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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Juak Albino Gabriel Biel

Petitioner,

v.

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

Respondents.

Case No. 2:25-cv-02432-APG-EJY

First Amended § 2241 Petition

INTRODUCTION

Juak Albino Gabriel Biel, who came to the United States from Sudan with his grandmother at just eight years old during the civil war in that country, has lived under a shadow of uncertainty for more than a decade. Although an immigration judge ordered his removal to Sudan in 2014, the United States has never been able to carry out that order.

Nothing has changed since 2014. Yet, in May 2025, immigration officials arrested Mr. Biel again. Since then, he has received no information about when or whether he will be removed. What has changed is this: after more than ten years of effort, the government is no closer to securing travel documents.

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

JURISDICTION AND VENUE

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

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

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

Accordingly, Mr. Biel's habeas petition is properly before this court.

PARTIES

Mr. Biel is a native and citizen of Sudan who was ordered removed in July 2014. He is currently detained at the Nevada Southern Detention Center in Pahrump, Nevada.

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

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

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

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

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

Statement of Facts

Petitioner Biel was born in Sudan. On information and belief, when he was approximately five years old, he fled the country with his grandmother and cousin due to the civil war. After spending three years in an Ethiopian refugee camp, he moved with his family to the United States under a refugee visa.

In 2014, an immigration judge ordered Mr. Biel removed to Sudan.[1] He was detained for roughly 90 days following the order but was then released because ICE could not effectuate his removal.

More than a decade later, in May 2025, immigration officials again arrested Mr. Biel. After more than six months in immigration custody at Nevada Southern Detention Center, he filed a habeas petition under 28 U.S.C. § 2241.[2] Mr. Biel has been given no information about the ability of the United States government to remove him to Sudan, and he has not spoken with Sudanese or South Sudanese consulate. Other than the three years Mr. Biel spent at the Ethiopian refugee camp, he has never lived in any other country and does not have lawful status anywhere else.

Despite the complete lack of any viable path to removal, the government has held Mr. Biel in overcrowded conditions[3] at the Nevada Southern Detention Center for nearly seven months.[4] The circumstances surrounding his removability have not changed since he was ordered removed 11 years ago: ICE still cannot remove him to

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[1] ECF No. 1-1 at 5.

[2] ECF No. 1-1.

[3] Isabella Aldrete, *Nevada is home to one of the most over-capacity ICE detention centers in the country*, Nevada Independent (Aug. 27, 2025), available at https://thenevadaindependent.com/article/nevada-is-home-to-one-of-the-most-over-capacity-ice-detention-centers-in-the-country.

[4] Mr. Biel was also previously detained for the initial 90-day removal period in 2014.

Sudan or South Sudan, and Mr. Biel has received no indication that another country has been identified or that any removal plan exists.

LEGAL FRAMEWORK

I. Third Country Removals

A. Statutory guidance on third country removals

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

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

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

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

> JUSTICE KAGAN: ...suppose you had a third country that, for whatever reason, was willing to accept [a noncitizen]. If...that [noncitizen] was currently in withholding proceed—proceedings, you couldn't put him on a plane to that third country, could you?
>
> MR. SURI: We could after we provide the [noncitizen] notice that we were going to do that.
>
> JUSTICE KAGAN: Right.
>
> MR. SURI: But, without notice –
>
> JUSTICE KAGAN: So that's what it would depend on, right? That—that you would have to provide him 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?

> 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."[5] 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."[6] In other words, an individual may be removed without providing notice or an opportunity to contest removal to that third country.

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[5] P.Ex. 1 at 1.

[6] P.Ex 1 at 2.

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

If USCIS determines that the noncitizen did not meet that burden, they will be removed.[11] If the noncitizen does make a showing to the satisfaction of USCIS, USCIS will notify ICE, and the ICE Office of the Principal Legal Advisor (OPLA) may reopen immigration court proceedings for the noncitizen to seek withholding or CAT protection from removal to the third country.[12] "Alternatively, ICE may choose to designate another country for removal."[13] The memo provides no limitation on how many times ICE could designate a new third country for removal upon a noncitizen's showing of a well-founded fear of removal to a particular country.

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[7] P.Ex. 1 at 1-2.

[8] P.Ex. 1 at 2.

[9] P.Ex. 1 at 2.

[10] P.Ex. 1 at 2.

[11] P.Ex. 1 at 2.

[12] P.Ex. 1 at 2.

[13] P.Ex. 1 at 2.

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

II. Detention of Noncitizens after a Final Order of Removal

A. Statutory framework

Section 1231 of the INA governs the detention of noncitizens during and beyond the "removal period." The removal period begins once a noncitizen's removal order becomes administratively final and lasts for 90 days, during which ICE "shall

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[14] P.Ex. 2.

[15] P.Ex. 2.

[16] P.Ex. 2.

[17] P.Ex. 2.

remove the [noncitizen] from the United States" and "shall detain the [noncitizen]" as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). 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).

The Supreme Court considered the issue of indefinite detention under 8 U.S.C. §1231(a)(6) in the case *Zadvydas v. Davis*, 533 U.S. 678 (2001). In that case, the Court acknowledged that allowing a noncitizen to be detained indefinitely after the statutory removal period would raise "serious constitutional concerns" and, as a result, held that 8 U.S.C. §1231(a)(6) contains an implicit time limit. *Id.* at 682. The Court further 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 689, 701.

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

answer that question.'" *Medina v. Noem, et al., Respondents*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *6 (D. Md. Aug. 11, 2025) (citing *Zadvydas*, 533 U.S. at 699).

B. DHS Regulations

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

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

C. ICE Policy

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

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

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

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[18] P.Ex. 3. *See* Immigration Policy Tracking Project, https://immpolicytracking.org/policies/ice-directs-review-on-non-detained-docket-for-redetention-and-removal/#/tab-policy-documents (last visited 12/2/2025).

GROUNDS FOR RELIEF

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

Mr. Biel 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. Biel'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 July 21, 2014, 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.

Mr. Biel's continued detention is unreasonable because his removal is not reasonably foreseeable. As of the filing date of this Amended Petition, more than 11 years have passed since the immigration judge issued an order of removal in immigration proceedings. Mr. Biel was detained for the initial 90-day removal period after his order of removal was entered, and Mr. Biel has now been detained for nearly seven months since being re-detained by ICE in May 2025.

Mr. Biel cannot be removed to Sudan or South Sudan. Mr. Biel has never lived in, and has no connection to *any other* country, except Ethiopia, where Mr. Biel is not a citizen and has no reason to believe they would accept his removal. Upon information and belief, throughout his prolonged detention, no specific plans have been made to deport Mr. Biel, and no third country designation has been made.

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

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

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

As provided in Ground One, above, Mr. Biel's detention is governed by 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, *supra*. Mr.

Biel's continued detention violates 8 U.S.C. § 1231(a)(6) because it is both unreasonable and because removal is not reasonably foreseeable. Rather, his continued detention under 8 U.S.C. § 1231(a)(6) is driven by sweeping and arbitrary DHS policies. Moreover, and as discussed in Ground One, Mr. Biel's removal is not reasonably foreseeable. This Court should order that Mr. Biel be released.

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

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

The APA entitles "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . to judicial review." 5 U.S.C. § 702. Further, the APA compels a reviewing court to "hold unlawful and set aside 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," *id.* § 706(2)(C). The APA also compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

As explained above, Mr. Biel has a due process right to meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports him to a third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Mr. Biel also has a due process right to implementation of a process or procedure to afford these protections. *See, e.g.*, *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991).

The government however, has adopted a policy—set forth in the March 30 memo and July 9 directive—that is arbitrary and capricious and deprives Mr. Biel

of meaningful notice and an opportunity to present a fear-based claim to an immigration judge prior to his deportation to a third country. Moreover, the government's policy also violates the INA and implementing regulations which mandate that the government refrain from removing Mr. Biel, and similarly situated individuals, to a third country where they will likely be persecuted or tortured, thus requiring the government to provide meaningful notice of deportation to a third country and the opportunity to present a fear-based claim to an immigration judge before deporting an individual to a third country. In this case, the March 30 memo and July 9 directive demonstrate the government does not intend to observe those protections.[19]

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

IV. Ground Four: Mr. Biel's detention in immigration custody pursuant to recent ICE policy regarding third country removal violates the Due Process Clause of the Fifth Amendment.

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

To the extent that Mr. Biel's continued detention is meant to facilitate his removal to a third country, his detention is unlawful because, as argued in Ground Three (incorporated here by reference), ICE's procedure for third country removal is

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[19] *See also* Gerald Imray, 3 deported by U.S. held in African prison despite 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.

arbitrary and capricious and does not comply with due process. Any such future removal would be accomplished in violation of his due process rights, rendering his detention on that basis unlawful. Accordingly, this Court should order Mr. Biel's immediate release.

PRAYER FOR RELIEF

Accordingly, Mr. Biel respectfully requests that this Court:

1. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. §1231(a)(6); the Administrative Procedure Act, 5 U.S.C. §706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

2. Order Petitioner's immediate release;

3. Prohibit the government from re-detaining Petitioner in the future absent proof of changed circumstancing making his removal reasonably foreseeable;

4. Prohibit the government from removing petitioner to a third country without providing Petitioner and Petitioner's counsel with adequate notice of intent to seek removal to a third country and due process in the form of an opportunity to seek to reopen Petitioner's immigration court proceedings to seek fear-based relief from removal; and

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

Dated December 29, 2025.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Ellesse Henderson
Ellesse Henderson
Assistant Federal Public Defender

/s/ Margaret Lambrose
Margaret Lambrose
Assistant Federal Public Defender

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 29, 2025.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Ellesse Henderson
Ellesse Henderson
Assistant 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 29, 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:

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