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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*.	**PETITIONER'S TRAVERSE** Case No.: 26-cv-00146-BTM-SBC

I. SUMMARY OF RESPONDENTS' ARUGMENT

Respondents assert that since Petitioner has been detained, Immigration and Customs Enforcement (ICE), has "worked as expeditiously as possible to identify a third country to which Petitioner may be removed." *See* DOC. 6, p. 1. In support of this assertion, Respondents have provided a Declaration of La'Shaniece Wilson, Deportation Officer ("Wilson Decl."). *See* DOC. 6-3.

For the convenience of the Court, according to Respondents and Deportation Officer Wilson, ICE working "as expeditiously as possible" is as follows:

- **July 9, 2015** (grant of withholding of removal) to June 15, 2025 (date of detention) – nine years, eleven months – no action taken to remove Petitioner.
- **August 8, 2025**, almost two months after Petitioner is detained (54 days) "[Enforcement and Removal Operations] ERO submitted a request to Removal and International Operations (RIO) for assistance identifying a third country where Petitioner may be removed." Wilson Decl. at ¶ 10.
- **November 23, 2025**, exactly three-and-a-half months since submitting a request to RIO, ERO requested an update from RIO concerning Petitioner's removal. Wilson Decl. at ¶ 11.
- **November 23, 2025 to present,** nothing.

What is noticeably absent from Respondents' Return and Deportation Officer Wilson's declaration (aside from any indication of substantive progress towards Petitioner's removal) is what response, if any, they received from RIO – certainly if there was any substantive update or progress, it would have been provided.

Respondents assert that the Petition should be denied, as "[e]vidence of progress, even slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy." DOC. 6, p. 3.

In considering Respondents' return, this Court should find that over the past seven-and-a-half months Respondents have made no meaningful progress in obtaining a travel document for Petitioner, and grant Petitioner's a writ of habeas corpus.

II. PROLONGED DETENTION

The Supreme Court has recognized a six-month presumptively reasonable period of detention after a noncitizen's removal order becomes final. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). "After this 6-month period, 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.*

a. Presumption of Reasonableness

The six-month presumptively reasonable period has passed for Petitioner. Courts in the Ninth Circuit, and most courts across the country, calculate detention "cumulatively based on all post-removal order detentions to determine whether *Zadvydas's* presumption of reasonableness is exceeded." *Phan v. Warden of Otay Mesa Det. Facility*, Case No.: 25-cv-02369-AJB-BLM, 2025 WL 3141205, at *3 (S.D. Cal. Nov. 10, 2025) (collecting cases). Considering Petitioner has been detained since June 15, 2025, his detention is no longer presumptively reasonable.

b. Good Reason to Believe

After the six-month period expires, Petitioner has the initial burden of showing "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. "Good reason to believe does not place a burden upon the detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or show that his detention is indefinite; it is something less than that." *Senor v. Barr*, 401 F. Supp. 3d 420, 430 (W.D.N.Y. 2019). However, Petitioner must offer more than "conclusory statements suggesting

that he will not" be removed. *Azzo v. Noem*, No. 3:25-CV-03122-RBM-BJW, 2025 WL 3535208, at *3 (S.D. Cal. Dec. 10, 2025), quoting *Andrade v. Gonzalez*, 459 F.3d 538, 543 (5th Cir. 2006); *Quassani v. Killian*, Case No. 2:17-cv-01678-APG-PAL, 2017 WL 3396506, at *2 (D. Nev. Aug. 4, 2017) ("question[ing] whether petitioner can meet his initial burden" given that he "has offered nothing more than conclusory statements with respect to the likelihood of his removal in the foreseeable future").

Here, Petitioner has met his burden to show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." ICE has been unable to deport him over the last 10 years and that ICE has yet to even *identify* a third country to deport him to. Further, Respondents' evidence seems to indicate that the *only* efforts ICE has made to remove Petitioner to a third country in the past seven months is to send two emails to RIO – one two months after Petitioner was detained, and another three-and-a-half months later to "request an update." Wilson Decl. at ¶¶ 10-11. Respondents do not even provide what update – if any – was provided by RIO, what countries it has identified as *potential* third countries for removal, or whether they have *ever* been successful in a third country removal of an Indonesian citizen.

Accordingly, the burden should thus shift to Respondents to "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701; *Azzo v. Noem*, at *3.

c. Significant Likelihood of Removal in the Reasonably Foreseeable Future

Respondents argue that they have sufficiently rebutted Petitioner's showing. Doc. 6 at 1–3. They note that: (1) Although RIO is still in the process of identifying countries that may be willing to accept Petitioner for removal, ICE attests it is working as expeditiously as possible, and removal efforts remain ongoing." Doc. 6, p. 3. To support this assertion, they provide the aforementioned declaration of Deportation Officer Wilson, wherein Officer Wilson states ICE has

"submitted a request" in August 2025, and requested "an update" in November 2025, with no further details; and (2) "[e]vidence of progress, even slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy." DOC. 6, p. 3.

The glairing issue with Respondents' assertion, is that they have not actually provided "evidence of progress." "Progress" is defined as "*advancement* through a process, a sequence of events, a period of time, etc.; movement towards an outcome or conclusion." Oxford University Press. (n.d.). Progress, n. *In Oxford English dictionary*. Retrieved January 26, 2026, from https://doi.org/10.1093/OED/3034306464 (emphasis added). According to Respondents' return, there has not been any 'advancement' in the process of obtaining Petitioner a travel document – there has been an email, and a follow-up email. And the record is devoid of any evidence that the August request and the November request for an update, were even acknowledged or received a response.

Respondents' return and evidence does not show that there is a significant likelihood that Petitioner will be accepted to a third country in the reasonably foreseeable future. Courts in this circuit have regularly refused to find the Government's burden met where the Government has offered little more than generalizations regarding the likelihood that removal will occur. *Azzo v. Noem,* No. 3:25-CV-03122-RBM-BJW, 2025 WL 3535208, at *3–4 (S.D. Cal. Dec. 10, 2025), citing *Singh v. Gonzalez*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006); *Chun Yat Ma v. Asher*, [No. C11-1797 MJP], 2012 WL 1432229, at *4–5 [(W.D. Wash. Apr. 25, 2012)].

In *Singh v. Gonzalez*, the court found that ICE had not met its burden where it 'merely assert[ed] that it has followed up on its request for travel documents' but could not provide any substantive indication regarding how or when it expect[ed] to obtain the necessary travel document

....' 448 F. Supp. 2d at 1220. And in *Chun Yat Ma v. Asher*, the court considered an affidavit from an ICE official that included a statement that an individual's travel document would 'likely' be issued soon. 2012 WL 1432229, at *4. Yet, the court noted, a deportation officer could not give any 'indication of when the issuance may occur.' *Kamyab*, 2025 WL 2917522, at *4.

III. NOTICE OF THIRD COUNTRY REMOVAL

Respondents assert that ICE would wait "at least 24 hours following the notice of third country removal before executing it" to allow Petitioner time to speak with an attorney and claim a fear of removal to the identified third country. Dkt. 6., p. 4. Respondents conclude that "Petitioner's concern that he will not receive adequate notice and an opportunity to be heard prior to his third country removal is not borne out by the evidence in this case." *Id.* These supposed safeguards are from the July 9, 2025 memo from ICE Director Todd Lyons ("ICE Memo") titled "Third Country Removals Following the *Supreme Court's Order in Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)."

"As several courts have held, the policies in the ICE memo are "contrary to Ninth Circuit precedent." *Azzo v. Noem*, No. 3:25-CV-03122-RBM-BJW, 2025 WL 3535208, at *7 (S.D. Cal. Dec. 10, 2025), quoting *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).

Twenty-four hours, while detained, to compile and defend a claim of a fear of removal is not sufficient notice to protect Petitioner's right due process.

IV. CONCLUSION

For the reasons stated herein, Petitioner respectfully request that the Court grant his habeas petition and order immediate release from Respondents' custody.

Respectfully Submitted,

Date: January 26, 2026

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