

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PRAMESH UPRETY,

Petitioner,

vs.

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; LAURA
HERMOSILLO, Acting Seattle Field
Office Director, United States
Citizenship and Immigration Services;
BRUCE SCOTT, Warden of Immigration
Detention Facility; and the United States
Immigration and Customs Enforcement,

Respondents.

No.

**PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241
AND REQUEST FOR INJUNCTIVE
RELIEF**

PRELIMINARY MATTERS

“Congress has clearly indicated that habeas petitioners are entitled to a prompt ruling” on their petition. *Mejia v. Hermosillo*, No. 2:25-CV-02196, 2025 WL 3173842, at *1 (W.D. Wash. Nov. 13, 2025). Petitioner Uprety suggests that Respondents be directed to file their response within 14 days of service of the petition on Respondents and that Uprety reply within five days.

Petitioner Uprety asks this Court to order Respondents not to remove him from this district while this case is pending, both “[b]ecause transfer of Petitioner to another district could interfere with his access to counsel and ability to participate in the proceedings,” *Tran v. Bondi, et al.*, No. CV25-1897-JLR-BAT, dkt. 6 at 3 (W.D. Wash. Oct. 7, 2025) (*sua sponte* issuing such an order in a § 2241 case involving an ICE

1 detainee), and “under the Court’s inherent power to preserve its ability to hear the
2 case.” *Alves v. U.S. Dep’t of Just.*, No. EP-25-CV-306-KC, 2025 WL 2629763, at *5
3 (W.D. Tex. Sept. 12, 2025) (same). *See also M.M. v. Wamsley*, No. CV25-2074-TMC,
4 2025 WL 3053023, at *1 (W.D. Wash. Oct. 31, 2025) (same).¹

5 **RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242**

6 **Personal Information**

- 7 1. (a) Full name: Pramesh Raj Uprety
8 (b) Other names used: Robert Paul Parker
9 2. Place of confinement:
10 (a) Northwest Immigration Processing Center (NWIPC)
11 (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a
12 contractual arrangement with my custodian, the Immigration and Customs Enforcement
13 Field Office Director at Seattle, Washington.
14 (c) Case number or numbers [ICE file number, if known]: My A# has been
15 provided to the government along with the filing of this petition.
16 3. I am currently being held on orders by federal authorities: United States
17 Immigration and Customs Enforcement.
18 4. I am currently being held on an immigration charge.

19 **Decision or Action You Are Challenging**

- 20 5. What are you challenging in this petition: immigration detention.

21 _____
22 ¹ For just a few examples of other courts issuing such an order in § 2241 cases
23 involving ICE detainees within the past few months (or reflecting the court had
24 previously issued such an order), *see, e.g., Bustos v. Raycraft*, No. 25-13202, 2025 WL
25 3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. CV25-513-SDN, 2025
26 WL 3003708, at *1 (D. Me. Oct. 27, 2025) (order issued same day petition was filed);
Lopez Pop v. Noem, No. CV25-2589-SSS-SSC, 2025 WL 3050095, at *7 (C.D. Cal.
Oct. 3, 2025); *Singh v. Delaney Hall*, No. CV25-16018-GC, 2025 WL 2772644, at *1
(D.N.J. Sept. 29, 2025); *Hom v. Ceja*, No. CV25-2221-WJM-TPO, 2025 WL 2801449,
at *2 (D. Colo. Sept. 17, 2025).

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: United States Immigration and Customs Enforcement

(b) Docket number, case number, or opinion number: My A# has been provided to the government along with the filing of this petition.

(c) Decision or action you are challenging I was initially ordered removed on July 24, 2023. I was taken into custody by ICE on January 17, 2025. I have been detained in ICE custody for six months following my final removal order.

Your Earlier Challenges of the Decision or Action

7–9. First, second, and third appeals:

10. Motion under 28 U.S.C. § 2255: N/A

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

(a) Date you were taken into immigration custody: January 17, 2023

(b) Date of the removal or reinstatement order: July 24, 2023

(c) Did you file an appeal with the Board of Immigration Appeals? Yes

(d) Did you appeal the decision to the United States Court of Appeals? Yes

12. Other than the appeals listed above, have you filed any other petition, application, or motion about the issues raised in this petition? No

Grounds for Your Challenge in This Petition

I. Introduction

Petitioner Pramesh Uprety is presently detained at the Northwest ICE Processing Center (NWIPC). Petitioner has been held in immigration custody for a total of 35 months, nearly three years, including six months since all litigation challenging his deportation determination has been resolved. Removal to his former country of residence is not reasonably foreseeable. Petitioner's continued detention is therefore in

1 violation of the Supreme Court's holding in *Zadvydas v. Davis*, 533 U.S. 678, 689
2 (2001).

3 Petitioner Uprety seeks (a) release; (b) an order preventing re-detention unless
4 the government establishes by clear and convincing evidence at a hearing before a
5 neutral decisionmaker that he is a flight risk or a danger to the community, based on
6 changed circumstances after their most recent release by ICE; (c) an order preventing
7 removal to a third country without notice and meaningful opportunity to respond in
8 compliance with the statute and due process in reopened removal proceedings; and (d)
9 an order barring removal to any third country pursuant to Respondents' punitive
10 removal policy.

11 **II. Jurisdiction and Venue**

12 This case arises under the Constitution of the United States and the Immigration
13 and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*

14 This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.*
15 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States
16 as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived
17 sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

18 The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et*
19 *seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28
20 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the Court's
21 inherent equitable powers.

22 Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because
23 Respondents are agencies or officers of agencies of the United States; Respondents
24 Hermosillo and Scott reside in this district; and Petitioner Uprety is detained in this
25 district. Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part
26

1 of the events or omissions giving rise to Petitioner Uprety's claims occurred in this
2 district.

3 Because Petitioner is seeking relief related only to his custody status, which is
4 not inconsistent with an order of removal, exhaustion of administrative remedies, if any,
5 is not required.

6 **III. Requirements of 28 U.S.C. §§ 2241, 2243**

7 Petitioner Uprety is "in custody" for the purpose of § 2241 because he has been
8 detained by Respondent ICE in Tacoma, Washington, since January 17, 2023.

9 **IV. Parties**

10 Petitioner Uprety is a citizen of Nepal. He has a final order of removal with
11 Nepal identified as the country designated for removal. Petitioner is detained in the
12 control and custody of Respondents at NWIPC. As such, he is a resident of Tacoma,
13 Washington.

14 Respondent Pamela Bondi is the Attorney General of the United States. In this
15 capacity, Respondent Bondi is the legal custodian of Petitioner. Respondent Bondi is
16 sued in her official capacity.

17 Respondent Kristi Noem is the Secretary of the Department of Homeland
18 Security ("DHS"). In this capacity, Respondent Noem is the legal custodian of
19 Petitioner. Respondent Noem is sued in her official capacity.

20 Respondent Laura Hermosillo is the Field Office Director for ICE Enforcement
21 and Removal Operations ("ERO") in Seattle, Washington. As the ERO Seattle Field
22 Office Director, she is Petitioner's immediate custodian, responsible for his detention at
23 NWIPC and is the person with the authority to authorize detention or release.

24 Respondent Hermosillo is sued in her official capacity.

25 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
26 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant

1 to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official
2 capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-
3 700, 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

4 Respondent United States Immigration and Customs Enforcement (hereinafter
5 ICE) is the federal executive agency responsible for the enforcement of immigration
6 laws, including the arrest, detention, and removal of noncitizens. Respondent ICE is a
7 legal custodian of Petitioner.

8 **V. Background**

9 Petitioner Uprety was born in Nepal in 1970. Upon turning 18, seeking
10 educational opportunities, he left Nepal, the only country he had ever known, came to
11 the United States on a student visa, and settled in Oregon. When a friend was issued an
12 extra social security number, he began using that. Based on that, he was ultimately
13 arrested and, on January 12, 2023, was convicted of Social Security Fraud and Making
14 a False Statement in an Application for Use of a Passport. He was sentenced to five
15 years' probation. Those are his only criminal convictions during over thirty years in this
16 country. Although he was informed by both his criminal and immigration attorneys that
17 his crime was not one that would lead to deportation, he was taken into immigration
18 custody when he reported to ICE on January 17, 2023. He has been detained ever since.

19 Although Petitioner was still challenging his deportation in court, in the summer
20 of 2024 he began to help obtain travel documents so he could be returned to Nepal
21 immediately if his appeal would prove unsuccessful. His photo was taken, and he
22 signed all pertinent documents he was presented on that date.

23 On April 25, 2025, after Petitioner's appeal was denied on April 10, he was told
24 he was going to get his travel documents "ASAP." He was slated to be called to intake
25 on May 1, 2025, but that did not happen. He sent a request on May 5, 2025, but
26 received no response.

1 On May 15, 2025, immigration officers again took his photograph for a travel
2 document and informed him that the Nepali government had sent proof of his
3 citizenship to U.S. authorities. However, on July 1, 2025, his request for a deportation
4 kit was denied. On August 1, 2025, Petitioner was told that the Nepali government
5 would not, in fact, provide him travel documents because his documents were too old.
6 He was supposed to speak with an official at the NWIPC later that day regarding that
7 but received no further communication. On September 30, 2025, Petitioner and eight
8 other Nepalese detainees were taken to sign travel documents. However, on October 16,
9 2025, another deportation officer informed Petitioner and the rest of the Nepalese
10 detainees that, due to recent unrest and a non-functional government in Nepal, travel
11 documents had not been issued for two months and would not be issued in the
12 immediate future. The detainees were told that, if they wanted to be able to leave the
13 NWIPC, they should try to find a third country that would take them.

14 Petitioner Uprety has lived in the United States for over 35 years, since he was
15 18 years old. This is the only country he truly knows anymore. Nonetheless, he would
16 prefer a return to his native Nepal than to stay at incarcerated the NWIPC. Because he
17 evidently cannot be deported, though, he should be released. He suffers from several
18 ailments that require medications, including for high cholesterol, diabetes, depression,
19 and sleep apnea, all of which are not being handled at the NWIPC as well as they would
20 be on the outside, even in Nepal. If released, he hopes to go to Austin, Texas, to stay at
21 a place named Casa Marianella, which assists displaced immigrants like him. He has
22 been accepted there and is just waiting for a letter of confirmation. If required by the
23 Court, though, he is willing to reside in another jurisdiction.

24 Petitioner remains detained at the NWIPC with no information regarding the
25 likelihood or timeline of his possible removal to Nepal.
26

VI. Particularized Facts Pertaining to Petitioner Uprety's Continued Detention

Petitioner Uprety cannot presently be returned to Nepal because Nepal has recently experienced a coup and, apparently, the uncertain nature of the Nepali government has severely limited, if not curtailed entirely, the immigration process. *See* Kamal Dev Bhattari, "Two Months after the Gen Z Upheaval, Nepal Struggles to Find Its Diplomatic Footing," *The Wire*, Nov. 16, 2025, *available at*: <https://thewire.in/south-asia/two-months-after-the-gen-z-upheaval-nepal-struggles-to-find-its-diplomatic-footing> (noting, among other issues, that Nepal had recalled its ambassador to the United States and was operating without a foreign minister). The political unrest and uncertain future have meant that he and other Nepali detainees have been told that travel documents have not been issued for months. Additionally, Petitioner Uprety has diligently cooperated with the process for well over a year now and been told he was in the process of getting his travel documents no fewer than three times but has been rebuffed each time. Removal to Nepal is thus not reasonably foreseeable for any detainee but especially not for Petitioner Uprety. To his knowledge, ICE has not obtained a travel document from Nepal for him, nor has Nepal agreed to accept him.

VII. The Legal Framework Regarding Indefinite Detention Pending Removal

A. Detention is illegal when there is not a significant likelihood of removal in the reasonably foreseeable future.

Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered removed is mandatory during the so-called 90-day "removal period." 8 U.S.C. § 1231(a)(1)(A). This period begins on the "date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed that a "serious constitutional threat" under the Fifth Amendment's Due Process Clause was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court

1 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the
2 statute's "basic purpose [of] effectuating [a noncitizen]'s removal[.]" *Id.* at 696–99.

3 The Court further held that the presumptive period during which the detention is
4 reasonably necessary to effectuate a noncitizen's removal is six months. After that, the
5 noncitizen is eligible for conditional release if there is "no significant likelihood of
6 removal in the reasonably foreseeable future." *Id.* at 701. After the "presumptively
7 reasonable" period of six months, when the noncitizen can "provide[] good reason to
8 believe that there is no significant likelihood of removal in the reasonably foreseeable
9 future," then "the Government must respond with evidence sufficient to rebut that
10 showing." *Id.*

11 The issue is not whether Respondents have been able to remove some
12 individuals to a given country. Rather, the court must make an individualized analysis
13 as to a particular detainee. *See Nguyen v. Scott*, -- F.Supp.3d --, 2025 WL 2419288, *17
14 (W.D. Wash. Aug. 21, 2025) (stating increase in total number of removals to Vietnam,
15 including those who entered pre-1995, fails to rebut the evidence that "individual
16 circumstances make removal unlikely."). Facts that are part of the analysis include
17 whether Respondent provides evidence that the request was submitted to Nepal,
18 whether Nepal has acknowledged receipt of the request or otherwise responded to
19 Petitioner's request, and the anticipated wait time for a response from Nepal.

20 **B. The Legal Framework for Third-Country Removals**

21 ICE has told Petitioner Uprety that he will not be removed to a third country,
22 although they suggested it was an option he should consider. However, because that
23 promise is not legally binding, Petitioner respectfully asks for an injunction against a
24 third-country removal unless he is provided the legally required protections.

1 The immigration laws delineate the proper procedures by which a country may
2 be designated for removal. *See* 8 U.S.C. § 1231(b). These procedures move in
3 incremental steps.

4 First, an individual with a removal order may designate the country to which
5 they want to be removed, and the government *shall* remove the individual to that
6 country. 8 U.S.C. § 1231(b)(2)(A). The government may disregard that designation if
7 (1) the individual fails to designate a country promptly; (2) the government of that
8 country does not inform the U.S. government finally, within 30 days after the date the
9 U.S. government first inquires, whether the government will accept the individual into
10 that country; (3) the government of the country is not willing to accept the individual
11 into the country; or (4) the government decides that removing the individual to that
12 country is prejudicial to the United States. 8 U.S.C. § 1231(b)(2)(C).

13 Second, if the individual is not removed to the country they designated under
14 § 1231(b)(2)(A), the government shall remove the individual to the country of which
15 the individual is a “subject, national, or citizen” unless the government of that country
16 does not inform the U.S. government or the individual within 30 days after first inquiry
17 or within another reasonable period of time whether the government will accept the
18 individual into the country or the country is not willing to accept the individual into the
19 country. 8 U.S.C. § 1231(b)(2)(D).

20 Third, if the individual is not removed to either the country of their designation
21 or the country of which they are a subject, national, or citizen, then the government
22 shall remove them to any of the following options: (1) the country from which the
23 individual was admitted to the United States; (2) the country in which is located the
24 foreign port from which the individual left for the United States or for a foreign
25 territory contiguous to the United States; (3) the country in which the individual resided
26 before the individual entered the United States and from which the individual entered

1 the United States; (4) the country in which the individual was born; or (5) the country in
 2 which the individual's birthplace is located when the individual was ordered removed.
 3 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to
 4 remove the individual to any of these countries may the government remove the
 5 individual to "another country whose government will accept [them] into that country."
 6 8 U.S.C. § 1231(b)(2)(E)(vii).

7 Notwithstanding any of these procedures, the statute prohibits removal to a third
 8 country where a person may be persecuted or tortured, a form of protection known as
 9 withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not
 10 remove [a noncitizen] to a country if the Attorney General decides that the
 11 [noncitizen's] life or freedom would be threatened in that country because of the
 12 [noncitizen's] race, religion, nationality, membership in a particular social group, or
 13 political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is
 14 a mandatory protection.

15 Similarly, Congress codified protections enshrined in the Convention Against
 16 Torture (CAT) prohibiting the government from removing a person to a country where
 17 they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998
 18 ("FARRA"), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822
 19 (8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel,
 20 extradite, or otherwise effect the involuntary return of any person to a country in which
 21 there are substantial grounds for believing the person would be in danger of being
 22 subjected to torture, regardless of whether the person is physically present in the United
 23 States."); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also
 24 mandatory.

25 To comport with the requirements of due process, the government must provide
 26 notice of the third-country removal and an opportunity to respond. Due process requires

1 “written notice of the country being designated” and “the statutory basis for the
 2 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409
 3 F.Supp.3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*
 4 *Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All
 5 removals to third countries, i.e., removal to a country other than the country or
 6 countries designated during immigration proceedings as the country of removal on the
 7 non-citizen’s order of removal, must be preceded by written notice to both the non-
 8 citizen and the non-citizen’s counsel in a language the non-citizen can understand.”
 9 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process
 10 requires notice to the noncitizen of the right to apply for asylum and withholding to the
 11 country where they will be removed). The government must be able to show evidence
 12 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,
 13 378 F.3d 932, 939 (9th Cir. 2004), *as amended* (Aug. 24, 2004), *amended sub nom. El*
 14 *Himri v. Ashcroft*, No. 03-71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) (“at the
 15 time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii),
 16 the government must be able to show that the proposed country *will* accept the
 17 [individual]”).

18 Due process also demands that the government “ask the noncitizen whether he or
 19 she fears persecution or harm upon removal to the designated country and memorialize
 20 in writing the noncitizen’s response. This requirement ensures DHS will obtain the
 21 necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute
 22 about what the officer and noncitizen said].” *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*,
 23 2025 WL 1453640, at *1 (“Following notice, the individual must be given a meaningful
 24 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection
 25 prior to removal.”) (emphasis omitted).

1 If the noncitizen claims fear, measures must be taken to ensure that the
 2 noncitizen can seek asylum, withholding, and relief under CAT before an immigration
 3 judge in reopened removal proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring
 4 the government to move to reopen the noncitizen’s immigration proceedings if the
 5 individual demonstrates “reasonable fear” and to provide “a meaningful opportunity,
 6 and a minimum of fifteen days, for the non-citizen to seek reopening of their
 7 immigration proceedings” if the noncitizen is found to not have demonstrated
 8 “reasonable fear”); *Aden*, 409 F.Supp.3d at 1019 (requiring notice and time for a
 9 respondent to file a motion to reopen and seek relief).

10 Finally, notice of the country to which the noncitizen will be removed must not
 11 be “last minute” because that would deprive an individual of a meaningful opportunity
 12 to apply for fear-based protection from removal. *Andriasian*, 180 F.3d at 1041. They
 13 must have time to prepare and present relevant arguments and evidence and to seek
 14 reopening of their removal case.

15 **C. Facts Pertaining to Punitive Banishment to Third Countries**

16 Since January 2025, Respondents have developed and implemented a policy and
 17 practice of removing individuals to third countries, without first following the
 18 procedures in the INA for designation and removal to a third country and without
 19 providing fair notice and an opportunity to contest the removal in immigration court.

20 Respondents reportedly have negotiated with at least 58 countries to accept
 21 deportees from other nations. On June 25, 2025, the *New York Times* reported that
 22 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
 23 Rwanda—had agreed to accept deportees who are not their own citizens.² Since then,
 24 ICE has carried out highly publicized third-country deportations to South Sudan and

25 ² Edward Wong, et al., *Inside the Global Deal-Making Behind Trump’s Mass*
 26 *Deportations*, N.Y. Times (June 25, 2025), <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html> [<https://perma.cc/64G9-XYGB>].

1 Eswatini. It also attempted—and completed—an “end-run” around the protections of
2 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
3 them on to their countries of citizenship despite fears of persecution.

4 Punishment and deterrence appear to be the point of the Administration’s third-
5 country removal scheme. The Administration has reportedly negotiated with countries
6 to have deportees imprisoned in prisons, camps, or other facilities. The government
7 paid El Salvador about \$5 million to arbitrarily and indefinitely imprison more than 200
8 deported Venezuelans in a maximum-security prison notorious for gross human rights
9 abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of
10 deportees from countries in Africa and Central Asia and imprisoned them in hotels, a
11 jungle camp, and a detention center. On July 4, 2025, ICE deported eight men,
12 including one pre-1995 Vietnamese refugee, to South Sudan. The men have been
13 detained incommunicado ever since. On July 15, 2025, ICE deported five men to the
14 tiny African nation of Eswatini, including one man from Vietnam, where they are
15 reportedly being held in solitary confinement.

16 The Administration has hand-selected countries known for human rights abuses
17 and instability for these third-country deportation agreements to frighten people in the
18 United States into self-deporting or to accept removal to their home countries. Indeed,
19 conditions in South Sudan are so extreme that the U.S. State Department website warns
20 Americans not to travel there, and, if they do, to prepare their will, make funeral
21 arrangements, and appoint a hostage-taker negotiator first.

22 On July 9, 2025, ICE issued a new memo stating that, when seeking to remove
23 an individual to a country not designated on the removal order, ICE may deport that
24 person without any procedures for notice or an opportunity to be heard if the State
25 Department confirms it has received diplomatic assurances that individuals will not be
26 persecuted or tortured. If no diplomatic assurances are received, the ICE memo

1 instructs officers to serve on the individual a Notice of Removal that includes the
2 intended country of removal. It instructs officers not to ask whether the individual is
3 afraid of removal to that country. It states that officers should “generally wait at least 24
4 hours following service of the Notice of Removal before effectuating removal” but that
5 “[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours
6 after service of the Notice of Removal as long as the [noncitizen] is provided
7 reasonable means and opportunity to speak with an attorney prior to removal.”

8 The memo further instructs that if the noncitizen “does not affirmatively state a
9 fear of persecution or torture if removed to the country of removal listed on the Notice
10 of Removal within 24 hours, [ICE] may proceed with removal to the country identified
11 on the notice.” If the noncitizen “does affirmatively state a fear if removed to the
12 country of removal,” then ICE will refer the case to U.S. Citizenship and Immigration
13 Services (“USCIS”) for a screening for eligibility for withholding of removal and
14 protection under the Convention Against Torture. “USCIS will generally screen within
15 24 hours.” If USCIS determines that the noncitizen does not meet the standard, the
16 individual will be removed. If USCIS determines that the noncitizen has met the
17 standard, then the policy directs ICE to either move to reopen removal proceedings “for
18 the sole purpose of determining eligibility for [withholding of removal protection] and
19 CAT” or designate another country for removal.

20 The eight men who were ultimately deported to South Sudan all claimed fear of
21 removal to South Sudan. None of those men were provided a fear screening by a
22 USCIS officer or otherwise, despite the fact that they were held by ICE for six weeks
23 on a U.S. military base in Djibouti before their final removal to South Sudan.

24 **D. The Law Governing Punitive Removal Practices**

25 It is bedrock law that the U.S. government may not impose or inflict an infamous
26 punishment for violations of civil immigration law. In 1896, the U.S. Supreme Court

1 ruled that while deportation itself was not a punishment, the government could not
2 attach punitive conditions to deportation—in that case, imprisonment at hard labor—
3 absent a criminal charge, trial in a court of law, and the protections of the Fifth, Sixth,
4 and Eighth Amendments. *Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

5 Importantly, the Court distinguished deportation, which the Court reasoned is
6 “not a ‘banishment,’ in the sense in which that word is often applied to the expulsion of
7 a citizen from his country by way of punishment,” from government actions aimed at
8 punishment, such as imprisonment at hard labor in addition to deportation. *Id.* at 236.
9 The Court explained that deportation “is but a method of enforcing the return to his own
10 country of [a noncitizen] who has not complied with the conditions upon the
11 performance of which the government of the nation, acting within its constitutional
12 authority and through the proper departments, has determined that his continuing to
13 reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730
14 (1893)). But the Court admonished that the government may not “declare unlawful
15 residence within the country to be an infamous crime, punishable by deprivation of
16 liberty and property . . . unless provision were made that the fact of guilt should first be
17 established by a judicial trial.” *Id.* at 237.

18 Deportation of individuals to third countries to be imprisoned or harmed is
19 unquestionably punishment.

20 Grounds for Relief

21 **Ground One: Petitioner Uprety’s Continued Detention in Immigration** 22 **Custody Violates the Due Process Clause of the Fifth Amendment to the** 23 **U.S. Constitution Because There Is No Significant Likelihood that He Will** 24 **Be Removed in the Reasonably Foreseeable Future.**

25 The allegations in the above paragraphs are realleged and incorporated herein.
26

1 Because Petitioner Uprety's removal order became final on June 2, 2025, the
2 removal period has expired, and detention is no longer required under 8 U.S.C. § 1231.
3 In addition, the presumptively reasonable period of six months has passed.

4 There is "good reason to believe that there is no significant likelihood of removal
5 in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. Petitioner has been
6 told no fewer than three times that his immigration documents were being prepared
7 only for that to turn out to be untrue. Additionally, he has been told that Nepal will not
8 accept his documents because they are too old and that Nepal is not accepting any
9 deportees due to the recent government upheaval.

10 Therefore, the burden shifts to the government to rebut that showing. The
11 government cannot meet that burden under the facts of this case. *See Nguyen v. Scott*,
12 No. CV25-1398, 2025 WL 2419288, at *28–29 (W.D. Wash. Aug. 21, 2025) (granting
13 preliminary injunction requiring release under *Zadvydas*); *Tang*, 2025 WL 2637750, at
14 *6 (same).

15 **Ground Two: Violation of the Fifth Amendment, 8 U.S.C. § 1231,**
16 **Convention Against Torture, Implementing Regulations, and the**
17 **Administrative Procedure Act**

18 The allegations in the above paragraphs are realleged and incorporated herein.

19 The Fifth Amendment, the INA, the CAT, and implementing regulations
20 mandate meaningful notice and opportunity to respond to any attempt to remove
21 Petitioner Uprety to a third country in reopened removal proceedings. They also require
22 an opportunity for Petitioner to make a fear-based claim against removal to a third
23 country in reopened removal proceedings. Respondents' policy for third-country
24 removals violates all of these laws because it directs ICE agents to remove individuals
25 to third countries without any notice or process *at all* where diplomatic assurances are
26 received and, where no diplomatic assurances are received, to provide flagrantly

insufficient notice (6–24 hours) and opportunity to respond, in violation of the statute, regulations, and Fifth Amendment.

Prior to any third-country removal, Petitioner must be provided with constitutionally and statutorily compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country in reopened removal proceedings. *See Nguyen*, 2025 WL 2419288, at *29 (granting preliminary injunction against “removing Petitioner to a country other than [home country] without notice and a meaningful opportunity to be heard in reopened removal proceedings with a hearing before an immigration judge”).

Ground Three: Punitive Third-Country Banishment; Violation of Fifth and Eighth Amendments

The allegations in the above paragraphs are realleged and incorporated herein.

Under the Fifth Amendment to the U.S. Constitution, no person shall “be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury;” “be subject for the same offence to be twice put in jeopardy of life or limb;” or “be deprived of life, liberty, or property, without due process of law.”

The Eighth Amendment provides that no “cruel and unusual punishments” may be inflicted.

The U.S. Supreme Court long ago held that the government may not inflict upon individuals an “infamous punishment” in addition to deportation as a penalty for an immigration violation, absent criminal charges, a judicial trial, and attendant constitutional protections. *Wong Wing*, 163 U.S. at 236–38.

Petitioner Uprety was convicted and completed any sentences for his criminal convictions in 2023. His convictions arguably made him removable from the United States, but the convictions do not authorize the government to inflict, as a matter of

executive policy and discretion, additional punishment on Petitioner. Respondents' third-country removal program is punitive in both its nature and its execution.

In other cases, the government has arranged for third countries to receive deportees and imprison them on arrival, possibly indefinitely, and often in abhorrent conditions. It has selected countries notorious for human rights abuses and instability for third-country removal arrangements. It has targeted individuals with criminal convictions for third-country removals, where they will be imprisoned and harmed, and has publicly broadcast those removals to demonize and dehumanize the individuals subjected to these practices and strike fear in the immigrant community to send a message of retribution and deterrence.

Respondents' third-country removal program is more than a publicity stunt. The hundreds of individuals who have already been subjected to it have been banished in foreign prisons upon arrival without charge and often without communication with the outside world, including their families and lawyers. Respondents may not subject Petitioner to their third-country removal program designed to impose a severe punishment on their subjects. Such conduct "shocks the conscience" under Fifth Amendment substantive due process, is cruel and unusual punishment, and may not be imposed without charge and a judicial trial.

Respondents may not seek to remove Petitioner to a third country under their punitive banishment policy and practices. *See Nguyen*, 2025 WL 2419288, at *29 (granting preliminary injunction against "removing Petitioner to any country where he is likely to face imprisonment upon arrival").

Prayer for Relief

Petitioner Uprety respectfully requests that this Court:

- (a) Assume jurisdiction over this action;

1 (b) Issue an Order directing Respondents promptly to show cause why this
2 Petition should not be granted;

3 (c) Order Respondents to immediately release him from custody;

4 (d) Order that Respondents may not re-detain him without first holding a
5 hearing before a neutral decisionmaker at which the government bears the burden of
6 establishing flight risk or danger to the community by clear and convincing evidence
7 based on changed circumstances since he was previously released;

8 (e) Order that Respondents may not remove or seek to remove him to a third
9 country without notice and meaningful opportunity to respond in compliance with the
10 statute and due process in reopened removal proceedings;

11 (f) Order that Respondents may not remove him to any third country because
12 Respondents' third-country removal program seeks to impose unconstitutional
13 punishment on its subjects, including imprisonment and other forms of harm; and

14 (g) Order all other relief that the Court deems just and proper.

15 **Verification Pursuant to LCR 100(e)**

16 Counsel verifies that this petition is authorized by Pramesh Uprety. It does not
17 personally bear his signature because of the significant difficulty for counsel in meeting
18 with Mr. Uprety in person and because mailing the petition to Mr. Uprety and having it
19 mailed back would cause delay that would only extend the period of his unlawful
20 detention. Counsel knows the facts asserted above or alleges them on information and
21 belief, based on information obtained from the government and/or Mr. Uprety.

22 DATED this 2nd day of December 2025.

23 Respectfully submitted,

24 *s/ Andrew D. Kennedy*
25 Assistant Federal Public Defender
26 Attorney for Pramesh Uprety