

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Ferdinandus Nahak,

Petitioner,

v.

Gregory J. Archambeault, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; **Jeremy Casey**, Facility Administrator, Imperial Regional Detention Facility,

Respondents.

**PETITION FOR A WRIT OF
HABEAS CORPUS**

Case No. '26CV0146 BTM SBC

INTRODUCTION

1. Petitioner Ferdinandus Nahak (“Mr. Nahak” or “Petitioner”), a 53-year-old citizen of Indonesia who has lived in the United States for 25 years, has been detained in Immigration and Customs Enforcement (ICE) custody since June 15, 2025, without a bond hearing, despite being granted Withholding of Removal on July 9, 2015. Mr. Nahak petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to remedy his unlawful detention by Respondents.

2. Mr. Nahak is detained pursuant to 8 U.S.C. § 1231, which governs the detention of non-citizens with final removal orders. *See Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2280 (2021). Mr. Nahak lived peaceably with a final removal order for the past 25 years and was granted Withholding of Removal from Indonesia on July 9, 2015. Almost exactly 10 years after his grant of Withholding of Removal, he was abruptly detained by ICE on Father’s Day, on his way to church. Presumptively, due to his order of Withholding of Removal, ICE now seeks to remove him to a third country.

3. Mr. Nahak remains detained—now at the Imperial Regional Adult Detention Facility (“Imperial”).

4. Mr. Nahak’s continued detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

5. Further, Mr. Nahak’s removal to a third country without sufficient notice and opportunity to be heard violates his due process rights. *Nguyen v. Scott*, 796 F. Supp. 3d 703, 727 (W.D. Wash. 2025), citing *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999).

6. As a remedy, Mr. Nahak requests immediate release from ICE custody. Alternatively, and at a minimum, he requests a bond hearing before an Immigration Judge (IJ) at which the Department of Homeland Security (DHS) bears the burden of proving by clear and convincing evidence that he is a flight risk or danger to the community and at which the adjudicator considers the suitability of alternative conditions of supervision and Mr. Nahak’s ability to pay bond.

JURISDICTION & VENUE

7. This case arises under the United States Constitution. This Court has subject matter jurisdiction under Art. I § 9, cl. 2 of the U.S. Constitution, 28 U.S.C. § 2241, and 28 U.S.C. § 1331.

8. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. See *German Santos*, 965 F.3d at 208; *Zadvydas*, 533 U.S. at 687. Administrative exhaustion is unnecessary as it would be futile.

9. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is detained in Imperial County within the jurisdiction of the Southern District of California.

PARTIES

10. Petitioner Ferdinandus Nahak is a native and citizen of Indonesia who has been in ICE custody since June 15, 2025.

11. Respondent Gregory J. Archambeault is the Acting Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, Respondent Archambeault is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

12. Respondent Jeremy Casey is employed as the Facility Administrator of the Imperial Regional Detention Facility, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

STATEMENT OF FACTS

13. Mr. Nahak entered the United States on a visitor's visa on or about December 28, 2000. He has lived her for 25 years.

14. Mr. Nahak has been married for 22 years to his wife, Sahlina Harianja, and together they have two U.S. citizen children. **Mr. Nahak's 19-year-old son, Paul, is an active duty member of the United States Navy.** Mr. Nahak's 20-year-old son, David, is a full-time mechanical engineering student in college. Prior to his detention, for 17 years, Mr. Nahak was lawfully working as a cardiac technician in Redlands, California. He has been an active member of his church since 2012, where he volunteers, donates, and participates in the outreach community. He and his wife own a home in Highland, California.

15. On July 9, 2015, the Immigration Court in Los Angeles, California granted Mr. Nahak's I-589, Application for Withholding of Removal, finding that it was more-likely-than not that he would suffer persecution if returned to his native Indonesia. *See* Ex. A, containing order

of the immigration court. In accordance with this status, Mr. Nahak has valid employment authorization.

16. On Sunday, June 15, 2025, Father's Day, Mr. Nahak was arrested by ICE on his way to church. Presumptively, given his Withholding of Removal Status, ICE now seeks to remove him to a third country.

17. If released, Mr. Nahak would return to live and work in California, with his family, as he has for decades.

LEGAL BACKGROUND

18. Two principal sections of the U.S. Code govern the detention of non-citizens: 8 U.S.C. § 1226 and § 1231.¹

19. Section 1226 governs the detention of non-citizens “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Non-citizens detained under § 1226(a) are eligible for bond, whereas those with certain criminal convictions are subject to mandatory detention without bond under § 1226(c).

20. 8 U.S.C. § 1231 governs the detention of non-citizens “during” and “beyond” the “removal period.” 8 U.S.C. § 1231(a)(2)-(6). The “removal period” begins once a non-citizen’s removal order “becomes administratively final” or when the non-citizen with a removal order enters ICE custody, whichever is later. 8 U.S.C. § 1231(a)(1)(B).

21. The removal period lasts for 90 days, during which ICE “shall remove the alien from the United States” and “shall detain the alien” as they carry out the removal. 8 U.S.C. § 1231(a)(1)-(2). If ICE does not remove the non-citizen within the 90-day removal period, the

¹ Another provision not relevant here, 8 U.S.C. § 1225(b), authorizes the mandatory detention of “arriving aliens.”

non-citizen “may be detained beyond the removal period” if they meet certain criteria, such as being inadmissible to the United States. 8 U.S.C. § 1231(a)(6). Detention after the 90-day removal period is discretionary rather than mandatory.

22. To avoid “indefinite detention” that would raise “serious constitutional concerns,” the Supreme Court in *Zadvydas v. Davis* construed § 1231(a)(6) to contain an implicit time limit. 533 U.S. at 682. The Court held that § 1231(a)(6) authorizes detention only for “a period reasonably necessary to bring about the alien’s removal from the United States.” *Id.* at 689. *Zadvydas* established a six-month threshold, after which a non-citizen’s detention becomes unlawful if the non-citizen’s removal is “not reasonably foreseeable” *Id.* at 699.

23. In an attempt to comply with *Zadvydas*, DHS enacted regulations governing periodic custody reviews for non-citizens detained after a final removal order. Under 8 C.F.R. § 241.4, the director of the local ICE field office with jurisdiction over a non-citizen’s detention must perform an initial custody review once the non-citizen has been detained for 90 days past a final removal order. *Id.* § 241.4(c)(1). If the non-citizen is not released following the 90-day custody review, jurisdiction over further custody reviews transfers to ICE headquarters, *id.* § 241.4(c)(2), which must conduct a 180-day custody review for the non-citizen via a two-member review panel that makes a recommendation to the headquarters director for a final decision. *Id.* § 241.4(i). If the non-citizen is not released following the 180-day review, ICE must personally interview the non-citizen and make another determination based on the interview. *Id.* § 241.4(i)(3)-(6). After the 180-day review, ICE must continue conducting periodic reviews every 90 days, or at least every year. *Id.* § 241.4(k)(2)(iii).

24. In making custody determinations under the regulations, ICE must consider several factors, including whether the non-citizen is likely to pose a danger to the community or constitute

a flight risk if released. *Id.* § 241.4(e). In weighing these factors, ICE is instructed to consider mitigating evidence such as “ties to the United States such as the number of close relatives residing here lawfully.” *Id.* § 241.4(f). If at any point the record reveals, or the non-citizen argues, that there is no significant likelihood of removal in the reasonably foreseeable future, ICE must evaluate the foreseeability of the non-citizen’s removal pursuant to 8 C.F.R. § 241.13. *See id.* § 241.4(i)(7). If release is appropriate under § 241.4 and/or § 241.13, ICE must release the non-citizen under conditions of supervision. *Id.* §§ 241.4(j)(2), 241.13(h).

25. Pursuant to the Supreme Court’s decision in *Johnson v. Guzman Chavez*, non-citizens in ongoing proceedings following a final removal order are detained under 8 U.S.C. § 1231 rather than § 1226, and therefore not automatically entitled to bond hearings at the outset of their detention. 141 S. Ct. at 2271.

ARGUMENT

26. Mr. Nahak’s continued detention violates § 1231(a)(6) as interpreted by *Zadvydas* because it has exceeded six months and his removal is not reasonably foreseeable. Under *Zadvydas* and the regulations implementing it, this Court should order Mr. Nahak’s immediate release under conditions of supervision.

I. Mr. Nahak’s continued detention violates § 1231(a)(6) under *Zadvydas* and he is entitled to immediate release.

a. *Zadvydas* applies to Mr. Nahak’s detention.

27. Under current law, Mr. Nahak is detained pursuant to § 1231 because he has a final removal order. *See Guzman Chavez*, 141 S. Ct. at 2280. Mr. Nahak’s 90-day “removal period” began on June 15, 2025, when he entered ICE custody with a removal order. 8 U.S.C. § 1231(a)(1)(B)(iii). At now 208 days of detention, Mr. Nahak has been detained well past the removal period and his detention is governed by § 1231(a)(6).

28. After six months of post-removal order § 1231 detention, a non-citizen is entitled to relief under *Zadvydas* if there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

29. The Supreme Court and courts across the country have analyzed the foreseeability of removal on a sliding scale. *See Zadvydas*, 533 U.S. at 701 (“[F]or detention to remain reasonable, as the period of prior post removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.”); *Alexander v. Att’y Gen.*, 495 F. App’x 274, 275 (3d Cir. 2012) (“[T]he longer the alien is detained, the less he must put forward to obtain relief.”); *Hassoun v. Sessions*, No. 18-cv-586-FPG, 2019 WL 78984, at *4 (W.D.N.Y. Jan. 2, 2019) (“[T]he government’s burden becomes more onerous the longer an alien is detained, because it must show that removal will be effectuated sooner in the future.”).

30. Additionally, in *Guzman Chavez*, the Court refuted the argument that “there is a difference between the Government’s inability to remove an alien due to the grant of withholding-only relief and its inability to remove an alien because of the geopolitical and practical concerns that prevented removal in that case,” noting that “the same lack of certainty [of removal] existed in *Zadvydas* . . . for geopolitical or practical reasons” as in ongoing proceedings where “it is not certain that the Government will actually be able to remove the [non-citizen] from the country.” 141 S. Ct. at 2287 n.7.

b. Mr. Nahak’s removal is not reasonably foreseeable under *Zadvydas*.

31. Mr. Nahak has been detained for nearly 208 days, well beyond the presumptively reasonable six-month detention period and the Respondents are lawfully barred from removing him to his native country of Indonesia. Thus, Respondents can only remove him to a third country,

which can only be described as speculative. Respondents, presumptively, are going country to country asking if they will take Mr. Nahak, without success.

c. Mr. Nahak must be immediately released under *Zadvydas*.

32. Because Mr. Nahak has been detained under § 1231 for 208 days, and his removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. *See* 533 U.S. at 692 (reviewing District Court decisions ordering release); 8 U.S.C. § 1231(a)(6) (authorizing release “subject to . . . terms of supervision”).

33. Release is the most common and appropriate remedy for a *Zadvydas* violation. *See Hassoun*, 2019 WL 78984, at *8 (ordering release subject to “reasonable conditions of supervision” determined by Respondents); *D’Alessandro*, 628 F. Supp. 2d at 406 (recommending that petitioner be “released immediately pursuant to reasonable conditions of supervision and bond, as determined by DHS, subject to review and oversight by the District Court”), *report and recommendation adopted*, 2009 WL 931164 (W.D.N.Y. Apr. 2, 2009).

34. To order Mr. Nahak’s immediate release, this Court need only determine that his removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether Mr. Nahak is a danger to the community or flight risk. *See Zadvydas*, 533 U.S. at 699-700 (“[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.”). To the extent that this Court considers the risk of danger or flight, Mr. Nahak clearly does not pose either risk as he has no criminal record and has lived in the United States for more than 20 years. In any case, “the [non-citizen]’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances.” *Zadvydas*, 533 U.S. at 700.

II. Alternatively, Mr. Nahak’s prolonged detention without a bond hearing violates due process and he is entitled to a bond hearing before a neutral arbiter.

35. If this Court does not find that Mr. Nahak is entitled to immediate release under *Zadvydas*, it should hold that his 208 day detention without a bond hearing violates due process under and order a constitutionally adequate bond hearing.

36. The *Arteaga-Martinez* Court expressly held that “as-applied constitutional challenges [to § 1231 detention] remain available to address ‘exceptional’ cases.” 142 S. Ct. at 1835. Following the Supreme Court’s instructions, courts in this circuit and neighboring circuits have analyzed such due process challenges and, in at least one case, granted relief accordingly. See *Cabrera Galdamez v. Mayorkas*, No. 22-cv-9847, 2023 WL 1777310, at *4, *9 (S.D.N.Y. Feb. 6, 2023) (holding that 16-month detention under § 1231(a)(6) without bond hearing violated due process); *Grant v. Warden of Clinton Cty.*, No. 1:22-cv-331, 2022 WL 304584, at *3 (M.D. Pa. Aug. 2, 2022) (“[N]oncitizens detained under Section 1231(a)(6) past the presumptively constitutional period may bring an as-applied Due Process Clause challenge to their continued detention should that detention become prolonged and potentially unlawful”).

III. Petitioner’s detention threatens unexpected, but potentially immediate and abrupt, removal to another unidentified third country without adequate notice and an opportunity to be heard,” in violation of the Fifth Amendment.

37. New to this dynamic is the U.S. government policy and practice of deporting individuals to third countries, including countries where deportees are imprisoned upon arrival, often in abhorrent conditions. The Trump Administration, in its first six months in office, has reportedly negotiated with more than 50 countries to accept deportees from other countries, and it has carried out deportations to El Salvador, South Sudan, Eswatini, Panama, and Costa Rica where deportees have been indefinitely and arbitrarily imprisoned or detained upon arrival, often incommunicado. It has carried out these third country removals without following any of the

required statutory, regulatory, and constitutional procedures required before deporting an individual to a third country. Now, as of July 9, 2025, ICE has adopted a new policy to permit removals to third countries with as little as six hours of notice to the individual and without following the statutory procedures and requirements of due process that ensure an individual has a meaningful opportunity to make a fear-based claim against removal to that country.

38. As several courts have held, the policies in the ICE memo are “contrary to Ninth Circuit precedent.” *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341, at *9 (E.D. Cal. Nov. 6, 2025) (collecting cases). A “noncitizen must be given sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation.” *Nguyen v. Scott*, — F. Supp. 3d —, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21, 2025) (quoting *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019)). “Both the due process clause and the governing statute place the burden on the government ... to provide a meaningful opportunity to be heard on asylum and withholding claims.” *Nguyen*, 2025 WL 2419288, at *18 (quoting *Aden*, 409 F. Supp. 3d at 1009). “Failing to notify individuals who are subject to deportation that they have the right to apply ... for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process.” *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). *Azzo v. Noem*, No. 3:25-CV-03122-RBM-BJW, 2025 WL 3535208, at *7 (S.D. Cal. Dec. 10, 2025).

39. The courts in *Azzo v. Noem* and in *Esmail v. Noem* analyzed how the policies in the ICE Memo “present due process issues.” Case No. 3:25-CV-03122-RBM-BJW, 2025 WL 3535208, at *8 (S.D. Cal. Dec. 10, 2025), and Case No. 2:25-cv-08325-WLH-RAO, 2025 WL 3030589, at *6–7 (C.D. Cal. Sept. 26, 2025), *respectively*. First, when the third country “has

provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured ... the alien may be removed *without the need for further procedures.*” *Id.* at *7 (emphasis in original). Because “the due process clause and the governing statute place the burden on the government ... to provide a meaningful opportunity to be heard on asylum and withholding claims, this approach is insufficient.” *Id.* (cleaned up). Second, when the third country has not provided such assurances, ICE “will not affirmatively ask whether the alien is afraid of being removed to that country.” *Id.* This “forces the noncitizen to assert a right he may not know that he has,” which “ ‘violates both INS regulations and the constitutional rights to due process.’ ” *Id.* (cleaned up) (quoting *Andriasian*, 180 F.3d at 1041).

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. § 1231(a)(6)

40. Mr. Nahak realleges and incorporates by reference the paragraphs above.

41. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for “a period reasonably necessary to bring about the alien’s removal from the United States,” which is generally no longer than six months. 533 U.S. at 689, 701.

42. Mr. Nahak has been detained for far longer than six months and his removal is not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6) and requires his immediate release.

43. To the extent that Respondents have not determined pursuant to 8 C.F.R. § 241 that Mr. Nahak is a danger to the community or flight risk, Respondents lack any authority to detain him under § 1231(a)(6).

COUNT TWO

**Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution
Detention Without Bond**

44. Mr. Nahak realleges and incorporates by reference the paragraphs above.

45. 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.

46. Mr. Nahak's detention without a bond hearing violates due process, which demands that Mr. Nahak receive a bond hearing before a neutral adjudicator at which the Government bears the burden of justifying continued detention by clear and convincing evidence and at which the adjudicator considers appropriate alternatives to detention and Mr. Nahak's ability to pay.

COUNT THREE

**Violation of the Fifth Amendment, 8 U.S.C. § 1231, Convention Against Torture,
Implementing Regulations, and the Administrative Procedure Act**

47. Mr. Nahak realleges and incorporates by reference the paragraphs above.

48. The Fifth Amendment, the INA, the CAT, and implementing regulations mandate meaningful notice and opportunity to respond to any attempt to remove Petitioner to a third country in reopened removal proceedings. They also require an opportunity for Petitioner to make a fear-based claim against removal to a third country in reopened removal proceedings. Respondents' policy for third country removals violates all of these laws because it directs ICE agents to remove individuals to third countries without any notice or process at all where diplomatic assurances are received and, where no diplomatic assurances are received, to provide flagrantly insufficient notice (6-24 hours) and opportunity to respond, in violation of the statute, regulations, and Fifth Amendment.

49. Prior to any third country removal, Petitioner must be provided with constitutionally and statutorily compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country in reopened removal proceedings.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- c. Issue a Writ of Habeas Corpus requiring that Respondents **immediately release Petitioner**;
- d. Declare that Order that Respondents may not remove or seek to remove Petitioner to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings;
- a. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- b. Grant any other and further relief that this Court deems just and proper.

Respectfully Submitted,

Date: January 9, 2026

s/ Curtis Lee Morrison

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List of Respondents

1. **Gregory J. Archambeault**, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement;
2. **Jeremy Casey**, Facility Administrator, Imperial Regional Detention Facility,