

**UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

ALTYNAI ASHYRAPOVA, in her own capacity and on
behalf of her minor son, [REDACTED]

Petitioner(s),

-against-

TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement (ICE); MARCOS CHARLES, in his official capacity as Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; ALEJANDRO N. MAYORKAS, Secretary, U.S. Department of Homeland Security; KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; and PAM BONDI, in her official capacity as Attorney General of the United States, and WARDEN of DILLEY IMMIGRATION PROCESSING CENTER, in their official capacity as custodian of petitioner, THE WARDEN OF THE FACILITY WHERE PETITIONER IS CURRENTLY DETAINED, in his or her official capacity as custodian of Petitioner

**NOTICE OF EMERGENCY
MOTION TO
ENFORCE INJUNCTION**

Case No. 5:26-CV-00214-FB

MOTION BY:

ABDUMADZHITKHON ALTYNAI
ASHYRAPOVA, Petitioner.

DATE, TIME AND
PLACE OF HEARING:

At the United State District Court For The Western District Of Texas San Antonio Division, 262 West Nueva Street, Room 1-400, San Antonio, Texas 78207 at a date and time to be determined by the Court, conducted virtually.

RELIEF SOUGHT:

An Order (i) Enforcing the injunctive relief granted in this Court's January 21, 2026 Order by directing Respondents to facilitate the immediate return of the Petitioner to the United States; and (ii) Granting such other and further relief as this Court deems just and proper.

SUPPORTING PAPERS:

Petitioner's/undersigned's Memorandum of Law/Affirmation in support of the Instant Motion, and accompanying exhibits.

Dated: January 26, 2026
Port Washington, New York

A handwritten signature in black ink, appearing to read "Diana Rubin", written over a horizontal line.

Diana Rubin, Esq.
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Case No. 5:26-CV-00214-FB

**PETITIONER'S MEMORANDUM OF LAW/AFFIRMATION IN SUPPORT OF THE
EMERGENCY MOTION TO ENFORCE INJUNCTION**

Petitioner Altynai Ashyrapova (“Petitioner”), by and through counsel, Diana Rubin, Esq., respectfully submits this Memorandum of Law in support of her Emergency Motion to Enforce this Court’s Order, dated January 21, 2026. The Motion seeks enforcement of the injunctive relief previously granted by the Court in its January 21, 2026 Order, which, in pertinent part, ordered that “any possible or anticipated removal or transfer is IMMEDIATELY STAYED until further order of this Court. Respondents shall not transfer the above-named Petitioners outside of this judicial district during the pendency of this litigation and until further Order of this Court allowing removal or transfer. Nor shall Respondents transfer either Petitioner without simultaneously transferring both Petitioners to the same detention facility.”

BACKGROUND INFORMATION AND RELEVANT FACTS

On January 12, 2026 the Petitioner commenced these proceedings by filing a Petition for a Writ of Habeas Corpus (the “Petition”). In her Petition Petitioner asserted that she suffered a violent head injury in July 2025 in Kyrgyzstan, resulting in a skull fracture, brain injury, two-day coma, and ongoing neurological symptoms. She entered the U.S. in August 2025 and underwent a credible fear interview on September 3, 2025, less than two months post-injury, while still recovering and taking concussion medication. The USCIS officer found her testimony inconsistent regarding details of her assault, including conflicting accounts about the duration of her coma and whether she saw her attacker. The Immigration Judge subsequently affirmed the negative credible fear determination and ordered removal.

The Petitioner argues in her Petition that these inconsistencies are medically explainable consequences of traumatic brain injury rather than credibility issues. The petitioner requested but did not have family representation during the interview, which could have clarified her medical

condition to the officer. The core legal argument invokes the Fifth Amendment due process protections and Matter of M-A-M-, which requires adjudicators to assess competency when there are indicia of mental impairment, identify the scope of any incompetency, implement appropriate safeguards, and articulate why those safeguards ensure fairness. The Petitioner contends in her Petition that both the USCIS officer and Immigration Judge failed to conduct any competency assessment despite clear medical evidence of cognitive impairment, rendering the proceedings fundamentally unfair.

As a result, the Petitioner seeks release from detention to obtain an eight-hour in-person neuropsychological evaluation to document her cognitive impairments, vacatur of the negative credible fear determination, and a new hearing with proper competency safeguards and opportunity to present asylum claims.

Notably, the Petition was accompanied with an Order to Show Cause for Temporary Restraining Order (the “OSC”), wherein the Petitioner sought, in effect, injunctive relief to enjoin Respondents from deporting/removing the Petitioner from the detention center where she was detained, pending the the Court’s determination of the Petition.

On or about January 21, 2026, the Court issued an Order, among other things, enjoining Respondents from deporting or otherwise removing the Petitioner, as stated above. A copy of the January 21, 2026 Order is annexed hereto as **Exhibit A**. However, during the pendency of this Petition and after the Order to Show Cause was filed, but prior to the issuance of the Court’s January 21, 2026 Order, Respondents deported the Petitioner on January 20, 2026 to the country where Petitioner faced persecution, Kyrgyzstan. On January 20, 2026 before or after Respondents effectuated deportation of the Petitioner, they telephoned the undersigned, and

requested A-numbers of the Petitioner and her minor son, which I provided to them. I was not informed by Respondents, neither before this phone call, nor after, that Respondents planned to deport the Petitioner.

By means of this application I respectfully request the Court to enforce the injunctive relief that it granted in its January 21, 2026 order, and direct Respondents to return the Petitioner back to the US, and/or facilitate her return to the US so that Petitioner may meaningfully pursue her habeas claims, and, subsequently, be afforded a full and fair asylum hearing consistent with due process of law.

LEGAL STANDARD AND ARGUMENT

"It is well settled that the courts of the United States have the inherent and statutory (28 U.S.C. § 1651) power and authority to enter such orders as may be necessary to enforce and effectuate their lawful orders and judgments, and to prevent them from being thwarted and interfered with by force, guile, or otherwise." Mississippi Valley Barge Line Co. v. United States, 273 F. Supp. 1, 6 (E.D. Miss. 1967).

In Mei Ying Fong v. Ashcroft, 317 F. Supp. 2d 398 (S.D.N.Y. 2004), petitioner Fong filed a habeas corpus petition after being removed from the U.S., seeking to be returned. She had failed to appear at a removal hearing in 1998 of which she claimed she had no notice, resulting in an in absentia removal order. Years later, when she appeared for what she believed was an adjustment-of-status interview, ICE took her into custody and scheduled her removal. Despite her counsel filing a habeas petition and a temporary stay being issued, ICE removed her before the court hearing. The court held that Fong's removal violated her Fifth Amendment right to due process. The rapid removal also prevented her from consulting counsel or pursuing

administrative remedies, further violating due process. ICE additionally ignored the court's stay order, and the in absentia removal order was invalid due to deficient notice of the hearing. The habeas petition was granted, and the court ordered her return to the U.S. so she could meaningfully pursue relief consistent with her constitutional rights.

"Courts, including district courts, regularly find that return is the appropriate remedy when a removal is found to be unlawful." D.V.D. v. U.S. Dep't of Homeland Sec., 784 F. Supp. 3d 401, 406 (D. Mass. 2025) (collecting cases); see also J.G.G. v. Trump, No. CV 25-766 (JEB), 2025 U.S. Dist. LEXIS 264192, 2025 WL 3706685, at *20 (D.D.C. Dec. 22, 2025) (requiring the Government "to articulate what steps it proposes to facilitate the return of Plaintiffs" after they were unlawfully removed); Melgar-Salmeron v. Bondi, No. 23-7792, Dkt. 49 (2d Cir. 2025) (June 24, 2025) (ordering the Government "to facilitate the return of Petitioner to the United States as soon as possible").

In the case at bar, Respondents' deportation of the Petitioner while her Petition and OSC were pending, was clearly done in bad faith and in attempt to divest this Court of its jurisdiction, or, as was stated in the Advisory, filed by the Respondents with this Court on or about January 22, 2026, to render the Petition and OSC moot. Effective relief cannot be granted unless the Petitioner is returned to the United States. In order to obtain a comprehensive, in-person neuropsychological evaluation documenting her cognitive impairments, and to participate in a new credible fear proceeding with appropriate competency safeguards, set forth in, inter alia, *Matter of M-A-M-*, Petitioner's physical presence is essential. The evaluation must be conducted in person by qualified neuropsychologists using standardized testing measures that examine memory function, executive function, attention, processing speed, and other cognitive domains

affected by head trauma. Only through such an evaluation can the true extent of Petitioner's impairments at the time of her credible fear interview be established.

What is even more striking is the fact that Respondents in a hastily manner deported Petitioner back in the country where she fears persecution, resulting in immediate danger to the Petitioner, and eliminating any practical ability to pursue her asylum claim. "This Court has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained", United States v. New York Telephone Co., 434 U.S. 159, 172, 54 L. Ed. 2d 376, 98 S. Ct. 364 (1977).

Although the Petitioner was deported on January 20, 2026, shortly before this Court issued its January 21, 2026 Order, enjoining Respondents from deporting the Petitioner, the removal is effectively a deliberate attempt to frustrate the Court's jurisdiction over the pending Petition. As also stated above, it is well-settled that federal courts may use their equitable powers, including the All Writs Act, to address situations in which a party's actions undermine the Court's jurisdiction, even if no injunction was technically in place at the time of the action. In *Mei Ying Fong*, for example, the court ordered the alien returned to the United States after an unlawful removal interfered with her ability to pursue habeas relief, emphasizing that preserving the ability to meaningfully exercise constitutional and statutory rights is a core concern of the judiciary.

As stated above, the USCIS and Immigration Judge failed to evaluate competency or implement safeguards, in violation of the standards set forth in Matter of M-A-M-, and the removal prevents the Court from addressing/assessing these deficiencies.

Last but not least, on or about January 22, 2026 Respondents filed an Advisory to the Court, contending that the Petition is moot as a result of a Petitioner being deported during the pendency of this proceedings and that “The relief Petitioner sought, namely release, has occurred.” The undersigned filed an Advisory Letter to the Court on or about January 23, 2026, rebutting Respondent’s position vis-a-vis mootness of this Petition. Both advisory letters are annexed hereto as **Exhibit B**. It is well-settled that a habeas petition is not rendered moot by a petitioner’s removal/deportation. Jurisdiction over a habeas petition attaches at the time of filing. See Lee v. Wetzel, 244 F.3d 370, 373-375 (5th Cir. 2001); jurisdiction over a habeas petition is not destroyed by the transfer of the petitioner and accompanying custodial change. See Griffin v. Ebbert, 751 F.3d 288, 290 (5th Cir. 2014); 28 U.S.C. §2241(a).

In Zegarra-Gomez v. INS, 314 F.3d 1127, 1130–31 (9th Cir. 2002), the Ninth Circuit held that deportation during the pendency of a habeas petition does not moot the case so long as the petitioner suffers ongoing collateral consequences stemming from the removal, explaining that once jurisdiction has attached in a habeas case, it is not defeated by the petitioner’s subsequent removal. The court emphasized that a statutory bar on reentry and other immigration disabilities resulting from removal constitute concrete legal consequences sufficient to satisfy Article III’s case-or-controversy requirement, notwithstanding the petitioner’s physical absence from the United States. (see also Carafas v. LaVallee, 391 U.S. 234, 242, 88 S. Ct. 1556, 1562 (1968))

The same basic principles apply here. To wit, Petitioner was in DHS custody at the time she filed her Petition accompanied by the OSC, and her removal/deportation has imposed severe and continuing legal consequences that this Court has the power to remedy. Upon her removal, Respondents issued a Notice to Alien Ordered Removed/Departure Verification, the copy of

which is annexed hereto as **Exhibit C**, advising Petitioner that she has been found inadmissible under INA § 212(a) and is prohibited from entering, attempting to enter, or being in the United States for a period of five years pursuant to INA § 212(a)(9). This determination imposes a concrete statutory bar to reentry and constitutes the type of collateral consequence recognized as sufficient to defeat mootness in *Zegarra-Gomez, Id.* In addition, as was briefly discussed above, Petitioner was removed pursuant to a negative credible fear determination that she contends were rendered through fundamentally flawed proceedings by the failure to assess competency and provide required safeguards under *Matter of M-A-M-* and the Fifth Amendment. Respondents' core assertion that the Petition is moot because "the relief Petitioner sought, namely release, has occurred" mischaracterizes both the nature of the Petition and the governing law. Petitioner did not seek release as an end in itself, but to vindicate her due process rights, obtain a neuropsychological evaluation, and secure a new, fair hearing with appropriate competency safeguards, as was set forth in the Petition.

Accordingly, because Petitioner was in custody at the time the Petition and accompanying OSC were filed and continues to suffer concrete collateral consequences, including the statutory five-year bar to reentry, the fundamentally flawed negative credible fear determination, and loss of access to full asylum proceedings, this case is not moot, and this Court retains jurisdiction to adjudicate the Petition and to enforce its injunctive relief.

For the foregoing reasons, Petitioner respectfully requests that this Court reject Respondents' potential assertion of mootness. Firstly, the release from custody was only a "supplementary" or auxiliary type of relief Petitioner originally sought in the Petition. The

primary objective of the Petition remains the vindication/protection of Petitioner's due process rights through a legally sufficient competency evaluation and a fair asylum adjudication.

Secondly, as stated above, jurisdiction attached at the time of filing, and Petitioner's removal during the pendency of this Petition and accompanying OSC does not extinguish this controversy given the severe collateral consequences Petitioner continues to face, including a five-year statutory bar to reentry and the loss of a fair opportunity to seek asylum. The Respondents' decision to deport a brain-injured woman to the country of her persecution while her Petitioner and emergency OSC were pending, thereby circumventing the Court's eventual stay and, in effect, frustrating its jurisdiction, constitutes a fundamental deprivation of due process that can only be remedied by her return. Because an in-person neuropsychological evaluation is medically and legally necessary to establish her incompetency under *Matter of M-A-M-*, her physical presence in the United States is essential to the fair adjudication of this case. Consequently, the Petitioner respectfully moves the Court to enforce its January 21, 2026 Order, and direct Respondents to facilitate Petitioner's immediate return to the United States so that she may meaningfully pursue her habeas claims and be afforded the process to which she is lawfully entitled.

The undersigned counsel hereby certifies that on January 22, 2026, I conferred in good faith with DHS representative/counsel, Christina Clayton, via telephone immediately after becoming appraised of the Petitioner's deportation from the United States. During this conference, I specifically requested that the government facilitate the return of the Petitioner to the US to preserve the Court's jurisdiction and her due process rights. Ms. Clayton, on behalf of the Respondents, did not consent to this request and indicated that the government intended to

maintain its position that the removal was proper and the case is now moot, as evidenced by the Advisory filed by Respondents later that same day. Accordingly, the parties have reached an impasse, and judicial intervention is required.

WHEREFORE, Petitioner respectfully requests that this Court enter an Order:

- A. Enforcing the injunctive relief granted in this Court's January 21, 2026 Order by requiring Respondents to facilitate Petitioners' immediate return to the United States; and
- B. Granting such other and further relief as this Court deems just and proper.

Dated: January 26, 2026
Port Washington, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Diana Rubin", is written over a horizontal line.

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