

No. _____

**In the
Supreme Court of the United States**

ADRIAN CABRERA ESPINOZA,
Petitioner,

v.

PAMELA BONDI, Attorney General,
Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

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

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March 18, 2026

Counsel for Petitioner

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

COMES NOW Adrian Cabrera Espinoza, Petitioner, by and through undersigned counsel, pursuant to Supreme Court Rule 23 and 28 U.S.C. § 2101, and hereby respectfully applies to this Court for an emergency stay of removal pending disposition of his petition for a writ of certiorari challenging the decision of the United States Court of Appeals for the Ninth Circuit. Supreme Ct R 23.

The Board of Immigration Appeals denied petitioner's statutory motion to reopen as untimely but assumed *arguendo* that the changed-country-conditions exception might apply. It then denied reopening on the ground that petitioner failed to make a *prima facie* showing for Convention Against Torture protection, stating that petitioner had not shown a "reasonable likelihood the new evidence will change the result." The Ninth Circuit affirmed, holding that although the Board used "change the result" phrasing, the decision, "read as a whole," reflected application of the correct standard.

This Court recently held that the application of a statutory legal standard to established facts is a quintessential mixed question of law and fact reviewable under 8 U.S.C. section 1252(a)(2)(D). *Wilkinson v. Garland*, 601 U.S. 209, 218–19 (2024).

I. INTRODUCTION

Petitioner Adrian Cabrera Espinoza is a lawful permanent resident who has resided in the United States since 1992, is married to a United States citizen, and

has five United States citizen children. Petitioner is currently detained at the California City ICE Detention Center by the Department of Homeland Security and faces imminent removal to Mexico, where he credibly fears torture and death at the hands of cartel members who blame him for the death of one of their members in 2002.

On December 1, 2025, the Ninth Circuit issued an unpublished memorandum disposition denying Petitioner's petition for review of the Board of Immigration Appeals' denial of his motion to reopen removal proceedings to pursue Convention Against Torture protection. On February 17, 2026, the Ninth Circuit denied Petitioner's petition for panel rehearing and rehearing en banc. On March 12, 2026, the Ninth Circuit denied Petitioner's motion to stay the mandate pending petition for writ of certiorari. This is the second time the Ninth Circuit denied Petitioner's motion to stay. The first denial was on March 5, 2026, and was based on the January 21, 2026, California Supreme Court grant of review in Petitioner's criminal case - California Supreme Court case S294373.

On March 12, 2026, Petitioner timely filed a petition for writ of certiorari with this Court, presenting an important federal question regarding the legal standard governing statutory motions to reopen and the scope of judicial review to established facts under 8 U.S.C. § 1252(a)(2)(D). *Wilkinson v. Garland*, 601 U.S. 209, 218–19 (2024).

Petitioner now seeks an emergency stay of removal from this Court to preserve the status quo and prevent irreparable harm while his petition for certiorari is pending.

II. PROCEDURAL REQUIREMENTS ARE SATISFIED

Petitioner has satisfied the procedural requirements for seeking a stay from a Justice of this Court. USCS Supreme Ct R 23. Petitioner first sought a stay of removal from the Ninth Circuit on January 17, 2025, which was granted on February 28, 2025, and remained in effect until the mandate issued. Following the Ninth Circuit's December 1, 2025, decision denying his petition for review, Petitioner sought a stay of the mandate for collateral state criminal proceedings after the California Supreme Court granted review, which the Ninth Circuit denied on March 5, 2026. Petitioner then sought a stay of the mandate pending petition for certiorari, which the Ninth Circuit denied on March 12, 2026.

Relief is not available from any other court or judge, as the Ninth Circuit has denied all requested relief and the mandate has issued. This application identifies the judgment sought to be reviewed, includes copies of the relevant orders and opinions, and sets out specific reasons why a stay is justified as required by Supreme Court Rule 23. Supreme Ct R 23.

III. LEGAL STANDARD

A Justice of the Supreme Court has authority to grant a stay of removal pending disposition of a petition for a writ of certiorari. 8 U.S.C. § 1535. In evaluating a stay application, the Court applies the traditional four-factor test: (1)

whether the applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Nken v. Holder*, 556 U.S. 418, 434 (2009). The first two factors are the most critical. Id

IV. PETITIONER HAS MADE A STRONG SHOWING OF LIKELIHOOD OF SUCCESS ON THE MERITS

Petitioner's certiorari petition presents an important and recurring federal question about the legal standard governing motions to reopen removal proceedings and whether courts may uphold agency denials when the agency uses ambiguous or heightened phrasing rather than the correct legal standard. The Board of Immigration Appeals denied Petitioner's motion to reopen, stating that Petitioner had not shown a reasonable likelihood the new evidence would change the result in his case. The Ninth Circuit affirmed, holding that although the Board used change the result phrasing, the decision read as a whole reflected application of the correct reasonable likelihood standard. This Court recently held in *Wilkinson v. Garland*, 601 U.S. 209, 218–19 (2024), that applying a statutory legal standard to established facts is a quintessential mixed question of law and fact reviewable as a question of law. 8 U.S.C. § 1252(a)(2)(D)

The Ninth Circuit's approach of treating the Board's articulation of the legal standard as harmless error based on an inferred reading of the decision as a whole cannot be reconciled with this Court's holding in *Wilkinson*. By supplying the

correct legal standard post hoc and treating the Board's ambiguous phrasing as harmless, the Ninth Circuit insulated a legal question from review and departed from the accepted course of judicial proceedings.

The reopening standard is a recurring gatekeeper that determines whether protection claims can ever be heard on a full record, affecting large numbers of cases. The question presented satisfies the criteria for certiorari review under Supreme Court Rule 10, as it involves an important federal question and reflects a departure from accepted judicial proceedings. Supreme Ct R 10.

The case presents a clean vehicle for review, as the Board assumed *arguendo* that the motion was timely, and there were no factual disputes, exhaustion issues, or alternative grounds complicate review.

Petitioner has therefore made a strong showing of likelihood of success on the merits sufficient to warrant a stay.

V. PETITIONER WILL SUFFER IRREPARABLE INJURY ABSENT A STAY

Absent a stay, Petitioner will be removed to Mexico before this Court can consider his petition for certiorari, rendering the petition moot and causing irreparable harm. If the mandate issues, removal to Mexico can occur in hours.

Petitioner credibly fears torture and death at the hands of cartel members in Mexico based on their belief that he was responsible for the death of one of their members in 2002. In December 2023, cartel members threatened Petitioner's brother in Purundiro, Mexico, stating that they were waiting to kill Petitioner upon his return.

In early 2024, Petitioner's son received threatening text messages from Mexico detailing plans to dismember and kill Petitioner and stating that the cartel was monitoring his movements. In August 2024, a fire was started at Petitioner's home in Dinuba, California, raising further concerns about the cartel's reach. If removed to Mexico, Petitioner faces a credible threat of torture and death that cannot be remedied if this Court later grants certiorari and reverses the Ninth Circuit's decision. The harm of removal is irreparable because Petitioner cannot be restored to his prior status in the United States if he is tortured or killed in Mexico.

Petitioner has resided in the United States since 1992, has been a lawful permanent resident since 2003, is married to a United States citizen, and has five United States citizen children who depend on him. Removal would cause irreparable harm not only to Petitioner but also to his United States citizen family members.

VI. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR A STAY

Issuance of a stay will not substantially injure the Government, as Petitioner has been in detention and the Government's interest in finality can be adequately protected by maintaining Petitioner in detention during the pendency of the certiorari petition. The public interest favors a stay to ensure that this Court has the opportunity to resolve an important federal question regarding the legal standard governing motions to reopen and the scope of judicial review under 8 U.S.C. § 1252(a)(2)(D).

The public has a strong interest in ensuring that legal standards are clearly articulated and uniformly applied, particularly in cases involving life-or-death protection claims under the Convention Against Torture. See *Nken v. Holder*, 556 U.S. 418, 435 (2009) (recognizing that the public interest and balance of equities are integral factors in the stay analysis). The public interest also favors preventing the removal of individuals who face credible threats of torture and death, consistent with the United States' obligations under international law.

Petitioner is also pursuing post-conviction relief in California state court under California Penal Code section 1473.7 to vacate the underlying convictions that form the basis for his removal, and the California Supreme Court has granted review and deferred further action pending a related case. The public interest favors allowing state post-conviction proceedings to conclude before executing removal based on convictions that may be vacated.

VII. CONCLUSION AND RELIEF REQUESTED

WHEREFORE, Petitioner Adrian Cabrera Espinoza respectfully requests that this Court grant an emergency stay of removal pending disposition of his petition for writ of certiorari, and for such other and further relief as the Court deems just and proper.

THE ADVOCATES' LAW FIRM, PC

/s/ Mario Valenzuela

Mario Valenzuela, Esq., Counsel of Record
for Petitioner Adrian Cabrera Espinoza

APPENDIX A

Ninth Circuit Memorandum Disposition

(December 1, 2025)

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

DEC 1 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADRIAN CABRERA ESPINOZA,

Petitioner,

v.

PAMELA BONDI, Attorney General,

Respondent.

No. 25-341

Agency No.
A079-369-148

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 17, 2025**
Pasadena, California

Before: CLIFTON, OWENS, and DE ALBA, Circuit Judges.

Petitioner Adrian Cabrera Espinoza, a native and citizen of Mexico, seeks review of a Board of Immigration Appeals (BIA) decision denying his motion to reopen removal proceedings to pursue his Convention Against Torture (CAT)

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

claim based on new evidence of recent threats against him. Cabrera Espinoza argues that the BIA considered his motion under the wrong standard.

We review the BIA’s denial of a motion to reopen for abuse of discretion. *See Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 702 (9th Cir. 2022). We deny the petition.

1. The BIA used the phrase “change the result” in its denial of Cabrera Espinoza’s motion, but its reasoning made clear that the BIA applied the correct “reasonable likelihood” standard set forth in *Fonseca-Fonseca v. Garland*, 76 F.4th 1176 (9th Cir. 2023). In a motion to reopen, the petitioner must present new evidence that demonstrates a threshold “prima facie eligibility for relief” and establishes a “reasonable likelihood” that he would “prevail on the merits if the motion to reopen were granted.” *Id.* at 1179. “The reasonable likelihood standard requires a petitioner to show more than a mere possibility [he] will establish a claim for relief, but it does not require [him] to demonstrate [he] is more likely than not to prevail.” *Id.* at 1183 (internal quotation marks omitted).

The BIA properly applied *Fonseca-Fonseca*’s reasonable likelihood standard here. The BIA correctly cited *Fonseca-Fonseca* as the source of the standard, recited the “reasonable likelihood” language, and centered its analysis upon whether Cabrera Espinoza’s new evidence cured the deficiencies in his prior application. In this context, the reference to Cabrera Espinoza’s failure to present

new evidence that would “change the result” simply meant that he was still unable to establish a prima facie case. The BIA’s reasoning rested on whether Cabrera Espinoza made a threshold showing, consistent with *Fonseca-Fonseca*, and not whether he established his CAT eligibility with “absolute certainty.” Therefore, the BIA correctly applied the reasonable likelihood standard. *See Magana-Magana v. Bondi*, 129 F.4th 557, 572 (9th Cir. 2025) (“Viewing the BIA’s decision as a whole, it is clear that the BIA understood the proper legal standard and applied it.”).

2. The BIA did not abuse its discretion in denying Cabrera Espinoza’s motion to reopen, because he failed to make the necessary prima facie showing of eligibility for CAT relief. The BIA can deny a motion to reopen for “failure to establish a prima facie case for the relief sought.” *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010) (quoting *INS v. Doherty*, 502 U.S. 314, 323 (1992)). To establish prima facie eligibility for CAT deferral, the relief requested here, Cabrera Espinoza needed to show it is more likely than not he would be tortured if removed to Mexico. 8 C.F.R. § 1208.16(c)(2).

The new evidence Cabrera Espinoza presented in his motion to reopen consisted of declarations from his brother and son, describing threats made against him. The declarations did not provide information sufficient to cure the two deficiencies in Cabrera Espinoza’s CAT claim: his failures to show (1) that he

could not safely relocate within Mexico; and (2) that public officials would consent or acquiesce to him being harmed. These lingering deficiencies prevent Cabrera Espinoza from establishing prima facie eligibility for CAT relief. *See* 8 C.F.R. § 1208.16(c)(3); 8 C.F.R. § 1208.18(a)(1). The BIA therefore acted within its discretion by denying his motion to reopen.

PETITION FOR REVIEW DENIED.¹

¹ The Motion to Stay Removal, Dkt. No. 5, is DENIED effective upon issuance of the mandate from this Court.

APPENDIX B

Ninth Circuit Order Denying Panel Rehearing and Rehearing En Banc

(February 17, 2026)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 17 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADRIAN CABRERA ESPINOZA,

Petitioner,

v.

PAMELA BONDI, Attorney General,

Respondent.

No. 25-341

Agency No.
A079-369-148

ORDER

Before: CLIFTON, OWENS, and DE ALBA, Circuit Judges.

The panel has unanimously voted to deny the Petitioner's petition for rehearing. Judge Owens and Judge de Alba vote to deny the petition for rehearing en banc and Judge Clifton so recommends. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. P. 40. The petitions for rehearing and rehearing en banc (Docket Entry 43) are therefore DENIED.

APPENDIX C

Ninth Circuit Order Denying Motion to Stay the Mandate (First Denial)
(March 4, 2026)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 5 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADRIAN CABRERA ESPINOZA,

Petitioner,

v.

PAMELA BONDI, Attorney General,

Respondent.

No. 25-341

Agency No.
A079-369-148

ORDER

Before: CLIFTON, OWENS, and DE ALBA, Circuit Judges.

The Petitioner's emergency motion to stay the mandate (Docket No. 47) is
DENIED.



Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

January 22, 2026

Adrian Espinoza Cabrera
ICE Booking No: A-079369148.
California Correctional Facility
22844 Virginia Boulevard
California City, CA 93505

Re: **PEOPLE v. ADRIAN ESPINOZA CABRERA — S294373**

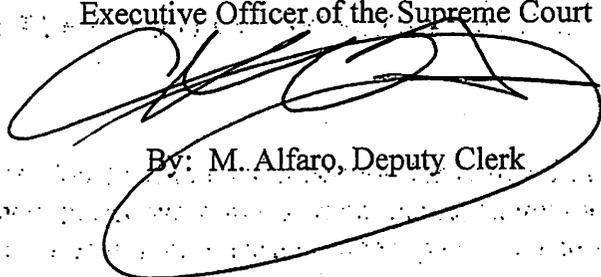
Dear Mr. Cabrera:

The Supreme Court has granted a petition for review in this case. If you are able to pay for an attorney, please write in his or her name, address and phone number on the attached form. If you are without funds and cannot pay for an attorney, you should declare that you have no income or assets in the appropriate place on the application for appointment of counsel form, sign it and promptly return it to this office. Upon its receipt, the court will undertake to appoint counsel to represent you in this matter. You must sign and return the enclosed form before this office can proceed further with the appointment of counsel in your case.

We are enclosing a self-addressed envelope to help you to return the form promptly.

Sincerely,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court


By: M. Alfaro, Deputy Clerk

Enclosures

cc: Cynthia Lee Barnes, Attorney at Law
Central California Appellate Program
John W. Powell, Office of the Attorney General
Rec.

SUPREME COURT
FILED

JAN 21 2026

Court of Appeal, Fifth Appellate District - No. F088474

Jorge Navarrete Clerk

S294373

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

ADRIAN ESPINOZA CABRERA, Defendant and Appellant.

The petition for review is granted. Further action in this matter is deferred pending consideration and disposition of a related issue in *In re Hernandez*, S282186 (see Cal. Rules of Court, rule 8.512(d)(2)), or pending further order of the court. Submission of additional briefing, pursuant to California Rules of Court, rule 8.520, is deferred pending further order of the court.

GUERRERO

Chief Justice

CORRIGAN

Associate Justice

LIU

Associate Justice

KRUGER

Associate Justice

GROBAN

Associate Justice

EVANS

Associate Justice

Associate Justice

APPENDIX D

Ninth Circuit Order Denying Motion to Stay the Mandate Pending Certiorari
(March 12, 2026)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 12 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADRIAN CABRERA ESPINOZA,

Petitioner,

v.

PAMELA BONDI, Attorney General,

Respondent.

No. 25-341

Agency No.
A079-369-148

ORDER

Before: CLIFTON, OWENS, and DE ALBA, Circuit Judges.

The Petitioner's motion to stay the mandate pending petition for writ certiorari (Docket No. 50) is DENIED.

APPENDIX E

Board of Immigration Appeals Decision

(January 13, 2025)

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Adrian CABRERA-ESPINOZA, A079-369-148

Respondent



ON BEHALF OF RESPONDENT: Mario A. Valenzuela, Esquire

IN REMOVAL PROCEEDINGS

On Motion from a Decision of the Board of Immigration Appeals

Before: Sáenz, Appellate Immigration Judge

SÁENZ, Appellate Immigration Judge

This matter was last before the Board on September 26, 2023, when we dismissed the respondent's appeal from the Immigration Judge's April 20, 2023, decision denying the respondent's applications for asylum, withholding of removal, and his request for protection under the regulations implementing the Convention Against Torture ("CAT").¹ See sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 241(b)(3)(A); 8 C.F.R. §§ 1208.16(c)-1208.18. On September 11, 2024, the respondent filed a motion to reopen proceedings. The Department of Homeland Security has not responded to the motion. The motion will be denied.

With limited exceptions, a motion to reopen must be filed within 90 days of the Board's decision. See INA § 240(c)(7)(C)(i), 8 U.S.C. § 1229a(c)(7)(C)(i). In order to warrant reopening, the motion must present new evidence that is material was not available, and could not have been discovered or presented at the previous proceeding. See 8 C.F.R. §§ 1003.2(c)(1), 1003.39. The respondent must establish prima facie eligibility for the relief sought and bears the burden of demonstrating that there is a reasonable likelihood the new evidence will change the result in the case. See *Matter of L-O-G-*, 21 I&N Dec. 413, 420 (BIA 1996); see also *Fonseca-Fonseca v. Garland*, 76 F.4th 1176, 1178-79 (9th Cir. 2023).

Here, the respondents' motion was not filed within 90 days of our prior decision. See INA § 240(c)(7)(C)(i), 8 U.S.C. § 1229a(c)(7)(C)(i). He argues that the changed country conditions exception to the filing deadline applies in his case (Respondent's Mot. at 8). See INA § 240(c)(7)(C)(ii), 8 U.S.C. § 1229a(c)(7)(C)(ii).

¹ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c), 1208.17; 8 C.F.R. § 1208.18(a) (2020).

However, even assuming, *arguendo*, the respondent has established that the new threats he experienced establish a material change in country conditions, this new evidence does not establish a reasonable likelihood this new evidence will change the result in the case. *See Fonseca-Fonseca*, 76 F.4th at 1178-79; *Matter of L-O-G-*, 21 I&N Dec. at 420. While the motion argues that this evidence is relevant to whether he is likely to be tortured in Mexico, it does not address how this evidence affects our prior relocation analysis, nor does it explain how these threats would be carried out with the consent or acquiescence of a public official (BIA Sept. 26, 2023, Dec. at 2 n.2). *Id.* We will therefore deny the motion.

Accordingly, the following order will be entered.

ORDER: The motion is denied.

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2026, I served the foregoing Petition for a Emergency Application for Stay of Removal Pending Disposition of Petition for Writ of Certiorari on the Solicitor General of the United States by depositing a copy in the United States mail, first-class postage prepaid, addressed to:

Solicitor General of the United States
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

THE ADVOCATES' LAW FIRM, PC

/s/ Mario Valenzuela

Mario Valenzuela, Esq., Counsel of Record
for Petitioner Adrian Cabrera Espinoza