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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MOHAMED HUSSEIN MOUSTAPHA-DAGHMASH, *Petitioner*, v. CHRISTOPHER J. LAROSE, et al., *Respondents*.	Case No.: 26-cv-03317-BJC-JAC PETITIONER'S TRAVERSE TO RESPONDENTS' RETURN; REQUEST FOR ORDER DIRECTING IMMEDIATE RELEASE

I. INTRODUCTION

Respondents' Return resolves this case. Confronted with the Petition's showing that Petitioner is a stateless noncitizen whom no country will accept, Respondents do not dispute it. To the contrary, they concede that counsel is "unable to ascertain sufficient facts at this time to establish that there is a significant likelihood of removal in the reasonably foreseeable future," and they "acknowledge that Petitioner is entitled to be released from custody subject to conditions of

supervision." Return 2 (citing *Zadvydas v. Davis*, 533 U.S. 678 (2001), and 8 U.S.C. § 1231(a)(3)).That concession is dispositive. The single question *Zadvydas* poses—whether there is a significant likelihood of removal in the reasonably foreseeable future—has been answered by Respondents themselves, in the negative. Nothing remains for the Court to adjudicate except entry of an order directing Petitioner's release. Because Petitioner remains in physical custody each day that release is delayed, and because 28 U.S.C. § 2243 commands that habeas relief issue "forthwith," Petitioner respectfully asks the Court to order his immediate release under conditions of supervision pursuant to 8 U.S.C. § 1231(a)(3), with the terms of supervision to be set by ICE.

II. THE RETURN CONCEDES THE ONLY CONTESTED ISSUE, AND PETITIONER IS ENTITLED TO RELEASE

Under *Zadvydas*, post-final-order detention under 8 U.S.C. § 1231(a)(6) is authorized only for a period reasonably necessary to effect removal. 533 U.S. at 699–701. Once a detainee provides good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing," and if it cannot, continued detention is not authorized. *Id.* at 701.Respondents have not attempted that rebuttal showing. They have conceded that they cannot make it: counsel is "unable to

ascertain sufficient facts at this time to establish that there is a significant likelihood of removal in the reasonably foreseeable future." Return 2. The Government's own filing thus establishes the dispositive fact—that Petitioner's removal is not significantly likely in the reasonably foreseeable future—and forecloses any argument that his detention remains authorized under § 1231(a)(6).The record confirms why. Petitioner is stateless for purposes of removal; he holds no passport; no country has agreed to accept him; and DHS's effort to return him through Mexico did not succeed. Respondents' own Exhibit 1 is an Immigration Judge's order from the Aurora, Colorado Immigration Court in the *Matter of Moustapha-Daghmash*, No. A076-021-805—confirming that the order under which Petitioner is now held is long-standing and that the obstacles to his removal are structural rather than transient. Respondents do not contend otherwise.

Because Respondents concede the merits, the Court need not resolve the parties' competing accounts of how Petitioner came into custody, nor decide whether his detention is measured from February 5, 2026, alone or in the aggregate with his prior period of DHS detention. On any view of those questions, the Government's concession that removal is not significantly likely controls, and § 1231(a)(6) does not authorize Petitioner's continued confinement.

III. NOTHING IN THE RETURN JUSTIFIES CONTINUED DETENTION OR ANY DELAY IN RELEASE

Having conceded that Petitioner must be released, Respondents identify no basis for keeping him in custody another day. Their Return cites *Ba v. Lyons*, No. 25-cv-2871-CAB-BJW, 2026 WL 218936 (S.D. Cal. Jan. 27, 2026), and *Khachikian v. Casey*, No. 25-cv-3737-GPC-JLB (S.D. Cal. Jan. 13, 2026), for the propositions that "the habeas statute does not empower courts to manage ICE supervision programs" and that "ICE has discretion to impose conditions on release." Return 2. Petitioner does not dispute either proposition, and neither supports continued detention.

Those authorities address who fixes the conditions of supervised release—not whether release must occur. Petitioner does not ask this Court to design or administer ICE's supervision program as a general matter. He asks only for what *Zadvydas* requires and what Respondents concede he is owed: an order directing his release from physical custody. Consistent with the very authorities Respondents cite, ICE may set the ordinary conditions of that supervision under 8 U.S.C. § 1231(a)(3) and 8 C.F.R. § 241.13(h)—but, as explained in Section IV below, that discretion does not reach GPS electronic monitoring, which would merely continue the custody the Government concedes it cannot justify. The Government's

reservation about who manages supervision is therefore no obstacle to the only relief Petitioner seeks—an order ending his unlawful detention. Nor does the Return's account of how Petitioner came into custody warrant a different result. Respondents state that after his removal order became final, Petitioner departed to Mexico and was taken into custody when he sought admission at the Otay Mesa Port of Entry. Return 1. Whatever the precise procedural path, Respondents agree that Petitioner is detained under 8 U.S.C. § 1231(a), that *Zadvydas* governs, and that release is required. If anything, that account reinforces Petitioner's showing: it confirms that there is no country to which he can be removed—including Mexico, the very country to which DHS attempted to send him.

Finally, the timing of relief is not a matter of open-ended discretion. Section 2243 commands that the court "shall forthwith award the writ or issue an order" to show cause and shall "dispose of the matter as law and justice require." 28 U.S.C. § 2243. Where, as here, the Government concedes that a detainee is entitled to release, no interest of "law and justice" is served by prolonging his confinement. Each additional day of detention is an additional day of liberty deprivation that the Government itself agrees is unwarranted.

IV. AN ORDER IMPOSING GPS MONITORING WOULD PERPETUATE THE CONSTRUCTIVE CUSTODY *ZADVYDAS* FORBIDS

Release under § 1231(a)(3) must be genuine release—not the substitution of one form of custody for another. The Supreme Court has long recognized that "custody" is not limited to physical incarceration. A person subject to "restraints on his liberty . . . not shared by the public generally" remains in custody for purposes of the writ. *Jones v. Cunningham*, 371 U.S. 236, 240 (1963). On that principle a parolee, *ibid.*, and a person released on his own recognizance, *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973), are each "in custody" despite the absence of physical confinement, because the Government retains control over their movements and the power to return them to detention. As the Court has put it, "our understanding of custody has broadened to include restraints short of physical confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004).

A GPS ankle monitor is precisely such a restraint. It subjects the wearer to continuous, around-the-clock governmental tracking of his location, constrains where he may go and when, and carries the ever-present threat that any deviation will be deemed a violation and answered with re-detention. That is direct governmental control over the wearer's movements—the hallmark of custody—and a restraint plainly "not shared by the public generally." *Jones*, 371 U.S. at 240.

That distinction controls here. *Zadvydas* authorizes detention under § 1231(a)(6) only for so long as it remains reasonably necessary to effect removal; once removal is no longer significantly likely in the reasonably foreseeable future, the statute authorizes no continued custody. 533 U.S. at 699–701. Respondents have conceded that removal is not significantly likely. The Government thus has no more authority to impose a custodial GPS restraint than it has to hold Petitioner within the walls of Otay Mesa—each is a form of the very confinement the statute no longer permits. An order of "release" subject to electronic monitoring would not vindicate the writ; it would perpetuate, in lesser degree, the same unlawful custody.

Accordingly, the order directing Petitioner's release should provide for release without GPS or other electronic location monitoring. Whatever discretion ICE retains to set the ordinary conditions of supervision under § 1231(a)(3), that discretion does not extend to a condition that is itself a continuation of custody over a person the Government concedes it has no authority to detain.

V. CONCLUSION

For the foregoing reasons, and in light of Respondents' concession, Petitioner respectfully requests that the Court:

A. Grant the Petition and issue a writ of habeas corpus directing Respondents to release Petitioner from physical custody forthwith, and

in no event later than forty-eight (48) hours after entry of the Court's order, under conditions of supervision to be set by ICE pursuant to 8 U.S.C. § 1231(a)(3) and 8 C.F.R. § 241.13(h), provided that those conditions shall not include GPS or other electronic location monitoring;

B. Declare that Petitioner's continued detention is not authorized 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;

C. Retain jurisdiction to ensure Respondents' prompt compliance with the order of release; and

D. Grant such other and further relief as the Court deems just and proper.

Dated: June 12, 2026

Respectfully submitted,

/s/ Marcelo Gondim

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CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Date: June 12, 2026

/s/ Marcelo Gondim

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