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9 **Juan De La Torre Duran,**

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

12 **Case No. 3:25-cv-03230-DMS-DDL**

13 **JUAN DE LA TORRE DURAN,**
14 **Petitioner,**

15 **RESPONSE TO**
16 **RESPONDENT'S**
17 **OPPOSITION**

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

27 **[CAT GRANTED]**



28 **Respondents.**

RESPONSE TO RESPONDENT'S OPPOSITION

INTRODUCTION

Respondents' Opposition fundamentally mischaracterizes the nature of Petitioner's habeas claim, repeatedly framing this as an attack on the underlying removal proceedings and invoking jurisdiction-stripping provisions that simply do not apply. Petitioner is not challenging the removal order, the initiation of proceedings, or the adjudication of removability. Rather,

1 Petitioner challenges one thing only: the lawfulness of his continued civil detention during a
2 period when removal is legally impossible because (1) the Immigration Judge granted deferral of
3 removal under the Convention Against Torture (“CAT”), and (2) Department of Homeland
4 Security (“DHS”) chose to file an appeal of that CAT grant, thereby invoking the regulatory stay
5 under 8 C.F.R. § 1003.6 and halting any removal efforts.
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7 The DHS Notice of Appeal itself confirms that the only issue before the Board of
8 Immigration Appeals (“BIA”) is the IJ’s grant of CAT protection, not removability. DHS states
9 that it “intends to file a separate written brief” and expressly “reserves the right to raise
10 additional issues once it has received and reviewed the transcript of the record of proceedings,”
11 acknowledging that the record has not yet been prepared. *See* Tab E, at 210-219. No briefing
12 schedule has been issued, and no record of proceedings has been served. DHS’s appeal is thus in
13 its earliest stages, with no foreseeable completion date.
14

15 Respondents do not—because they cannot—explain how U.S. Immigration and Customs
16 Enforcement (“ICE”) may lawfully continue to detain Petitioner during a period when removal
17 cannot occur. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention is lawful only if removal
18 is reasonably foreseeable. Where, as here, removal is legally barred to Mexico and DHS is not
19 pursuing removal to any third country, detention lacks any legitimate immigration purpose and
20 becomes punitive in violation of the Fifth Amendment. Ninth Circuit cases addressing prolonged
21 detention—*Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006); *Prieto-Romero v. Clark*, 534
22 F.3d 1053 (9th Cir. 2008); *Tijani v. Willis*, 430 F.3d 1241 (9th Cir. 2005)—confirm that courts
23 retain habeas jurisdiction to grant relief in precisely these circumstances.
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1 Respondents’ Opposition also ignores that Petitioner’s detention has already exceeded
2 eleven months and is likely to continue for many more months or years due to DHS’s own
3 appellate posture. The medical evidence—largely undisputed by Respondents—demonstrates
4 ongoing chest pain, liver dysfunction, respiratory compromise, and trauma-related psychological
5 decline. Federal courts across the country, including two decisions from 2025 (*Nguyen v. Scott*,
6 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025); *Doe v. Andrews*, 2025 WL 2590392 (E.D. Cal.
7 Sept. 8, 2025)), have granted habeas relief in materially similar situations involving prolonged
8 detention, CAT deferral, DHS appeals, and lack of removal foreseeability.
9

10
11 Respondents have not overcome any of Petitioner’s showings under *Winter v. NRDC*, 555
12 U.S. 7 (2008). The motion for emergency relief should be granted.

13 **ARGUMENT**

14 **A. This Court Has Habeas Jurisdiction Because Petitioner Challenges Only His**
15 **Detention, Not the Removal Proceedings**

16
17 Respondents’ jurisdictional arguments rely almost entirely on 8 U.S.C. § 1252(g) and a
18 series of cases addressing challenges to the initiation or adjudication of removal—not civil
19 detention. Section 1252(g) is “narrow” and bars review only of “three discrete actions” by the
20 Attorney General: the decision to commence proceedings, adjudicate cases, or execute removal
21 orders. *Reno v. AADC*, 525 U.S. 471, 482 (1999). Here, Petitioner does not challenge any of
22 those three actions. Instead, he challenges the lawfulness of continued civil detention during a
23 period when removal cannot legally proceed.
24

25 The Supreme Court has repeatedly held that § 2241 habeas jurisdiction remains available
26 for challenges to detention independent of challenges to removal. *Zadvydas*, 533 U.S. at 687–88;
27 *Demore v. Kim*, 538 U.S. 510, 516 (2003) (distinguishing detention challenges from removal
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1 challenges); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839 (2018) (“§ 1252(b)(9) does not bar
2 challenges that are independent of removal orders”). The Ninth Circuit has long reaffirmed this
3 principle. *Nadarajah*, 443 F.3d at 1075–76; *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir.
4 2011). Respondents’ asserted precedents are not on point because they involve challenges to the
5 decisions that § 1252(g) protects—not detention. None involves a CAT grantee whose detention
6 continues solely because DHS appealed the grant of protection. Federal courts have jurisdiction
7 over habeas petitions challenging ongoing unlawful detention, especially where, as here, the
8 agency itself has made removal impossible. *Nadarajah*, 443 F.3d at 1080 (“The government’s
9 litigation posture cannot convert a temporary detention into a permanent one.”).

12 **B. Removal Proceedings Are Functionally Complete, and the Only Issue Pending Is
13 DHS’s Appeal of CAT Deferral**

14 Respondents’ repeated claim that “removal proceedings remain ongoing” obscures the
15 relevant distinction: the IJ’s determination of removability is complete. The IJ found Petitioner
16 inadmissible. Removal is not the subject of DHS’s appeal; CAT protection is.

17 The DHS Notice of Appeal makes this explicit:

- 18 • DHS challenges only the CAT grant. *See* Tab E, at 210-219.
- 19 • DHS does not argue that the IJ erred in finding Petitioner removable.
- 20 • DHS states it will file a separate brief, which has not occurred. *See* Tab E, at 210-219,
21 item 8.
- 22 • DHS acknowledges that the Board must provide the transcript of the record of
23 proceedings before briefing can begin. *Id.*
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1 Thus, removal proceedings are not “ongoing” in any meaningful sense relevant to §
2 1225(b). They are complete as to removability and stayed as to execution. What remains is
3 purely appellate litigation over protection from removal.
4

5 The Ninth Circuit recognizes that post-removal-order litigation over protection is not
6 “adjudication of removability.” *Prieto-Romero*, 534 F.3d at 1059. Courts hold that detention
7 during such pendency must be tied to removal feasibility. Here, it is not.

8
9 **C. Under *Zadvydas*, Continued Detention Is Unlawful Because Removal Is Not Reasonably Foreseeable**

10 The governing standard is clear: after a presumptively reasonable period, the government
11 must show a significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*,
12 533 U.S. at 701.
13

14 Respondents do not—and cannot—make that showing. First, removal to Mexico is
15 categorically prohibited due to the IJ’s CAT deferral. An IJ’s grant of CAT deferral bars removal
16 to the torture country until it is vacated. *See* 8 C.F.R. § 1208.17(a). DHS’s appeal does not lift
17 that bar. Second, DHS has taken no steps toward removal to a third country. Respondents do not
18 identify: any third country, any communication with a third country, any attempt to negotiate
19 removal. None of this appears in the DHS appeal either. Third, DHS’s own appeal triggers the
20 regulatory stay and halts removal efforts. By filing the Form EOIR-26, DHS invoked 8 C.F.R. §
21 1003.6(a), staying execution of the IJ’s decision. DHS cannot rely on a stay it created to justify
22 detention. Fourth, the BIA appeal is in its earliest stages. There is no transcript and no briefing
23 schedule. Courts hold that this posture makes removal not reasonably foreseeable. *See Nguyen v.*
24 *Scott*, 2025 WL 2419288, at *7–10 (W.D. Wash. Aug. 21, 2025) (finding no concrete removal
25 steps make removal unforeseeable); *Doe v. Andrews*, 2025 WL 2590392, at *6–7 (E.D. Cal.
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1 Sept. 8, 2025) (pending BIA review of CAT deferral makes removal unlikely for months or
2 years).

3 This case is materially identical.

4 **D. Respondents' Reliance on § 1225(b) and *Thuraissigiam* Is Misplaced**

5 Respondents argue Petitioner is “an arriving alien” subject to mandatory detention under
6 § 1225(b)(1). That is incorrect in this context for three reasons. First, § 1225(b)(1) detention
7 applies only “for further consideration of the asylum application.” The IJ has already adjudicated
8 Petitioner’s application for asylum, withholding, and CAT. Once relief is granted, § 1225(b)(1)
9 detention ends. The statute does not expressly authorize detention after the IJ’s merits
10 adjudication. Second, the pending appeal concerns CAT protection, not admission or asylum
11 processing. The statutory trigger for § 1225(b) no longer exists. Third, *Thuraissigiam* concerned
12 judicial review of removal, not detention. Nothing in *Thuraissigiam*, 591 U.S. 103 (2020),
13 restricts habeas jurisdiction over detention challenges. Courts have refused to extend
14 *Thuraissigiam* to detention cases. *See Nguyen*, 2025 WL 2419288, at *5–6.

15 **E. DHS Cannot Use Its Own Appeal to Manufacture Indefinite Detention**

16 Respondents argue detention is justified because Petitioner’s “case remains pending.” But
17 the only reason the case remains pending is because DHS appealed a grant of protection. Courts
18 reject this exact argument. *Zadvydass*, 533 U.S. at 690 (“Government may not justify indefinite
19 detention based on its own failure to act.”); *Nadarajah*, 443 F.3d at 1080 (government cannot
20 manufacture prolonged detention through litigation strategy). *Doe v. Andrews*, 2025 WL
21 2590392, at *8 (E.D. Cal. Sept. 8, 2025) (government cannot argue petitioner’s detention is “in
22 furtherance of his own goals” when DHS appealed CAT grant).

CONCLUSION

1
2 Respondents have not refuted the central point: removal is not reasonably foreseeable due
3 to DHS's own appeal, a regulatory stay, and a CAT grant that legally bars removal to Mexico.
4
5 Petitioner's detention now lacks any lawful purpose and violates both the immigration statutes
6 and the Fifth Amendment. Courts across the country have granted habeas relief in precisely this
7 posture. Petitioner respectfully requests that the Court grant the emergency TRO and order his
8 immediate release under reasonable conditions of supervision.
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1 CERTIFICATION

2 This petition cannot be verified by Juan De La Torre Duran because he is in DHS custody.
3 Consequently, the undersigned counsel for Petitioner hereby verifies that the information in this
4 petition is true and correct to the best of his knowledge and belief based on information
5 provided by the Petitioner.
6

7 SWORN under penalty of perjury this date of December 5th, 2025, at Los Angeles,
8 California.

9 By counsel,

10
11 /s/ Mher Cholakhyan
12 Mher Cholakhyan
13 CA State Bar: 322605
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