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9

10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA

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

Case No. 2:25-cv-02518-APG-NJK  
**First Amended § 2241 Petition**

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## INTRODUCTION

Vitaly Fedorov, who was born in the extinct USSR, came to the United States as a refugee in 1989, but was then ordered removed to Ukraine on August 30, 2006. In the nearly two decades since he was ordered removed, the United States has been unable to remove him to Ukraine. Indeed, upon information and belief, Fedorov received correspondence from the Ukrainian consulate as recently as December of last year that indicated that Ukraine did not recognize him as a citizen. In short, Fedorov cannot be removed to Ukraine.

The statutory 90-day window to remove Fedorov ended more than two decades ago. Respondents' re-detention of Fedorov now violates the Constitution, the Immigration and Nationality Act, and their own policies and regulations. Respondents have no reason to believe that they will be able to remove Fedorov. He must be released immediately.

## JURISDICTION AND VENUE

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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).

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Federal district courts have jurisdiction to hear habeas claims by noncitizens 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. Petitioner's continued detention violates his constitutional due process

1 rights, constitutes arbitrary and capricious agency action, and is an abuse of  
2 discretion.

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

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

7 **PARTIES**

8 Vitaly Fedorov is a native of the now-extinct USSR, who was ordered  
9 removed in August of 2006. He is currently detained at the Nevada Southern  
10 Detention Center in Pahrump, Nevada.

11 John Mattos is the Warden of Nevada Southern Detention Center. Mattos, in  
12 his official capacity, is the immediate custodian of Fedorov.

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

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

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

26 Pam Bondi is the Attorney General of the United States. She oversees the  
27 immigration court system, which is housed within the Executive Office for

1 Immigration Review (EOIR) and includes all immigration courts and the Board of  
2 Immigration Appeals (BIA). She is named in her official capacity.

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

6 STATEMENT OF FACTS<sup>1</sup>

7 Petitioner Vitaly Fedorov was born in Paltava, in the now-extinct USSR. In  
8 1989, when Fedorov was around seven years old, he fled the USSR with his parents  
9 and siblings. They came to the United States due to [REDACTED]

10 [REDACTED] The United States granted Fedorov and his family refugee status and  
11 issued them legal permanent resident cards.

12 Fedorov has never lived in or held a lawful status in any other country. In the  
13 years after Fedorov and his family fled the USSR, the USSR dissolved and ceased to  
14 exist as a sovereign nation.<sup>2</sup> And beginning in 2022, Ukraine has faced a full-scale  
15 invasion from Russia, resulting in a war claiming over 14,534 civilian lives.<sup>3</sup>

16 Fedorov was placed in removal proceedings and ordered removed to Ukraine  
17 in August 30, 2006. Fedorov was held for approximately 86 days before being  
18 released on an order of supervision because he could not be removed. ICE was  
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22 <sup>1</sup> Where Fedorov possesses relevant documents, he will specifically reference  
and attach them as exhibits. Otherwise, the assertions of facts throughout this  
section are based on information and belief.

23 <sup>2</sup> *Collapse of the Soviet Union*, Britannica, available at  
24 <https://www.britannica.com/event/the-collapse-of-the-Soviet-Union> (accessed on  
January 8, 2026).

25 <sup>3</sup> *Ukrainian Civilian Casualties Rise 27 Per Cent Compared to Last Year*,  
26 United Nations, November 12, 2025, available at  
27 <https://news.un.org/en/story/2025/11/1166343#:~:text=continue%20in%20Ukraine.-,Ukrainian%20civilian%20casualties%20rise%2027%20per%20cent%20compared%20to%20last,underscored%20the%20UN%20monitoring%20mission.>

1 unable to obtain travel documents for Fedorov from Ukraine at that time. And upon  
2 information and belief, Fedorov received correspondence from the Ukrainian  
3 consulate as recently as December of last year that indicated that Ukraine did not  
4 recognize him as a citizen now.

5 On August 1, 2025, about 19 years after his release from detention, Fedorov  
6 was transferred from Nevada state custody to DHS custody. Earlier that year,  
7 Fedorov pleaded guilty in state court to ownership or possession of a firearm by a  
8 prohibited person.<sup>4</sup> In May, Fedorov received a suspended sentence to allow him to  
9 participate in a rehabilitative drug court program.<sup>5</sup> But on June 10, the state court  
10 was notified that the Clark County Detention Center was refusing to release  
11 Fedorov to participate in the drug court program “due to [an] ICE hold[.]”<sup>6</sup> Fedorov  
12 continued to languish in state custody for another month, with July 29 district court  
13 minutes noting that, still, “ICE has not been notified.”<sup>7</sup> It was not until August 1  
14 that Fedorov was formally transferred to ICE detention.<sup>8</sup>

15 Fedorov’s detention in state custody pursuant to an ICE hold, and then  
16 formal ICE custody, now totals approximately seven months and counting; and it  
17 was effectuated by ICE despite the fact that Fedorov still cannot be removed to  
18 Ukraine. When his initial ICE detention from 2006 is considered, Fedorov has been  
19 detained based on his pending “removal” for approximately 10 months.

## 20 LEGAL FRAMEWORK

### 21 I. Detention of noncitizens after a final order of removal

#### 22 A. Statutory framework

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24 <sup>4</sup> Ex. 1

25 <sup>5</sup> Ex. 2

26 <sup>6</sup> Ex. 3

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<sup>8</sup> Ex. 5

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

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

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

1 determinative of whether the detention is, or is not, pursuant to statutory  
2 authority. . . . The basic federal habeas corpus statute grants the federal courts  
3 authority to answer that question.” *Medina v. Noem*, No. 25-CV-1768-ABA, 2025  
4 WL 2306274, at \*6 (D. Md. Aug. 11, 2025) (citing *Zadvydas*, 533 U.S. at 699).

### 5 **B. DHS regulations**

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

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

3 **C. ICE policy**

4 On February 18, 2025, in an apparent departure from longstanding legal  
5 requirements and ICE’s own policies, ICE issued a directive to agents encouraging  
6 them to seek to re-detain noncitizens with final removal orders who had been  
7 previously released from custody for the purpose of removal to previously  
8 recalcitrant countries of origin, or to third countries.<sup>9</sup> The directive did not provide  
9 justification as to why detention of noncitizens under orders of supervision would be  
10 necessary to effectuate proper removal to countries of origin or otherwise.

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

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

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27 <sup>9</sup> Ex. 6

## 1 II. Third country removals

### 2 A. Statutory guidance on third country removals

3 A noncitizen who cannot be removed to their country of origin can be removed  
4 to another country by ICE. This is known as a “third country” because it is a  
5 country other than the one designated on the noncitizen’s removal order. 8 C.F.R.  
6 § 1208.16(f). Specific criteria for identifying a third country for removal are  
7 prescribed by statute. For example, the law provides that a noncitizen with a  
8 removal order may be removed to a non-designated country of which the noncitizen  
9 is a “subject, national or citizen.” 8 U.S.C. § 1231(b)(2)(D). ICE may also remove a  
10 noncitizen with a removal order to the country from which they were admitted to  
11 the U.S.; the country from which the noncitizen departed for the U.S. or a foreign  
12 territory contiguous to the U.S.; a country in which the noncitizen resided before  
13 entering the country from which they entered the U.S.; the noncitizen’s country of  
14 birth; the country that had sovereignty over the place of birth at the time of birth;  
15 the country in which the birthplace is located at the time of the removal order; and,  
16 “if impracticable, inadvisable, or impossible to remove the [noncitizen] to each  
17 country described [above],” ICE may remove a noncitizen to “another country whose  
18 government will accept the [noncitizen] into that country.” 8 U.S.C. § 1231(b)(2)(E).

19 Notwithstanding the criteria for removal to a third country, ICE may not  
20 remove a noncitizen to a country where the noncitizen’s life or freedom would be  
21 threatened on the basis of the five protected grounds. 8 U.S.C. § 1231(b)(3)(A). The  
22 Supreme Court has emphasized the importance of existing avenues of relief from  
23 removal (such as applications for asylum, withholding of removal, and protection  
24 under the convention against torture) for providing protection against removal to a  
25 third country where a noncitizen would be in danger. *See Jama v. Immigr. &*  
26 *Customs Enft*, 543 U.S. 335, 348 (2005) (“If aliens would face persecution or other  
27 mistreatment in the country designated under § 1231(b)(2), they have a number of

1 available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A);  
2 relief under an international agreement prohibiting torture, *see* 8 CFR  
3 §§ 208.16(c)(4), 208.17(a) (2004); and temporary protected status, 8 U.S.C.  
4 § 1254a(a)(1)”; *see also* *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (recently  
5 holding that noncitizens “must receive notice” that “they are subject to removal” to a  
6 third country and that such notice must be provided “within a reasonable time and  
7 in such a manner as will allow the[] [noncitizen] to actually seek . . . relief” (quoting  
8 *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025))).

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

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

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

19 JUSTICE KAGAN: Right.

20 MR. SURI: But, without notice—

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

25 MR. SURI: Yes, that’s right.

26 JUSTICE KAGAN: So, in this situation, as to these  
27 [noncitizens] who are currently in withholding

1 proceedings, you can't put them on a plane to anywhere  
2 right now, isn't that right?

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

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

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

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

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

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

23 The March 30 memo also states that DHS will remove noncitizens even to  
24 third countries that have not provided diplomatic assurances that noncitizens  
25 deported from the U.S. will not be persecuted or tortured.<sup>11</sup> In such cases, DHS will  
26 inform the noncitizen of removal to the intended country but will not affirmatively

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27 <sup>10</sup> Ex. 7

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

1 ask the noncitizen if they fear being removed to that country.<sup>12</sup> DHS will refer any  
2 noncitizen that affirmatively states a fear of removal to a third country to USCIS  
3 for a screening for eligibility for withholding of removal and/or CAT protection as to  
4 the intended third country.<sup>13</sup> USCIS will then make a determination about whether  
5 the noncitizen has established that they will “more likely than not be persecuted on  
6 a statutorily protected ground or tortured in the country of removal.”<sup>14</sup>

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

15 On July 9, 2025, Respondent Todd Lyons sent additional guidance to ICE  
16 employees regarding third country removals (“July 9 Directive”).<sup>18</sup> The directive  
17 was issued in light of the Supreme Court’s decision to stay the injunction in the case  
18 *D.V.D. v. Department of Homeland Security*, No. 25-10676 (D. Mass.). It reiterated  
19 the procedures from the March 30 memo and provided additional details regarding  
20 how to deal with third country removals to countries that have not provided credible  
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22 <sup>12</sup> *Id.*

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

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

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

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

27 <sup>17</sup> *Id.*

<sup>18</sup> Ex. 8

1 assurances that U.S. deportees will not be persecuted or tortured. It added that, in  
2 such cases, an ICE officer will serve the noncitizen with a “Notice of Removal”  
3 stating the intended country, and the notice must be read in a language the  
4 noncitizen understands.<sup>19</sup> ICE “will generally wait at least 24 hours following  
5 service of the Notice of Removal before effectuating removal,” but in “exigent  
6 circumstances” ICE may remove a noncitizen to a possible-torture third country in  
7 as little as six hours after service of the Notice of Removal “as long as the  
8 [noncitizen] is provided reasonable means and opportunity to speak with an  
9 attorney prior to removal.”<sup>20</sup> Generally, if a noncitizen does not affirmatively state a  
10 fear of persecution or torture within 24 hours of service of the Notice of Removal,  
11 ICE may proceed with removal to the identified third country.<sup>21</sup>

#### 12 GROUND FOR RELIEF

13 **I. Ground One: The continued indefinite detention of Fedorov**  
14 **violates his Fifth Amendment right to due process because his**  
15 **removal is not reasonably foreseeable.**

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

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

24 However, in *Zadvydas*, the Supreme Court concluded that due process imposes an

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

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

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

1 “implicit limitation” upon 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 689.  
2 Specifically, the Court held that 8 U.S.C. § 1231(a)(6) authorizes detention only for  
3 “a period reasonably necessary to bring about the [noncitizen]’s removal from the  
4 United States,” and that six months of detention after the removal order is final is  
5 “presumptively reasonable.” *Id.* at 701. The Court further determined that “once the  
6 alien provides good reason to believe that there is no significant likelihood of  
7 removal in the reasonably foreseeable future, the Government must respond with  
8 evidence sufficient to rebut that showing.” *Id.*

9 Fedorov’s detention is governed by 8 U.S.C. § 1231(a)(6) because he has been  
10 detained for more than 90 days since he was ordered removed. That 90-day removal  
11 period began on August 30, 2006, when he was ordered removed. *See* 8 U.S.C.  
12 § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(b). Therefore, the *Zadvydas* framework applies.

13 Petitioner’s continued detention is unreasonable because his removal is not  
14 reasonably foreseeable. As of the filing date of this Amended Petition, almost two  
15 decades have passed since the IJ issued an order of removal in immigration  
16 proceedings. Fedorov was detained for 86 days of the initial 90-day removal period  
17 after his order of removal was entered. And then he was detained for approximately  
18 three months in CCDC pursuant to an ICE hold(s), waiting to be transferred to ICE  
19 custody, where he has been since August 1, 2025.

20 There is no indication that Fedorov can be removed to Ukraine, as the US  
21 government recognized in 2006. Indeed, his prospects of removal to Ukraine have  
22 never been worse, given that Ukraine is embroiled in a protracted conflict with  
23 Russia. Upon information and belief, Fedorov received correspondence from the  
24 Ukrainian consulate as recently as December of last year that indicated that  
25 Ukraine did not recognize him as a citizen. Aside from Ukraine, Fedorov is not a  
26 citizen of, has never lived in, and has no connection to *any other* country.

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

10 **II. Ground Two: Fedorov’s continued detention violates the**  
11 **Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6).**

12 Petitioner incorporates the above paragraphs by reference as if fully set forth  
13 herein.

14 As provided in Ground One, Fedorov’s detention is governed by 8 U.S.C.  
15 § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*. Fedorov’s continued  
16 detention violates 8 U.S.C. § 1231(a)(6) because it is both unreasonable and because  
17 removal is not reasonably foreseeable. Instead, his continued detention under 8  
18 U.S.C. § 1231(a)(6) is driven by sweeping and arbitrary DHS policies. This Court  
19 should order that Fedorov be released because his detention violates the INA.

20 **III. Ground Three: ICE’s failure to comply with its own regulations**  
21 **concerning the re-detention of individuals on orders of**  
22 **supervision violates Fedorov’s Fifth Amendment due process**  
23 **rights and the Administrative Procedure Act.**

24 Petitioner incorporates the above paragraphs by reference as if fully set forth  
25 herein.

26 Title 8 C.F.R. § 241.4(l) applies to the re-detention of individuals previously  
27 released by ICE generally, while 8 C.F.R. § 241.13(i) applies to persons—such as  
Fedorov—who were released after providing good reason to believe that they will

1 not be removed in the reasonably foreseeable future. *See Rokhfirooz v. Larose*, No.  
2 25-CV-2053-RSH-VET, 2025 WL 2646165, at \*2 (S.D. Cal. Sept. 15, 2025).

3 These regulations permit an official to “return[s] [the person] to custody”  
4 because they “violate[d] any of the conditions of release.” 8 C.F.R. § 241.13(i)(1); *see*  
5 *also id.* § 241.4(l)(1). Otherwise, they permit revocation of release only if the  
6 appropriate official (1) “determines that there is a significant likelihood that the  
7 [person] may be removed in the reasonably foreseeable future,” *id.* § 241.13(i)(2),  
8 and (2) makes that finding “on account of changed circumstances.” *Id.* No matter  
9 the reason for re-detention, the re-detained person is entitled to “an initial informal  
10 interview promptly,” during which they “will be notified of the reasons for  
11 revocation.” *Id.* §§ 241.4(l)(1), 241.13(i)(3). The interviewer must “afford[] the  
12 [person] an opportunity to respond to the reasons for revocation,” allowing them to  
13 “submit any evidence or information” relevant to re-detention and evaluating “any  
14 contested facts.” *Id.*

15 ICE is required to follow its own regulations. *United States ex rel. Accardi v.*  
16 *Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th  
17 Cir. 2004) (“The legal proposition that agencies may be required to abide by certain  
18 internal policies is well-established.”). A court may review a re-detention decision  
19 for compliance with the regulations. *See, e.g., Nguyen v. Noem*, No. 25CV2792-LL-  
20 VET, 2025 WL 3101979, at \*2 (S.D. Cal. Nov. 6, 2025); *Phan v. Beccerra*, No. 2:25-  
21 CV-01757, 2025 WL 1993735, at \*3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No.  
22 25-cv-11470-MJJ, 2025 WL 1725791, at \*3 (D. Mass. June 20, 2025) (citing *Kong v.*  
23 *United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

24 None of the prerequisites to re-detention apply here. Fedorov has never been  
25 told that he was returned to custody because of a “conditions” violation. And there  
26 are no changed circumstances that justify re-detaining him. Fedorov still cannot be  
27 removed to Ukraine, and there is no indication that any other country has agreed to

1 issue him travel documents. Even if Respondents possess a vague intention to  
2 remove Fedorov, absent any evidence as to “why obtaining a travel document is  
3 more likely this time around[,] Respondents’ intent to eventually complete a travel  
4 document request for Petitioner does not constitute a changed circumstance.” *Hoac*  
5 *v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July 16,  
6 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at \*2 (D. Kan.  
7 June 17, 2025)). Upon information and belief, Fedorov has not received the  
8 interview required by regulation and no one from ICE has ever invited him to  
9 contest the revocation of his order of supervision.

10 Numerous courts have released re-detained immigrants after finding that  
11 ICE failed to comply with applicable regulations. *See, e.g., Ghafouri v. Noem*, No.  
12 3:25-CV-02675-RBM-BLM, 2025 WL 3085726, (S.D. Cal. Nov. 4, 2025); *Ceesay v.*  
13 *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp.  
14 3d 451,463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass.  
15 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at \*7-9 (S.D.N.Y.  
16 Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at \*10-  
17 12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL  
18 2491782, at \*2-3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-  
19 JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at  
20 \*2; *M.Q. v. United States*, 2025 WL 965810, at \*3, \*5 n.1 (S.D.N.Y. Mar. 31, 2025);  
21 *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, (S.D. Cal. Sept.  
22 15, 2025).

23 The Court should do so here too. “[B]ecause officials did not properly revoke  
24 petitioner’s release pursuant to the applicable regulations, that revocation has no  
25 effect, and [Fedorov] is entitled to his release (subject to the same Order of  
26 Supervision that governed his most recent release).” *Liu*, 2025 WL 1696526, at \*3.  
27

1           **IV. Ground Four: ICE’s policy of removing noncitizens to a third**  
2           **country with no notice or opportunity to seek fear-based**  
3           **protection violates Fedorov’s Fifth Amendment right to due**  
4           **process and constitutes arbitrary and capricious agency action**  
5           **in violation of the Administrative Procedure Act, 5 U.S.C. § 706.**

6           Petitioner incorporates the above paragraphs by reference as if fully set forth  
7           herein.

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

16          As explained above, Fedorov has a due process right to meaningful notice and  
17          an opportunity to present a fear-based claim to an immigration judge before DHS  
18          deports him to a third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.  
19          1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Fedorov also  
20          has a due process right to implementation of a process or procedure to afford these  
21          protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991).  
22          Respondents, however, have adopted a policy—set forth in the March 30 memo and  
23          July 9 directive—that is arbitrary and capricious and deprives Fedorov of  
24          meaningful notice and an opportunity to present a fear-based claim to an  
25          immigration judge prior to his deportation to a third country. Moreover,  
26          Respondents’ policy also violates the INA and implementing regulations, which  
27          mandate that Respondents refrain from removing Fedorov, and similarly situated  
                individuals, to a third country where they will likely be persecuted or tortured.

1 Respondents must provide meaningful notice of deportation to a third country and  
2 the opportunity to present a fear-based claim to an immigration judge before  
3 deporting an individual to a third country. In this case, the March 30 memo and  
4 July 9 directive demonstrate that Respondents do not intend to observe those  
5 protections.<sup>22</sup>

6 The APA empowers federal courts to “compel agency action unlawfully  
7 withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The Court should hold that  
8 Respondents’ actions and policy are unlawful and compel that—before any attempt  
9 is made to deport him to a third country—Petitioner be provided with meaningful  
10 notice and an opportunity to present a fear-based claim to an immigration judge.

11 **V. Ground Five: Fedorov’s detention in immigration custody**  
12 **pursuant to recent ICE policy regarding third country removal**  
13 **violates the Due Process Clause of the Fifth Amendment.**

14 Petitioner incorporates the above paragraphs by reference as if fully set forth  
15 herein.

16 To the extent that Petitioner’s continued detention is meant to facilitate his  
17 removal to a third country, his detention is unlawful because, as argued in Ground  
18 Four, ICE’s procedure for third country removal is arbitrary and capricious and  
19 does not comply with due process. Any such future removal would be accomplished  
20 in violation of his due process rights, rendering his detention on that basis  
21 unlawful. Accordingly, this Court should order Fedorov’s immediate release.

22 **PRAYER FOR RELIEF**

23 Accordingly, Fedorov respectfully requests that this Court:  
24

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25 <sup>22</sup> See also Gerald Imray, *Three Deported by U.S. Held in African Prison*  
26 *Despite Completing Sentences, Lawyers Say*, PBS News (Sept. 2, 2025),  
27 <https://www.pbs.org/newshour/amp/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say>.



**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 January 12, 2026.

Respectfully submitted,

Rene L. Valladares  
Federal Public Defender

/s/ Stacy Newman  
Stacy Newman  
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on January 12, 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:

Vitaly Fedorov   
Nevada Southern Detention Center  
2190 E. Mesquite Avenue  
Pahrump, NV 89048

John Mattos, Warden  
Nevada Southern Detention Center  
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Pahrump, NV 89060

*/s/ Mayra Castillo*  
\_\_\_\_\_  
An Employee of the  
Federal Public Defender