

1 **Jessie Agatstein**
2 Cal. Bar No. 319817
3 **Federal Defenders of San Diego, Inc.**
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
6 Telephone: (619) 234-8467
7 Facsimile: (619) 687-2666
8 jessie_agatstein@fd.org
9 Attorneys for Mr. Giebashvili

10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **LUKA GIEBASHVILI,**

13 **Petitioner,**

14 **v.**

15 **KRISTI NOEM, Secretary of the**
16 **Department of Homeland Security,**
17 **PAMELA JO BONDI, Attorney General,**
18 **TODD M. LYONS, Acting Director,**
19 **Immigration and Customs Enforcement,**
20 **JESUS ROCHA, Acting Field Office**
21 **Director, San Diego Field Office,**
22 **CHRISTOPHER LAROSE, Warden at**
23 **Otay Mesa Detention Center,**

24 **Respondents.**

No.: 25-cv-3432-BJC-VET

Traverse in support of
petition for writ of
habeas corpus

[Civil Immigration Habeas,
28 U.S.C. § 2241]

25
26
27
28

1 **I. Introduction**

2 In its return, the government does not dispute that it bears the burden to
3 prove there is a “significant likelihood” of Luka Giebashvili’s removal “in the
4 reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). It
5 does not dispute that it must do so with “evidence.” *Guarin v. LaRose*, No. 25-cv-
6 3085-DMS, 2025 WL 3440589, *3 (S.D. Cal. Dec. 1, 2025).

7 The sole evidence the government submits is a declaration from
8 Deportation Officer Rodriguez, which states:

- 9
- 10 • Mr. Giebashvili was ordered removed and granted withholding of
removal on May 29, 2025¹;
 - 11 • A local San Diego ICE division contacted a central division within ICE
12 “to seek a third country for removal” on June 20, 2025;
 - 13 • The central ICE division “sent requests to the governments of France,
14 Spain and Guatemala,” and “[a]s of September 22, 2025, all three
15 governments declined the requests”;
 - 16 • On November 19, 2025, the local division requested an update from the
17 central division;
- 18
19
20

21 ¹ Officer Rodriguez incorrectly declares that Mr. Giebashvili’s order became final
22 on June 30, 2025. ECF No. 10, Declaration of Leticia Rodriguez, ¶ 8. However,
23 Mr. Giebashvili waived his right to appeal on May 29, 2025, and his removal
24 order thus became final on that date. ECF No. 1, Exhibit B at 5 (noting that, as to
25 “Respondent” in the immigration proceedings, Mr. Giebashvili, the “Appeal” was
26 “waived”). That the government reserved its right to appeal does not change when
27 the order became final. As the Supreme Court explained this summer, “An order
28 of removal becomes final at the earlier of two points: (1) ‘a determination by the
[BIA] affirming such order,’ or (2) ‘the expiration of the period in which *the alien
is permitted to* petition the BIA for review of the order.” *Riley v. Bondi*, 606 U.S.
259, 267 (2025) (quoting 8 U.S.C. § 1101(a)(47)(B)) (emphasis added). Because
Mr. Giebashvili waived his right to appeal to the BIA on May 29, 2025, that is the
date his order became final, and thus the date from which this Court begins
counting for purposes of this petition. *See* 8 U.S.C. § 1231(a)(1)(B)(i) (defining
the start of the “removal period”).

- 1 • As of December 15, 2025, the central division is “still in the process of
2 identifying third countries that may be willing to accept”
3 Mr. Giebashvili;
4 • ICE “believes there is a significant likelihood of removal to a third
5 country in the reasonably foreseeable future”; and
6 • When ICE identifies a third country, it will follow its “standard ICE
7 guidance and procedures,” which as summarized in the declaration
8 match details included in the more fulsome third-country removal policy
9 Mr. Giebashvili submitted to this Court as Exhibit G.

10 ECF No. 1, Declaration of Leticia Rodriguez, ¶¶ 8–15; ECF No. 1, Exhibit G.

11 The government also points to evidence regarding several dozen
12 noncitizens who have been removed to, and held indefinitely in, foreign prisons
13 and military camps in third countries. ECF No. 10 at 2–3 (citing evidence like that
14 submitted at ECF No. 1 at 7).

15 This information does not rebut Mr. Giebashvili’s showing—based on his
16 more than six months in detention after being ordered removed, his withholding
17 relief, the evidence he submitted regarding the extremely low number of people
18 who received similar relief who have been removed to third countries, and the
19 lack of ICE’s progress in his case—that there is no significant likelihood of his
20 removal in the reasonably foreseeable future. *See* ECF No. 1 at 1–6, 8–13.

21 Further, the government has no response to Mr. Giebashvili’s argument that
22 ICE’s current third-country removal policy—to which it agrees it intends to
23 subject Mr. Giebashvili, and the contents of which it agrees with Mr. Giebashvili
24 on—does not provide him “with adequate notice and an opportunity to be heard
25 before removing him to a third country.” *Azzo v. Noem*, No. 25-cv-3122-RBM-
26 BJW, 2025 WL 353208, *8 (S.D. Cal. Dec. 10, 2025) (granting habeas petition
27 and enjoining the respondents from removing the petitioner absent the process
28 outlined in *DVD v. U.S. Dep’t of Homeland Sec.*, No. 25-10676-BEM, 2025 WL

1 1453640 (D. Mass. May 21, 2025)). The government has no response to
2 Mr. Giebashvili’s argument that it is proper for this Court to prohibit Respondents
3 from removing him to a third country without first providing him notice of his
4 statutory rights to apply for asylum and withholding from those third countries
5 and a meaningful opportunity to be heard on those claims. *See* ECF No. 1 at 6–7,
6 14–18, Exhibit G.

7 For both these reasons, this Court should grant the petition.

8 **II. The government has not rebutted Mr. Giebashvili’s showing that there**
9 **is good reason to believe there is no significant likelihood of his**
10 **removal in the reasonably foreseeable future.**

11 “[M]ere generalizations, divorced from any documentary support,” do not
12 “suffice for *Zadvydas* purposes.” *Azzo*, 2025 WL 3535208 at *4 n.3. The
13 government has offered no more than mere generalizations in this case.

14 *Azzo* is instructive. There, the district court received a similar declaration
15 for a habeas petitioner who had received relief from removal to his only country
16 of citizenship under the Convention Against Torture. *Id.* at *1. Upon surveying
17 relevant case law, the court noted that the declaration resulted in an “even weaker
18 evidentiary showing” than in other cases that had still granted *Zadvydas* petitions
19 and ordered immediate relief. *Id.* *4 (discussing, among other cases, *Kamyab v.*
20 *Bondi*, No. C-25-389-RSL, 2025 WL 2917522 (W.D. Wash. Oct. 14, 2025), and
21 *Phan v. Warden of Otay Mesa Detention Facility*, No. 25-cv-2369-AJB-BLM,
22 2025 WL 3141205 (S.D. Cal. Nov. 10, 2025)). There, “Respondents ha[d] not
23 even identified a third country to which they plan to remove Petitioner, much less
24 submitted a travel document or provided an estimate for how long it would take
25 this unidentified third country to respond.” *Azzo*, 2025 WL 3535208 at *4. Here,
26 the government identified third countries, but all of them had rejected
27 Mr. Giebashvili by September. ICE has not identified any new countries since.

28 With ““little more than generalizations regarding the likelihood that
removal will occur,”” in *Azzo*, as here, the Respondents “have not met their

1 burden to ‘respond with evidence sufficient to rebut’ Petitioner’s showing.” *Id.*

2 In Mr. Giebashvili’s case, ICE has begun the process of removal, but it has
3 not gotten far. ICE requested France, Spain, and Guatemala accept
4 Mr. Giebashvili, and all three countries denied that request as of three months
5 ago. ICE has not identified any new countries. It has no timetable for when it will.
6 ECF No. 10, Declaration of Officer Rodriguez, ¶¶ 9–12.

7 This evidence does not show that Mr. Giebashvili’s removal to an
8 unidentified third country is “significant[ly] like[ly].” *Zadvydas*, 533 U.S. at 701.
9 Nor does it show that his removal to an unidentified third country will happen “in
10 the reasonably foreseeable future.” *Id.* Mr. Giebashvili thus succeeds on his
11 *Zadvydas* petition, and this Court should order his immediate release.

12 **III. The government has no legal argument for how ICE’s third-country**
13 **removal process complies with existing Ninth Circuit law regarding the**
14 **process due to noncitizens in third-country removal proceedings.**

15 This Court should also prohibit ICE from removing Mr. Giebashvili to a
16 third country without adequate notice and a meaningful opportunity to be heard
17 regarding his statutory and related rights to seek asylum, withholding of removal,
18 and Convention Against Torture relief as to that third country.

19 The government identifies certain components of the third-country removal
20 policy challenged in Mr. Giebashvili’s habeas petition. Compare ECF No. 10 at 3
21 with ECF No. 1 at 6–7, 14–18, Exhibit G. But the government does not explain
22 how this policy complies with due process or Ninth Circuit law.

23 As Mr. Giebashvili explained in his habeas petition, “This policy
24 contravenes Ninth Circuit law.” *Nguyen*, __ F. Supp. 3d __, 2025 WL 2419288 at
25 *19. “It would be impossible to comply both with Ninth Circuit precedent and the
26 policy.” *Id.* “Failing to notify individuals who are subject to deportation that they
27 have the right to apply . . . for withholding of deportation to the country to which
28 they will deported violates both INS regulations and the constitutional right to due
process.” *Id.* at *18 (quoting *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.

1 1999). Yet that is exactly what existing ICE policy allows for. *See* ECF No. 1 at
2 6–7, 14–18, Exhibit G. The government has no response on this point.

3 Nor does the government articulate any reason why this Court cannot order
4 it to provide Mr. Giebashvili with notice and a meaningful opportunity to be heard
5 before deporting him to an as-yet unidentified third country: *See* ECF No. 10 at 3.
6 “This relief has been granted in similar matters.” *Azzo*, 2025 WL 3535208 at *8
7 n.6. Indeed, just this summer, the Supreme Court confirmed that habeas
8 petitioners may raise claims regarding the process due to them in removal
9 proceedings, and that district courts should use those habeas petitions to articulate
10 “in the first instance the precise process necessary to satisfy the Constitution.”
11 *AARP v. Trump*, 605 U.S. 91, 95 (2025).

12 **IV. Conclusion**

13 This Court should order Mr. Giebashvili’s immediate release. It should also
14 order the Respondents to provide the process identified in the habeas petition
15 before removing Mr. Giebashvili to an unidentified third country.

16
17 Respectfully submitted,

18
19 Dated: December 22, 2025

s/ Jessie Agatstein
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Giebashvili
Email: jessie_agatstein@fd.org