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

Mr. 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

Petitioners' Reply to Respondents' Opposition to the 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 submits this Reply to the Government's Response to Mr. Shengelia's Petition for Writ of Habeas Corpus. Petitioner will not reply to every issue and argument made by the Respondents. The absence of any rebuttal is not, however, a waiver or abandonment of any claim or argument made previously. For arguments not addressed herein, Petitioner stands on the arguments presented in his Petition for Writ of Habeas Corpus.

2. The Response confirms rather than defeats the central defect in Petitioner's continued detention: after more than seven months beyond the final order of removal, DHS has failed to identify any country willing to accept Petitioner, has no travel documents, no timeline, and no concrete prospect of removal. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention under 8 U.S.C. § 1231(a)(6) is unlawful where removal is not reasonably foreseeable. That is precisely this case.

3. Respondents further attempt to shift responsibility to Petitioner to locate a receiving country, invoke nonbinding agency "guidance" to defeat due process, and rely on conclusory assertions of flight risk and danger unsupported by evidence. None withstands scrutiny.

RESPONDENTS FAIL TO REBUT THE PETITIONER'S SHOWING OF NON-FORESEEABILITY.

4. The undisputed record establishes prolonged post-order detention:

- Petitioner's removal order became administratively final on **April 21, 2025**.
- The 90-day removal period expired **July 21, 2025**.
- Petitioner has remained detained well beyond six months after finality.

5. This triggers the *Zadvydas* framework. 533 U.S. at 701.

6. Moreover:

a) Removal to Georgia is legally barred by a final grant of statutory withholding of removal. 8 U.S.C. § 1231(b)(3)(A).
b) Petitioner has only one country of nationality and no lawful status or ties elsewhere.
c) ICE has undertaken third-country inquiries for months and has produced zero acceptances, zero travel documents, zero timelines, and no scheduled removal, and it has already received multiple refusals. (Resp., Ex. A ¶¶ 18–21.)
d) The longer detention continues without any concrete progress, the smaller the "reasonably foreseeable future" becomes. *Zadvydas*, 533 U.S. at 701.

7. The Declaration of Supervisory Detention and Deportation Officer Freddie Rodriguez submitted by the Respondent provides a documented record of failed removal efforts spanning more than seven months:

- **Canada**: no response (May 7, 2025)
- **France**: affirmatively declined (June 3, 2025)
- **Armenia**: no response despite multiple requests and follow-ups
- **Azerbaijan**: no response
- **Turkey**: no response
- **Uganda**: affirmatively declined (Oct. 27, 2025)

(Resp., Ex. A ¶¶ 18–22, 26)

8. Therefore, Petitioner has shown "good reason" to believe removal is not significantly likely in the reasonably foreseeable future, satisfying the *Zadvydas* framework. 533 U.S. at 701. (*See also*, the Habeas Corpus Petition).

Removal to a Third Country Is Not Reasonably Foreseeable Where the Petitioner Has Been Granted Withholding of Removal

9. Courts analyzing post-order detention under *Zadvydas* consistently recognize that noncitizens granted withholding of removal constitute a distinct class for whom removal, particularly to third countries, is exceptionally rare and often not reasonably foreseeable.

10. In *Munoz-Saucedo v. Pittman*, the district court addressed a habeas petition brought by a detainee with a grant of withholding of removal, the same posture as here. No. 1:25-cv-02258 (D.N.J. June 24, 2025). The court relied in part on empirical evidence discussed by the Supreme Court in *Johnson v. Guzman Chavez*, noting:

> "[I]n fiscal year 2017, **only 1.6% of aliens who were granted withholding of removal were actually removed to an alternative country.** See *Guzman Chavez*, 594 U.S. 523, 552 (2021) (Breyer, J., dissenting) ("Studies have . . . found that, once withholding-only relief is granted, the alien is ordinarily not sent to another . . . country. Rather, the alien typically remains in the United States for the foreseeable future.")." *Munoz-Saucedo*, D.N.J. June 24, 2025.

11. The court further held that "**removal for this particular class of detainees is substantially more difficult**. Cf. *Guzman Chavez*, 594 U.S. at 537 ('[A]lternative-country removal is rare.')". *Id.*

12. Critically, the facts in *Munoz-Saucedo* mirror the present case in all material respects:

> "Petitioner has alleged that he **cannot be removed to his country of origin,** that removing similarly situated individuals has been historically rare, that **ICE tried and failed to find a third country willing to accept him during the initial 90-day detention period**, and that there is presently no country in the world willing to accept him". *Id.*

13. These facts led the court to the following conclusion:

> "These allegations, left uncontested, would **more than suffice** to demonstrate that Petitioner's removal is not reasonably foreseeable**,** and therefore overcome the presumption that his detention is reasonable." *Id.*

14. Most compellingly, **this same Court** recently applied the same reasoning in *Puertas-Mendoza v. Bondi,* holding that removal was not reasonably foreseeable where the petitioner had been granted withholding of removal and CAT protection. No. 5:25-cv-00890 (W.D. Tex. 2025).

15. The court observed:

> "Very few people subject to withholding of removal or CAT relief are removed from the United States. … In fiscal year 2017, **less than two percent of those granted withholding of removal were deported to a third country**. And that is not simply a matter of United States policy - foreign governments **'routinely deny' requests to receive people who lack a connection to the would-be receiving country**. The fact that removal to a third country is unusual is not necessarily decisive, but it is important context." *Puertas-Mendoza*, slip op. at ___ (citing *Munoz-Saucedo*, 2025 WL 1750346, at *7; *Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021)).

16. As *Munoz-Saucedo* and *Puertas-Mendoza* make clear, the circumstances of the present case, taken together, are more than sufficient to establish that Petitioner's removal is not reasonably foreseeable, thereby overcoming the presumption of reasonable detention and shifting the burden to the Government under *Zadvydas*. Respondents have failed to meet that burden.

Respondents' reliance on cases denying relief is misplaced

17. The cases Respondents rely on involved concrete progress or realistic repatriation pathways.

18. Respondents cite *Andrade v. Gonzales*, *Idowu v. Ridge*, *Boroky v. Holder,* and similar cases involving repatriation to a country of nationality with established repatriation processes, or where the Government could point to concrete progress (e.g., active travel document processing with a realistic timeline). *See Andrade v. Gonzales, 459 F.3d 538 (5th Cir. 2006); Idowu v. Ridge, No. 3:03- CV-1293-R, 2003 WL 21805198 (N.D. Tex. Aug. 4, 2003). Boroky v. Holder, No. 3:14-CV-2040-L-BK, 2014 WL 6809180 (N.D. Tex. Dec.3, 2014).* Those cases are inapposite. Thus, in the present case:

- Petitioner cannot be removed to his country of nationality (Georgia) due to final withholding.
- Respondents cannot identify any third country that has agreed to accept him, and
- Petitioner has no legal, factual, or linguistic ties to any third country.

19. Accordingly, Petitioner has easily met the "good reason" threshold, and the burden shifts to the Government.

Respondents' attempt to impose a "Petitioner must find a country" rule is unlawful

20. Respondents fault Petitioner for failing to propose an acceptable third country. Nothing in § 1231 or *Zadvydas* imposes such a burden. The relevant inquiry is whether the Government can effectuate removal, not whether the detainee can do so on its behalf. Imposing such a requirement would invert the constitutional burden and permit indefinite civil detention based on statelessness or geopolitical refusal, a result *Zadvydas* expressly forbids. 533 U.S. at 689–90.

Respondents cannot extend the removal period under 8 U.S.C. § 1231(a)(1)(C) because they do not (and cannot) show deliberate noncooperation

21. Respondents conspicuously do not argue that Petitioner failed to cooperate within the meaning of § 1231(a)(1)(C). Nor could they.

22. Under *Glushchenko v. U.S. Dep't of Homeland Sec.,* DHS must show by clear and convincing evidence that: (1) the detainee intentionally or deliberately obstructed removal; and (2) such obstruction deprived DHS of necessary documents or otherwise prevented removal. 566 F. Supp. 3d 693, 709 (W.D. Tex. 2021).

23. Here, Respondents can identify no intentional obstruction and no missing documents caused by Petitioner. Moreover, Petitioner has no travel documents because no country will accept him.

24. Accordingly, the removal period cannot be tolled, and detention cannot be justified under § 1231(a)(1)(C).

Detention cannot be justified by flight risk or danger

25. As the Supreme Court made clear in *Zadvydas v. Davis*, civil immigration detention is constitutionally permissible only insofar as it is reasonably related to effectuating removal and justified by one of two legitimate purposes: preventing flight or protecting the community. 533 U.S. 678, 690–91 (2001); *Demore v. Kim*, 538 U.S. 510, 528 (2003). Where, as here, removal is not reasonably foreseeable, continued detention, regardless of asserted risk, no longer bears a reasonable relation to its stated purpose and violates due process. *Zadvydas*, 533 U.S. at 690, 699–700.

26. Even assuming arguendo that risk considerations were relevant, Respondents have not shown that Petitioner poses either a flight risk or a danger. Their reliance on a conclusory Post-Order Custody Review determination is insufficient. ICE's own regulations require individualized consideration of concrete factors, including criminal history, community ties, and likelihood of compliance with conditions of release. See 8 C.F.R. § 241.4(e)–(f); 8 C.F.R. § 241.13(g)(2).

27. Respondents identify ***no criminal history, no prior failures to comply, and no specific conduct*** suggesting danger or absconding, because none exists.

28. To the contrary, Petitioner has no criminal record, has fully cooperated with DHS, and has a stable U.S.-citizen sponsor who has offered housing, financial support, and oversight to ensure compliance with all conditions of release. Where the Government's own record shows no danger, no flight risk, and no foreseeable removal, detention cannot be justified under either the Constitution or the INA. See *Zadvydas*, 533 U.S. at 700.

RESPONDENTS' PROCEDURAL DUE PROCESS ARGUMENT FAILS

Substitute process cannot cure unlawful detention

29. Respondents argue that even if procedures were deficient, the remedy is "substitute process." That misstates the claim. Petitioner challenges continued detention, not merely delayed

review. Substitute process cannot convert an unlawful detention into a lawful one when the detention is not reasonably related to the purpose of effectuating removal. Where detention itself violates § 1231(a)(6) and *Zadvydas*, release is the required remedy. See *Zadvydas*, 533 U.S. at 699.

Respondents' Post-Order Custody Review (POCR) discussion is generic and forward-looking

30. Respondents state that ICE "will" perform post-order custody reviews at various intervals. But the removal order became final on April 21, 2025; the 90-day period has long since elapsed. Moreover, ICE already conducted a POCR on September 29, 2025, yet produced no decision, no written results, and no evidence that the review was timely, meaningful, or compliant with applicable regulations. Respondents' continued use of the future tense underscores that their Response relies on generic boilerplate rather than case-specific evidence demonstrating actual, timely compliance or any substantive consideration of release. More importantly, even perfect POCR compliance cannot justify continued detention absent a significant likelihood of removal under *Zadvydas*.

Internal guidance does not override the INA or the Constitution

31. Respondents' reliance on internal March 30, 2025, DHS "Third Country Removal" guidance and purported diplomatic assurances does not cure the statutory and constitutional defects in third-country removal. Agency guidance cannot override the Immigration and Nationality Act, implementing regulations, or the Due Process Clause, nor can it eliminate an individual's right to notice and a meaningful opportunity to seek protection from persecution or torture.

32. First, the INA and CAT regulations require individualized procedures before removal to a newly designated country where the noncitizen may face persecution or torture. See 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 1208.16–1208.18. Internal guidance, even when issued by DHS

leadership, cannot dispense with those legally mandated safeguards or authorize removal "without further procedures".

33. Second, Respondents' reliance on *Munaf v. Geren* and *Kiyemba v. Obama* is misplaced. Those cases arose in the military and national-security transfer context, not civil immigration detention governed by the INA and CAT. *Munaf v. Geren*, 553 U.S. 674, 702–03 (2008). *Kiyemba v. Obama,* 561 F.3d 509, 514 (D.C. Cir. 2009).

34. *Mohammad v. Lynch* and *Virani v. Huron* are equally misplaced because both cases involved circumstances where removal was actually imminent, unlike here. *Mohammad v. Lynch,* No. EP-16-CV-28-PRM, 2016 WL 8674354 at *6 n. 6 (W.D. Tex. May 24, 2016). *Virani v. Huron*, No. SA–19–CV–00499-ESC, 2020 WL 1333172 at *12 (W.D. Tex. Mar. 23, 2020). In *Mohammad*, DHS had already secured a valid travel permit from Bangladesh and had a scheduled removal date. 2016 WL 8674354, at *6 n.6. In *Virani*, DHS likewise possessed travel documents to India. 2020 WL 1333172, at *12.

35. Finally, the existence of internal screening mechanisms does not resolve the core habeas issue: even if additional procedures were eventually provided, they would necessarily entail further proceedings and delay, underscoring that removal is not reasonably foreseeable. See *Zadvydas*, 533 U.S. at 699-701.

THIS CASE EXEMPLIFIES THE PRECISE EVIL *ZADVYDAS* FORBIDS

36. Petitioner is:

- A recognized victim of political persecution.
- Legally barred from returning to his country of nationality.
- Unwanted by every third country contacted.
- Detained for over two years with no endpoint.

37. Allowing detention to continue based on "ongoing efforts" would convert § 1231(a)(6) into a regime of permanent civil confinement for the unremovable. This is the very outcome the Supreme Court rejected. *Zadvydas*, 533 U.S. at 691.

REQUEST FOR RELIEF

38. For the foregoing reasons, Petitioner respectfully incorporates the Prayer for Relief from the Habeas Corpus Petition, and requests that the Court grant it.

Respectfully submitted,

Date: December 12, 2025

Respectfully submitted,

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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 Reply in Support of 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 12th day of December 2025.

/s/Brian Scott Green
BRIAN SCOTT GREEN