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13 UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

14 Sam Khamsaen Phetinta,
 15 Petitioner,

16 v.

17 John Mattos, NSDC Warden; Michael
 18 Bernacke, Field Director, West Valley City
 Office of ICE ERO; Todd Lyons, ICE
 19 Acting Director; Kristi Noem DHS
 Secretary; Pam Bondi, U.S. Attorney
 20 General, et al.,

21 Respondents.

Case No. 2:25-cv-02564-GMN-BNW
First Amended § 2241 Petition

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INTRODUCTION

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2 Sam Phetinta, who was born in Laos, was ordered removed on June 24, 2022.
3 After he was ordered removed, the government detained Phetinta in Aurora,
4 Colorado for six months. He was released on an order of supervision in December
5 2022. During that six months of detention, and during the three year period since
6 Phetinta was released from detention, the United States has been unable to remove
7 him. In short, Phetinta cannot be removed to Laos.

8 The statutory 90-day window to remove Phetinta ended more than three
9 years ago. Respondents' re-detention of Phetinta is an egregious violation of the
10 Constitution, the Immigration and Nationality Act, and their own policies and
11 regulations. Respondents have no reason to believe that they will now be able to
12 remove Phetinta. He must be released immediately.

JURISDICTION AND VENUE

13
14 This Court has jurisdiction pursuant to 28 U.S.C. §2241 (granting general
15 habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the
16 "Suspension Clause"); 28 U.S.C. §1331 (federal question jurisdiction); and 28 U.S.C.
17 § 2201, 2202 (Declaratory Judgment Act).

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

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 Sam Phetinta is a native of Laos who was ordered removed in June of 2022.
7 He is currently detained at the Nevada Southern Detention Center in Pahrump,
8 Nevada.

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

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 Phetinta is detained. Bernacke, in his official capacity, is a legal custodian of
16 Phetinta.

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

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

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

1 Between now and the time Phetinta was ordered removed more than three
2 years ago, circumstances have not materially changed concerning the possibility of
3 his removal. ICE still cannot remove him to Laos, and Phetinta has not received
4 any documents identifying another country of removal, or any plan for removal.

5 LEGAL FRAMEWORK

6 I. Third Country Removals

7 A. Statutory guidance on third country removals

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

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

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

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

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

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

23 JUSTICE KAGAN: Right.

24 MR. SURI: But, without notice –

25 JUSTICE KAGAN: So that's what it would depend
26 on, right? That – that you would have to provide him
27 notice, and if he had a fear of persecution or torture in

1 that country, he would be given an opportunity to contest
2 his removal to that country. Isn't that right?

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

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

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

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

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

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

18 **A. Trump Administration policies on third country removal.**

19 On March 30, 2025, Respondent Kristi Noem, the Secretary of the
20 Department of Homeland Security, issued guidance to ICE and other DHS agencies
21 regarding third country removals. This memo states that, prior to a noncitizen's
22 removal to a third country, "DHS must determine whether that country has
23 provided diplomatic assurances that aliens removed from the United States will not
24 be persecuted or tortured."² The memo continues that, where a country has
25 provided such assurances and the U.S. government believes them to be credible, a
26 noncitizen may be removed to that country "without the need for further

27 ² P.Ex. 2 at 1.

1 procedures.” In other words, an individual may be removed without providing notice
2 or an opportunity to contest removal to that third country.

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

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

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22 ³ P.Ex. 2 at 1-2.

23 ⁴ P.Ex. 2 at 2.

24 ⁵ P.Ex. 2 at 2.

25 ⁶ P.Ex. 2 at 2.

26 ⁷ P.Ex. 2 at 2.

27 ⁸ P.Ex. 2 at 2.

⁹ P.Ex. 2 at 2.

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

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

19 **A. Statutory framework**

20 Section 1231 of the INA governs the detention of noncitizens during and
21 beyond the “removal period.” The removal period begins once a noncitizen’s removal
22 order becomes administratively final and lasts for 90 days, during which ICE “shall
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25 ¹⁰ P.Ex. 3.

26 ¹¹ P.Ex. 3.

27 ¹² P.Ex. 3.

¹³ P.Ex. 3.

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

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

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

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

3 **B. DHS Regulations**

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

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

1 **C. ICE Policy**

2 On February 18, 2025, in an apparent departure from longstanding legal
3 requirements and ICE's own policies, ICE issued a directive to agents encouraging
4 them to seek to re-detain noncitizens with final removal orders who had been
5 previously released from custody for the purpose of removal to previously
6 recalcitrant countries of origin, or to third countries.¹⁴ The directive did not provide
7 justification as to why detention of noncitizens under orders of supervision would be
8 necessary to effectuate proper removal to countries of origin or otherwise.

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

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

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27 ¹⁴ P.Ex. 1.

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GROUNDS FOR RELIEF

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

Phetinta’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 June 24, 2022, when he 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.

Petitioner’s continued detention is unreasonable because his removal is not reasonably foreseeable. As of the filing date of this Amended Petition, more than

1 three years have passed since the IJ issued an order of removal in immigration
2 proceedings. Phetinta was detained for more than the initial 90-day removal period
3 after his order of removal was entered. In fact, he was detained for six months.
4 Therefore, Phetinta has now been detained for over seven months since being re-
5 detained by ICE because he was initially detained for six months in 2022, and he
6 has now been detained for more than a month in 2025.

7 Phetinta cannot be removed to Laos. He has attempted to contact the Lao
8 Consulate, but without success. Phetinta is not a citizen of, has never lived in, and
9 has no connection to *any other* country. Upon information and belief, throughout his
10 prolonged detention, no specific plans have been made to deport Phetinta, and no
11 third country designation has been made.

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

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

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

25 As provided in Ground One, above, Phetinta’s detention is governed by 8
26 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas, supra*.
27 Phetinta’s continued detention violates 8 U.S.C. § 1231(a)(6) because it is both

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

5 **III. Ground Three: ICE's failure to comply with its own regulations**
6 **concerning the re-detention of individuals on orders of supervision**
7 **violates Phetinta's Fifth Amendment due process rights and the**
8 **Administrative Procedures Act.**

9 Title 8 C.F.R. § 241.4(l) applies to re-detention of individuals previously
10 released by ICE generally, while 8 C.F.R. 241.13(i) applies to persons released after
11 providing good reason to believe that they will not be removed in the reasonably
12 foreseeable future, as Phetinta plainly was. *See Rokhfirooz v. Larose*, No. 25-CV-
13 2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025). These
14 regulations permit an official to "return[s] [the person] to custody" because they
15 "violate[d] any of the conditions of release." 8 C.F.R. § 241.13(i)(1); *see also id.* §
16 241.4(l)(1). Otherwise, they permit revocation of release only if the appropriate
17 official (1) "determines that there is a significant likelihood that the alien may be
18 removed in the reasonably foreseeable future," *id.* § 241.13(i)(2), and (2) makes that
19 finding "on account of changed circumstances." *Id.* No matter the reason for re-
20 detention, the re-detained person is entitled to "an initial informal interview
21 promptly," during which they "will be notified of the reasons for revocation." *Id.* §§
22 241.4(l)(1), 241.13(i)(3). The interviewer must "afford[] the [person] an opportunity
23 to respond to the reasons for revocation," allowing them to "submit any evidence or
24 information" relevant to re-detention and evaluating "any contested facts." *Id.*

25 ICE is required to follow its own regulations. *United States ex rel. Accardi v.*
26 *Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th
27 Cir. 2004) ("The legal proposition that agencies may be required to abide by certain
internal policies is well-established."). A court may review a redetention decision for

1 compliance with the regulations. See e.g. *Nguyen v. Noem, et. al.*, No. 25CV2792-LL-
2 VET, 2025 WL 3101979, at *2 (S.D. Cal. Nov. 6, 2025); *Phan v. Beccerra*, No. 2:25-
3 CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No.
4 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v.*
5 *United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

6 None of the prerequisites to detention apply here. Phetinta has never been
7 told that he was returned to custody because of a "conditions" violation. And there
8 are no changed circumstances that justify re-detaining him. Phetinta still cannot be
9 removed to Laos, and there is no indication that any other country has agreed to
10 issue him travel documents. Even if Respondents possess a vague intention to
11 remove Phetinta, absent any evidence as to "why obtaining a travel document is
12 more likely this time around[,] Respondents' intent to eventually complete a travel
13 document request for Petitioner does not constitute a changed circumstance." *Hoac*
14 *v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16,
15 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan.
16 June 17, 2025)). Nor has Phetinta received the interview required by regulation. No
17 one from ICE has ever invited him to contest the revocation of his order of
18 supervision. *Id.*

19 Numerous courts have released re-detained immigrants after finding that
20 ICE failed to comply with applicable regulations. See e.g. *Ghafouri v. Noem, et. al.*,
21 No. 3:25-CV-02675-RBM-BLM, 2025 WL 3085726, (S.D. Cal. Nov. 4, 2025); *Ceesay*
22 *v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.
23 Supp. 3d 451,463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383,387 (D.
24 Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7-9
25 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL
26 2430267, at *10-12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-
27 MJT, 2025 WL 2491782, at *2-3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-

1 cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL
2 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar.
3 31, 2025); *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, (S.D.
4 Cal. Sept. 15, 2025).

5 "[B]ecause officials did not properly revoke petitioner's release pursuant to
6 the applicable regulations, that revocation has no effect, and [Phetinta] is entitled
7 to his release (subject to the same Order of Supervision that governed his most
8 recent release)." *Liu*, 2025 WL 1696526, at *3.

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

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

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

24 As explained above, Phetinta has a due process right to meaningful notice
25 and opportunity to present a fear-based claim to an immigration judge before DHS
26 deports him to a third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
27 1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Phetinta also
has a due process right to implementation of a process or procedure to afford these

1 protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991).
2 Respondents, however, have adopted a policy—set forth in the March 30 memo and
3 July 9 directive—that is arbitrary and capricious and deprives Phetinta of
4 meaningful notice and an opportunity to present a fear-based claim to an
5 immigration judge prior to his deportation to a third country. Moreover,
6 Respondents’ policy also violates the INA and implementing regulations which
7 mandate that Respondents refrain from removing Phetinta, and similarly situated
8 individuals, to a third country where they will likely be persecuted or tortured, thus
9 requiring Respondents to provide meaningful notice of deportation to a third
10 country and the opportunity to present a fear-based claim to an immigration judge
11 before deporting an individual to a third country. In this case, the March 30 memo
12 and July 9 directive demonstrate Respondents do not intend to observe those
13 protections.¹⁵

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

19 **V. Ground Five: Petitioner’s detention in immigration custody**
20 **pursuant to recent ICE policy regarding third country removal**
21 **violates the Due Process Clause of the Fifth Amendment.**

22 To the extent that Petitioner’s continued detention is meant to facilitate his
23 removal to a third country, his detention is unlawful because, as argued in Ground
24 Four (incorporated here by reference), ICE’s procedure for third country removal is

25
26 ¹⁵ *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 arbitrary and capricious and does not comply with due process. Any such future
2 removal would be accomplished in violation of his due process rights, rendering his
3 detention on that basis unlawful. Accordingly, this Court should order Phetinta's
4 immediate release.

5 **PRAYER FOR RELIEF**

6 Accordingly, Sam Phetinta respectfully requests that this Court:

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

11 2. Order Petitioner's immediate release;

12 3. Prohibit Respondent's from re-detaining Petitioner in the future
13 absent proof of changed circumstancing making his removal reasonably foreseeable;

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

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

21
22 Dated January 12, 2026.

23 Respectfully submitted,

24 Rene L. Valladares
25 Federal Public Defender

26 /s/ Kimberly Sandberg
27 Kimberly Sandberg

Assistant Federal Public Defender

/s/ Laura Barrera

Laura Barrera
Assistant Federal Public Defender

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DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the facts alleged in this petition are true and correct to the best of counsel’s knowledge, information, and belief.

Dated January 12, 2026.

Respectfully submitted,


Rene L. Valladares
Federal Public Defender

/s/ Kimberly Sandberg
Kimberly Sandberg
Assistant Federal Public Defender

/s/ Laura Barrera
Laura Barrera
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:

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/s/ Mayra Castillo

 An Employee of the
 Federal Public Defender