicial review,” *Riley*, 222 L. Ed. 2d at 507; and he claims that it was
7 improper for DHS to order him removed based on regulations that have been found to
8 be unlawful and void. The Supreme Court has held that §1252(g) is a “narrow”
9 provision and has “rejected as ‘implausible’ the Government’s suggestion that §1252(g)
10 covers ‘all claims arising from deportation proceedings’ or imposes ‘a general
11 jurisdictional limitation.’” *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020).
12 Here, none of Petitioner’s claims arises from the government’s decision to commence
13 proceedings, adjudicate cases, or execute a removal order. Section 1252(g) thus does
14 not preclude judicial review.

15 There is a strong likelihood that the Petitioner will prevail on the merits of his
16 claims. Regarding Petitioner’s claim for protection against removal to an undesignated
17 third country, several courts have held that such removal is unlawful. *See, e.g.*,
18 *Mahdejian v. Bradford*, Case No. 25-cv-00191 (E.D. Tex. 7/3/2025) (where petitioner
19 had been granted withholding of removal as to Iran, court issued injunction prohibiting
20 DHS from removing him to a third country without notice and a meaningful
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1 opportunity to establish that his life or freedom would be threatened there); *Ortega v.*
2 *Kaiser*, 2025 U.S. Dist. LEXIS 121997, *7, 2025 WL 1771438 (N.D. Cal. 6/26/2025)
3 (where petitioner was granted CAT relief as to El Salvador, “there are no countries to
4 which Ortega could currently be removed without his first being afforded notice and
5 opportunity to be heard on a fear-based claim as to that country, as the Fifth
6 Amendment Due Process Clause requires”); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010
7 (W.D. Wash. 2019) (“ICE’s attempt to remove petitioner to Somalia [a previously
8 undesignated country of removal] without notice, much less an opportunity to be heard,
9 violated petitioner’s due process rights.”). *See also Andriasian v. INS*, 180 F.3d 1033,
10 1041 (9th Cir. 1999) (INS concedes that “the last minute designation of Armenia as a
11 country of deportation violated due process and that [petitioner] is entitled to a remand
12 in order to present additional evidence of the persecution that he would face if deported
13 to that country”). These cases establish a likelihood of success. *See also Trump v.*
14 *J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) (all nine Supreme Court justices
15 agreed that “notice must be afforded within a reasonable time and in such a manner as
16 will allow [plaintiffs] to actually seek . . . relief in the proper venue before such removal
17 occurs”); *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (“[i]n order to actually seek
18 habeas relief, a detainee must have sufficient time and information to reasonably be
19 able to contact counsel, file a petition, and pursue appropriate relief”).
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1 There is also a strong likelihood that Petitioner will succeed on his CAT claim
2 with respect to Afghanistan. His close family member worked as an interpreter for the
3 prior Afghan government and U.S. military; the Taliban have a widespread practice of
4 retaliating against family members of those associated with the prior government; the
5 Petitioner has been targeted by the Taliban, who have invaded his home and seized
6 electronic devices; and the Taliban has issued summonses against Petitioner. Dkt. 2-1,
7 pp. 8-36; pp. 58-60. Under these circumstances, Petitioner is very likely to be able to
8 establish a reasonable possibility that he is eligible for protection under the CAT.

9 Finally, Petitioner has a likelihood of success on his claim that his removal order
10 exceeded Respondents' statutory authority. The District Court for the District of
11 Columbia vacated the regulation under which E.Q. was deemed ineligible for asylum,
12 making it clear that there is no valid removal order against him that can be executed.

13 **C. Irreparable Harm**

14 There is no doubt about the likelihood of irreparable harm. The Petitioner has
15 been targeted by the Taliban and accused of being an "American spy." His close family
16 member worked as an interpreter for the prior Afghan government and U.S. military.
17 The Taliban's security office has summoned Petitioner for questioning. The threatened
18 harm to the Petitioner is clear and simple: persecution, torture, and death. The Supreme
19 Court has long recognized that removal is a "particularly severe" injury, inflicting
20 substantial harm on a noncitizen. *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010)
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1 (quoting *Fong Yeu Ting v. United States*, 149 U.S. 698, 740 (1893)). Special care
2 accordingly must be taken in asylum cases lest the court permit persecution to occur.
3 See *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011) (threat of persecution,
4 including beatings, constitutes irreparable harm).

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

6 The remaining two factors to be considered for a TRO – balance of harms and
7 public interest – merge when the government is the party opposing a motion for
8 preliminary injunction. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Government
9 will suffer no irreparable harm if the court stays removal while this lawsuit is
10 pending. In addition, it is in the public interest to prevent the Petitioner from being
11 unlawfully removed to a country where he would be persecuted or tortured and to allow
12 him to pursue his claims for relief. According to the Supreme Court, “there is a public
13 interest in preventing [noncitizens] from being wrongfully removed, particularly to
14 countries where they are likely to face substantial harm.” *Nken*, 556 U.S. at 436; see
15 also *Alabama Ass’n of Realtors v. HHS*, 594 U.S. 758, 766 (2021) (“our system does
16 not permit agencies to act unlawfully even in pursuit of desirable ends”); *Youngstown*
17 *Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582 (1952) (affirming district court’s
18 preliminary injunction of an illegal executive order even though a wartime president
19 said his order was “necessary to avert a national catastrophe”). The balance of the
20 equities and the public interest counsel in favor of granting a stay of removal. See
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1 *Tabatabaeifar*, 2025 U.S. Dist. LEXIS 91554 at *27 (granting a stay of removal
2 because petitioner risks removal to a country where she could be tortured or otherwise
3 persecuted; there is no evidence to suggest that she poses a threat to the public; and “the
4 public has a strong interest in ensuring that the nation’s immigration laws are
5 robustly—and fairly—enforced”).

6 **CONCLUSION**

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

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11 Dated this 11th day of August, 2025.

12
13 /S/ Delia Salvatierra
14 Delia Salvatierra
SALVATIERRA LAW GROUP

15 Robert Pauw
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