

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Bikash Gurung,	§
Petitioner,	§ No.5:25-cv-01739-OLG
V.	§
Pamela J. Bondi, Attorney General of the United States	§
Reynaldo Castro, Warden, South Texas Ice Processing Center;	§
Sylvester Ortega, Field Office Director, ICE;	§
Todd M. Lyons, Director, Ice;	§
Kristi Noem, Secretary, Department of Homeland Security.	§

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Designation as EMERGENCY is warranted. Each additional day of unlawful detention inflicts irreparable harm: Petitioner’s physical liberty is restrained; his family is deprived of his presence and financial support; and ICE’s ongoing custody—without lawful procedures, notice, or any identified receiving country—creates a continuing risk of sudden transfer and/or removal action without meaningful opportunity for judicial review. No adequate remedy exists absent immediate intervention.

Petitioner therefore respectfully requests that the Court: (1) enjoin removal and any transfer outside this Division pending resolution of his habeas petition; (2) restore Petitioner to supervised release under his prior Order of Supervision (or substantively equivalent conditions); (3) set this Motion for an expedited hearing at the Court’s earliest availability; and (4) under Rule 65(c), waive security or set a nominal bond given the constitutional and statutory claims asserted against the Government.

Petitioner Bikash Gurung, by and through undersigned counsel, respectfully moves this Court for a temporary restraining order and preliminary injunction to halt his continued unlawful detention

and preserve the *status quo* pending adjudication of his Petition for Writ of Habeas Corpus. In support, Petitioner states as follows:

I. FACTUAL BACKGROUND

1. Petitioner Bikash Gurung (A# [REDACTED]) is a stateless person born on [REDACTED] [REDACTED] in a refugee camp in Nepal. He has never been recognized as a Nepali citizen, has never been issued a Nepali birth certificate, and has never held a passport from any country. His parents were born in Bhutan; Nepal's citizenship laws do not grant citizenship based solely on place of birth, and Nepali documentation was not issued to him.
2. On April 28, 2009, Mr. Gurung entered the United States as a lawful permanent resident (RE8). He has lived in the United States continuously for more than sixteen years. His parents later naturalized as U.S. citizens and his siblings derived citizenship; Mr. Gurung did not derive citizenship because he was over eighteen at the time. His wife, son, and grandparents are U.S. citizens.
3. On March 25, 2022, an Immigration Judge ordered Mr. Gurung removed based on a conviction deemed to render him deportable.
4. On August 4, 2022, ICE released Mr. Gurung from custody under an Order of Supervision ("OSUP"). He fully complied with all conditions and did not violate the OSUP.
5. In January 2025, ICE re-detained Mr. Gurung. He has been held at the South Texas ICE Processing Center ("STIPC"), 566 Veterans Drive, Pearsall, Texas 78061, since January 2025—approximately eleven months.

6. ICE has not provided Mr. Gurung with a written OSUP revocation notice stating the alleged violation(s), has not afforded him the prompt informal interview required by regulation after return to custody, and has not provided a meaningful custody review consistent with DHS's own regulations. He was never given an opportunity to have counsel present at any conversations with officers.
7. Critically, no country has agreed to accept Mr. Gurung for removal. Because he is stateless, removal is not reasonably foreseeable. ICE has had years since the final order to effect removal and has not done so; continued detention is not tethered to any realistic removal plan.
8. Mr. Gurung has deep community ties, and his continued detention deprives his U.S. citizen family of his companionship and financial support. Prior to detention, he worked as a manager at a Chevron gas station for approximately two and a half years.
9. Petitioner incorporates by reference all factual allegations set forth in the Petition for Writ of Habeas Corpus on file in this case, and the exhibits attached thereto.

II. LEGAL STANDARD

10. A temporary restraining order and preliminary injunction preserve the *status quo* and prevent irreparable harm until the Court can resolve the merits.
11. Injunctive relief is appropriate where the movant shows: (1) a likelihood of success on the merits; (2) a substantial threat of irreparable harm if relief is denied; (3) that the balance of equities favors the movant; and (4) that an injunction will not disserve the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012).

12. When the Government is the opposing party, the balance-of-equities and public-interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000).

III. ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits

13. Petitioner has a strong likelihood of success on multiple independent grounds, each of which warrants injunctive relief.
14. *Zadvydas* prohibits continued detention where removal is not reasonably foreseeable.
15. Under 8 U.S.C. § 1231(a)(6), post-order detention is limited to the period reasonably necessary to effect removal. *Zadvydas v. Davis*, 533 U.S. 678, 689–700 (2001). Once removal is no longer reasonably foreseeable, continued detention is not authorized. *Id.* at 699–700. After six months, detention becomes presumptively unreasonable and the burden shifts to the Government to rebut a showing that removal is not significantly likely in the reasonably foreseeable future. *Id.* at 701.
16. Here, Petitioner has been detained for approximately eleven months since January 2025, with no identified receiving country and no tangible progress toward travel documents. As a stateless person with no country of nationality, Mr. Gurung has “good reason to believe” removal is not significantly likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Continued detention under these circumstances violates § 1231(a)(6) as construed in *Zadvydas*.
17. The Supreme Court has confirmed that the *Zadvydas* construction applies equally to inadmissible noncitizens under the same statutory provision. *Clark v. Martinez*, 543 U.S.

371, 386–87 (2005). The Government cannot justify indefinite or prolonged detention simply because removal is difficult or cannot occur.

18. ICE failed to follow mandatory release-revocation procedures and custody regulations.
19. ICE’s regulations require that, upon revocation of release under an order of supervision, the noncitizen must be notified of the reasons for revocation and must be afforded an initial informal interview promptly after return to custody to respond to the stated reasons. 8 C.F.R. § 241.4(l).
20. Mr. Gurung has not been served with an OSUP revocation notice stating any alleged violation(s), nor has he been afforded the required prompt informal interview after return to custody. ICE’s failure to comply with its own regulations renders the re-detention unlawful and strongly supports habeas relief.
21. Continued detention is arbitrary and violates due process.
22. The Fifth Amendment protects noncitizens from arbitrary civil detention and requires due process. *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Zadvydas*, 533 U.S. at 690. Civil immigration detention must remain reasonably related to its permissible purposes—effectuating removal, preventing flight, or addressing danger—supported by adequate procedural protections. *Zadvydas*, 533 U.S. at 690–91.
23. Where removal is a remote possibility, the Government’s flight-prevention justification is “weak or nonexistent.” *Id.* at 690. And where ICE provides no meaningful procedures for revocation and continued custody, detention becomes arbitrary and punitive in effect, violating due process.

B. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief

24. Unlawful physical detention constitutes irreparable harm. Each day of unconstitutional confinement inflicts a continuing deprivation of liberty that cannot be remedied by damages.

25. Continued detention also inflicts ongoing harm to Petitioner's U.S. citizen wife and child through prolonged separation and loss of financial and emotional support.

26. Additionally, without an injunction preserving the *status quo*, Petitioner faces a substantial risk of sudden transfer and/or removal-related action that could frustrate this Court's jurisdiction and impair meaningful review of the pending habeas claims.

C. The Balance of Equities and Public Interest Favor Relief

27. The Government has no legitimate interest in continuing detention that exceeds statutory authority, violates binding Supreme Court precedent, and disregards DHS's own mandatory procedures.

28. Petitioner seeks only to restore the *status quo ante*—release under an order of supervision he successfully complied with for years—and to prevent transfer/removal actions that would undermine this Court's ability to adjudicate the habeas petition.

29. The public interest is served by ensuring the Government complies with the Constitution, federal statutes, and its own regulations, and by preventing arbitrary confinement. *Nken*, 556 U.S. at 435.

D. Rule 65(c) Security Should Be Waived or Set at a Nominal Amount

30. Under Rule 65(c), the Court may waive security or set a nominal bond where the movant raises substantial constitutional claims and is unable to post meaningful security, and where the requested relief primarily enforces compliance with law.

31. Petitioner respectfully requests waiver of security or, alternatively, a nominal bond.

IV. REQUESTED RELIEF

For the reasons stated above and in the Petition for Writ of Habeas Corpus, Petitioner respectfully requests that the Court:

1. Grant this Emergency Motion for Temporary Restraining Order and Preliminary Injunction;
2. Enjoin Respondents, their agents, and all persons acting in concert with them from removing Petitioner to any country pending final resolution of the habeas petition, absent further order of this Court;
3. Enjoin Respondents from transferring Petitioner outside the Western District of Texas, San Antonio Division, during the pendency of this case and require at least 48 hours' written notice to counsel before any attempted transfer or removal action;
4. Order Petitioner's immediate release from ICE custody to his prior Order of Supervision (or substantively equivalent conditions of supervision), or, in the alternative, order release on appropriate conditions set by the Court;
5. Set this Motion for an expedited hearing at the Court's earliest availability; and
6. Grant any further relief the Court deems just and proper.

Respectfully submitted this 15th day of December, 2025.

/s/ Georgia Santos Laurent
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CERTIFICATE OF CONFERENCE

I certify that counsel for Petitioner has not conferred with counsel for Respondents because of the emergency nature of the requested relief and the need to prevent irreparable harm. To the extent required, undersigned will promptly confer with Government counsel at the earliest feasible opportunity.

/s/ Georgia Santos Laurent
Georgia Santos Laurent

CERTIFICATE OF SERVICE

I certify that on December 15, 2025, I filed the foregoing via the Court's CM/ECF system, which will send notice to all counsel of record who have entered an appearance.

/s/ Georgia Santos Laurent
Georgia Santos Laurent