UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Bikash Gurung,	§
Petitioner,	§ No.5:25-cv-01739
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.	§

REPLY TO FEDERAL RESPONDENTS' RESPONSE TO PETITIONER'S WRIT OF HABEAS CORPUS

Petitioner Bikash Gurung, by and through undersigned counsel, respectfully submits this Reply to Respondents' Response. Respondents' filing does not rebut the constitutional and statutory violations alleged in the Petition. Instead, it relies on factual inaccuracies, misidentification of the Petitioner, procedural misstatements, and a hearsay-based declaration that fails to establish compliance with binding detention regulations. This Reply is filed on the same day undersigned counsel received Respondents' Response by email.

I. PROCEDURAL POSTURE AND FILING IRREGULARITIES

Petitioner alleges and reincorporates all facts and arguments from the habeas petition (*ECF. No. 1*) and the TRO (*ECF. No 2*). Respondents filed their Response under SA:25-CV-01614-XR, a case initiated by Petitioner pro se. Undersigned counsel does not have direct CM/ECF access to filings in that pro se matter. Counsel received the Response on December 29, 2025, after Respondents kindly provided it by email upon request. Accordingly, this Reply is timely filed in Case No. 5:25-cv-01739, the operative habeas action filed by undersigned counsel.

II. RESPONDENTS MISIDENTIFY THE PETITIONER AND MISSTATE THE COURT'S ORDER

Respondents refer to "Garcia-Aleman" as the Petitioner. That individual is not before this Court. The Petitioner in this matter is Bikash Gurung. This fundamental error underscores Respondents' reliance on boilerplate arguments rather than a case-specific analysis.

Respondents further assert that the Court ordered a response three days after July 30, 2025. That is incorrect. This case was filed pro se in December 2025. Respondents' misstatement of the deadline further illustrates their lack of precision and undermines the credibility of their filing.

Respondents also assert that the "Petitioner does not list any specific relief sought in his Prayer for Relief." For clarity, Petitioner notes that the relief requested is expressly set forth and fully articulated in Case No. 5:25-cv-01739, which details the specific habeas and injunctive relief sought.

III. THIS CASE PRESENTS THE SAME PROLONGED DETENTION SCENARIO OCCURRING NATIONWIDE

This case reflects the same prolonged post-order detention pattern now occurring across the country:

- a noncitizen previously released on an Order of Supervision;
- full compliance with ICE reporting and cooperation requirements;
- re-detention without advance notice or meaningful process, and;
- continued custody despite the absence of a realistic removal plan.

Federal courts nationwide are confronting this exact scenario and repeatedly finding that such detention violates statutory and constitutional limits when ICE lacks a viable, timely path to removal and fails to follow its own regulations. See *Maldonado v. Macias*, 150 F. Supp. 3d 788 (W.D. Tex. 2015). See also *Hernandez-Fernandez v. Lyons et al* (W.D. Tex. Oct. 21, 2025) (Page 11) and *Las Americas Immigrant Advocacy Center v. Noem* (D.D.C. Apr. 25. 205) (Page 14).

IV. RESPONDENTS FAIL TO ADDRESS PETITIONER'S CORE ARGUMENTS

Rather than responding to the arguments raised in undersigned counsel's habeas petition and TRO, Respondents explicitly chose to rest on their response filed in SA:25-CV-01614-XR. As a result, Respondents do not address:

- the unlawful revocation of Petitioner's Order of Supervision;
- the absence of required notice to prior counsel;
- the lack of any documented informal interview;
- ICE's failure to comply with 8 C.F.R. §§ 241.4 and 241.13, or
- the absence of any **concrete and imminent** removal plan.

This failure alone warrants relief.

V. THE PENA DECLARATION IS HEARSAY AND DOES NOT ESTABLISH REGULATORY COMPLIANCE

Respondents rely exclusively on the declaration of Supervisory Detention and Deportation Officer Celestina Peña. That declaration is pure file-review hearsay and is legally insufficient.

Officer Peña does not claim that she personally:

- served any revocation notice;

- conducted or attended any informal interview;
- notified Petitioner of the reasons for continued detention; or
- notified Petitioner's prior counsel of any review.

Rather than relying on firsthand knowledge, the declarant states that her declaration is based on a review of electronic databases, the Petitioner's A-file, and information obtained from other DHS employees and contract detention facility staff.

This is textbook hearsay. It is second-hand, records-based narration that does not establish compliance with mandatory procedural safeguards.

The only suggestion that any interview occurred comes from this hearsay declaration. That assertion directly conflicts with Petitioner's sworn account and with the undisputed fact that Petitioner's prior counsel received no notice of any review, interview, or revocation process. Under binding precedent, that is not compliance.

In immigration proceedings, while hearsay is generally admissible, it must not be fundamentally unfair to the alien. The use of hearsay that lacks reliability or is contradicted by other evidence, such as the Petitioner's sworn account, may be deemed insufficient to meet procedural safeguards. The Federal Rules of Evidence, particularly Rule 801(c), provide the basis for understanding what constitutes hearsay. See *GRIJALVA-*, A038-840-614 (BIA Jun. 22, 1988) (Page 1) and *MEJIA-*, A021-327-181 (BIA Sep. 1, 1976) (Page 1).

VI. FAILURE TO COMPLY WITH 8 C.F.R. §§ 241.4 AND 241.13

The regulations governing post-order custody reviews require:

- notice of the reasons for detention;

- an opportunity to submit information;
- an informal interview; and
- **meaningful** consideration of release.

Respondents produce no revocation order, no notice, no interview record, no transcript, and no identification of the officer who allegedly conducted any review. They merely assert that a review occurred.

Courts have repeatedly and unequivocally held that an agency must strictly comply with its own regulations when those regulations confer procedural protections. In *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954), the Supreme Court established the foundational principle that an agency is bound by its own rules so long as they remain operative, and that failure to follow those rules renders the agency's action unlawful. The Court reaffirmed this doctrine in *Fort Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990), holding that even procedural regulations limiting otherwise discretionary authority must be followed.

This principle is reinforced by the Administrative Procedure Act, which authorizes courts to set aside agency action taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). Agencies may not rely on after-the-fact explanations or *post hoc* rationalizations to excuse procedural failures. See *Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003) (holding that an agency's failure to adhere to its own regulations renders its action contrary to law). Judicial review is confined to whether the agency complied with required procedures at the time the action was taken, not whether it can later assert that compliance occurred. See *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 560 (9th Cir. 2000) (rejecting

post hoc rationalizations and emphasizing that agencies may not supplement the record to cure procedural defects).

Courts addressing immigration detention have applied these principles with particular force where liberty interests are at stake. In *Villanueva v. U.S. Immigration & Customs Enforcement,* No. 4:23-cv-01044, 2024 WL 1367125, at *6–8 (S.D. Tex. Mar. 29, 2024), the court rejected ICE's reliance on a file-review declaration reciting internal codes and database entries where the government failed to produce evidence of notice, a signed revocation decision, or compliance with the informal interview requirements under 8 C.F.R. § 241.4. Similarly, in *Puertas-Mendoza v. Garland,* No. 3:23-cv-00578, 2023 WL 5090124, at *7–9 (N.D. Tex. Aug. 8, 2023), the court held that conclusory, record-based declarations were insufficient to establish compliance with post-order custody review regulations and ordered habeas relief.

Here, Respondents rely on precisely the type of after-the-fact, hearsay-based file-review declaration that courts have consistently rejected. Assertions derived from internal databases and second-hand reports cannot substitute for proof that ICE complied with the detailed procedural safeguards mandated by 8 C.F.R. §§ 241.4 and 241.13. Under *Accardi,* the APA, and binding habeas precedent, such post hoc narratives do not cure noncompliance and cannot justify continued detention.

VII. RESPONDENTS HAVE NO VIABLE REMOVAL PLAN

Respondents' own declaration confirms that:

- Nepal has refused to issue travel documents.
- Mexico denied third-country acceptance.
- No other country has agreed to accept Petitioner.

Despite this, ICE re-detained Petitioner without having a removal plan in place.

Petitioner has fully cooperated. He personally requested acceptance by third countries. He complied with every OSUP condition. ICE nevertheless re-detained him while continuing to demand a Nepalese passport, despite knowing—and acknowledging—that Petitioner is not a citizen of Nepal.

Even if a third country were to agree today, ICE would still be required to conduct a reasonable fear interview and related procedures. That process would take additional time, further extending detention. This confirms that removal is not significantly likely in the reasonably foreseeable future. Under *Zadvydas*, detention is only legal to secure removal when removability is reasonably foreseeable. This is definitely not the case.

VIII. THIS DETENTION IS ARBITRARY AND UNCONSTITUTIONAL

As set forth in the Petition for Writ of Habeas Corpus and the Emergency Motion for Temporary Restraining Order, Petitioner was previously released from ICE custody only after the agency itself determined that removal was not significantly likely in the reasonably foreseeable future. That determination formed the basis for Petitioner's placement on an Order of Supervision. Nothing material has changed since that time with respect to Petitioner's nationality, travel documentation, or the willingness of any country to accept him. What has changed is ICE's enforcement posture and administrative approach—not the underlying facts governing removability.

Re-detaining Petitioner without a concrete removal plan, without proper notice, without the required informal interview, and without compliance with the procedural safeguards mandated by 8 C.F.R. §§ 241.4 and 241.13 violates due process, the Immigration and Nationality Act, and

the Suspension Clause. As detailed in the Habeas Petition and TRO, ICE may not warehouse individuals indefinitely while searching for speculative third-country options, particularly where the agency has already concluded that removal is not foreseeable and has failed to follow its own binding regulations upon re-detention. (*See ECF. No. 1 and 2*).

IX. TRO FILED AND ONGOING IRREPARABLE HARM

Undersigned counsel filed a Temporary Restraining Order on December 15, 2025, to prevent Petitioner's unlawful removal and to halt continued unconstitutional detention while this Court considers the merits of his habeas petition. As set forth in the TRO and supporting habeas filings, Petitioner was previously released by ICE after the agency itself determined that removal was not reasonably foreseeable and placed him on an Order of Supervision, under which he fully complied. His sudden re-detention—without notice, without an interview, and without a viable removal plan—has resulted in ongoing and compounding irreparable harm.

Courts have repeatedly recognized that prolonged civil immigration detention constitutes irreparable injury because "freedom from bodily restraint lies at the core of the liberty protected by the Due Process Clause," *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), and because unlawful detention cannot be remedied after the fact. See, e.g., *Rodriguez v. Robbins*, 715 F.3d 1127, 1144–45 (9th Cir. 2013), rev'd on other grounds, *Jennings v. Rodriguez*, 583 U.S. 131 (2018) (loss of liberty through prolonged immigration detention constitutes irreparable harm). Therefore, indefinite detention without a foreseeable end violates due process, as it infringes on the fundamental right to freedom from bodily restraint. See *Zadvydas* and *Abrego Garcia v. Noem* (D. Md. Dec. 12, 2025) (Page 3). See also *Salcedo Aceros v. Kaiser* (N.D. Cal. 2025) (Page 4).

Courts likewise recognize that separation from family and the inability to maintain family relationships during detention constitute irreparable harm. See *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (finding irreparable harm where immigration detention causes family separation and emotional injury); *Nken v. Holder*, 556 U.S. 418, 435 (2009) (acknowledging that removal and detention implicate serious, often irreparable harms). Each additional day Petitioner remains detained without lawful justification inflicts harm that cannot be undone, including continued deprivation of liberty, psychological injury, and prolonged separation from family, all of which independently and collectively satisfy the irreparable harm requirement for injunctive relief. See also *Doe v. Trump* (N.D. Cal. Apr. 16, 2025) (Page 24) and *United States and U.S. Department of Homeland Security v. Chief Judge George L. Russell III et al.* (D. Md. 2025) (Page 17).

X. CONCLUSION

Respondents' Response is legally and factually deficient. It misidentifies the Petitioner, misstates the Court's order, relies on hearsay, fails to demonstrate regulatory compliance, and confirms the absence of any viable removal plan. This is the same prolonged detention scenario now repeatedly rejected by federal courts nationwide.

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

1) Grant the Petition for Writ of Habeas Corpus;
2) Restore the *status quo ante* by ordering Petitioner's immediate release under appropriate conditions of supervision; and
3) Award such other and further relief as the Court deems just and proper.

Respectfully submitted on December 29, 2025.

/s/Georgia Santos Laurent
Attorney for Petitioner
SanLaurent Law Group
13785 Research Blvd, Suite 125
Austin, TX
FL Bar No. 0289377
Admitted and Qualified to Practice as an Attorney in the Western District of Texas
georgia@sanlaurentlaw.com
512-693-9343

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2025, a true and correct copy of the foregoing Reply was served on all counsel of record through the Court's CM/ECF system.

Respectfully submitted,

/s/ *Georgia Santos Laurent*
Georgia Santos Laurent
Attorney for Petitioner
SanLaurent Law Group
13785 Research Blvd, Suite 125
Austin, TX
FL Bar No. 0289377
Admitted and Qualified to Practice as an Attorney in the Western District of Texas
georgia@sanlaurentlaw.com
512-693-9343