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8  
9 UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

10 Naim Vijdani,

11 Petitioner,

12 v.

13 John Mattos, NSDC Warden; Michael  
14 Bernacke, Field Director, West Valley City  
Office of ICE ERO; Todd Lyons, ICE  
15 Acting Director; Kristi Noem DHS  
Secretary; Pam Bondi, U.S. Attorney  
16 General, Kerri Ann Quihuis, ICE Field  
Office Director, Las Vegas

17 Respondents.  
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Case No. 2:25-cv-02496-GMN-EJY

**First Amended § 2241 Petition**

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## INTRODUCTION

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2 Naim Vijdani, a citizen of Iran, was ordered removed to Iran on September 11,  
3 2017.<sup>1</sup> In the over 8 years since he was ordered removed, the United States has been  
4 unable to remove him to Iran. The statutory 90-day window to remove Vijdani ended  
5 more than 8 years ago. Respondents' re-detention of Vijdani now violates the  
6 Constitution, the Immigration and Nationality Act, and their own policies and  
7 regulations. Respondents have no reason to believe that they will now be able to  
8 remove Vijdani. He must be released immediately.

## JURISDICTION AND VENUE

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10 This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (granting general  
11 habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the  
12 "Suspension Clause"); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C.  
13 § 2201, 2202 (Declaratory Judgment Act).

14 Federal district courts have jurisdiction to hear habeas claims by non-citizens  
15 challenging the lawfulness of their detention. *See e.g., Zadvydas v. Davis*, 533 U.S.  
16 678 (2001). Federal courts also have federal question jurisdiction, through the APA  
17 to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an  
18 abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).  
19 APA claims are cognizable in habeas. 5 U.S.C. § 703. The APA affords a right of  
20 review to a person who is "adversely affected or aggrieved by agency action." 5  
21 U.S.C. § 702. Petitioner's continued detention violates his constitutional due process  
22 rights, constitutes arbitrary and capricious agency action, and is an abuse of  
23 discretion.

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27 <sup>1</sup> ECF No. 1-1 at 1.

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

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

#### 5 PARTIES

6 Naim Vijdani is a native and citizen of Iran, who was ordered removed in  
7 September of 2017. He is currently detained at the Nevada Southern Detention  
8 Center in Pahrump, Nevada.

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

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

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

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

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

1 Kerri Ann Quihuis is the ICE Field Office Director for Detention and  
2 Removal, and in her official capacity is responsible for the day-to-day operation of  
3 detaining and removing noncitizens in Las Vegas.

4 STATEMENT OF FACTS<sup>2</sup>

5 Petitioner Naim Vijdani was born in Iran. In 1995, when Vijdani was around  
6 fifteen years old, he fled Iran with his parents and siblings. They came to the  
7 United States over 30 years ago as

8 [REDACTED]

9 Vijdani also has significant mental health issues. His diagnoses include  
10 schizophrenia, bipolar disorder, depression, and anxiety. In 2016, he underwent a  
11 competency determination in Nevada state court.<sup>3</sup>

12 [REDACTED]

13 [REDACTED]

14 For the last two years, he has been compliant with his medications, taking  
15 Haloperidol, Cogentin, and Prozac daily.

16 Vijdani was placed in removal proceedings and ordered removed to Iran on  
17 September 11, 2017.<sup>6</sup> Because of his significant mental health issues, it is unclear  
18 how much time he spent in ICE custody before or after being ordered removed in  
19 2017. It appears he spent at least some period of time in ICE custody because a  
20 June 6, 2017 comment in his Nevada state court case states that Vijdani was to be

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23 <sup>2</sup> Where Vijdani possesses relevant documents, he will specifically reference  
24 and attach them as exhibits. Otherwise, the assertions of facts throughout this  
section are based on information and belief.

25 <sup>3</sup> Ex. 1 at 6–7.

26 <sup>4</sup> *Id.* at 6.

27 <sup>5</sup> *Id.* at 7.

<sup>6</sup> ECF No. 1-1 at 1.

1 released “to ICE custody only.”<sup>7</sup> Nevertheless, it is clear that Vijdani was eventually  
2 released because he could not be removed.

3 On November 5, 2025, over 8 years after he was ordered removed, Vijdani  
4 was detained by ICE. Between now and the time Vijdani was ordered removed over  
5 8 years ago, circumstances have not materially changed concerning the possibility  
6 of his removal. ICE still cannot remove him to Iran, and Vijdani has not received  
7 any documents identifying another country of removal, or any plan for removal.

## 8 LEGAL FRAMEWORK

### 9 I. Detention of Noncitizens after a Final Order of Removal

#### 10 A. Statutory framework

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

18 The Supreme Court considered the issue of indefinite detention under 8  
19 U.S.C. § 1231(a)(6) in *Zadvydas v. Davis*, 533 U.S. 678 (2001). In that case, the  
20 Court acknowledged that allowing a noncitizen to be detained indefinitely after the  
21 statutory removal period would raise “serious constitutional concerns” and, as a  
22 result, held that 8 U.S.C. § 1231(a)(6) contains an implicit time limit. *Id.* at 682. The  
23 Court further held that 8 U.S.C. § 1231(a)(6) authorizes detention only for “a period  
24 reasonably necessary to bring about the [noncitizen]’s removal from the United  
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27 <sup>7</sup> Ex. 1 at 5.

1 States” and that six months of detention after the removal order is final is  
2 “presumptively reasonable.” *Id.* at 689, 701.

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

### 18       **B. DHS Regulations**

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

26       To comply with *Zadvydas*, DHS issued additional regulations in 2001 that  
27 established “special review procedures” to determine whether detained noncitizens

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

### 15 C. ICE Policy

16 On February 18, 2025, in an apparent departure from longstanding legal  
17 requirements and ICE’s own policies, ICE issued a directive to agents encouraging  
18 them to seek to re-detain noncitizens with final removal orders who had been  
19 previously released from custody for the purpose of removal to previously  
20 recalcitrant countries of origin, or to third countries.<sup>8</sup> The directive did not provide  
21 justification as to why detention of noncitizens under orders of supervision would be  
22 necessary to effectuate proper removal to countries of origin or otherwise.

23 This recent ICE policy goes against DHS regulations on re-detention. Beyond  
24 the protections in *Zadvydas*, 8 C.F.R. § 241.4, § 241.13(i) establishes additional  
25 protective procedures for re-detention. These procedures allow for the noncitizen to  
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27 <sup>8</sup> Ex. 2.

1 “be returned to custody” due to violations of the conditions of their release. 8 C.F.R.  
2 § 241.13(i)(1); *see also* § 241.4. Absent condition violations, revocation of release is  
3 only permitted if based on “changed circumstances” it is determined that “there is a  
4 significant likelihood that the alien may be removed in the reasonably foreseeable  
5 future.” 8 C.F.R. § 241.13(i)(2).

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

## 13 **II. Third Country Removals**

### 14 **A. Statutory guidance on third country removals**

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

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

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

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

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

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

3 JUSTICE KAGAN: Right.

4 MR. SURI: But, without notice –

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

10 MR. SURI: Yes, that’s right.

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

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

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

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

23 *See* Tr. of Oral Argument at 20–21, *Johnson v. Guzman Chavez*, 594 U.S. 523  
24 (2021).

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

26 On March 30, 2025, Respondent Kristi Noem, the Secretary of the  
27 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.”<sup>9</sup> The memo continues that, where a country has

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<sup>9</sup> Ex. 3.

1 provided such assurances and the U.S. government believes them to be credible, a  
2 noncitizen may be removed to that country “without the need for further  
3 procedures.”<sup>10</sup> In other words, an individual may be removed without providing  
4 notice or an opportunity to contest removal to that third country.

5 The March 30th memo also states that DHS will remove noncitizens even to  
6 third countries that have not provided diplomatic assurances that noncitizens  
7 deported from the U.S. will not be persecuted or tortured.<sup>11</sup> In such cases, DHS will  
8 inform the noncitizen of removal to the intended country but will not affirmatively  
9 ask the noncitizen if they fear being removed to that country.<sup>12</sup> DHS will refer any  
10 noncitizen that affirmatively states a fear of removal to a third country to USCIS  
11 for a screening for eligibility for withholding of removal and/or CAT protection as to  
12 the intended third country.<sup>13</sup> USCIS will then make a determination about whether  
13 the noncitizen has established that they will “more likely than not be persecuted on  
14 a statutorily protected ground or tortured in the country of removal.”<sup>14</sup>

15 If USCIS determines that the noncitizen did not meet that burden, they will  
16 be removed.<sup>15</sup> If the noncitizen does make a showing to the satisfaction of USCIS,  
17 USCIS will notify ICE and the ICE Office of the Principal Legal Advisor (OPLA)  
18 may reopen immigration court proceedings for the noncitizen to seek withholding or  
19 CAT protection from removal to the third country.<sup>16</sup> “Alternatively, ICE may choose  
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22 <sup>10</sup> *Id.*

23 <sup>11</sup> *Id.*

24 <sup>12</sup> *Id.*

25 <sup>13</sup> *Id.*

26 <sup>14</sup> *Id.*

27 <sup>15</sup> *Id.*

<sup>16</sup> *Id.*

1 to designate another country for removal.”<sup>17</sup> The memo provides no limitation on  
2 how many times ICE could designate a new third country for removal upon a  
3 noncitizen’s showing of a well-founded fear of removal to a particular country.

4 On July 9, 2025, Respondent Todd Lyons sent additional guidance to ICE  
5 employees regarding third country removals (“July 9 Directive”).<sup>18</sup> The directive  
6 was issued in light of the Supreme Court’s decision to stay the injunction in the case  
7 *D.V.D. v. Department of Homeland Security*, No. 25-10676 (D. Mass.). It reiterated  
8 the procedures from the March 30 memo and provided additional details regarding  
9 how to deal with third country removals to countries that have not provided credible  
10 assurances that U.S. deportees will not be persecuted or tortured. It added that, in  
11 such cases, an ICE officer will serve the noncitizen with a Notice of Removal  
12 including the intended country and that the notice must be read in a language the  
13 noncitizen understands.<sup>19</sup> ICE “will generally wait at least 24 hours following  
14 service of the Notice of Removal before effectuating removal” but that in “exigent  
15 circumstances” ICE may remove a noncitizen to a possible-torture third country in  
16 as little as six hours after service of the Notice of Removal “as long as the  
17 [noncitizen] is provided reasonable means and opportunity to speak with an  
18 attorney prior to removal.”<sup>20</sup> Generally, if a noncitizen does not affirmatively state a  
19 fear of persecution or torture within 24 hours of service of the Notice of Removal,  
20 ICE may proceed with removal to the identified third country.<sup>21</sup>

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24 <sup>17</sup> Ex. 4.

25 <sup>18</sup> *Id.*

26 <sup>19</sup> *Id.*

27 <sup>20</sup> *Id.*

<sup>21</sup> *Id.*

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## GROUNDS FOR RELIEF

**I. Ground One: The continued indefinite detention of Vijdani 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.*

Vijdani’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 September 11, 2017, when the judge signed an order of removal. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(b). Therefore, the *Zadvydas* framework applies.

As explained above, given Petitioner’s severe mental health issues, it is unclear exactly how much time he has spent in ICE custody. But that is irrelevant

1 to this Court’s analysis, as the *Zadvydas* six-month period of presumptive  
2 reasonableness starts during the 90-day removal period after the order of removal  
3 becomes final, 8 U.S.C. § 1231(a)(1)(B) and comprises that period and the following  
4 three months. *See Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001)  
5 (the period of presumptive reasonableness is “six months after a final order of  
6 removal—that is, three months after the statutory removal period has ended.”)  
7 Here, Vijdani’s order of removal was entered on September 11, 2017. Accordingly,  
8 his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The presumptively  
9 reasonable period thus expired six months after the entry of his removal order and  
10 three months after the end of his 90-day removal period, both of which occurred in  
11 March of 2018.

12 Petitioner’s continued detention is unreasonable because his removal is not  
13 reasonably foreseeable. As of the filing date of this Amended Petition, over 8 years  
14 have passed since the immigration judge issued an order of removal in immigration  
15 proceedings. ICE is evidently unable to remove Vijdani to Iran, and he is not a  
16 citizen of and has no connection to *any other* country. Upon information and belief,  
17 no specific plans have been made to deport Vijdani, and no third country  
18 designation has been made.

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

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

12 **III. Ground Three: ICE's policy to remove noncitizens to a third country**  
13 **with no notice or opportunity to seek fear-based protection violates**  
14 **Vijdani's Fifth Amendment right to due process and constitutes**  
15 **arbitrary and capricious agency action in violation of the**  
16 **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, Vijdani 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.

1 1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Vijdani also  
2 has a due process right to implementation of a process or procedure to afford these  
3 protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491  
4 (1991). Respondents, however, have adopted a policy—set forth in the March 30  
5 memo and July 9 directive—that is arbitrary and capricious and deprives Vijdani of  
6 meaningful notice and an opportunity to present a fear-based claim to an  
7 immigration judge prior to his deportation to a third country. Moreover,  
8 Respondents’ policy also violates the INA and implementing regulations which  
9 mandate that Respondents refrain from removing Vijdani, and similarly situated  
10 individuals, to a third country where they will likely be persecuted or tortured, thus  
11 requiring Respondents to provide meaningful notice of deportation to a third  
12 country and the opportunity to present a fear-based claim to an immigration judge  
13 before deporting an individual to a third country. In this case, the March 30 memo  
14 and July 9 directive demonstrate Respondents do not intend to observe those  
15 protections.<sup>22</sup>

16 The APA empowers federal courts to “compel agency action unlawfully  
17 withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The Court should hold that  
18 Respondents’ actions and policy are unlawful and compel that—before any attempt  
19 is made to deport him to a third country—Petitioner be provided with meaningful  
20 notice and opportunity to present a fear-based claim to an immigration judge.  
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25  
26 <sup>22</sup> *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 **IV. Ground Four: Vijdani's detention in immigration custody pursuant**  
2 **to recent ICE policy regarding third country removal violates the**  
3 **Due Process Clause of the Fifth Amendment.**

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

11 **PRAYER FOR RELIEF**

12 Accordingly, Niam Vijdani respectfully requests that this Court:

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

1 Dated January 15, 2026.  
2

3 Respectfully submitted,

4 Rene L. Valladares  
5 Federal Public Defender

6 */s/ Hannah D. Nelson*

7 Hannah D. Nelson  
8 Assistant Federal Public Defender  
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on January 15, 2026. I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following person:

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