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**UNITED STATES DISTRICTS COURT
DISTRICT OF ARIZONA
PHOENIX DIVISION**

In re:

Case No.: CV-25-01846-PHX-DJH (ASB)

EKATERINA KUNITSKAIA,

**PETITIONER'S MOTION FOR
EMERGENCY STAY OF REMOVAL**

Petitioner,

FRED FIGUEROA

Respondent

PETITIONER'S MOTION FOR AN EMERGENCY STAY OF REMOVAL
PENDING RESOLUTION OF WRIT OF HABEAS CORPUS PETITION

INTRODUCTION AND STATEMENT OF FACTS

Petitioner, Ekaterina Kunitskaia, hereby moves the Court for an order staying Petitioner physical removal and deportation from the United States of America until such time as this Court has issued an order on Petitioner's Writ of Habeas Corpus Petition. In support of this motion, Petitioner states as follows:

1. Petitioner was born in Russia and entered the United States on February 17, 2025.
2. Petitioner expressed a fear of returning to her home country and an intent to seek asylum in the United States.
3. Petitioner's deportation officer refused to refer her to USCIS for an asylum credible fear screening.
4. Petitioner's deportation officer is attempting to unlawfully remove him from the United States.
5. Petitioner's deportation officer has mistreated Petitioner and attempted to force her to accept summary deportation despite her legal entitlement to a credible fear screening.
6. Without an order temporarily prohibiting Immigration & Customs Enforcement (ICE) from summarily and extrajudicially removing Petitioner from the United States, Petitioner will be denied a credible fear screening due her under the law.
7. Petitioner has a substantial liberty interest at stake, including, having expressed a fear of return to her country of origin and a desire to seek asylum in the United States, both the right be referred to USCIS for a credible fear screening and to undergo said credible fear screening. A

denial of a stay of removal would allow ICE to remove Petitioner from the United States and functionally forestall evaluation of her Writ of Habeas Corpus Petition.

ARGUMENT IN SUPPORT OF MOTION FOR EMERGENCY STAY OF REMOVAL

Petitioner contends that contrary to and in violation of the requirements of 8 CFR § 235.3, even though she has expressed a fear of return to her country of origin and a desire to seek asylum in the United States, ICE is denying her a statutorily mandated credible fear screening and attempting to deport her in violation of the law. Additionally, Petitioner contends the ICE is attempting to rely on a dubious interpretation of INA § 212(f) to subvert her rights as an asylum seeker.

If removed prior to her statutory right to a credible fear screening by USCIS, Petitioner will be unable to pursue and present her claims before the Court. The Supreme Court has characterized deportation as a drastic measure and, at times, the equivalent of banishment. *Fong How Tran v. Phelan*, 333 U.S. 6, 10 (1948). A stay of removal is appropriate in this situation to both prevent the capricious disregard of the law by the Petitioner's deportation officer and to enable Petitioner to avail herself of the due process of law, and the credible fear screening she is entitled to as a *bona fide* asylum seeker. Petitioner's underlying petition for a Writ of Habeas Corpus does not seek to challenge any decision on the merits of her potential asylum claims or the outcome of a credible fear screening; Petitioner merely seeks this emergency stay of removal so that she may have the statutorily mandated credible fear screening she is entitled to under the law.

Granting a motion for stay of removal requires finding four factors: (1) Petitioner's writ/petition is likely to succeed; (2) Petitioner will be irreparably injured absent a stay; (3)

issuance of the stay will not substantially injure the other parties interested in the proceeding; and (4) the public interest favors a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). *Nken* explains that the first two factors are "most critical." *Id.* 556 U.S. at 434. The last two factors merge because the government is the Petitioner. *Id.*

Regarding the first factor, Petitioner is likely to succeed with respect to her Writ of Habeas Corpus as the deportation officer's refusal to refer Petitioner for a credible fear screening after her expressing a fear of return to her country of origin or an intent to seek asylum is patently contrary to their duty according to the unequivocal language of 8 CFR § 235.3, stating that the officer "shall not proceed further with removal of the alien until the alien has been referred for an interview by an asylum officer in accordance with 8 CFR § 208.30."

As for *Nken's* second factor, the irreparableness of the injury Petitioner will invariably suffer absent a stay of removal will cause crippling and incurable prejudice to her Writ of Habeas Corpus claim, her statutorily mandated credible fear screening, and her underlying, potential asylum claim. Petitioner's removal from the United States prior to adjudication of her Writ of Habeas Corpus would essentially preclude Petitioner from seeking relief by removing her.

Both the third and fourth factors weigh decisively in Petitioner's favor. *Nken* explains that these last two factors, injury to other parties in the litigation and the public interest, merge in immigration cases because the Government is both the opposing litigant and the public's representative. *Id.* 556 U.S. at 435. The Court further noted that the interests of the Government and the public in the "prompt execution of removal orders" is only heightened where "the alien is particularly dangerous" or "has substantially prolonged his stay by abusing the process provided to him." *Id.* at 436. The Government has had the opportunity to confirm Petitioner's ID and that she has never committed a crime anywhere in the world. Also, the Government's interest in

expeditiously removing Petitioner is not heightened because Petitioner is neither a criminal nor dangerous.

Nor can the Government point to any abuse of the process to substantially prolong Petitioners stay in the USA. Quite to the contrary, Petitioner only entered the USA on February 17, 2025, and is only seeking this stay to prevent the Government's willful violation of her statutory and due process rights.

The Government has no particular interest in Petitioners removal. She has no criminal history and poses no threat to the community. Further, *Nken* recognizes a "public interest in preventing aliens from being wrongfully removed," which must weigh heavily in the Court's consideration. 566 U.S. at 436. Because the Government cannot make any particularized showing that granting a stay of removal would substantially injure the Government, and because the Government has no interest in enabling the violation of domestic and international laws, granting a stay would serve the public interest.

Conversely, potential harm to the Petitioner outweighs any perceived harm or inconvenience to the Government if a stay is not granted. Procedural due process requires the Government to afford a meaningful hearing if it seeks to deprive a person of liberty or property interests. The Supreme Court has recognized that deportation touches on important issues and that an alien must be afforded due process. *Rosenberg v. Fluetti*, 374 U.S. 449, 458 (1962), quoting *Di-Pasquale v. Karnath*, 158 F. 2d 878, 879 (2nd Cir 1974) and *Degadillo v. Carmichael*, 332 U.S. 67, 77 (1976). The removal of Petitioner serves no public interest at present, whereas the United States has a public interest in allowing Petitioner the opportunity to vigorously present her claim throughout the legal process.

For the foregoing reasons, Petitioner respectfully asks that the Court grant this motion for a stay of removal pending resolution of complaint for a writ of habeas corpus.

Dated: June 3, 2025.

Respectfully submitted.

s/Alexandra Tseitlin

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EMERGENCY MOTION FOR STAY OF REMOVAL

ORDER OF THE JUDGE

The Judge has considered the motion for emergency stay of removal by the Petitioner and concludes that the motion should be:

DENIED ☐

GRANTED ☐

IT IS FURTHER ORDERED that:

Date: _____

Hon.

CERTIFICATE OF SERVICE

This document was served by: ☐ Mail ☐ Personal Service

To: ☐ Alien ☐ Alien c/o Custodial Officer ☐ Alien's Atty/Rep ☐ DHS

Date:

By Court Staff

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2025, I caused the foregoing Stay of Removal Motion to be served by U.S mail/electronically to the following:

Fred Figueroa
Warden at Eloy Detention Facility
c/o PAM BONDI, U.S. Attorney General
950 Pennsylvania Ave., NW
Washington D.C. 20530-0001

c/o U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
500 12th Street., SW Mail Stop 5900
Washington, DC 20536

s/ Alexandra Tseitlin

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