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8
9 **In the United States District Court**

10 **District of Arizona**

11
12
13 In re:

14 German Togoev,

15 Plaintiffs,

16
17 U.S. Attorney General; Pam Bondi, in her
18 capacity as U.S. Attorney General; U.S.
19 Department of Homeland Security; Kristi
20 Noem, in his official capacity as Secretary of
21 Homeland Security; U.S. Citizenship and
22 Immigration Services (USCIS); Ur Mendoza
23 Jaddou, in her official capacity as Director of
24 USCIS

Case No.: 2:25-ph-99906

Petition for Writ of Mandamus (Immigration

Mandamus Case)

Introduction

Plaintiff, German Toguev, A# [REDACTED], located in Southern Arizona ("Plaintiff") requests issuance of a writ of mandamus and/or an order to compel under the Administrative Procedure Act ("APA") ordering Defendants to schedule and provide Plaintiff with a credible fear screening as required by US law in light of his expressing a fear of return to his home country and an intention to seek asylum in the United States.

Jurisdiction and Venue

1. This Court has jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361, and 28 U.S.C. § 1651 because Plaintiffs ask this court to compel Defendants, officers of the United States, to perform a duty owed under 8 U.S.C. § 1158(d)(5)(A)(iii).

2. Jurisdiction is also conferred on this Court pursuant to 5 U.S.C. § 704 as Plaintiff's are aggrieved by adverse agency action which this Court is authorized to remedy under the Administrative Procedures Act, 5 U.S.C. §§ 702 *et seq.*

3. The jurisdiction of this Court is also invoked pursuant to 28 U.S.C. §§ 2201-2, which authorizes the issuance of a declaratory judgment.

4. Costs and fees are sought pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*

5. Venue is proper in this judicial district pursuant to because this judicial district is where the Plaintiff is detained.

Parties

6. Plaintiff is a native and citizen of Russia who came to the United States to escape persecution and seek asylum.

7. The United States Citizenship and Immigration Services (“USCIS”), is the defendant agency charged with inter alia conducting credible fear screening. It has the obligation, upon Plaintiff expressing a fear of return to his home country or an intention to seek asylum in the United States, to interview Plaintiff and determine whether he has a credible fear.

8. Defendant Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”) and oversees DHS. In her official capacity, she is charged with the administration and enforcement of the INA, including the referral of asylum seekers for credible fear screening, has the authority to determine the refugee status of applicants pursuant to 8 U.S.C. § 1158(b)(1)(A), and is authorized to delegate such powers and authority to employees of DHS, including those of USCIS. *See* 8 U.S.C. § 1103(a)(1). Defendant Noem is named in this complaint in her official capacity.

9. Defendant Ur M. Jaddou is the Director of USCIS, the agency charged with scheduling and conducting Plaintiffs’ credible fear screening. Defendant Jaddou is named in her official capacity.

Administrative Procedure Act Framework

10. Under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1), the Court is authorized to compel agency action which has been unreasonably delayed.

1 11. Assessing reasonableness is frequently found to involve a balancing test, in which a
2 statutory requirement is a very substantial factor. *See Telecommunications Research & Action*
3 *Ctr. V. FCC*, 750 F.2d, 70, 77-78 (D.C. Cir. 1984).
4

5 12. the APA also provides pursuant to 5 U.S.C. § 706(1) that courts “shall compel agency
6 action unlawfully withhold.” Courts have held that this provision eliminates court discretion to
7 grant relief once an agency has violated a statutory deadline as is the situation here. *See Forrest*
8 *Guardians v. Babbitt*, 174 F.3d 1178 (10th Cir. 1998); *see also Biodiversity Legal Foundation v.*
9 *Badgley*, 309 F.3d 1166, 1178 (9th Cir. 2002) (noting that when Congress has specifically
10 provided a deadline for performance ... no balancing of factors is required or permitted”).
11
12

13 13. Plaintiff has a statutory right to a credible fear screening pursuant to 8 C.F.R. §
14 235.3.
15

16 14. Defendants have a statutory duty to provide Plaintiff with a credible fear screening
17 pursuant to 8 C.F.R. §§ 208.30 and 235.3.
18

19 15. Plaintiff has no adequate remedy at law and will suffer irreparable harm if he is not
20 promptly provided with a credible fear screening.
21

22 **Mandamus Framework**

23 16. Plaintiff has a statutory right to undergo a credible fear screening after expressing a
24 fear of return to his home country or an intention to seek asylum pursuant to 8 U.S.C. § 235.3.
25

26 17. Defendants have a duty to refer for, schedule, and conduct a credible fear screening
27 pursuant to 8 U.S.C. § 235.3.
28

1 18. Plaintiff has no adequate remedy at law and will suffer irreparable harm if he is not
2 promptly provided with a credible fear screening.
3

4 19. Pursuant to 28 U.S.C. § 1361, this Court has “original jurisdiction in the nature of
5 mandamus to compel an officer or employee of the United States or any agency thereof to
6 perform a duty owed to the [Plaintiffs.]”
7

8 20. Pursuant to 28 U.S.C. § 1651, this Court may issue any and all “writs necessary or
9 appropriate in aid of [the Court’s] respective jurisdiction ... and agreeable to the usages and
10 principles of law.
11

12 **Factual Allegations**
13

14 21. Plaintiff was born in Russia and entered the United States on February 14th, 2025.
15

16 22. After entering the United States, Plaintiff expressed a fear of return to his home
17 country and an intent to seek asylum in the United States to officers of the Department of
18 Homeland Security.
19

20 23. Though, per US statutes, Plaintiff should have been referred to USCIS for a credible
21 fear screening upon expressing a fear of return to his home country or an intent to seek asylum in
22 the United States, he was informed that he was to be deported from the United States without a
23 full asylum credible fear screening.
24

25 24. Plaintiff was subsequently pressured to accept summary deportation, which he
26 refused, consequently receiving threats from officers of the government.
27
28

1 25. As set forth in greater detail below, Plaintiff fears persecution in his country of
2 citizenship and intends to seek asylum in the United States. Instead of being provided his rights
3 as an asylum seeker under the law, he has been denied a full credible fear screening and is under
4 threat of being extrajudicially deported under the color of law.
5

6
7 **Plaintiff's Entitlement to a Credible Fear Screening**

8 26. 8 C.F.R. § 235.3 addresses the procedures governing the handling of inadmissible
9 aliens and expedited removal.
10

11 (4) *Claim of asylum or fear of persecution or torture.* If an alien subject to
12 the expedited removal provisions indicates an intention to apply for asylum, or
13 expresses a fear of persecution or torture, or a fear of return to his or her country,
14 the inspecting officer shall not proceed further with removal of the alien until the
15 alien has been referred for an interview by an asylum officer in accordance with 8
16 CFR 208.30. The examining immigration officer shall record sufficient
17 information in the sworn statement to establish and record that the alien has
18 indicated such intention, fear, or concern, and to establish the alien's
19 inadmissibility. 8 C.F.R. § 235.3 (4)

20 27. Plaintiff verbally expressed to officers of the United States government a fear of
21 return to his home country and an intent to seek asylum in the United States but was refused a
22 full asylum credible fear screening and was told he was going to be deported.
23

24 **Additional Violations of Policy by the Department of Homeland Security**

25 28. When Plaintiff's deportation officer was asked to comply with US
26 immigration law, the deportation officer refused to refer Plaintiff for a credible fear screening,
27 and provided only a Convention Against Torture screening. The deportation officer's reliance
28 upon INA § 212(f) to summarily deport Plaintiff is at best a misunderstanding of the law or, at

1 worst, a malicious attempt to extrajudicially deport Plaintiff from the United States before he can
 2 avail himself of the legal protections under the law that he is entitled to. Courts have held that
 3 INA § 212(f) does not allow a president to interfere with or subvert other parts of the INA or
 4 other federal laws, including INA § 208.30, which grants people the right to seek asylum in the
 5 United States: “Any alien who is physically present in the United States or who arrives in the
 6 United States (whether or not in a designated port of arrival [...]) irrespective of such alien’s
 7 status, may apply for asylum.” Undermining any contention that a presidential proclamation
 8 under 212(f), the Supreme Court held that such a proclamation “does not allow the President to
 9 expressly override particular provisions of the INA.” *Trump v. Hawaii*, 585 U.S.____(2018).
 10 Whether through ignorance of the law or malice, Plaintiff’s deportation officer has failed to refer
 11 Plaintiff for a credible fear screening as required by 8 C.F.R. § 235.3. The Department of
 12 Homeland Security is currently attempting to deport Plaintiff before this matter can be addressed.

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 14
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 17
 18 **Count One**

19 **Mandamus**

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 21 45. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein and
 22 incorporates them by reference.

23
 24 46. Pursuant to 28 U.S.C. § 1361, this Court may compel an officer or employee of the
 25 United States to perform a duty owed to the Plaintiffs.

1 47. Pursuant to 28 U.S.C. § 1651, the Court may issue any and all “Writs necessary or
2 appropriate in aid of [the Court’s] respective jurisdiction ... and agreeable to the usages and
3 principle of law.
4

5 48. Plaintiff has the right to be referred to USCIS for the scheduling of a credible fear
6 screening.
7

8 49. Plaintiff also has the right to have USCIS perform said credible fear screening in
9 accordance with 8 C.F.R. § 235.3.
10

11 50. No adequate remedy exists at law, for the reasons set forth above. Further, Plaintiff
12 will suffer irreparable harm if he is summarily and extrajudicially removed from the United
13 States without undergoing a statutorily mandated credible fear interview.
14

15 51. The denial of a credible fear screening is unreasonable and leaves Plaintiff without
16 an adequate remedy.
17

18 52. Having diligently complied with the requirements of the law and exhausted any
19 administrative remedies, Plaintiff seeks a writ of mandamus or in the nature of mandamus to end
20 Defendants’ unreasonable and unlawful denial of a credible fear screening.
21

22
23 **Prayer for Relief**

24 WHEREFORE, Plaintiff respectfully requests the Court to:
25

26 a. Accept jurisdiction and maintain continuing jurisdiction of this action;
27
28

- 1 b. Declare Defendants' actions in this matter arbitrary and capricious, an abuse of
2 discretion and not in accordance with the law pursuant to 5 U.S.C. § 706(1) and 28
3 U.S.C. §§ 2201-02;
4
5 c. Issue a preliminary and permanent injunction pursuant to 28 U.S.C. § 1361 and 5
6 U.S.C. § 706(a) compelling Defendants to refer, schedule, and provide Plaintiff with a
7 credible fear screening;
8
9 d. Issue a writ of mandamus or in the nature of mandamus, pursuant to 28 U.S.C. §
10 1361, 28 U.S.C. § 1651, and/or 5 U.S.C. § 706(1), compelling Defendants to refer,
11 schedule, and provide Plaintiff with a credible fear screening;
12
13 e. Grant attorneys' fees and costs of this suit under the Equal Access to Justice Act, 5
14 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*
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16

17 Dated: June 5th, 2025.

18 Respectfully submitted,
19

20 _____/s/ Nathaniel Nicoll_____

21 Nathaniel L. Nicoll

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28

CERTIFICATE OF SERVICE

I hereby certify that on June 5th, 2025, I caused the foregoing Petition for Writ of Mandamus to be served by U.S. mail/electronically to the following:

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