

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

FABIAN LAGUNAS ESPINOZA;  
MARIA ANGELICA FLORES ULLOA;  
FABIAN LAGUNAS FLORES;  
MATEO LAGUNAS FLORES,

Petitioners,

v.

PAMELA BONDI, Attorney General of the United States,

Respondent.

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EMERGENCY APPLICATION FOR STAY OF REMOVAL  
PENDING DISPOSITION OF A PETITION  
FOR WRIT OF CERTIORARI

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To the Honorable Elena Kagan, Associate Justice of the  
Supreme Court of the United States and Circuit Justice  
for the Ninth Circuit:

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## INTRODUCTION

Petitioners respectfully request an emergency stay of removal pending disposition of a forthcoming Petition for Writ of Certiorari to the United States Supreme Court. Petitioners face imminent removal and have been directed to report to Immigration Office on 4/17/2025, despite credible and detailed testimony and documentary evidence showing they are targets of cartel violence due to their family ties and refusal to comply with extortion demands. The Board of Immigration Appeals (BIA) dismissed Petitioners' appeal on November 28, 2023, and the Ninth Circuit issued its memorandum disposition on February 13, 2025, affirming the BIA. The Mandate was issued on April 7, 2025. During the pendency of review the Ninth Circuit granted a Stay of Removal pending review. The Mandate lifted that stay and Petitioners may be removed without notice at any time.

Petitioner filed a motion for emergency stay of removal with the Ninth Circuit Court of Appeals on 4/16/2025 at 12:15 p.m.

This motion is permitted by Supreme Court Rule 23 as the Ninth Circuit a stay of removal effective April 7, 2025. The filing of a motion to stay pending writ of certiorari does not automatically stay of removal filing of a motion in Ninth Circuit post mandate. Petitioners are

scheduled to removed prior to any available remedy in the Ninth Circuit.

A Petition for Writ of Certiorari will raise constitutional and statutory questions involving *due process*, misapplication of asylum law, and improper factual determinations.

#### **FACTUAL BACKGROUND**

Petitioner Fabian Lagunas-Espinoza and his family are citizens of Mexico who entered the United States on or about September 1, 2021. In August 2021, armed cartel members threatened the family at gunpoint, demanding they vacate their home within 24 hours or be killed. They complied, fled their town, and entered the United States shortly thereafter.

Previously, Petitioner's brother had been beaten after refusing cartel demands, and another brother was targeted and forced to flee after receiving death threats, following witnessing criminal activity. The Immigration Judge found the family's testimony credible but denied relief, and the BIA upheld that decision despite strong documentary support and unrefuted country conditions showing widespread corruption and cartel control in Guerrero, Mexico, as well as family members being targeted if another member wronged the cartel.

## LEGAL STANDARD

To obtain a stay of removal, a petitioner must show (1) a likelihood of success on the merits, (2) irreparable harm absent a stay, (3) no substantial injury to other parties, and (4) that the public interest favors a stay. See Nken v. Holder, 556 U.S. 418 (2009).

## ARGUMENT

### A. Likelihood of Success on the Merits

Petitioners raise substantial and review-worthy legal and constitutional questions that are likely to prevail before this Court. First, the Board of Immigration Appeals committed legal error by engaging in improper factfinding on the Petitioners' claims for asylum and protection under the Convention Against Torture (CAT), in violation of INS v. Ventura, 537 U.S. 12, 16 (2002). Although Ventura, addressed appellate court factfinding, its core principle—that factual determinations must be made by the agency of first instance—applies with equal force to the BIA, particularly in light of 8 C.F.R. § 1003.1(d)(3), which limits the BIA's role in factfinding.

The BIA violated this framework by assessing Petitioners' likelihood of torture and government acquiescence where the Immigration Judge made no specific findings on Petitioners' CAT eligibility, merely reciting

the standards and saying Petitioner had not met their burden, without any individualized factual assessment and consideration of the credible testimony, country conditions reports, or corroborating evidence in the record.

The BIA declined to remand, asserting lack of evidence regarding country-wide risk, despite the record showing ongoing cartel violence directed at this family, direct threats, expansion of the cartel to all parts of the country, prior physical assaults by cartel actors against family, as well as a pattern of cartels targeting family members of those with whom they have a grievance.

This kind of unsupported legal conclusion fails to satisfy the requirement that CAT claims be adjudicated with reasoned fact finding. See Madrigal v. Holder, 716 F.3d 499, 509 (9th Cir. 2013); Aguilar-Ramos v. Holder, 594 F.3d 701, 705-06 (9th Cir. 2010). Where the IJ fails to adequately develop findings, the Board of Immigration Appeals (BIA) may not affirm without remand. See 8 C.F.R. § 1003.1(d)(3); Rodriguez v. Holder, 683 F.3d 1164, 1170 (9th Cir. 2012).

The IJ also indicated there was no evidence that the government desired to do Petitioners harm, but failed to address whether they would fail to act or acquiescence by inaction or inability to protect. The BIA failed to remand

specific factual findings in the first instance by the IJ, despite country conditions report and corroborative evidence showing the Cartel could not be controlled by Mexico and many law enforcement officials worked for them.

Second, the IJ applied an incorrect legal standard in rejecting Petitioners' asylum and withholding claims by mischaracterizing the evidence of cartel targeting as mere generalized criminal activity. The IJ failed to engage with Petitioners' family-based particular social group (PSG) claims considering controlling Ninth Circuit law and summarily concluded there was no nexus to a protected ground.

The IJ ignored or minimized the pattern of specific threats and past harm against family members, and did not analyze whether family association itself was a central reason for the harm. By rejecting all proposed PSGs and concluding that the harm stemmed from criminal extortion alone, the IJ foreclosed legitimate grounds of relief without a reasoned nexus analysis.

The IJ and BIA failed to consider cumulative harm and family-based nexus asylum and withholding claims in a full assessment based on evidence in the record. The

Petitioners, including minor children, fled after receiving direct death threats from members of the Los

Rojos cartel, who demanded that they vacate their home within 24 hours or face execution. The family complied and fled the same day. Prior to this, relatives had been kidnapped and beaten, and another suffered a near-fatal attack after refusing cartel extortion demands. Despite this uncontroverted and credible testimony from multiple family members, the BIA found "no nexus" to a protected ground and "no likelihood of torture," without explaining why these repeated cartel threats, cooperation that family is targeted, and reprisals did not satisfy the regulatory standard.

The BIA compounded this error by affirming the IJ's decision without addressing these legal flaws, engaging in impermissible fact finding, not considering the entire record, and failing to remand to the IJ for initial determinations. This deprived Petitioners of *due process* and a full and fair adjudication of their claims. The BIA's decision thus involved not only a failure to apply correct legal and regulatory standards but a constitutional violation requiring judicial review.

Third, Petitioners will argue that the current legal framework for "particular social group" (PSG) recognition is void for vagueness and allows for arbitrary outcomes across circuits, invoking the reasoning of *Sessions v.*

Dimaya, 138 S. Ct. 1204 (2018). The BIA's decision in this case cited no identifiable social group other than "family," and failed to meaningfully apply consistent criteria. Courts have diverged significantly on how family-based groups are evaluated, resulting in unpredictability that undermines due process. This Court's review is warranted to resolve inconsistencies in PSG adjudication, failure of Congress to enact specific guidance for the regulation, and to clarify the scope of family-based claims and nexus required in cases where it is documented family is targeted by cartels, not just an individual.

Finally, the Ninth Circuit's cursory affirmance failed to consider evidence in the record contradicting the claim of "no evidence in the record", and failed to address Ventura error or the *due process* issues raised, making this case a strong candidate for Supreme Court intervention under Nken v. Holder, 556 U.S. 418 (2009).

This Court has repeatedly emphasized that agency adjudicators may not substitute their own fact finding where the Immigration Judge failed to resolve a material issue of fact. In denying review, the Ninth Circuit sanctioned a procedure that Ventura and subsequent case law forbid.

For these reasons, Petitioners present significant legal errors and unresolved factual disputes that warrant Supreme Court review and justify a stay of removal pending resolution of their forthcoming Petition for Writ of Certiorari.

**B. Irreparable Harm**

Petitioners face immediate deportation to a region of Mexico where they have been explicitly threatened with death by cartel members. The government's removal would result in irreparable harm including exposure to violence, persecution, and family separation.

**C. No Harm to Government; Public Interest Supports a Stay**

Granting a temporary stay does not prejudice the government. Petitioners have complied with all legal procedures and pose no danger or flight risk. Indeed, the government would save the expense of removing Petitioners, and then sending a plan to retrieve them (if they are still alive) should they prevail. The public interest is served by ensuring constitutional and asylum claims receive full judicial review.

**CONCLUSION**

For the reasons stated above, Petitioners respectfully request that this Court stay their removal pending review of disposition of their Petition for Writ of Certiorari, to be filed in the United States Supreme Court.

Respectfully submitted,

Dated: 04/16/2025

s/LeRoy George Siddell  
Attorney for Petitioners