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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 Salah Hassan¹,

15 Petitioner,

16 v.

17 Pamela Bondi, *et al.*,

18 Respondents.

Case No. 2:26-cv-00411-JAD-MDC

First Amended § 2241 Petition

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¹ Although it was inadvertently misspelled on the Petition, Petitioner's name is correctly spelled "Salah Hassan."

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INTRODUCTION

Salah Hassan is a citizen of Sudan who was lawfully admitted to the United States in 2006 as a refugee fleeing genocide. He was ordered removed to Sudan on February 8, 2021, but he was simultaneously granted deferral of removal under the Convention Against Torture (CAT) because it is likely he would be tortured if forced to return to Sudan. On information and belief, Mr. Hassan was released from immigration custody in June 2021 after spending more than six months in ICE custody. The statutory 90-day window to remove Mr. Hassan ended in 2021, as did the *Zadvydas* six-month period of presumptive reasonableness of detention. In the five years since he was ordered removed, the United States has been unable to remove him. Nevertheless, Mr. Hassan was re-detained several months ago. Since his recent re-detention, Mr. Hassan has not been informed of any developments in getting him travel documents, and Respondents still cannot remove Mr. Hassan to Sudan. Respondents' re-detention of Mr. Hassan is a violation of the Constitution, the Immigration and Nationality Act, and their own policies and regulations. Respondents have no reason to believe that they will now be able to remove Mr. Hassan. He must be released immediately.

JURISDICTION AND VENUE

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

Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001). Federal courts also have federal question jurisdiction, through the Administrative Procedure Act (APA) to "hold unlawful and set aside agency action"

1 that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
2 with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable in habeas. 5 U.S.C.
3 § 703. The APA affords a right of review to a person who is “adversely affected or
4 aggrieved by agency action.” 5 U.S.C. § 702. Petitioner’s continued detention
5 violates his constitutional due process rights, constitutes arbitrary and capricious
6 agency action, and is an abuse of discretion.

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

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

11 **PARTIES**

12 Salah Hassan is a native and citizen of Sudan who was ordered removed in
13 February of 2021. He is currently detained at the Nevada Southern Detention
14 Center in Pahrump, Nevada.

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

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

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 Mr. Hassan is detained. Bernacke, in his official
26 capacity, is a legal custodian of Mr. Hassan.
27

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

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

6 STATEMENT OF FACTS

7 Petitioner Salah Hassan was born in Sudan. When he was 11 years old, he
8 narrowly escaped an attack on his home in which his father, brother, and sister
9 were murdered.² Mr. Hassan, his mother, and his brother fled genocide and were
10 lawfully admitted to the United States as refugees in 2006.³

11 In January 2020, Mr. Hassan received a Notice to Appear charging him as
12 removable due to Utah convictions related to marijuana possession.⁴ Mr. Hassan
13 completed his custodial sentence in Utah and was then transferred to ICE custody
14 in Colorado, where he remained during the pendency of his removal proceedings.⁵
15 In February 2021, an Immigration Judge (IJ) issued a final order of removal,
16 ordering Mr. Hassan removed to Sudan.⁶ At the same time, however, the IJ granted
17 deferral of removal under the Convention Against Torture (CAT) after extensive
18 factual findings concerning country conditions in Sudan, as well as Mr. Hassan's
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22 ² Ex. 1 at 8.

23 ³ Ex. 1 at 3, 8.

24 ⁴ Ex. 2 at 5.

25 ⁵ These factual allegations are made on information and belief. Additional
26 documents that could corroborate these facts are in the possession of the Federal
27 Respondents. To the extent Respondents raise any information to the contrary, Mr.
Hassan reserves the right to file a second amended petition, if necessary.

⁶ Ex. 1 at 14.

1 mental health conditions. Mr. Hassan remained in immigration detention until
2 June 2021, when he was released because he could not be removed.⁷

3 Several months ago, Mr. Hassan was again taken into immigration custody.
4 However, Mr. Hassan continues to have CAT protection and cannot be removed to
5 Sudan. Mr. Hassan has lived in the United States since he was a child and has no
6 meaningful ties to any other country. Despite no chance of removal, Respondents
7 are holding Mr. Hassan in custody in the Nevada Southern Detention Center with
8 no end to his detention in sight. Between the time Mr. Hassan was ordered removed
9 in 2021 and now, circumstances have not materially changed concerning the
10 possibility of his removal. ICE still cannot remove him to Sudan, and Mr. Hassan
11 has not received any documents identifying another country of removal, or any plan
12 for removal.

13 LEGAL FRAMEWORK

14 I. Deferral of removal under the Convention Against Torture

15 Noncitizens in removal proceedings have three primary forms of relief from
16 removal based on a fear of returning to their home country: asylum, withholding of
17 removal, and protection under the CAT. An applicant may be ineligible for asylum
18 for several reasons, such as failing to apply within one year of entering the United
19 States. *See* 8 U.S.C. § 1158(a)(2)(B). There are fewer restrictions on eligibility for
20 withholding of removal under the Immigration and Nationality Act (INA), and no
21 restrictions on eligibility for deferral of removal under the CAT. *See* 8 U.S.C.
22 § 1231(b)(3)(B); 8 C.F.R. § 1208.17(a).
23

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25
26 ⁷ Mr. Hassan was therefore detained in 2021 for the initial 90-day removal
27 period, as well as for the *Zadvydas* presumptively reasonable six-month period of
detention.

To be granted CAT protection, an applicant must show that “it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R. § 1208.16(c)(2). Such torture “must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” *Edgar G.C. v. Bondi*, 136 F.4th 832, 845 (9th Cir. 2025) (internal quotations omitted). When a noncitizen wins protection under the CAT, an order of removal to the country where the person will be tortured is still entered, but ICE is not permitted to remove the individual to that country because of the probability of torture. *See* 8 C.F.R. § 1208.17(a), (b). The grant of CAT protection and the accompanying removal order become final on the date they are issued if both parties waive appeal, or at the conclusion of the 30-day period to file an appeal if no appeal is filed. 8 C.F.R. § 1241.1. To the extent an order of removal was entered in separate proceedings and prior to a grant of CAT protection, the finality of the removal order would still be determined from the date the removal order was entered. *See id.*

II. Removal to a third country for individuals granted protection under the Convention Against Torture

A. Statutory guidance on third country removals

A noncitizen who has been granted CAT protection cannot be removed to the country for which they demonstrated a likelihood of persecution. However, ICE can arrange for removal to another country. This is known as a “third country” because it is a country other than the one designated on the noncitizen’s removal order. 8 C.F.R. § 1208.16(f). Specific criteria for identifying a third country for removal are prescribed by statute. For example, the law provides that a noncitizen with a removal order may be removed to a non-designated country of which the noncitizen is a “subject, national or citizen.” 8 U.S.C. § 1231(b)(2)(D). ICE may also remove a noncitizen with a removal order to the country from which they were admitted to

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

9 Notwithstanding the criteria for removal to a third country, ICE may not
10 remove a noncitizen to a country where the noncitizen's life or freedom would be
11 threatened on the basis of the five protected grounds, or where the noncitizen would
12 be tortured. 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(c)(4). The Supreme Court
13 has emphasized the importance of existing avenues of relief from removal (such as
14 applications for asylum, withholding of removal, and protection under the
15 Convention Against Torture) for providing protection against removal to a third
16 country where a noncitizen would be in danger. *See Jama v. Immigr. & Customs*
17 *Enft*, 543 U.S. 335, 348 (2005) ("If [noncitizens] would face persecution or other
18 mistreatment in the country designated under § 1231(b)(2), they have a number of
19 available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A);
20 relief under an international agreement prohibiting torture, see 8 CFR
21 §§ 208.16(c)(4), 208.17(a) (2004); and temporary protected status, 8 U.S.C.
22 § 1254a(a)(1)"); *see also A.A.R.P. v. Trump*, 605 U.S. 91, 95 (2025) (reiterating that
23 non-citizens "must receive notice . . . that they are subject to removal" to a third
24 country and that such notice must be provided "within a reasonable time and in
25 such a manner as will allow [the non-citizen] to actually seek . . . relief." (quoting
26 *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025))).
27

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

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

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

12 JUSTICE KAGAN: Right.

13 MR. SURI: But, without notice --

14 JUSTICE KAGAN: So that's what it would depend
15 on, right? That -- that you would have to provide him
16 notice, and if he had a fear of persecution or torture in
17 that country, he would be given an opportunity to contest
18 his removal to that country, isn't that right?

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

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

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

25 JUSTICE KAGAN: Okay. And that's not as a
26 practical matter. That really is, as -- as you put it, in the
27 eyes of the law. In the eyes of the law, you cannot put one
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?

MR. SURI: Yes, that's right.

1 See Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594
2 U.S. 523 (2021).

3 **B. Trump Administration policies on third country removals**

4 Until recently, it was exceedingly rare that the government would pursue
5 removal to a third country for an individual granted INA withholding of removal or
6 CAT protection. This information is not routinely released by ICE, but data
7 obtained through a Freedom of Information Act request revealed that in fiscal year
8 2017, just 21 people who had been granted withholding of removal were removed to
9 a third country.⁸ That is 1.6% of the people granted withholding that year. But,
10 based on the data, the individuals removed were not necessarily people who had
11 been granted withholding in 2017—just 21 people out of all the people with
12 withholding of removal grants in the U.S., granted at any time, were removed.
13 Further, it is likely that some of those people had some form of permanent
14 immigration status in the country they were removed to.

15 On March 30, 2025, Respondent Kristi Noem, the Secretary of the
16 Department of Homeland Security, issued guidance to ICE and other DHS agencies
17 regarding third country removals (“March 30 Memo”). This memo states that, prior
18 to a noncitizen’s removal to a third country, “DHS must determine whether that
19 country has provided diplomatic assurances that [noncitizens] removed from the
20 United States will not be persecuted or tortured.”⁹ The memo continues that, where
21 a country has provided such assurances and the U.S. government believes them to
22 be credible, a noncitizen may be removed to that country “without the need for
23

24 ⁸ AMERICAN IMMIGRATION COUNCIL & NATIONAL IMMIGRANT JUSTICE CENTER,
25 THE DIFFERENCE BETWEEN ASYLUM AND WITHHOLDING OF REMOVAL 7 (Oct. 2020),
26 [https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/
the_difference_between_asylum_and_withholding_of_removal.pdf](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf).

27 ⁹ Ex. 3 at 2.

1 further procedures.”¹⁰ In other words, an individual may be removed without
2 providing notice or an opportunity to contest removal to that third country.

3 The March 30 Memo also states that DHS will remove noncitizens even to
4 third countries that have not provided diplomatic assurances that noncitizens
5 deported from the U.S. will not be persecuted or tortured. In such cases, DHS will
6 inform the noncitizen of removal to the intended country but will not affirmatively
7 ask the noncitizen if they fear being removed to that country.¹¹ DHS will refer any
8 noncitizen that affirmatively states a fear of removal to a third country to USCIS
9 for a screening for eligibility for withholding of removal and/or CAT protection as to
10 the intended third country.¹² USCIS will then make a determination about whether
11 the noncitizen has established that they will “more likely than not be persecuted on
12 a statutorily protected ground or tortured in the country of removal.”¹³ If USCIS
13 determines that the noncitizen did not meet that burden, they will be removed.¹⁴ If
14 the noncitizen does make a showing to the satisfaction of USCIS, USCIS will notify
15 ICE and the ICE Office of the Principal Legal Advisor (OPLA) may reopen
16 immigration court proceedings for the noncitizen to seek withholding or CAT
17 protection from removal to the third country.¹⁵ “Alternatively, ICE may choose to
18 designate another country for removal.”¹⁶ The memo provides no limitation as to
19 how many times ICE could designate a new third country for removal upon a
20 noncitizen’s showing of a well-founded fear of removal to a particular country.

22 ¹⁰ Ex. 3 at 2-3.

23 ¹¹ Ex. 3 at 3.

24 ¹² Ex. 3 at 3.

25 ¹³ Ex. 3 at 3.

26 ¹⁴ Ex. 3 at 3.

27 ¹⁵ Ex. 3 at 3.

¹⁶ Ex. 3 at 3.

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

III. Detention of noncitizens after a final order of removal

A. Statutory framework

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

¹⁷ Ex. 4.

¹⁸ Ex. 4 at 2.

¹⁹ Ex. 4 at 2.

²⁰ Ex. 4 at 3.

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

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

14 Importantly, the *Zadvydas* court did not say the presumption is irrebuttable,
15 and a variety of courts across the country that have considered the issue have found
16 the presumption of reasonableness during the first six months of post-removal order
17 detention can be rebutted. *See Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 395-
18 96 (D.N.J. 2025) (analyzing the issue and collecting cases). “Within the six-month
19 window,” the noncitizen bears the burden of “prov[ing] the unreasonableness of
20 detention.” *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). After six
21 months, once there is “good reason to believe that there is no significant likelihood
22 of removal in the reasonably foreseeable future,” the burden shifts to the
23 government to justify continued detention. *Zadvydas*, 533 U.S. at 701. “Whether
24 detention is ‘reasonably necessary to secure removal is determinative of whether
25 the detention is, or is not, pursuant to statutory authority. . . . The basic federal
26 habeas corpus statute grants the federal courts authority to answer that question.”
27

1 *Medina v. Noem*, 794 F. Supp. 3d 365, 375 (D. Md. 2025) (quoting *Zadvydas*, 533
2 U.S. at 699).

3 **B. DHS Regulations**

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

11 To comply with *Zadvydas*, DHS issued additional regulations in 2001 that
12 established “special review procedures” to determine whether detained noncitizens
13 with final removal orders are likely to be removed in the reasonably foreseeable
14 future. *See* Continued Detention of Aliens Subject to Final Orders of Removal, 66
15 Fed. Reg. 56,967 (Nov. 14, 2001). Subsection (i)(7) was added to 8 C.F.R. § 241.4,
16 which added a supplemental review procedure that ICE HQ must initiate when “the
17 [noncitizen] submits, or the record contains, information providing a substantial
18 reason to believe that removal of a detained [noncitizen] is not significantly likely in
19 the reasonably foreseeable future.” 8 C.F.R. § 241.4(i)(7). Under this procedure, ICE
20 HQ evaluates the foreseeability of removal by analyzing factors such as the history
21 of ICE's removal efforts to third countries. *See* 8 C.F.R. § 241.13(f). If ICE HQ
22 determines that removal is not reasonably foreseeable but nonetheless seeks to
23 continue detention based on “special circumstances,” it must justify the detention
24 based on narrow grounds such as national security or public health concerns, or by
25 demonstrating by clear and convincing evidence before an immigration judge that
26 the noncitizen is “specially dangerous.” 8 C.F.R. § 241.14(b)-(d), (f).
27

1 **C. ICE Policy**

2 Consistent with the statutory and regulatory scheme, long-standing ICE
3 policy favors the prompt release of noncitizens who have been granted withholding
4 or CAT relief. In 2000, the then-Immigration and Naturalization Service (INS)²¹
5 General Counsel issued a memorandum clarifying that 8 U.S.C. § 1231 authorizes
6 but does not require the detention of noncitizens granted withholding of removal or
7 CAT relief during the 90-day removal period.²² A 2004 ICE memorandum turned
8 this acknowledgment of authority into a presumption, stating that “it is ICE policy
9 to favor the release of [noncitizens] who have been granted protection relief by an
10 immigration judge, absent exceptional concerns such as national security issues or
11 danger to the community and absent any requirement under law to detain.”²³ ICE
12 leadership subsequently reiterated this policy in a 2012 announcement, clarifying
13 that the 2000 and 2004 ICE memorandums are “still in effect and should be
14 followed” and that “[t]his policy applies at all times following a grant of protection,
15 including during any appellate proceedings and throughout the removal period.”²⁴
16 Finally, in 2021, Acting ICE Director Tae Johnson circulated a memorandum to all
17 ICE employees reminding them of the “longstanding policy” that “absent
18 exceptional circumstances, . . . noncitizens granted asylum, withholding of removal,
19 or CAT protection by an immigration judge should be released”²⁵ Director
20 Johnson clarified that “[i]n considering whether exceptional circumstances exist,
21
22

23 ²¹ INS, housed within the Department of Justice, became ICE after the
24 formation DHS in 2002.

25 ²² Ex. 5 at 2.

26 ²³ Ex. 5 at 3.

27 ²⁴ Ex. 5 at 4.

²⁵ Ex. 5 at 5.

1 prior convictions alone do not necessarily indicate a public safety threat of danger to
2 the community.”²⁶

3 On February 18, 2025, ICE issued a directive to agents encouraging them to
4 seek to re-detain noncitizens with final removal orders who had been previously
5 released from custody for the purpose of removal to previously recalcitrant countries
6 of origin, or to third countries.²⁷ The directive did not provide justification as to why
7 detention of noncitizens complying with orders of supervision would be necessary to
8 effectuate removal to country of origin or otherwise.

9 GROUND S FOR RELIEF

10 I. Ground One: The continued indefinite detention of Mr. Hassan 11 violates his Fifth Amendment right to due process because his 12 removal is not reasonably foreseeable.

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

15 The INA requires mandatory detention of individuals with final removal
16 orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2). A noncitizen
17 who is not removed within that period “shall be subject to supervision under
18 regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3). If ICE does
19 not remove the noncitizen within the 90-day removal period, the noncitizen “*may* be
20 detained beyond the removal period.” 8 U.S.C. § 1231(a)(6) (emphasis added).

21 However, in *Zadvydas*, the Supreme Court concluded that due process imposes an
22 “implicit limitation” upon 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 689.

23 Specifically, the Court held that 8 U.S.C. § 1231(a)(6) authorizes detention only for
24 “a period reasonably necessary to bring about [the noncitizen]’s removal from the
25

26 ²⁶ Ex. 5 at 5.

27 ²⁷ Ex. 6 at 3.

1 United States,” and that six months of detention after the removal order is final is
2 “presumptively reasonable.” *Id.* at 689, 701. The Court further determined that
3 “once the [noncitizen] provides good reason to believe that there is no significant
4 likelihood of removal in the reasonably foreseeable future, the Government must
5 respond with evidence sufficient to rebut that showing.” *Id.* at 701.

6 Mr. Hassan’s detention is governed by 8 U.S.C. § 1231(a)(6) because he has
7 been detained for more than 90 days since he was ordered removed. Here, the 90-
8 day removal period began either on February 8, 2021, when the IJ ordered removal
9 and granted CAT protection (if both parties waived appeal), or 30 days later, when
10 the time to file an appeal expired. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R.
11 § 1241.1(b), (c). Therefore, the *Zadvydas* framework applies.

12 Mr. Hassan’s continued detention is unreasonable because his removal is not
13 reasonably foreseeable. As of the filing date of this Amended Petition, five years
14 have passed since the IJ issued an order of removal in immigration proceedings. On
15 information and belief, Mr. Hassan was detained for the initial 90-day removal
16 period after his order of removal was entered in 2021, and since being recently re-
17 detained by ICE, he has now been in custody for several months. Mr. Hassan cannot
18 be removed to Sudan, and he is not a citizen of, nor does he have any meaningful
19 connection to, *any other* country. Mr. Hassan is aware of no specific plans to deport
20 him, nor has a third country designation been made.

21 The Due Process Clause of the Fifth Amendment forbids the government
22 from depriving any “person” of liberty “without due process of law.” U.S. Const.
23 Amend. V. Mr. Hassan has a liberty interest in remaining free from physical
24 confinement where removal is not reasonably foreseeable. Respondents have
25 violated the Due Process Clause of the Fifth Amendment because Mr. Hassan’s
26 removal is not reasonably foreseeable. As provided above, *Zadvydas* requires that
27 he be immediately released. *See* 533 U.S. at 700-01 (describing release as an

appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release “subject to . . . terms of supervision”).

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

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

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

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

Title 8 C.F.R. § 241.4(l) applies to re-detention of individuals previously released by ICE generally, while 8 C.F.R. § 241.13(i) applies to persons released after providing good reason to believe that they will not be removed in the reasonably foreseeable future, as Mr. Hassan plainly was. *See Rokhfirooz v. Larose*, 804 F. Supp. 3d 1095, 1097-98 (S.D. Cal. 2025). These regulations permit an official to return the noncitizen to custody because the noncitizen “violate[d] any of the conditions of release.” 8 C.F.R. § 241.13(i)(1); *see also id.* § 241.4(l)(1). Otherwise, they permit revocation of release only if the appropriate official (1) “determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future,” *id.* § 241.13(i)(2), and (2) makes that finding “on account of

1 changed circumstances.” *Id.* No matter the reason for re-detention, the re-detained
2 person is entitled to “an initial informal interview promptly,” during which they
3 “will be notified of the reasons for revocation.” *Id.* §§ 241.4(l)(1), 241.13(i)(3). The
4 interviewer must “afford the [person] an opportunity to respond to the reasons for
5 revocation,” allowing them to “submit any evidence or information” relevant to re-
6 detention and evaluating “any contested facts.” *Id.*

7 ICE is required to follow its own regulations. *United States ex rel. Accardi v.*
8 *Shaughnessy*, 347 U.S. 260, 268 (1954); *see also Alcaraz v. INS*, 384 F.3d 1150, 1162
9 (9th Cir. 2004) (“The legal proposition that agencies may be required to abide by
10 certain internal policies is well-established.”). A court may review a re-detention
11 decision for compliance with the regulations. *See e.g., Nguyen v. Noem*, No.
12 25CV2792-LL-VET, 2025 WL 3101979, at *2 (S.D. Cal. Nov. 6, 2025); *Phan v.*
13 *Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025);
14 *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 150 (D. Mass. June 20, 2025) (citing *Kong v.*
15 *United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

16 None of the prerequisites to detention apply here. On information and belief,
17 Mr. Hassan has not been told that he was returned to custody because of a
18 “conditions” violation. And there are no changed circumstances that justify re-
19 detaining him. Mr. Hassan still cannot be removed to Sudan, and there is no
20 indication that any other country has agreed to issue him travel documents. Even if
21 Respondents possess a vague intention to remove Mr. Hassan, absent any evidence
22 as to “why obtaining a travel document is more likely this time around[,]”
23 Respondents’ intent to eventually complete a travel document request for Petitioner
24 does not constitute a changed circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-
25 DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No.
26 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Mr.
27

1 Hassan received any information about why he was recently re-detained or been
2 able to contest the revocation of his release.

3 Numerous courts have released re-detained immigrants after finding that
4 ICE failed to comply with applicable regulations. *See e.g., Ghafouri v. Noem*, No.
5 3:25-CV-02675-RBM-BLM, 2025 WL 3085726, (S.D. Cal. Nov. 4, 2025); *Ceesay v.*
6 *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp.
7 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass.
8 2017); *Zhu v. Genalo*, 798 F. Supp. 3d 400, 411-14 (S.D.N.Y. 2025); *M.S.L. v.*
9 *Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10-12 (D. Or. Aug. 21, 2025);
10 *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2-3 (E.D. Tex.
11 July 18, 2025); *Hoac*, 2025 WL 1993771, at *4; *Liu*, 2025 WL 1696526, at *2;
12 *Rokhfirooz*, 804 F. Supp. 3d at 1097-98; *see also M.Q. v. United States*, 776 F. Supp.
13 3d 180, 190 n.1 (S.D.N.Y. Mar. 31, 2025).

14 Accordingly, “because officials did not properly revoke petitioner’s release
15 pursuant to the applicable regulations, that revocation has no effect, and petitioner
16 is entitled to his release (subject to the same Order of Supervision that governed his
17 most recent release).” *Liu*, 2025 WL 1696526, at *3.

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

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

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

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

5 As explained above, Mr. Hassan has a due process right to meaningful notice
6 and opportunity to present a fear-based claim to an immigration judge before DHS
7 deports him to a third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
8 1999); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009-11 (W.D. Wash. 2019). Mr.
9 Hassan also has a due process right to implementation of a process or procedure to
10 afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S.
11 479, 491 (1991). Respondents, however, have adopted a policy—set forth in the
12 March 30 Memo and July 9 Directive—that is arbitrary and capricious and deprives
13 Mr. Hassan of meaningful notice and an opportunity to present a fear-based claim
14 to an immigration judge prior to his deportation to a third country. Moreover,
15 Respondents’ policy also violates the INA and implementing regulations which
16 mandate that Respondents refrain from removing Mr. Hassan, and similarly
17 situated individuals, to a third country where they will likely be persecuted or
18 tortured, thus requiring Respondents to provide meaningful notice of deportation to
19 a third country and the opportunity to present a fear-based claim to an immigration
20 judge before deporting an individual to a third country. In this case, the March 30
21 Memo and July 9 Directive demonstrate Respondents do not intend to observe those
22 protections.²⁸

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25
26 ²⁸ See also Gerald Imray, *3 Deported by U.S. Held in African Prison Despite*
27 *Completing Sentences, Lawyers Say*, PBS NEWS (Sept. 2, 2025),
<https://www.pbs.org/newshour/amp/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say>.

1 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 him to a third country—Mr. Hassan be provided with meaningful
 5 notice and opportunity to present a fear-based claim to an immigration judge.

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

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

16 **PRAYER FOR RELIEF**

17 Accordingly, Salah Hassan respectfully requests that this Court:

- 18 1. Declare that Petitioner’s continued detention violates the Immigration
 19 and Nationality Act, 8 U.S.C. § 1231(a)(6); the Administrative Procedure Act, 5
 20 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the
 21 U.S. Constitution;
- 22 2. Order Petitioner’s immediate release;
- 23 3. Prohibit Respondent’s from re-detaining Petitioner in the future
 24 absent proof of changed circumstancing making his removal reasonably foreseeable;
- 25 4. Prohibit Respondents from removing petitioner to a third country
 26 without providing Petitioner and Petitioner’s counsel with adequate notice of intent
 27 to seek removal to a third country and due process in the form of an opportunity to

1 seek to reopen Petitioner's immigration court proceedings to seek fear-based relief
2 from removal; and

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

5 Dated March 11, 2026.

6 Respectfully submitted,

7
8 Rene L. Valladares
9 Federal Public Defender

10 /s/ Kelly Recker

11 Kelly Recker
12 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 11, 2026.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Kelly Recker

Kelly Recker
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on March 11, 2026. I personally served a true and correct copy of the foregoing First Amended § 2241 Petition by CM/ECF to the following individuals:

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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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2
3 /s/ Shanyla Curtis

4 An Employee of the
5 Federal Public Defender
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