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

13 ELENA KASHPIROVA

CASE No. **'26CV1835 LL DEB**

14 FILE NO:



**PETITION FOR WRIT OF HABEAS
CORPUS**

Petitioner,

v.

15 CHRISTOPHER J. LAROSE, Warden, Otay
16 Mesa Detention Center; GREGORY J.
17 ARCHAMBEAULT, Field Office Director, San
18 Diego Field Office, U.S. Immigration and
19 Customs Enforcement; TODD M. LYONS,
20 Director, U.S. Immigration and Customs
21 Enforcement; KRISTI NOEM, Secretary, U.S.
22 Department of Homeland Security; PAM
23 BONDI, United States Attorney General,


Respondents.

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INTRODUCTION

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2 1. Petitioner¹ is currently detained by Immigration and Customs Enforcement (“ICE”)
3 at the Otay Mesa Detention Center pending removal proceedings.

4 2. Petitioner is an asylum seeker from Russia. She entered the United States on
5 February 25, 2023.

6 3. Petitioner Elena Kashpirova has a daughter, 

7 4. Prior to her detention, Petitioner resided in California, where she maintained stable
8 housing while complying with all immigration requirements.

9 5. On March 14, 2026, Petitioner was detained by ICE officers.

10 6. On January 26, 2024, Petitioner filed Form I-589, Application for Asylum and for
11 Withholding of Removal. Her appeal of the Immigration Judge’s denial of her motion to reopen is
12 currently pending before the Board of Immigration Appeals. She has no criminal record.

13 7. The Due Process Clause applies to “all ‘persons’ within the United States, including
14 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
15 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). “Freedom from bodily restraint has always been at
16 the core of the liberty protected by the Due Process Clause from arbitrary governmental action.”
17 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

18 8. Immigration detention is civil and thus is permissible for only two reasons: to ensure
19 a noncitizen’s appearance at immigration hearings and to prevent danger to the community.
20 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Here, Petitioner has no criminal history and has
21 complied with all immigration requirements. Petitioner does not present a flight risk or a danger to
22 the community. Under these circumstances, his detention is thus not justified under the

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25 ¹ Petitioner respectfully requests that the Court use his initials, rather than his full last name, in any
26 opinion in his case, as suggested by the Committee on Court Administration and Case Management
27 of the Judicial Conference of the United States. *See* Memorandum Re: Privacy concern Regarding
28 Social Security & Immigration Opinions (May 1, 2018), *available at*
https://www.uscourts.gov/sites/default/files/18-cv-1-suggestion_cacm_0.pdf; *see also* *Jorge M.F.*
v. Jennings, 534 F. Supp. 3d 1050 n.1 (N.D. Cal. Apr. 14, 2021).

1 Constitution. *See id.*

2 9. Additionally, generally “the Constitution requires some kind of a hearing *before* the
3 State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990)
4 (emphasis added).

5 10. Petitioner respectfully seeks a writ of habeas corpus ordering the government to
6 immediately release her from her ongoing, unlawful detention, and prohibiting her re-arrest without
7 a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve this
8 Court’s jurisdiction, Petitioner also requests that this Court order the government not to transfer
9 her outside of the District or deport her for the duration of this proceeding.

10 **JURISDICTION AND VENUE**

11 11. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
12 question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act),
13 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension
14 Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706
15 (Administrative Procedure Act).

16 12. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28
17 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

18 **PARTIES**

19 13. Petitioner, Elena Kashpirova, is a Russian citizen. She has a pending appeal of the
20 Immigration Judge’s denial of her motion to reopen before the Board of Immigration Appeals. She
21 is presently in civil immigration detention at the Otay Mesa Detention Center, located at 7488
22 Calzada de la Fuente, San Diego, CA 92154.

23 14. Respondent Christopher J. Larose is the Warden of the Otay Mesa Detention Center
24 in San Diego, California. As Warden, he is responsible for the custody and supervision of
25 individuals detained at the Otay Mesa Detention Center, including Petitioner. He maintains an
26 office and regularly conducts business in this district. He is sued in his official capacity.

27 15. Respondent Gregory J. Archambeault is the Field Office Director of the San Diego
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1 Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal
2 Operations. He is responsible for the administration of immigration laws and the execution of
3 immigration enforcement and detention policy within ICE's San Diego Area of Responsibility,
4 including the detention of Petitioner. He maintains an office and regularly conducts business in this
5 district. He is sued in his official capacity.

6 16. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official
7 Performing the Duties of the Director of ICE, he is responsible for the administration and
8 enforcement of the immigration laws of the United States; routinely transacts business in this
9 District; and is legally responsible for pursuing any effort to detain and remove the Petitioner.
10 Respondent Lyons is sued in his official capacity.

11 17. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate
12 authority over DHS. In that capacity and through her agents, Respondent Noem has broad authority
13 over and responsibility for the operation and enforcement of the immigration laws; routinely
14 transacts business in this District; and is legally responsible for pursuing any effort to detain and
15 remove the Petitioner. Respondent Noem is sued in her official capacity.

16 18. Respondent Pamela Bondi is the Attorney General of the United States and the most
17 senior official at the Department of Justice. In that capacity and through her agents, she is
18 responsible for overseeing the implementation and enforcement of the federal immigration laws.
19 The Attorney General delegates this responsibility to the Executive Office for Immigration Review,
20 which administers the immigration courts and the BIA. Respondent Bondi is sued in her official
21 capacity.

22 EXHAUSTION

23 19. There is no requirement to exhaust because no other forum exists in which
24 Petitioners can raise the claims herein. There is no statutory exhaustion requirement prior to
25 challenging the constitutionality of an arrest or detention or challenging a policy under the
26 Administrative Procedure Act. Prudential exhaustion is not required here because it would be futile,
27 and Petitioners will "suffer irreparable harm if unable to secure immediate judicial consideration
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1 of [their] claim.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Any further exhaustion
2 requirements would be unreasonable.

3 **LEGAL BACKGROUND**

4 20. The Constitution establishes due process rights for “all ‘persons’ within the United
5 States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
6 permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533
7 U.S. at 693). These due process rights are both substantive and procedural.

8 21. *First*, “[t]he touchstone of due process is protection of the individual against
9 arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the
10 exercise of power without any reasonable justification in the service of a legitimate government
11 objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

12 22. These protections extend to noncitizens facing detention, as “[i]n our society liberty
13 is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United*
14 *States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, “[f]reedom from imprisonment—from
15 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty
16 that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

17 23. Substantive due process thus requires that all forms of civil detention—including
18 immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See Jackson v.*
19 *Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-
20 punitive purposes for immigration detention: ensuring a noncitizen’s appearance at immigration
21 proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also*
22 *Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).


23 24. *Second*, the procedural component of the Due Process Clause prohibits the
24 government from imposing even permissible physical restraints without adequate procedural
25 safeguards.

26 25. Generally, “the Constitution requires some kind of a hearing *before* the State
27 deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so
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1 even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d at 683
2 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional
3 supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)
4 (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

5 **FACTUAL ALLEGATIONS**

6 26. Petitioner is a noncitizen currently detained by Respondents pending her removal
7 proceedings.

8 27. Petitioner was born on  and was 55 years old at the time of her
9 arrest. She has been detained in DHS custody since March 14, 2026. Petitioner has a 22-year-old
10 daughter who arrived with her in the United States on February 25, 2023, through the San Ysidro
11 Port of Entry.

12 28. Petitioner filed Form I-589, Application for Asylum, Withholding of Removal, and
13 Protection under the Convention Against Torture, on January 26, 2024. On December 2, 2024, the
14 Immigration Judge issued an in absentia order of removal. Petitioner timely filed a motion to reopen
15 on December 31, 2024; however, the Immigration Judge denied that motion. Thereafter, on
16 February 24, 2025, Petitioner filed a second motion to reopen, explaining that her failure to appear
17 at the Master Calendar Hearing was due to lack of notice; this motion was likewise denied.
18 Petitioner subsequently filed an appeal with the Board of Immigration Appeals on April 17, 2025,
19 which remains pending.

20 29. Petitioner has not been provided a bond hearing before a neutral decisionmaker to
21 determine whether her prolonged detention is justified based on danger or flight risk.

22 30. Pursuant to *Matter of Jonathan Javier Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA
23 2025), the Immigration Court lacks jurisdiction to provide Petitioner with a bond hearing to
24 determine whether his detention is justified. There is no statutory or regulatory mechanism by
25 which Petitioner may seek a bond hearing before a neutral decisionmaker.

26 31. Absent intervention by this Court, Petitioner cannot and will not be provided with
27 a bond hearing by a neutral decisionmaker to assess the propriety of Petitioner's continued
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1 detention.

2 32. Petitioner is being deprived of her liberty without any permissible justification.
3 Upon information and belief, Petitioner has no criminal record, poses no danger to the community.
4 Petitioner's prior in absentia removal order does not establish that she is a flight risk. Before the
5 missed hearing, she consistently appeared for all scheduled proceedings, demonstrating
6 compliance with immigration requirements. Her failure to appear was not willful, but resulted from
7 a lack of notice. Upon learning of the order, Petitioner acted promptly to reopen her case and correct
8 the record, further evidencing good faith and diligence. Given her history of compliance and
9 immediate efforts to remedy the missed hearing, this isolated incident does not indicate any intent
10 to abscond.

11 33. Additional facts that support Petitioner's entitlement to relief are that she is 55 years
12 old and prolonged detention poses heightened physical and mental strain and increases
13 vulnerability to adverse health effects. She also has a daughter who has been struggling financially
14 and emotionally. The Petitioner's detention has come at a great cost, financially, emotionally, and
15 physically, to the Petitioner and her family. Furthermore, Petitioner is detained unnecessarily at
16 government expense and may continue to be detained for years.

17 34. Petitioner wants to start a new life in the United States and be a law-abiding citizen.
18 Petitioner wants to be there for her family financially, emotionally, and physically.

19 35. In light of these points, I respectfully request that Elena Kashpirova be granted
20 release from detention on bond.

21 **CLAIMS FOR RELIEF**

22 **FIRST CLAIM FOR RELIEF**

23 **Violation of the Fifth Amendment to the United States Constitution (Substantive**
24 **Due Process—Detention)**

25 36. Petitioner repeats and re-alleges the allegations contained in the preceding
26 paragraphs of this Petition as if fully set forth herein.

27 37. The Due Process Clause of the Fifth Amendment protects all "person[s]" from
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1 deprivation of liberty “without due process of law.” U.S. Const. amend. V. “Freedom from
2 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
3 the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

4 38. Immigration detention is constitutionally permissible only when it furthers the
5 government’s legitimate goals of ensuring the noncitizen’s appearance during removal proceedings
6 and preventing danger to the community. See *id.*

7 39. Petitioner is not a danger or flight risk.

8 **SECOND CLAIM FOR RELIEF**

9 **Violation of the Fifth Amendment to the United States Constitution (Procedural**
10 **Due Process—Detention)**

11 40. Petitioner repeats and re-alleges the allegations contained in the preceding
12 paragraphs of this Petition as if fully set forth herein.

13 41. The Fifth Amendment guarantees noncitizens present in the country with due
14 process rights, including the right not to be deprived of a liberty or property interest without notice
15 and a hearing before a neutral decision-maker.

16 42. Petitioner does not pose a flight risk or danger to the community. She has a protected
17 liberty interest in her continued freedom from detention and is entitled to due process before the
18 government can deprive her of her liberty by detaining him. The Due Process Clause prohibits
19 Petitioner’s detention without a pre-deprivation hearing before a neutral decision-maker in which
20 the government bears the burden of demonstrating that he poses a flight risk or danger to the
21 community.

22 **PRAYER FOR RELIEF**

23 Petitioner respectfully requests that this Court:

- 24 1. Assume jurisdiction over this matter;
- 25 2. Issue a writ of habeas corpus ordering Respondents to immediately release
26 Petitioner from custody;
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- 1 3. Declare that Petitioner's arrest and detention violate the INA, implementing
2 regulations, and Due Process Clause of the Fifth Amendment.
- 3 4. Enjoin Respondents from transferring Petitioner outside this District or deporting
4 Petitioner pending these proceedings;
- 5 5. Enjoin Respondents from re-detaining Petitioner unless her re-detention is ordered
6 at a custody hearing before a neutral arbiter in which the government bears the
7 burden of proving, by clear and convincing evidence, that Petitioner is a flight risk
8 or danger to the community;
- 9 6. Award Petitioner her costs and reasonable attorneys' fees in this action as provided
10 for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
- 11 7. Grant such further relief as the Court deems just and proper.

12 Date: March 23, 2026

13 Respectfully Submitted,

14 /s/ Magomed Esendirov

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