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

11 SAILESH SUBEDI,  
12 Petitioner,

13 v.

14 KRISTI NOEM, Secretary of the  
15 Department of Homeland Security,  
16 PAMELA JO BONDI, Attorney General,  
17 TODD M. LYONS, Acting Director,  
18 Immigration and Customs Enforcement,  
19 JESUS ROCHA, Acting Field Office  
20 Director, San Diego Field Office,  
21 JEREMY CASEY, Warden at Imperial  
22 Regional Detention Center,

23 Respondents.

CIVIL CASE NO.: '26CV0569 BAS VET

**Petition for Writ  
of  
Habeas Corpus**  
**[28 U.S.C. § 2241]**

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1 INTRODUCTION

2 On July 14, 2025, Sailish Subedi received withholding of removal to his  
3 native country of Nepal. ICE continued to detain him for the next six months,  
4 purportedly to remove him to a third country. But ICE has made no progress in  
5 doing so. It does not appear that ICE has even asked a third country to take him.  
6 Because “there is no significant likelihood of removal in the reasonably  
7 foreseeable future,” Mr. Subedi’s detention is no longer statutorily authorized,  
8 and this Court must order his immediate release. *Zadvydas v. Davis*, 533 U.S. 678  
9 (2001).

10 STATEMENT OF FACTS

11 Mr. Subedi was born in Nepal on [REDACTED] Exh. A at ¶ 1. He fled  
12 threats to his life from [REDACTED] and came to the United States on December 27,  
13 2024. *Id.* He was immediately arrested and detained. *Id.*

14 In subsequent removal proceedings, he lost his asylum claim but got  
15 withholding of removal on July 29, 2025. *Id.* at ¶ 2. Since then, ICE has never met  
16 with him in person about his removal. *Id.* at ¶ 3.

17 Twice, he asked ICE by tablet how much longer he would be detained. On  
18 August 4, 2025, ICE replied, “Just granted order of withholding, but you also  
19 have an order of removal from the USA. Right now, you will be in detention until  
20 further notice.” *Id.* On September 4, 2025, ICE replied, “You will remain in  
21 custody until a third country can be identified for your removal. You will not be  
22 released into the United States. If you experience health problems, consult  
23 medical staff.” *Id.* An ICE officer who visited his pod in October had no further  
24 updates. *Id.* at ¶ 4.

25 No one has ever identified a third country that might take him. *Id.* at ¶ 5.  
26 No one has asked him to fill out any paperwork for third-country removal or talk  
27 to the consulate for any third country. *Id.* He does not know of any reason that a  
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1 third country would take him, as he is not a citizen of any country other than  
2 Nepal and has no status elsewhere. *Id.* at ¶ 6. His family is from Nepal too. *Id.*

3 Meanwhile, the stress of detention has affected hi psychologically. He is  
4 taking anti-anxiety medication for the first time in his life. *Id.* at ¶ 7.

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6 **CLAIMS FOR RELIEF**

7 This Court should grant this petition and order Mr. Subedi’s immediate  
8 release, because there is “no significant likelihood of removal in the reasonably  
9 foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

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

11 **A. Legal background**

12 Mr. Subedi’s indefinite detention violates the statute authorizing detention,  
13 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme  
14 Court considered a problem affecting people like Mr. Subedi. Federal law requires  
15 ICE to detain an immigrant during the “removal period,” which typically spans  
16 the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-  
17 (2). After that 90-day removal period expires, detention becomes discretionary—  
18 ICE may detain the migrant while continuing to try to remove them. *Id.*  
19 § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as  
20 removal happens within days or weeks. But some detainees cannot be removed  
21 quickly. Perhaps their removal “simply require[s] more time for processing,” or  
22 they are “ordered removed to countries with whom the United States does not  
23 have a repatriation agreement,” or their countries “refuse to take them,” or they  
24 are “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma*  
25 *v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other  
26 circumstances, detained immigrants can find themselves trapped in detention for  
27 months, years, decades, or even the rest of their lives.

28 If federal law were understood to allow for “indefinite, perhaps permanent,

1 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at  
2 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by  
3 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

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

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

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

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18 **A. The six-month grace period expired.**

19 As an initial matter, the six-month grace period has ended. The *Zadvydas*  
20 grace period lasts for “*six months* after a final order of removal—that is, *three*  
21 *months* after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257  
22 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Subedi was ordered removed on  
23 July 29, 2025. Exh. A at ¶ 2. Accordingly, his 90-day removal period began then.  
24 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six months  
25 after the removal period began, on January 29, 2026. The threshold requirement is  
26 therefore met.  
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1           **B. There is good reason to believe that there is no significant**  
2           **likelihood of Mr. Subedi removal in the reasonably foreseeable**  
3           **future.**

4           Because the six-month grace period has passed, this Court must evaluate  
5           Mr. Subedi’s *Zadvydas* claim using the burden-shifting framework. At the first  
6           stage of the framework, there must be “good reason to believe that there is no  
7           significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,  
8           533 U.S. at 701. This standard can be broken down into three parts.

9           **“Good reason to believe.”** The “good reason to believe” standard is a  
10          relatively forgiving one. “A petitioner need not establish that there exists no  
11          possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL  
12          10714999, at \*3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to  
13          believe’ . . . place a burden upon the detainee to demonstrate no reasonably  
14          foreseeable, significant likelihood of removal or show that his detention is  
15          indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,  
16          2020 WL 3972319, at \*3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401  
17          F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:  
18          Petitioners need only give a “good reason”—not prove anything to a certainty.

19          **“No significant likelihood of removal.”** This component focuses on  
20          whether Mr. Subedi will likely be removed: Continued detention is permissible  
21          only if it is “significant[ly] like[ly]” that ICE will be able to remove him.  
22          *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of  
23          untapped possibilities, but also [the] probability of *success* in such possibilities.”  
24          *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis  
25          added). In other words, even if “there remains *some* possibility of removal,” a  
26          petitioner can still meet its burden if there is good reason to believe that  
27          successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-  
28          8019, 2002 WL 31520362, at \*4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

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

15           Mr. Subedi has very good reason to doubt his removal. ICE has made no  
16 progress whatsoever in removing him, despite having six months to do so. And  
17 there is an obvious explanation for ICE’s inability to remove him: The IJ’s order  
18 prohibits Mr. Subedi’s removal to his home country of Nepal, “which is the only  
19 country to which he has a claim to citizenship or legal immigration status.”  
20 *Villanueva*, 2025 WL 2774610, at \*10. “This substantially increases the difficulty  
21 of removing him.” *Munoz-Saucedo*, 789 F. Supp. 3d at 398.

22           That’s because “alternative-country removal is rare.” *Johnson v. Guzman-*  
23 *Chavez*, 594 U.S. 523, 537 (2021). Between 2020 and 2023, data apparently show  
24 that “ICE removed . . . only *five* non-citizens granted withholding or CAT relief to  
25 alternative countries.” *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J.  
26 2025) (emphasis original). In fiscal year 2017, there were at most 21 people of the  
27 thousands with withholding of removal deported to *any* country; that number  
28 includes dual citizens who only received withholding from one of their two other

1 countries of origin. See American Immigration Council & National Immigrant  
2 Justice Center, *The Difference Between Asylum and Withholding of Removal*, 7  
3 (Oct. 2020)<sup>1</sup> (cited in *Guzman-Chavez*, 594 U.S. at 537). That means that “less than  
4 two percent of those granted withholding of removal were deported to a third  
5 country.” *Puertas-Mendoza*, 2025 WL 3142089 at \*3 (citing American  
6 Immigration Council & National Immigrant Justice Center, *supra*).

7 “[T]hat is not simply a matter of United States policy—foreign governments  
8 ‘routinely deny’ requests to receive people who lack a connection to the would-be  
9 receiving country.” *Puertas-Mendoza*, 2025 WL 3142089 at \*3. “The reason so few  
10 people are deported to third countries is because,” while “customary international  
11 law holds that a country has a duty to accept the return of its nationals,” usually,  
12 “countries have no incentive to accept non-citizens.” American Immigration  
13 Council & National Immigrant Justice Center, *supra*, at 7.

14 Because third country removal is exceedingly rare, and ICE has made no  
15 progress in removing Mr. Subedi to one over the last six months, Mr. Subedi has  
16 met his initial burden. Thus, unless the government can prove a “significant  
17 likelihood of removal in the reasonably foreseeable future,” Mr. Subedi must be  
18 released. *Zadvydas*, 533 U.S. at 701.

19 **II. Count 2: ICE may not remove Mr. Subedi to a third country without**  
20 **adequate notice and an opportunity to be heard.**

21 There is therefore no current likelihood that Mr. Subedi will be removed to  
22 a third country. But ICE is trying to do just that, and in this rapidly evolving removal  
23 landscape, something unforeseen could suddenly change to make that feasible.  
24 ICE’s “credible threat of enforcement” of this third-country removal plan is  
25 sufficient to make this claim justiciable, even ICE does not have any current  
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27 <sup>1</sup>Available at [https://www.americanimmigrationcouncil.org/wp-](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-removal.pdf)  
28 [content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-removal.pdf](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-removal.pdf)

1 feasible plan to remove Mr. Subedi to a third country. *See Susan B. Anthony List v.*  
2 *Driehaus*, 573 U.S. 149, 156–57, 161 (2014) (finding standing, even though the  
3 politician seeking enforcement of an unconstitutional law was no longer running  
4 for office). And if ICE did suddenly prove able to remove Mr. Subedi to a third  
5 country, it would do so under a policy that violates the Fifth Amendment, the  
6 Convention Against Torture, and implementing regulations.

7  
8 **A. Legal background**

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

18 Similarly, Congress codified protections enshrined in the CAT prohibiting  
19 the government from removing a person to a country where they would be tortured.  
20 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of  
21 the United States not to expel, extradite, or otherwise effect the involuntary return  
22 of any person to a country in which there are substantial grounds for believing the  
23 person would be in danger of being subjected to torture, regardless of whether the  
24 person is physically present in the United States.”); 28 C.F.R. § 200.1; *id.*  
25 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

26 To comport with the requirements of due process, the government must  
27 provide notice of the third country removal and an opportunity to respond. Due  
28 process requires “written notice of the country being designated” and “the statutory

1 basis for the designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v.*  
2 *Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S.*  
3 *Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at \*1 (D.  
4 Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

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

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

28 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,

1 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and  
2 for good reason: To have a meaningful opportunity to apply for fear-based  
3 protection from removal, immigrants must have time to prepare and present  
4 relevant arguments and evidence. Merely telling a person where they may be sent,  
5 without giving them a chance to look into country conditions, does not give them a  
6 meaningful chance to determine whether and why they have a credible fear.

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

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

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

1 countries that have agreed to removal thus far. Due process requires an adequate  
2 chance to identify and raise these threats to health and life. This Court must prohibit  
3 the government from removing Mr. Subedi without these due process safeguards.

4 **III. This Court must hold an evidentiary hearing on any disputed facts.**

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

8 **IV. Prayer for relief**

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

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

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Respectfully submitted,

Dated: January 29, 2026

*s/ Katie Hurrelbrink*

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**KATIE HURRELBRINK**

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**PROOF OF SERVICE**

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney’s Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Date: 1/29/2026

/s/ Katie Hurrelbrink  
Katie Hurrelbrink