IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

IRAKLI ZHUZHIASHVILI,

Petitioner,

v.

CRYSTAL CARTER, in her official capacity as the Warden of FCI Leavenworth; **RICARDO WONG**, in his official capacity as Chicago Field Office Director for U.S. Immigration and Customs Enforcement; **TODD LYONS**, in his official capacity as Acting Director of U.S. Customs and Immigration Enforcement; **KRISTI NOEM**, in her official capacity as Secretary of the Department of Homeland Security; and **PAMELA BONDI**, in her official capacity as Attorney General of the United States,

Respondents.

Case No. 25-3189-JWL

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. When Irakli Zhuzhiashvili ("Mr. Zhuzhiashvili") incurred the ire of the ruling party in Georgia through his activism and his refusal to work for them, he faced repeated instances of severe harassment and violence, including being shot at and suffering multiple severe beatings, as well as other government persecution.

2. Mr. Zhuzhiashvili fled to this country and sought protection from an immigration court because of the persecution he faced at the hands of the Georgian government. At a hearing before Immigration Judge Elanie Cintron on February 10, 2025, Mr. Zhuzhiashvili was granted withholding of removal to Georgia, meaning the United States cannot legally deport him there

because of the risk of future persecution he would face. *See* ECF No. 1-1 (IJ decision). DHS did not appeal the determination, and it became final 30 days later, on March 12, 2025.

3. Mr. Zhuzhiashvili has never been convicted of any crime, yet finds himself subject to prolonged and indefinite detention by ICE at FCI Leavenworth under squalid and substandard conditions. He has now been detained for more than six months after the IJ's order granting him withholding of removal became final. Because of the IJ's order, Respondents cannot legally remove Mr. Zhuzhiashvili to Georgia, and ICE has stated at least twice in emails to Mr. Zhuzhiashvili's immigration attorney that it cannot – and is making no effort to – remove him to another country. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that noncitizens cannot be detained indefinitely on the off chance that the government might someday be able to remove them.

4. The Supreme Court made clear in *Zadvydas* that the only permissible bases for prolonged detention are an individual's dangerousness and/or a flight risk posed by the person. Here, Mr. Zhuzhiashvili has no criminal history in Georgia or the United States, and there has been no allegation at any time that he poses a danger to anyone. Furthermore, as the Court noted in *Zadvydas*, detaining a noncitizen indefinitely based on flight risk cannot be justified because such justification "is weak or nonexistent where removal seems a remote possibility at best." *Zadvydas*, 533 U.S. at 690.

5. Mr. Zhuzhiashvili's continued detention violates his procedural due process rights and furthermore serves no legitimate purpose. As detailed herein, the violation of Mr. Zhuzhiashvili's procedural due process rights is only underscored by ICE's failure even to follow its own custody regulations in his case. This Court should grant habeas relief and order his immediate release.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, since this Petition arises under the Constitution and laws of the United States, namely the detention provisions of the Immigration and Nationality Act, 8 U.S.C. § 1231; the accompanying regulations codified at 8 C.F.R. § 241.4, *et seq.*; the habeas corpus statute, 28 U.S.C. § 2241; and the Due Process Clause of the Fifth Amendment..

7. This Court may grant relief pursuant to the Habeas Corpus Act, 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 Court's inherent equitable powers.

8. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *Zadvydas*, 533 U.S. at 687 (2001).

9. Federal courts also have federal question jurisdiction, through the 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 via habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. ICE's continued detention of Mr. Zhuzhiashvili has adversely and severely affected his liberty.

10. 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 at the time of filing Petitioner was detained at FCI Leavenworth in Leavenworth, Kansas, within the jurisdiction of the District of Kansas; a substantial part of the

events and omissions giving rise to the claim occurred in this district; Respondent Carter resides in this district; and Respondents are officers of the United States acting in their official capacity.

11. Exhaustion of administrative remedies is not required because it would be futile.

PARTIES

12. Mr. Zhuzhiashvili is a citizen of Georgia who is being detained by Respondents at FCI Leavenworth in Leavenworth, Kansas.

13. Respondent Crystal Carter is the Warden of FCI Leavenworth, which incarcerates individuals suspected of civil immigration violations. Respondent Carter is the immediate physical custodian responsible for the detention of Petitioner. She is named in her official capacity.

14. Respondent Ricardo Wong is the director of ICE's Chicago Field Office, which is responsible for ICE activities in Kansas, including FCI Leavenworth. Respondent Wong is an immediate legal custodian responsible for Petitioner's detention. He is named in his official capacity.

15. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for ICE's polices, practices, and procedures, including those relating to detention of immigrants during the removal process. Respondent Lyons is a legal custodian of Petitioner. He is named in his official capacity.

16. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. She is named in her official capacity. In that capacity, Respondent Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103.

17. Respondent Pamela J. Bondi is the Attorney General of the United States. She is named in her official capacity.

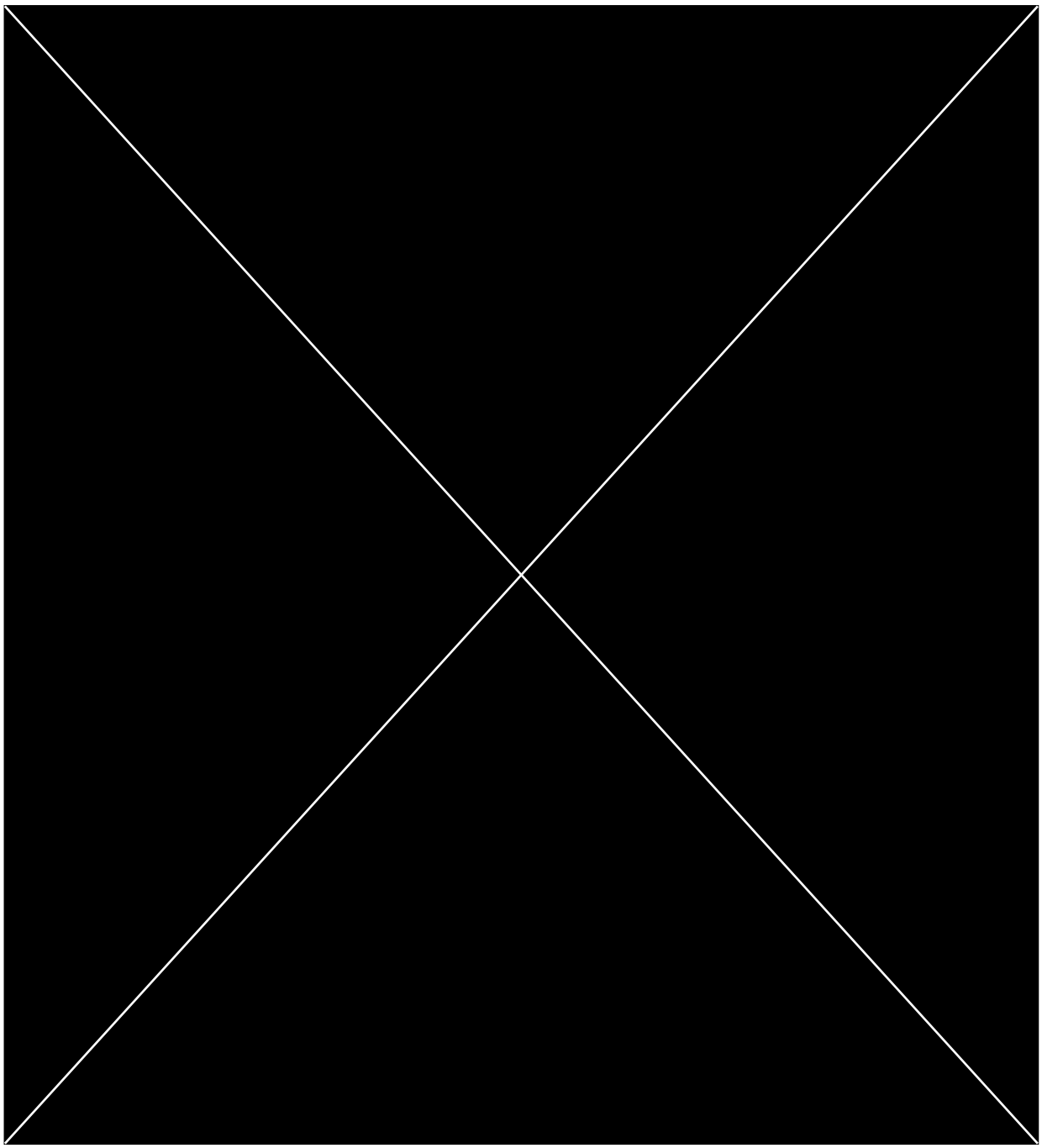
FACTUAL BACKGROUND

A. Mr. Zhuzhiashvili's persecution in Georgia

18. Mr. Zhuzhiashvili is a 30-year-old citizen of Georgia, born in the capital city of Tbilisi, [redacted]

19. Mr. Zhuzhiashvili started to attend peaceful protests against the Georgian Dream Party in 2019. He began attending the protests after Russian politician Sergei Gavrilov was invited to open the Georgian parliamentary session, an act which upset Mr. Zhuzhiashvili and many other Georgians because they were concerned that the Georgian Dream Party was trying to establish closer ties between Georgia and Russia. A large protest attended by Mr. Zhuzhiashvili was met with a violent response from police, who used rubber bullets and water cannons to disperse protesters. Over the following four years, Mr. Zhuzhiashvili witnessed the police use tear gas and rubber bullets on crowds of protesters and viciously beat up protesters on many occasions.

[redacted]



24. In May 2024, Mr. Zhuzhiashvili attended a peaceful protest which the police dispersed using water cannons, tear gas, rubber bullets, and police batons. Mr. Zhuzhiashvili helped a man who had been shot in the face with a rubber bullet and helped another friend who

had been blinded by tear gas. He was pictured on the TV news for his actions at this protest, which caused him to fear further retaliation from the government for his political actions.

[redacted]

26. [redacted] At that point Mr. Zhuzhiashvili finally decided he had to flee Georgia.

[redacted]

B. Mr. Zhuzhiashvili's flight to the U.S. and immigration proceedings.

28. Mr. Zhuzhiashvili fled to the U.S. via Guatemala and ultimately Mexico. He hired a car to drive him across the Guatemalan border into Mexico, but during the trip the driver demanded an additional $1,000 from him, threatening to leave him on the side of the road otherwise. And when they arrived in Mexico, the driver, instead of driving Mr. Zhuzhiashvili to his destination, dropped him off at a remote farm, where a group of armed men extorted another $6,000 from him at gunpoint.

29. He finally entered the United States without inspection on or about June 6, 2024. He was detained by border officials and passed a credible fear interview on July 7, 2024. He has been detained by ICE since June 2024, a period now exceeding 15 months, more than 6 of those months after his withholding of removal order became final.

30. At an immigration court merits hearing on February 10, 2025, Mr. Zhuzhiashvili proved by a preponderance of the evidence that he faced future persecution if returned to Georgia. Accordingly, an immigration judge granted him withholding of removal under INA § 241(b)(3) [8 U.S.C. § 1231(b)(3)], which provides that "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion."

31. Neither Mr. Zhuzhiashvili nor DHS appealed the immigration judge's decision, meaning it became final on March 12, 2025, and the United States is now prohibited by law from sending Mr. Zhuzhiashvili to Georgia. The immigration court's order did not name any other country to which Mr. Zhuzhiashvili could be legally removed.

C. Petitioner's continuing detention and ICE's failure to comply with regulations.

32. Almost immediately after Mr. Zhuzhiashvili won his immigration case, his attorney, Gabrielle Gile of the nonprofit Rocky Mountain Immigrant Advocacy Network (RMIAN), began emailing ICE to request his release. Her correspondence (in reverse chronological order) is filed herewith as ECF No. 1-2 and is incorporated here by reference. In one such email, Ms. Gile wrote to ICE Deportation Officer Michael Ketels on March 4, 2025, asking, "If my client did not intend on appealing would ICE consider releasing him sooner?" Mr. Ketels wrote back the same day, stating that, "We are submitting acceptance requests to three other countries once a final order

takes effect. These are never successful, so as long as we get denial from three other countries and there is no derogatory information in your client's background we would move forward with release rather than the 90 day custody review." ECF No. 1-2 at 22.

33. After Mr. Zhuzhiashvili was transferred from detention in Colorado to FCI Leavenworth, Ms. Gile continued to communicate with ICE and request his release. On April 23, 2025, she received a response from DHS official Nathan J. Simpson, stating that, "ERO [Enforcement and Removal Operations] has made no arrangements to have him removed to a third-party country as his order of withholding does not allow that option." ECF No. 1-2 at 18. Nonetheless, even though he could not legally be deported to Georgia and ICE admitted it was making no arrangements to send him elsewhere, Mr. Simpson wrote that, "[Y]our client will remain detained for 180 days[;] at that time HQ will make the decision to release him or keep him detained." *Id.*

34. Ms. Gile wrote to ICE again on April 29, 2025, pointing out that Mr. Zhuzhiashvili has no criminal history or security concerns and has a U.S.-citizen sponsor, and further urged that, "Since ERO is not attempting to remove my client to another country and he cannot be removed to Georgia because he was awarded withholding of removal from the IJ, he requests immediate release from detention." *Id.* at 17. She received no response to this email. She sent follow-up emails on May 28, June 6, and June 25, to which she also received no response.

35. On July 31, 2025, Ms. Gile finally received an email from ICE Deportation Officer Eric K. Swanson, in which he admitted that Mr. Zhuzhiashvili's 90-day post-order custody review was 48 days late and inexplicably asked Ms. Gile to obtain a valid passport for Mr. Zhuzhiashvili, even though she had already informed ICE months earlier that his passport was already in ICE's possession, included with his other personal property being held by ERO.

36. Again on September 9, 2025, Mr. Swanson wrote to Ms. Gile asking "if any effort has been made in obtaining a passport for Mr. Zhuzhiashvili," despite the fact that she had told ICE at least twice that they already had his passport. ICE's confusion about, *inter alia*, whether it was entitled to remove him to a third country, when his 90-day custody review was due, and the whereabouts of his passport, are all symptomatic of a bureaucratic incompetence that has resulted in Mr. Zhuzhiashvili's detention under deplorable conditions for an extended period of time to no apparent purpose.

37. Mr. Zhuzhiashvili has been detained pursuant to 8 U.S.C. § 1231(a) since March 12, 2025, for a total period that now exceeds six months. Conditions at FCI Leavenworth, where he remains detained, have been reported to be squalid and unhealthy. One news article describes "unsanitary and crowded living quarters, extended lockdowns, delayed and costly medical treatment, restricted contact with [detainees'] families and no access to religious services," as well as a "rat infestation" and "suicide attempts" with a lack of access even to sunlight. *See* Anna Kaminski, "Immigrants detained in Leavenworth federal prison live in squalor without sunlight, letters claim" (June 7, 2025), https://lailluminator.com/2025/06/07/immigrants-leavenworth/. His continuing detention at FCI Leavenworth violates his due process rights as articulated by the Supreme Court in *Zadvydas*.

38. Following the Court's decision in *Zadvydas*, "DHS promulgated regulations to implement the newly established constitutional constraints." *Bonitto v. Bureau of Immigr. & Customs Enforcement*, 547 F. Supp. 2d 747, 752 (S.D. Tex. 2008). Those regulations are codified at 8 C.F.R. § 241.4 and provide for reviews of a noncitizen's continuing detention after 90 days and again after 180 days. *See Bonitto*, 547 F. Supp. 2d at 752-53 (describing procedures).

39. The provisions for the 90-day review are set out in 8 C.F.R. § 241.4(h), which provides that the district director or Director of the Detention and Removal Field Office will conduct "a review of the alien's records and any written information submitted in English to the district director by or on behalf of the alien." In considering whether to release the noncitizen, the district director is required to consider the factors set out in § 241.4(f), which include the noncitizen's criminal record, mental health reports, evidence of rehabilitation, prior immigration violations and history, and other factors.

40. Mr. Zhuzhiashvili has no criminal history of any kind, nor are any of the other negative factors listed in § 241.4(f) relevant to his case.

41. On August 15, 2025, Mr. Zhuzhiashvili was served with a "Decision to Continue Detention" (ECF No. 1-3), in which he was denied release from detention because "ICE is in receipt of or expects to receive the necessary travel documents to effectuate your removal, and removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest." The document is digitally signed on July 31, 2025. Mr. Zhuzhiashvili reached the 90-day post-order mark on June 10, 2025, so his 90-day custody review was completed 51 days late. Additionally, the reasons given for his continued detention were pretextual or boilerplate, given that ICE had informed Ms. Gile that it was not seeking to remove Mr. Zhuzhiashvili to a third country, and that, in any event, such attempts were "never successful." Furthermore, since ICE apparently did not even realize that it was in possession of his passport, it is unlikely that it had in fact received the travel documents necessary for Mr. Zhuzhiashvili's removal.

42. If the district director decides to continue detention after the 90-day removal period, another review is mandated at the 180-day mark, the procedures for which are set out in § 241.4(i). Under these procedures, a "Review Panel" of two members is supposed to review the noncitizen's

records and make a recommendation on release; if the Director of the Headquarters Post-Order Detention Unit (HQPDU) does not accept their recommendation, or if the panel does not recommend release, the Review Panel "shall personally interview the detainee." § 241.4(i)(3)(i). Following the interview, the Review Panel "shall issue a written recommendation that the alien be released or remain in custody." § 241.4(i)(5).

43. Mr. Zhuzhiashvili has never received a 180-day custody review, despite having so far been detained for 187 days since his immigration court order became final.

44. Courts have granted habeas relief where DHS failed to conduct required custody reviews or conducted them without strict compliance with regulations. *See, e.g., Misirbekov v. Venegas*, -- F. Supp. 3d --, 2025 WL 2451030 (Aug. 25, 2025), at *2 (conditionally granting habeas relief where "Petitioner's 90-day custody review was late, and [] his 180-day custody review is still in progress" and "the reasons contained in the 90-day review were boilerplate and pretextual"); *Bonitto*, 547 F. Supp. 2d at 757-58 ("Bonitto's procedural due process rights have been violated by DHS's complete failure to provide the required 180-day review [...] [T]he Court notes the shortcomings in the 90-day POCR ... at present it appears to lack a reasoned basis.... Conclusory statements that removal is 'expected in the reasonably foreseeable future' or that an alien would 'pose a danger to society' if released, with no factual basis or explanation, teeters dangerously close to a perfunctory and superficial pretense instead of a meaningful review sufficient to comport with due process standards.")

ARGUMENT

A. Mr. Zhuzhiashvili has been detained for an unreasonably long period and has shown that his removal is not reasonably foreseeable.

45. 8 U.S.C. § 1231(a) permits ICE to detain noncitizens during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien

from the United States." 8 U.S.C. § 1231(a)(1)(A).

46. The statute provides that "the removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.
(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement."

8 U.S.C. § 1231(a)(1)(B).

47. In this case, Mr. Zhuzhiashvili had an administratively final removal order as of March 12, 2025, thirty days after the immigration judge's decision in his case. The 90-day removal period therefore ended on June 10, 2025.

48. After the expiration of the 90-day removal period, 8 U.S.C. § 1231(a)(3) provides that ICE may release noncitizens on an order of supervision. Alternatively, a noncitizen "may be detained beyond the removal period" if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6). Mr. Zhuzhiashvili does not fall into any of these categories.

49. Constitutional limits on detention beyond the removal period are well established. Government detention violates due process unless it is reasonably related to a legitimate government purpose. *Zadvydas*, 533 U.S. at 701. "[W]here detention's goal is no longer practically attainable, detention no longer 'bear[s] [a] reasonable relation to the purpose for which the individual [was] committed.'" *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Given that there has been no allegation of any dangerousness in Mr. Zhuzhiashvili's case, and no neutral adjudicator has determined that Mr. Zhuzhiashvili poses a flight risk, all constitutional justification for his prolonged detention has now evaporated.

50. The purpose of detention during and beyond the removal period is to "secure[] the alien's removal." *Zadvydas*, 533 U.S. at 682. In *Zadvydas*, the Supreme Court "read § 1231 to

authorize continued detention of an alien following the 90-day removal period for only such time as is reasonably necessary to secure the alien's removal." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 699).

51. As the Supreme Court explained, where there is no possibility of removal, immigration detention presents due process concerns because the need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is "weak or nonexistent." *Zadvydas*, 533 U.S. at 690-92. Detention is lawful only when "necessary to bring about that alien's removal." *See id.* at 689.

52. To balance these competing interests, the Court in *Zadvydas* established a rebuttable presumption regarding what constitutes a "reasonable period of detention" for noncitizens after a removal order. *Id.* at 700-01. The Court held that six months' detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to justify continued detention if the noncitizen provides a "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

53. Here, Mr. Zhuzhiashvili has been detained for longer than the presumptively reasonable six-month period. His removal period began on March 12, 2025, when the immigration judge's removal order became final, and he passed six months of post-removal order custody on September 12, 2025.

54. Mr. Zhuzhiashvili has "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* By law, he cannot be removed to Georgia, and he does not have citizenship in any other country, nor any ties to any other country. *See* 8 U.S.C. § 1231(b)(2)(D) (mandating that DHS "shall remove the alien to a country of which the alien is a subject, national, or citizen"). DHS has stated more than once in writing to Mr.

Zhuzhiashvili's immigration attorney that it is unable to remove him to a third country and/or is not trying to do so. DHS cannot keep Mr. Zhuzhiashvili incarcerated indefinitely simply on the off chance that it might decide one day to try to remove him to a third country.

55. Courts have often found that a petitioner in Mr. Zhuzhiashvili's position meets his burden of showing that his removal is not significantly likely to occur in the reasonable future if he can show that removal to his home country is impossible. *See, e.g., Palma v. Gillis*, 2020 WL 4880158, at *2 (S.D. Miss. July 7, 2020) ("to shift the burden to the Government, an alien must demonstrate … barriers to his repatriation to his country of origin"); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707-08 (S.D. Tex. 2020) (Pakistani man met burden by showing he could not be removed to Pakistan); *Joseph v. Mukasey*, 2009 WL 331558, at *4 (N.D. Fla. Feb. 10, 2009) (dual citizen of Bahamas and Haiti met burden by showing Bahamas would not issue travel documents for him).

56. A recent case from the Southern District of Georgia is also on point. In *Abrosi v. Warden, Folkston ICE Processing Ctr.*, 5:25-cv-00013 (S.D. Ga. Aug. 18, 2025) (Dkt. 26), an Ecuadorian national who had been granted withholding of removal to Ecuador filed a petition under *Zadvydas* seeking his release from prolonged detention, and a magistrate judge recommended that the petition be granted because "he cannot be removed to his country of origin (Ecuador) and ICE cannot feasibly remove him to another country … ICE has attempted to have [him] deported to a third country, but those countries denied the requests and ICE 'does not have an expected timeline for [his] removal to a third country.'" *Id.* at 5-6.

57. Counsel for Mr. Zhuzhiashvili is currently litigating other, nearly factually identical cases, and DHS's admissions in those cases are also relevant to this case. In a legally indistinguishable case of a Kyrgyzstani man granted INA withholding which counsel recently

litigated, *Misirbekov v. Venegas*, 1:25-cv-168 (S.D. Tex.), DHS submitted a declaration (Dkt. 10-1) stating that it had contacted Russia, Mexico, and Costa Rica in an attempt to remove the petitioner; Russia and Mexico did not respond, and Costa Rica declined. Thereafter, in the two and a half months preceding the filing of his habeas petition, DHS had not contacted any other countries regarding removal. In another case counsel is now litigating, *Iakubov v. Figueroa*, 2:25-cv-3187 (D. Ariz.), DHS submitted a declaration (Dkt. 10-1) admitting that on April 14, 2025, it contacted Uzbekistan, Kyrgyzstan, and Hungary regarding removal, but as of the date of the declaration, September 5, 2025, it had made no actual progress in removing the petitioner to any of those countries. In short, there is good reason to believe, based on DHS's own written admissions in this case, as well as its current actions (or inaction) in recent, legally indistinguishable cases of noncitizens from the same part of the world, that there is no significant likelihood of removing Mr. Zhuzhiashvili to a third country in the reasonably foreseeable future.

58. Furthermore, Mr. Zhuzhiashvili would be able to assert a credible fear of removal to a third country. As one district court recently noted, the U.S. has been violating the principle of non-refoulement by deporting refugees to third countries who are not bound by U.S. immigration court orders and which then immediately return the refugees to their homelands, where they face persecution. *See Abrego Garcia v. Noem*, 2025 WL 2062203 (D. Md. July 23, 2025), at *9, n. 15 (citing removal of Guatemalan refugee to Mexico, which then immediately sent him to Guatemala, and case of Venezuelans with pending asylum claims who were sent to El Salvador, which then returned them to Venezuela in a prisoner swap). In another case, filed September 12, 2025 in the U.S. District Court for the District of Columbia, *D.A. v. Noem*, 1:25-cv-3135, the plaintiffs allege that the United States is violating its obligations under international law not to refoul refugees to countries where they would face persecution by instead sending them to Ghana, which then

immediately returns them to their homelands, a practice known as "chain refoulement." Similarly, it has been reported in the media that refugees removed to Eswatini will be refouled to their home countries. *See* "5 immigrants deported by the US to Eswatini in Africa are held in solitary confinement," (July 17, 2025), available at: https://www.politico.com/news/2025/07/17/5-immigrants-deported-by-the-us-to-eswatini-in-africa-are-held-in-solitary-confinement-00461712. Because any third country to which Respondents might send Mr. Zhuzhiashvili could return him to Georgia in violation of the U.S.'s obligations of non-refoulement, Mr. Zhuzhiashvili could assert a credible fear to such removal and would be entitled to a credible fear hearing before a USCIS officer. *See D.V.D. v. U.S. Dep't of Homeland Security*, 778 F. Supp. 3d 355, 393 n. 48 (D. Mass. 2025) (injunction stayed pending appeal by *Dep't of Homeland Sec. v. D.V.D.*, 145 S.Ct. 2153 (2025)).

59. Respondents have been legally entitled to remove Mr. Zhuzhiashvili to a safe third country for more than six months, but have for whatever reason been unable or unwilling to do so; therefore, it appears that there is no "*significant* likelihood" of his removal "in the *reasonably* foreseeable future" (emphasis added). At this point, the Government "must respond with evidence sufficient" to indicate that it is significantly likely that Mr. Zhuzhiashvili will, in fact, be removed in a reasonable period of time. *Zadvydas*, 533 U.S. at 701.

B. The Government must be required to rebut Mr. Zhuzhiashvili's showing.

60. Some deference is owed to the government's assessment of the likelihood of removal and the time it will take to execute removal. *Id.* at 700. However, just as pro forma findings of dangerousness do not suffice to justify indefinite detention, pro forma statements that removal is likely should not satisfy the government's burden. The government must rebut a detainee's showing that there is no significant likelihood of removal in the reasonably foreseeable future with "evidence of progress . . . in negotiating a petitioner's repatriation." *Gebrelibanos v. Wolf*, 2020

WL 5909487 at *3 (S.D. Cal., Oct. 6, 2020); *Hassoun v. Sessions*, 2019 WL 78984 at *4 (W.D.N.Y. Jan. 2, 2019) ("[A]s time passes, the mere existence of possible avenues for removal becomes insufficient to justify further detention; some evidence of progress is required") (collecting cases).

61. The longer a noncitizen is detained, the more evidence the Government needs to put forward to justify continued detention. Specifically, "for detention to remain reasonable [once six months of detention have passed], as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701; see also *Alexander v. Att'y Gen. U.S.*, 495 F. App'x 274, 275 (3d Cir. 2012) ("[T]he longer an alien is detained, the less he must put forward to obtain relief"); *Hassoun*, 2019 WL 78984 at *4 ("[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.").

62. Even if ICE is engaged in ongoing efforts to secure removal, such efforts alone do not mitigate already-prolonged detention, nor do they render removal reasonably foreseeable. *See Shefqet v. Ashcroft*, 2003 WL 1964290 at *5 (N.D. Ill. April 28, 2003) ("Even if [ICE] has been making regular efforts to secure Petitioner's travel document . . . at this time there must be some concrete evidence of progress. [ICE] cannot rely on good faith efforts alone"). The likelihood of removal "does not turn on the degree of the government's good faith efforts," but rather "on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun*, 2019 WL 78984 at *5. Indeed, the Supreme Court specifically rejected the notion that removal is reasonably foreseeable as long as "good faith efforts" continue, holding that such a standard "would seem to require an alien seeking release to show the absence of any prospect of removal—no matter how unlikely or unforeseeable—which demands more than our reading of the statute can bear." *Zadvydas*, 533 U.S. at 701. "[I]f [ICE] has no idea of when it might reasonably expect

[Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Palma*, 2020 WL 4880158, at *3 (citing *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)).

63. Given ICE's total failure to take any meaningful step toward removing Mr. Zhuzhiashvili in more than six months, this Court should order Mr. Zhuzhiashvili's immediate release subject to whatever conditions this Court deems appropriate. *See, e.g., Manson v. Barr*, 2020 WL 3962235 (M.D. Fla. July 13, 2020) at *3 (ordering immediate release on conditions of supervision pursuant to 8 U.S.C. § 1231(a)((3)).

C. ICE has failed to comply with its own regulations with respect to Mr. Zhuzhiashvili's custody.

64. ICE's regulations provide that, by the end of the 90-day removal period that begins upon a noncitizen's removal order becoming final, the local ICE field office with jurisdiction over the noncitizen's detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R. § 241.4(c)(1), (h)(1), (k)(1)(i). If the noncitizen is not released following the 90-day custody review, jurisdiction transfers to ICE Headquarters, § 241.4(c)(2), which must conduct a custody review before or at 180 days. § 241.4(k)(2)(ii). In making these custody determinations, ICE considers several factors, including whether the noncitizen is likely to pose a danger to the community or will be a flight risk if released. § 241.4(e).

65. Here, as alleged more fully above, ICE conducted Mr. Zhuzhiashvili's 90-day custody review almost two months late and has not conducted a 180-day review at all. In any event, even if ICE had reviewed Mr. Zhuzhiashvili's custody, based on counsel's experience in a number of other cases around the country, it would have denied release based on boilerplate or pretextual reasons that do not comport with either the regulations or due process.

66. ICE's failure to appropriately review Mr. Zhuzhiashvili's custody is prejudicial. Prejudice can be presumed because the custody-review regulations implicate fundamental liberty interests and due process rights. *See Leslie v. Att'y Gen. of U.S.*, 611 F.3d 171, 180 (3d Cir. 2010) ("[W]e hold that when an agency promulgates a regulation protecting fundamental statutory or constitutional rights of parties appearing before it, the agency must comply with that regulation. Failure to comply will merit invalidation of the challenged agency action"); *Delgado-Corea v. INS*, 804 F.2d 261, 263 (4th Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [noncitizen]" and the violation affected "interests of the [noncitizen] which were protected by the regulation") (internal quotations omitted). The regulations provide noncitizens with a discrete opportunity to obtain freedom from detention, and that opportunity has thus far been withheld from Mr. Zhuzhiashvili. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

67. A sister district court dealt with a factually similar scenario in *Bonitto v. Bureau of Immig. & Customs Enforcement*, 547 F. Supp. 2d 747 (S.D. Tex. 2008). Relevant to this case, the *Bonitto* court found that the "Respondent's failure to comply with the review procedures outlined in the applicable regulations violates Petitioner's procedural due process rights." *Id.* at 755. As the court pointed out, "The Fifth Circuit has held that it is a denial of procedural due process for any government agency to fail to follow its own regulations providing procedural safeguards to persons involved in adjudicative processes before it." *Id.* (citing *Government of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970)). The *Bonitto* court went on to note that, "Where individual interests are implicated, the Due Process clause requires that an executive agency adhere to the standards

by which it professes its actions to be judged. The regulations involved here do not merely facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees. This Court must insist on DHS's compliance with the post-order custody regulations if Bonitto's detention is to remain constitutional." *Id.* at 756 (internal citations omitted). The court in that case granted habeas relief and ordered DHS to conduct a "meaningful post-removal custody review." *Id.* at 758.

68. For the reasons set out above and discussed at length in cases like *Bonitto* and *Misirbekov*, ICE's non-compliance with its own regulations violates the APA and Mr. Zhuzhiashvili's due process rights. As a remedy, this Court should review Mr. Zhuzhiashvili's custody under 8 C.F.R. § 241.4 and/or § 241.13, and it should order his release if appropriate under those standards. See *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) ("In these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioners' constitutional rights to due process by promptly deciding itself whether each should be released.")

CLAIMS FOR RELIEF

Count I – Violation of 8 U.S.C. § 1231(a), as interpreted by *Zadvydas*

69. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

70. Mr. Zhuzhiashvili's prolonged and open-ended detention by Respondents violates 8 U.S.C. § 1231(a), as interpreted by *Zadvydas*. Mr. Zhuzhiashvili's 90-day statutory removal period and six-month presumptively reasonable removal period for continued removal efforts have passed.

71. Respondents' failure to remove to Mr. Zhuzhiashvili over a six-month span, as well as Respondents' own written admissions that they cannot and are not trying to remove Mr.

Zhuzhiashvili, indicates that Respondents either cannot or will not remove him in the reasonably foreseeable future, particularly given that Respondents are not legally allowed to send him to Georgia and he has no citizenship or ties to any other country.

72. Under *Zadvydas*, Mr. Zhuzhiashvili's continued detention is unreasonable and not authorized by 8 U.S.C. § 1231.

Count II – Procedural Due Process – Unconstitutionally Indefinite Detention (U.S. Const. amend. V)

73. Petitioner re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

74. 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.

75. Other than as punishment for a crime, due process permits the government to take away liberty only "in certain special and narrow nonpunitive circumstances ... where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690. Such special justification exists only where a restraint on liberty bears a "reasonable relation" to permissible purposes. *Jackson*, 406 U.S. at 738; see also *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992). In the immigration context, those purposes are "ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (quotations omitted).

76. Those substantive limitations on detention are closely intertwined with procedural due process protections. *Foucha*, 504 U.S. at 78-80. Noncitizens have a right to adequate procedures to determine whether their detention in fact serves the purposes of ensuring their appearance or protecting the community. Id. at 79; *Zadvydas*, 533 U.S. at 692; *Casas-Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008). Where laws and regulations fail to

provide such procedures, the habeas court may assess whether the noncitizen's immigration detention is reasonably related to the purposes of ensuring his appearance or protecting the community, *Zadvydas*, 533 U.S. at 699, or require release.

77. Under this framework, Petitioner's release is required because his detention violates his due process rights.

78. Petitioner's detention is unconstitutionally indefinite because he cannot be removed to Georgia and has no ties or citizenship anywhere else. His continued detention without any reasonably foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. *Zadvydas*, 533 U.S. at 701.

79. Moreover, because Petitioner poses no danger or flight risk, his detention is not reasonably related to its claimed purpose, and is unlawful.

Count III – Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (D)

80. Petitioner realleges and incorporates by reference all preceding paragraphs.

81. A "reviewing court shall (1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (D) without observance of procedure required by law." 5 U.S.C. § 706.

82. ICE's actions and omissions, including, but not limited to: (1) its failure to conduct a 180-day custody review and/or to notify Mr. Zhuzhiashvili of the results of such review; (2) its failure to timely conduct his 90-day custody review; and (3) its arbitrary and capricious decision to continue his detention after 90 and 180 days based on spurious, pretextual, or boilerplate reasons, constitute unlawful agency action that is subject to being set aside by this Court.

83. Respondents' continued detention of Mr. Zhuzhiashvili violates his due process

rights by denying him an individualized and meaningful custody review, to which he is entitled under 8 C.F.R. § 241.4.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(a) Assume jurisdiction over this matter;

(b) Declare that Petitioner's continued detention violates 8 U.S.C. § 1231, as interpreted by the Supreme Court in *Zadvydas*;

(c) Alternatively, declare that Petitioner's prolonged and indefinite detention violates his rights under the Due Process Clause of the Fifth Amendment;

(d) Alternatively, declare that Respondent's continued detention of Petitioner without strict compliance with the procedural requirements of 8 C.F.R. § 241.4 violates the APA, 5 U.S.C. § 706 and/or the Due Process Clause;

(e) Grant a writ of habeas corpus and order Respondents to release Petitioner from detention forthwith, on an order of supervision pursuant to 8 U.S.C. § 1231(a)(3);

(f) Alternatively, review Petitioner's custody under the standards articulated in 8 C.F.R. § 241.4 and order his release under that standard, if appropriate;

(g) Award Petitioner his reasonable attorneys' fees and costs;

(h) Grant any other relief that this Court deems just and proper.

Dated: September 15, 2025

Respectfully submitted,

/s/ James D. Jenkins
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Counsel for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner pursuant to 28 U.S.C. § 2242. I am familiar with the details of Petitioner's case and I have discussed with him the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: September 15, 2025

/s/ James D. Jenkins
James D. Jenkins

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was emailed to the Clerk of Court at ksd_clerks_topeka@ksd.uscourts.gov for filing via the Court's CM/ECF system this 15th day of September, 2025, and that a true copy of the foregoing was served pursuant to Fed. R. Civ. P. 4(i) via certified U.S. mail this 15th day of September, 2025 to the following Respondents:

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