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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

Traverse in Support of Amended Petition for a Writ of Habeas Corpus

In their petition, Sergei, Viktoriia, and Vyacheslav explained that their home in Russia was set on fire after their adopted brother sang the Ukranian national anthem on his popular social media accounts in the midst of the war. When they reported it to the Russian police, the police beat them up and threatened them.[1] The family came to the border to seek asylum. Their parents

[1] *See* Radio Free Europe / Radio Liberty, *House of Father of Anti-War Blogger In Exile Attacked By Arsonists in Russia*, Sept. 17, 2024, available at https://www.rferl.org/a/danya-milokhin-dmitry-tyulenev-blogger-arson-attack-ukraine-war/33123258.html.

and younger siblings were sent to family detention and released, and they settled with significant community support and ties in the Chicago area. But Petitioners have remained detained for the last nine months. They each have very serious health conditions: Viktoriia has a gynecological disease, chronic ovarian apoplexy, from which she suffers repeated serious hemorrhages of tissue and ovarian cysts; Sergei has developed worsening mental health such that he now regularly has "nightmares, insomnia, and panic attacks"; and Vyacheslav has "severe pain related to cystitis and bladder problems." *See generally* ECF No. 6.

Not only have Petitioners caused zero delay, but they even *sped* up their case. Sergei, Viktoriia, and Vyacheslav moved to have their asylum hearing earlier than first scheduled. *Id.* at 4; *accord* ECF No. 8 at 2.

Even so, the BIA has yet to issue a briefing schedule in the last two months—a delay attributable to Respondents. Petitioners filed their notice of appeal to the BIA in early May. As of today, the BIA still has not set a briefing schedule. Over 25% of all BIA appeals are currently taking more than a year; the median is a little over seven months. *See* ECF No. 6, Exhibit D ¶¶ 3, 13, 18.

This Court should order that Sergei, Viktoriia, and Vyacheslav receive a bond hearing as a matter of due process under the factors articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106, 1118–19 (W.D. Wash. 2019). The government's remaining arguments under the *Banda* factors fails to persuade. *See* ECF No. 8 at 8–9.

First, the government does not cite any case law or explanation for its argument that the likely duration of future detention during the pending appeal is speculative or weighs against Petitioners. *See* ECF No. 8 at 8. Petitioners provided a national dataset analysis as to the median time of a pending BIA appeal that the government does not dispute. ECF No. 6, Exhibit D. Because an "appeal to the BIA may take months, and any appeal to the Ninth Circuit thereafter may take years. . . . the likely duration of future detention weighs in

Petitioner[s'] favor." *Beyene v. Larose*, No. 26-cv-3037-JLS-DDL, 2026 WL 1708599, *2 (June 12, 2026). The fact that they have chosen to appeal, "as is [their] right," does not alter this calculus. *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1111 (S.D. Cal. 2025). The factor still "favor[s] Petitioner[s]" because they "face[] an undetermined, but likely significant, period of mandatory detention through the appeals process." *Id.*

Further, contrary to the government's argument, ECF No. 8 at 8, Petitioners certainly submitted evidence that their detention "resemble[s] penal confinement," *Banda*, 385 F. Supp. 3d at 1119. They submitted declarations that they are "locked up behind razor wire and concrete," "wear[ing] a color-coded jump suit," "guarded at all times" and "restricted on when [they] can be outside and who can visit." ECF No. 6, Exhibit A ¶ 11, Exhibit B ¶ 6, Exhibit C ¶ 6. For exactly these reasons, "[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 v. Larose*, No. 26-cv-387-RSH-JLB, 2026 WL 377870, *3 (S.D. Cal. Feb. 10, 2026).

In fact, Sergei, Viktoriia, and Vyacheslav each submitted significant personal details as to how they have faced health care problems while in custody, some even more serious than typical to penal confinement. *See* ECF No. 6, Exhibits A, B, C.

Viktoriia has chronic ovarian apoplexy, for which she has not received treatment. *Id.* Exhibit A. This a condition in which women repeatedly hemorrhage from ovarian tissue and burst ovarian cysts.[2] As a result, Viktoriia has "developed severe anemia and bec[o]me extremely pale and physically weak." *Id.*

[2] *See* Cleveland Clinic, *Ruptured Ovarian Cyst* (May 4, 2026), available at https://my.clevelandclinic.org/health/diseases/ovarian-cyst-rupture; The Women's Center, *Are Ovarian Cysts Dangerous If They Keep Returning?*, available at https://wcorlando.com/are-ovarian-cysts-dangerous-if-they-keep-returning/.

Sergei has major depression that has worsened significantly in custody. Exhibit B. He has been "suffering from worsening depression, anxiety, nightmares, insomnia, and panic attacks." *Id.*

Vyacheslav has "severe pain related to cystitis and bladder problems without receiving proper treatment." Exhibit C. He has "lost approximately 10kg," or over 20 pounds. *Id.*

Finally, Petitioners have presented a strong likelihood that their appeal will result in an order other than a final order of removal. As corroborated by contemporary reporting, their house faced an arson attack in response to their adopted brother's political statements on social media. The Russian police not only failed to protect them but added their own political persecution on top. *See* ECF No. 6, Exhibits A, B, C. They have a straightforward, strong, and corroborated political asylum claim. *Id.*

For each of these reasons, this Court should hold that Petitioners' "detention without a bond hearing has become unreasonable and violates due process," and that they are "entitled to a prompt and individualized bond hearing, at which Respondents must justify [their] continued detention by a showing of clear and convincing evidence that Petitioner[s] would likely flee or pose a danger to the community if released." *Mtiulishvili*, 2026 WL 377870 at *3.

Respectfully submitted,

Dated: July 2, 2026

s/ Jessie Agatstein

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