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**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)

**PETITIONER'S REPLY TO ORDER
TO SHOW CAUSE¹**

¹ Petitioner's response here is limited to the question raised in this Court's Order to Show Cause. Petitioner intends to file a response to the Government's Opposition to Motion for Preliminary Injunction, ECF 19, on August 24, 2025, pursuant to this Court's Order issued July 29, 2025, ECF 13.

1 In this case, E.Q. presents three claims: first, E.Q. was not given a lawful credible
2 fear interview in accordance with §1225(b)(1)(B)(i) and (ii),² and thus no lawful order of
3 removal that has been issued under §1225(b)(1); second, the Respondents erred in
4 denying E.Q.'s request for protection under the Convention Against Torture ("CAT");
5 and third, E.Q.'s removal to a third country without an opportunity to apply for
6 withholding of removal or CAT relief violates the statute. See Motion for Preliminary
7 Injunction, ECF 14 at 14-15. The Government argues that E.Q. cannot pursue these claims
8 in habeas proceedings, relying primarily on *DHS v. Thuraissigiam*, 591 U.S. 103 (2020).
9 ECF 19 at 8-9. This Court has pointed to the Ninth Circuit's decision in *Pinson v.*
10 *Carvajal*, 69 F.4th 1059 (9th Cir. 2023), which states: "claims that if successful would
11 not necessarily lead to the invalidity of the custody are not at the core of habeas corpus."
12 *Id.* at 1071. However, these cases do not establish that this Court lacks statutory habeas
13 jurisdiction under 28 U.S.C. §2241. Rather, all three of E.Q.'s claims are cognizable in
14 habeas.

15 The starting point for determining whether this Court has habeas jurisdiction over
16 E.Q.'s claims is the statute, 28 U.S.C. §2241, which provides that jurisdiction extends to
17 cases in which the petitioner is "in custody under or by color of the authority of the
18 United States." The statutory writ of habeas corpus "is not now and never has been a
19 static, narrow, formalistic remedy." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).
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22 ² Unless otherwise indicated, all references to the statute are found in Title 8 of the United States Code.

1 Under a straightforward reading of the statute, because E.Q. is in custody by color of the
2 authority of the United States, this Court has jurisdiction and has authority to “hear and
3 determine the facts, and dispose of the matter as law and justice require.” 28 U.S.C.
4 §2243. It is significant that the statute does not limit habeas jurisdiction to “core” habeas
5 claims in which the petitioner seeks release from detention. A court may grant relief “as
6 law and justice require” even if that relief is not release from detention. *See, e.g.,*
7 *Humphrey v. Cady*, 405 U.S. 504, 506 (1972) (federal habeas jurisdiction over
8 petitioner’s claim that he was confined in the wrong institution); *In re Bonner*, 151 U.S.
9 242 (1894) (same); *Jones*, 371 U.S. at 243 (habeas jurisdiction over challenge to parole
10 even though petitioner was not seeking release from detention because he had already
11 been released). In the immigration context, habeas relief traditionally has included
12 invalidating an order of removal even without release from custody. *See, e.g., INS v. St.*
13 *Cyr*, 533 U.S. 289, 306-307 and n. 29 (2001) (citing cases and noting: “In case after case,
14 courts answered questions of law in habeas corpus proceedings brought by [noncitizens]
15 challenging Executive interpretations of the immigration laws.”).

16 Congress can, of course, limit the court’s statutory jurisdiction, and did so in 1996
17 with respect to review of orders of removal issued “under” §1225(b)(1). *See* 8 U.S.C.
18 §1252(a)(2)(A) and (e)(2). In *Thuraissigiam*, the petitioner conceded that §1252(a)(2)(A)
19 and (e)(2) eliminated statutory habeas jurisdiction and argued that the Supreme Court had
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1 constitutional jurisdiction under the Suspension Clause.³ 591 U.S. at 115. In response,
2 the Court held that for purposes of constitutional habeas jurisdiction, the petitioner must
3 present a “core” habeas claim – i.e. the petitioner must be seeking release from detention.
4 The Court rejected the petitioner’s argument that “the Suspension Clause guarantees a
5 broader habeas right,” and concluded that claims “outside the ‘core’ of habeas” may not
6 be pursued through constitutional habeas. *Id.* at 119-120. However, the Court did not
7 indicate that statutory habeas jurisdiction is limited to “core” claims. In fact, the Court
8 noted that courts have properly exercised habeas jurisdiction in many immigration cases
9 that involve non-core claims; these cases “simply involved the exercise of the authority
10 conferred by the habeas statute then in effect.” *See* 591 U.S. at 135.⁴

11 Similarly, *Pinson v. Carvajal* did not countenance a general rule that statutory
12 habeas jurisdiction is limited to “core” habeas claims. Rather, that case involved the
13 “tension in our case law regarding the intersection between §2241 and §2255.”⁵ 69 F.4th
14 at 1066. *Pinson* holds that where a claim can be brought under §2255 the petitioner
15 cannot bring a claim under §2241 unless §2255 is “inadequate or ineffective to test the
16

17 ³ The Suspension Clause, set forth in Article I, §9 of the Constitution, provides: “The
18 Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of
Rebellion or Invasion the public Safety may require it.”

19 ⁴ *Skinner v. Switzer*, 562 U.S. 521 (2011), cited by the Government at Dkt. 19, p. 7, is a
20 criminal habeas case that holds that a petitioner’s claim that he is entitled to DNA testing
(which is not a “core” habeas claim) can be pursued under 42 U.S.C. §1983. The Court
21 said nothing suggesting that a non-core habeas claim is not cognizable in a habeas
petition.

22 ⁵ 28 U.S.C. §2255 provides a non-habeas remedy for a prisoner claiming that the sentence
imposed violates the Constitution or laws of the United States; the prisoner files a motion
with the sentencing court challenging the sentence imposed rather than a habeas petition.

1 legality of [the] detention.” *Id.* at 1067. *See also Lorentsen v. Hood*, 223 F.3d 950, 954
2 (9th Cir. 2000) (noting the general rule that a petitioner cannot “resort to § 2241 in order
3 to avoid the limitations on second or successive petitions contained in §2255”); *United*
4 *States v. Pirro*, 104 F.3d 297, 299 (9th Cir. 1997) (same). In *Pinson*, the court noted that
5 “claims that if successful would not necessarily lead to the invalidity of the custody are
6 not at the core of habeas corpus,” *id.* at 1071, but said nothing to suggest a general rule
7 that such claims cannot be brought under §2241.

8 Thus, this Court has habeas jurisdiction under §2241 even if E.Q.’s claims are not
9 “core” habeas claims. The question is whether some other statute prohibits this Court’s
10 jurisdiction. The answer is no.

11 As to E.Q.’s claim that he has not been lawfully ordered removed under
12 §1225(b)(1), that claim is not barred by §1252(a)(2)(A) or (e)(2). *See* Motion for PI,
13 ECF 14 at . 7-10, including *Tabatabaeifar v. Scott*, 2025 U.S. Dist. LEXIS 91554, 2025
14 WL 1397114 (D.Az. 5/14/2025) (§1252(a)(2)(A) does not bar jurisdiction where DHS
15 did not provide the petitioner with a credible fear interview as required by §1225(b)(1)).

16 As to E.Q.’s claim challenging the CAT determination, the statute requires review
17 in habeas proceedings, subject to the limitations in §1252(e)(2). *See* §1252(a)(4).
18 However, §1252(e)(2) does not preclude review of the CAT determination because such
19 determination is neither a “final order of removal” nor a determination regarding whether
20 the applicant has a credible fear of persecution. *See* Motion for PI, ECF 14 at 11-12,
21 citing *Riley v. Bondi*, 222 L. Ed. 2d 497, 507 (June 26, 2025).
22

1 Finally, as to E.Q.'s claim that he cannot be removed to a third country without an
2 opportunity to apply for withholding of removal or CAT protection, there is no relevant
3 statute that precludes this Court's habeas jurisdiction. *See* ECF 14 at 10-11.

4 CONCLUSION

5 It is clear that this Court has jurisdiction to hear E.Q.'s CAT claim in habeas
6 proceedings. That is required by statute, and the U.S. District Court for the District of
7 Columbia does not have jurisdiction to hear that claim. Should this Court determine that
8 one or more of E.Q.'s remaining claims are not properly brought in habeas proceedings
9 and should be transferred to federal district court in the District of Columbia, E.Q.
10 requests – as the Government suggested in its Opposition to Motion for PI, ECF 15 at 7-8
11 – that this Court stay proceedings in this case pending the outcome of proceedings in the
12 District of Columbia.

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15 Dated this 21st day of August, 2025.

16 /s/ Robert Pauw

17 Robert Pauw
18 GIBBS HOUSTON PAUW

19 Delia Salvatierra
20 SALVATIERRA LAW GROUP

21 Attorneys for Petitioner
22

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2025, I served a copy of the foregoing on counsel for Respondents via the Court's CM/ECF system.

/s/ Robert Pauw