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9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11  
12 **FOR THE DISTRICT OF ARIZONA**  
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14 Hisham Ahamad Kameal Shaban Ghalia,  
15 Petitioner,

16 vs.

17 Charles Garcia, ICE Deportation Officer;  
18 Martin E. Zelenka, Acting Assistant Field  
19 Office Director of ICE, Florence, Arizona;  
20 Katrina S. Kane, Field Office Director of ICE,  
21 Florence, Arizona;  
22 Michael Zackowski, Assistant Field Office  
23 Director of ICE, Phoenix, Arizona;  
24 Albert E. Carter, Acting Field Office Director  
25 of ICE, Florence, Arizona;  
26 Thomas Giles, Deputy Field Office Director of  
27 ICE, Phoenix, Arizona;  
28 Loretta Lynch, Attorney General of the United  
States of America;  
Jeh Charles Johnson, Secretary of the  
Department of Homeland Security;  
Respondents.

**CASE NO.**

**PETITION UNDER 28 U.S.C. § 2254 FOR  
A WRIT OF HABEAS CORPUS BY A  
PERSON IN FEDERAL CUSTODY**

Petitioner, Hisham Ahamad Kameal Shaban Ghalia, petitions this Court for a writ of habeas corpus to remedy his unlawful detention by Respondents. In support of this petition, 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. See 28 U.S.C. § 2241 et. seq., 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,

1           6.       Respondent Charles Garcia is a Deportation Officer for ICE at the Florence  
2 Service Process Center in Florence, Arizona and has direct control over Mr. Ghalia. Charles  
3 Garcia is responsible for the detention of aliens in Florence, Arizona and is therefore a custodian  
4 of Mr. Ghalia.

5           7.       Respondent Martin E. Zelenka is the Acting Assistant Field Officer Director of  
6 ICE at the Florence Service Process Center in Florence, Arizona and has direct control over Mr.  
7 Ghalia. Martin E. Zelenka is responsible for the detention of aliens in Florence, Arizona and is  
8 therefore a custodian of Mr. Ghalia.

9           8.       Respondent Katrina S. Kane is the Field Office Director of ICE at the Florence  
10 Service Process Center in Florence, Arizona and has direct control over Mr. Ghalia. Katrina S.  
11 Kane is responsible for the detention of aliens in Florence, Arizona and is therefore a custodian  
12 of Mr. Ghalia.

13           9.       Respondent Michael Zackowski is the Assistant Field Office Director of ICE in  
14 Phoenix, Arizona and is responsible for the detention of aliens held in Arizona. Therefore,  
15 Michael Zackowski is a custodian of Mr. Ghalia.

16           10.      Respondent Albert E. Carter is the Acting Field Office Director of ICE at the  
17 Florence Service Process Center in Florence, Arizona and has direct control over Mr. Ghalia.  
18 Albert E. Carter is responsible for the detention of aliens in Florence, Arizona and is therefore a  
19 custodian of Mr. Ghalia.

20           11.      Respondent Thomas Giles is the Deputy Field Office Director of ICE in Phoenix,  
21 Arizona and is responsible for the detention of aliens held in Arizona. Therefore, Thomas Giles  
22 is a custodian of Mr. Ghalia.

23           12.      Respondent Loretta Lynch is the Attorney General of the United States and is  
24 responsible for the administration of ICE and the implementation and enforcement of the INA.  
25 As such, she has ultimate custodial authority over Mr. Ghalia.



1 212(a)(7)(A)(i)(I) and designated his country of removal as Saudi Arabia. Accordingly, Mr.  
2 Ghalia applied for Asylum.

3 19. On August 21, 2015, Immigration Judge Coughlon denied Mr. Ghalia's  
4 application for Asylum because Mr. Ghalia failed to meet his evidentiary burden due to his  
5 inability to obtain documents in support of his claim. Accordingly, Immigration Judge Coughlon  
6 ordered him removed from the United States to Saudi Arabia, or in the alternative, to Israel – a  
7 country Mr. Ghalia has no ties to. Both Mr. Ghalia and DHS waived their rights to appeal the  
8 decision. See attached Exhibit B, Order of the Immigration Judge dated August 21, 2015.

9 20. While in post removal order custody, Mr. Ghalia's detention status was reviewed  
10 by ICE on or about November 20, 2015 pursuant to Post-Order Custody Review procedures at 8  
11 C.F.R. § 241.4. In a letter dated November 20, 2015, Respondent Albert E. Carter, on behalf of  
12 ICE, denied Mr. Ghalia's request for release stating that he was unable to conclude that Mr.  
13 Ghalia would not be a flight risk or that Mr. Ghalia would be able to comply with the  
14 requirements of an Order of Supervision. Respondent Albert E. Carter failed to specify the basis  
15 of his conclusion.<sup>1</sup> See attached Exhibit C, Decision to Continue Detention dated November 20,  
16 2015.

17 21. Mr. Ghalia has fully cooperated in all efforts to obtain travel documents to  
18 effectuate his removal from the United States.

19 22. To Mr. Ghalia's knowledge, the governments of Saudi Arabia and Israel have not  
20 issued travel documents for him. Additionally, neither ICE nor the governments of Saudi Arabia  
21 and Israel have provided any indication that they would accept Mr. Ghalia in the reasonably  
22 foreseeable future.

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



1 28. Mr. Ghalia’s deportation cannot be effectuated by ICE

2 29. Mr. Ghalia’s continued detention is unconstitutional.

3 30. In Zadvydas, the Supreme Court recognized that aliens released from custody  
4 pursuant to Zadvydas would be subject to orders of supervision, and would be subject to  
5 conditions amounting to “supervised release.” See Zadvydas, 533 U.S. at 696.

6 **COUNT ONE**

7 **STATUTORY VIOLATION**

8 31. Mr. Ghalia re-alleges and incorporates by reference paragraphs 1-30 above.

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

16 **COUNT TWO**

17 **SUBSTANTIVE DUE PROCESS VIOLATION**

18 33. Mr. Ghalia re-alleges and incorporates by reference paragraphs 1-32 above.

19 34. Mr. Ghalia’s continued detention violates his right to substantive due process by  
20 depriving him of his core liberty interest to be free from bodily restraint. The Due Process Clause  
21 requires that the deprivation of Mr. Ghalia’s liberty be narrowly tailored to serve a compelling  
22 government interest. While the Respondents’ would have a compelling government interest in  
23 detaining Mr. Ghalia in order to effect his removal, that interest does not exist if Mr. Ghalia  
24 cannot be removed from the United States. Zadvydas interpreted INA § 241 to allow continued  
25 detention only for a period reasonably necessary to secure the alien’s removal because any other  
26 reading would go beyond the government’s articulated interest to effect the alien’s removal.

27 **COUNT THREE**

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**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 Petitioner 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 20<sup>th</sup> 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