

obligations. Accordingly, to vindicate Petitioners' statutory and constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

2. Petitioners bring this action to challenge: (1) their detention without a custody redetermination; (2) Respondents' failure to refer them for mandatory credible fear interviews; (3) Respondents' failure to initiate full removal proceedings despite their expressed fear; (4) the denial of protections guaranteed under the Convention Against Torture and withholding of removal statutes; and (5) the unlawful and traumatic separation from their minor child without a legal justification. Absent intervention from this Court, Petitioners will continue to suffer irreparable harm through prolonged detention, family separation, and the risk of refoulement to a country where they will face persecution and torture.

3. Petitioners respectfully ask this Court to find that their continued detention and denial of required asylum processing are unlawful, and to order their immediate release or transfer to a family facility, prompt asylum and CAT screening, reunification with their child, and placement in removal proceedings before an Immigration Judge as required by law.

JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner can prove by a preponderance of the evidence that he/she/they is asylee under 8 U.S.C. § 1158.

6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

7. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. § 1391, as Petitioners are currently detained at Elizabeth Detention Center in New Jersey.

REQUIREMENTS OF 28 U.S.C. § 2243

8. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

9. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

10. Petitioners are seeking asylum and other applicable protections. Petitioners are currently detained at Elizabeth Detention Center, are in the custody, and under the direct control, of Respondents and their agents.

11. Respondent ERIC ROKOSKY is the Warden of Elizabeth Detention Center, and has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S.


Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent is a legal custodian of Petitioners.


12. Respondent JOHN TSOUKARIS is sued in his official capacity as the Director of the Newark Field Office of U.S. Immigration and Customs Enforcement. Respondent TSOUKARIS is a legal custodian of Petitioners and has authority to release them.

13. Respondent KRISTI NOEM is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent NOEM is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioners' detention. Respondent NOEM is a legal custodian of Petitioners.

14. Respondent PAM BONDI is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent BONDI is a legal custodian of Petitioners.

STATEMENT OF FACTS

15. Petitioners Evgeny (38 y.o.) and Evgeniia (33 y.o.) Mashchenko and their son  (8 y.o.), nationals of the Russian Federation, entered the United States on April 29, 2025, fleeing political persecution. They entered via port of entry, but without a CBP One appointment they were waiting for in Mexico since summer of 2024 due to the unavailability of CBP One appointments after January 20, 2025, following Presidential Proclamation 10888.

16. Immediately upon entry, Petitioners were apprehended and detained for some time by U.S Customs and Border Patrol (CBP). Later their custody was transferred to the U.S. Immigration and Customs Enforcement (ICE) at Elizabeth Detention Center, New Jersey. Their minor child,  age 8, was forcibly separated from Petitioners and placed into ORR custody in New York at the time of detention with ICE.

17. Petitioners have continuously expressed credible fear of persecution if returned to Russia due to their documented opposition activism, including participation in protests supporting Alexei Navalny, involvement in ecological organizing, and open criticism of Russian government policies.

18. To date, neither petitioner has received a statutory credible fear interview nor appeared before an Immigration Judge. Both parents underwent a limited CAT screening interview on June 2, 2025, and the father a follow-up interview on June 6, 2025. No determinations or results have been provided to date. No opportunity for attorney representation or attendance at the screening was afforded.

19. Petitioners requested parole and family reunification; these requests have not been acknowledged by ICE and DHS.

20. Petitioners face severe consequences, including torture and prolonged imprisonment, if returned to Russia, based on their documented political activism and prior persecution experiences. See Appendix A.

LEGAL FRAMEWORK

A. Due Process Under the Fifth Amendment

21. The Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person of liberty without due process of law. U.S. Const.

Amend. V. Noncitizens physically present in the United States, even if deemed removable and/or inadmissible, are entitled to due process protections. See *Clark v. Martinez*, 543 U.S. 371 (2005), *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

22. Immigration detention becomes constitutionally problematic when it is prolonged without adequate procedural protections. *Zadvydas*, 533 U.S. at 690.

B. Statutory Framework for Asylum and Fear Screenings

23. The Immigration and Nationality Act (INA) provides that any noncitizen who indicates an intention to apply for asylum or expresses a fear of return shall be referred to an asylum officer for a credible fear interview. See INA § 235(b)(1)(A)(ii), 8 U.S.C. § 1225(b)(1)(A)(ii).

24. If the asylum officer determines that the individual has a credible fear of persecution, the case must be referred to full removal proceedings under INA § 240. See 8 C.F.R. § 208.30(e)(2).

25. No statutory provision permits indefinite delay or the suspension of credible fear interviews. A categorical failure to refer individuals for screening after fear is expressed violates 8 U.S.C. § 1225 and 8 C.F.R. § 208.30.

26. Following Presidential Proclamation 10888, issued on January 20, 2025, DHS and DOJ implemented changes suspending many credible fear interviews under INA § 212(f), 8 U.S.C. § 1182(f). However, executive action cannot override statutory mandates absent Congressional amendment. See persuasive authority in *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 676–77 (9th Cir. 2021).

C. Convention Against Torture (CAT) Protections

27. Under the Foreign Affairs Reform and Restructuring Act (FARRA) and the implementing regulations, the United States may not return any person to a country where it is more likely than not that they will be tortured. See 8 C.F.R. §§ 208.16(c), 208.18.

28. Individuals in expedited removal who express a fear of torture are entitled to a "reasonable fear" screening. See 8 C.F.R. § 208.31. Unreasonable delays or failure to provide such screening constitutes a violation of the INA and CAT.

D. Family Separation and the Right to Family Integrity

29. The Constitution protects the fundamental right of parents to the care, custody, and control of their children. See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

30. The forced separation of children from their parents without a finding of parental unfitness violates substantive due process. See *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1149–51 (S.D. Cal. 2018). See also *Jacinto-Castanon de Nolasco v. U.S. Immigration & Customs Enforcement*, 319 F. Supp. 3d 491, 502 (D.D.C. 2018), where the Court found that parents retain fundamental right to family integrity and the government carries a substantial burden to present compelling state interests in family separation cases. *Id.*

31. The Flores Settlement Agreement and applicable federal law also require the government to pursue prompt reunification and the least restrictive placement for children. See *Flores v. Reno*, CV 85-4544-RJK (C.D. Cal. 1997); 18 U.S.C. § 1232(c)(2)(A).

E. Right to Apply for Asylum and Full Hearing Before an Immigration Judge

32. INA § 208(a)(1), 8 U.S.C. § 1158(a)(1) states unequivocally:

“Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival...) may apply for asylum...”

This creates an affirmative statutory right to apply for asylum, regardless of manner of entry.

33. Section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), codified at 8 U.S.C. § 1225(b)(1)(A)(ii) and (B)(ii), requires that noncitizens who express a fear of return or an intent to seek asylum be referred for a credible fear interview by an asylum officer. If found to have a credible fear, they are entitled to full removal proceedings under INA § 240, including the opportunity to present their claims before an Immigration Judge.

34. Even those subject to expedited removal may not be deported without an opportunity for fear screening or judicial review if they express a fear of persecution or torture. See 8 C.F.R. § 208.30(e)(5).

F. Non-Refoulement Obligations and Withholding of Removal

35. Under both 8 U.S.C. § 1231(b)(3) (withholding of removal) and Article 3 of the Convention Against Torture, the U.S. may not return individuals to countries where their life or freedom would be threatened under protected grounds or where they are likely to be tortured. Failure to initiate or complete screening for withholding or CAT in the presence of a non-frivolous claim, as in the present matter, constitutes a violation of U.S. treaty obligations and domestic law.

36. The Department of Homeland Security's own regulations require referral to Immigration Judge (IJ) proceedings for individuals found to have a reasonable or credible fear. See 8 C.F.R. § 208.30(f); § 208.31(e).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

37. The allegations in the above paragraphs are realleged and incorporated herein.

38. The Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of liberty without due process of law. See *Clark v. Martinez*, 543 U.S. 371 (2005), *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). *Supra*.

39. Petitioners have been detained since April 29, 2025, without any individualized custody determination, justification for continued detention, or opportunity for meaningful review by an Immigration Judge, in violation of procedural due process.

40. The government has also unjustifiably separated Petitioners from their 8-year-old son without any finding of parental unfitness or exigent circumstance, violating the substantive due process right to family integrity. See *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1149–51 (S.D. Cal. 2018). *Supra*.

COUNT TWO

Violation of INA § 235(b)(1)(A) and Implementing Regulations

41. The allegations in the above paragraphs are realleged and incorporated herein.

42. INA § 235(b)(1)(A)(ii), 8 U.S.C. § 1225(b)(1)(A)(ii), requires that any noncitizen who expresses a fear of return be referred to an asylum officer for a credible fear interview.

43. Petitioners explicitly and continuously expressed a fear of persecution if returned to Russia upon entry on April 29, 2025.

44. Respondents have failed to timely refer Petitioners for a credible fear interview in violation of 8 U.S.C. § 1225(b)(1)(A) and its implementing regulations at 8 C.F.R. § 208.30.

COUNT THREE

Denial of Protections Under the Convention Against Torture and Withholding of Removal

45. The allegations in the above paragraphs are realleged and incorporated herein.

46. The United States is obligated under the Foreign Affairs Reform and Restructuring Act (FARRA) and its regulations not to remove individuals to a country where they are more likely than not to be tortured. See 8 C.F.R. §§ 208.16(c), 208.18.

47. Petitioners have made non-frivolous claims for protection under the Convention Against Torture (CAT) and withholding of removal under 8 U.S.C. § 1231(b)(3).

48. Respondents have failed to timely conduct the required screening interviews and provide determinations on CAT or withholding, in violation of both statutory and treaty-based obligations.

COUNT FOUR

Violation of the Flores Settlement Agreement and Substantive Due Process Rights to Family Integrity

49. The allegations in the above paragraphs are realleged and incorporated herein.

50. The forced separation of Petitioners from their 8-year-old child, without a finding of parental unfitness or imminent danger, violates Petitioners' constitutional right to family integrity. See *Troxel v. Granville*, 530 U.S. 57, 66 (2000); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Ms. L. v. ICE*, 310 F. Supp. 3d at 1149–51. *Supra*.

51. The separation also violates the Flores Settlement Agreement and 18 U.S.C. § 1232(c)(2)(A), which require prompt reunification and placement in the least restrictive setting.

PRAYER FOR RELIEF

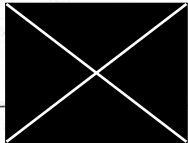
Wherefore, Petitioners respectfully request this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that Petitioners' continued detention, the failure to conduct required credible fear interviews, and the ongoing separation from their minor child violate the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act, 8 U.S.C. § 1225(b), and implementing regulations including 8 C.F.R. §§ 208.30 and 208.31;
- (4) Issue a Writ of Habeas Corpus directing Respondents to:
 - a) immediately release Petitioners from ICE custody; or, in the alternative,
 - b) transfer Petitioners to a family residential facility for immediate reunification with their minor child; and
 - c) refrain from removing or deporting Petitioners while this habeas petition is pending;
- (5) Order Respondents to immediately:
 - a) refer Petitioners to an asylum officer for credible fear interviews as required by law;
 - b) if found to have a credible fear, place Petitioners in full removal proceedings under 8 U.S.C. § 1229a, with a hearing before an Immigration Judge;
 - c) schedule a custody redetermination hearing before an Immigration Judge;
- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (7) Grant any further relief this Court deems just and proper.

This petition was prepared with the pro bono assistance of attorney Maria Kalmanovich (Cal. Bar No. 303621), who is not currently counsel of record in this matter, but intends to represent Petitioners in their immigration proceedings.

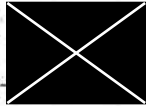
Respectfully submitted,

Evgeny MASHCHENKO, Pro Se,



Date: 06.19.2025

Evgeniia MASHCHENKO, Pro Se,



Date: 06.19.2025

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