

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PEMA SHERPA,

Case No.

Petitioner,

**PETITION FOR WRIT OF  
HABEAS CORPUS**

v.

JUDITH ALMODOVAR, Acting Director, New York City  
Field Office, US Immigration and Customs Enforcement;  
TODD LYONS, Acting Director U.S. Immigrations and Customs  
Enforcement;  
KRISTI NOEM, U.S. Secretary of Homeland Security;  
Respondents.

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**INTRODUCTION**

1. Petitioner Pema Sherpa (“Petitioner” or “Ms. Sherpa”) hereby seeks a writ of habeas corpus releasing her immediately from detention.
2. Petitioner is a citizen of Nepal, who has been physically present in the U.S. since on or about December 4, 2015, when she entered the country by crossing the Mexico-US border.
3. Upon entry, she was apprehended by Department of Homeland Security (“DHS”) officials, who then released her the next day (December 5) under an order of supervision. Although she asserted a fear of persecution if returned to Nepal, Respondents did not administer a credible fear interview to Petitioner as required by 8 U.S.C. § 1225(b)(1)(A)(ii).
4. Upon release, Ms. Sherpa went to live in New York, and has remained here ever since. On June 16, 2017, she filed an application for asylum with USCIS, alleging a fear of persecution if returned to Nepal. That application was accepted by the USCIS asylum

- VENUE division, Petitioner completed the required biometrics, kept USCIS apprized of her address, obtained employment authorization through the pending asylum application, and has remained employed since then.
5. On June 11, 2025, USCIS dismissed Petitioner's asylum application, nearly 8 years after it was filed, on the basis that the asylum office lacked jurisdiction because she was subject to expedited removal proceedings since her entry in 2015, and that her claim of fear of persecution would be "considered by an asylum officer through the credible fear screening process pursuant to 8 CFR 208.30."
6. On October 29<sup>th</sup>, 2025, ICE officers showed up at Petitioner's home, claiming to be delivering a package, and then arrested her. She is currently being held at ICE's detention space in 26 Federal Plaza, New York, NY, 10278. Despite her detention, Petitioner has not been placed in removal proceedings, and has not been provided with a credible fear interview. There is therefore no lawful basis for her detention.
7. Ms. Sherpa now brings this Petition for a writ of habeas corpus, seeking immediate release from custody, and an order enjoining her removal out of this district while this case remains pending.

## JURISDICTION

8. This action arises under the U.S. Constitution and the Immigration and Nationality Act, at 8 U.S.C. §1101 et seq. This Court has habeas corpus jurisdiction pursuant to 5 U.S.C. §703, 28 U.S.C. §2241 et seq., and Article I, § 9, Clause 2 of the United States Constitution (suspension clause).
9. Petitioner is in custody under color of the authority of the U.S., in violation of the constitution and laws of the U.S.

## **VENUE**

10. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(e), because Petitioner is physically detained in this District and Respondents' principal place of business is in this district.

## **PARTIES**

11. Petitioner Pema Sherpa is a citizen of Nepal, who has resided continually in the U.S. since on or about December 2015. She was arrested on October 29<sup>th</sup>, 2025, and is currently detained at 26 Federal Plaza in New York City.
12. Judith Almodovar is the Acting Director of the New York City Field Office, US Immigration and Customs Enforcement, and is Petitioner's immediate custodian.
13. Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and is sued in his official capacity. ICE oversees the enforcement of the immigration laws and is responsible for, inter alia, decisions regarding the detention of non-citizens inside the US, including those regarding Ms. Sherpa.
14. Kristi Noem is Secretary of the Department of Homeland Security of the United States, an agency of the US government, responsible for administration and enforcement of the nations' immigration laws.

## **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15. Ms. Sherpa has no administrative remedies to exhaust. There are no exhaustion requirements with regard to the claim of unlawful detention, and exhaustion is only required when specifically mandated by Congress.

**RELEVANT LAW**

16. Subject to a number of exceptions not relevant here, any non-citizen physically present in the US can apply for asylum, 8 U.S.C. § 1158(a)(1). Non-citizens physically present in the country can seek asylum by filing form I-589 with USCIS. After the application is filed, the applicant is scheduled for an interview before an asylum officer, and if the application is granted they are granted asylum, which affords them the right to remain living lawfully in the US, and to apply for permanent residence after a year. If the application is not granted, the applicant is referred for a hearing before an immigration judge in removal proceedings, in which they can renew the application for asylum, and also seek any other type of immigration relief to which they may be entitled.
17. The above asylum application process does not apply to people who are in “expedited removal” proceedings. “Expedited removal” is, as the name suggests, an expedited process for removing people from the US, typically those apprehended at or shortly after entering the US. The statutory authority for it is at 8 U.S.C. § 1225(b)(1). Noncitizens subjected to expedited removal are ordered removed by an immigration officer “without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). If the person asserts a fear of persecution if removed, they are referred for an asylum pre-screening “credible fear interview”, requiring them to show a “significant possibility” of eligibility for asylum at a future hearing. This pre-screening, to the extent it occurs, does not remotely approach the type of process and the rights asylum seekers receive in regular proceedings before the asylum office or in removal proceedings.
18. If the person is found to have a credible fear of persecution, the order of expedited removal is vacated, and they are referred for removal proceedings in immigration court

under Section 240 of the Immigration and Nationality Act, 8 U.S.C. § 1229a. If the person is not found to have a credible fear, they can request a review by an Immigration Judge, but cannot introduce additional evidence or testimony. If the Immigration Judge upholds the negative credible fear determination, the person is ordered removed without the possibility of any further review.

#### **FACTS**

19. Petitioner is a native and citizen of Nepal, who entered the US by crossing the US-Mexico border on December 4, 2015. She was detained by immigration officers upon her entry, and then released the following day her under an order of supervision, which required her to report to ICE and comply with several other conditions.
20. Petitioner subsequently retained an immigration attorney, and on June 16, 2017, she filed an application for asylum with USCIS, alleging a fear of persecution if returned to Nepal at the hands of Maoist terrorists. The application was accepted by USCIS, and Petitioner complied with the biometrics requirements, and consistently kept USCIS apprised of her address. She also received, and renewed, work authorization as a result of the pending asylum application.
21. On June 11, 2025, nearly eight years after she had first filed it, USCIS wrote to Petitioner and her attorney, stating that her asylum application was being dismissed on the basis that she was ineligible, because she had been placed in expedited removal proceedings. The letter further stated that she would receive notification of a credible fear interview. A copy of that letter is annexed as Exhibit A.
22. These statements are incorrect. There is no order of expedited removal in Petitioner's case. There is a blank, unsigned, "Order of Removal Under Section 235(b)(1) of the

Act” (see Exhibit B), but no actual Order. In the absence of an Order of Expedited Removal, Petitioner cannot be said to be subject to expedited removal. Further, the expedited removal process is expected to be just that: an expedited process. By releasing Petitioner from custody in December 2015, and taking no action to schedule a credible fear interview for eight whole years, Respondents have abandoned any claim that Petitioner is or should be subjected to the expedited removal procedures.

23. On or about October 29, 2025, ICE officers went to Petitioner’s apartment under the guise of delivering a package. They then detained Respondent and took her to the ICE office at 26 Federal Plaza, New York NY 10278, under the auspices of the New York City ICE Field Office, where she remains.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE: Violation of 4<sup>th</sup> Amendment Protections Against Unlawful Seizure**

24. Detention, including for immigration purposes, is a “seizure” under the Fourth Amendment, and must be lawful and reasonable in scope and duration.
25. Immigration law authorizes detention in a number of discrete, limited situations: at the border at the time of entry (8 U.S.C. § 1225), while removal proceedings are pending (8 U.S.C. § 1226), and after an administratively final order of removal has been issued (8 U.S.C. § 1231). Petitioner is not subject to detention under any of these statutory provisions. She is not subject to a final order of removal, because one was never issued. She has not been placed in removal proceedings, and she was released from border custody almost ten years ago. There is thus no legal basis for her detention.
26. Even if Petitioner was subject to an expedited removal order (which she is not), she has been living in the US for nearly ten years, pursuant to her release from ICE custody and

32. subject to ICE supervision, and with their full knowledge of her whereabouts at all times. Petitioner has not done anything to warrant the abrupt and arbitrary termination of her release from custody. Respondent's detention of Petitioner in the manner

COUNT complained is thus unreasonable as well as unlawful, and violates her rights under the Violation of Fifth Amendment Right to Due Process (Se Fourth Amendment to be free from an unlawful and/or unreasonable seizure.

**COUNT TWO** (Paragraph 25), immigration law only authorizes detention in limited Violation of Fifth Amendment Right to Due Process (Procedural Due Process) bear a "reasonable relation" to the purposes of immigration

27. The Due Process Clause of the Fifth Amendment forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law."

28. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). is not subject to an administratively-final order of

29. Petitioner was released from detention in 2015 on an order of supervision, and has been 35. a law-abiding citizen since then. She has complied with Respondents' biometrics requirements and has kept them apprized of her address at all times. Respondent thus has a protected liberty interest in her continued freedom from detention.

30. Nonetheless, on October 29, 2025, Respondents abruptly terminated this liberty and detained her arbitrarily, with cause, no prior notice, and no pre-deprivation hearing.

31. Petitioner has thus been deprived of her protected and significant liberty interest in freedom from detention without any of the procedural protections which are required to precede such a deprivation. My requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the Southern District of New York.

32. Respondent's arbitrary re-detention of the Petitioner, without a pre-deprivation hearing, or even any notice or reason, violates the Fifth Amendment's procedural due process protections.

### **COUNT THREE**

#### **Violation of Fifth Amendment Right to Due Process (Substantive Due Process)**

33. As stated above (Paragraph 25), immigration law only authorizes detention in limited situations. It must also bear a "reasonable relation" to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal proceedings) and not be impermissibly punitive.

34. Petitioner does not come within any of the categories of people who are subject to immigration detention. She is not in expedited removal proceedings at the border, she is not in removal proceedings, and she is not subject to an administratively-final order of removal. Therefore, there is no lawful basis for Petitioner's detention.

35. Further, Petitioner's detention bears no reasonable relationship to the purposes of immigration detention. She is not a flight risk, and she is not a danger to the community.

36. Because there is no statutory (or other) justification for it, Respondent's detention of Petitioner violates her right to due process of law as guaranteed by the Fifth Amendment.

### **PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Order that Petitioner shall not be transferred outside the Southern District of New York;

(3) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, order Petitioner's release on conditions the Court deems just and proper, or direct Respondents to provide her with a bond hearing before an Immigration Judge;

(4) Award Petitioner her reasonable litigation costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

(5) Grant any further relief this Court deems just and proper.

Dated: New York, New York  
October 31, 2025

/s/ Paul O'Dwyer  
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ORDERED that service of this Order to Show Cause, Declaration and Verdict upon the Office of the United States Attorney for the Western District of Louisiana, and the Respondents, on or before the \_\_\_ day of November 2025, shall be good and sufficient service.

Hon. Keyla D. McLesky  
United States Magistrate Judge