

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

Civil No.: 4:25-cv-4594

EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER

Respondents

1 **PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

2  
3 Petitioner, by and through undersigned counsel, respectfully moves this Court for a Temporary  
4 Restraining Order (TRO) pursuant to Federal Rule of Civil Procedure 65(b), to enjoin Respondents  
5 from removing Petitioner from the United States while his habeas petition is pending and to  
6 immediately release him from custody.

7 **I. INTRODUCTION**

8  
9 Esneyder Fernando Rivera Gomez (Petitioner), by and through his undersigned counsel, hereby  
10 files this petition for a Temporary Restraining Order. Petitioner entered the United States on October  
11 23, 2023 after having presented himself at the border for asylum. Ex. 1. Petitioner is a native and citizen  
12 of Colombia. *Id.* At the border, Petitioner was given a credible fear interview and was permitted to  
13 enter the United States on a form of parole. Ex. 4; *see also* 8 U.S.C. 1182(d)(5).

14  
15 Soon after removal proceedings were commenced against Petitioner. Ex. 1. On May 28, 2025,  
16 DHS filed a motion with the immigration judge to dismiss proceedings, alleging that Petitioner was  
17 subject to expedited removal. Ex. 3. However, soon after, DHS discovered that he had already been  
18 subjected to expedited removal and was found to have a credible fear of return to his home country.  
19 Ex. 4. DHS immediately filed a motion to reconsider the IJ's decision. Ex. 2.

20  
21 Immediately after dismissing proceedings, Petitioner filed an appeal of the IJ's decision with  
22 the Board of Immigration Appeals, which kept the dismissal from being final. Ex. 5. On September 24,  
23 2025, Petitioner withdrew his appeal, thus making the dismissal final. Ex. 5. At this time, there are no  
24 open proceedings against Petitioner.

25  
26 Under 8 U.S.C. § 1225(b)(1), certain arriving aliens who are not lawful permanent residents  
27 and who lack proper entry documents may be subject to expedited removal. This process allows  
28 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 When the removal proceedings under 8 U.S.C. § 1229a were dismissed, this would have  
27 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 Because the petitioner has no pending or open removal proceedings, DHS lacks statutory  
8 authority to detain him. Under the Immigration and Nationality Act, detention authority is tied either  
9 to removal proceedings (8 U.S.C. §§ 1226, 1229a) or to mandatory detention for arriving aliens (8  
10 U.S.C. § 1225(b)). Once an alien is no longer in expedited removal or formal removal proceedings,  
11 and does not otherwise fall within a category requiring mandatory detention, DHS cannot lawfully  
12 continue to hold the individual. Detention under these circumstances is therefore ultra vires, and the  
13 petitioner must be released unless DHS can identify a separate, lawful basis for custody. Courts have  
14 repeatedly recognized that immigration detention must be grounded in statutory authority, and absent  
15 such authority, continued detention violates the petitioner's constitutional and statutory rights. .

16 **II. LEGAL STANDARD**

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

- 20 1. A likelihood of success on the merits,
- 21 2. Irreparable harm in the absence of relief,
- 22 3. The balance of equities favors the movant, and
- 23 4. The injunction is in the public interest.

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

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

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

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

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

### III. ARGUMENT

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

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

i. Respondents Are Unlawfully Detaining the Plaintiff

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

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

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

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           C. The Balance of Equities Favors Petitioner

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

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

14           D. The Public Interest Supports a TRO

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

18           **IV. CONCLUSION**

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

21           1. Issue an immediate Temporary Restraining Order prohibiting Respondents from removing the  
22 Petitioner from the United States;  
23  
24           2. Require Respondents to release Plaintiff from custody; and  
25  
26           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