Marcelo Gondim (CA SBN 271302)
GONDIM LAW CORP.
1880 Century Park East, Suite 400
Los Angeles, CA 90067
Telephone: (323) 282-7770
Email: court@gondim-law.com
Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MOHAMED HUSSEIN MOUSTAPHA-DAGHMASH
Petitioner,

vs.

CHRISTOPHER J. LAROSE, in his official capacity as Senior Warden of Otay Mesa Detention Facility;

CHARLES WALL, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement (ICE);

MARKWAYNE MULLIN, in his official capacity as Secretary of the U.S. Department of Homeland Security;

TODD BLANCHE, in his official capacity as Acting Attorney General of the United States

Respondents.

Case No.: '26CV3317 BJC JAC

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR ADMINISTRATIVE PROCEDURE ACT RELIEF [IMMEDIATE RELEASE OR BOND HEARING REQUESTED]

I. INTRODUCTION

1. Petitioner Mohamed Hussein Moustapha-Daghmash brings this petition for writ of habeas corpus under 28 U.S.C. § 2241 to challenge his prolonged civil immigration detention by U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is detained under a final order of removal that the Department of Homeland Security ("DHS") has been unable to execute and, as set forth below, has no significant likelihood of executing in the reasonably foreseeable future.

2. Petitioner is a stateless noncitizen originally from Saudi Arabia whose family ties are to Palestine. He holds no valid passport from any country and no country has agreed to accept his return. DHS designated Mexico as a country of removal and attempted to remove him there; that attempt failed and Mexico will not accept him. His family in Gaza was killed in 2025. There is no country to which Petitioner can be removed.

3. Petitioner has been in DHS civil immigration custody since February 5, 2026, more than three months, and is currently held at the Otay Mesa Detention Center in San Diego, California.

4. This is not Petitioner's first prolonged detention by DHS: based on Petitioner's recollection, he was previously detained by DHS in Denver, Colorado, for a period of months ending in or around 2010. The precise duration and legal posture of that prior detention are the subject of a pending Freedom of Information Act request and related litigation against the Executive Office for Immigration Review, as described below. In the aggregate, however, DHS has subjected Petitioner to more than a year of civil immigration detention without ever effectuating his removal.

5. The Supreme Court held in *Zadvydas v. Davis*, 533 U.S. 678 (2001), that post-final-order detention under 8 U.S.C. § 1231(a)(6) is presumptively unreasonable once it has continued for six months and the noncitizen provides good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.

6. Petitioner's circumstances, statelessness, the failed Mexico removal, the absence of any travel document, and the absence of any country willing to accept him, establish that there is no significant likelihood of removal in the reasonably foreseeable future. His continued detention violates the Due Process Clause of the Fifth Amendment and exceeds the authority granted by 8 U.S.C. § 1231(a)(6).

7. Petitioner has, in a separate action, sued the Executive Office for Immigration Review ("EOIR") for its failure to comply with the Freedom of Information Act, 5 U.S.C. § 552, with respect to records concerning Petitioner's immigration history. Those records are expected to include documentation of Petitioner's prior period of DHS detention in Denver, Colorado, ending in or around 2010, and the precise legal posture of the order of removal under which Petitioner is presently detained, including, on information and belief, the possibility that an earlier order of removal was reinstated against Petitioner on or about February 5, 2026.

8. Because EOIR has not produced those records, certain factual allegations in this Petition are made on information and belief and on the basis of Petitioner's recollection. Petitioner respectfully reserves the right to amend this Petition to correct, refine, or supplement those allegations upon receipt of the FOIA records, including but not limited to the precise duration of the 2010 Denver detention, the procedural history of the order of removal under which Petitioner is currently detained, and any reinstatement of a prior removal order.

9. Petitioner respectfully requests that this Court issue a writ of habeas corpus directing Respondents to release him from custody under appropriate conditions of supervision pursuant to 8 U.S.C. § 1231(a)(3).

II. JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the United States Constitution (Suspension Clause). Petitioner is "in custody" within the meaning of 28 U.S.C. § 2241(c)(3) and is challenging the constitutionality of that custody.

11. Venue is proper in the Southern District of California because Petitioner is detained at the Otay Mesa Detention Center, located in San Diego, California, within this District, and the events giving rise to the claim are occurring within this District. See 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004).

12. No administrative exhaustion is required for a *Zadvydas*-type habeas claim challenging post-final-order detention. See *Diouf v. Napolitano*, 634 F.3d 1081, 1090 (9th Cir. 2011).

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

III. PARTIES

15. Petitioner Mohamed Hussein Moustapha-Daghmash is a noncitizen currently detained by U.S. Immigration and Customs Enforcement at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California 92154. Petitioner is originally from Saudi Arabia, holds no valid passport from any country, and has no country willing to accept his return. He is subject to a final order of removal that DHS has been unable to execute.

16. Respondent Christopher J. LaRose, in his official capacity as Senior Warden of Otay Mesa Detention Facility, he is responsible for the custody of immigration detainees there, including Petitioner. He is sued in his official capacity.

17. Respondent Charles Wall is the Acting Director of ICE. He is responsible for the implementation of immigration detention policies and oversees the Petitioner's detention.

18. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security ("DHS"). He is the cabinet-level official responsible for the administration of immigration laws.

19. Respondent Todd Blanche is the Acting Attorney General of the United States. He oversees the Executive Office for Immigration Review ("EOIR") and the IJs who have refused to provide the Petitioner with a neutral bond hearing.

IV. LEGAL FRAMEWORK

20. Once a noncitizen is ordered removed, DHS must remove the noncitizen within a 90-day "removal period." 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of: (i) the date the order of removal becomes administratively final; (ii) the date of any final judicial order if the removal order is judicially reviewed and a court orders a stay; or (iii) the date the noncitizen is released from non-immigration detention or confinement. 8 U.S.C. § 1231(a)(1)(B).

21. During the removal period, detention is mandatory. 8 U.S.C. § 1231(a)(2).

22. Beyond the removal period, DHS has discretionary authority to detain certain noncitizens, including those determined to be a risk to the community or unlikely to comply with the removal order. 8 U.S.C. § 1231(a)(6).

23. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court construed § 1231(a)(6) to avoid serious constitutional doubt under the Fifth Amendment's Due Process Clause, holding that the statute does not authorize indefinite detention. The Court recognized six months of post-final-order detention as a presumptively reasonable period to effect removal. Id. at 701. After six months, if the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." Id.

24. "[A]s the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." Id.

25. The Ninth Circuit has applied *Zadvydas* to require release where the government cannot show a significant likelihood of removal in the reasonably foreseeable future. See, e.g., *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011); *Xi v. INS*, 298 F.3d 832 (9th Cir. 2002).

26. A noncitizen ordered removed who is released because removal cannot be effectuated is subject to supervision under 8 U.S.C. § 1231(a)(3), which authorizes DHS to impose conditions of release such as reporting requirements, restrictions on employment, and other terms reasonably necessary to ensure compliance.

V. FACTUAL ALLEGATIONS

27. Petitioner is originally from Saudi Arabia. His family ties are to Palestine, where his immediate family lived in Gaza.

28. In 2025, every member of Petitioner's immediate family in Gaza was killed. Petitioner has no remaining family in Palestine, no community to return to, and no functioning consular relationship with any country from which he could obtain a travel document.

29. Petitioner holds no valid passport from any country. Saudi Arabia has not agreed to accept his return, has not issued him a travel document, and has provided no indication that it will do so. No other country has agreed to accept him.

30. Petitioner is, for all practical purposes, stateless: no country recognizes him as its national for purposes of accepting his removal, and no travel document exists or is in prospect that would permit his physical removal from the United States.

31. DHS has previously subjected Petitioner to prolonged civil immigration detention. Based on Petitioner's recollection, Petitioner was held by DHS in Denver, Colorado, for a period of approximately several months to a year, ending in or around 2010. The precise duration and procedural posture of that detention are the subject of the pending FOIA litigation against EOIR described above and will be supplemented by amendment upon receipt of those records.

During that prior period of custody, DHS likewise was unable to effectuate Petitioner's removal.

32. On February 5, 2026, ICE took Petitioner back into civil immigration custody. He has been detained continuously since that date. He is currently held at the Otay Mesa Detention Center in San Diego, California.

33. As of the filing of this Petition, Petitioner has been continuously detained for more than three (3) months under his current detention.

34. In the aggregate, across both periods of DHS custody, Petitioner has been subjected to well over a year of civil immigration detention without DHS ever effectuating his removal, with the precise duration of the 2010 Denver detention to be confirmed upon receipt of the FOIA records described above.

35. Petitioner is subject to an administratively final order of removal. On information and belief, the order under which Petitioner is presently detained may consist of a prior order of removal that was reinstated against Petitioner on or about February 5, 2026 pursuant to 8 U.S.C. § 1231(a)(5).

36. In either case, the removal period under 8 U.S.C. § 1231(a)(1) commenced no later than February 5, 2026, when ICE took Petitioner into post-final-order custody for purposes of effecting removal. The precise procedural history of the order is the subject of the pending FOIA litigation against EOIR described in Paragraph 5 and will be supplemented by amendment as warranted.

37. DHS designated Mexico as a country of removal and attempted physically to remove Petitioner to Mexico. Mexico refused to accept Petitioner. The removal attempt failed.

38. Petitioner is not a Mexican national, has no nationality-based claim to admission to Mexico, and Mexico has not consented and will not consent to receive him.

39. Saudi Arabia, Petitioner's country of origin, has not issued Petitioner a travel document and has not agreed to accept his return. Petitioner's family ties to Palestine cannot serve as a basis for removal: there is no functioning consular authority that will issue him a Palestinian travel document, and his immediate family in Gaza was killed in 2025.

40. No other country has agreed to accept Petitioner. DHS has identified no alternative country of removal. Petitioner holds no passport. There is no travel document in existence or in prospect that would permit his physical removal from the United States.

41. On the present record, there is no significant likelihood that DHS will remove Petitioner in the reasonably foreseeable future. His prior eleven-month detention in Denver, which likewise ended without removal, confirms that the obstacles to his removal are not transient.

42. Petitioner's continued civil detention deprives him of his liberty. He is held in a secure detention facility, separated from any support network, and remains in custody with no meaningful end date because no country will accept him.

43. Each additional day of detention compounds Petitioner's injury. Civil immigration detention without any realistic prospect of removal is precisely the indefinite confinement that *Zadvydas* held § 1231(a)(6) does not authorize and that the Due Process Clause does not permit.

44. The conditions that prevent Petitioner's removal, his statelessness, the absence of any travel document, the refusal of Mexico to accept him, the absence of any Saudi consular cooperation, and the death of his family in Gaza, are not within Petitioner's control and cannot be cured by his continued detention. No length of additional confinement will produce a travel document or a country willing to accept him.

45. Release under conditions of supervision pursuant to 8 U.S.C. § 1231(a)(3) is fully adequate to address any governmental interest in ensuring Petitioner's compliance with his order of removal and any future removal logistics.

VI. FIRST CLAIM FOR RELIEF

Detention in Violation of 8 U.S.C. § 1231(a)(6) as Construed in *Zadvydas v. Davis*

46. Petitioner incorporates by reference all preceding paragraphs.

47. Petitioner is detained under 8 U.S.C. § 1231(a)(6).

48. *Zadvydas v. Davis*, 533 U.S. 678 (2001), construes § 1231(a)(6) to authorize detention only for a period reasonably necessary to bring about the noncitizen's removal. After six months of post-final-order detention, the statute does not authorize continued detention where there is no significant likelihood of removal in the reasonably foreseeable future.

49. Petitioner has provided good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future: he is stateless for purposes of removal, holds no passport, has no country willing to accept him, and DHS's attempt to remove him to Mexico failed. His prior prolonged detention by DHS in Denver, which ended without removal, further confirms that the obstacles are structural and not transient.

50. Although Petitioner's current continuous detention has not yet reached six months, his aggregate civil immigration detention by DHS substantially exceeds one year, and the same removal-related obstacles persist. The Court should consider the totality of his civil detention in evaluating the reasonableness of continued confinement. At a minimum, the Court should declare that Respondents bear the burden under *Zadvydas* now and direct release in the absence

of a particularized showing of significant likelihood of removal in the reasonably foreseeable future.

51. Respondents cannot meet their burden under *Zadvydas* to come forward with evidence sufficient to rebut Petitioner's showing.

52. Petitioner's continued detention therefore exceeds the authority conferred by § 1231(a)(6) and entitles him to release under conditions of supervision pursuant to 8 U.S.C. § 1231(a)(3).

VII. SECOND CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fifth Amendment

53. Petitioner incorporates by reference all preceding paragraphs.

54. The Due Process Clause of the Fifth Amendment applies to all persons within the United States, including noncitizens such as Petitioner. *Zadvydas*, 533 U.S. at 693. Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty that Clause protects. Id. at 690.

55. Civil immigration detention that is not reasonably related to its purported purpose, effecting removal, violates substantive due process. Where there is no significant likelihood of removal in the reasonably foreseeable future, continued detention is not reasonably related to that purpose.

56. Petitioner's removal is not reasonably foreseeable. He is stateless for purposes of removal, has no passport, has no country willing to accept him, and DHS's attempt to remove him to Mexico has already failed. His prior prolonged detention without removal, taken together with his current confinement and the same persistent removal obstacles, confirms that no length of continued detention will produce removal.

57. The Government has no constitutionally adequate interest in detaining Petitioner indefinitely when removal cannot occur. Conditions of supervision under 8 U.S.C. § 1231(a)(3) are fully adequate to address any legitimate governmental interest.

58. Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Assume jurisdiction over this matter;

B. Issue a writ of habeas corpus directing Respondents to release Petitioner from custody under appropriate conditions of supervision pursuant to 8 U.S.C. § 1231(a)(3);

C. In the alternative, order Respondents to demonstrate, within a date certain set by this Court, a significant likelihood of Petitioner's removal

in the reasonably foreseeable future, and, absent such a showing, order his release under conditions of supervision;

D. Declare that Petitioner's continued detention is unauthorized by 8 U.S.C. § 1231(a)(6) as construed in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and violates the Due Process Clause of the Fifth Amendment;

E. Order an expedited hearing on this Petition given that Petitioner remains in physical custody;

F. Award Petitioner reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable provision of law;

G. Retain jurisdiction over this action pending Respondents' full compliance with the Court's orders; and

H. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted on May 26, 2026

/s/ Marcelo Gondim
Marcelo Gondim (CA SBN 271302)
GONDIM LAW CORP.
1880 Century Park East, Suite 400
Los Angeles, CA 90067
Telephone: (323) 282-7770
Email: court@gondim-law.com
Attorney for Petitioner

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

I represent Petitioner, Mohamed Hussein Moustapha-Daghmash, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

May 29, 2026.

/s/ Marcelo Gondim

Marcelo Gondim (SBN 271302)
Gondim Law Corp.
1880 Century Park East, Suite 400
Los Angeles, CA 90067
Telephone: 323-282-777
Email: court@gondim-law.com

Attorneys for Petitioner