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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No.

**PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241**

2:26-cv-00412-CDS-NJK

~~REDACTED~~ BUI-TU-TAN

Petitioner,

v.

PAMELA BONDI, Attorney General of the
United States; KRISTI NOEM, Secretary,
United States Department of Homeland
Security; MICHAEL BERNACKE, Field
Director, West Valley City Office; TODD
LYONS, Acting Director; JOHN MATTOS,
Nevada Southern Detention Center,

Respondents.

Personal Information

1. (a) ~~XXXXXXXXXX~~ BUI-TU -TAN

(b) Other names used:

2. Place of confinement:

(a) Nevada Southern Detention Center

(b) 2190 E Mesquite Avenue, Pahrump, NV 89048

(c) Case number or numbers: My A No. i ~~XXXXXXXXXX~~

3. I am currently being held on orders by federal authorities: United States Immigration and Customs Enforcement.

4. I am currently being held pursuant to a final removal order dated 08-2002 ~~XXXXXXXXXX~~.

Decision or Action You Are Challenging

5. What are you challenging in this petition: immigration detention.

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: United States Immigration and Customs Enforcement

(b) ~~XXXXXXXXXX~~ Docket number, case number, or opinion number: My A No. is

(c) Decision or action you are challenging: I was originally ordered removed on 08-2002

I was taken into custody by ICE on ~~08-2002~~ 09-10-2025 I have been detained in ICE custody for 5 months following my final deportation order.

Your Earlier Challenges of the Decision or Action

7-9. First, second, and third appeals: None

10. Motion under 28 U.S.C. § 2255: N/A

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

(a) Date you were taken into immigration custody: 9/10/2025

(b) Date of the removal or reinstatement order: 08/2002

(c) Did you file an appeal with the Board of Immigration Appeals? No

If "Yes," provide answers.

(1) Date of filing:

(2) Case number:

(3) Result:

(4) Date of result:

(5) Issues raised:

(d) Did you appeal the decision to the United States Court of Appeals? If "Yes," provide answers. No

(1) Name of court:

(2) Date of filing

(3) Case number:

(4) Result:

(5) Date of result:

(6) Issues raised:

12. Other appeals: No

Other than the appeals listed above, have you filed any other petition, application, or motion about the issues raised in this petition? ☐ Yes ☒ No

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

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

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

PARTIES

BUI TU TAN
[REDACTED] is a citizen of Vietnam. He is detained in the control and custody of Respondents in Nevada.

John Mattos is the warden of Nevada Southern Detention Center. Mattos, in his official capacity, is the immediate custodian of Petitioner.

Michael Bernacke is the Field Director of the West Valley City Office of ICE Enforcement and Removal Operations, which has jurisdiction of enforcement and removal operations over detention facilities in Nevada, including Nevada Southern

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

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

7 Kristi Noem is the Secretary of the Department of Homeland Security, which
8 oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of
9 Petitioner.

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

14
15 **STATEMENT OF FACTS**

16 Brief statement regarding immigration history and detention:

17 Indefinite Removal, Pre longed Detention
18 I have High Blood Pressure, Disabled
19 minimum movement of my Arms.
20 MEDICAL CONDITIONS: Due to Negligent
21 MEDICAL Attention. I have lived in
22 The United States For over 32 years.
23 I help my Elderly mother TAKING
24 CARE of Her. I DON'T want and
25 CN'T leave my mother Alone to
26 Tend For Herself.
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GROUNDS FOR RELIEF

Ground One: Petitioner's continued detention violates his Fifth Amendment right to due process because his removal is not reasonably foreseeable.

The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. Petitioner has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable. Respondents have violated the Due Process Clause of the Fifth Amendment because Petitioner's removal is not reasonably foreseeable.

The INA requires mandatory detention of individuals with final removal orders only during the 90-day removal period. 8 U.S.C. § 1231(a)(2). A noncitizen who is not removed within that period "shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3). If ICE does not remove the noncitizen within the 90-day removal period, the noncitizen "may be detained beyond the removal period." 8 U.S.C. § 1231(a)(6) (emphasis added). However, in *Zadvydas*, supra, the Supreme Court concluded that due process imposes an "implicit limitation" upon 8 U.S.C. § 1231(a)(6). *Zadvydas*, 533 U.S. at 689. Specifically, the Court held that 8 U.S.C. § 1231(a)(6) authorizes detention only for "a period reasonably necessary to bring about the [noncitizen]'s removal from the United States" and that six months of detention after the removal order is final is "presumptively reasonable." *Id.* at 701. The Court further determined that "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

Petitioner's detention is governed by 8 U.S.C. § 1231(a)(6) because he has been detained for far more than 90 days since he was ordered removed. Therefore, the *Zadvydas* framework applies.

1 Petitioner's continued detention is unreasonable and his removal is not
2 reasonably foreseeable. As of the filing date of this Petition, more than ⁵ months
3 have passed since he was detained, and it has been nearly ²⁴ years since the
4 immigration judge issued an order of removal in immigration proceedings. Despite
5 his lengthy detention, Respondents have not been able to effectuate his removal
6 either to his country of origin, or to a third country. His removal is no longer
7 reasonably foreseeable, so the Constitution and the holding of *Zadvydas* compel his
8 immediate release. *See* 533 U.S. at 700-01 (describing release as an appropriate
9 remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of
10 supervision").

11
12 **Ground Two: Petitioner's continued detention violates the Immigration**
13 **and Nationality Act, 8 U.S.C. § 1231(a)(6).**

14 As provided in Ground One, above, Petitioner's detention is governed by 8
15 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas, supra*.
16 Petitioner's continued detention violates 8 U.S.C. § 1231(a)(6) because it is both
17 unreasonable and because removal is not reasonably foreseeable. As further
18 discussed in Ground Three, incorporated herein by reference, Petitioner poses
19 neither a risk of flight nor a danger to the community. Rather, his continued
20 detention under 8 U.S.C. § 1231(a)(6) is driven by sweeping and arbitrary DHS
21 policies. Moreover, and as discussed in Ground One, Petitioner's removal is not
22 reasonably foreseeable. This Court should order that Petitioner be released.

23 **Ground Three: ICE's continued detention of Petitioner, without providing**
24 **an individualized custody assessment pursuant to ICE policy, violates the**
25 **Administrative Procedures Act, 5 U.S.C. § 706(2)(A).**

26 Under the Administrative Procedures Act (APA), a court must hold unlawful
27 and set aside agency action found to be "arbitrary, capricious, an abuse of

1 discretion, or otherwise not in accordance with law” or “without observance of
2 procedure required by law.” 5 U.S.C. §706(2). An agency action is “arbitrary and
3 capricious if the agency has relied on factors which Congress has not intended it to
4 consider, entirely failed to consider an important aspect of the problem, offered an
5 explanation for its decision that runs counter to the evidence before the agency, or is
6 so implausible that it could not be ascribed to a difference in view or the product of
7 agency expertise.” *Motor Vehicles Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto.*
8 *Ins. Co.*, 463 U.S. 29, 43 (1983). Courts “defer to an agency’s determinations so long
9 as the agency ‘gives adequate reasons for its decisions, in the form of a satisfactory
10 explanation for its action including a rational connection between the facts found
11 and the choice made.” *Nat. Res. Def. Council, Inc. v. United States Env’t Prot.*
12 *Agency*, 961 F.3d 160, 170 (2d Cir. 2020) (cleaned up).

13 As noted in 8 C.F.R. §241.4, before the end of the 90-day removal period, the
14 local ICE field office with jurisdiction over a noncitizen’s detention must conduct a
15 custody review to determine whether the noncitizen should remain detained. *See* 8
16 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). A copy of any decision to release or continue to
17 detain a noncitizen “shall be provided to the detained [noncitizen].” 8 C.F.R.
18 §241.4(d). Where ICE decides that a noncitizen will stay detained, the decision
19 provided to the noncitizen “shall briefly set forth the reasons for the continued
20 detention.” *Id.* The criteria for determining if continued detention is warranted
21 mainly concerns whether the noncitizen presents a risk of flight or danger to the
22 community. 8 C.F.R. §241.4(e). The review panel members must also determine that
23 travel documents are not available or that “immediate removal, while proper, is
24 otherwise not practicable or not in the public interest.” *Id.*

25 Petitioner’s continued detention without an individualized assessment is
26 arbitrary and capricious. Because there is no evidence that Respondents found
27 Petitioner to be a danger or a flight risk, or that he had travel documents, the

1 decision to continue detaining him violates DHS's own regulations. "It is a familiar
2 rule of administrative law that an agency must abide by its own regulations." *Fort*
3 *Stewart Schs. v. Fed. Lab. Rels. Auth.*, 495 U.S. 641, 654 (1990); *see also United*
4 *States ex rel Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (holding that government
5 agencies are required to follow their own regulations). In addition, continuing to
6 detain Petitioner is contrary to ICE's longstanding policy of releasing individuals
7 granted withholding of removal absent an exceptional reason not to do so. Even the
8 new directives regarding removal to third countries, which on their face are
9 unconstitutional and in violation of the INA because they fail to provide the
10 requisite due process and comply with the regulations, do not provide any reason
11 that a noncitizen in Petitioner's position should not be released. Accordingly,
12 Petitioner's continued detention violates the APA because it is arbitrary and
13 capricious and not in accordance with law.

14 This Court should order that Petitioner be released because Respondents
15 have not demonstrated that he was afforded proper procedures related to his
16 continued detention, or that he warrants continued detention under the regulations.
17 Accordingly, his continued detention is unlawful.

18 **Ground Four: ICE's policy to remove noncitizens to a third country with**
19 **no notice or opportunity to seek fear-based protection constitutes**
20 **arbitrary and capricious agency action in violation of the Administrative**
Procedure Act, 5 U.S.C. § 706.

21 The APA entitles "a person suffering legal wrong because of agency action, or
22 adversely affected or aggrieved by agency action . . . to judicial review." 5 U.S.C. §
23 702. Further, the APA compels a reviewing court to "hold unlawful and set aside
24 agency action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . .
25 otherwise not in accordance with law," *id.* § 706(2)(A), or "short of statutory right,"
26 *id.* § 706(2)(C). The APA also compels a reviewing court to "hold unlawful and set
27

1 aside agency action, findings, and conclusions found to be . . . without observance of
2 procedure required by law.” 5 U.S.C. § 706(2)(D).

3 Petitioner has a due process right to meaningful notice and opportunity to
4 present a fear-based claim to an immigration judge before DHS deports him to a
5 third country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Aden v.*
6 *Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Petitioner also has a due
7 process right to implementation of a process or procedure to afford these
8 protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991).
9 Respondents, however, have adopted a policy—set forth in their March 30, 2025
10 memo and July 9, 2025, directive—that is arbitrary and capricious and deprives
11 Petitioner of meaningful notice and an opportunity to present a fear-based claim to
12 an immigration judge prior to his deportation to a third country. Moreover,
13 Respondents’ policy also violates the INA and implementing regulations which
14 mandate that Respondents refrain from removing Petitioner, and similarly situated
15 individuals, to a third country where they will likely be persecuted or tortured, thus
16 requiring Respondents to provide meaningful notice of deportation to a third
17 country and the opportunity to present a fear-based claim to an immigration judge
18 before deporting an individual to a third country. In this case, the March 30 memo
19 and July 9 directive and Respondents recent actions in this case and others,
20 demonstrate Respondents do not intend to observe those protections.¹

21 The APA empowers federal courts to “compel agency action unlawfully
22 withheld or unreasonably delayed.” 5 U.S.C. § 706(1). The Court should hold that
23 Respondents’ actions and policy are unlawful and compel that—before any attempt
24

25 ¹ *See also* Lunga Masuku, Eswatini government faces court challenge for
26 accepting US deportees, THE GUARDIAN (Aug. 22, 2025),
27 <https://www.reuters.com/world/africa/eswatini-government-faces-court-challenge-accepting-us-deportees-2025-08-22/>.

1 is made to deport him to a third country—Petitioner be provided with meaningful
2 notice and opportunity to present a fear-based claim to an immigration judge.

3
4 **Ground Five: Petitioner’s detention in immigration custody pending**
5 **removal to any third country pursuant to recent ICE policy violates the**
6 **Due Process Clause of the Fifth Amendment.**

7 “It is well established that the Fifth Amendment entitles aliens to due
8 process of law in the context of removal proceedings.” *Trump v. J.G.G.*, 145 S. Ct.
9 1003, 1006 (2025)(per curiam(quoted *Reno v. Flores*, 507 U.S. 292, 306 (1993)).
10 Petitioner is thus entitled to “notice and an opportunity to be heard appropriate to
11 the nature of the case.” *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*,
12 339 U.S. 306, 313 (1950)). As relevant here, this means that Petitioner is entitled to
13 notice that he is to be removed to a third country “within a reasonable time and in
14 such a manner as will allow [him] to actually seek habeas relief in the proper venue
15 before such removal occurs.” *Id.*

16 Petitioner has not had an opportunity to contest removal to any third country
17 on the ground that he may face persecution or torture if he is removed to that
18 country. To the extent that Petitioner’s continued detention is meant to facilitate
19 his removal to a third country, his detention is unlawful because, as argued in
20 Ground Four, ICE’s procedure for third country removal is arbitrary and capricious,
21 and does not comply with due process. Any such future removal would be
22 accomplished in violation of his due process rights, rendering his detention on that
23 basis unlawful. This due process claim “necessarily impl[ies] the invalidity of [his]
24 confinement and removal” to a third country not yet named in any removal order.
25 *J.G.G.*, 145 S. Ct. at 1005. Thus, his due process claim is properly brought in these
26 habeas proceedings, and ordering his release from detention is a proper remedy for
27 such a violation.

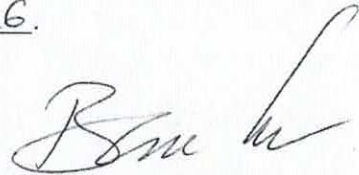
BUI-TU-TAN PRAYER FOR RELIEF

Accordingly ~~XXXXXX~~ respectfully requests that this Court:

BUI-TU-TAN

1. Issue a writ of habeas corpus to have ~~XXXXXX~~ brought before the Court so that he may be discharged from his unconstitutional confinement;
2. Conduct an evidentiary hearing at which proof may be offered concerning the allegations in this amended petition and any defenses that may be raised by respondents; and
3. Grant such other and further relief as, in the interests of justice, may be appropriate.

DATED this 11 day of 02, 2026.



~~XXXXXX~~ BUI-TU-TAN