UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

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DISTRICT OF ARIZONA
BY ___ DEPUTY

Tagir Shikhkerimov, Petitioner,

v.

Eric Rokosky, Warden, Eloy Detention Center, et al., Respondents.

Case No. 2:26-cv-00578-JJT

PETITIONER'S REPLY TO RESPONDENTS' SUPPLEMENTAL RESPONSE (DOC. 16) AND REQUEST FOR HABEAS RELIEF

Petitioner Tagir Shikhkerimov, proceeding pro se, respectfully submits this reply to Respondents' Supplemental Response filed September 30, 2026 (Doc. 16), pursuant to this Court's September 25, 2026 Order (Doc. 15).

Respondents contend that Padilla v. United States Immigration and Customs Enforcement, No. 24-2801 (9th Cir. Sept. 21, 2026), is inapplicable because Petitioner has a final order of removal and is detained under 8 U.S.C. § 1231. Respondents further contend that continued detention is lawful because removal to Russia is reasonably foreseeable.

These arguments fail to meaningfully address Petitioner's independent Fifth Amendment challenge to his prolonged detention or the constitutional adequacy of the bond hearing conducted on August 27, 2026.

Petitioner has now been continuously detained since December 10, 2024, a period of nearly 22 months. Throughout these proceedings, he has sought meaningful consideration of release. A bond hearing was finally provided on August 27, 2026, after this habeas proceeding had been pending for several months.

Petitioner respectfully submits that his detention and the procedures afforded to him must be examined under the Fifth Amendment, independently of the Government's arguments concerning the ultimate possibility of his removal.

THIS DOCUMENT IS NOT IN PROPER FORM ACCORDING TO FEDERAL AND/OR LOCAL RULES AND PRACTICES AND IS SUBJECT TO REJECTION BY THE COURT.
REFERENCE LR Civ 5.4
(Rule Number/Section)

I. RESPONDENTS HAVE FAILED TO MEANINGFULLY ADDRESS PETITIONER'S INDEPENDENT FIFTH AMENDMENT CLAIM

Respondents' March 26, 2026 Response (Doc. 9) argued that Petitioner was subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) and therefore was not entitled to a bond hearing.

In their September 30 Supplemental Response (Doc. 16), Respondents instead assert that Petitioner is subject to detention under 8 U.S.C. § 1231 and concentrate almost entirely on whether his removal to Russia is reasonably foreseeable under Zadvydas v. Davis, 533 U.S. 678 (2001).

Neither response meaningfully addresses Petitioner's independent constitutional claim concerning the prolonged duration of his detention and the necessity of continued confinement. The fact that the Government may ultimately be able to remove Petitioner does not, by itself, resolve whether nearly 22 months of detention without constitutionally adequate procedural protections violates the Fifth Amendment.

The Ninth Circuit has recognized that a party's failure to address arguments raised by its opponent may constitute waiver. In Martinez v. Sessions, 873 F.3d 655, 660 (9th Cir. 2017), the court held that the government's failure to offer an argument on the merits waived its challenge to the petitioner's arguments. Similarly, Chengxian Chen v. Lyons, No. 5:26-cv-04053-MBK, 2026 WL 2280792, at *2 (C.D. Cal. Aug. 4, 2026), addressed a respondent's failure to meaningfully contest due process claims. [Verify the quoted language and citation against the full Chen opinion before filing.]

Petitioner respectfully submits that Respondents' failure to meaningfully address his prolonged-detention claim should be treated as a waiver or concession of their opposition to that claim. Alternatively, even if the Court declines to find waiver, it should independently adjudicate the Fifth Amendment claim rather than deny the Petition solely on the Government's arguments regarding removal.

II. PADILLA REQUIRES SEPARATE CONSIDERATION OF THE CONSTITUTIONALITY OF PETITIONER'S DETENTION

In Padilla v. United States Immigration and Customs Enforcement, No. 24-2801 (9th Cir. Sept. 21, 2026), the Ninth Circuit held that Department of Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), does not categorically bar the detention-related due process claims of the class

before it. The court distinguished challenges to admission from challenges to detention and recognized the historical constitutional importance of freedom from arbitrary imprisonment.

Petitioner acknowledges that his circumstances differ from those of the class members addressed in Padilla. Petitioner entered the United States without inspection and was apprehended near San Luis, Arizona, shortly after crossing the border. Furthermore, he is now subject to an administratively final order of removal.

Nevertheless, Petitioner does not seek admission through this habeas proceeding, nor does he ask this Court to decide the merits of his immigration appeal. He challenges the constitutionality of his prolonged physical confinement and the adequacy of the procedures used to determine whether continued detention is necessary.

Although Padilla did not establish an automatic right to release or a bond hearing for every immigration detainee, its analysis supports the proposition that statutory detention authority does not necessarily dispose of an independent constitutional challenge. Petitioner requests that the Court examine the constitutional necessity and duration of his detention rather than conclude that his apprehension circumstances or immigration status categorically foreclose his Fifth Amendment claim.

III. THE GOVERNMENT HAS NOT ESTABLISHED THAT SECTION 1231 GOVERNS PETITIONER'S CURRENT DETENTION

Respondents assert that Petitioner is detained under 8 U.S.C. § 1231 because the Board of Immigration Appeals dismissed his appeal on March 16, 2026. However, Respondents' analysis does not adequately address Petitioner's pending petition for review in the Ninth Circuit or the judicial stay reflected in the appellate docket.

On March 30, 2026, Petitioner filed a petition for review and a motion to stay removal in Shikhkerimov v. Blanche, No. 26-1914. On that same date, the Ninth Circuit entered a temporary stay of removal under General Order 6.4, effective until further order of the court. The October 1, 2026 docket report contains no subsequent entry expressly lifting that stay.

Under 8 U.S.C. § 1231(a)(1)(B)(ii), when a removal order is judicially reviewed and a court orders a stay of removal, the removal period begins on the date of the court's final order. In Prieto-Romero v. Clark, 534 F.3d 1053 (9th Cir. 2008), the Ninth Circuit held that detention during judicial review of an administratively final removal order, when removal is judicially

stayed pending resolution of the petition for review, is governed by § 1226(a), rather than § 1231(a).

Petitioner recognizes that the precise legal effect of the temporary stay under General Order 6.4 must be determined. Nevertheless, Respondents have not explained why § 1231 governs his detention notwithstanding the March 30 stay. Petitioner requests that the Court determine the applicable detention authority before accepting Respondents' claim that he is subject to mandatory post-removal-order detention.

Regardless of whether the Court determines that § 1225, § 1226 or § 1231 governs Petitioner's custody, the applicable statute does not eliminate the need to resolve his properly presented constitutional claims.

IV. THE GOVERNMENT'S ASSERTION THAT REMOVAL IS REASONABLY FORESEEABLE DOES NOT RESOLVE PETITIONER'S CONSTITUTIONAL CLAIM

Respondents argue that Petitioner has failed to establish that there is no significant likelihood of his removal to Russia in the reasonably foreseeable future. However, Respondents have not identified a scheduled removal date or an anticipated date for resolution of Petitioner's Ninth Circuit proceedings in their Supplemental Response.

The October 1, 2026 Ninth Circuit docket establishes that the Government moved to stay appellate proceedings on June 9, 2026. That motion was granted on July 21, 2026, and the previously established briefing schedule was vacated. On September 14, 2026, the Government requested a further stay of appellate proceedings. On September 28, 2026, the Ninth Circuit granted that request and extended the stay until November 16, 2026.

The November 16 date is not a scheduled decision date. Moreover, the order expressly permits the possibility of additional relief. Petitioner does not contend that the passage of time alone establishes entitlement to release under Zadvydas. Nor does he suggest that the possibility of eventual removal is irrelevant.

Rather, he submits that the Government's assertions concerning removal do not independently establish that his present confinement is constitutionally necessary. Petitioner should not be required to remain detained without adequate constitutional safeguards merely because his petition for review remains unresolved, particularly when the Government itself has requested extensions of the appellate proceedings.

V. THE AUGUST 27, 2026 BOND HEARING DID NOT NECESSARILY SATISFY THE FIFTH AMENDMENT

Throughout much of Petitioner's detention and the pendency of this habeas proceeding, he was denied access to a bond hearing based on the Government's position that his detention was mandatory. A bond hearing was finally held on August 27, 2026, after this proceeding had been pending for several months.

At that hearing, the immigration judge found that Petitioner was not a danger to the community. Nevertheless, the judge denied bond based on Petitioner's unfavorable decisions in the Immigration Court and before the BIA and the judge's prediction that Petitioner would probably lose his pending Ninth Circuit appeal.

Petitioner submits that a prediction about the outcome of his judicial appeal does not, by itself, establish that he presents a flight risk warranting continued incarceration. The judge's assessment also fails to resolve whether reasonable conditions of release could adequately ensure Petitioner's appearance in future proceedings. Petitioner has no criminal history, maintains that he is not a danger to the community, and is willing to comply with reasonable conditions of supervision.

In Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011), the Ninth Circuit recognized procedural protections in prolonged immigration-detention bond proceedings, including a clear-and-convincing-evidence burden on the Government in the hearings addressed by that decision. Petitioner requests that the Court determine whether his August 27 hearing satisfied the procedural protections constitutionally required in his circumstances.

The mere occurrence of a bond hearing does not necessarily cure a prolonged-detention violation if the hearing itself fails to provide constitutionally adequate consideration of the necessity of continued detention. Petitioner maintains his request for release or, alternatively, a constitutionally adequate individualized hearing at which the Government must justify continued confinement and reasonable alternatives to detention are meaningfully considered.

VI. PETITIONER'S FIFTH AMENDMENT CLAIM REMAINS INDEPENDENT OF HIS CHALLENGE UNDER ZADVYDAS

Respondents' Supplemental Response effectively treats the foreseeability of removal as dispositive of the entire habeas proceeding. However, Petitioner's constitutional claim raises a

separate question: whether the Government has adequately justified continuing his civil detention for nearly 22 months.

Petitioner requests that the Court consider the totality of the circumstances, including the duration of detention, the reasons for the delay, the status of his judicial proceedings, his lack of criminal history, the August 27 finding that he was not dangerous, and the adequacy of the procedures used to assess flight risk.

Even if the Court concludes that removal remains reasonably foreseeable and that relief is unavailable under Zadvydas, that conclusion does not necessarily dispose of Petitioner's independent Fifth Amendment claim. Petitioner requests that the Court adjudicate that claim separately.

VII. CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Reject Respondents' contention that the possibility of eventual removal disposes of Petitioner's independent Fifth Amendment claim.

2. Determine whether Respondents have waived their opposition to Petitioner's prolonged-detention claim by failing to meaningfully address its merits.

3. Determine the proper statutory authority for Petitioner's continued detention in light of the pending Ninth Circuit petition for review and the judicial stay reflected in the appellate docket.

4. Determine whether Petitioner's August 27, 2026 bond hearing provided constitutionally adequate procedural protections.

5. Grant the Petition for Writ of Habeas Corpus and order Petitioner's release, subject to reasonable conditions of supervision as the Court considers appropriate.

6. Alternatively, order a prompt, constitutionally adequate individualized bond hearing before a neutral decision-maker, with appropriate procedural safeguards, including the Government's burden of justifying continued detention and consideration of reasonable alternatives to confinement.

7. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Tagir Shikhkerimov

Tagir Shikhkerimov

Petitioner, Pro Se

Date: 10/02/26

CERTIFICATE OF SERVICE

I certify that on 10/02/26, I served a true and correct copy of the foregoing Petitioner's Reply to Respondents' Supplemental Response upon counsel for Respondents by:

[Specify method of service and address.]

Tagir Shikhkerimov

Tagir Shikhkerimov