UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

GIORGI SHENGELIA,

Petitioner-Plaintiff,

v.

SYLVESTER M. ORTEGA, Director of the San Antonio Field Office of the U.S. Immigration and Customs Enforcement, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security,

ROSE THOMPSON, Warden of the Karnes County Immigration Processing Center,

TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security,

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security,

U.S. DEPARTMENT OF HOMELAND SECURITY

PAMELA BONDI, Attorney General of the United States,

In their official capacities,

Respondents-Defendants.

Case No. 5:25-cv-01545

**PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

## INTRODUCTION

1. Petitioner, Mr. Giorgi Shengelia ("Mr. Shengelia" or "Petitioner"), by and through his undersigned Counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel his immediate release from the immigration detention where he has been held by the U.S. Department of Homeland Security ("DHS") since being detained on October 12, 2023. *See* ICE Detainee Locator results, Exhibit A.

2. Petitioner Giorgi Shengelia has been continuously detained for over 2 years now, seven months of which, after the Immigration Judge's ("IJ") order granting withholding of removal became final on April 21, 2025, following an unsuccessful appeal by the DHS. This violates the federal statute, 8 U.S.C. § 1231(a)(1)(A), which gives the government only three months to effectuate such removal.

3. Both the Immigration Judge and the Board of Immigration Appeals ("BIA") decided in Mr. Shengelia's favor, finding that he will be persecuted on account of his political opinion in the event of return to his home country, Georgia. *See* Exhibits B and C.

4. Mr. Shengelia remains detained under 8 U.S.C. § 1231, which governs the detention of non-citizens with a final order of removal that has been withheld or deferred by an Immigration Judge due to a substantial risk of persecution in his home country. 8 U.S.C. § 1231(a)(1)(B)(i).

5. Enforcement and Removal Operations ("ERO") of Immigration and Customs Enforcement ("ICE") refuses to release Mr. Shengelia and keeps looking for third countries of removal despite knowing that he lacks citizenship in or a connection to any other country.

6. Thus, DHS has attempted—without success—to secure Petitioner's removal to multiple third countries, including Turkey, Armenia, Azerbaijan, and Uganda. Despite more than seven months of efforts since the final order, and more than two years of Petitioner's overall

detention, no country has agreed to accept him, and there is no indication that acceptance is forthcoming.

7. Because Petitioner is a Georgian national who cannot be removed to Georgia due to his granted withholding, and because all efforts to remove him to alternative countries have failed, there is no significant likelihood of removal in the reasonably foreseeable future. *See* Exhibits B and C.

8. Petitioner'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), because his removal is not reasonably foreseeable. The Supreme Court has limited the potentially indefinite post-removal order detention to a maximum of six months. *Id.* He cannot be deported to his home country because he was granted withholding of removal with respect to that country. 8 C.F.R. § 1208.17. ICE's half-hearted attempts to remove Mr. Shengelia to a random collection of unspecified alternative countries—to which he has no ties, and which have no policy or history of accepting non-citizen deportees—are speculative and futile. The Petitioner's continued detention without any reasonably foreseeable endpoint is thus unconstitutionally prolonged in violation of clear Supreme Court precedent.

9. If Mr. Shengelia is to be removed to a third country, Respondents *must* first assert a basis under 8 U.S.C. § 1231(b)(2)(C) and ICE *must* provide him with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[1]

[1] United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading (last visited on 11/20/2025.

10. Moreover, given the Supreme Court of the United States' decision on June 23, 2025, in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded Respondents from removing noncitizens to third countries without notice and an opportunity to seek fear-based relief, U.S. Immigration and Customs Enforcement ("ICE") is intent to implement its campaign to send noncitizens to far corners of the planet—places they have absolutely no connection to whatsoever[2]—in violation of clear statutory obligations set forth in the Immigration and Nationality Act ("INA"), and Due Process in accordance to the US Constitution. In the absence of the nationwide injunction, individual lawsuits, such as the instant case, are the sole method to challenge the illegal third-country removals.

11. Absent an order from this Court, Petitioner will likely remain detained for many more months, if not years. Therefore, the Petitioner's continued detention is arbitrary and unlawful, and he requests that this Court order his immediate release from ICE custody.

## JURISDICTION

12. Petitioner is in the physical custody of Respondents and ICE, an agency within the Department of Homeland Security ("DHS"). He is detained at the Karnes County Immigration Processing Center in Karnes City, TX. See Exhibit A. Karnes County Immigration Processing Center is under the direct control of Respondents and their agents.

13. Petitioner has been detained since October 12, 2023. He has not received an individualized bond hearing before an Immigration Judge because he was not eligible for bond under *Matter of M-S-*. 27 I&N Dec. 509 (A.G. 2019). He has no criminal convictions.

[2] CBS News, "Politics Supreme Court lets Trump administration resume deportations to third countries without notice for now" (June 24, 2025), available at: https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/ (last visited on 11/20/2025).

14. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

15. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). *See Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

16. This Court may grant relief pursuant to habeas corpus, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.*, and the All Writs Act, 28 U.S.C. § 1651, to protect Petitioner's rights under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and under applicable Federal law, and to issue a writ of habeas corpus for his immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289 (2001); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

17. Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

**VENUE**

18. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky,* venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner is currently in custody. 410 U.S. 484, 493–500 (1973). See Exhibit A.

19. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e). *Id.* No real property is involved in this matter.

**REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243.**

20. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an

order to show cause is issued, the Respondents must file a return "within three days unless, for good cause, additional time, not exceeding twenty days, is allowed." *Id.*

21. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

22. Petitioner is "in custody" for the purpose of § 2241 because Petitioner is arrested and detained by Respondents.

## PARTIES

23. Petitioner is a native and citizen of Georgia. He entered the United States on October 12, 2023, and has been detained ever since. On September 19, 2024, following a remand from the Board of Immigration Appeals, an Immigration Judge granted Petitioner withholding of removal. DHS appealed that decision, but the Board dismissed DHS's appeal, and the Immigration Judge's order became final on April 21, 2025. *See* Exhibits B and C. Petitioner has remained in DHS custody since his initial detention on October 12, 2023, and has therefore been detained for more than two years. He is currently held at the Karnes County Immigration Processing Center in Karnes City, Texas. *See* Exhibit A. Petitioner is in the custody and under the direct control of Respondents and their agents.

24. Sylvester M. ORTEGA is the Field Office Director of ICE in San Antonio, Texas, and is named in his official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

25. Respondent Rose THOMPSON is the Warden of the Karnes County Immigration Processing Center, where Petitioner is being held. Respondent Thompson oversees the day-to-day operations of the facility and acts at the Direction of Respondents Lyons, Noem, and Becerra. She is a custodian of the Petitioner and is named in her official capacity.

26. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.

27. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.

28. Respondent DHS is the federal agency responsible for implementing and enforcing the INA. DHS oversees ICE and the detention of noncitizens. DHS is a legal custodian of Petitioner.

29. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice ("DOJ") and is named in her official capacity. She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA.

## EXHAUSTION OF ADMINISTRATIVE REMEDIES

30. Exhaustion of administrative remedies is not required, should be excused, or, alternatively, has been satisfied by the Petitioner.

31. A person seeking *habeas* relief in this Circuit must first exhaust available administrative remedies." *Hinojosa v Horn*, 896 F3d 305, 314 (5th Cir 2018). In the present case, however, the exhaustion is prudential, as there is no statutory requirement under 28 U.S.C § 2241. *See Covarrubias v Vergara, 2025 WL 2950096, *6 (SD Tex).*

32. The Fifth Circuit has long held that exhaustion may be excused when administrative remedies are (i) unavailable, (ii) wholly inadequate, (iii) patently futile, or (iv) when a constitutional challenge is advanced that is unsuitable for determination in an administrative proceeding. *See Fuller v. Rich*, 11 F3d 61, 62 (5th Cir 1994); *Garner v US Department of Labor*, 221 F3d 822, 825 (5th Cir. 2000).

33. Exhaustion is satisfied here, as there is a final BIA decision of April 21, 2025, dismissing DHS's appeal. (Preceded by the BIA decision dated July 30, 2024, finding that the Petitioner established past persecution). *See* Exhibits B and C.

34. Furthermore, the Petitioner challenges the constitutional grounds of his detention under the Due Process Clause of the Fifth Amendment – a claim that is unsuitable for determination in an administrative proceeding. *Garner*, 221 F3d at 825.

35. The Petitioner argues in the alternative that where, as here, administrative relief is unavailable or futile, and the petitioner asserts an ongoing constitutional injury, exhaustion is not required and should be excused.

## STATEMENT OF FACTS

36. Petitioner is a 43-year-old native and citizen of Georgia. He fled his home country due to persecution on account of a protected ground—his political opinion, which opposes that of

[redacted] As a result of this political dissent, Petitioner was subjected to severe persecution, including kidnapping, assaults by law enforcement officials, threats, and physical injuries. The sustained harassment and violence made it impossible for him to live safely in Georgia, maintain employment, or relocate within the country.

37. Mr. Shengelia has no criminal history in any country.

38. Petitioner entered the United States through the Southern Border on October 12, 2023.

39. The Petitioner had been detained at the Folkston ICE Processing Center in Folkston, Georgia, since his entry into the United States on October 12, 2023. However, on or about June 17, 2025, he was transferred to the Karnes County Detention Center in Karnes City, Texas.

40. Petitioner's initial individual hearings were held on February 29, 2024, and March 6, 2024. During his individual hearing, he provided detailed testimony regarding the physical and emotional harm inflicted upon him by government officials, testimony that was corroborated by extensive documentary evidence in the record. *See* Exhibit B.

41. On March 6, 2024, the IJ denied Petitioner's applications for asylum, withholding of removal, and protection under the Convention Against Torture.

42. On March 7, 2024, Petitioner timely appealed the IJ's decision.

43. On July 30, 2024, the BIA issued a decision reversing the IJ's adverse credibility determination as clearly erroneous. The BIA further held that the record established both past persecution and the requisite nexus to a protected ground. The BIA therefore remanded the case to the Immigration Court for further proceedings. *See* Exhibit C.

44. On September 19, 2024, following the BIA's remand, the IJ granted Petitioner withholding of removal. DHS appealed that decision on October 8, 2024. *See* Exhibit B.

45. On April 21, 2025, the BIA dismissed DHS's appeal. *See* Exhibit C.

46. Therefore, the IJ's order of withholding of removal became final on April 21, 2025.

47. The Petitioner has not been released since his detention began more than two years ago. See Exhibit D, TimeAndDate.com calculation. After the withholding-of-removal order became final on April 21, 2025, ICE initiated efforts to remove him to various third countries. ICE contacted multiple nations—including Turkey, Azerbaijan, Armenia, and, more recently, Uganda—but each of these countries declined to accept him. At no point was the Petitioner asked whether he feared removal to any of those countries.

48. Deportation officers at the detention facility informed Mr. Shengelia that none of the contacted countries agreed to receive him. Throughout this period, Mr. Shengelia and his counsel requested weekly updates from ICE regarding the status of his removal. Each time, they were told that there had been no change and that they should follow up again the following week.

49. On September 29, 2025, ICE conducted a custody-redetermination interview with the Respondent at the detention facility. Respondent's counsel participated by telephone. During the interview, the Respondent was asked routine questions concerning his proposed sponsor, anticipated place of residence, criminal history, and community ties, all of which he answered truthfully and accurately. Mr. Shengelia was informed that the results of the custody-redetermination interview were forwarded to DHS Headquarters in Washington, D.C., after the 180-day period following the final order, on October 18, 2025. However, despite repeated inquiries by the Petitioner and his attorneys, ICE has provided no further updates and has stated only that no decision has yet been issued.

50. ICE has recently intensified pressure on Mr. Shengelia, warning that if he does not personally identify and secure a third country willing to accept him, he may face legal consequences or even criminal charges. This pressure culminated in the issuance of a "Warning for Failure to Depart" (Form I-229A) on November 4, 2025, citing INA § 241(a)(1)(C) and

instructing him to identify third countries for removal—despite the notice itself stating that it is not a violation for a detainee to seek relief from removal or request release from custody. *See* Exhibit E.

51. The Petitioner cannot be removed to Georgia due to the likelihood of persecution on account of his political opinion, as established in the Immigration Judge's final order. *See* Exhibits B and C. DHS attempted to deport Mr. Shengelia to Turkey, Armenia, Azerbaijan, and Uganda—countries with which he has no ties or family connections and whose languages he does not speak.

52. Nevertheless, DHS insisted that the Petitioner identify potential "third countries" for removal pursuant to the November 4, 2025, Warning for Failure to Depart, despite his lack of any meaningful connection to any country other than Georgia. *See* Exhibit E. To mitigate the psychological pressure exerted on him during detention, counsel submitted several countries on November 6, 2025.

53. Petitioner now affirms that he has no lawful status, residency, familial ties, or other nexus to any third country. His sole country of nationality is Georgia – the very country to which the Immigration Judge granted, and the Board of Immigration Appeals affirmed, withholding of removal based on the grave threats to his life and safety. Accordingly, DHS cannot reasonably pursue removal to any so-called "third country," and continued detention on that basis is unsupported by law or fact.

54. Mr. Shengelia is therefore at risk of being unlawfully removed to a third country without constitutionally adequate notice and an opportunity to apply for protection, in violation of the INA, binding international treaties, and due process.

55. Currently, DHS has a policy of removing or seeking to remove individuals to third countries *without* first providing adequate notice of third country removal, or any meaningful

opportunity to contest that removal if the individual has a well-founded fear of persecution or torture in that country.

56. Intervention from this Court is therefore required to ensure that Mr. Shengelia does not continue to suffer irreparable harm in the form of unjustified, prolonged, and indefinite detention, and further violation of his rights in the form of summary removal to a third country.

## LEGAL ARGUMENT

### A. Withholding of Removal: Higher Standard Than Asylum and Thus Higher Risk of Persecution in the Home Country.

57. Non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and CAT relief. Withholding of removal requires showing a higher probability of persecution than asylum. 8 C.F.R. §§ 208.16–208.18. *To be granted withholding of removal, a non-citizen must show that their* life or freedom would "more likely than not" be threatened in the country of origin, as opposed to the 'well-founded fear' standard for asylum. 8 C.F.R. §§208.13(b), 208.16(b).

58. When an immigration judge grants a non-citizen withholding of removal, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. See *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2283 (2021). Once withholding relief is granted, either party has the right to appeal that decision to the BIA within 30 days. *See* 8 C.F.R. § 1003.38(b). If the removal order is appealed, it becomes final upon dismissal of an appeal by the Board of Immigration Appeals. 8 C.F.R. 1241.1(a).

**B. Detention Of Non-Citizens Beyond the 90-Day Removal Period is Unconstitutional.**

**1. Petitioner's continued detention is unlawful under *Zadvydas* because his removal is not reasonably foreseeable.**

59. "It is well established that the Fifth Amendment entitles [non-citizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "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." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

60. The Supreme Court has recognized that post-removal order detention is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at 701.

61. 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during "the removal period," which is defined as the 90-day period beginning on "the latest" of either "[t]he date the order of removal becomes administratively final"; "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court's final order"; or "[i]f the [noncitizen]is detained or confined (except under an immigration process), the date the [noncitizen] is released from detention or confinement."

62. Individuals who are not removed within the 90-day removal period are no longer subject to mandatory detention and should generally be released under conditions of supervision, such as periodic reporting and other reasonable restrictions. See *id.* § 1231(a)(3).

63. Although 8 U.S.C. § 1231(a)(6) permits detention "beyond the removal period" of noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme Court held that "the statute, read in light of the Constitution's demands, limits [a noncitizen's] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen's]

removal from the United States." 533 U.S. at 689. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

64. In determining the reasonableness of detention, the Supreme Court recognized that, if a person has been detained *for longer than six months* following the initiation of their removal period, their detention is presumptively unreasonable unless deportation is reasonably foreseeable; otherwise, it violates that noncitizen's due process right to liberty. 533 U.S. at 701. In this circumstance, if the noncitizen "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.* In other words, the burden shifts to the Government to justify continued detention. *Id.*

65. Moreover, "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.

66. Therefore, detention is unconstitutional and not authorized by statute when it exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701 (stating that "Congress previously doubted the constitutionality of detention for more than six months" and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months).

67. Here, Petitioner has been detained by Respondents for over 2 years. *See* Exhibit D. Over seven months of this prolonged detention has taken place *after* his removal period began.

68. Petitioner's removal order became administratively final on April 21, 2025. The removal period began on that day and thus elapsed on July 21, 2025. Therefore, the *Zadvydas* framework applies to the Petitioner's detention, and he has been detained for more than six months since his removal order became final.

69. Mr. Shengelia will very likely never be removed from the United States, let alone in the reasonably foreseeable future. (See Section C. 'Deportation to a Third Country Not Reasonably Foreseeable' below). Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

70. Therefore, the Petitioner has been detained for more than six months: in total for 2 years and for seven months since receiving a final removal order, and his removal is not reasonably foreseeable because

1) He cannot be deported to his home country due to his withholding of removal relief grant.

2) Any countries to which requests may still be pending have no logical reason to accept the Petitioner's deportation and have provided no timeline under which they might decide; and

3) Deporting the Petitioner to those alternative countries would require additional, lengthy proceedings.

See *Hassoun v. Sessions*, No. 18-cv-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (finding removal not reasonably foreseeable where several countries had declined to issue travel documents and several others had provided no response or timeline for response); *Kacanic v. Elwood*, No. 02-cv-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002) (finding removal not reasonably foreseeable where the country of origin had "been in possession of all the information [ICE] is capable of providing to it" but had "never stated that the Petitioner is likely to be granted travel papers" and was "unable to tell the [ICE] when a decision will be reached").

71. For the reasons stated above, the Petitioner has clearly met any burden of proof that this Court may place on him. Unlike *Zadvydas* and the vast majority of its progeny, which analyzed whether ICE will foreseeably remove non-citizens to their home country or country of citizenship, see, e.g., *Zadvydas*, 533 U.S. at 684-85. The question here is whether ICE will be able to remove

the Petitioner to random third countries to which he has no connection whatsoever. The answer to that question has been no from the moment the Petitioner's relief grant became final, and the likelihood of third-country removal has only decreased since then.

**2. Petitioner Poses Neither a Flight Risk nor a Danger to the Community.**

72. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528.

73. Thus, where detention meets the *Zadvydas* standard for reasonable foreseeability, detention violates the Due Process Clause unless it is "reasonably related" to the government's purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 ("[I]f removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period") (emphasis added); *Id.* at 699 (purpose of detention is "assuring the alien's presence at the moment of removal"); *Id.* at 690-91 (discussing twin justifications of detention as preventing flight and protecting the community).

74. The government's own regulations contemplate this requirement. They dictate that even after ICE determines that removal is reasonably foreseeable—and that detention therefore does not per se exceed statutory authority—the government must still determine whether continued detention is warranted based on flight risk or danger. *See* 8 C.F.R. § 241.13(g)(2) (providing that

where removal is reasonably foreseeable, "detention will continue to be governed under the established standards" in 8 C.F.R. § 241.4).

75. The regulations at 8 C.F.R. § 241.4 set forth the custody review process that existed even before *Zadvydas*. This mandated process, known as the post-order custody review, requires ICE to conduct "90-day custody reviews" prior to expiration of the ninety-day removal period and to consider release of individuals who pose no danger or flight risk. 8 C.F.R. § 241.4(e)-(f). Among the factors to be considered in these custody reviews are "ties to the United States such as the number of close relatives residing here lawfully"; whether the noncitizen "is a significant flight risk"; and "any other information that is probative of whether" the noncitizen is likely to "adjust to life in a community," "engage in future acts of violence," "engage in future criminal activity," pose a danger to themselves or others, or "violate the conditions of his or her release from immigration custody pending removal from the United States." *Id.*

76. Here, Mr. Shengelia must be released because he poses no danger or flight risk: he has no criminal history, is a peaceful individual, and has stable support in the United States through his U.S.-citizen relative and sponsor, who has offered him housing, full financial support, and has affirmed—through a sworn, notarized affidavit—both his good moral character and her commitment to ensure his compliance with all immigration requirements.

**C. Removal to a Third Country Not Reasonably Foreseeable.**

77. When a non-citizen has a final withholding relief grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. See 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2).

78. While ICE is authorized to remove non-citizens who were granted withholding relief to alternative countries, see 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f), the removal statute

specifies restrictive criteria for identifying appropriate countries. Non-citizens can be removed, for instance, to the country "of which the [non-citizen] is a citizen, subject, or national," the country "in which the [non-citizen] was born," or the country "in which the [non-citizen] resided" immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)-(E).

79. Importantly, the U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third-country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D., et al.* v. *U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025), limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction.

80. In this case, the Petitioner cannot be removed to Georgia because the Immigration Judge has found that Georgia is the country in which the Petitioner has been persecuted and will face future persecution. See 8 U.S.C. § 1231(b)(3)(A). Nevertheless, ICE has contacted Turkey, Armenia, Azerbaijan, and Uganda—countries with which the Petitioner has absolutely no connection. He is not a citizen, subject, or national of those countries; has never resided in them; has no familial or personal ties there; and does not speak any of their languages.

81. Moreover, even in the highly unlikely event that an alternative country informs ICE of its willingness to accept the Petitioner's removal, ICE must still provide the Petitioner with adequate notice and a meaningful opportunity to respond and to seek fear-based relief with respect to that country, in compliance with the INA, due process, and the binding international treaty: The

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[3] Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. This policy clearly violates due process and the United States' obligations under the Convention Against Torture, and, even if complied with, would restart the process that took several months to complete the first time.

82. Therefore, the government has failed to produce sufficient evidence to meet its burden of demonstrating a significant likelihood of removal in the reasonably foreseeable future. It is clear that removing Mr. Shengelia to any third country would violate his due process rights unless he is first afforded constitutionally adequate notice and a meaningful opportunity to seek protection under the Convention Against Torture. In the absence of any other operative injunction, intervention by this Court is necessary to safeguard those rights.

**D. The Removal Period Cannot Be Extended Because the Petitioner Did Not Fail to Cooperate with ICE under 8 U.S.C. § 1231(a)(1)(C).**

83. The 90-day removal period can be extended when an individual fails to cooperate with the government's lawful efforts to deport them. 8 U.S.C. § 1231(a)(1)(C). Section 1231(a)(1)(C) defines two main categories of failure to cooperate: "[1] fail[ing] or refus[ing] to make timely application in good faith for travel or other documents necessary to [one]'s departure or [2] conspir[ing] or act[ing] to prevent [one]'s removal subject to an order of removal." *Id.* Detention is discretionary during the time(s) when an individual's removal period is extended pursuant to Section 1231(a)(1)(C). *Id.* (providing that an individual "*may* remain in detention during such extended period") (emphasis added).

[3] *See supra* n.6.

84. Neither the Supreme Court nor the Fifth Circuit has "addressed the quantum of evidence necessary to establish lack of cooperation" under Section 1231(a)(1)(C). *Khan v. Gonzales*, 481 F. Supp. 2d 638, 641 (W.D. Tex. 2006). This Court has held that, in order to justify a habeas petitioner's continued detention under Section 1231(a)(1)(C), "the government must demonstrate a lack of cooperation by clear and convincing evidence." *Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F. Supp. 3d 693, 709 (W.D. Tex. 2021) (adopting "the standard of proof used in other civil confinement contexts"). Moreover, the government must "renew its efforts to seek compliance . . . on a regular basis"—specifically, "no less than every six months" in order "[t]o keep within the spirit of *Zadvydas*." *Id.*

85. In *Glushchenko*, this Court established "a two-part test to establish a lack of cooperation":

> (1) the alleged non-compliance with removal efforts must be a product of the detainee's intentional or deliberate conduct; and (2) the non-compliance must deprive the government of documents necessary to effectuate a departure from the United States or otherwise prevent the [person]'s removal from the United States subject to an order of removal. 566 F. Supp. 3d 693, 709.

*Id.* at 709 (emphasis added); see also *Balogun v. I.N.S.*, 9 F.3d 347, 351 (5th Cir. 1993) (holding, in pre-Zadvydas case, that continued post-removal order detention is justified if government can show that petitioner "by his conduct has intentionally prevented [immigration authorities] from effecting his deportation", and petitioner must be afforded an opportunity in district court to contest the government's claims of deliberate noncooperation).

86. In the present case, neither the statutory nor the case law non-compliance was exhibited by the Petitioner. Despite ICE's unfounded attempts to remove him to the unrelated countries, he neither intentionally nor deliberately obstructed the government's efforts nor deprived the government of documents necessary to effectuate a departure. *Glushchenko*, 566 F. Supp. 3d at 709.

## CLAIMS FOR RELIEF

### COUNT ONE

**Violation of Fifth Amendment Right to Due Process and *Zadvydas v. Davis***

87. Petitioner re-alleges and incorporates by reference the paragraphs above as though fully set forth herein.

88. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

89. Mr. Shengelia's detention during the removal period is constitutionally permissible only if there is a significant likelihood that his removal can be effectuated in the reasonably foreseeable future. In his case, removal to Georgia is barred because withholding of removal has been granted, and removal to any other country is not viable, as he has no ties to those countries. *See* Exhibits B and C. These circumstances strongly support the conclusion that there is no significant likelihood of removal in the reasonably foreseeable future. Nevertheless, Respondents continue to detain Mr. Shengelia without any evidence that a third country will issue a travel document, and without any reasonable basis to believe that such a document will be obtained within a reasonable period of time.

90. Moreover, the Respondents' detention of the Petitioner no longer bears any reasonable relation to a legitimate government purpose, as he has no criminal history and poses no risk of flight or danger to the community.

91. For these reasons, Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment and is contrary to the Supreme Court precedent.

**COUNT TWO**

**Violation of 8 U.S.C. § 1229**

92. Petitioner re-alleges and incorporates by reference paragraphs 1 to 81 above as though fully set forth herein.

93. The INA provides that a removal proceeding before an immigration judge under 8 U.S.C. § 1229(a) is "the sole and exclusive procedure" by which the government may determine whether to remove an individual, "[u]nless otherwise specified" in the INA. 8 U.S.C. § 1229a(a)(3). The INA's "exclusive procedure" and statutory protections apply to any removal of a noncitizen from the United States.

94. Considering the immigration judge granted withholding of removal, which was further affirmed by the BIA, ICE's attempts to remove the Petitioner and his continued detention are unlawful and should cease immediately.

**COUNT THREE**
**Violation of 8 U.S.C. § 1231(a)**

95. Petitioner re-alleges and incorporates by reference paragraphs 1 to 81 above as though fully set forth herein.

96. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); *see also Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.").

97. Mr. Shengelia's continued detention by the Respondent violates 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*. Mr. Shengelia's 90-day statutory removal period passed in July 2025, and there is no reasonable chance that he can be removed in any foreseeable future neither to his home country, as the removal was withheld, nor to any third country.

98. Under *Zadvydas*, the continued detention of someone like Mr. Shengelia is unreasonable and not authorized by 8 U.S.C. § 1231.

**COUNT FOUR**
**Violation of 8 C.F.R. § 241.4**

99. Petitioner re-alleges and incorporates by reference paragraphs 1 to 81 above as though fully set forth herein.

100. As set forth above, Respondents continue to detain Mr. Shengelia in violation of 8 C.F.R. § 241.4, having not considered the substantive factors set forth in that regulation. Were such factors to be properly weighed, it would be apparent that Mr. Shengelia is a candidate for release on an Order of Supervision pending removal.

101. Likewise, Respondent continues to detain Mr. Shengelia in violation of 8 C.F.R. § 241.13, since the proper procedures set forth in those regulations have not been carried out.

**PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Declare that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment and 8 U.S.C. § 1231(a);

(3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

(4) Order that Petitioner's detention is unlawful in violation of *Zadvydas* because his removal is not reasonably foreseeable;

(5) Order the immediate release of Petitioner from custody because his detention is not reasonably foreseeable in violation of *Zadvydas*;

(6) Order the immediate release of Petitioner from custody on any other basis that this Court finds proper;

(7) Order that Petitioner cannot be removed to any third country without first being provided constitutionally-compliant procedures, including:

a. Written notice to Petitioner and counsel of the third country to which he may be removed, in a language that Petitioner can understand, provided at least 21 days before any such removal;

b. A meaningful opportunity for Petitioner to raise a fear of return for eligibility for protection under the Convention Against Torture, including a reasonable fear interview before a DHS officer;

c. If Petitioner demonstrates a reasonable fear during the interview, DHS must move to reopen his underlying removal proceedings so that he may apply for relief under the Convention Against Torture.

d. If it is found that Petitioner does not demonstrate a reasonable fear during the interview, a meaningful opportunity, and a minimum of 15 days for Petitioner to seek to move to reopen his underlying removal proceedings to challenge potential third-country removal.

(8) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(9) Grant any further relief this Court deems just and proper.

Date: November 20, 2025

Respectfully submitted,

*/s/Brian Scott Green*
Brian Scott Green
Colorado Bar ID # 56087
Law Office of Brian Green
9609 S University Boulevard
#630084
Highlands Ranch, CO 80130
Tel: (443) 799-4225
Email: BrianGreen@greenUSimmigration.com

*/s/Nino Pataraia* (with permission)
* Nino Pataraia
New York Bar ID # 5731161
EK Law Office PLLC
405 Lexington Ave, Suite 813
New York, NY 10174
Tel: (646) 402-2219
Fax: (646) 786-4170
Email: Npataraia@ek-lawoffice.com
*Motion for *pro hac vice* forthcoming

Attorneys for Petitioner

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent the Petitioner-Plaintiff, Giorgi Shengelia, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 20th day of November, 2025.

*/s/Brian Scott Green*
BRIAN SCOTT GREEN