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Attorney for Petitioner,
Juan De La Torre Duran,

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JUAN DE LA TORRE DURAN,
Petitioner,

DOE 1, San Diego Field Office Director
U.S. Immigration and Customs Enforcement;
Madison Sheahan, Deputy Director
U.S. Immigration and Customs Enforcement;
Kristi Noem, Secretary of the U.S. Department of
Homeland Security, and Pam Bondi,
Attorney General of the United States,
DOE 2 Warden of Otay Mesa Detention Center
in their official capacities,

Respondents.

Case No. _____

'25CV3230 DMS DDL

**PETITION FOR WRIT
OF HABEAS CORPUS
AND INJUNCTIVE
RELIEF**

[CAT GRANTED]



**PETITION FOR WRIT OF HABEAS CORPUS
AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

INTRODUCTION

1. Petitioner Juan Antonio De La Torre Duran ("Petitioner") respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 and moves for an emergency Temporary Restraining Order ordering his immediate release from immigration detention. The Petitioner has been detained by the Department of Homeland Security

1 ("DHS") since December 13, 2024. (**Exhibit A**: Passport Biographical Page); (**Exhibit B**:
2 Notice to Appear). He suffers from severe medical conditions, including permanent
3 injuries from past torture in Mexico, chronic chest pain, liver dysfunction, respiratory
4 symptoms, and depression. His medical condition is deteriorating due to inadequate
5 treatment at the Otay Mesa Detention Center.
6

7 2. On September 29, 2025, the Immigration Judge granted Petitioner deferral of removal
8 under the Convention Against Torture ("CAT"). DHS subsequently filed an appeal with
9 the Board of Immigration Appeals ("BIA") on October 28, 2025. Because the
10 government has chosen to appeal, it is not taking any steps toward effectuating
11 removal—including removal to a third country. Combined with the IJ's CAT
12 determination, removal is legally and practically impossible during the pendency of the
13 appeal. As a result, Petitioner's continued detention lacks any lawful purpose.
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16 3. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), immigration detention is unconstitutional
17 when removal is not reasonably foreseeable. Here, removal is not possible. Petitioner's
18 prolonged and indefinite detention violates the Immigration and Nationality Act ("INA"),
19 the Administrative Procedure Act ("APA"), and the Fifth Amendment.
20

21 4. The Petitioner respectfully seeks a Temporary Restraining Order ("TRO") due to his
22 rapidly worsening health and the irreparable harm he is suffering.
23

JURISDICTION

24 5. This action arises under the Constitution of the United States, the Immigration and
25 Nationality Act ("INA"), 8 U.S.C. §§ 1101 et seq., and the Administrative Procedure Act
26 ("APA"), 5 U.S.C. §§ 701 et seq. This Court has habeas corpus jurisdiction pursuant to
27 28 U.S.C. §§ 2241 et seq.; Art. I, § 9, Cl. 2 of the United States Constitution (the
28

1 “Suspension Clause”), and 28 U.S.C. § 1331, as Petitioner is presently in custody under
2 the color of the authority of the United States, and such custody is in violation of the
3 Constitution, laws, or treaties of the United States. *See Zadvydas v. Davis*, 533 U.S. 678
4 (2001). This Court may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C.
5 §§ 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.
6

7 6. Use of the Writ of Habeas Corpus to challenge detention by U.S. Immigration and
8 Customs Enforcement (“ICE”) is available after the REAL ID Act of 2005, Pub. L. No.
9 109-13, 119 Stat. 231 (May 11, 2005) (“REAL ID Act”). Section 106(c) of Title I of the
10 REAL ID Act, amending INA § 242(a)(2)(A), (B), and (C), and § 242(g), although
11 limiting habeas jurisdiction, applies only to those challenges to a “final administrative
12 order of removal.” *Nnadika v. Att’y Gen. of the United States*, 484 F.3d 626, 632 (3d Cir.
13 2007) (holding that the proper venue for a habeas petition challenging detention remains
14 with the district court); *see also INS v. St. Cyr*, 533 U.S. 289, 314 (2001) (“The writ of
15 habeas corpus has always been available to review the legality of executive detention.”);
16 *Waffi v. Loiselle*, 527 F. Supp. 2d 480, 483-85 (E.D. Va. 2007).
17

18
19 7. The Petitioner has exhausted his administrative remedies to the extent required by law,
20 and his only remedy is by way of this judicial action. This Court has held that
21 “exhaustion is not required when a Petitioner challenges conditions imposed upon bond.”
22 *Galvez v. Lewis*, 56 F. Supp. 2d 637, 644 (E.D. Va. 1999); *see also Sengkeo v. Horgan*,
23 670 F. Supp. 2d 116, 121-23 (D. Mass. 2009). Following the termination of the removal
24 proceedings and the grant of the sought relief, Petitioner has no viable administrative
25 review available.
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VENUE

1
2 8. Venue is proper with this Court pursuant to 18 U.S.C. § 1391(e) because Respondents
3 are employees or officers of the United States or under contract with the United States,
4 acting in their official capacity, and an agency of the United States, and Petitioner is
5 under their control; because Petitioner is detained at Otay Mesa, which is under the
6 jurisdiction of this District; because a substantial part of the events or omissions giving
7 rise to the claim occurred in this District; and because the government’s decision to hold
8 Petitioner in custody and his administrative proceedings occurred in this District.
9
10

PARTIES

- 11
12 9. Petitioner, Juan De La Torre Duran, is a native and citizen of Mexico, who was
13 previously a Lawful Permanent Resident of the United States. He is currently in custody
14 in Otay Mesa, California.
15
16 10. Respondent, DOE 1, is the Field Office Director at the U.S. Immigration and Customs
17 Enforcement, San Diego Field Office. ICE is the component of the Department of
18 Homeland Security (“DHS”) responsible for detaining and removing aliens according to
19 U.S. immigration law. In his official capacity, he is the legal custodian of Petitioner.
20
21 11. Respondent DOE 2 is sued under said fictitious name given the unavailability of public
22 information regarding his or her identity. On information and belief, DOE 2 is believed to
23 be agent or employee of other Respondent. Upon discovery of the identity of Respondent
24 DOE 1, Petitioner will seek leave to amend this Petition to provide the correct name.
25
26 12. Respondent, Todd M. Lyons, is the Acting Director of the U.S. Immigration and Customs
27 Enforcement. In his official capacity, he is the legal custodian of Petitioner.
28

1 13. Respondent, Kristi Noem, is the Secretary of the U.S. Department of Homeland Security.

2 She is responsible for the administration of ICE and the enforcement of INA. In her
3 official capacity, she is the legal custodian of Petitioner.
4

5 14. Respondent, Pam Bondi is the Attorney General of the United States. She is responsible
6 for administration of the Executive Office of Immigration Review, which includes the
7 U.S. Immigration Courts and the BIA.

8 15. Respondent DOE 2 is the Warden of Otay Mesa Detention Center in San Diego,
9 California, where Petitioner is currently detained. He is a legal custodian of Petitioner
10 and is names in his official capacity. Respondent DOE 2 is sued under said fictitious
11 name given the unavailability of public information regarding his or her identity. On
12 information and belief, DOE 2 is believed to be agent or employee of other Respondent.
13 Upon discover of the identity of Respondent DOE 2, Petitioner will seek leave to amend
14 this Petition to provide the correct name.
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16

17 **STATEMENT OF FACTS**

18 16. The Petitioner is a native and citizen of Mexico. He has been residing in U.S.
19 government's custody since his parole into the United States on or about December 13,
20 2024. He is a father to two (2) U.S. citizen children. In the United States, he also has the
21 support of his U.S. citizen mother and siblings.
22

23 17. Leading to his entry into the United States, the Petitioner suffered a brutal attack by
24 Mexican law enforcement officer in 2019. (**Exhibit C**: Documents Evidencing
25 Petitioner's Injuries and Medical Conditions). Following years of physical and financial
26 persecution in the hands of law enforcement, Petitioner found himself in a vulnerable
27 situation. He was no longer capable of making the demanded payments; the only means
28

1 of avoiding physical persecution. On of about November 2019, witnesses saw Mexican
2 law enforcement officials pulling Petitioner and pushing him into live electrical cables.
3 The electric shock caused extensive burns over his chest, abdomen, arms, and hand. He
4 lost a finger and required multiple surgeries and skin grafts. *Id.* Petitioner continues to
5 suffer from: chronic chest pain, abnormal liver enzymes, difficulty breathing and burning
6 sensations, residual burn pain, psychological trauma and depression, ongoing need for
7 medical monitoring. *Id.*

9
10 18. ICE's medical system has not provided adequate treatment. His pain is managed only
11 with Tylenol and ibuprofen. *Id.* He has repeatedly reported chest pain and shortness of
12 breath without appropriate follow-up care. His symptoms require specialized care not
13 available in detention.

14
15 19. Given his history of torture, trauma, and extensive burns, continued detention places him
16 at significant risk of medical deterioration.

17
18 20. Following the attack in 2019 and recovery, Petitioner remained in Mexico for several
19 years but de facto in self-imposed house arrests due to safety concerns.

20
21 21. After lengthy proceedings, the Immigration Judge granted CAT deferral on September
22 29, 2025. (**Exhibit D**: Immigration Judge's September 29, 2025 Decision). The IJ found
23 that Petitioner had previously been tortured by individuals acting under color of law and
24 would more likely than not be tortured again. *Id.*

25
26 22. DHS appealed the IJ's CAT decision. (**Exhibit E**: DHS's Appeal Notice). Accordingly,
27 as a matter of law, DHS cannot execute any removal order during the pendency of its
28 own appeal. Furthermore, DHS has not initiated any steps to identify or negotiate

1 removal to any third country. Thus, DHS is detaining Petitioner solely because it chose to
2 appeal, not because removal is likely.
3

4 **CAUSES OF ACTION**

5 **COUNT ONE**
6 **(SUBSTANTIVE DUE PROCESS)**

7 23. The allegations contained in paragraphs 1 through 21 above are repeated and realleged as
8 though fully set forth herein.
9

10 24. All persons residing in the United States are protected by the Due Process Clause of the
11 Fifth Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001); *Plyler v. Doe*,
12 457 U.S. 202, 210 (1987); *Mathews v. Diaz*, 426 U.S. 67 (1976); *Yamataya v. Fisher*, 189
13 U.S. 86 (1903); *see also Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002); *Wilson v.*
14 *Zeithern*, 265 F. Supp. 2d 628, 634 (E.D. Va. 2003) (noting that “aliens who have entered
15 the country through proper channels and have been granted legal permanent resident
16 status ... therefore enjoy a more robust liberty interest under the Due Process Clause”).

17 25. The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be ...
18 deprived of life, liberty or property, without due process of law.” U.S. Const. amend. V.
19 “Freedom from bodily restraint has always been at the core of the liberty protected by the
20 Due Process clause from arbitrary government action.” *Foucha v. Louisiana*, 504 U.S.
21 71, 80 (1992); *Youngberg v. Romeo*, 457 U.S. 307 (1982). This vital liberty interest is at
22 stake when an individual is subject to detention by ICE. *See Zadvydas*, 533 U.S. at 690
23 (“A statute permitting indefinite detention of an alien would raise a serious constitutional
24 problem.”); *Kiareldeen v. Reno*, 71 F.Supp.2d 402, 409-10 (D.N.J. 1999) (holding that, in
25 analyzing due process in the immigration context, the first factor in the procedural due
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28

1 process analysis, “the petitioner’s private interest in his physical liberty, must be
2 accorded the utmost weight”).

3
4 26. Petitioner’s continued detention violates substantive due process by depriving him of his
5 fundamental liberty interest in remaining free from detention. Government detention
6 violates an individual’s fundamental liberty interest unless the detention is “narrowly
7 tailored to serve a compelling government interest.” *Reno v. Flores*, 507 U.S. 292, 302
8 (1993); *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992). Non-punitive detention
9 must present a “special justification” that “outweighs the individual’s constitutionally
10 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690. No such
11 special justification exists in Petitioner’s case, because removal is not reasonably
12 foreseeable; ICE has no lawful authority to detain him during DHS’s appeal of his CAT
13 grant, and therefore his ongoing confinement is arbitrary, punitive, and medically
14 dangerous.
15

16
17 27. The Supreme Court held in *Zadvydas*, that immigration detention under 8 U.S.C. §
18 1231(a)(6) is constitutionally permissible only for a “period reasonably necessary to
19 bring about the alien’s removal,” and that once removal is no longer reasonably
20 foreseeable, “the statute, read in light of the Constitution’s demands, limits an alien’s
21 post-removal-period detention to a period reasonably necessary to secure removal,” 533
22 U.S. 678. at 699. Petitioner’s circumstances fall squarely within *Zadvydas*: removal to
23 Mexico is legally impossible because an Immigration Judge granted CAT deferral, and
24 DHS’s own appeal prevents removal to any third country. Detention therefore no longer
25 serves any purpose related to removal and is unlawful.
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27
28

1 28. The Ninth Circuit has repeatedly applied *Zadvydas* to persons who have received
2 immigration relief or who otherwise cannot be removed. In *Nadarajah v. Gonzales*, 443
3 F.3d 1069 (9th Cir. 2006), the Ninth Circuit ordered the release of a CAT-protected
4 detainee because detention became unauthorized once removal was no longer a realistic
5 possibility. The court held that the immigration laws “do not permit indefinite and
6 potentially permanent detention,” and emphasized that CAT protection makes removal
7 “not reasonably foreseeable” as a matter of law. *Id.* at 1080.
8

9
10 29. The same principle applies here: Petitioner’s CAT protection prohibits removal to
11 Mexico, and DHS has not identified any third country willing to accept him. Moreover,
12 DHS’s own appeal signals the agency’s intention not to effectuate removal until the
13 conclusion of BIA review. For the duration of that appeal, DHS is not seeking to remove
14 Petitioner anywhere, rendering continued detention purposeless.
15

16 30. Additional Ninth Circuit precedent confirms that detention pending agency appeals is
17 tightly constrained. In *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008), the court
18 upheld detention only because removal remained “practically attainable” and the
19 government was actively pursuing removal to the designated country. By contrast, the
20 court in *Tijani v. Willis*, 430 F.3d 1241 (9th Cir. 2005), rejected detention where removal
21 proceedings were prolonged and removal was uncertain. Where, as here, the government
22 is not actively pursuing removal and instead has prevented it by its own appeal, detention
23 cannot satisfy the statutory requirement that it be tethered to a removal purpose.
24

25 31. The Petitioner’s detention also violates the Fifth Amendment’s Due Process Clause
26 because it is no longer civil in nature but punitive. Civil immigration detention must be
27 “nonpunitive in purpose and effect.” *Demore v. Kim*, 538 U.S. 510, 527 (2003). When
28

1 detention continues for reasons unrelated to removal—such as administrative delay
2 caused by the government’s litigation choices—its purpose becomes indistinguishable
3 from punishment, which the Constitution does not allow. The Ninth Circuit held in *Diouf*
4 *v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011), that prolonged detention under §
5 1231(a)(6) raises “serious constitutional concerns” and requires heightened procedural
6 protections. Here, Petitioner has received none. Further, *Zadvydas* makes clear that
7 indefinite civil confinement, especially of individuals with no realistic prospect of
8 removal, violates due process because it “runs against the basic totality of our
9 constitutional tradition.” 533 U.S. at 690.

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11
12 32. Detention is also unlawful because ICE has failed to comply with its regulatory
13 obligation to consider parole for individuals with urgent humanitarian needs. Under 8
14 C.F.R. § 212.5(b)(1)–(2), ICE must favor release where continued detention is not in the
15 public interest or where an individual presents serious medical concerns. Petitioner’s
16 medical conditions—chronic chest pain, elevated liver enzymes, persistent pain from
17 electrical burns, loss of a finger, and depression—qualify as urgent humanitarian factors
18 requiring explicit consideration. ICE is required to make individualized parole
19 determinations, yet it has either failed to do so. Courts have repeatedly held that failure to
20 apply § 212.5 in good faith is unlawful. See *Damian v. Shanahan*, No. 15-CV-03600,
21 2015 WL 9307554, at *6 (N.D. Cal. Dec. 22, 2015) (ordering release where ICE failed to
22 consider humanitarian parole despite compelling medical evidence).

23
24
25 33. The Petitioner’s confinement additionally violates the Constitution because ICE has
26 exhibited deliberate indifference to his serious medical needs. It is well-established that
27 due process prohibits immigration authorities from ignoring urgent medical conditions.
28

1 See *Gordon v. County of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018) (civil
2 detainees entitled to adequate medical care under the Fifth Amendment). Petitioner
3 continues to experience chronic chest pain and abnormal laboratory values without
4 adequate evaluation or treatment; he receives only Tylenol and ibuprofen despite
5 repeated reports of severe symptoms. Courts recognize deliberate indifference when
6 authorities “deny, delay, or intentionally interfere with medical treatment.” *Id.* at 1125.
7 ICE’s pattern of inadequate care, particularly given Petitioner’s complex burn history and
8 trauma-related medical needs, satisfies that standard.
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10

11 **COUNT TWO**
12 **(PROCEDURAL DUE PROCESS)**

13 34. The allegations contained in paragraphs 1 through 33 above are repeated and realleged as
14 though fully set forth herein.
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16 35. Under the Due Process Clause, a foreign national is entitled to be heard at a meaningful
17 time and in a meaningful manner before deprivation of liberty occurs. *Matthews v.*
18 *Eldridge*, 424 U.S. 319, 334 (1976). The process that is due depends on the private
19 interest affected by the official action, the risk of erroneous deprivation of that interest,
20 the value of additional or substitute procedural safeguards, and the government’s interest,
21 including fiscal and administrative burdens that additional or substitute procedural
22 requirements would impose. *Id.* at 335.
23

24 36. In the case at bar, procedural due process requires a custody hearing before an
25 independent and impartial adjudicator, not simply by an ICE employee. *See Morrissey v.*
26 *Brewer*, 408 U.S. 471, 486-87 (1972); *Marcello v. Bonds*, 39 U.S. 302, 307 (1955);
27 *Castro-Cortez v. INS*, 239 F.3d 1037 (9th Cir. 2001); *Cabrera-Rojas v. Reno*, 999 F.
28

1 Supp. 493, 496-97 (S.D.N.Y. 1998); *Ekekhon v. Aljets*, 979 F. Supp. 640 (N.D. Ill. 1997);
2 *St. John v. McElroy*, 917 F. Supp. 243, 249-51 (S.D.N.Y. 1996); *cf. Kiareldeen*,
3 71F.Supp.2d at 418-19 (holding that “access to a neutral judge [is] one of the „most basic
4 of due process protections“” (quoting *Marincas v. Lewis*, 92 F.3d 195, 203 (3d Cir.
5 1996))).

6
7 37. ICE’s actions constitute arbitrary and capricious agency conduct in violation of the
8 Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2). Agencies must articulate a
9 rational basis for detention decisions. See *Judulang v. Holder*, 565 U.S. 42, 53 (2011).
10 Continued detention of a CAT-protected individual who cannot be removed, without
11 consideration of alternatives to detention or the humanitarian parole regulation, is
12 arbitrary, unsupported by evidence, and contrary to law. Courts have invalidated
13 immigration detention decisions where the agency “entirely failed to consider an
14 important aspect of the problem” or relied on factors Congress did not intend. *Motor*
15 *Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). By
16 refusing to evaluate Petitioner for parole, ignoring the binding legal effect of his CAT
17 protection, and detaining him solely because DHS chose to appeal, ICE’s conduct meets
18 this standard for APA relief.

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22 38. The private interest affected by the continued detention after the CAT appeal is of the
23 highest importance, namely, a fundamental liberty interest in being free from physical
24 restraint.

1 **IRREPARABLE INJURY**

2 39. The Petitioner has been detained for more than 330 days. He is suffering and will
3
4 continue to suffer irreparable injury because of Respondents' actions. Every day that he is
5 held in custody, considering his medical conditions and the legal disposition of his case,
6 amount to irreparable injury.

7
8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 40. Petitioner has exhausted all remedies that are legally required or available to him, and
10 any further exhaustion would be futile, unavailable, or inadequate to remedy his ongoing
11 unlawful detention. Although 28 U.S.C. § 2241 does not contain an explicit statutory
12 exhaustion requirement, courts in the Ninth Circuit recognize a prudential exhaustion
13 doctrine that applies only when administrative review can meaningfully resolve the
14 petitioner's claim or when Congress has designated a specific statutory exhaustion
15 pathway. See *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011). Because
16 Petitioner challenges the legality of his continued detention—rather than the IJ's CAT
17 decision, DHS's appeal of that decision, or the merits of his underlying removal order—
18 there exists no administrative tribunal with jurisdiction to adjudicate the lawfulness of his
19 confinement. Immigration courts and the BIA lack authority to order his release from
20 post-order detention under § 1231(a), and thus any expectation of administrative
21 exhaustion would be improper.
22
23
24

25 **EQUAL ACCESS TO JUSTICE ACT**

26 41. If he prevails, Petitioner will seek attorney's fees and costs under the Equal Access to
27 Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412.
28

PRAYER FOR RELIEF

PRAYER FOR RELIEF WHEREFORE, the Petitioner prays that this Honorable Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Grant Petitioner a writ of habeas corpus directing Respondents to immediately release Petitioner from custody while he awaits for his removal order to become final;
3. Grant attorney’s fees and costs of court to Petitioner under the Equal Access to Justice Act (“EAJA”); and
4. Grant such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted 20th day of November 2025

By counsel,

/s/ Mher Cholakhyan
Mher Cholakhyan
CA State Bar: 322605