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13 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

14 Nicolas Cavieres Gomez,

15 Petitioner,

16 v.

17 John Mattos, NSDC Warden; Michael
18 Bernacke, Field Director, West Valley City
Office of ICE ERO; Todd Lyons, ICE
19 Acting Director; Kristi Noem DHS
Secretary; Pam Bondi, U.S. Attorney
20 General

21 Respondents.
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Case No. 2:25-cv-00975-GMN-BNW

First Amended § 2241 Petition

INTRODUCTION

Nicolas Cavieres Gomez, a citizen of Chile, was granted withholding of removal from Chile on February 7, 2025. Counsel for Immigration and Customs Enforcement (ICE) reserved appeal but did not file an appeal. Accordingly, Cavieres Gomez's removal order and grant of withholding of removal became final on March 10, 2025, when the appeal period expired. Because of his withholding of removal grant, Cavieres Gomez cannot be removed to Chile. The statutory 90-day window to remove Cavieres Gomez (to a third country, since Chile is not an option) commenced on March 9, 2025, and expired on June 8, 2025. Cavieres Gomez's continued detention beyond the removal period is unconstitutional and in violation of the Immigration and Nationality Act (INA) as well as the Administrative Procedure Act (APA). He must be released.

JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. §2241 (granting general habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the "Suspension Clause"); 28 U.S.C. §1331 (federal question jurisdiction); and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See e.g. Zadvydas v. Davis*, 533 U.S. 678 (2001). Federal courts also have federal question jurisdiction, through the APA to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable in habeas. 5 U.S.C. § 703. The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. Petitioner's continued detention violates his constitutional due process rights, and constitutes arbitrary and capricious agency action, and is an abuse of discretion.

1 Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28
2 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained within this district at
3 Nevada Southern Detention Center.

4 Accordingly, Petitioner's habeas petition is properly before this court.

5 PARTIES

6 Cavieres Gomez is a native and citizen of Chile who was granted withholding
7 of removal under the INA in February of 2025. He is currently detained at the
8 Nevada Southern Detention Center in Pahrump, Nevada.

9 John Mattos is the warden of Nevada Southern Detention Center. He was
10 named to this position in July of 2025, replacing Christopher Chestnut. Mattos, in
11 his official capacity, is the immediate custodian of Cavieres Gomez.

12 Michael Bernacke is the Field Director of the West Valley City Office of ICE
13 Enforcement and Removal Operations, which has jurisdiction of enforcement and
14 removal operations over detention facilities in Nevada, including Nevada Southern
15 Detention Center where Cavieres Gomez is detained. Bernacke, in his official
16 capacity, is a legal custodian of Cavieres Gomez.

17 Todd Lyons is the Acting Director of Immigration and Customs Enforcement,
18 which is responsible for administering and enforcing immigration laws, including
19 the detention and removal of immigrants. Lyons, in his official capacity, is a legal
20 custodian of Cavieres Gomez.

21 Kristi Noem is the Secretary of the Department of Homeland Security, which
22 oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of
23 Cavieres Gomez.

24 Pam Bondi is the Attorney General of the United States. She oversees the
25 immigration court system, which is housed within the Executive Office for
26 Immigration Review (EOIR) and includes all immigration courts and the Board of
27 Immigration Appeals (BIA). She is named in her official capacity.

LEGAL FRAMEWORK

I. Withholding of Removal under the Immigration and Nationality Act.

Noncitizens in removal proceedings have three primary forms of relief from removal based on a fear of returning to their home country: asylum, withholding of removal, and protection under the Convention Against Torture (CAT). An applicant may be ineligible for asylum for several reasons such as failing to apply within one year of entering the United States. *See* 8 U.S.C. §1158(a)(2). There are fewer restrictions on eligibility for withholding of removal under the INA, and no restrictions on eligibility for deferral of removal under the CAT. *See* 8 U.S.C. §1231(b)(3)(B); 8 C.F.R. § 1208.16.

To be granted INA withholding, an applicant must show that “his life or freedom would be threatened in the country to which he would be removed on account of one of the five protected grounds [race, religion, nationality, political opinion, and membership in a particular social group].” *Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1092 (9th Cir. 2005) (internal quotations omitted). The burden required to win withholding of removal is higher than what is required to win asylum. *Id.* When a noncitizen wins withholding of removal the IJ simultaneously enters a removal order to the person’s country of origin but withholds that order with respect to the country of removal for which the noncitizen established a likelihood of persecution. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 531–532 (2021). The withholding grant and accompanying removal order become final on the date they are issued if both parties waive appeal, or at the conclusion of the 30-day period to file an appeal if no appeal is filed. 8 C.F.R. §1241.1. A noncitizen who has been granted withholding cannot be removed to the country for which they demonstrated a likelihood of persecution.

II. Removal to a Third Country for Individuals granted Withholding of Removal

A. Statutory guidance on third country removals

A noncitizen who has been granted withholding cannot be removed to the country for which they demonstrated a likelihood of persecution. However, ICE can arrange for removal to another country. This is known as a “third country” because it is a country other than the one designated on the noncitizen’s removal order. 8 C.F.R. § 1208.16(f). Specific criteria for identifying a third country for removal are prescribed by statute. For example, the law provides that a noncitizen with a removal order may be removed to a non-designated country of which the noncitizen is a “subject, national or citizen.” 8 U.S.C. §1231(b)(2)(D). ICE may also remove a noncitizen with a removal order to the country from which they were admitted to the U.S.; the country from which the noncitizen departed for the U.S. or a foreign territory contiguous to the U.S.; a country in which the noncitizen resided before entering the country from which they entered the U.S.; the noncitizen’s country of birth; the country that had sovereignty over the place of birth at the time of birth; the country in which the birthplace is located at the time of the removal order; and, “if impracticable, inadvisable, or impossible to remove the [noncitizen] to each country described [above],” ICE may remove a noncitizen to “another country whose government will accept the [noncitizen] into that country.” 8 U.S.C. §1231(b)(2)(E).

Notwithstanding the criteria for removal to a third country, ICE may not remove a noncitizen to a country where the noncitizen’s life or freedom would be threatened on the basis of the five protected grounds. 8 U.S.C. §1231(b)(3)(A). The Supreme Court has emphasized the importance of existing avenues of relief from removal (such as applications for asylum, withholding of removal, and protection under the convention against torture) for providing protection against removal to a third country where a noncitizen would be in danger. *See Jama v. Immigr. &*

1 *Customs Enf't*, 543 U.S. 335, 348 (2005) (“If aliens would face persecution or other
2 mistreatment in the country designated under § 1231(b)(2), they have a number of
3 available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A);
4 relief under an international agreement prohibiting torture, see 8 CFR §§
5 208.16(c)(4), 208.17(a) (2004); and temporary protected status, 8 U.S.C. §
6 1254a(a)(1))”; see also *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (recently
7 holding that non-citizens “must receive notice” that “they are subject to removal” to
8 a third country and that such notice must be provided “within a reasonable time
9 and in such a manner as will allow the[] [non-citizen] to actually seek . . . relief.”)
10 (quoting *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025)).

11 The government itself has previously acknowledged this limitation on
12 removal to a third country. In oral argument before the Supreme Court in the case
13 *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) the following exchange took place
14 between the then-Assistant to the Solicitor General, Vivek Suri, and Justice Kagan:

15 JUSTICE KAGAN: ...suppose you had a third country
16 that, for whatever reason, was willing to accept [a
17 noncitizen]. If...that [noncitizen] was currently in
18 withholding proceed--proceedings, you couldn't put him on
19 a plane to that third country, could you?

20 MR. SURI: We could after we provide the [noncitizen]
21 notice that we were going to do that.

22 JUSTICE KAGAN: Right.

23 MR. SURI: But, without notice –

24 JUSTICE KAGAN: So that's what it would depend on,
25 right? That – that you would have to provide him notice,
26 and if he had a fear of persecution or torture in that
27 country, he would be given an opportunity to contest his
removal to that country. Isn't that right?

MR. SURI: Yes, that's right.

1 JUSTICE KAGAN: So, in this situation, as to these
2 [noncitizens] who are currently in withholding
3 proceedings, you can't put them on a plane to anywhere
4 right now, isn't that right?

5 MR. SURI: Certainly, I agree with that, yes.

6 JUSTICE KAGAN: Okay. And that's not as a practical
7 matter. That really is, as -- as you put it, in the eyes of the
8 law. In the eyes of the law, you cannot put one of these
9 [noncitizens] on a plane to any place, either the -- either
10 the country that's referenced in the removal order or any
11 other country, isn't that right?

12 MR. SURI: Yes, that's right.

13 See Transcript of Oral Argument at 20–21, *Johnson v. Guzman Chavez*, 594
14 U.S. 523 (2021).

15 **B. Trump Administration policies on third country removal**

16 Until recently, it was exceedingly rare that the government would pursue
17 removal to a third country for an individual granted INA withholding of removal or
18 CAT protection. This information is not routinely released by ICE, but data
19 obtained through a Freedom of Information Act request revealed that in fiscal year
20 2017 just 21 people who had been granted withholding of removal were removed to
21 a third country.¹ That is 1.6% of the people granted withholding that year. But,
22 based on the data, the individuals removed were not necessarily people who had
23 been granted withholding in 2017 – just 21 people out of all the people with
24 withholding of removal grants in the U.S., granted at any time, were removed.

25 ¹ American Immigration Council, *The Difference Between Asylum and*
26 *Withholding of Removal*, at 7, available at
27 [https://www.americanimmigrationcouncil.org/wp-](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)
[content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_remo-](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)
[val.pdf](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf) (last visited August 21, 2025).

1 Further, it's likely that some of those people had some form of permanent
2 immigration status in the country they were removed to.

3 On March 30, 2025, Respondent Kristi Noem, the Secretary of the
4 Department of Homeland Security, issued guidance to ICE and other DHS agencies
5 regarding third country removals. This memo states that, prior to a noncitizen's
6 removal to a third country, "DHS must determine whether that country has
7 provided diplomatic assurances that aliens removed from the United States will not
8 be persecuted or tortured."² The memo continues that, where a country has
9 provided such assurances and the U.S. government believes them to be a credible, a
10 noncitizen may be removed to that country "without the need for further
11 procedures." In other words, an individual may be removed without providing notice
12 or an opportunity to contest removal to that third country.

13 The March 30th memo also states that DHS will remove noncitizens even to
14 third countries that have not provided diplomatic assurances that noncitizens
15 deported from the U.S. will not be persecuted or tortured.³ In such cases, DHS will
16 inform the noncitizen of removal to the intended country but will not affirmatively
17 ask the noncitizen if they fear being removed to that country.⁴ DHS will refer any
18 noncitizen that affirmatively states a fear of removal to a third country to USCIS
19 for a screening for eligibility for withholding of removal and/or CAT protection as to
20 the intended third country.⁵ USCIS will then make a determination about whether
21 the noncitizen has established that they will "more likely than not be persecuted on
22 a statutorily protected ground or tortured in the country of removal."⁶ If USCIS

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24 ² P.Ex. 6 at 3.

25 ³ P.Ex. 6 at 4

26 ⁴ P.Ex. 6 at 4.

27 ⁵ P.Ex. 6 at 4.

⁶ P.Ex. 6 at 4.

determines that the noncitizen did not meet that burden, they will be removed.⁷ If the noncitizen does make a showing to the satisfaction of USCIS, USCIS will notify ICE and the ICE Office of the Principal Legal Advisor (OPLA) may reopen immigration court proceedings for the noncitizen to seek withholding or CAT protection from removal to the third country.⁸ “Alternatively, ICE may choose to designate another country for removal.”⁹ The memo provides no limitation on how many times ICE could designate a new third country for removal upon a noncitizen’s showing of a well-founded fear of removal to a particular country.

On July 9, 2025, Respondent Todd Lyons sent additional guidance to ICE employees regarding third country removals (“July 9 Directive”).¹⁰ The directive was issued in light of the Supreme Court’s decision to stay the injunction in the case *D.V.D. v. Department of Homeland Security*, No. 25-10676 (D. Mass.). It reiterated the procedures from the March 30 memo and provided additional details regarding how to deal with third country removals to countries that have not provided credible assurances that U.S. deportees will not be persecuted or tortured. It added that, in such cases, an ICE officer will serve the noncitizen with a Notice of Removal including the intended country and that the notice must be read in a language the noncitizen understands.¹¹ ICE “will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal” but that in “exigent circumstances” ICE may remove a noncitizen to a possible-torture third country in as little as six hours after service of the Notice of Removal “as long as the [noncitizen] is provided reasonable means and opportunity to speak with an

⁷ P.Ex. 6 at 4.

⁸ P.Ex. 6 at 4.

⁹ P.Ex. 6 at 4.

¹⁰ P.Ex. 7.

¹¹ P.Ex. 7 at 2.

1 attorney prior to removal.”¹² Generally, if a noncitizen does not affirmatively state a
2 fear of persecution or torture within 24 hours of service of the Notice of Removal,
3 ICE may proceed with removal to the identified third country.¹³

4 **III. Detention of Noncitizens Granted Withholding of Removal**

5 **A. Statutory framework**

6 Section 1231 of the INA governs the detention of noncitizens during and
7 beyond the “removal period.” The removal period begins once a noncitizen’s removal
8 order becomes administratively final and lasts for 90 days, during which ICE “shall
9 remove the [noncitizen] from the United States” and “shall detain the [noncitizen]”
10 as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the
11 noncitizen within the 90-day removal period, the noncitizen “*may* be detained
12 beyond the removal period.” 8 U.S.C. § 1231(a)(6) (emphasis added).

13 The Supreme Court considered the issue of indefinite detention under 8
14 U.S.C. §1231(a)(6) in the case *Zadvydas v. Davis*, 533 U.S. 678 (2001). In that case,
15 the Court acknowledged that allowing a noncitizen to be detained indefinitely after
16 the statutory removal period would raise “serious constitutional concerns” and, as a
17 result, held that 8 U.S.C. §1231(a)(6) contains an implicit time limit. *Id.* at 682. The
18 Court further held that 8 U.S.C. §1231(a)(6) authorizes detention only for “a period
19 reasonably necessary to bring about the [noncitizen]’s removal from the United
20 States” and that six months of detention after the removal order is final is
21 “presumptively reasonable.” *Id.* at 689, 701.

22 Importantly, the *Zadvydas* court did not say the presumption is irrebuttable,
23 and a variety of courts across the country that have considered the issue have found
24 the presumption of reasonableness during the first six months of post-removal order
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26 ¹² P.Ex. 7 at 2.

27 ¹³ P.Ex. 7 at 3.

1 detention can be rebutted. *See Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO),
2 2025 WL 1750346, at *5 (D.N.J. June 24, 2025) (analyzing the issue and collecting
3 case). “Within the six-month window,” the noncitizen bears the burden of “prov[ing]
4 the unreasonableness of detention.” *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D.
5 Wis. 2008). After six months, there is “good reason to believe that there is no
6 significant likelihood of removal in the reasonably foreseeable future,” and the
7 burden shifts to the government to justify continued detention. *Zadvydas*, 533 U.S.
8 at 701. “Whether detention is ‘reasonably necessary to secure removal is
9 determinative of whether the detention is, or is not, pursuant to statutory
10 authority...The basic federal habeas corpus statute grants the federal courts
11 authority to answer that question.” *Medina v. Noem, et al., Respondents*, No. 25-
12 CV-1768-ABA, 2025 WL 2306274, at *6 (D. Md. Aug. 11, 2025) (citing *Zadvydas*,
13 533 U.S. at 699).

14 **B. DHS Regulations**

15 DHS regulations provide that, before the end of the 90-day removal period,
16 the local ICE field office with jurisdiction over the noncitizen’s detention must
17 conduct a custody review to determine whether the noncitizen should remain
18 detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released
19 at the end of the removal period or in the three months that follow, jurisdiction
20 transfers to ICE headquarters (ICE HQ), which must conduct a custody review
21 before or at 180 days. 8 C.F.R. §241.4(c)(2), (k)(2)(ii).

22 To comply with *Zadvydas*, DHS issued additional regulations in 2001 that
23 established “special review procedures” to determine whether detained noncitizens
24 with final removal orders are likely to be removed in the reasonably foreseeable
25 future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66
26 Fed. Reg. 56, 967 (Nov. 14, 2001). Subsection (i)(7) was added to 8 C.F.R. §241.4,
27 which added a supplemental review procedure that ICE HQ must initiate when “the

1 [noncitizen] submits, or the record contains, information providing a substantial
2 reason to believe that removal of a detained [noncitizen] is not significantly likely in
3 the reasonably foreseeable future.” 8 C.F.R. §241.4(i)(7). Under this procedure, ICE
4 HQ evaluates the foreseeability of removal by analyzing factors such as the history
5 of ICE’s removal efforts to third countries. *See* 8 C.F.R. §241.13(f). If ICE HQ
6 determines that removal is not reasonably foreseeable but nonetheless seeks to
7 continue detention based on “special circumstances,” it must justify the detention
8 based on narrow grounds such as national security or public health concerns or by
9 demonstrating by clear and convincing evidence before an IJ that the noncitizen is
10 “specially dangerous.” 8 C.F.R. §241.14(b)-(d), (f).

11 C. ICE Policy

12 Consistent with the statutory and regulatory scheme, long-standing ICE
13 policy favors the prompt release of noncitizens who have been granted withholding
14 or CAT relief. In 2000, the then-Immigration and Naturalization Service (INS)¹⁴
15 General Counsel issued a memorandum clarifying that 8 U.S.C. § 1231 authorizes
16 but does not require the detention of noncitizens granted withholding of removal or
17 CAT relief during the 90-day removal period.¹⁵ A 2004 ICE memorandum turned
18 this acknowledgment of authority into a presumption, stating that “it is ICE policy
19 to favor the release of [noncitizens] who have been granted protection relief by an
20 immigration judge, absent exceptional concerns such as national security issues or
21 danger to the community and absent any requirement under law to detain.”¹⁶ ICE
22 leadership subsequently reiterated this policy in a 2012 announcement, clarifying
23 that the 2000 and 2004 ICE memorandums are “still in effect and should be
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25 ¹⁴ INS, housed within the Department of Justice, became ICE after the
26 formation DHS in 2002.

27 ¹⁵ P. Ex. 1 at 2.

¹⁶ P. Ex. 1 at 3.

1 followed” and that “[t]his policy applies at all times following a grant of protection,
2 including during any appellate proceedings and throughout the removal period.”¹⁷
3 Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all
4 ICE employees reminding them of the “longstanding policy” that “absent
5 exceptional circumstances, . . . noncitizens granted asylum, withholding of removal,
6 or CAT protection by an immigration judge should be released. . . .”¹⁸ Director
7 Johnson clarified that “in considering whether exceptional circumstances exist,
8 prior convictions alone do not necessarily indicate a public safety threat of danger to
9 the community.”¹⁹

10 On February 18, 2025, ICE issued a directive to agents encouraging them to
11 seek to re-detain noncitizens with final removal orders who had been previously
12 released from custody for the purpose of removal to previously recalcitrant countries
13 of origin, or to third countries.²⁰ The directive did not provide justification as to why
14 detention of noncitizens complying with orders of supervision would be necessary to
15 effectuate removal to country of origin or otherwise.

16 STATEMENT OF FACTS

17 Petitioner Nicolas Cavieres Gomez was born and raised in Chile. On
18 information and belief, neither he nor his parents are citizens of any other country.
19 On information and belief, Cavieres Gomez has not lived in any countries besides
20 the U.S. and Chile and does not have a lawful immigration status in any other
21 countries.

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25 ¹⁷ P. Ex. 1 at 4.

26 ¹⁸ P. Ex. 1 at 5.

27 ¹⁹ P. Ex. 1 at 5.

²⁰ P. Ex. 5.

Cavieres Gomez was placed in asylum-only proceedings on October 31, 2024.²¹ He has been detained since that time. On February 7, 2025, an IJ granted Cavieres Gomez withholding of removal from Chile because he demonstrated it is more likely than not that he will be persecuted on account of a protected ground if forced to return, so he cannot legally be removed to Chile.²² On information and belief, ICE reserved appeal of the grant of withholding but did not file an appeal. Accordingly, Cavieres Gomez's removal order became final on March 10, 2025. The 90-day removal period ended on June 8, 2025.

As of the filing of this amended petition, Cavieres Gomez has been detained for 166 days, or five months and 13 days, since his removal order and grant of withholding of removal became final. During that time, on information and belief, ICE has not undertaken any steps to facilitate Cavieres Gomez's removal to a third country. Cavieres Gomez has not received any documents identifying a third country of removal, or any plan for removal. ICE has also not claimed that Cavieres Gomez is "specially dangerous" or exhibits any of the other characteristics of noncitizens meriting extended detention after a grant of withholding of removal.

GROUND'S FOR RELIEF

I. **Ground One: The continued indefinite detention of Cavieres Gomez violates his Fifth Amendment right to due process because his removal is not reasonably foreseeable.**

Petitioner incorporates the above paragraphs by reference as if fully set forth herein.

The INA requires mandatory detention of individuals with final removal orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2). A noncitizen who is not removed within that period “shall be subject to supervision under

²¹ P. Ex. 3.

²² P. Ex. 4.

1 regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3). If ICE does
2 not remove the noncitizen within the 90-day removal period, the noncitizen “*may* be
3 detained beyond the removal period.” 8 U.S.C. § 1231(a)(6) (emphasis added).
4 However, in *Zadvydas, supra*, the Supreme Court concluded that due process
5 imposes an “implicit limitation” upon 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at
6 689. Specifically, the Court held that 8 U.S.C. § 1231(a)(6) authorizes detention only
7 for “a period reasonably necessary to bring about the [noncitizen]’s removal from the
8 United States” and that six months of detention after the removal order is final is
9 “presumptively reasonable.” *Id.* at 701. The Court further determined that “once the
10 alien provides good reason to believe that there is no significant likelihood of
11 removal in the reasonably foreseeable future, the Government must respond with
12 evidence sufficient to rebut that showing.” *Id.*

13 Cavieres Gomez’s detention is governed by 8 U.S.C. § 1231(a)(6) because he
14 has been detained for more than 90 days since he received a final grant of
15 withholding of removal. Here, the 90-day removal period began on March 10, 2025,
16 when the appeal period that followed the order in Cavieres Gomez’s removal
17 proceedings expired without either party filing a timely appeal. *See* 8 U.S.C. §
18 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(c). Therefore, the *Zadvydas* framework applies.

19 Petitioner’s continued detention is unreasonable and his removal is not
20 reasonably foreseeable. As of the filing date of this Amended Petition, six (6)
21 months and sixteen (16) days have passed since the IJ issued an order of removal in
22 immigration proceedings. And five (5) months and thirteen (13) days have passed
23 since the order became final. Cavieres Gomez cannot be removed to Chile. Cavieres
24 Gomez is not a citizen of, has never lived in, and has no connection to *any* country
25 besides his home country, let alone the countries to which ICE has purportedly
26 attempted to remove individuals in the recent past. Upon information and belief,
27 throughout his prolonged detention, no preparations have been made to deport

1 Cavieres Gomez, and no third country designation has been made. No third country
2 designation has been made.

3 The Due Process Clause of the Fifth Amendment forbids the government
4 from depriving any “person” of liberty “without due process of law.” U.S. Const.
5 amend. V. Petitioner has a liberty interest in remaining free from physical
6 confinement where removal is not reasonably foreseeable. Respondents have
7 violated the Due Process Clause of the Fifth Amendment because Petitioner’s
8 removal is not reasonably foreseeable. As provided above, *Zadvydas* requires that
9 Petitioner be immediately released. *See* 533 U.S. at 700-01 (describing release as an
10 appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release “subject to . . . terms
11 of supervision”).
12

13 **II. Ground Two: Cavieres Gomez’s continued detention violates the**
14 **Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6).**

15 Petitioner incorporates the above paragraphs by reference as if fully set forth
16 herein.

17 As provided in Ground One, above, Cavierez Gomez’s detention is governed
18 by 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas, supra*.
19 Cavieres Gomez’s continued detention violates 8 U.S.C. § 1231(a)(6) because it is
20 both unreasonable and because removal is not reasonably foreseeable. As further
21 discussed in Ground Three, incorporated herein by reference, Cavieres Gomez poses
22 neither a risk of flight nor a danger to the community. Rather, his continued
23 detention under 8 U.S.C. § 1231(a)(6) is driven by sweeping and arbitrary DHS
24 policies. Moreover, and as discussed in Ground One, Cavieres Gomez’s removal is
25 not reasonably foreseeable. This Court should order that Cavieres Gomez be
26 released
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3 **III. Ground Three: ICE's continued detention of Cavieres Gomez,**
4 **without providing an individualized custody assessment pursuant**
5 **to ICE policy, violates the Administrative Procedures Act, 5 U.S.C.**
6 **§706(2)(A).**

7 Petitioner incorporates the above paragraphs by reference as if fully set forth
8 herein.

9 Under the Administrative Procedures Act (APA), a court must hold unlawful
10 and set aside agency action found to be "arbitrary, capricious, an abuse of
11 discretion, or otherwise not in accordance with law" or "without observance of
12 procedure required by law." 5 U.S.C. §706(2). An agency action is "arbitrary and
13 capricious if the agency has relied on factors which Congress has not intended it to
14 consider, entirely failed to consider an important aspect of the problem, offered an
15 explanation for its decision that runs counter to the evidence before the agency, or is
16 so implausible that it could not be ascribed to a difference in view or the product of
17 agency expertise." *Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto.*
18 *Ins. Co.*, 463 U.S. 29, 43 (1983). Courts "defer to an agency's determinations so long
19 as the agency 'gives adequate reasons for its decisions, in the form of a satisfactory
20 explanation for its action including a rational connection between the facts found
21 and the choice made.'" *Nat. Res. Def. Council, Inc. v. United States Env't Prot.*
22 *Agency*, 961 F.3d 160, 170 (2d Cir. 2020) (cleaned up).

23 As noted in 8 C.F.R. §241.4, before the end of the 90-day removal period, the
24 local ICE field office with jurisdiction over a noncitizen's detention must conduct a
25 custody review to determine whether the noncitizen should remain detained. *See* 8
26 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). A copy of any decision to release or continue to
27 detain a noncitizen "shall be provided to the detained [noncitizen]." 8 C.F.R.
§241.4(d). Where ICE decides that a noncitizen will stay detained, the decision

1 provided to the noncitizen “shall briefly set forth the reasons for the continued
2 detention.” *Id.* The criteria for determining if continued detention is warranted
3 mainly concerns whether the noncitizen presents a risk of flight or danger to the
4 community. 8 C.F.R. §241.4(e). The review panel members must also determine that
5 travel documents are not available or that “immediate removal, while proper, is
6 otherwise not practicable or not in the public interest.” *Id.*

7 Cavieres Gomez was informed via an undated letter that the initial custody
8 review would take place on January 26, 2025.²³ On information and belief, Cavieres
9 Gomez never received a written decision informing him of his continued detention,
10 and the reasons justifying it. This break with protocol suggests that ICE never
11 actually performed an individualized assessment of whether continued detention
12 was warranted in Cavieres Gomez’s case. It is likely that an individualized custody
13 determination would have resulted in the release of Cavieres Gomez because there
14 is no significant evidence to establish that he presents either a flight risk or a
15 danger to the community. Furthermore, he cannot be removed to Chile, and has no
16 legal status in any other country, so he does not have any travel documents that
17 ICE could use to remove him. There has also been no indication that ICE has
18 attempted to obtain travel documents from any third country to effect a third
19 country removal.²⁴

22
23 ²³ P. Ex. 2.

24 ²⁴ Compare with *Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *1
25 (D. Md. Aug. 11, 2025) (ICE informed Honduran petitioner in writing of intent to
26 remove him to El Salvador and that his case was “under current review by El
27 Salvador for the issuance of a travel document”); *I.V.I. v. Baker*, No. CV JKB-25-
1572, 2025 WL 1811273, at *1 (D. Md. July 1, 2025) (ICE informed Honduran
petitioner in writing of intent to remove him to Mexico).

1 Because there is no evidence that Respondents found Cavieres Gomez to be a
2 danger or a flight risk, or that he had travel documents, the decision to continue
3 detaining him violates DHS's own regulations. "It is a familiar rule of
4 administrative law that an agency must abide by its own regulations." *Fort Stewart*
5 *Schs. v. Fed. Lab. Rels. Auth.*, 495 U.S. 641, 654 (1990); *see also United States ex rel*
6 *Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (holding that government agencies are
7 required to follow their own regulations). In addition, continuing to detain Cavieres
8 Gomez is contrary to ICE's longstanding policy of releasing individuals granted
9 withholding of removal absent an exceptional reason not to do so. Even the new
10 directives regarding removal to third countries, which on their face are
11 unconstitutional and in violation of the INA because they fail to provide the requisite
12 due process and comply with the regulations, do not provide any reason that a
13 noncitizen in Cavieres Gomez's position should not be released. Accordingly,
14 Cavieres Gomez's continued detention violates the APA because it is arbitrary and
15 capricious and not in accordance with law.

16 This Court should order that Cavieres Gomez be released because
17 Respondents have not demonstrated that he was afforded proper procedures related
18 to his continued detention, or that he warrants continued detention under the
19 regulations. Accordingly, his continued detention is unlawful.

20 **IV. Ground Four: ICE's policy to remove noncitizens to a third**
21 **country with no notice or opportunity to seek fear-based**
22 **protection constitutes arbitrary and capricious agency action in**
23 **violation of the Administrative Procedure Act, 5 U.S.C. § 706.**

24 Petitioner incorporates the above paragraphs by reference as if fully set forth
25 herein.

26 The APA entitles "a person suffering legal wrong because of agency action, or
27 adversely affected or aggrieved by agency action . . . to judicial review." 5 U.S.C. §
702. Further, the APA compels a reviewing court to "hold unlawful and set aside

1 agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . .
2 otherwise not in accordance with law,” *id.* § 706(2)(A), or “short of statutory right,”
3 *id.* § 706(2)(C). The APA also compels a reviewing court to “hold unlawful and set
4 aside agency action, findings, and conclusions found to be . . . without observance of
5 procedure required by law.” 5 U.S.C. § 706(2)(D).

6 As explained above, Cavieres Gomez has a due process right to meaningful
7 notice and opportunity to present a fear-based claim to an immigration judge before
8 DHS deports him to a third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041
9 (9th Cir. 1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019).
10 Cavieres Gomez also has a due process right to implementation of a process or
11 procedure to afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*,
12 498 U.S. 479, 491 (1991). Respondents, however, have adopted a policy—set forth in
13 the March 30 memo and July 9 directive—that is arbitrary and capricious and
14 deprives Cavieres Gomez of meaningful notice and an opportunity to present a fear-
15 based claim to an immigration judge prior to his deportation to a third country.
16 Moreover, Respondents’ policy also violates the INA and implementing regulations
17 which mandate that Respondents refrain from removing Cavieres Gomez, and
18 similarly situated individuals, to a third country where they will likely be
19 persecuted or tortured, thus requiring Respondents to provide meaningful notice of
20 deportation to a third country and the opportunity to present a fear-based claim to
21 an immigration judge before deporting an individual to a third country. In this case,
22 the March 30 memo and July 9 directive and those recent events described in the
23 Emergency Motion for Temporary Restraining Order or Preliminary Injunction
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25
26
27

(ECF No. 8) filed in this case, incorporated by reference as if fully set forth herein, demonstrate Respondents do not intend to observe those protections.²⁵

The APA empowers federal courts to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The Court should hold that Respondents’ actions and policy are unlawful and compel that—before any attempt is made to deport him to a third country—Petitioner be provided with meaningful notice and opportunity to present a fear-based claim to an immigration judge.

PRAYER FOR RELIEF

Accordingly, Nicolas Cavieres Gomez respectfully requests that this Court:

1. Declare that Petitioner’s continued detention violates the Immigration and Nationality Act, 8 U.S.C. §1231(a)(6); the Administrative Procedure Act, 5 U.S.C. §706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
2. Order Petitioner’s immediate release;
3. Prohibit Respondents from removing petitioner to a third country without providing Petitioner and Petitioner’s counsel with adequate notice of intent to seek removal to a third country and due process in the form of an opportunity to seek to reopen Petitioner’s immigration court proceedings to seek fear-based relief from removal; and

²⁵ See also Lunga Masuku, Eswatini government faces court challenge for accepting US deportees, THE GUARDIAN (Aug. 22, 2025), <https://www.reuters.com/world/africa/eswatini-government-faces-court-challenge-accepting-us-deportees-2025-08-22/>.

1 4. Grant such other and further relief as, in the interests of justice, may
2 be appropriate.

3 Dated August 22, 2025.

4 Respectfully submitted,

5 Rene L. Valladares
6 Federal Public Defender

7 */s/ Laura Barrera*
8 Laura Barrera
9 Assistant Federal Public Defender

10 */s/ Martin L. Novillo*
11 _____
12 Martin L. Novillo
13 Assistant Federal Public Defender
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DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the facts alleged in this petition are true and correct to the best of counsel's knowledge, information, and belief.

Dated August 22, 2025.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Laura Barrera
Laura Barrera
Assistant Federal Public Defender

/s/ Martin L. Novillo
Martin L. Novillo
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on August 22, 2025. I personally served a true and correct copy of the foregoing index and exhibits in support of the first amended petition by CM/ECF to the following individuals:

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I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:

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/s/ Kaitlyn O'Hearn
An Employee of the
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