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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Farhad Navaie, Petitioner, vs. David R. Rivas, Warden, San Luis Detention Center; Gregory J. Archambeault, San Diego Field Office Director, U.S. Immigration and Customs Enforcement; Pamela Jo Bondi, Attorney General of the United States; and Kristi Noem, Secretary of Homeland Security, Respondents.	No. **Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241**

Technical Data

1. Mr. Navaie is challenging the validity of his detention in immigration custody. His A-number is [redacted]

2. Mr. Navaie is challenging the decision made by U.S. Immigration and Customs Enforcement to revoke a prior release order issued in 2001 and that he be detained pending removal from the United States.

3. Mr. Navaie is presently detained at the San Luis Regional Detention Center in San Luis, Arizona. He has been in immigration custody for 159 days. Upon information and belief, an immigration judge denied him a bond hearing for lack of jurisdiction under *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). Accordingly, Mr. Navaie is exempt from any exhaustion requirement that may apply to him.

Parties, Jurisdiction, and Venue

4. Petitioner Farhad Navaie is a native and citizen of Iran. In 2001, he lost his status as a legal permanent resident of the United States when he was ordered removed following a conviction for second-degree robbery, in violation of Cal. Penal Code §§ 211 and 212.5(c). *See United States v. Gonzalez*, 429 F.3d 1252, 1254 (9th Cir. 2005) (noting that robbery under § 211 is an aggravated felony). He was released on an order of supervision. He was complying with that order until he was arrested by immigration officials on March 13, 2025, and taken into custody.

5. Respondent David R. Rivas is the Warden of San Luis Regional Detention Center, where Mr. Navaie is being detained. He is Mr. Navaie's immediate legal custodian and thus a proper respondent in this matter. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).

6. Respondent Gregory J. Archambeault is the San Diego Field Office Director for U.S. Immigration and Customs Enforcement. He is responsible for Mr. Navaie's detention, and thus a legal custodian of Mr. Navaie.

7. Respondents Kristi Noem and Pamela J. Bondi are, respectively, the Secretary of Homeland Security and the Attorney General of the United States. As such, they are responsible for maintaining the immigration detention system. They are thus legal custodians of Mr. Navaie.

8. This Court has jurisdiction under 28 U.S.C. §§ 2241 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Fifth Amendment to the United States Constitution.

9. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because a substantial part of the events or omissions giving rise to the claims set forth herein occurred in this district.

Background

10. Mr. Navaie is a native and citizen of the Islamic Republic of Iran. He was born in 1975, under the government of the shah. In 1979, when he was four years old, the shah was overthrown and a theocratic republic was installed. He left Iran in approximately 1997 for the United States, where he gained legal permanent resident status.

11. In 2001, he lost his status as a legal permanent resident after he was convicted of second-degree robbery, in violation of Cal. Penal Code §§ 211 and 212.5(c), in the Los Angeles County Superior Court. Because a conviction under § 211 is an aggravated felony, *see United States v. Gonzalez*, 429 F.3d 1252, 1254 (9th Cir. 2005), Mr. Navaie was ordered removed to Iran. *See* 8 U.S.C. § 1227(a)(2)(A)(iii) (aliens convicted of aggravated felonies are removable). But because Iran would not accept his return, he was instead allowed to remain in the United States on an order of supervision.

12. Over the next 23 years, according to Mr. Navaie, he complied fully with the order of supervision. On March 13, 2025, he appeared for a regular check-in with officials of the Bureau of Immigration and Customs Enforcement. He was then arrested and detained by ICE officials. He was ultimately transferred to the San Luis Detention Center in San Luis, Arizona.

13. According to Mr. Navaie, ICE has requested travel documents for him. This request was likely directed at the Office for the Protection of the Interests of the Islamic Republic of Iran. This office is hosted by the Pakistani Embassy in Washington, DC. *See Nibkakhsh-Tali v. Mukasey*, No. 2:07-cv-1526-PHX-NVW, 2008 WL 2328354, at *3 (D. Ariz. Jun. 4, 2008) (report and recommendation of Velasco, M.J.). Another judge of this Court concluded, in 2008, that in light of Iran's lack of cooperation (through the Pakistani

Embassy) with a request for travel documents, an immigration detainee's removal to Iran was not significantly likely in the reasonably foreseeable future. *Id.* at *8.

14. According to Mr. Navaie, Iranian officials have told him that because he has been away from Iran for nearly 30 years, Iran will not accept him as a returning citizen.

15. Upon information and belief, ICE's Headquarters Post-order Removal Detention Unit is presently reviewing Mr. Navaie's case to ascertain whether there is a significant likelihood that he will be removed to Iran in the reasonably foreseeable future. *See generally* 8 C.F.R. § 241.13.

16. But ICE has already concluded that there is no such likelihood. In November 2024, ICE issued a report (which is attached to this filing as an exhibit) explaining that Iran is one of 15 countries that it classifies as "uncooperative" with what ICE believes as Iran's "obligat[ion] to accept the return of its citizens and nationals who are ineligible to remain in the United States."

17. Thus there is no significant likelihood that Mr. Navaie will be removed to Iran in the reasonably foreseeable future.

18. Although Mr. Navaie was ordered removed in 2001, according to the online Automated Case Information database maintained by the Executive Office of Immigration Review, a case concerning Mr. Navaie was docketed in immigration court on July 15, 2025.

    a. Upon information and belief, this event concerned a request for a bond hearing before an immigration judge.

    b. Upon information and belief, that request was denied for lack of jurisdiction under *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025).

Grounds for Relief

Ground One: Mr. Navaie's detention in immigration custody violates the Due Process Clause of the Fifth Amendment because there is no significant likelihood of removal in the reasonably foreseeable future.

19. Mr. Navaie cannot presently be returned to Iran, because Iran has indicated it will not accept him for return and it does not cooperate with ICE's efforts to obtain travel documents on behalf of its nationals.

20. For approximately 24 years, ICE believed that Iran would not cooperate with its efforts to obtain travel documents for Mr. Navaie. That is why he was allowed to remain at liberty in the United States since 2001 on an order of supervision. The current administration decided—contrary to this decades-long belief—to revoke that order and take him into custody.

21. Mr. Navaie's present detention is purportedly authorized under 8 U.S.C. § 1231.

a. Detention of aliens who have been ordered removed is mandatory during the so-called "removal period." 8 U.S.C. § 1231(a)(1)(A). This period begins, as relevant here, on the "date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). Because Mr. Navaie's removal order became final in 2001, the removal period has expired and detention is no longer required under § 1231.

b. Aliens like Mr. Navaie who have been ordered removed because of a criminal conviction for an aggravated felony, *see* 8 U.S.C. § 1227(a)(2)(A)(iii), may be kept in detention after the removal period expires. *See* 8 U.S.C. § 1231(a)(6). If they are released, they "shall be subject to the terms of supervision" in § 1231(a)(3). 8 U.S.C. § 1231(a)(6). Those terms include periodic appearances before an immigration officer and other conditions prescribed by regulation. 8 U.S.C. § 1231(a)(3)(A), (D).

c. The government has previously argued that the statutory text of § 1231 authorizes indefinite detention. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

22. But the Supreme Court has interpreted § 1231 *not* to authorize indefinite detention in order to avoid a serious constitutional problem. *Zadvydas*, 533 U.S. at 689. The Due Process Clause of the Fifth Amendment limits an alien's "detention to a period reasonably necessary to bring about that alien's removal from the United States." *Id.* Because of this constitutional limitation, § 1231 "does not permit indefinite detention." *Id.* After six months of detention, there arises a presumption that the alien can "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," such that "the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701.

23. ICE has already concluded that there is no significant likelihood of removing anyone to Iran in the reasonably foreseeable future. The government cannot therefore rebut the presumption that

24. Thus Mr. Navaie's continued detention in ICE custody violates the Due Process Clause of the Fifth Amendment as described in *Zadvydas*.

Ground Two: Mr. Navaie's detention in immigration custody violates the Due Process Clause of the Fifth Amendment because he is being denied a bond hearing before a neutral decisionmaker.

25. As Mr. Navaie has explained, his detention is unreasonably prolonged because there is no significant likelihood of his removal to Iran in the reasonably foreseeable future. That fact violates the Due Process Clause as articulated in *Zadvydas*.

26. Following a precedential decision of the Board of Immigration Appeals, *see Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), an immigration judge has denied Mr. Navaie a bond hearing for lack of jurisdiction. Neither the Supreme Court nor the Ninth Circuit have determined whether the Due Process Clause of the Fifth Amendment permits indefinite detention without a bond hearing.

    a. As previously explained, Mr. Navaie's present detention in immigration custody is authorized by § 1231, as limited by the constraints of the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 690–99 (explaining how the Due

Process Clause limits the otherwise-indefinite detention authorized by the text of § 1231). The Court in *Zadvydas* noted that detention authorized by statute in other contexts must carry "adequate procedural protections." *Id.* at 690 (citing *United States v. Salerno*, 481 U.S. 739, 746 (1987)). But the sole procedural protections afforded to aliens whose detention is authorized by § 1231 "are found in administrative proceedings, where the alien bears the burden of proving that he is not dangerous, without… significant later judicial review." *Id.* at 692 (citing 8 C.F.R. § 241.4(d)(1) (2001)). The question whether those procedural protections were adequate to vindicate the unremovable alien's liberty interest in indefinite detention was "strong enough to raise a serious question as to whether" indefinite detention without an individualized hearing before a neutral decisionmaker under § 1231 was consistent with the requirements of due process. *Id.* at 696.

b. Whether due process requires that unremovable aliens subject to indefinite detention under § 1231 to receive a bond hearing before a neutral decisionmaker remains an open question even after *Zadvydas*.

c. In 2011, the Ninth Circuit, following the constitutional-avoidance reasoning of *Zadvydas*, held that § 1231 implicitly requires bond hearings for unremovable aliens who have been detained for six months or longer. *Diouf v. Napolitano*, 634 F.3d 1081, 1086 (9th Cir. 2011). With reasoning parallel to that in *Zadvydas*, the Ninth Circuit held that "prolonged detention under § 1231(a)(6), without adequate procedural protections, would raise serious constitutional concerns. To address those concerns, we apply the canon of constitutional avoidance and construe § 1231(a)(6) as requiring an individualized bond hearing, before an immigration judge, for aliens facing prolonged detention under that provision. Such aliens are entitled to release on bond unless the government establishes that the alien is a flight risk or will be a danger to the community." *Id.* (citations omitted). Because the court in *Diouf* relied on a rule of statutory interpretation to

reach its result—the constitutional avoidance canon—it did not reach the question whether the Due Process Clause required such hearings. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1199 (9th Cir. 2022).

d. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court expressly avoided the due-process question as well. That case involved detention of other classes of aliens under different provisions of the Immigration and Nationality Act than did *Zadvydas*. *See* 583 U.S. at 299–300. On remand from the Supreme Court, the Ninth Circuit in *Rodriguez v. Marin* observed that the Supreme Court "chose to answer only the question whether the statutory text itself included a limit on prolonged detention or a requirement of individual bond hearings. In an opinion authored by Justice Alito, the Court concluded that as a matter of statutory construction, the only exceptions to indefinite detention were those expressly set forth in the statutes or related regulations." 909 F.3d 252, 255 (9th Cir. 2018).

e. Because the Supreme Court in *Rodriguez* had not squarely addressed § 1231, the Ninth Circuit held that the requirement of holding bond hearings for unremovable aliens detained under § 1231 imposed in *Diouf* remained good circuit law in the wake of the Supreme Court's decision. *Aleman Gonzalez v. Barr*, 955 F.3d 762, 777 (9th Cir. 2020). Because the Supreme Court in *Rodriguez* had not expressly addressed § 1231, the Ninth Circuit reasoned that *Diouf* had not been implicitly overruled by the Supreme Court in *Rodriguez*. *Aleman Gonzalez*, 955 F.3d at 777–79.

f. The Supreme Court reversed the Ninth Circuit's constitutional-avoidance holding in *Aleman Gonzalez* two years later. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). "*Zadvydas*," the Court said, "does not require, and *Jennings* [*v. Rodriguez*] does not permit, the… application of the canon of constitutional avoidance." *Id.* at 582.

g. Before the Supreme Court in *Arteaga-Martinez*, the detained aliens also argued that due process forbids "prolonged detention without an individualized hearing, before a neutral adjudicator, at which the detainee has a meaningful opportunity to participate." *Id.* at 583. The Supreme Court expressly decided not to address this argument. "We are a court of review, not of first view. The courts below did not reach Arteaga-Martinez's constitutional claims because they agreed with him that the statute required a bond hearing. We leave them for the lower courts to consider in the first instance." *Id.* (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718, n.7 (2005)) (cleaned up).

27. Mr. Navaie thus contends that the Due Process Clause requires that he receive a bond hearing before a neutral decisionmaker because there is no significant likelihood of his being removed in the reasonably foreseeable future.

a. "[T]he majority of courts across the country" to address this question agree. *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020). District courts have therefore ordered bond hearings for migrants detained under various statutes. *See id.* (ordering bond hearing for immigrant detained under 8 U.S.C. § 1225(b)); *Arechiga v. Archambeault*, No. 23-CV-600, 2023 WL 5207589, at *3 (D. Nev. Aug. 11, 2023) (same, and collecting cases); *Santos v. Warden, Pike County Correctional Facility*, 965 F.3d 203, 210 (3d Cir. 2020) (same, for detention under 8 U.S.C. § 1226(c)); *Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *7 (S.D. Cal. Jan. 9, 2023) (same); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (same, and collecting cases).

b. These courts agree that due process mandates a bond hearing when detention grows unreasonably prolonged. But they disagree about what factors to use when assessing whether a particular migrant's detention has reached that point. *Sanchez-Rivera*, 2023 WL 139801, at *5–6 (surveying the various approaches). Additionally, courts do not ordinarily do not have the occasion to address people

detained after receiving a final order of removal, because *Zadvydas* typically provides the more appropriate vehicle for evaluating post-removal-order detention. Accordingly, many of the factors that courts use—e.g., "the likelihood that removal proceedings will result in a final order of removal," "the nature of the crimes the petitioner committed" to warrant removal, and "delays in the removal proceedings caused by the petitioner and the government," *Sanchez-Rivera*, 2023 WL 139801, at *5–6—are not applicable to an unsuccessful asylum-seeker with a final removal order.

c. Accordingly, if this Court rejects Mr. Navaie's bid for *Zadvydas* relief, this Court will have to determine what factors govern a post-removal-order due process claim. These will likely be similar to the kinds of due process concerns that animate *Zadvydas* itself. *See* 533 U.S. 678, 690–95 (2001). For example, this Court might consider how long the government has been trying to remove Mr. Navaie, whether ICE's removal efforts will likely succeed in the reasonably foreseeable future, and whether Mr. Navaie is responsible for the government's inability to remove him. Here, these factors all favor Mr. Navaie.

d. ICE has recently determined that Iran is uncooperative with its efforts to repatriate Iranian citizens who have been ordered removed. This has been the case for Mr. Navaie since at least 2001, and there is no reason to believe it will change in the reasonably foreseeable future. Mr. Navaie, moreover, fully cooperated with the terms of his supervised release during the 23 years that he was allowed to remain at liberty in the United States. Furthermore, Mr. Navaie has spent a significant amount of total time in detention. Since his recent arrest on March 13, 2025, he has been in custody for 159 days, and will remain in custody unless this Court orders his release.

e. Accordingly, even if Mr. Navaie were not entitled to *Zadvydas* relief, he would still be entitled to a bond hearing. His continued detention without such a hearing thus violates the Due Process Clause.

Prayer for Relief

28. Mr. Navaie is being illegally detained, in violation of the Due Process Clause of the Fifth Amendment. He respectfully asks the Court to:

a. order the government to answer this petition;

b. permit him to file a reply in support;

c. allow him to conduct discovery in order to support his claim for relief;

d. convene an evidentiary hearing, if needed to resolve disputed facts;

e. order Respondents to release him from their custody under supervision; and

f. grant any other relief that is just and practicable.

Respectfully submitted: August 19, 2025.

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