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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Ruslan Makhmudov,
Petitioner,

No. CV-25-01951-PHX-KLM (MTM)

**REPLY TO RESPONDENTS'
RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS**

v.

Pamela Bondi, et al.,
Respondents.

Petitioner, Ruslan Makhmudov, by and through counsel, replies to the Respondents' Response to his Petition for Writ of Habeas Corpus and request that the Court grant his Petition and his Motion for Temporary Restraining Order and Preliminary Injunction for the following reasons:

I. INTRODUCTION

Petitioner does not dispute that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), for having entered the United States as an arriving alien. Petitioner in this case is also not challenging the removal order issued by an immigration judge in removal proceedings. The removal order is being challenged separately at the Board of Immigration Appeals. Petitioner brought this action before this Court to review whether the Respondents' continued detention against the advice of his cardiologist and medical providers, is a violation of his Fifth Amendment rights to life and liberty.

1 **A. The Real ID Act of 2005 does not preclude a district court from reviewing**
2 **a challenge to detention.**

3 Respondents allege that this Court is precluded by the REAL ID Act of 2005 from
4 exercising jurisdiction to review the Attorney General's discretionary decision to deny
5 Petitioner's release on humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). However,
6 Congress has clarified, that the REAL ID Act was not intended to "preclude habeas review
7 over challenges to detention that are independent of challenges to removal orders." *Singh v.*
8 *Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011). The jurisdiction-stripping provision cited by
9 Respondents (Doc. 13 at ¶ 1) does not limit habeas jurisdiction over questions of law,
10 including instances where a discretionary process was itself constitutionally flawed. *See*
11 *Gutierrez-Chavez v. INS*, 298 F.3d 824, 829 (9th Cir. 2002) (stating that although the
12 Attorney General's discretionary judgment shall not be subject to review, claims that the
13 discretionary process itself was constitutionally flawed are "cognizable in federal court on
14 habeas.").

15 Petitioner claims that even where prolonged detention is permissible or even
16 mandatory, "due process requires 'adequate procedural protections' to ensure that the
17 government's asserted justification for physical confinement 'outweighs the individual's
18 constitutionally protected interest in avoiding physical restraint.'" 535 F.3d at 950 (quoting
19 *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001)).
20 Moreover, the Respondent's cite to *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir.
21 2013) for the proposition that the parole process is unreviewable by this court is misleading.
22 The Ninth Circuit in *Rodriguez v. Robbins*, unequivocally stated that the parole process is
23 unreviewable by "IJs". *Id.* emphasis added. Thus, Petitioner requests the Court assert
24 jurisdiction over his petition.

25 **B. This Court has broad authority to remedy the unconstitutional violation**
26 **of the Petitioner's conditions of confinement brought under 28 U.S.C. §**
27 **2241.**

28 Respondents are mistaken that this court lacks jurisdiction over Petitioner's challenge
to the conditions of his confinement through a habeas petition. The government in *Rivas v.*

1 *Jennings*, 845 F. App'x 530, 534 (9th Cir. 2021), made the same argument that the
2 Respondents are making here. In *Rivas*, the Ninth Circuit unequivocally recognized that the
3 Due Process Clause of the Fifth Amendment provides civil immigration detainees an implied
4 cause of action to seek equitable relief from unconstitutional conditions of confinement. *Id.*
5 The court in *Rivas* did not foreclose judicial review by district courts of constitutional
6 violations stemming from conditions of confinement in the immigration context. *Id.* Instead,
7 the court in *Rivas* concluded that the district court had authority to enter appropriate
8 injunctive relief to remedy a likely constitutional violation. *Id.* See also *Roman v. Wolf*, 977
9 F.3d 935, 945 (9th Cir. 2020) (concluding same).

10 In their Response (Doc. 13. at 7 ¶ 1), Respondents cite to the court's dismissal of the
11 habeas petition in *Wright v. Shartie*, 699 F. App'x 733, 733 (9th Cir. 2017), in support of
12 their position. However, Wright challenged the constitutionality of the Bureau of Prisons
13 officials preventing him from litigation his criminal conviction or having access to the courts,
14 unlike the Petitioner here, who is alleging a violation of his due process rights. *Id.* Therefore,
15 a civil rights action or a "*Bivens*" action, as suggested by the Respondents as being the
16 appropriate vehicle for Petitioner to bring forth his constitutional claims stemming from the
17 conditions of his confinement erroneous. As such, this Court has jurisdiction to review and
18 remedy the conditions of his confinement if those conditions likely violation his
19 constitutional rights.

20 **B. Respondents have recklessly disregarded uncontroverted medical**
21 **evidence that establishes that Petitioner's continued detention**
22 **compromises his health and survival.**

23 The Fifth Amendment requires the government to provide conditions of reasonable
24 health and safety to people in its custody. *Roman v. Wolf*, 977 F.3d 935, 943 (9th Cir. 2020).
25 The government violates this duty when:

- 26 (i) [It] made an intentional decision with respect to the conditions under which
27 the plaintiff was confined;
28 (ii) those conditions put the plaintiff at substantial risk of suffering serious harm;

1 (iii) the [government] did not take reasonable available measures to abate that
2 risk, even though a reasonable official in the circumstances would have
3 appreciated the high degree of risk involved . . . ; and

4 (iv) by not taking such measures, the [government] caused the plaintiff's injuries.

5 *Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018).

6 Whether the government's conduct was objectively unreasonable, will depend on the
7 facts and circumstances of each case. *Castro v. County of Los Angeles*, 833 F.3d 1060, 1071
8 (9th Cir. 2016) (en banc). A petitioner need only prove a "sufficiently imminent danger[],"
9 because a "remedy for unsafe conditions need not await a tragic event." *Helling v. McKinney*,
10 509 U.S. 25, 33-34, 113 S. Ct. 2475, 125 L. Ed. 2d 22 (1993).

11 Petitioner in this case will likely show that Respondents' conduct was objectively
12 unreasonable. Petitioner's cardiologist, Robert J. Siegel, M.D., FACC., confirmed that one
13 day after Petitioner underwent heart surgery, he was returned to ICE custody in shackles
14 without any monitoring, rehabilitation, or pain control. (Doc. 1-1 Exh, A). Dr. Siegel
15 described this treatment as "deleterious and suboptimal" and warned that Mr. Makhmudov's
16 health and survival are being actively endangered by the conditions of confinement. *Id.* Dr.
17 Siegel emphasized the need for urgent release to a qualified healthcare facility to receive
18 life-saving care. *Id.*

19 Respondents in their Response offered a Declaration of Luis A. Rodriguez, M.D.
20 (Doc. 13-1) to show that ICE Health Service Corps ("IHSC") is aware of Petitioner's
21 conditions and has provided him with high level of medical care. However, there is zero
22 indication that Dr. Rodriguez personally examined, treated, or even met Petitioner. Dr.
23 Rodriguez simply makes assertions about his employment history as a licensed physician but
24 nowhere does Dr. Rodriguez confirm that he had any direct clinical contact with Petitioner.
25 Moreover, Dr. Rodriguez does not claim to be an expert in cardiology, aortic disease,
26 electrophysiology, or complex post-operative care, to make conclusions or assess whether
27 Petitioner was provided with adequate medical care while in detention in light of his
28 numerous medical conditions.

1 Petitioner claims, among other things, that on September 18, 2024, while detained at
2 Otay Mesa Detention Center, he was seen by a medical doctor who expressed concerns that
3 his condition was life-threatening and conveyed that he would speak to ICE regarding
4 Petitioner's detention. *Id.* Exh. B at 10 ¶ 25. According to Petitioner, the medical doctor
5 scheduled an emergency appointment that same morning, but instead of receiving care, that
6 evening he was forcibly transferred in shackles to the Eloy Detention Center. *Id.* at ¶ 25-26.
7 Petitioner claims that the delay in care, resulted in the growth of his heart aneurysm,
8 necessitating urgent surgery. *Id.* at 11-12.

9 Petitioner also claims that a week after his surgery, on or about February 19, 2025, he
10 experienced the following:

11 "About a week after my surgery, I was in extremely poor condition. My
12 glasses were broken, and my left arm was in a sling — completely
13 immobilized. I was so weak I could barely move my right arm either. I
14 had no strength to move or push the wheelchair they gave me. That
15 evening, I began experiencing excruciating chest pain — the kind that
16 made me fear I was dying. I begged for help, but the medical unit ignored
17 me and said it was "normal." For hours, I was left in that condition, until
18 other detainees pleaded with staff to do something. Only then was I taken
19 to the Casa Grande emergency room. I spent three days in the hospital,
20 shackled to the bed by my wrists and ankles, without a translator, without
21 any explanation of what was happening to me." Doc. 1-1 at 19 ¶ 69.

22 Petitioner claims that ICE deliberately concealed the fact that he had suffered a
23 myocardial infarction (heart attack). *Id.* Petitioner claims that this concealment of critical
24 health information was not merely neglect, but also a form of medical abuse that prevented
25 Petitioner from understanding his own condition and risks. *Id.* at 20 ¶ 71. Petitioner asserts
26 that he has not been evaluated, examined or had communication with a cardiologist since his
27 last surgery. *Id.* ¶ 70.

28 On July 11, 2025, Elizabeth Casey, a social worker employed by the Florence
Immigrant & Refugee Rights Project ("Florence Project" or "FIRRP"), visited Petitioner at
the Eloy Detention Center. *See* Exhibit A. According to Ms. Casey, Petitioner appears to
have lost about thirty (30) pounds since his surgery. *Id.* Petitioner appears significantly
skinnier and frailer *Id.* Petitioner reported to Ms. Casey, that he is not being fed a heart
healthy diet as his doctor requested. *Id.* In addition, Petitioner is currently experiencing pain

1 in his back and chest and he has not been able to speak to his surgeon. *Id.* Moreover, Ms.
2 Casey confirms in her Declaration that she has been working with FIRRP on Petitioner's case
3 since December 17, 2024, and has spoken to him and visited him on numerous occasions. *Id.*
4 Ms. Casey confirms that ICE has delayed Petitioner's treatment and has failed to provide him
5 with a heart healthy diet and rehabilitative services while in detention. *Id.* Ms. Casey can
6 confirm that the conditions of Petitioner's detention are impeding his ability to recover from
7 heart surgery and the inadequate diet and environment at the Eloy Detention Center have
8 caused Petitioner immense stress affecting his mental health. *Id.*

9 II. CONCLUSION

10 Based on the nature and seriousness of Petitioner's allegations, confirmed by his
11 medical doctors, and his case worker, the court should exercise jurisdiction over Petitioner's
12 Petition for Writ of Habeas Corpus and rule on the merits of the constitutionality of his
13 detention.

14 RESPECTFULLY SUBMITTED this 15th day of July, 2025.

15 POPE & ASSOCIATES PC

16 /s/ Luciana Galarza

17 Luciana Galarza, Esq.
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CERTIFICATE OF SERVICE

On the 15th day of July, 2025, I, Luciana Galarza, the undersigned, served the foregoing via CM/ECF follows:

Katherine R. Branch
Assistant U.S. Attorney
Counsel for Respondents

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 15th day of July, 2025, at Phoenix, Arizona.

/s/ Luciana Galarza

Attorney for Petitioner