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13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 Peejman Shadalo,

16 Petitioner,

17 v.

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

21 Respondents.
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Case No. 2:25-cv-02076-RFB-BNW

First Amended § 2241 Petition

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 Peejman Shadalo is a native and citizen of Iran who was ordered removed in
7 October of 2013. He is currently detained at the Nevada Southern Detention Center
8 in Pahrump, Nevada.

9 John Mattos is the warden of Nevada Southern Detention Center. Mattos, in
10 his official capacity, is the immediate custodian of Shadalo.

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

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 Shadalo.

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

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.

1 **STATEMENT OF FACTS**

2 Petitioner Peejman Shadalo was born in Iran. On information and belief,
3 when Shadalo was around seven years old, he left Iran with his parents as refugees.
4 They temporarily lived in Germany before permanently resettling in the United
5 States as refugees in 2001. Shadalo later became a permanent resident.

6 Shadalo was placed in removal proceedings and ordered removed to Iran in
7 2013. At the same time, however, Shadalo was granted deferral of removal under
8 the Convention Against Torture (CAT), so he cannot be removed to Iran.¹ Shadalo
9 was held in detention for around 90 days after his removal was ordered, then was
10 released because he could not be removed. ICE was unable to obtain removal
11 documents for Shadalo from either Iran or Germany.

12 On June 25, 2025, Shadalo appeared for an appointment with his probation
13 officer in Salt Lake City, UT. Shadalo had been fully compliant with his probation.²
14 Officers from ICE were waiting for Shadalo and took him into custody. Notably,
15 Iranians across the country were detained the same week as Shadalo, seemingly for
16 political reasons unrelated to the foreseeability of removal from the United States.³
17 In fact, Shadalo still cannot be removed to Iran because he has CAT protection.
18 Shadalo has complied with ICE's past and recent requests to seek travel documents
19 from Germany but was informed that Germany will not accept him. He has never
20 lived in or held a lawful status in any other country. Despite no chance of removal,
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24 ¹ Ex. 2.

25 ² See ECF No. 1-1 at 21.

26 ³ Kourosh Ziabari and Meghnad Bose, *Arrested for being Iranian: How a war*
27 *in the Middle East gave ICE new targets at home*, Prism (Oct. 8, 2025), available at
<https://prismreports.org/2025/10/08/iranian-immigrants-deportation-iran/>

1 Respondents have held Shadalo in custody in overcrowded⁴ conditions in the
2 Nevada Southern Detention Center for five months, or 153 days.⁵

3 Between now and the time Shadalo was ordered removed 12 years ago,
4 circumstances have not materially changed concerning the possibility of his
5 removal. ICE still cannot remove him to Iran or Germany, and Shadalo has not
6 received any documents identifying another country of removal, or any plan for
7 removal.

8 LEGAL FRAMEWORK

9 I. Deferral of Removal under the Convention Against Torture.

10 Noncitizens in removal proceedings have three primary forms of relief from
11 removal based on a fear of returning to their home country: asylum, withholding of
12 removal, and protection under the CAT. An applicant may be ineligible for asylum
13 for several reasons such as failing to apply within one year of entering the United
14 States. *See* 8 U.S.C. §1158(a)(2). There are fewer restrictions on eligibility for
15 withholding of removal under the Immigration and Nationality Act (INA), and no
16 restrictions on eligibility for deferral of removal under the CAT. *See* 8 U.S.C.
17 §1231(b)(3)(B); 8 C.F.R. § 1208.17(a).

18 To be granted CAT protection, an applicant must show that “it is more likely
19 than not that he or she would be tortured if removed to the proposed country of
20 removal.” 8 C.F.R. 1208.16(c)(2). Such torture “must be inflicted by or at the
21 instigation of or with the consent or acquiescence of a public official or other person
22 acting in an official capacity.” *Edgar G.C. v. Bondi*, 136 F.4th 832, 845 (9th Cir.

23 _____
24 ⁴ Isabella Aldrete, *Nevada is home to one of the most over-capacity ICE*
25 *detention centers in the country*, Nevada Independent (Aug. 27, 2025), available at
26 <https://thenevadaindependent.com/article/nevada-is-home-to-one-of-the-most-over-capacity-ice-detention-centers-in-the-country>.

27 ⁵ As noted above, Shadalo was also previously detained for the initial 90-day
removal period in 2013.

1 2025) (internal quotations omitted). When a noncitizen wins protection under the
2 CAT, an order of removal to the country where the person will be tortured is still
3 entered, but ICE is not permitted to remove the individual to that country because
4 of the probability of torture. *See* 8 C.F.R. §1208.17(a), (b). The grant of CAT
5 protection and accompanying removal order become final on the date they are
6 issued if both parties waive appeal, or at the conclusion of the 30-day period to file
7 an appeal if no appeal is filed. 8 C.F.R. §1241.1. To the extent an order of removal
8 was entered in separate proceedings and prior to a grant of CAT protection, the
9 finality of the removal order would still be determined from the date the removal
10 order was entered. *See id.*

11 **II. Removal to a Third Country for Individuals granted protection** 12 **under the Convention Against Torture.**

13 **A. Statutory guidance on third country removals**

14 A noncitizen who has been granted CAT protection cannot be removed to the
15 country for which they demonstrated a likelihood of persecution. However, ICE can
16 arrange for removal to another country. This is known as a “third country” because
17 it is a country other than the one designated on the noncitizen’s removal order. 8
18 C.F.R. § 1208.16(f). Specific criteria for identifying a third country for removal are
19 prescribed by statute. For example, the law provides that a noncitizen with a
20 removal order may be removed to a non-designated country of which the noncitizen
21 is a “subject, national or citizen.” 8 U.S.C. §1231(b)(2)(D). ICE may also remove a
22 noncitizen with a removal order to the country from which they were admitted to
23 the U.S.; the country from which the noncitizen departed for the U.S. or a foreign
24 territory contiguous to the U.S.; a country in which the noncitizen resided before
25 entering the country from which they entered the U.S.; the noncitizen’s country of
26 birth; the country that had sovereignty over the place of birth at the time of birth;
27 the country in which the birthplace is located at the time of the removal order; and,

1 “if impracticable, inadvisable, or impossible to remove the [noncitizen] to each
2 country described [above],” ICE may remove a noncitizen to “another country whose
3 government will accept the [noncitizen] into that country.” 8 U.S.C. §1231(b)(2)(E).

4 Notwithstanding the criteria for removal to a third country, ICE may not
5 remove a noncitizen to a country where the noncitizen’s life or freedom would be
6 threatened on the basis of the five protected grounds, or where the noncitizen would
7 be tortured. 8 U.S.C. §1231(b)(3)(A); *Id.*, §1208(c)(4). The Supreme Court has
8 emphasized the importance of existing avenues of relief from removal (such as
9 applications for asylum, withholding of removal, and protection under the
10 convention against torture) for providing protection against removal to a third
11 country where a noncitizen would be in danger. *See Jama v. Immigr. & Customs*
12 *Enft*, 543 U.S. 335, 348 (2005) (“If [noncitizens] would face persecution or other
13 mistreatment in the country designated under § 1231(b)(2), they have a number of
14 available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A);
15 relief under an international agreement prohibiting torture, see 8 CFR §§
16 208.16(c)(4), 208.17(a) (2004); and temporary protected status, 8 U.S.C. §
17 1254a(a)(1)”; *see also A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (recently
18 holding that non-citizens “must receive notice” that “they are subject to removal” to
19 a third country and that such notice must be provided “within a reasonable time
20 and in such a manner as will allow the[] [non-citizen] to actually seek . . . relief.”)
21 (quoting *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025)).

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

26 JUSTICE KAGAN: ...suppose you had a third
27 country that, for whatever reason, was willing to accept [a
noncitizen]. If...that [noncitizen] was currently in

1 withholding proceed--proceedings, you couldn't put him on
2 a plane to that third country, could you?

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

5 JUSTICE KAGAN: Right.

6 MR. SURI: But, without notice –

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

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

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

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

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

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

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

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

Until recently, it was exceedingly rare that the government would pursue removal to a third country for an individual granted INA withholding of removal or CAT protection. This information is not routinely released by ICE, but data

1 obtained through a Freedom of Information Act request revealed that in fiscal year
2 2017 just 21 people who had been granted withholding of removal were removed to
3 a third country.⁶ That is 1.6% of the people granted withholding that year. But,
4 based on the data, the individuals removed were not necessarily people who had
5 been granted withholding in 2017 – just 21 people out of all the people with
6 withholding of removal grants in the U.S., granted at any time, were removed.
7 Further, it’s likely that some of those people had some form of permanent
8 immigration status in the country they were removed to.

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

19 The March 30th memo also states that DHS will remove noncitizens even to
20 third countries that have not provided diplomatic assurances that noncitizens
21 deported from the U.S. will not be persecuted or tortured.⁸ In such cases, DHS will

23 ⁶ American Immigration Council, *The Difference Between Asylum and*
24 *Withholding of Removal*, at 7, available at
25 [https://www.americanimmigrationcouncil.org/wp-](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)
26 [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)
27 [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).

⁷ Ex. 4 at 3.

⁸ Ex. 4 at 4

1 inform the noncitizen of removal to the intended country but will not affirmatively
2 ask the noncitizen if they fear being removed to that country.⁹ DHS will refer any
3 noncitizen that affirmatively states a fear of removal to a third country to USCIS
4 for a screening for eligibility for withholding of removal and/or CAT protection as to
5 the intended third country.¹⁰ USCIS will then make a determination about whether
6 the noncitizen has established that they will “more likely than not be persecuted on
7 a statutorily protected ground or tortured in the country of removal.”¹¹ If USCIS
8 determines that the noncitizen did not meet that burden, they will be removed.¹² If
9 the noncitizen does make a showing to the satisfaction of USCIS, USCIS will notify
10 ICE and the ICE Office of the Principal Legal Advisor (OPLA) may reopen
11 immigration court proceedings for the noncitizen to seek withholding or CAT
12 protection from removal to the third country.¹³ “Alternatively, ICE may choose to
13 designate another country for removal.”¹⁴ The memo provides no limitation as to
14 how many times ICE could designate a new third country for removal upon a
15 noncitizen’s showing of a well-founded fear of removal to a particular country.

16 On July 9, 2025, Respondent Todd Lyons sent additional guidance to ICE
17 employees regarding third country removals (“July 9 Directive”).¹⁵ The directive
18 was issued in light of the Supreme Court’s decision to stay the injunction in the case
19 *D.V.D. v. Department of Homeland Security*, No. 25-10676 (D. Mass.). It reiterated
20 the procedures from the March 30 memo and provided additional details regarding
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22 ⁹ Ex. 4 at 4.

23 ¹⁰ Ex. 4 at 4.

24 ¹¹ Ex. 4 at 4.

25 ¹² Ex. 4 at 4.

26 ¹³ Ex. 4 at 4.

27 ¹⁴ Ex. 4 at 4.

¹⁵ Ex. 5.

1 how to deal with third country removals to countries that have not provided credible
2 assurances that U.S. deportees will not be persecuted or tortured. It added that, in
3 such cases, an ICE officer will serve the noncitizen with a Notice of Removal
4 including the intended country and that the notice must be read in a language the
5 noncitizen understands.¹⁶ ICE “will generally wait at least 24 hours following
6 service of the Notice of Removal before effectuating removal” but that in “exigent
7 circumstances” ICE may remove a noncitizen to a possible-torture third country in
8 as little as six hours after service of the Notice of Removal “as long as the
9 [noncitizen] is provided reasonable means and opportunity to speak with an
10 attorney prior to removal.”¹⁷ Generally, if a noncitizen does not affirmatively state a
11 fear of persecution or torture within 24 hours of service of the Notice of Removal,
12 ICE may proceed with removal to the identified third country.¹⁸

13 **III. Detention of Noncitizens after a Final Order of Removal**

14 **A. Statutory framework**

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

22 The Supreme Court considered the issue of indefinite detention under 8
23 U.S.C. §1231(a)(6) in the case *Zadvydas v. Davis*, 533 U.S. 678 (2001). In that case,
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25 ¹⁶ Ex. 5 at 2.

26 ¹⁷ Ex. 5 at 2.

27 ¹⁸ Ex. 5 at 3.

1 the Court acknowledged that allowing a noncitizen to be detained indefinitely after
2 the statutory removal period would raise “serious constitutional concerns” and, as a
3 result, held that 8 U.S.C. §1231(a)(6) contains an implicit time limit. *Id.* at 682. The
4 Court further held that 8 U.S.C. §1231(a)(6) authorizes detention only for “a period
5 reasonably necessary to bring about the [noncitizen]’s removal from the United
6 States” and that six months of detention after the removal order is final is
7 “presumptively reasonable.” *Id.* at 689, 701.

8 Importantly, the *Zadvydas* court did not say the presumption is irrebuttable,
9 and a variety of courts across the country that have considered the issue have found
10 the presumption of reasonableness during the first six months of post-removal order
11 detention can be rebutted. *See Munoz-Saucedo v. Pittman*, No. CV 25-2258 (CPO),
12 2025 WL 1750346, at *5 (D.N.J. June 24, 2025) (analyzing the issue and collecting
13 cases). “Within the six-month window,” the noncitizen bears the burden of
14 “prov[ing] the unreasonableness of detention.” *Cesar v. Achim*, 542 F. Supp. 2d 897,
15 903 (E.D. Wis. 2008). After six months, there is “good reason to believe that there is
16 no significant likelihood of removal in the reasonably foreseeable future,” and the
17 burden shifts to the government to justify continued detention. *Zadvydas*, 533 U.S.
18 at 701. “Whether detention is ‘reasonably necessary to secure removal is
19 determinative of whether the detention is, or is not, pursuant to statutory
20 authority...The basic federal habeas corpus statute grants the federal courts
21 authority to answer that question.” *Medina v. Noem, et al., Respondents*, No. 25-
22 CV-1768-ABA, 2025 WL 2306274, at *6 (D. Md. Aug. 11, 2025) (citing *Zadvydas*,
23 533 U.S. at 699).

24 **B. DHS Regulations**

25 DHS regulations provide that, before the end of the 90-day removal period,
26 the local ICE field office with jurisdiction over the noncitizen’s detention must
27 conduct a custody review to determine whether the noncitizen should remain

1 detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released
2 at the end of the removal period or in the three months that follow, jurisdiction
3 transfers to ICE headquarters (ICE HQ), which must conduct a custody review
4 before or at 180 days. 8 C.F.R. §241.4(c)(2), (k)(2)(ii).

5 To comply with *Zadvyas*, DHS issued additional regulations in 2001 that
6 established “special review procedures” to determine whether detained noncitizens
7 with final removal orders are likely to be removed in the reasonably foreseeable
8 future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66
9 Fed. Reg. 56, 967 (Nov. 14, 2001). Subsection (i)(7) was added to 8 C.F.R. §241.4,
10 which added a supplemental review procedure that ICE HQ must initiate when “the
11 [noncitizen] submits, or the record contains, information providing a substantial
12 reason to believe that removal of a detained [noncitizen] is not significantly likely in
13 the reasonably foreseeable future.” 8 C.F.R. §241.4(i)(7). Under this procedure, ICE
14 HQ evaluates the foreseeability of removal by analyzing factors such as the history
15 of ICE’s removal efforts to third countries. *See* 8 C.F.R. §241.13(f). If ICE HQ
16 determines that removal is not reasonably foreseeable but nonetheless seeks to
17 continue detention based on “special circumstances,” it must justify the detention
18 based on narrow grounds such as national security or public health concerns or by
19 demonstrating by clear and convincing evidence before an immigration judge (IJ)
20 that the noncitizen is “specially dangerous.” 8 C.F.R. §241.14(b)-(d), (f).

21 C. ICE Policy

22 Consistent with the statutory and regulatory scheme, long-standing ICE
23 policy favors the prompt release of noncitizens who have been granted withholding
24 or CAT relief. In 2000, the then-Immigration and Naturalization Service (INS)¹⁹
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27 ¹⁹ INS, housed within the Department of Justice, became ICE after the
formation DHS in 2002.

1 General Counsel issued a memorandum clarifying that 8 U.S.C. § 1231 authorizes
2 but does not require the detention of noncitizens granted withholding of removal or
3 CAT relief during the 90-day removal period.²⁰ A 2004 ICE memorandum turned
4 this acknowledgment of authority into a presumption, stating that “it is ICE policy
5 to favor the release of [noncitizens] who have been granted protection relief by an
6 immigration judge, absent exceptional concerns such as national security issues or
7 danger to the community and absent any requirement under law to detain.”²¹ ICE
8 leadership subsequently reiterated this policy in a 2012 announcement, clarifying
9 that the 2000 and 2004 ICE memorandums are “still in effect and should be
10 followed” and that “[t]his policy applies at all times following a grant of protection,
11 including during any appellate proceedings and throughout the removal period.”²²
12 Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all
13 ICE employees reminding them of the “longstanding policy” that “absent
14 exceptional circumstances, . . . noncitizens granted asylum, withholding of removal,
15 or CAT protection by an immigration judge should be released. . . ”²³ Director
16 Johnson clarified that “in considering whether exceptional circumstances exist,
17 prior convictions alone do not necessarily indicate a public safety threat of danger to
18 the community.”²⁴

19 On February 18, 2025, ICE issued a directive to agents encouraging them to
20 seek to re-detain noncitizens with final removal orders who had been previously
21 released from custody for the purpose of removal to previously recalcitrant countries
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24 ²⁰ Ex. 1 at 2.

25 ²¹ Ex. 1 at 3.

26 ²² Ex. 1 at 4.

27 ²³ Ex. 1 at 5.

²⁴ Ex. 1 at 5.

1 of origin, or to third countries.²⁵ The directive did not provide justification as to why
2 detention of noncitizens complying with orders of supervision would be necessary to
3 effectuate removal to country of origin or otherwise.

4 GROUND FOR RELIEF

5 **I. Ground One: The continued indefinite detention of Shadalo** 6 **violates his Fifth Amendment right to due process because his** 7 **removal is not reasonably foreseeable.**

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

10 The INA requires mandatory detention of individuals with final removal
11 orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2). A noncitizen
12 who is not removed within that period “shall be subject to supervision under
13 regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3). If ICE does
14 not remove the noncitizen within the 90-day removal period, the noncitizen “*may* be
15 detained beyond the removal period.” 8 U.S.C. § 1231(a)(6) (emphasis added).

16 However, in *Zadvydas*, the Supreme Court concluded that due process imposes an
17 “implicit limitation” upon 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 689.

18 Specifically, the Court held that 8 U.S.C. §1231(a)(6) authorizes detention only for
19 “a period reasonably necessary to bring about the [noncitizen]’s removal from the
20 United States” and that six months of detention after the removal order is final is
21 “presumptively reasonable.” *Id.* at 701. The Court further determined that “once the
22 alien provides good reason to believe that there is no significant likelihood of
23 removal in the reasonably foreseeable future, the Government must respond with
24 evidence sufficient to rebut that showing.” *Id.*

25 Shadalo’s detention is governed by 8 U.S.C. § 1231(a)(6) because he has been
26 detained for more than 90 days since he was ordered removed. Here, the 90-day

27 ²⁵ Ex. 3.

1 removal period began on October 10, 2013, when the IJ ordered removal and
2 granted CAT protection because both parties waived appeal.²⁶ See 8 U.S.C. §
3 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(b). Therefore, the *Zadvydas* framework applies.

4 Petitioner's continued detention is unreasonable because his removal is not
5 reasonably foreseeable. As of the filing date of this Amended Petition, 12 years have
6 passed since the IJ issued an order of removal in immigration proceedings. On
7 information and belief, Shadalo was detained for the initial 90-day removal period
8 after his order of removal was entered. In any case, Shadalo has now been detained
9 for five months since being re-detained by ICE.

10 Shadalo cannot be removed to Iran. He has complied with ICE's requests for
11 assistance obtaining travel documents from Germany, but Germany will not accept
12 him. Shadalo is not a citizen of, has never lived in, and has no connection to *any*
13 *other* country. Upon information and belief, throughout his prolonged detention, no
14 specific plans have been made to deport Shadalo, and no third country designation
15 has been made.

16 The Due Process Clause of the Fifth Amendment forbids the government
17 from depriving any "person" of liberty "without due process of law." U.S. Const.
18 Amend. V. Petitioner has a liberty interest in remaining free from physical
19 confinement where removal is not reasonably foreseeable. Respondents have
20 violated the Due Process Clause of the Fifth Amendment because Petitioner's
21 removal is not reasonably foreseeable. As provided above, *Zadvydas* requires that
22 Petitioner be immediately released. See 533 U.S. at 700-01 (describing release as an
23 appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms
24 of supervision").

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27 ²⁶ Ex. 2.

1 **II. Ground Two: Shadalo's continued detention violates the**
2 **Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6).**

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

5 As provided in Ground One, above, Shadalo's detention is governed by 8
6 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas, supra*.
7 Shadalo's continued detention violates 8 U.S.C. § 1231(a)(6) because it is both
8 unreasonable and because removal is not reasonably foreseeable. Rather, his
9 continued detention under 8 U.S.C. § 1231(a)(6) is driven by sweeping and arbitrary
10 DHS policies. Moreover, and as discussed in Ground One, Shadalo's removal is not
11 reasonably foreseeable. This Court should order that Shadalo be released.

12 **III. Ground Three: ICE's failure to comply with its own regulations**
13 **concerning the re-detention of individuals on orders of**
14 **supervision violates Shadalo's Fifth Amendment due process**
15 **rights and the Administrative Procedures Act.**

16 Title 8 C.F.R. § 241.4(l) applies to re-detention of individuals previously
17 released by ICE generally, while 8 C.F.R. 241.13(i) applies to persons released after
18 providing good reason to believe that they will not be removed in the reasonably
19 foreseeable future, as Shadalo plainly was. *See Rokhfirooz v. Larose*, No. 25-CV-
20 2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025). These
21 regulations permit an official to "return[s] [the person] to custody" because they
22 "violate[d] any of the conditions of release." 8 C.F.R. § 241.13(i)(1); *see also id.* §
23 241.4(l)(1). Otherwise, they permit revocation of release only if the appropriate
24 official (1) "determines that there is a significant likelihood that the alien may be
25 removed in the reasonably foreseeable future," *id.* § 241.13(i)(2), and (2) makes that
26 finding "on account of changed circumstances." *Id.* No matter the reason for re-
27 detention, the re-detained person is entitled to "an initial informal interview
 promptly," during which they "will be notified of the reasons for revocation." *Id.* §§

1 241.4(l)(1), 241.13(i)(3). The interviewer must "afford[] the [person] an opportunity
2 to respond to the reasons for revocation," allowing them to "submit any evidence or
3 information" relevant to re-detention and evaluating "any contested facts." *Id.*

4 ICE is required to follow its own regulations. *United States ex rel. Accardi v.*
5 *Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th
6 Cir. 2004) ("The legal proposition that agencies may be required to abide by certain
7 internal policies is well-established."). A court may review a redetention decision for
8 compliance with the regulations. *See e.g. Nguyen v. Noem, et. al.*, No. 25CV2792-LL-
9 VET, 2025 WL 3101979, at *2 (S.D. Cal. Nov. 6, 2025); *Phan v. Beccerra*, No. 2:25-
10 CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No.
11 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v.*
12 *United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

13 None of the prerequisites to detention apply here. Shadalo has never been
14 told that he was returned to custody because of a "conditions" violation. And there
15 are no changed circumstances that justify re-detaining him. Shadalo still cannot be
16 removed to Iran, and there is no indication that any other country has agreed to
17 issue him travel documents. Even if Respondents possess a vague intention to
18 remove Shadalo, absent any evidence as to "why obtaining a travel document is
19 more likely this time around[,] Respondents' intent to eventually complete a travel
20 document request for Petitioner does not constitute a changed circumstance." *Hoac*
21 *v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16,
22 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan.
23 June 17, 2025)). Nor has Shadalo received the interview required by regulation. No
24 one from ICE has ever invited him to contest the revocation of his order of
25 supervision. *Id.*

26 Numerous courts have released re-detained immigrants after finding that
27 ICE failed to comply with applicable regulations. *See e.g. Ghafouri v. Noem, et. al.*,

1 No. 3:25-CV-02675-RBM-BLM, 2025 WL 3085726, (S.D. Cal. Nov. 4, 2025); *Ceesay*
2 *v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.
3 Supp. 3d 451,463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383,387 (D.
4 Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7-9
5 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL
6 2430267, at *10-12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-
7 MJT, 2025 WL 2491782, at *2-3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-
8 cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL
9 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar.
10 31, 2025); *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, (S.D.
11 Cal. Sept. 15, 2025).

12 "[B]ecause officials did not properly revoke petitioner's release pursuant to
13 the applicable regulations, that revocation has no effect, and [Shadalo] is entitled to
14 his release (subject to the same Order of Supervision that governed his most recent
15 release)." *Liu*, 2025 WL 1696526, at *3.

16
17 **IV. Ground Four: ICE's policy to remove noncitizens to a third**
18 **country with no notice or opportunity to seek fear-based**
19 **protection violates his Fifth Amendment right to due process and**
20 **constitutes arbitrary and capricious agency action in violation of**
21 **the Administrative Procedure Act, 5 U.S.C. § 706.**

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

24 The APA entitles "a person suffering legal wrong because of agency action, or
25 adversely affected or aggrieved by agency action . . . to judicial review." 5 U.S.C. §
26 702. Further, the APA compels a reviewing court to "hold unlawful and set aside
27 agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . .
otherwise not in accordance with law," *id.* § 706(2)(A), or "short of statutory right,"

1 *id.* § 706(2)(C). The APA also compels a reviewing court to “hold unlawful and set
2 aside agency action, findings, and conclusions found to be . . . without observance of
3 procedure required by law.” 5 U.S.C. § 706(2)(D).

4 As explained above, Shadalo has a due process right to meaningful notice and
5 opportunity to present a fear-based claim to an immigration judge before DHS
6 deports him to a third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
7 1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Shadalo also
8 has a due process right to implementation of a process or procedure to afford these
9 protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991).
10 Respondents, however, have adopted a policy—set forth in the March 30 memo and
11 July 9 directive—that is arbitrary and capricious and deprives Shadalo of
12 meaningful notice and an opportunity to present a fear-based claim to an
13 immigration judge prior to his deportation to a third country. Moreover,
14 Respondents’ policy also violates the INA and implementing regulations which
15 mandate that Respondents refrain from removing Shadalo, and similarly situated
16 individuals, to a third country where they will likely be persecuted or tortured, thus
17 requiring Respondents to provide meaningful notice of deportation to a third
18 country and the opportunity to present a fear-based claim to an immigration judge
19 before deporting an individual to a third country. In this case, the March 30 memo
20 and July 9 directive demonstrate Respondents do not intend to observe those
21 protections.²⁷

22 The APA empowers federal courts to “compel agency action unlawfully
23 withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The Court should hold that
24

25 ²⁷ *See also* Gerald Imray, 3 deported by U.S. held in African prison despite
26 completing sentences, lawyers say, PBS NEWS (Sept. 2, 2025),
27 <https://www.pbs.org/newshour/amp/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say>.

1 Respondents' actions and policy are unlawful and compel that—before any attempt
2 is made to deport him to a third country—Petitioner be provided with meaningful
3 notice and opportunity to present a fear-based claim to an immigration judge.

4 **V. Ground Five: Petitioner's detention in immigration custody**
5 **pursuant to recent ICE policy regarding third country removal**
6 **violates the Due Process Clause of the Fifth Amendment.**

7 To the extent that Petitioner's continued detention is meant to facilitate his
8 removal to a third country, his detention is unlawful because, as argued in Ground
9 Four (incorporated here by reference), ICE's procedure for third country removal is
10 arbitrary and capricious and does not comply with due process. Any such future
11 removal would be accomplished in violation of his due process rights, rendering his
12 detention on that basis unlawful. Accordingly, this Court should order Shadalo's
13 immediate release.

14 **PRAYER FOR RELIEF**

15 Accordingly, Peejman Shadalo respectfully requests that this Court:

- 16 1. Declare that Petitioner's continued detention violates the Immigration
17 and Nationality Act, 8 U.S.C. §1231(a)(6); the Administrative Procedure Act, 5
18 U.S.C. §706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the
19 U.S. Constitution;
- 20 2. Order Petitioner's immediate release;
- 21 3. Prohibit Respondent's from re-detaining Petitioner in the future
22 absent proof of changed circumstancing making his removal reasonably foreseeable;
- 23 4. Prohibit Respondents from removing petitioner to a third country
24 without providing Petitioner and Petitioner's counsel with adequate notice of intent
25 to seek removal to a third country and due process in the form of an opportunity to
26 seek to reopen Petitioner's immigration court proceedings to seek fear-based relief
27 from removal; and

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 November 24, 2025.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Laura Barrera

Laura Barrera
Assistant Federal Public Defender

/s/ Ron Sung

Ron Sung
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on November 24, 2025. I 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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