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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 Roberto Sanchez Diaz,

15 Petitioner,

16 v.

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

23 Respondents.

Case No. 2:26-cv-00310-MMD-MDC

First Amended § 2241 Petition

24 INTRODUCTION

25 On August 20, 2002, an immigration judge issued an order of removal for
26 Petitioner Roberto Sanchez Diaz, a Cuban national.¹ Since 2002, Sanchez Diaz has
27 been released on an order of supervision (OSUP) from ICE. In the nearly 24 years

¹ Exhibit 1, Automated Case Information, Executive Office for Immigration Review, Redacted.

1 since he was ordered removed, the United States has been unable to remove him.
2 He was taken back into custody by ICE on January 20, 2026. However, ICE has no
3 plan or ability to remove Sanchez Diaz to Cuba. Indeed, upon information and
4 belief, during the week of February 22, 2026, an ICE agent informed Sanchez Diaz
5 that the government has not been able to secure travel documents for Cuban
6 immigrants ordered removed and “he probably wouldn’t be the exception.”

7 Additionally, ICE agents have continuously threatened Sanchez Diaz with
8 forcible removal to Mexico. On January 21, 2026, the day after he was seized by
9 ICE, an ICE agent told him that he had 90 days to agree to be removed to Mexico,
10 otherwise he would be held in custody another 90 days. On February 22, 2026, ICE
11 agents threatened that they were going to force Sanchez Diaz onto a plane to
12 Mexico. He has also been told that it does not matter what he has filed with this
13 Court, ICE will send him to Mexico. And since that date, the facility has denied him
14 critical medication for his hypertension, back pain from two surgeries to put in
15 place metal implants, and a stomach condition.

16 The statutory 90-day removal period ended in 2002, after Sanchez Diaz was
17 held in detention for over 90 days after the entry of the final order of removal. The
18 *Zadvydas* six-month period of presumptive reasonableness of detention for Sanchez
19 Diaz also expired in early 2002. Respondents’ re-detention of Sanchez Diaz is an
20 egregious violation of the Constitution, the Immigration and Nationality Act, and
21 their own policies and regulations. Respondents have no reason to believe that they
22 will now be able to remove Sanchez Diaz. He must be released immediately.

23 JURISDICTION AND VENUE

24 This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (granting general
25 habeas authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the
26 “Suspension Clause”); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C.
27 §§ 2201, 2202 (Declaratory Judgment Act).

1 Federal district courts have jurisdiction to hear habeas claims by non-citizens
2 challenging the lawfulness of their detention. *See e.g., Zadvydas v. Davis*, 533 U.S.
3 678 (2001). Federal courts also have federal question jurisdiction, through the APA
4 to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an
5 abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).
6 APA claims are cognizable in habeas. 5 U.S.C. § 703. The APA affords a right of
7 review to a person who is “adversely affected or aggrieved by agency action.” 5
8 U.S.C. § 702. Petitioner’s continued detention violates his constitutional due process
9 rights, and constitutes arbitrary and capricious agency action, and is an abuse of
10 discretion.

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

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

15 PARTIES

16 Sanchez Diaz is a native and citizen of Cuba who was ordered removed on
17 August 20, 2002. Sanchez Diaz is currently detained at the Nevada Southern
18 Detention Center in Pahrump, Nevada.

19 John Mattos is the Warden of Nevada Southern Detention Center. He was
20 named to this position in July of 2025, replacing Christopher Chestnut. Mattos, in
21 his official capacity, is the immediate custodian of Sanchez Diaz.

22 Michael Bernacke is the Field Director of the Salt Lake City Field Office of
23 ICE Enforcement and Removal Operations, which has jurisdiction of enforcement
24 and removal operations over detention facilities in Nevada, including Nevada
25 Southern Detention Center where Sanchez Diaz is detained. Bernacke, in his
26 official capacity, is a legal custodian of Sanchez Diaz.
27

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 Sanchez Diaz.

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
7 Sanchez Diaz.

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 Roberto Sanchez Dias was born in Cuba. He and his family were
14 targeted by the Cuban government after his father fled to the United States in the
15 1980s. Sanchez Diaz escaped the government oppression by leaving Cuba in 1994.
16 He came to the United States in 1995. In 2002 he was ordered removed and held in
17 custody for 90 days, but the government was unable to remove him to Cuba. He was
18 therefore released. When he was first released on ICE supervision, he checked in
19 every month. Then he was told to check in every three months, then every six
20 months, and eventually once a year. After two years of checking in once a year, he
21 was told he did not need to do check ins anymore.

22 Prior to his re-detention, Sanchez Diaz lived in Las Vegas. His ex-wife,
23 stepchildren, and 21-year-old biological daughter live in las Vegas as well. All are
24 American citizens. Sanchez Diaz's daughter in particular has suffered greatly since
25 he has been re-detained, she is in fear of losing her dad.

26 On January 20, 2026, Sanchez Diaz was taken back into ICE custody. During
27 that time, on information and belief, ICE has not undertaken any substantial steps

1 to facilitate Sanchez Diaz's removal to Cuba. Almost twenty-four years ago, Sanchez
2 Diaz was released from ICE custody on an order of supervision because his
3 deportation was not reasonably foreseeable. The only condition that has changed in
4 those decades is ICE's decision to ignore their own policies and re-detain
5 individuals. It appears that there is no plan for Sanchez Diaz other than holding
6 him in detention indefinitely while coercing him to consent to be removed to Mexico.

7 Furthermore, ICE has failed to care for Sanchez Diaz medical needs while he
8 has been detained. As explained above, since February 22 the facility has withheld
9 medication for his hypertension, back pain from two surgeries to put in place metal
10 implants, and a stomach condition.

11 LEGAL FRAMEWORK

12 I. Constitutional protection against indefinite civil detention

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

20 The Supreme Court considered the issue of indefinite detention under 8
21 U.S.C. § 1231(a)(6) in the case *Zadvydas v. Davis*, 533 U.S. 678 (2001). In that case,
22 the Court acknowledged that allowing a noncitizen to be detained indefinitely after
23 the statutory removal period would raise "serious constitutional concerns" and, as a
24 result, held that 8 U.S.C. § 1231(a)(6) contains an implicit time limit. *Id.* at 682.
25 The Court further held that 8 U.S.C. § 1231(a)(6) authorizes detention only for "a
26 period reasonably necessary to bring about the [noncitizen]'s removal from the
27

1 United States” and that six months of detention after the removal order is final is
2 “presumptively reasonable.” *Id.* at 689, 701.

3 Importantly, the *Zadvydas* court did not say the presumption is irrebuttable,
4 and a variety of courts across the country that have considered the issue have found
5 the presumption of reasonableness during the first six months of post-removal order
6 detention can be rebutted. *See Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387
7 (D.N.J. 2025) (analyzing the issue and collecting case). “Within the six-month
8 window,” the noncitizen bears the burden of “prov[ing] the unreasonableness of
9 detention.” *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). After six
10 months, there is “good reason to believe that there is no significant likelihood of
11 removal in the reasonably foreseeable future,” and the burden shifts to the
12 government to justify continued detention. *Zadvydas*, 533 U.S. at 701. “Whether
13 detention is ‘reasonably necessary to secure removal is determinative of whether
14 the detention is, or is not, pursuant to statutory authority...The basic federal
15 habeas corpus statute grants the federal courts authority to answer that question.”
16 *Cruz Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *6 (D. Md. Aug.
17 11, 2025) (citing *Zadvydas*, 533 U.S. at 699).

18 **II. Relevant DHS Regulations**

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

26 To comply with *Zadvydas*, DHS issued additional regulations in 2001 that
27 established “special review procedures” to determine whether detained noncitizens

1 with final removal orders are likely to be removed in the reasonably foreseeable
2 future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66
3 Fed. Reg. 56, 967 (Nov. 14, 2001). Subsection (i)(7) was added to 8 C.F.R. § 241.4,
4 which added a supplemental review procedure that ICE HQ must initiate when “the
5 [noncitizen] submits, or the record contains, information providing a substantial
6 reason to believe that removal of a detained [noncitizen] is not significantly likely in
7 the reasonably foreseeable future.” 8 C.F.R. § 241.4(i)(7). Under this procedure, ICE
8 HQ evaluates the foreseeability of removal by analyzing factors such as the history
9 of ICE’s removal efforts to third countries. *See* 8 C.F.R. § 241.13(f). If ICE HQ
10 determines that removal is not reasonably foreseeable but nonetheless seeks to
11 continue detention based on “special circumstances,” it must justify the detention
12 based on narrow grounds such as national security or public health concerns or by
13 demonstrating by clear and convincing evidence before an IJ that the noncitizen is
14 “specially dangerous.” 8 C.F.R. § 241.14(b)-(d), (f).

15 **III. Recent ICE Policy on the re-detention of individuals with final** 16 **removal orders**

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

24
25 ² Exhibit 2, Directive on Expedited Removal and Nondetained Docket,
26 *available at* [https://immpolicytracking.org/policies/ice-directs-review-on-non-](https://immpolicytracking.org/policies/ice-directs-review-on-non-detained-docket-for-redetention-and-removal/#/tab-policy-documents)
27 [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) (found on the
“Documents” tab).

1 This recent ICE policy goes against DHS regulations on re-detention. Beyond
2 the protections in *Zadvydas*, 8 C.F.R. § 241.4, §241.13(i) establishes additional
3 protective procedures for re-detention. These procedures allow for the noncitizen to
4 “be returned to custody” due to violations of the conditions of their release. 8 C.F.R.
5 § 241.13(i)(1); *see also* § 241.4. Absent condition violations, revocation of release is
6 only permitted if based on “changed circumstances” it is determined that “there is a
7 significant likelihood that the alien may be removed in the reasonably foreseeable
8 future.” 8 C.F.R. § 241.13(i)(2).

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

16 **IV. Third country removals**

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

18 A noncitizen who cannot be removed to their country of origin can be removed
19 to another country by ICE. This is known as a “third country” because it is a
20 country other than the one designated on the noncitizen’s removal order. 8 C.F.R. §
21 1208.16(f). Specific criteria for identifying a third country for removal are prescribed
22 by statute. For example, the law provides that a noncitizen with a removal order
23 may be removed to a non-designated country of which the noncitizen is a “subject,
24 national or citizen.” 8 U.S.C. §1231(b)(2)(D). ICE may also remove a noncitizen
25 with a removal order to the country from which they were admitted to the U.S.; the
26 country from which the noncitizen departed for the U.S. or a foreign territory
27 contiguous to the U.S.; a country in which the noncitizen resided before entering the

1 country from which they entered the U.S.; the noncitizen's country of birth; the
2 country that had sovereignty over the place of birth at the time of birth; the country
3 in which the birthplace is located at the time of the removal order; and, "if
4 impracticable, inadvisable, or impossible to remove the [noncitizen] to each country
5 described [above]," ICE may remove a noncitizen to "another country whose
6 government will accept the [noncitizen] into that country." 8 U.S.C. § 1231(b)(2)(E).

7 Notwithstanding the criteria for removal to a third country, ICE may not
8 remove a noncitizen to a country where the noncitizen's life or freedom would be
9 threatened on the basis of the five protected grounds. 8 U.S.C. §1231(b)(3)(A). The
10 Supreme Court has emphasized the importance of existing avenues of relief from
11 removal (such as applications for asylum, withholding of removal, and protection
12 under the convention against torture) for providing protection against removal to a
13 third country where a noncitizen would be in danger. *See Jama v. Immigr. &*
14 *Customs Enft.*, 543 U.S. 335, 348 (2005) ("If aliens would face persecution or other
15 mistreatment in the country designated under § 1231(b)(2), they have a number of
16 available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A);
17 relief under an international agreement prohibiting torture, *see* 8 CFR
18 §§ 208.16(c)(4), 208.17(a) (2004); and temporary protected status, 8 U.S.C.
19 § 1254a(a)(1)"); *see also A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (recently
20 holding that non-citizens "must receive notice" that "they are subject to removal" to
21 a third country and that such notice must be provided "within a reasonable time
22 and in such a manner as will allow the[] [non-citizen] to actually seek . . . relief.")
23 (quoting *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025)).

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

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

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

7 JUSTICE KAGAN: Right.

8 MR. SURI: But, without notice --

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

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

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

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

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

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

23 See Transcript of Oral Argument at 20–21, *Johnson v. Guzman Chavez*, 594 U.S.
24 523 (2021).

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

26 On March 30, 2025, Respondent Kristi Noem, the Secretary of the
27 Department of Homeland Security, issued guidance to ICE and other DHS agencies

1 regarding third country removals. This memo states that, prior to a noncitizen's
 2 removal to a third country, "DHS must determine whether that country has
 3 provided diplomatic assurances that aliens removed from the United States will not
 4 be persecuted or tortured."³ The memo continues that, where a country has
 5 provided such assurances and the U.S. government believes them to be credible, a
 6 noncitizen may be removed to that country "without the need for further
 7 procedures."⁴ In other words, an individual may be removed without providing
 8 notice or an opportunity to contest removal to that third country.

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

19 If USCIS determines that the noncitizen did not meet that burden, they will
 20 be removed.⁸ If the noncitizen does make a showing to the satisfaction of USCIS,
 21 USCIS will notify ICE and the ICE Office of the Principal Legal Advisor (OPLA)

23 ³ Exhibit 3, Guidance Regarding Third Country removals, at 2.

24 ⁴ *Id.* at 3.

25 ⁵ *Id.*

26 ⁶ *Id.*

27 ⁷ *Id.*

⁸ *Id.*

1 may reopen immigration court proceedings for the noncitizen to seek withholding or
2 CAT protection from removal to the third country.⁹ “Alternatively, ICE may choose
3 to designate another country for removal.”¹⁰ The memo provides no limitation on
4 how many times ICE could designate a new third country for removal upon a
5 noncitizen’s showing of a well-founded fear of removal to a particular country.

6 On July 9, 2025, Respondent Todd Lyons sent additional guidance to ICE
7 employees regarding third country removals (“July 9 Directive”).¹¹ The directive
8 was issued in light of the Supreme Court’s decision to stay the injunction in the case
9 *D.V.D. v. Department of Homeland Security*, No. 25-10676 (D. Mass.). It reiterated
10 the procedures from the March 30 memo and provided additional details regarding
11 how to deal with third country removals to countries that have not provided credible
12 assurances that U.S. deportees will not be persecuted or tortured. It added that, in
13 such cases, an ICE officer will serve the noncitizen with a Notice of Removal
14 including the intended country and that the notice must be read in a language the
15 noncitizen understands.¹² ICE “will generally wait at least 24 hours following
16 service of the Notice of Removal before effectuating removal” but that in “exigent
17 circumstances” ICE may remove a noncitizen to a possible-torture third country in
18 as little as six hours after service of the Notice of Removal “as long as the
19 [noncitizen] is provided reasonable means and opportunity to speak with an
20 attorney prior to removal.”¹³ Generally, if a noncitizen does not affirmatively state a
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22

23 ⁹ *Id.*

24 ¹⁰ *Id.*

25 ¹¹ Exhibit 4, Third Country Removals Following the Supreme Court's Order
26 in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025).

27 ¹² *Id.* at 1.

¹³ *Id.*

1 fear of persecution or torture within 24 hours of service of the Notice of Removal,
 2 ICE may proceed with removal to the identified third country.¹⁴

3 GROUND FOR RELIEF

4 I. **Ground One: The continued indefinite detention of Sanchez Diaz** 5 **violates his Fifth Amendment right to due process because his** 6 **removal is not reasonably foreseeable.**

7 Petitioner incorporates the above paragraphs by reference as if fully set forth
 8 herein. The INA requires mandatory detention of individuals with final removal
 9 orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2). A noncitizen
 10 who is not removed within that period “shall be subject to supervision under
 11 regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3). If ICE does
 12 not remove the noncitizen within the 90-day removal period, the noncitizen “*may* be
 13 detained beyond the removal period.” 8 U.S.C. § 1231(a)(6) (emphasis added).
 14 However, in *Zadvydas, supra*, the Supreme Court concluded that due process
 15 imposes an “implicit limitation” upon 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at
 16 689. Specifically, the Court held that 8 U.S.C. § 1231(a)(6) authorizes detention only
 17 for “a period reasonably necessary to bring about the [noncitizen]’s removal from the
 18 United States” and that six months of detention after the removal order is final is
 19 “presumptively reasonable.” *Id.* at 701. The Court further determined that “once the
 20 alien provides good reason to believe that there is no significant likelihood of
 21 removal in the reasonably foreseeable future, the Government must respond with
 22 evidence sufficient to rebut that showing.” *Id.*

23 Here, Sanchez Diaz was ordered removed more than six months ago, decades
 24 in fact, after his removal order became final in 2002.¹⁵ He then was re-detained on
 25

26 ¹⁴ *Id.* at 2.

27 ¹⁵ Ex. 1.

1 November 26, 2025, and has remained in immigration custody.¹⁶ On information
2 and belief, Sanchez Diaz was previously detained for the initial 90-day removal
3 period in 2002. Petitioner's continued detention is unreasonable and his removal is
4 not reasonably foreseeable. As of the filing date of this Amended Petition, almost 24
5 years have passed since Sanchez Diaz was issued an order of removal in
6 immigration proceedings.

7 Sanchez Diaz cannot be removed to Cuba. Sanchez Diaz is not a citizen of
8 and has no connection to *any other* country. Upon information and belief,
9 throughout his prolonged detention, no specific plans have been made to deport
10 Sanchez Diaz, and no formal third country designation has been made. Indeed,
11 upon information and belief, during the week of February 22, 2026, an ICE agent
12 informed Sanchez Diaz that the government has not been able to secure travel
13 documents for Cuban immigrants ordered removed and "he probably wouldn't be
14 the exception."

15 The Due Process Clause of the Fifth Amendment forbids the government
16 from depriving any "person" of liberty "without due process of law." U.S. Const.
17 amend. V. Petitioner has a liberty interest in remaining free from physical
18 confinement where removal is not reasonably foreseeable. Respondents have
19 violated the Due Process Clause of the Fifth Amendment because Petitioner's
20 removal is not reasonably foreseeable. As provided above, *Zadvydas* requires that
21 Petitioner be immediately released. *See* 533 U.S. at 700-01 (describing release as an
22 appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms
23 of supervision").
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25
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¹⁶ Ex. 1.

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

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

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

1 information” relevant to re-detention and evaluating “any contested facts.” *Id.* As
2 explained above, *supra* Section III (Legal Framework) ICE is required to follow its
3 own regulations and this court may review a re-detention decision for compliance
4 with the regulations.

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

17 A court may review a re-detention decision to ensure regulatory compliance
18 by ICE. *See Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D.
19 Cal. July 16, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 149–150 (D. Mass. 2025)
20 (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)). And numerous
21 courts have released re-detained immigrants after finding that ICE failed to comply
22 with applicable regulations. *See e.g. Ghafouri v. Noem, et. al.*, No. 3:25-CV-02675-
23 RBM-BLM, 2025 WL 3085726, (S.D. Cal. Nov. 4, 2025); *Ceesay v. Kurzdorfer*, 781 F.
24 Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451,463
25 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383,387 (D. Mass. 2017); *Zhu v.*
26 *Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7-9 (S.D.N.Y. Aug. 26,
27 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10-12 (D.

Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2-3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025); *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, (S.D. Cal. Sept. 15, 2025). “[B]ecause officials did not properly revoke petitioner’s release pursuant to the applicable regulations, that revocation has no effect, and [Sanchez Diaz] is entitled to his release (subject to the same Order of Supervision that governed his most recent release).” *Liu*, 2025 WL 1696526, at *3.

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

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

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

As explained above, Sanchez Diaz has a due process right to meaningful notice 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. 1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019).

1 Sanchez Diaz also has a due process right to implementation of a process or
2 procedure to afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*,
3 498 U.S. 479, 491 (1991).

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

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

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23
24 ¹⁷ *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>.

V. Ground Five: Sanchez Diaz's detention in immigration custody pursuant to recent ICE policy regarding third country removal violates the Due Process Clause of the Fifth Amendment.

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

PRAYER FOR RELIEF

Accordingly, Roberto Sanchez Diaz respectfully requests that this Court:

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

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

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

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

....

....

1 from removal; and

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

4 Dated: March 2, 2026

5 Respectfully submitted,

6
7 Rene L. Valladares
8 Federal Public Defender

9 /s/ Cristen C. Thayer

10 Cristen C. Thayer
11 Assistant Federal Public Defender
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DECLARATION UNDER PENALTY OF PERJURY

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

Dated: March 2, 2026

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Cristen C. Thayer
Cristen C. Thayer
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on March 2, 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:

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/s/Celina Moore

An Employee of the
Federal Public Defender