

1 **NATHANIEL L. NICOLL (SBN 225509)**

2 **FRIEDMAN LAW FIRM**

3 3947 Lennane Drive, Suite #150

4 Sacramento, CA 95833

5 Telephone: (916) 800-4454

6 FACSIMILE: (855) 377-6235

7 Attorney for Respondent

8 **United States District Court**
9 **District of Arizona**

10 In re:

11 German Togoev,

12 Plaintiffs,

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

Case No.: 2:25-ph-99906

Plaintiff's Motion for Emergency Stay of Removal

21
22 Plaintiff's Motion For An Emergency Stay of Removal Pending Resolution Of
23 Writ of Mandamus
24
25
26
27
28

Introduction and Statement of Facts

Plaintiff, German Toguev (A# [REDACTED]) (currently detained in Southern Arizona), hereby moves the Court for an order staying Plaintiff's physical removal and deportation from the United States of America until such time as this Court has issued a final decision on Plaintiff's writ of mandamus. In support of this motion, Plaintiff states as follows:

1. Plaintiff was born in Russia and entered the United States on February 14th, 2025.
2. Plaintiff expressed a fear of returning to his home country and an intent to seek asylum in the United States.
3. Plaintiff's deportation officer refused to refer him to UNCIS for a full asylum credible fear screening.
4. Plaintiff's deportation officer is attempting to unlawfully remove him from the United States.
5. Deportation officers have mistreated Plaintiff and attempted to force him to accept summary deportation despite his legal entitlement to a full asylum credible fear screening.
6. Without an order temporarily prohibiting Immigration & Customs Enforcement (ICE) from summarily and extrajudicially removing Plaintiff

1 from the United States, Plaintiff will be denied a credible fear screening due
2 him under the law.
3

4 7. Plaintiff has a substantial liberty interests at stake, including, having
5 expressed a fear of return to her country of origin and a desire to seek
6 asylum in the United States, both the right be referred to USCIS for a
7 credible fear screening and to undergo said credible fear screening. A denial
8 of a stay of removal would allow ICE to remove Plaintiff from the United
9 States and functionally forestall evaluation of Plaintiff's writ of mandamus.
10
11
12
13

14 **Argument in Support of Motion for Emergency Stay of Removal**

15 Plaintiff contends that the contrary to and in violation of the requirements of 8
16 CFR § 235.3, even though he has expressed a fear of return to her country of origin
17 and a desire to seek asylum in the United States, ICE is denying him a statutorily
18 mandated credible fear screening and attempting to deport him in violation of the
19 law. Additionally, Plaintiff contends the ICE is attempting to rely on a dubious
20 interpretation of INA § 212(f) to subvert his rights as an asylum seeker.
21
22
23

24 If removed prior to his statutory right to a credible fear screening by USCIS,
25 Plaintiff will be unable to vigorously pursue and present his claims before the
26 Court. The Supreme Court has characterized deportation as a drastic measure and,
27 at times, the equivalent of banishment. Fong How Tran v. Phelan, 333 U.S. 6, 10
28

1 (1948). A stay of removal is appropriate in this situation to both prevent the
2 capricious disregard of the law by Plaintiff's deportation officer and to enable
3 Plaintiff to avail himself of the due process of law, and the credible fear screening
4 he is entitled to as a bona fide asylum seeker in particular. Plaintiff's underlying
5 complaint for a writ of mandamus does not seek to challenge any decision on the
6 merits of his potential asylum claims or the outcome of a credible fear screening:
7 Plaintiff merely seeks this emergency stay of removal so that he may have the
8 statutorily mandated credible fear screening he is entitled to under the law.

9
10 Granting a motion for stay of removal requires finding four factors: (1)
11 Plaintiff's writ/petition is likely to succeed; (2) Plaintiff will be irreparably injured
12 absent a stay; (3) issuance of the stay will not substantially injure the other parties
13 interested in the proceeding; and (4) the public interest favors a stay. *Nken v.*
14 *Holder*, 556 U.S. 418, 434 (2009). *Nken* explains that the first two factors are
15 "most critical." 556 U.S. at 434. The last two factors merge because the
16 government is the respondent. *Id.*

17
18 Regarding the first factor, Plaintiff is likely to succeed with respect to his writ
19 of mandamus as the Department of Homeland Security's officer's refusal to refer
20 Plaintiff for a credible fear screening after his expressing a fear of return to his
21 country of origin or an intent to seek asylum is patently contrary to their duty
22 according to the unequivocal language of 8 CFR § 235.3 stating that the officer

1 “shall not proceed further with removal of the alien until the alien has been
2 referred for an interview by an asylum officer in accordance with 8 CFR §
3 208.30.”.

4
5 As for *Nken*’s second factor, the irreparableness of the injury Plaintiff will
6 invariably suffer absent a stay of removal will cause crippling and incurable
7 prejudice to his writ of mandamus, his statutorily mandated credible fear screening,
8 and his underlying, potential asylum claim. Plaintiff’s removal from the United
9 States prior to adjudication of her writ of mandamus would essentially preclude
10 Plaintiff from seeking relief by removing him.

11
12 Both the third and fourth factors weigh decisively in Plaintiff’s favor. *Nken*
13 explains that these last two factors, injury to other parties in the litigation and the
14 public interest, merge in immigration cases because the Government is both the
15 opposing litigant and the public’s representative. 556 U.S. at 435. The Court
16 further noted that the interests of the Government and the public in the “prompt
17 execution of removal orders” is only heightened where “the alien is particularly
18 dangerous” or “has substantially prolonged his stay by abusing the process
19 provided to him.” *Id.* at 436 (citations omitted). The Government has had the
20 opportunity to confirm Plaintiff’s ID and that he has never committed a crime
21 anywhere in the world. Also, the Government’s interest in expeditiously removing
22 Plaintiff is not heightened because Plaintiff is neither a criminal nor dangerous.

1 Nor can the Government point to any abuse of the process to substantially prolong
2 Plaintiff's stay in the USA. Quite to the contrary, Plaintiff only entered the USA
3 on February 14th, 2025, and is only seeking this stay in an attempt to prevent the
4 Government's willful violation of his statutory and due process rights.
5

6
7 The Government has no particular interest in Plaintiff's removal. He has no
8 criminal history and poses no threat to the community. Further, *Nken* recognizes a
9 "public interest in preventing aliens from being wrongfully removed," which must
10 weigh heavily in the Court's consideration. 566 U.S. at 436. Because the
11 Government cannot make any particularized showing that granting a stay of
12 removal would substantially injure the Government, and because the Government
13 has no interest in enabling the violation of domestic and international laws,
14 granting a stay would serve the public interest.
15

16
17 Conversely, potential harm to Plaintiff outweighs any perceived harm or
18 inconvenience to the Government if a stay is not granted. Procedural due process
19 requires the Government to afford a meaningful hearing if it seeks to deprive a
20 person of liberty or property interests. The Supreme Court has recognized that
21 deportation touches on important issues and that an alien must be afforded due
22 process. *Rosenberg v. Flueti*, 374 U.S. 449, 458 (1962), quoting *Di-Pasquale v.*
23 *Karnath*, 158 F. 2d 878, 879 (2nd Cir 1974) and *Degadillo v. Carmichael*, 332 U.S.
24 *67, 77 (1976)*. The removal of Plaintiff serves no public interest at this time,
25

1 whereas the United States has a public interest in allowing Plaintiff the opportunity
2 to vigorously present his claim throughout the legal process.
3

4 For the foregoing reasons, Plaintiff respectfully asks that the Court grant this
5 motion for a stay of removal pending resolution of complaint for a writ of
6
7 mandamus.

8
9 Respectfully submitted.

10 Dated: June 5th, 2025.
11

12
13 ____/s/____ Nathaniel L. Nicoll, Esq. ____

14 Nathaniel L. Nicoll

15 Friedman Law Firm

16 1387 Carden Hwy, Suite 100

17 Sacramento, CA 95833

18 Telephone (916) 800-4454

19 E-mail: nate@friedman-firm.com

20 *Attorneys for Plaintiffs*
21
22
23
24
25
26
27
28

**United States District Court
District of Arizona**

Case No.: 2:25-ph-99906
German Togoev v. U.S. Attorney General Pam Bondi, et al.

Re: Motion for Emergency Stay of Removal

German Togoev

Order of the Judge

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

Denied ☐

Granted ☐

It is Further Ordered that:

Date: _____

Hon. Judge

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 5th, 2025, I caused the foregoing Emergency Motion for Stay of Removal to be served by U.S. mail/electronically to the following:

KRISTI NOEM, Secretary of DHS
245 Murray Lane, SW, Mail Stop 0485
Washington DC, 20528-0485

Ur M. Jaddou, Director USCIS
Office of the Chief Counsel
5900 Capital Gateway Drive
Mail Stop 2120
Camp Springs, MD 20588-0009

PAM BONDI, U.S. Attorney General
950 Pennsylvania Ave., NW
Washington D.C. 20530-0001

/s/ Nathaniel Nicoll
Nathaniel L. Nicoll, Esq.
Friedman Law Firm
3947 Lennane Drive, Suite 150
Sacramento, CA 95834
(916) 800-4454
Attorneys for Plaintiff