

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NIRAJ BHANDARI,

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

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

¹ For just a few examples of other courts issuing such an order in § 2241 cases involving ICE detainees within the past few months (or reflecting the court had previously issued such an order), *see, e.g., Bustos v. Raycraft*, No. 25-13202, 2025 WL

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: Niraj Bhandari
- (b) Other names used: N/A
2. Place of confinement:
 - (a) Northwest Immigration Processing Center (NWIPC)
 - (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a contractual arrangement with my custodian, the Immigration and Customs Enforcement Field Office Director at Seattle, Washington.
 - (c) Case number or numbers [ICE file number, if known]: My A# has been provided to the government along with the filing of this petition.
3. I am currently being held on orders by federal authorities: United States Immigration and Customs Enforcement.
4. I am currently being held on an immigration charge.

Decision or Action You Are Challenging

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

3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. CV25-513-SDN, 2025 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).

(c) Decision or action you are challenging: I was taken into custody by ICE on January 15, 2025. I have been detained in ICE custody for eight months following my final removal order on April 15, 2025.

Your Earlier Challenges of the Decision or Action

7–9. First, second, and third appeals: None

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 15, 2025

(b) Date of the removal or reinstatement order: April 15, 2025

(c) Did you file an appeal with the Board of Immigration Appeals? No

(d) Did you appeal the decision to the United States Court of Appeals? No

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

Niraj Bhandari is presently detained at the Northwest ICE Processing Center (NWIPC). Petitioner has been held in immigration custody for just nearly a year. He came to this country seeking asylum based on political persecution in Nepal, although it was ultimately concluded that he did not have a credible fear of return to Nepal. Removal to the former country of residence is not reasonably foreseeable as a recent coup has meant deportations to Nepal have significantly slowed if not stopped entirely, and the Government's own representatives have conceded that the process may take "several months" while asserting no concrete details of when, if ever, it will be completed. Petitioner's continued detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner seeks (a) release; (b) an order preventing re-

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

8 **II. Jurisdiction and Venue**

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

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

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

19 Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because
20 Respondents are agencies or officers of agencies of the United States; Respondents
21 Hermosillo and Scott reside in this district; and Petitioner is detained in this district.
22 Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the
23 events or omissions giving rise to Petitioner's claims occurred in this district.

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

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

2 Petitioner is “in custody” for the purpose of § 2241 because he has been detained
3 by Respondent since January 15, 2025.

4 **IV. Parties**

5 Mr. Bhandari is a citizen of Nepal. He came to the United States seeking asylum
6 based on his political activities. Upon entering the United States in San Diego on
7 January 15, 2025, he immediately presented himself to immigration authorities and
8 expressed a desire to seek asylum. He was taken into custody and has been detained
9 ever since, ultimately arriving at the NWIPC at the beginning of February. He has
10 remained there ever since. In the year since he left Nepal, his father was killed, likely
11 by the same individuals who were persecuting him. Nonetheless, immigration
12 authorities have concluded he does not have a credible fear of returning to Nepal. He
13 has a final order of removal to Nepal as the country designated for removal. Petitioner
14 is detained in the control and custody of Respondents at NWIPC. As such, Petitioner is
15 a resident of Tacoma, Washington.

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

19 Respondent Kristi Noem is the Secretary of the Department of Homeland
20 Security (“DHS”). In this capacity, Respondent Noem is the legal custodian of
21 Petitioner. Respondent Noem is sued in her official capacity.

22 Respondent Laura Hermosillo is the Field Office Director for ICE Enforcement
23 and Removal Operations (“ERO”) in Seattle, Washington. As the ERO Seattle Field
24 Office Director, she is Petitioner’s immediate custodian, responsible for his detention at
25 NWIPC and is the person with the authority to authorize detention or release.
26 Respondent Hermosillo is sued in her official capacity.

Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-700, 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

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

V. Background

Niraj Bhandari was born in Nepal on [REDACTED] Facing political persecution in his homeland, he fled to the United States, turned himself in at the border in San Diego, and requested asylum on January 15, 2025. He participated in a credible fear interview on April 2, 2025. That was denied on April 10, 2025, and he was ordered deported on April 15, 2025. Mr. Bhandari has been in ICE detention for over six months since his final order of removal with no end in sight. He cannot be returned to Nepal given recent government upheaval there and the nation's apparent unwillingness to provide travel documents.² It has been suggested by NWIPC staff that, if he and other Nepali citizens would like to leave, they should embrace potentially going to a third country. However, Petitioner does not have ties to any other country. The only country to which he could reasonably be deported is Nepal, and they will not accept him currently.

² Binod Ghimire, "Floods and Landslides in Nepal Worsen Woes of a Nation in Flux," *The New York Times* (Oct. 5, 2025), <https://www.nytimes.com/2025/10/05/world/asia/landslides-floods-nepal-india.html> [<https://perma.cc/Y27S-YDLH>] ("Violent protests over entrenched corruption and economic stagnation last month toppled the government and damaged many government offices.").

1 If released on bond, Mr. Bhandari intends to live with a family friend Naryan
 2 Sapkota, a naturalized citizen residing in Fort Worth, Texas. Mr. Sapkota is willing to
 3 house Mr. Bhandari and assist him in appearing for any future immigration
 4 proceedings.

5 **VI. Particularized Facts Pertaining to Petitioner's Continued Detention**

6 Petitioner cannot presently be returned to Nepal because the political situation
 7 there is in flux and deportations to Nepal have slowed if not stopped entirely. On
 8 October 16, 2025, Mr. Bhandari and other Nepalese detainees met with a deportation
 9 officer at the NWIPC who informed them that Nepal was not issuing travel documents
 10 and had not done so for at least two months. Although, in other cases, the Government
 11 has asserted that Nepal is indeed accepting deportees, that has not been the case for
 12 Mr. Bhandari and the several other Nepalese detainees he knows at the NWIPC and,
 13 even if Nepal is accepting deportees, in another case in which Judge Robart ultimately
 14 granted habeas relief to a similarly-situated Nepalese petitioner, an immigration official
 15 conceded that “[i]t is not uncommon for a request for a Nepalese Travel Document to
 16 take several months before the TD is issued” *KC v. Bondi et al*, No. 2:25-cv-
 17 02071-JLR, Dkt. 11 at 2. Removal to Nepal is thus simply not reasonably foreseeable.
 18 ICE has not obtained a travel document from Nepal for Petitioner, nor has Nepal agreed
 19 to accept Petitioner.

20 **VII. The Legal Framework Regarding Indefinite Detention Pending Removal**

21 **A. Detention is unconstitutional when there is not a significant likelihood** 22 **of removal in the reasonably foreseeable future.**

23 Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered
 24 removed is mandatory during the so-called 90-day “removal period.” 8 U.S.C.
 25 § 1231(a)(1)(A). This period begins on the “date the order of removal becomes
 26 administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed

1 that a “serious constitutional threat” under the Fifth Amendment’s Due Process Clause
2 was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court
3 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the
4 statute’s “basic purpose [of] effectuating [a noncitizen]’s removal[.]” *Id.* at 696–99.

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

13 The issue is not whether Respondents have been able to remove some
14 individuals to a given country. Rather, the court must make an individualized analysis
15 as to a particular detainee. *See Nguyen v. Scott*, -- F.Supp.3d --, 2025 WL 2419288, *17
16 (W.D. Wash. Aug. 21, 2025) (stating increase in total number of removals to Vietnam,
17 including those who entered pre-1995, fails to rebut the evidence presented by
18 Petitioner that “his individual circumstances make removal unlikely.”).

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

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

23 First, an individual with a removal order may designate the country to which
24 they want to be removed, and the government *shall* remove the individual to that
25 country. 8 U.S.C. § 1231(b)(2)(A). The government may disregard that designation if
26 (1) the individual fails to designate a country promptly; (2) the government of that

1 country does not inform the U.S. government finally, within 30 days after the date the
2 U.S. government first inquires, whether the government will accept the individual into
3 that country; (3) the government of the country is not willing to accept the individual
4 into the country; or (4) the government decides that removing the individual to that
5 country is prejudicial to the United States. 8 U.S.C. § 1231(b)(2)(C).

6 Second, if the individual is not removed to the country they designated under
7 § 1231(b)(2)(A), the government shall remove the individual to the country of which
8 the individual is a “subject, national, or citizen” unless the government of that country
9 does not inform the U.S. government or the individual within 30 days after first inquiry
10 or within another reasonable period of time whether the government will accept the
11 individual into the country or the country is not willing to accept the individual into the
12 country. 8 U.S.C. § 1231(b)(2)(D).

13 Third, if the individual is not removed to either the country of their designation
14 or the country of which they are a subject, national, or citizen, then the government
15 shall remove them to any of the following options: (1) the country from which the
16 individual was admitted to the United States; (2) the country in which is located the
17 foreign port from which the individual left for the United States or for a foreign
18 territory contiguous to the United States; (3) the country in which the individual resided
19 before the individual entered the United States and from which the individual entered
20 the United States; (4) the country in which the individual was born; or (5) the country in
21 which the individual’s birthplace is located when the individual was ordered removed.
22 8 U.S.C. § 1231(b)(2)(E). *Only* “[i]f impracticable, inadvisable, or impossible” to
23 remove the individual to any of these countries may the government remove the
24 individual to “another country whose government will accept [them] into that country.”
25 8 U.S.C. § 1231(b)(2)(E)(vii).

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

9 Similarly, Congress codified protections enshrined in the Convention Against
10 Torture (CAT) prohibiting the government from removing a person to a country where
11 they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998
12 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822
13 (8 U.S.C. § 1231 note) (“It shall be the policy of the United States not to expel,
14 extradite, or otherwise effect the involuntary return of any person to a country in which
15 there are substantial grounds for believing the person would be in danger of being
16 subjected to torture, regardless of whether the person is physically present in the United
17 States.”); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also
18 mandatory.

19 To comport with the requirements of due process, the government must provide
20 notice of the third-country removal and an opportunity to respond. Due process requires
21 “written notice of the country being designated” and “the statutory basis for the
22 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409
23 F.Supp.3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*
24 *Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All
25 removals to third countries, i.e., removal to a country other than the country or
26 countries designated during immigration proceedings as the country of removal on the

1 non-citizen's order of removal, must be preceded by written notice to both the non-
2 citizen and the non-citizen's counsel in a language the non-citizen can understand."
3 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process
4 requires notice to the noncitizen of the right to apply for asylum and withholding to the
5 country where they will be removed). The government must be able to show evidence
6 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,
7 378 F.3d 932, 939 (9th Cir. 2004), *as amended* (Aug. 24, 2004), *amended sub nom. El*
8 *Himri v. Ashcroft*, No. 03-71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) ("at the
9 time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii),
10 the government must be able to show that the proposed country *will* accept the
11 [individual]").

12 Due process also demands that the government "ask the noncitizen whether he or
13 she fears persecution or harm upon removal to the designated country and memorialize
14 in writing the noncitizen's response. This requirement ensures DHS will obtain the
15 necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute
16 about what the officer and noncitizen said]." *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*,
17 2025 WL 1453640, at *1 ("Following notice, the individual must be given a meaningful
18 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection
19 prior to removal.") (emphasis omitted).

20 If the noncitizen claims fear, measures must be taken to ensure that the
21 noncitizen can seek asylum, withholding, and relief under CAT before an immigration
22 judge in reopened removal proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring
23 the government to move to reopen the noncitizen's immigration proceedings if the
24 individual demonstrates "reasonable fear" and to provide "a meaningful opportunity,
25 and a minimum of fifteen days, for the non-citizen to seek reopening of their
26 immigration proceedings" if the noncitizen is found to not have demonstrated

1 “reasonable fear”); *Aden*, 409 F.Supp.3d at 1019 (requiring notice and time for a
2 respondent to file a motion to reopen and seek relief).

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

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

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

13 Respondents reportedly have negotiated with at least 58 countries to accept
14 deportees from other nations. On June 25, 2025, the *New York Times* reported that
15 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
16 Rwanda—had agreed to accept deportees who are not their own citizens.³ Since then,
17 ICE has carried out highly publicized third-country deportations to South Sudan and
18 Eswatini. It also attempted—and completed—an “end-run” around the protections of
19 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
20 them on to their countries of citizenship despite fears of persecution.

21 Punishment and deterrence appear to be the point of the Administration’s third-
22 country removal scheme. The Administration has reportedly negotiated with countries
23 to have deportees imprisoned in prisons, camps, or other facilities. The government
24 paid El Salvador about \$5 million to arbitrarily and indefinitely imprison more than 200

25 ³ 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 deported Venezuelans in a maximum-security prison notorious for gross human rights
2 abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of
3 deportees from countries in Africa and Central Asia and imprisoned them in hotels, a
4 jungle camp, and a detention center. On July 4, 2025, ICE deported eight men,
5 including one pre-1995 Vietnamese refugee, to South Sudan. The men have been
6 detained incommunicado ever since. On July 15, 2025, ICE deported five men to the
7 tiny African nation of Eswatini, including one man from Vietnam, where they are
8 reportedly being held in solitary confinement.

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

15 On July 9, 2025, ICE issued a new memo stating that, when seeking to remove
16 an individual to a country not designated on the removal order, ICE may deport that
17 person without any procedures for notice or an opportunity to be heard if the State
18 Department confirms it has received diplomatic assurances that individuals will not be
19 persecuted or tortured. If no diplomatic assurances are received, the ICE memo
20 instructs officers to serve on the individual a Notice of Removal that includes the
21 intended country of removal. It instructs officers not to ask whether the individual is
22 afraid of removal to that country. It states that officers should “generally wait at least 24
23 hours following service of the Notice of Removal before effectuating removal” but that
24 “[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours
25 after service of the Notice of Removal as long as the [noncitizen] is provided
26 reasonable means and opportunity to speak with an attorney prior to removal.”

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

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

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

18 It is bedrock law that the U.S. government may not impose or inflict an infamous
19 punishment for violations of civil immigration law. In 1896, the U.S. Supreme Court
20 ruled that while deportation itself was not a punishment, the government could not
21 attach punitive conditions to deportation—in that case, imprisonment at hard labor—
22 absent a criminal charge, trial in a court of law, and the protections of the Fifth, Sixth,
23 and Eighth Amendments. *Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

24 Importantly, the Court distinguished deportation, which the Court reasoned is
25 “not a ‘banishment,’ in the sense in which that word is often applied to the expulsion of
26 a citizen from his country by way of punishment,” from government actions aimed at

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

11 Deportation of individuals to third countries to be imprisoned or harmed is
 12 unquestionably punishment.

13 **Grounds for Relief**

14 **Ground One: Petitioner Bhandari’s Continued Detention in Immigration** 15 **Custody Violates the Due Process Clause of the Fifth Amendment to the** 16 **U.S. Constitution Because There Is No Significant Likelihood that He Will** 17 **Be Removed in the Reasonably Foreseeable Future.**

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

19 Because Petitioner Bhandari’s removal order became final on April 15, 2025, the
 20 removal period has expired, and detention is no longer required under 8 U.S.C. § 1231.
 In addition, the presumptively reasonable period of six months has passed.

21 There is “good reason to believe that there is no significant likelihood of removal
 22 in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701. Petitioner was told
 23 in no uncertain terms that Nepal was not accepting deportees. Moreover, there has been
 24 no indication of any progress being made on obtaining travel documents for him in the
 25 past ten months.

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

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

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

10 The Fifth Amendment, the INA, the CAT, and implementing regulations
11 mandate meaningful notice and opportunity to respond to any attempt to remove
12 Petitioner Bhandari to a third country in reopened removal proceedings. They also
13 require an opportunity for Petitioner to make a fear-based claim against removal to a
14 third country in reopened removal proceedings. Respondents' policy for third-country
15 removals violates all of these laws because it directs ICE agents to remove individuals
16 to third countries without any notice or process *at all* where diplomatic assurances are
17 received and, where no diplomatic assurances are received, to provide flagrantly
18 insufficient notice (6–24 hours) and opportunity to respond, in violation of the statute,
19 regulations, and Fifth Amendment.

20 Prior to any third-country removal, Petitioner must be provided with
21 constitutionally and statutorily compliant notice and an opportunity to respond and
22 contest that removal if he has a fear of persecution or torture in that country in reopened
23 removal proceedings. *See Nguyen*, 2025 WL 2419288, at *29 (granting preliminary
24 injunction against “removing Petitioner to a country other than [home country] without
25 notice and a meaningful opportunity to be heard in reopened removal proceedings with
26 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 Bhandari does not have a criminal history. His immigration actions arguably made him removable from the United States, but they do not authorize the government to inflict, as a matter of executive policy and discretion, additional punishment on him. 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 respectfully requests that this Court:

- (a) Assume jurisdiction over this action;
- (b) Issue an Order directing Respondents promptly to show cause why this Petition should not be granted;
- (c) Order Respondents to immediately release Petitioner from custody;
- (d) Order that Respondents may not re-detain Petitioner without first holding a hearing before a neutral decisionmaker at which the government bears the burden of establishing flight risk or danger to the community by clear and convincing evidence based on changed circumstances since Petitioner was previously released;
- (e) Order that Respondents may not remove or seek to remove Petitioner to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings;

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

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

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

6 Counsel verifies that this petition is authorized by Petitioner Bhandari. It does
7 not personally bear Petitioner's signature because of the significant difficulty for
8 counsel in meeting with Petitioner in person and because mailing the petition to him
9 and having it mailed back would cause delay that would only extend the period of his
10 unlawful detention. Counsel knows the facts asserted above or alleges them on
11 information and belief, based on information obtained from the government and/or
12 Petitioner.

13 DATED this 31st day of December 2025.

14 Respectfully submitted,

15 *s/ Andrew D. Kennedy*
16 Assistant Federal Public Defender
17 Attorney for Niraj Bhandari
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