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9

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA


12 Dagmar Jesus Diaz-Gonzalez,
13 Petitioner,
14 v.
15 John Mattos, NSDC Warden; Michael
16 Bernacke, Field Director, Salt Lake City
17 Field Office of ICE ERO; Todd Lyons, ICE
18 Acting Director; Kristi Noem DHS
Secretary; Pam Bondi, U.S. Attorney
General, et al.,
19 Respondents.

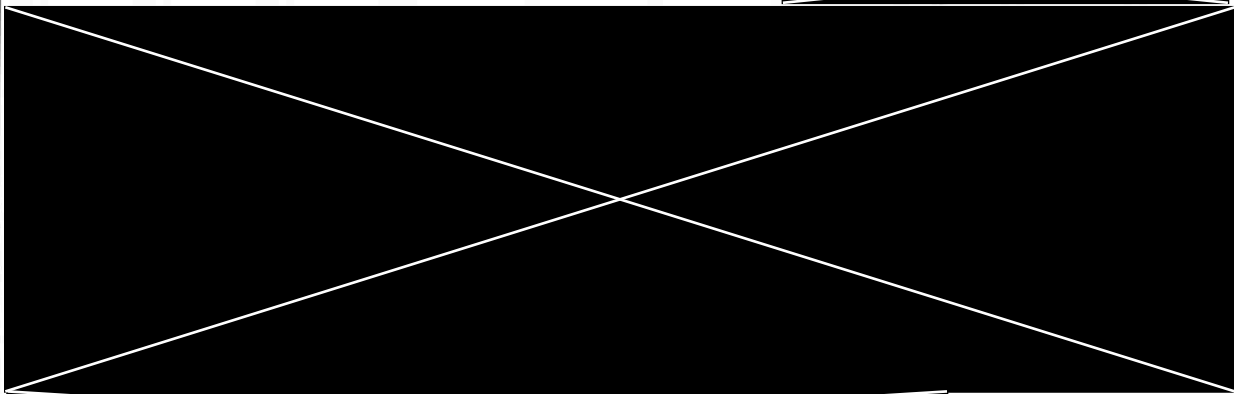

Case No. 2:25-cv-02622-JAD-BNW
First Amended § 2241 Petition

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1 INTRODUCTION¹

2 On November 14, 2025, Mr. Diaz-Gonzalez was released from NDOC custody
3 after completing his sentence. He was immediately taken into ICE custody on
4 November 14, 2025, and has been detained by ICE since. On December 15, 2025, an
5 immigration judge issued an order of removal for Dagmar Jesus Diaz-Gonzalez.² An
6 appeal was filed on January 2, 2026.³

7 Mr. Diaz-Gonzalez's health has quickly deteriorated while in ICE custody. Mr.
8 Diaz-Gonzalez is a disabled person with two chronic conditions. He suffers from
9 malignant multiple sclerosis and re-occurring tonic-clonic ("grand mal") seizures
10 caused by epilepsy.⁴ His multiple sclerosis (M.S.) is in a progressed state causing
11 him to require the use of a wheelchair. Mr. Diaz-Gonzalez cannot stand up on his
12 own and is struggling with meeting his basic needs. 

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19  Even in NDOC, his
20 conditions were taken seriously with visits to the hospital and prescribed
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24 ¹ Any factual allegations that do not cite to a specific document are made on
the basis of information and belief.

25 ² P. Ex. 6

26 ³ P. Ex. 6

27 ⁴ P. Ex. 1 (filed under seal); P.Ex. 2 (filed under seal); ECF No. 1-1 at 12–14.

⁵ P.Ex. 2 (filed under seal).

1 treatments being administered.⁶ But now while in ICE custody, no such medical
2 attention is being given causing his already chronic conditions to rapidly deteriorate
3 his health and put his life at risk.

4 Malignant M.S. is a particularly rapid and progressive form of M.S. causing
5 life expectancy to be diminished.⁷ In sum, M.S. is fatal. Without the proper medical
6 treatments and care, Mr. Diaz-Gonzalez's life is at risk. ICE, by not providing Mr.
7 Diaz-Gonzalez with the proper medical care, medications, treatment, and
8 rehabilitative/accessibility care, is acting with deliberate indifference to Mr. Diaz-
9 Gonzalez's life.

10 Mr. Diaz-Gonzalez's continued detention is unconstitutional and in violation
11 of the 5th Amendment to the U.S. Constitution, the Administrative Procedure Act
12 (APA), and the Immigration and Nationality Act (INA). Mr. Diaz-Gonzalez must be
13 immediately released.

14 JURISDICTION AND VENUE

15 This Court has jurisdiction pursuant to 28 U.S.C. §2241 (granting general
16 habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the
17 "Suspension Clause"); 28 U.S.C. §1331 (federal question jurisdiction); and 28 U.S.C.
18 § 2201, 2202 (Declaratory Judgment Act).

19 Federal district courts have jurisdiction to hear habeas claims by non-citizens
20 challenging the lawfulness of their detention. *See e.g. Zadvydas v. Davis*, 533 U.S.
21 678 (2001). Federal courts also have federal question jurisdiction, through the APA
22 to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an
23 abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).
24 APA claims are cognizable in habeas. 5 U.S.C. § 703. The APA affords a right of
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26 ⁶ P.Ex. 2 (filed under seal).

27 ⁷ ECF No. 1-1 at 12–14.

1 review to a person who is “adversely affected or aggrieved by agency action.” 5
2 U.S.C. § 702. Petitioner’s continued detention violates his constitutional due process
3 rights, constitutes arbitrary and capricious agency action, and is an abuse of
4 discretion.

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

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

9 **PARTIES**

10 Mr. Diaz-Gonzalez is from the country of Cuba. He was ordered removed on
11 December 15, 2025. Mr. Diaz-Gonzalez is currently detained at the Nevada
12 Southern Detention Center in Pahrump, Nevada.

13 John Mattos is the warden of Nevada Southern Detention Center. He was
14 named to this position in July of 2025, replacing Christopher Chestnut. Mattos, in
15 his official capacity, is the immediate custodian of Mr. Diaz-Gonzalez.


16 Michael Bernacke is the Field Director of the Salt Lake City Field Office of
17 Immigration and Customs Enforcement (ICE) Enforcement and Removal
18 Operations, which has jurisdiction of enforcement and removal operations over
19 detention facilities in Nevada, including Nevada Southern Detention Center, where
20 Mr. Diaz-Gonzalez is detained. Bernacke, in his official capacity, is a legal custodian
21 of Mr. Diaz-Gonzalez

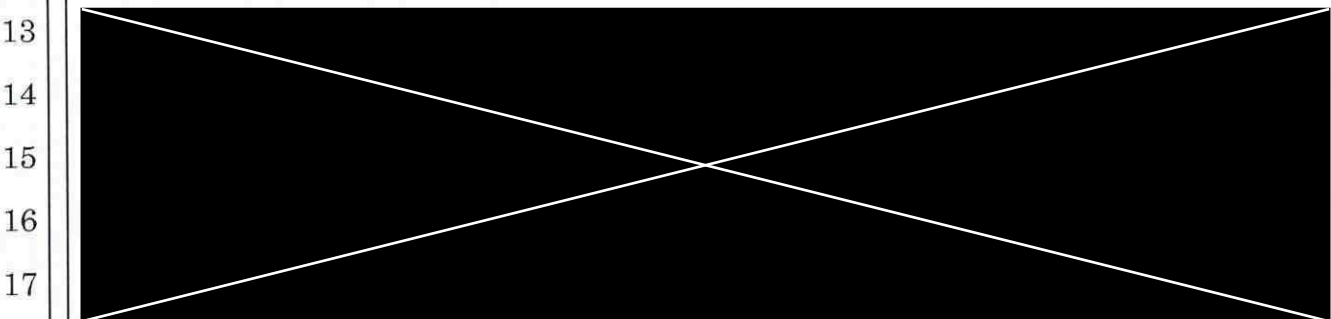
22 Todd Lyons is the Acting Director of Immigration and Customs Enforcement,
23 which is responsible for administering and enforcing immigration laws, including
24 the detention and removal of immigrants. Lyons, in his official capacity, is a legal
25 custodian of Mr. Diaz-Gonzalez.


1 Kristi Noem is the Secretary of the Department of Homeland Security (DHS),
2 which oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of
3 Mr. Diaz-Gonzalez.

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

8 **STATEMENT OF FACTS**


9 The following statements are all made on information and belief, unless
10 otherwise specifically noted. Mr. Diaz-Gonzalez was born in Cuba. He traveled to
11 the United States in 2001 as a young child refugee with his parents. He grew up
12 and went to school in Las Vegas, NV. 



18  As a result of both brain injuries, he also struggles with short-term
19 memory loss and other cognitive functions.

20 Mr. Diaz-Gonzalez was in NDOC custody for 12-years. While in NDOC
21 custody, his health began to show signs of deterioration, causing concern. He was
22 diagnosed with malignant, fulminate multiple sclerosis. "This rare form Multiple
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25 ⁸ P. Ex. 1.
26 ⁹ P. Ex. 1.
27 ¹⁰ P. Ex. 1.
¹¹ P. Ex. 1.

1 Sclerosis is also known as malignant Multiple Sclerosis or Marburg-type Multiple
2 Sclerosis. This type of Multiple Sclerosis is rapidly progressive and results in death
3 due to the extensive brain involvement. Additionally, Mr. Diaz suffers from a
4 chronic seizure disorder resulting from ”¹² Mr. Diaz-
5 Gonzalez has a shortened lifespan, considering he gets medical care and
6 treatment.¹³

7 While in NDOC, Mr. Diaz-Gonzalez was prescribed multiple medications—
8 records list at least 18.¹⁴ He was also receiving a type of M.S. flare up treatment via
9 injections. While in ICE custody, Mr. Diaz-Gonzalez is not receiving any
10 medications for his M.S. Mr. Diaz-Gonzalez believes he is being given one
11 medication for his seizures, but he is normally used to receiving more than that. He
12 has had at least one tonic-clonic seizure while in ICE custody. This seizure caused
13 him secondary injury, including a black eye.

14 Mr. Diaz-Gonzalez’s M.S. is in a progressed state causing him to require the
15 use of a wheelchair. Although he has access to a wheelchair in ICE custody, he is
16 still having a hard time attending to his basic needs such as eating, bathing, and
17 toileting. Mr. Diaz-Gonzalez cannot stand up on his own. Mr. Diaz-Gonzalez is in
18 constant pain. The multiple sclerosis, as it rapidly progresses, is also causing him to
19 lose grip strength in his hands and arms. He cannot hold a pen and struggles with
20 feeding himself.

21 Mr. Diaz-Gonzalez’s chronic medical conditions are extensively recorded. The
22 medications and treatments he needs are also recorded. His conditions are serious
23 and life-threatening. Without the proper medical care his conditions are worsening,
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25 ¹² ECF No. 1-1 at 12–14.

26 ¹³ ECF No. 1-1 at 12–14.

27 ¹⁴ P. Ex. 2.

1 increasing the risk to his life. In addition, Mr. Diaz-Gonzalez is disabled and is
2 barely able to care for himself without pain or discomfort. He requires accessibility
3 and mobility devices, and in time, a caregiver.

4 Mr. Diaz-Gonzalez has family in Florida who are ready and willing to care for
5 him. His mother has the ability to care for him on a daily basis. He has been in ICE
6 custody since November 14, 2026, and has not received the required medical care
7 for his two chronic conditions violating his constitutional rights. His release is
8 necessary to remedy these ongoing constitutional violations, and, quite frankly, to
9 keep him from dying in ICE custody. His release is warranted.

10 LEGAL FRAMEWORK

11 I. Constitutional guarantee to medical care

12 The Fifth Amendment guarantees individuals in civil detention are not
13 subject to conditions of confinement or the denial of medical care that “amount to
14 punishment.” *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). The federal government
15 violates a detained individual’s substantive due process rights if it “takes [that]
16 person into custody, severely limiting his ability to care for himself, and then is
17 deliberately indifferent to his medical needs.” *Charles v. Orange Cnty.*, 925 F.3d 73,
18 85 (2d Cir. 2019); *see also Helling v. McKinney*, 509 U.S. 25, 32 (1993) (“[W]hen the
19 State by the affirmative exercise of its power so restrains an individual’s liberty
20 that it renders him unable to care for himself, and at the same time fails to provide
21 for his basic human needs—e.g., . . . medical care and reasonable safety—it
22 transgresses the substantive limits on state action set by the Eighth Amendment.”).
23 A court’s intervention is warranted where conditions put the life of a detained
24 individual at risk. *See Basank v. Decker*, 449 F. Supp 3d 205, 210 (S.D.N.Y. 2020)
25 (ordering the release of detained migrants with chronic medical conditions whose
26 health was worsened by detention conditions and viral illnesses).

1 **II. The Administrative Procedures Act mandates that a federal agency**
2 **comply with existing regulations and policies.**

3 The APA provides that a court shall “hold unlawful and set aside agency
4 action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise
5 not in accordance with law.” 5 U.S.C. § 706(2)(A). When the government has
6 promulgated “[r]egulations with the force and effect of law,” those regulations
7 “supplement the bare bones” of federal statutes, such that the agencies are bound to
8 follow their own “existing valid regulations.” *United States ex rel. Accardi*
9 *Shaugnessy*, 347 U.S. 260, 266, 268 (1954). The *Accardi* doctrine additionally
10 obligates agencies to comply with procedures outlined in their own manuals. *See*
11 *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (finding that an agency is obligated to
12 comply with the procedural rules outlined in its internal manual). Pursuant to the
13 *Accardi* doctrine, courts may set aside agency actions that are not in compliance
14 with their own regulations or internal procedures. *See Lesli v. Att’y Gen. of U.S.*, 611
15 F.3d 171, 175 (3d Cir. 2010).

16 **III. ICE Policies Concerning the Detention of Chronically Ill and/or**
17 **Disabled Persons.**

18 ICE Directive 11071.1 sets forth ICE’s policy for assessing and administering
19 accommodations for detainees with disabilities. The policy states that ICE must
20 provide reasonable accommodations to those with disabilities to enable them to
21 access services and programs, but most importantly must provide, “proper
22 medication and medical treatment; accessible housing, toilet, and shower facilities;
23 devices like bed transfer, accessible beds or shower chairs, wheelchairs, walkers or
24 canes; and assistance with toileting and hygiene.” ICE Directive 11071.1-3.1(1).¹⁵

25
26 ¹⁵ Directive: 11071.1 Assessment and Accommodations for Detainees with
27 Disabilities, U.S. Immigration and Customs Enforcement, December 15, 2016,
available at <https://www.ice.gov/node/65142>

1 The policy contemplates that upon notice that a disabled individual requires
2 accommodations and services, discretionary action can be taken. This discretionary
3 action, in light of the individuals needs and condition, could include “considering
4 release from custody.” ICE Directive 11071.1-5.4(3)(f).¹⁶

5 ICE is responsible for ensuring that chronically ill or disabled individuals are
6 given the accommodations necessary to attend to their condition but to also ensure
7 accessibility and functioning of daily basic needs. ICE, based on their own policies,
8 is required to review an individual’s condition and the appropriateness of their
9 placement, considering releasing from detention as a viable option.

10 ICE Directive 11737.3 sets forth ICE’s policy for the care of individuals with
11 chronic illnesses, “to ensure patients with chronic disease, or other significant
12 health conditions, disabilities, and other special needs receive ongoing
13 multidisciplinary care that aligns with evidence-based guidelines.” ICE Directive
14 11737.3(1).¹⁷ The directive sets forth ICE’s requirement to treat individuals with
15 chronic illnesses accordingly, including accommodations, medications, treatment,
16 and other medical care.

17 ICE Directive 11853.3 sets forth ICE’s policy for individuals who have
18 significant illnesses and emphasizes the need for continuity of care and coordination
19 of medical services.¹⁸
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22 ¹⁶ Directive: 11071.1 Assessment and Accommodations for Detainees with
23 Disabilities, U.S. Immigration and Customs Enforcement, December 15, 2016,
available at <https://www.ice.gov/node/65142>

24 ¹⁷ Directive: 11737.3 Care of Patients with Chronic Health Conditions and
25 Special Needs, U.S. Immigration and Customs Enforcement, ICE Health Services
26 Corps, April 5, 2023, *available at*
<https://www.ice.gov/doclib/foia/policy/directive11737.3.pdf>

27 ¹⁸ Directive 11853.3 Significant Detainee Illness(SDI), U.S. Immigration and
Customs Enforcement, ICE Health Services Corps, December 3, 2021, *available at*

1 **IV. 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 prescribed
7 by statute. For example, the law provides that a noncitizen with a removal order
8 may be removed to a non-designated country of which the noncitizen is a “subject,
9 national or citizen.” 8 U.S.C. §1231(b)(2)(D). ICE may also remove a noncitizen with
10 a removal order to the country from which they were admitted to the U.S.; the
11 country from which the noncitizen departed for the U.S. or a foreign territory
12 contiguous to the U.S.; a country in which the noncitizen resided before entering the
13 country from which they entered the U.S.; the noncitizen’s country of birth; the
14 country that had sovereignty over the place of birth at the time of birth; the country
15 in which the birthplace is located at the time of the removal order; and, “if
16 impracticable, inadvisable, or impossible to remove the [noncitizen] to each country
17 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 _____
27 [https://www.ice.gov/doclib/foia/policy/directive11853.3_SignificantDetaineeIllness.p
df](https://www.ice.gov/doclib/foia/policy/directive11853.3_SignificantDetaineeIllness.pdf)

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

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

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

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

20 JUSTICE KAGAN: Right.

21 MR. SURI: But, without notice –

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

26 MR. SURI: Yes, that's right.
27

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

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

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

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

10
11 See Transcript of Oral Argument at 20–21, *Johnson v. Guzman Chavez*, 594
12 U.S. 523 (2021).

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

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

24 The March 30th memo also states that DHS will remove noncitizens even to
25 third countries that have not provided diplomatic assurances that noncitizens

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27 ¹⁹ P.Ex. 4 at 3.

1 deported from the U.S. will not be persecuted or tortured.²⁰ In such cases, DHS will
2 inform the noncitizen of removal to the intended country but will not affirmatively
3 ask the noncitizen if they fear being removed to that country.²¹ DHS will refer any
4 noncitizen that affirmatively states a fear of removal to a third country to USCIS
5 for a screening for eligibility for withholding of removal and/or CAT protection as to
6 the intended third country.²² USCIS will then make a determination about whether
7 the noncitizen has established that they will “more likely than not be persecuted on
8 a statutorily protected ground or tortured in the country of removal.”²³

9 If USCIS determines that the noncitizen did not meet that burden, they will
10 be removed.²⁴ If the noncitizen does make a showing to the satisfaction of USCIS,
11 USCIS will notify ICE and the ICE Office of the Principal Legal Advisor (OPLA)
12 may reopen immigration court proceedings for the noncitizen to seek withholding or
13 CAT protection from removal to the third country.²⁵ “Alternatively, ICE may choose
14 to designate another country for removal.”²⁶ The memo provides no limitation on
15 how many times ICE could designate a new third country for removal upon a
16 noncitizen’s showing of a well-founded fear of removal to a particular country.

17 On July 9, 2025, Respondent Todd Lyons sent additional guidance to ICE
18 employees regarding third country removals (“July 9 Directive”).²⁷ The directive
19 was issued in light of the Supreme Court’s decision to stay the injunction in the case
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21 ²⁰ P.Ex. 4 at 4

22 ²¹ P.Ex. 4 at 4.

23 ²² P.Ex. 4 at 4.

24 ²³ P.Ex. 4 at 4.

25 ²⁴ P.Ex. 4 at 4.

26 ²⁵ P.Ex. 4 at 4.

27 ²⁶ P.Ex. 4 at 4.

²⁷ P.Ex. 5.

1 *D.V.D. v. Department of Homeland Security*, No. 25-10676 (D. Mass.). It reiterated
2 the procedures from the March 30 memo and provided additional details regarding
3 how to deal with third country removals to countries that have not provided credible
4 assurances that U.S. deportees will not be persecuted or tortured. It added that, in
5 such cases, an ICE officer will serve the noncitizen with a Notice of Removal
6 including the intended country and that the notice must be read in a language the
7 noncitizen understands.²⁸ ICE “will generally wait at least 24 hours following
8 service of the Notice of Removal before effectuating removal” but that in “exigent
9 circumstances” ICE may remove a noncitizen to a possible-torture third country in
10 as little as six hours after service of the Notice of Removal “as long as the
11 [noncitizen] is provided reasonable means and opportunity to speak with an
12 attorney prior to removal.”²⁹ Generally, if a noncitizen does not affirmatively state a
13 fear of persecution or torture within 24 hours of service of the Notice of Removal,
14 ICE may proceed with removal to the identified third country.³⁰

15 GROUND FOR RELIEF

16 **I. Ground One: The continued detention of Mr. Diaz-Gonzalez violates**
17 **his Fifth Amendment right to due process because ICE’s denial of or**
18 **inadequate medical care amounts to a punishment.**

19 Petitioner incorporates the above paragraphs by reference as if fully set forth
20 herein.

21 The Fifth Amendment guarantees detainees are not denied medical care and
22 are not subject to conditions that “amount to punishment.” *Bell*, 441 U.S. at 535.
23 The federal government may not detain an individual and then deny that person
24 medical care through their deliberate indifference. *Charles*, 925 F.3d at 85.

25 ²⁸ P.Ex. 5 at 2.

26 ²⁹ P.Ex. 5 at 2.

27 ³⁰ P.Ex. 5 at 3.

1 Deliberate indifference “involves culpable recklessness, i.e., an act or a failure to act
2 that evinces a conscious disregard of a substantial risk of serious harm.” *Id.* at 87
3 (quoting *Cuoco v. Moritsugu*, 222 F.3d 99, 107) (2d Cir. 2000) (cleaned up).

4 Mr. Diaz-Gonzalez has diagnosed malignant, fulminate multiple sclerosis.
5 “This rare form Multiple Sclerosis is also known as malignant Multiple Sclerosis or
6 Marburg-type Multiple Sclerosis. This type of Multiple Sclerosis is rapidly
7 progressive and results in death due to the extensive brain involvement.
8 Additionally, Mr. Diaz suffers from a chronic seizure disorder resulting from a
9 childhood head injury.”³¹ Mr. Diaz-Gonzalez has a shortened lifespan, considering
10 he gets medical care and treatment.³²

11 Mr. Diaz-Gonzalez, in the past, had been prescribed and administered
12 multiple medications, medical records list at least 18.³³ He also received M.S. flare
13 up treatment via injections. Yet, while in ICE custody, Mr. Diaz-Gonzalez is not
14 receiving any medications for his M.S. Mr. Diaz-Gonzalez is likely taking one
15 medication related to his epilepsy, but believes he regularly was given more. He has
16 had at least one tonic-clonic seizure while in ICE custody. This seizure caused him
17 secondary injury, including a black eye.

18 Mr. Diaz-Gonzalez’s M.S. is in a progressed state causing him to require the
19 use of a wheelchair. Although he has access to a wheelchair in ICE custody, he is
20 still having a hard time attending to his basic needs such as eating, bathing, and
21 toileting. Mr. Diaz-Gonzalez cannot stand up on his own. Mr. Diaz-Gonzalez is in
22 constant pain. The multiple sclerosis, as it rapidly progresses, is also causing him to
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25 ³¹ ECF No. 1-1 at 12–14.

26 ³² ECF No. 1-1 at 12–14.

27 ³³ P. Ex. 2.

1 lose grip strength in his hands and arms. He cannot hold a pen and struggles with
2 feeding himself.

3 Mr. Diaz-Gonzalez's chronic medical conditions are extensively recorded. The
4 medications and treatments he needs are also recorded. His conditions are serious
5 and life-threatening. Without the proper medical care his conditions are worsening,
6 increasing the risk to his life. Yet, ICE is not providing him with the care that his
7 chronic conditions require. They are ignoring his medical needs and are refusing to
8 not only accommodate him because of his disability and chronic illnesses but are
9 denying him the required medical care and medications his malignant M.S. and
10 epilepsy require. ICE's deliberate indifference to Mr. Diaz-Gonzalez's conditions is
11 life-threatening.

12 There have already been reports of ICE deporting individuals in vegetative
13 states, near death. One individual entered ICE custody healthy, but records show
14 his health quickly deteriorated while detained and he was eventually deported in a
15 vegetative state and later died in his home country.³⁴ More than 30 deaths in ICE
16 custody were reported in 2025,³⁵ with the total being over 50 at this point.³⁶

20 ³⁴ Family seeks answers after ICE deported man to Costa Rica in vegetative
21 state, The Guardian, January 11, 2026, *available at*
22 <https://www.theguardian.com/us-news/2026/jan/11/ice-death-costa-rica-randall-gamboa-esquivel>

23 ³⁵ It's the deadliest year for people in ICE custody in decades; next year could
24 be worse, NPR.org, October 23, 2025, <https://www.npr.org/2025/10/23/nx-s1-5538090/ice-detention-custody-immigration-arrest-enforcement-dhs-trump>

25 ³⁶ Letter to Kristi Noem, Committee on Homeland Security, January 22,
26 2026, *available at* chrome-
27 extension://efaidnbmnnnibpcajpcgclefindmkaj/https://democrats-homeland.house.gov/imo/media/doc/chs_letter_to_noem_re_ice_and_cbp_condemning_deaths.pdf

1 Based on the reported conditions at detention centers³⁷ and his own reports,
2 it is clear Mr. Diaz-Gonzalez is being denied his due process rights. ICE is violating
3 Mr. Diaz-Gonzalez's Fifth Amendment guarantees by refusing to provide him with
4 medical care and address his accessibility needs, along with the medications
5 required to treat his chronic conditions putting his life at risk. Mr. Diaz-Gonzalez's
6 civil detention is now punitive in nature, the punishment being the denied medical
7 care and medications necessary for his chronic illnesses. As such, Mr. Diaz-
8 Gonzalez must be immediately released.

9 **II. Ground Two: ICE's continued detention of Mr. Diaz-Gonzalez is in**
10 **violation of governing ICE policy concerning the detention of**
11 **chronically ill and/or disabled persons.**

12 As explained above, Section III (Legal Framework), ICE is not complying
13 with its own policies and directives as it relates to detained individuals with
14 disabilities and chronic illnesses. As explained above, Section II (Legal Framework),
15 ICE is required to follow its own regulations and directives, and this court may
16 review a detention decision for compliance with the regulations.

17 ICE is not following its own directives and this failure has increased since
18 January 2025 when ICE began rapidly increasing the number of people detained
19 and began detaining individuals who would not have previously been detained.³⁸

20 The analysis here is simple: according to ICE's own directive, they should be
21 administering necessary medical care to individuals with chronic illnesses.

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23 ³⁷ Health Issues for Immigrants in Detention Centers, Kaiser Family
24 Foundation, September 30, 2025, *available at* <https://www.kff.org/racial-equity-and-health-policy/health-issues-for-immigrants-in-detention-centers/>

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26 ³⁸ "Deportations Reach New High After Summer Surge in Immigration
27 Arrests," New York Times, Aug. 21, 2025, *available at* <https://www.nytimes.com/interactive/2025/08/21/us/trump-deportations-summer-data-immigration-arrests.html>.

1 According to ICE's own directive they should be providing individuals with the
2 necessary medications to address their chronic illnesses. According to ICE's own
3 directive they should be providing individuals with disabilities with the necessary
4 accommodations required to allow them to attend to basic daily needs. According to
5 ICE's own directive they should assessing whether current housing facilities are
6 appropriate with individuals with chronic illnesses and disabilities. According to
7 ICE's own directive they should be focused on the continuity of care. According to
8 ICE's own directive they should be considering release for clients with serious
9 disabilities and medical conditions.

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

23 Because ICE has not complied with its own regulations and because Mr.
24 Diaz-Gonzalez's medical state is serious and has life threatening implications, ICE
25 must release Mr. Diaz-Gonzalez from custody. In denying Mr. Diaz-Gonzalez his
26 constitutional rights and defying its own policies, ICE is threatening the health and
27

1 safety of Mr. Diaz-Gonzalez. His continued detention could cause him serious harm
2 or death.

3 **III. Ground Three: ICE’s continued detention of Mr. Diaz-Gonzalez is in**
4 **violation of governing ICE policy concerning discretionary parole.**

5 Under the Immigration and Nationality Act (“INA”), the Secretary of
6 Homeland Security has broad discretion to parole noncitizens on a case-by-case
7 basis. Parole may be granted even if the individual is otherwise inadmissible or
8 removable. 8 U.S.C. § 1182(d)(5)(A); INA § 212(d)(5)(A). Consistent with INA parole
9 authority, 8 C.F.R. § 212.5(b) expressly acknowledges that an alien with a *serious*
10 *medical condition in which continued detention would not be appropriate* is
11 precisely the category of individual for whom discretionary parole is justified. 8
12 C.F.R. § 212.5(b)(1).

13 ICE’s own detention management policies affirm that factors such as a
14 *serious medical condition* must be considered in custody decision-making, including
15 but not limited to discretionary parole and release evaluations.³⁹ ICE guidance on
16 detention management directs ICE officers to weigh humanitarian considerations,
17 including significant health conditions when making continued detention or release
18 determinations. Its own detention policy states, “detention is non-punitive.”⁴⁰

19 Despite these clear statutory and policy directives, ICE has refused to grant
20 parole to Mr. Diaz-Gonzalez, even though he is afflicted with a serious and chronic
21 medical condition that cannot be adequately managed in detention and for which he

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23 ³⁹ Detention Management, U.S. Immigration and Customs Enforcement,
24 01/08/2026, *available at* [https://www.ice.gov/detain/detention-](https://www.ice.gov/detain/detention-management#:~:text=Detention%20Policies,children%2C%20or%20other%20humanitarian%20considerations)
25 [management#:~:text=Detention%20Policies,children%2C%20or%20other%20humanitarian%20considerations](https://www.ice.gov/detain/detention-management#:~:text=Detention%20Policies,children%2C%20or%20other%20humanitarian%20considerations).

26 ⁴⁰ Detention Management, U.S. Immigration and Customs Enforcement,
27 01/08/2026, *available at* [https://www.ice.gov/detain/detention-](https://www.ice.gov/detain/detention-management#:~:text=Detention%20Policies,children%2C%20or%20other%20humanitarian%20considerations)
[management#:~:text=Detention%20Policies,children%2C%20or%20other%20humanitarian%20considerations](https://www.ice.gov/detain/detention-management#:~:text=Detention%20Policies,children%2C%20or%20other%20humanitarian%20considerations).

1 is *not* receiving constitutionally or medically appropriate care. Mr. Diaz-Gonzalez’s
2 chronic illnesses trigger parole policy considerations. Mr. Diaz-Gonzalez is at an
3 elevated risk of harm, especially given ICE’s failure to ensure continuity of
4 prescribed medical treatment, medication, and adequate care while in custody.

5 Discretionary parole with conditions is justified under these applicable
6 federal regulations and ICE policy. ICE’s own policies recognize humanitarian
7 factors, such as serious medical conditions, yet ICE has not acted. ICE’s denial of
8 parole, or any consideration of it, is inconsistent with its own policy. ICE’s refusal to
9 grant or consider Mr. Diaz-Gonzalez for parole — despite his medical condition —
10 directly undermines the agency’s obligation to consider medical conditions in
11 discretionary release decisions and to exercise its parole authority in cases where
12 continued detention poses serious medical risk. And in this case, a risk to life.

13 In addition, the Administrative Procedure Act (APA) prohibits agency action
14 that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
15 with law. 5 U.S.C. § 706(2)(A). ICE’s refusal to provide Mr. Diaz-Gonzalez with
16 parole despite compelling statutory, regulatory, and policy grounds constitutes an
17 abuse of discretion that this Court should address.

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

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

25 The APA entitles “a person suffering legal wrong because of agency action, or
26 adversely affected or aggrieved by agency action . . . to judicial review.” 5 U.S.C. §
27 702. Further, the APA compels a reviewing court to “hold unlawful and set aside
agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . .

1 otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A), or “short of statutory
2 right,” 5 U.S.C. § 706(2)(C). The APA also compels a reviewing court to “hold
3 unlawful and set aside agency action, findings, and conclusions found to be . . .
4 without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

5 As explained above, Mr. Diaz-Gonzalez has a due process right to meaningful
6 notice and opportunity to present a fear-based claim to an immigration judge before
7 DHS deports him to a third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041
8 (9th Cir. 1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Mr.
9 Diaz-Gonzalez also has a due process right to implementation of a process or
10 procedure to afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*,
11 498 U.S. 479, 491 (1991).

12 Respondents, however, have adopted a policy—set forth in the March 30
13 memo and July 9 directive—that is arbitrary and capricious and deprives Mr. Diaz-
14 Gonzalez of meaningful notice and an opportunity to present a fear-based claim to
15 an immigration judge prior to his deportation to a third country. Moreover,
16 Respondents’ policy also violates the INA and implementing regulations which
17 mandate that Respondents refrain from removing Mr. Diaz-Gonzalez, and similarly
18 situated individuals, to a third country where they will likely be persecuted or
19 tortured, thus requiring Respondents to provide meaningful notice of deportation to
20 a third country and the opportunity to present a fear-based claim to an immigration
21 judge before deporting an individual to a third country. In this case, the March 30
22 memo and July 9 directive demonstrate Respondents do not intend to observe those
23 protections.⁴¹

24
25 ⁴¹ *See also* Lunga Masuku, Eswatini government faces court challenge for
26 accepting US deportees, THE GUARDIAN (Aug. 22, 2025),
27 <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 African prison despite completing sentences, lawyers say, PBS NEWS (Sept. 2, 2025),

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

7 **V. Ground Five: Mr. Diaz-Gonzalez’s detention in immigration custody**
8 **pursuant to recent ICE policy regarding third country removal**
9 **violates the Due Process Clause of the Fifth Amendment.**

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

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<https://www.pbs.org/newshour/amp/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say>.

PRAYER FOR RELIEF

1
2 Accordingly, Dagmar Jesus Diaz-Gonzalez respectfully requests that this
3 Court:

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

8 2. Order Petitioner’s immediate release;

9 3. Prohibit Respondents from removing petitioner to a third
10 country without providing Petitioner and Petitioner’s counsel with adequate
11 notice of intent to seek removal to a third country and due process in the form
12 of an opportunity to seek to reopen Petitioner’s immigration court
13 proceedings to seek fear-based relief from removal; and

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

16
17 Dated January 23, 2026.

18 Respectfully submitted,

19 Rene L. Valladares
20 Federal Public Defender


21 /s/ Ashlyn Saenz-Ochoa
22 Ashlyn Saenz-Ochoa
23 Assistant Federal Public Defender
24
25
26
27

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on January 23, 2026. I personally served a true and correct copy of the foregoing first amended § 2241 petition by CM/ECF to the following individuals:

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

Dagmar Jesus Diaz-Gonzalez,  Nevada Southern Detention Center 2190 E. Mesquite Avenue Pahrump, NV 8906	Todd Lyons 500 12th St SW Washington, DC 20536
Pam Bondi Attorney General U.S. Department of Justice 950 Pennsylvania Ave, NW, Washington, DC, 20530	John Mattos, Warden Nevada Southern Detention Center 2190 E Mesquite Avenue Pahrump, NV 89048
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/ Mayra Castillo
An Employee of the
Federal Public Defender