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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' RESPONSE IN
OPPOSITION TO PETITIONER'S
HABEAS CORPUS PETITION**

1 Respondents hereby file a response in opposition to Petitioner's Petition For
2 Habeas Corpus and For Writ of Mandamus ("Habeas Petition"), ECF No. 1. This entire
3 case suffers from multiple jurisdictional defects: (1) E.Q.'s claims fall outside the "core"
4 of habeas corpus and thus the Court lacks habeas jurisdiction over these claims; (2) 8
5 U.S.C. §§ 1252(a) and (e) bar review of this action; and (3) E.Q. lacks standing to
6 challenge his removal to a third country. Even if these jurisdictional hurdles pose no bar
7 on review, the Court should still dismiss the Habeas Petition because E.Q.'s claims fail
8 on the merits. Therefore, for all these reasons, the Court should deny the Habeas Petition
9 and dismiss this case.

10 STATEMENT OF FACTS

11 On January 16, 2025, Petitioner E.Q., a native and citizen of Afghanistan, entered
12 the United States illegally across the southwest border. ECF No. 15-1 at 8.¹ He was
13 apprehended by U.S. Customs and Border Protection. ECF No. 1 ¶ 18. E.Q. was
14 determined inadmissible because he did not possess a valid entry document and placed in
15 expedited removal proceedings. *See* ECF No. 15-1 at 8; *see also* ECF No. 1 ¶ 18. After
16 requesting asylum, E.Q. was referred for a credible fear interview. *Id.* E.Q. received his
17 first credible fear interview on February 4, 2025. ECF No. 15-1 at 8.

18 ¹ E.Q. does not dispute the facts that are contained in the opinions issued in the *E.Q., et*
19 *al. v. U.S. Dep't of Homeland Sec., et al.*, Case No. 1:25-cv-00791 (D.D.C.) case nor
20 does he dispute the authenticity of these opinions. Furthermore, in E.Q.'s Habeas
21 Petition, Motion for Preliminary Injunction, and Reply to the Motion for Preliminary
22 Injunction, he acknowledges the contents of these opinions, including the holdings
23 reached in these opinions, which is that E.Q. lacked standing in the action. *See* ECF No. 1
24 ¶¶ 24-26; ECF No. 14 at 4 n.1; ECF No. 17 at 4-7. Therefore, this Court can take judicial
25 notice of the opinions and the facts contained in the opinions that were issued by the U.S.
26 District Court for the District of Columbia, which were previously attached as exhibits to
27 Respondents' Opposition to E.Q.'s Motion for Preliminary Injunction. *See Hotel*
Employees & Rest. Employees Local 2 v. Vista Inn Mgmt. Co., 393 F.Supp.2d 972, 978
(N.D.Cal.2005); *see also Knievel v. ESPN*, 393 F.3d 1068, 1076-77 (9th Cir. 2005). It is
also worth noting that the Respondents did not attach the exhibits that the U.S. District
Court for the Columbia District Court relied on in issuing its opinions because these
exhibits were filed under seal in that case.

I. E.Q.'s First Negative Credible fear Determination.

E.Q. received his first credible fear interview on February 4, 2025. *Id.* During his first credible fear interview, E.Q. stated that he fled Afghanistan in 2024 after the Taliban raided his home and accused him of being an “American spy.” *Id.* E.Q. believed he was targeted because one of his relatives worked with the U.S. military. *Id.* He also testified that, before leaving Afghanistan, he had worked for a business that served the public but was patronized by members of the Taliban; however, E.Q. testified that he never personally worked with them. *Id.*

In his first interview, the asylum officer found E.Q. credible but issued him a negative credible fear determination. *Id.* The officer made findings as to asylum, withholding of removal, and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) protection. *Id.* First, as to asylum, the officer found that E.Q. was likely subject to a limitation on asylum eligibility under the “Securing the Border Rule.” The Securing the Border Rule, 89 Fed. Reg. 48710 (June 7, 2024) and Fed. Reg. 81156 (Oct. 7, 2024), provided that, once the number of southwest border crossings over a period reached a certain threshold, aliens who arrived at the border could not apply for asylum unless they qualified for an exception. *See* 8 C.F.R. § 208.35(a). Because E.Q. entered the United States from Mexico when the Rule’s limit was in effect, and the officer determined that there was not a significant possibility that he could establish an exception, he was ineligible for asylum. ECF No. 15-1 at 8.

Next, as to withholding of removal, the officer determined that E.Q. had not established a reasonable probability of persecution.² *Id.* at 9. The officer found no nexus

² DHS and the Department of Justice first implemented the “reasonable probability” standard in the Securing the Border Rule in June 2024. *See Securing the Border*, 89 Fed. Reg. 4870 (Jun. 7, 2024); *Las Americas Immigr. Advoc. Ctr. v. DHS*, --- F. Supp. 3d ---, No. CV 24-1702 (RC), 2025 WL 1403811 (D.D.C. May 9, 2025) (“The Rule requires ‘greater specificity of the claim’ than before, when [aliens] had to show only a ‘reasonable’ or ‘significant possibility’ of their eligibility for statutory withholding of

1 between any feared persecution and a protected ground of race, religion, nationality,
2 membership in a particular social group, or political opinion, as necessary to make out a
3 withholding-of-removal claim. *Id.* The officer's written analysis explained that E.Q. had
4 not suffered past persecution because he had not been harmed or directly threatened in
5 Afghanistan. *Id.* In addition, E.Q. failed to establish that he "would be harmed in the
6 future due to a protected characteristic that he possesses." *Id.* Although E.Q. expressed
7 that he feared "possible death or imprisonment" because a relative had worked for the
8 U.S. government, he did not claim that this relative had been harmed or threatened by the
9 Taliban. *Id.* Nor did E.Q. indicate that any of his other relatives would be harmed or
10 investigated. *Id.* "Without more," the officer concluded, E.Q. had not established a
11 "reasonable probability" of future persecution based on a protected ground.

12 The officer also found E.Q. subject to two mandatory bars to withholding of
13 removal—namely, the security-risk bar, 8 U.S.C. § 1158(b)(2), and terrorist bar, 8 U.S.C.
14 § 1182(a)(3)(8). *Id.* The officer explained that "there [were] reasonable grounds to
15 believe" E.Q. was "a danger to the security of the United States" and "a person described
16 in the Terrorism-Related Inadmissibility Grounds." *Id.* The officer pointed to E.Q.'s
17 testimony about working for a business that served and therefore "gave material support
18 to the Taliban."³ *Id.*

19 Finally, as to CAT, the officer determined that E.Q. had not established a
20 reasonable probability of torture because he had not demonstrated a reasonable
21 probability that he would suffer severe physical or mental pain or suffering if removed.
22 *Id.* The officer concluded that E.Q.'s testimony did not support a finding that the Taliban

23
24
25 removal or CAT protection.") (citing 89 Fed. Reg. at 81246–47). While *Las Americas*
26 *Immigr. Advoc. Ctr.* invalidated portions of the Rule, "the Court [did] not set[] aside the
27 Rule's reasonable probability screening standard." *Id.* at *24 n.17.

³ Providing material support to a terrorist organization is considered a terrorism-related
inadmissibility ground. See 8 U.S.C. § 1182(a)(3)(B)(iv)(VI).

1 would harm him in the future. *Id.* at 9-10. An Immigration Judge affirmed this negative
2 credible fear determination. *Id.* at 10.

3 **II. The Current D.D.C. Lawsuit and E.Q.'s Second credible fear interview.**

4 On March 17, 2025, the Petitioner, then facing removal, joined with three
5 organizations to challenge the DHS rule, Mandatory Bars in Fear Screenings, 89 Fed.
6 Reg. 103,370 (Dec. 18, 2024) and the Executive Office for Immigration Review (EOIR)
7 companion rule, Bars to Eligibility During Credible Fear and Reasonable Fear Review,
8 89 Fed. Reg. 105,392 (Dec. 27, 2024) (collectively, "the Rules"). ECF No. 15-1; *see*
9 *E.Q., et al. v. U.S. Dep't of Homeland Sec., et al.*, Case No. 1:25-cv-00791 (D.D.C.).
10 E.Q. along with the three organizational Plaintiffs sought vacatur of the Rules under the
11 Administrative Procedure Act ("APA") on the grounds that they violated the INA and
12 were arbitrary and capricious. *Id.* Two days after filing the complaint, E.Q. moved for an
13 emergency stay of E.Q.'s removal. *Id.* The government subsequently notified Plaintiffs
14 and the Court that it planned to reconsider E.Q.'s first credible fear determination and
15 conduct a second credible fear interview. *Id.* E.Q.'s second credible fear interview took
16 place on April 14, 2025. *Id.* at 11. This time, E.Q. testified that, while still in
17 Afghanistan, he had been summoned for questioning by the head of law enforcement in
18 his neighborhood. *Id.* E.Q. told the asylum officer that he had forgotten to mention this
19 summons during his first credible fear interview because he was "stressed" and
20 "confused." *Id.* E.Q. could not remember when he had received the summons but testified
21 that it led him to fear for his life and go into hiding. *Id.* In this interview, E.Q. clarified
22 that he was already in hiding—and thus not present—when the Taliban raided his home.
23 *Id.*

24 This interview also resulted in a negative credible fear determination, though on a
25 different basis: The asylum officer determined that E.Q. was not credible based on
26 inconsistencies between statements in his first and second interviews. *Id.* The asylum
27 officer noted E.Q.'s failure to mention the summons in his first interview and the

1 contradiction between his initial suggestion that he had been present when the Taliban
2 came to his home and his subsequent admission that, by that time, he had already gone
3 into hiding. *Id.* The asylum officer also found concerning that E.Q. was able to testify
4 with detail as to some topics but not others, including the summons and his work history
5 in Afghanistan. *Id.* In addition to finding E.Q. not credible, the asylum officer also
6 concluded the Securing the Border limitation on asylum ineligibility applied. However,
7 the asylum officer did not find that E.Q. was subject to a mandatory bar. *Id.*

8 On May 9, 2025, an immigration judge affirmed E.Q.'s second negative credible
9 fear determination. *Id.* In the period between the asylum officer's decision and the
10 immigration judge's affirmance, parts of the Securing the Border Rule, including the
11 limitation on asylum eligibility, had been vacated in *Las Americas Immigrant Advoc. Ctr.*
12 *v. U.S. Dep't of Homeland Sec.*, No. CV 24-1702 (RC), 2025 WL 1403811, at *21
13 (D.D.C. May 9, 2025). *Id.* at 11-12. The immigration judge, however, found that E.Q.
14 had failed to rebut the presumption of asylum ineligibility established by a different rule,
15 the Circumvention of Lawful Pathways Rule ("CLP") at 8 C.F.R. § 1208.33(a)(1)–(2). *Id.*
16 at 12. And, as to withholding of removal and CAT, the immigration judge affirmed that
17 E.Q. had not established a reasonable possibility of persecution or torture under CLP. *Id.*

18 Shortly thereafter, E.Q. filed an emergency motion to stay his removal during the
19 pendency of that case. The U.S. District Court for the District of Columbia considered
20 and rejected E.Q.'s allegation that the credible fear determination and the resulting
21 removal order are invalid for having been considered under the challenged Rules. *See*
22 *generally id.* In rejecting this allegation and denying a stay of removal, the Court found
23 that E.Q. likely lacked standing because his injury—his first negative credible fear
24 determination and associated removal order—was neither fairly traceable to the
25 challenged Rules nor redressable by the Court in that suit. *Id.* at 19-20. E.Q. then filed a
26 motion for reconsideration, which the Court denied because he "has not demonstrated
27 any of the factors warranting reconsideration: an intervening change in the law, newly

1 discovered evidence that was previously unavailable, a clear error in the first order, or a
2 change in facts.” ECF No. 15-2 at 5.

3 **III. This Habeas Petition Action**

4 Shortly after the U.S. District Court for the District of Columbia denied E.Q.’s
5 request for a stay of removal twice, he filed this habeas petition action on July 13, 2025.
6 ECF No. 1. E.Q.’s Habeas Petition raises four claims. These claims include: (1) E.Q.’s
7 negative credible fear determination and the resulting removal order were not made
8 pursuant to 8 U.S.C. § 1225(b)(1), but rather were made under a part of the Securing the
9 Border Rule that had been vacated by the *Las Americas. Immigrant Advoc. Ctr.* case; (2)
10 a mandamus claim requiring Respondents to provide a credible fear interview under
11 Section 1225(b)(1) prior to his removal from the United States; (3) a claim that his
12 possible removal to a third country is unlawful without providing him a meaningful
13 opportunity to access the protections required pursuant to 8 U.S.C. § 1231(b)(3) and
14 Section 2242 of the Foreign Affairs Reform and Restructuring Act (FARRA); and (4) a
15 claim that this Court review the CAT determinations related to his removal to
16 Afghanistan. *See* ECF No. 1 at 9-12. As for relief, E.Q. seeks: (1) to enjoin his removal to
17 any third country without an opportunity to apply for withholding of removal or CAT
18 protection; (2) a declaration that the CAT determinations are not supported by substantial
19 evidence and violate the INA and Section 2242 of FARRA; (3) a declaration that the
20 asylum determination and the issuance of an order of removal are void and without legal
21 effect; and (4) grant a writ of mandamus requiring respondents to provide him with
22 another credible fear interview. *See* ECF No. 1, Prayer for Relief at 12-13.

23 **ARGUMENT**

24 **I. The Court Lacks Jurisdiction Over E.Q.’s Habeas Petition**

25 The Court lacks jurisdiction over E.Q.’s habeas petition based on three grounds.
26 First, E.Q.’s claims for relief fall outside the core of habeas corpus and thus the Court
27 lacks habeas jurisdiction over this action. Second, 8 U.S.C. §§ 1252(a) and (e) bar review

1 of this action. Third, E.Q. lacks standing to challenge his removal to a third country and
 2 thus the Court lacks jurisdiction over this claim.

3 **A. E.Q.'s claims for relief fall outside the core of habeas corpus and thus the**
 4 **Court lacks habeas jurisdiction over this action.**

5 Historically, “the writ of habeas corpus has served as a means of reviewing the
 6 legality of Executive detention” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). And the
 7 traditional “remedy for such detention is, of course, release.” *Munaf v. Geren*, 553 U.S.
 8 674, 693 (2008).

9 The Supreme Court, in *Department of Homeland Security v. Thuraissigiam*, 591
 10 U.S. 103 (2020), reaffirmed this longstanding understanding of habeas corpus as a
 11 mechanism for seeking release from confinement. In *Thuraissigiam*, the Supreme Court
 12 found no evidence that the writ of habeas corpus permits a habeas petitioner to claim the
 13 right to “remain in a country other than his own or to obtain administrative or judicial
 14 review leading to that result.” 591 U.S. at 120. Rather, the Supreme Court noted that “the
 15 essence of habeas corpus is an attack by a person in custody upon the legality of that
 16 custody.” *Id.* at 117. In doing so, the Supreme Court found that there is no habeas
 17 jurisdiction “to seek relief other than immediate or earlier release from confinement.” *Id.*
 18 at 117. Accordingly, the Supreme Court held that claims for relief that fall “outside the
 19 ‘core’ of habeas may not be pursued through habeas.” *Id.* (citing *Skinner v. Switzer*, 562
 20 U.S. 521, 525 (2011)). Therefore, when a Petitioner’s claim would not “‘necessarily spell
 21 speedier release,’” that claim does not lie at “‘the core of habeas corpus,’” and must be
 22 brought, if at all, under some other mechanism. *See Skinner*, 562 U.S. at 535 n.13
 23 (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)).

24 Here, E.Q.’s claim that the negative credible fear determination and the resulting
 25 removal order were not made pursuant to Section 1225(b)(1), and mandamus claim
 26 cannot result in his release from custody. In fact, as an applicant for admission who was
 27 found not to have a credible fear by an asylum officer and an immigration judge, E.Q. is

1 subject to mandatory detention until his removal under Section 1225(b)((1)(B)(iii)(IV).
2 Furthermore, even assuming *arguendo* that the credible fear determinations and resulting
3 removal order were not made pursuant to Section 1225(b)(1), and the Respondents
4 provide E.Q. with another credible fear interview under § 1225(b)(1), even if he is found
5 to have a credible fear, that determination still will not result in his release. *See* 8 U.S.C.
6 § 1225(b)(1)(B)(ii) (mandating detention of applicants for admission who have not been
7 admitted or paroled and found to have a credible fear during consideration of the
8 application for asylum); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (highlighting
9 that “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [] mandate detention of applicants
10 for admission until certain proceedings have concluded,” and that neither provision
11 “imposes any limit on the length of detention” or “says anything whatsoever about bond
12 hearings.”). Accordingly, E.Q.’s first two claims for relief would not spell speedier release
13 nor release at all, and thus these claims fall outside the “core” of habeas. *See Skinner*, 562
14 U.S. at 535 n.13; *see also Thuraissigiam*, 591 U.S. at 133, 138 (noting “respondent
15 contends that IIRIRA [via 8 U.S.C. § 1252(e)(2)] violates his right to due process by
16 precluding judicial review of his allegedly flawed credible fear proceeding,” but finding
17 “IIRIRA unequivocally bars habeas review of respondent’s claims, see § 1252(e)(2).”).
18 Rather, it is evident that E.Q. is raising these two claims to obtain administrative or
19 judicial review leading to the result to “remain in a country other than his own,” which
20 the Supreme Court explicitly found not to be permitted in habeas. Thus, the Court lacks
21 habeas jurisdiction over these two claims.

22 To the extent E.Q. relies on *Trump v. J. G.G.*, 145 S. Ct. 1003 (2025) in support of
23 his habeas petition, he is mistaken. The Supreme Court found in that case that
24 “[r]egardless of whether the detainees formally request release from confinement,
25 because their claims for relief ‘necessarily imply the invalidity’ of their confinement and
26 removal under the AEA, their claims fall within the ‘core’ of the writ of habeas corpus
27 and thus must be brought in habeas.” *Id.* at 1005. E.Q. does not contest the validity of his

1 confinement, and he cannot. As explained above, as an applicant for admission, E.Q. is
 2 subject to mandatory detention through the consideration of his asylum claim and until he
 3 is removed. 8 U.S.C. § 1225(b)(1)(B)(ii). Thus, *J.G.G.* is inapposite here.

4 E.Q.'s claims that his possible removal to a third country would be unlawful and
 5 that this Court should review the negative CAT determination related to his removal to
 6 Afghanistan cannot result in his release. Rather, these claims address only where E.Q.
 7 could be removed to, not whether detention during immigration proceedings or pending
 8 his removal is legal. 8 C.F.R. § 1208.17(c) (where an alien is ordered removed and that
 9 removal is deferred, the grant of deferral of removal under the CAT does not alter DHS'
 10 authority to detain that alien); *see also Wanjiru v. Holder*, 705 F.3d 258, 267 (7th
 11 Cir.2013)(highlighting that the government has authority to keep an alien in custody
 12 under Section 1208.17(c) until he is removed to either his country or a third country).
 13 Accordingly, these two claims also fall outside the core of habeas and thus the Court
 14 lacks habeas jurisdiction. Because the Court lacks habeas jurisdiction over all E.Q.'s
 15 claims for relief, this case must be dismissed.⁴

16 **B. Sections 1252(a) and (e) bar review of this action.**

17 In 1996, Congress passed the Illegal Immigration Reform and Immigrant
 18 Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104208, Tit. III, § 302(a), 110 Stat.
 19 3009-579. IIRIRA substantially amended the procedures under § 1225(b) regarding
 20 aliens' admission and removal from the United States and established a new expedited
 21 removal process for adjudicating the claims of certain aliens arriving in the United States.

22 ⁴ Should the Court find that it has jurisdiction outside of habeas over E.Q.'s civil claims,
 23 it should still dismiss them without prejudice as improperly raised in habeas and require
 24 E.Q. to file a civil claim subject to the Federal Rules of Civil Procedure. *Trollope v.*
 25 *Vaughn*, 2018 WL 3913922, at *3 (C.D. Cal. Aug. 13, 2018) (declining to convert a non-
 26 cognizable habeas petition to a civil rights claim in part because petitioner paid only the
 27 \$5 habeas fee and not the \$350 civil filing fee and \$50 administrative fee) (citing 28
 U.S.C. § 1914); *see also Al Eyani v. Bondi, et al.*, Case No. 5:25-cv-00422 (C.D. Cal.
 May 20, 2025) (dismissing habeas petition in part because it was seeking civil relief).

1 The expedited removal system includes special procedures applicable to an
 2 applicant for admission who “indicates an intention to apply for asylum, or expresses a
 3 fear of persecution or torture, or a fear of return to his or her country.” 8 C.F.R. §
 4 235.3(b)(4); *see* 8 U.S.C. § 1225(b)(1)(A)(ii) and (B). Rather than immediately being
 5 ordered removed, such an alien is referred for screening before an asylum officer, who
 6 interviews the alien, reviews relevant facts, and determines whether the alien has a
 7 credible fear. 8 U.S.C. § 1225(b)(1)(A)(ii) and (B); *see also* 8 C.F.R. §§ 208.30(d) and
 8 (e). The alien “may consult with a person or persons of the alien’s choosing” before the
 9 credible fear screening, so long as it does not unreasonably delay the process. 8 C.F.R. §
 10 208.30(d)(4); *see also* 8 C.F.R. § 1003.42(c) (consultation before immigration judge
 11 review). A credible fear exists when there is a “significant possibility,” 8 U.S.C. §
 12 1225(b)(1)(B)(v), that the alien could establish eligibility for asylum, withholding of
 13 removal under 8 U.S.C. § 1231(b)(3), or protection under CAT. *See* 8 C.F.R. §
 14 208.30(e)(2) and (3).⁵

15 The asylum officer must “create a written record of his or her determination”
 16 regarding credible fear, 8 C.F.R. § 208.30(e)(1); 8 U.S.C. § 1225(b)(1)(B)(iii)(II). If the
 17 officer finds that the individual lacks a credible fear, that finding “shall not become final
 18 until reviewed by a supervisory asylum officer.” 8 C.F.R. § 208.30(e)(8). If the
 19 supervisory officer agrees that the alien lacks a credible fear, the asylum officer “shall”
 20 provide the alien a “written notice of decision” that informs the alien that he can request
 21 immigration judge review. 8 C.F.R. §§ 208.30(g)(1), 235.3(b)(4)(i)(C); 8 U.S.C.

22
 23 ⁵ Under the Securing the Border Rule, DHS determined that “the ‘reasonable probability’
 24 screening standard is more appropriate” than the “significant possibility” standard for
 25 withholding of removal and CAT protection “in light of the ultimate burden of proof for
 26 statutory withholding of removal and CAT protection and better captures the population
 27 of [aliens] with potentially valid claims for such protection.” Securing the Border, 89 FR
 81156-01. As noted above, the district court in *Las Americas* found the alternative
 standard reasonable and did not vacate it along with other aspects of the Securing the
 Border rule.

1 § 1225(b)(1)(B)(iii)(III). If the alien requests further review, the immigration judge—who
2 is part of the Executive Office for Immigration Review (EOIR) in the Department of
3 Justice—reviews de novo the asylum officers’ determination. 8 C.F.R. § 1003.42(d). The
4 immigration judge “may receive into evidence any oral or written statement which is
5 material and relevant to any issue in the review.” 8 C.F.R. § 1003.42(c). If the
6 supervisory officer, and (if review is sought) the immigration judge find that the alien
7 lacks a credible fear of persecution on a protected ground or a credible fear of torture, the
8 alien shall be removed without further hearing or review. 8 U.S.C. § 1225(b)(1)(B)(iii)(I).

9 In 8 U.S.C. § 1252(a)(1), Congress provided for review in the courts of appeals of
10 final removal orders entered at the conclusion of removal proceedings under 8 U.S.C. §
11 1229(a). But Congress limited judicial review of final removal orders entered under
12 expedited removal procedures. Subject to specified exceptions, Congress provided that,
13 “[n]otwithstanding any other provision of law (statutory or nonstatutory), including
14 section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and
15 1651 of such title, no court shall have jurisdiction to review”: (1) any “cause or claim
16 arising from or relating to the implementation or operation of an [expedited] order of
17 removal”; (2) the government’s decision to invoke expedited removal; (3) “the
18 application of [expedited removal] to individual aliens, including the [credible fear]
19 determination”; or (4) “procedures and policies adopted” to “implement the provisions of
20 section 1225(b)(1).” 8 U.S.C. §§ 1252(a)(2)(A)(i)-(iv).

21 Section 1252(e) sets forth the exceptions to the jurisdictional bar to review
22 expedited-removal orders. As relevant here, it provides that judicial review of an
23 expedited-removal order “is available in habeas corpus proceedings,” but “shall be
24 limited” to the specific determinations of whether the individual: (1) “is an alien”; (2)
25 “was ordered removed under” Section 1225(b)(1); or (3) can prove that he or she was
26 previously admitted to the United States as a lawful permanent resident or a refugee, or
27 was granted asylum, and that such status has not been terminated. 8 U.S.C. § 1252(e)(2).

1 “In determining whether an alien has been ordered removed” under the expedited
2 removal statute, Congress further specified that “the court’s inquiry shall be limited to
3 whether such an order in fact was issued and whether it relates to [E.Q.]” *See* 8 U.S.C. §
4 1252(e)(5) (“*There shall be no review of whether the alien is actually inadmissible or*
5 *entitled to any relief from removal.*”) (emphasis added); *see also* H.R. Conf. Rep. No.
6 828, 104th Cong., 2d Sess. 209, 220 (1996) (Conference Report) (“[R]eview does not
7 extend to determinations of credible fear and removability in the case of individual
8 aliens.”).

9 Here, E.Q. is an applicant for admission that was ordered removed on an expedited
10 basis when he attempted to enter the United States illegally by crossing the southern border.
11 E.Q. neither claims that he was admitted as a lawful permanent resident or a refugee, nor
12 that he was granted asylum. Accordingly, the Court’s review of any other aspect of the
13 expedited removal order is foreclosed by Section 1252(e)(1). In short, because E.Q.’s
14 claims do not fall within one of the three limited circumstances allowing for judicial review
15 of expedited removal proceedings, the Court lacks jurisdiction to review his claims and
16 this ends the inquiry. *See, e.g., Avendano-Ramirez v. Ashcroft*, 365 F.3d 813, 818-19 (9th
17 Cir. 2004).

18 The fact that E.Q. is alleging that the credible fear determinations and the resulting
19 removal order are unlawful because they were made under the Securing the Border Rule
20 and not made pursuant to Section 1225(b)(1) does not change the jurisdictional outcome.
21 *See* ECF No. 1 at 9-10, 12. As noted above, save for the three permitted bases for review
22 under Section 1252(e)(2) that are inapplicable here, no court has jurisdiction to review any
23 “cause or claim arising from or relating to the implementation or operation of an
24 [expedited] order of removal,” the government’s decision to invoke the expedited removal
25 statute; and “the application of [expedited removal] to individual aliens, including the
26 [credible fear] determination.” 8 U.S.C. §§ 1252(a)(2)(A)(i)-(iii). The Ninth Circuit held
27 that these provisions foreclose review of whether the expedited removal statute was

properly invoked. *United States v. Barajas-Alvarado*, 655 F.3d 1077, 1082 (9th Cir. 2011) (“Congress expressly deprived courts of jurisdiction to hear” challenges to applications of the expedited removal statute and limited habeas review to “considering whether the petitioner is legally in the country, . . . and whether the petitioner was expeditiously removed.”); *Meng Li v. Eddy*, 259 F.3d 1132, 1134, *opinion vacated as moot*, 324 F.3d 1109 (9th Cir. 2003) (courts may not “inquire into whether section 1225(b)(1) was properly invoked”); *Avendano-Ramirez*, 365 F.3d at 818-19 (courts may not review whether alien “was improperly removed pursuant to § 1225(b)(1)(A)(I) in the first place”). Thus, the Court lacks jurisdiction over such a claim.

Furthermore, the fact that E.Q. is raising a challenge to the expedited removal system, by asserting that the credible fear determinations and resulting removal order were not made pursuant to Section 1225(b)(1) because they were based on the Securing the Border Rule, does not restore jurisdiction to this Court. *See* ECF No. 1 at ¶¶ 20, 27, 31, 35.⁶ Section 1252(e)(3) “sets forth the process for bringing a constitutional challenge to § 1225(b) or its implementing regulations. Such a claim may be brought in the United States District Court for the District of Columbia and must have been filed no later than 60 days after the date the challenged section or regulation was first implemented.” *Vaupel v. Ortiz*, No. 06-1103, 2007 WL 2269444, *3 (10th Cir. Aug. 9, 2007) (citing 8 U.S.C. § 1252(e)(3)(A)-(B)). Thus, the fact that E.Q. is raising a challenge to the expedited

⁶ Petitioner alleges that each of the decisions he challenges here “was not made under or pursuant to § 1225(b)(1).” *See, e.g.*, ECF No. 1 ¶¶ at 20 (asylum officer’s first negative credible fear determination), 22 (asylum officer’s CAT determination), 23 (immigration judge’s “asylum, withholding of removal, [and] CAT relief” denials), 27 (second asylum officer’s negative credible fear determination), 29 (second asylum officer’s CAT determination), 30 (second immigration judge’s “asylum, withholding of removal, [and] CAT relief” denials); *see also id.* at First, Second, Fourth Causes of Action. The only authorities Petitioner cites in support of these allegations are the Securing the Border Rule, *id.* at ¶¶ 20, 27, and the Mandatory Bars Rule that he is concurrently challenging in the District of Columbia. *Id.* at ¶ 24. Thus, Petitioner is either challenging the Securing the Border Rule or the Mandatory Bars Rule, or both. He offers no other possibilities.

1 removal system does not change the outcome of jurisdiction, as such a claim may not be
2 brought in this Court. *Li*, 259 F.3d at 1136 (holding under Section 1252(e)(3) that alien’s
3 challenge to expedited removal system could not be brought in courts in the Ninth Circuit).

4 Likewise, E.Q.’s claim that the CAT determination is unlawful and his third-country
5 removal claim also do not change the jurisdictional outcome in this case. *See* ECF No. 1 at
6 10-12. Contrary to E.Q.’s allegation in his Habeas Petition, Section 1252(a)(2)(A)(iii)
7 precludes any judicial review of “the *application* of such section to *individual aliens*,
8 including the [credible fear] determination made under section 235(b)(1)(B).” 8 U.S.C. §
9 1252(a)(2)(A)(iii) (emphasis added); *see also Mendoza-Linares v. Garland*, 51 F.4th 1146,
10 1155 (9th Cir. 2022). Notably, Section 1252(a)(2)(A)(iii)—unlike the other three
11 provisions—“is not subject to the proviso ‘except as provided in subsection (e),’ and it
12 therefore stands as a flat prohibition on any judicial review of such matters.” *Mendoza-*
13 *Linares*, 51 F.4th at 1155 (internal citation omitted). Accordingly, the Ninth Circuit held
14 that Section 1252(a)(2)(A)(iii) bars review of challenges to credible fear determinations,
15 including challenges that are based on the standards that were employed by the asylum
16 officer and the Immigration Judge in applying § 1225(b)(1).⁷ *Id.* (“By challenging the
17 credible fear determination made . . . and the standards that were employed by the asylum
18 officer and the Immigration Judge in applying Section 235(b)(1) to him, *Mendoza-Linares*
19 necessarily asks us to do what the statute forbids us to do, which is to review ‘the
20 application of such section to [him].’” (quoting 8 U.S.C. § 1252(a)(2)(A)(iii))).

21 Similarly, the crux of E.Q.’s third-country claim is that he should not be removed
22 to a third country without receiving withholding of removal and CAT determinations as to

23
24 ⁷ E.Q.’s attempt to distinguish his CAT determination claim from the CAT determination
25 claim raised in *Mendoza-Linares* is unavailing. *See* ECF No. 14 at 9. Contrary to E.Q.’s
26 characterization, the Petitioner in *Mendoza-Linares* was challenging his credible fear
27 determination on the grounds that the standards of a regulatory bar should not have been
applied by the asylum officer and the immigration judge. *Mendoza-Linares*, 51 F.4th at
1155. Thus, the *Mendoza-Linares* ruling is squarely applicable to this case.

1 that country and thus seeks review of the application of Section 1225(b)(1) to him.
2 Therefore, for the same reasons noted above as to EQ's CAT determination claim, such a
3 claim would be barred by Section 1252(a)(2)(A)(iii).

4 Moreover, none of the other jurisdictional grounds alleged by E.Q. confer
5 jurisdiction upon this Court. Due to the jurisdictional bars established by Section
6 1252(a)(2)(A), the Federal Question Statute, 28 U.S.C. § 1361, and the Mandamus Statute,
7 28 U.S.C. § 1361, do not provide this Court with jurisdiction.⁸ See 8 U.S.C. § 1252(e)(2);
8 *see also De Rincon v. Dep't of Homeland Sec.*, 539 F.3d 1133, 1138-39 (9th Cir. 2008).
9 Likewise, the Declaratory Judgment Act ("DJA"), 28 U.S.C. § 2201 does not confer
10 jurisdiction on this Court, it merely provides a remedy once an independent ground of
11 jurisdiction is established. *See, e.g., Countrywide Home Loans, Inc., v. Mortg. Guar. Ins.*
12 *Corp.*, 642 F.3d 849, 853 (9th Cir. 2011). Given that Sections 1252(a)(2)(A) and (e)
13 deprive this Court of jurisdiction, there does not exist an independent ground of jurisdiction
14 and thus the DJA does not confer jurisdiction. And for the reasons explained above and
15 pursuant to §§ 1252(a)(2)(A) and (e), 28 U.S.C. § 2241 (habeas corpus statute) does not
16 confer jurisdiction to this Court. Therefore, the Court should dismiss this case in its
17 entirety.

18 **C. E.Q. lacks Standing to Raise his Third-Country Removal Claim.**

19 In addition to the jurisdictional bars described above, E.Q. lacks standing to raise
20 his claim for relief related to his removal to a third country. A petitioner seeking to establish
21

22 ⁸ Contrary to E.Q.'s assertion, Section 1252(a)(4) does not confer jurisdiction for CAT
23 determinations in habeas, as it specifically provides that "[n]otwithstanding any other
24 provision of law (statutory or nonstatutory), including Section 2241 of title 28, or any
25 other habeas corpus provision, . . . a petition for review filed with an appropriate court of
26 appeals . . . shall be the sole and exclusive means for judicial review of any cause or
27 claim under [CAT] except as provided in subsection (e)." And because E.Q. is subject to
expedited removal proceedings, Congress has restricted his access to a petition for review
or to any other means of seeking review of a negative CAT determination other than for
the limited categories explained *supra*, none of which apply here.

standing must show that he has (1) suffered a concrete and particularized injury in fact that is (2) fairly traceable to the defendant's challenged conduct and (3) likely to be redressed by a favorable judicial decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). An injury in fact is “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ‘actual or imminent’ not ‘conjectural’ or ‘hypothetical.’” *Id.* at 560. Here, E.Q. alleges that the Respondents seek to remove E.Q. to a third country without providing him a meaningful opportunity to access the protections required pursuant to § 1231(b)(3) and FARRA. ECF No. 1 ¶ 44. However, E.Q. does not show that Respondents have attempted to remove him to a third country. In fact, it appears from E.Q.'s Habeas Petition that this allegation only stems from his “fear that if he is removed to a country other than Afghanistan, he will be subjected to persecution or torture in that third country.” ECF No. 1 ¶ 33. Accordingly, E.Q.'s third-country removal claim is conjectural or hypothetical, rather than actual or imminent, as there is no evidence to indicate that the Respondents have determined to remove him to a third country. Accordingly, given that E.Q. cannot establish standing for this claim, this claim must be dismissed for this reason as well.

II. Even if the Court Can Reach the Merits, E.Q. Cannot Succeed on the Merits.

At the heart of E.Q.'s claims, he is challenging the validity of a negative credible fear determination and the resulting removal order, alleging they were not done in accordance with 8 U.S.C. § 1225(b)(1)(B) and 8 C.F.R. § 208.30, because they were based on the partially-vacated Securing the Border Rule. This challenge, however, is unavailing.

As to E.Q.'s second negative credible fear determination, although the asylum officer concluded that the Securing the Border limitation on asylum ineligibility applied, the second negative credible fear determination was made on a different basis: The asylum officer determined that he was not credible based on inconsistencies between statements in his first and second interview. ECF No. 15-1 at 11. And, as to withholding

1 of removal and CAT, the Immigration Judge affirmed that E.Q. had not established a
2 reasonable possibility of persecution or torture. *See id.* at 14 (“E.Q. does not point to any
3 part of the no-nexus finding that turned on or was influenced by the Rules.”); *see also*
4 ECF No. 15 at 3-4. It is also worth noting that in *Las Americas Immigr. Advoc. Ctr. v.*
5 *DHS*, the district court found that one provision of the Securing the Border Rule E.Q.
6 challenges here, requiring aliens to demonstrate “reasonable probability of persecution . .
7 . or torture” to establish eligibility for statutory withholding of removal or protection
8 under CAT, was not arbitrary and capricious under the APA. *Id.* at *24 n.17 (“the Court
9 is not setting aside the Rule’s reasonable probability screening standard”). Therefore,
10 contrary to E.Q.’s assertion, the first negative credible fear determination finding that he
11 failed to demonstrate a “reasonable probability” of harm to establish withholding of
12 removal or protection under CAT was not invalidated by the *Las Americas Immigr.*
13 *Advoc. Ctr. v. DHS* court. Accordingly, for these reasons alone, the Court should reject
14 the assertion that the negative credible fear determinations and resulting removal order
15 were not done in accordance with 8 U.S.C. §1225(b)(1)(B) and 8 C.F.R. §208.30,
16 because they were based on parts of the Securing the Border Rule.

17 CONCLUSION

18 For the foregoing reasons, the Court should deny E.Q.’s Habeas Petition and dismiss
19 this action.

20 Dated: August 18, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2025, I served an electronic copy of the foregoing on counsel for E.Q. via the Court's CM/ECF system.

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