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6	IN THE UNITED STATES DISTRICT COURT	
7	FOR THE DISTRICT OF ARIZONA	
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10	Hisham Ahamad Kameal Shaban Ghalia,	CASE NO.
11	Petitioner, vs.	
12		PETITION UNDER 28 U.S.C. § 2254 FOR A WRIT OF HABEAS CORPUS BY A
13	Charles Garcia, ICE Deportation Officer;	PERSON IN FEDERAL CUSTODY
14	Martin E. Zelenka, Acting Assistant Field Office Director of ICE, Florence, Arizona;	
15	Katrina S. Kane, Field Office Director of ICE, Florence, Arizona;	
16 17	Michael Zackowski, Assistant Field Office Director of ICE, Phoenix, Arizona;	
18	Albert E. Carter, Acting Field Office Director of ICE, Florence, Arizona;	
19	Thomas Giles, Deputy Field Office Director of ICE, Phoenix, Arizona;	
20 21	Loretta Lynch, Attorney General of the United States of America;	
22	Jeh Charles Johnson, Secretary of the Department of Homeland Security;	
23	Respondents.	
24		
25	Petitioner, Hisham Ahamad Kameal Shaban Ghalia, petitions this Court for a writ of	
26	habeas corpus to remedy his unlawful detention by Respondents. In support of this petition	
27	Petitioner alleges as follows:	
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CUSTODY

1. Petitioner is in the physical custody of Respondents – the Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE). Petitioner is detained at the ICE Florence Service Process Center in Florence, Arizona. Petitioner is under the direct control of the Respondents and their agents.

JURISDICTION

- 2. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 1570, and the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq.
- 3. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. See Zadvydas v. Davis, 533 U.S. 678 (2001). This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

4. Venue is proper in this district because Petitioner's removal proceedings were held here and Petitioner is currently detained here. <u>See</u> 28 U.S.C. § 2241 <u>et. seq.</u>, and 28 U.S.C. § 1391(e).

PARTIES

5. Petitioner, Hisham Ahamad Kameal Shaban Ghalia, is a native of Saudi Arabia but is not a citizen of any country and is considered stateless. Mr. Ghalia entered into the United States on November 14, 2014 at the Nogales, Arizona Port of Entry and has been in the custody of ICE since his entry. Mr. Ghalia received a final order of removal on August 21, 2015. He has spent over 15 months in custody during the pendency of his immigration removal proceedings and subsequent post order of removal,

- 6. Respondent Charles Garcia is a Deportation Officer for ICE at the Florence Service Process Center in Florence, Arizona and has direct control over Mr. Ghalia. Charles Garcia is responsible for the detention of aliens in Florence, Arizona and is therefore a custodian of Mr. Ghalia.
- 7. Respondent Martin E. Zelenka is the Acting Assistant Field Officer Director of ICE at the Florence Service Process Center in Florence, Arizona and has direct control over Mr. Ghalia. Martin E. Zelenka is responsible for the detention of aliens in Florence, Arizona and is therefore a custodian of Mr. Ghalia.
- 8. Respondent Katrina S. Kane is the Field Office Director of ICE at the Florence Service Process Center in Florence, Arizona and has direct control over Mr. Ghalia. Katrina S. Kane is responsible for the detention of aliens in Florence, Arizona and is therefore a custodian of Mr. Ghalia.
- 9. Respondent Michael Zackowski is the Assistant Field Office Director of ICE in Phoenix, Arizona and is responsible for the detention of aliens held in Arizona. Therefore, Michael Zackowski is a custodian of Mr. Ghalia.
- 10. Respondent Albert E. Carter is the Acting Field Office Director of ICE at the Florence Service Process Center in Florence, Arizona and has direct control over Mr. Ghalia. Albert E. Carter is responsible for the detention of aliens in Florence, Arizona and is therefore a custodian of Mr. Ghalia.
- 11. Respondent Thomas Giles is the Deputy Field Office Director of ICE in Phoenix, Arizona and is responsible for the detention of aliens held in Arizona. Therefore, Thomas Giles is a custodian of Mr. Ghalia.
- 12. Respondent Loretta Lynch is the Attorney General of the United States and is responsible for the administration of ICE and the implementation and enforcement of the INA. As such, she has ultimate custodial authority over Mr. Ghalia.

13. Jeh Charles Johnson is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA and oversees ICE. Jeh Charles Johnson has ultimate custodial authority over Mr. Ghalia.

EXHAUSTION OF REMEDIES

14. Mr. Ghalia has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. After the Supreme Court decision in Zadvydas, the Department of Justice issued regulations governing the custody of aliens ordered removed. See 8 C.F.R § 241.4. Mr. Ghalia received final order of removal on date August 21, 2015. At his "90-day" custody review on or about date November 20, 2015, ICE decided to continue his detention. No statutory exhaustion requirements apply to Mr. Ghalia's claim of unlawful detention.

STATEMENT OF FACTS

- 15. Mr. Ghalia was born in Saudi Arabia, left at a young age, and is thus considered a native of Saudi Arabia despite leaving at a young age. Saudi Arabia did not give Mr. Ghalia any lawful status because his parents are natives of Gaza, Palestine. Mr. Ghalia has resided in Gaza, Palestine since his departure from Saudi Arabia.
- 16. On November 14, 2014, Mr. Ghalia entered the United States at the Nogales, Arizona Port of Entry after claiming asylum to United States Customs and Border Patrol Agents. Accordingly, Mr. Ghalia was taken into ICE custody. Prior to his entry, Mr. Ghalia has never attempted to unlawfully enter the United States.
- 17. During his detention Mr. Ghalia was served with a Notice to Appear dated December 1, 2014 after Mr. Ghalia established credible fear of persecution. The Notice to Appear alleged that Mr. Ghalia was a native of Saudi Arabia but is Stateless. See attached Exhibit A, Notice to Appear dated December 1, 2014.
- 18. During his immigration proceedings, Immigration Judge Coughlon affirmed the factual allegations made against Mr. Ghalia and found him to be inadmissible pursuant to INA §

212(a)(7)(A)(i)(I) and designated his country of removal as Saudi Arabia. Accordingly, Mr. Ghalia applied for Asylum.

- 19. On August 21, 2015, Immigration Judge Coughlon denied Mr. Ghalia's application for Asylum because Mr. Ghalia failed to meet his evidentiary burden due to his inability to obtain documents in support of his claim. Accordingly, Immigration Judge Coughlon ordered him removed from the United States to Saudi Arabia, or in the alternative, to Israel a country Mr. Ghalia has no ties to. Both Mr. Ghalia and DHS waived their rights to appeal the decision. See attached Exhibit B, Order of the Immigration Judge dated August 21, 2015.
- 20. While in post removal order custody, Mr. Ghalia's detention status was reviewed by ICE on or about November 20, 2015 pursuant to Post-Order Custody Review procedures at 8 C.F.R. § 241.4. In a letter dated November 20, 2015, Respondent Albert E. Carter, on behalf of ICE, denied Mr. Ghalia's request for release stating that he was unable to conclude that Mr. Ghalia would not be a flight risk or that Mr. Ghalia would be able to comply with the requirements of an Order of Supervision. Respondent Albert E. Carter failed to specify the basis of his conclusion. See attached Exhibit C, Decision to Continue Detention dated November 20, 2015.
- 21. Mr. Ghalia has fully cooperated in all efforts to obtain travel documents to effectuate his removal from the United States.
- 22. To Mr. Ghalia's knowledge, the governments of Saudi Arabia and Israel have not issued travel documents for him. Additionally, neither ICE nor the governments of Saudi Arabia and Israel have provided any indication that they would accept Mr. Ghalia in the reasonably foreseeable future.

¹ Though under <u>Zadvydas</u>, Petitioner has the right to be free from indefinite detention regardless of whether ICE considers him a danger to the community or a flight risk, Mr. Ghalia contests ICE's determination.

- 23. It is unlikely that Mr. Ghalia will be removed to Saudi Arabia in the foreseeable future because Mr. Ghalia left Saudi Arabia at a young age and has no lawful status in Saudi Arabia because his parents are natives of Gaza, Palestine. More than six months has passed since Mr. Ghalia's order of deportation and Saudi Arabia has yet to accept his repatriation.
- 24. It is unlikely that Mr. Ghalia will be removed to Israel in the foreseeable future because Mr. Ghalia is citizen of Gaza, Palestine a government that Israel maintains a hostile relationship with and does not recognize. Furthermore, Mr. Ghalia has no ties with and has never visited Israel. More than six months has passed since Mr. Ghalia's order of removal and Israel has yet to accept his repatriation.
- 25. To date, ICE has been unable to remove Mr. Ghalia to Saudi Arabia or Israel and they are unlikely to do so in the foreseeable future. Without intervention from this Court, Mr. Ghalia will face continued indefinite detention.

EQUAL ACCESS TO JUSTICE ACT

26. If he prevails, Mr. Ghalia will seek attorneys' fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

LEGAL FRAMEWORK FOR RELIEF SOUGHT

27. Mr. Ghalia is in custody pursuant to INA § 241(a)(6), 8 U.S.C. § 1231(a)(6). Under INA § 241(a)(1), 8 U.S.C. § 1231(a)(1), ICE shall remove aliens within 90 days of receiving an administrative final order of removal. Further, for aliens who have entered the United States and have received a final order of removal, INA § 241 has been interpreted by the Supreme Court in Zadvydas to only authorize continued detention for a period reasonably necessary to secure the alien's removal. See Zadvydas, 533 U.S. at 699-700. In Clark v. Martinez, 543 U.S. 371 (2005), the Supreme Court held that its ruling in Zadvydas that six months is the presumptively reasonable period for removal in most cases. See id. at 701. Mr. Ghalia's order of removal became final on August 21, 2015 while in ICE custody since November 14, 2014. Therefore, his 90 day statutory removal period ended on November 20, 2015 and his six month presumptive removal period under Zadvydas ended February 17, 2016.

- 28. Mr. Ghalia's deportation cannot be effectuated by ICE
- 29. Mr. Ghalia's continued detention is unconstitutional.
- 30. In <u>Zadvydas</u>, the Supreme Court recognized that aliens released from custody pursuant to <u>Zadvydas</u> would be subject to orders of supervision, and would be subject to conditions amounting to "supervised release." <u>See Zadvydas</u>, 533 U.S. at 696.

COUNT ONE

STATUTORY VIOLATION

- 31. Mr. Ghalia re-alleges and incorporates by reference paragraphs 1-30 above.
- 32. Respondents' continued detention of Mr. Ghalia is unlawful and contravenes 8 U.S.C. § 1231(a) as interpreted by the Supreme Court in Zadvydas and Clark v. Martinez. Mr. Ghalia has not been removed and continues to languish in detention. He has been detained for a period of time that is over the presumptively reasonable period of six months and statutorily permitted 90-day period for ordinary circumstances. Mr. Ghalia's removal to Saudi Arabia, Israel, or any other country is not significantly likely to occur in the reasonably foreseeable future. Accordingly, Respondents' continued detention of Mr. Ghalia is contrary to statute.

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

- 33. Mr. Ghalia re-alleges and incorporates by reference paragraphs 1-32 above.
- 34. Mr. Ghalia's continued detention violates his right to substantive due process by depriving him of his core liberty interest to be free from bodily restraint. The Due Process Clause requires that the deprivation of Mr. Ghalia's liberty by narrowly tailored to serve a compelling government interest. While the Respondents' would have a compelling government interest in detaining Mr. Ghalia in order to effect his removal, that interest does not exist if Mr. Ghalia cannot be removed from the United States. Zadvydas interpreted INA § 241 to allow continued detention only for a period reasonably necessary to secure the alien's removal because any other reading would go beyond the government's articulated interest to effect the alien's removal.

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

- 35. Mr. Ghalia re-alleges and incorporates by reference paragraphs 1-34 above.
- 36. Under the Due Process Clause of the United States Constitution, an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. Mr. Ghalia has been denied that opportunity. There is no administrative mechanism in place for Mr. Ghalia to demand a decision, ensure that a decision will ever be made, or appeal a panel review determination that violates Zadvydas.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
- 3) Pursuant to 28 U.S.C. § 2243 issue an order directing Respondents to show cause why the writ of habeas corpus should not be granted;
- 4) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petition from custody, under reasonable conditions of supervision;
- 5) Order Respondents to refrain from transferring the Petitioner outside of this judicial district during the pendency of these proceedings and while the Petitioner remains in Respondents' custody;
- 6) Award Petitioner attorney's fees and costs under the EAJA and any other basis justified under law; and
 - 7) Grant any other and further relief as the Court deems just and proper.

Respectfully submitted this 20th day of February, 2016.

THE LAW OFFICE OF ZAYED AL-SAYYED, PLLC

/s/Zayed Al-Sayyed Zayed A. Al-Sayyed Attorney for Petitioner

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Verification by someone acting on Petitioner's behalf pursuant to 28 U.S.C. § 2242 I am submitting this verification on behalf of Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the attached Petitioner for Write of Habeas Corpus are true and correct to the best of my knowledge. Dated: February 20, 2016 /s/Zayed Al-Sayyed Zayed A. Al-Sayyed Attorney for Petitioner