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9

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 Penapu Nena Mudung

13 Petitioner,

14 v.

15 John Mattos, NSDC Warden; Michael
16 Bernacke, Field Director, Salt Lake City
Field Office of ICE ERO; Todd Lyons, ICE
17 Acting Director; Kristi Noem DHS
Secretary; Pam Bondi, U.S. Attorney
18 General

19 Respondents.

Case No. 2:25-cv-02345-CDS-MDC

First Amended § 2241 Petition

20 INTRODUCTION

21 Penapu Nena Mudung, who came to the United States from Sudan with his
22 brother at just eight years old during the civil war in that country, has lived under a
23 shadow of uncertainty for nearly two decades. Although an immigration judge
24 ordered his removal to Sudan in 2009, the United States has never been able to
25 carry out that order. In 2018, after immigration officials detained him for more than
26 six months at a facility in California, Mr. Mudung sought habeas relief under 28
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1 U.S.C. § 2241. The government released him while that petition was pending—an
2 acknowledgment that his removal was not reasonably foreseeable.

3 Nothing has changed. Yet, in May 2025, immigration officials arrested Mr.
4 Mudung again. Since then, he has received no information about when or whether
5 he will be removed. What has changed is this: after nearly 17 years of effort, the
6 government is no closer to securing travel documents. When Mr. Mudung recently
7 contacted the Sudanese and South Sudanese consulates, he was told there are no
8 records connecting him to Sudan or South Sudan, and therefore no travel
9 documents will be issued from either country.¹ Neither country acknowledges his
10 citizenship.

11 Mr. Mudung is, in short, unremovable. The statutory 90-day removal period
12 expired more than a decade and a half ago. Yet, the government has again subjected
13 him to prolonged, purposeless detention, this time lasting over seven months, in
14 violation of the Constitution, the Immigration and Nationality Act, and its own
15 governing policies. With no evidence that removal has become more likely now than
16 at any point in the past 17 years, his continued detention is unlawful. Mr. Mudung
17 must be released.

18 JURISDICTION AND VENUE

19 This Court has jurisdiction pursuant to 28 U.S.C. §2241 (granting general
20 habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the
21 “Suspension Clause”); 28 U.S.C. §1331 (federal question jurisdiction); and 28 U.S.C.
22 § 2201, 2202 (Declaratory Judgment Act).

23 Federal district courts have jurisdiction to hear habeas claims by non-citizens
24 challenging the lawfulness of their detention. *See e.g. Zadvydas v. Davis*, 533 U.S.

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26 ¹ South Sudan broke from Sudan in 2011; thus, Mr. Mudung could be from an
27 area that is in either Sudan or South Sudan. But neither country acknowledges his
citizenship.

1 678 (2001). Federal courts also have federal question jurisdiction, through the APA
2 to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an
3 abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
4 APA claims are cognizable in habeas. 5 U.S.C. § 703. The APA affords a right of
5 review to a person who is “adversely affected or aggrieved by agency action.” 5
6 U.S.C. § 702. Mr. Mundung’s continued detention violates his constitutional due
7 process rights, constitutes arbitrary and capricious agency action, and is an abuse of
8 discretion.

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

12 Accordingly, Mr. Mundung’s habeas petition is properly before this court.

13 **PARTIES**

14 Penapu Nena Mudung is a native and citizen of Sudan who was ordered
15 removed in January of 2009. He is currently detained at the Nevada Southern
16 Detention Center in Pahrump, Nevada.

17 John Mattos is the warden of Nevada Southern Detention Center. Mattos, in
18 his official capacity, is the immediate custodian of Mr. Mudung.

19 Michael Bernacke is the Field Director of the West Valley City Office of
20 Immigration and Customs Enforcement (ICE) Enforcement and Removal
21 Operations, which has jurisdiction of enforcement and removal operations over
22 detention facilities in Nevada, including Nevada Southern Detention Center where
23 Mr. Mudung is detained. Bernacke, in his official capacity, is a legal custodian of
24 Mr. Mudung.

25 Todd Lyons is the Acting Director of Immigration and Customs Enforcement,
26 which is responsible for administering and enforcing immigration laws, including
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1 the detention and removal of immigrants. Lyons, in his official capacity, is a legal
2 custodian of Mr. Mudung.

3 Kristi Noem is the Secretary of the Department of Homeland Security (DHS),
4 which oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of
5 Mr. Mudung.

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

10 STATEMENT OF FACTS

11 Petitioner Penapu Nena Mudung was born in Sudan. On information and
12 belief, when he was approximately eight years old, he fled the country with his older
13 brother due to the civil war. His parents remained behind, and his father was
14 ultimately killed in the conflict.

15 In 2009, an immigration judge ordered Mr. Mudung removed to Sudan.² He
16 was detained for roughly 90 days following the order but was then released because
17 ICE could not effectuate his removal.³ ICE was unable to obtain travel documents
18 from Sudan, and Mr. Mudung could not be removed.⁴

19 Nearly a decade later, in 2018, immigration officials again arrested Mr.
20 Mudung.⁵ After more than six months in immigration custody at a facility in
21 California, he filed a habeas petition under 28 U.S.C. § 2241.⁶ While that petition
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23 ² ECF No. 1-1 at 4; *see also Mudung v. ICE*, 1:18-cv-01140-LJO-SAB-HC,
24 ECF No. 10 at 1 n.1.

25 ³ *Mudung v. ICE*, 1:18-cv-01140-LJO-SAB-HC, ECF No. 10 at 1.

26 ⁴ *Id.*

27 ⁵ *See e.g. Mudung v. ICE*, 1:18-cv-01140-LJO-SAB-HC.

⁶ *Mudung v. ICE*, 1:18-cv-01140-LJO-SAB-HC, ECF No. 1.

1 was pending, the government released him on supervision and the petition was
2 dismissed as moot.⁷

3 On May 14, 2025—over 16 years after his original release from ICE custody—
4 ICE detained Mr. Mudung once more, despite the fact that he still cannot be
5 removed to Sudan.⁸ Mr. Mudung has consistently complied with ICE’s requests to
6 seek travel documents. Most recently, upon information and belief, while Mr.
7 Mudung was detained at the Nevada Southern Detention Center, an ICE officer
8 arranged for him to call the Sudanese consulate. During that call, a consular official
9 informed Mr. Mudung that Sudan cannot issue travel documents because there are
10 no records indicating that he is a Sudanese citizen or that he ever lived in Sudan.
11 Mr. Mudung was told the exact same information from the South Sudanese
12 consulate. Mr. Mudung has never lived in any other country and does not have
13 lawful status anywhere else.

14 Despite the complete lack of any viable path to removal, the government has
15 held Mr. Mudung in overcrowded conditions⁹ at the Nevada Southern Detention
16 Center for more than seven months—over 210 days.¹⁰ The circumstances
17 surrounding his removability have not changed since he was ordered removed
18 nearly 17 years ago: ICE still cannot remove him to Sudan or South Sudan, and Mr.
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22 ⁷ *Mudung v. ICE*, 1:18-cv-01140-LJO-SAB-HC, ECF No. 10 at 2, see also ECF
No. 1-1 at 8.

23 ⁸ ECF No. 1-1 at 3.

24 ⁹ 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-](https://thenevadaindependent.com/article/nevada-is-home-to-one-of-the-most-over-capacity-ice-detention-centers-in-the-country)
[capacity-ice-detention-centers-in-the-country](https://thenevadaindependent.com/article/nevada-is-home-to-one-of-the-most-over-capacity-ice-detention-centers-in-the-country).

27 ¹⁰ As noted, Mr. Mudung was also previously detained for the initial 90-day
removal period in 2009 and again for over six months in 2018.

1 Mudung has received no indication that another country has been identified or that
2 any removal plan exists.

3 LEGAL FRAMEWORK

4 I. Third Country Removals

5 A. Statutory guidance on third country removals

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7 A noncitizen who cannot be removed to their country of origin can be removed
8 to another country by ICE. This is known as a “third country” because it is a
9 country other than the one designated on the noncitizen’s removal order. 8 C.F.R. §
10 1208.16(f). Specific criteria for identifying a third country for removal are prescribed
11 by statute. For example, the law provides that a noncitizen with a removal order
12 may be removed to a non-designated country of which the noncitizen is a “subject,
13 national or citizen.” 8 U.S.C. §1231(b)(2)(D). ICE may also remove a noncitizen with
14 a removal order to the country from which they were admitted to the U.S.; the
15 country from which the noncitizen departed for the U.S. or a foreign territory
16 contiguous to the U.S.; a country in which the noncitizen resided before entering the
17 country from which they entered the U.S.; the noncitizen’s country of birth; the
18 country that had sovereignty over the place of birth at the time of birth; the country
19 in which the birthplace is located at the time of the removal order; and, “if
20 impracticable, inadvisable, or impossible to remove the [noncitizen] to each country
21 described [above],” ICE may remove a noncitizen to “another country whose
22 government will accept the [noncitizen] into that country.” 8 U.S.C. §1231(b)(2)(E).

23 Notwithstanding the criteria for removal to a third country, ICE may not
24 remove a noncitizen to a country where the noncitizen’s life or freedom would be
25 threatened on the basis of the five protected grounds. 8 U.S.C. §1231(b)(3)(A). The
26 Supreme Court has emphasized the importance of existing avenues of relief from
27 removal (such as applications for asylum, withholding of removal, and protection

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

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

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

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

23 JUSTICE KAGAN: Right.

24 MR. SURI: But, without notice –

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

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MR. SURI: Yes, that's right.

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

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

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

MR. SURI: Yes, that's right.

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

B. Trump Administration policies on third country removal.

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

¹¹ P.Ex. 1 at 1.

¹² P. Ex 1 at 2.

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

11 If USCIS determines that the noncitizen did not meet that burden, they will
12 be removed.¹⁷ If the noncitizen does make a showing to the satisfaction of USCIS,
13 USCIS will notify ICE and the ICE Office of the Principal Legal Advisor (OPLA)
14 may reopen immigration court proceedings for the noncitizen to seek withholding or
15 CAT protection from removal to the third country.¹⁸ “Alternatively, ICE may choose
16 to designate another country for removal.”¹⁹ The memo provides no limitation on
17 how many times ICE could designate a new third country for removal upon a
18 noncitizen’s showing of a well-founded fear of removal to a particular country.
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22 ¹³ P.Ex. 1 at 1-2.

23 ¹⁴ P.Ex. 1 at 2.

24 ¹⁵ P.Ex. 1 at 2.

25 ¹⁶ P.Ex. 1 at 2.

26 ¹⁷ P.Ex. 1 at 2.

27 ¹⁸ P.Ex. 1 at 2.

¹⁹ P.Ex. 1 at 2.

1 On July 9, 2025, Respondent Todd Lyons sent additional guidance to ICE
2 employees regarding third country removals (“July 9 Directive”).²⁰ The directive
3 was issued in light of the Supreme Court’s decision to stay the injunction in the case
4 *D.V.D. v. Department of Homeland Security*, No. 25-10676 (D. Mass.). It reiterated
5 the procedures from the March 30 memo and provided additional details regarding
6 how to deal with third country removals to countries that have not provided credible
7 assurances that U.S. deportees will not be persecuted or tortured. It added that, in
8 such cases, an ICE officer will serve the noncitizen with a Notice of Removal
9 including the intended country and that the notice must be read in a language the
10 noncitizen understands.²¹ ICE “will generally wait at least 24 hours following
11 service of the Notice of Removal before effectuating removal” but that in “exigent
12 circumstances” ICE may remove a noncitizen to a possible-torture third country in
13 as little as six hours after service of the Notice of Removal “as long as the
14 [noncitizen] is provided reasonable means and opportunity to speak with an
15 attorney prior to removal.”²² Generally, if a noncitizen does not affirmatively state a
16 fear of persecution or torture within 24 hours of service of the Notice of Removal,
17 ICE may proceed with removal to the identified third country.²³

18 II. Detention of Noncitizens after a Final Order of Removal

19 A. Statutory framework

20 Section 1231 of the INA governs the detention of noncitizens during and
21 beyond the “removal period.” The removal period begins once a noncitizen’s removal
22 order becomes administratively final and lasts for 90 days, during which ICE “shall
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25 ²⁰ P.Ex. 2.

26 ²¹ P.Ex. 2.

27 ²² P.Ex. 2.

²³ P.Ex. 2.

1 remove the [noncitizen] from the United States” and “shall detain the [noncitizen]”
2 as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the
3 noncitizen within the 90-day removal period, the noncitizen “*may* be detained
4 beyond the removal period.” 8 U.S.C. § 1231(a)(6) (emphasis added).

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

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

1 CV-1768-ABA, 2025 WL 2306274, at *6 (D. Md. Aug. 11, 2025) (citing *Zadvydas*,
2 533 U.S. at 699).

3 B. DHS Regulations

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

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

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2 On February 18, 2025, in an apparent departure from longstanding legal
3 requirements and ICE's own policies, ICE issued a directive to agents encouraging
4 them to seek to re-detain noncitizens with final removal orders who had been
5 previously released from custody for the purpose of removal to previously
6 recalcitrant countries of origin, or to third countries.²⁴ The directive did not provide
7 justification as to why detention of noncitizens under orders of supervision would be
8 necessary to effectuate proper removal to countries of origin or otherwise.

9 This recent ICE policy goes against DHS regulations on re-detention. Beyond
10 the protections in *Zadvydas*, 8 C.F.R. § 241.4, §241.13(i) establishes additional
11 protective procedures for re-detention. These procedures allow for the noncitizen to
12 "be returned to custody" due to violations of the conditions of their release. 8 C.F.R.
13 § 241.13(i)(1); *see also* § 241.4. Absent condition violations, revocation of release is
14 only permitted if based on "changed circumstances" it is determined that "there is a
15 significant likelihood that the alien may be removed in the reasonably foreseeable
16 future." 8 C.F.R. § 241.13(i)(2).

17 Regardless of the reason for re-detention, the re-detained person is entitled to
18 "an initial informal interview promptly" after being taken back into custody. 8
19 C.F.R. §241.13(i)(3). The re-detained person "will be notified of the reasons for
20 revocation" and will be afforded the "opportunity to respond to the reasons for
21 revocation." *Id.* The re-detained person should also be permitted to "submit any
22 evidence or information" that can demonstrate that "there is no significant
23 likelihood [they] be removed in the reasonably foreseeable future" *Id.*

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²⁴ P.Ex. 3.

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GROUNDS FOR RELIEF

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

Mr. Mudung’s detention is governed by 8 U.S.C. § 1231(a)(6) because he has been detained for more than 90 days since he was ordered removed. Here, the 90-day removal period began on January 8, 2009 when the order of removal was entered. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(b). Therefore, the *Zadvydas* framework applies.

1 Mr. Mudung's continued detention is unreasonable because his removal is not
2 reasonably foreseeable. As of the filing date of this Amended Petition, almost 17
3 years have passed since the immigration judge issued an order of removal in
4 immigration proceedings. Mr. Mudung was detained for the initial 90-day removal
5 period after his order of removal was entered and he was detained again for six
6 months when he was arrested by ICE in 2018. In any case, Mr. Mudung has now
7 been detained for over seven months since being re-detained by ICE in May 2025.

8 Mr. Mudung cannot be removed to Sudan or South Sudan. He has complied
9 with ICE's requests for assistance obtaining travel documents from Sudan and
10 South Sudan, but neither country will accept him.²⁵ Mr. Mudung is not a citizen of,
11 has never lived in, and has no connection to *any other* country. Upon information
12 and belief, throughout his prolonged detention, no specific plans have been made to
13 deport Mr. Mudung, and no third country designation has been made.

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

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²⁵ ECF No. 1-1 at 2-3, 8.

1 **II. Ground Two: Mr. Mudung’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, Mr. Mudung’s detention is governed by 8
6 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas, supra*. Mr.
7 Mudung’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, Mr. Mudung’s removal is
11 not reasonably foreseeable. This Court should order that Mr. Mudung be released.

12 **III. Ground Three: ICE’s policy to remove noncitizens to a third**
13 **country with no notice or opportunity to seek fear-based**
14 **protection violates his Fifth Amendment right to due process**
15 **and constitutes arbitrary and capricious agency action in**
16 **violation of the Administrative Procedure Act, 5 U.S.C. § 706.**

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

19 The APA entitles “a person suffering legal wrong because of agency action, or
20 adversely affected or aggrieved by agency action . . . to judicial review.” 5 U.S.C. §
21 702. Further, the APA compels a reviewing court to “hold unlawful and set aside
22 agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . .
23 otherwise not in accordance with law,” *id.* § 706(2)(A), or “short of statutory right,”
24 *id.* § 706(2)(C). The APA also compels a reviewing court to “hold unlawful and set
25 aside agency action, findings, and conclusions found to be . . . without observance of
26 procedure required by law.” 5 U.S.C. § 706(2)(D).

27 As explained above, Mr. Mudung has a due process right to meaningful notice
and opportunity to present a fear-based claim to an immigration judge before DHS

1 deports him to a third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
2 1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Mr. Mudung
3 also has a due process right to implementation of a process or procedure to afford
4 these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491
5 (1991).

6 The government however, has adopted a policy—set forth in the March 30
7 memo and July 9 directive—that is arbitrary and capricious and deprives Mr.
8 Mudung of meaningful notice and an opportunity to present a fear-based claim to
9 an immigration judge prior to his deportation to a third country. Moreover, the
10 government’s policy also violates the INA and implementing regulations which
11 mandate that the government refrains from removing Mr. Mudung, and similarly
12 situated individuals, to a third country where they will likely be persecuted or
13 tortured, thus requiring the government to provide meaningful notice of deportation
14 to a third country and the opportunity to present a fear-based claim to an
15 immigration judge before deporting an individual to a third country. In this case,
16 the March 30 memo and July 9 directive demonstrate the government does not
17 intend to observe those protections.²⁶

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

24
25
26 ²⁶ *See also* Gerald Imray, 3 deported by U.S. held in African prison despite
27 completing sentences, lawyers say, PBS NEWS (Sept. 2, 2025),
<https://www.pbs.org/newshour/amp/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say>.

1 Dated December 11, 2025.

2 Respectfully submitted,

3 Rene L. Valladares
4 Federal Public Defender

5 /s/ Margaret Lambrose
6 Margaret Lambrose
7 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 December 11, 2025.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Margaret Lambrose
Margaret Lambrose
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on December 11, 2025. I personally served a true and correct copy of the foregoing First Amended § 2241 Petition by CM/ECF to the following individuals:

Virginia T. Tomova Assistant United States Attorney 501 Las Vegas Blvd. South Ste #1100 Las Vegas, NV 89101 Email: Virginia.Tomova@usdoj.gov	Sigal Chattah Acting US Attorney, District of Nevada 501 Las Vegas Blvd, Ste #1100 Las Vegas, NV 89101 Email: Sigal.Chattah@usdoj.gov
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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:

Penapu Nena Mudung, A1397 Nevada Southern Detention Center 2190 E Mesquite Avenue Pahrump, NV 89060	Todd Lyons 500 12th St SW Washington, DC 20536
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/s/ Mayra Castillo

 An Employee of the
 Federal Public Defender