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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Daniel Avila Marin,
Petitioner,

vs.

Pamela Bondi, Attorney General of the United States;

John Cantu, U.S. Immigration and Customs Enforcement Phoenix Field Office Director;

Kristi Noem, Secretary of the U.S. Department of Homeland Security;

Luis Rocha, Warden, Florence Correctional Center;

Todd M. Lyons, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Respondents.

Case No.: CV-25-03251-PHX-SMB (JFM)

File No: A# [redacted]

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

ORAL ARGUMENT REQUESTED

I. INTRODUCTION

Comes now, Petitioner, Daniel Avila Marin, brings this Reply to Respondent's Response in Opposition to Motion for Temporary Restraining Order and Preliminary Injunction.

The Supreme Court has made clear that the post-removal-period detention statute, when read in light of constitutional principles, does not authorize indefinite incarceration. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court held that detention must be limited to the time reasonably necessary to effectuate removal. It explained that a statute permitting indefinite detention would raise serious constitutional questions, and therefore construed § 1231 to authorize detention only while removal remains reasonably foreseeable. Id. at 679.

Petitioner Daniel Avila Marin has been confined for more than twelve months following his grant of deferral of removal under the Convention Against Torture. Removal to Mexico, the only country designated in his reinstated order is permanently barred. The government points to nothing more than speculative inquiries to third countries (Response At. 13 17:22), none of which have agreed to accept him like Spain, Guatemala and El Salvador. The absence of any concrete progress demonstrates that removal is not reasonably foreseeable, and detention has crossed from permissible into unreasonable and unlawful.

Respondents' opposition does not refute these core points. Instead, they rely on generalized authority for third-country removal, invoke unrelated class action litigation, and attempt to minimize the harm Petitioner suffers from indefinite confinement. These arguments cannot overcome the constitutional command that civil detention remain tied to its purpose. Because Petitioner's removal is not significantly likely in the reasonably foreseeable future, and because his confinement has now become unreasonable, the Court should grant the requested relief and order his release under appropriate supervision.

II. ARGUMENT

A. THE GOVERNMENT HAS FAILED TO DEMONSTRATE THAT REMOVAL IS REASONABLY FORESEEABLE

Zadvydas establishes a clear framework. During the initial ninety-day removal period, detention is mandatory. Beyond that, detention is permitted only for a "reasonable time" necessary to secure removal. 533 U.S. at 699–701. Six months is the presumptively reasonable period. After that point, if the noncitizen provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing with evidence. Id. at 701.

Petitioner has now been in custody for over twelve months, double the presumptive limit. Respondents admit that Mexico, the only country designated in

his reinstated order, is unavailable due to his CAT protection. They further admit that, to date, no other country has agreed to accept him. The government's evidence consists of three attempts made to Spain, Guatemala, and El Salvador in July, August and September 2, 2025. Yet no country has responded affirmatively.

Courts have consistently held that such speculative efforts do not satisfy the *Zadvydas* standard. In *Xi v. INS*, 298 F.3d 832, 839–40 (9th Cir. 2002), the Ninth Circuit emphasized that communications with foreign governments, absent confirmation of acceptance, are insufficient. In *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 428 (M.D. Pa. 2004), the court rejected DHS's reliance on unproductive inquiries, holding that the mere hope of removal does not equate to likelihood. Similarly, in *Oyedeji v. Ashcroft*, 332 F. Supp. 2d 747, 755 (M.D. Pa. 2004), the court ordered release after nineteen months of detention, reasoning that "the lack of evidence that removal is likely in the foreseeable future renders continued detention unreasonable."

B. THIRD-COUNTRY REMOVAL AUTHORITY DOES NOT AUTHORIZE INDEFINITE DETENTION

Respondents argue that because DHS has statutory authority to pursue removal to a third country, detention may continue. Respondents emphasize that under *Johnson v. Guzman-Chavez*, 594 U.S. 523 (2021), DHS may pursue removal to a third country. That authority, however, does not grant unchecked authority to

detain indefinitely. This case addressed which statutory detention provision applies in reinstated removal proceedings; it did not displace the constitutional avoidance construction in *Zadvydas*. Even where third-country removal is theoretically possible, the statute continues to permit detention only for a period reasonably necessary to bring about removal. It is undisputed that DHS may seek to remove Petitioner to a third country under § 1231(a)(5). But the fact that DHS possesses theoretical authority does not relieve it of the obligation to demonstrate that removal is reasonably foreseeable.

Neither does *Nasrallah v. Barr*, 590 U.S. 573 (2020), support the government's position. *Nasrallah* confirms that CAT relief bars removal to the country where torture is likely, but does not invalidate the underlying removal order. That means DHS may seek a third country. But when no such country has come forward after more than twelve months, detention no longer serves the purpose of the statute. It becomes indefinite and unreasonable, in violation of both § 1231 and the Due Process Clause.

C. THE PENDENCY OF THE D.V.D. CLASS ACTION DOES NOT FORECLOSE RELIEF

Respondents next argues that Petitioner's claims overlap with the *D.V.D.* class action pending in Massachusetts. See *D.V.D. v. Department of Homeland Security*, No. 25-cv-10676 (D. Mass.) But the issues are distinct. The *D.V.D.* litigation

challenges the procedures DHS must follow before removing class members to a third country not previously designated. Petitioner here does not challenge procedures for future removal. Petitioner challenges his present confinement, which is unlawful because he has been detained for more than twelve months, twice the six-month period the Supreme Court in *Zadvydas* identified as presumptively reasonable, and removal is not reasonably foreseeable. *Id.*

Habeas corpus has long been the mechanism to test the legality of detention. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Nothing in *D.V.D.* strips this Court of jurisdiction to decide whether Petitioner's ongoing detention violates *Zadvydas*. Membership in a Rule 23(b)(2) class does not deprive an individual of the right to challenge unlawful confinement.

Finally, Respondents' reliance on the *D.V.D. v. DHS* class action is misplaced. *D.V.D.* addresses the procedures DHS must follow before removing class members to third countries. It does not address whether detention of a CAT-protected individual for more than twelve months without a realistic prospect of removal is lawful under *Zadvydas*. Even if *D.V.D.* were resolved tomorrow, it would not answer the question presented here: whether continued detention is "reasonably necessary to bring about... removal" or instead has become unlawful. *Zadvydas*, 533 U.S. at 679. even if *D.V.D.* resolves favorably to DHS, it would not authorize indefinite

detention, because *Zadvydas* governs the length of custody, not the procedures for removal.

D. PRELIMINARY INJUNCTION IS WARRANTED

Respondent correctly states that under *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008), a party seeking preliminary relief must show (1) likelihood of success on the merits, (2) irreparable harm, (3) that the balance of equities tips in his favor, and (4) that an injunction serves the public interest. The Ninth Circuit recognizes a "serious questions" sliding scale where a petitioner may prevail if serious questions exist on the merits and the balance of hardships tips sharply in his favor. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir. 2011) (cited in Respondents' opposition).

Here, Petitioner easily satisfies each element. He has been detained for more than twelve months following a grant of CAT protection. Removal to Mexico is legally barred. The government's own submissions confirm that no other country has agreed to accept him despite multiple inquiries. Under *Zadvydas*, detention beyond six months is presumptively unreasonable unless the government can show removal is significantly likely in the reasonably foreseeable future. Id. at 701. Respondents have not met that burden.

Respondents downplay the harm Petitioner faces, suggesting that his detention is routine. But the harm here is not abstract. Petitioner has already been deprived of his liberty for more than twelve months beyond the period reasonably necessary to secure removal. He remains confined in penal-like conditions, separated from his U.S. citizen family, and subjected to the ongoing uncertainty of indefinite detention. Courts recognize that prolonged unlawful detention itself constitutes irreparable harm. *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (cited in Petitioner's opening brief). Each additional day of confinement deepens that injury.

Respondents attempt to minimize Petitioner's injury by characterizing his detention as routine, unlawful detention is never routine. The Supreme Court has repeatedly recognized that unlawful detention constitutes irreparable harm. As *Boumediene v. Bush*, 553 U.S. 723, 779 (2008), makes clear, the writ of habeas corpus exists precisely to remedy unlawful confinement, and denial of that protection results in an injury the law will not tolerate. Unlike the generalized harms cited in Respondents' cases, Petitioner's ongoing incarceration is the quintessential example of irreparable harm. Each additional day of confinement deepens the constitutional injury, and no later relief can compensate for the liberty lost.

Petitioner's interest in freedom from unlawful detention outweighs any speculative harm to the government. The government has not shown that Petitioner poses a danger or flight risk that could not be addressed through conditions of supervision. The balance of equities therefore favors release.

Accordingly, Petitioner has demonstrated not only a strong likelihood of success on the merits, or at minimum serious questions warranting judicial intervention, but also that his ongoing loss of liberty constitutes irreparable harm. For these reasons, preliminary relief is both warranted and necessary to prevent further unlawful detention.

Respondents' reliance on *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873 (9th Cir. 2009), and *Garcia v. Google, Inc.*, 786 F.3d 733 (9th Cir. 2015) (en banc), does not alter the outcome. In *Marlyn*, the Ninth Circuit denied injunctive relief where the plaintiff could not show irreparable harm because its injury was purely economic. In *Garcia*, the Court of Appeals found no basis for preliminary relief where the claimed injury involved speculative copyright infringement and did not justify the extraordinary remedy of a mandatory injunction. Neither case involved the loss of physical liberty. By contrast, Petitioner suffers ongoing incarceration for more than twelve months beyond the period deemed presumptively reasonable in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The

deprivation of freedom is not speculative or economic but immediate and concrete. These cases therefore underscore that where liberty is at stake, the standard for irreparable harm is satisfied, and preliminary relief is proper.

iii. CONCLUSION

8 U.S.C. § 1231(a)(6) does not permit indefinite detention. As *Zadvydas* held, it authorizes detention only for a reasonable period necessary to effectuate removal. 533 U.S. at 679. Petitioner has been confined for more than twelve months, and the government has failed to demonstrate that his removal is significantly likely in the reasonably foreseeable future. Continued detention has therefore become unreasonable and unconstitutional.

For these reasons, Petitioner respectfully requests that the Court grant his Motion for Temporary Restraining Order and Preliminary Injunction and order his immediate release under appropriate conditions of supervision.

Dated: September 22, 2025,

Tucson, AZ,

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CERTIFICATE OF SERVICE

I, Siovhan Sheridan Ayala, hereby certify that on September 22, 2025, I electronically filed the foregoing Opening Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case that require service are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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