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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Tatiana MIAGKIKH,

12 Petitioner,

13 v.

14 Christopher J. LAROSE, Senior Warden,
15 Otay Mesa Detention Center, San Diego,
16 California;

17 Daniel A. BRIGHTMAN, Field Office
18 Director, San Diego Office of Detention
19 and Removal, U.S. Immigrations and
20 Customs Enforcement; U.S. Department
21 of Homeland Security;

22 Todd M. LYONS, Acting Director,
23 Immigration and Customs Enforcement,
24 U.S. Department of Homeland Security;
Sirce OWEN, Acting Director for
Executive Office for Immigration Review;
Kristi NOEM, Secretary, U.S. Department
of Homeland Security;

Pam BONDI, Attorney General of the
United States;

Respondents.

Case No.: '25CV3755 CAB BJW

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Agency Doc. No. 

1 Petitioner TATIANA MIAGKIKH petitions this Court for a writ of habeas corpus
2 under 28 U.S.C. § 2241 to remedy Respondents’ detaining her unlawfully, and states as
3 follows:

4 **INTRODUCTION**

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6 1. Petitioner, TATIANA MIAGKIKH (“Ms. Miagkikh” or “Petitioner”), by and
7 through her undersigned counsel, hereby petitions this Court under 28 U.S.C. § 2241, et
8 seq., to issue a Writ of Habeas Corpus ordering Ms. Miagkikh’s release from immigration
9 detention by the Department of Homeland Security, United States Immigration and
10 Customs Enforcement (“ICE”). Ms. Miagkikh seeks immediate release from custody
11 because Respondents have held her since April 21, 2025—a prolonged period—even
12 though she has hired counsel and has acted diligently to have her asylum application
13 heard by an immigration judge (“IJ”), and her proceedings have been continued through
14 no fault of her own. Her continued detention without a hearing as to flight risk and
15 danger to the community violates the U.S. Constitution and federal law.

16 **CUSTODY**

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18 2. Ms. Miagkikh is currently in Respondents’ legal and physical custody. They are
19 detaining her at the Otay Mesa Detention Center in San Diego, California. She is under
20 Respondents’ and their agents’ direct control.

21 **PARTIES**

22 3. Ms. Miagkikh is a 33-year-old citizen of Russia, born in St. Petersburg, Russia.
23 She is currently detained at the Otay Mesa Detention Center in San Diego, California.
24

1 Ms. Miagkikh is seeking asylum in the United States due to persecution on account of her
2 political opinion.

3 4. Ms. Miagkikh is currently in Respondents' legal and physical custody at the Otay
4 Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland
5 corporation, operates that facility.

6 5. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
7 Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-
8 to-day operations of the Otay Mesa Detention Center and acts at the Direction of
9 Respondents Brightman, Lyons and Noem. Respondent Christopher LaRose is a
10 custodian of Petitioner and is named in his official capacity.

11 6. Respondent Daniel A. BRIGHTMAN is the Field Office Director of ICE in San
12 Diego, California and is named in his official capacity. ICE is the component of the DHS
13 that is responsible for detaining and removing noncitizens according to immigration law
14 and oversees custody determinations. In his official capacity, he is the legal custodian of
15 Petitioner.

16 7. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
17 official capacity. Among other things, ICE is a component of the DHS, 6 U.S.C. § 271,
18 and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. §
19 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining
20 Ms. Miagkikh. Respondent Lyons has custodial authority over Ms. Miagkikh, who names
21 him in his official capacity.
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1 8. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate
2 responsibility for overseeing the operation of the immigration courts and the Board of
3 Immigration Appeals, including bond hearings. Executive Office for Immigration Review
4 (EOIR) is the federal agency responsible for implementing and enforcing the INA in
5 removal proceedings, including for custody redeterminations in bond hearings. She is
6 sued in her official capacity.

7
8 9. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official
9 capacity. DHS is the federal agency responsible for enforcing immigration laws and
10 granting immigration benefits. See 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent Noem
11 has ultimate custodial authority over Ms. Miagkikh, who names her in her official
12 capacity.

13 10. Respondent Pam BONDY is the Attorney General of the United States and the
14 most senior official in the U.S. Department of Justice (DOJ) and is named in her official
15 capacity. She is responsible for the Immigration and Nationality Act's implementation
16 and enforcement (see 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office for
17 Immigration Review, the office that administers Ms. Miagkikh's removal proceedings
18 and is responsible for adjudicating Ms. Miagkikh's asylum application. Ms. Miagkikh
19 names her in her official capacity.
20

21 JURISDICTION AND VENUE

22 11. This action arises under the United States Constitution and the Immigration and
23 Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Ms. Miagkikh's
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1 detention under the INA and any inherent or plenary powers the government may claim
2 to continue holding him.

3 12. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701–706
4 (Administrative Procedure Act, “APA”); and the Suspension Clause, U.S. Const. art. I, §
5 9, cl. 2, and the Fifth and Eighth Amendments of the United States Constitution.
6 Jurisdiction is not limited by a petitioner’s nationality, immigration status, or any other
7 classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). The Court may grant
8 relief under the Suspension Clause; the Fifth and Eighth Amendments; 5 U.S.C. § 706
9 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651 (All Writs Act), 2001
10 (Declaratory Judgment Act), and 2241 (habeas corpus).
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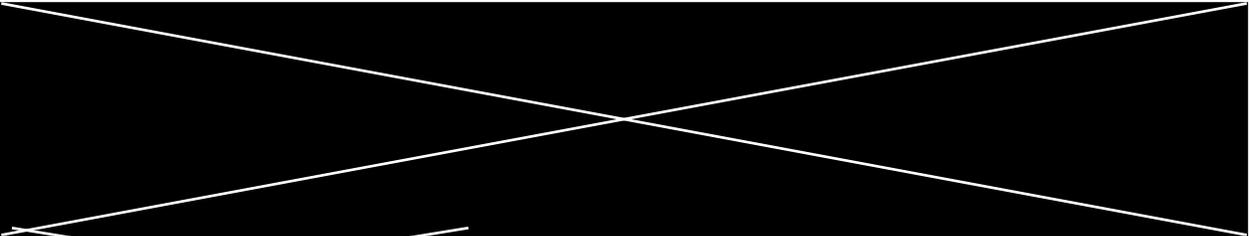
12 13. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Ms.
13 Miagkikh’s detention. Federal district courts possess broad authority to issue writs of
14 habeas corpus when a person is held “in custody in violation of the Constitution or laws
15 or treaties of the United States” (28 U.S.C. § 2241(c)(3)), and this authority extends to
16 immigration detention challenges that survived the REAL ID Act’s jurisdictional
17 restrictions. Because Ms. Miagkikh seeks the traditional habeas remedy of release from
18 allegedly unlawful detention, her petition presents precisely the type of threshold legality-
19 of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S.
20 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020)
21 (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir. 2011)). And federal courts are
22 not stripped of jurisdiction under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S.
23 678, 687 (2001). No court has ruled on the legality of Ms. Miagkikh’s detention.
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1 14. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a
2 substantial part of the events or omissions giving rise to this claim have happened here,
3 Ms. Miagkikh is detained here, and her custodian resides here. Venue is also proper
4 under 28 U.S.C. § 2243 because Ms. Miagkikh's immediate custodian resides in this
5 District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004) (Kennedy, J., concurring).

6
7 **FACTUAL BACKGROUND**

8 15. Ms. Miagkikh is a 33-year-old divorced woman born in St. Petersburg, Russia. She
9 is seeking asylum in the United States due to persecution in Russia on account of her
10 political opinion.

11 16. Ms. Miagkikh is a supporter of the late Alexei Anatolyevich Navalny, who was a
12 Russian lawyer, opposition leader, anti-corruption activist and political prisoner. He
13 founded the Anti-Corruption Foundation in 2011. He was recognized by Amnesty
14 International as a prisoner of conscience and was awarded the Sakharov Prize for his
15 work on human rights. In 2024, while in prison, the Russian prison service reported that
16 Navalny had died which subsequently sparked protests in both Russia and various other
17 countries. Accusations against Putin's government in connection with his death have been
18 made by many Western governments and international organizations.

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1 18. Ms. Miagkikh arrived in the U.S. on April 21, 2025 by requesting asylum at the
2 U.S.-Mexico border at San Ysidro, California, port of entry. She was ultimately
3 transferred to the Otay Mesa Detention Center where she has been detained ever since.

4 19. On May 10, 2025, an asylum officer interviewed Ms. Miagkikh and determined
5 that she was credible and made a positive credible fear determination.

6 20. Despite Ms. Miagkikh's counsel's repeated attempts to have ICE issue her a Notice
7 to Appear ("NTA"), counsel was told by the officers that "per their new policy, they
8 would not be serving the NTA for at least 45 days because they will be trying to have her
9 removed to alternative countries."

10 21. On July 15, 2025, over two months later, the government issued Ms. Miagkikh an
11 NTA ordering her to appear before an Immigration Judge ("IJ") on July 28, 2025,
12 effectively vacating the expedited removal order.

13 22. At her first Master Calendar hearing on July 28, 2025, Ms. Miagkikh's completed
14 asylum application was submitted prior to the start of the hearing so that the Court would
15 be ready to schedule an individual merits hearing. However, the IJ did not schedule a
16 merits hearing but rather adjourned the proceedings to another master calendar hearing on
17 August 19, 2025 and ordered that Ms. Miagkikh's declaration be filed before the IJ would
18 set the matter to an individual merits hearing.
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20 23. Prior to the August 19, 2025 hearing, Ms. Miagkikh's counsel reached out to the
21 government to secure a copy of certain documents related to her CFI which counsel
22 needed to review in order to finalize Ms. Miagkikh's declaration. However, neither ICE
23 nor its counsel provided a copy and as a result, Ms. Miagkikh's was unable to complete
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1 and file her declaration prior to the August 19, 2025 hearing, and at that hearing, after
2 Ms. Miagkikh's counsel explained the situation, the IJ provided her a short continuance
3 until September 11, 2025 to submit her declaration.

4 24. On September 10, 2025 Ms. Miagkikh's detailed declaration was submitted and the
5 case was ready to be set for a merits date. However at the next hearing, on September 11,
6 2025, when the IJ should have set the case for a merits as all required documentation had
7 been submitted, the IJ instead ordered the filing of even more documentation, i.e. divorce
8 certificate, proof of marriage, proof of participation in protests, etc. These documents
9 were not requested when Ms. Miagkikh's declaration was requested. Despite Ms.
10 Miagkikh's counsel's request that the case be set for an individual merits hearing, with a
11 filing deadline for the documentation, as is common practice in immigration court and is
12 in accordance with the Immigration Court Practice Manual, the judge instead adjourned
13 the proceedings again to another master calendar hearing scheduled for October 15,
14 2025.

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16 25. On October 15, 2025, all requested evidence which was available to Ms. Miagkikh
17 was submitted to the court and the case was finally set for an individual merits hearing
18 scheduled to take place on February 5, 2026.

19 26. However, on November 19, 2025, Ms. Miagkikh and her counsel received a new
20 notice that the case was to be recalendared to another master calendar hearing scheduled
21 for December 23, 2025 and that the proceedings would be reassigned to a new.
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1 27. At the December 23, 2025 hearing, the newly assigned IJ set the matter for an
2 individual merits hearing to take place on March 19, 2026, with the supplemental
3 documents filing deadline of March 9, 2026.

4 28. To date, Ms. Miagkikh has requested parole from ICE which has been denied, and
5 she has moved for a custody redetermination hearing before the IJ, which has also been
6 denied on the purported ground that the IJ lacks jurisdiction. The IJ's in this jurisdiction
7 have consistently ruled that they do not have jurisdiction to redetermine the conditions of
8 custody over individuals who have been apprehended at the border and who have been
9 processed under Section 235(b)(1) expedited removal statute, and who have been placed
10 in removal proceedings following a positive credible fear determination by an asylum
11 officer.
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13 29. When Ms. Miagkikh was initially detained, she was pregnant but suffered a
14 miscarriage while under CBP custody prior to being transferred to the Otay Mesa
15 Detention Center. While at Otay Mesa Detention Center, she went on a hunger strike for
16 28 days and had to be hospitalized prior to being forced to eat at the threat of being given
17 forced medication. Furthermore, prior to being incarcerated, Ms. Miagkikh was neither
18 positive for Hepatitis A nor B. Now, she is positive for both. Over the last few weeks her
19 body has been breaking out into hives but the government is refusing to give her counsel
20 or her family any information, stating it is a HIPPA violation. She has been transported to
21 the hospital on several occasions and her health is rapidly deteriorating.
22

23 30. Moreover, due to her prolonged detention, Ms. Miagkikh also suffers from
24 depression and anxiety, nightmares, flashbacks, sleeplessness and irritability, for which

1 there is no adequate treatment in the detention facility due to its conditions of
2 confinement.

3 31. Ms. Miagkikh's continued detention without a tenable justification and without a
4 demonstration that removal is significantly likely in the reasonably foreseeable future
5 violates constitutional due process. Zadvydas v. Davis, 533 U.S. 678 (2001); Kydyrali v.
6 Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

7
8 32. The government has failed to effectuate Ms. Miagkikh's removal within a
9 reasonable period of time or present any evidence that her removal is significantly likely
10 to occur in the reasonably foreseeable future.

11 33. Ms. Miagkikh's detention without a tenable justification violates her rights under
12 the Due Process Clause of the Fifth Amendment.

13 EXHAUSTION OF REMEDIES

14 34. Ms. Miagkikh has exhausted all administrative remedies, and no further ones are
15 available. To date, Ms. Miagkikh has requested parole from ICE which has been denied,
16 and she has moved for a custody redetermination hearing before the IJ, which has also
17 been denied on the purported ground that the IJ lacks jurisdiction.

18 35. Furthermore, for habeas claims, exhaustion of administrative remedies is
19 prudential, not jurisdictional. Hernandez, 872 F.3d at 988. A court may waive the
20 prudential exhaustion requirement if "administrative remedies are inadequate or not
21 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
22 injury will result, or the administrative proceedings would be void." *Id.* (quoting Laing v.
23 Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).
24

1 Petitioner asserts that exhaustion should be waived because administrative remedies are
2 (1) futile and (2) her continued detention results in irreparable harm.

3 36. Exhausting administrative remedies here is futile because Respondents contend
4 Ms. Miagkikh is subject to mandatory detention. As such, no request to release her from
5 custody would be considered by ICE and Ms. Miagkikh's repeated requests for parole
6 release have been denied. Moreover, IJ's in this district claim to have no jurisdiction to
7 conduct a custody redetermination hearing as to individuals procedurally situated like
8 Ms. Miagkikh. Indeed, in contravention to the INA and long-standing precedent and
9 practice, the Board of Immigration Appeals and Attorney General have deemed no
10 noncitizen eligible for bond before an immigration judge (with the exception of only
11 noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust
12 administrative remedies would be entirely futile.

14 37. Moreover, no statutory exhaustion requirements apply to Petitioner's claim of
15 unlawful custody in violation of her due process rights, and there are no administrative
16 remedies that she needs to exhaust. See Am.-Arab Anti-Discrimination Comm. v. Reno,
17 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because
18 the agency does not have jurisdiction to review" constitutional claims); In re Indefinite
19 Det. Cases, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

21 38. More importantly, every day that Petitioner remains detained causes her harm that
22 cannot be repaired. Her continued detention puts her physical and mental health at greater
23 risk, further warranting a finding of irreparable harm and the waiver of the prudential
24 exhaustion requirement. As explained above, Ms. Miagkikh has been suffering from teeth

1 pain and decay as well as depression and anxiety while in detention, for which there is no
2 adequate treatment for Ms. Miagkikh in the detention facility.

3 39. The Court must consider this in its irreparable harm analysis of the effects on
4 Petitioner as her detention continues. See De Paz Sales v. Barr, No. 19-CV-07221-KAW,
5 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner “continues to
6 suffer significant psychological effects from her detention, including anxiety caused by
7 the threats of other inmates and two suicide attempts,” in finding that petitioner would
8 suffer irreparable harm warranting waiver of exhaustion requirement).

9
10 **FIRST CAUSE OF ACTION**
11 **Fifth Amendment Due Process Violation**

12 40. Ms. Miagkikh re-alleges and incorporates by reference, as if fully set forth herein,
13 the allegations in paragraphs 1-39 above.

14 41. The Supreme Court has long recognized that the Fifth and Fourteenth
15 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
16 removable aliens, must be afforded due process protection. See Yick Wo v. Hopkins, 118
17 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not confined to
18 the protection of citizens.”). As stated by the Court, the provisions of the Fourteenth
19 Amendment “are universal in their application, to all persons within the territorial
20 jurisdiction, without regard to any differences of race, of color, or of nationality” *Id.*
21 (emphasis added).

22 42. The Supreme Court has held that “even one whose presence in this country is
23 unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due
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1 Process Clauses of the Fifth and Fourteenth Amendments]” Mathews v. Diaz., 426 U.S.
2 67, 75 n.7 (1976); see also Plyler v. Doe, 457 U.S. 202, 210 (1982) (“Whatever his status
3 under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that
4 term.”); Wong Wing v. United States, 163 U.S. 228, 238 (1896) (“Persons within the
5 territory of the United States... even aliens... [may not]... be deprived of life, liberty or
6 property without due process of law.”).

7
8 43. As there is no final order of removal, and there doesn’t appear to be one in the
9 reasonably foreseeable future, Ms. Miagkikh may not be removed from the United States.
10 Her removal is not reasonably foreseeable, and her detention no longer serves any
11 legitimate purpose under the INA.

12 44. In Kydyrali v. Wolf, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this District
13 granted habeas relief in a substantially similar case, applying a six-factor balancing test
14 first articulated in Banda v. McAleenan, 385 F. Supp. 3d 1099 (W.D. Wash. 2019), which
15 considers: (1) total length of detention to date; (2) likely duration of future detention; (3)
16 conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5)
17 delays in the removal proceedings caused by the government; and (6) the likelihood that
18 the removal proceedings will result in a final order of removal. The court determined that
19 prolonged detention, when considered alongside other due process concerns, can rise to
20 the level of a constitutional violation warranting release. Kydyrali, 499 F. Supp. 3d at
21 773.

22
23 45. Applying the Banda six-factor framework here supports granting Ms. Miagkikh’s
24 petition.

1 46. The final factor—finality—strongly supports the grant of this habeas petition and
2 request for a bond hearing. Ms. Miagkikh is statutorily eligible to apply for asylum, and
3 until that application is finally adjudicated, she cannot be removed from the United
4 States. Thus, the only prospect for removal from the United States would be a
5 speculative, and not factually unsupported prospect of removal to a third country.

6 47. All delays in this case are attributable to the government, and none whatsoever
7 are attributable to Ms. Miagkikh. She promptly applied for asylum at the border, she has
8 timely attended all of her interviews and court hearings and has retained counsel at a very
9 early stage of her case to represent her. She has never requested any continuances in her
10 case and one short continuance was granted by the court due to Ms. Miagkikh's counsel
11 requesting certain documents that her counsel felt she needed to review before finalizing
12 and submitting Miagkikh's declaration and which were never provided to her by the
13 government. She timely filed her asylum application. Her master and individual hearings
14 were rescheduled on multiple occasions due to the actions of the government, including
15 by DHS and EOIR.

16 48. Ms. Miagkikh has now been detained by ICE for over eight months since her
17 arrival in the United States on April 21, 2025. Her continued individual hearing will not
18 take place until at least March 9, 2026, by which time Ms. Miagkikh would be detained
19 for almost a year. And in the event Ms. Miagkikh is granted asylum, the government will
20 likely appeal and if she is denied asylum and ordered removed by the IJ, she will appeal
21 before the BIA as a matter of her right, and the appeal of her case to the BIA is estimated
22 to take several months if not over a year. And in the event that the BIA affirms the IJ,
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1 then Ms. Miagkikh will petition for review with the Ninth Circuit Court of Appeals and if
2 the BIA reverses the IJ, then her case will be remanded back to a new IJ which will take
3 several additional months if not over a year. This period is well beyond the presumptively
4 reasonable six-month period set forth in Zadvydas, 533 U.S. at 701. Courts consistently
5 find detention beyond this threshold triggers due process scrutiny. See Kydyrali, 499
6 F.Supp. 3d at 774–75.

7
8 49. Conditions of confinement also raise constitutional concerns as the medical
9 treatment available at the Otay Mesa Detention Center is not adequate to address Ms.
10 Miagkikh’s very serious health conditions.

11 50. Ms. Miagkikh poses no risk of flight and no danger to the community. She has no
12 criminal history, has demonstrated compliance with all prior immigration requirements,
13 and has extensive family and community support in the United States.

14 51. Ms. Miagkikh’s continued detention without a tenable justification violates her
15 Fifth Amendment right to due process.

16 **PRAYER FOR RELIEF**

17 Ms. Miagkikh asks this Court to grant the following relief:

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19 1. Issue a Writ of Habeas Corpus ordering Respondents to release Ms.
20 Miagkikh from custody immediately;
- 21 2. Declare the continued detention of Ms. Miagkikh without a tenable
22 justification a violation of the Due Process Clause of the U.S. Constitution;
- 23 3. Alternatively, order an immediate bond hearing before a neutral
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1 decisionmaker where DHS bears the burden of justifying Ms. Miagkikh's
2 continued detention by clear and convincing evidence and where alternatives
3 to detention and Ms. Miagkikh's ability to pay a bond are considered

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5 4. Order Respondents to show cause why Ms. Miagkikh is being
6 subjected to unlawful and unconstitutional detention; and

7 5. Grant any other relief that may be fit and proper.

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9 Dated: December 23, 2025

Respectfully submitted,

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11 By: /s/ Bashir Ghazialam
Bashir Ghazialam

12 Attorney for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner’s attorney. I have discussed with the Petitioner the events described in the Petition and have reviewed her immigration file. Based on those discussions and review of her file, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this December 23, 2025, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner