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8 **UNITED STATES DISTRICT COURT**
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

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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.

Case No.: 26-cv-00146-BTM-SBC
**RETURN TO PETITION FOR
 WRIT OF HABEAS CORPUS**

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4 **I. INTRODUCTION**

Respondents hereby submit their return to Petitioner’s habeas petition, and for the reasons set forth below, respectfully ask the Court to deny the petition.

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6 **II. FACTUAL AND PROCEDURAL BACKGROUND**

Petitioner is a citizen and national of Indonesia who entered the United States in 2000 and overstayed his visa. *See* Declaration of La’Shaniece Wilson (“Wilson Decl.”) at ¶¶ 4–5; Exh. 1.¹ Petitioner was then placed in removal proceedings, and on July 9, 2015, an Immigration Judge ordered Petitioner removed to Indonesia but granted him withholding of removal under the Immigration and Nationality Act. *See* Exh. 2.

10 On June 15, 2025, Immigration and Customs Enforcement (ICE) detained
11 Petitioner to execute his removal order and has since worked as expeditiously as
12 possible to identify a third country to which Petitioner may be removed. *See* Wilson
13 Decl. at ¶ 10. The San Diego Enforcement and Removal Operations (ERO) is
14 coordinating with its headquarters’ Removal and International Operations (RIO) unit
15 for assistance on Petitioner’s third country removal, and “removal efforts remain
16 ongoing.” *Id.* at ¶¶ 10–11, 14.

17 **III. ARGUMENT**

18 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
19 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
20 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
21 (2022). The INA provides that an alien ordered removed must be detained for 90 days
22 pending the government’s efforts to secure the alien’s removal through negotiations
23 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
24 detain” the alien during the 90-day removal period under subsection (a)(1)).

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¹ The attached exhibits are true copies of documents, with redactions of private information, obtained from ICE counsel.

1 Section 1231(a)(6) “authorizes further detention if the Government fails to
2 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
3 The statute, however, is limited to “a period reasonably necessary to bring about the
4 alien’s removal from the United States” and “does not permit indefinite detention.” *Id.*
5 at 689. The Supreme Court has held that a six-month period of post-removal detention
6 constitutes a “presumptively reasonable period of detention.” *Id.* at 701. Release is not
7 mandated after the expiration of the six-month period unless “there is no significant
8 likelihood of removal in the reasonably foreseeable future.” *Id.*

9 If an individual ordered removed “is not removed to his or her country of choice
10 or citizenship, he or she shall be removed to any of the following countries” listed in 8
11 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007).

12 The enumerated countries are:

- 13 (i) The country from which the alien was admitted to the United States.
14 (ii) The country in which is located the foreign port from which the alien
15 left for the United States or for a foreign territory contiguous to the United
16 States.
17 (iii) A country in which the alien resided before the alien entered the
18 country from which the alien entered the United States.
19 (iv) The country in which the alien was born.
20 (v) The country that had sovereignty over the alien's birthplace when the
alien was born.
(vi) The country in which the alien’s birthplace is located when the alien
is ordered removed.

21 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
22 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another
23 country whose government will accept the alien into that country.’” *Id.* (quoting
24 § 1231(b)(2)(E)(vii)).

25 Here, Petitioner was granted withholding of removal to Indonesia—his country
26 of birth and citizenship, as well as the country designated during his removal
27 proceedings. Petitioner has not designated any other country for removal. Apart from
28 Indonesia, there appears to be no other country that would meet the definitions under

1 subsections (i) through (vi), and Petitioner has made no showing to the contrary. *See*
2 *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal.
3 Sept. 15, 2025) (“A prisoner bears the burden of demonstrating that ‘he is in custody in
4 violation of the Constitution or laws or treaties of the United States.’”) (quoting 28
5 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above enumerated
6 countries is “impracticable, inadvisable, or impossible,” ICE may remove Petitioner to
7 a third country that will accept Petitioner’s removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

8 To that end, on August 8, 2025, the San Diego ERO submitted a request to RIO
9 for assistance identifying a third country where Petitioner may be removed and
10 requested an update from RIO on November 23, 2025. *See* Wilson Decl. at ¶¶ 10–11.
11 Although RIO is still in the process of identifying countries that may be willing to accept
12 Petitioner for removal, ICE attests it is working as expeditiously as possible, and
13 removal efforts remain ongoing. *See id.* at ¶¶ 10–11, 14; *see also Zadvydas*, 533 U.S. at
14 700 (instructing district courts “to listen with care when the Government’s foreign
15 policy judgments, including, for example, the status of repatriation negotiations, are at
16 issue, and to grant the Government appropriate leeway when its judgments rest upon
17 foreign policy expertise.”). Evidence of progress, even slow progress, in negotiating a
18 petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s detention grows
19 unreasonably lengthy. *See, e.g., Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF
20 No. 5 at 5 (S.D. Cal. Aug. 15, 2019) (“The record at this stage in the litigation does not
21 support a finding that there is no significant likelihood of Petitioner’s removal in the
22 reasonably foreseeable future.”); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM,
23 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because
24 “Respondents have set forth evidence that demonstrates progress and the reasons for
25 the delay in Petitioner’s removal”).

26 Petitioner also suggests that once a third country is identified, ICE will
27 immediately deport him there without adequate notice and an opportunity to be heard.
28 *See* ECF No. 1 at 9. ICE attests, however, that once a third country is identified, it “will

1 provide Petitioner with written notice, and if Petitioner claims a fear of removal to the
2 identified country, he will be referred to an asylum officer for processing of the fear-
3 based claims.” Wilson Decl. at ¶ 12. The declaration further reflects that ICE will wait
4 at least 24 hours following the notice of third country removal before executing it, and
5 under no circumstances would removal be executed in less time than that without the
6 noncitizen being provided “reasonable means and opportunity to speak with an attorney
7 prior to removal.” *Id.* at ¶ 13. Thus, Petitioner’s concern that he will not receive
8 adequate notice and an opportunity to be heard prior to his third country removal is not
9 borne out by the evidence in this case.² *See also Mora Gutierrez v. Noem et al.*, Case
10 No. 26-cv-112-RSH-JLBB, ECF No. 6 at 3 (S.D. Cal. Jan. 16, 2026) (Huie, J.) (denying
11 a request for “a permanent injunction regulating the terms under which Petitioner may
12 be detained in the future or removed to a country other than Cuba” because “it exceeds
13 the scope of relief available to Petitioner on his habeas petition.”).

14 To the extent Petitioner is challenging ICE’s decision to detain him for the
15 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
16 (“Except as provided in this section and *notwithstanding any other provision of law*
17 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
18 *corpus provision*, . . . no court shall have jurisdiction to hear any cause or claim by or
19 on behalf of any alien arising from the decision or action by the Attorney General to
20 commence proceedings, adjudicate cases, or *execute removal orders* against any alien
21 under this chapter.”) (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination*
22 *Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus
23 special attention upon, and make special provision for, judicial review of the Attorney
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25 ² Respondents note that Petitioner’s challenge to the July 9, 2025 ICE memo is subject
26 to ongoing litigation, with the Supreme Court staying an injunction imposed by a district
27 court ordering the government to provide notice and an opportunity to be heard like that
28 requested here. *See Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Given
the Supreme Court’s reversal of that injunction, Respondents’ position is that
imposition of a similar injunction would be reversed here.

1 General’s discrete acts of commencing proceedings, adjudicating cases, and executing
2 removal orders—which represent the initiation or prosecution of various stages in the
3 deportation process.”) (simplified); *Limpin v. United States*, 828 Fed. App’x 429 (9th
4 Cir. 2020) (holding that the district court properly dismissed under 8 U.S.C. § 1252(g)
5 “because claims stemming from the decision to arrest and detain an alien at the
6 commencement of removal proceedings are not within any court’s jurisdiction”).

7 **IV. CONCLUSION**

8 For the reasons stated herein, Respondents respectfully request the Court to deny
9 the habeas petition.

10 DATED: January 21, 2026

ADAM GORDON
United States Attorney

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