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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**

5
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**

17
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 BONDI 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
24

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).
11

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.
24

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 **FACTUAL BACKGROUND**

7
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.

19 17. Ms. Miagkikh fled Russia after being harmed, mistreated, beaten, and illegally
20 detained by Russian government officials, including the police due to her political
21 opinion in support of Navalny and her opposition to the corrupt regime. She was also
22 kidnapped and sexually abused on numerous occasion by her former spouse, who is a
23 high-ranking official in Russia.
24

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.
19

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
24

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.

15
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.
12

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
24

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:

- 18
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
24 3. Alternatively, order an immediate bond hearing before a neutral

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

4
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.

8
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

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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TATIANA MIAGKIKH,

Petitioner,

v.

CHRISTOPHER J. LAROSE, et al,

Respondents.

Case No.: 25-cv-3755-CAB-BJW

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

1 **I. INTRODUCTION**

2 Petitioner requests the Court to order her immediate release from Immigration
3 and Customs Enforcement (ICE) custody or require that she be afforded a bond
4 hearing. As an arriving alien and applicant for admission, however, Petitioner’s
5 detention is mandated by 8 U.S.C. § 1225(b)(2) until the conclusion of her removal
6 proceedings. Accordingly, the Court should deny Petitioner’s requests for relief.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 Petitioner is a native and citizen of Russia. ECF No. 1 at 2-3 ¶ 3. On April 21,
9 2025, she applied for admission to the United States at a port of entry. *See id.* at 7 ¶ 18.
10 She did not possess legal documentation to be in or enter the United States. *See Exhibit*
11 *1* at 4. She was determined to be an arriving alien inadmissible under 8 U.S.C.
12 § 1182(a)(7)(A)(i)(I), placed into expedited removal proceedings under 8 U.S.C.
13 § 1225(b)(1), and taken into Immigration and Customs Enforcement (ICE) custody
14 pursuant to 8 U.S.C. § 1225(b)(1)(B).

15 She was then interviewed by an asylum officer. *See ECF No. 1* at 7 ¶ 19. On July
16 15, 2025, Petitioner was issued a Notice to Appear (NTA). Exhibit 1. The filing of the
17 NTA initiated removal proceedings against Petitioner, and those proceedings remain
18 ongoing. *Id.* at 7-9 ¶ 24-27. Within her removal proceedings under 8 U.S.C. § 1229a,
19 Petitioner has the opportunity to apply for relief from removal before an immigration
20 judge (IJ), including asylum under 8 U.S.C. § 1158, withholding of removal under 8
21 U.S.C. § 1231(b)(3), and relief under the Convention Against Torture.

22 The Notice to Appear scheduled Petitioner’s initial master calendar hearing for
23 July 28, 2025. *Id.* at 7 ¶ 22. On September 12, 2025, the immigration judge held a bond
24 hearing and denied her bond. *See Exhibit 2.* Petitioner’s removal proceedings remain
25 pending, and her individual merits hearing is scheduled for March 19, 2026. *See ECF*
26 *No. 1* at 9 ¶ 27.

27 As a result, there is no administratively final order of removal at this time.
28 Because Petitioner is an alien who is an applicant for admission, she remains

1 mandatorily detained at the Otay Mesa Detention Center under 8 U.S.C. §
2 1225(b)(2)(A). *See* Ex. 1 at 1 (stating Petitioner is “an arriving alien” and has “not been
3 admitted or paroled after inspection by an Immigration Officer”); ECF No 1 at 7 ¶ 18
4 (stating Petitioner applied for asylum at a port of entry and was detained).

5 III. STATUTORY BACKGROUND

6 Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C.
7 § 1225, applies to an “applicant for admission,” defined as an “alien present in the
8 United States who has not been admitted” or “who arrives in the United States.” 8
9 U.S.C. § 1225(a)(1). “[A]pplicants for admission fall into one of two categories, those
10 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*,
11 583 U.S. 281, 287 (2018).

12 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
13 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
14 document.” *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject
15 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if “the alien
16 indicates an intention to apply for asylum . . . or a fear of persecution,” immigration
17 officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
18 “If the officer determines at the time of the interview that [the] alien has a credible fear
19 of persecution . . . , the alien *shall be detained* for further consideration of the
20 application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien
21 does not indicate an intent to apply for asylum, does not express a fear of persecution,
22 or is “found not to have such a fear,” they “shall be detained . . . until removed” from
23 the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

24 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*,
25 583 U.S. at 287. It “applies to all applicants for admission not covered by §
26 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall
27 be detained for a removal proceeding “if the examining immigration officer determines
28 that [the] alien seeking admission is not clearly and beyond a doubt entitled to be

1 admitted.” 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025)
2 (“for aliens arriving in and seeking admission into the United States who are placed
3 directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
4 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing
5 *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority
6 to temporarily release on parole “any alien applying for admission to the United States”
7 on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.”
8 *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

9 IV. ARGUMENT

10 Petitioner’s habeas petition should be denied because 28 U.S.C. § 1252(g) bars
11 judicial review over her claim, and because she is lawfully detained under the INA and
12 the Constitution.

13 A. Petitioner’s Claim is Barred Under 8 U.S.C. § 1252(g).

14 Respondents contend that judicial review over Petitioner’s claim is barred by 28
15 U.S.C. § 1252(g), which states that “[n]o court shall have jurisdiction to hear any cause
16 or claim by or on behalf of any alien arising from the decision or action by the Attorney
17 General to commence proceedings, adjudicate cases, or execute removal orders.”

18 Here, Petitioner’s claims of unlawful detention necessarily arise from the
19 Department of Homeland Security’s¹ decision to commence removal proceedings
20 against him because that decision unavoidably triggers mandatory detention under 8
21 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. See, e.g.,
22 *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D.
23 Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment
24 claim because the plaintiff’s detention arose from the decision to commence removal
25

26
27 ¹ “In 2002, Congress transferred the Attorney General’s immigration enforcement
28 responsibilities to the Secretary of Homeland Security.” *Ibarra-Perez v. United States*,
154 F.4th 989, 995 n.2 (9th Cir. 2025).

1 proceedings, and in turn, the “statute mandating detention during removal proceedings
2 of a person charged as an ‘arriving alien.’”).

3 As explained by another district court, removal proceedings are commenced
4 when, as occurred here, “the alien is issued a Notice to Appear before an immigration
5 court.” *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL
6 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 1 (Notice to Appear). The
7 government “may arrest the alien against whom proceedings are commenced and detain
8 that individual until the conclusion of those proceedings.” *Herrera-Correra*, 2008 WL
9 11336833, at *3. “Thus, an alien’s detention throughout this process arises from the
10 [government’s] decision to commence proceedings” and review of claims arising from
11 such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d
12 947, 949 (9th Cir. 2007)); *see also* *Wang*, 2010 WL 11463156, at *6.

13 Because this habeas petition brings a claim “arising from the decision or action
14 by the [government] to commence proceedings,” review of Petitioner’s claim is barred
15 under 8 U.S.C § 1252(g). Thus, the Court must dismiss the petition.

16 **B. Petitioner is Lawfully Detained Under the INA and the Constitution.**

17 Even if the Court assumed jurisdiction to review Petitioner’s claim, the Court
18 must deny his habeas petition because Petitioner’s detention is statutorily mandated
19 under 8 U.S.C. § 1225(b)(2)(A).

20 **1. Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2).**

21 Petitioner’s claim fails because she is subject to mandatory detention under 8
22 U.S.C. § 1225(b)(2). Under 8 U.S.C. § 1225(a)(1), an “applicant for admission” is
23 defined as an “alien present in the United States who has not been admitted or who
24 arrives in the United States.” As explained above, applicants for admission “fall into
25 one of two categories, those covered by § 1225(b)(1) and those covered by §
26 1225(b)(2).” *Jennings*, 583 U.S. at 287.

27 Section 1225(b)(2)(A) requires mandatory detention of “an alien who is *an*
28 *applicant for admission*, if the examining immigration officer determines that an alien

1 seeking admission is not clearly and beyond a doubt entitled to be admitted[.]” *Chavez*
2 *v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025)
3 (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that she
4 is entitled to a bond hearing. But the Supreme Court has rejected such contention,
5 explaining: “Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of
6 applicants for admission until certain proceedings have concluded. . . . Nothing in the
7 statutory text imposes any limit on the length of detention. And neither § 1225(b)(1)
8 nor § 1225(b)(2) says anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at
9 297. Except for temporary parole granted at the discretion of the Attorney General “for
10 urgent humanitarian reasons or significant public benefit” under 8 U.S.C. § 1182(d)(5),
11 “there are no *other* circumstances under which aliens detained under § 1225(b) may be
12 released.” *Id.* at 300 (emphasis in original).

13 As Petitioner’s removal proceedings are pending, and she has not been granted
14 temporary parole, section 1225(b)(2) mandates her detention until the proceedings have
15 concluded. *Jennings*, 583 U.S. at 297 (“Once those proceedings end, detention under
16 § 1225(b) must end as well.”). Because Petitioner is lawfully detained under
17 section 1225(b) and the statute does not entitle her to a bond hearing at this time, her
18 petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151
19 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to
20 find that the petitioner had no right to release or a bond hearing under 1225(b)(1)
21 because “[b]inding Ninth Circuit and Supreme Court precedents are clear that Petitioner
22 lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to
23 a bond hearing”).

24 **2. Petitioner’s detention does not violate due process.**

25 Petitioner also argues that her mandatory detention under the INA violates the
26 due process clause of the Fifth Amendment to the U.S. Constitution. The Court should
27 reject this argument.

28 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.

1 § 1225(b). The Supreme Court stated that, “[r]ead most naturally, [8 U.S.C.]
2 §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain
3 proceedings have concluded.” *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1)
4 nor § 1225(b)(2) “impose[] any limit on the length of detention” and “neither
5 § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings.” *Id.* The
6 Supreme Court added that the sole means of release for noncitizens detained pursuant
7 to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary
8 parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300
9 (“That express exception to detention implies that there are no *other* circumstances
10 under which aliens detained under [8 U.S.C.] § 1225(b) may be released.”) (emphasis
11 in original). “In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens
12 throughout the completion of applicable proceedings[.]” *Id.* at 302.

13 In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a
14 noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged
15 detention without a hearing violated his constitutional rights. The Supreme Court
16 rejected the petition, concluding that the noncitizen’s continued detention did not
17 deprive him of any due process rights, stating: “[A]n alien on the threshold of initial
18 entry stands on a different footing: ‘Whatever the procedure authorized by Congress
19 is, it is due process as far as an alien denied entry is concerned.’” *Id.* at 212 (citation
20 omitted).

21 In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40
22 (2020), the Supreme Court once again addressed the due process rights of individuals
23 like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United
24 States. The Supreme Court stated that such individuals have no due process rights
25 “other than those afforded by statute.” *Id.* at 107; *see also id.* at 140 (“[A]n alien in
26 respondent’s position has only those rights regarding admission that Congress has
27 provided by statute.”). The Supreme Court noted that its determination was supported
28 by “more than a century of precedent.” *Id.* at 138 (citing *Nishimura Ekiu v. United*

1 *States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,
2 544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)).
3 Because the only process due Petitioner is that afforded under section 1225(b), the
4 Court must reject her claim that her detention violates the Fifth Amendment’s Due
5 Process Clause and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 138–40;
6 *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206
7 (9th Cir. 2022) (“The recognized liberty interests of U.S. citizens and aliens are not
8 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition
9 that Congress may make rules as to aliens that would be unacceptable if applied to
10 citizens.’”) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*,
11 2023 WL 3103811, at *4 (“Binding Ninth Circuit and Supreme Court precedents are
12 clear that Petitioner lacks any rights beyond those conferred by statute, and no statute
13 entitles Petitioner to a bond hearing.”).

14 Even if the Court were to infer a constitutional right against prolonged
15 mandatory detention, Petitioner’s claim still fails. “In general, as detention continues
16 past a year, courts become extremely wary of permitting continued custody absent a
17 bond hearing.” *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at
18 *4 (S.D. Cal. April 20, 2023) (citation omitted); *see also Durand v. Allen*, No. 3:23-
19 cv-00279-RBM-BGS, 2024 WL 711607, at *5 (S.D. Cal. Feb. 21, 2024) (detained over
20 two-and-a-half years); *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB),
21 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023) (three years); *Yagao v. Figueroa*,
22 No. 17-cv-2224-AJB-MDD, 2019 WL 1429582, at *2 (S.D. Cal. March 29, 2019) (two
23 years). Petitioner’s detention falls significantly short of the length courts have found to
24 raise due process concerns.

25 In similar cases, courts in this district have applied the test in *Lopez v. Garland*,
26 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). *See, e.g., Sanchez-Rivera*, 2023 WL 139801,
27 at *5 (“[W]hile the *Mathews* [*v. Eldridge*, 424 U.S. 319 (1976)] factors may be well-
28 suited to determining whether due process requires a second bond hearing, they are not

1 particularly dispositive of whether prolonged mandatory detention has become
2 unreasonable in a particular case.”); *D.D. v. LaRose, et al.*, Case No. 25-cv-02581-BJC-
3 JLB, ECF No. 10 at 7 (S.D. Cal. Oct. 22, 2025) (considering a similar claim and finding
4 “the three-factor balancing test from *Lopez* . . . provides an appropriate assessment of
5 the possible constitutional implications of Petitioner’s ongoing detention without
6 process.”). Under *Lopez*, to determine whether continued mandatory detention has
7 become unreasonable, “the Court will look to the total length of detention to date, the
8 likely duration of future detention, and the delays in the removal proceedings caused by
9 the petitioner and the government.” 631 F. Supp. 3d at 879.

10 Petitioner has been detained for less than nine months. Courts in this district
11 have found detention for much longer periods to be unreasonably prolonged. *See, e.g.*,
12 *Durand v. Allen*, No. 3:23-cv-00279-RBM-BGS, 2024 WL 711607 at *5 (S.D. Cal.
13 Feb. 21, 2024) (32 months); *Sibomana*, 2023 WL 3028093, at *4 (19 months);
14 *Sanchez-Rivera*, 2023 WL 139801 at *6 (three years); *Kydyrali v. Wolf*, 499 F. Supp.
15 3d 768, 773 (S.D. Cal. 2020) (20 months); *Yagao*, 2019 WL 1429582, at *1 (two years
16 since last bond hearing). The length of detention “is the most important factor.”
17 *Sanchez-Rivera*, 2023 WL 139801, at *6 (citation omitted). And Petitioner’s current
18 detention does not fall within the range these courts have found to be unreasonable.
19 Moreover, the length of Petitioner’s detention, by itself, does not favor granting habeas
20 relief. *See Sadeqi v. LaRose*, No. 25-cv-2587-RSH-BJW, --- F. Supp. ----, 2025 WL
21 3154520, at *3 (S.D. Cal. Nov. 12, 2025) (“The Court agrees with Respondents that
22 the length of Petitioner’s detention to date—almost 12 months—does not by itself,
23 without more, establish prolonged detention in violation of due process.”). Not only
24 does the length of Petitioner’s detention fall comparatively short of the length some
25 courts in this district have found to warrant habeas relief, but the other *Lopez* factors
26 do not favor habeas relief either.

27 Petitioner was detained when she applied for admission to the United States.
28 Thus, Petitioner is rightly considered an applicant for admission, and her mandatory

1 detention does not violate due process. *See Shahin v. Noem*, No. 25-cv-2496-AGS-
2 KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025).

3
4 **V. CONCLUSION**

5 For the reasons stated herein, Respondents respectfully request that the Court
6 dismiss this petition for lack of jurisdiction or deny it on the merits.

7 Dated: January 5, 2026

Respectfully submitted,

8 ADAM GORDON
9 United States Attorney

10 *s/ Robbin Lee*
11 ROBBIN O. LEE
12 Assistant United States Attorney
13 Attorneys for Respondents
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EXHIBIT 1

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: 03/07/1992

Event No: [REDACTED]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED]

FINS: [REDACTED]

File No: [REDACTED]

In the Matter of:

Respondent: TATIANA MIAGKIKH currently residing at:

7488 CALZADA DE LA FUENTE SAN DIEGO, CALIFORNIA 92154
(Number, street, city, state and ZIP code)

(619) [REDACTED]
(Area code and phone number)

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of RUSSIA and a citizen of RUSSIA;
3. You arrived in the United States at or near SAN YSIDRO, CA , on or about April 21, 2025
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

7488 CALZADA DE LA FUENTE SAN DIEGO, CALIFORNIA 92154

(Complete Address of Immigration Court, including Room Number, if any)

on July 28, 2025 at 8:00 am to show why you should not be removed from the United States based on the

charge(s) set forth above.

Date: July 15, 2025

(City and State)

EOIR - 1 of 6

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/oro>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Upon information and belief, the language that the alien understands is RUSSIAN

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent)

Date: _____

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on July 15, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

- in person by certified mail, returned receipt # _____ requested by regular mail
- Attached is a credible fear worksheet.
- Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the RUSSIAN language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(Signature of Person Personally Served)

EOIR - 2 of 6

Privacy Act Statement

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

U.S. Department of Homeland Security

Continuation Page for Form I-862

Alien's Name MIAGKIKH, TATIANA	File Number [REDACTED] Event No: [REDACTED]	Date 07/15/2025
CURRENTLY RESIDING AT:		
----- DHS CUSTODY 7488 CALZADA DE LA FUENTE SAN DIEGO, CALIFORNIA 92154		
ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW:		

212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.		
Signature MARIELLE CE [REDACTED]	Title SDDO	

EOIR - 4 of 6

EXHIBIT 2



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTAY MESA IMMIGRATION COURT**

Respondent Name:
MLAGKIKH, TATIANA

To:
Petrosyan, Ani A
PO BOX 590
GLENDALE, CA 91209

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

09/12/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

Denied, because

The court lacks authority to redetermine the bond pursuant to Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).

Granted. It is ordered that Respondent be:

released from custody on his own recognizance.

released from custody under bond of \$

other:

Other:



Immigration Judge: SAMEIT, MARK 09/12/2025

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved

Appeal Due: 10/14/2025

Certificate of Service

This document was served:

Via: Mail | Personal Service | Electronic Service | Address Unavailable

To: Alien | Alien c/o custodial officer | Alien atty/rep. | DHS

Respondent Name : MLAGKIKH, TATIANA | A-Number : 

Riders:

Date: 09/12/2025 By: Rosa Rodriguez, Court Staff

1 Bashir Ghazialam (CA Bar No. 212724)
2 LAW OFFICES OF BASHIR GHAZIALAM
3 P.O. Box 928167
4 San Diego, California 92192
5 Tel: (619) 795-3370
6 Fax: (866) 685-4543
7 bg@lobg.net

8 Attorneys for the petitioner

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 TATIANA MIAGKIKH,
12
13 Petitioner,
14
15 v.
16 CHRISTOPHER J. LAROSE, et al.
17
18 The government-Respondents.

Case No.: 25-cv-3755-CAB-BJW

**PETITIONER'S TRAVERSE IN
SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS**

1 **A. The petitioner's Habeas Claims Are Not Barred by 8 U.S.C. § 1252(g)**

2 Section 1252 does not apply to bar jurisdiction because this action concerns the
3 petitioner's unlawful and prolonged detention. The government contends that the
4 petitioner is subject to the mandatory detention provisions of Section 1225(b)(2), and that
5 ICE had authority to continue to detain the petitioner.

6 Here, the petitioner does not make *any claim or cause of action arising from any*
7 *decision to commence or adjudicate removal proceedings or execute removal orders.* The
8 petitioner does not dispute the commencement or any other aspect of her removal
9 proceedings nor does she have a removal order. In short, the petitioner challenges nothing
10 related to her removal proceedings – she challenges her continued unreasonably prolonged
11 detention by the government in violation of her Due Process rights. Therefore, the
12 jurisdictional bar under 8 U.S.C. § 1252(g) does not apply here.

13 In short, this action concerns the unlawful detention of the petitioner and the
14 Supreme Court and Ninth Circuit have rejected the government's contention that § 1252(g)
15 covers all claims arising from deportation proceedings or imposes a general jurisdictional
16 limitation. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19, 140
17 S. Ct. 1891, 207 L. Ed. 2d 353 (2020); see also *Arce v. United States*, 899 F.3d 796, 800
18 (9th Cir. 2018) ("[W]e have limited [§ 1252(g)]'s jurisdiction-stripping power to actions
19 challenging the Attorney General's discretionary decisions to initiate proceedings,
20 adjudicate cases, and execute removal orders.")
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1 **B. Miagkikh’s Classification as an “Arriving Alien” and Subjection to § 1225(b)(1)**
2 **Notwithstanding, She Has Due Process Rights Beyond Those That Congress Has**
3 **Provided, and *Thuraissigiam* Does Not Bar Substantive Due Process Claims**

4 The government argues that under the Supreme Court's decision in Department of
5 Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), the petitioner as an arriving alien
6 has no due process rights “other than those afforded by statute.” Dkt. 4, at 7. In Thuraissigiam,
7 the Supreme Court rejected a habeas petitioner's argument that the due process clause
8 conferred rights to challenge his order of expedited removal beyond those established by
9 Congress, stating that “an alien at the threshold of initial entry cannot claim any greater rights
10 under the Due Process Clause.” 591 U.S. at 107. The petitioner in that case had “attempted to
11 enter the country illegally and was apprehended just 25 yards from the border.” *Id.* The
12 Supreme Court determined that the “political department of the government” had plenary
13 authority to admit or exclude aliens seeking initial entry, and thus “an alien in respondent's
14 position has only those rights regarding admission that Congress has provided by statute.” *Id.*
15 at 139-40. The government argue that because Miagkikh is an “arriving alien,” due process
16 provides her nothing beyond the mandatory detention scheme established by Section
17 1225(b)(1). *Id.*

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19 Although following the Supreme Court's decision in Thuraissigiam, some district
20 courts have adopted the reasoning to dismiss or deny habeas petitions in the context of
21 arriving aliens subject to mandatory detention under Section 1225(b)(1)¹, however, most
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23 ¹ E.g. Petgrave v. Aleman, 529 F. Supp. 3d 665, 669 (S.D. Tex. 2021) (“As far as The
24 petitioner is concerned, whatever procedure Congress has authorized is sufficient due
process.”); Gonzales Garcia v. Rosen, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021) (“The

1 courts have ruled otherwise. See Abdul-Samed v. Warden of Golden State Annex Det.
2 Facility, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025)
3 ("Although the Ninth Circuit has yet to take a position on whether due process requires a bond
4 hearing for noncitizens detained under 8 U.S.C. § 1225(b) 'essentially all district courts that
5 have considered the issue agree that prolonged mandatory detention pending removal
6 proceedings, without a bond hearing, will—at some point—violate the right to due process.'")
7 (citing Martinez v. Clark, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *6 (W.D. Wash.
8 May 23, 2019)); Kydyrali v. Wolf, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) ("[T]he Court
9 joins the majority of courts across the country in concluding that an unreasonably prolonged
10 detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due
11 process.").

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13 Recently, this Court has applied the same reasoning as the majority of courts, holding
14 that a petitioner detained under Section 1225(b)(1) may assert a due process challenge to
15 prolonged mandatory detention. Mingzhi Gao v. Larose, 25-cv-2084-RSH-SBC, 2025 WL
16 495253 (S.D. Cal. Sep. 26, 2025); Sadeqi v. Larose, 25-cv-2587-RSH-BJW, (S.D. Cal. Nov.
17 12, 2025); Faizi v. Larose, 25-cv-2974-JO-MSB, (S.D. Cal. Nov. 13, 2025); Elikaei v. Larose
18 3:25-cv-03219-DMS-AHG, (S.D. Cal. Dec. 10, 2025); Dogan v. Larose, 3:25-cv-03525-
19 DMS-BJW, (S.D. Cal. Dec. 23, 2025).

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21 In those cases, this Court agreed with the majority position that a petitioner detained
22 under Section 1225(b)(1) may assert a due process challenge to prolonged mandatory

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petitioner is on the threshold of initial entry into the United States and he accordingly is not
entitled to procedural protections beyond those provided by statute.")

1 detention without a bond hearing. It agreed with those district courts that interpret
2 Thuraissigiam as circumscribing an arriving alien's due process rights to admission, rather
3 than limiting that person's ability to challenge detention. See A.L. v. Oddo, 761 F. Supp. 3d
4 822, 825 (W.D. Pa. 2025) ("Nowhere in [Thuraissigiam] did the Supreme Court suggest that
5 arriving aliens being held under § 1225(b) may be held indefinitely and unreasonably with no
6 due process implications, nor that such aliens have no due process rights whatsoever.");
7 Hernandez v. Wofford, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal.
8 Aug. 21, 2025) ("Although the Supreme Court has described Congress's power over the
9 'policies and rules for exclusion of aliens' as 'plenary,' and held that this court must generally
10 'defer to Executive and Legislative Branch decision-making in that area,' it is well-established
11 that the Due Process Clause stands as a significant constraint on the manner in which the
12 political branches may exercise their plenary authority'—through detention or otherwise.")
13 (citations omitted); Padilla v. ICE, 704 F. Supp. 3d 1163, 1171-72 (W.D. Wash. 2023) ("The
14 holding in Thuraissigiam does not foreclose Plaintiffs' due process claims which seek to
15 vindicate a right to a bond hearing with certain procedural protections.").

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18 Lastly, Mezei² also does not help the government as this case does not involve
19 particularized national security risks or emergency regulations, as in Mezei, 345 U.S. at 214-
20 16. See Jennings v. Rodriguez, 583 U.S. 281, 340 (2018) (Breyer, J., dissenting); Jean v.
21 Nelson, 472 U.S. 846, 872 (1985) (Marshall, J., dissenting); Mezei, 345 U.S. at 217 (Black, J.,

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24 ² The Court held that the Attorney General continued exclusion of the alien without a hearing does not amount to an unlawful detention, and courts may not temporarily admit him to the United States pending arrangements for his departure abroad.

1 dissenting). The government has failed to articulate any particularized national security risks
2 that the petitioner may pose.

3 Therefore, this Court should follow most courts, including in this district, and find that
4 the petitioner is entitled to due process protections beyond those provided by statute.

5 **C. The Fifth Amendment Applies to “All Persons,” Including Miagkikh**

6 The Fifth Amendment’s Due Process Clause applies to “all persons” within the United
7 States. This protection is not contingent on immigration status or the “entry fiction.”

8 Miagkikh’s liberty interest in freedom from physical restraint is profound and protected.

9 Zadvydas v. Davis, 533 U.S. 678, 690 (2001); Singh v. Holder, 638 F.3d 1196, 1203 (9th Cir.

10 2011). The Supreme Court has long been solicitous of the constitutional rights of noncitizens.

11 Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) (“The fourteenth amendment to the
12 constitution is not confined to the protection of citizens.”). Both “removable and inadmissible
13 aliens are entitled to be free from detention that is arbitrary or capricious.” Zadvydas at 721.

14 **D. Judicial Forum Required for Constitutional Claims**

15 Denying Miagkikh a forum to challenge her prolonged detention would raise a “serious
16 constitutional question” under Webster v. Doe, 486 U.S. 592, 603 (1988). As Judge Sabraw
17 recognized in Domingo-Ros v. Archambeault, No. 25-cv-1208-DMS-DEB, 2025 WL 27541,
18 at *2 (S.D. Cal. May 18, 2025), statutes cannot be construed to deny any judicial forum for a
19 colorable constitutional claim. Miagkikh’s claim that her detention violates substantive due
20 process is precisely such a claim.
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1 **E. Miagkikh’s Detention Has Become “Unreasonably Prolonged” Which Without a**
2 **Bond Hearing Violates Due Process**

3 Even before Jennings, many courts recognized detention became unreasonably
4 prolonged at six months. Applying the canon of “constitutional avoidance,” the Ninth Circuit
5 has ruled that “[a]s a general matter, detention is prolonged when it has lasted six months and
6 is expected to continue more than minimally beyond six months.” Diouf v. Napolitano, 634 F.
7 3d 1081, 1092 (9th Cir. 2011). Specifically addressing mandatory detention, the court found
8 detention at six months was “prolonged” requiring an “automatic individualized bond
9 hearing[]” at which the government bore the burden of persuasion as to why detention should
10 continue. Rodriguez v. Robbins, 804 F.3d 1060 (9th Cir. 2015), *rev’d sub nom.* Jennings v.
11 Rodriguez, 583 U.S. 281 (2018).

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13 Other circuits had similarly adopted a six-month benchmark for when detention
14 becomes constitutionally problematic. In Lora v. Shanahan, 804 F.3d 601 (2nd Cir. 2015),
15 *cert. granted, judgment vacated*, 583 U.S. 1165 (2018), the court observed that “every other
16 circuit to have considered this issue” determined that bond hearings were required after six
17 months. Lora v. Shanahan at 606. See also Ly v. Hansen, 351 F.3d 263, 275 (6th Cir. 2003).
18 In 2018, in Jennings, the Court reversed the Rodriguez holding that automatic bond hearings
19 are mandated every six months as a matter of constitutional avoidance. But it left open the
20 application of due process as *applied* in specific cases.

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22 As this Court assessed, “Jennings did not determine the constitutional question at issue
23 here—whether arriving aliens subject to prolonged detention under 8 U.S.C § 1225(b) are
24 entitled to a bond hearing as a matter of due process.” Kydyrali, 499 F. Supp. 3d at 772 (citing

1 Jennings, 138 S. Ct. at 851); see also German Santos v. Warden Pike Cnty. Corr. Facility, 965
2 F.3d 203, 210 (3d Cir. 2020)(“Jennings ... left our framework for assessing as-applied
3 constitutional challenges intact”).

4 Therefore, Miagkikh’s detention of over eight months and counting, without an
5 individualized bond hearing, is unreasonably prolonged and violates substantive due process.
6 This Court should apply the Kydyrali factors (recently applied by Judge Huie in *Mingzhi Gao*
7 as well as by other judges in this district subsequently as cited above).

8
9 The Kydyrali factors favor the release of the Miagkikh as follows:

10 *Duration of Detention* - First, Miagkikh has been detained since April 21, 2025. This is
11 an “unreasonably prolonged” period and the lack of any individualized assessment or prospect
12 for release makes the detention inherently punitive and unconstitutional under Mathews v.
13 Eldridge, 424 U.S. 319 (1976).

14 *Government’s Interest* - Second, the government’s interest is minimal. The government
15 makes no showing of any particularized danger to the community or flight risk. They offer no
16 justification beyond the bare assertion of mandatory detention. Policy quotas or administrative
17 convenience are insufficient interests to override liberty interests. (Hernandez v. Sessions, 872
18 F.3d 976, 996 (9th Cir. 2017) - noting staggering detention costs). Indeed, there is no evidence
19 that Miagkikh has done anything to delay her case. Miagkikh’s hearings were rescheduled on
20 multiple occasions by the immigration court. Miagkikh complied by all the filing deadlines
21 that the Court set, and she timely filed her asylum application as well as all the supporting
22 documentations. On October 15, 2025, all requested evidence which were available to Ms.
23 Miagkikh were submitted to the court and the case was finally set for an individual merits
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1 hearing scheduled to take place on February 5, 2026. However, on November 19, 2025, Ms.
2 Miagkikh and her counsel received a new notice that the case was to be recalendared to
3 another master calendar hearing scheduled for December 23, 2025 and that the proceedings
4 would be reassigned to a new IJ. At the December 23, 2025 hearing, the newly assigned IJ set
5 the matter for an individual merits hearing to take place on March 19, 2026, with the
6 supplemental documents filing deadline of March 9, 2026.

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8 In the event, the March 19, 2026 hearing takes places and the hearing is completed on
9 that date, if the IJ grants relief, it is expected that the government will appeal to the BIA and
10 in the event the IJ denies relief and orders removal, the petitioner is expected to appeal. And
11 in the event the BIA affirms the IJ's decision, Mr. Miagkikh will file a petition for review
12 before the Ninth Circuit Court of Appeals, which could take many additional months if not
13 years to be completed. This period is well beyond the presumptively reasonable six-month
14 period set forth in Zadvydas, 533 U.S. at 701. Courts consistently find detention beyond this
15 threshold triggers due process scrutiny. See Kydyrali, 499 F.Supp. 3d at 774–75.

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17 *The petitioner's Liberty Interest & Risk of Error* - Miagkikh has a profound liberty
18 interest in freedom from physical restraint (Morrissey v. Brewer, 408 U.S. 471 (1972)). The
19 risk of erroneous deprivation is high without an individualized hearing. There is no evidence
20 that she is a danger to the community or a flight risk.

21 *Fiscal/Administrative Burden* - The burden of releasing Miagkikh is nil and the burden
22 of providing a bond hearing is negligible compared to the substantial cost of detention
23 (\$158/day/detainee) and the constitutional imperative. Release is fiscally prudent and
24 administratively simple.

1 Finally, under Mathews, the balance of factors tips sharply in favor of – at a minimum
2 – requiring an individualized bond hearing to assess Miagkikh’s flight risk and dangerousness.
3 The government’s bare reliance on a statutory classification (even if applicable) cannot
4 substitute for the individualized determination required by due process before depriving a
5 person of liberty for a significant period. (*Kydryali*, 499 F. Supp. 3d at 772; *Banda v.*
6 *McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019)).
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8 *Duration of Detention / Likelihood of Final Order of Removal* - Miagkikh has been
9 detained since April 21, 2025. In addition to this being an “unreasonably prolonged” period,
10 the lack of any individualized assessment or prospect for release, coupled with Miagkikh’s
11 medical and psychological conditions makes the detention inherently punitive and
12 unconstitutional under Mathews, 424 U.S. 319 (1976). As mentioned above, Miagkikh’s
13 proceedings is still pending. In the event the IJ orders removal and the BIA affirms the IJ’s
14 decision, she will petition to the Ninth Circuit.

15 **A. Miagkikh Has a Protected Liberty Interest and the *Mathews v. Eldridge* Balancing**
16 **Test Tips in her Favor**

17 Under the test set forth in Mathews, this Court should consider the following three
18 factors: “first, the private interest that will be affected by the official action; second, the risk
19 of an erroneous deprivation of such interest through the procedures used, and the probative
20 value, if any, of additional or substitute procedural safeguards; and finally the government’s
21 interest, including the function involved and the fiscal and administrative burdens that the
22 additional or substitute procedural requirements would entail.” See Mathews v. Eldridge, 424
23 U.S. 319, 335 (1976).
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1 The Matthews factors all favor Miagkikh. The government's interest in keeping
2 Miagkikh in detention is very low, and when weighed against her significant private interest
3 in her liberty, the scale tips sharply in favor of releasing her from custody. Moreover,
4 detention cannot have a punitive purpose. The government cannot plausibly assert an interest
5 in continuing to detain Miagkikh after over eight months of detention. There is no evidence or
6 argument presented by the government of Miagkikh being a danger to the community or a
7 flight risk.
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9 The government's interest in detaining Miagkikh is extremely low at best. That ICE has
10 a policy to make a minimum number of arrests each day under the new administration does
11 not constitute a valid increase in the government's interest in detaining her. Moreover, the
12 "fiscal and administrative burdens" that release from custody would provide are nil. In fact,
13 release from custody is far less costly than keeping Miagkikh detained. As the Ninth Circuit
14 noted in 2017, which remains even more true today, "[t]he costs to the public of immigration
15 detention are 'staggering': \$158 each day per detainee, amounting to a total daily cost of \$6.5
16 million." Hernandez v. Session, 872 F.3d 976, 996 (9th Cir. 2017).
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18 **B. The Petition Meets All Habeas Rule 2(c) Requirement**

19 • Rule 2(c) Compliance:

- 20 ○ Petition "specifies all the grounds for relief" and "states the facts supporting each ground."

21 • Specific Factual Allegations:

- 22 ○ Detention duration: 9 months as of January 21, 2026.
- 23 ○ No individualized assessment of flight risk or danger to community.
- 24 ○ Government delays: Multiple continuances, long adjournments in between hearings, reassignment to a different IJ.

1 Dated: January 5, 2026,

2 By: /s/ Bashir Ghazialam
3 Bashir Ghazialam
4 Attorney for The petitioner
5 Email: bg@lobg.net
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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Southern District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: January 5, 2026

/s/ Bashir Ghazialam
Bashir Ghazialam

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