

1 Burt & Ngo
2 John Burt, Esq.
3 419 English Oaks Drive
4 Hixson, TN 37343
5 510-556-9498
6 john@burtngo.com
7 Bar No.: 208563
8 EOIR ID: FF202218

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Asim Pasholli



Civil Action No. '26CV1296 CAB MSB

12 Petitioner,

13 v.

PETITION FOR WRIT OF HABEAS

14 **PATRICK DIVVER**, Field Office Director,
15 Enforcement and Removal Operations, San
16 Diego Field Office, U.S. Immigration and
17 Customs Enforcement; Warden of the
18 Imperial Regional Detention Facility;
19 **KRISTI NOEM**, Secretary, U.S. Department
20 of Homeland Security; **TODD M. LYONS**,
21 Acting Director, U.S. Immigration and
22 Customs Enforcement; and **U.S.**
23 **DEPARTMENT OF HOMELAND**
24 **SECURITY**,

CORPUS PURSUANT TO 28 U.S.C. § 2241

25 Respondents,

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Petitioner Asim Pasholli, by counsel, petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and states as follows:

INTRODUCTION

Petitioner Asim Pasholli brings this petition for a writ of habeas corpus to end his unlawful, prolonged detention by U.S. Immigration and Customs Enforcement (“ICE”). Mr. Pasholli is a native and citizen of Albania who has been held at the Imperial Regional Detention Facility since September 5, 2025 under a decades-old final order of removal. The statutory 90-

1 day removal period expired on December 4, 2025. The six-month presumptively reasonable
2 detention period recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001) expired on March 5,
3 2026. ICE nevertheless continues to jail Mr. Pasholli without travel documents, without a
4 scheduled removal date, and without competent evidence that removal is significantly likely in
5 the reasonably foreseeable future.

6 ICE's continued detention of Mr. Pasholli is unlawful for multiple, independent reasons.
7 First, under *Zadvydas* and 8 U.S.C. § 1231(a)(6), post-order detention is limited to the period
8 reasonably necessary to effectuate removal; once detention extends beyond six months and
9 removal is not reasonably foreseeable, continued incarceration is not authorized. Second, ICE
10 has failed to comply with its own mandatory post-order custody review regulations, including 8
11 C.F.R. §§ 241.4 and 241.13. Mr. Pasholli has received no meaningful custody review and no
12 written decision explaining the basis for continued confinement. Under *United States ex rel.*
13 *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), ICE's failure to follow binding regulations
14 violates due process and renders continued detention unlawful. Third, detention that continues by
15 inertia, untethered to an actual removal timeline and unaccompanied by meaningful process,
16 becomes arbitrary and punitive in effect, violating the Fifth Amendment. Finally, continuing to
17 impose the extreme deprivation of incarceration without reasoned decision-making, required
18 procedures, or evidence of removability in the near term constitutes arbitrary and capricious
19 agency action.

20 Mr. Pasholli has strong family and community ties in the United States. He can be
21 released under reasonable conditions of supervision, and continued confinement serves no
22 legitimate civil purpose. Because ICE cannot lawfully detain him indefinitely while lacking
23 travel documents and refusing to provide required custody reviews, this Court should grant the
24 writ and order Mr. Pasholli's immediate release.

25 26 27 JURISDICTION

28 This Court has jurisdiction over this petition pursuant to 28 U.S.C. § 2241(c)(3) because

Petitioner is in custody in violation of the Constitution and laws of the United States, including the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1231(a)(6) as construed by *Zadvydas v. Davis*, 533 U.S. 678 (2001).

This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

This Court has authority to grant relief pursuant to 28 U.S.C. § 2241, and to issue all writs necessary or appropriate in aid of its jurisdiction pursuant to 28 U.S.C. § 1651.

Petitioner is presently confined at the Imperial Regional Detention Facility in Calexico, California, and is in the physical custody of Respondents.

VENUE

Venue is proper in the Southern District of California because Petitioner is confined within this District and his immediate custodian is located within this District. See *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973).

Venue is also proper pursuant to 28 U.S.C. § 1391(e) because Respondents are officers and agencies of the United States acting in their official capacities, and because a substantial part of the events and omissions giving rise to the claims occurred in this District.

PARTIES

Petitioner Asim Pasholli is a native and citizen of Albania and is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at the **Imperial Regional Detention Facility** in Calexico, California. Petitioner’s A-number is 

Respondent Warden of the Imperial Regional Detention Facility, where Petitioner is detained, and has immediate physical custody of Petitioner. He is sued in his official capacity.

Respondent Patrick Divver is the Field Office Director of ICE Enforcement and Removal Operations for the San Diego Field Office and is responsible for Petitioner’s detention and removal decisions within this District. He is sued in his official capacity.

Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and has supervisory authority over ICE detention and removal operations nationwide, including the detention of Petitioner. He is sued in his official capacity.

Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security and has ultimate authority over the Department and its component agencies, including ICE, which is responsible for Petitioner's detention. She is sued in her official capacity.

Respondent U.S. Department of Homeland Security (“DHS”) is the federal agency responsible for implementing and enforcing the Immigration and Nationality Act, including the detention and removal of noncitizens. DHS is sued in its official capacity for declaratory and injunctive relief.

FACTUAL BACKGROUND

Mr. Pasholli was ordered removed in 2009. That order became administratively final. On September 5, 2025, ICE took Mr. Pasholli into custody to execute the removal order. The statutory removal period therefore commenced on that date. See 8 U.S.C. § 1231(a)(1)(B).

The 90-day removal period expired on December 4, 2025. Six months from the start of the removal period expired on March 5, 2026. As of the filing of this Petition on March 6, 2026, Mr. Pasholli has been detained for over six months beyond the commencement of the removal period.

ICE has not secured travel documents from Albania. No removal flight has been scheduled. ICE has issued no written § 1231(a)(1)(C) noncooperation finding/notice; Petitioner declined to sign documents he did not understand / without counsel review.

ICE has not provided Petitioner with the post order review procedures required by 8 C.F.R. § 241.4, nor has it issued any written custody determination explaining the legal and factual basis for continued detention.

Petitioner remains confined without a realistic removal timeline and without meaningful process.

STATUTORY AND LEGAL BACKGROUND

A. Post-order detention is governed by 8 U.S.C. § 1231(a) and is limited by the Constitution.

After a removal order becomes administratively final, the Immigration and Nationality Act provides the Government a defined period to carry out removal. 8 U.S.C. § 1231(a)(1).

1 During the statutory “removal period,” detention is generally mandatory. 8 U.S.C. § 1231(a)(2).
2 The removal period is ordinarily ninety (90) days. 8 U.S.C. § 1231(a)(1)(A). It begins on the
3 latest of several triggering events, including, as relevant here, when the noncitizen is taken into
4 ICE custody for execution of a final order. 8 U.S.C. § 1231(a)(1)(B).

5 When the ninety-day removal period expires, the statute permits continued detention for
6 certain categories of individuals. 8 U.S.C. § 1231(a)(6). But that authority is not unlimited.
7 Because indefinite civil detention would raise severe constitutional concerns, the Supreme Court
8 construed § 1231(a)(6) to contain an implicit “reasonable time” limitation.

9 **B. Zadvydas establishes the controlling framework and burden shifting.**

10 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that post-order
11 detention under § 1231(a)(6) is authorized only for a period reasonably necessary to effectuate
12 removal. *Zadvydas* recognized six months as a presumptively reasonable period of detention.
13 After that point, if the detainee provides good reason to believe there is no significant likelihood
14 of removal in the reasonably foreseeable future, the burden shifts to the Government to rebut that
15 showing with evidence. If the Government cannot carry its burden, continued detention is not
16 authorized under § 1231(a)(6) and violates due process.

17 Thus, the central question in a post-order detention habeas action is not whether ICE is
18 still attempting removal in the abstract. It is whether removal is significantly likely in the
19 reasonably foreseeable future based on concrete facts.

20 **C. DHS regulations require periodic custody review during post-order detention.**

21 In addition to the statutory framework, DHS has promulgated regulations governing post-
22 order custody reviews. See 8 C.F.R. §§ 241.4 and 241.13. These regulations are intended to
23 ensure that continued detention remains tied to a legitimate, nonpunitive purpose and that ICE
24 makes individualized determinations about whether continued detention is warranted or whether
25 release under conditions of supervision is appropriate.

26 As a matter of due process, and under the long-settled principle that agencies must follow
27 their own binding regulations, ICE’s failure to adhere to these custody review requirements
28 renders continued detention unlawful. See *United States ex rel. Accardi v. Shaughnessy*, 347

1 U.S. 260 (1954).

2 **D. Due process prohibits arbitrary civil detention untethered to removal and supports**
3 **habeas relief.**

4 The Fifth Amendment Due Process Clause protects all persons from arbitrary deprivation
5 of liberty. Civil immigration detention must remain regulatory and reasonably related to a
6 legitimate governmental purpose. When detention extends beyond the period reasonably
7 necessary to accomplish removal, and when it continues without meaningful process or a
8 realistic removal timeline, it becomes arbitrary and punitive in effect, violating due process.
9 Because Petitioner challenges the lawfulness of his custody itself, habeas corpus under 28 U.S.C.
10 § 2241 is the proper vehicle for relief. The Court should act promptly to address unlawful
11 restraint of liberty consistent with 28 U.S.C. § 2243.

12 **ARGUMENT**

13 **CLAIM I**

14 **Continued Post-Order Detention Violates 8 U.S.C. § 1231(a)(6) as Construed in Light of the**
15 **Constitution (Zadvydas)**

16 **A. Legal Standard**

17 Section 241(a) of the INA, 8 U.S.C. § 1231(a), establishes a statutory “removal period”
18 during which the Government must effectuate removal. During that period, detention is
19 mandatory. After the removal period expires, the statute authorizes continued detention only in
20 limited circumstances. 8 U.S.C. § 1231(a)(6).

21 In *Zadvydas v. Davis*, the Supreme Court held that if § 1231(a)(6) were interpreted to
22 authorize indefinite detention, it would raise grave constitutional concerns. The Court therefore
23 construed § 1231(a)(6) to contain an implicit “reasonable time” limitation and held that detention
24 is permissible only for the period reasonably necessary to bring about removal. *Zadvydas*
25 recognized a six-month period as presumptively reasonable. After six months, if the detained
26 person provides “good reason to believe that there is no significant likelihood of removal in the
27 reasonably foreseeable future,” the Government must rebut that showing with sufficient
28 evidence. If the Government cannot do so, continued detention is not authorized and release is

1 required subject to reasonable supervision conditions.

2 This burden-shifting framework is central: post-order detention is not justified by
3 generalized assertions, good-faith efforts, or speculation. The question is whether removal is
4 actually significantly likely in the reasonably foreseeable future.

5 **B. The Removal Period Began September 5, 2025 and the Zadvydas Presumption Expired**
6 **March 5, 2026**

7 Petitioner has been detained continuously since September 5, 2025. Because Petitioner
8 was already subject to a final order of removal, the statutory removal period began when ICE
9 took him into custody for removal execution. The 90-day removal period ended on December 4,
10 2025. The six-month Zadvydas presumption expired on March 5, 2026. Petitioner remains
11 detained beyond that point.

12 Accordingly, this Court must apply the Zadvydas burden-shifting framework: Petitioner
13 need only provide good reason to believe removal is not significantly likely in the reasonably
14 foreseeable future; then the burden shifts to the Government to prove otherwise.

15 **C. Petitioner Has More Than “Good Reason” to Believe Removal Is Not Significantly**
16 **Likely in the Reasonably Foreseeable Future**

17 Petitioner satisfies the threshold showing for three independent reasons.

18 **1. No travel documents, no removal date, and no concrete timeline.**

19 ICE has not secured travel documents from Albania. No removal date has been
20 scheduled. Petitioner has received no concrete information showing removal is imminent
21 or even likely in the near term. In the post-order context, the absence of travel documents
22 and the absence of a scheduled removal date after the removal period has run is strong
23 evidence that removal is not significantly likely in the reasonably foreseeable future.

24 **2. ICE cannot avoid Zadvydas by relying on vague or speculative future steps.**

25 Zadvydas does not allow continued detention based on “we’re still trying,” “we might get
26 documents,” or “removal could happen at some unknown time.” The statute, as
27 construed, demands a realistic and reasonably foreseeable prospect of removal. Where
28 the Government cannot identify a specific pathway to removal (travel document issuance,

1 confirmed acceptance, scheduled transport), detention becomes untethered from the
2 removal purpose and becomes constitutionally suspect.

3 **3. ICE has not invoked or established obstruction under § 1231(a)(1)(C).**

4 ICE has never made a formal obstruction determination, never issued a written finding
5 that Petitioner is refusing to cooperate within the meaning of § 1231(a)(1)(C), and never
6 provided the procedural predicates typically associated with invoking that tolling
7 provision. Without a formal obstruction finding, ICE cannot convert routine post-order
8 detention into indefinite detention. Petitioner's detention must be assessed under
9 Zadvydas as a normal § 1231(a)(6) case, and the Government must carry its burden to
10 show removal is significantly likely soon.

11 On these facts, Petitioner has at least "good reason to believe" removal is not significantly
12 likely in the reasonably foreseeable future.

13 **D. The Government Cannot Meet Its Burden to Rebut Petitioner's Showing**

14 Once Petitioner meets the Zadvydas threshold, the burden shifts to the Government.
15 Here, the Government cannot meet it.

16 At minimum, the Government would need competent evidence of concrete progress such
17 as: confirmed issuance of travel documents, confirmed acceptance by Albania, a scheduled
18 removal date, or other reliable indicia of near-term removability. The Government has none of
19 that. The absence of travel documents and any removal schedule after the expiration of the
20 removal period and the Zadvydas presumption defeats any attempt to justify continued
21 incarceration based on speculation.

22 **E. Relief Is Required**

23 Because Petitioner's continued detention is not authorized by § 1231(a)(6) as construed
24 in Zadvydas, this Court should grant the writ and order Petitioner's immediate release under
25 reasonable conditions of supervision.

26 At a minimum, the Court should issue a conditional writ requiring release unless
27 Respondents prove, promptly and with competent evidence, that removal is significantly likely in
28 the reasonably foreseeable future.

CLAIM II

ICE Failed to Follow Its Own Mandatory Post-Order Custody Review Regulations (8 C.F.R. §§ 241.4 and 241.13), Violating Due Process Under *Accardi* and Rendering Detention Unlawful

A. Legal Standard: ICE Must Follow Its Own Binding Detention Regulations

Even where the INA authorizes post-order detention in limited circumstances, DHS has adopted binding regulations that govern how ICE must administer that detention. Those regulations are not optional. When an agency promulgates rules and regulations intended to confer procedural protections, due process requires the agency to follow them. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (agency must comply with its own rules); see also Ninth Circuit authority recognizing the *Accardi* principle in immigration contexts.

Here, the relevant regulatory framework is found in 8 C.F.R. §§ 241.4 and 241.13, which establish custody review requirements and procedures for post-removal-order detention. These regulations are designed to ensure that continued detention remains tethered to its only permissible purpose: effectuating removal within a reasonably foreseeable time, while managing danger and flight risk through individualized determinations and conditions.

When ICE fails to comply with these regulations, continued detention is unlawful and habeas relief is appropriate.

B. The § 241.4 Post-Order Custody Review Scheme Requires Periodic, Meaningful Review and Written Decisions

Section 241.4 establishes periodic custody reviews after the statutory removal period ends. The point is not formality; it is meaningful review. A lawful custody review must be:

1. **Timely** (occurring at required intervals once the removal period has expired);
2. **Individualized** (based on the detainee's circumstances, including danger, flight risk, and the actual likelihood of removal); and
3. **Documented** (reflected in a written decision or record that provides the basis for continued detention or release conditions).

At a minimum, ICE must actually conduct the custody review process the regulation requires

1 and create a decision record adequate to show that detention continues to serve a legitimate, non-
2 punitive purpose.

3 **C. Section 241.13 Provides Enhanced Procedures Where Removal Is Not Reasonably**
4 **Foreseeable**

5 Section 241.13 addresses the scenario Zadvydas squarely contemplated: a detainee held
6 beyond the removal period where there is good reason to believe removal is not reasonably
7 foreseeable.

8 The regulation provides a mechanism for evaluating whether the detainee should be
9 released because removal is not significantly likely in the reasonably foreseeable future. This is
10 not discretionary. It is the regulatory implementation of the constitutional and statutory limits
11 recognized in Zadvydas.

12 In short, once detention extends and removal is not concretely on the horizon, § 241.13
13 requires ICE to engage in an enhanced, reasoned determination rather than continuing detention
14 by inertia.

15 **D. ICE Failed to Provide Any Custody Review at All to Petitioner**

16 Petitioner's detention is unlawful not only because it exceeds the temporal limits of §
17 1231(a)(6) as construed in Zadvydas (Claim I), but also because ICE has failed to comply with
18 the regulatory safeguards that govern post-order custody.
19 Petitioner has received:

- 20 1. **No § 241.4 custody review** at all after the 90-day removal period expired;
- 21 2. **No written custody decision** explaining why continued detention is supposedly justified;
- 22 3. **No meaningful opportunity** to respond to, contest, or supplement any asserted basis for
23 continued confinement; and
- 24 4. **No § 241.13 determination** addressing whether removal is significantly likely in the
25 reasonably foreseeable future.

26 These are not minor defects. They are the entire process.

27 ICE's failure is particularly serious here because the facts most relevant to the regulatory
28 inquiry are straightforward and undisputed: there are no travel documents from Albania, no

1 scheduled removal, and no concrete timeline for removal. In that posture, a lawful review
2 process would necessarily grapple with the core regulatory question: whether detention remains
3 tethered to a realistic removal objective. ICE has avoided that inquiry altogether.

4 **E. Under Accardi, ICE's Failure to Follow Its Own Regulations Violates Due Process and**
5 **Requires Habeas Relief**

6 Under Accardi, when the Government fails to adhere to its own binding rules governing
7 detention decisions, it violates due process. The constitutional harm is not abstract. It is the
8 deprivation of liberty without the procedural safeguards the agency itself deemed necessary for
9 lawful detention.

10 Moreover, the failure here is not cured by belated compliance. The regulations require
11 timely review; "no review" followed by "a review after litigation begins" does not retroactively
12 legalize months of unlawful confinement. Petitioner has been detained through the period when
13 these custody reviews should have occurred. The failure has already inflicted irreparable liberty
14 deprivation.

15 Because ICE failed to comply with §§ 241.4 and 241.13, Petitioner's detention is
16 unlawful independent of Zadvydas and must be set aside.

17 **F. Relief**

18 For the foregoing reasons, Petitioner respectfully requests that this Court grant the writ
19 and order immediate release under reasonable conditions of supervision.

20 At a minimum, the Court should issue a conditional writ requiring Petitioner's release unless
21 Respondents, within a short deadline set by the Court (consistent with 28 U.S.C. § 2243's
22 requirement of prompt action), demonstrate both:

- 23 1. actual compliance with the required regulatory procedures, and
- 24 2. competent evidence that removal is significantly likely in the reasonably foreseeable
25 future.

26 Because ICE has not complied with the regulatory scheme at all, and because continued
27 detention without those safeguards violates Accardi and due process, release is the appropriate
28 remedy.

CLAIM III

Violation of the Fifth Amendment – Arbitrary and Prolonged Detention

Petitioner’s Continued Detention Violates the Fifth Amendment Due Process Clause

Because It Has Become Arbitrary, Punitive, and Untethered to Any Legitimate Removal Purpose

A. Legal Standard: Civil Immigration Detention Must Remain Regulatory, Not Punitive, and Must Bear a Reasonable Relationship to Its Purpose

The Fifth Amendment’s Due Process Clause protects “persons,” including noncitizens, from deprivation of liberty without due process of law. Immigration detention is civil, not criminal. Because it is civil, it is constitutionally permissible only so long as it remains regulatory and reasonably related to a legitimate governmental purpose, such as effectuating removal or preventing danger/flight risk through individualized determinations.

The Supreme Court in *Zadvydas* recognized the core due process problem here: if post-order detention can continue without a realistic prospect of removal, it becomes “indefinite” and raises grave constitutional concerns. The Court therefore limited detention to the period reasonably necessary to bring about removal, warning that prolonged detention without a realistic removal prospect “would raise a serious constitutional problem.” The constitutional principle underlying *Zadvydas* is not technical. It is fundamental: a person cannot be jailed indefinitely when the Government cannot accomplish the objective that supposedly justifies the confinement.

In the Ninth Circuit, due process in the immigration detention context requires an individualized, meaningful justification for continued custody when detention becomes prolonged and untethered to a legitimate end. Detention that persists by inertia, without a genuine path to removal, is arbitrary.

B. Petitioner’s Detention Has Become Arbitrary Because There Is No Realistic, Near-Term Prospect of Removal

Petitioner’s continued detention violates due process because it is no longer reasonably related to removal.

Petitioner has been detained since September 5, 2025. The statutory 90-day removal period

ended December 4, 2025. The six-month presumptive period expired March 5, 2026. Yet:

1. No travel documents exist.

ICE has not obtained travel documents from Albania. In post-order detention cases, travel documents are the practical predicate to removal. Their absence, after months of detention, is powerful evidence that removal is not realistically imminent.

2. No removal date exists.

ICE has not scheduled Petitioner's removal. There is no credible evidence that removal will occur soon.

3. No meaningful custody review exists.

ICE has provided no custody review decision explaining why continued detention is necessary, and no process at all under §§ 241.4 or 241.13.

Absent a travel document, a removal date, or a meaningful process, continued confinement is indistinguishable from preventive incarceration. Due process forbids that.

C. ICE Cannot Convert This Into an "Obstruction" Case Without Formal Findings and Process

ICE has attempted to pressure Petitioner to sign unspecified paperwork. Petitioner has declined. But Respondents have not made any formal determination that Petitioner is "acting to prevent" his removal within the meaning of 8 U.S.C. § 1231(a)(1)(C), and they have not provided any written notice, factual basis, or administrative determination invoking tolling of the removal period.

This matters constitutionally.

When the Government asserts that a detainee is the cause of continued detention, due process requires clear notice, a defined allegation, and a meaningful opportunity to respond. Otherwise, the Government could evade constitutional limits simply by claiming, without findings, that the detainee "wouldn't sign."

Here, Respondents have not invoked § 1231(a)(1)(C) in any formal way. They have not alleged, much less proved, that Petitioner has willfully obstructed removal. Without a formal obstruction finding and process, Respondents cannot justify continued confinement by

1 insinuation.

2 And in any event, the Government's own facts demonstrate the central point: there are no
3 travel documents. Without travel documents, the Government cannot show detention remains
4 reasonably related to removal.

5 **D. The Detention Is Punitive in Effect and Shocks the Conscience**

6 Civil detention becomes punitive when it continues despite the absence of any realistic
7 means of accomplishing the stated objective. That is what is occurring here.

8 Petitioner remains in jail-like confinement, separated from family and community, despite:

- 9 • no travel documents,
10 • no removal date,
11 • no custody review process, and
12 • no individualized finding that detention remains necessary to accomplish removal.

13 This is the definition of arbitrary detention. It is also conscience-shocking: months of
14 incarceration with no meaningful process and no realistic removal timeline.

15 **E. Strong Family and Community Ties Underscore the Arbitrary Nature of Continued**
16 **Detention**

17 Petitioner has strong family and community ties. Those ties matter not as a plea for
18 mercy, but because they underscore that continued incarceration is not justified as a necessary
19 mechanism to secure appearance or prevent flight where there is no removal scheduled and
20 where conditions of supervision can adequately mitigate any asserted risk.

21 ICE's own statutory framework provides for release under an Order of Supervision.
22 Continued detention without removal prospect, without review, and despite available
23 noncustodial alternatives is the paradigm of arbitrariness.

24 **F. Relief**

25 Because Petitioner's continued detention violates the Fifth Amendment, this Court should
26 grant the writ and order immediate release under reasonable conditions of supervision.

27 At minimum, the Court should issue a conditional writ requiring release unless
28 Respondents, within a short deadline, demonstrate with competent evidence that removal is

1 significantly likely in the reasonably foreseeable future and that continued detention remains
2 reasonably related to effectuating removal.

3 CLAIM IV

4 Respondents' Continued Detention Decision Is Arbitrary, Capricious, and Contrary to 5 Law Under the Administrative Procedure Act (5 U.S.C. § 706) and Therefore Unlawful in 6 Habeas

7 A. Legal Standard: Agency Action Must Be Reasoned, Lawful, and Supported by the 8 Record

9 The Administrative Procedure Act ("APA") requires that agency action not be "arbitrary,
10 capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §
11 706(2)(A). An agency acts arbitrarily and capriciously when it fails to consider important aspects
12 of the problem, offers an explanation that runs counter to the evidence, relies on impermissible
13 factors, or otherwise fails to engage in reasoned decision-making.

14 Detention decisions and continued custody determinations by ICE are agency actions that
15 must comply with governing statutes, constitutional limits, and the agency's own regulations.
16 When ICE continues to detain someone beyond the statutory removal period without making the
17 determinations required by regulation, without considering the core statutory limitation
18 recognized in *Zadvydas*, and without a reasoned explanation grounded in concrete facts, the
19 detention becomes arbitrary and capricious.

20 Although habeas is the procedural vehicle here, courts routinely consider APA principles
21 where the petitioner challenges detention that is untethered to statutory authority and
22 unsupported by required agency process. At bottom, the APA claim is an additional, independent
23 route to the same conclusion: continued detention without reasoned, lawful decision-making is
24 not authorized.

25 B. ICE Has Taken and Maintained the Extreme Liberty-Depriving Action of Continued 26 Detention Without Addressing the Central Issue: Foreseeability of Removal

27 The most important fact governing post-order detention is whether removal is
28 significantly likely in the reasonably foreseeable future. That is the constitutional and statutory

1 “hinge” in this entire area. Zadvydas makes foreseeability the central constraint; §§ 241.4 and
2 241.13 operationalize that constraint through custody review procedures.

3 Here, Respondents have continued to detain Petitioner while ignoring or refusing to squarely
4 address the only question that matters:

- 5 • **No travel documents exist.**
- 6 • **No removal date exists.**
- 7 • **No documented acceptance or coordination by Albania exists.**

8 By maintaining detention while failing to confront these facts through any meaningful
9 process, ICE has failed to consider an “important aspect” of the problem, rendering its action
10 arbitrary and capricious.

11 **C. ICE Failed to Follow Required Procedures and Thus Acted “Not in Accordance With**
12 **Law”**

13 Agency action is “not in accordance with law” when it conflicts with binding statutory
14 limits or the agency’s own regulations.

15 ICE’s continued detention of Petitioner conflicts with:

- 16 1. **The statutory and constitutional limitation recognized in Zadvydas:** detention cannot
17 continue indefinitely where removal is not significantly likely in the reasonably
18 foreseeable future.
- 19 2. **ICE’s own mandatory regulations:** §§ 241.4 and 241.13 require custody review
20 procedures and determinations. ICE provided none. A total failure to implement required
21 procedures is not a harmless technicality; it is legal error.

22 When an agency denies or withholds required process and continues detention anyway, that
23 is agency action “not in accordance with law” under § 706(2)(A) and (C).

24 **D. ICE’s Approach Here Is the Definition of Arbitrary Decision-Making: Detention by**
25 **Inertia**

26 Respondents have not issued any written custody decision. There is no record of a §
27 241.4 review, no § 241.13 determination, no documented analysis of danger or flight risk, and no
28 documented analysis of removal foreseeability.

1 Instead, detention appears to be continuing by default.

2 Detention by inertia is quintessentially arbitrary and capricious. It reflects no reasoned
3 explanation, no record-based justification, and no lawful process. It is precisely the kind of
4 extreme liberty deprivation the APA is designed to prevent when agencies act without
5 accountability.

6 **E. ICE Cannot Justify Arbitrary Detention by Informal Pressure to Sign “Papers” Without**
7 **Formal Findings**

8 ICE has attempted to pressure Petitioner to sign documents, and Petitioner has declined.
9 But Respondents have not issued a formal finding of noncooperation under 8 U.S.C. §
10 1231(a)(1)(C), have not provided written notice of an obstruction allegation, and have not
11 created any record supporting tolling of the removal period.

12 If ICE wishes to rely on an obstruction theory, it must do so through a lawful process and
13 a reasoned determination. It cannot maintain detention indefinitely by informal coercion, vague
14 insinuations, or undocumented claims. Reliance on such informal pressure rather than lawful
15 findings is itself arbitrary.

16 **F. Relief**

17 Because Respondents’ continued detention decision is arbitrary, capricious, and contrary
18 to law, this Court should grant the writ and order Petitioner’s immediate release under reasonable
19 conditions of supervision.

20 At minimum, the Court should issue a conditional writ requiring release unless
21 Respondents, within a short deadline, produce a lawful, reasoned, and record-supported custody
22 determination that (1) complies with §§ 241.4 and 241.13, and (2) demonstrates with competent
23 evidence that removal is significantly likely in the reasonably foreseeable future.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Petitioner Asim Pasholli respectfully requests that this Court:

- 26 1. **Assume jurisdiction** over this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.
27 §§ 2241 and 1331;
- 28 2. **Issue the writ and order Petitioner’s immediate release** from ICE custody, under

1 reasonable conditions of supervision to be set by ICE consistent with 8 U.S.C. §
2 1231(a)(3) and applicable regulations;

3 3. In the alternative to immediate release, issue a conditional writ requiring Respondents to
4 release Petitioner within seven (7) days unless Respondents can demonstrate, with
5 competent evidence, that there is a significant likelihood of removal in the reasonably
6 foreseeable future and that continued detention remains authorized under 8 U.S.C. §
7 1231(a)(6) as construed by *Zadvydas v. Davis*;

8 4. In the further alternative, and only if the Court concludes that some form of process may
9 cure the constitutional and regulatory violations, order Respondents to provide, within
10 seven (7) days, a meaningful and constitutionally adequate custody review that complies
11 with 8 C.F.R. §§ 241.4 and 241.13, including a written decision stating the factual and
12 legal basis for continued detention, and order release absent strict compliance;

13 5. **Enjoin Respondents from transferring Petitioner** outside the Southern District of
14 California during the pendency of this action, or, at minimum, require Respondents to
15 provide Petitioner and undersigned counsel advance written notice of any intended
16 transfer and an opportunity to be heard;

17 6. **Order expedited consideration** of this Petition and set an accelerated schedule
18 consistent with 28 U.S.C. § 2243;

19 7. Award such other and further relief as the Court deems just and proper.

20 Respectfully submitted,

21 /s/ John Burt
22 John Burt, Esq.
23 Burt & Ngo, P.C.
24 419 English Oaks Drive
25 Hixson, TN 37343
(510) 556-9498
john@burtnngo.com
Attorney for Petitioner

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28

DECLARATION OF JOHN BURT IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

I, John Burt, declare as follows:

1. I am an attorney licensed to practice law in the State of California and admitted to practice before this Court. I am counsel of record for Petitioner Asim Pasholli in this action. I make this declaration based on my personal knowledge and on information obtained in the course of representing Petitioner.
2. Petitioner is currently detained at the Imperial Regional Detention Facility in Calexico, California.
3. Petitioner has been in ICE custody continuously since September 5, 2025.

A. Basis for this declaration

4. I submit this declaration to provide the Court with factual support regarding: (a) the duration of Petitioner's post-order detention; (b) the absence of travel documents or a scheduled removal date to Albania; (c) ICE's failure to provide required post-order custody review process; and (d) Petitioner's family and community support upon release.

B. Communications with ICE / efforts to obtain information

5. Since being retained, I have attempted to obtain basic information from ICE regarding Petitioner's custody posture and removal timeline, including whether ICE has obtained travel documents from Albania and whether a removal date has been set.
6. My office has sent a written request to ICE requesting travel documentsrepeating the requests above.

1 7. To date, ICE has not provided me with any travel document for Petitioner, any written
2 confirmation that Albania has issued travel documents, or any confirmed removal date.

3 8. To date, ICE has not provided me with any written post-order custody review decision
4 for Petitioner under 8 C.F.R. § 241.4 or § 241.13, despite my requests.

5 9. Based on my communications and the information available to me, I am not aware of any
6 scheduled removal flight or confirmed removal plan for Petitioner in the near term.
7

8 **C. Review of records from prior counsel / case file**
9

10 11. I reviewed documents from Petitioner's prior counsel, including a request to ICE for
11 release or custody status review following prolonged post-order detention and documents
12 reflecting Petitioner's identity and final order history.
13

14 12. Those records reflect that Petitioner is detained pursuant to a final order of removal and
15 that his immigration case has no future EOIR hearings scheduled.
16

17 **D. Client communications and detention conditions relevant to this petition**
18

19 13. My office has communicated with Petitioner concerning his detention status and the basis
20 for this habeas petition.

21 14. Petitioner has consistently reported that: (a) he has not been provided travel documents;
22 (b) he has not been given a removal date; (c) he has not received a meaningful custody
23 review process since his detention began; and (d) he has not received any written custody
24 review decision explaining continued detention.

25 15. Petitioner has also reported that ICE personnel have attempted to have him sign
26 documents related to his removal, but that he did not understand the documents and was
27 not given a meaningful opportunity to have counsel review them before signing.
28

1 16. To my knowledge, ICE has not served Petitioner with any written finding or notice
2 asserting that Petitioner is “refusing to cooperate” within the meaning of 8 U.S.C. §
3 1231(a)(1)(C), nor has ICE provided any written determination stating that the removal
4 period is being tolled on that basis.

5 17. In preparing the Petition, I communicated with Petitioner by legal call on [DATE(S)] and
6 reviewed the materials available from prior counsel. Petitioner reported to me that ICE
7 has not provided him any travel document for Albania, has not scheduled a removal date,
8 and has not provided any written post-order custody review decision. I separately
9 requested from ICE information and documents regarding travel document status, any
10 scheduled removal, and any § 241.4/§ 241.13 custody review paperwork, and no such
11 documents have been provided to me.
12
13

14 **E. Family and community support upon release**
15

16 17. Petitioner has represented to me that he has strong family and community ties in the
17 United States and that he has a stable residence available to him upon release.

18 18. Petitioner has represented that family members and community members are willing to
19 support him, including ensuring he appears for check-ins and complies with any
20 supervision conditions.
21

22 19. If the Court orders release, Petitioner is willing to comply with reasonable conditions of
23 supervision, including reporting requirements, electronic monitoring, and any other
24 conditions ICE imposes.
25

26 **F. Need for prompt relief**
27
28

1 20. Petitioner's continued detention beyond the removal period and beyond six months
2 without travel documents, without a removal date, and without documented custody
3 review imposes substantial and continuing harm.

4 21. Because Petitioner is detained in this District, and because habeas relief is intended to
5 provide prompt review of unlawful restraint, I respectfully request that the Court consider
6 this petition on an expedited basis.
7

8 I declare under penalty of perjury under the laws of the United States that the foregoing is true
9 and correct.
10

11 Executed on: **March 2, 2026**

12 /s/ John Burt
13 John Burt, Esq.
14 Burt & Ngo, P.C.
15 419 English Oaks Drive
16 Hixson, TN 37343
17 (510) 556-9498
18 john@burtnngo.com
19 Attorney for Petitioner
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VERIFICATION
(28 U.S.C. § 2242)

I, John Burt, Esq., am an attorney licensed to practice before this Court and counsel of record for Petitioner Asim Pasholli

I, JOHN BURT, ESQ., COUNSEL FOR PETITIONER, VERIFY UNDER PENALTY OF PERJURY THAT I HAVE COMMUNICATED WITH PETITIONER REGARDING THE FACTS ALLEGED IN THIS PETITION, REVIEWED THE MATERIALS AVAILABLE TO COUNSEL, AND THAT THE FACTUAL ALLEGATIONS IN THE PETITION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF. PETITIONER IS DETAINED AND IS NOT REASONABLY ABLE TO EXECUTE A VERIFICATION ON THE FILING TIMELINE, AND I THEREFORE SUBMIT THIS VERIFICATION ON HIS BEHALF PURSUANT TO 28 U.S.C. § 2242.

EXECUTED THIS 6TH DAY OF MARCH 2026.

/s/ John Burt

JOHN BURT, ESQ.
ATTORNEY FOR PETITIONER