

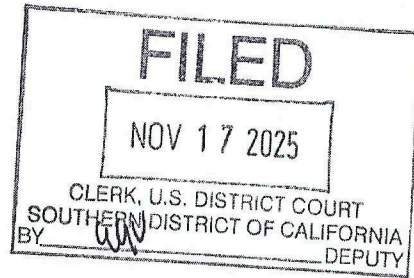
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Samir Paudel



Otay Mesa Detention Center
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Pro Se¹



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SAMIR PAUDEL,

Petitioner,

v.

KRISTI NOEM, Secretary of the
Department of Homeland Security,
PAMELA JO BONDI, Attorney General,
TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement,
JESUS ROCHA, Acting Field Office
Director, San Diego Field Office,
CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center,

Respondents.

CIVIL CASE NO.: '25CV3174 AGS BLM

**Petition for Writ
of
Habeas Corpus**

[28 U.S.C. § 2241]

¹ Mr. Paudel is filing this petition for a writ of habeas corpus with the assistance of the Federal Defenders of San Diego, Inc., who drafted the instant petition. That same counsel also assisted the petitioner in preparing and submitting his request for the appointment of counsel, which has been filed concurrently with this petition, and all other documents supporting the petition. As explained in the motion to appoint counsel, Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases.

1 INTRODUCTION


2 Mr. Paudel came to the United States in December 2024, fleeing political
3 persecution in his home country of Nepal. He was denied relief and ordered
4 removed in March 2025. He has languished in immigration detention since then.
5 Between March and September, ICE visited him only twice. Both times, ICE
6 asked if he happened to have memorized his passport number and issuance and
7 expiration dates. Both times, he told ICE that he had not. Other than that, ICE
8 appears to have made no effort to remove him. Mr. Paudel’s family, in contrast,
9 worked to get the information ICE required and provided it to ICE in October.
10 ICE still has not secured a travel document to Nepal. If ICE proves unable to do
11 so, a recent policy permits ICE to remove him to a third country with no notice,
12 six hours’ notice, or 24 hours’ notice, depending on the circumstances.

13 ICE’s failure to secure a travel document, combined with their negligence
14 in seeking one, provides “good reason to believe that there is no significant
15 likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*,
16 533 U.S. 678, 701 (2001). The government must therefore prove that he will
17 likely be removed in the reasonably foreseeable future or else release him. *Id.* In
18 the alternative, ICE must provide him with a bond hearing under the Fifth
19 Amendment Due Process Clause. And if ICE indeed cannot remove him to Nepal,
20 ICE must not remove him to a third country without a meaningful opportunity to
21 make a fear-based claim. This Court must therefore order his release and enjoin
22 ICE from removing him to a third country without due process.

23 STATEMENT OF FACTS

24 **I. Mr. Paudel came to the United States fleeing political persecution, but**
25 **after he was denied immigration relief, ICE held him for 8 months**
26 **without removing him.**

27 Samir Paudel came to the United States to escape political persecution in
28 his native country of Nepal. Exh. A at ¶ 1. Mr. Paudel was a social worker who

1 supported Nepal’s Congress Party. *Id.* He was well-liked because of his work, so
2 he proved to be an effective party member. *Id.* But 
3 saw him as a threat. *Id.* They wanted him to join their side. *Id.* When he refused,
4 they attacked him. After suffering physical harm on several occasions, Mr. Paudel
5 fled to the United States. *Id.* He arrived on December 10, 2024. *Id.*

6 Border Patrol immediately arrested and detained him. *Id.* at ¶ 2. He did not
7 succeed in getting asylum or any other form of relief. *Id.* at ¶ 3. Instead, he was
8 ordered removed on March 11, 2025. *Id.*

9 After he was ordered removed, ICE transferred him to Arizona. *Id.* at ¶ 4.
10 An ICE agent there asked for his citizen number and passport number, as well as
11 issuance and expiration dates. *Id.* He did not know that information off the top of
12 his head, so the agent said that he would come back. *Id.* Instead, Mr. Paudel was
13 transferred to Otay Mesa. *Id.* An ICE agent asked him for the same information in
14 September. *Id.* at ¶ 5. Mr. Paudel still did not know it. *Id.* Finally, his family in
15 Nepal managed to get the information, along with a photocopy of his passport. *Id.*
16 at ¶ 5. He provided the information to ICE in October. *Id.* He has heard nothing
17 more from ICE since then. *Id.*

18 In the meantime, Mr. Paudel has been detained for over 8 months since his
19 removal order became final. *Id.* at ¶ 3. Though he is generally in good health, he
20 has had to take antidepressants and sleeping aids to handle the psychological
21 effects of his indefinite detention. *Id.* at ¶ 7.

22 **II. The government is carrying out deportations to third countries without**
23 **providing sufficient notice and opportunity to be heard.**

24 When immigrants cannot be removed to their home country, ICE has begun
25 deporting those individuals to third countries without adequate notice or a
26 hearing. The Trump administration reportedly has negotiated with at least 58
27 countries to accept deportees from other nations. Edward Wong et al, *Inside the*
28 *Global Deal-Making Behind Trump’s Mass Deportations*, N.Y. Times, June 25,

1 2025. On June 25, 2025, the New York Times reported that seven countries—
2 Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—
3 had agreed to accept deportees who are not their own citizens. *Id.* Since then, ICE
4 has carried out highly publicized third country deportations to South Sudan and
5 Eswatini.

6 The Administration has reportedly negotiated with countries to have many
7 of these deportees imprisoned in prisons, camps, or other facilities. The
8 government paid El Salvador about \$5 million to imprison more than 200
9 deported Venezuelans in a maximum-security prison notorious for gross human
10 rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica
11 took in hundreds of deportees from countries in Africa and Central Asia and
12 imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa
13 Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,
14 BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men, including one
15 pre-1995 Vietnamese refugee, to South Sudan. *See Wong, supra.* On July 15, ICE
16 deported five men to the tiny African nation of Eswatini, including one man from
17 Vietnam, where they are reportedly being held in solitary confinement. Gerald
18 Imray, *3 Deported by US held in African Prison Despite Completing Sentences*,
19 *Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human
20 rights abuses or instability. For instance, conditions in South Sudan are so
21 extreme that the U.S. State Department website warns Americans not to travel
22 there, and if they do, to prepare their will, make funeral arrangements, and appoint
23 a hostage-taker negotiator first. *See Wong, supra.*

24 On June 23 and July 3, 2025, the Supreme Court issued a stay of a national
25 class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of*
26 *Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D.
27 Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional
28 requirements before removing an individual to a third country. *U.S. Dep't of*

1 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025
2 WL 1832186 (U.S. July 3, 2025).² On July 9, 2025, ICE rescinded previous
3 guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims
4 for protection under the Convention Against Torture (CAT) before initiating
5 removal to a third country” like the ones just described. Exh. B.

6 Under the new guidance, ICE may remove any immigrant to a third country
7 “without the need for further procedures,” as long as—in the view of the State
8 Department—the United States has received “credible” “assurances” from that
9 country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails
10 to credibly promise not to persecute or torture releasees, ICE may still remove
11 immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’
12 notice. But “[i]n exigent circumstances,” a removal may take place in as little as
13 six hours, “as long as the alien is provided reasonably means and opportunity to
14 speak with an attorney prior to the removal.” *Id.*

15 Upon serving notice, ICE “will not affirmatively ask whether the alien is
16 afraid of being removed to the country of removal.” *Id.* (emphasis original). If the
17 noncitizen “does not affirmatively state a fear of persecution or torture if removed
18 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]
19 may proceed with removal to the country identified on the notice.” *Id.* at 2. If the
20 noncitizen “does affirmatively state a fear if removed to the country of removal”
21

22 _____
23 ² Though the Supreme Court’s order was unreasoned, the dissent noted that the
24 government had sought a stay based on procedural arguments applicable only to
25 class actions. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025)
26 (Sotomayor, J., dissenting). Thus, “even if the Government [was] correct that
27 classwide relief was impermissible” in *D.V.D.*, Respondents still “remain[]
28 obligated to comply with orders enjoining [their] conduct with respect to individual
plaintiffs” like Mr. Paudel. *Id.* Thus, the Supreme Court’s decision does not
override courts’ authority to grant individual injunctive relief. *See Paudel v. Scott*,
No. 2:25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

1 then ICE will refer the case to U.S. Citizenship and Immigration Services
2 (“USCIS”) for a screening for eligibility for withholding of removal and
3 protection under the Convention Against Torture (“CAT”). *Id.* at 2. “USCIS will
4 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen
5 does not meet the standard, the individual will be removed. *Id.* If USCIS
6 determines that the noncitizen has met the standard, then the policy directs ICE to
7 either move to reopen removal proceedings “for the sole purpose of determining
8 eligibility for [withholding of removal protection] and CAT” or designate another
9 country for removal. *Id.*

10 CLAIMS FOR RELIEF

11 *Zadvydas v. Davis* holds that immigration statutes do not authorize the
12 government to detain immigrants like Mr. Paudel, for whom there is “no
13 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
14 678, 701 (2001). Because Mr. Paudel provides good reason to believe that he
15 cannot be removed, ICE must rebut that evidence or release him. In the
16 alternative, the Fifth Amendment’s Due Process Clause prohibits his continued
17 detention without a bond hearing. And in any case, ICE may not remove him to a
18 third country without a meaningful opportunity to make a fear-based claim.

20 **I. Count 1: Mr. Paudel’s detention violates *Zadvydas* and 8 U.S.C. § 1231.**

21 **A. Legal background**

22 Mr. Paudel’s indefinite detention violates the statute authorizing detention,
23 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme
24 Court considered a problem affecting people like Mr. Paudel. Federal law requires
25 ICE to detain an immigrant during the “removal period,” which typically spans
26 the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-
27 (2). After that 90-day removal period expires, detention becomes discretionary—
28 ICE may detain the migrant while continuing to try to remove them. *Id.*

1 § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as
2 removal happens within days or weeks. But some detainees cannot be removed
3 quickly. Perhaps their removal “simply require[s] more time for processing,” or
4 they are “ordered removed to countries with whom the United States does not
5 have a repatriation agreement,” or their countries “refuse to take them,” or they
6 are “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma*
7 *v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other
8 circumstances, detained immigrants can find themselves trapped in detention for
9 months, years, decades, or even the rest of their lives.

10 If federal law were understood to allow for “indefinite, perhaps permanent,
11 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at
12 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
13 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

14 As an initial matter, *Zadvydas* held that detention is “presumptively
15 reasonable” for at least six months. *Id.* at 701. This acts as a kind of grace period
16 for effectuating removals.

17 Following the six-month grace period, courts must use a burden-shifting
18 framework to decide whether detention remains authorized. First, the petitioner
19 must make a prima facie case for relief: He must prove that there is “good reason
20 to believe that there is no significant likelihood of removal in the reasonably
21 foreseeable future.” *Id.*

22 If he does so, the burden shifts to “the Government [to] respond with
23 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of
24 proof rests with the government: The government must prove that there is a
25 “significant likelihood of removal in the reasonably foreseeable future,” or the
26 immigrant must be released. *Id.*

1 **B. ICE’s failure to remove Mr. Paudel in 8 months despite his full**
2 **cooperation provides good reason to believe that he will not likely**
3 **be removed in the reasonably foreseeable future.**

4 Using this framework, Mr. Paudel can make all the threshold showings
5 needed to shift the burden to the government. As an initial matter, *Zadvydas*’s six-
6 month grace period has indisputably expired, as Mr. Paudel’s removal order
7 became final on March 11, 2025. *Id.* at ¶ 3.

8 This Court must therefore evaluate Mr. Paudel’s *Zadvydas* claim using the
9 burden-shifting framework. At the first stage of the framework, Mr. Paudel must
10 “provide[] good reason to believe that there is no significant likelihood of removal
11 in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This standard
12 can be broken down into three parts.

13 **“Good reason to believe.”** The “good reason to believe” standard is a
14 relatively forgiving one. “A petitioner need not establish that there exists no
15 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
16 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
17 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
18 foreseeable, significant likelihood of removal or show that his detention is
19 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
20 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
21 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
22 Petitioners need only give a “good reason”—not prove anything to a certainty.

23 **“Significant likelihood of removal.”** This component focuses on whether
24 Mr. Paudel will likely be removed: Continued detention is permissible only if it is
25 “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533 U.S.
26 at 701. This inquiry targets “not only the *existence* of untapped possibilities, but
27 also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.
28 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,

1 even if “there remains *some* possibility of removal,” a petitioner can still meet its
2 burden if there is good reason to believe that successful removal is not
3 significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL
4 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

5 **“In the reasonably foreseeable future.”** This component of the test
6 focuses on when Mr. Paudel will likely be removed: Continued detention is
7 permissible only if removal is likely to happen “in the reasonably foreseeable
8 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
9 removal efforts. If the Court has “no idea of when it might reasonably expect
10 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
11 is likely to occur—or even that it might occur—in the reasonably foreseeable
12 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
13 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
14 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
15 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Paudel
16 “would *eventually* receive” a travel document, he can still meet his burden by
17 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
18 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

19 Mr. Paudel has provided at least a good reason to think that removal will
20 not likely happen in the reasonably foreseeable future. First off, Mr. Paudel has
21 fully cooperated with ICE for over 8 months, Exh. A at ¶¶ 4–6, nearly three times
22 the removal period during which ICE is supposed to accomplish removal, 8
23 U.S.C. § 1231(a). Yet ICE has proved unable to remove him. Nor does ICE
24 appear to have taken any concrete steps in that direction. There is no indication
25 that Nepal will accept Mr. Paudel. It is not even clear that ICE has asked. “[T]he
26 passage of time combined with’ the ‘government [being] no closer to . . .
27 repatriating [a detainee] than they were once they first took him into custody’ is
28 sufficient to satisfy Petitioner’s initial burden.” *Rual v. Barr*, No. 6:20-CV-06215

1 EAW, 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Singh v.*
2 *Whitaker*, 362 F. Supp. 3d. 93, 102-03 (W.D.N.Y. 2019)).

3 Secondly, ICE appears to have made minimal effort to remove him in the
4 eight months that he has been detained. Between March and September, ICE met
5 with him only twice. Exh. A ¶¶ 4–5. And though Nepal could undoubtedly
6 provide the United States with basic information (citizenship number, passport
7 expiration date, etc.) about a detainee upon request, ICE does not appear even to
8 have asked. Instead, over the course of six months, ICE’s only strategy for
9 removing Mr. Paudel was to ask him whether he happened to memorize that
10 information. *Id.* at ¶¶ 5–6. As he told them from the beginning, he did not. *Id.*
11 When Mr. Paudel’s family was finally able to recover the information, he gave it
12 to ICE immediately. *Id.* at ¶ 5. Yet he still has heard nothing about a travel
13 document. ICE’s apparent “lack of effort only reinforces the conclusion that the
14 Petitioner’s removal is not likely to occur in the reasonably foreseeable future.”
15 *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D. Pa.
16 Nov. 8, 2002); *accord Conchas-Valdez v. Casey*, 25-CV-2469-DMS-JLB, Dkt.
17 No. 9 at 6 (S.D. Cal. Oct. 6, 2025) (Sabraw, J.) (“[T]he Government’s minimal
18 work on this case—one resettlement request and two follow up emails over the
19 course of seven months—do not instill confidence that it will be able to secure
20 Petitioner’s removal in the reasonably foreseeable future.”).

21 Thus, Mr. Paudel has met his initial burden, and the burden shifts to the
22 government. Unless the government can prove a “significant likelihood of
23 removal in the reasonably foreseeable future,” Mr. Paudel must be released.
24 *Zadvydas*, 533 U.S. at 701.

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1 **II. Count 2: Though *Zadvydas* provides the appropriate framework,**
2 **Mr. Paudel makes an alternative request for a bond hearing under the**
3 **Due Process Clause out of an abundance of caution.**

4 As just explained, *Zadvydas* is the proper vehicle for assessing
5 Mr. Paudel’s detention, and it mandates his outright release. Out of an abundance
6 of caution, however, Mr. Paudel also asserts in the alternative that even without
7 *Zadvydas*, he would still have a right to a bond hearing under the Fifth
8 Amendment’s Due Process Clause.

9 Neither the Supreme Court nor the Ninth Circuit have determined whether
10 the Fifth Amendment’s Due Process Clause permits indefinite detention without a
11 bond hearing. (*Zadvydas* itself sidestepped the question by interpreting 8 U.S.C.
12 § 1231 using the constitutional avoidance canon. 533 U.S. at 689.) But the Ninth
13 Circuit has expressed “grave doubts that any statute that allows for arbitrary
14 prolonged detention without any process is constitutional or that those who
15 founded our democracy precisely to protect against the government’s arbitrary
16 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
17 256 (9th Cir. 2018).

18 “[T]he majority of courts across the country” to address the issue agree.
19 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.).
20 District courts have therefore ordered bond hearings for migrants detained under
21 various statutes. *See id.* (ordering bond hearing for immigrant detained under 8
22 U.S.C. § 1225(b)); *Arechiga v. Archambeault*, No. 23-CV-600, 2023 WL
23 5207589, at *3 (D. Nev. Aug. 11, 2023) (same, and collecting cases); *Santos v.*
24 *Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210 (3d Cir. 2020) (same, for
25 detention under 8 U.S.C. § 1226(c)); *Sanchez-Rivera v. Matuszewski*, No. 22-CV-
26 1357-MMA (JLB), 2023 WL 139801, at *7 (S.D. Cal. Jan. 9, 2023) (Anello, J.)
27 (same); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (same, and
28 collecting cases).

1 These courts agree that due process mandates a bond hearing when detention
2 grows unreasonably prolonged. But they disagree about how to assess whether a
3 particular migrant’s detention has reached that point. Some courts have
4 “conclude[d] . . . that detention becomes prolonged after six months and entitles [a
5 petitioner] to a bond hearing,” in which case Mr. Paudel would be automatically
6 eligible. *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6
7 (N.D. Cal. Jan. 7, 2019).

8 Others have adopted various factors tests. *Sanchez-Rivera*, 2023 WL 139801,
9 at *5–6 (surveying the difference approaches). But these courts do not ordinarily
10 have the occasion to address the rights of people detained after receiving a final
11 order of removal, because *Zadvydas* provides the correct vehicle for evaluating
12 post-removal-order detention. Accordingly, many of the factors that courts use—
13 e.g., “the likelihood that removal proceedings will result in a final order of
14 removal,” and “delays in the removal proceedings caused by the petitioner and the
15 government,” *id.* at *5–6—are not applicable to someone already ordered removed.

16 Accordingly, if this Court rejects Mr. Paudel’s bid for *Zadvydas* relief, this
17 Court will have to determine what factors govern a post-removal-order Due
18 Process claim. These will likely be similar to the kinds of due process concerns
19 that animate *Zadvydas* itself. 533 U.S. at 690–95. For example, this Court might
20 consider how long ICE has been trying to remove Mr. Paudel, whether ICE’s
21 removal efforts will likely succeed in the reasonably foreseeable future, and
22 whether the immigrant is responsible for the government’s inability to remove
23 him. Here, these factors all favor Mr. Paudel. ICE has had eight months to remove
24 him. By all indications, ICE has barely tried, and any efforts have not borne fruit.
25 And far from obstructing his removal, Mr. Paudel has fully cooperated with ICE.
26 Exh. A at ¶ 6.

27 Accordingly, even if Mr. Paudel were not entitled to *Zadvydas* relief, he
28 would still be entitled to a bond hearing.

1 **III. Count 3: ICE may not remove Mr. Paudel to a third country without**
2 **adequate notice and an opportunity to be heard.**

3 In addition to unlawfully detaining him, ICE’s policies threaten Mr. Paudel’s
4 removal to a third country without adequate notice and an opportunity to be heard.
5 These policies violate the Fifth Amendment, the Convention Against Torture, and
6 implementing regulations.

7 **A. Legal background**

8 U.S. law enshrines protections against dangerous and life-threatening
9 removal decisions. By statute, the government is prohibited from removing an
10 immigrant to any third country where they may be persecuted or tortured, a form
11 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The
12 government “may not remove [a noncitizen] to a country if the Attorney General
13 decides that the [noncitizen’s] life or freedom would be threatened in that country
14 because of the [noncitizen’s] race, religion, nationality, membership in a particular
15 social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16.
16 Withholding of removal is a mandatory protection.

17 Similarly, Congress codified protections enshrined in the CAT prohibiting
18 the government from removing a person to a country where they would be tortured.
19 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of
20 the United States not to expel, extradite, or otherwise effect the involuntary return
21 of any person to a country in which there are substantial grounds for believing the
22 person would be in danger of being subjected to torture, regardless of whether the
23 person is physically present in the United States.”); 28 C.F.R. § 200.1; *id.*
24 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

25 To comport with the requirements of due process, the government must
26 provide notice of the third country removal and an opportunity to respond. Due
27 process requires “written notice of the country being designated” and “the statutory
28 basis for the designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v.*

1 *Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); accord *D.V.D. v. U.S.*
2 *Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D.
3 Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

4 The government must also “ask the noncitizen whether he or she fears
5 persecution or harm upon removal to the designated country and memorialize in
6 writing the noncitizen’s response. This requirement ensures DHS will obtain the
7 necessary information from the noncitizen to comply with section 1231(b)(3) and
8 avoids [a dispute about what was said].” *Aden*, 409 F. Supp. 3d at 1019. “Failing to
9 notify individuals who are subject to deportation that they have the right to apply
10 for asylum in the United States and for withholding of deportation to the country to
11 which they will be deported violates both INS regulations and the constitutional
12 right to due process.” *Andriasian*, 180 F.3d at 1041.

13 If the noncitizen claims fear, measures must be taken to ensure that the
14 noncitizen can seek asylum, withholding, and relief under CAT before an
15 immigration judge in reopened removal proceedings. The amount and type of
16 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
17 circumstances, he would have a reasonable opportunity to raise and pursue his
18 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
19 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
20 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring the
21 government to move to reopen the noncitizen’s immigration proceedings if the
22 individual demonstrates “reasonable fear” and to provide “a meaningful
23 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening
24 of their immigration proceedings” if the noncitizen is found to not have
25 demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice
26 and time for a respondent to file a motion to reopen and seek relief).

27 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,
28 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and

1 for good reason: To have a meaningful opportunity to apply for fear-based
2 protection from removal, immigrants must have time to prepare and present
3 relevant arguments and evidence. Merely telling a person where they may be sent,
4 without giving them a chance to look into country conditions, does not give them a
5 meaningful chance to determine whether and why they have a credible fear.

6 **B. The June 6, 2025 memo’s removal policies violate the Fifth**
7 **Amendment, 8 U.S.C. § 1231, the Conviction Against Torture, and**
8 **Implementing Regulations.**

9 The policies in the June 6, 2025 memo do not adhere to these requirements.
10 First, under the policy, ICE need not give immigrants *any* notice or hearing before
11 removing them to a country that—in the State Department’s estimation—has
12 provided “credible” “assurances” against persecution and torture. Exh. B. By
13 depriving immigrants of any chance to challenge the State Department’s view, this
14 policy violates “[t]he essence of due process,” “the requirement that a person in
15 jeopardy of serious loss be given notice of the case against him and opportunity to
16 meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

17 Second, even when the government has obtained no credible assurances
18 against persecution and torture, the government can still remove the person with
19 between 6 and 24 hours’ notice, depending on the circumstances. Exh. B.
20 Practically speaking, there is not nearly enough time for a detained person to assess
21 their risk in the third country and martial evidence to support any credible fear—let
22 alone a chance to file a motion to reopen with an IJ. An immigrant may know
23 nothing about a third country, like Eswatini or South Sudan, when they are
24 scheduled for removal there. Yet if given the opportunity to investigate conditions,
25 immigrants would find credible reasons to fear persecution or torture—like patterns
26 of keeping deportees indefinitely and without charge in solitary confinement or
27 extreme instability raising a high likelihood of death—in many of the third
28 countries that have agreed to removal thus far. Due process requires an adequate

1 chance to identify and raise these threats to health and life. This Court must prohibit
2 the government from removing Mr. Paudel without these due process safeguards.

3 **IV. This Court must hold an evidentiary hearing on any disputed facts.**

4 Resolution of a prolonged-detention habeas petition may require an
5 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr.
6 Paudel hereby requests such a hearing on any material, disputed facts.

7 **V. Prayer for relief**

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

- 9 1. Order Respondents to immediately release Petitioner from custody;
- 10 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
11 § 1231(a)(6) unless and until Respondents obtain a travel document for
12 his removal;
- 13 3. Enjoin Respondents from removing Petitioner to any country other than
14 Nepal, unless they provide the following process, *see D.V.D. v. U.S. Dep't*
15 *of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D.
16 Mass. May 21, 2025):
- 17 a. written notice to both Petitioner and Petitioner's counsel in a
18 language Petitioner can understand;
- 19 b. a meaningful opportunity, and a minimum of ten days, to raise a
20 fear-based claim for CAT protection prior to removal;
- 21 c. if Petitioner is found to have demonstrated "reasonable fear" of
22 removal to the country, Respondents must move to reopen
23 Petitioner's immigration proceedings;
- 24 d. if Petitioner is not found to have demonstrated a "reasonable fear"
25 of removal to the country, a meaningful opportunity, and a
26 minimum of fifteen days, for the Petitioner to seek reopening of his
27 immigration proceedings.
- 28 4. Order all other relief that the Court deems just and proper.

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Conclusion

For those reasons, this Court should grant this habeas petition.

DATED: 11/16/2025

Respectfully submitted,



SAMIR PAUDEL

Petitioner

PROOF OF SERVICE

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to Janet Cabral, janet.cabral@usdoj.gov, when I receive the court-stamped copy.

Date: 11/17/2025

/s/ Katie Hurrelbrink
Katie Hurrelbrink