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8 \* *pro hac vice forthcoming*  
9

10 **UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**  
11

12 E.Q.,

13 Petitioner,

14 v.

15 John CANTU, Field Office Director, U.S.  
Immigration and Customs Enforcement,  
Enforcement and Removal Operations,  
16 Phoenix Field Office, in his official  
capacity; Kristi NOEM, Secretary, U.S.  
17 Department of Homeland Security, in her  
official capacity; Pamela BONDI, U.S.  
18 Attorney General, in her official capacity;  
Fred FIGUEROA, Warden of Eloy  
19 Detention Center, in his official capacity,

20 Respondents.  
21  
22

**PETITION FOR WRIT OF  
HABEAS CORPUS AND FOR  
WRIT OF MANDAMUS**

## INTRODUCTION

1  
2 1. The Petitioner, E.Q., a citizen of Afghanistan, is currently detained by U.S.  
3 Immigrations and Customs Enforcement (ICE) at the Eloy Detention Center in Eloy,  
4 Arizona. ICE is in the process of transferring him out of this jurisdiction and removing  
5 him from the United States.

6 2. Petitioner faces arrest, imprisonment, torture, and death in Afghanistan. Prior  
7 to removal, the Immigration and Nationality Act (INA) requires that he be given an  
8 interview under 8 U.S.C. §1225(b)(1)(B) to determine whether he has a credible fear of  
9 persecution in Afghanistan and, if so, he must be given an opportunity to apply for  
10 asylum. Petitioner has not been afforded a lawful credible fear interview as required  
11 under §1225(b)(1)(B).

12 3. Petitioner may be removed to a third country without any opportunity to seek  
13 protection from the persecution and/or torture that he faces there. Prior to removal to a  
14 third country, the INA requires that he be given an interview under 8 U.S.C.  
15 §1225(b)(1)(B) to determine whether he has a credible fear of persecution and/or torture  
16 in a third country and, if so, he must be given an opportunity to apply for protection from  
17 persecution and/or torture. Petitioner has not been afforded a lawful credible fear  
18 interview as required under §1225(b)(1)(B).

19 4. Petitioner seeks an order requiring Respondents to provide him with a lawful  
20 credible fear interview and, if he receives a negative determination, an opportunity for an  
21 immigration judge to review that determination, as mandated under §1225(b)(1)(B).  
22

Petitioner also requests this court to issue an emergency order staying removal until Respondents comply with §1225(b)(1)(B).

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction under 28 U.S.C. § 2241(c) (habeas corpus); 28 U.S.C. § 1361 (mandamus); 28 U.S.C. § 2201 (declaratory judgment); 28 U.S.C. § 1331 (federal question); and 8 U.S.C. § 1252(a)(4) (review of claims under the Convention Against Torture).

6. Venue lies in this judicial district, where Petitioner currently is in custody. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973). Venue is also properly in this district pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and a substantial part of the events or omissions giving rise to the claims in this lawsuit occurred in this district.

### **PARTIES**

7. Petitioner E.Q. is a citizen of Afghanistan. ICE is in the process of removing E.Q. from the United States. Afghanistan is the designated country of removal.

8. Respondent John Cantu is the Field Office Director of the Phoenix Field Office of ICE's Enforcement and Removal Operations division. As such, Officer Cantu is responsible for Petitioner's detention and removal. He is sued in his official capacity.

9. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration

1 and Nationality Act (INA) and oversees ICE, which is responsible for Petitioner's  
2 detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her  
3 official capacity.

4 10. Respondent Pamela Bondi is the Attorney General of the United States. She is  
5 responsible for the Department of Justice, of which the Executive Office for Immigration  
6 Review, including the immigration court system it operates, is a component agency. She  
7 is sued in her official capacity.

8 11. Respondent Fred Figueroa is the Warden of the Eloy Detention Facility, where  
9 Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his  
10 official capacity.

### 11 **FACTUAL BACKGROUND**

12 12. E.Q.'s close family member worked for several years as an interpreter with the  
13 prior Afghan government and the U.S. military. E.Q.'s family member later immigrated  
14 to the United States and is now a U.S. citizen.

15 13. In the spring of 2024, E.Q. began receiving threats from the Taliban due to his  
16 family member's work with the prior Afghan government and the U.S. military. On one  
17 occasion, the Taliban raided E.Q.'s home, where he lived with his family, took their  
18 electronic items, and broke their television. The Taliban accused E.Q. of being an  
19 "American spy" due to his family member's prior work as an interpreter. The Taliban  
20 also followed E.Q. and tried to collect information about him from his friends and  
21 relatives.  
22

1 14. Around the same time, the Taliban issued summonses to E.Q., directing him to  
2 report for questioning “immediately.” After receiving the summonses, E.Q. feared for his  
3 life, went into hiding, and ultimately fled Afghanistan in or about August 2024.

4 15. E.Q. is at heightened risk of persecution and torture because the Taliban know  
5 that his close family member worked for the prior Afghan government and U.S. military  
6 and because they summoned E.Q. for questioning. According to Tim Foxley, a country  
7 conditions expert on Afghanistan and former intelligence analyst with the British Foreign  
8 Ministry of Defence, since the Taliban regained control of Afghanistan in August 2021,  
9 they have “continue[d] to aggressively target individuals and families associated with  
10 support for the previous government.”

11 16. Based on his review of E.Q.’s case, Mr. Foxley concluded that if forced to  
12 return to Afghanistan, E.Q. “is likely to remain at risk of human rights abuses,” including  
13 “illegal detention, physical abuse, interrogation, torture, or even revenge killings.” These  
14 risks are present throughout the country as the “Taliban now physically control all  
15 international airports in Afghanistan and all official ports of entry across land borders.”  
16 They also have “many checkpoints along main roads” where they stop, search and  
17 question travelers, including searching through their mobile and other electronic devices.  
18

19 17. Based on the foregoing, E.Q. has a substantial risk of persecution and torture if  
20 returned to Afghanistan.

## 21 PROCEDURAL HISTORY

1 18. E.Q. arrived in the United States on or about January 16, 2025. Upon his  
2 arrival in the United States, E.Q. was apprehended by U.S. Customs and Border  
3 Protection (CBP) and placed in expedited removal proceedings. On January 17, 2025, a  
4 CBP officer issued an order of removal. Afghanistan was designated as the country of  
5 removal.

6 19. After E.Q. expressed a fear of return to Afghanistan, he was referred to an  
7 asylum officer from U.S. Citizenship and Immigration Services (USCIS) to determine  
8 whether he had a credible fear of persecution in Afghanistan and should thus be allowed  
9 to file an application for asylum. At the interview, E.Q. testified that before the Taliban  
10 took over in Afghanistan, a close family member had worked for the prior Afghan  
11 government and U.S. military as an interpreter. That family member now lives in the  
12 United States. E.Q. also testified that while in Afghanistan, he worked for a business that  
13 provided services to the general public; that Taliban members would sometimes come as  
14 customers; and that E.Q. himself never provided any services to Taliban members. E.Q.  
15 testified further that in the spring of 2024, the Taliban raided his home and accused him  
16 of being an American spy. The asylum officer found E.Q.'s testimony credible.

17 20. On February 20, 2025, the asylum officer issued a negative credible fear  
18 determination and ordered that E.Q. be removed. The asylum officer did not allow E.Q.  
19 to file an application for asylum. Based on "Securing the Border" regulations, the asylum  
20 officer determined that E.Q. is not eligible for asylum because he entered the United  
21 States without inspection. That determination was not made under or pursuant to  
22

1 §1225(b)(1). The regulations used to find E.Q. ineligible for asylum have been found  
2 unlawful and have been vacated. *Las Americas v. DHS*, Case No. 24-1702 (RC), 2025  
3 U.S. Dist. LEXIS 94453, 2025 WL 1403811 (D.D.C. 5/9/2025).

4 21. The asylum officer found E.Q. ineligible for withholding of removal on the  
5 basis that E.Q. would be subject to a “mandatory bar” ostensibly because he used to be  
6 employed at a business that provided material support to the Taliban.

7 22. The mandatory bars do not apply to requests for protection under the  
8 Convention Against Torture (CAT). As to CAT relief, the asylum officer found that E.Q.  
9 did not establish a reasonable probability that he would suffer torture if forced to return to  
10 Afghanistan. That decision was not made under or pursuant to § 1225(b)(1).

11 23. On February 25, 2025, an immigration judge affirmed the asylum officer’s  
12 determination that E.Q. is not eligible for asylum, withholding of removal, or CAT relief.  
13 The immigration judge’s decision was not made under or pursuant to § 1225(b)(1).

14 24. On March 17, 2025, E.Q., along with three organizational plaintiffs, filed a  
15 lawsuit in the U.S. District Court for the District of Columbia challenging DHS’s  
16 decision to implement the Mandatory Bars Rule, which prohibits certain noncitizens from  
17 applying for asylum and withholding of removal if a mandatory bar “appears” to apply.  
18 DHS, Application of Certain Mandatory Bars in Fear Screenings, 89 Fed. Reg. 103370  
19 (Dec. 18, 2024). Until the Mandatory Bars Rule went into effect on January 17, 2025,  
20 Respondents had never previously applied the mandatory bars in credible fear screening  
21 interviews.  
22

1           25. The plaintiffs in the Mandatory Bars litigation maintain that the legal and  
2 factual complexity of the mandatory bars means that applying them in the context of  
3 screening interviews conducted on rushed timetables—without counsel or the opportunity  
4 to present documentary evidence—will inevitably result in the return to persecution  
5 (*refoulement*) of many people who could show eligibility for asylum or withholding of  
6 removal on the merits.

7           26. The U.S. District Court for the District of Columbia found that E.Q. does not  
8 have standing to challenge DHS’s decision to apply the mandatory bars in this manner.

9           27. On April 14, 2025, E.Q. had a second credible fear interview with a USCIS  
10 asylum officer. On April 30, 2025, the asylum officer again determined, based on  
11 “Securing the Border” regulations, that E.Q. is not eligible for asylum because he entered  
12 the United States without inspection. That determination was not made under or pursuant  
13 to §1225(b)(1).

14           28. The asylum officer found E.Q. ineligible for withholding of removal on the  
15 basis that E.Q.’s testimony was not credible.

16           29. Regarding CAT relief, the asylum officer found that E.Q. did not establish a  
17 reasonable probability that he would be tortured. That decision was not made under or  
18 pursuant to § 1225(b)(1).

19           30. On May 9, 2025, an immigration judge affirmed the asylum officer’s  
20 determination that E.Q. is not eligible for asylum, withholding of removal, or CAT relief.  
21 The immigration judge’s decision was not made under or pursuant to § 1225(b)(1).  
22



1 31. The determination that E.Q. is not eligible for asylum, withholding of removal,  
2 and CAT relief, and the resulting removal order were based on and made under  
3 regulations that exceeded Respondents' statutory authority and have since been found  
4 unlawful and vacated. *See Las Americas v. DHS*, Case No. 24-1702 (RC), 2025 U.S.  
5 Dist. LEXIS 94453, 2025 WL 1403811 (D.D.C. 5/9/2025).

6 32. The decision to deny Petitioner's request for CAT protection was not made  
7 under or pursuant to § 1225(b)(1). Respondents' decision to deny E.Q. protection under  
8 the CAT is not supported by substantial evidence and violates the Immigration and  
9 Nationality Act and section 2242 of the Foreign Affairs Reform and Restructuring Act  
10 (FARRA), which implements the CAT.

11 33. E.Q. fears that if he is removed to a country other than Afghanistan, he will be  
12 subjected to persecution or torture in that third country. Respondents have not given E.Q.  
13 an opportunity to apply for withholding of removal or protection under the CAT as to any  
14 country other than Afghanistan.

15 **CLAIMS FOR RELIEF**

16 **FIRST CAUSE OF ACTION**

17 **Ultra Vires**

18 34. Petitioner repeats and re-alleges the allegations contained in the preceding  
19 paragraphs of this Petition as if fully set forth herein.

20 35. Petitioner's negative credible fear determination and the resulting removal  
21 order were not made pursuant to 8 U.S.C. §1225(b)(1), but rather were made under  
22

1 regulations and policies that exceeded the Respondents' statutory authority, have been  
2 vacated, and accordingly have no legal effect.

3 36. The removal order issued against Petitioner exceeded Respondents' statutory  
4 authority and is thus ultra vires, not in accordance with law, and has no legal effect.

5  
6 **SECOND CAUSE OF ACTION**  
7 **Mandamus**

8 37. Petitioner repeats and re-alleges the allegations contained in the preceding  
9 paragraphs of this Petition as if fully set forth herein.

10 38. The INA requires that before an expedited order of removal under 8 U.S.C.  
11 §1225(b)(1) is issued, a noncitizen who indicates an intention to apply for asylum or a  
12 fear of persecution must be afforded an interview to determine whether the person has a  
13 "credible fear of persecution," which is defined as a significant possibility of establishing  
14 eligibility for asylum under 8 U.S.C. §1158.

15 39. Petitioner has not been afforded an interview as required by §1225(b)(1). The  
16 defendants owe a duty to Petitioner to conduct an interview under §1225(b)(1) to  
17 determine whether E.Q. has a credible fear of persecution as to any country to which the  
18 Defendants intend to remove Petitioner.

19 40. Petitioner is entitled to an order in the nature of mandamus requiring  
20 Respondents to provide an interview under §1225(b)(1) prior to his removal from the  
21 United States.

22 **THIRD CAUSE OF ACTION**

**Violation of § 1231(b)(3) and FARRA**

41. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

42. 8 U.S.C. §1231(b)(3) mandates that a noncitizen cannot be removed to a country where their life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.

43. FARRA mandates that a noncitizen cannot be removed to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture.

44. Notwithstanding these statutory mandates, 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.

45. Accordingly, the removal of Petitioner to a third country is unlawful.

**FOURTH CAUSE OF ACTION**  
**Review of CAT Decision**

46. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

47. Congress has provided for review of decisions under the Convention Against Torture in habeas corpus proceedings. Such review is not subject to the limitations in §1252(e)(2) because the decision regarding CAT protection is not a “determination made under” §1225(b)(1).

1 48. FARRA mandates that a noncitizen cannot be removed to a country in which  
2 there are substantial grounds for believing the person would be in danger of being  
3 subjected to torture.

4 49. Notwithstanding this statutory mandate, Respondents seek to remove E.Q. to  
5 Afghanistan without providing him a meaningful opportunity to access the protections  
6 required pursuant to the FARRA.

7 50. Accordingly, the removal of Petitioner to Afghanistan is unlawful.  
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Petitioner prays that this Court grant the following relief:

11 (1) Assume jurisdiction over this matter;

12 (2) Enjoin Petitioner's removal unless and until Respondents provide a meaningful  
13 opportunity for Petitioner to seek relief under 8 U.S.C. §1231(b)(3) and the  
14 Convention Against Torture as to any country of removal and pending a lawful  
15 credible fear interview;

16 (3) Declare that Respondent's decision denying protection under the Convention  
17 Against Torture is not supported by substantial evidence and violates the  
18 Immigration and Nationality Act and section 2242 of the Foreign Affairs Reform  
19 and Restructuring Act (FARRA), which implements the CAT.

20 (4) Declare that Respondents' decision denying asylum and issuing an order of  
21 removal was not made under 1225(b)(1), and is thus void and without legal effect;  
22

1 (5) Grant a writ of mandamus requiring Respondents to provide Petitioner with a  
2 lawful credible fear interview, including an opportunity for review by an  
3 immigration judge, as required by 1225(b)(1)(B).

4 (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice  
5 Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified  
6 under law; and

7 (7) Grant any other and further relief that this Court deems just and proper.  
8

9 Dated this 13<sup>th</sup> day of July 2025.

10 /s/ Delia Salvatierra  
11

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VERIFICATION

Robert Pauw, being duly sworn upon oath, hereby states: I am an attorney representing the Petitioner in these habeas corpus proceedings. I hereby verify that the information contained in the foregoing Petition is true and correct to the best of my knowledge and belief.

Dated this 13th day of July, 2025.

/s/ Robert Pauw

**Violation of § 1231(b)(3) and FARRA**

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44. Notwithstanding these statutory mandates, 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.

45. Accordingly, the removal of Petitioner to a third country is unlawful.

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6 under law; and

7 (7) Grant any other and further relief that this Court deems just and proper.  
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9 Dated this 13<sup>th</sup> day of July 2025.

10 /s/ Delia Salvatierra  
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VERIFICATION

Robert Pauw, being duly sworn upon oath, hereby states: I am an attorney representing the Petitioner in these habeas corpus proceedings. I hereby verify that the information contained in the foregoing Petition is true and correct to the best of my knowledge and belief.

Dated this 13th day of July, 2025.

/s/ Robert Pauw