THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION

M.K., M.R., and S.D.

Petitioner-Plaintiff,

v.

RICHARD JONES, Sheriff of Butler County, in his official capacity; **PAMELA BONDI,** Attorney General of the United States, in her official capacity; **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security, in her official capacity; **TODD LYONS,** Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; **ROBERT LYNCH,** Director of the Detroit Field Office for U.S. Immigration and Customs Enforcement, in his official capacity.

Respondents–Defendants.

Case No. 25-281

Hon. Matthew W. McFarland
Mag. Stephanie K. Bowman

PETITIONERS' EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR STAY OF REMOVAL

This is an emergency. Pursuant to Rule 65 of the Federal Rules of Civil Procedure and Local Rule 65.1, Petitioners urgently move this Court for a Temporary Restraining Order and/or stay of removal to prevent their imminent deportation—an event that could occur at any moment. Petitioners are stateless Nepali-speaking Bhutanese refugees who were lawfully resettled in the United States more than a decade ago and have now been suddenly detained for removal. Based on new evidence, their removal to Bhutan is expected to result in their immediate expulsion to

third countries—namely, India and Nepal—where they face persecution, arbitrary prosecution and detention, and lack of legal status. ICE officers met with one Petitioner, M.K., as recently as yesterday, and Petitioners' family members believe their removal is imminent. These actions strongly indicate that deportation could occur at any moment. **Absent immediate intervention, Petitioners will be removed before this Court can act—stripping the Court of jurisdiction and depriving Petitioners of any opportunity for judicial review.**

The requested relief is necessary to preserve Petitioners' statutory and constitutional rights while they pursue motions to reopen based on changed country conditions under 8 U.S.C. § 1229a(c)(7)(C)(ii). Removal before they can file or supplement such motions would cause irreparable harm and foreclose access to statutory and treaty-based protections, including withholding of removal under 8 U.S.C. § 1231(b)(3) and protection under the Convention Against Torture.

Petitioners' counsel has contacted the Office of the United States Attorney to seek the government's position on this motion but, as of the time of filing, has not yet received a response. Counsel will notify government counsel of the filing and request a preliminary conference in accordance with Local Rule 65.1. Petitioners respectfully request that the Court schedule oral argument at the earliest possible opportunity.

WHEREFORE,

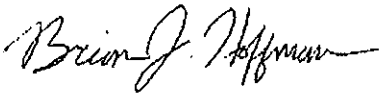
Petitioners respectfully request that this Court:

1. Issue a Temporary Restraining Order and/or Administrative Stay prohibiting Respondents from removing Petitioners until such time as they receive meaningful notice of the intended country of removal and are afforded an opportunity to seek reopening of their

immigration cases **based on recently emerged changed country conditions pursuant to 8 U.S.C. § 1229a(c)(7)(C)(ii);**

2. Set a hearing on the merits of this request for preliminary relief; and
3. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Dated this 2 day of May, 2025

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PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND ADMINISTRATIVE STAY

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STATEMENT OF ISSUES PRESENTED

1. Whether the Court should issue an emergency order to prevent the removal of Petitioners—stateless Nepali-speaking Bhutanese refugees of the Lhotshampa ethnic minority—under circumstances where the government has notice that they will be expelled to third countries where they face persecution, detention, and abuse.

   Petitioners' Answer: Yes.

2. Whether Petitioners are likely to prevail on their claims that the execution of their removal orders—without advance notice of destination and without a meaningful opportunity to reopen proceedings based on changed country conditions—violates the INA, the Convention Against Torture, and the Due Process Clause.

   Petitioners' Answer: Yes.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Statutory and Constitutional Rights to Reopen Based on Changed Country Conditions

- 8 U.S.C. § 1229a(c)(7)(C)(ii)
- 8 C.F.R. § 1003.2(c)(3)(ii)
- *INS v. Abudu*, 485 U.S. 94, 104–05 (1988)
- *Pilica v. Ashcroft*, 388 F.3d 941, 948 (6th Cir. 2004)

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- 8 U.S.C. § 1231(b)(3)
- FARRA § 2242(a), Pub. L. No. 105–277
- 8 C.F.R. §§ 1208.16–18
- *Stserba v. Holder*, 646 F.3d 964, 973 (6th Cir. 2011)
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- 28 U.S.C. § 2241
- *INS v. St. Cyr*, 533 U.S. 289, 314 (2001)
- *Hamama v. Adducci*, 912 F.3d 869, 878 & n.10 (6th Cir. 2018)
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- *Ne. Ohio Coal. for Homeless & Serv. Emps. Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006)

Petitioners submit this brief in support of their Motion for a Temporary Restraining Order and/or stay of removal.

INTRODUCTION

Petitioners—M.K., M.R., and S.D.—are stateless Nepali-speaking Bhutanese refugees of the Lhotshampa ethnic minority who were resettled in the United States more than a decade ago. Each Petitioner has a final order of removal to Bhutan and is currently detained by Immigration and Customs Enforcement (ICE) at the Butler County Correctional Complex in Hamilton, Ohio. Petitioners are now at imminent risk of removal to Bhutan, India, or Nepal—countries where they face a credible threat of persecution, torture, and indefinite detention based on their ethnicity, political opinion, and statelessness.

Critically, all three Petitioners have a statutory right to file a motion to reopen their removal orders based on **newly discovered facts** and *changed country conditions*. See 8 U.S.C. § 1229a(c)(7)(C)(ii). But those conditions only came to light **this week**, with the publication of firsthand reports and eyewitness documentation describing the persecution, expulsion, and torture of Bhutanese deportees. See Kurt Streeter, *U.S. Deported Bhutanese Who Were Here Legally. They Are Now Stateless.*, *N.Y. Times* (May 1, 2025), https://www.nytimes.com/2025/05/01/us/trump-immigration-deportations-missing.html; INHURED Letter & Field Report (Ex. A). Petitioners are unable to timely exercise their statutory rights because the relevant facts were not previously discoverable and remain inaccessible to them in detention.

Petitioner M.R. has a U.S. citizen child and a history of trauma and mental health challenges that were exacerbated by his arrest and detention. He previously initiated a psychiatric evaluation, but treatment was interrupted before any therapeutic relationship could form. Petitioner S.D. has been held incommunicado since arrest and may be unaware of the newly surfaced

evidence. Petitioner M.K. is similarly unable to file a motion to reopen without access to legal counsel, interpretation, or his own immigration records. Yet DHS intends to remove them imminently—before any motion can be filed, let alone adjudicated.

New evidence confirms that Bhutanese authorities have **not resumed lawful admissions** of deportees. Rather, since March 2025, deportees have been **denied entry**, subjected to interrogation, and expelled across the border within 24 hours. See INHURED Letter & Field Report (Ex. A). These transfers occur **clandestinely**, without formal coordination, into India and Nepal, where Lhotshampa refugees have no legal status or protection. Id. at 4–6. Some deportees were jailed upon arrival in Nepal; others have simply disappeared. Id.; Wilkie, *Two More Former Refugees*, WITF (Apr. 16, 2025), https://www.witf.org/2025/04/16/two-more-former-refugees-deported-to-bhutan-to-be-made-stateless/.

In Bhutan, returned Lhotshampa are prosecuted under the National Security Act of 1992 and may face life imprisonment for peaceful advocacy or political affiliation. See U.N. Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 60/2024 ¶¶ 22–24 (Feb. 18, 2025), https://digitallibrary.un.org/record/4079667?ln=en&v=pdf#files. The U.N. has concluded such detentions constitute **ethnically and politically motivated punishment** in violation of international law. Id. ¶¶ 32–36. Neither India nor Nepal offers legal protection to Lhotshampa deportees; both routinely detain or expel stateless individuals without legal process. See *Last Hope*, Human Rights Watch (May 16, 2007), https://www.hrw.org/report/2007/05/16/last-hope/need-durable-solutions-bhutanese-refugees-nepal-and-india; Nepal Citizenship Act 2063 §§ 3–5 (2006).

Under these conditions, removal would violate binding prohibitions under the INA and the Convention Against Torture. See 8 U.S.C. § 1231(b)(3)(A); FARRA § 2242(a); 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). These protections are mandatory and apply regardless of prior

immigration violations. See *INS v. Stevic*, 467 U.S. 407, 421–22 (1984); *Trump v. J.G.G.*, 604 U.S. ___, slip op. at 2–3 (2025) (per curiam). Due process likewise requires that Petitioners be given a **meaningful opportunity to assert newly available claims for relief** before their removal is executed. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001); *Trump v. J.G.G.*, slip op. at 3; *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

To avoid irreparable harm and preserve the opportunity to file motions to reopen, Petitioners respectfully request a temporary restraining order. If removed now, they face an imminent threat of persecution and torture—risks Congress and the Constitution are designed to prevent. See *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 226 (6th Cir. 1996). The Court has jurisdiction to enter such relief under Article I of the Constitution and the Suspension Clause, notwithstanding 8 U.S.C. § 1252(g), because Petitioners challenge the *legality of removal under new facts* and seek to exercise a statutory right that cannot otherwise be meaningfully accessed.

BACKGROUND

I. Ethnic Expulsion and Statelessness of the Lhotshampa

The Lhotshampa are a Nepali-speaking ethnic minority who lived in southern Bhutan for generations before being subjected to mass denationalization and expulsion in the early 1990s. See Maximillian Mørch, *Bhutan's Dark Secret: The Lhotshampa Expulsion*, The Diplomat (Sept. 21, 2016), https://thediplomat.com/2016/09/bhutans-dark-secret-the-lhotshampa-expulsion/. In 1988, Bhutan launched a nationwide census that reclassified tens of thousands of Lhotshampa as non-nationals and stripped them of citizenship based on arbitrary residency criteria. See Michael Hutt, *The Bhutanese Refugees: Between Verification, Repatriation and Royal Realpolitik*, 1 Peace & Democracy in S. Asia (2005), himalaya.socanth.cam.ac.uk/collections/journals/pdsa/

pdf/pdsa_01_01_05.pdf. The government followed with a campaign of cultural repression known as the "One Nation, One People" policy, banning the Nepali language in schools and mandating assimilation to Drukpa Buddhist norms. See *id.* at 3–4.

By 1993, more than 100,000 Lhotshampa had been expelled from Bhutan and confined to refugee camps in eastern Nepal. See UNHCR, *The State of the World's Refugees: Human Displacement in the New Millennium*, ch. 5 (2006), https://www.unhcr.org/us/publications/state-worlds-refugees-2006-human-displacement-new-millennium. Nepal never granted them citizenship or asylum and remains outside the 1951 Refugee Convention and 1967 Protocol. See *Human Rights Watch*, *Last Hope,* at 3–4, supra. Camp conditions were harsh and restrictive, with high rates of depression, limited healthcare, and prohibitions on employment and movement. See *id.* at 5.

II. The United States' Longstanding Recognition of the Impossibility and Danger of Bhutanese Removal

In 2007, the United States designated Bhutanese Lhotshampa refugees as a Priority 2 group for resettlement and led a multinational initiative to offer durable solutions. See See U.S. Dep't of State, *Proposed Refugee Admission for Fiscal Year 2008: Report to Congress*, at 20 (2007), https://2001-2009.state.gov/g/prm/refadm/rls/rpts/2007/92585.htm. Between 2008 and 2017, more than 85,000 Bhutanese refugees were resettled in the United States, comprising the largest single-country refugee group admitted during that decade. See *id.* at 21.

Despite final orders of removal issued to some individuals after arrival, ICE did not carry out deportations for more than a decade. See INHURED Letter & Field Report (Ex. A). Bhutan had consistently refused to issue travel documents or accept deportees, and DHS maintained a

policy of releasing individuals on orders of supervision based on humanitarian discretion and practical impossibility of removal. See *id.*

III. Abrupt Shift in 2025 and Third-Country Expulsions

This In March 2025, ICE abruptly departed from its longstanding practice and carried out the first known deportations of resettled Bhutanese refugees since the U.S.-led resettlement program began. See INHURED Letter & Field Report (Ex. A) at 3. These removals marked a sharp break from more than a decade of U.S. policy grounded in humanitarian discretion and Bhutan's refusal to accept deportees.

New facts have since emerged showing that these deportations resulted in persecution, expulsion, and renewed statelessness. Independent observers have documented that deportees were refused entry into Bhutan, subjected to interrogation, and expelled across the southern border within 24 hours. See id. Bhutanese authorities did not coordinate with Indian or Nepalese officials but instead facilitated unauthorized crossings—effectively smuggling deportees across borders without any documentation, legal status, or lawful process. *Id.* at 4–5.

At least four individuals were arrested upon arrival in Nepal and held without access to legal counsel or humanitarian assistance. See Jordan Wilkie, *Two More Former Refugees Deported to Bhutan to Be Made Stateless*, WITF (Apr. 16, 2025), https://www.witf.org/2025/04/16/two-more-former-refugees-deported-to-bhutan-to-be-made-stateless/. Although they were recently released to the refugee camps for a temporary 60-day period, their legal status remains unresolved, and their fate beyond that term is unknown. Others have disappeared entirely after removal. See INHURED Letter & Field Report (Ex. A) at 5–6.

These recent events establish—*for the first time*—a concrete risk of persecution and torture upon removal, not only in Bhutan but also through clandestine expulsion into India and Nepal.

Petitioners are entitled to seek protection under 8 U.S.C. § 1231(b)(3)(A) and the Convention Against Torture, but they cannot meaningfully do so unless given a fair opportunity to file motions to reopen based on these newly discovered country conditions. See 8 U.S.C. § 1229a(c)(7)(C)(ii).

Removal in the face of these emergent facts would not only violate binding statutory protections, it would also deprive Petitioners of their constitutional right to be heard at a meaningful time and in a meaningful manner. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The Court retains jurisdiction under the Suspension Clause to ensure that Petitioners are not removed before they can avail themselves of these protections, notwithstanding the general bar under 8 U.S.C. § 1252(g).

IV. International Condemnation and Legal Conditions in Receiving Countries

Bhutan's treatment of Lhotshampa returnees has drawn sustained international condemnation. In a 2025 opinion, the U.N. Working Group on Arbitrary Detention concluded that Bhutan's prosecution and imprisonment of Lhotshampa individuals under the National Security Act of 1992 constitutes arbitrary punishment based on political opinion, ethnicity, and statelessness. See U.N. Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 60/2024, ¶¶ 22–24, 32–36 (Feb. 18, 2025), https://digitallibrary.un.org/record/4079667?ln=en&v=pdf#files. While the report predates the most recent U.S. removals, it underscores Bhutan's longstanding pattern of targeting Lhotshampa returnees—including those who re-entered Bhutan from Nepal—for life sentences and other harsh penalties for peaceful advocacy or unauthorized reentry. See id. at ¶ 24.

Meanwhile, deportees rerouted into Nepal face a complete absence of legal protection. Nepal is not a party to the 1951 Refugee Convention or the 1967 Protocol and has no domestic asylum framework. See *Last Hope: The Need for Durable Solutions for Bhutanese Refugees in*

Nepal and India, Human Rights Watch, at 3–4 (May 16, 2007), https://www.hrw.org/report/2007/05/16/last-hope/need-durable-solutions-bhutanese-refugees-nepal-and-india. The Nepal Citizenship Act of 2006 bars most individuals of Bhutanese descent from acquiring citizenship and limits naturalization for Bhutanese men, including those married to Nepalese citizens. See Nepal Citizenship Act 2063 §§ 3–5 (2006).

Four individuals recently deported by the United States were initially jailed upon arrival in Nepal. Although the Nepalese Supreme Court ordered their **conditional release** last week, they remain under strict movement restrictions and have been confined to refugee camps under the supervision of designated individuals. See INHURED Letter & Field Report (Ex. A). Their legal status remains unresolved, and they may be subject to renewed detention or expulsion after 60 days. Id.

Despite these realities, the United States resumed removals to Bhutan in March 2025 without public disclosure of the receiving country's willingness to accept deportees or provide any form of protection. See id. at 5–6. In practice, the removal process functions as a chain of extrajudicial expulsions—initiated by ICE and culminating in expulsion from Bhutan and legal limbo in India or Nepal. Deportees are transferred across borders without status, process, or meaningful protection, placing them at risk of renewed detention, disappearance, or torture.

V. Structural Barriers to Relief and the Urgency of Judicial Intervention

Petitioners' removal orders became final years ago. But until this week, the factual and legal basis for a motion to reopen based on changed country conditions did not exist. See 8 U.S.C. § 1229a(c)(7)(C)(ii). Only now—with new reporting, witness documentation, and international concern over recent deportations—do Petitioners have access to evidence capable of supporting

protection claims under the INA and Convention Against Torture. Judicial intervention is urgently required to preserve their ability to invoke these statutory rights.

Even under ordinary circumstances, preparing and filing a motion to reopen is not immediate. As one district court has recognized, "under normal circumstances, preparing a motion to reopen can take anywhere from three to six months." *Hamama v. Adducci*, Order Granting Petitioners' Motion for Temporary Restraining Order, No. 17-cv-11910, at 4 (E.D. Mich. July 24, 2017) (attached as exhibit). That timeline assumes timely access to legal representation and documentation—conditions that are rarely met in immigration detention.

Current data confirms a worsening crisis in legal access: "Five years ago, noncitizens had found attorneys in 65 percent of all pending cases in the Court's backlog. Today, this proportion has dropped to just 30 percent." Transactional Records Access Clearinghouse (TRAC), *Too Few Immigration Attorneys: Average Representation Rates Fall from 65% to 30%*, https://tracreports.org/reports/736 (last visited Apr. 30, 2025). These challenges are compounded in detention, where access to legal calls, interpreters, and immigration files is routinely limited. Although ICE advertises that legal calls can be arranged at Butler County Jail, those procedures are nonfunctional in practice. Counsel has been unable to reach Petitioner M.K. despite repeated attempts. See U.S. Immigration & Customs Enf't, *Butler County Sheriff's Office* (May 1, 2025) (attached as Exhibit C).

While detention conditions and lack of counsel further delay the preparation of motions to reopen, the core obstacle is temporal: the changed country conditions forming the basis for reopening *only emerged in the last several days*. Petitioners cannot be expected to invoke rights that were unavailable until now. Without a temporary restraining order, they will be removed before they can access the very remedies Congress has provided.

LEGAL STANDARD

A temporary restraining order is appropriate where the moving party demonstrates: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent injunctive relief; (3) that the balance of equities tips in their favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). In the Sixth Circuit, these factors are not rigid prerequisites, but interrelated considerations that must be balanced in light of the circumstances. *Ne. Ohio Coal. for Homeless & Serv. Emps. Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006). A strong showing of irreparable harm may justify relief even where the probability of success is less certain. *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991).

Petitioners meet each prong of this standard. They are likely to succeed on the merits because removal under newly emerged country conditions—without notice or an opportunity to seek reopening—violates the INA, the Convention Against Torture, and the Due Process Clause. The harm they face is both irreparable and imminent: cross-border expulsion, statelessness, and denial of statutory protections that cannot be asserted once removal occurs. The balance of equities strongly favors preserving the status quo, and the public interest is served by ensuring that removals proceed only in compliance with binding legal obligations.

I. Petitioners Are Likely to Succeed Because the Government's Execution of Removal Prevents the Exercise of Statutory and Constitutional Rights

Petitioners are stateless Nepali-speaking Bhutanese refugees who face imminent removal under circumstances that violate the Immigration and Nationality Act (INA), the Convention Against Torture (CAT), and the Due Process Clause of the Fifth Amendment. Since March 2025, new evidence has emerged—documented for the first time—that deported Bhutanese refugees are being refused entry into Bhutan, expelled across multiple borders, and subjected to indefinite

detention or disappearance in Nepal and India. These changed country conditions trigger a statutory and constitutional right to reopen removal proceedings. See 8 U.S.C. § 1229a(c)(7)(C)(ii); *INS v. Abudu*, 485 U.S. 94, 104–05 (1988); *Pilica v. Ashcroft*, 388 F.3d 941, 948 (6th Cir. 2004).

Petitioners are not challenging their removability as adjudicated years ago. Rather, they seek to invoke a distinct legal right—the right to reopen proceedings in light of *new, previously unavailable facts*. See 8 C.F.R. § 1003.2(c)(3)(ii). The statutory scheme recognizes that immigration conditions are dynamic and that safeguarding noncitizens from persecution and torture requires courts and agencies to respond to newly discovered evidence. Preventing Petitioners from exercising that right now—after such evidence has finally emerged—would violate both statute and the Constitution.

A. The INA Guarantees a Right to Reopen Based on Changed Country Conditions

The INA expressly entitles noncitizens to file a motion to reopen removal proceedings based on material changes in country conditions. 8 U.S.C. § 1229a(c)(7)(C)(ii). Congress imposed no limit on the number of such motions and exempted them from time constraints, reflecting the fundamental nature of the right and its role in preventing refoulement. See *INS v. Abudu*, 485 U.S. at 104–05.

The facts here are not speculative. For the first time in over a decade, ICE deported resettled Bhutanese refugees in March 2025. Independent monitors subsequently documented that deportees were rejected at the Bhutanese border, interrogated, and forcibly expelled—first through India, and then into Nepal, without documentation, protection, or legal status. See INHURED Letter & Field Report (Ex. A) at 4–6; Jordan Wilkie, *Two More Former Refugees Deported to Bhutan to Be Made Stateless*, WITF (Apr. 16, 2025), https://www.witf.org/2025/04/16/two-more-

former-refugees-deported-to-bhutan-to-be-made-stateless/. Four deportees were initially jailed by Nepalese authorities. They have since been released into tightly restricted conditions within refugee camps, pending an uncertain legal outcome. Others have simply disappeared.

These are precisely the types of changed factual circumstances that Congress contemplated in enacting 8 U.S.C. § 1229a(c)(7)(C)(ii). Petitioners could not have presented these claims at their original hearings or in any prior filings because the circumstances giving rise to protection did not exist until now. Nor could they have predicted that ICE would begin executing removals to Bhutan in violation of long-standing U.S. policy and despite Bhutan's lack of lawful readmission procedures for Lhotshampa deportees.

B. Removal Without Notice or Opportunity to Reopen Violates Due Process

The Due Process Clause of the Fifth Amendment protects all persons, including noncitizens, from arbitrary government action. See *Reno v. Flores*, 507 U.S. 292, 306 (1993). At its core, due process requires notice and "the opportunity to be heard … at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

ICE re-detained all three Petitioners in early April 2025—just days after the first public reports surfaced documenting Bhutan's expulsion of deportees into third countries. These events had never been presented or considered in any prior proceedings. Nonetheless, ICE intends to execute removal without affording Petitioners notice of their actual destination, a chance to prepare motions to reopen, or the ability to supplement filings with newly discovered facts.

These facts constitute a clear due process violation. See *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (reversing denial of motion to reopen where noncitizen was denied notice of

changed country conditions and a meaningful opportunity to respond); *Kossov v. INS*, 132 F.3d 405, 408–09 (7th Cir. 1998) (same).

Although legal access problems—such as lack of attorney contact, phone restrictions, and isolation in detention—compound the harm, they are not the crux of this claim. The essential issue is temporal: the right to seek reopening only became meaningful once these conditions were publicly documented. Depriving Petitioners of the opportunity to file on that basis violates both the INA and the Constitution. See *Pilica v. Ashcroft*, 388 F.3d at 948.

C. The Government's Planned Removals Violate U.S. and International Law

Federal law prohibits removal to a country where a noncitizen's "life or freedom would be threatened" on account of a protected ground, or where they are more likely than not to face torture. See 8 U.S.C. § 1231(b)(3)(A); *FARRA § 2242(a)*; 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). These protections apply irrespective of past immigration violations or final removal orders. See *INS v. Stevic*, 467 U.S. 407, 421–22 (1984).

Petitioners have submitted credible, corroborated evidence that removal would result in expulsion to countries where they would face indefinite detention, persecution, or disappearance. Bhutan continues to prosecute Lhotshampa returnees under the National Security Act of 1992. See U.N. Human Rights Council, Opinion No. 60/2024, ¶ 24. India and Nepal provide no legal status or protection for deportees, and Nepal continues to detain refugees in legally precarious conditions. See INHURED Letter & Field Report (Ex. A); Human Rights Watch, *Last Hope*, at 3–4.

The Sixth Circuit has recognized that expulsion or denationalization based on ethnicity may constitute persecution. In *Stserba v. Holder*, the Court held that "denationalization that results in statelessness is an extreme sanction" and "may be per se persecution when it occurs on account of a protected status such as ethnicity." *Stserba v. Holder*, 646 F.3d 964, 973 (6th Cir. 2011).

Likewise, in *Ouda v. INS*, the Court found that forced expulsion due to ethnic or political identity—standing alone—is sufficient to establish past persecution. *Ouda v. INS*, 324 F.3d 445, 454 (6th Cir. 2003) ("The mere fact that the Oudas were ordered by the government to leave Kuwait because they were perceived enemies of their country is sufficient alone to establish past persecution.").

The government's plan to effectuate removal knowing these risks—and to do so before Petitioners can seek reopening—raises grave legal and ethical concerns.

D. This Court Has Jurisdiction Under the Suspension Clause and § 2241

This Court has jurisdiction to enjoin the government's unlawful execution of removal orders under 28 U.S.C. § 2241 and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2. Petitioners do not seek adjudication of removability, nor do they request physical release. Instead, they seek narrow relief to preserve their ability to access congressionally authorized protection mechanisms before they are removed to countries where they may face persecution or torture. See *INS v. St. Cyr*, 533 U.S. 289, 314 (2001); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

To the extent that 8 U.S.C. § 1252(g) is asserted as a bar to jurisdiction, such a reading would raise serious constitutional problems. The Suspension Clause guarantees a forum for legal redress when liberty and removal are at stake and no other legal remedy exists. See *St. Cyr*, 533 U.S. at 314. Petitioners allege violations arising from newly emergent facts that became known only in March and April 2025. These are not claims that could have been previously raised or adjudicated.

Hamama v. Adducci, 912 F.3d 869 (6th Cir. 2018), does not bar jurisdiction here. In *Hamama*, the petitioners had known of the risk of removal for years and failed to file motions to reopen. Here, by contrast, Petitioners face *newly emerged* country conditions that trigger statutory rights and render removal unlawful. The Sixth Circuit in *Hamama* expressly limited its holding to

cases where the government "had a plan for removal" and where conditions were long known. *Id.* at 878 & n.10. That is not this case.

Finally, to the extent *Trump v. J.G.G.*, 604 U.S. ___ (2025), is relevant, it confirms that habeas jurisdiction encompasses claims that challenge the government's legal authority to remove individuals before they can exercise statutory protections. The Court emphasized that habeas review is essential where removal would effectively extinguish access to judicial remedies. See *id.*, slip op. at 2–3 (citing *Peyton v. Rowe*, 391 U.S. 54, 67 (1968)).

Even if this Court were uncertain about the full scope of its jurisdiction, it may and should preserve the status quo while resolving those questions. See *Hamdi ex rel. Hamdi v. Napolitano*, 620 F.3d 615, 622 (6th Cir. 2010); *Mustata v. U.S. Dep't of Justice*, 179 F.3d 1017, 1019 (6th Cir. 1999). The government cannot be permitted to carry out removals that extinguish Petitioners' legal rights while jurisdiction is still under review.

II. PETITIONERS WILL SUFFER IRREPARABLE HARM ABSENT EMERGENCY RELIEF

A. Harm to Petitioners Is Imminent, Grievous, and Irreparable

Petitioners face imminent removal under an opaque and perilous transfer regime, just as newly emerged evidence has made them eligible to seek reopening under 8 U.S.C. § 1229a(c)(7)(C)(ii). Their ability to assert that right is time-sensitive—and removal now would extinguish it permanently.

M.K. has already filed a motion to reopen but has been unable to supplement it with critical new evidence due to his transfer into ICE detention and his inability to reach counsel by phone. He is married to a U.S. citizen, and the couple is expecting their first child in June 2025. See M.K. Aff. (Apr. 5, 2025) (Ex. B) ¶ 12. M.R. suffers from adjustment disorder and complex trauma

symptoms. He began mental health treatment shortly before detention but has been unable to continue care or pursue reopening due to complete lack of access to counsel. S.D. has not spoken with family since his April 11, 2025, arrest and lacks access to contact information for any attorney or relative.

All three Petitioners face imminent removal to Bhutan, Nepal, or India under conditions that did not exist when their final orders were entered. Bhutan has refused to accept deportees as citizens, instead interrogating and forcibly expelling them across its borders within hours of arrival. See INHURED Letter & Field Report (Ex. A); Wilkie, *Two More Former Refugees*, supra. Deportees have been transferred without documentation into India and Nepal, where they lack legal status and face indefinite detention, disappearance, or forced encampment. Although several were initially jailed, they have now been conditionally released to refugee camps under court-imposed restrictions that leave their long-term status uncertain. See INHURED Letter & Field Report (Ex. A).

These facts are not speculative. They mirror the documented experience of individuals already removed. The U.N. Working Group on Arbitrary Detention has warned that Lhotshampa deportees are at risk of imprisonment based on political opinion, ethnicity, and statelessness. See U.N. Human Rights Council, Opinion No. 60/2024, supra, ¶¶ 22–24, 32–36.

The Sixth Circuit has likewise recognized that denationalization or forced expulsion based on ethnicity may itself constitute persecution. In *Stserba v. Holder*, the Court explained that "denationalization that results in statelessness is an extreme sanction" and "may be per se persecution when it occurs on account of a protected status such as ethnicity." *Stserba v. Holder*, 646 F.3d 964, 973 (6th Cir. 2011). And in *Ouda v. INS*, the Court held that forced removal based

on perceived political identity—standing alone—can constitute past persecution. *Ouda v. INS*, 324 F.3d 445, 454 (6th Cir. 2003).

Petitioners were born into statelessness as members of a community forcibly expelled by Bhutan in the 1990s and never recognized by Nepal or India. See Human Rights Watch, *Last Hope*, at 3–4; Nepal Citizenship Act 2063 §§ 3–5 (2006). These conditions have sharply deteriorated in just the past month. Immediate removal would expose them to a foreseeable and well-documented chain of expulsion, detention, and legal erasure—without access to any process, country of refuge, or nationality.

This harm is irreparable in every legally cognizable sense. Removal now would not only expose Petitioners to persecution and torture in violation of U.S. law—it would eliminate their ability to access statutory protection mechanisms altogether. See 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.18(a)(1); *INS v. Stevic*, 467 U.S. 407, 421–22 (1984). Once removed, Petitioners will not be able to re-enter the United States or assert claims retroactively. The injury—both legal and physical—is final.

B. Emergency Relief Is Necessary to Preserve Petitioners' Rights

All three Petitioners are now eligible to seek reopening of their final removal orders based on newly emerged conditions in Bhutan and the surrounding region. That process requires access to counsel, legal documents, and time to develop a factual record. None of those conditions exist in ICE custody.

M.R. and S.D. have been unable to prepare motions at all due to isolation and the lack of communication with legal counsel. Even M.K.—who managed to file a motion to reopen just days before detention—has been unable to supplement it with the most critical evidence: newly documented country conditions, made public for the first time in April 2025. The government's

attempt to remove Petitioners before they can pursue these claims directly undermines the statutory framework Congress enacted to prevent wrongful removal.

The government has not publicly identified which country will accept Petitioners, nor confirmed whether any has agreed to receive them lawfully. In light of Bhutan's expulsion practices and Nepal's record of arresting deportees, removal under these circumstances is not only unlawful—it is dangerous. The constitutional and statutory right to seek reopening would be extinguished before it could be meaningfully exercised. Emergency relief is necessary to preserve jurisdiction and allow Petitioners to file claims based on facts that simply did not exist weeks ago.

III. THE BALANCE OF EQUITIES FAVORS PETITIONERS

The balance of hardships tips overwhelmingly in favor of Petitioners. See *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008). They face imminent and irreparable harm: stateless expulsion, indefinite detention, and potential disappearance in third countries with no obligation to protect them. By contrast, the government would suffer no material prejudice from a temporary delay allowing Petitioners to file or supplement motions to reopen.

Deportees expelled in March and April 2025 were forcibly transferred across multiple borders without screening or legal status. See INHURED Letter & Field Report (Ex. A); Wilkie, *Two More Former Refugees*, supra. Similar removal now would eliminate access to counsel, foreclose fact development, and place Petitioners at immediate risk of physical and legal harm.

This is precisely the kind of scenario where equitable relief is warranted to preserve the status quo. See *Reid v. Hood*, No. 1:10-CV-2842, 2011 WL 251437, at *2 (N.D. Ohio Jan. 26, 2011); *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 226 (6th Cir. 1996) ("[T]he purpose of a TRO under Rule 65 is to preserve the status quo so that a reasoned resolution of a dispute may be had.").

IV. THE PUBLIC INTEREST STRONGLY SUPPORTS TEMPORARY RELIEF

The public interest is served when removals occur in a manner that respects statutory and constitutional protections. Petitioners seek only the opportunity Congress has guaranteed: to file motions to reopen based on facts previously unavailable. See 8 U.S.C. § 1229a(c)(7)(C)(ii); FARRA § 2242(a); 8 C.F.R. §§ 1208.16–18.

Where ICE pursues removal to countries that are known to reject deportees and expose them to danger, judicial oversight is not only lawful—it is necessary. See *Devitri v. Cronen*, 290 F. Supp. 3d 86, 91 (D. Mass. 2017) ("The public interest is served by assuring that persons subject to removal are not deported in violation of their statutory or constitutional rights.").

Temporary relief here ensures that Petitioners can exercise rights they never had a meaningful chance to assert. That is not only in Petitioners' interest—it is essential to the integrity of the immigration system and the rule of law.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Petitioners respectfully request that the Court:

1. Issue a Temporary Restraining Order enjoining Respondents from executing Petitioners' removal orders pending further order of this Court;
2. Order Respondents to provide written notice identifying the specific country to which each Petitioner is to be removed, including whether that country has affirmatively agreed to accept the individual;
3. Enjoin removal for a reasonable period following the provision of such written notice, sufficient to allow Petitioners to pursue motions to reopen or other protection-based relief before the immigration courts;
4. Grant such further relief as the Court deems just and appropriate to preserve Petitioners' statutory and constitutional rights.

Dated: May 2, 2025

Respectfully submitted,

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Counsel for Petitioner-Plaintiff

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION

M.K., M.R., and S.D.

Petitioner-Plaintiff,

v.

RICHARD JONES, Sheriff of Butler County, in his official capacity; **PAMELA BONDI,** Attorney General of the United States, in her official capacity; **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security, in her official capacity; **TODD LYONS,** Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; **ROBERT LYNCH,** Director of the Detroit Field Office for U.S. Immigration and Customs Enforcement, in his official capacity.

Respondents–Defendants.

Case No. 25-281

Hon. Matthew W. McFarland
Mag. Stephanie K. Bowman

PROPOSED ORDER

Upon consideration of Petitioner-Plaintiff's Motion for a Temporary Restraining Order, the Memorandum of Law in Support of the Motion, and his Petition for a Writ of Habeas Corpus and Complaint for Injunctive Relief ("Petition"), and together with the exhibits annexed thereto, **IT IS HEREBY ORDERED** that:

1. Pending consideration of all claims before this Court, Respondents ARE HEREBY RESTRAINED from transferring the Petitioner from the Southern District of Ohio;

2. Pending consideration, Respondents-Defendants ARE HEREBY RESTRAINED from moving Petitioners unless seventy-two (72) hours 16 written notice of any movement is provided to Petitioner-Plaintiff's counsel;
3. Respondents are ORDERED to file a return as to why the Petition should not be granted by_____;
4. Petitioner shall have an opportunity to reply by_____;
5. The merits of the Petition shall be heard by the Court on_____;
6. It is further ORDERED that security is not required;
7. And such other and further relief as the Court may find appropriate;
8. Service of this Order shall be effected by Petitioner on the United States Attorney for the Southern District of Ohio by electronic mail by ____am/pm on_____and shall constitute good and sufficient service.

IT IS SO ORDERED:

DATED: _____,

_____
Hon.
United States District Judge

PETITIONER-PLAINTIFFS' INDEX OF EXHIBITS

Exhibit (A)	International Institute for Human Rights, Environment and Development, *Letter (Apr. 7, 2025), Field Report (Apr. 2–3, 2025)*
Exhibit (B)	Affidavit of M.K. (Apr. 5, 2025), submitted in support of Motion to Reopen, Board of Immigration Appeals.
Exhibit (C)	U.S. Immigration & Customs Enf't, *Butler County Sheriff's Office* (May 1, 2025)

UNPUBLISHED CASES

Exhibit (D)	*Hamama v. Adducci, Order Granting Petitioners' Motion for Temporary Restraining Order*, No. 17-cv-11910, at 4 (E.D. Mich. July 24, 2017)
Exhibit (E)	*Trump v. J.G.G.*, 604 U.S. ___, slip op. (2025) (per curiam)