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13 UNITED STATES DISTRICT COURT  
14 DISTRICT OF NEVADA

15 Dien Thanh Nguyen,

16 Petitioner,

17 v.

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

22 Respondents.  
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Case No. 2:26-cv-00186-JAD-BNW  
**First Amended § 2241 Petition**

1 INTRODUCTION

2 On November 30, 2001, a federal immigration judge issued an order of  
3 removal for Petitioner Dien Thanh Nguyen.<sup>1</sup> Mr. Nguyen was not removed then for  
4 the same reason he cannot be removed now—Immigration and Customs  
5 Enforcement (ICE) cannot obtain travel documents for his country of origin,  
6 Vietnam, because Vietnam generally refuses to repatriate its citizens if they left the  
7 country before 1995. Since 2001, Mr. Nguyen has been released on an order of  
8 supervision (OSUP) from ICE. He was taken back into custody by ICE on October  
9 10, 2025. The statutory 90-day removal period and the *Zadvydas* six-month period  
10 of presumptive reasonableness of detention for Mr. Nguyen expired in 2001, over 25  
11 years ago. Mr. Nguyen’s present detention has already exceeded four months. Mr.  
12 Nguyen’s continued detention is unconstitutional and in violation of the  
13 Immigration and Nationality Act (INA), and the Administrative Procedure Act  
14 (APA) (codified at 5 U.S.C. §§ 551–559, 701–706). Mr. Nguyen must be released.

15 JURISDICTION AND VENUE

16 This Court has jurisdiction under 28 U.S.C. § 2241 (granting general habeas  
17 authority to district courts); U.S. Const. art. I, § 9, cl. 2 (the “Suspension Clause”);  
18 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202  
19 (Declaratory Judgment Act).

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

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<sup>1</sup> P. Ex. 1

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

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

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

9 **PARTIES**

10 Mr. Nguyen is from the country of Vietnam. He was ordered removed on  
11 November 30, 2001.<sup>2</sup> Mr. Nguyen is detained at the Nevada Southern Detention  
12 Center in Pahrump, Nevada.

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

17 Kristi Noem is the Secretary of the Department of Homeland Security (DHS),  
18 which oversees Immigration and Customs Enforcement (ICE). Noem, in her official  
19 capacity, is the ultimate legal custodian of Mr. Nguyen.

20 Todd Lyons is the Acting Director of ICE, which administers and enforces  
21 immigration laws, including the detention and removal of immigrants. Lyons, in his  
22 official capacity, is a legal custodian of Mr. Nguyen.

23 Michael Bernacke is the Field Director of the Salt Lake City Field Office of  
24 ICE Enforcement and Removal Operations, which has jurisdiction of enforcement  
25 and removal operations over detention facilities in Nevada, including Nevada  
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27 <sup>2</sup> P. Ex. 1.

1 Southern Detention Center where Mr. Nguyen is detained. Bernacke, in his official  
2 capacity, is a legal custodian of Mr. Nguyen.

3 John Mattos is the warden of Nevada Southern Detention Center. Mattos, in  
4 his official capacity, is the immediate custodian of Mr. Nguyen.

5 **STATEMENT OF FACTS<sup>3</sup>**

6 Petitioner Dien Thanh Nguyen was born in Vietnam in 1966, during the U.S.  
7 military's involvement in the Vietnam War. His father served as a combat soldier  
8 for South Vietnam, allied with and supported by the U.S. military. Following the  
9 fall of Saigon in 1975, his father fled Saigon City, taking Mr. Nguyen and his  
10 brother to Trà Vinh. They were among the millions of South Vietnamese who fled to  
11 escape mistreatment because of their alliance with the U.S. military. Trà Vinh was  
12 a key city for refugee outflow following the Vietnam War. In 1987, Mr. Nguyen and  
13 his brother traveled with their father to the United States under the sponsorship of  
14 their grandmother—a U.S. citizen.

15 On November 30, 2001, after Mr. Nguyen was convicted of conspiracy to  
16 commit bank fraud, he was ordered removed by an immigration judge in  
17 Annandale, Virginia.<sup>4</sup> Because Vietnam refused to repatriate its citizens if they had  
18 left the country before 1995, Mr. Nguyen's deportation was never carried out. Due  
19 to *Zadvydas v. Davis*, 533 U.S. 678 (2001), in which the Supreme Court held that  
20 the Immigration and Nationality Act (INA) does not allow indefinite detention of  
21 non-citizens with removal orders, Mr. Nguyen was released from custody on an  
22 order of supervision (OSUP) because he could not be removed to his country of  
23 origin.

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26 <sup>3</sup> The following statements of fact are all made on information and belief,  
unless otherwise specifically noted.

27 <sup>4</sup> P. Ex. 1.

1 For the past 25 years, Mr. Nguyen has complied with ICE's instructions and  
2 requests by checking in annually every December as required and renewing his  
3 work permit every two years. In 2006, he relocated from Virginia to California and  
4 married his wife Tiffany, a U.S. citizen, on October 22, 2009. The couple has lived in  
5 the Los Angeles area since 2010 where they both worked and cared for his elderly  
6 mother-in-law. The couple has no children. In 2021, Mr. Nguyen began  
7 transitioning his family to Houston, Texas, where his brother now lives. His wife  
8 had to remain in California to care for her elderly mother. At this same time, his  
9 wife suffered catastrophic kidney failure and was diagnosed with end stage renal  
10 disease, requiring dialysis for 11 hours every night.

11 On October 10, 2025, Mr. Nguyen was taken back into ICE custody. His re-  
12 detention occurred at an incredibly difficult time for his family. The day before his  
13 re-detention, October 9, 2025, his wife received a life-saving kidney transplant at  
14 University of California Irvine Medical Center in California. Because Mr. Nguyen  
15 was detained, his wife had to drive herself to the hospital for the transplant. She  
16 was released following a week of hospitalization, and now requires daily assistance  
17 with medical and living needs. She must see her medical team every two weeks for  
18 lab testing and treatment. Currently, she requires 17 different medications every  
19 day. In early November 2025, his wife suffered severe gastric complications from  
20 the transplant, was unable to eat, and admitted to the hospital weighing only 78  
21 pounds. She was released after a week of hospitalization and is scheduled for  
22 further gastrointestinal testing on March 16, 2026. Depending on the test results,  
23 she may require gastrointestinal surgery.<sup>5</sup> While his wife's brother and a niece are  
24 able to care for her sporadically, this requires them to take time off work. His wife's  
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27 <sup>5</sup> Undersigned counsel can provide Mrs. Nguyen's medical records under seal  
upon request by this Court.

1 two sisters live in Florida and Illinois and cannot provide care. Mr. Nguyen is  
2 greatly needed to provide daily medical and living care for his wife. Tragically, Mr.  
3 Nguyen’s mother-in-law passed away just last month while he was in re-detention.

4 During his re-detention, ICE has undertaken no substantial steps to  
5 facilitate Mr. Nguyen’s removal to Vietnam, nor is it likely that any eventual steps  
6 will actually lead to removal. Mr. Nguyen has received no documents identifying a  
7 third country of removal, or any plan for removal. ICE has also not claimed that he  
8 is “specially dangerous” or exhibits any of the other characteristics of noncitizens  
9 meriting extended detention for whom removal is not reasonably foreseeable. 8  
10 C.F.R. § 241.14.

11 Mr. Nguyen now files an amended petition for writ of habeas corpus and  
12 simultaneously moves for a temporary restraining order.

### 13 LEGAL FRAMEWORK

#### 14 **Constitutional protection against indefinite civil detention of** 15 **noncitizens with final removal orders.**

16 Section 1231 of the INA governs the detention of noncitizens during and  
17 beyond the “removal period.” 8 U.S.C. § 1231(a). The removal period begins once a  
18 noncitizen’s removal order becomes administratively final and lasts for 90 days,  
19 during which ICE “shall remove the [noncitizen] from the United States” and “shall  
20 detain the [noncitizen]” as it carries out the removal. 8 U.S.C. § 1231(a)(1)-(2). And  
21 if ICE does not remove the noncitizen within the 90-day removal period, the  
22 noncitizen “*may* be detained beyond the removal period” only if certain criteria are  
23 met. 8 U.S.C. § 1231(a)(6) (emphasis added).

24 The Supreme Court limited detention under 8 U.S.C. § 1231(a)(6), because  
25 allowing a noncitizen to be detained indefinitely raised “serious constitutional  
26 concerns.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). The *Zadvydas* Court held  
27 that § 1231(a)(6) contains an implicit time limit authorizing detention only for “a

1 period reasonably necessary to bring about the [noncitizen]’s removal from the  
2 United States” and that six months of detention after the removal order is final is  
3 “presumptively reasonable.” *Id.* at 689, 701.

4 *Zadvydas* did not address whether this presumption of reasonableness during  
5 the first six months of post-removal order detention is irrebuttable, and federal  
6 courts find the presumption can be rebutted. *See Munoz-Saucedo v. Pittman*, 789 F.  
7 Supp. 3d 387, 396–98 (D.N.J. 2025) (collecting cases). Within “the six-month mark,  
8 the detainee must prove the unreasonableness of detention.” *Barka v. Mattos*, No.  
9 2:25-cv-01781-GMN-MDC, 2025 WL 3723998, at \*5 (D. Nev. Dec. 23, 2025) (cleaned  
10 up). After six months, there is “good reason to believe that there is no significant  
11 likelihood of removal in the reasonably foreseeable future,” and the burden shifts to  
12 the government to justify continued detention. *Zadvydas*, 533 U.S. at 701. “The  
13 Supreme Court has explained that ‘as the period of prior postremoval confinement  
14 grows, what counts as the reasonably foreseeable future conversely would have to  
15 shrink,’ . . . “[a]nd as time passes, the burden on the government increases  
16 accordingly.” *Barka*, 2025 WL 3723998 at \*5 (quoting *Zadvydas*, 533 U.S. at 701).  
17 When a “Petitioner’s detention is unreasonable under *Zadvydas*, [] he is entitled to  
18 habeas relief under the Fifth Amendment.” *Id.* at \*7.

1           **Relevant DHS regulations for detaining noncitizens with final**  
2           **removal orders.**

3           DHS regulations provide that, before the end of 8 U.S.C. § 1231(a)'s 90-day  
4 removal period, the local ICE field office with jurisdiction over the noncitizen's  
5 detention must conduct a custody review to determine whether the noncitizen  
6 should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen  
7 is not released at the end of the removal period or in the three months that follow,  
8 jurisdiction transfers to ICE headquarters (ICE HQ), which must conduct a custody  
9 review within 180 days. 8 C.F.R. § 241.4(c)(2), (k)(2)(ii).

10           To comply with *Zadvydus*, DHS issued additional regulations in 2001  
11 establishing "special review procedures" to determine whether detained noncitizens  
12 with final removal orders are likely to be removed in the reasonably foreseeable  
13 future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66  
14 Fed. Reg. 56967, 56977 (Nov. 14, 2001). Subsection (i)(7) was added to 8 C.F.R.  
15 § 241.4, containing the supplemental review procedure ICE HQ must initiate when  
16 "the [noncitizen] submits, or the record contains, information providing a  
17 substantial reason to believe that removal of a detained [noncitizen] is not  
18 significantly likely in the reasonably foreseeable future." 8 C.F.R. § 241.4(i)(7).  
19 Under this procedure, ICE HQ evaluates the foreseeability of removal by analyzing  
20 factors such as the history of ICE's removal efforts to third countries. *See* 8 C.F.R.  
21 § 241.13(f). When ICE HQ determines removal is not reasonably foreseeable but  
22 seeks to continue detention based on "special circumstances," it must justify the  
23 detention based on narrow grounds such as national security or public health  
24 concerns or by demonstrating by clear and convincing evidence before an  
25 Immigration Judge that the noncitizen is "specially dangerous." 8 C.F.R. §  
26 241.14(b)-(d), (f).  
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1 **Recent ICE policy on the re-detention of individuals with final removal**  
2 **orders stands in contradiction to DHS regulations.**

3 On February 18, 2025, in an apparent departure from longstanding legal  
4 requirements and ICE's own policies, ICE issued a directive encouraging its agents  
5 to re-detain noncitizens with final removal orders who were previously released  
6 from custody under orders of supervision (OSUP), and to seek removal to previously  
7 recalcitrant countries of origin or to third countries.<sup>6</sup> The directive contains no  
8 justification for why detention of noncitizens under an OSUP would be necessary to  
9 effectuate proper removal to countries of origin or otherwise.

10 The February 18, 2025 ICE policy contradicts DHS regulations on re-  
11 detention. Beyond the protections in *Zadvydas*, DHS protective regulations are  
12 contained in 8 C.F.R. § 241.4(l) and § 241.13(i) that establish procedures for re-  
13 detention. These procedures allow for the noncitizen to “be returned to custody” due  
14 to violations of release conditions. 8 C.F.R. § 241.13(i)(1); *see also* 8 C.F.R. § 241.4(l).  
15 Absent condition violations, revocation of release is only permitted when “changed  
16 circumstances” result in “a significant likelihood that the alien may be removed in  
17 the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2).

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

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26 <sup>6</sup> P. Ex. 2, *Immigration Policy Tracking Project*, “2025.02.18 ICE Email  
27 Directive on Expedited Removal and Nondetained Docket” (Feb. 18, 2025), available  
at <https://immpolicytracking.org/policies/ice-directs-ero-officers-to-consider-expedited-removal-for-large-categories-of-noncitizens/>.

1 **Limitations on removals to non-origin third countries.**

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

3 In limited circumstances, a noncitizen who cannot be removed to their  
4 country of origin may be removed to another country by ICE. This is known as a  
5 “third country” because it is a country other than the one designated on the  
6 noncitizen’s removal order. 8 C.F.R. § 1208.16(f).

7 The specific criteria for identifying a third country for removal are contained  
8 in 8 U.S.C. § 1231(b)(2) and (3). For example, a noncitizen with a removal order may  
9 be removed to a non-designated country of which the noncitizen is a “subject,  
10 national or citizen.” 8 U.S.C. § 1231(b)(2)(D). Or a noncitizen with a removal order  
11 may be removed to: the country from which they were admitted to the United  
12 States; the country from which the noncitizen departed for the United States or a  
13 foreign territory contiguous to the United States; a country in which the noncitizen  
14 resided before entering the country from which they entered the United States; the  
15 noncitizen’s country of birth; the country with sovereignty over the place of birth at  
16 the time of birth; the country in which the birthplace is located during the removal  
17 order; and, “if impracticable, inadvisable, or impossible to remove the [noncitizen] to  
18 each country described [above],” ICE may remove a noncitizen to “another country  
19 whose government will accept the [noncitizen] into that country.” 8 U.S.C.  
20 §1231(b)(2)(E).

21 Notwithstanding the criteria for removal to a third country, ICE cannot  
22 remove a noncitizen to a country where the noncitizen’s life or freedom would be  
23 threatened based on the person’s “race, religion, nationality, membership in a  
24 particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A). When a  
25 noncitizen would be in such danger, the Supreme Court encourages existing  
26 avenues of relief from removal to the third country, such as relief through  
27 applications for asylum, withholding of removal, and protection under the

1 Convention Against Torture (CAT).<sup>7</sup> See *Jama v. Immigr. & Customs Enft*, 543  
2 U.S. 335, 348 (2005); see also *A.A.R.P. v. Trump*, 605 U.S. 91, 95 (2025) (holding  
3 non-citizens “must receive notice . . . that they are subject to removal” to a third  
4 country and such notice must be provided “within a reasonable time and in such a  
5 manner as will allow them to actually seek habeas relief” (quoting *Trump v. J.G.G.*,  
6 604 U.S. 670, 673 (2025)).

7 The government itself has acknowledged this limitation on removal to a third  
8 country. In a 2021 oral argument before the Supreme Court regarding the detention  
9 of noncitizens seeking withholding of removal after reinstatement of removal  
10 orders, the following exchange took place between then-Assistant Solicitor General  
11 Vivek Suri, and Justice Kagan:

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

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

19 JUSTICE KAGAN: Right.

20 MR. SURI: But, without notice –

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

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

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27 <sup>7</sup> United Nations Convention Against Torture and Other Cruel, Inhuman, or  
Degrading Treatment or Punishment, 1465 U.N.T.S. 85 (1988) (codified and  
implemented at 8 C.F.R. §§ 208.16–208.18).at 8 C.F.R. § 208.18).

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?

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

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

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

13 Transcript of Oral Argument at 20–11, *sub nom. Johnson v. Guzman Chavez*, 594  
14 U.S. 523 (2021) (No. 19-897).<sup>8</sup>

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

16 On March 30, 2025, Respondent DHS Secretary Kristi Noem issued guidance  
17 to ICE and other DHS agencies regarding third country removals.<sup>9</sup> The memo  
18 states that, before a noncitizen's removal to a third country, "DHS must determine  
19 whether that country has provided diplomatic assurances that aliens removed from  
20 the United States will not be persecuted or tortured."<sup>10</sup> The memo continues that,  
21 where a country has provided such assurances and the U.S. government believes  
22 them to be credible, a noncitizen may be removed to that country "without the need  
23 for further procedures."<sup>11</sup> In other words, an individual may be removed without

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24 <sup>8</sup> Available at  
25 [https://www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2020/19-897\\_1537.pdf](https://www.supremecourt.gov/oral_arguments/argument_transcripts/2020/19-897_1537.pdf).

26 <sup>9</sup> P. Ex. 3, U.S. Dept. of Homeland Security, Memorandum re Guidance  
27 Regarding Third Country Removals (March 30, 2025).

<sup>10</sup> P. Ex. 3.

<sup>11</sup> P. Ex. 3.

1 DHS or ICE providing notice or an opportunity to contest removal to that third  
2 country.

3 The March 30, 2025 memo also states DHS will even remove noncitizens to  
4 third countries that have not provided diplomatic assurances the noncitizen will be  
5 free from persecution or torture.<sup>12</sup> In such cases, DHS will inform the noncitizen of  
6 removal to the third country but will not affirmatively ask the noncitizen if they  
7 fear being removed to that country.<sup>13</sup> DHS will refer any noncitizen that  
8 affirmatively state a fear of removal to a third country to U.S. Citizenship and  
9 Immigration Services (USCIS) for an eligibility screening for withholding removal  
10 and/or CAT protection as to the intended third country.<sup>14</sup> USCIS will then  
11 determine whether the noncitizen establishes they will “more likely than not be  
12 persecuted on a statutorily protected ground or tortured in the country of  
13 removal.”<sup>15</sup> If USCIS determines the noncitizen did not meet that burden, they will  
14 be removed.<sup>16</sup>

15 If the noncitizen sufficiently establishes they will “more likely than not be  
16 persecuted on a statutorily protected ground or tortured in the country of removal,”  
17 ICE and the ICE Office of the Principal Legal Advisor (OPLA) may reopen  
18 immigration court proceedings for the noncitizen to seek withholding or CAT  
19 protection from removal to the third country.<sup>17</sup> “Alternatively, ICE may choose to  
20 designate another country for removal.”<sup>18</sup> The memo provides no limitation how  
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22 <sup>12</sup> P. Ex. 3.

23 <sup>13</sup> P. Ex. 3.

24 <sup>14</sup> P. Ex. 3.

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<sup>18</sup> P. Ex. 3.

1 often ICE could designate a new third country for removal upon a noncitizen's  
2 showing of a well-founded fear of removal to a particular country.

3 On July 9, 2025, Respondent Todd Lyons issued an ICE directive regarding  
4 third country removals<sup>19</sup> The directive was in response to the Supreme Court's  
5 decision to stay an injunction against DHS and others for violating procedural due  
6 process by planning to remove noncitizens to a third country without first providing  
7 notice and opportunity to apply for protection from removal to that country. *See*  
8 *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2726 (2025). The directive reiterated  
9 procedures from the DHS March 30, 2025 memo and explained how to deal with  
10 third country removals to countries that have not provided credible assurances that  
11 deportees will not be persecuted or tortured. It added that, in such cases, an ICE  
12 officer will serve the noncitizen with a Notice of Removal including the intended  
13 country and that the notice must be read in a language the noncitizen  
14 understands.<sup>20</sup> ICE "will generally wait at least 24 hours following service of the  
15 Notice of Removal before effectuating removal," but in "exigent circumstances" ICE  
16 may remove a noncitizen to a possible-torture third country in as little as six hours  
17 after service of the Notice of Removal "as long as the [noncitizen] is provided  
18 reasonable means and opportunity to speak with an attorney prior to removal."<sup>21</sup>  
19 Generally, if a noncitizen does not affirmatively state a fear of persecution or  
20 torture within 24 hours of service of the Notice of Removal, ICE may proceed with  
21 removal to the identified third country.<sup>22</sup>

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23 <sup>19</sup> P. Ex. 4, Todd. M. Lyons, Acting Director, U.S. Immigration and Customs  
24 Enforcement, *Directive to All ICE Employees regarding Third Country Removals*  
25 *Following the Supreme Court's Order in Dept. of Homeland Security v. D.V.D., No.*  
*24A1153 (U.S. June 23, 2025)* (July 9, 2025).

26 <sup>20</sup> P. Ex. 4.

27 <sup>21</sup> P. Ex. 4.

<sup>22</sup> P. Ex. 4.

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**GROUNDS FOR RELIEF****I. Ground One: The continued indefinite detention of Mr. Nguyen violates his Fifth Amendment right to due process because his removal is not reasonably foreseeable.**

Petitioner Nguyen incorporates the above paragraphs by reference as if 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)(1) and (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, the Supreme Court holds that due process imposes an “implicit limitation” upon 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 689. Specifically, § 1231(a)(6) authorizes detention only for “a period reasonably necessary to bring about the [noncitizen]’s removal from the United States,” which the Supreme Court holds is six months of detention after the removal order is final. *Id.* at 701. In addition, “once the [noncitizen] 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. Nguyen was ordered removed over six months ago, decades ago in fact, as his removal order became final in November 2001.<sup>23</sup> He has been re-detained since October 10, 2025, which is over four months.<sup>24</sup> Mr. Nguyen was detained for the initial 90-day removal period in 2001, and thus has cumulatively been detained for over six months.

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<sup>23</sup> P. Ex. 1.

<sup>24</sup> ECF No. 1-1, p. 6.

1 Mr. Nguyen's continued detention is unreasonable because his removal is not  
2 reasonably foreseeable. As of filing this Amended Petition, it has been over 24 years  
3 since the order of removal was issued on November 30, 2001. Mr. Nguyen cannot be  
4 removed because Vietnam generally refuses to repatriate its citizens if they had left  
5 the country before 1995. And Mr. Nguyen has no connection to *any* country besides  
6 Vietnam. Throughout his prolonged detention, no preparations have been made to  
7 deport Mr. Nguyen, and no third country designation has been made.

8 The Due Process Clause of the Fifth Amendment forbids the government  
9 from depriving any "person" of liberty "without due process of law." U.S. Const.  
10 amend. V. Petitioner has a liberty interest in remaining free from physical  
11 confinement where removal is not reasonably foreseeable. *Zadvydas*, 533 U.S. at  
12 701. Respondents have violated Mr. Nguyen's due process protections because  
13 removal is not reasonably foreseeable. Therefore, Mr. Nguyen must be immediately  
14 released. *See Zadvydas*, 533 U.S. at 700-01 (describing release as an appropriate  
15 remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of  
16 supervision").

17 **II. Ground Two: Mr. Nguyen's continued detention violates the**  
18 **Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6).**

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

21 As provided in Ground One, Mr. Nguyen's detention is governed by 8 U.S.C.  
22 § 1231(a)(6), and *Zadvydas*. Mr. Nguyen's continued detention violates § 1231(a)(6)  
23 because it is both unreasonable and removal is not reasonably foreseeable. His  
24 continued detention under § 1231(a)(6) is driven by arbitrary DHS policies. And as  
25 discussed in Ground One, Mr. Nguyen's removal is not reasonably foreseeable. This  
26 Court should therefore order that Mr. Nguyen be released.  
27

1 **III. Ground Three: ICE’s failure to comply with its own regulations**  
2 **concerning re-detention of individuals on orders of supervision**  
3 **violates Mr. Nguyen’s Fifth Amendment due process rights and the**  
4 **Administrative Procedure Act.**

5 Re-detention of individuals previously released by ICE is generally regulated  
6 by 8 C.F.R. § 241.4(l), and 8 C.F.R. § 241.13(i) applies to persons released after  
7 providing good reason to believe they will not be removed in the reasonably  
8 foreseeable future, as Mr. Nguyen was. *See Rokhfirooz v. Larose*, 804 F. Supp. 3d  
9 1095, 1099 (S.D. Cal. 2025) (granting § 2241 petition for release of noncitizen  
10 because DHS violated its own regulation governing revocation of release). As part of  
11 DHS, ICE must follow its these regulations. This Court may review a re-detention  
12 decision to ensure regulatory compliance by ICE. *See Huang v. Albarran*, \_\_\_ F.  
13 Supp. 3d \_\_\_, No. 1:25-cv-01308 JLT EPG, 2026 WL 279888, at \*5 (E.D. Cal. Feb. 3,  
14 2026); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 149–50 (D. Mass. 2025) (citing *Kong v.*  
15 *United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

16 The DHS regulations permit an official to “return[] [the noncitizen] to  
17 custody” if the noncitizen “violate[s] any of the conditions of release.” 8 C.F.R. §  
18 241.13(i)(1); *see also id.* § 241.4(l)(1). Otherwise, the DHS regulations only permit  
19 revocation of release if the appropriate official: (1) “determines that there is a  
20 significant likelihood that the [noncitizen] may be removed in the reasonably  
21 foreseeable future,” *id.* § 241.13(i)(2), or (2) finds “on account of changed  
22 circumstances” there is “a significant likelihood that the alien may be removed in  
23 the reasonably foreseeable future,” *id.* § 241.13(i)(2). And no matter the basis for re-  
24 detention, the noncitizen must receive “an initial informal interview promptly,”  
25 during which they “will be notified of the reasons for revocation.” 8 C.F.R.  
26 § 241.4(l)(1) and § 241.13(i)(3). In addition, the noncitizen must be given “an  
27 opportunity to respond to the reasons for revocation,” allowing them to “submit any

1 evidence or information” relevant to re-detention and evaluating “any contested  
2 facts.” 8 C.F.R. § 241.4(l)(1) and § 241.13(i)(3).

3 None of the circumstances permitting re-detention are present here. There is  
4 no allegation that Mr. Nguyen violated a condition of release. And there are no  
5 changed circumstances. He cannot be removed to Vietnam, and there is no  
6 indication that a third country has agreed to issue travel documents. Even if  
7 Respondents possess a vague intention to remove Mr. Nguyen, Respondents’ “intent  
8 to eventually complete a travel document request for [Mr. Nguyen] does not  
9 constitute a changed circumstance.” *Huang*, 2026 WL 279888, at \*5 (E.D. Cal. Feb.  
10 3, 2026) (citation omitted). Nor have Respondents provided evidence as to “why  
11 obtaining [travel] documentation is more likely to occur this time around.” *Id.* at \*6.

12 Since being re-detained on October 10, 2025, Mr. Nguyen has not received the  
13 interview required and described by DHS regulation, and no one from ICE has  
14 invited him to contest the revocation of his order of supervision or allowed him to  
15 provide evidence relevant to re-detention. Thus, he is being detained in violation of  
16 the applicable DHS regulations at 8 C.F.R. §§ 241.4(l) and 241.13(i)

17 Federal courts regularly order release of re-detained immigrants upon  
18 finding that ICE violated applicable DHS regulations. *See, e.g., Huang v. Albarran*,  
19 \_\_\_ F. Supp. 3d \_\_\_, No. 1:25-cv-01308 JLT EPG, 2026 WL 279888, at \*5 (E.D. Cal.  
20 Feb. 3, 2026); *Sarfazi-Esfahari v. Murray*, No. 1:25-cv-00774-JLT-EPG-HC, 2026  
21 WL 192347, at \*6 (E.D. Cal. Jan. 26, 2026); *Ghafouri v. Noem, et. al.*, No. 3:25-CV-  
22 02675-RBM-BLM, 2025 WL 3085726 (S.D. Cal. Nov. 4, 2025); *Ceesay v. Kurzdorfer*,  
23 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463  
24 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383,387 (D. Mass. 2017); *Zhu v.*  
25 *Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at \*7-9 (S.D.N.Y. Aug. 26,  
26 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at \*10-12 (D.  
27 Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782,

1 at \*2-3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025  
2 WL 1993771, at \*4 (E.D. Cal. July 16, 2025); *Liu v. Carter*, No. 25-cv-3036, 2025 WL  
3 1696526, at \*3 (D. Kan. June 17, 2025); *M.Q. v. United States*, 2025 WL 965810, at  
4 \*3, \*5 n.1 (S.D.N.Y. Mar. 31, 2025); *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-  
5 VET, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025).

6 Here, “because officials did not properly revoke petitioner’s release pursuant  
7 to the applicable regulations, that revocation has no effect, and [Mr. Nguyen] is  
8 entitled to his release (subject to the same Order of Supervision that governed his  
9 most recent release).” *Sarfazi-Esfahari*, 2026 WL 192347, at \*6 (citation omitted).

10 This Court should therefore order that Mr. Nguyen be released.

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

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

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

26 As explained above, Mr. Nguyen has a due process right to meaningful notice  
27 and opportunity to present a fear-based claim to an immigration judge before DHS  
deports him to a third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.

1 1999); *Sarfazi-Esfahari*, 2026 WL 192347, at \*10. Mr. Nguyen also has a due  
2 process right to implementation of a process or procedure to afford these  
3 protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991).

4 Respondents, however, have adopted policies—set forth in the March 30,  
5 2025 DHS memo<sup>25</sup> and the July 9, 2025 ICE directive<sup>26</sup>—that are arbitrary and  
6 capricious. These policies deprive Mr. Nguyen of meaningful notice and an  
7 opportunity to present a fear-based claim to an immigration judge before his  
8 deportation to a third country. Respondents’ policies also violate the INA and  
9 implementing DHS regulations that mandate Respondents do not remove Mr.  
10 Nguyen, and similarly situated individuals, to a third country where they will likely  
11 be persecuted or tortured. Respondents must provide meaningful notice of  
12 deportation to a third country and the opportunity to present a fear-based claim to  
13 an immigration judge before deporting an individual to a third country. Here, the  
14 March 30, 2025 memo and July 9, 2025 directive both demonstrate that  
15 Respondents do not intend to observe Mr. Nguyen’s due process protections.

16 Through the APA, federal courts may “compel agency action unlawfully  
17 withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The Court should therefore  
18 hold that Respondents’ actions and policies are unlawful and violate due process.  
19 Mr. Nguyen request that this Court order that, before any attempt is made to  
20 deport Mr. Nguyen to a third country, he be provided with meaningful notice and  
21 opportunity to present a fear-based claim to an immigration judge.

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23  
24  
25  
26 <sup>25</sup> P. Ex. 3.

27 <sup>26</sup> P. Ex. 4.

1 **V. Ground Five: Mr. Nguyen’s detention in immigration custody under**  
2 **recent ICE policy regarding third country removal violates the Due**  
3 **Process Clause of the Fifth Amendment.**

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

11 \* \* \*

12 **PRAYER FOR RELIEF**

13 Dien Thanh Nguyen respectfully requests this Court:

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

18 2. Order Petitioner’s immediate release under the conditions of his prior  
19 order of supervision;

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

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



**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:** February 27, 2026.

Respectfully submitted,  
Rene L. Valladares  
Federal Public Defender

/s/ Wendi Overmyer  
Wendi Overmyer  
Assistant Federal Public Defender

/s/ Laura Barrera  
Laura Barrera  
Assistant Federal Public Defender

**CERTIFICATE OF SERVICE**

I certify the foregoing document has been filed on February 27, 2026, and the following individuals have been served a true and correct copy by CM/ECF:

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I further certify that the following participants in the case are not registered electronic filing system users and have been mailed the foregoing document by First-Class Mail, postage pre-paid, or through a third-party commercial carrier for delivery within three calendar days:

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