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 12
 13 UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

14 Wahid Masud Siddiqi,

15 Petitioner,

16 v.

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

22 Respondents.

Case No. 2:25-cv-02614-JAD-BNW

First Amended § 2241 Petition

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INTRODUCTION

On February 13, 2006, an immigration judge issued an order of removal for Wahid Masud Siddiqi.¹ In the nearly 20 years since he was ordered removed, the United States has been unable to remove him. Despite filling out travel paperwork for Immigration and Customs Enforcement (ICE) on multiple occasions, there has been no change in his status. Indeed, upon information and belief, during the week of January 12, 2026, an ICE agent informed Mr. Siddiqi that he needed to “sit tight” in prison because ICE could not get him travel documents and would not be able to deport him. ICE has no plan or ability to remove Mr. Siddiqi to Afghanistan.

Since 2006, Mr. Siddiqi has been released on an order of supervision (OSUP) from ICE. He was taken back into custody by ICE on November 26, 2025. The statutory 90-day removal period ended in 2006, after Siddiqi was held in detention for over 90 days. The *Zadvydas* six-month period of presumptive reasonableness of detention for Mr. Siddiqi also expired in early 2006, almost 20 years ago. Respondents’ re-detention of Mr. Siddiqi is an egregious violation of the Constitution, the Immigration and Nationality Act, and their own policies and regulations. Respondents have no reason to believe that they will now be able to remove Mr. Siddiqi. He must be released immediately.

JURISDICTION AND VENUE

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

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

¹ P. Ex. 1

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

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

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

13 PARTIES

14 Mr. Siddiqi is a native and citizen of Afghanistan who was ordered removed
15 on February 13, 2006.² Mr. Siddiqi is currently detained at the Nevada Southern
16 Detention Center in Pahrump, Nevada.

17 John Mattos is the Warden of Nevada Southern Detention Center. He was
18 named to this position in July of 2025, replacing Christopher Chestnut. Mattos, in
19 his official capacity, is the immediate custodian of Mr. Siddiqi.

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



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27 ² P. Ex. 1.

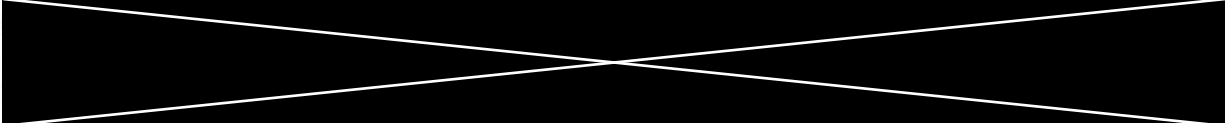

1 Todd Lyons is the Acting Director of Immigration and Customs Enforcement,
2 which is responsible for administering and enforcing immigration laws, including
3 the detention and removal of immigrants. Lyons, in his official capacity, is a legal
4 custodian of Mr. Siddiqi.

5 Kristi Noem is the Secretary of the Department of Homeland Security, which
6 oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of Mr.
7 Siddiqi.

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

12 STATEMENT OF FACTS

13 Petitioner Wahid Masud Siddiqi was born in Afghanistan. Mr. Siddiqi came
14 to the United States in 1992, when he was ten years old. He moved with his parents
15 and two sisters to escape the political unrest in Afghanistan and because his family
16  The family moved in with Mr. Saddiqi's aunt in New York, then in
17 Maine, and eventually settled in Thousand Oaks, California, when he was in high
18 school. During this time, Mr. Siddiqi's parents and two sisters obtained citizenship.
19 Unfortunately, the move to Thousand Oaks led to tragedy for the family. In 2018,
20 Mr. Siddiqi's younger sister 

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22 
23 Throughout the past twenty years, Mr. Siddiqi has cooperated with ICE's
24 instructions and requests. He has checked in when he was told to do so and has
25 filled out travel documents whenever asked. Prior to his re-detention, Mr. Siddiqi
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³ P. Ex. 5.

1 lived in Las Vegas with his long-term partner and twelve-year-old daughter. Both
2 his partner and daughter are American citizens. Mr. Siddiqi's daughter and family
3 have suffered greatly since he has been re-detained. His daughter is in fear of losing
4 her dad and has been hospitalized because she has exhibited suicidal ideation. Mr.
5 Siddiqi's parents are afraid that they will lose another child after their youngest
6 daughter [REDACTED]

7 On November 26, 2025, Mr. Siddiqi was taken back into ICE custody. During
8 that time, on information and belief, ICE has not undertaken any substantial steps
9 to facilitate Mr. Siddiqi's removal to Afghanistan; in fact, Mr. Siddiqi was recently
10 informed that ICE cannot remove him to Afghanistan. This is not the first time that
11 ICE has been unable to obtain travel documents for him. At different times since
12 2006, despite his efforts to get travel documents, he has been told by ICE that they
13 can't get travel documents for him and that it is "unknown who he is in his
14 country." Nor has Mr. Siddiqi received any documents identifying a third country of
15 removal, or any plan for removal. ICE has also not claimed that he is "specially
16 dangerous" or exhibits any of the other characteristics of noncitizens meriting
17 extended detention for whom removal is not reasonably foreseeable. 8 C.F.R. §
18 241.14. Almost twenty years ago, Mr. Siddiqi was released from ICE custody on an
19 order of supervision because his deportation was not reasonably foreseeable. The
20 only condition that has changed in those twenty years is ICE's decision to ignore
21 their own policies and re-detain individuals. It appears that there is no plan for Mr.
22 Siddiqi other than holding him in detention indefinitely.

23 ICE has failed to care for Mr. Siddiqi's medical needs while he has been
24 detained. Mr. Siddiqi has gall bladder problems and needs surgery. He also was
25 stable on suboxone prior to being detained but has not been given the appropriate
26 dose in custody. He has been suffering from withdrawals because the facility has
27 failed to provide him appropriate medical care. Additionally, on December 12, 2025,

1 while being held with several other inmates in a holding cell, upon information and
2 belief, an officer grabbed Mr. Siddiqi, who fell and cracked his head on the floor.
3 Although he was seriously injured, he did not receive any medical attention, has
4 been having severe headaches, and was not taken to a hospital for any imaging.
5 Rather, after this traumatic fall, Mr. Siddiqi was given Ibuprofen and told to
6 contact a lawyer.

7 LEGAL FRAMEWORK

8 I. Constitutional protection against indefinite civil detention.

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

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

25 Importantly, the *Zadvydas* court did not say the presumption is irrebuttable,
26 and a variety of courts across the country that have considered the issue have found
27 the presumption of reasonableness during the first six months of post-removal order

1 detention can be rebutted. *See Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387
2 (D.N.J. 2025) (analyzing the issue and collecting case). “Within the six-month
3 window,” the noncitizen bears the burden of “prov[ing] the unreasonableness of
4 detention.” *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). After six
5 months, there is “good reason to believe that there is no significant likelihood of
6 removal in the reasonably foreseeable future,” and the burden shifts to the
7 government to justify continued detention. *Zadvydas*, 533 U.S. at 701. “Whether
8 detention is ‘reasonably necessary to secure removal is determinative of whether
9 the detention is, or is not, pursuant to statutory authority...The basic federal
10 habeas corpus statute grants the federal courts authority to answer that question.”
11 *Cruz Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *6 (D. Md. Aug.
12 11, 2025) (citing *Zadvydas*, 533 U.S. at 699).

13 **II. Relevant DHS Regulations.**

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

21 To comply with *Zadvydas*, DHS issued additional regulations in 2001 that
22 established “special review procedures” to determine whether detained noncitizens
23 with final removal orders are likely to be removed in the reasonably foreseeable
24 future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66
25 Fed. Reg. 56, 967 (Nov. 14, 2001). Subsection (i)(7) was added to 8 C.F.R. § 241.4,
26 which added a supplemental review procedure that ICE HQ must initiate when “the
27 [noncitizen] submits, or the record contains, information providing a substantial

1 reason to believe that removal of a detained [noncitizen] is not significantly likely in
2 the reasonably foreseeable future.” 8 C.F.R. § 241.4(i)(7). Under this procedure, ICE
3 HQ evaluates the foreseeability of removal by analyzing factors such as the history
4 of ICE’s removal efforts to third countries. *See* 8 C.F.R. § 241.13(f). If ICE HQ
5 determines that removal is not reasonably foreseeable but nonetheless seeks to
6 continue detention based on “special circumstances,” it must justify the detention
7 based on narrow grounds such as national security or public health concerns or by
8 demonstrating by clear and convincing evidence before an IJ that the noncitizen is
9 “specially dangerous.” 8 C.F.R. § 241.14(b)-(d), (f).

10 **III. Recent ICE Policy on the re-detention of individuals with final** 11 **removal orders.**

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

19 This recent ICE policy goes against DHS regulations on re-detention. Beyond
20 the protections in *Zadvydas*, 8 C.F.R. § 241.4, §241.13(i) establishes additional
21 protective procedures for re-detention. These procedures allow for the noncitizen to
22 “be returned to custody” due to violations of the conditions of their release. 8 C.F.R.
23 § 241.13(i)(l); *see also* § 241.4. Absent condition violations, revocation of release is
24 only permitted if based on “changed circumstances” it is determined that “there is a

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26 ⁴ P. Ex. 2, *see* [https://immpolicytracking.org/policies/ice-directs-review-on-](https://immpolicytracking.org/policies/ice-directs-review-on-non-detained-docket-for-redetention-and-removal/#/tab-policy-documents)
27 [non-detained-docket-for-redetention-and-removal/#/tab-policy-documents](https://immpolicytracking.org/policies/ice-directs-review-on-non-detained-docket-for-redetention-and-removal/#/tab-policy-documents) (last
visited 1/27/2026) (found on the “Documents” tab).

1 significant likelihood that the alien may be removed in the reasonably foreseeable
2 future.” 8 C.F.R. § 241.13(i)(2).

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

10 **IV. Third country removals.**

11 **A. Statutory guidance on third country removals**

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

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

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

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

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

1 JUSTICE KAGAN: Right.

2 MR. SURI: But, without notice –

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

7 MR. SURI: Yes, that’s right.

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

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

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

17 MR. SURI: Yes, that’s right.

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

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

21 On March 30, 2025, Respondent Kristi Noem, the Secretary of the
22 Department of Homeland Security, issued guidance to ICE and other DHS agencies
23 regarding third country removals. This memo states that, prior to a noncitizen’s
24 removal to a third country, “DHS must determine whether that country has
25 provided diplomatic assurances that aliens removed from the United States will not
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1 be persecuted or tortured.”⁵ The memo continues that, where a country has
2 provided such assurances and the U.S. government believes them to be credible, a
3 noncitizen may be removed to that country “without the need for further
4 procedures.” In other words, an individual may be removed without providing notice
5 or an opportunity to contest removal to that third country.

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

16 If USCIS determines that the noncitizen did not meet that burden, they will
17 be removed.¹⁰ If the noncitizen does make a showing to the satisfaction of USCIS,
18 USCIS will notify ICE and the ICE Office of the Principal Legal Advisor (OPLA)
19 may reopen immigration court proceedings for the noncitizen to seek withholding or
20 CAT protection from removal to the third country.¹¹ “Alternatively, ICE may choose
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22 ⁵ P.Ex. 3 at 3.

23 ⁶ P.Ex. 3 at 4

24 ⁷ P.Ex. 3 at 4.

25 ⁸ P.Ex. 3 at 4.

26 ⁹ P.Ex. 3 at 4.

27 ¹⁰ P.Ex. 3 at 4.

¹¹ P.Ex. 3 at 4.

1 to designate another country for removal.”¹² 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”).¹³ 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.¹⁴ 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.”¹⁵ 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.¹⁶

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24 ¹² P.Ex. 3 at 4.

25 ¹³ P.Ex. 4.

26 ¹⁴ P.Ex. 4 at 2.

27 ¹⁵ P.Ex. 4 at 2.

¹⁶ P.Ex. 4 at 3.

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GROUNDS FOR RELIEF

I. Ground One: The continued indefinite detention of Mr. Siddiqi 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, supra*, 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.*

Here, Mr. Siddiqi was ordered removed more than six months ago, decades in fact, after his removal order became final in 2006.¹⁷ He then was re-detained on November 26, 2025, and has remained in immigration custody.¹⁸ On information and belief, Mr. Siddiqi was previously detained for the initial 90-day removal period

¹⁷ P. Ex. 1.

¹⁸ P. Ex. 1.

1 in 2006. Petitioner’s continued detention is unreasonable and his removal is not
2 reasonably foreseeable. As of the filing date of this Amended Petition, almost 20
3 years have passed since Mr. Siddiqi was issued an order of removal in immigration
4 proceedings.

5 Mr. Siddiqi cannot be removed to Afghanistan. He has complied with ICE’s
6 request for assistance obtaining travel documents throughout the last twenty years,
7 most recently during the week of January 12, 2026. However, Afghanistan will not
8 accept him. Mr. Siddiqi is not a citizen of, has never lived in, and has no connection
9 to *any other* country. Upon information and belief, throughout his prolonged
10 detention, no specific plans have been made to deport Mr. Siddiqi, and no third
11 country designation has been made. Indeed, in signing the most recent travel
12 documents, Mr. Siddiqi was told to “sit tight” because ICE knows they cannot obtain
13 travel documents for him.

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

3 Petitioner incorporates the above paragraphs by reference as if fully set forth
4 herein.

5 As provided in Ground One, above, Mr. Siddiqi’s detention is governed by 8
6 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas, supra*. Mr.
7 Siddiqi’s continued detention violates 8 U.S.C. § 1231(a)(6) because it is both
8 unreasonable and because removal is not reasonably foreseeable. His continued
9 detention under 8 U.S.C. § 1231(a)(6) is driven by sweeping and arbitrary DHS
10 policies. This Court should order that Mr. Siddiqi be released.

11 **III. Ground Three: ICE’s failure to comply with its own regulations**
12 **concerning the re-detention of individuals on orders of**
13 **supervision violates Mr. Siddiqi’s Fifth Amendment due process**
14 **rights and the Administrative Procedures Act.**

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

1 to respond to the reasons for revocation,” allowing them to “submit any evidence or
2 information” relevant to re-detention and evaluating “any contested facts.” *Id.*

3 As explained above, *supra* Section III (Legal Framework) ICE is required to
4 follow its own regulations and this court may review a re-detention decision for
5 compliance with the regulations.

6 There are no changed circumstances that justify re-detaining Mr. Siddiqi. As
7 an ICE agent plainly admitted, Mr. Siddiqi still cannot be removed to Afghanistan,
8 and there is no indication that any other country has agreed to issue him travel
9 documents. Even if Respondents possess a vague intention to remove Mr. Siddiqi,
10 absent any evidence as to “why obtaining a travel document is more likely this time
11 around[,] Respondents’ intent to eventually complete a travel document request for
12 Petitioner does not constitute a changed circumstance.” *Hoac v. Becerra*, No. 2:25-
13 CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v.*
14 *Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). On
15 information and belief, Mr. Siddiqi has not received the interview required and
16 described by regulation, and no one from ICE has invited him to contest the
17 revocation of his order of supervision or allowed him to provide evidence.

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

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

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

8 A court may review a re-detention decision to ensure regulatory compliance
9 by ICE. See *Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D.
10 Cal. July 16, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 149–150 (D. Mass. 2025)
11 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

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

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

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

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

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

6 Respondents, however, have adopted a policy—set forth in the March 30
7 memo and July 9 directive—that is arbitrary and capricious and deprives Mr.
8 Siddiqi of meaningful notice and an opportunity to present a fear-based claim to an
9 immigration judge prior to his deportation to a third country. Moreover,
10 Respondents’ policy also violates the INA and implementing regulations which
11 mandate that Respondents refrain from removing Mr. Siddiqi, and similarly
12 situated individuals, to a third country where they will likely be persecuted or
13 tortured, thus requiring Respondents to provide meaningful notice of deportation to
14 a third country and the opportunity to present a fear-based claim to an immigration
15 judge before deporting an individual to a third country. In this case, the March 30
16 memo and July 9 directive demonstrate Respondents do not intend to observe those
17 protections.¹⁹

18 The APA empowers federal courts to “compel agency action unlawfully
19 withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The Court should hold that
20 Respondents’ actions and policy are unlawful and compel that—before any attempt
21 is made to deport Mr. Siddiqi to a third country—Petitioner be provided with
22

23
24 ¹⁹ *See also* Lunga Masuku, Eswatini government faces court challenge for
25 accepting US deportees, THE GUARDIAN (Aug. 22, 2025),
26 <https://www.reuters.com/world/africa/eswatini-government-faces-court-challenge-accepting-us-deportees-2025-08-22/>; Gerald Imray, 3 deported by U.S. held in
27 African prison despite completing sentences, lawyers say, PBS NEWS (Sept. 2, 2025),
<https://www.pbs.org/newshour/amp/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say>.

1 meaningful notice and opportunity to present a fear-based claim to an immigration
2 judge.

3 **V. Ground Five: Mr. Siddiqi's detention in immigration custody**
4 **pursuant to recent ICE policy regarding third country removal**
5 **violates the Due Process Clause of the Fifth Amendment.**

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

13 * * *

14 **PRAYER FOR RELIEF**

15 Accordingly, Wahid Masud Siddiqi respectfully requests that this Court:

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

20 2. Order Petitioner's immediate release under the conditions as set out in
21 his already imposed OSUP;

22 3. Prohibit Respondents from re-detaining Petitioner in the future
23 absent proof of changed circumstances making his removal reasonably foreseeable;


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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on January 27, 2026. I personally served a true and correct copy of the foregoing index and exhibits in support of the first amended petition by CM/ECF to the following individuals:

Summer Allegra Johnson US Attorney's Office District of Nevada 501 Las Vegas Blvd. South Las Vegas, NV 89101 Email: summer.johnson@usdoj.gov	Sigal Chattah First Assistant, District of Nevada 501 Las Vegas Blvd, Ste 1100 Las Vegas, NV 89101 Email: Sigal.Chattah@usdoj.gov
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I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three calendar days, to the following person:

Wahid Masud Siddiqi,  Nevada Southern Detention Center 2190 E Mesquite Avenue Pahrump, NV 89060	Todd Lyons 500 12th St SW Washington, DC 20536
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Kristi Noem Secretary of the Department of Homeland Security 2707 Martin Luther King Jr. Ave SE, Washington, DC 20528	Michael Bernanke Salt Lake City ICE Field Office Director 2975 Decker Lake Drive, Ste 100 West Valley City, UT 841179-6096

/s/ Victoria Lenzi

 An Employee of the
 Federal Public Defender