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LOCAL COUNSEL
Layla Khamoushian, Esq.
State Bar #236724
Khamoushian Law Group
11845 West Olympic Blvd., Ste 520
Los Angeles, CA 90064
(310)-278-0100
laylak@klglawyers.com

PRO HAC VICE COUNSEL
New York State Bar # 5773981
Sergey Risko, Esq.
Risko Law Group, PLLC
227 West Street, Suite 2121
Brooklyn, NY 11222
(718)-757-7734
riskolawgroup@gmail.com

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

SVETLANA GRIGOROVICH,

Petitioner,

v.

Civil Action No. '26CV1572 BAS MSB

CHRISTOPHER LAROSE, the Senior
Warden, Otay Mesa Detention Center,
PATRICK DIVVER, the Field Office
Director, ICE ERO San Diego; TODD
LYONS, the Acting Director, U.S.
Immigration and Customs Enforcement;
KRISTI NOEM, the Secretary, U.S.
Department of Homeland Security; and
PAMELA BONDI, the Attorney General
of the United States,

Defendants



**PETITION FOR WRIT OF HABEAS
CORPUS
UNDER 28 U.S.C. § 2241**

I. INTRODUCTION

Petitioner Svetlana Grigorovich (“Petitioner”) is a 63-year-old citizen of Russia, who has been in immigration detention in the United States since May 7, 2025. She files this petition for a writ of habeas corpus under 28 U.S.C. § 2241, challenging the lawfulness of her immigration detention. Immigration and Customs

1 Enforcement (“ICE”) officers unlawfully detained her despite the government’s
2 earlier release into the United States allowing her to remain at liberty while awaiting
3 a final decision on her application for asylum in removal proceedings. For the
4 reasons stated below, the Petitioner respectfully asks this Court to grant her habeas
5 petition.

6 7 **II. JURISDICTION**

8 A writ of habeas corpus is “available to every individual detained within the
9 United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art
10 I, § 9, cl. 2). “The essence of habeas corpus is an attack by a person in custody upon
11 the legality of that custody, and ... the traditional function of the writ is to secure
12 release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). A
13 court may grant a writ of habeas corpus to a petitioner who demonstrates to be in
14 custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3).
15 Traditionally, “the writ of habeas corpus has served as a means of reviewing the
16 legality of Executive detention, and it is in that context that its protections have been
17 strongest.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001).

18 Accordingly, challenges to immigration-related detention are within the
19 purview of a district court's habeas jurisdiction. *Zadvydas v. Davis*, 533 U.S. 678,
20 687 (2001); see also *Demore v. Kim*, 538 U.S. 510, 517 (2003).

21 22 **III. VENUE**

23 Venue lies in this District because Petitioner is detained at Otay Mesa
24 Detention Center, 7488 Calzada De La Fuente, San Diego, CA 92154 and the Senior
25 Warden of the Otay Mesa Detention Center exercises custody and control over
26 Petitioner.
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IV. PARTIES

Petitioner Svetlana Grigorovich is a national and citizen of Russia, born on [REDACTED]. She is now detained at the Otay Mesa Detention Center at 7488 Calzada De La Fuente, San Diego, CA 92154.

Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention Center and was the Petitioner’s immediate custodian at the time this habeas petition was filed.

Respondent Patrick Divver is the ICE Field Office Director, and oversees immigration enforcement and removal operations within San Diego and Imperial Counties.

Respondent Kristi Noem is the Secretary of the Department of Homeland Security and oversees ICE.

Respondent Todd M. Lyons is the Acting Director of the ICE.

Respondent Pamela Bondi is the Attorney General of the United States.

III. FACTUAL BACKGROUND

On May 7, 2025, Petitioner entered the United States at the Otay Mesa Port of Entry, California, with her daughter, son-in-law, and their minor child, to seek asylum.

All members of Petitioner’s family were released into the United States to await adjudication of their asylum claims while at liberty. Petitioner, however, was taken into custody on the basis of the alleged lack of lawful immigration status or valid entry documents, issued a Notice to Appear, and placed in removal proceedings. Subsequently, she applied for asylum and for withholding of removal with the Immigration Court based on persecution on account of her political opinion and Torture Convention.

1 On January 26, 2026, the Immigration Judge denied Petitioner's application
2 for relief and ordered her removed to Russia. On February 7, 2026, Petitioner
3 appealed that order to the Board of Immigration Appeals ("BIA"). Her appeal
4 remains pending.

5 The Petitioner has no criminal record and has not incurred any disciplinary
6 infractions while in detention. She maintains strong family ties in the United States,
7 as both of her children and her grandchild are asylum seekers here due to persecution
8 in Russia on account of their political opinions.

9 There is no indication that the Petitioner poses a flight risk or a danger to the
10 community. She has consistently complied with all conditions of custody and has
11 established meaningful connections within her community.

12 Petitioner suffers from deteriorating health conditions and has been held in
13 punitive conditions at the Otay Mesa Detention Center for more than ten months. The
14 prolonged detention under such conditions has adversely affected her mental well-
15 being.

16 Petitioner's continued detention under these circumstances no longer serves
17 any legitimate governmental purpose and inflicts severe harm. It has far exceeded
18 180 days without a bond hearing, any meaningful review, or any valid justification,
19 thereby violating her rights under the Due Process Clause.
20

21 **IV. STATUTORY FRAMEWORK AND LEGAL CLAIMS**

22 Title 8 of the United States Code §§ 1225, 1226, and 1231 govern immigration
23 detention. "Where an alien falls within this statutory scheme can affect whether his
24 detention is mandatory or discretionary, as well as the kind of review process
25 available to him if he wishes to contest the necessity of his detention." *Prieto-*
26 *Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).
27
28

1 Petitioner is detained pursuant to 8 U.S.C. § 1225(b). See *Jennings v.*
2 *Rodriguez*, 583 U.S. 281, 287, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018). Section
3 1225(b)(1), applies to, among others, noncitizens initially determined to be
4 inadmissible because of fraud, misrepresentation, or lack of valid documentation. *Id.*
5 (citing § 1225(b)(1)(A)(i)). Section 1225(b)(2) is broader and "serves as the catchall
6 provision that applies to all applicants for admission not covered by § 1225(b)(1)"
7 (with specific exceptions that are not applicable here). *Jennings*, 583 U.S. at 287-88
8 (citing §§1225(b)(2)(A), (B)).

9 "Normally, noncitizens covered by § 1225(b)(1) are subject to an expedited
10 removal process that does not include a hearing before an Immigration Judge or
11 review of the removal order." *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116
12 (W.D. Wash. 2019) (citing 8 U.S.C. § 1225(b)(1)(A)(i)). But, where a noncitizen
13 "indicates either an intention to apply for asylum ... or a fear of persecution," the
14 inspecting immigration officer must refer that noncitizen for an interview with an
15 asylum officer. 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 208.30(d). Thereafter, if the
16 asylum officer determines that the noncitizen has a credible fear of persecution, then
17 the noncitizen "shall be detained for further consideration of the application for
18 asylum." 8 U.S.C. § 1225(b)(1)(B)(ii); *Banda*, 385 F. Supp. 3d at 1112.

19 Under § 1225(b), "the only opportunity for a noncitizen to be released pending
20 a decision on the asylum application is temporary parole 'for urgent humanitarian
21 reasons or significant public benefit.'" *Banda*, 385 F. Supp. 3d at 1112 (quoting 8
22 U.S.C. § 1182(d)(5)(A)); see also 8 C.F.R. §§ 212.5(b), 235.3. And the "statute does
23 not impose 'any limit on the length of detention' pending a decision on the asylum
24 application and does not authorize bond hearings or release on bond." *Banda*, 385 F.
25 Supp. 3d at 1112 (quoting *Jennings*, 583 U.S. at 296-301). As the Supreme Court
26 held in *Jennings*, "1225(b)(1) mandates detention 'for further consideration of the
27 application for asylum,' § 1225(b)(1)(B)(ii), and § 1225(b)(2) requires detention 'for a
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1 [removal] proceeding,' § 1225(b)(2)(A). The plain meaning of those phrases is that
2 detention must continue until immigration officers have finished 'consider[ing]' the
3 application for asylum, § 1225(b)(1)(B)(ii), or until removal proceedings have
4 concluded, § 1225(b)(2)(A)." *Jennings*, 583 U.S. at 299.

5 The right to be free from physical restraint by the Government is "at the heart
6 of the liberty that [the Due Process Clause of the Fifth Amendment] protects."
7 *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).
8 Confinement under this immigration statutory framework applies broadly; it is not
9 limited to "a small segment of particularly dangerous individuals" *Id.* at 691 (quoting
10 *Kansas v. Hendricks*, 521 U.S. 346, 356, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997)).
11 The procedural protection from unwarranted detention is an administrative
12 proceeding, followed by judicial review. *Id.* at 692.

13 Even if the statutory terms of § 1225(b) do not require a bond hearing,
14 petitioner's continued detention must still comport with due process. See *Boumediene*
15 *v. Bush*, 553 U.S. 723, 797, 128 S. Ct. 2229, 171 L. Ed. 2d 41 (2008) (holding that
16 habeas corpus applies to detainees who were classified as enemy combatants and
17 held at Guantanamo Bay; "few exercises of judicial power are as legitimate or
18 necessary as the responsibility to hear challenges to the authority of the Executive to
19 imprison a person."); *Wing Wong v. United States*, 163 U.S. 228, 235-237, 16 S. Ct.
20 977, 41 L. Ed. 140 (1896) (under the Due Process Clause of the Fifth Amendment,
21 temporary confinement is permissible for a noncitizen pending deportation but —
22 compulsory labor, confiscation of property, or other punitive measures are not).

23 Neither the Supreme Court nor the Ninth Circuit have settled on a test for
24 assessing the constitutionality of prolonged mandatory detention. *Banda*, 385 F.
25 Supp. 3d at 1113. See also *Chekhovskii v. Scott*, No. 2:25-cv-02550-TLF, 2026 U.S.
26 Dist. 2026 WL 353265 (W.D. Wash. Feb. 9, 2026).

1 Because this unresolved issue necessarily counterbalances the government's
2 interest in efficient removals against noncitizens' interest in liberty, courts across the
3 country have adopted a balancing test to determine when the constitution requires
4 process regarding detention even absent a final order of removal. In *Banda*, the Court
5 articulated a series of considerations for cases involving prolonged detention of
6 noncitizens not subject to final orders of removal. 385 F. Supp. 3d 1099, 1106 (W.D.
7 Wash. 2019). The factors are as follows: "(1) the total length of detention to date; (2)
8 the likely duration of future detention; (3) the conditions of detention; (4) delays in
9 the removal proceedings caused by the detainee; (5) delays in the removal
10 proceedings cause by the government; and (6) the likelihood that the removal
11 proceedings will result in a final order of removal."

12 These factors have since been used by courts across this country, including this
13 district. See *Markosian v. Bondi*, No. 3:25-cv-03494-JES-BLM, 2026 WL 25850
14 (S.D. Cal. Jan. 5, 2026) (granting request for a bond hearing for a petitioner held for
15 thirteen months under 1225(b)'s mandatory detention provision); *Amado v. United*
16 *States Dep't of Just.*, No. 25CV2687-LL-DDL, 2025 WL 3079052 (S.D. Cal. Nov. 4,
17 2025) (granting request for a bond hearing for a petitioner held for thirteen months
18 under 1225(b)'s mandatory detention provision); *Abdul Kadir v. Larose*, No.
19 25CV1045-LL-MMP, 2025 WL 2932654 (S.D. Cal. Oct. 15, 2025) (same); *Sadeqi v.*
20 *LaRose*, No. 25-CV-2587-RSH-BJW, 2025 WL 3154520 (S.D. Cal. Nov. 12, 2025)
21 (granting request for a bond hearing for a petitioner held for eleven months under
22 1225(b)'s mandatory detention provision).

23 24 25 **A. Length of Detention**

26 Courts consider the first factor, time in detention to date, to be the most
27 important in determining the necessity of process regarding detention. See *Banda*,
28 385 F. Supp. 3d at 1118 ("the length of detention, which is the most important

1 factor”); *Amado v. United States Dep't of Just.*, No. 25CV2687-LL-DDL, 2025 WL
2 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (“The total length of detention to date is
3 considered the most important factor.”).

4 Petitioner has been in detention since May 7, 2025, which is now more than 10
5 months. Courts have found in previous cases that detention for similar or even shorter
6 term favored petitioners. See *Masood v. Barr*, No. 19-CV-07623JD, 2020 WL
7 95633, at *3 (N.D. Cal. Jan. 8, 2020) (finding detention for nearly nine months
8 weighs in favor of the petitioner); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261
9 (S.D.N.Y. 2018) (finding detention of over seven months weighed in petitioner’s
10 favor); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5
11 (S.D.N.Y. Aug. 20, 2018) (finding detention of over nine months weighed in
12 petitioner’s favor); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018)
13 (finding detention of over nine months weighed in petitioner’s favor).

14 Under the Fifth Amendment’s Due Process Clause, civil immigration detention
15 must remain reasonably related to its limited purposes: ensuring appearance at future
16 proceedings and protecting the community. See *Zadvydas v. Davis*, 533 U.S. 678,
17 690 (2001). When detention becomes prolonged, it may no longer be “reasonably
18 related” to those purposes and thus violates due process. See *Rodriguez v. Robbins*,
19 804 F.3d 1060 (9th Cir. 2015), *rev'd on other grounds sub nom. Jennings v.*
20 *Rodriguez*, 583 U.S. 281 (2018).

21 In this case, Petitioner’s continued detention does not advance either purpose.
22 She has no criminal record and no history of flight. Furthermore, she has strong
23 family ties in the United States; both her children and her grandchild are currently
24 seeking asylum here due to political persecution in Russia.

25 Prolonged detention for a non-dangerous, compliant, sixty-three-year-old
26 Petitioner cannot be justified as necessary to ensure appearance or public safety. The
27 Ninth Circuit has established that once detention loses a rational connection to its
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1 stated purpose, it violates the Constitution. *See Rodriguez Diaz v. Garland*, 53 F.4th
2 1189, 1206–07 (9th Cir. 2022). Consequently, this factor weighs heavily in favor of
3 finding that Petitioner’s continued confinement violates her due process rights.

4 5 **B. Likely Duration of Future Detention**

6 The second factor requires consideration of "how long the detention is likely to
7 continue absent judicial intervention; in other words, the 'anticipated duration of all
8 removal proceedings—including administrative and judicial appeals.'" *Banda*, 385 F.
9 Supp. 3d at 1119 (quoting *Jamal A.*, 358 F. Supp. 3d at 859).

10 Here, on January 26, 2025, the Immigration Judge denied Petitioner's
11 application for asylum and associated relief and ordered Petitioner’s removal to
12 Russia. She appealed this decision to the BIA on February 7, 2026. BIA has not yet
13 set a briefing schedule for the appeal. Petitioner's future detention can last several
14 more months or even years during the adjudication of her appeal to the BIA and if
15 unfavorable, Petitioner's appeal to the Ninth Circuit. *See Banda*, 385 F. Supp. 3d at
16 1119 (finding an appeal to the BIA and subsequent judicial review "may take up to
17 two years or longer"). *See Rash v. Larose*, No. 26-cv-0008-LL-DEB, 2026 U.S. Dist.
18 LEXIS 19033 (S.D. Cal. Jan. 30, 2026).

19 Accordingly, this factor weighs in favor of Petitioner.

20 21 **C. Conditions of Detention**

22 Petitioner’s detention at the Otay Mesa Detention Center is not meaningfully
23 distinguishable from penal confinement. Courts in this district have frequently found
24 that conditions at the Otay Mesa Detention Center are "indistinguishable from penal
25 confinement," concluding that this factor weighs in favor of petitioners’ due process
26 arguments regarding prolonged detention. *Kydyrali v. Biden*, 499 F. Supp. 3d 761,
27 773 (S.D. Cal. 2020); see also *Hoyos Amado*, 2025 WL 3079052, at *6.
28

1 Accordingly, this factor weighs in favor of Petitioner.

2
3 **D. Delays in the removal proceedings**

4 The fourth and fifth factors consider the nature and extent of any delays in the
5 removal proceedings caused by petitioner and the government, respectively.
6 "Petitioner is entitled to raise legitimate defenses to removal ... and such challenges
7 to his removal cannot undermine his claim that detention has become
8 unreasonable." *Martinez v. Clark*, No. 18-1669, 2019 U.S. Dist. LEXIS 197895,
9 2019 WL 5968089, at *10 (W.D. Wash. May 23, 2019), R & R adopted, 2019 U.S.
10 Dist. LEXIS 196836, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (citations and
11 internal quotation marks omitted).

12 Yet Courts should consider "dilatory tactics by the removable [noncitizen] may
13 serve not only to put off the final day of deportation, but also to compel a
14 determination that the [noncitizen] must be released because of the length of his
15 incarceration." *Id* (citations and internal quotation marks omitted).

16 With respect to the government, "[i]f immigration officials have caused delay,
17 it weighs in favor of finding continued detention unreasonable.... Continued detention
18 will also appear more unreasonable when the delay in the proceedings was caused by
19 the immigration court or other non-ICE government officials." *Sajous v. Decker*, No.
20 18-2447, 2018 U.S. Dist. LEXIS 86921, 2018 WL 2357266, at *11 (S.D.N.Y. May
21 23, 2018).

22 Even if "not the result of intentional action on behalf of government officials,
23 th[ese] delay[s] [are] attributable to the Government." *Martinez*, 2019 U.S. Dist.
24 LEXIS 197895, 2019 WL 5968089, at *10 (citing *Sajous*, 2018 U.S. Dist. LEXIS
25 86921, 2018 WL 2357266, at *11 ("the operative question should be whether the
26 [noncitizen] has been the cause of the delayed immigration proceeding and, where
27 the fault is attributable to some entity other than the [noncitizen], the factor will
28

1 weigh in favor of concluding that continued detention without a bond hearing is
2 unreasonable"); *Dukuray v. Decker*, No. 18-2898, 2018 U.S. Dist. LEXIS 183372,
3 2018 WL 5292130, at *4 (S.D.N.Y. Oct. 25, 2018) (weighing delay caused by
4 immigration court in favor of the petitioner)).

5 Here, there is no evidence that either the Petitioner or the government has
6 intentionally delayed adjudication of her claims.

7 However, any "delay in this case is a product of the BIA's and Ninth Circuit's
8 'crowded dockets,' which courts typically attribute to the Government—not the
9 Petitioner." *Djelassi v. Ice Field Off. Dir.*, 434 F. Supp. 3d 917, 923 (W.D. Wash.
10 2020) (citing *Martinez v. Clark*, No. 18-1669, 2019 U.S. Dist. LEXIS 197895, 2019
11 WL 5968089, at *10 (W.D. Wash. May 23, 2019), R & R adopted, 2019 U.S. Dist.
12 LEXIS 196836, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) ("Most of the delay.
13 . . . appears to have stemmed from the immigration court's crowded docket. Although
14 not the result of intentional action on behalf of government officials, this delay is
15 attributable to the Government.")).

16 Accordingly, the fourth factor is neutral, and the fifth factor weighs slightly in
17 Petitioner's favor. *See Chekhovskii v. Scott*.

18 19 **E. Likelihood of Final Order of Removal**

20 The sixth factor involves consideration of "the likelihood that the final
21 proceedings will culminate in a final order of removal." *Banda*, 385 F. Supp. 3d at
22 1120 (quoting *Jamal A.*, 358 F. Supp. 3d at 860). Petitioner was ordered removed and
23 timely appealed the removal order. Accordingly, there is an approximately equal
24 likelihood that her proceedings will result in removal or that she will be granted
25 relief.

26 Accordingly, the sixth factor is neutral.
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1 WHEREFORE, Petitioner respectfully requests that this Court:

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- 3 a. Assume jurisdiction over this matter;
- 4 b. Order that Petitioner shall not be removed from the United States without an
- 5 order by this Court allowing such removal and transferred, except to a facility
- 6 within this District, absent further order of this Court;
- 7
- 8 c. Issue an Order to Show Cause directing Respondents to explain why the writ
- 9 should not be granted within three days, as required by 28 U.S.C. § 2243;
- 10
- 11 d. Declare Petitioner’s detention unlawful;
- 12
- 13 e. Order Petitioner’s immediate release or, in the alternative, a bond hearing
- 14 before an Immigration Judge within seven days, at which the Government
- 15 bears the burden of proving, by clear and convincing evidence, that
- 16 Petitioner’s continued detention is justified by dangerousness or flight risk.
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19

20 Date: March 12, 2026

Respectfully submitted,

21 /s/ Layla Khamoushian, Esq.
22 Layla Khamoushian, Esq.
23 State Bar #236724
24 Khamoushian Law Group
25 11845 West Olympic Blvd., Suite 520
26 Los Angeles, CA 90064
27 Telephone: 310-278-0100
28 laylak@klglawyers.com

Attorney for Petitioner

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/S/ Sergey Risko, Esq.
Sergey Risko, Esq.
New York State Bar #5473699
Risko Law Group, PLLC
227 West Street, Suite 2121
Brooklyn, NY 11222
(718)-757-7734
riskolawgroup@gmail.com

Applicant for Pro Hac Vice Admission

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Layla Khamoushian, Esq., represent the Petitioner, Svetlana Grigorovich, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Date: March 12, 2026

/S/ Layla Khamoushian, Esq.
Layla Khamoushian, Esq.
State Bar #236724
Khamoushian Law Group
11845 West Olympic Blvd., Suite 520
Los Angeles, CA 90064
Telephone: 310-278-0100
laylak@klglawyers.com

Attorney for Petitioner