

1 Name: Emmanuel I. McGweeney

2 A Number: [REDACTED]

3 Address: Otay Mesa Detention Facility

4 P.O. Box 439049

5 San Diego, CA 92143

FILED

SEP 15 2024

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY

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9 **UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

10 Name: Emmanuel I. McGweeney

11 Petitioner,

12 v.

13 Warden of the Otay Mesa
14 Detention Facility; Field Office Director, San
15 Francisco Field Office, United States
16 Immigration and Customs Enforcement; Director,
17 United States Immigration and Customs
18 Enforcement; Secretary, United States
19 Department of Homeland Security; and United
20 States Attorney General,

21 Respondents.

Case No.

1:25-cv-01200-EPG-(146)

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

22
23 Petitioner [name] Emmanuel McGweeney petitions this Court for a writ
24 of habeas corpus to remedy Petitioner's indefinite detention by Respondents.

25 **JURISDICTION AND VENUE**

26 1. This Court has subject matter jurisdiction and may grant relief under 28 U.S.C. §
27 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 1331 (federal question).
28

1 This Court also has jurisdiction to hear this case under the Suspension Clause of Article I of the
2 United States Constitution. *INS v. St. Cyr*, 533 U.S. 289 (2001).

3 2. Because Petitioner challenges his or her custody, jurisdiction is proper in this
4 Court. While the courts of appeals have jurisdiction to review removal orders through petitions
5 for review, *see* 8 U.S.C. §§ 1252(a)(1) and (b), the federal district courts have jurisdiction under
6 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness of their
7 detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001); *Nadarajah v. Gonzales*, 443
8 F.3d 1069, 1075-76 (9th Cir. 2006).

9 3. Petitioner has exhausted any and all administrative remedies to the extent required
10 by law.

11 4. Venue is proper in the Eastern District of California because this is the district in
12 which Petitioner is confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

13 **PARTIES**

14 5. Petitioner is a noncitizen who is currently detained by Immigration and Customs
15 Enforcement (ICE) at the [name of detention facility] Otay Mesa Detention Center
16 in [city, state] San Diego, CA.

17 6. Respondent Warden of the Otay Mesa [name of detention facility]
18 Detention Facility is Petitioner's immediate custodian at the facility where Petitioner is detained.
19 *See Doe*, 108 F.4th at 1194-97.

20 7. Respondent Field Office Director for the San Francisco Field Office of ICE ("SF
21 FOD") has the authority to order Petitioner's release or continued detention. As such, Respondent
22 SF FOD is a legal custodian of Petitioner.

23 8. Respondent Director of ICE ("ICE Director") is the head of ICE, an agency within
24 the United States Department of Homeland Security that detains and removes certain noncitizens.
25 Respondent ICE Director is a legal custodian of Petitioner.

26 9. Respondent Secretary of the United States Department of Homeland Security
27 ("DHS Secretary") is responsible for the implementation and enforcement of the immigration
28

1 laws and oversees ICE. As such, Respondent DHS Secretary has ultimate custodial authority over
2 Petitioner.

3 10. Respondent Attorney General of the United States ("U.S. A.G.") is the head of the
4 United States Department of Justice, which oversees the immigration courts. Respondent U.S.
5 A.G. shares responsibility for enforcement of the immigration laws with Respondent DHS
6 Secretary.

7 11. All Respondents are sued in their official capacities.

8 **FACTUAL ALLEGATIONS**

9 12. Petitioner [name] Emmanuel I MSweeney Jr. was born in
10 [country] Nassau, Bahamas.

11 13. Petitioner entered the United States on or about [date] August 15, 1998.
12 Petitioner's immigration history is as follows: Status Expired
13
14
15
16

17 14. Petitioner's criminal history is as follows: _____
18 Misdemeanor Possession of Cannabis 20grams or less
19
20
21

22 15. Petitioner was detained by Immigration and Customs Enforcement on or about
23 [date] March 18, 2025. Petitioner has remained in ICE custody since that date.

24 16. An Immigration Judge ordered Petitioner removed from the United States on or
25 about [date] May 21, 2020. Petitioner [circle one] DID / DID NOT appeal
26 the Immigration Judge's decision to the Board of Immigration Appeals (BIA). The BIA dismissed
27 Petitioner's appeal on [date, if applicable] April 20, 2021.
28

17. Petitioner received a document titled "Decision to Continue Detention" from ICE on or about [date] N/A. Petitioner received a second "Decision to Continue Detention" from ICE on or about [date] N/A.

18. Petitioner has cooperated fully with all of ICE's efforts to remove Petitioner. Petitioner has cooperated with ICE in the following ways: Provided birth certificate

19. Nonetheless, ICE has been unable to remove Petitioner from the United States. ICE is unlikely to be able to remove Petitioner because: My home country does not consider me a citizen, I am not a citizen of any country.

LEGAL FRAMEWORK

20. In *Zadvydas v. Davis*, the Supreme Court held that the immigration statute 8 U.S.C. § 1231(a)(6) does not allow ICE to detain a noncitizen indefinitely while attempting to carry out removal. 533 U.S. 678, 689 (2001). Because of the "serious constitutional problem" posed by indefinite detention, the Court read the statute to limit a noncitizen's detention to "a period reasonably necessary to bring about that alien's removal from the United States." *Id.*

21. The Court also recognized six months as the "presumptively reasonable period" of post-removal order detention. *Id.* at 701. After six months, once the noncitizen provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Id.* Moreover, "as the period of

1 prior postremoval confinement grows, what counts as the 'reasonably foreseeable future'
2 conversely would have to shrink." *Id.*

3 22. In *Clark v. Martinez*, the Supreme Court held that its ruling in *Zadvydas* applies
4 equally to noncitizens who have never been admitted to the United States. 543 U.S. 371 (2005).

5 **CLAIM FOR RELIEF**

6 **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**

7 23. The foregoing allegations are realleged and incorporated herein.

8 24. Petitioner's continued detention is unlawful and violates 8 U.S.C. § 1231(a)(6) as
9 interpreted by the Supreme Court in *Zadvydas*. The six-month presumptively reasonable period of
10 detention has expired and Petitioner has provided good reason to believe that his or her removal is
11 not significantly likely to occur in the reasonably foreseeable future. Therefore, Respondents lack
12 authority to continue detaining Petitioner.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Petitioner respectfully requests that the Court grant the following relief:

- 15 a. Assume jurisdiction over this matter;
16 b. Issue an order pursuant to 28 U.S.C. § 2243 directing Respondents to show cause
17 why the writ of habeas corpus should not be granted;
18 c. Grant the writ of habeas corpus and order Petitioner's immediate release from
19 custody;
20 d. Grant any other and further relief as the Court deems just and proper.

21
22 Date: August 29, 2025

23 Signature: 
24 Petitioner