UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

AHMER SHAIKH
A# [redacted]

Petitioner,

VERSUS

TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; RUSSEL HOTT, Field Office Director, Office of Enforcement and Removal, U.S. Immigration and Customs Enforcement; KENNETH GENALO, Acting Executive Associate Director, Enforcement and Removal Operations; KRISTI NOEM, Secretary, Department of Homeland Security; and PAMELA J BONDI, Attorney General

Respondents

Civ. No. _____

Petition for a Writ of Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Petitioner, Ahmer Altaf Shaikh, by and through undersigned counsel, hereby petitions this Court for a writ of habeas corpus to remedy his unlawful detention, and to enjoin his continued unlawful detention by the Respondents. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

SUMMARY OF CLAIM

1. The petitioner's detention is not authorized under 8 U.S.C §1231(a)(6) because his removal to Pakistan is not significantly likely to occur in the reasonably foreseeable future

2 Additionally, even if the petitioner's detention is still authorized by statute, the petitioner's prolonged detention without an individualized bail hearing with sufficient procedural safeguards is a violation of the Due Process Clause of the U.S. Constitution because his removal

is not imminent.

3 Petitioner's removal is not reasonably foreseeable, and his continued detention is therefore unreasonable and impermissible under section 1231(a)(6) of the United States Code ("USC") as interpreted by the United States Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) Because Petitioner's continued detention violates the laws and Constitution of the United States, he seeks immediate release from ICE custody

4 Removal is unlikely as the U.S. government enacted visa sanctions against Pakistan in 2019 for its failure to reasonably and timely cooperate with the removal of its citizens from the United States Those sanctions remain in place. Further, while the government has been able to remove some Pakistani citizens in the last year, they have not been able to effectuate the removal for all Pakistani citizens. Petitioner has been waiting for removal for several years to no avail.

CUSTODY

5 The Petitioner is in the physical custody of Enforcement and Removal Operations ("ERO"), a sub-bureau within Immigration and Customs Enforcement ("ICE")[1], which is a bureau within the Department of Homeland Security ("DHS"). The Petitioner is currently detained at Farmville Detention Center at 508 Waterworks Rd, Farmville, VA 23901. Petitioner is accordingly under the direct control of Respondents and their agents.

JURISDICTION

6. The Court has jurisdiction under 28 U S.C. §1331 (federal question), §1346(a)(2) (United States as defendant), and §2241 (habeas)

7. The Court may grant relief pursuant to the U.S. Const., Art. I, §9, Cl 2 (suspension clause), 28 U.S.C. §1651 (All Writs Act), 28 U.S.C. §§2201-02 (declaratory relief), and 28 U.S.C

[1] Note that "ICE" also refers, for purposes of this petition, to its predecessor, the Immigration and Naturalization Service

§2241 (habeas corpus).

8. Additionally, "the primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases." *Zadvydas v Davis*, 533 U S 678, 687 (2001)

VENUE

9 Venue is proper in this district because the petitioner is detained at the Farmville Detention Center in Farmville, Virginia (Appx , Exh. A, at 1.), and because this is the district where the "the custodian can be reached by service of process." *Rasul v Bush*, 542 U.S. 466, 478-79 (2004).

PARTIES

10. The petitioner Ahmer Altaf Shaikh is an alien currently detained by the respondents at the Farmville Detention Center in Farmville, Virginia

11. Russel Hott is sued in his official capacity as the Field Office Director for the U.S. Immigration and Customs Enforcement (ICE) Washington, D.C Field Office In this capacity, he has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is therefore the petitioner's custodian

12. Kenneth Genalo is sued in his official capacity as the Acting Executive Associate Director for Enforcement and Removal Operations (ERO). Respondent Genalo is charged with managing the detention of aliens and the completion of final order removals. In this official capacity, Genalo is also a legal custodian of Petitioner.

13. Respondent Todd M Lyons is the Acting Director of ICE, a bureau within the Department of Homeland Security ("DHS"). Respondent Lyons is charged with administration of ICE, which investigates and enforces the Immigration and Nationality Act Respondent Lyons is

charged with the responsibility over all immigration-related detainees in the United States, including the Petitioner Respondent Lyons is being sued in his official capacity.

14. Respondent Kristi Noem is the Secretary of DHS. DHS is a cabinet department responsible for protecting the United States from public security threats. Respondent Noem is charged with the administration of DHS and implementation of the Immigration and Nationality Act. Respondent Noem has ultimate responsibility for all immigration-related detainees in the United States, including the Petitioner Respondent Noem is being sued in her official capacity

EXHAUSTION OF REMEDIES

15. Mr. Shaikh 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's decision in *Zadvydas*, Attorney General Ashcroft issued a memorandum outlining how such aliens may seek release from custody pursuant to *Zadvydas*. *See* Memorandum, John Ashcroft, Attorney General, July 19, 2001: *Post-Order Custody Review After Zadvydas v. Davis*, 66 Fed. Reg. 38,433 (2001) ("Ashcroft Memorandum"). Under the procedures of the Ashcroft Memorandum, the Petitioner filed a written request for release from custody with ICE in June 2021 and again in September 2021 In response to the June 2021 request, Petitioner was notified that ICE was waiting for travel documents from Pakistan and would not be releasing him at that time In September 2021 in anticipation of Petitioner's 180-day custody review, Petitioner asked for his release and requested review of his case by ICE Headquarters Post-Order Detention Unit ("HQPDU") Neither the Ashcroft Memorandum nor ICE's previous custody review procedures at 8 C F.R. § 241.4 provide another method of obtaining or appealing a custody review decision. No statutory exhaustion

requirements apply to Petitioner's claim of unlawful detention.

FACTUAL ALLEGATIONS

16 The petitioner is a native and citizen of Pakistan.

17 The petitioner has lived in the United States since he was about seventeen years old. He held lawful permanent residence in the United States from the late 1980's until his removal order became final on March 31, 2021. Petitioner has several U.S. citizen children, including an adult child serving in the U.S. Marine Corps. He also has several U.S. citizen siblings all of whom live in the Northern Virginia area, where Petitioner also resided prior to being detained.

18. After serving a twenty year criminal sentence at the Coffeewood Correctional Center in Mitchels, Virginia, Petitioner was taken into custody by immigration authorities on or about July 9, 2020. Thereafter, her was held in detention, applied for relief before the immigration court and that relief was denied then appealed. On March 31, 2021, the Board of Immigration Appeals upheld the Immigration Judge's decision to deny Petitioners application for relief making his removal order final. *See Dormescar v U.S Att'y Gen.*, 690 F. 3d 1258, 1260 (CA11 2012) (explaining merger of deportation proceedings into removal proceedings). Pursuant to this final order, Petitioner was ordered removed to Pakistan. (Appx , Exh. B.)

19. Petitioner remained in civil immigration custody from July 9, 2020 until July 15, 2022 when he was released on an order of supervision by ERO. He remained released living in Virginia with his wife and family from that time until he was re-detained by ERO on May 2, 2025. He is currently being held by the respondents at the Farmville Detention Center, Farmville, Virginia. (Appx., Exh. A.)

20. Petitioner's custody status was reviewed by respondents and respondents chose to re-detain him despite the absence of violations of his order of supervision, not yet securing a travel

document from Pakistan, and the U.S. Department of Homeland Security implementing visa sanctions against Pakistan in 2019 due to Pakistan's failure to timely cooperate with the removal of their citizens from the United States.

21. Upon his detention, Petitioner was informed that respondents secured a travel document from Pakistan for him Thereafter, Petitioner had the opportunity to review the travel document, and it included identity information for a person other than the Petitioner. It appears to be the same travel document that respondents attempted to present in September 2021 which was found to not actually be Petitioner Specifically, Petitioner's name, place of birth, permanent address in Pakistan, and Petitioner's father's name were all incorrect Undersigned counsel has requested a copy of the travel document to once again examine it, but that request has yet to be responded to.

22 As of the date of this filing, Petitioner has been held 476 days since his removal order became final. Further it has been 1498 days since Petitioner's removal order became final and the respondents have yet to secure a valid travel document.

STATUTORY AND REGULATORY FRAMEWORK FOR REMOVAL DETENTION

23 "When an alien has been found to be unlawfully present in the United States and a final order of removal has been entered, the Government ordinarily secures the alien's removal during a subsequent 90-day statutory 'removal period,' during which time the alien normally is held in custody " *Zadvydas v Davis*, 533 U.S. 678, 682 (2001); 8 U.S.C. §1231(a)(1).

24. During the 90-day removal period, detention is mandatory. *Zadvydas*, 533 U.S., at 683 (citing 8 U S.C. §1231(a)(2)); 8 U S.C. §1231(a)(1).

25. The 90-day removal period "begins on the date the removal order becomes administratively final or, if the order is judicially reviewed and the court enters a stay, the date of

the court's final order." *Singh v. U.S Att'y Gen.*, 945 F 3d 1310, 1313 (CA11 2019) (citing 8 U S C §§1231(a)(1)(B)(i), (ii))

26 However, "[t]he 90-day removal period shall be extended, and the noncitizen may remain in detention, if the noncitizen (1) 'fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure' or (2) 'conspires or acts to prevent the alien's removal.' " *Singh*, 945 F. 3d, at 1313 (citing 8 U S C. §1231(a)(1)(C)); accord 8 CFR §241.4(g)(5).

27. Following the completion of the 90-day removal period, the immigration agencies may use discretionary detention authority to effectuate an alien's removal. *Zadvydas*, 533 U.S., at 683 ("Subsequently, as the post-removal-period statute provides, the Government 'may' continue to detain an alien who still remains here or release that alien under supervision.") (citing 8 U S C. §1231(a)(6)).

28. When the agency discretionarily detains an alien beyond the removal period under 8 U.S.C. §1231(a)(6), it must do so "pursuant to the procedures described in" its discretionary detention regulation. 8 CFR §241 4(a).

I. General regulatory requirements.

29. Under these regulations, the agency conducts periodic custody determinations that involve the weighing of numerous factors outlined at §241 4(f). But, before making a release determination, the agency must make certain conclusions required by §241.4(e).

30 These regulations place the burden on the detainee to show that "his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal from the United States." §241.4(d)(1).

31 These regulations require that "[a] copy of any decision" "to release or to detain an

alien shall be provided to the alien" §241.4(d). Further, "[a]ll notices, decisions, or other documents in connection with the custody reviews" "shall be served on the alien." §241 4(d)(2). "Copies of all such documents will be retained in the alien's record." §241.4(d)(2).

32. Where release is granted, the agency has discretion to impose conditions on that release, including placement with sponsors, or in an approved halfway house, mental health project, or community project. §§241.4(j)(1), (2).

33. Release may be revoked based on a violation of conditions or other reasons, and is also subject to an informal interview and custody review. §241.4(l)

II. Bifurcated custody review scheme.

34 The agency's obligation to conduct periodic custody determinations has been delegated in a two-step manner §241.4(c).

35 First, local officers conduct the "initial custody determination" in accordance with §241.4(h) and they can conduct "any further custody determination concluded in the 3 month period immediately following the expiration of the 90–day removal period" §241 4(c)(1); accord §241 4(k)(1)(i), (ii)

36. The local officers' initial jurisdiction over custody reviews coincides with the "presumptively reasonable period" of "six months" under *Zadvydas* that "include[s] the 90-day removal period plus 90 days thereafter." *Akinwale v Ashcroft*, 287 F 3d 1050, 1052 (CA11 2002).

37 These local officers must maintain a record, as the regulations require that they "shall maintain appropriate files respecting each detained alien reviewed for possible release" §241 4(c).

38. The local officers conduct "the initial custody review," as well as "a records review prior to the expiration of the removal period." §241.4(h)(1). This review "will consist of a review

of the alien's records and any written information submitted" by the detainee, and may include "a personal or telephonic interview with the alien as part of this custody determination." §241.4(h)(1).

39. As to the record review prior to the expiration of the removal period, the agency must give the alien "written notice" and an opportunity to "submit information in writing in support of his or her release" "approximately 30 days in advance of the pending records review." §241.2(h)(2).

40. Written notice of the local officer's decision must be given to the detainee. §§241.2(h)(4), (k)(1)(i)

41. Second, "[f]or any alien the [local officer] refers for further review after the removal period, or any alien who has not been released or removed by the expiration of the three-month period after the review, all further custody determinations will be made by the Executive Associate Commissioner, acting through the HQPDU," in Washington, D.C. §241.4(c)(2).

42. This headquarters review also includes the maintenance of a record. §241.4(c)(3).

43. In referral cases, headquarters is required to give "approximately 30 days notice of this further review, which will ordinarily be conducted by the expiration of the removal period or as soon thereafter as practicable." §241.4(k)(2)(i).

44. Additionally, following the expiration of the presumptively reasonable *Zadvydas* period (three months of detention after expiration of the removal period), jurisdiction transfers to headquarters for custody reviews. §241.4(k)(2)(ii).

45. The headquarters review process is divided between Review Panels (designated by the HQPDU Director) which make recommendations to the Executive Associate Commissioner who makes the determinations. §§241.4(i)(1), (5), (6).

46. The recommendation shall be in writing and based on a review of the record §241.4(i)(2).

47. If release is not recommended, or if a recommendation of release is not accepted, "a Review Panel shall personally interview the detainee," §241.4(i)(3)(i), during which the detainee may be assisted by counsel and can submit evidence as a basis for release, §241.4(i)(3)(ii).

48. "Following completion of the interview and its deliberations, the Review Panel shall issue a written recommendation that the alien be released or remain in custody pending removal or further review," which "shall include a brief statement of the factors that the Review Panel deems material to its recommendation." §241.4(i)(5).

49. Afterward, "[t]he Executive Associate Commissioner shall consider the recommendation and appropriate custody review materials and issue a custody determination." §241.4(i)(6).

50. In continued detention cases, "[a] subsequent review shall ordinarily be commenced for any detainee within approximately one year of a decision by the Executive Associate Commissioner declining to grant release " §241.4(k)(2)(iii).

51. However, a detainee can make written requests for a release determination every three months, with the burden of demonstrating "a material change in circumstances," to which headquarters must respond "in writing within approximately 90 days." §241.4(k)(2)(iii)

52. Headquarters need not strictly abide by these scheduled review periods. §§241.4(k)(2)(iv), (v) In cases of postponement of review by headquarters, "[t]he decision and reasons for the delay shall be documented in the alien's custody review file or A file, as appropriate." §241.4(k)(3).

III. Steps for securing removal or release due to unlikely removal.

53. During post-removal order detention, the local officers "shall continue to undertake appropriate steps to secure travel documents for the alien both before and after the expiration of the removal period " §241.4(g)(2).

54. If the local officers are "unable to secure travel documents within the removal period, [they] shall apply for assistance from" headquarters. §241.4(g)(2).

55. "In making a custody determination, the [agency] shall consider the ability to obtain a travel document for the alien " §241.4(g)(3)

56. The regulations also provide that "[t]he [agency's] determination that receipt of a travel document is likely may by itself warrant continuation of detention pending the removal of the alien from the United States " §241 4(g)(2); accord §241.4(g)(3).

57. But, if the detainee or the record demonstrates "substantial reason to believe that the removal of a detained alien is not significantly likely in the reasonably foreseeable future," then the special review procedures of 241.13 are invoked §241.4(i)(7); accord §241 13(a). The custody review record can be considered under the special review procedures. §241.4(i)(7).

58 The special review proceedings were designed to implement the Supreme Court's holding in *Zadvydas* that 8 U.S.C. §1231(a)(6), "read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." 533 U.S., at 689

59. A detainee can invoke the special review proceedings by "written request," §241 13(d)(1), "at any time after the removal order becomes final," §241.13(d)(3), but the agency may "postpone its consideration of such a request until after expiration of the removal period," §241.13(d)(3).

60. "Within 10 business days," or after "the expiration of the removal period," the agency "shall respond in writing" to "acknowledg[e] receipt" of the detainee's request and to "explain[] the procedures that will be used to evaluate the request." §241.13(e)(1).

61. The review process may involve "forward[ing] a copy of the alien's release request to the Department of State for information and assistance " §241.13(e)(3). If the agency "bases its decision, in whole or in part, on information provided by the Department of State, that information shall be made part of the record." §241 13(e)(3)

62. The agency "shall permit the alien an opportunity to respond to the evidence on which the [agency] intends to rely, including the Department of State's submission, if any, and other evidence of record presented by the [agency] prior to" decision §241.13(e)(4).

63. The agency may conduct an interview as part of the special review process §241 13(e)(5).

64. The agency's determination "shall consider all the facts of the case" "including the ongoing nature of the Service's efforts to remove this alien," and "the reasonably foreseeable results of those efforts." §241.13(f)

65. The agency "shall issue a written decision based on the administrative record, including any documentation provided by the alien, regarding the likelihood of removal and whether there is a significant likelihood that the alien will be removed in the reasonably foreseeable future under the circumstances," and "shall provide the decision to the alien." §241.13(g)

66. If the agency denies the request, the detainee "may submit a request for review of his or her detention under this section, ***six months after*** the Service's last denial of release under this section." §241.13(j) (emphasis added).

THERE IS NO SIGNIFICANT LIKELIHOOD THAT

THE PETITIONER WILL BE REMOVED TO PAKISTAN

IN THE REASONABLY FORESEEABLE FUTURE

67 Section 1231(a)(6) "is part of a statute that has as its basic purpose effectuating an alien's removal," with "protecti[on] [of] the community from dangerous aliens" being a "secondary statutory purpose." *Zadvydas*, 533 U.S., at 697.

68 "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S., at 699.

69 In reviewing whether continued detention is authorized under *Zadvydas*, "courts carry out what this Court has described as the 'historic purpose of the writ,' namely, 'to relieve detention by executive authorities without judicial trial.' " *Zadvydas*, 533 U.S., at 699 (citation omitted)

70. The Supreme Court described judicial review of the lawfulness of continued detention as follows:

> In answering that basic question, the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute. In that case, of course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions. See *supra,* at 2501 (citing 8 U.S.C §§ 1231(a)(3), 1253 (1994 ed., Supp. V); 8 C.F.R. § 241.5 (2001)) And if removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period. See *supra,* at 2499.

Zadvydas, 533 U S , at 699–700.

71 In balancing "the greater immigration-related expertise of the Executive Branch,"

the Supreme Court alleviated those concerns by adopting a "presumptively reasonable period of detention." *Zadvydas*, 533 U.S., at 700-01

72. This presumptively reasonable period is a "six-month period to include the 90-day removal period plus 90 days thereafter" *Akinwale v Ashcroft*, 287 F. 3d 1050, 1052 (CA11 2002) That is, it "permit[s] a detention period" under 8 U.S.C §1231(a)(6) of " '*three* months after the statutory removal period has ended ' " *Id.*, at 1052 n.3 (citation omitted) (emphasis in original)

73. After the presumptive period has ended, "once the alien 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." *Zadvydas*, 533 U S., at 701.

74. "And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S., at 701.

75. In meeting his burden, the detainee need not "show the absence of *any* prospect of removal—no matter how unlikely or unforeseeable—which demands more than [the Court's] reading of the statute can bear." *Zadvydas*, 533 U S., at 702 (emphasis in original)

76. Here, the petitioner's statutory removal period began on March 31, 2021 when the Board of Immigration Appeals rendered his order of removal administratively final. 8 U.S.C §§1101(a)(47)(B)(i), 1231(a)(1)(B)(i).

77. The presumptively reasonable period of three months of detention under §1231(a)(6), as interpreted by *Akinwale*, expired on or about June 30, 2021.

78. As of today, the petitioner has been detained for approximately 741 days, which amounts to 2 years, 1 week, and 4 days. Since the date that the removal order became final, the

petitioner has been detained for approximately 476 days, which amounts to 1 year, 3 months, 2 weeks, and 6 days.

79. During the almost three years Petitioner was released on an order of supervision he had no contacts with law enforcement, no arrests, no violations of his order of supervision. He has maintained a firm address, familial ties, and employment since his release. There is no clear indication why ICE has re-detained him given their lack of a valid travel document.

80. During his prior detention Petitioner made several requests for his release to ICE, each of which was denied (Appx , Exh. C) Petitioner was forced to file a habeas petition in the Southern District of Florida as he was held in the Krome Processing Center in Miami, Florida The initial habeas petition was ultimately denied but noted that the detention was likely to become unreasonable if it continued for much longer. Thereafter, Petitioner was held for several more months and filed a second habeas petition The merits of that petition were never heard as ICE released petitioner during its pendency. (Appx , Exh. D)

81. On April 22, 2019, the U.S. government published in the Federal Register that in 2019 it had imposed visa sanctions against Pakistan because it failed to timely and reasonably cooperate with the removal of their citizens from the United States. 84 FR 16610. The sanctions have not been rescinded

82. Pakistan has a history of not cooperating with the removal of its citizens from the United States and it appears in this situation, it is more of the same

83. Given this situation, there is simply "no *significant* likelihood of [the petitioner's] removal [to Pakistan] in the *reasonably* foreseeable future " Nor is there any other "sufficiently strong special justification" for Petitioner's prolonged detention beyond the six-month limit. *Zadvydas*, 533 U.S., at 690-91, 701 (emphasis added).

CONTINUED DETENTION WITHOUT AN INDIVIDUALIZED BOND HEARING WITH SUFFICIENT PROCEDURAL SAFEGUARDS VIOLATES DUE PROCESS

84 It is well accepted that "detention could still raise constitutional concerns even if it is ostensibly authorized by statute." *Guerrero-Sanchez* v. *Warden*, 905 F. 3d 208, 221 (CA3 2018)

85 "The Supreme Court has been unambiguous that executive detention orders, which occurs without the procedural protections required in courts of law, call for the most searching review." *Velasco Lopez* v. *Decker*, 978 F. 3d 842, 850 (CA2 2020) (citing *Boumediene v Bush,* 553 U.S. 723, 781 (2008); *INS v. St. Cyr*, 533 U.S. 289, 301-02 (2001)).

86. These procedural protections include the idea that at a "bond hearing, a clear and convincing standard is appropriate" given that "[a] standard of proof 'serves to allocate the risk of error between the litigants' and must reflect the 'relative importance attached to the ultimate decision ' " *Id.*, at 855-56 (quoting *Addington v. Texas*, 441 U.S. 418, 423 (1979).

87 Applying the doctrine of constitutional avoidance, and Supreme Court due process precedents, the Third Circuit concluded that "an alien facing prolonged detention under [that provision] is entitled to a bond hearing before an immigration judge and is entitled to be released from detention unless the government establishes that the alien poses a risk of flight or a danger to the community." *Guerrero-Sanchez*, 905 F.3d, at 224 (citation omitted) (alteration in original).

88. That court held that "[t]he Government must meet its burden in such bond hearings by clear and convincing evidence . . . [b]ecause it is improper to ask the alien to share equally with society the risk of error when the possible injury to the individual—deprivation of liberty—is so significant." *Id.*, at 224 n 12 (punctuation and citations omitted).

89. Further, applying the balancing test from *Mathews* v. *Eldridge*, 424 U.S. 319, 355 (1976), the Third Circuit "adopt[ed] a six-month rule here—that is, an alien detained under §

1231(a)(6) is generally entitled to a bond hearing after six months (*i.e.*, 180 days) of custody." *Id*, at 226

90. However, the court added a caveat that, if "the alien's release or removal is imminent then the government is not required to afford the alien a bond hearing before an immigration judge" *Id*, at 226 n.15 (punctuation and citation omitted).

91 The Third Circuit's ruling is entirely in line with, and essentially adopts the Ninth Circuit's conclusions from *Diouf* v. *Napolitano*, 634 F 3d 1081 (CA9 2011), which is also based on the Supreme Court's leading due process cases.

92 No Court of Appeals has disagreed with either the *Guerrero* or the *Diouf* rulings

93. This Court should adopt this rulings and order that a bail hearing be had with sufficient procedural safeguards, including placing the burden of proof on the Government to demonstrate by clear and convincing evidence that the petitioner should suffer a continuing deprivation of his liberty, that ability to pay be considered in the setting of a bond, and that alternatives to detention be considered as alternatives to monetary bond.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT – 8 U.S.C. § 1231

94. Petitioner re-alleges and incorporates by reference paragraphs 1 through 93.

95. 8 U.S C. § 1231(a) governs the detention of an individual with an administratively final order of removal The INA permits DHS to detain an immigrant during the "removal period," which is defined as the 90-day period following the issuance of a final order of removal. 8 U.S C. §§ 1231(a)(1)(A), (B), (a)(2).

96. Petitioner is detained pursuant to the discretionary, post-removal-period detention provision, Section 1231(a)(6), because more than ninety days have elapsed since his removal order became administratively final. *See* 8 C.F.R. § 1241 1

97. Petitioner has not engaged in any conduct to trigger an extension of the removal period under 8 U.S C § 1231(a)(1)(C).

98. In *Zadvydas v Davis*, 533 U S 678, (2001), the Supreme Court construed § 1231(a)(6) to contain an implicit temporal limitation of six months, after which continued detention is no longer presumptively reasonable. *Id* at 701 After that point, "if a detainee 'provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,' . . . [and] the government fails to rebut the detainee's assertion, he must be released." *Singh*, 945 F 3d at 1313-14 (quoting *Zadvydas*, 533 U.S. at 701). Petitioner's continued detention by the Respondents violates 8 U.S.C. § 1231 (a)(6), as interpreted in *Zadvydas*.

99. Further, the court in *Zadvydas* stated that "as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink " *See Zadvydas*, 533 U.S. at 701. It is extremely unlikely that the Respondents will be able to remove the Petitioner in the reasonably foreseeable future, because the application for a travel document has been pending for nearly as long as the detention, more than 6 months and Pakistan has yet to produce a valid document.

100. Petitioner's 90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts have both passed. Petitioner's detention under § 1231 is no longer presumptively reasonable.

101. Because there is no significant likelihood that the petitioner will be removed to Pakistan in the reasonably foreseeable future, his continued detention is unconstitutional

102. Nor is there any other "sufficiently strong special justification" for Petitioners' prolonged detention beyond the six-month limit See *Zadvydas*, 533 U S at 690-91

103 Therefore, the petitioner is entitled to a writ of habeas corpus ordering his release from civil immigration custody under an order of supervision.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE

OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

104 Petitioner re-alleges and incorporates by reference paragraphs 1 through 93.

105. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U S Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

106. Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *See id.* at 690 (citing *Jackson v. Indiana*, 406 U S. 715, 738 (1972)). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and prevent danger to the community *Id., Demore v. Kim*, 538 U.S. 510, 528 (2003)

107. Prolonged civil detention also violates due process unless it is accompanied by strong procedural protections to guard against the erroneous deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91; *Foucha*, 504 U.S. at 81-83; *Kansas v Hendricks*, 521 U S. at 346, 364-69 (1997); *United States v Salerno*, 481 U.S 739, 750-52 (1987).

108 Petitioner's prolonged civil detention has extended well beyond the end of the

removal period and will continue into the indefinite future His detention is no longer reasonably related to the primary statutory purpose of ensuring imminent removal.

109. The *pro forma* internal post-order custody reviews ICE conducted in petitioners' cases do not meet the minimum procedural safeguards required by due process. *See Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011)

110. Thus, petitioner's detention violates both substantive and procedural due process, and he is entitled to an individualized bail hearing with sufficient procedural safeguards, including placing the burden of proof on the Government to demonstrate by clear and convincing evidence that the petitioner should suffer a continuing deprivation of his liberty, that ability to pay be considered in the setting of a bond, and that alternatives to detention be considered as alternatives to monetary bond

PRAYER FOR RELIEF

WHEREFORE, the petitioner prays that the Court grant the following relief:

(a) Assume jurisdiction over this matter;

(b) Set this matter for expedited consideration;

(c) Order the respondents to show cause why the writ should not be granted, and to produce records regarding the true cause for the petitioner's continued detention;

(d) Order the respondents to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding;

(e) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release the Petitioner from custody;

(f) Award the petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and

(g) Grant any other and further relief that the Court deems just and proper.

Dated: May 7, 2025

s/ Briana Carlson
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VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Briana Carlson, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. 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 foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge

Dated: May 7, 2025

s/ Briana Carlson
BRIANA CARLSON

Co-Counsel for Petitioner