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

8 Daniel Avila Marin,
9 Petitioner,

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

10 vs.

File No: 

11 Pamela Bondi, Attorney General of the
12 United States;

**PETITIONER'S REPLY TO
RESPONDENT'S ANSWER TO
HABEAS CORPUS.**

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

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

18 Luis Rocha, Warden, Florence
19 Correctional Center;

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

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24 Respondents.

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I. INTRODUCTION

Respondents' Answer to the Habeas confirms rather than refutes that Petitioner's detention has become unlawful. The government concedes that Daniel Avila Marin was granted protection under the Convention Against Torture (CAT) on April 2, 2025, that DHS did not appeal, and that he remains detained at the Florence Correctional Center nearly one year later. Respondents further admit that ICE has made only "follow-up inquiries" to the Removal Management Division regarding speculative third-country options. Nothing in the record suggests that any nation has agreed to accept Petitioner, or that removal is even *reasonably foreseeable*.

Under 8 U.S.C. § 1231 and *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention after a final order of removal is permitted only for a period "reasonably necessary to bring about that alien's removal." *Id.* at 689. Once removal is no longer realistically attainable, continued custody becomes arbitrary and violates the Due Process Clause. The government's Answer offers no evidence of any meaningful progress toward removal, only speculation that, at some point, another country might agree to accept a CAT-protected individual. That showing falls far short of the government's burden under *Zadvydas*.

1 Once an Immigration Judge grants CAT protection, DHS is legally prohibited
2 from removing the individual to the country where torture was found likely unless
3 and until the government affirmatively proves that country conditions have
4 materially changed. See 8 C.F.R. § 1208.17(d)(1). No such showing has been made
5 here. To the contrary, Respondents have presented no evidence of any change in the
6 conditions in Mexico that gave rise to the CAT order. Absent such proof, the CAT
7 deferral remains binding, and detention based on hypothetical “future changes” is
8 not authorized by statute or regulation.
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11 Respondents cite *Lema v. INS*, 341 F.3d 853 (9th Cir. 2002), to suggest that
12 detention may continue until it is determined there is no significant likelihood of
13 removal in the reasonably foreseeable future. In *Lema*, the petitioner was detained
14 for approximately one year while active, concrete negotiations were underway with
15 a foreign government that had agreed in principle to accept him. The Ninth Circuit
16 upheld detention only because removal was then actively being arranged and
17 therefore reasonably foreseeable.
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22 Here, by contrast, ICE’s own declaration confirms that since Petitioner was
23 granted CAT protection on April 2, 2025, the agency has made only three
24 unanswered inquiries to the Removal Management Division and has not identified
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1 any country willing to receive him. There are no negotiations, no travel documents,
2 and no receiving nation.

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4 Moreover, *Zadvydas* governs the legality of post-order detention. *Zadvydas*
5 makes clear that once removal is no longer reasonably foreseeable, continued
6 detention is unauthorized under 8 U.S.C. § 1231(a)(6) and violates the Due Process
7 Clause. The government's reliance on *Lema* therefore fails under *Zadvydas* and its
8 control, and they prohibit the indefinite confinement of a CAT-protected individual
9 with no realistic prospect of removal.
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12 Furthermore, the government's invocation of the reinstatement statute, the
13 pending *D.V.D., et al. v. Department of Homeland Security, No. 1:25-cv-10676 (D.*
14 *Mass.)* class litigation, and generalized references to "ongoing removal efforts" do
15 nothing to cure these defects. Reinstatement does not override the constitutional
16 limits on post-order detention; *D.V.D.* concerns procedural safeguards for third-
17 country transfers, not the legality of confinement; and speculative inquiries do not
18 establish foreseeability. Each argument sidesteps the central question before this
19 Court whether Petitioner's continued incarceration serves any lawful purpose when
20 removal is no longer reasonably foreseeable. It does not. Because Respondents have
21 failed to demonstrate any realistic prospect of removal, any change in country
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1 conditions, or any ongoing statutory authority to detain, the Court should grant the
2 writ and order Petitioner's immediate release under reasonable supervision.
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4 **II. ARGUMENT**

5 **A. The Government's Evidence Confirms Removal Is Not Reasonably** 6 **Foreseeable.**

7 The government's declaration concedes that since Petitioner's CAT grant on
8 April 2, 2025, ICE has made only three "follow-up inquiries" to its Removal
9 Management Division about hypothetical third-country placements. These inquiries
10 occurred on July 20, August 17, and September 2, 2025, and there has been no
11 response, no travel document, and no country identified as willing to receive
12 Petitioner.
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15 Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention under §1231(a)(6) is
16 permissible only for a "period reasonably necessary to bring about removal," and
17 once removal is no longer realistically attainable, continued confinement violates
18 due process. *Zadvydas* established a presumptively reasonable six-month limit,
19 which the Ninth Circuit and other courts continue to apply strictly.
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22 Here, ICE has presented no evidence of any "reasonably foreseeable" removal
23 only unacknowledged emails and speculation that some third country might accept
24 a CAT-protected individual. Speculative administrative outreach is not a removal
25 plan. The absence of any affirmative response after nearly a year of detention
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1 demonstrates that removal is not “reasonably foreseeable” within the meaning of
2 *Zadvydas*. Accordingly, the statute no longer authorizes Petitioner’s confinement.
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4 **B. The Pending *D.V.D.* Class Litigation Has No Bearing on the Lawfulness**
5 **of Petitioner’s Detention.**

6 Respondents’ reliance on the pending *D.V.D., et al. v. Department of Homeland*
7 *Security, No. 1:25-cv-10676 (D. Mass.* litigation is misplaced and irrelevant to the
8 question before this Court. The *D.V.D.* litigation concerns the procedures DHS must
9 follow before removing class members to a third country not previously designated.
10 Petitioner does not challenge the procedures that might apply to some future removal.
11 He challenges his present detention, which has already exceeded twelve months,
12 twice the six-month period the Supreme Court in *Zadvydas* identified as
13 presumptively reasonable, and removal is not reasonably foreseeable.
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17 *D.V.D.* does not suspend or displace the controlling constitutional framework
18 established in *Zadvydas*. That decision holds unequivocally that detention under 8
19 U.S.C. §1231(a)(6) is permissible only for the period reasonably necessary to bring
20 about removal and that once removal is no longer realistically attainable, continued
21 custody is unauthorized and unconstitutional. The government cannot rely on the
22 pendency of unrelated class litigation to expand its statutory authority or avoid
23 compliance with *Zadvydas*’ constitutional limitations.
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1 Even if *D.V.D.* were resolved tomorrow, it would not answer the question
2 before this Court of whether continued detention of a CAT-protected individual for
3 more than a year, without any realistic prospect of removal, remains “reasonably
4 necessary to bring about [his] removal. The pendency of *D.V.D.* does not authorize
5 ICE to hold individuals indefinitely while it awaits potential policy guidance.
6 *Zadvydas* governs the length of custody; *D.V.D.* concerns only the procedures for
7 removal. The class action addresses future procedural steps, while this habeas
8 petition challenges an ongoing deprivation of liberty that has already exceeded
9 constitutional and statutory limits.
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14 **C. Petitioner’s Detention Under 8 U.S.C. § 1231(a)(6) Is Limited by**
15 ***Zadvydas* and is unlawful.**

16 Respondents correctly identify 8 U.S.C. § 1231(a)(6) as the statute governing
17 detention after a final order of removal. What they overlook is the limitation the
18 Supreme Court established in *Zadvydas v. Davis*, 533 U.S. 678 (2001): detention
19 under § 1231(a)(6) is lawful only for so long as it remains reasonably necessary to
20 accomplish removal. When removal is no longer realistically foreseeable, continued
21 custody exceeds statutory authority and violates the Due Process Clause.
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24 Immigration Judge granted Petitioner deferral of removal under the Convention
25 Against Torture (CAT) on April 2, 2025, and that DHS did not appeal. Under 8
26 C.F.R. § 1208.17(d)(1), DHS is legally prohibited from removing a CAT-protected
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1 individual to the country of feared torture absent proof of materially changed country
2 conditions, proof which the government has not offered. In light of this binding
3 protection order, and the absence of any willing third country, removal is not
4 reasonably foreseeable.
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7 **D. Petitioner's Detention violates the Due Process**

8 Respondent confuses Petitioner's position. Petitioner has never asserted that
9 release is required automatically upon the expiration of six months. Rather,
10 Petitioner relies on *Zadvydas* for the well-established rule that detention under 8
11 U.S.C. § 1231(a)(6) is constitutionally limited to the period reasonably necessary to
12 accomplish removal. The six-month threshold described in *Zadvydas* is not a
13 demand for automatic release, it establishes a presumption that, after six months,
14 further detention must be supported by concrete evidence that removal remains
15 reasonably foreseeable.
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19 Respondents' reliance on *Lema*, does not alter that rule. *Lema* was decided after
20 *Zadvydas* and applied the same "reasonably foreseeable" standard. The Ninth Circuit
21 upheld detention there only because the government was engaged in active, concrete
22 negotiations with a foreign government that had already agreed in principle to accept
23 the petitioner, making removal genuinely imminent. No such circumstances exist
24 here. ICE's own declaration confirms there have been only three unanswered
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1 “follow-up inquiries” with no response and no receiving country identified. Unlike
2 in *Lema*, where removal was actively arranged, here removal is speculative. *Lema*
3 therefore reinforces Petitioner’s position: when removal is not realistically attainable,
4 detention must end.
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7 Petitioner’s continued detention violates due process because it no longer serves
8 any legitimate purpose. The government has not shown that removal is reasonably
9 foreseeable or that detention remains necessary to accomplish it.
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11 **E. Petitioner Has Met His Burden to Show That Removal Is Not Reasonably**
12 **Foreseeable**

13 Petitioner has now been detained for more than twelve months since being
14 granted deferral of removal under the Convention Against Torture, and DHS has
15 made no meaningful progress toward removal. ICE’s own declaration admits that
16 the only actions taken have been three “follow-up inquiries” to the Removal
17 Management Division, with no response from any country and no indication that any
18 nation has agreed to receive him. There is no evidence of travel documents, ongoing
19 negotiations, or any plan for repatriation.
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23 By contrast, the government has offered nothing beyond speculation that removal
24 might occur at some unspecified time in the future. Petitioner has shown good reason
25 to believe that removal is not reasonably foreseeable and because Respondents have
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1 failed to rebut that showing with concrete evidence continued detention is unlawful
2 under § 1231(a)(6).
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4 Petitioner has easily met his burden of showing that removal is not reasonably
5 foreseeable.

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7 **F. This Court has jurisdiction because Petitioner's Habeas claim is proper.**

8 This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. §§ 2241 et seq.,
9 as protected by the Suspension Clause, and federal question jurisdiction under 28
10 U.S.C. § 1331. The Suspension Clause provides that “[t]he privilege of the Writ of
11 Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or
12 Invasion the public Safety may require it.” U.S. Const. art. I, § 9, cl. 2. This provision
13 guarantees judicial review of the legality of detention, including immigration
14 custody. The habeas petition does not seek judicial review of any administrative rule
15 or policy; it seeks relief from continued detention that has become unlawful under
16 *Zadvydas*. *Zadvydas* specifically recognized that § 2241 provides a remedy for
17 individuals held in post-removal-period custody whose detention no longer serves a
18 legitimate removal purpose.
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23 The Government's planned continual and indefinite detention of Petitioner would
24 violate the APA and the Fifth Amendment by arbitrarily keeping him detained longer
25 than the Statutorily allowed 90 days with no plan of revision or stated program of
26 relief. 8 U.S.C. § 1231.
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1 Petitioner's claim is not an APA challenge, it is a habeas challenge to unlawful
2 detention. Nevertheless, the Government's actions would fail even under the APA's
3 own standards. The APA requires that agency decisions not be "arbitrary, capricious,
4 an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §
5 706(2)(A). An agency must "examine the relevant data and articulate a satisfactory
6 explanation for its action including a rational connection between the facts found
7 and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto.*
8 *Ins. Co.*, 463 U.S. 29, 43 (1983); *Encino Motorcars, LLC v. Navarro*, 136 S. Ct.
9 2117, 2125 (2016). There have been no findings, no explanation, and no rationale
10 for continued confinement after a binding CAT order and more than a year of failed
11 removal attempts. Accordingly, even if the APA framework were applied here, it
12 would reinforce rather than undermine the conclusion that Petitioner's continued
13 confinement is unlawful.
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19 **G. Respondents' Conduct Constitutes a State-Created Danger in Violation**
20 **of the Fifth Amendment**

21 The Due Process Clause protects "every person within the nation's borders,"
22 regardless of immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781
23 (9th Cir. 2014) (quoting *Mathews v. Diaz*, 426 U.S. 67, 77 (1976)). The government
24 violates that protection when it "affirmatively places [an] individual in danger" by
25 acting with "deliberate indifference to [a] known or obvious danger." *Kennedy v.*
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1 *City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006). Respondents have
2 affirmatively placed Petitioner in danger by detaining him indefinitely after his grant
3 of protection under the Convention Against Torture, this continued confinement
4 subjects Petitioner to severe mental and physical harm. The government is fully
5 aware that Petitioner cannot lawfully be removed to Mexico yet it continues to
6 confine him without any viable plan for release or safe relocation. ICE's declaration
7 notes that it has "reached out" to other countries to explore possible removal options,
8 but those efforts have yielded no response. The mere act of sending inquiries does
9 not mean that removal is foreseeable. This ongoing detention, despite the
10 government's knowledge of the danger Petitioner faces and the absence of any
11 lawful or practical removal option, leaves him in a more perilous position than before
12 he sought protection. By maintaining custody under these circumstances,
13 Respondents have acted with deliberate indifference to a known and obvious risk of
14 harm, in violation of the Fifth Amendment's guarantee of due process.
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21 **H. Petitioner properly invokes the suspension clause.**

22 Respondents' contention that Petitioner has not been denied "meaningful judicial
23 review" misrepresents the reach and the function of the Suspension Clause. The
24 Suspension Clause provides that "[t]he privilege of the Writ of Habeas Corpus shall
25 not be suspended, unless when in Cases of Rebellion or Invasion the public Safety
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1 may require it.” U.S. Const. art. I, § 9, cl. 2. This provision guarantees judicial review
2 of the legality of detention, including immigration custody. The government’s
3 reliance on Petitioner’s prior administrative proceedings before an asylum officer
4 and Immigration Judge is erroneous. Those proceedings addressed his eligibility for
5 withholding or deferral of removal under the Convention Against Torture, they did
6 not review the legality of his continued post-order detention because at that time it
7 would’ve been impossible. At the time of those proceedings, the issue of prolonged
8 detention had not yet arisen, Petitioner does not seek to reopen or revisit his
9 underlying removal proceedings; he seeks judicial review of his ongoing
10 confinement.
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III. CONCLUSION

For the reasons set forth above, Petitioner’s continued detention is unlawful.

The government has failed to demonstrate that removal is reasonably foreseeable or to justify his confinement. Petitioner respectfully requests this Court to grant the writ and order his immediate release under appropriate supervision.

Dated: October 16, 2025,

Tucson, AZ,

By: /s/ Siovhan Sheridan Ayala
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CERTIFICATE OF SERVICE

I, Siovhana Sheridan Ayala, hereby certify that on October 16, 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.

/s/Siovhana Ayala

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