UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ADHAM AMIN HASSOUN, Petitioner, v. JEFFREY SEARLS, in his official capacity Acting Assistant Field Office Director and Administrator of the Buffalo Federal Detention Facility, Respondent.	Case No. 19-cv-00370-EAW

AMENDED VERIFIED PETITION
FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

1. Petitioner Adham Amin Hassoun (A#074-079-096) is currently being held in unlawful, indefinite detention at the Buffalo Federal Detention Facility ("BFDF") in the custody of the Department of Homeland Security ("DHS") and, specifically, Jeffrey Searls, Acting Assistant Field Office Director of U.S. Immigration and Customs Enforcement ("ICE") Buffalo Field Office.

2. This case concerns the government's asserted power to hold Mr. Hassoun in detention indefinitely—potentially for the rest of his life—based on nothing more than a unilateral executive branch determination that his release could pose a national security "risk" or terrorism "threat."

3. Mr. Hassoun lived peacefully in the United States for more than a decade before his arrest. He has completed his sentence for the crimes of which he was convicted.

4. He has three children, all of whom are U.S. citizens, as well as extended family who are also U.S. citizens living in Florida.

5. Mr. Hassoun is a stateless Palestinian man who has been ordered removed from this country. But no country, including Lebanon, the country of his birth, has agreed to accept him. He has been held in immigration custody awaiting removal since his criminal sentence ended, more than 17 months ago.

6. In a prior habeas proceeding, the U.S. District Court for the Western District of New York held that the government could not establish that he would be removed to another country within the reasonably foreseeable future. On that basis, the Court found that Mr. Hassoun's indefinite detention had become unlawful under the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), which interpreted the statute that authorizes detention following a final order of removal, 8 U.S.C. § 1231(a), as authorizing detention only insofar as removal is significantly likely in the reasonable future.

7. The Supreme Court held that 8 U.S.C. § 1231(a) does not authorize indefinite detention. *Zadvydas*, 533 U.S. at 682; *see also Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984 (W.D.N.Y. Jan. 2, 2019) (holding that because Mr. Hassoun's removal was not reasonably foreseeable, his detention was not authorized by the statute).

8. Yet the government in this case claims precisely that power. The government has invoked a regulation, 8 C.F.R. §241.14(d), that purports to authorize it to hold Mr. Hassoun indefinitely based on a unilateral determination by a government official that he could be dangerous. The regulation purports to allow the government to condemn Mr. Hassoun to spend the rest of his natural life in prison and to die in immigration custody—without criminal charge or trial, without the ability to meaningfully review the underlying evidence against him, and without the opportunity to confront his accusers.

9. This regulation is unlawful and unconstitutional. First, the regulation flatly

contradicts the statute under which it was enacted, as authoritatively construed by the Supreme Court, and is therefore *ultra vires*. Second, it does not comport with the Substantive Due Process right not to be deprived of one's freedom. Third, it does not provide even the most minimal procedures required by Procedural Due Process. Fourth, the regulation is void-for-vagueness because it does not provide fair notice of what actions could consign a person to be locked away in detention for the rest of his life. Fifth, the regulation subjects Mr. Hassoun to punishment for the same crime twice, violating the Double Jeopardy Clause. Finally, the regulation violates the Fifth Amendment because it unlawfully discriminates on the basis of alienage and interferes with fundamental rights.

10. Even if the regulation were valid, which it is not, Mr. Hassoun cannot be detained under its authority because the government's evidence against Mr. Hassoun is insufficient to fulfill the three elements required to justify continued detention under the regulation.

11. Mr. Hassoun is not a threat to national security. The judge who presided at Mr. Hassoun's 4-month-long trial found at sentencing that his crimes were not violent, involved no identifiable victims, and were never directed against the United States or anyone in this country. The judge issued a sentence well below the guidelines range precisely because the facts did "not support the government's argument that Mr. Hassoun is such a danger to the community that he needs to be imprisoned for the rest of his life."

12. Mr. Hassoun continues to pose no national security threat. The only allegations beyond his conviction that the government relies on are anonymous, uncorroborated accusations made by unnamed fellow BFDF detainees who have strong interests in providing false information to the authorities in exchange for favorable outcomes in their own cases. Mr. Hassoun unequivocally denies these anonymous allegations.

13. Moreover, the regulation requires Mr. Hassoun to be released from custody if there are any conditions of release that would reasonably avoid a supposed risk. Mr. Hassoun's prior conviction, as well as the government's new and false allegations, stem solely from communication with other individuals. Thus, even if Mr. Hassoun posed a risk to national security, which he does not, any risk could be mitigated by appropriate conditions of release, such as monitoring and travel restrictions.

14. Indeed, a co-defendant who was tried together with Mr. Hassoun, convicted of the same charges, and sentenced to a similar term is now at liberty after completing his sentence.

15. Mr. Hassoun's detention is unjustified. There is no reason why he should continue to be imprisoned rather than being released to the custody of his U.S. citizen sister under appropriate conditions of supervision.

Jurisdiction and Venue

16. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and the Suspension Clause of the United States Constitution, Art. I, sec. 9, cl. 2.

17. Mr. Hassoun's current detention constitutes a "severe restraint" on his individual liberty such that Petitioner is "in custody" of the Respondents in violation of the laws of the United States." Hensley v. Municipal Court, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

18. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.484 (1973), venue lies in the United States District Court for the Western District of New York, the judicial district in which Petitioner is being detained. Mr. Hassoun is being detained at the Buffalo Federal Detention Facility, which is under the jurisdiction of the ICE Field Office of Buffalo, New York, which encompasses the geographic area where Petitioner is being detained, pursuant to 28 U.S.C. § 1391.

Statement of Facts

Mr. Hassoun's Background

19. Adham Amin Hassoun is a Palestinian man born to Palestinian parents in Beirut, Lebanon on April 20, 1962. His parents resettled in Lebanon after the 1948 Arab-Israeli War. Lebanon does not grant citizenship to Palestinian refugees born within its borders.

20. Moreover, Mr. Hassoun's father never registered his family with the United National Relief Works Agency. As a result, despite living in Lebanon for many years, Mr. Hassoun was never recognized by Lebanon as a refugee.

21. Growing up in Lebanon, Mr. Hassoun knew firsthand what happened to a country when internal politics turned violent. As a teenager, he and his friends converted an old car into an ambulance and transported the wounded to the hospital during an armed conflict.

22. During Lebanese Civil War, Mr. Hassoun and his father were both captured, his father by the Lebanese Army and Mr. Hassoun by Shiite fighters. When Mr. Hassoun was captured, he was held for four nights and tortured.

23. Mr. Hassoun arrived in the United States on September 10, 1989, as a nonimmigrant visitor. He changed his status to that of an F-1 nonimmigrant student on June 5, 1990, when he began his studies at Nova Southeastern University.

24. After completing his degree in computer science and after receiving work authorization, Mr. Hassoun worked in the IT field as a computer programmer and systems analyst. During this time, his mother sponsored him for a green card, and filed an immigrant visa petition on his behalf. This petition was granted in 1990, but his adjustment of status ("green card") application remained pending for years. While waiting on his green card, Mr. Hassoun began a family and had three sons, all of whom are U.S. citizens.

25. On June 12, 2002, Mr. Hassoun was detained by immigration authorities and

charged with overstaying his visa, despite the fact that the government had approved his mother's petition sponsoring him for permanent resident in 1990, and his application for a green card remained pending. The government detained Mr. Hassoun at the Krome Service Processing Center in Miami, Florida throughout his immigration proceedings.

26. Mr. Hassoun's arrest fits a pattern of widespread detention of Muslims on immigration charges for purposes of interrogation in the months after the September 11 attacks. As the Department of Justice's Office of Inspector General has documented, between September 2001 and August 2002, more than 1,200 citizens and immigrants were detained for questioning, and more than 750 immigrants were held long-term in immigration detention as part of a far-reaching and often indiscriminate FBI investigation.

27. Throughout his immigration proceedings, Mr. Hassoun was approached many times by FBI agents seeking to have him serve as an informant or witness for the government, something he was not willing or able to do.

28. Mr. Hassoun was ultimately ordered removed by an immigration judge, and the Board of Immigration Appeals subsequently rendered his removal order administratively final. Mr. Hassoun continued to be detained in post-final order detention until he was transferred to criminal custody in January 2004.

29. The most difficult part of Mr. Hassoun's incarceration has been his separation from his family, including his three children, who were young when he was first detained and are now adults. Despite his prolonged separation from his children—including leaving his youngest son when he was only two years old—Mr. Hassoun has managed to maintain an incredibly strong bond with each of them. He speaks with them almost daily on the phone.

30. He also has five siblings. His sister, Beth, is a U.S. citizen who has lived in Florida

since 1982. His other sister lives in Sweden and his three brothers live in the United Arab Emirates.

31. Mr. Hassoun is now approaching 60 years of age. After nearly two decades in detention, he suffers from multiple chronic illnesses including diabetes, coronary artery disease, asthma, and hypertension.

32. If released, Mr. Hassoun would live with his sister, Beth, a United States citizen. She is ready to welcome him into her home, and has made arrangements to accommodate him. A federal probation officer reviewed the reentry plan for Mr. Hassoun after visiting Beth's house and found it to be adequate.

Mr. Hassoun's Criminal Conviction

33. The government is relitigating Mr. Hassoun's criminal conviction in which United States District Court Judge Marcia Cooke explicitly held that his crimes did not justify a life sentence. By invoking immigration detention laws, the government is attempting to circumvent Judge Cooke's decision, even though these laws have been construed by the Supreme Court as not authorizing such indefinite and possibly lifelong detention.

34. Mr. Hassoun was indicted on 11 counts, but was brought to trial on only three counts. On August 16, 2007, a jury found Mr. Hassoun guilty of these three charges, which related to support he had provided in 1990s to people sited in various conflicts involving Muslims around Eastern Europe, the Middle East and Northern Africa.

35. The crimes of which Ms. Hassoun was convicted—material support for terrorism and related conspiracy charges—involved no acts of violence and involved no actions directed at, in, or against the United States. He was charged and tried based on his outspoken support in the 1990s of ethnic minorities defending themselves in conflicts abroad. Mr. Hassoun understood himself to be engaging in protected speech in support of Muslims around the world.

36. Judge Cooke, who presided over his 4-month-long trial, confirmed that his offenses

involved no threat to the United States and no national security threat more broadly. *See* Hassoun Sentencing Tr., *United States v. Hassoun*, No. 04-cr-60001 (S.D. Fla. Jan. 22, 2008), ECF No. 1334 (attached as **Exhibit A**).

37. In particular, at sentencing, Judge Cooke concluded that "[n]o so-called act of terrorism occurred on United States soil. [Mr. Hassoun] did not seek to damage United States infrastructure, shipping interests, power plants or government buildings. There was never a plot to harm individuals inside the United States or to kill government or political officials. There was never a plot to overthrow the United States government*." Id*. 5:19–25.

38. Judge Cooke also made clear that the conviction on charges of material support and "conspiracy to maim, kill or kidnap" included absolutely "no evidence that [Mr. Hassoun] personally maimed, killed or kidnapped anyone in the United States or elsewhere . . . [and] the government has pointed to no identifiable victims." *Id*. 6:7–19. She confirmed that the conviction was based solely on Mr. Hassoun efforts to "provide support to people sited in various conflicts involving Muslims" abroad. *Id*.

39. Judge Cooke found that Mr. Hassoun posed no danger and that a life sentence could not be justified on the grounds that it was necessary to prevent a risk to the community.

40. Judge Cooke also noted that Mr. Hassoun had submitted many letters of support from members of his community and that "[h]is employer and co-employees describe him as smart, compassionate and a caring human being." *Id*. 7:17–18; Hassoun Letters of Support (attached as **Exhibit B**).

41. Even more important, Judge Cooke found that "the government intercepted most of Mr. Hassoun's telephone, work, home, cell, and fax. The interceptions and investigation continued for many, many years. He was questioned and never charged with a crime. The

government knew where Mr. Hassoun was, knew what he was doing and the government did nothing. *This fact does not support the government's argument that Mr. Hassoun poses such a danger to the community that he needs to be imprisoned for the rest of his life*." Hassoun Sentencing Tr, Ex. A. 8:8–16 (emphasis added).

42. As Judge Cooke noted, Mr. Hassoun was under constant electronic supervision for nearly a decade in the 1990's and early 2000's and during that time he never harmed anybody and never took any actions against the United States. The "terrorism" crimes of which he was charged and convicted related solely to communications he had and financial support he provided. They were evidently not serious enough to prompt the government to take any action for years, nor were they serious enough to cause the sentencing judge to impose a strict sentence, despite the government's arguments.

43. To the contrary, in light of the nature of his offenses, Judge Cooke rejected the government's request for a life sentence and also rejected a guidelines range of 360 months to life. *Id*. 7:2–3, 14:21–22. Instead, she departed radically downward, issuing a 188-month sentence. *Id*. 16:22–17:1; Judgment in a Criminal Case, *United States v. Hassoun*, No. 04-cr-60001 (S.D. Fla. Jan. 22, 2008), ECF No. 1335 (attached as **Exhibit C**). The government did not appeal Mr. Hassoun's sentence. The remaining eight counts alleged against Mr. Hassoun in the indictment were subsequently dismissed by the U.S. Attorney. Order of Dismissal, *United States v. Hassoun*, No. 04-cr-60001 (S.D. Fla. Sept. 4, 2012), ECF No. 1411.

44. Mr. Hassoun served approximately 165 months of his 188-month sentence, receiving approximately 23 months of good time credit.

The Government's Indefinite Detention of Mr. Hassoun.

45. The government now seeks to impose what amounts to a life sentence on the very same basis that the trial judge considered and rejected—i.e. that Mr. Hassoun's release would pose

a danger to the community. There is no more basis for that conclusion now than there was when Mr. Hassoun was sentenced nearly 17 years ago.

46. To the contrary, Mr. Hassoun has served his sentence and has demonstrated through his good behavior in prison and immigration custody that he is not a threat to anybody. The new allegations the government has put forth are baseless and unsupported by any reliable evidence.

47. Mr. Hassoun has been detained in immigration custody at BFDF since October 2017, under 8 U.S.C. § 1231(a)(6), awaiting deportation from the United States on a final order of removal issued by the Board of Immigration Appeals.

48. The government has failed to find a country that will accept him.

49. The government could release Mr. Hassoun into a supportive community and into the custody of his U.S. citizen sister in Florida, under appropriate conditions of supervised release, but instead continues to deprive Mr. Hassoun of his liberty.

50. In May 2018, Mr. Hassoun filed a petition for habeas corpus challenging the lawfulness of his detention asserting that his continued, indefinite detention was no longer lawful under 8 U.S.C. § 1231(a)(6) because it violated the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), among other constitutional and statutory grounds. *See Hassoun v. Sessions*, 18-cv-00586-FRG (filed May 22, 2018).

51. On January 2, 2019, the Court issued a decision and order finding that "[Mr. Hassoun]'s continued detention is no longer authorized under § 1231(a)(6). The Court determined the government had failed to show "a significant likelihood of [Mr. Hassoun's] removal in the reasonably foreseeable future." *Hassoun v. Sessions*, 2019 WL 78984, at *6.

52. The Court held, therefore, that Mr. Hassoun's detention had become unlawful under the standard established by the Supreme Court in *Zadvydas*. *Id*.

53. The Court, however, allowed some additional time for the government to pursue negotiations with an unspecified country that the government had approached about accepting Mr. Hassoun. *Id*. at *7.

54. The Court ordered the government to report on the status of those negotiations by January 28, 2019, and further ordered the government to release Mr. Hassoun by March 1, 2019.

55. The Court stated, in addition, that its order did not preclude the government from continuing to detain Mr. Hassoun "on any other permissible basis under applicable statutes or regulations." *Id*.

56. On January 28, 2019, the government notified the Court that the unspecified country had refused to accept Mr. Hassoun.

57. The next day, the Court issued an additional order confirming its prior order directing that Mr. Hassoun be released by March 1, 2019, "except that the Court's order 'does not preclude Respondent Searls from continuing to detain [Mr. Hassoun] on any other permissible basis under applicable statutes and regulations."

58. On February 22, 2019, the Department of Homeland Security served on Mr. Hassoun a "Notice of Intent and Factual Basis to Continue Detention." *See* Notice (attached as **Exhibit D**).

59. The notice informed Mr. Hassoun that the government was initiating a procedure through which it would determine whether to hold Mr. Hassoun pursuant to 8 C.F.R. § 241.14(d).

60. 8 C.F.R. § 241.14(d) states the government "shall continue to detain" a non-citizen who meets three criteria:

(1) the individual "has engaged or will likely engage in any other activity that endangers the national security";

(2) the individual's release "presents a significant threat to the national security or a significant risk of terrorism"; and

(3) "[n]o conditions of release can reasonably be expected to avoid the threat to the national security or the risk of terrorism, as the case may be."

61. According to the regulation, the individual "shall be notified of the [DHS]'s intention to continue the alien in detention and of the alien's right to submit a written statement and additional information." 8 C.F.R. § 241.14(d).

62. The regulation denies the individual the opportunity to know the "factual basis for [his or her] continued detention" or "evidence against him or her" if the government determines it wishes to withhold some such information for "the protection of national security and classified information." 8 C.F.R. § 241.14(d)(2).

63. The individual is subject, in some circumstances, to an interview with an immigration officer. 8 C.F.R. § 241.14(d)(3). The regulation states that this interview will be allowed only "if possible." This interview is not conducted before the actual decisionmaker, but instead appears to be in the nature of a deposition or interrogation.

64. This information is considered, in the first instance by ICE, which makes a recommendation to the Secretary of Homeland Security. 8 C.F.R. § 241.14(d)(5).

65. The Secretary of Homeland Security ultimately makes the decision about whether to certify the individual for continued detention under 8 C.F.R. § 241.14(d). The Secretary's determination is based on the record developed by ICE and its recommendation, as well as the recommendation of the Federal Bureau of Investigation ("FBI").

66. The regulation does not allow the individual to see any evidence against him that the government does not wish to provide.

67. The regulation does not allow the individual any opportunity to question witnesses against him, or even to see witness statements upon which the government relies. Indeed, the regulation does not even require the government to identify the names of the witnesses or sources of evidence upon which it relies.

68. The regulation also provides no opportunity for the individual to engage with the FBI prior to its recommendation, nor does it set forth the basis upon which the FBI will make its recommendation.

69. The regulation provides no opportunity for a hearing before any decisionmaker, let alone a hearing before an impartial decisionmaker.

70. Instead, the regulation leaves it within the Secretary's sole discretion to make the ultimate determination regarding an individual's potential lifelong imprisonment, and also leaves it in her sole discretion to choose whether to order additional procedures. 8 C.F.R. § 241.14(d)(6).

71. Once the Secretary makes her determination, the Deputy Secretary can re-certify the individual for continued detention every six months, potentially for the rest of the non-citizen's life. The regulation does not clearly specify what these semi-annual reviews entail, providing only that "the detention decision . . . is subject to ongoing review on a semi-annual basis as provided in this paragraph (d)." It is unclear whether Petitioner will have any other opportunity to confront the evidence against him, to review new evidence, to present new evidence, or otherwise to know the basis for and challenge his detention.

72. The regulation provides no opportunity for any further administrative review of decisions by the Secretary or Deputy Secretary. The notice provided Mr. Hassoun confirms that "Detention decisions under paragraph (d) are not subject to further administrative review."

73. The regulation is silent as to the availability, scope, or nature of judicial review.

74. The regulation does not impose any obligation on the government to continue to find a country to which it can remove Mr. Hassoun. The regulation purports to authorize the government to hold Mr. Hassoun in detention until he dies in custody, even if the government makes no further effort to find a country that will agree to receive him.

75. On March 11, 2019, Mr. Hassoun was served with the "Administrative Record" that the Secretary of Homeland Security will purportedly consider when deciding whether to certify Mr. Hassoun for continued detention pursuant to 8 C.F.R. § 241.14(d).

76. The Administrative Record consists of seven exhibits. The first exhibit is the Notice to Alien of Intent and Factual Basis to Continue Detention served on Mr. Hassoun on February 22, 2019. The second exhibit is an "FBI Letterhead Memorandum," discussed further below. The third exhibit are two decisions issued by the Board of Immigration Appeals in 2003 concerning Mr. Hassoun's immigration proceedings and final order of removal. The fourth exhibit is the criminal indictment and conviction order from Mr. Hassoun's prosecution in federal district court. (It appears that government neglected to include in the Administrative Record the actual conviction order or judgment and instead included a "penalty sheet" showing the maximum possible penalties, rather than the penalties actually imposed. The judgment against Mr. Hassoun is attached here as Exhibit C.) The fifth exhibit is the Eleventh Circuit's decision on appeal in the criminal case of Mr. Hassoun and his two co-defendants. The sixth exhibit consists of three government press releases and three news stories that concern the prior criminal charges against and conviction of Mr. Hassoun. The seventh and final exhibit consists of briefs and orders from Mr. Hassoun's recent, successful *habeas* petition, *Hassoun v. Sessions*, 2019 WL 78984.

77. As noted, the second exhibit is an "FBI Letterhead Memorandum." It is an unsworn letter from FBI Director Christopher Wray, apparently signed on his behalf by the Deputy FBI

Director David Bowditch, addressed to the Secretary of Homeland Security for the purpose of recommending that Mr. Hassoun continue to be detained pending removal as a significant threat to national security and a significant risk of terrorism. The FBI letter explicitly states that it bases its assessment of threat and risk on four factors: Mr. Hassoun's prior criminal conviction, his failure to cooperate with law enforcement (apparently referring to his unwillingness to serve as a cooperating witness or informant more than a decade ago, prior to his trial and conviction), his failure to take responsibility for his actions, and more recent allegations based on supposed statements to fellow detainees at the BFDF.

78. The only allegations against Mr. Hassoun in the FBI letter (or anywhere else in the Administrative Record) that post-date his criminal conviction are based on statements apparently made by three unidentified immigration detainees at the BFDF to officials at the BFDF, who then apparently relayed those statements to the FBI. These statements concern supposed conversations involving Mr. Hassoun that these detainees claim to have "overheard" or been told about secondhand by other detainees. The statements of these anonymous jailhouse informants apparently allege that Mr. Hassoun discussed various illegal activities with other detainees after arriving at the BFDF in late 2017. The FBI letter neither cites nor describes any corroborating evidence for these anonymous allegations. It also does not indicate any investigation of the statements themselves.

79. Mr. Hassoun strongly denies all of these new allegations in the FBI letter and strongly denies that any of the alleged conversations actually occurred.

80. The new allegations in the FBI's letter constitute double or triple hearsay and would not be admissible in any criminal prosecution against Mr. Hassoun. Instead, the government would have to produce the individuals who purported to overhead or otherwise learn about these

conversations to testify about those conversations and would require the government to provide more details about any inducements or benefits these jailhouse informants received for their statements.

81. The regulation does not provide Mr. Hassoun any opportunity even to see the underlying witness statements given by the individuals who purportedly made these reports to BFDF officials. Mr. Hassoun will have no opportunity to question or cross-examine those witnesses. Indeed, he will not even be allowed to know who the witnesses against him are. The government has provided no information as to the identity of the individuals making the reports other than that they are or were "detainees."

82. In addition, the FBI's letter alleges that Mr. Hassoun used "incendiary rhetoric" in prayer services he conducted for fellow Muslims at BFDF. No further information is provided regarding the content of this "rhetoric" that would allow a decisionmaker to distinguish between First Amendment protected speech and criminal activity.

83. Although Mr. Hassoun was in the custody of the Bureau of Prisons ("BOP") for 165 months, there are no allegations in the FBI's letter pertaining to Mr. Hassoun's time in BOP custody.

84. The government has not charged Mr. Hassoun with new criminal offenses, despite the new allegations in the FBI's letter.

85. Mr. Hassoun emphatically asserts that each of the new allegations in the FBI's letter is false.

Claims

COUNT ONE

The Regulation is Invalid and Ultra Vires

86. The regulation exceeds the authority granted by Congress in 8 U.S.C. § 1231(a)(6),

and is therefore invalid.

87. The Supreme Court authoritatively construed that same statutory provision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and held that it did not authorize indefinite detention. Instead, the Court authoritatively construed the provision to mean that "once removal is no longer reasonably foreseeable, continued detention is not authorized by the statute." *Id*. at 699.

88. The regulation in question here flatly contradicts the statute, as interpreted by the Supreme Court. The regulation purports to authorize indefinite detention on national security grounds even though the Court held that the statute, as written, must be interpreted not to authorize indefinite detention.

COUNT TWO

Violation of the Fifth Amendment: Substantive Due Process

89. The regulation under which Mr. Hassoun is being held violates the U.S. Constitution.

90. It authorizes indefinite preventative detention that could last for the rest of Mr. Hassoun's natural life based solely on a prediction of future risk or threat. It extends Mr. Hassoun's detention indefinitely into the future, even after he has completed the criminal sentence that was imposed for the crimes of which he was convicted.

91. This violates the Fifth Amendment to the United States Constitution, as interpreted in a string of Supreme Court cases that have never permitted the government to preventatively imprison a person indefinitely based solely on predictions of future dangerousness. *See Addington v. Texas*, 441 U.S. 418 (1979); *Foucha v. Louisiana*, 504 U.S. 71 (1992); *Kansas v. Hendricks*, 521 U.S. 346 (1997).

92. Moreover, the facts of Mr. Hassoun's case cannot and justify indefinite detention consistent with Substantive Due Process limitations on the government's power to imprison

individuals beyond their criminal sentence.

COUNT THREE

Violation of the Fifth Amendment: Procedural Due Process

93. The regulation is procedurally defective, depriving Mr. Hassoun of Due Process rights. Under the regulation, the government could deprive Mr. Hassoun of the fundamental rights to liberty and to life. It could consign him to die in federal custody. Yet the regulation, and the government's implementation thereof, denies him the most fundamental requirements of Due Process. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

COUNT FOUR

Violation of Fifth Amendment: Vagueness

94. The Constitution forbids the government from depriving a person of life, liberty or property without fair notice. Here, both the statute and regulation utilized by the government in an attempt to hold Mr. Hassoun indefinitely are unconstitutionally vague and should be rendered void as such.

95. Neither the regulation nor the statute provide definitions of the terms utilized throughout, nor do they provide any guidance for individuals, the court, or the government as to what can be considered to determine that a person held under this statute is a "risk to the community." 8 U.S.C. § 1231(a)(6); *see also* 8 C.F.R. § 241.14(d) (incorporating undefined terms like "national security" and "terrorism").

96. For these reasons, both 8 U.S.C. § 1231(a)(6) and 8 C.F.R. § 241.14(d) are unconstitutionally vague and should be voided.

COUNT FIVE

Violation of Double Jeopardy Clause

97. Mr. Hassoun's continued imprisonment under the regulation amounts to

punishment twice for the same crime.

98. The government, through this regulation, now seeks to transform Mr. Hassoun's 188- month sentence into a life sentence that will last forever unless the government finds a country that is willing to accept Mr. Hassoun.

99. This amounts to punishment twice for the same offence, in violation of the Double Jeopardy Clause of the U.S. Constitution.

COUNT SIX

Violation of the Fifth Amendment: Equal Protection

100. The regulation under which Mr. Hassoun is being held violates the right to equal protection of the laws guaranteed by the U.S. Constitution because it interferes with the fundamental right to be free from unlawful constraint and discriminates on the basis of alienage or citizenship status.

101. The regulation singles out only a sub-class of removable non-citizens for potentially indefinite detention on national security grounds. Detention under the regulation is not tied to the pendency of ongoing removal proceedings or other immigration proceedings. It purports to authorize detention that can extend for the rest of the non-citizen's natural life. There is no parallel authority to detain a U.S. citizen indefinitely based solely on a determination that the citizen poses a national security risk or terrorism threat.

102. Because the regulation threatens a discriminatory subclass with indefinite detention and encroaches upon a fundamental right to be free from physical restraint it is subject to heightened scrutiny under the Constitution, a standard that the regulation cannot withstand.

COUNT SEVEN

Violation of the Regulation

103. Even if 8 C.F.R. § 241.14(d) is constitutional on its face and as applied and is not

ultra vires, the government cannot show that Mr. Hassoun meets the elements required to justify continued detention under the regulation.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests the Court to

1. Declare that 8 C.F.R. § 241.14(d) is *ultra vires*.
2. Declare that Mr. Hassoun's indefinite detention is unlawful and unconstitutional.
3. Declare that 8 C.F.R. § 241.14(d) is unconstitutional.
4. Declare that Mr. Hassoun does not meet the requirements for indefinite preventative detention articulated in 8 C.F.R. § 241.14(d).
5. Order the government to release Mr. Hassoun immediately.
6. Award attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.
7. Grant such further relief as the Court deems equitable and proper.

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Dated: May 14, 2019
Buffalo, New York

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Mr. Hassoun as one of Mr. Hassoun's attorneys. I have discussed with Mr. Hassoun the events described in this Petition and have examined all documents referenced herein. On the basis of those discussions and upon my review of those documents, on information and belief, I hereby verify that the factual statements made in the attached Verified Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: May 14, 2019
Buffalo, New York

/s/ Jonathan Manes
Jonathan Manes

Counsel for Petitioner