

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KAMAL BISTA,

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

Kamal Bista 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. Sep. 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 orders 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 3022294, at *2

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: Kamal Bista
- (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]: Petitioner's A# has been provided to the government along with the filing of this petition.
3. Petitioner is currently being held on orders by federal authorities: United States Immigration and Customs Enforcement.
4. Petitioner is 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: Petitioner's A# has been provided to the government along with the filing of this petition.

(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. Sep. 29, 2025); *Hom v. Ceja*, No. CV25-2221-WJM-TPO, 2025 WL 2801449, at *2 (D. Colo. Sep. 17, 2025).

(c) Decision or action you are challenging: Mr. Bista was ordered removed on March 3, 2025. He was taken into custody by ICE on January 21, 2025. Mr. Bista has been detained in ICE custody for ten months following the final removal order.

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 21, 2025

(b) Date of the removal or reinstatement order: March 3, 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

Kamal Bista is presently detained at the Northwest ICE Processing Center (NWIPC). He has been held in immigration custody for a grand total of twelve months. Removal to his former country of residence is not reasonably foreseeable. 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-detention unless the government establishes by clear and convincing evidence at a hearing before a neutral decisionmaker that Petitioner is a flight risk or a danger to the community, based on changed circumstances after their most recent release by ICE; (c) an order preventing removal to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings; and

(d) an order barring removal to any third country pursuant to Respondents' punitive removal policy.

II. Jurisdiction and Venue

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

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

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

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

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

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

Petitioner is "in custody" for the purpose of § 2241 because he has been detained by Respondent ICE in Tacoma, Washington, since January 21, 2025.

1 **IV. Parties**

2 Kamal Bista is a citizen of Nepal. He has a final order of removal to Nepal as the
3 country designated for removal. Petitioner is detained in the control and custody of
4 Respondents at NWIPC. As such, Petitioner is a resident of Tacoma, Washington.

5 Respondent Pamela Bondi is the Attorney General of the United States. In this
6 capacity, Respondent Bondi is the legal custodian of Petitioner. Respondent Bondi is
7 sued in her official capacity.

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

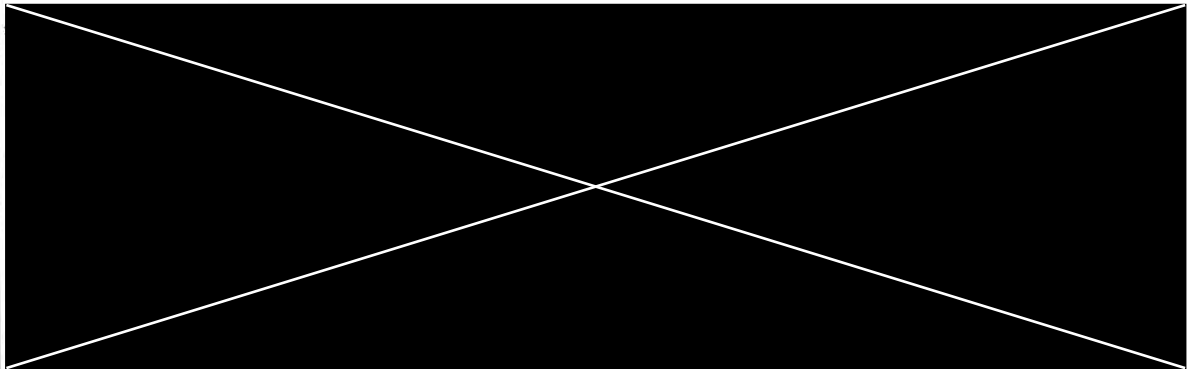
11 Respondent Laura Hermosillo is the Field Office Director for ICE Enforcement
12 and Removal Operations ("ERO") in Seattle, Washington. As the ERO Seattle Field
13 Office Director, she is Petitioner's immediate custodian, responsible for his detention at
14 NWIPC, and is the person with the authority to authorize detention or release.
15 Respondent Hermosillo is sued in her official capacity.

16 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
17 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant
18 to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official
19 capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-
20 700, 2021 WL 1946222, at *3-5 (W.D. Wash. May 14, 2021).

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

V. Background

Kamal Bista was born in Nepal in 2002. He is a law-abiding Nepali citizen with no criminal history. He grew up with his mother, brother, and father. 



Mr. Bista, in fear of his life, fled to the United States to seek asylum. On January 21, 2025, he crossed the border from Mexico into Texas and was arrested by ICE soon after entering the United States. A credible fear interview was conducted, and Mr. Bista was given a negative outcome. He was denied the ability to express his fear of persecution in Nepal to an immigration judge. Nonetheless, Mr. Bista still believes that his life will be in danger if he returns to Nepal.

If released on bond, Mr. Bista intends to live with a cousin in Austin, Texas. Mr. Bista's cousin is willing to house Mr. Bista and assist him in appearing for any future immigration proceedings.

VI. Particularized Facts Pertaining to Bista's Continued Detention

Mr. Bista 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), 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 has led to many Nepali detainees being held in ICE detention, with ICE notably being unable to effectuate travel documents for months. As an ICE official conceded in a case in which Judge Robart ultimately granted habeas relief to a similarly situated Nepalese petitioner, “[i]t is not uncommon for a request for a Nepalese Travel Document to take several months before the TD is issued” *KC v. Bondi, et al.*, No. 2:25-cv-02071-JLR, Dkt. 11 at 2. It has now been over a year since Mr. Bista was taken into custody and over ten months since he received a final order of removal. ICE has not given Mr. Bista any updates about the status of his travel documents, and he has been in the dark about his removability since March.

VII. The Legal Framework Regarding Indefinite Detention Pending Removal

A. Detention is unconstitutional 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 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the statute’s “basic purpose [of] effectuating [a noncitizen]’s removal[.]” *Id.* at 696–99.

The Court further held that the presumptive period during which the detention is reasonably necessary to effectuate a noncitizen’s removal is six months. After that, the noncitizen is eligible for conditional release if there is “no significant likelihood of removal in the reasonably foreseeable future[.]” *Id.* at 701. After the “presumptively reasonable” period of six months, when the noncitizen can “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable

1 future,” then “the Government must respond with evidence sufficient to rebut that
2 showing.” *Id.*

3 The issue is not whether Respondents have been able to remove some
4 individuals to a given country. Rather, the court must make an individualized analysis
5 as to a particular detainee. *See Nguyen v. Scott*, 796 F.Supp.3d 703, 726 (W.D. Wash.
6 Aug. 21, 2025) (stating increase in total number of removals to Vietnam, including
7 those who entered pre-1995, fails to rebut the evidence presented by Petitioner that “his
8 individual circumstances make removal unlikely.”). Facts that are part of the analysis
9 include whether Respondent provides evidence that the request was submitted to Nepal,
10 whether Nepal has acknowledged receipt of the request or otherwise responded to
11 Petitioner’s request, and the anticipated wait time for a response from Nepal.

12 When a petitioner has been detained for a total of six months after a final order
13 of removal, the *Zadvydas* presumptively reasonable period has expired, even if the
14 petitioner’s current period of detention is less than six months. “A petitioner’s total
15 length of confinement need not be consecutive to reach the six-month presumptively
16 reasonable limit established in *Zadvydas*.” *Tang v. Bondi*, No. CV25-1473-RAJ-TLF,
17 2025 WL 2637750, at *4 (W.D. Wash. Sep. 11, 2025).

18 **VIII. The Legal Framework for Third-Country Removals**

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

22 First, an individual with a removal order may designate the country to which
23 they want to be removed, and the government *shall* remove the individual to that
24 country. 8 U.S.C. § 1231(b)(2)(A). The government may disregard that designation if
25 (1) the individual fails to designate a country promptly; (2) the government of that
26 country does not inform the U.S. government finally, within 30 days after the date the

U.S. government first inquires, whether the government will accept the individual into that country; (3) the government of the country is not willing to accept the individual into the country; or (4) the government decides that removing the individual to that country is prejudicial to the United States. 8 U.S.C. § 1231(b)(2)(C).

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

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

Notwithstanding any of these procedures, the statute prohibits removal to a third country where a person may be persecuted or tortured, a form of protection known as

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

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

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

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

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

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

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

6 **IX. Facts Pertaining to Punitive Banishment to Third Countries**

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

11 Respondents reportedly have negotiated with at least 58 countries to accept
 12 deportees from other nations. On June 25, 2025, the *New York Times* reported that
 13 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
 14 Rwanda—had agreed to accept deportees who are not their own citizens.² Since then,
 15 ICE has carried out highly publicized third-country deportations to South Sudan and
 16 Eswatini. It also attempted—and completed—an “end-run” around the protections of
 17 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
 18 them on to their countries of citizenship despite fears of persecution.

19 Punishment and deterrence appear to be the point of the Administration’s third-
 20 country removal scheme. The Administration has reportedly negotiated with countries
 21 to have deportees imprisoned in prisons, camps, or other facilities. The government
 22 paid El Salvador about \$5 million to arbitrarily and indefinitely imprison more than 200
 23 deported Venezuelans in a maximum-security prison notorious for gross human rights
 24 abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of

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 deportees from countries in Africa and Central Asia and imprisoned them in hotels, a
2 jungle camp, and a detention center. On July 4, 2025, ICE deported eight men to South
3 Sudan. The men have been detained incommunicado ever since. On July 15, 2025, ICE
4 deported five men to the tiny African nation of Eswatini, where they are reportedly
5 being held in solitary confinement.

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

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

24 The memo further instructs that if the noncitizen “does not affirmatively state a
25 fear of persecution or torture if removed to the country of removal listed on the Notice
26 of Removal within 24 hours, [ICE] may proceed with removal to the country identified

1 on the notice.” If the noncitizen “does affirmatively state a fear if removed to the
2 country of removal,” then ICE will refer the case to U.S. Citizenship and Immigration
3 Services (“USCIS”) for a screening for eligibility for withholding of removal and
4 protection under the Convention Against Torture. “USCIS will generally screen within
5 24 hours.” If USCIS determines that the noncitizen does not prove to the screener’s
6 satisfaction that it is more likely than not that the noncitizen will be tortured, the
7 individual will be removed. This imposes on the noncitizen a higher standard than the
8 “reasonable fear” and “credible fear” standards found in the INA. If USCIS determines
9 that the noncitizen has met the standard, then the policy directs ICE to either move to
10 reopen removal proceedings “for the sole purpose of determining eligibility for
11 [withholding of removal protection] and CAT” or designate another country for
12 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 Further support that Petitioner faces a risk of punitive third-country removal
18 comes from two declarations submitted in *Nguyen*. They detail removals to third
19 countries with little or no notice, as described in *Nguyen*, 796 F.Supp.3d at 736–37.

20 **X. The Law Governing Punitive Removal Practices**

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

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

14 Deportation of individuals to third countries to be imprisoned or harmed is
 15 unquestionably punishment.

16 **XI. The Law Governing Injunctive Relief**

17 “An injunction is appropriate when the party seeking relief demonstrates that:
 18 (1) it is likely to suffer irreparable injury that cannot be redressed by an award of
 19 damages; (2) that “considering the balance of hardships between the plaintiff and
 20 defendant, a remedy in equity is warranted”; and (3) “that the public interest would not
 21 be disserved by a permanent injunction.” *City & Cnty. of San Francisco v. Trump*, 897
 22 F.3d 1225, 1243 (9th Cir. 2018).

23 **Grounds for Relief**

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

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

2 Because Petitioner Bista's removal order became final on March 3, 2025, the
3 removal period has long since expired, and detention is no longer required under
4 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has
5 passed. Mr. Bista has been compliant with ICE for the entirety of his detention, yet ICE
6 has still failed to produce travel documents for him.

7 There is "good reason to believe that there is no significant likelihood of removal
8 in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. Nepal's current
9 socio-political status has left the country in a state of political unrest. The country is
10 undergoing a major political transition, which has left many integral government
11 functions at a stall. Because of the recent protests in Nepal, the government is
12 attempting to regroup, while still facing a crisis of distrust. *See* Amish R. Mulmi, *From*
13 *Streets to Discord: How Nepal's Gen Z Toppled a Government*, Carnegie Endowment
14 for Int'l Peace (Sep. 25, 2025), [https://carnegieendowment.org/research/2025/09/nepal-](https://carnegieendowment.org/research/2025/09/nepal-gen-z-topple-government)
15 [gen-z-topple-government](https://carnegieendowment.org/research/2025/09/nepal-gen-z-topple-government). Mr. Bista and other Nepali detainees have been asked by ICE
16 to opt to be removed to a third country. He believes that ICE may be having issues
17 deporting to Nepal.

18 Therefore, the burden shifts to the government to rebut that showing. The
19 government cannot meet that burden under the facts of this case. *See Nguyen*, 796
20 F.Supp.3d 703, 739 (granting preliminary injunction requiring release under *Zadvydas*);
21 *Tang*, 2025 WL 2637750, at *6 (same).

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

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

26 The Fifth Amendment, the INA, the CAT, and implementing regulations
mandate meaningful notice and opportunity to respond to any attempt to remove

1 Petitioner to a third country in reopened removal proceedings. They also require an
2 opportunity for Petitioner to make a fear-based claim against removal to a third country
3 in reopened removal proceedings. Respondents' policy for third-country removals
4 violates all of these laws because it directs ICE agents to remove individuals to third
5 countries without any notice or process *at all* where diplomatic assurances are received
6 and, where no diplomatic assurances are received, to provide flagrantly insufficient
7 notice (6–24 hours) and opportunity to respond, in violation of the statute, regulations,
8 and Fifth Amendment.

9 Prior to any third-country removal, Petitioner must be provided with
10 constitutionally and statutorily compliant notice and an opportunity to respond and
11 contest that removal if he has a fear of persecution or torture in that country in reopened
12 removal proceedings. *See Nguyen*, 796 F.Supp.3d 703, 739 (granting preliminary
13 injunction against “removing Petitioner to a country other than [home country] without
14 notice and a meaningful opportunity to be heard in reopened removal proceedings with
15 a hearing before an immigration judge”).

16 Furthermore, the requirements for injunctive relief are met. Petitioner's
17 prospective unlawful re-detention would constitute an irreparable injury that could not
18 be redressed by an award of damages. Second, the balance of hardships is completely in
19 Petitioner's favor: Petitioner risks unlawful removal to a third country, while
20 Respondents suffer no hardship by being prevented from following their unlawful re-
21 detention practices. Finally, the public interest would affirmatively be served by barring
22 Respondents' unlawful practice.

23 In addition, the matter is ripe. The facts set forth above—including Respondents'
24 stated policy regarding third-country removals—make it reasonably likely that
25 Respondents would seek to remove Petitioner to a third country without complying
26

1 with their regulatory and constitutional obligations to provide Petitioner with notice and
2 an opportunity to be heard.

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

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

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

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

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

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

25 Respondents’ third-country removal program is more than a publicity stunt. The
26 hundreds of individuals who have already been subjected to it have been banished in

1 foreign prisons upon arrival without charge and often without communication with the
2 outside world, including their families and lawyers. Respondents may not subject
3 Petitioner to their third-country removal program that is designed to impose a severe
4 punishment on their subjects. Such conduct “shocks the conscience” under Fifth
5 Amendment substantive due process, is cruel and unusual punishment, and may not be
6 imposed without charge and a judicial trial.

7 Respondents may not seek to remove Petitioner to a third country under their
8 punitive banishment policy and practices. *See Nguyen*, 796 F.Supp.3d 703, 739
9 (granting preliminary injunction against “removing Petitioner to any country where he
10 is likely to face imprisonment upon arrival”).

11 The criteria for an injunction in this case are met. First, unlawful removal to a
12 third country risks irreparable injury that could not be redressed by an award of
13 damages. Second, the balance of hardships is completely in Petitioner’s favor:
14 Petitioner risks removal to a third country where unwarranted punishment may result,
15 and Respondents suffer no hardship by being prevented from following their unlawful
16 removal policies. Finally, the public interest would affirmatively be served by barring
17 Respondents’ unlawful policies. Given the potential for Respondents to attempt a rapid
18 and unlawful removal, Petitioner would have no opportunity to seek injunctive relief at
19 that time.

20 Furthermore, the matter is ripe. The facts set forth above—including
21 Respondents’ stated policy regarding third-country removals—make it reasonably
22 likely that Respondents would seek to remove Petitioner to a third country with a
23 punitive intent and punitive result.

24 Prayer for Relief

25 Petitioner respectfully requests that this Court:

26 (a) Assume jurisdiction over this action;

1 (b) Order Respondents to immediately release Petitioner from custody;

2 (c) Order Respondents to, within 24 hours of his release, provide the Court
3 with a declaration confirming that Petitioner has been released from custody;

4 (d) Order that Respondents may not re-detain Petitioner without first holding
5 a 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 Petitioner was previously released;

8 (e) Order that the government may not otherwise re-detain Petitioner unless
9 the government:

10 (1) obtains a valid travel document to Nepal for him,

11 (2) provides the valid travel document to him and his counsel,

12 (3) offers Petitioner the opportunity to leave on his own within two months,
13 and

14 (4) Petitioner does not leave. Under such circumstances, the government may
15 be permitted to re-detain Petitioner provided it has already made concrete
16 arrangements for him to be put on a flight to Nepal in the reasonably
17 foreseeable future.

18 *See Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5,
19 2025); *Tang*, 2025 WL 3551381, at *3.

20 (f) Order that Respondents may not remove or seek to remove Petitioner to a
21 third country without notice and meaningful opportunity to respond in compliance with
22 the statute and due process in reopened removal proceedings;

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

26 (h) Order all other relief that the Court deems just and proper.

Verification Pursuant to LCR 100(e)

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

DATED this 30th day of January 2026.

Respectfully submitted,

s/ Andrew D. Kennedy
Assistant Federal Public Defender
Attorney for Kamal Bista