

ALEC S. BRACKEN (USBN 17178)
CONTIGO LAW
P.O. Box 249
Midvale, UT 84047
Phone: 801-980-9430
Email: alec@contigo.law
Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

Esneyder Fernando Rivera Gomez,

Petitioner

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

BRET BRADFORD, in his official capacity as
ICE Field Officer Director,

FRANCISCO VENEGAS, in his official
capacity as the warden of the El Valle
Detention Facility,

PAMALA BONDI, in her official capacity as
the United States Attorney General,

United States Immigration and Customs
Enforcement.

Respondents

Civil No.: 4:25-cv-4594

EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner, by and through undersigned counsel, respectfully moves this Court for a Temporary Restraining Order (TRO) pursuant to Federal Rule of Civil Procedure 65(b), to enjoin Respondents from removing Petitioner from the United States while his habeas petition is pending and to immediately release him from custody.

I. INTRODUCTION

Esneyder Fernando Rivera Gomez (Petitioner), by and through his undersigned counsel, hereby files this petition for a Temporary Restraining Order. Petitioner entered the United States on October 23, 2023 after having presented himself at the border for asylum. Ex. 1. Petitioner is a native and citizen of Colombia. *Id.* At the border, Petitioner was given a credible fear interview and was permitted to enter the United States on a form of parole. Ex. 4; *see also* 8 U.S.C. 1182(d)(5).

Soon after removal proceedings were commenced against Petitioner. Ex. 1. On May 28, 2025, DHS filed a motion with the immigration judge to dismiss proceedings, alleging that Petitioner was subject to expedited removal. Ex. 3. However, soon after, DHS discovered that he had already been subjected to expedited removal and was found to have a credible fear of return to his home country. Ex. 4. DHS immediately filed a motion to reconsider the IJ's decision. Ex. 2.

Immediately after dismissing proceedings, Petitioner filed an appeal of the IJ's decision with the Board of Immigration Appeals, which kept the dismissal from being final. Ex. 5. On September 24, 2025, Petitioner withdrew his appeal, thus making the dismissal final. Ex. 5. At this time, there are no open proceedings against Petitioner.

Under 8 U.S.C. § 1225(b)(1), certain arriving aliens who are not lawful permanent residents and who lack proper entry documents may be subject to expedited removal. This process allows immigration officers at a port of entry, or within 100 miles of the border, to quickly determine

1 admissibility and order removal without a full hearing before an immigration judge. Expedited removal
2 is typically applied to individuals who have recently entered the United States or attempted entry
3 without inspection, and it is designed to prevent inadmissible persons from entering the country. During
4 the expedited removal process, the alien is detained pending a credible fear screening; if the alien
5 expresses a credible fear of persecution or torture, they may be referred for a full asylum interview and
6 proceedings before an immigration judge. Importantly, release from detention prior to these
7 proceedings is only available through discretionary parole under 8 U.S.C. § 1182(d)(5), emphasizing
8 the mandatory detention framework for arriving aliens.
9
10

11 If an arriving alien is found to have a credible fear, then the expedited removal proceedings are
12 terminated and the alien is referred to an immigration judge for removal proceedings under 8 U.S.C.
13 1229a. 8 C.F.R. § 235.6.
14

15 Once an asylum officer determines that an alien has a credible fear of persecution or torture,
16 the expedited removal proceedings under 8 U.S.C. § 1225(b)(1) and 8 C.F.R. § 235.3 are terminated,
17 and the alien is referred to an immigration judge for full removal proceedings under 8 U.S.C. § 1229a.
18 At that point, DHS may not recommence expedited removal proceedings against the same alien for the
19 same encounter, as doing so would circumvent the statutory and regulatory framework established to
20 ensure that individuals with a credible fear are afforded a full hearing and the opportunity to apply for
21 asylum, withholding of removal, or protection under the Convention Against Torture. This principle is
22 reflected in the USCIS and EOIR guidance, which emphasizes that credible fear findings convert the
23 alien's case from an expedited removal process to formal removal proceedings before an immigration
24 judge.
25
26
27

28 When the removal proceedings under 8 U.S.C. § 1229a were dismissed, this would have
terminated all removal proceedings, but for Petitioner's appeal. Since Petitioner has withdrawn his

1 appeal, there are currently no open removal proceedings under the Immigration and Nationality Act.
2
3 As Petitioner has a positive credible fear determination, DHS cannot re-commence proceedings under
4 8 U.S.C. § 1225(b)(1).

5 Instead, Petitioner may now submit an asylum and withholding of removal application with the
6 United States Citizenship and Immigration Services.

7
8 Because the petitioner has no pending or open removal proceedings, DHS lacks statutory
9 authority to detain him. Under the Immigration and Nationality Act, detention authority is tied either
10 to removal proceedings (8 U.S.C. §§ 1226, 1229a) or to mandatory detention for arriving aliens (8
11 U.S.C. § 1225(b)). Once an alien is no longer in expedited removal or formal removal proceedings,
12 and does not otherwise fall within a category requiring mandatory detention, DHS cannot lawfully
13 continue to hold the individual. Detention under these circumstances is therefore ultra vires, and the
14 petitioner must be released unless DHS can identify a separate, lawful basis for custody. Courts have
15 repeatedly recognized that immigration detention must be grounded in statutory authority, and absent
16 such authority, continued detention violates the petitioner's constitutional and statutory rights. .
17
18

19 **II. LEGAL STANDARD**

20 A Temporary Restraining Order (TRO) is an extraordinary remedy, but it is warranted when
21 the movant satisfies the four-part standard set forth by the Supreme Court. To obtain a TRO, the
22 Petitioner must show:
23

- 24 1. A likelihood of success on the merits,
- 25 2. Irreparable harm in the absence of relief,
- 26 3. The balance of equities favors the movant, and
- 27 4. The injunction is in the public interest.
- 28

1 *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139,
2
3 156 (2010).

4 Likelihood of success on the merits requires that the Petitioner demonstrate that it is “more
5 likely than not” that the legal claim will prevail. Courts recognize that noncitizens with pending asylum
6 applications have a statutory and regulatory right to have those claims adjudicated before removal.
7

8 Irreparable harm exists when the injury cannot be adequately remedied by money damages or
9 other legal relief. *Winter*, 555 U.S. at 20.

10 Balance of equities requires weighing the harm to the Petitioner against any potential harm to
11 the Respondents from issuance of a TRO. *Winter*, 555 U.S. at 24.

12 Public interest favors compliance with statutory and regulatory requirements, and the United
13 States’ obligations under international law to protect individuals from persecution and torture.
14

15 **III. ARGUMENT**

16 Petitioner is entitled to a Temporary Restraining Order because all four factors for injunctive
17 relief are met: (1) likelihood of success on the merits, (2) irreparable harm, (3) balance of equities, and
18 (4) public interest. *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Monsanto Co. v. Geertson Seed Farms*,
19 561 U.S. 139, 156 (2010).
20

21 **A. Petitioner Is Likely to Succeed on the Merits**

22 **i. Respondents Are Unlawfully Detaining the Plaintiff**

23 The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal
24 government from depriving any person of “life, liberty, or property, without due process of law.” U.S.
25 Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-
26 citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533
27 U.S. at 693.57.
28

1 Here, the petitioner is currently detained by DHS despite having no pending removal
2 proceedings or other statutory basis for custody. Because detention authority under the INA is tied to
3 either formal removal proceedings (8 U.S.C. §§ 1226, 1229a) or mandatory detention of arriving aliens
4 (8 U.S.C. § 1225(b)), the petitioner's continued detention is unsupported by any statutory provision.
5 As a result, DHS's actions deprive him of his liberty without due process of law, in violation of the
6 Fifth Amendment. Under *Zadvydas*, detention must be grounded in statutory authority and reasonably
7 related to the government's legitimate interest in effectuating removal; absent a removal order or
8 credible fear proceedings, there is no lawful basis for holding the petitioner, and continued confinement
9 constitutes a clear deprivation of liberty without due process.
10
11
12

13 The Immigration and Nationality Act (INA) sets forth specific circumstances under which the
14 federal government may detain noncitizens. Under 8 U.S.C. § 1225(b)(1), arriving aliens may be
15 detained pending a determination of admissibility, and under 8 U.S.C. § 1226(a), the Attorney General
16 may take into custody aliens who are already in removal proceedings. Additionally, 8 U.S.C. § 1226(c)
17 mandates detention for certain criminal aliens during removal proceedings. Once an alien is no longer
18 subject to expedited removal, has completed credible fear proceedings, or does not fall within one of
19 these statutory categories, the INA provides no authority for continued detention.
20
21

22 Here, the petitioner has no open removal proceedings, is not an arriving alien subject to
23 mandatory detention, and has no other statutory category that would authorize detention. Consequently,
24 DHS's continued custody of the petitioner exceeds the statutory authority granted under the INA and
25 is therefore unlawful. Courts have consistently recognized that immigration detention must be tied to
26 statutory authority, and absent such authority, detention violates both the INA and the Constitution.
27
28 *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

1 Because the petitioner does not fall within any statutory basis for detention under the INA, his
2 continued confinement is ultra vires, and DHS is required to release him immediately.

3
4 B. Petitioner Will Suffer Irreparable Harm

5 Petitioner is currently being deprived of his liberty and property while being detained. He is
6 unable to work and unable to provide for his family. DHS is actively attempting to remove Plaintiff to
7 his home country despite having a positive credible fear determination. If he is removed from the
8 United States, he could potentially face persecution and even death.

9
10 C. The Balance of Equities Favors Petitioner

11 Respondents suffer minimal burden by released Petitioner and releasing petitioner would be in
12 the interest of justice and would secure his due process rights.

13
14 In contrast, Petitioner faces permanent harm to his liberty and safety. He has been detained for
15 over four months and faced potential death if returned to his home country.

16
17 D. The Public Interest Supports a TRO

18 Public interest supports preserving the due process rights of every individual in the United
19 States. If Petitioner remains detained by the U.S. government he faces further deprivation of his rights,
20 and his life and liberty.

21
22 IV. CONCLUSION

23 Because all four TRO factors are satisfied—likelihood of success, irreparable harm, favorable
24 balance of equities, and public interest—Petitioner respectfully requests that the Court:

- 25
26 1. Issue an immediate Temporary Restraining Order prohibiting Respondents from removing the
27 Petitioner from the United States;
28 2. Require Respondents to release Plaintiff from custody; and
3. Schedule a prompt hearing on a preliminary injunction.

PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that the Court:

1. Issue an immediate Temporary Restraining Order prohibiting Respondents from removing Petitioner from the United States;
2. Order Respondents to release Petitioner from custody ;
3. Schedule a prompt hearing on Petitioner's request for a preliminary injunction; and
4. Grant any other relief the Court deems just and proper.

DATED: September 25, 2025

Respectfully submitted,

/S/ ALEC S. BRACKEN
Alec S. Bracken (UT SBN 17178)
Contigo Law
P.O. Box 249
Midvale, UT 84047
Tel. (801) 676-6548
Email: alec@contigo.law