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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 Mervin Tooy,
12 Petitioner,
13 v.
14 United States of America, et al.,
15 Respondents.
16

Case No. 2:25-cv-02286-CDS-BNW
Reply in Support of § 2241 Petition

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INTRODUCTION

1
2 Petitioner Merven Tooy, a citizen of Suriname, was ordered removed on
3 September 29, 2020, and has now been held in ICE detention for an extended period
4 of time. On February 17, 2025, Tooy was arrested and held at the Clark County
5 Detention Center (“CCDC”) based on a trespassing charge from 2023. On February
6 26, 2025, judgment was entered. He was sentenced to 30 days, given credit for time
7 served, and ordered released. However, he was not released. Instead, he was held
8 on an ICE detainer for over two months at CCDC before ICE moved him to
9 Pahrump on May 5, 2025. Tooy has now been in ICE custody for a significant
10 amount of time: over 10 months this year.

11 Contrary to Respondents’ claim (ECF No. 17 at 20), Tooy’s current detention
12 is not authorized. He was illegally seized and detained at CCDC far beyond the 48
13 hours that an ICE detainer is authorized to hold someone. Further, there is no
14 indication that ICE properly followed its own procedures in re-detaining Tooy.

15 Moreover, Tooy’s continuing indefinite detention is unreasonable and violates
16 due process under *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001), because his removal
17 is not reasonably foreseeable. Tooy has been in ICE detention for an extended
18 period of time, and, despite his cooperation, the removal has not yet occurred. Tooy
19 has not been told anything about a possible deportation. Without any evidence,
20 Respondents claim that a deportation was scheduled in December but was canceled
21 due to “flight unavailability.” But this unverified allegation raises far more
22 questions than it answers. Because Respondents’ allegations do nothing to show
23 that the deportation may be effectuated in the near future, Tooy has presented good
24 reason to believe his deportation is not reasonably foreseeable. For these same
25 reasons, Respondents have not presented sufficient evidence to prove Tooy’s
26 deportation is reasonably foreseeable. “[A]s time passes, the burden on the
27 government increases accordingly.” *Barka v. Mattos*, No. 2:25-cv-01781-GMN-MDC,

1 2025 WL 3723998 at *5 (D. Nev. Dec. 23, 2025) (quoting *Sweid v. Cantu*, No. CV-25-
2 03590-PHX-DWL (CDB), 2025 WL 3033655, at *4 (D. Ariz. Oct. 30, 2025)).

3 Respondents' insufficient evidentiary presentation has not met that burden here.

4 Accordingly, the petition should be granted, and this Court should order
5 Tooy's immediate release.

6 **STATEMENT OF FACTS¹**

7 Tooy is a citizen of Suriname. In 2001 Tooy entered the United States from
8 Canada on a visa, which he then overstayed. At some point between 2001 and 2015,
9 Tooy married an American citizen, and they had an American citizen son together.
10 He is now 13 and lives with Tooy's ex-wife in Chicago. In 2015, Tooy was given a
11 conditional green card due to the marriage.

12 In 2018, Tooy was arrested in Arizona on a drug charge, and then, in 2019, he
13 was arrested for robbery. He was placed in removal proceedings. In 2019, he applied
14 for an unconditional green card, which he received. On September 29, 2020, he was
15 ordered removed.² He was released on an order of supervision ("OSUP") in
16 December 2020.

17 In June 2023 Tooy was arrested in Las Vegas and charged in a criminal
18 complaint with gross misdemeanor unlawful occupancy and misdemeanor resisting
19 public officer.³ He was released from custody. A deferred adjudication on a
20 misdemeanor trespassing conviction and an interim sentence were entered in
21

22
23 ¹ The Statement of Facts is based on public documents and information that
is within Respondents' possession, much of which was not provided to this Court.

24 ² ECF No. 17-1. It is not clear if Tooy appealed from this order. The Ninth
25 Circuit initially issued an order indicating that the case had an exhaustion issue
because Tooy had not appealed from that order. Petitioner Ex. ("P. Ex.") 10.
26 However, the court later dismissed the petition for review because it was untimely,
suggesting that there was not an exhaustion issue. See ECF No. 17-2.

27 ³ P. Ex. 1.

1 October 2023.⁴ Tooy was eventually taken back into custody after a failure to
2 appear and an unsuccessful attempt at completing community court programs.⁵
3 Tooy was released again on December 4, 2024.⁶ After he failed to appear at a court
4 date on December 12, 2025, a bench warrant was issued.⁷ On February 17, 2025,
5 Tooy was arrested at a Siegel Suites downtown based on the outstanding warrant
6 and sent to CCDC.⁸

7 On February 26, 2025, Tooy was adjudicated guilty of a misdemeanor
8 trespassing charge and sentenced to 30 days.⁹ He was given credit for time served
9 and ordered released.¹⁰ However, he was not released and was subsequently held at
10 CCDC for another 68 days. Tooy had no other pending criminal charges.¹¹ On May
11 5, 2025, ICE agents picked him up at CCDC¹² and transferred him to NSDC. Tooy
12 has been held at NSDC since that date. Tooy has complied with his removal,
13 providing ICE officers with his citizenship documents. During the entire time he
14 has been at NSDC, no ICE officer has given Tooy any indication whether he will be
15 deported to Suriname.

16 On June 27, 2025, Tooy filed an untimely petition for review in the Ninth
17 Circuit.¹³ Although procedurally improper, the Ninth Circuit issued an automatic
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19
20 ⁴ P. Ex. 9.

21 ⁵ P. Ex. 9.

22 ⁶ P. Ex. 2.

23 ⁷ P. Ex. 3.

24 ⁸ P. Ex. 4.

25 ⁹ P. Exs. 5, 6.

26 ¹⁰ P. Exs. 5, 6.

27 ¹¹ P. Ex. 8.

¹² P. Ex. 7.

¹³ P. Ex. 10; ECF No. 17-2.

1 administrative stay on the day the petition was filed.¹⁴ On September 25, 2025, the
2 Ninth Circuit dismissed the petition and lifted the stay.¹⁵

3 On November 17, 2025, Tooy filed the instant § 2241 petition and a request
4 for appointment of counsel.¹⁶ On November 25, 2025, this Court granted
5 appointment of counsel and ordered Respondents to respond to the petition by
6 December 9, 2025.¹⁷ Respondents were granted an initial 8-day extension of time
7 and then a second 2-day extension of time.¹⁸ This Court denied a third request for
8 an additional 11 days to respond, ordering Respondents to file their response on
9 December 23, 2025, which they did.¹⁹

10 ARGUMENT

11 I. Tooy should be released now.

12 Tooy should be released either because his re-detention is unlawful, and/or
13 under *Zadvydas* due to the length of his current detention.

14 A. Tooy should be released because his re-detention is unlawful.

15 Tooy's re-detention is not justified because ICE violated its own policies when
16 it re-detained him.²⁰ Title 8 C.F.R. § 241.4(l) applies to re-detention of individuals
17

18 ¹⁴ P. Ex. 10.

19 ¹⁵ ECF No. 17-2. Tooy filed a motion to reconsider that order on October 24,
20 2025, which remains pending. The Ninth Circuit did not renew the stay of removal
21 as a result of the motion.

22 ¹⁶ ECF Nos. 1-1, 1-2.

23 ¹⁷ ECF No. 3.

24 ¹⁸ ECF Nos. 11, 13.

25 ¹⁹ ECF Nos. 16, 17.

26 ²⁰ A similar argument was raised in Tooy's pro se § 2241 petition, which
27 should be liberally construed. See ECF No. 1-1 at 19. This argument is also
responsive to Respondents' claim that Tooy's current detention is lawful.
Nevertheless, if this Court believes that this is a new claim, Tooy would request
leave to amend the petition in the interest of justice. See Fed. R. Civ. P. 15(a); 28
U.S.C. § 2242 (petition "may be amended or supplemented as provided in the rules

1 previously released by ICE generally, while 8 C.F.R. 241.13(i) applies to persons
2 released after providing good reason to believe that they will not be removed in the
3 reasonably foreseeable future. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET,
4 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025). These regulations permit an
5 official to “return[] [the person] to custody” because they “violate[d] any of the
6 conditions of release.” 8 C.F.R. § 241.13(i)(1); *see also id.* § 241.4(l)(1). Otherwise,
7 they permit revocation of release only if the appropriate official (1) “determines that
8 there is a significant likelihood that the alien may be removed in the reasonably
9 foreseeable future,” *id.* § 241.13(i)(2), and (2) makes that finding “on account of
10 changed circumstances.” *Id.* No matter the reason for re-detention, the re-detained
11 person is entitled to “an initial informal interview promptly,” during which they
12 “will be notified of the reasons for revocation.” *Id.* §§ 241.4(l)(1), 241.13(i)(3). The
13 interviewer must “afford[] the [person] an opportunity to respond to the reasons for
14 revocation,” allowing them to “submit any evidence or information” relevant to re-
15 detention and evaluating “any contested facts.” *Id.*

16 Further, Title 8 C.F.R. § 287.7 controls the procedures on ICE detainers.
17 Under this regulation, an ICE detainer is only authorized to last for 48 hours. 8
18 C.F.R. § 287.7(d).²¹ According to ICE’s own policy on its website, if ICE does not
19 pick up the individual after 48 hours, the local law enforcement agency is required
20 to release the individual. *See* U.S. Immigration and Customs Enforcement, *What*

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25 of procedure applicable to civil actions”). There would be no prejudice to
Respondents as the claim is based on information in their possession.

26 ²¹ The Supreme Court has stated that these regulations under § 287 were
27 promulgated to deter immigration officers from violating the Fourth Amendment.
I.N.S. v. Lopez-Mendoza, 468 U.S. 1032, 1044 (1984).

1 *Happens If ICE Does Not Assume Custody of the Individual After 48 Hours?* (last
2 visited Dec. 30, 2025).²²

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

12 Numerous courts have ordered that re-detained immigrants must be released
13 after finding that ICE failed to comply with applicable regulations. *See generally*
14 *Ghafouri v. Noem, et al.*, No. 3:25-CV-02675-RBM-BLM, 2025 WL 3085726 (S.D.
15 Cal. Nov. 4, 2025) (release ordered due to failure to comply with § 241.4); *Rokhfirooz*
16 *v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, (S.D. Cal. Sept. 15, 2025)
17 (granting the petitioner’s release where the Government failed to comply with
18 § 241.13); *Rombot v. Souza*, 296 F. Supp. 3d 383,387 (D. Mass. 2017) (holding ICE’s
19 failures to follow § 241.4’s revocation procedures rendered the petitioner’s detention
20 unlawful); *see also Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025);
21 *You v. Nielsen*, 321 F. Supp. 3d 451,463 (S.D.N.Y. 2018); *Zhu v. Genalo*, No. 1:25-
22 CV-06523 (JLR), 2025 WL 2452352, at *7-9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v.*
23 *Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10-12 (D. Or. Aug. 21, 2025);
24 *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2-3 (E.D. Tex.

25
26 ²²Available at [https://www.ice.gov/immigration-](https://www.ice.gov/immigration-detainers#:~:text=If%20ICE%20does%20not%20assume,individual%20beyond%20the%2048%2Dhour%20period.)
27 [detainers#:~:text=If%20ICE%20does%20not%20assume,individual%20beyond%20the%2048%2Dhour%20period.](https://www.ice.gov/immigration-detainers#:~:text=If%20ICE%20does%20not%20assume,individual%20beyond%20the%2048%2Dhour%20period.)

1 July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4
2 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025
3 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

4 Tooy's re-detention is illegal because ICE did not follow its own procedures in
5 re-detaining him. It justifies his immediate release. First, Respondents did not
6 provide any evidence to establish that ICE complied with its own procedures when
7 it re-detained Tooy. If true, Respondents could have established this by submitting
8 the I-213 document²³ with the response. It should be inferred that their failure to
9 submit it would not establish proper grounds for the re-detention.

10 Moreover, ICE violated its own regulations when it requested the Clark
11 County Sheriff to detain Tooy for longer than 48 hours. Tooy was ordered released
12 on February 26, 2025. Yet he was not released. Although he had no other pending
13 charges against him, he was held at CCDC for *another 68 days* until ICE picked
14 him up on May 5, 2025. The only reasonable conclusion to draw here is that he was
15 being held at CCDC at ICE's request because there is no evidence of any other
16 warrants, and it was ICE who picked him up on May 5. This was an egregious
17 violation of ICE policy, which only allows for a 48 hour hold. Thus, at the time ICE
18 picked him up, any lawful ICE detainer had long expired, making Tooy's detention
19 unauthorized.

20 Because ICE did not comply with its own regulations when it re-detained
21 Tooy, Tooy should be released, subject to the same OSUP that governed his
22 December 2020 release.

26 ²³ The I-213 form is similar to a police report in which ICE officers provide
27 the reasons for the detention or arrest and a narrative of how they took the
individual into custody.

1 **B. Tooy should be released under *Zadvydas*.**

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

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

18 “Within the six-month window,” the noncitizen bears the burden of “prov[ing]
19 the unreasonableness of detention.” *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D.
20 Wis. 2008). After six months, if the petitioner shows that there is “good reason to
21 believe that there is no significant likelihood of removal in the reasonably
22 foreseeable future,” the burden shifts to the government to justify continued
23 detention. *Zadvydas*, 533 U.S. at 701. As the Supreme Court has explained, “as the
24 period of prior postremoval confinement grows, what counts as the ‘reasonably
25 foreseeable future’ conversely would have to shrink.” *Id.* “Whether detention is
26 ‘reasonably necessary to secure removal is determinative of whether the detention
27 is, or is not, pursuant to statutory authority . . . The basic federal habeas corpus

1 statute grants the federal courts authority to answer that question.” *Medina v.*
2 *Noem, et al.*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *375 (D. Md. Aug. 11,
3 2025) (quoting *Zadvydas*, 533 U.S. at 699).

4 **1. Tooy meets the *Zadvydas* six-month presumption.**

5 Here, Respondents do not contend that Tooy’s post-removal detention period
6 has been for less than six months. The available information does appear to
7 establish that Tooy has now been in detention for more than six months since his
8 order of removal became final. See *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5
9 (9th Cir. 2001) (finding the period of presumptive reasonableness is “six months
10 after a final order of removal—that is, three months after the statutory removal
11 period has ended.”).

12 Preliminarily, it is not clear from the documents that Respondents provided
13 when the order of removal became final. In their response, Respondents do not state
14 when they believe the removal order became final. Rather, they state that Tooy was
15 ordered removed in September 2020, citing to the EOIR automated case information
16 available over the internet. See ECF No. 17-1. To note, the EOIR information also
17 states that a BIA appeal was dismissed on February 13, 2025. *Id.* There is no
18 indication that this BIA appeal was the appeal from the September 2020 removal
19 order. Nevertheless, there are three possible dates of finality for the removal order:
20 September 29, 2020, when he was ordered removed; October 28, 2020, when the
21 time to appeal expired, if a party reserved the right to appeal; or February 13, 2025,
22 which is the date listed in the EOIR for a decision from the BIA. In the end, the
23 date of finality does not matter as it appears that Tooy has been held in custody
24 beyond six months past any of these dates.

25 Here is a timeline of relevant dates:

- 26
- Sept. 29, 2020 – Removal order issued.
 - Oct. 28, 2020 – Time period expired for appeal to BIA.
- 27

- 1 • Dec. 2020 – Released on supervision.
- 2 • Feb. 13, 2025 – BIA dismissed an appeal.
- 3 • Feb. 26, 2025 – Sentenced to Time Served. Ordered released.
- 4 • Feb. 26, 2025 to May 5, 2025 – Held in custody at CCDC.
- 5 • May 5, 2025 – Transferred to NSDC.
- 6 • June 27, 2025 – PFR filed in Ninth Circuit. Stay issued.
- 7 • Sept. 25, 2025 – PFR denied. Stay lifted.

8 **a. He meets the presumption if his removal order**
9 **became final in 2020.**

10 If the date of finality was in 2020, Tooy has been held in custody long past six
11 months. He was held in custody for what appears to have been the statutory 90-day
12 detention period in 2020. Then Tooy was re-detained in February 2025 and has
13 been in custody ever since. Together, that is well over a year of custody since the
14 order of removal became final. Even if the time during which the order of removal
15 was stayed in the Ninth Circuit between June 27, 2025, and September 25, 2025,
16 and the start date for his ICE detention is pushed back to May 5, 2025, he still has
17 been in immigration custody for over six months if the removal order became final
18 in 2020.

19 **b. He meets the presumption if his removal order**
20 **became final in February 2025.**

21 If the date of finality was February 13, 2025, when the BIA appeal was
22 dismissed, Tooy has been in custody for longer than six months past that date. Tooy
23 has been in ICE custody since February 26, 2025—the date that the jail began to
24 hold him due to an ICE detainer. He has now been detained nine months past that
25 date. And, even if the time during which the order of removal was administratively
26 stayed in the Ninth Circuit, he still has been in immigration custody for over six
27 months since February 13, 2025.

1 Thus, the *Zadvydas* framework applies here. Tooy's continued detention
2 violates his right to due process under that case.

3 **2. Respondents have not shown deportation is reasonably**
4 **foreseeable.**

5 **a. Tooy has shown reason to believe that his removal**
6 **is not reasonably foreseeable.**

7 There is good reason to believe that there is no significant likelihood of
8 removal in the reasonably foreseeable future. Tooy has been cooperative with
9 Respondents from the beginning. He has provided his citizenship documents. Yet he
10 remains in ICE custody, and ICE has not given him any information that he will be
11 deported.

12 Moreover, Respondents' allegations in their response also provide good
13 reason to believe that removal is not reasonably foreseeable. Respondents claim
14 that DHS scheduled Tooy's removal for "mid-December [but] that removal had to be
15 cancelled because of flight unavailability and will be rescheduled."²⁴ These
16 unverified allegations are insufficient to prove that deportation is reasonably
17 foreseeable. Rather, these vague claims provide good cause to think that
18 deportation is *not* reasonably foreseeable.

19 The allegations do not indicate when a possible deportation may happen.
20 They show, at most, that DHS may have come close to scheduling the deportation
21 on two occasions. However, they do not provide any indication when the actual
22 deportation will occur. Critically, they do not explain what the vague expression
23 "flight unavailability" means and whether this unavailability was temporary or will
24 continue indefinitely. For instance, flights to Suriname have to go through the
25 Caribbean, and there is a significant American military buildup in that area. If this
26 is the reason for "flight unavailability," it could impact flights for an extended

27 ²⁴ ECF No. 17 at 2.

1 period of time, making Tooy's deportation unlikely. Even if this flight unavailability
2 is temporary, Respondents do not provide any timeframe as to when the deportation
3 will be rescheduled. More specifically, they do not provide any details about what
4 the next steps will be, such as seeking new travel documents or finding available
5 flights. They do not provide this Court with the ability to assess whether
6 deportation is likely to occur. Put simply, Respondents' vague allegations do not
7 provide any indication that removal is reasonably foreseeable.

8 **b. Respondents have not met their burden of**
9 **providing sufficient evidence to establish removal**
10 **is reasonably foreseeable.**

11 Because Tooy has met his burden of showing good reason, the burden shifts
12 to Respondents to justify the detention. Respondents have not met their burden
13 here. First, Respondents have presented nothing more than unverified allegations
14 that, on two occasions, DHS came close to scheduling the deportation. These
15 allegations are insufficient to meet their burden.²⁵ Significantly, Respondents do
16 not state who provided them with that information. Nor have they submitted a
17 sworn declaration. To be sure, Tooy doesn't doubt that counsel for Respondents
18 accurately reported what she was told. However, there is no way to verify the
19 accuracy or reliability of this information without knowing who provided that
20 information to her or how that person came into possession of that information.
21 Respondents have in their possession documentation that could potentially verify
22 this information. Yet they did not submit anything of value (beyond two publicly
23 available documents). Their failure to submit any documentation to support these
24

25 ²⁵ See generally *Gomez v. Mattos*, No. 2:25-cv-00975-GMN-BNW, 2025 WL
26 3101994 at *6 (D. Nev. Nov. 6, 2025); *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220
27 (W.D. Wash. 2006); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
1993771, at *3 (E.D. Cal. July 16, 2025).

1 claims means they have not met their burden here.²⁶ And, as discussed above, even
2 taking their factual allegations at face value, they do little to show that deportation
3 is reasonably foreseeable. Their allegations raise more questions than they answer.

4 To support their argument that removal is reasonably foreseeable,
5 Respondents rely upon an unpublished decision from the Third Circuit, *Castellanos*
6 *v. Holder*, 337 F. App'x 263 (3d Cir. 2009). They claim that, in *Castellanos*, the
7 Third Circuit “held” that removal remains “reasonably foreseeable” even when the
8 detention lacks a specific end date. ECF No. 17 at 4. This is a misleading and
9 inaccurate description of this unpublished and non-binding decision. In the first
10 instance, *Castellanos* affirmed the lower court’s decision that the petition should be
11 dismissed as premature because the order of removal was not final. *Castellanos*, 337
12 App'x at 264. Thus, any analysis in this case about what constitutes reasonable
13 foreseeability is dictum, not a holding. Moreover, the court did not say that a
14 removal is reasonably foreseeable without a specific date. The court stated that the
15 end of the “*detention*,” not the removal, was reasonably foreseeable as it would
16 correspond with the completion of the removal proceedings. *Id.* at 268. Thus,
17 *Castellanos* does not provide any support for Respondents’ position.

18 The Due Process Clause of the Fifth Amendment forbids the government
19 from depriving any “person” of liberty “without due process of law.” U.S. Const.
20 amend. V. Tooy has a liberty interest in remaining free from physical confinement
21 where removal is not reasonably foreseeable. Respondents have violated the Due
22 Process Clause of the Fifth Amendment because Petitioner’s removal is not
23 reasonably foreseeable. *Zadvydas* requires that Petitioner be immediately released.

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25
26 ²⁶ Respondents’ alternative request for a stay can also be viewed as an
27 acknowledgement that they have not provided sufficient evidence to meet their
burden. As discussed below, the stay request should be rejected.

1 See 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C.
2 § 1231(a)(6) (authorizing release “subject to . . . terms of supervision”).

3 Respondents’ alternative request for a stay should be rejected. Respondents
4 have had a sufficient opportunity to produce reliable evidence to establish that
5 deportation is reasonably foreseeable. They have produced nothing more than
6 unverified allegations that do not indicate when a possible deportation may happen.
7 Their failure to produce the evidence is inexcusable. Indeed, in nearly the same
8 amount of time that Respondents had to respond in this case, Respondents were
9 able to provide the certified administrative record to the Ninth Circuit (in fact, they
10 filed it before their deadline).²⁷ There is no reason why Respondents should be given
11 any more time to respond to Tooy’s petition. A stay of this proceeding would just
12 indefinitely extend Tooy’s already unreasonable detention. At most, as opposed to a
13 stay, this Court should consider setting an immovable deadline for Respondents to
14 submit documentation to support their position, which should include, at the very
15 least, the entire A file, including, but not limited to, any documentation establishing
16 what steps have been taken to effectuate a removal; the documents relating to the
17 ICE detainer; and the I-213 form.

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27 ²⁷ P. Ex. 10.

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CONCLUSION

Tooy's continuing detention violates due process. He is entitled to relief on the grounds raised in his petition. He must be released immediately.

Dated December 30, 2025.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Jonathan M. Kirshbaum
Jonathan M. Kirshbaum
Assistant Federal Public Defender

