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UNITED STATES OF AMERICA

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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 GRIGOR OGANESIAN,

11
12 Petitioner,

13 v.

14 WARDEN of the California City Detention
15 Center,

16 Respondent.

Case No. 1:25-cv-01667-EFB

**RESPONDENT'S RESPONSE/ANSWER TO
THE PETITION**

COURT: Hon. Edmund F. Brennan

17 The Respondent files this response/answer to the habeas petition (the "Petition"). For the
18 reasons set forth herein, the Petition should be denied.

19
20 I. **BACKGROUND**

21 **A. Factual Background**

22 The Respondent reincorporates and reasserts below the facts as detailed in the Respondent's
23 motion to dismiss and attached exhibits. As this Court noted, however, the parties asserted similar facts
24 with minor differences. [ECF #21 at 4 ("Respondent's allegations are somewhat different.")] Pursuant
25 to order of the Court,¹ Respondent also attached the exhibits to the prior motion to dismiss without any

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28 ¹ Respondent also received written permission from Petitioner for release of the files without
redactions by way of Petitioner's counsel.

1 redactions, which appear to confirm, little, if any, disagreement between the parties as to the operative
2 facts.

3 Petitioner Grigor Oganessian is a citizen of Russia and Armenia. [ECF #1 at 10]. After arriving
4 at the United States border on or around August 26, 2022, Petitioner was paroled into the United States
5 pending his removal proceedings in Immigration Court. [ECF #1 at 10]; Decl. of Patrick J. Cruz (“Cruz
6 Decl”) ¶ 6. On August 28, 2022, Department of Homeland Security (“DHS”) “issued [Petitioner] a
7 Notice to appear and placed [him] in removal proceedings, charging Petitioner with removability
8 pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (‘INA’).” [ECF #1 at 10];
9 Cruz Decl. ¶ 7.

10 On or around September 18, 2024, ICE detained Petitioner. [ECF #1 at 10]; Cruz Decl. ¶ 9.

11 On or around November 7, 2025, an Immigration Judge ordered Petitioner removed to Russia or
12 in the alternative to Armenia. [ECF #1 at 10]; Cruz Decl. ¶ 5, Ex. 2. The Immigration Judge, however,
13 granted deferral of removal to both countries.² [ECF #1 at 10]; Cruz Decl. ¶ 5, Ex.2. Petitioner
14 appealed the Immigration Judge’s decision on or around December 4, 2025. Cruz Decl. ¶ 5, Ex.3. That
15 appeal remains pending. Cruz Decl. ¶ 11.

16 Given the pending appeal, Petitioner is being detained subject to mandatory detention under INA
17 § 235(b)(2). Cruz Decl. ¶ 12.

18 Petitioner is currently being held at the detention facility in California City, in the Eastern
19 District of California. [ECF #1 ¶ 2].

20 **B. Allegations in Petition**

21 Petitioner states he is challenging his allegedly “prolonged (14 months) detention without a bond
22 hearing” as in violation of due process pursuant to the Fifth Amendment. [ECF #1 ¶ 13]. In support,
23 Petitioner claims that despite having “won [his] immigration case” he is still being detained. [ECF #1 ¶¶
24 6, 13]. In his declaration, Petitioner restated the same claim while adding that “[t]here is no country
25 where [he] can secure[ly] be deported . . . , mak[ing] [his] imprisonment de facto infinite.” [ECF #1 at
26 10 ¶ 7].

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28 ² Changed to term of art “deferral of removal.”

1 Petitioner also added that he has not violated the law while in the United States while also
2 claiming health issues and that his family is dependent on him. [ECF #1 at 10].

3 **II. ARGUMENT**

4 As detailed below, Respondent viewed the Petition as potentially raising two separate claims, a
5 claim under Section 1225/1226 or a claim under Section 1231. As a result, Respondent raised separate
6 defenses for those two claims. Based on the Court's order on the motion to dismiss, Respondent
7 understands the Court to be construing the Petition as only raising a Section 1225/1226 claim. If that
8 remains the case, Respondent requests that the Court ignore the Section 1231 discussion including the
9 defenses as to that claim. Respondent only discusses a Section 1231 claim and the defenses thereto in
10 case the Court construes the Petition differently on the final merits as compared to the motion to dismiss
11 stage.

12 **A. Detention Pursuant to Section 1225 Applies to Petitioner**

13 As before, Respondent asserts that, as to detention (prior to finalization of the removal order
14 currently on appeal), Title 8, United States Code, Section 1225 applies rather than Section 1226 of the
15 same title.

16 But as before, Respondent acknowledges that the majority of persuasive authority has held
17 otherwise. Respondent, however, points to the Fifth Circuit's relatively recent decision in support of
18 Respondent's position in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). While the
19 Seventh Circuit concluded otherwise in *Castanon-Nava v. United States Department of Homeland*
20 *Security*, 161 F.4th 1048, 1061 (7th Cir. 2025), that decision was made at the preliminary injunction
21 stage rather than on the final merits. *See E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 660 (9th
22 Cir. 2021) (holding merits panel was not bound by motions panel decision as, *inter alia*, different
23 standards applied).

24 Rather than decide the issue now, Respondent also requests that the Court hold the case in
25 abeyance pending the Ninth Circuit's resolution of *Rodriguez v. Bostock*, No. 25-6842 (9th Cir.) which
26 was argued before the Ninth Circuit earlier this month (March 4, 2026) and is likely to have precedential
27 effect in this case.

B. Petitioner's Section 1231 Claim, if any, remains Unripe and Insufficient

Respondent, in its motion to dismiss, addressed Petitioner's claim first as one brought under Title 8, United States Code, Section 1231(a)(6), as the language used by the *pro se* Petitioner most closely aligned with claims made under that section. [ECF #11 at 6-7]. A removal order had been issued in Petitioner's case (but had yet to be finalized due to Petitioner's appeal), which reasonably suggested that a *pro se* Petitioner may be challenging detention pursuant to said order. Indeed, Petitioner referenced his removal order multiple times, stating that he was subject to detention despite having "won [his] case." [ECF #1 at 2, 6, 10]. Given this construction of Petitioner's claim, Respondent asserted two defenses against this claim: (1) a Section 1231(a)(6) claim remained unripe; and (2) Petitioner had failed to sufficiently meet his initial burden as outlined by the Supreme Court in *Zadyvdas v. Davis*, 533 U.S. 678 (2001) for such a claim. Respondent lastly discussed the merits of a Section 1225/1226 claim should the Court construe Petitioner's petition as raising such a claim. [ECF #11 at 8-9]; *see also* [ECF #11 at 9 n.4 ("Based on the conclusory allegations in the petition again, however, Petitioner appeared more concerned with a *Zadyvdas* like claim given the emphasis on detention following the Immigration Judge's order.")].

Following the motion to dismiss, Petitioner, by way of defense counsel, and the Court appear to have construed Petitioner's claim as only raising a Section 1225/1226 claim. [ECF #19 at 1-4]; [ECF #21 at 1-7]; *see also* [ECF #21 at 6 ("[P]etitioner has established his eligibility for bond should be evaluated under section 1226, and thus his claim is ripe.")].

If the Court again construes the Petition as raising only a Section 1225/1226 claim, Respondent asks the Court to disregard its Section 1231 arguments. Respondent also requests that the Court clarify that its granted relief, if any, is limited to a Section 1225/1226 claim and does not impact any future claim/detention pursuant to Section 1231. Respondent notes that the Court, while only addressing Petitioner's claim under the Section 1225/1226 analysis, appeared to respond to Respondent's defenses to a Section 1231 claim as if they were raised in defense of a Section 1225/1226 claim. [ECF #21 at 6].

If the Court, however, construes the Petitioner has also raising a 1231 claim, Respondent reasserts the same defenses:

First, Petitioner's Section 1231 claim is not ripe as the appeal remains pending.

1 Second, Petitioner fails to “provide[] good reason to believe that there is no significant likelihood
2 of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). While
3 there does not appear to be a case expressly stating that petitioners raising a Section 1231 claim must
4 discuss the possibility of removal to a third country, petitioners themselves routinely provide such an
5 explanation presumably because *Zadvydas* itself only speaks of removal generally and is not limited to
6 petitioners’ country of origin or citizenship. *See, e.g., Abdirahman v. Noem*, No. 3:26-CV-00177, 2026
7 WL 311509, at *2 (S.D. Cal. Feb. 5, 2026) (“Petitioner has also met his initial burden under *Zadvydas* to
8 show good reason to believe that there is no significant likelihood of removal in the reasonably
9 foreseeable future; he was granted withholding of removal to Somalia, established that ‘third country
10 removal is exceedingly rare, and [noted that] ICE has not been able to remove [him] to a third country
11 for over 7 months.’”)³; *see also A.A.M. v. Andrews*, No. 1:25-CV-01514-DC-DMC (HC), 2025 WL
12 3485219, at *2 (E.D. Cal. Dec. 4, 2025) (“While DHS has the authority to remove a noncitizen to a
13 country not identified in the final removal order, there is no statute or regulation providing a specific
14 procedure to effectuate such a third country removal.” (citation omitted)). Indeed, after the initial 90-
15 day removal period has expired, “a noncitizen may request a review of whether there is a ‘significant
16 likelihood of removal to the country to which he or she was ordered removed, or to a third country, in
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18 3 *Temahagari v. Bondi*, No. 25-CV-02484, 2026 WL 353264, at *5 (W.D. Wash. Feb. 9, 2026)
19 (“Furthermore, [petitioner] avers that it appears that no effort has been made to persuade a third country
20 to accept him. Courts routinely find that noncitizens under such circumstances have met their initial
21 burden under *Zadvydas*.” (internal quotation marks and citation omitted)); *Karimaghee v. Bowen, et al.*,
22 No. 5:25-CV-03573, 2026 WL 331360, at *4–5 (C.D. Cal. Feb. 5, 2026) (“Petitioner argues there is no
23 significant likelihood of his removal to Iran or an alternative country in the reasonably foreseeable
24 future.”); *Castillo Rivas v. Bondi*, No. C26-0134, 2026 WL 295705, at *3 (W.D. Wash. Feb. 4, 2026)
25 (“Petitioner has met his burden to show that there is no significant likelihood of removal in the
26 reasonably foreseeable future because he may not be removed to Venezuela, and no third country has
27 agreed to accept him.”); *Emara v. Bondi*, No. C26-0116, 2026 WL 266067, at *2 (W.D. Wash. Feb. 2,
28 2026) (“Petitioner has met his burden to show that there is no significant likelihood of removal in the
reasonably foreseeable future because he may not be removed to Egypt, and no third country has agreed
to accept him.”); *Yeritsyan v. LaRose*, No. 25-CV-3760, 2025 WL 3734585, at *1 (S.D. Cal. Dec. 26,
2025) (“[Petitioner] contends that since ICE has not removed him to Russia or identified a third country
to remove him to, there is ‘no significant likelihood of removal in the reasonably foreseeable future.’”
(citation omitted)); *Ortega v. Kaiser*, No. 25-CV-05259, 2025 WL 1771438, at *4 (N.D. Cal. June 26,
2025) (“Furthermore, [petitioner] has demonstrated there is no significant likelihood of his removal in
the reasonably foreseeable future because fifteen years have gone by without the Government securing a
third country for his removal.”).

the reasonably foreseeable future.” *Asfestani v. Current or Acting Field Off.*, No. 1:25-CV-1562, 2025 WL 3677321, at *4 (E.D. Cal. Dec. 18, 2025) (citing 8 C.F.R. § 241.13(a)). Moreover, courts in this district have routinely granted injunctions seeking notice and other safeguards before third country removal can be effectuated pursuant to claims that DHS policy now requires expedited removal to third countries for those with removal orders. *See Escobar v. Chestnut*, No. 1:25-CV-1801, 2026 WL 622121, at *8 (E.D. Cal. Mar. 5, 2026) (“This court, as well as other courts in the Ninth Circuit, have found that the third-country removal process in the July 2025 ICE Memorandum fails to provide adequate due process protections.” (collecting cases)). Under these circumstances, petitioners themselves again have often addressed the likelihood or unlikelihood of removal to a third-country removal in meeting their initial burden under *Zadvydas*.

Moreover, in this case, Petitioner addressed third country removal by stating that he is not removable to any country. *See* [ECF #21 at 2 (“Petitioner also alleges that there is no country to where he can be can safely be deported, and thus that he is subject *de facto* indefinite detention.”)]; [ECF #1 at 10 ¶ 7 (“There is no country where I can secure[ly] be deported . . . , mak[ing] [his] imprisonment *de facto* infinite.”)]. And in doing so, Petitioner opened the door for Respondents to critique Petitioner’s explanation or lack thereof. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988–89 (9th Cir.) (holding plaintiff can plead himself out of claims), *opinion amended on denial of reh’g*, 275 F.3d 1187 (9th Cir. 2001). Petitioner, while claiming not to be removable to any country, provided no reason, merely stating that he could not “secure[ly] be deported.” While Courts have found minimal evidence sufficient to meet the initial burden under *Zadvydas* as to reasonable foreseeability of removal (including to a third country), Petitioner provides only a conclusion and not an explanation.

III. CONCLUSION

For the reasons discussed above, Respondent requests that the Petition be denied.

Given the significant variation depending on the construction of the Petition, Respondent also requests the following:

Should the Court construe the Petition again as only asserting a Section 1225/1226 claim, in the alternative to a final decision, Respondents ask the Court to hold the matter in abeyance until the Ninth Circuit’s resolution of *Rodriguez v. Bostock*, No. 25-6842 (9th Cir.) which was argued before the Ninth

1 Circuit earlier this month (March 4, 2026). Respondent also asks the Court to ignore Respondent's
2 defenses against a Section 1231 claim and to also limit any granted relief to a Section 1225/1226 claim.

3 Should the Court construe the Petition as also asserting a Section 1231 claim, Respondent
4 requests that the Court consider its Section 1231 defenses, particularly that the claim remains unripe.

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7 DATED: March 24, 2026

Respectfully Submitted,

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10 By: /s/ Chan Hee Chu
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12 Assistant United States Attorney
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