

District Judge Kymberly K. Evanson

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NIRAJ BHANDARI,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02747-KKE

FEDERAL RESPONDENTS'
RETURN MEMORANDUM

Noted for Consideration:
January 26, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement (“ICE”) detains Petitioner Niraj Bhandari, a noncitizen subject to an administratively final order of removal, pursuant to Section 241 of the Immigration and Nationality Act (“INA”). *See* 8 U.S.C. § 1231. Petitioner brings this habeas litigation pursuant to 28 U.S.C. § 2241 to challenge the lawfulness of his immigration detention. In response, Federal Respondents submit the following factual background as contained in the records of Petitioner’s immigration case Declaration of Jordan Steveson (“Steveson Decl.”) with attached exhibits and as set forth in the Declaration of Deportation Officer Curran (“Curran Decl.”), as well as the relevant legal authorities.

Petitioner additionally requests that this Court order Federal Respondents to provide additional process as it relates to removal to a country other than a country designated on his removal order (“third country removal”), and simultaneously prohibit Petitioner’s removal to any third country. Dkt. 5 Pet. at 16-18. The U.S. Department of Homeland Security’s (“DHS”) policy addresses protections concerning third country removals. Accordingly, these requests must be denied.

II. LEGAL STANDARD

To succeed on a habeas petition, Petitioner “must show [he] is in custody in violation of the Constitution or laws or treaties of the United States.” *Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 3291033, at *5 (W.D. Wash. Mar. 29, 2024), report and recommendation adopted, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6, 2024) (citing 28 U.S.C. § 2241). Because habeas proceedings are civil in nature, the “[p]etitioner ‘bears the burden of proving that he is being held contrary to law, . . . [and] he must satisfy his burden of proof by a preponderance of the evidence.’” *Aditya W. H. v. Trump*, No. 25-cv-1976, 2025 WL 1420131, at *7 (D. Minn. May 14, 2025) (quoting *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (citations omitted)).

III. DETENTION AND REMOVAL AUTHORITY

A. Detention for Expedited Removal

A noncitizen who “arrives in the United States,” or “is present” in this country but “has not been admitted,” or “who is brought to the United States after having been interdicted in international or United States waters” is treated as “an applicant for admission.” 8 U.S.C. § 1225(a)(1). Noncitizens who are apprehended almost immediately after illegally crossing the border and who are determined to be inadmissible due to lacking a visa or valid entry documentation, 8 U.S.C. § 1182(a)(7)(A), may be removed pursuant to an expedited removal

1 order unless they express an intention to apply for asylum or a fear of persecution in their home
2 country. 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II). “The purpose of these provisions is to expedite
3 the removal from the United States of aliens who indisputably have no authorization to be
4 admitted to the United States, while providing an opportunity for such an alien who claims
5 asylum to have the merits of his or her claim promptly assessed by officers with full professional
6 training in adjudicating asylum claims.” H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 209
7 (1996).

8 Applicants for admission fall into one of two categories. Section 1225(b)(1) covers
9 noncitizens initially determined to be inadmissible due to fraud, misrepresentation, or lack of
10 valid documentation, and certain other noncitizens designated by the Attorney General in her
11 discretion. Separately, Section 1225(b)(2) serves as a catchall provision that applies to all
12 applicants for admission not covered by Section 1225(b)(1) (with specific exceptions not
13 relevant here). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

14 Congress has determined that all noncitizens subject to Section 1225(b) must be detained.
15 Regardless of whether a noncitizen falls under Section 1225(b)(1) or (b)(2), the sole means of
16 release is “temporary parole from § 1225(b) detention ‘for urgent humanitarian reasons or
17 significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583 U.S. at 283.

18 If a noncitizen subject to Section 1225(b)(1) asserts a credible fear of persecution, the
19 noncitizen “shall be detained for further consideration of the application for asylum.” 8 U.S.C. §
20 1225(b)(1)(B)(ii). “Any alien subject to the procedures under this clause shall be detained pending
21 a final determination of credible fear of persecution and, if found not to have such a fear, until
22 removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *see also* 62 Fed. Reg. 10,312, 10,315 (Mar. 6, 1997)
23 (“[t]he provisions of § 235.3(b)(2)(iii) require[e] detention of all aliens subject to the expedited
24 removal provisions and issued a removal order”); *Matter of M-S-*, 27 I. & N. Dec. 509, 509 (A.G.

1 2019) (“Generally, aliens placed in expedited proceedings must be detained until removed. INA
2 § 235(b)(1)(B)(iii)(IV).”).

3 **B. Third Country Removal**

4 When the Government seeks to remove an individual, it may do so through removal
5 proceedings involving an evidentiary hearing before an Immigration Judge (“IJ”). 8 U.S.C. §
6 1229a. In removal proceedings, the IJ determines both whether the individual may be removed
7 from the United States and also the country to which they will be removed. *Id.*; 8 U.S.C. §
8 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). The INA sets out the process for determining the country of
9 removal.

10 First, the alien may select a country. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). If
11 the alien declines, the IJ will designate one and may also designate alternative countries. 8 U.S.C.
12 §§ 1231(b)(2)(C)-(D); 8 C.F.R. § 1240.10(f). In selecting an alternative country of removal, the IJ
13 must first select the “country of which the alien is a subject, national, or citizen[.]” 8 U.S.C. §
14 1231(b)(2)(D). If removal to that country is impossible, the IJ may remove the alien to “any of the
15 following countries” listed in 8 U.S.C. § 1231(b)(2)(E):

- 16 (i) The country from which the alien was admitted to the United States.
- 17 (ii) The country in which is located the foreign port from which the alien left for the
18 United States or for a foreign territory contiguous to the United States.
- 19 (iii) A country in which the alien resided before the alien entered the country from which
20 the alien entered the United States.
- 21 (iv) The country in which the alien was born.
- 22 (v) The country that had sovereignty over the alien's birthplace when the alien was born.
- 23 (vi) The country in which the alien's birthplace is located when the alien is ordered
24 removed.

1 Lastly, Section 1231(b)(2)(E)(vii) provides that “[i]f impracticable, inadvisable, or impossible to
2 remove the alien to each country” described above, the statute permits removal to any “country
3 whose government will accept the” noncitizen. *Id.* § 1231(b)(2)(E)(vii).

4 The government is prohibited from removing a person to a third country where they may
5 be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. §
6 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove a
7 person to a country where they would be tortured, a form of protection known as protection under
8 the Convention Against Torture (“CAT”). *See* Foreign Affairs Reform and Restructuring Act of
9 1998 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. §
10 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. Withholding of removal and
11 CAT protection are mandatory, but “only restrict *where* the Government may remove a noncitizen
12 to, not *whether* the noncitizen is subject to removal.” *Kumar v. Wamsley*, No. C25-2055-KKE,
13 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). “Thus, even if the IJ grants such protection,
14 the removal order remains valid and enforceable, albeit not to the identified country or countries
15 of risk.” *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*,
16 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004)).

17 If the government has a removal order but no country to which an IJ has authorized
18 removal, it can remove the noncitizen to a third country, meaning any country not designated on
19 the removal order. It remains the case that the government cannot remove an alien to any third
20 country where they would face persecution or torture. 8 U.S.C. § 1231(b)(3)(A); 28 C.F.R. § 200.1;
21 8 C.F.R. §§ 208.16–18, 1208.16–18.

22 C. DHS Policy on Third-Country Removals

23 On March 30, 2025, and then later, on July 9, 2025, DHS issued a guidance regarding third
24 country removals. *See* U.S. Department of Homeland Security, “Guidance Regarding Third

Country Removals,” Kristi Noem, March 30, 2025, available at <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1.pdf> (last visited January 16, 2026) (“DHS Memo”); U.S. Immigration and Customs Enforcement, “Third Country Removals Following the Supreme Court’s Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025),” Todd M. Lyons, July 9, 2025, available at <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf> (last visited January 16, 2026) (hereinafter “July 9 Memo”); *see also* Kumar, 2025 WL 3204724, at *2-3 (describing contents of these memos and the distinction between the two);

The DHS memo discusses DHS’s policies and procedures regarding the removal of individuals with final orders of removals to countries other than those designated for removal in those orders (referred to as “third country removals”). July 9 Memo. According to the guidance outlined in the July 9 Memo, if DHS has not received diplomatic reassurances from the designated country, DHS will first inform the individual that DHS is seeking removal to that country. *Id.*, at 2. If the individual expresses that they are afraid of being removed to that country, DHS will refer them to U.S. Citizenship and Immigration Services (“USCIS”) for a reasonable fear interview, to screen that person for protection against removal to that country. *Id.*

After the interview is conducted, USCIS will determine whether the individual would more likely than not be persecuted or tortured in the country of removal. *Id.* If USCIS finds that the individual has met this standard, if the person was previously in removal proceedings, USCIS will inform ICE, and ICE can then file a motion to reopen with the Immigration Court. *Id.* Alternatively, ICE can also choose to designate another country of removal. If USCIS finds that the person has not met the standard, according to DHS policy, they will be removed. *Id.* There is nothing in the memo or in ICE policy that prevents an individual from filing a motion to reopen their prior

1 removal proceedings at any time they so choose, based on a request for asylum, withholding of
2 removal, or protection under CAT. *See id.*; *see also* 8 C.F.R. § 1003.23(b)(4)(i).

3 IV. FACTUAL BACKGROUND

4 Petitioner is a native and citizen of Nepal. Curran Decl., ¶ 4. He unlawfully entered the
5 United States from Mexico on or about January 15, 2025, and was detained by United States
6 Border Patrol and processed for expedited removal. Steveson Decl., Exh. A, Form I-213. On
7 February 2, 2025, Bhandari was transferred to the Northwest ICE Processing Center (“NWIPC”).
8 Curran Decl., ¶ 5. On February 10, 2025, Bhandari claimed fear of return. *Id.*

9 On April 2, 2025, Bhandari was interviewed by an Asylum Officer, who found no credible
10 fear of return. Curran Decl., ¶ 6. On April 15, 2025, an immigration judge also determined that
11 Bhandari had no credible fear of return. Curran Decl., ¶ 7; Steveson Decl., Exh. B, IJ Order.

12 ICE is seeking a travel document from Nepal. Curran Decl., ¶¶ 8-16. Initially, some
13 revisions needed to be made to the travel document request. Curran Decl., ¶ 9-10. However, a
14 travel document request was approved for submission to the Embassy of Nepal on September 23,
15 2025. Curran Decl., 11. Approximately a month later, on October 21, 2025, the Embassy of Nepal
16 issued a temporary travel document for Bhandari. Curran Decl., ¶ 12. Unfortunately, ICE did not
17 remove Bhandari prior to the document expiring. *Id.*

18 Another travel document request was prepared in December 2025 and on January 8, 2026,
19 another travel document request was sent to the Embassy of Nepal. Curran Decl., 13-15. When
20 ICE receives the travel document from Nepal, it will make arrangements to remove Bhandari to
21 Nepal. Curran Decl., ¶ 16.

22 V. ARGUMENT

23 ICE detains Petitioner subject to mandatory detention until removal under 8 U.S.C. §
24 1225(b)(1)(B)(IV). During this time, ICE is taking steps to execute Petitioner’s removal from the

1 United States to Nepal. There is a significant likelihood that ICE will remove Bhandari to Nepal
2 in the reasonably foreseeable future. There is no indication that Bhandari will be removed to a
3 third country other than Nepal and his request for additional process, based on a hypothetical
4 scenario, should be denied.

5 **A. ICE's continued detention of Bhandari is lawful pursuant to 8 U.S.C. § 1225(b).**

6 Bhandari's detention prior to his removal is statutorily mandated as he is subject to
7 expedited removal procedures under the procedures set forth in 8 U.S.C. § 1225(b)(1). Bhandari
8 was encountered at the border, determined to be inadmissible, processed for an expedited removal,
9 and claimed fear of return. Pet. at 6; Steveson Decl., Exh. A, Form I-213. His credible fear claim
10 was denied. Pet. at 6; Steveson Decl., Exh. B, IJ Order. Because he was found not to have a credible
11 fear of persecution, the IJ returned his case to DHS for his removal. Bhandari must be detained
12 until his removal. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

13 In this case, the interpretation of the statutory authority which Bhandari is detained under
14 does not provide for the relief requested in the Petition. *See Jennings*, 583 U.S. at 297-303. As
15 the detention authority does not afford Bhandari a right to release or any of the relief requested,
16 the Court should thereby reject his habeas claim and dismiss the Petition in its entirety.

17 **B. Bhandari's detention is not "indefinite."**

18 Bhandari mistakenly relies on a six-month presumptive time limitation applicable to 8
19 U.S.C. § 1231(a)(6) to allege that his detention has become indefinite or otherwise violates due
20 process. Pet. at 7-8. The facts in this case demonstrate that Bhandari is subject to expedited removal
21 under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Unlike Section 1231(a)(6), Section 1225(b) cannot
22 "reasonably be read to limit detention to six months." *Jennings*, 583 U.S. at 301. Therefore, the
23 length of Bhandari's detention does not implicate the time limitation raised in *Zadvydas v. Davis*,
24 533 U.S. 678 (2001).

1 The Supreme Court has considered whether 8 U.S.C. § 1225(b) imposes a time-limit on
2 the length of detention and whether such noncitizens detained under this statutory authority have
3 a statutory right to a bond hearing. *See Jennings*, 583 U.S. at 297-303. The Supreme Court held
4 that “nothing in the statutory text [of 8 U.S.C. § 1225(b)] imposes any limit on the length of
5 detention” nor “says anything whatsoever about bond hearings.” *Id.*, at 297. The Court proceeded
6 to add that the *sole* means of release for noncitizens detained pursuant to 8 U.S.C. § 1225(b) is
7 temporary parole *at the discretion of the Attorney General* under 8 U.S.C. § 1182(d)(5). *Id.*, at
8 300 (“That express exception to detention implies that there are no other circumstances under
9 which aliens detained under [8 U.S.C.] § 1225(b) may be released.”).

10 The Supreme Court’s decision in *Thuraissigiam* reinforced this holding. Therein, the
11 Supreme Court “reiterated th[e] important rule” that a noncitizen seeking initial entry to the United
12 States “has no entitlement” to *any* legal rights, constitutional or otherwise, other than those
13 expressly provided by statute. *See* 591 U.S. at 107, 138-39; *see also id.*, at 107 (“Congress is
14 entitled to set the conditions for an alien’s lawful entry into this country and that, as a result, an
15 alien at the threshold of initial entry cannot claim any greater rights under the Due Process
16 Clause.”). Furthermore, the fact that Bhandari succeeded in illegally crossing the border does not
17 alter this rule. *Id.*, at 140 (“An alien who is detained shortly after unlawful entry cannot be said to
18 have ‘effected an entry.’”).

19 Since *Thuraissigiam*, the Ninth Circuit has issued multiple published decisions discussing
20 the ramifications of the Supreme Court’s decision for noncitizens seeking initial entry who fall
21 within the ambit of 8 U.S.C. § 1225(b) and has expressly held that such noncitizens’ due process
22 rights are expressly limited to those set forth by statute. In 2021, the Ninth Circuit stated that
23 “Congress has already balanced the amount of due process available to petitioners with the
24 executive’s prerogative to remove individuals, and we decline to expand judicial review beyond

1 the parameters set by Congress.” *Rauda v. Jennings*, 8 F.4th 1050, 1058 (9th Cir. 2021). Later
2 that same year, the Ninth Circuit repeated its decision that “in the expedited removal context, a
3 petitioner’s due process rights are coextensive with the statutory rights Congress provides.”
4 *Guerrier v. Garland*, 18 F.4th 304, 310 (9th Cir. 2021).

5 In *Mendoza-Linares v. Garland*, the Ninth Circuit explicitly noted the Supreme Court’s
6 decision in *Thuraissigiam* and held that “any rights [a noncitizen seeking initial entry] may have
7 in regard to removal or admission are purely statutory in nature and are not derived from, or
8 protected by, the Constitution’s Due Process Clause.” 51 F.4th 1146, 1167 (9th Cir. 2022).
9 Ultimately, “[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive: the
10 Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress may make rules
11 as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*, 53
12 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)).

13 To claim an alleged due process violation based on the length of his detention, Bhandari
14 mistakenly relies on the Supreme Court’s constitutional analysis of detention pursuant to 8 U.S.C.
15 § 1231(a)(6) in *Zadvydas v. Davis*, 533 U.S. 678 (2001). See Pet. at 7-8. In *Zadvydas*, the Supreme
16 Court found that post-order detention could potentially become indefinite as authorized under the
17 open-ended terms of Section 1231(a)(6). Finding the possibility of indefinite detention
18 troublesome, the Supreme Court clarified that there is a point at which Congress’s interest in
19 detaining a noncitizen to facilitate his removal may eventually give way to the noncitizen’s liberty
20 interest. This shift occurs when detention becomes potentially indefinite. *Zadvydas*, 533 U.S. at
21 690 (“A statute permitting indefinite detention of an alien would raise a serious constitutional
22 problem.”). The Court construed Section 1231 as having an implicit six-month reasonableness
23 limitation, after which the noncitizen may be released if he can demonstrate there is no foreseeable
24 likelihood of his removal, and the Government fails to rebut that showing. *Id.*, at 701.

1 However, Bhandari has never been detained under Section 1231(a), and so *Zadvydas* is
2 irrelevant to his case. *See, e.g., Singh v. Holder*, 2013 U.S. Dist. LEXIS 169715, *2 ((D. Ariz.
3 Aug. 28, 2013) (stating that “*Zadvydas* is inapplicable because Petitioner is an arriving alien who
4 was issued an expedited order of removal, and is mandatorily detained under 8 U.S.C. §
5 1225(b)(1)(B)(iii)(IV), not § 1231(a)(6)”). Rather, as the relevant statutory provision makes
6 abundantly clear, “[a]ny alien subject to the [expedited removal] procedures under this clause *shall*
7 *be detained* pending a final determination of credible fear of persecution and, if found not to have
8 such a fear, *until removed*.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (emphasis added); *see also* 8 C.F.R.
9 § 235.3(b)(2)(iii). That express and plain statutory command is both the beginning and the end of
10 the statutory analysis.

11 The Supreme Court “has long held that an alien seeking initial admission to the United
12 States requests a privilege and has no constitutional rights regarding his application.” *Landon v.*
13 *Plasencia*, 459 U.S. 21, 32 (1982); *see also Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972)
14 (“[T]hat the formulation of these policies is entrusted exclusively to Congress has become about
15 as firmly embedded in the legislative and judicial tissues of our *body politic* as any aspect of our
16 government.”) (quoting *Galvan v. Press*, 347 U.S. 522, 531 (1954)); *Shaughnessy v. United States*
17 *ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Harisiades v. Shaughnessy*, 342 U.S. 580, 591 (1952);
18 *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Nishimura Ekiu v. United States*,
19 142 U.S. 651, 659–60 (1892).

20 Moreover, Congress may “entrust[]” the “supervision of the admission of aliens into the
21 United States” to the Executive Branch. *Nishimura Ekiu*, 142 U.S. at 659–60. If it does so, “the
22 decisions of executive or administrative officers, acting within powers expressly conferred by
23 Congress, are due process of law,” and it “is not within the province of the judiciary” to disturb
24

1 them. *Id.* at 660. The Supreme Court recently reaffirmed this principle. *See Thuraissigiam*, 591
2 U.S. at 138-39.

3 Thus, the critical inquiry in ascertaining due process rights available to a noncitizen is
4 whether the noncitizen has entered under the law, even if he is physically present in the United
5 States. *See Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (finding that, even though an excluded
6 noncitizen was present in the United States for nine years, she “was still in theory of law at the
7 boundary line and had gained no foothold in the United States”); *Leng May Ma v. Barber*, 357
8 U.S. 185, 188-90 (1958) (holding that a noncitizen paroled into the United States pending
9 admissibility had not effected an “entry”). Those well-established principles govern here as
10 Bhandari has not entered the United States under the law. Congress and the Executive Branch
11 unequivocally determined that noncitizens subject to expedited removal shall be detained until
12 removed — unless they are granted discretionary parole. Therefore, Section 1225(b)(1) detention
13 is lawful and not susceptible to the due process claims Bhandari raises.

14 Even if this Court were to reach the merits of Bhandari’s indefinite detention claim, his
15 removal is reasonably foreseeable. The Embassy of Nepal already issued one temporary travel
16 document and is expected to issue another travel document for Bhandari. Curran Decl., ¶¶ 12, 15-
17 16. Here, Bhandari’s detention is neither indefinite nor permanent.

18 **C. Petitioner’s request for additional process as it relates to third country removal**
19 **should be denied.**

20 Petitioner’s request for additional process should be denied because ICE is seeking to
21 remove Petitioner to Nepal, which is not a third country. While his Petition discusses removal to
22 a third country, Petitioner presents no evidence of any intention by ICE to do so in this case. Pet.
23 at 6-7. Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing
24 cases or controversies. *Deakins v. Monaghan*, 484 U.S. 193, 199, 108 S.Ct. 523, 528, 98 L.Ed.2d

1 529 (1988). “To invoke the jurisdiction of a federal court, a litigant must have suffered, or be
2 threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable
3 judicial decision.” *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477, 110 S. Ct. 1249, 1253, 108 L.
4 Ed. 2d 400 (1990).

5 If ICE seeks Petitioner’s removal to a third country, ICE will provide him with a notice of
6 its intent to remove her and notice as to which country. *See* July 9 Memo. This notice will allow
7 Petitioner to claim fear of removal to that country. *Id.* If Petitioner claims a fear of removal, ICE
8 will refer him to USCIS, and USCIS would schedule him for an interview to determine whether it
9 is more likely than not that he will be persecuted or tortured in that third country. *Id.*

10 Petitioner has suffered no injury at this time and any allegation that he is likely to face an
11 injury in the future is speculative. Accordingly, Petitioner has failed meet the case-or-controversy
12 requirement, and his petition must be denied. *Cf. Spencer v. Kemna*, 523 U.S. 1, 16 (1998)
13 (rejecting the petitioner's alleged consequences as “a possibility rather than a certainty or even a
14 probability” and as “purely a matter of speculation”).

15 **D. Petitioner’s punitive banishment argument restates his due process challenge and**
16 **does not demonstrate that the policy is unconstitutional.**

17 Petitioner’s “punitive third country banishment” argument fails because it lacks any factual
18 basis demonstrating that the third-country removal policy is unconstitutional either on its face or
19 as applied. *See* Pet. at 17-18.

20 Petitioner cannot meet the heavy burden required for a facial challenge. A facial challenge
21 demands a showing that a law “is invalid in toto –and therefore incapable of any valid application.”
22 *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5 (1982). Such
23 challenges are “strong medicine” and are disfavored because they “often rest on speculation” and
24 risk “premature interpretation of statutes on the basis of factually barebones records.” *Nat’l*

1 *Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998); *Wash. State Grange v. Wash. State*
2 *Republican Party*, 552 U.S. 442, 450 (2008). Petitioner's broad assertions that the program
3 imposes punishment on its subjects are precisely the type of speculative allegations that these cases
4 reject.

5 Petitioner pleads no facts supporting an as-applied claim. He does not allege which third
6 country he might be removed to, what harm he personally faces, or any circumstances that would
7 make removal punitive in his case. A claim resting on imaginary injury does not satisfy Article
8 III's case-or-controversy requirement. *Lewis v. Cont'l Bank Corp.*, 494 U.S. at 477. Without
9 factual allegations establishing a realistic danger of punitive treatment, Petitioner's theory remains
10 purely conjectural and nonjusticiable. Therefore, the Court should deny the writ to the extent it
11 seeks to bar third-country removal.

12 **E. Petitioner is not entitled to a re-detention hearing if he is released.**

13 Petitioner requests that if he is released, he not be re-detained without a bond hearing for
14 danger or flight risk "by clear and convincing evidence based on changed circumstances since
15 Petitioner was previously released[.]" Pet., Prayer for Relief. However, Petitioner admits that he
16 is subject to mandatory detention. 8 U.S.C. § 1225(b)(1). The sole means of release is "temporary
17 parole from § 1225(b) detention 'for urgent humanitarian reasons or significant public benefit,' §
18 1182(d)(5)(A)." see *Jennings*, 583 U.S. at 283. Bhandari is a noncitizen seeking entry into the
19 United States. He is to be removed to Nepal soon and the process he has received is all he is due
20 under the circumstances. See *Thuraissigiam*, 591 U.S. at 107, 138-139.

21 There is no statutory or Constitutional requirement that a Bhandari receive a pre-detention
22 hearing prior to ICE executing the removal order. Indeed, such a requirement would only delay
23 removal further if ICE is unable to effectuate the removal prior to another temporary travel
24 document lapsing. There is no jurisdiction for a court to hear a claim on execution of removal

orders in habeas. 8 U.S.C. § 1252(g). Adding a pre-detention hearing would result in a de facto stay of removal in this case, which is inconsistent with this Court's jurisdiction.

VI. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition.

DATED this 20th day of January, 2026.

Respectfully submitted,

CHARLES NEIL FLOYD
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s/ Jordan C. Steveson

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I certify that this memorandum contains 4,374 words, in compliance with Local Civil Rules