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DETAINED

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

10 ROLAND TUMASOV, an individual,

Case No.: 3:25-cv-02704-AGS-JLB
[Assigned to the Hon. Andrew G.
Schopler, District Judge]

11 Petitioner,

12 v.

**PETITIONER ROLAND TUMASOV'S
REPLY IN SUPPORT OF PETITION
FOR WRIT OF HABEAS CORPUS
AND REQUEST FOR PRELIMINARY
INJUNCTION**

13 DOE 1, et al.,

14 Respondents.

15 Agency file no.: 

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REPLY MEMORANDUM

I. INTRODUCTION

Petitioner Roland Tumasov respectfully submits this Reply in further support of his Petition for a Writ of Habeas Corpus and Motion for Preliminary Injunction. He has now been detained for over 13 months in ICE custody despite being granted withholding of removal and despite the Government failing to identify a viable destination for his removal. Newly submitted psychological evidence establishes that continued detention places his mental health at grave risk. (See Progress Report, **Exhibit 1**.) Under the applicable standards set forth in *Zadvydas* and the requirements for preliminary injunctive relief under *Winter v. NRDC*, 555 U.S. 7 (2008), Mr. Tumasov's prolonged detention is both unlawful and harmful.

II. DISCUSSION

A. THE COURT'S SCREENING ORDER RECOGNIZED THE VALIDITY OF PETITIONER'S DUE PROCESS CLAIM UNDER ZADVYDAS

In its October 16, 2025 Screening Order (ECF 3), the Court acknowledged that Mr. Tumasov had pled a cognizable claim for relief. The Court noted that because it was “not clear under what authority the government is holding him,” and given the “length of his detention,” Petitioner had stated a claim sufficient to proceed to a full return from the Government. Citing *Nadarajah v. Gonzales*, 443

1 F.3d 1069, 1076 (9th Cir. 2006), and *Zadvydas*, the Court recognized that statutes
2 permitting indefinite detention raise serious constitutional concerns, particularly
3 where removal is not imminent.

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5 Here, the Government's Return fails to resolve these concerns. Despite now
6 having had more than 13 months to identify a removal destination, the Government
7 can only assert that a "request is pending" with the Removal Management Division.
8 This failure to demonstrate a "significant likelihood of removal in the reasonably
9 foreseeable future" reinforces the Court's initial finding that continued detention
10 raises a serious due process issue under the Fifth Amendment.

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12 B. THE GOVERNMENT'S SIX-MONTH CLOCK ARGUMENT IS
13 FORMALISTIC AND INCONSISTENT WITH ZADVYDAS AND
14 THE FIFTH AMENDMENT

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16 The Government contends that the presumptively reasonable six-month
17 detention period under *Zadvydas* began on October 27, 2025¹, the date the
18 immigration judge's order became final. But this is a hyper-technical reading that
19 disregards the practical realities and the constitutional core of the *Zadvydas*
20 framework.

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25 ¹ In actuality, the Court should treat Mr. Tumasov's order of removal and grant of
26 withholding of removal as having become final no later than October 1, 2025, the
27 date that Mr. Tumasov filed with the Immigration Court a Notice of Waiver of his
right to appeal, attached as **Exhibit 2**.

1 Mr. Tumasov has been detained continuously since October 3, 2024. That is
2 more than 13 months of confinement, far beyond what *Zadvydas* deems
3 presumptively reasonable. The Ninth Circuit and other district courts have made
4 clear that finality of order does not necessarily reset the constitutional clock when
5 prolonged detention has already occurred. *It is the length of the period of*
6 *confinement that matters. See Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 (9th
7 Cir. 2011) (even post-order, prolonged detention without individualized
8 determination violates due process); *cf. Trinh v. Homan*, 466 F.Supp.3d 1077, 1093
9 (C.D. Cal. 2020) (detainees may challenge period of detention even before six-
10 month mark).

11 Furthermore, the Government’s reliance on the statutory authority under 8
12 U.S.C. § 1231(a) is misplaced. That statute allows for detention to facilitate
13 removal—but only if removal is reasonably foreseeable. In *Zadvydas*, the Supreme
14 Court held that detention becomes unconstitutional once there is “no significant
15 likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701. This is
16 a *constitutional* restriction. In the present case, continued detention with no removal
17 destination identified or timetable presented plainly violates that constraint.

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1 **C. THE GOVERNMENT HAS NOT IDENTIFIED ANY COUNTRY**
2 **WILLING TO ACCEPT PETITIONER, AND REMOVAL IS NOT**
3 **FORESEEABLE**

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5 Despite the passage of 13 months, the Government has not identified any
6 third country willing to accept Mr. Tumasov. It offers only the declaration of ICE
7 Deportation Officer Leticia Rodriguez, stating that as of October 17, 2025, a
8 referral was submitted to ICE's Removal Management Division, and that request
9 "is currently pending." No country is named. No negotiations are described. No
10 timeline is offered.

11
12 This minimal effort does not satisfy the Government's burden under
13 *Zadvydas*. While *Zadvydas* initially places the burden on the petitioner to show no
14 significant likelihood of removal, once that showing is made—as it is here by virtue
15 of the 13-month detention and complete absence of progress—the burden shifts to
16 the Government to rebut it. *See Zadvydas*, 533 U.S. at 701; *cf. Bah v. Barr*, 409
17 F.Supp.3d 464, 467 (E.D. Va. 2019) (District Court taking into consideration
18 severity of obstacle posed to removal to a particular country).

19
20 Notably, the Government concedes that repatriation to Armenia is legally
21 barred. Its only asserted removal pathway—resettlement in a third country—
22 remains *speculative* and *undefined*, which severely prejudices Petitioner's ability
23 and the Court's ability to evaluate whether removal is reasonably foreseeable.

1 Under *Clark v. Martinez*, 543 U.S. 371 (2005), continued detention without the
2 Government's demonstrating real prospects for removal to a specific country. *Id.* at
3 386-387. That is precisely the situation here.
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5 **D. NEW MEDICAL EVIDENCE ESTABLISHES IRREPARABLE**
6 **HARM FROM CONTINUED DETENTION**

7 The Court previously denied Petitioner's motion for a temporary restraining
8 order because the prior psychiatric report did not directly link continued detention
9 to medical harm. That gap has now been addressed. The updated October 30, 2025
10 report from Dr. Celina Marciano (Exhibit 1), a licensed clinical psychologist,
11 whose credentials were previously filed with the Court, offers clear and
12 unequivocal findings: Dr. Marciano concludes that Mr. Tumasov's continued
13 detention at Otay Mesa Detention Center is:
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- 17 • Exacerbating his diagnoses of Major Depressive Disorder,
18 Generalized Anxiety Disorder, and PTSD;
- 19 • Leading to increasing symptoms including sleep disruption,
20 panic attacks, suicidal ideation, and hopelessness;
- 21 • Creating a serious and escalating risk to his mental health that
22 may result in long-term, possibly irreversible harm; and
- 23 • Rendering him clinically at risk for psychological
24 decompensation if detention continues.

1 This constitutes compelling evidence of irreparable harm, justifying
2 injunctive relief. No adequate remedy at law exists for this kind of deterioration in
3 psychological well-being. Detention-related health deterioration, particularly where
4 conditions are civil in nature, triggers the right to relief. *See Hernandez Roman v.*
5 *Wolf*, 977 F.3d 935, 943-944 (9th Cir. 2020).

7 **E. THE BALANCE OF EQUITIES AND PUBLIC INTEREST**

8 **SUPPORT RELEASE OR A PROMPT BOND HEARING**

10 Mr. Tumasov has no criminal history, has consistently complied with all
11 legal procedures, and is married to a U.S. citizen who is sponsoring him through a
12 Form I-130 petition. He poses no threat to public safety or national security.

14 Conversely, the Government has not articulated any pressing interest that
15 would be harmed by his supervised release. His ongoing civil confinement—
16 despite a legal bar to return and no identified removal destination—no longer
17 serves any legitimate government objective. Civil detention is not meant to be
18 punitive.

21 The public interest is not advanced by the indefinite detention of individuals
22 in violation of constitutional protections. To the contrary, “it is always in the public
23 interest to prevent the violation of a party’s constitutional rights.” *Melendres v.*
24 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).

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1 **III. CONCLUSION**

2 Petitioner Roland Tumasov has now been detained for more than 13 months
3 under conditions that violate his constitutional rights and endanger his mental
4 health. The Government has failed to justify continued confinement or identify any
5 destination for removal. Under *Zadvydas*, and based on the substantial and now
6 uncontested medical evidence of irreparable harm, Petitioner respectfully requests
7 that this Court: grant the Petition for Writ of Habeas Corpus, and/or injunctive
8 relief, and order his immediate release from ICE custody; and grant any other relief
9 the Court deems just and appropriate.

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13 Dated November 5, 2025
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