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8 UNITED STATES DISTRICT COURT

9 DISTRICT OF ARIZONA

10 LUIS GARCIA MASCORRO )

11 Petitioner, )

12 v. )

13 LUIS ROSA JR. , Warden, Central Arizona )  
14 Florence Correctional Center; )

15 John E. Cantu, Director of Phoenix Field Office, )  
16 U.S. Immigration and Customs Enforcement; )

17 KRISTI NOEM, Secretary of the U.S. )  
18 Department of Homeland Security; and )

19 PAMELA BONDI, )  
20 Attorney General of the United States, )  
21 in their official capacities, )

22 Respondents. )

Case No. \_\_\_\_\_

PETITION FOR WRIT OF  
HABEAS CORPUS

23 INTRODUCTION

24 1. Petitioner Luis Garcia Mascorro ("Mr. Garcia Mascorro") is a Mexican National,  
25 married to a US Citizen and seeking to adjust status via a pending I-130 Petition for Alien Relative.  
26 Petitioner Luis Garcia Mascorro was detained during his Adjustment of Status Interview on July  
27 29, 2025 and issued a Notice to Appear (NTA) dated August 1, 2025. Petitioner has been detained  
28 in an immigration facility since then, over 100 days and counting pending the adjudication of his  
family petition in immigration court and an appeal with United States Customs and Immigration  
Services ("USCIS"). He has been deemed to qualify for adjustment of status as soon as his I-130  
petition is approved, but USCIS has delayed this adjudication and denied all requests to expedited

1 causing Mr. Garcia Mascorro's prolonged civil detention while judicial review is pending and  
2 potentially years more if his case is remanded to the agency for further proceedings.

3 2. Mr. Garcia Mascorro's continued detention has exacted a high toll. He is a 23-year-  
4 old and has lived in the United States since he was 7 years old when he was admitted with a valid  
5 visitor's visa. California is the only home he has known and he is a beloved member of his  
6 community and family. Due to his detention, Mr. Garcia Mascorro has been unable to provide  
7 companionship to his US Citizen husband or contribute financially to the home they are building  
8 together. His legal permanent resident family members and Citizen spouse have suffered greatly  
9 as a result of his detention. His continued detention is arbitrary and unlawful, and he requests that  
10 this court order his immediate release from ICE custody.

11 3. Mr. Garcia Mascorro's detention may be permitted under the constitution and the  
12 Immigration and Nationality act ("INA") only if Respondents can demonstrate before a neutral  
13 decision maker that he is a danger or a flight risk, or if his removal is imminent. Mr. Garcia  
14 Mascorro is not a dangerous man and has extensive ties to the U.S., further showing that he is not  
15 a flight risk. As his removal proceedings have been continued pending the adjudication of his I-  
16 130 family petition and the appeal with USCIS. For these reasons, his removal is not imminent.

17 4. This Court should issue a writ of habeas corpus and determine that Ms. Garcia  
18 Mascorro is entitled to immediate release under reasonable conditions and pending further order  
19 of the court.

20 5. Alternatively, this Court should order Mr. Garcia Mascorro's release unless he  
21 receives a bond hearing before a neutral arbiter where: (1) to justify his continued detention, the  
22 government bears the burden to establish by clear and convincing evidence that Mr. Garcia  
23 Mascorro is a danger or flight risk, even after consideration of alternatives to detention that could  
24 mitigate any risk his release would result in; and (2) if the government cannot meet its burden, Mr.  
25 Garcia Mascorro must be ordered released on reasonable conditions, taking into account his ability  
26 to pay bond.

### 27 CUSTODY

28 6. Mr. Garcia Mascorro is detained in the legal and physical custody of Respondents  
at the Florence Service Processing Center (SPC), where he is under the direct control of  
Respondents and their agents.

### JURISDICTION



1 14. Administrative remedies would be futile, inadequate, and not efficacious for Mr.  
2 Garcia Mascorro. Exhaustion of his constitutional claim would be futile because the agency does  
3 not have the authority to rule on constitutional questions. See *Wang v. Reno*, 81 F.3d 808, 815-16  
4 (9th Cir. 1996) (*per curiam*) (“the inability of the INS to adjudicate the constitutional claim  
5 completely undermines most, if not all, of the purpose underlying exhaustion”).

6 15. Mr. Garcia Mascorro has attempted to exhaust his statutory claim. He was denied  
7 bond on October 6, 2025 and timely appealed to the Board of Immigration Appeals (“BIA”) which  
8 currently remains pending.

9 16. Even if exhaustion were not futile, waiver is warranted because administrative  
10 remedies are not efficacious and irreparable injury will result in his prolonged detention. See  
11 *Hernandez v. Sessions*, 872 F. 3d 976, 988 (9th Cir. 2017).

12 17. Requiring exhaustion at the BIA will result in irreparable harm due to violation of  
13 his right to due process under the fifth amendment and continuation of his indefinite detention. *Id.*  
14 at 976, 990.

#### 15 PARTIES

16 18. Petitioner Luis Garcia Mascorro is a native and citizen of Mexico who has resided  
17 in the United States since he was 7 years old. He is currently detained at Florence SPC in Florence,  
18 Arizona under Respondents’ legal custody.

19 19. Respondent Luis Rosa Jr. is the Warden for the Central Arizona Florence  
20 Correctional Center, including Florence SPC where Petitioner is detained. He has immediate  
21 physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and  
22 Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Rosa  
23 Jr. is a legal custodian of Petitioner.

24 20. Respondent John E. Cantu is sued in his official capacity as the Director of the  
25 Phoenix Field Office of U.S. Immigration and Customs Enforcement. Respondent Cantu is a legal  
26 custodian of Petitioner and has authority to release him.

27 21. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S.  
28 Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for  
the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S.  
Immigration and Customs Enforcement, the component agency responsible for Petitioner’s  
detention. Respondent Noem is a legal custodian of Petitioner.



1 August 18, 2025. On October 6, 2025 Immigration Judge ("IJ") Irene Feldman denied bond on the  
2 basis that Mr. Garcia Mascorro had failed to meet his burden of demonstrating that he was neither  
3 a danger to the community or a flight risk. Mr. Garcia Mascorro retained new counsel and timely  
4 appealed the decision with the BIA under the premise that he was not given a meaningful chance  
5 by the Court or his prior counsel to present his case. This appeal remains pending.

6 30. On September 15, 2025 USCIS denied the I-130. The letter alleged that Mr. Garcia  
7 Mascorro and his husband had failed to respond to the NOID and therefore abandoned the I-130  
8 petition leading to a denial. On September 16, 2025 Mr. Garcia Mascorro promptly filed an I-290B  
9 Motion of Appeal with USCIS and attached proof of his timely response to the NOID. This appeal  
10 remains pending.

11 31. On September 25, 2025 Petitioner had an individual hearing where the IJ denied  
12 his asylum, withholding, and deferral under the convention against torture (CAT) claim, but  
13 granted a continuance on the issue of his prospective relief of adjustment of status because USCIS  
14 had not made a final decision on the appeal of his I-130 denial.

15 32. On November 20, 2025 Mr. Garcia and his husband submitted another I-130  
16 petition which remains pending with USCIS.

17 33. The IJ has been unable to issue any decision regarding Mr. Garcia Mascorro's  
18 prospective relief because USCIS has yet to adjudicate the appeal and the pending petition.

### 19 LEGAL ARGUMENT

#### 20 **I. PETITIONERS CONTINUED DETENTION VIOLATES THE DUE PROCESS 21 CLAUSE OF THE FIFTH AMENDMENT AND IS UNLAWFUL UNDER 22 ZADVYDAS BECAUSE HIS REMOVAL IS NOT REASONABLY 23 FORESEEABLE.**

24 34. The Due Process Clause of the Fifth Amendment provides Petitioner with  
25 important protections regarding his detention. The Supreme Court has reiterated that protecting  
26 liberty includes protecting freedom from government custody, detention or physical restraint.  
27 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Immigration detention should not be used as a  
28 punishment and should only be used when, under an individualized determination, a non-citizen  
is a deemed a flight risk because they are unlikely to appear for immigration court or a danger to  
the community. *Id.* at 690.

1           35.     Since the Supreme Court’s *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) decision,  
2 the Ninth Circuit has expressed “grave doubt” that “any statute that allows for arbitrary prolonged  
3 detention without any process is constitutional or that those who founded our democracy precisely  
4 to protect against the government’s arbitrary deprivation of liberty would have thought so.”  
5 *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

6           36.     To guarantee against such arbitrary detention and to guarantee the right to liberty,  
7 due process requires “adequate procedural protections” that ensure the government’s asserted  
8 justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally  
9 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation  
marks omitted).

10           37.     In the immigration context, the Supreme Court has recognized only two valid  
11 purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight.  
12 *Id.*; *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based  
13 on any other justification.

14           38.     Due process also requires certain minimal procedures at bond hearings. First, the  
15 government must bear the burden of proof by clear and convincing evidence to justify continued  
16 detention. Second, the decisionmaker must consider available alternatives to detention. Finally, if  
17 the government cannot meet its burden, a decisionmaker must assess a noncitizen’s ability to pay  
a bond when determining the appropriate conditions of release.

18           39.     To justify immigration detention, the government must bear the burden of proof by  
19 clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*,  
20 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme  
21 Court has permitted civil detention; in those cases, the Court has relied on the fact that the  
22 government bore the burden of proof at least by clear and convincing evidence. *See United States*  
23 *v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pretrial detention where the detainee was  
24 afforded a “full-blown adversary hearing,” requiring “clear and convincing evidence” before a  
25 “neutral decisionmaker”); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil  
26 detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-  
27 final-order custody review procedures deficient because, inter alia, they placed burden on  
28 detainee); see also *Padilla v. Immigration & Customs Enf’t*, 379 F. Supp. 3d 1170 (W.D. Wash.  
2019) (requiring the government to bear the burden of proof for class members who receive bond

1 hearings after being found to have a credible fear of persecution or torture); *Banda v. McAleenan*,  
2 385 F. Supp. 3d 1120-21 (in case of arriving asylum seeker, government must bear burden of proof  
3 to justify continued detention after noncitizen had been detained for more than 18 months).

4 40. Due process also requires that a neutral decisionmaker consider available  
5 alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen's  
6 appearance during removal proceedings. Detention is not reasonably related to this purpose if there  
7 are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S.  
8 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance  
9 Program (ISAP)—has achieved extraordinary success in ensuring appearance at removal  
10 proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d  
11 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR  
12 hearings and a 95% attendance rate at final hearings”). It follows that alternatives to detention must  
13 be considered in determining whether prolonged incarceration is warranted.

14 41. Immigration detainees face severe hardships while incarcerated. Immigration  
15 detainees are held in lock-down facilities, with limited freedom of movement and access to their  
16 families: “the circumstances of their detention are similar, so far as we can tell, to those in many  
17 prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); accord *Chavez-Alvarez*, 783  
18 F.3d at 478; *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. “And  
19 in some cases[,] the conditions of their confinement are inappropriately poor.” *Jennings*, 138 S.  
20 Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector  
21 General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE  
22 Detention Facilities (2017) (reporting instances of invasive procedures, substandard care, and  
23 mistreatment, e.g., indiscriminate strip searches, long waits for medical care and hygiene products,  
24 and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another  
25 detainee)).

26 42. These conditions and obstacles only further underscore the serious due process  
27 concerns that prolonged immigration detention pose for noncitizens like the Petitioner and reflect  
28 the need for an immediate release or a new bond hearing at which the government bears the burden  
of justifying continued detention.

1 43. Mr. Garcia Mascorro is a valued member of his community and family. He has  
2 every reason to appear in immigration court and fight his case for lawful status so that he may  
3 continue building a home and life with his US citizen husband.

4 44. In April 2025, he entered a no-contest plea to a DUI charge and was ordered to  
5 complete seven days of house arrest, twenty-four hours of community service, and participation in  
6 a DUI program. The DUI conviction is his only criminal discrepancy. Respondent has consistently  
7 sought to conduct his life with integrity and serve as a positive example for his family and  
8 community. He is not a danger to the community. His continued indefinite detention without the  
9 opportunity to be released constitutes arbitrary government detention, in violation of the Due  
10 Process Clause of the Fifth Amendment.

11 45. The Immigration Judge has repeatedly stated that they are unable to proceed with  
12 or issue any final order relating to Mr. Garcia Mascorro's prospective relief due to the pending  
13 appeal and petition. The Immigration Judge has stated on the record that Mr. Garcia Mascorro is  
14 eligible for adjustment of status and has granted multiple continuance as it seems USCIS made a  
15 mistake denying the initial I-130 petition based on abandonment. The Immigration Judge has  
16 granted additional continuances and is puzzled as to why USCIS is unwilling to expedite the  
17 processing of the I-130 petition as Mr. Garcia Mascorro is detained. This prolonged detention for  
18 an indeterminate amount of time is unlawful under *Zadvydas* and this Court should accordingly  
19 order his immediate release.

20 **CLAIMS FOR RELIEF**

21 **COUNT ONE**

22 **Unconstitutional Detention in Violation of the Fifth Amendment Right to Due Process**

- 23 1. The allegations in the above paragraphs are realleged and incorporated herein.
- 24 2. "Freedom from imprisonment -from government custody, detention, or other forms of  
25 physical restraint - lies at the heart of the liberty that [the] Clause protects." *Zadvydas v. Davis*,  
533 U.S. 678,690 (2001).
- 26 3. Civil immigration detention is only permissible where it bears a "reasonable relation to  
27 the purpose for which the individual was committed." *Jackson v. Indiana*, 406 U.S. 715, 738

1 (1972); *Zadvydas*, 533 U.S. at 690. Those purposes are limited: preventing flight and protecting  
2 the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

3 4. Petitioner is neither a danger to the community or a flight risk, and therefore, the  
4 detention no longer bears a reasonable relation to the purpose for which it was committed. *See*  
5 *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. There is no removal  
6 order, subjecting Petitioner to prolonged detention pending the appeal with USCIS and the pending  
I-130 petition.

7 5. Keeping petitioner in civil detention is constitutionally suspect and reflect punitive  
8 conduct rather than civil processing.

9 6. For these reasons, Petitioner's continued detention violates the Due Process Clause of  
10 the Ffith Amendment. The Court should order his release.

11 **COUNT TWO**

12 **Violation Immigration and Nationality Act, 8 U.S.C. §1231(a)(6)**

13 7. The allegations in the above paragraphs are realleged and incorporated herein.

14 8. 8 U.S.C. §1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes  
15 detention only for a period reasonably necessary to bring about the aliens removal from the United  
16 States." 533 U.S. at 689, 201.

17 9. Petitioner's continued detention has become unreasonable because his removal is not  
18 reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. §1231(a)(6), and he  
19 must be immediately released.

20 **PRAYER FOR RELIEF**


21 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- 22 1. Assume jurisdiction over this matter;
- 23 2. Issue an Order to Show Cause ordering Respondents to show cause why this  
24 Petition should not be granted within three days;
- 25 3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth  
26 Amendment, 8 U.S.C. §1231(a)(6)
- 27 4. Issue a Writ of Habeas Corpus ordering Respondents to release petitioner

- 1           5.     Award Petitioner attorney's fees and costs under the Equal Access to Justice Act,
- 2     and on any other basis justified under law; and
- 3           6.     Grant any further relief this Court deems just and proper.

4     Respectfully Submitted,

5  
6     DATED: 12/29/25

  
\_\_\_\_\_

Daniel Chrisney, Esq.  
WILNER & O'REILLY, APLC  
Attorney for Petitioner

10  
11                   VERIFICATION PURSUANT TO 28 U.S.C. § 2242

12  
13     I represent Petitioner, Luis Garcia Mascorro, and submit this verification on his behalf. I hereby  
14     verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are  
15     true and correct to the best of my knowledge.

16  
17     Date: 12/29/25

  
\_\_\_\_\_

Daniel Chrisney, Esq.