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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SERGEI TIULENEV, VYACHESLAV RYZKHOV, VIKTORIIA TIULENEVA,

Petitioners,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Case No.: 26-cv-3282-BAS-MSB

Amended Petition for a Writ of Habeas Corpus

[1] The Court referred this matter to Federal Defenders, ECF No. 2. Federal Defenders confirms appointment as to all three petitioners is appropriate and accepts appointment. Their financial eligibility for appointment is included in declarations attached to this amended petition.

I. Introduction

Twenty-year-old Sergei Tiulenev, twenty-two-year-old Viktoriia Tiuleneva, and twenty-seven-year-old Vyacheslav Ryzkhov fled a politically motivated arson attack on their home in Russia. After their family reported the arson, the Russian police beat them up. The police told them to stop expressing their anti-war opinions. The whole family arrived together at the American border and requested asylum in early October 2025. The Tiulenev parents and minor children were separated, sent to family detention, and released. But the three eldest Tiulenev children have remained detained at Otay Mesa for the last eight and a half months. This April, an immigration judge denied them asylum and withholding. They have appealed to the Board of Immigration Appeals. *See* Exhibits A, B, C, E.

No briefing schedule has been set at the BIA. *Id.* A comprehensive analysis of BIA appeals shows that the median processing time has doubled in the last two years. It now takes, on average, over seven months for an appeal to resolve. About one in three cases now takes more than a year. *See* Exhibit D (declaration of Zabdi Salazar regarding statistics on BIA detained case appeals).

Because they asked for asylum at the border, Sergei, Viktoriia, and Vyacheslav face mandatory statutory detention for the duration of their appeals to the BIA and potentially the Ninth Circuit. Considering the factors outlined in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019), this Court should conclude that their indefinite mandatory detention without an individualized determination violates due process and order that they receive a bond hearing or release.

"[A] period of nine months favor[s] the petitioners": "the length of detention has surpassed the rough six-month threshold at which detentions become less and less reasonable." *LBOM v. Hermosillo*, No. 25-cv-2695-GJL, 2026 WL 266068, *3 (W.D. Wash. Feb. 2, 2026) (quoting *Perez v. Decker*, No. 18-cv-5279-VEC, 2018 WL 3991497, *5 (S.D.N.Y 2018)).

Many courts grant petitions for noncitizens appealing asylum cases who have been detained for even less time: "the appeal to the BIA may take months, and any appeal to the Ninth Circuit thereafter may take years." *Beyene v. LaRose*, No. 26-cv-3037-JLS-DDL, 2026 WL 1708599, *2 (S.D. Cal. June 12, 2026) (seven months); *accord Nche v. Patrick*, No. 26-cv-2449-JES-DDL, 2026 WL 1195015, *3 (S.D. Cal. May 1, 2026) (six months); *Hasaballah v. LaRose*, No. 26-cv-1172-DMS-DDL, 2026 WL 936951, *1 (S.D. Cal. Apr. 7, 2026) (seven months); *Uferk v. Brightman*, No. 26-cv-2354-RBM-DDL, 2026 WL 1157166, *2 (S.D. Cal. Apr. 28, 2026) (seven months); *Derbew v. Larose*, No. 26-cv-2803-JAO-DEB, 2026 WL 1468308, *3 (S.D. Cal. May 22, 2026) (eight months); *Cong v. Noem*, No. 25-cv-3730-GPC-DEB, 2026 WL 76566, *5 (S.D. Cal. Jan. 8, 2026) (eight months); *Amado v. U.S. Dep't of Justice*, No. 25-cv-2687-LL-DDL, 2025 WL 3079052, *6 (S.D. Cal. Nov. 4, 2025) (collecting cases at seven months and nine months); *see also Mtiulishvili v. Larose*, No. 26-cv-387-RSH-JLB, 2026 WL 377870, *3 (S.D. Cal. Feb. 10, 2026) (ten months); *Seged v. Larose*, No. 26-cv-2564-BTM-DEB, 2026 WL 1480801, *1 (S.D. Cal. May 27, 2026) (nine months).

II. Statement of Facts

Sergei Tiulenev and Viktoriia Tuileneva are siblings who were born and raised in Russia. Exhibits A, B. Vyacheslav Ryzkhov is Viktoriia's husband. Exhibit C. All three lived together with their parents and the younger Tiulenev siblings in the same house in Russia. Exhibits A, B, C. Vyahceslav is so close to the Tiulenev parents that, as he says, "I don't even call my wife's parents by their first names. I call them mom and dad." Exhibit C ¶ 7.

After Russia's war against Ukraine began in 2022, the Tiulenevs' adopted brother sang the Ukrainian national anthem on his popular social media platforms. Exhibit A ¶ 2. The whole family began receiving threats based on their anti-war political beliefs. *Id.* ¶ 3.

In September 2024, the Tiulenev house was set on fire. Exhibit A ¶ 3. Not

only did the Russian police fail to help the Tiulenevs in the aftermath of the arson; the police also issued their own threats. *Id.* ¶ 4. As Viktoriia explains,

> The police did not help us investigate the arson. Instead, the police came to our house to threaten us. [redacted]

Id.

Fearing further persecution and criminal charges for their political beliefs, the whole family eventually fled. Exhibits A, B, C, E.

On October 10, 2025, the eight members of the family arrived at the automobile entrance to the San Ysidro Port of Entry and requested asylum. *Id.*

They were split up. Exhibit A ¶ 7. The Tiulenev parents and the three youngest siblings were taken to family detention in Texas and ultimately released to pursue their asylum applications in the country. *Id.*; Exhibit E. Viktoriia, Sergei, and Vyacheslav were held in Otay Mesa and pursued asylum while detained. Exhibits A, B, C. Because they arrived at the border requesting asylum, they were subject to mandatory statutory detention, and they have never received a bond hearing. *Id.*

Viktoriia, Sergei, and Vyacheslav pursued their asylum cases from detention as quickly as possible. They obtained an attorney by their very first master calendar hearing. They even had their attorney file a motion requesting an earlier date for their asylum hearing; the hearing was thus moved a month up, from May to April. *See* Exhibit A, First Declaration of Ms. Tiuleneva; *id.*, Second Declaration of Ms. Tiuleneva, ¶¶ 8–10.

On April 21, 2026, an immigration judge denied the three asylum. Exhibits A, B, C. They promptly appealed and filed a motion to reopen, which the BIA has received. *Id.* Viktoriia, Sergei, and Vyacheslav all remain detained at the Otay

Mesa Detention Center. *Id.* They have each faced significant health complications while detained. *Id.*

As of today, the BIA has not yet set a briefing schedule. *Id.*

A recent comprehensive analysis of the BIA's detained docket shows that the median processing time for appeals filed in the first quarter of 2016 was 216 days, about seven months. *See* Exhibit D ¶ 3, 13. About one in three cases took more than a year. *Id.* ¶ 18 (noting that in the first quarter, "72.4% of cases were completed within one year, while 27.6% took more than one year"). One in ten appeals took more than three and a half years. *Id.* ¶ 14 (noting that the "90th percentile rose . . . to 1,264 days in Q1 2026, or about three and a half years").

Sergei, Viktoriia, and Vyacheslav's continued detention "has created extraordinary emotional, psychological, and financial strain on the family unit." Exhibit E at 4 (letter from Chicago Refugee Coalition). Their released family members have settled in the Chicago area and done their best to support their detained family members. *Id.* Several months ago, their father spoke "alongside the Civic Orchestra Fellows of the Chicago Symphony Orchestra . . . openly and with remarkable dignity about his family's displacement following Russia's invasion of Ukraine, the consequences they faced for publicly opposing the war, and the ongoing separation from their detained children and son-in-law, which has now extended beyond seven months." *Id.* (letter dated May 14, 2026). "The impact on those present was profound." *Id.*

III. This Court has jurisdiction to consider due process claim of unlawful prolonged detention.

The government often argues that this Court's jurisdiction to consider immigration habeas petitions under 8 U.S.C. § 2241 is taken away by 8 U.S.C. § 1252(g). This argument is "mistaken." *Hernandez Cruz v. Noem*, No. 25-cv-2566-SB-MAA, 2025 WL 3482630, *1 (C.D. Cal. Dec. 2, 2025).

Courts "should read § 1252(g) narrowly." *Ibarra-Perez v. United States*,

154 F.4th 989, 991 (9th Cir. 2025) (citing *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). That section's jurisdiction-stripping provisions are limited to "three discrete actions": the "decision or action to *commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quoting 8 U.S.C. § 1252(g)). They do not strip jurisdiction and "sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, [the Court] read[s] the language to refer to just those three specific actions themselves." *Jennings v. Rodriguez*, 538 U.S. 281, 294 (2018).

As a result, this Court still has jurisdiction over these claims. Like many other habeas petitioners in immigration detention, Viktoriia, Sergei, and Vyacheslav are "seeking to review the legality of [their] detention, arguing that the length of time [they] ha[ve] been detained here violates due process—rather than challenging the decision to commence proceedings, the adjudication of [their] removal case, or an action to execute [their] removal order." *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1109 (S.D. Cal. 2025) (finding jurisdiction over § 2241 habeas petition in a prolonged detention case for an arriving noncitizen and ordering an individualized bond hearing). This Court's jurisdiction is "not barred by Section 1252(g)." *Id.*

IV. The Fifth Amendment's Due Process Clause prohibits prolonged immigration detention without a bond hearing.

The Fifth Amendment's Due Process Clause countermands the government's statutory authority to detain immigrants without bond hearings. Viktoriia, Sergei, and Vyacheslav have been and remain detained under 8 U.S.C. § 1225(b)(1)(B)(ii) for "consideration of [their] application for asylum."

"Section 1225 applies to 'applicants for admission'—noncitizens who 'arrive[] in the United States,' or are 'present' in the United States but have 'not been admitted.'" *Banda*, 385 F. Supp. 3d at 1111. It "applies to, among others,

noncitizens initially determined to be inadmissible because of . . . lack of valid documentation." *Id.* That includes persons who, like Petitioners here, arrive at the border, apply for asylum, are denied asylum, and appeal that denial to the BIA. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

In years past, the Ninth Circuit applied the constitutional avoidance canon to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015). But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding that the statute does not entitle detainees to bond hearings or otherwise impose "any limit on the length of detention." 583 U.S. 281, 297 (2018). *Jennings* did not address whether prolonged, mandatory detention without a bond hearing violates due process. *Id.* at 312. The Supreme Court's later decision in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), also poses no barrier to granting relief on this detention-based due process claim. *Thuraissigiam* "circumscribe[ed] an arriving alien's due process rights to *admission*, rather than limiting that person's ability to challenge *detention*." *Mtiulishivili*, 2026 WL 377870 at *2 (emphasis in original).

Now, "[n]early all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Banda*, 385 F. Supp. 3d at 1116 (cleaned up) (collecting cases); *accord, e.g.*, *Khedry-Kiyarsi v. Divver*, No. 26-cv-623-CAB-AHG, 2026 WL 657752 (S.D. Cal. Mar. 9, 2026). Indeed, the Ninth Circuit has "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018).

V. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Viktoriia, Sergei, and Vyacheslav would prevail under any standard.

Some courts have "conclude[d] . . . that detention becomes prolonged after six months and entitles [a petitioner] to a bond hearing." *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Viktoriia, Sergei, and Vyacheslav would automatically qualify. They have been detained for eight and a half months.

Other courts have adopted various factors tests, which often include:

(1) the total length of detention to date, which is the most important factor;

(2) the likely duration of future detention;

(3) the conditions of detention;

(4) delays in removal proceedings caused by the detainee;

(5) delays in removal proceedings caused by the government; and

(6) the likelihood that the removal proceedings will result in a final order of removal.

Mtiulishvili, 2026 WL 377870 at *2 (citing *Kydryali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020), and *Banda*, 385 F. Supp. 3d at 1116).

Viktoriia, Sergei, and Vyacheslav prevail upon balancing these factors: Their eight-and-a-half-month detention, plus their appeal likely taking at least another seven months, plus their conditions of confinement, plus their likelihood of prevailing on their claims of political asylum due to their anti-war activity in Russia all warrant a bond hearing.

First, the "most important factor," the length of detention, favors the petitioners or is at most neutral. *Banda*, 385 F. Supp. 3d at 1118. They have been detained since October 10, 2025. In assessing this factor, "[i]t is important to bear in mind the context: The detention that is being examined here is the detention of a human being who has never been found to pose a danger to the community or to

be likely to flee if released." *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). And, of course, many "[c]ourts have found that detention over seven months without a bond hearing weighs toward a finding that it is unreasonable." *Amando*, 2025 WL 3079052 at *5 (collecting cases). Even courts that take a more conservative approach hold that detention in a similar range, for "over 10 months," "neither . . . prevent[s] constitutional scrutiny" nor "presumptively establish[es] unreasonably prolonged detention." *Mtiulishvili*, 2026 WL 377870 at *3 (ordering a bond hearing in light of conditions of confinement at Otay Mesa, a recently filed pending appeal, and the petitioner's young age).

Second, Viktoriia, Sergei, and Vyacheslav have reason to anticipate significant future detention. They filed their notice of appeal to the BIA in late April or early May and a briefing schedule is not yet set. Exhibits A, B, C. In the most recent available quarter of data, the median BIA appeal took over seven months; one in three took more than a year; and one in ten took more than three and a half years. Exhibit D at ¶¶ 3, 13, 14, 18. "The likely duration of future detention also favors Petitioner[s] here, where [their] appeal has recently been filed and no further dates appear to have been set." *Mtiulishvili*, 2026 WL 377870 at *3. "[T]he appeal to the BIA may take months, and any appeal to the Ninth Circuit thereafter may take years." *Beyene*, 2026 WL 1708599 at *2.

Third, Viktoriia's, Sergei's, and Vyahceslav's confinement at the Otay Mesa Detention Center "is similar to penal confinement." *Ayideji v. Casey*, No. 26-cv-16244-CAB-MMP, 2026 WL 948669, *2 (S.D. Cal. Apr. 8, 2026). Their "conditions of detention favor setting a bond hearing," as "[c]ourts in this district have found that conditions at the Otay Mesa Detention Center are 'indistinguishable from penal confinement,' and that this factor weighs in favor of petitioners' due process arguments of prolonged detention." *Mtiulishvili*, 2026 WL 377870 at *3 (quoting *Kydyrali*, 499 F. Supp. 3d at 773). Each of the petitioners has faced significant health repercussions from their lengthy

detentions. Exhibits A, B, C.

The fourth and fifth factors, regarding delay by the parties, either favor the petitioners or are neutral. Viktoriia, Sergei, and Vyacheslav have acted so diligently in pursuing their asylum cases that they moved to have their merits hearing even *earlier* than initially scheduled. Exhibits A, B, C.

Sixth, there is a significant likelihood that they will prevail on their political asylum claims. They have strong evidence that they faced a politically motivated arson attack on their home due to their anti-war activity in Russia; when they reported that attack, the police not only chose to not help them, but also began their own persecution of the family for their political activity. *Id.*

CLAIM AND PRAYER FOR RELIEF

For the reasons just given, the Fifth Amendment Due Process Clause prohibits the government from continuing to detain Petitioners.

Accordingly, Petitioners respectfully request that this Court:

1. **Order Respondents to immediately release Petitioners from custody.** "A district court has equitable discretion in determining the appropriate remedy 'as law and justice require' for unlawful detention in a habeas petition." *Figueredo v. ICE*, No. 5:26-cv-360, 2026 WL 1552402, *3 n.3 (S.D. Tex. June 2, 2026) (quoting *Brown v. Davenport*, 596 U.S. 118, 127–28 (2022)). Some district courts have found recently "that the specific harm Petitioner[s] suffered—unlawful deprivation of liberty without due process—is remedied by granting [them] immediate release, rather than ordering a bond hearing." *Id.* "[A] hearing after Petitioner[s'] unjustified deprivation of liberty does not cure the deprivation." *Id.*
2. **In the alternative, order a prompt bond hearing.** Specifically, the Court should order:
   a. Respondents provide Petitioners with a hearing and

individualized bond determinations within **fourteen days** of its order.

i. At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk.

ii. The IJ shall consider alternative conditions of release and Petitioner's ability to pay bond if he or she determines bond is appropriate.

iii. Respondents shall make a complete record of the bond hearing available to Petitioner and counsel upon request.

3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: June 22, 2026

s/ Jessie Agatstein

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