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DEC 12 2025	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: <i>MM</i>	DEPUTY

1 Noorullah Fayazi
 2 Alien No. 
 3 Nevada Southern Detention Center
 4 2190 East Mesquite Avenue
 5 Pahrump, Nevada 89060

6
 7 **IN THE UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF NEVADA**

9 2:25-cv-02480-APG-DJA

10 NOORULLAH FAYAZI,

) Case No.

11 -Petitioner, *Pro Se*,

) INS No. 

12 v.

)

13 THE UNITED STATES OF AMERICA,

) Custody Status: **DETAINED**

14 Kristi NOEM, in her Official Capacity,
 15 Secretary of the Department of Homeland Security

)

)

16 Pamela J. BONDI, in her Official Capacity,
 17 Attorney General, Department of Justice,

)

)

18 Kerri Ann QUIHUIS, in her Official Capacity,
 19 ICE Field Office Director, Detention and Removal,
 20 Las Vegas, Nevada (ICE Local)

) **Petition for Writ of Habeas
) Corpus Pursuant to
) 28 U.S.C. § 2241**

21 Michael BERNACKE, in his Official Capacity,
 22 Field Office Director, Salt Lake City Field Office,
 23 U.S. Immigration and Customs Enforcement,

)

)

)

24 Todd M. LYONS, in his Official Capacity,
 25 Acting Director, Immigration & Customs Enforcement,

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27 John MATTOS, in his Official Capacity,
 28 Warden of Immigration Detention Facility,
 29 Nevada Southern Detention Center;

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30 -Respondents.

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PETITION FOR WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241

COMES NOW NOORULLAH FAYAZI, as the Petitioner, appearing *Pro Se*, and hereby respectfully petitions this Honorable Court for a Writ of Habeas Corpus to remedy Petitioner's unlawful detention by Respondents. Alternatively, Petitioner respectfully seeks an emergency injunction relief ordering his immediate release from ICE custody.

The Petition of Mr. Noorullah Fayazi respectfully shows:

INTRODUCTION

1. Petitioner, Mr. Noorullah Fayazi, is a married male born in Afghanistan and is currently detained by the Respondents, including the Department of Homeland Security, Immigration and Customs Enforcement ("DHS/ICE"). Here, Petitioner is challenging his continued detention by Respondents, including ICE, and not his removal order.
2. On April 16, 2025, Petitioner was granted deferral of removal protection under the Convention Against Torture ("CAT") by an Immigration Judge ("IJ"). *See* Exhibit A.
3. Respondents cannot remove Petitioner because CAT protection legally prohibits ICE from removing him from Afghanistan.
4. Petitioner respectfully requests that the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time. *See* 28 U.S.C. § 2243 (stating that an order to show cause why a petition for a writ of habeas corpus should be denied is returnable "within three days unless for good cause additional time, not exceeding twenty days, is allowed").
5. In order to permit full judicial review of the claims herein and requested relief, Petitioner respectfully requests that the Court order Respondents not to transfer Petitioner outside the jurisdiction of this Court pending consideration of this Petition.

CUSTODY

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6. Currently, Petitioner is in the physical custody of the Respondents and U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is detained in the United States at the Nevada Southern Detention Center ("NSDC") in Pahrump, Nevada, where ICE has contracted with "NSDC" to house immigration ICE detainees such as Petitioner.
 7. Petitioner is under the direct control of Respondents and their agents. Petitioner was been detained for well-over six months, to the present date.

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PARTIES

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8. Petitioner (also referred to as Mr. Fayazi) a married male who is a citizen of Afghanistan. Petitioner was granted CAT deferral on April 16, 2025. The Department ("DHS") did not appeal from the order of the IJ, thereby making the decision Final. Again, on April 16, 2025, the IJ Granted Petitioner's application for deferral of removal under CAT.
 9. Respondent, UNITED STATES OF AMERICA, issued pursuant to 5 U.S.C. § 703, in which the Administrative Procedures Act provides "[i]f no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer".
 10. Respondent Kristi NOEM is sued in her official capacity as the Secretary of the Department of Homeland Security (herein after referred to as "DHS"). In her official capacity she has the responsibility for administration and enforcement of the immigration laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. 296, 116 Stat. 2135 (Nov. 25, 2002). *See Armentero v. INS*, 340 F.3d 1058 (9th Cir. 2003).
 11. Respondent Pamela J. BONDI is sued in her official capacity as the Attorney General of the United States. She has responsibility for the administration and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103, and Immigration and Nationality Act §

1 103. As the “INA” has not been amended to reflect the designation of the Secretary of
2 the DHS as the administrator and enforcer of the immigration laws. Equally important,
3 Respondent Pamela J. BONDI is sued in her official capacity to the extent that 8 U.S.C.
4 § 1102 gives her the authority to detain Petitioner. *See Armentero v. INS, supra*. Thus,
5 Pamela J. BONDI is considered a legal custodian of Noorullah Fayazi.

6 12. Respondent Kerri Ann QUIHUIS is sued in her official capacity as ICE Field Office
7 Director, Detention and Removal, DHS at Las Vegas, Nevada (ICE Local), who is
8 responsible for the day-to-day operation of detaining and removing noncitizens in Las
9 Vegas, Nevada.

10 13. Respondent, Michael BERNACKE is the Field Office Director responsible for the Salt
11 Lake City Field Office of ICE Enforcement and Removal Operations, which has
12 administrative jurisdiction over Petitioner’s case. He is a legal custodian of Mr. Noorullah
13 Fayazi and is named in his official capacity.

14 14. Respondent, Todd M. LYONS is the Acting Director of ICE. As the head of ICE, an
15 agency within the U.S. Department of Homeland Security that detains and removes
16 certain noncitizens, Respondent Todd M. LYONS is a legal custodian of Mr. Noorullah
17 Fayazi. He is named in his official capacity.

18 15. Respondent, John MATTOS, Warden of Nevada Southern Detention Center, where
19 Petitioner is currently detained under the authority of ICE, alternatively may be
20 considered to be Petitioner’s immediate custodian.

21 16. Respondents are the legal custodian of Petitioner and are named in their official capacity.

22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 17. Petitioner need not exhaust his administrative remedies. The statute in question, 8 U.S.C.
24 § 1231(a)(6), has no exhaustion requirement. Exhaustion is required only when Congress

1 specifically mandates it. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). In all other
2 instances, "sound judicial discretion governs." *Id.* This Court should not require
3 Petitioner to exhaust his administrative remedies. Petitioner has CAT protection.

4 18. Petitioner is being held under mandatory detention without a bond hearing. Even if
5 Petitioner would move for such a bond hearing, it would be futile as the Las Vegas
6 Immigration Court does not hold proper jurisdiction. As such, Petitioner is challenging
7 the constitutionality of the procedures, *inter alia*, by which ICE reviews the custody
8 status of aliens who cannot be removed within six months, and whose removal is not
9 significantly likely to occur in the reasonably foreseeable future. The administrative
10 remedy is inadequate to address these constitutional grounds for recovery.

11 JURISDICTION

12 19. This Nevada District Court holds proper jurisdiction under the Suspension Clause, U.S.
13 Const. art. I § 9, cl. 2. This action arises under the United States Constitution, the
14 Immigration and Nationality Act of 1952, as amended (herein after referred to as "INA"),
15 8 U.S.C. § 1101 *et. seq.*, and the Administrative Procedures Act (herein after referred to
16 as "APA"), 5 U.S.C. §§ 701 *et. seq.*

17 20. This Honorable U.S. District Court for the District of Nevada has proper Habeas Corpus
18 jurisdiction pursuant to 28 U.S.C. §§ 2241 *et. seq.*; Article 1, Clause 2 of the United States
19 Constitution (herein referred to as "Suspension Clause"); and the Common Law. This
20 Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331, as Petitioner is
21 presently in custody under color of the authority of the United States, and such custody
22 is in violation of the Constitution, laws, and/or treaties of the United States. This Court
23 may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, 28
24 U.S.C. § 2241, 5. U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

1 21. This Court has authority to order Petitioner's immediate release. *See Zadvydas v. Davis*,
2 533 U.S. 678 (2001); *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006).

3 VENUE

4 22. Venue is proper with this Court pursuant to 28 U.S.C. § 1391(c) because the Respondents
5 are employees or officers of the United States, acting in their official capacity, and an
6 agency of the United States. Venue is additionally proper in this U.S. District Court
7 because Petitioner is detained in the District of Nevada, and pursuant to *Braden v. 30th*
8 *Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973). A substantial part of
9 the events giving rise to the claims in this action took place within this District.

10 STATEMENT OF THE FACTS AND STATEMENTS OF THE CASE

11 23. Petitioner was granted CAT protection by the Honorable Immigration Judge in the Las
12 Vegas Immigration Court.

13 24. Petitioner, Mr. Noorullah Fayazi, is a native and citizen of Afghanistan. Petitioner has
14 been in ICE custody where he cannot be removed to Afghanistan.

15 25. This Court should hold that a CAT grant, by law, prohibits Respondents from removing
16 a noncitizen to the country of feared torture. *See* 8 C.F.R. § 208.16(c)(4).

17 26. Petitioner has CAT protection which forbids removal to Afghanistan and Respondents
18 cannot produce any evidence nor the slightest indication that Petitioner will be removed
19 to another country in the foreseeable future. Petitioner is protected under the Convention
20 Against Torture ("CAT"), which categorically forbids his removal to Afghanistan. *See* 8
21 C.F.R. § 208.16(c)(4) (a grant of CAT protection "prohibits the removal of the applicant
22 to the country of feared torture"). Because the Immigration Judge granted CAT relief and
23 the Department of Homeland Security did not appeal, this determination is final and
24 binding. The upshot, the IJ does not have jurisdiction over a bond. *See* Exhibit B.

1 27. Respondents cannot produce any evidence—nor even the slightest indication—that
2 Petitioner’s removal to any other country is reasonably foreseeable. The Ninth Circuit
3 has repeatedly held that where removal is legally impossible or factually unforeseeable,
4 continued detention is unlawful. *See Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001);
5 *Nadarajah v. Gonzales*, 443 F.3d 1069, 1080–81 (9th Cir. 2006). Under these controlling
6 precedents, detention is permissible only if removal is likely in the reasonably
7 foreseeable future; when the government cannot show such likelihood, detention violates
8 due process.

9 28. Here, Respondents have offered no evidence of any country willing to accept Petitioner,
10 nor have they initiated arrangements with any alternative country. Given the absolute bar
11 to removal to Afghanistan and the complete absence of evidence suggesting a viable
12 destination elsewhere, Petitioner’s continued detention serves no legitimate immigration
13 purpose and is constitutionally impermissible.

14 29. Respondents has been unable to effectuate Petitioner’s removal to Afghanistan. Under
15 *Zadvydas v. Davis*, 533 U.S. 678 (2001), Petitioner’s detention is not reasonably related
16 to removal and has become arbitrary, indefinite, and unlawful. It is important to stress
17 out that DHS has not removed Petitioner from the US, but instead Mr. Fayazi has been
18 in full compliance with ICE and the Courts.

19 LEGAL ARGUMENT

20 30. Respondents cannot execute Petitioner’s removal in the reasonably foreseeable future nor
21 could it. Given the protection under CAT that Petitioner has, it makes removal practically
22 impossible. Under *Zadvydas*, this Court should conclude that detention is indefinite and
23 unlawful.

24 31. Again, Respondents, including DHS, has been unable—and remains unable—to remove

1 him. It is important to stress out that under *Zadvydas*, the government may not detain a
2 noncitizen indefinitely when removal is not reasonably foreseeable.

3 **a. Petitioner Merits Habeas Relief Because He Was Granted CAT Protection**
4 **& DHS Did Not Appeal, thus the IJ Retains No Jurisdiction Over Bond**

5 32. The Department (“DHS”) did not appeal, therefore the IJ retains no jurisdiction over
6 bond. The upshot, DHS did not appeal the IJ’s CAT determination and thus, the decision
7 became final. Even more, under the Immigration Court Practice Manual § 9.3(b)(2): No
8 Jurisdiction by mootness—“A bond becomes moot, and the Immigration Judge loses
9 jurisdiction to conduct a bond hearing, when an alien... is granted relief from removal
10 by the Immigration Judge, and the Department of Homeland Security does not appeal”.
11 *See* ICPM § 9.3(b)(2). This Court should release Petitioner because the Immigration
12 Court lacks jurisdiction and the only remedy available is a federal habeas petition.

13 33. Pursuant to definition of the federal law, Petitioner does not have any serious violent
14 crimes and does not have an extensive criminal record. Respondents have not executed
15 removal. There is no indication that Petitioner will be removed in the future.

16 34. Petitioner has CAT protection and Respondents cannot remove him in the reasonably
17 foreseeable future. Petitioner suffers irreparable harm as he remains detained indefinitely.

18 **b. This Court Should Grant Habeas Relief on the Grounds that Detention is**
19 **Unlawful Because Deferral of Removal Under CAT Bars Removal.**

20 35. This is a special case where Respondents cannot remove Petitioner to Afghanistan due to
21 the binding CAT order. Detention for the purpose of removal is lawful only when removal
22 is reasonably foreseeable. *See Zadvydas*, 533 U.S. at 699-700. Where removal is legally
23 impossible, detention is unlawful. *See Nadarajah*, 443 F.3d at 1080-81.

24 36. Respondents have been unable to remove Petitioner. Respondents are unlikely to remove

1 Petitioner in the reasonably foreseeable future to Afghanistan. No other country has
2 accepted Petitioner, nor can Respondents produce otherwise that he will be removed.

3 37. Again, there is no clear indication that ICE will remove Petitioner in the foreseeable
4 future. This case warrants an emergency injunction relief.

5 38. This Court should conclude that Respondents have no legitimate immigration purposes
6 for detaining Petitioner. The upshot, Petitioner is protected by CAT.

7 **c. This Court Should Issue Petitioner's Immediate Release Because CAT**
8 **Protection Bars Removal to Afghanistan as a Matter of Law**

9 39. Petitioner has been granted protection under the Convention Against Torture ("CAT"),
10 which creates a mandatory and nondiscretionary prohibition on removal to Afghanistan.
11 Federal regulations provide that once CAT relief is granted, DHS is categorically barred
12 from returning the applicant to the country where torture is likely: "*Deferral or*
13 *withholding of removal under CAT prohibits the removal of the applicant to the country*
14 *of feared torture.*"— 8 C.F.R. § 208.16(c)(4).

15 40. The Ninth Circuit has repeatedly affirmed this rule: a grant of CAT protection eliminates
16 the government's authority to remove a noncitizen to the designated country. *See Nuru v.*
17 *Gonzales*, 404 F.3d 1207, 1221–23 (9th Cir. 2005) (CAT protection is "mandatory,"
18 "absolute," and creates a complete bar to removal). *Avendano-Hernandez v. Lynch*, 800
19 F.3d 1072, 1080–82 (9th Cir. 2015) (CAT findings impose a binding, nondiscretionary
20 obligation on DHS). *Madrigal v. Holder*, 716 F.3d 499, 508 (9th Cir. 2013) (CAT findings
21 are factual and entitled to substantial deference; DHS must respect the IJ's findings unless
22 overturned on appeal).

23 41. Because Respondents did not appeal the Immigration Judge's decision, it is final and
24 binding. DHS is legally prohibited from attempting to remove Petitioner to Afghanistan.

1 **d. This Court Should Grant Immediate Release Because Respondents Cannot**
2 **Show That Removal to Any Other Country Is Reasonably Foreseeable**

3 42. Petitioner’s CAT protection not only forbids removal to Afghanistan—it also places the
4 burden on Respondents to demonstrate that some other country is both willing and legally
5 permitted to receive him. Respondents have provided **no evidence**, no documentation,
6 and not even a suggestion that removal to a third country is possible.

7 43. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention beyond six months is
8 unconstitutional unless removal is reasonably foreseeable. The government must show a
9 “significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

10 44. The Ninth Circuit applies this standard strictly: In *Nadarajah v. Gonzales*, 443 F.3d 1069,
11 1080–81 (9th Cir. 2006), the court ordered immediate release where removal was not
12 realistically foreseeable due to CAT issues, holding that “*indefinite detention is not*
13 *authorized by the immigration statutes*” and violates due process. In *Diouf v. Napolitano*,
14 634 F.3d 1081, 1092 (9th Cir. 2011), the court confirmed that prolonged detention
15 without a demonstrable removal plan is unlawful.

16 45. In *Zadvydas*, the Supreme Court emphasized that the government cannot detain a
17 noncitizen “*for the rest of his life*” based purely on theoretical removal possibilities. 533
18 U.S. at 701.

19 46. Here, Respondents cannot produce any evidence—nor even the slightest indication—that
20 any other country will accept Petitioner. There is no removal plan, no travel document
21 request, and no evidence of diplomatic communications with any third country. DHS has
22 failed to provide any concrete basis for believing removal will occur at all. Absent such
23 evidence, detention violates due process under *Zadvydas* and *Nadarajah*, because
24 removal is not reasonably foreseeable.

1 **e. Petitioner Warrants Habeas Relief on the Grounds that Continued Detention**
2 **Serves No Immigration Purpose and Is Unlawful**

3 47. This Court should grant this Habeas petition and issue Respondents to immediately
4 release Petitioner because removal to Afghanistan is legally prohibited by CAT; and
5 removal to any other country is not reasonably foreseeable; then detention serves no
6 purpose under the immigration statutes.

7 48. Thus, this Court should conclude that Petitioner should be released as his detention is
8 unlawful under the Fifth Amendment, *Zadvydas*, *Nadarajah*, the INA and CAT
9 regulations codified at 8 C.F.R. § 208.16–208.18

10 49. The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), held that post-
11 removal detention is constitutionally permissible only for a period reasonably necessary
12 to effectuate removal, presumptively six months. Detention beyond that period violates
13 due process where there is no significant likelihood of removal in the reasonably
14 foreseeable future.

15 50. The Ninth Circuit has consistently applied *Zadvydas* to prohibit prolonged and indefinite
16 detention absent evidence of imminent removal. Here, Respondents have provided no
17 credible evidence that Petitioner's removal is likely in the reasonably foreseeable future.

18 51. The prolonged detention—extending more than the six-month period—has become
19 indefinite and punitive, in violation of *Zadvydas* and the Fifth Amendment's due process
20 protections.

21 52. Further, Nevada jurisprudence reinforces that punishment or restraint must always be
22 proportionate to the underlying conduct and the legitimate objectives of confinement. *See*
23 *Keys v. State*, 104 Nev. 736, 738, 766 P.2d 270 (1988) (holding that isolated and dated
24 offenses must be viewed in full context and cannot alone justify harsh or prolonged

1 consequences). When viewed in light of *Zadvydas*, the absence of serious or recent
2 criminal conduct, his detention is unlawful, excessive, and unsupported by any
3 constitutionally valid justification. Petitioner's immediate release is warranted under
4 established federal and Ninth Circuit precedent. This Court should conclude that
5 Petitioner's prolonged detention violates due process because continued detention serves
6 no legitimate government purpose once removal is not achievable.

7 53. This action arises under the Constitution of the United States and the Immigration and
8 Nationality Act ("INA") §§ 101-507, 8 U.S.C. § 1101-1537, amended by the Illegal
9 Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208,
10 110 Stat. 3009-1570. As the Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678
11 (2001), non-citizens cannot be detained indefinitely if the government is unable to carry
12 out their removal. However, because Petitioner is under CAT protection, removal is not
13 reasonably foreseeable and continued detention violates the Due Process Clause.

14 54. The Ninth Circuit has consistently applied *Zadvydas* to require release where removal is
15 not significantly likely in the reasonably foreseeable future. *See Diouf v. Mukasey*, 542
16 F.3d 1222 (9th Cir. 2008); *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006).

17 55. In this case, the record reflects that there is a good reason to believe that there is no
18 significant likelihood of removal in the reasonably foreseeable future and the
19 Government must respond with evidence sufficient to rebut that showing. And the longer
20 a non-citizen has been detained, the stronger the government's showing must be.

21 56. This is a special case where Petitioner meets his initial burden to show that no such
22 likelihood of removal exists. As such, the burden shifts to the Government to "respond
23 with evidence sufficient to rebut [the alien's] showing." *Id.* at 701.

24 57. Due Process clause applies to all persons in the United States, "whether their presence

1 here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

2 58. In *Zadvydas*, the Supreme Court emphasized, "[f]reedom from imprisonment—from
3 government custody, detention, or other forms of physical restraint—lies at the heart of
4 the liberty that [the Due Process] Clause protects." 533 U.S. at 690 (citing *Foucha v.*
5 *Louisiana*, 504 U.S. 71, 80 (1992)). That Court noted, "[a] statute permitting indefinite
6 detention of an alien would raise a serious constitutional problem." *Id.*; see also, *Plyer v.*
7 *Doe*, 457 U.S. 202, 210 (1982) ("Aliens, even aliens whose presence in this country is
8 unlawful, have long been recognized as 'persons' guaranteed due process of law by the
9 Fifth and Fourteenth Amendments.").

10 59. Under 8 U.S.C. § 1231(a)(2), non-citizens subject to final orders of removal "shall" be
11 detained during the first 90 days—the "removal period"—and they "shall" be removed
12 during that period under § 1231(a)(1). Under 8 U.S.C. § 1231(a)(6), the government
13 "may" continue detention beyond the 90-day removal period if a non-citizen falls within
14 certain broad categories of removability or is determined "to be a risk to the community
15 or unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6).

16 60. Courts have rejected conclusory claims by ICE agents which claim, without submitting
17 concrete factual information about scheduled flights or repatriation agreements, that
18 removal is imminent. "[A] theoretical possibility of eventually being removed does not
19 satisfy the government's burden once the removal period has expired and the petitioner
20 establishes good reason to believe his removal is not significantly likely in the reasonably
21 foreseeable future." *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D.
22 La. Sept. 17, 2020) (internal quotation marks and citation omitted).

23 61. "[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to be repatriated,
24 [a] Court certainly cannot conclude that [a] removal is likely to occur—or even that it

1 might occur—in the reasonably foreseeable future." *Id.* at *5 (internal quotation marks
2 and citation omitted). *See also, Gomez Barco v. Witte*, No 6:20-CV-00497, 2020 WL
3 7393786 (W.D. La. Dec. 16, 2020) (ordering release of a petitioner who was detained
4 longer than six months because ICE had not been able to secure necessary travel
5 documents, noting that the ICE officer "clearly has no factual basis for his 'belief' that
6 there is no foreseeable impediment to Petitioner's removal or that her removal is
7 imminent," and that there was no foundation for the "expectation" that the COVID-19
8 related travel restrictions in place would soon be lifted); *Balza v. Barr*, No. 6:20-CV-
9 00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) (same).¹ In granting Ms. Balza's
10 release, the court considered and rejected a conclusory declaration by a local ICE
11 Assistant Field Officer that removal was imminent. *Id.* at *5.

12 62. In *Alexis v. Smith*, the petitioner, Mr. Alexis, had been in detention for almost a year and
13 subject to a removal order for over a year. An ICE official testified to an informal
14 agreement that permitted removals but acknowledged that there were far fewer removals
15 to Haiti in the aftermath of the 2010 hurricane. The Haitian government had an issue with
16 identity documents and it was unknown when that would be resolved. The magistrate did
17 not credit ICE's vague statements that it was "endeavoring to rectify the issue" and

¹ Other district courts in the Fifth Circuit and elsewhere have similarly granted habeas relief when the noncitizen has shown that there is no significant likelihood of removal in the reasonably foreseeable future. *See, e.g., Carreno v. Gillis*, No. 5:20-cv-44-KS-MTP, 2020 WL 8366735 (S.D. Miss. Dec. 16, 2020) (granting habeas relief to petitioner detained for approximately sixteen months due to lack of diplomatic relations with Venezuela); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703 (S.D. Tex. 2020) (granting habeas relief to petitioner initially detained for three years, released and detained again for four months when petitioner could not be removed due to travel restrictions to Pakistan); *Sharifi v. Gillis*, No. 5:20-cv-5-DCB-MTP, 2020 WL 7379211 (S.D. Miss. Oct. 9, 2020) (granting habeas relief to petitioner detained for seventeen months after Iranian officials failed to respond to a travel document request for more than seven months).

1 concluded there was no end in sight for detention, and recommended release. The District
2 Court Judge agreed and ordered released. ICE then released Mr. Alexis on an Order of
3 Supervised Release and moved to get the judgment vacated on mootness, which it was.
4 However, this does not invalidate the reasoning and conclusions of the Magistrate Judge
5 and District Court Judge on this subject, and this case is till informative and persuasive
6 to the body of law on this subject. *Alexis v. Smith*, No. CIV.A. 11-0309, 2011 WL 3924247
7 (W.D. La. Aug. 3, 2011), report and recommendation adopted, No. CIV.A. 11-0309, 2011
8 WL 3954945 (W.D. La. Sept. 6, 2011), vacated, No. CV 11-00309 2011 WL 13386020
9 (W.D. La. Sept. 15, 2011).

10 63. As the length of detention grows, the period of time that would be considered the
11 "reasonably foreseeable future" shrinks. *See, e.g., Zadvydas*, 533 U.S. at 701 (stating that
12 as the length of time in detention grows "what counts as the 'reasonably foreseeable
13 future' conversely would have to shrink"); *Senor*, 401 F. Supp. 3d at 430 ("[T]he passage
14 of time combined with' the 'government [being] no closer to . . . repatriating [a detainee]
15 than they were once they first took him into custody' [is] sufficient to meet that 'initial
16 burden.'"); *Lawrikow*, 2009 WL 2905549, at *12. Due to Petitioner's CAT protection,
17 there is no likelihood that his removal will occur in the foreseeable future. Therefore,
18 Petitioner's detention violates the statute and he is entitled to immediate release.

19 64. This Court should hold that civil immigration detention violates due process if it is not
20 reasonably related to its statutory purpose. *See id.* (citing *Jackson v. Indiana*, 406 U.S.
21 715, 738 (1972)). In the immigration context, the Supreme Court has recognized only
22 two valid purposes for civil detention: to mitigate the risk of flight and prevent danger to
23 the community. *Id.* Petitioner's prolonged civil detention, which is likely to continue
24 indefinitely, is no longer reasonably related to the primary statutory purpose of ensuring

1 imminent removal. Thus, Petitioner's detention violates his right to due process.

2 65. To the extent ICE may argue that it can continue indefinitely detaining Petitioner on the
3 grounds that he is "specially dangerous", ICE has not even attempted to comply with its
4 own extensive procedures to obtain such a classification. *See* 8 C.F.R. § 241.14(f)-(g),
5 (i). *See also, Sharifi v. Gillis*, No. 5:20-cv-5-DCB-MTP, 2020 WL 7379211 (S.D. Miss.
6 Oct. 9, 2020) (granting habeas relief to petitioner detained for seventeen months after
7 Iranian officials failed to respond to a travel document request for more than seven
8 months). Petitioner cannot be removed to Afghanistan and Respondents cannot provide
9 a date where Petitioner would be removed in the foreseeable future.

10 66. This is a case where ICE has not obtained a certification of special dangerousness from
11 the Commissioner, it has not ordered that Petitioner undergo a medical examination, and
12 it has not initiated a reasonable cause proceeding in Immigration Court. In fact, ICE's
13 own regulations provide that without proving "special dangerousness" by clear and
14 convincing evidence before an IJ, ICE does not have the ability to indefinitely detain an
15 alien who has no significant likelihood of being removed within a six-month period.

16 67. In short, ICE has not followed its own rules, or the due process demanded by the United
17 States Constitution and by *Zadvydas*. Thus, given the underlying fact that Petitioner is
18 protected by CAT, he cannot be removed to Afghanistan.

19 68. Thus, given the underlying fact that Petitioner has been granted protection under the CAT,
20 he cannot be removed to Afghanistan as a matter of law. CAT protection imposes a
21 *mandatory prohibition* on the United States government from returning an individual to
22 the country where torture is more likely than not to occur. *See* 8 C.F.R. § 208.16(c)(4)
23 (CAT withholding or deferral "*prohibits the removal of the applicant to the country of*
24 *feared torture*"). The Ninth Circuit has consistently reaffirmed that CAT relief is absolute

1 and non-discretionary, and that it unequivocally bars the government from removing the
2 applicant to the country of persecution or torture.

3 69. In *Nuru v. Gonzales*, the court held that CAT protection creates a “clear, categorical, and
4 mandatory” bar to removal to the country of torture. 404 F.3d 1207, 1221–23 (9th Cir.
5 2005). The agency may not disregard or undermine the Immigration Judge’s binding
6 factual findings regarding the likelihood of torture.

7 70. Similarly, in *Avendano-Hernandez v. Lynch*, the Ninth Circuit emphasized that once an
8 Immigration Judge concludes the applicant is more likely than not to be tortured, DHS is
9 prohibited from effectuating removal to that country. 800 F.3d 1072, 1080–82 (9th Cir.
10 2015). Respondents must “strictly comply” with CAT obligations and cannot treat the
11 grant of protection as discretionary or subject to unilateral revision.

12 71. Moreover, in *Madrigal v. Holder*, the court reiterated that CAT determinations are
13 grounded in factual findings supported by substantial evidence and must be respected
14 unless DHS successfully appeals—which did not occur here. 716 F.3d 499, 508 (9th Cir.
15 2013). Because the DHS did not appeal the Immigration Judge’s decision to grant CAT
16 protection on April 16, 2025, that decision is final and binding.

17 72. Where removal is legally impossible—as here—detention lacks any valid immigration
18 purpose. The Ninth Circuit has made clear that the government cannot detain an
19 individual for removal purposes when removal is not reasonably foreseeable or legally
20 permissible, as such detention violates due process. *See Zadvydas v. Davis*, 533 U.S. 678,
21 699–701 (2001); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1080–81 (9th Cir. 2006)
22 (ordering immediate release of asylum applicant with CAT issues; “indefinite—and
23 potentially permanent—detention” violates due process)

24 73. Thus, because Petitioner is protected by CAT, the law forbids Respondents, including

1 DHS/ICE from removing him to Afghanistan, and his detention—premised on a removal
2 that cannot legally occur—is unlawful, arbitrary, and unconstitutional.

3 74. The upshot, Petitioner's indefinite detention violates the detention statute and is
4 unconstitutional because the Supreme Court has held that a noncitizen cannot be detained
5 indefinitely in a removable but-not-removable status; the most common situation occurs
6 when no country can be found to accept the noncitizen. *Zadvydas*, 533 U.S. 678.

7 75. Accordingly, Petitioner respectfully requests that this Court order Respondents to show
8 cause why the writ should not be granted "within three days unless for good cause
9 additional time, not exceeding twenty days, is allowed," and set a hearing on this Petition
10 within five days of the return, pursuant to 28 U.S.C. § 2243 and grant the Writ of Habeas
11 Corpus ordering Respondents to immediately release Petitioner.

12 **IN THE ALTERNATIVE, AN EMERGENCY INJUNCTION RELIEF IS**
13 **WARRANTED TO PREVENT IRREPARABLE HARM**

14 76. Petitioner respectfully requests that this Court issue an emergency injunction ordering
15 his release from ICE custody. Petitioner respectfully requests that this Honorable Court
16 issue an emergency injunction ordering his immediate release from DHS/ICE custody.

17 77. Again, Respondents have not provided any evidence—nor identified any concrete date—
18 indicating that Petitioner's removal is likely to occur in the reasonably foreseeable future.

19 78. This Court should grant immediate release because once it becomes evident that removal
20 is not significantly likely in the reasonably foreseeable future, continued detention
21 violates the Fifth Amendment's guarantee of due process.

22 79. This Court has consistently applied *Zadvydas* to grant relief where removal was not
23 reasonably foreseeable and detention became punitive. *Mendoza v. Barr*, No. 2:19-cv-
24 00364-JAD-BNW, 2019 WL 6310259, at 3 (D. Nev. Nov. 25, 2019) (granting habeas

1 relief and ordering release where removal was not reasonably foreseeable and petitioner
2 posed no flight risk or danger).

3 80. As in *Zadvydas* and its progeny, Respondents' continued detention of Petitioner serves
4 no legitimate government purpose. The prolonged and indefinite nature of his
5 confinement has transformed an administrative measure into unconstitutional
6 punishment. This Court's equitable and inherent authority empowers it to grant
7 immediate injunctive relief where federal detention exceeds lawful bounds and violates
8 due process. Thus, Petitioner respectfully requests that this Court issue an **emergency**
9 **injunction ordering his immediate release** from Respondents' custody.

10 81. Injunctive relief is appropriate where the petitioner demonstrates: (1) a likelihood of
11 success on the merits, (2) irreparable harm absent relief, (3) that the balance of equities
12 tips in his favor, and (4) that the public interest supports relief. *Winter v. Nat. Res. Def.*
13 *Council*, 555 U.S. 7, 20 (2008); *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
14 1131 (9th Cir. 2011) (a serious question going to the merits plus a balance of hardships
15 that tips sharply toward the petitioner also supports injunctive relief).

16 **A. Likelihood of Success on the Merits**

17 82. Petitioner's CAT protection and indefinite detention violates the Fifth Amendment's Due
18 Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (civil detention must
19 bear a reasonable relation to its purpose and cannot be indefinite). Because Respondents
20 has failed to justify Petitioner's continued detention under the appropriate legal standard,
21 success on the merits is likely. This factor weighs heavily in Petitioner's favor.

22 **B. Irreparable Harm**

23 83. Petitioner and his family are suffering irreparable harm every day that his liberty is
24 restrained in violation of due process. Indefinite detention imposes significant

1 psychological and physical hardship and impedes Petitioner’s ability to meaningfully
2 participate in his defense. The Ninth Circuit has recognized that “prolonged detention
3 without adequate procedural protections would raise serious constitutional concerns.”
4 *Rodriguez v. Robbins*, 804 F.3d 1060, 1074 (9th Cir. 2015), *vacated on other grounds*,
5 138 S. Ct. 830 (2018). The deprivation of liberty is the quintessential form of irreparable
6 harm.

7 84. Courts have recognized that the loss of family unity and the resulting emotional trauma
8 constitute irreparable harm warranting judicial intervention. *See Leiva-Perez v. Holder*,
9 640 F.3d 962, 968 (9th Cir. 2011) (per curiam) (irreparable harm established where
10 removal or detention would cause separation from family and loss of stability); *Ramos v.*
11 *Nielsen*, 321 F. Supp. 3d 1083, 1114 (N.D. Cal. 2018) (holding that family separation and
12 loss of parental support amount to irreparable injury). In light of these authorities and
13 because the IJ granted deferral of removal, which gives CAT protection, Petitioner’s
14 continued confinement serves no legitimate government interest and inflicts grave,
15 irreparable harm upon a vulnerable family—harm that cannot be undone by later judicial
16 relief. Because these facts demonstrate both a constitutional violation and the existence
17 of irreparable injury, the Court should exercise its equitable authority under 28 U.S.C. §
18 2241 to grant habeas relief and Order Petitioner’s immediate release or injunctive relief
19 to prevent further suffering. This factor weighs in Petitioner’s favor.

20 **C. Balance of Equities**

21 85. The balance of equities strongly favors Petitioner’s release. The government’s interest in
22 ensuring attendance at removal proceedings can be met through less restrictive means,
23 such as bond or supervision, particularly where Petitioner has taken steps of rehabilitation
24 and no record of absconding. *See Valdez-Jimenez v. Eighth Judicial Dist. Ct.*, 460 P.3d

1 976, 992 (Nev. 2020) (holding that due process requires individualized findings before
2 continued pretrial detention). Continued detention imposes significant hardship on
3 Petitioner, while release under reasonable conditions poses no harm to the government.

4 **D. Public Interest**

5 86. The public interest is always served by upholding constitutional rights and preventing
6 unlawful detention. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (recognizing
7 that enforcement of constitutional rights is in the public interest). Prompt judicial
8 intervention will preserve the integrity of removal proceedings and reinforce the rule of
9 law. Public interests favor Petitioner’s release.

10 **i. ICE’s Custody Review Process Is Constitutionally Inadequate,**
11 **Leaving Habeas Corpus as the Only Available Remedy.**

12 87. This Court should conclude that ICE’s post-order custody reviews at 90 and 180 days are
13 not meaningful substitutes for judicial review. These reviews are conducted entirely
14 within the agency, lack transparent standards, provide no guaranteed opportunity to
15 present evidence or rebut government assertions, and result in decisions that are
16 unappealable. Such a process fails to meet the minimum requirements of due process.
17

18 88. Even if after the 180-day custody review, ICE failed to provide a fair hearing, leaving
19 Petitioner at risk of indefinite and unreviewable detention—a result the Supreme Court
20 condemned in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

21 89. The lack of an effective administrative remedy underscores the need for this Court’s
22 intervention through habeas corpus. As the Supreme Court reaffirmed in *Boumediene v.*
23 *Bush*, 553 U.S. 723, 745 (2008), the Great Writ is a critical safeguard against unlawful
24 executive detention and ensures that no person is deprived of liberty without judicial
25 review. Again, the IJ granted Petitioner’s application for deferral of removal under CAT.

1 90. Because no other remedy exists to challenge ICE’s arbitrary detention decisions, habeas
2 corpus relief is proper and necessary to protect Petitioner’s constitutional rights.

3 ii. **Respondents Arbitrary Detention Decisions Are Unlawful**
4 **and Deprive Petitioner of Due Process.**
5

6 91. DHS and ICE have acted in an arbitrary and capricious manner by cherry-picking arrests
7 and selectively detaining noncitizens like Petitioner without a reasoned basis or
8 individualized assessment. Administrative detention must be rationally related to its
9 purpose—to secure attendance at proceedings or protect the public—and cannot be
10 punitive or arbitrary. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (civil detention must
11 bear a reasonable relation to its purpose); *Judulang v. Holder*, 565 U.S. 42, 53 (2011)
12 (agency action must be based on a reasoned explanation and not arbitrary decision-
13 making).

14 92. DHS/ICE denied Petitioner’s 90-day custody review and his 180-day custody review
15 without any meaningful explanation and with no opportunity to present evidence or rebut
16 allegations. This Court should find that this lack of procedural safeguards renders the
17 review process constitutionally deficient. This leaves Petitioner in a state of indefinite
18 and unreviewable detention, a situation the Supreme Court condemned in *Zadvydas*, 533
19 U.S. at 690 (holding that indefinite detention raises serious constitutional concerns).

20 93. The Ninth Circuit has consistently held that the government must provide individualized
21 determinations and consider less restrictive alternatives to detention.

22 94. Because no other adequate remedy exists to challenge this unlawful detention—and
23 because continued detention without judicial oversight would result in irreparable harm
24 and injury—this Court’s intervention through habeas corpus relief is not only proper but
25 necessary. The writ of habeas corpus serves as a critical check on executive overreach

1 and unlawful deprivation of liberty. *See Boumediene v. Bush*, 553 U.S. 723, 745 (2008)
2 (habeas corpus is a fundamental safeguard against arbitrary detention).

3 95. Respondents' failure to provide a fair custody review or viable appeal rights leaves
4 Petitioner in prolonged detention without meaningful process, warranting this Court's
5 intervention and immediate release through the Great Writ of habeas corpus.

6 **iii. Respondents' Cherry-Picking Detention Is Arbitrary,**
7 **Capricious, and Violate Petitioner's Rights as a Refugee.**

8 96. Targeting Petitioner for arrest and detention under these circumstances amounts to
9 impermissible "cherry-picking" enforcement—a practice in which the agency
10 selectively targets compliant, law-abiding individuals while ignoring others similarly
11 situated, without articulating any rational or lawful basis for the disparate treatment. Such
12 arbitrary and inconsistent enforcement contravenes the constitutional guarantee of due
13 process and equal protection under the Fifth Amendment.

14 97. The Supreme Court and Ninth Circuit have long condemned arbitrary exercises of
15 executive power that lack rational justification or are applied in a discriminatory or
16 inconsistent manner. Similarly, this Court has recognized that selective and capricious
17 detention practices violate fundamental fairness where the agency fails to justify why one
18 compliant individual is detained while others in comparable circumstances are released.
19 *See Mendoza v. Barr*, No. 2:19-cv-00364-JAD-BNW, 2019 WL 6310259, at 3 (D. Nev.
20 Nov. 25, 2019) (holding that continued detention without reasonable justification violated
21 due process).

22 98. Petitioner has no criminal history and has CAT protection. Thus, this arbitrary and
23 selective enforcement of detention undermines the integrity of the immigration system,
24 offends basic principles of justice, and violates the constitutional prohibition against
25

1 arbitrary governmental action recognized in *County of Sacramento v. Lewis*, 523 U.S.
2 833, 845–46 (1998). *See Judulang v. Holder*, 565 U.S. 42, 53 (2011) (agency action must
3 not be arbitrary or capricious but must rest on a reasoned explanation).

4 99. Respondents' conduct to detain Petitioner indefinitely constitutes an abuse of discretion
5 and a violation of substantive due process. Petitioner's detention should therefore be
6 declared unlawful, and his immediate release ordered, as continued confinement under
7 such capricious enforcement serves no legitimate governmental purpose and directly
8 contravenes controlling Ninth Circuit and Nevada precedent.

9 100. Such selective enforcement is constitutionally suspect and undermines the integrity of
10 the immigration system. The Supreme Court has emphasized that agency actions must be
11 guided by intelligible principles and consistent application of law. *Encino Motorcars,*
12 *LLC v. Navarro*, 579 U.S. 211, 221 (2016) (agency decisions must reflect reasoned
13 analysis and avoid arbitrary departures from settled policy). Respondents' decision here
14 to indefinitely detain Petitioner reflects no individualized assessment of danger or flight
15 risk, as required by due process.

16 101. Petitioner is protected by statute and international law from removal to Afghanistan. *See*
17 *INA* § 241(b)(3)(A), 8 U.S.C. § 1231(b)(3)(A) (prohibiting removal of a noncitizen to a
18 country where life or freedom would be threatened); *see also, INS v. Cardoza-Fonseca*,
19 480 U.S. 421, 449 (1987) (refugee protections reflect the humanitarian purpose of U.S.
20 asylum law). By continuing to detain Petitioner indefinitely despite knowing he cannot
21 be deported to Afghanistan, Respondents' conduct is not only futile but punitive,
22 rendering the detention unlawful under *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)
23 (detention must be reasonably related to its purpose and cannot be indefinite where
24 removal is not reasonably foreseeable).

1 102. Because Respondents' detention decisions lack a rational connection to a legitimate
2 governmental objective and instead reflect arbitrary "cherry-picking" enforcement, this
3 Court should grant the writ of habeas corpus and order Petitioner's immediate release.
4 Judicial intervention is necessary to prevent further constitutional injury and to ensure
5 that agency discretion is exercised within lawful bounds. There is no response from a
6 country designated for removal and this follows a significant delay in receiving a
7 response. *See, e.g., Gonzalez-Rondon v. Gillis*, 5:19-cv-109-DCB-MTP, 2020 WL
8 3428983 (S.D. Miss. June 23, 2020) (granting habeas relief to petitioner detained thirteen
9 months where there was no response from Venezuelan officials).

10 103. Again, the Ninth Circuit requires release where ICE cannot show a "significant likelihood
11 of removal in the reasonably foreseeable future." *Diouf v. Mukasey*, 542 F.3d 1222, 1234
12 (9th Cir. 2008). *See also Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (due
13 process prohibits "unreasonably prolonged" immigration detention without
14 individualized justification). Because Petitioner has CAT protection, the government is
15 legally prohibited from removing him to Afghanistan. No alternative country has been
16 identified. Therefore, this Court should conclude that detention violates due process and
17 grant this habeas petition and issue an order to immediately release Petitioner.

18 104. This Court should grant Habeas relief based on the grounds that detention is arbitrary and
19 capricious in violation of the APA. Agency action that disregards binding legal
20 obligations is arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A). DHS/ICE's
21 decision to re-detain Petitioner, who has a final CAT protection is contrary to CAT
22 regulations, 8 C.F.R. § 208.16, binding IJ findings, and *Zadvydas*. These actions "entirely
23 fail to consider an important aspect of the problem" and are unlawful. *See Motor Vehicle*
24 *Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983).

1 105. The Fifth Amendment prohibits arbitrary deprivations of liberty. This Court should grant
2 immediate release based on due process violations where excessive use of force and
3 improper arrest procedures occurred against Petitioner. Because Petitioner was granted
4 CAT relief and DHS did not appeal, the IJ cannot hear a bond request. *See* Exhibit B:
5 Immigration Court Practice Manual § 9.3(b)(2). Thus, continued detention serves no
6 legitimate governmental purpose and contravenes fundamental due process protections.
7 This Court should grant relief and order Petitioner’s immediate release.

8 106. Because Petitioner’s CAT protection absolutely prohibits removal to Afghanistan, and
9 Respondents cannot show any viable plan for removal elsewhere, his continued detention
10 is unlawful, arbitrary, capricious, and unconstitutional. Under *Zadvydas*, *Nadarajah*, and
11 Ninth Circuit precedent, he must be immediately released. Again, the Supreme Court has
12 held that a noncitizen cannot be detained indefinitely in a removable but-not-removable
13 status; the most common situation occurs when no country can be found to accept the
14 noncitizen. *Zadvydas*, 533 U.S. 678.

15 **CLAIMS FOR RELIEF**

16 **COUNT ONE: PETITIONER’S DETENTION IS IN VIOLATION OF DUE PROCESS**

17 **CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTIONAL**

18 107. This Court should order Petitioner’s immediate release because Respondents arbitrary
19 and capricious detention decisions violate the Fifth Amendment’s guarantee of due
20 process. All persons, including non-citizens, residing in the US are protected by the Due
21 Process Clause of the Fifth Amendment to the US Constitution. *See Zadvydas v. Davis*,
22 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The Due Process
23 Clause of the Fifth Amendment provides that “[n]o person shall be ... deprived of life,
24 liberty, or property, without due process of law”. *U.S. Const., amend. V*. “Freedom from

1 imprisonment—from government custody, detention, or other forms of physical restraint—
2 lies at the heart of liberty that Clause protects”. *Zadvydas*, 533 U.S. at 690.

3 108. Detention by the Respondents puts at risk Petitioner's protected life and liberty interest.
4 The Due Process Clause of the Fifth Amendment forbids the government from depriving
5 any “person” of life and liberty “without due process of law”. *See U.S. Const., amend. V.*
6 Again, Respondents have been cherry-picking arrests and detention and Respondents
7 cannot produce a removal date in the foreseeable future.

8 **COUNT TWO: STATUTORY VIOLATIONS**

9 109. Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. §
10 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*. Petitioner has CAT
11 protection and continues to languish in detention. Petitioner's removal to his country of
12 origin, which would be Afghanistan, or any country is not significantly likely to occur in
13 the foreseeable future. The Supreme Court held in *Zadvydas* and *Martinez* that ICE's
14 continued detention of someone like Petitioner under such circumstances is unlawful.

15 **COUNT THREE: SUBSTANTIVE DUE PROCESS VIOLATION**

16 110. Petitioner's continued detention violates Petitioner's right to substantive due process
17 through a deprivation of the core liberty interest in freedom from bodily restraint.
18 111. The Due Process Clause of the Fifth Amendment requires that the deprivation of
19 Petitioner's liberty be narrowly tailored to serve a compelling government interest. While
20 Respondents would have an interest in detaining him in order to effectuate removal, that
21 interest does not justify his indefinite detention where he is not likely to be deported in
22 the reasonably foreseeable future. *Zadvydas* recognized that ICE may continue to detain
23 aliens only for a period reasonably necessary to secure the alien's removal.

24 **COUNT FOUR: PROCEDURAL DUE PROCESS VIOLATIONS**

1 112. Under the Due Process Clause of the Fifth Amendment, Petitioner is entitled to a timely
2 and meaningful opportunity to demonstrate that he should not be detained. Petitioner in
3 this case has been denied that opportunity. Petitioner respectfully notes that ICE does not
4 make decisions concerning aliens' custody status in a neutral and impartial manner. The
5 failure of Respondent to provide a neutral decision-maker to review the continued
6 custody of Petitioner violates Petitioner's right to procedural due process.

7 113. Respondents have failed to acknowledge or act upon the Petitioner's administrative
8 request for release in a timely manner. There is no administrative mechanism in place for
9 the Petitioner to demand a decision, ensure that a decision will ever be made, or appeal a
10 custody decision that violates *Zadvydas*.

11 114. Even if Petitioner's detention is authorized under Section 1231, 1225 or 1226,
12 Petitioner's continued detention must comport with due process. Petitioner respectfully
13 argues his indefinite detention violates his due process rights; he requests immediate
14 release from Respondents.

15 115. Respondents have failed to effectuate Petitioner's removal and have produced no credible
16 or substantial evidence indicating that removal is likely to occur in the reasonably
17 foreseeable future.

18 116. This Court should grant his Habeas petition and Order Respondents to release Petitioner
19 on the grounds that the Supreme Court has made clear that continued detention under
20 such circumstances violates the constitutional limits established in *Zadvydas v. Davis*,
21 533 U.S. 678, 699–701 (2001), where the Court held that detention is no longer lawful
22 once removal is no longer reasonably foreseeable. *See also Clark v. Martinez*, 543 U.S.
23 371, 384 (2005) (extending *Zadvydas* to all noncitizens facing indefinite detention).

24 117. Because Respondents have not met their burden of showing a significant likelihood of

1 removal in the reasonably foreseeable future, this case is ripe for habeas review. *See*
2 *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (recognizing the six-month
3 presumptively reasonable detention period under *Zadvydas*). Petitioner's continued
4 confinement thus constitutes an arbitrary and unlawful deprivation of liberty in violation
5 of the Fifth Amendment's Due Process Clause. Thus, this Court should grant the writ of
6 habeas corpus and order Petitioner's immediate release under appropriate supervision.

7 118. Respondents have failed to produce any evidence—such as travel documents, consular
8 coordination, or assurances from the destination country—indicating that removal is
9 imminent or even plausible. This indefinite detention therefore falls squarely within the
10 unconstitutional framework condemned by *Zadvydas* and its progeny.

11 119. Because Respondents have not met their burden of demonstrating a significant likelihood
12 of removal in the reasonably foreseeable future, Petitioner's detention has become
13 unlawful and unconstitutional.

14 120. Petitioner warrants immediate release based on the underlying fact that he is protected
15 by CAT and thus, indefinite detention no longer serves any legitimate governmental
16 purpose and instead constitutes an arbitrary deprivation of liberty contrary to the
17 principles articulated in *Zadvydas* and its Ninth Circuit progeny. Accordingly, this case
18 is ripe for habeas review, and this Court should grant this present Habeas Corpus petition
19 and issue an emergency injunction ordering Petitioner's immediate release from ICE
20 custody under, if applicable, appropriate conditions of supervision.

21 121. The Supreme Court has held that a noncitizen cannot be detained indefinitely in a
22 removable but-not-removable status; the most common situation occurs when no country
23 can be found to accept the noncitizen. *Zadvydas*, 533 U.S. 678.

24 122. This Court should grant this Habeas petition and order Petitioner's immediate release

1 from custody because there is no indication—nor even a theoretical possibility—that
2 Respondents will ever be able to deport him in the foreseeable future. Respondents have
3 not obtained travel documents, made diplomatic progress, or identified an alternative
4 receiving country.

5 123. Given the total absence of any indication that Respondents will be able to remove
6 Petitioner to Afghanistan—or to any third country—in the reasonably foreseeable future,
7 this Court should grant Habeas relief and order Mr. Fayazi’s immediate release.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Petitioner prays that this Court grant the following relief:

- 10 1. Assume jurisdiction over this present matter;
- 11 2. Issue a declaration that Petitioner’s ongoing detention violates the Due Process Clause
12 of the Fifth Amendment and the Eighth Amendment;
- 13 3. Grant Petitioner a Writ of Habeas Corpus directing the Respondents to immediately
14 release Petitioner from custody;
- 15 4. Enter preliminary and permanent injunctive relief enjoining Respondents from further
16 unlawful detention of Petitioner under *Zadvydas* or any further applicable law; or
- 17 5. This Court should grant a Writ of Habeas Corpus and order Petitioner’s release within
18 twenty (“20”) days, unless the Respondents schedule a bond hearing before an
19 immigration judge where the IJ holds proper jurisdiction and where: (1) to continue
20 detention, DHS must establish by *clear and convincing* evidence that Petitioner presents
21 a *flight risk* or *danger to the public*, even after consideration of alternatives to detention
22 that could mitigate any risk that Petitioner’s release would present; and (2) if DHS cannot
23 meet its burden, then the IJ should order Petitioner’s custody release under a reasonable
24 Bond taking into account Petitioner’s financial circumstances and ability to pay;

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- 6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law;
- 7. Grant any further relief as this Court deems just and proper.

I, Noorullah Fayazi, hereby affirm under penalty of perjury and under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

DATED and executed on this 3rd day of December, 2025.



Noorullah Fayazi

Alien No. 

Nevada Southern Detention Center

2190 East Mesquite Avenue

Pahrump, NV 89060

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4 **ACKNOWLEDGEMENT AND VERIFICATION**

5 Under penalty of perjury, the undersigned declares that he is the named Petitioner in the
6 foregoing petition. I have read the foregoing petition and its contents. The statements in the
7 petition are true and correct to the best of my knowledge, except as to any statements alleged
8 on information and belief, and as to those statements, I believe them to be true.

9
10 **DATED** this 3rd day of December, 2025.

11
12 **EXECUTED** in Pahrump, Nevada.

13
14 
15
16 Noorullah Fayazi

17 Alien No. 

18 Nevada Southern Detention Center

19 2190 East Mesquite Avenue

20 Pahrump, NV 89060

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**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

NOORULLAH FAYAZI
ALIEN No. [REDACTED]
PETITIONER, PRO SE
CUSTODY STATUS: DETAINED

