

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FRANCISCO D'COSTA, Petitioner,)
)
v.)
)
WARDEN, JOE CORLEY)
)
DETENTION FACILITY; DIRECTOR,)
)
U.S. IMMIGRATION AND CUSTOMS)
)
ENFORCEMENT; SECRETARY, U.S.)
)
DEPARTMENT OF HOMELAND)
)
SECURITY, Respondents.)

CIVIL ACTION NO.

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF WITH EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

Petitioner Francisco D'Costa, a native and citizen of India currently detained at the Joe Corley Detention Facility in Conroe, Texas, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and seeks declaratory and injunctive relief, including an immediate temporary restraining order (TRO) and preliminary injunction pursuant to Fed. R. Civ. P. 65.

INTRODUCTION

Respondents have indicated their intent to remove Petitioner from the United States as early as December 19, 2025, as evidenced by notice of the closure of his detention account; an action routinely associated with imminent removal.

Immediate execution of removal would violate Petitioner's rights under the Due Process Clause of the Fifth Amendment by practically mooted his pending Motion to Reopen before the Immigration Judge and his pending Petition for Review in the United States Court of Appeals for the Fifth Circuit. Removal at this juncture would deprive Petitioner of a meaningful opportunity for administrative and judicial review of his colorable claims for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT").

Petitioner therefore seeks a writ of habeas corpus and emergency injunctive relief to preserve the status quo and prevent irreparable constitutional harm.

Pursuant to Local Rule 7.1(A), no certificate of conference is included because this is an emergency matter involving imminent removal, rendering conference impracticable.

CUSTODY

1. Petitioner is currently in the physical custody of the Respondent Warden of the Joe Corley Detention Facility in Conroe, Texas, an immigration detention facility operating under contract with the U.S. Department of Homeland Security (“DHS”). Petitioner is detained pursuant to a final order of removal and remains under the direct control of Respondents and their agents.

JURISDICTION

2. This action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq.
3. This Court has jurisdiction pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, the Suspension Clause of the United States Constitution (Art. I, § 9, cl. 2), and the All Writs Act, 28 U.S.C. § 1651, because Petitioner is in custody

under color of authority of the United States in violation of the Constitution and laws of the United States.

4. Declaratory relief is authorized by 28 U.S.C. § 2201.

VENUE

5. Venue is proper in the Southern District of Texas, Houston Division, because Petitioner is detained within this District and Division, and Respondents exercise custody and authority here. See 28 U.S.C. § 1391(e).

PARTIES

6. Petitioner Francisco D'Costa (A# ) is a native and citizen of India currently detained at the Joe Corley Detention Facility.
7. Respondent Warden, Joe Corley Detention Facility, is Petitioner's immediate custodian and is sued in his official capacity.
8. Respondent Director, U.S. Immigration and Customs Enforcement, is responsible for ICE detention and removal operations and is sued in his official capacity.
9. Respondent Secretary, U.S. Department of Homeland Security, oversees DHS and ICE and is sued in his official capacity.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

10. Petitioner lawfully entered the United States in 2009.

11. On October 10, 2025, DHS issued a Notice to Appear charging Petitioner as removable under INA § 237(a)(1)(B) for overstaying his authorized period of admission.

12. On October 30, 2025, Petitioner appeared pro se before the Immigration Judge at a master calendar hearing. He admitted the factual allegations, declined time to seek counsel, and denied fear of return when asked a single, conclusory question by the Immigration Judge.

13. On November 5, 2025, the Immigration Judge granted voluntary departure until December 4, 2025, based on a joint request. Petitioner signed a declaration waiving fear of return and applications for relief without the benefit of counsel or meaningful advisals regarding asylum, withholding of removal, or CAT protection.

14. After retaining counsel, Petitioner filed a Motion to Reopen on December 3, 2025, seeking to apply for asylum, withholding of removal, and CAT protection based on [REDACTED]

[REDACTED] By operation of law, the filing converted voluntary departure into a final order of removal pursuant to 8 C.F.R. § 1240.26(b)(3)(iii).

15. On December 4, 2025, the Immigration Judge denied Petitioner's request for a discretionary stay, citing alleged evidentiary deficiencies.

16. On December 5, 2025, Petitioner filed a Renewed Emergency Motion for Stay or Reconsideration, curing all alleged deficiencies and submitting a complete Form I-589, a detailed personal declaration, affidavits from family members and [REDACTED]

[REDACTED]

India. That motion remains pending.

17. Petitioner timely filed a Petition for Review in the United States Court of Appeals for the Fifth Circuit (No. 25-60666), challenging the automatic final order and raising due process violations arising from the pro se waiver and the denial of meaningful review.

18. On December 10, 2025, the Fifth Circuit denied an emergency stay under the *Nken* factors without adjudicating the merits of Petitioner's due process claims. The Petition for Review remains pending.

19. No proceedings have occurred before the Board of Immigration Appeals.

20. ICE has notified Petitioner that his removal may occur as early as December 19, 2025.

STATEMENT OF LAW

20. Habeas corpus under § 2241 permits challenges to unlawful detention, including where removal would violate due process by mooting pending review (*Zadvydas v. Davis*, 533 U.S. 678 (2001)).
21. TROs and preliminary injunctions require showing substantial likelihood of success, irreparable harm, balance of equities, and public interest (*Winter v. NRDC*, 555 U.S. 7 (2008); *Nken v. Holder*, 556 U.S. 418 (2009)). District courts retain equitable authority to grant short-term relief despite 8 U.S.C. § 1252(f)(2) where necessary to preserve due process.
22. Due process requires meaningful opportunity for review; premature removal practically moots proceedings even if jurisdiction persists (Fifth Circuit precedent post-*Garcia-Carias v. Holder*, 697 F.3d 257 (2012)).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

23. Petitioner has exhausted all available administrative remedies to the extent required by law. His Motion to Reopen and Renewed Emergency Motion for Stay remain pending before the Immigration Judge, and no further administrative relief is available prior to execution of removal.

24.Exhaustion is not required for Petitioner’s constitutional claims, and any further attempt at exhaustion would be futile given the imminence of removal.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Due Process

25.Petitioner incorporates by reference paragraphs 1 through 22.

26.Respondents threatened execution of removal violates Petitioner’s right to substantive and procedural due process by practically mooted his pending Motion to Reopen and Petition for Review, thereby denying him a full and fair opportunity to be heard on colorable claims for protection from persecution and torture.

COUNT TWO

Unlawful Execution of Removal Order

25.Petitioner incorporates by reference paragraphs 1 through 24.

26.Execution of the removal order while Petitioner’s properly filed Motion to Reopen and Petition for Review remain pending is arbitrary, capricious, and unlawful under the INA and the Due Process Clause.

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

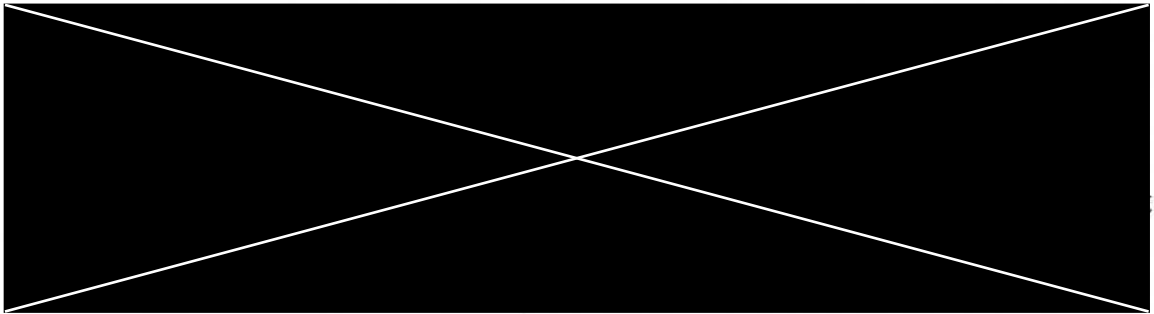
26. Pursuant to Federal Rule of Civil Procedure 65, Petitioner moves this Court for an immediate **ex parte Temporary Restraining Order (“TRO”)**, without notice, enjoining Respondents, their agents, officers, employees, and all persons acting in concert with them from removing Petitioner from the United States. Petitioner further moves for a **Preliminary Injunction** granting the same relief pending full resolution of this Petition for Writ of Habeas Corpus.

A. Substantial Likelihood of Success on the Merits

27. Petitioner has a substantial likelihood of success on his claims that Respondents’ threatened execution of removal violates the Fifth Amendment’s Due Process Clause and renders his detention and impending removal unlawful.

28. Petitioner’s pending Motion to Reopen (“MTR”), filed on December 3, 2025, and renewed with comprehensive evidentiary submissions on December 5, 2025, including a completed Form I-589, Petitioner’s sworn declaration, corroborating affidavits from family members and 

 and extensive documentary evidence of escalating persecution of

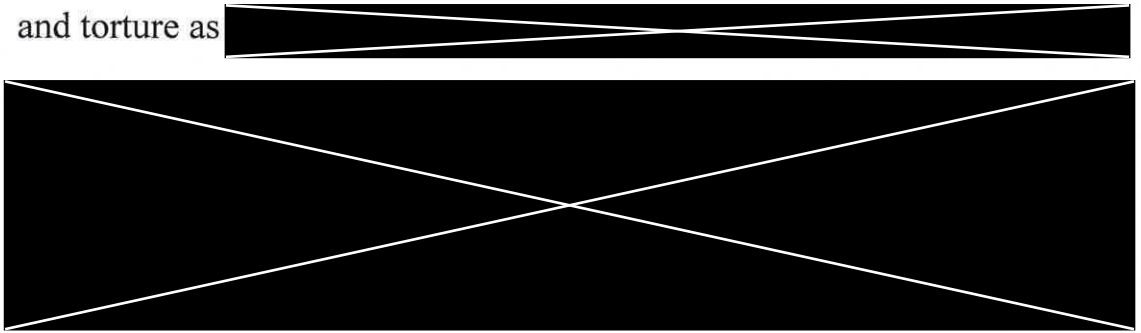


29. The pro se voluntary departure waiver executed on November 5, 2025, was **unknowing and involuntary**, as it was obtained without adequate advisals regarding fear of return or available forms of relief. The automatic conversion of voluntary departure to a final removal order upon the filing of the MTR is reviewable, and execution of removal prior to adjudication would **practically moot** Petitioner's colorable claims, denying meaningful review notwithstanding the formal continuation of jurisdiction in the Fifth Circuit. See *Garcia-Carias v. Holder*, 697 F.3d 257 (5th Cir. 2012).
30. The Fifth Circuit's per curiam denial of an emergency stay on December 10, 2025 (Exhibit D) addressed only the *Nken* stay factors and **did not resolve** the underlying due process and mootness arguments presented in Petitioner's pending Petition for Review (No. 25-60666; Exhibit C).

B. Irreparable Injury Absent Injunctive Relief

31. Absent immediate injunctive relief, Petitioner will suffer **irreparable harm** through removal to India, where he faces a substantial risk of persecution

and torture as



32. Removal would also practically moot Petitioner's pending MTR and Petition for Review by severely impairing his ability to consult with counsel, gather and present evidence, and meaningfully participate in ongoing proceedings from abroad, while also causing family separation, loss of U.S. community ties, and profound disruption. See *Nken v. Holder*, 556 U.S. 418, 435 (2009).

C. Balance of Equities

33. The threatened injury to Petitioner—catastrophic and irreversible—far outweighs any harm to Respondents from a brief delay in removal. Respondents face minimal burden, as Petitioner remains detained and does not seek release; enforcement interests are not compromised by a short-term preservation of the status quo pending adjudication.

D. Public Interest

34. The public interest strongly favors injunctive relief to ensure that executive enforcement actions comply with constitutional due process, preserve the

integrity of ongoing administrative and judicial review, and prevent premature removals that undermine statutory and humanitarian protections.

E. No Security Required

35. Pursuant to Federal Rule of Civil Procedure 65(c), no security should be required, or alternatively security should be set at \$0, because Petitioner is indigent, detained, and seeks to protect fundamental constitutional rights. See *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996).

36. Notwithstanding 8 U.S.C. § 1252(f)(2), this Court retains equitable authority in habeas to issue short-term injunctive relief necessary to prevent irreparable constitutional harm and the practical mootness of pending administrative and judicial proceedings.

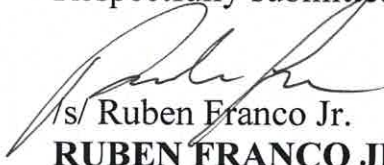
PRAYER FOR RELIEF

Petitioner respectfully requests:

- 1) Immediate ex parte TRO enjoining removal;
- 2) Order maintaining Petitioner in jurisdiction;
- 3) Expedited briefing and hearing on preliminary injunction;
- 4) Declaratory judgment that threatened removal violates due process;
- 5) Writ of habeas corpus;
- 6) Other just relief.

Dated: December 19, 2025

Respectfully submitted,



/s/ Ruben Franco Jr.

RUBEN FRANCO JR.

Counsel for Petitioner

Law Office of Ruben Franco Jr.

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Conroe, Texas 77301

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I represent Petitioner, Francisco Dcosta, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on December 19, 2025.



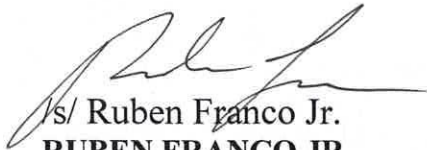
/s/ Ruben Franco Jr.

RUBEN FRANCO JR.

Counsel for Petitioner

CERTIFICATE OF SERVICE

I certify that on December 19, 2025, a copy of this filing was served via CM/ECF on all counsel and parties, and manually on Respondents if required.


/s/ Ruben Franco Jr.
RUBEN FRANCO JR.
Counsel for Petitioner

INDEX OF EXHIBITS

Exhibit	Description
Exhibit AA	Immigration Judge Order Denying Stay of Removal (Dec. 4, 2025)
Exhibit BB	Renewed Emergency Motion for Stay / Reconsideration (Dec. 5, 2025), including Form I-589, Petitioner's Declaration, Affidavits, and Country Conditions Evidence
Exhibit CC	Petition for Review filed with the U.S. Court of Appeals for the Fifth Circuit (No. 25-60666)
Exhibit DD	Fifth Circuit Order Denying Emergency Stay (Dec. 10, 2025)
Exhibit EE	Supplement to Petitioners original Motion to Reopen