

1 Siovhon Sheridan Ayala
2 AYALA LAW OFFICE, PC
3 P.O. Box 18986
4 Tucson, AZ 85731
(520) 202-0391

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

7
8 Daniel Avila Marin,
9 Petitioner,

10 vs.

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

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

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

18 Luis Rocha, Warden, Florence
19 Correctional Center;

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

23
24 Respondents.
25
26
27
28

Case No.:

File No: A#

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS AND
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Challenge to Unlawful Incarceration
Under Color of Immigration Detention
Statutes; Request for Declaratory and
Injunctive Relief

**ORAL ARGUMENT
REQUESTED**

1 **Comes now**, Petitioner, Daniel Avila Marin, brings this Verified Petition for
2 Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief
3 pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the
4 Immigration and Nationality Act (“INA”) and regulations thereunder; the
5 Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*; Article I, Section
6 9, Clause 2 of the United States Constitution (“Suspension Clause”). The efforts to
7 continually detain petitioner constitute a “severe restraint” on his individual liberty
8 such that Petitioner is “in custody” of the Respondents in violation of the ... laws
9 of the United States. *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28
10 U.S.C. § 2241. Petitioner was ordered deferred protection under the Convention
11 Against Torture on April 2, 2025, and has stayed in detention since before that
12 order, making more than 90 days since the issuance of his removal order. 8 U.S.C.
13 § 1231 provides: “[e]xcept as otherwise provided in this section, when an alien is
14 ordered removed, the Attorney General **shall** remove the alien from the United
15 States within a period of 90 days.”
16
17
18
19
20
21

22 Pursuant to this Court’s inherent powers in habeas corpus proceedings, Mr.
23 Avila Marin respectfully requests this Court order Respondents to release him from
24 detention.
25

26 **I. PARTIES**
27
28

1 A. Petitioner Daniel Avila Marin is a native of Mexico. He is currently detained
2 at Florence Correctional Center, 1100 Bowling Road, Florence, AZ, 85132.

3 He was granted deferred removal under CAT on April 2, 2025.

4
5 B. Respondent Pamela Bondi is named in her official capacity as the Attorney
6 General of the United States. In this capacity, she is responsible for the
7 administration of the immigration laws as exercised by the Executive Office
8 for Immigration Review, pursuant to section 103(g) of the INA, 8 U.S.C. §
9 1103(g). She routinely transacts business in the District of Arizona, is legally
10 responsible for administering Petitioner's removal proceedings and the
11 standards used in those proceedings, and as such, is the legal custodian of
12 Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950
13 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

14
15 C. Respondent, John Cantu, is the Phoenix Field Office Director for
16 Enforcement and Removal Operations, U.S. Immigration and Customs
17 Enforcement. He is the local ICE official who has immediate authority over
18 the Petitioner. Respondent Cantu's address is Field Office Director,
19 Enforcement and Removal Operations, U.S. Immigration and Customs
20 Enforcement, Phoenix Field Office, 2035 N. Central Avenue, Phoenix, AZ,
21 85004.
22
23
24
25
26
27
28

1 D. Respondent, Kristi Noem, is the Acting Secretary of the U.S. Department of
2 Homeland Security ("DHS"), the federal agency responsible for enforcing
3 Petitioner's arrest, detention and removal. DHS's address is U.S.
4 Department of Homeland Security, Washington, DC 20528.
5

6 E. Respondent, Luis Rosa Jr., is the warden of the Florence Correctional
7 Center, where Petitioner is being held. He is the custodian of Petitioner and
8 is named in his official capacity.
9

10 F. Todd M. Lyons is the Acting Director, Immigration and Customs
11 Enforcement, U.S. Department of Homeland Security, the federal agency
12 responsible for enforcing Petitioner's arrest, detention and removal. DHS's
13 address is U.S. Department of Homeland Security, Washington, DC 20528.
14
15

16 17 **II. JURISDICTION AND VENUE**

18 The Court has jurisdiction under the Suspension Clause. The Suspension
19 Clause provides, "The privilege of the Writ of Habeas Corpus shall not be
20 suspended, unless when in Cases of Rebellion or Invasion the public Safety may
21 require it." U.S. Const. Art. I § 9, cl. 2.
22

23 This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. §§ 2241 et
24 seq., as protected under Art. I § 9, cl. 2 of the United States Constitution
25 (Suspension Clause), and federal question jurisdiction under 28 U.S.C. § 1331.
26
27
28

1 Related to Immigration detention claims, the Supreme Court articulated in
2 *Zadvydas v. Davis* that 28 U.S.C. 2241 makes available Habeas proceedings for
3 statutory challenges to “post-removal-period detention.” 533 U.S. 678, 687 (2001).
4

5 This case arises under the United States Constitution; the INA, 8 U.S.C. §§
6 1101 et seq.; the APA, 5 U.S.C §§ 701 et seq.; the Due Process Clause of the Fifth
7 Amendment and the Fourteenth Amendment. Petitioner’s current detention
8 pending his removal order as enforced by Respondents constitutes a “severe
9 restraint [] on [Petitioner’s] individual liberty,” such that Petitioner is “in custody
10 in violation of the . . . laws . . . of the United States.” *See Hensley*, 411 U.S. at 351
11 (1973); 28 U.S.C. § 2241(c)(3).
12
13
14

15 While the courts of appeals have jurisdiction to review removal orders
16 directly through petitions for review, *See* 8 U.S.C. § 1252, federal district courts
17 have jurisdiction under 28 U.S.C. § 2241(d) to hear habeas claims by noncitizens
18 challenging the lawfulness or constitutionality of Respondents’ conduct. *See*
19 *Demore v. Kim*, 538 U.S. 510, 516–517 (2003); *Zadvydas*, 533 U.S. 678, 687
20 (2001). The history of Habeas as it relates to immigration claims has never
21 abridged the review of continued custody after a deportation order has become
22 final. *See Id.* (citing *Cheng Fan Kwok v. INS*, 392 U.S. 206, 212, 215-16 (1968)).
23
24
25
26
27
28

1 No Supreme Court or Ninth Circuit precedent applicable to immigration
2 detainees, nor the habeas statute, indicate that venue is not proper in the District of
3 Arizona. See 28 U.S.C. § 2241. Venue is proper in the District of Arizona because
4 a substantial part of the events and omissions which gave rise to this action
5 occurred in the district. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at
6 the Florence Correctional Center in Florence, Arizona, and he had his withholding
7 only case, in which he was granted protection under the Convention Against
8 Torture (“CAT”), in the Florence, Arizona immigration court, Executive Office for
9 Immigration Review, 3260 N. Pinal Parkway, Florence, AZ 85132.
10

11 **III. FACTS GIVING RISE TO THE HABEAS PETITION**

12 Petitioner has been the subject of two prior removal orders, one set of
13 proceedings in 1997, and another in 2013. Following his deportation in 2014,
14 Petitioner entered the United States again without inspection and was apprehended
15 in 2024, when withholding of removal proceedings were once again initiated
16 against him.
17

18 On April 2, 2025, Petitioner was granted deferral under the CAT by the
19 Immigration Judge. 8 C.F.R. § 1208.17(a). The IJ found that there was a greater
20 than 50 percent likelihood that Petitioner would be tortured if removed to Mexico
21 and ordered deferred protection under CAT until a removal comply with the
22

1 international law obligations of the United States. Among other harms, Mr. Avila
2 lost an eye due to the torture he endured in Mexico. On July 1, 2025, Petitioner had
3 been detained for 90 following his order of deferred removal under CAT. This
4 detention of more than 90 days after his removal order is in violation of 8 U.S.C.
5 1231(a)(3).
6
7

8 **IV. APPLICABLE LAW**

9 The Due Process Clause applies to all persons in the United States, “whether
10 their presence here is lawful, unlawful, temporary, or permanent.” *See Zadvydas v.*
11 *Davis*, 533 U.S. 678, 693 (2001); *see also Yick Wo v. Hopkins*, 118 U.S. 356
12 (1886). The Supreme Court declared “that the Due Process Clause protects
13 individuals against two types of government action” giving rise to distinct claims
14 of substantive and procedural due process violations. *See United States v. Salerno*,
15 481 U.S. 739, 746 (1987). Thus, “the touchstone of due process is protection of the
16 individual against arbitrary action of government ... whether the fault lies in the
17 denial of fundamental due process fairness [procedural due process] ... or in the
18 exercise of power without any reasonable justification in the service of a legitimate
19 government objective [substantive due process]...” *See City of Sacramento v.*
20 *Lewis*, 523 U.S. 833 (1998) (citations and internal quotations omitted). Procedural
21 due process constrains governmental decisions that deprive individuals of property
22
23
24
25
26
27
28

1 or liberty interests within the meaning of the Due Process Clause of the Fifth
2 Amendment. *See Matthews v. Eldridge*, 424 U.S. 319, 332 (1976); *see also Perry*
3 *v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on informal policies and
4 practices may establish a legitimate claim of entitlement to a constitutionally-
5 protected interest). Infringing upon a protected interest triggers a right to a hearing
6 before that right is deprived, and a right to meaningful process afforded at a
7 meaningful time. *See Bd. of Regents v. Roth*, 408 U.S. 564, 569–70 (1972).
8
9 “‘Substantive due process’ prevents the government from engaging in conduct that
10 ‘shocks the conscience,’ ... or interferes with rights ‘implicit in the concept of
11 ordered liberty.’” *See Salerno*, 481 U.S. at 746. (internal citations omitted).
12
13
14

15 Respondents’ power to detain and deport someone is not limitless, nor is it
16 shielded from judicial review. *See Calderon v. Sessions*, 330 F. Supp. 3d 944, 950
17 (S.D.N.Y. 2018) (appeal withdrawn sub nom.); *Villavicencio Calderon v. Sessions*,
18 No. 18-2926, 2018 WL 6920377 (2d Cir. Oct. 5, 2018) (ordering a stay of removal
19 and release from detention to permit the Petitioner to continue with the provisional
20 waiver process afforded by the government); *You Xiu Qing v. Nielsen*, 321 F.
21 Supp. 3d 451 (S.D.N.Y. 2018) (ordering a stay of removal and release from
22 detention to permit the Petitioner to continue with the provisional waiver process
23 and a motion to reopen); *S.N.C. v. Sessions*, No. 18 2018 WL 6175902, (S.D.N.Y.
24
25
26
27
28

1 Nov. 26, 2018); *Compere v. Nielsen*, 2019 WL 332193, at *9 (D.N.H. Jan. 24,
2 2019) (granting a stay of removal for petitioner because deportation to Haiti would
3 vitiate his ability to pursue an appeal to the BIA of the IJ's denial for a motion to
4 reopen); *Lin v. Nielsen*, 2019 WL 1958569 at *15 (D. Md. May 2, 2019) (court
5 found that a preliminary injunction was "in the public interest, as it requires DHS
6 to comport with its own rules and regulations, and bars arbitrary and capricious
7 action towards vulnerable undocumented immigrants."); *see also Martinez v.*
8 *Neilsen*, 341 F.Supp.3d 400 (D.N.J. Sept. 14, 2018); *Fatty v. Nielsen*, 2018 WL
9 3491278 at *2 (W.D. Wash. Jul. 20, 2018); *Gutierrez-Soto v. Sessions*, 317 F.
10 Supp. 3d 917, 933-35 (W.D. Tex. 2018); *Jimenez v. Nielsen*, No. CV 18-10225-
11 MLW, 2018 WL 4539687 (D. Mass. Sept. 21, 2018); *Sied v. Nielsen*, 2018 WL
12 1142202 (N.D. Cal. Mar. 2, 2018); *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y.
13 Jan. 29, 2018); *Ibrahim v. Acosta*, No. 17-CV-24574, 2018 WL 582520 (S.D. Fla.
14 Jan. 26, 2018); *Chhoeun v. Marin*, 306 F. Supp. 3d 1147 (C.D. Cal. 2018); *Rombot*
15 *v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017).

16
17
18
19
20
21
22 "Habeas corpus is at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S.
23 298, 319 (1995). Judges have "broad discretion" to fashion an appropriate remedy.
24 *Carafas v. La Vallee*, 391 U.S. 234 (1968). It may extend beyond simply ordering
25 the release of a petitioner and is to "be administered with the initiative and
26
27
28

1 flexibility essential to ensure that miscarriages of justices within its reach are
2 surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Habeas
3 corpus “never has been a static, narrow, formalistic remedy; its scope has been to
4 achieve its grand purpose - the protection of individuals against erosion of their
5 right to be free from wrongful restraints upon their liberty.” *Jones v. Cunningham*,
6 371 U.S. 236, 243 (1963). At its historical core, habeas corpus “has served as a
7 means of reviewing the legality of Executive detention, and it is in that context that
8 its protections have been strongest.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004)
9 (citations omitted). These protections extend fully to noncitizens subject to an
10 order of removal. *See Martinez v. McAleenan*, 385 F.Supp.3d 349, 355 (“Due to its
11 talismanic significance in protecting individual liberty from unlawful detention,
12 habeas corpus is fundamentally governed by equity. The Supreme Court has
13 granted the writ when justice has so required.”) (citing *Munaf v. Grren*, 128 S.Ct.
14 2207 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court
15 has noted the writ’s “scope and flexibility--its capacity to reach all manner of
16 illegal detention--its ability to cut through barriers of form and procedural mazes.”
17 *Harris*, 394 U.S. at 291.

18
19
20
21
22
23
24
25 **V. REQUEST FOR RELIEF**
26
27
28

1 Pending the adjudication of this Petition, Petitioner respectfully requests that
2 the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file
3 a return within three days, unless they can show good cause for additional time.
4 See 28 U.S.C. §2243. (Order to show cause why a petition for a writ of habeas
5 corpus should not be granted should be “returned within three days unless for good
6 cause additional time, not exceeding twenty days, is allowed”).
7
8

9 Petitioner requests that this Court issue an order that Respondents must
10 notify the Court and Petitioner’s counsel five days prior to any removal of
11 Petitioner.
12

13 Furthermore, Petitioner requests to be released from detention.
14

15 **VI. EXHAUSTION OF REMEDIES**

16

17 Petitioner’s claims of receiving a constitutionally inadequate process to
18 justify the intrusions into his liberty interests are not subject to any statutory
19 requirement of administrative exhaustion. *See McCarthy v. Madigan*, 503 U.S.
20 140, 144 (1992). Prudential concerns may lead the Court to require exhaustion as a
21 discretionary matter. Petitioner has exhausted the administrative remedies available
22 to him. Petitioner has gone through the administrative process, receiving a final
23 order of deferred removal under CAT. Moreover, no administrative agency, not an
24 Immigration Judge or the BIA, can rule on the constitutional nature of Petitioner’s
25
26
27
28

1 due process claims. Petitioner has been in custody longer than any reasonable
2 attempt to deport Petitioner, a period of more than 90 days. The Court should rule
3 for his provisional release. Just like in *Zadvydas*, this is a civil proceeding, not
4 punitive or criminal in nature. Finally, Petitioner is threatened with irreparable
5 harm – in the form of imminent physical danger if removed to Mexico against the
6 CAT order, or continued unjustified detention, suffering the physical and
7 emotional distress of confinement – such that exhaustion should not be required.
8 Respondents can parole Petitioner. 8 C.F.R. §§ 235.3(b)(2)(iii), 1235.3(b)(2)(iii).

12 **VII. PRELIMINARY INJUNCTION**

13 **1. Legal Standard**

14 The legal standard for granting preliminary injunction relief is well
15 established. *See Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir.1983). This Court
16 may issue injunctive relief maintaining the status quo when the movant
17 demonstrates: (1) a likelihood of irreparable harm in the absence of the injunction;
18 and (2) either a likelihood of success on the merits or sufficiently serious questions
19 going to the merits to make them a fair ground for litigation, with a balance of
20 hardships tipping decidedly in the movant's favor. *Id.* While a petitioner seeking a
21 preliminary injunction has the burden of demonstrating likelihood of success on the
22 merits, they are not required to prove their case in full at the preliminary injunction
23
24
25
26
27
28

1 stage, but only such portions that enable them to obtain the injunctive relief that they
2 seek. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

3 4 **2. Petitioner is Entitled to Injunctive Relief**

5 Under the Due Process Clause of the Fifth Amendment, no person shall be
6 deprived of life, liberty, or property, without due process of law. U.S. Const. Amend.
7 V. Non-citizens on U.S. soil have constitutional rights, including the right to due
8 process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886); *Matthew v. Diaz*,
9 426 U.S. 67, 77 (1976).
10
11

12 Under the Fifth Amendment, ICE cannot deprive an individual of notice and
13 an opportunity to be heard on a pending application for relief from removal, nor
14 can ICE detain an immigrant who is not a flight risk or danger. *See Bengally Fatty*,
15 2018 WL 3491278; *see also, Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass.
16 2017) (the Court explained that “[t]he Supreme Court has recognized that an ‘alien
17 may no doubt be returned to custody upon a violation of [supervision] conditions.’
18 *Zadvydas v. Davis*, 533 U.S.678, 700 (2001) but it has never given ICE a carte
19 blanche to re-incarcerate someone without basic due process protection”).
20
21
22

23 In this circumstance, if the noncitizen “provides good reason to believe that
24 there is no significant likelihood of removal in the reasonably foreseeable future,
25 the Government must respond with evidence sufficient to rebut that showing.” *Id.*
26
27
28

1 Although 8 U.S.C. § 1231(a)(6) permits detention “beyond the removal
2 period” of noncitizens who have been ordered removed and are deemed to be a risk
3 of flight or danger, the Supreme Court has recognized limits to such continued
4 detention. In *Zadvydas*, the Supreme Court held that “the statute, read in light of
5 the Constitution’s demands, limits [a noncitizen’s] post-removal-period detention
6 to a period reasonably necessary to bring about that [noncitizen’s] removal from
7 the United States.” 533 U.S. at 689. “[O]nce removal is no longer reasonably
8 foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

12 In determining the reasonableness of detention, the Supreme Court
13 recognized that, if a person has been detained for longer than six months following
14 the initiation of their removal period, their detention is presumptively unreasonable
15 unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen’s
16 due process right to liberty. 533 U.S. at 701.

19 Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens
20 during “the removal period,” which is defined as the 90-day period beginning on
21 “the latest” of either “[t]he date the order of removal becomes administratively
22 final”; “[i]f the removal order is judicially reviewed and if a court orders a stay of
23 the removal of the [noncitizen], the date of the court’s final order”; or “[i]f the
24
25
26
27
28

1 [noncitizen] is detained or confined (except under an immigration process), the date
2 the [noncitizen] is released from detention or confinement.
3

4 The Court's ruling in *Zadvydas* is rooted in due process's requirement that
5 there be "adequate procedural protections" to ensure that the government's
6 asserted justification for a noncitizen's physical confinement "outweighs the
7 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.*
8 at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the
9 immigration context, the Supreme Court only recognizes two purposes for civil
10 detention: preventing flight and mitigating the risks of danger to the community.
11 *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not
12 detain a noncitizen based on any other justification.
13

14 The first justification of preventing flight, however, is "by definition . . .
15 weak or nonexistent where removal seems a remote possibility." *Zadvydas*, 533
16 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight
17 prevention justification for detention accordingly is "no longer practically
18 attainable, detention no longer 'bears [a] reasonable relation to the purpose for
19 which the individual [was] committed.'" *Id.* (quoting *Jackson v. Indiana*, 406 U.S.
20 715, 738 (1972)). As for the second justification of protecting the community,
21 "preventive detention based on dangerousness" is permitted "only when limited to
22
23
24
25
26
27
28

1 specially dangerous individuals and subject to strong procedural protections.”

2 *Zadvydas*, 533 U.S. at 690–91.

3
4 Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court
5 should hold continued detention unreasonable and no longer authorized by statute.”

6 *Id.* at 699–700. If removal is reasonably foreseeable, “the habeas court should
7 consider the risk of the [noncitizen’s] committing further crimes as a factor
8 potentially justifying the confinement within that reasonable removal period.” *Id.*
9 at 700.

10
11
12 In this case, several statutes and federal regulations provide government
13 agencies with the power to act and provide important restraints. The Immigration
14 and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.* and implementing regulations
15 both authorize and place important limits on some acts of detention and removal.
16 Moreover, those provisions must be read harmoniously with the APA. 5 U.S.C. §
17 706(2)(A).

18
19
20 Respondents’ continued detention of Petitioner after the issuance of his
21 deferred order of removal from the Immigration Judge violates due process and the
22 APA. *See Calderon v. Sessions*, 330 F. Supp. 3d 944 (S.D.N.Y. August 1, 2018),
23 *appeal withdrawn sub nom. Villavicencio Calderon v. Sessions*, No. 18-2926, 2018
24 WL 6920377 (2d Cir. Oct. 5, 2018); *You v. Nielsen*, 321 F.Supp.3d 451 (S.D.N.Y.

1 2018); *Lin v. Nielsen*, 2019 WL 1958569 (D. Md. May 2, 2019) (noting that
2 defendants used an I-130 interview to “lure” the plaintiff to his arrest); *De Jesus*
3
4 *Martinez v. Nielsen*, 341 F. Supp. 3d 400 (D.N.J. Sept. 14, 2018).

5 In *Martinez*, the court explained that “[d]ue to its talismanic significance in
6 protecting individual liberty from unlawful detention, *habeas corpus* is
7 fundamentally governed by equity. The Supreme Court has granted the writ when
8 justice has so required.” *Id.* (citing *Hamdi v. Rumsfeld*, 542 U.S. 507 (2009), *Munaf*
9 *v. Geren*, 553 U.S. 674 (2008) and *Carafas v. LaVallee*, 391 U.S. 234 (1968); see
10 also *See S.N.C. v. Sessions*, , 2018 WL 6175902 (S.D.N.Y. Nov. 26, 2018); *Bengally*
11 *Fatty v. Nielsen*, 2018 WL 3491278 (W.D. Wash. July 20, 2018) (holding that a
12 detained non-citizen victim of human trafficking with a pending application for T
13 Nonimmigrant Status satisfied the *Mathews* Test). Even more significant in this case
14 is Petitioner’s continued detention despite the ruling in favor of his deferred removal,
15 and the violation of his indefinite detention in the post-90-day period.
16
17

18 Federal courts have “inherent power” to issue orders necessary to their
19 jurisdiction over a pending case. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991);
20
21 *see id.* at 58 (Scalia, J., dissenting) (“Some elements of that inherent authority are so
22 essential to the [Article III] judicial Power, that they are indefeasible, among which
23 is a court’s ability to enter orders protecting the integrity of its proceedings.”). As
24
25
26
27
28

1 such, Article III courts' inherent powers can be limited by only the clearest statutes
2 or rules. *See Califano v. Yamaski*, 442 U.S. 682, 705 (1979) ("Absent the clearest
3 command to the contrary from Congress, federal courts retain their equitable power
4 to issue injunctions...."). As the Supreme Court held in *Nken v Holder*, "[a]n
5 [noncitizen] seeking a stay of removal . . . does not ask for a coercive order against
6 the Government, but rather for the temporary setting aside of the source of the
7 Government's authority to remove." *Nken v Holder*, 556 U.S. 418, 419 (2009).
8
9

10
11 Moreover, federal courts have inherent authority to protect litigants' access to
12 the courts. *See Bounds v. Smith*, 430 U.S. 817, 824 (1977) (holding that the
13 Constitution guarantees litigants meaningful access to the court"). Recognizing the
14 need to protect access, multiple courts have issued temporary stays of removal to
15 provide the court with the requisite time to consider the underlying relief sought. *See*
16 *Calderon v. Sessions*, 330 F.Supp.3d 944 (S.D.N.Y. Aug. 1, 2018) (ordering a stay
17 of removal and release from detention to permit the petitioner to continue with the
18 provisional waiver process afforded by the government); *You v. Nielsen*, 321
19 F.Supp.3d 451, 461 (S.D.N.Y. 2018) (ordering a stay of removal and release from
20 detention to permit the petitioner to continue with the provisional waiver process
21 and a motion to reopen); *Jimenez v. Calderon*, 334 F.Supp.3d. 37, 390 (D. Mass.
22 2018) (Court found that "ICE may not order the removal of an alien pursuing a
23
24
25
26
27
28

provisional waiver solely because he or she is subject to a final order of removal.”);
and *De Jesus Martinez v. Nielsen*, ---F.Supp.3d---, 2018 WL 4442229 *4 (D.N.J.
Sept. 14, 2018) (ordering a stay of removal and ultimately release of the petitioner
to permit him the opportunity to continue with the provisional waiver process.).
Here, Petitioner has *already* been ordered a deferred removal under CAT, and it is
his continued detention that he is challenging. Like in *Zadvydas*, here there is no
reasonable foreseeability of removal for Petitioner, his claim has proven a greater
than 50 percent chance of torture with the acquiescence of Mexican authorities in
Mexico. Such a grave potential is unlikely to change in the foreseeable future in
Mexico, and thus his continued detention should be terminated by an order of this
Court. Petitioner has presently been detained for 156 days, and will reach 180 days
on Monday, September 29, 2025.

a. Irreparable Harm in the Absence of an Injunction

An injury is “irreparable” if it is “not accurately measurable or adequately
compensable by money damages.” *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*
102 F.3d 12, 19 (1st Cir. 1996); *see also United Steelworkers of Am., AFL-CIO v.*
Textron, Inc. 836 F.2d 6, 8 (1st Cir. 1987).

Due process cases recognize a broad liberty interest rooted in the fact of
deportation, not just the process of removal proceedings. *See Bridges v. Wixon*,

1 Immigrants who pursue lawful immigrant status in the United States have
2 rights under the Due Process Clause of the Fifth Amendment. Once a petitioner
3 has identified protected liberty or property interest, the Court must determine
4 whether a constitutionally sufficient process has been provided. *Mathews*, 424 U.S.
5 at 335. In making this determination, the Court balances (1) “the private interest
6 that will be affected by the official action”; (2) “the risk of an erroneous
7 deprivation of such interest through the procedures used, and the probable value, if
8 any, of additional or substitute procedural requirement would entail;” and (3) “the
9 government’s interest, including the function involved and the fiscal and
10 administrative burdens that the additional or substitute procedural requirement
11 would entail.” *Id.* Interpreted under the Constitution, the INA and its applicable
12 regulations do not permit continual detention of Petitioner after he has been
13 granted immigration relief and surpassed the 90-day removal allotment given
14 under the INA. 8 U.S.C. § 1231.

20 Due process protects a noncitizen’s liberty interest in the adjudication of
21 discretionary applications for relief and benefits made available under the
22 immigration laws. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003)
23 (recognizing protected interests in the “right to seek relief” even when there is no
24 “right to the relief itself”). Petitioner has a protected due process interest in his
25
26
27
28

1 claim of unlawful detention, and due process requires that since he cannot be
2 removed to Mexico, and he cannot stay detained, that he must be released.
3

4 The Government's actions toward Petitioner violate or will violate the APA
5 and the Fifth Amendment. The APA provides that a court "shall. . . hold unlawful
6 and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of
7 discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). To
8 satisfy the APA, an agency must "examine the relevant data and articulate a
9 satisfactory explanation for its action including a rational connection between the
10 facts found and the choice made." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct.
11 2117, 2125 (2016) (quoting *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut.*
12 *Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).
13
14
15

16 When the Government has promulgated "[r]egulations with the force and
17 effect of law," those regulations "supplement the bare bones" of federal statutes
18 and in areas of the law, such that agencies must follow their own "existing valid
19 regulations," even where Government officers have broad discretion, such as in
20 immigration. *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268
21 (1954) (reversing in immigration case after review of warrant for deportation); *see*
22 *also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("[I]t is incumbent upon agencies to
23 follow their own procedures . . . even where [they] are possibly more rigorous than
24
25
26
27
28

1 otherwise would be required.”); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir.
2 2005) (“*Accardi* has come to stand for the proposition that agencies may not
3 violate their own rules and regulations to the prejudice of others.”). Breaches of
4 *Accardi*’s rule constitute violations of both the APA and the Fifth Amendment’s
5 Due Process Clause. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991)
6 (“*Accardi* doctrine is premised on fundamental notions of fair play underlying the
7 concept of due process”); *see also Wilson v. Comm’r of Soc. Sec.*, 378 F.3d 541,
8 545, 546 (6th Cir. 2004) (noting that an *Accardi* violation may be a due process
9 violation, and the Government’s action may be set aside pursuant to the APA);
10 *Sameena, Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998) (“An
11 agency’s failure to follow its own regulations . . . may result in a violation of an
12 individual’s constitutional right to due process.”).

13
14 While violations of “internal agency procedures” do not always require a
15 remedy, *Accardi*’s rule applies with full force when “the rights or interests of the
16 objecting party” are “affected.” *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991)
17 (citing cases). Here, the Government’s planned continual and indefinite detention
18 of Mr. AVILA MARIN would violate the APA and the Fifth Amendment by
19 arbitrarily keeping him detained longer than the Statutorily allowed 90 days with
20 no plan of revision or stated program of relief. 8 U.S.C. § 1231.

1 *Accardi*'s "ambit" is "not limited" to "rules attaining the status of formal
2 regulation." *Montilla*, 926 F.2d at 167. It applies to both promulgated regulations
3 and other processes and programs that guide the Government's discretion. *See*
4 *Zhang v. Slattery*, 840 F. Supp. 292, 293- 96 (S.D.N.Y. 1994) (holding that the
5 Government violated the APA by ignoring its non- promulgated immigration
6 "program"); *see also Pasquini v. Morris*, 700 F.2d 658, 661-63 (11th Cir. 1983)
7 (same, but for informal criteria). *Accardi* means that when the Government sets out
8 a process whereby relief can be pursued, a "right to *seek* relief" is created, even
9 when there is no "right to the relief itself." *Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st
10 Cir. 2003) (emphasis added) (citing *Accardi*, 347 U.S. at 268).

11 **c. There is No Substantial Injury to Other Parties and Injunctive**
12 **Relief is in the Public Interest**

13 The issuing of a temporary restraining order and a preliminary injunction is
14 warranted because the balance of equities tips in the favor of the Petitioner and the
15 injunction is squarely within the public interest. The government's equities also
16 weigh in favor of issuing a preliminary injunction here.

17 The Petitioner, the public, and the Government all have a vested interest in
18 fair and equitable legal proceedings for all people, citizens and non-citizens alike.
19 *See Reno v. Flores*, 507 U.S. 292 (1993) (Finding that non-citizens are entitled to
20
21
22
23
24
25
26
27
28

1 5th Amendment due process). Further, continuing to detain Petitioner despite the
2 unforeseeable length of time he may have until removal is in clear violation of the
3
4 Constitution, APA, and INA, and the Government has no vested interest in violating
5 the law. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (a
6 government agency “cannot suffer harm from an injunction that merely ends an
7 unlawful practice”); *Devitri*, 2-18 WL 661518, at *7 (“[t]he public’s interest in
8 providing due process for non-citizens to ensure that they are not removed to a
9 country where they will be persecuted is an extremely weighted one.”) While the
10 government has an interest in enforcing the nation’s immigration laws, the
11 government’s actions here are in direct contravention of Congress’s express intent
12 and the government’s own regulations.

13
14
15
16 The Government “cannot suffer harm from an injunction that merely ends an
17 unlawful practice or reads a statute as required to avoid constitutional concerns.”
18 *R.I.L.-R v. Johnson*, 80 F. Supp. 3d at 191 (D.D.C. Feb. 20, 2015) (citing *Rodriguez*
19 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)). Further, “the public interest is
20 served when administrative agencies comply with [the requirements of U.S. law].”
21

22
23 *Id.*
24
25
26
27
28

1 **VIII. CLAIMS FOR RELIEF**

2 **1. PETITIONER’S CONTINUED DETENTION VIOLATES DUE**
3
4 **PROCESS, THE INA, AND THE APPLICABLE REGULATIONS**

5 Petitioner re-alleges and incorporate by reference each and every allegation
6
7 contained in the preceding paragraphs as if set forth fully herein. Due process
8 protects a noncitizen’s liberty interest in the adjudication of applications for relief
9 and benefits made available under the immigration laws. *See Arevalo v. Ashcroft*,
10 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the “right to seek
11 relief” even when there is no “right to the relief itself”). Petitioner has a protected
12 due process interest in his seeking review of continued detention so that he can be
13 rightfully released in accordance with the INA.
14

15
16 **2. CONTNUED DETENTION OF PETITIONER VIOLATES THE**
17 **ADMINISTRATIVE PROCEDURE ACT**

18
19 Petitioner re-alleges and incorporates by reference each and every allegation
20
21 contained in the preceding paragraphs as if set forth fully herein. The Respondents’
22 actions are “arbitrary, capricious, an abuse of discretion, or otherwise not in
23 accordance with law;” 5 U.S.C. §706(2)(C) and “in excess of statutory jurisdiction,
24 authority or limitations, or short of statutory right” and violates the APA 5 U.S.C.
25 §706(2)(C). Under the Administrative Procedure Act, “final agency action for
26
27
28

1 which there is no other adequate remedy in a court [is] subject to judicial review.”
2 5 U.S.C. § 704. The reviewing court “shall...hold unlawful and set aside agency
3 action, findings, and conclusions found to be arbitrary, capricious, an abuse of
4 discretion, or otherwise not in accordance with law,” or “unsupported by
5 substantial evidence.” 5 U.S.C. §§ 706(2)(A), (E). Absent this Court’s intervention,
6
7 Petitioner does not have any remedy to challenge the decision of the Respondents,
8
9 other than ask for reconsideration through Respondents, even though they have
10
11 already failed to follow applicable law. Respondents’ decision to continually detain
12
13 Petitioner more than the 90-day holding period post-removal order is arbitrary and
14
15 capricious. 8 U.S.C. § 1231. Detention beyond this period is permitted only if the
16
17 alien's removal is still "reasonably foreseeable". If removal is not reasonably
18
19 foreseeable, the statute, as interpreted by the Supreme Court in *Zadvydas*, requires
20
21 the alien's release.

22 **3. PETITIONER’S CONTINUED DETENTION VIOLATES THE** 23 24 **SUSPENSION CLAUSE**

25 Petitioner re-alleges and incorporates by reference each and every allegation
26
27 contained in the preceding paragraphs as if set forth fully herein. The Respondents’
28
continued detention of Petitioner without any opportunity for meaningful judicial
review violates the Suspension Clause. Respondents have not indicated any

1 intention to effectuate his release pending a change in conditions in Mexico.
2 Petitioner pleads this court to provide guidance to Respondents' actions and
3
4 instruct them to fairly apply the applicable rules, regulations, and law.

5 **4. FIFTH AMENDMENT DUE PROCESS – STATE-CREATED**

6 **DANGER**

7
8 The Due Process Clause provides that no person shall “be deprived of life,
9 liberty, or property, without due process of law.” U.S. Const. amend. V. Its
10 protections extend to “every person within the nation’s borders,” regardless of
11 immigration status. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014);
12 *id.* (“Even one whose presence in this country is unlawful, involuntary, or
13
14 transitory is entitled to that constitutional protection.”) (quoting *Mathews v. Diaz*,
15 426 U.S. 67, 77 (1976)). The government violates an individual’s right to due
16 process when it (1) “affirmatively place[s] [the] individual in danger,” (2) by
17
18 “acting with ‘deliberate indifference to [a] known or obvious danger.’” *Kennedy v.*
19 *City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006) (quoting *Munger v. City of*
20 *Glasgow*, 227 F.3d 1082, 1086 (9th Cir. 2000) and *L.W. v. Grubbs*, 92 F.3d 894,
21 900 (9th Cir. 1996)). When the government’s actions leave an individual “in a
22 situation that [is] more dangerous than the one in which [it] found him,” the
23
24 government has affirmatively placed that individual in danger. *Hernandez v. City*
25
26
27
28

1 of *San Jose*, 897 F.3d 1125, 1133 (9th Cir. 2018) (quoting *Munger*, F.3d at 1086).
2 The critical inquiry is thus whether the government’s actions “create[d] or
3 expose[d] an individual to a danger which he or she would not have otherwise
4 faced.” *Kennedy*, 439 F.3d at 1061; *Cf. J.P. v. Sessions*, No. Civ. 18-06081 JAK
5 (SKx), 2019 WL 6723686, at *36 (C.D. Cal. Nov. 5, 2019) (federal government
6 “‘acted with deliberate indifference to a known or obvious danger’ by
7 implementing the [family separation] policy with awareness of the potential harm
8 it would cause and intending to use that as a basis to deter future attempts by those
9 similarly situated to enter the United States” (alterations omitted) (quoting
10 *Hernandez*, 897 F.3d at 1137, and *Kennedy*, 439 F.3d at 1062)). Even if Petitioner
11 was required to show deliberate indifference as civil detainees—and he is not, see
12 *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004)—he could easily do so. The
13 government acts with deliberate indifference to a known or obvious danger when it
14 “recognize[s] an unreasonable risk and actually intend[s] to expose [the plaintiff]
15 to such risks without regard to the consequences to [the plaintiff].” *Hernandez*, 897
16 F.3d at 11 (alterations omitted) (quoting *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 974
17 (9th Cir. 2011)). An unreasonable risk includes future harm caused by conditions
18 of confinement. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993).
19
20
21
22
23
24
25
26
27
28

1 First, Respondents have affirmatively placed Petitioner in danger by forcing
2 him into a position more dangerous than it found him.
3

4 **5. FIFTH AMENDMENT DUE PROCESS CLAUSE – SPECIAL** 5 **RELATIONSHIP** 6

7 The Fifth Amendment’s Due Process Clause applies to all “persons” within the
8 United States, including persons whose presence here is unlawful, temporary, or
9 permanent. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). When the
10 government takes custody of a person, the government creates a “special
11 relationship” that entails assuming responsibility for the person’s safety and
12 wellbeing. *See Henry A. v. Willden*, 678 F.3d 991, 998 (9th Cir. 2012). The
13 government violates the Due Process Clause when it takes custody of a person
14 “and at the same time fails to provide for his basic human needs – e.g., food,
15 clothing, shelter, medical care, and reasonable safety.” *DeShaney v. Winnebago*
16 *Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989) (emphasis added).
17
18
19
20

21 Due process for civil detainees, like those held in immigration facilities,
22 “requires more than minimal necessities.” *Jones*, 393 F.3d at 931. To state a claim
23 under the special relationship doctrine, a plaintiff must show: “(i) the defendant
24 made an intentional decision with respect to the conditions under which the
25 plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of
26
27
28

1 suffering serious harm; (iii) the defendant did not take reasonable available
2 measures to abate the risk, even though a reasonable official in the circumstances
3 would have appreciated the high degree of involved . . . ; and (iv) by not taking
4 such measures, the defendant caused the plaintiff's injuries." *Gordon v. Cty. of*
5 *Orange*, 888 F.3d 1118, 112425 (9th Cir. 2018).
6
7

8 **6. VIOLATION OF FIFTH AMENDMENT PROTECTION AGAINST**
9 **PUNITIVE DETENTION**
10

11 When the federal government detains an immigrant, the immigrant is
12 considered a civil detainee, even if they have a prior criminal conviction. *See*
13 *Zadvydas*, 533 U.S. at 690. As civil detainees, immigrants are afforded greater
14 protection by the Fifth Amendment's Due Process Clause than convicted prisoners
15 or even pretrial criminal detainees. Unlike a convicted prisoner, who may be
16 punished as long as the punishment is not "cruel and unusual," *See Pierce v. Cty.*
17 *of Orange*, 526 F.3d 1190, 1205 (9th Cir. 2008), a civil detainee may not be
18 punished at all. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1970); *Jones*, 393 F.3d at
19 932. And civil immigration detainees "must be afforded 'more considerate
20 treatment'" than criminal pretrial detainees. *See Unknown Parties*, 2020 WL
21 813774, at *12 (citing *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982)).
22
23
24
25
26
27
28

1 To establish a violation of the Due Process Clause, Petitioner need not show
2 that Respondents intended to subject him to punishment, *see Pierce*, 526 F.3d at
3 1205, or that they acted with deliberate indifference, *see Jones*, 393 F.3d at 933. A
4 restriction is “punitive” if it is “excessive in relation to [its non-punitive purpose]’
5 or is ‘employed to achieve objectives that could be accomplished in so many
6 alternative and less harsh methods.’” *Jones*, 393 F.3d at 933-34 (alteration in
7 original) (quoting *Demery v. Arpaio*, 378 F.3d 1020, 1028 (9th Cir. 2004);
8 *Hallstrom v. City of Garden City*, 991 F.2d 1473, 1484 (1993)). A presumption of
9 punishment arises when a civil detainee is held in similar or more restrictive
10 conditions than his criminal counterparts. *See Jones*, 393 F.3d at 932; *see also*
11 *Torres v. U.S. Dep’t of Homeland Sec.*, 411 F. Supp. 3d 1036, 1065 (C.D. Cal.
12 2019) (finding a presumption of punitiveness where plaintiffs “allege[d] conditions
13 at [ICE detention center] and policies by ICE that are not ‘more considerate’ than
14 at criminal facilities”). To rebut this presumption, the government must show that
15 its actions are not excessive in relation to a legitimate, nonpunitive purpose. *See*
16 *King v. Cty. of Los Angeles*, 885 F.3d 548, 558 (9th Cir. 2018).

17
18
19
20
21
22 **IX. REQUEST FOR ORAL ARGUMENT**

23
24
25 Petitioner respectfully requests oral argument on this Petition

26 **X. PRAYER FOR RELIEF**

1 WHEREFORE, Petitioner respectfully requests that this Court:

- 2 1. Assume jurisdiction over this matter;
- 3
- 4 2. Issue a Writ of Habeas Corpus on the ground that Petitioner's continued
5 detention violates the Due Process Clause and order Petitioner's immediate
6 release;
- 7 3. In the alternative, issue injunctive relief ordering Respondents to
8 immediately release Petitioner on the ground that his continued detention
9 violates the Due Process Clause;
- 10 4. Order Respondents file a return within three days pursuant to 28 U.S.C. §
11 2243;
- 12 5. Declare that the process as applied to Petitioner by Respondents violates the
13 Suspension Clause, the Due Process Clause of the Fifth Amendment, the
14 Fourth Amendment, the INA, the APA, and federal regulations;
- 15 6. Issue a Writ of Habeas Corpus directing Respondents to pursue a
16 constitutionally adequate process to justify adverse immigration actions
17 against Petitioner;
- 18 7. Order Respondents to provide five days of notice to the Court and Petitioner
19 of his imminent removal;
- 20 8. Order Respondents to follow the applicable rules, regulations, law, and the
21 Constitution related to the Convention Against Torture
- 22 9. Award Petitioner his costs and reasonable attorneys' fees in this action as
23 provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other
24 statutes;
- 25 10. Grant such further relief as the Court deems just and proper.

26 Dated: September 5, 2025,
27 Tucson, AZ,

Respectfully submitted,
By: /s/ Siovhan Sheridan Ayala
Siovhan Sheridan Ayala

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

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner's legal team the events described in this Petition. Based on those discussions, on information and belief, I hereby verify that the factual statements made in the attached Amended Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Dated: September 5, 2025,

Tucson, AZ,

By: /s/ Siovhan Sheridan Ayala
Siovhan Sheridan Ayala
Attorney for the Petitioner
AYALA LAW OFFICE, PC
P.O. Box 18986
Tucson, AZ 85731
(520) 202-0391