

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS: BIKASH GURUNG
(b) County of Residence of First Listed Plaintiff: Travis
(c) Attorneys: Georgia S Laurent, 13785 research Blvd, Ste 125, SanLaurent Law Group, Austin, TX 78750 512-693-9343
DEFENDANTS: Reynaldo Castro, Sylvester Ortega, Pamela J. Bondi, Todd M. Lvons, Kristi Noem
County of Residence of First Listed Defendant: Frio County
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
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2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
INTELLECTUAL PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 2241
Brief description of cause: Unlawful Detention of Alien Having Granted Relief

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE DOCKET NUMBER 5:25-cv-01739

DATE 12/14/2025 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

4 **Bikash Gurung,** §
5 Petitioner, § No.5:25-cv-01739
6 V. §
7 **Pamela J. Bondi,** Attorney General of the United States §
8 **Reynaldo Castro,** Warden, South Texas Ice Processing Center; §
9 **Sylvester Ortega,** Field Office Director, ICE; §
10 **Todd M. Lyons,** Director, Ice; §
11 **Kristi Noem,** Secretary, Department of Homeland Security. §

12 **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND**
13 **COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF**

14 Petitioner Bikash Gurung, by and through undersigned counsel, respectfully petitions this Court
15 for a writ of habeas corpus under 28 U.S.C. § 2241 and states:

16 **PARTIES**

17 1. Petitioner Bikash Gurung, Alien Number  is a stateless person born on
18 

19 2. Mr. Gurung was born in a refugee camp in Nepal and has never been recognized as a
20 Nepali citizen. Nepal does not grant citizenship based on place of birth and instead follows a
21 parentage-based system requiring at least one Nepali citizen parent. Because Mr. Gurung's
22 parents were born in Bhutan, and Nepal does not issue birth certificates to children born in
23 refugee camps to non-Nepali parents, he has never been issued a birth certificate or passport by
24 any country.

25 3. On April 28, 2009, Mr. Gurung entered the United States as a lawful permanent resident
26 under category RE8, as the child of a refugee who adjusted status, and he has lived in the United
27 States continuously for more than sixteen years. His parents later naturalized as U.S. citizens,
28 and his siblings derived citizenship because they were under eighteen at the time. Mr. Gurung,
29 however, was over eighteen and therefore did not derive citizenship, leaving him as the only
30 non-citizen in his immediate family; his wife and son are both U.S. citizens.

31 4. On March 25, 2022, an Immigration Judge ordered Mr. Gurung removed after
32 determining that his conviction rendered him deportable under the Immigration and Nationality
33 Act. He was released from ICE detention on August 4, 2022, and placed on an Order of
34 Supervision, with which he has fully complied and has not violated any conditions.

35 5. The Petitioner is currently detained at the South Texas ICE Processing Center, located at
36 566 Veterans Drive, Pearsall, Texas 78061. He has been held at this Center since January of
37 2025.

38 6. Respondent Sylvester Ortega is the Field Office Director for Detention and Removal,
39 ICE San Antonio Field Office, within the U.S. Department of Homeland Security (DHS).
40 Pursuant to his orders, Petitioner remains detained.

41 7. Respondent Reynaldo Castro is the Warden of the South Texas ICE Processing Center in
42 Pearsall, Texas, and is Petitioner's immediate custodian within this judicial district.

43 8. Respondents Kristi Noem, Secretary of DHS; Todd M. Lyons, Acting Director of ICE;
44 and Pamela J. Bondi, Attorney General of the United States, have legal authority over
45 Petitioner's continued detention.

46 **CUSTODY**

47 9. Mr. Bikash Gurung is in the physical custody of Respondents Reynaldo Castro, Warden
48 for the South Texas ICE Processing Center, Sylvester Ortega, Field Office Director, Ice San
49 Antonio, and Todd M. Lyons, Director for ICE. At the time of the filing of this petition,
50 Petitioner is detained at the STDC in Pearsall, Texas. The STDC contracts with the DHS to
51 detain aliens such as Petitioner. Mr. Bikash Gurung is under the direct control of Respondents
52 and their agents.

53 **JURISDICTION & VENUE**

54 10. This action arises under the Constitution of the United States, the Immigration and
55 Nationality Act ("INA"), 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration
56 Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat.
57 1570. This Court has jurisdiction under 28 U.S.C. 2241, art. I, § 9, cl. 2 of the United States

58 Constitution (“Suspension Clause”) and 28 U.S.C. § 1331, as Petitioner is presently in custody
59 under color of authority of the United States and such custody is in violation of the U.S.
60 Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28
61 U.S.C. § 2241, 28 U.S.C. § 2201 et seq. and the All Writs Act, 28 U.S.C. § 1651.

62 11. Venue is proper in the Western District of Texas because Petitioner is currently detained
63 within this District and most Respondents also reside within this jurisdiction. 28 U.S.C. §
64 1391(e). Venue is proper in this District also pursuant to 28 U.S.C. § 1391(e), because
65 Respondents are officers, employees, or agencies of the United States, a substantial part of the
66 events or omissions giving rise to her claims occurred in this district, and no real property is
67 involved in this action.

68 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

69 12. Mr. Bikash Gurung has exhausted his administrative remedies to the extent required by
70 law. He has fully cooperated with Respondents and has not delayed or obstructed his detention.
71 He has not been given any explanation for his detention and was never provided with an
72 opportunity to present any evidence. Mr. Bikash Gurung was never informed that his Order of
73 Supervision (OSUP) had been revoked. He was not afforded an interview, advised of the reason
74 for the revocation, or provided any explanation for the decision. Mr. Bikash Gurung was never
75 advised that any country had agreed to accept him on a permanent basis. He is a stateless person
76 and does not possess citizenship of any country.

77 13. Mr. Bikash Gurung’s only remedy is by way of this judicial action.

78 **STATEMENT OF FACTS**

79 14. Mr. Gurung is a stateless person born in a refugee camp in Nepal. Therefore, that country has
80 never recognized him as a citizen. Nepal does not grant citizenship based solely on birth within
81 its territory. Unlike *jus soli* countries (e.g., the U.S.), Nepal follows a restricted *jus sanguinis*
82 system, meaning citizenship is primarily based on parentage, not place of birth. Under Nepal’s
83 Constitution and nationality laws, birth in Nepal alone does not confer citizenship. A child must
84 have at least one Nepali citizen parent to acquire citizenship by descent. The Petitioner’s parents
85 were born in Bhutan. Because Nepal does not issue Nepali birth certificates to children born in

86 refugee camps unless the parents are Nepali citizens, the Petitioner has never been issued a birth
87 certificate or passport by any country.

88 15. On April 28, 2009 the Petitioner entered the United States as a Legal Permanent Resident,
89 under category RE8 - Child of a refugee who adjusted status. He has resided in the United States
90 for over sixteen years without interruption. The Petitioner's parents later became United States
91 citizens. Because the Petitioner's siblings were under the age of eighteen at that time, they
92 automatically derived U.S. citizenship. The Petitioner was the only child over eighteen and
93 therefore did not acquire citizenship automatically. His wife and son are also United States
94 citizens. He is the only member of his immediate family who is not a U.S. citizen solely because
95 he was too old to qualify for derivative citizenship.

96 16. On March 25, 2022, an Immigration Judge ordered the Petitioner removed after concluding
97 that his conviction rendered him deportable under the Immigration and Nationality Act.

98 17. On August 4, 2022, the Petitioner was released from ICE detention and placed on Order of
99 Supervision (OSUP). Since that time, he has been complying with all requirements of his order.
100 He has not violated any of the listed requirements.

101 18. Bikash Gurung has deep roots in this community and his continued detention deprives his
102 family of his companionship and income. Before his detention, he was working as a manager for
103 a Chevron gas station for two and half years.

104 19. ICE has provided no explanation, bond hearing, or custody review since his re-detention. No
105 country has agreed to accept him, and he is not a citizen of any country in the world.

106 20. Respondents' decision to detain Mr. Bikash Gurung is no longer legally justifiable and is
107 capricious and arbitrary. There is no better time for the Court to consider the merits of his request
108 for release. There is no significant likelihood of removal in the reasonably foreseeable future.

109

LEGAL FRAMEWORK

110 21. Pursuant to 28 U.S.C. § 2243, the Court either must grant the instant petition for writ of
111 habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to

112 relief. If the Court issues an order to show cause, Respondents must file a response “within *three*
113 *days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” 28 U.S.C.
114 § 2243 (emphasis added).

115 22. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law
116 in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*,
117 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention,
118 or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
119 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

120 23. This fundamental due process protection applies to all noncitizens, **including both**
121 **removable and inadmissible noncitizens**. *See Id.* at 721 (Kennedy, J., dissenting) (“[B]oth
122 removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary
123 or capricious.”). It also protects noncitizens who have been ordered removed from the United
124 States and who face continuing detention. *Id.* at 690.

125 24. The Supreme Court in *Clark v. Martinez* confirmed that the *Zadvydas* limit on prolonged
126 detention **also applies to inadmissible aliens**. Even though *Clark* did not involve statelessness
127 per se, it reinforces the principle that § 241(a)(6) allows detention only as long as is reasonably
128 necessary to effect removal — and not indefinitely simply because removal cannot occur. *Clark*
129 *v. Martinez*, 543 U.S. 371 (2005).

130 25. Furthermore, 8 U.S.C. § 1231(a)(1)-(2) authorizes detention of noncitizens during “the
131 removal period,” which is defined as the 90-day period beginning on “the latest” of either “[t]he
132 date the order of removal becomes administratively final”; “[i]f the removal order is judicially
133 reviewed and if a court orders a stay of the removal of the [noncitizen], the date of the court’s
134 final order”; or “[i]f the [noncitizen] is detained or confined (except under an immigration
135 process), the date the [noncitizen] is released from detention or confinement.”

136 26. Although 8 U.S.C. § 1231(a)(6) permits detention “beyond the removal period” of
137 noncitizens who have been ordered removed and are deemed to be a risk of flight or danger, the
138 Supreme Court has recognized limits to such continued detention. In *Zadvydas*, the Supreme
139 Court held that “the statute, read in light of the Constitution’s demands, limits [a noncitizen’s]
140 post-removal-period detention to a period reasonably necessary to bring about that [noncitizen’s]
141 removal from the United States.” 533 U.S. at 689. “[O]nce removal is no longer reasonably
142 foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

143 27. The regulations at 8 C.F.R. § 241.4 provide situations where ICE may revoke its order of
144 release – “(I) Revocation of release—(1) Violation of conditions of release. Any alien described
145 in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or
146 other conditions of release who violates the conditions of release may be returned to custody.
147 Any such alien who violates the conditions of an order of supervision is subject to the penalties
148 described in section 243(b) of the Act. Upon revocation, the alien will be **notified** of the reasons
149 for revocation of his or her release or parole. The alien will be afforded an **initial informal**
150 interview promptly after his or her return to Service custody to afford the alien an opportunity to
151 respond to the reasons for revocation stated in the notification.

152 28. Petitioner argues that ICE has not complied with its own regulation. It has never supplied
153 him with a reason as to an alleged violation, nor afforded him an opportunity or received any
154 notification of ICE’s reasons. Further, he shows that ICE has maintained custody of him under its
155 Order of Supervision but has never in all these years shown any progress towards imminent
156 removal or reasonably foreseeable removal to a third country.

157 29. In determining the reasonableness of detention, the Supreme Court recognized that, if a
158 person has been detained for longer than six months following the initiation of their removal
159 period, their detention is presumptively unreasonable unless deportation is reasonably

160 foreseeable; otherwise, it violates that noncitizen’s due process right to liberty. 533 U.S. at 701.
161 In this circumstance, if the noncitizen “provides good reason to believe that there is no
162 significant likelihood of removal in the reasonably foreseeable future, the Government **must**
163 respond with evidence sufficient to rebut that showing.” *Id.* (*emphasis added*).

164 30. The Court’s ruling in *Zadvydas* is rooted in due process’s requirement that there be
165 “adequate procedural protections” to ensure that the government’s asserted justification for a
166 noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected interest
167 in avoiding physical restraint.’” *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356
168 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil
169 detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533
170 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any
171 other justification.

172 31. The first justification of preventing flight, however, is “by definition . . . weak or
173 nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at 690. Thus, where
174 removal is not reasonably foreseeable and the flight prevention justification for detention
175 accordingly is “no longer practically attainable, detention no longer ‘bears [a] reasonable relation
176 to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406
177 U.S. 715, 738 (1972)). As for the second justification of protecting the community, “preventive
178 detention based on dangerousness” is permitted “only when limited to specially dangerous
179 individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.

180 32. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold
181 continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700. If
182 removal is reasonably foreseeable, “the habeas court should consider the risk of the

183 [noncitizen's] committing further crimes as a factor potentially justifying the confinement within
184 that reasonable removal period." *Id.* at 700.

185 33. At a minimum, detention is unconstitutional and not authorized by statute when it
186 exceeds six months and deportation is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701
187 (stating that "Congress previously doubted the constitutionality of detention for more than six
188 months" and, therefore, requiring the opportunity for release when deportation is not reasonably
189 foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386
190 (2005).

191 34. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that the
192 post-order detention of noncitizens becomes presumptively unreasonable after six months unless
193 the government can demonstrate a significant likelihood of removal in the reasonably foreseeable
194 future¹. The Court was clear, however, that the six-month period is not a strict jurisdictional bar
195 to judicial review—it is a guideline for reasonableness². As such, courts retain discretion to
196 consider habeas petitions filed before the six-month period elapses if the facts show that removal
197 is not reasonably foreseeable.

198 35. This principle has been reaffirmed by several courts. In *Bah v. Cangemi*, 489 F. Supp. 2d
199 905, 920 (D. Minn. 2007), the court held that "while six months marks the beginning of the
200 presumptively unreasonable period, it does not mark the beginning of federal court jurisdiction."
201 Similarly, in *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002), the Eleventh Circuit
202 emphasized that the six-month period under *Zadvydas* is merely a guideline, not a jurisdictional
203 requirement.

¹ See also *Rodriguez v. Robbins* (9th Circuit 2015) (Page 31).

² *Zadvydas v. Davis*, 533 US 678 (2001) (Page 3).

204 36. Here, Petitioner has been detained for ELEVEN months without any indication that
205 removal will occur in the reasonably foreseeable future. ICE has not identified a receiving
206 country, has made no tangible progress in securing travel documents, and has not articulated any
207 plan for lawful removal. In fact, ICE has not even provided the Petitioner with an OSUP
208 revocation notice nor an informal interview. Petitioner cannot be removed to any country, and no
209 country has agreed to accept him.

210 37. This situation closely aligns with the facts in *Zadvydas* and similar cases, such as *Sopo v.*
211 *Att’y Gen.*, 825 F.3d 1199 (11th Cir. 2016), and *Singh v. Att’y Gen.*, 945 F.3d 1310 (11th Cir.
212 2019), where detention without a viable removal plan was held to be unconstitutional.

213 38. Moreover, the circumstances surrounding Petitioner’s detention—namely, his arrest after
214 full compliance with ICE supervision and his ongoing separation from his family—strongly
215 suggest that the detention is punitive, not administrative. Detention under § 241 of the INA must
216 be tethered to the purpose of effectuating removal. Where, as here, that purpose is illusory or
217 nonexistent, continued detention violates substantive due process³.

218 39. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer
219 authorized by statute.” *Id.* at 699. Petitioner shows that the government had years to execute the
220 final order and failed to do so. That failure does not now authorize his detention while the
221 government belatedly attempts to enforce it. The government may detain a noncitizen only when
222 it can demonstrate that removal is presently possible or will be possible within a reasonable time.
223 The regulations refer to an order of supervision as a “release” (alternative to detention) under
224 terms and conditions as set by ICE (U.S. Department of Homeland Security, Immigration and
225 Customs Enforcement). 8 C.F.R. § 241.4(l) (order of supervision cannot be rescinded without

³ See also: *Clark v. Martinez* (1/12/05, 543 U.S. 371) (Page 17) and *Johnson, et al. v. Guzman Chavez, et al.* [6/29/21, 594 U.S.]
226 (Page 8).

227 providing the foreign national with a written explanation of how the order of supervision was
228 violated and why it is being rescinded and as to give the foreign national an opportunity to
229 respond and show that they did not violate the terms and conditions of the order of supervision).

230 40. His detention by defendants began under their order of supervision, more than three years
231 ago. Petitioner's detention in January of 2025 is unconstitutional because ICE has had custody
232 under its order of supervision (Form I-220B) since August 4, 2022, more than six months after
233 the removal order in his case became administratively final on April 25, 2022, because removal
234 is not reasonably foreseeable. Accordingly, to vindicate Petitioner's statutory and constitutional
235 rights and to put an end to his continued arbitrary detention, this Court should grant the instant
236 petition for a writ of habeas corpus.

237 41. The Supreme Court construed § 1231(a)(6) as having an implicit, temporal limitation of
238 six months post-order of removal, after which an alien must generally be released absent a
239 significant likelihood of removal in the reasonably foreseeable future. The defendants do not
240 have a likelihood of imminently removing Petitioner. The apparent purpose of detaining him was
241 to try to browbeat him into accepting removal to any country, even if that country would later
242 send him somewhere else. In the past three years, the defendants have shown no ability to
243 remove him to any country under the statute and regulations. Nor would his release on
244 supervision, as previously, prevent the defendants continuing their efforts to locate a country to
245 remove him to. Continued detention under these circumstances amounts to arbitrary confinement
246 forbidden by both domestic and international law.

247 42. In light of the government's failure to provide any legitimate path toward removal, and
248 considering Petitioner's equities and compliance history, judicial intervention is warranted now.
249 Courts are empowered to act where removal is not reasonably foreseeable, even if six months
250 have not yet passed since the initial detention. In this case, eleven months have passed.

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**CLAIMS FOR RELIEF
COUNT ONE
CONSTITUTIONAL CLAIM**

254 43. Petitioner alleges and incorporates by reference paragraphs 1 through 42 above.

255 44. Petitioners' detention violates his right to substantive and procedural due process
256 guaranteed by the Fifth Amendment to the U.S. Constitution.

257 45. The Due Process Clause of the Fifth Amendment forbids the government from depriving
258 any "person" of liberty "without due process of law." U.S. Const. amend. V.

259 46. Petitioner has been under the custody of Respondents, under an order of supervision, for
260 over three years, and now has been detained by Respondents since January 2025. Over three
261 years of this prolonged detention has taken place *after* his removal period began. Petitioner's
262 removal order became administratively final on April 25, 2022. The removal period began on
263 that day and thus has already elapsed.

264 47. Petitioner's prolonged detention is not likely to end in the reasonably foreseeable future.
265 ICE has failed to follow its own regulation requiring notification and reasons for its revocation
266 of supervision, and affording him an opportunity to respond to the alleged violation. 8 C.F.R. §
267 241.4. In fact, ICE has never had an agreement with any country to accept Petitioner, for more
268 than three years. Where, as here, removal is not reasonably foreseeable, detention cannot be
269 reasonably related to the purpose of effectuating removal and thus violates due process. *See*
270 *Zadvydas*, 533 U.S. at 690, 699–700.

271 48. Absent an order from this Court, Petitioner will likely remain detained for many more
272 months, if not years. For these reasons, Petitioner's ongoing prolonged detention violates the
273 Due Process Clause of the Fifth Amendment.

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**COUNT TWO
STATUTORY CLAIM - Violation of 8 U.S.C. § 1231(a)**

276 49. Petitioner alleges and incorporates by reference paragraphs 1 through 48 above.

277 50. Petitioner's continued detention violates the Immigration and Nationality Act and the
278 U.S. Constitution. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes
279 detention "beyond the removal period" only for the purpose of effectuating removal. 8 U.S.C. §
280 1231(a)(6); see also *Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably
281 foreseeable, continued detention is no longer authorized by statute."). Because Petitioner's
282 removal is not reasonably foreseeable, his detention does not effectuate the purpose of the
283 statute and is accordingly not authorized by § 1231(a).

284

COUNT THREE

285 51. If he prevails, Petitioner requests attorney's fees and costs under the Equal Access to
286 Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412. The undersigned counsel recognizes the
287 Fifth Circuit's decision in *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023) ruling that fees are not
288 available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for redetermination
289 at the Fifth Circuit. At least two Circuit Courts and two district courts have disagreed
290 with *Barco*. See *Vacchio v. Ashcroft*, 404 F.3d 663, 670-72 (2d Cir. 2005); *In re Petition of*
291 *Hill*, 775 F.2d 1037, 1040-41 (9th Cir. 1985); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205
292 (W. D. Penn. 2024); *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (Dist. Colo. 2023). Given
293 ICE's recent actions in detaining individuals without substantial justification, EAJA fees are
294 needed to ensure attorneys can confront detention that is unconstitutional.

295

PRAYER FOR RELIEF

296 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 297 1. Assume jurisdiction over this matter;
- 298 2. Issue an order directing Respondents to show cause why the writ should not be granted;
- 299 3. Issue a writ of habeas corpus ordering Respondents to release Mr. Bikash Gurung on his
300 own recognizance or under parole, a low bond or reasonable conditions of supervision show;

301 4. Award Petitioner reasonable costs and attorney's fees under the Equal Access to Justice
302 Act, and on any other basis justified under law;

303 5. Enjoin Respondents from continuing his detention absent a legally viable removal plan;
304 and,

305 6. Grant any other relief which this Court deems just and proper.

306 **Respectfully submitted on December 14, 2025.**

307

308 /s/Georgia Santos Laurent

309 Attorney for Petitioner

310 SanLaurent Law Group

311 13785 Research Blvd, Suite 125

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313 FL Bar No. 0289377

314 Admitted and Qualified to Practice as an Attorney in the Western District of Texas

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VERIFICATION OF COUNSEL

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341 I, Georgia Santos Laurent, hereby certify that I am familiar with the case of the named petitioner

342 and that the facts as stated above are true and correct to the best of my knowledge and belief.

343 /s/Georgia Santos Laurent

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345 Date: December 14, 2025.

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CERTIFICATE OF SERVICE

379 I certify, in accordance with the rules of this Court, I filed the foregoing via the Court's CM/ECF
380 system, which will send notice to all registered counsel of record.

381 December 14, 2025.

382 /s/Georgia Santos Laurent
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