


The Petition of Petitioner Darwin F. Torres,  ("Petitioner") respectfully shows:

1. Petitioner hereby petitions this Court under 28 U.S.C. § 2241, et seq., to issue a Writ of Habeas Corpus ordering Petitioner's release from the custody of the Department of Homeland Security, United States Immigration and Customs Enforcement ("ICE") and issue a stay of removal to any third country unless and until the Petitioner has been provided notice and an opportunity to seek Withholding of Removal to any third country of removal.

JURISDICTION

2. Jurisdiction is proper in this Court pursuant to 28 USC § 2241 (habeas corpus); 28 USC § 1331 (federal question jurisdiction); the Administrative Procedure Act, 5 USC § 701 et seq.; Fed. R. Civ. P. 81 et seq., declaratory judgment and mandamus, brought pursuant to 28 USC § 2201, 28 USC § 1361, and Article I, Section 9, Clause 2 of the U.S. Constitution, and the common law.

PARTIES

3. Petitioner Darwin F. Torres is a 43-year-old native and citizen of Honduras currently detained at Nassau County Correctional Center.
4. Respondent Kenneth Genalo is the Field Office Director for the New York Field Office of ICE Enforcement and Removal Operations. He is sued in his official capacity only. The Field Office Director is charged with exercising authority over the removal operations carried out by ICE in the New York geographic region,

which includes the Southern District of New York, and for determinations on whether and where Petitioner is to be detained prior to removal.

5. Respondent Todd M. Lyons is the Acting Director of Immigration & Customs Enforcement. He is sued in his official capacity only. The Acting Director is charged with the overall administration and operation of ICE, including oversight of enforcement and removal operations, detention policies, and the implementation of immigration enforcement priorities nationwide.
6. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is sued in her official capacity only. The Secretary is charged with the overall leadership and administration of DHS, including oversight of all component agencies such as ICE, and the implementation of national homeland security policies and immigration enforcement strategies.

VENUE

7. Venue is proper in this court, which exercises jurisdiction in petitions for habeas corpus filed by persons being detained in Nassau County. Upon information and belief, Petitioner has been detained on the order of the Secretary of the Department of Homeland Security and her agents in ICE at 26 Federal Plaza, New York, New York, which is also within this District.

FACTUAL BACKGROUND

8. Upon information and belief, Mr. Torres entered the United States on or about September 24, 2001. Following removal proceedings, an Immigration Judge ordered him removed to Honduras on or about January 8, 2002.
9. Under 8 U.S.C. § 1231(a), the government had 90 days from January 8, 2002—until April 8, 2002—to effectuate Mr. Torres' removal. That deadline passed over twenty-three years ago. Upon information ICE could not remove Mr. Torres because Honduras refused to issue travel documents for his repatriation.
10. Upon information and belief, Mr. Torres has lived openly at all times in the U.S., disclosing his address and whereabouts to the authorities.
11. Mr. Torres married Alba Judith Acosta Moncada, a lawful permanent resident or U.S. citizen, on May 26, 2023, in Glen Cove, New York.
12. On [REDACTED] Mr. Torres and Mrs. Acosta Moncada had their first child, [REDACTED]; On [REDACTED] their second child was born, [REDACTED]; on [REDACTED] their third child, [REDACTED] was born. All three children are U.S. citizens by birth.
13. On December 1, 2023, Mrs. Acosta Moncada filed with U.S. Citizenship and Immigration Services an I-130 Petition for Alien Relative on behalf of Mr. Torres. That petition remains pending.

14. Upon information and belief, on or about September 2, 2025, Mr. Torres was detained by officers of Immigration and Customs Enforcement without a warrant during a traffic stop.
15. Upon information and belief, Mr. Torres is being held by Immigration and Customs Enforcement at a location within Nassau County, New York

CLAIMS FOR RELIEF

COUNT I: MR. TORRES DETENTION VIOLATES 8 U.S.C. § 1231 AS THE 90-DAY REMOVAL PERIOD EXPIRED TWENTY-THREE YEARS AGO

17. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs.
18. The statutory framework governing post-removal detention establishes clear temporal limits that ICE has flagrantly violated. Under 8 U.S.C. § 1231(a)(1)(B)(i), the 90-day removal period began when Mr. Torres' order became administratively final on January 2, 2002. That period expired in April, 2002. Once this period passed without removal, the statute mandates that "the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (emphasis added).
19. As Judge Rochon explained in *Zhu v. Genalo*, 1:25-cv-06523 (S.D.N.Y. Aug. 26, 2025), ICE cannot circumvent these temporal limits through strategic delays in arrest. The court there confronted nearly identical circumstances: a national with a decades-old

removal order who had been on supervision due to the Petitioner's home country's refusal to accept deportees. The court unequivocally held that detention commenced after the removal period expired violated the statute.

20. The statutory exceptions under 8 U.S.C. § 1231(a)(6) do not apply to Mr. Torres. Upon information and belief, Mr. Torres has only a single law enforcement encounter from 2002 which resulted in a conviction under VTL 1192.1 (01), operating while ability impaired by alcohol, for which he received a 1 year conditional discharge and a 90-day license suspension. His subsequent two decades without any further law enforcement encounters establishes that Mr. Torres is neither a flight risk or danger to the community. Thus, circumstances have not changed such that 8 U.S.C. § 1231(a)(6) can be applied at this time.

COUNT II: REMOVAL TO HONDURAS IS NOT REASONABLY FORESEEABLE

21. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention beyond six months is presumptively unreasonable unless the government demonstrates removal is reasonably foreseeable. Here, the presumption of unreasonableness is overwhelming—Mr. Torres has been unremovable for twenty-three years.

22. Upon information and belief, Honduras' documented refusal to accept some nationals for deportation has persisted for decades. ICE has presented no evidence that Honduras' position towards Mr. Torres has changed or that travel documents are forthcoming.

The government cannot meet its burden under *Zadvydas* when two decades of history demonstrate removal is impossible.

**COUNT III: THE BALANCE OF INTERESTS OVERWHELMINGLY FAVORS
RELEASE**

23. Applying the *Mathews v. Eldridge* framework, every factor supports immediate release. Mr. Torres' liberty interest could not be more fundamental. The risk of erroneous deprivation is manifest given ICE's complete abandonment of required procedures. The government's interest is minimal given Mr. Torres' strong family ties including marriage to a Lawful Permanent Resident, a pending I-130 petition and the absence of any criminal conduct for over twenty years.

24. Upon information and belief, Mr. Torres poses no flight risk—he has lived openly and freely disclosed his location and contact information as part of his efforts to normalize his status through the I-130 petition, He has had no criminal involvement since the 2002 arrest. He has stable housing with his Lawful Permanent Resident spouse, U.S. citizen children, deep community ties, and every incentive to pursue legal status through his I-130 petition.

**COUNT IV: MR. TORRES IS ENTITLED TO A STAY OF REMOVAL TO
THIRD COUNTRIES AND THE OPPORTUNITY TO SEEK WITHHOLDING
OF REMOVAL**

25. The government's inability to remove Mr. Torres to Honduras does not authorize removal to a third country without due process

protections. Should ICE attempt to circumvent Honduras' refusal by seeking removal to a third country, Mr. Honduras has fundamental rights that must be protected.

A. Right to Notice and Opportunity to Apply for Withholding of Removal to Third Countries

26. Under 8 U.S.C. § 1231(b)(2), an alien may be removed to a country other than the designated country of removal only under specific circumstances. Critically, before removal to any alternative country, Mr. Honduras must be afforded the opportunity to seek withholding of removal under 8 U.S.C. § 1231(b)(3) if he faces persecution or torture in that third country.
27. The regulations at 8 C.F.R. § 241.15 establish that aliens must be informed at least 30 days before removal to a third country and given the opportunity to apply for protection. This notice must identify the specific country to which removal is contemplated and inform the alien of the right to seek withholding or protection under the Convention Against Torture.
28. Upon information and belief, Mr. Honduras has received no such notice. He has been given no opportunity to assess whether he would face persecution or torture in any third country. This is particularly concerning given that ICE arrested him without any indication of where they intend to remove him, creating the risk of removal to a country where he may face harm without any opportunity to seek protection.

B. Due Process Requires Meaningful Opportunity to Contest Third Country Removal

29. The Supreme Court has recognized that due process applies to removal proceedings and that aliens cannot be removed to countries where they face persecution. See *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). This protection extends to removal to third countries, particularly where, as here, the alien has had no opportunity to develop or present claims regarding potential harm in those countries.

30. Upon information and belief, Mr. Torres two-decade residence in the United States, his family ties, and his lack of connections to any third country heighten the due process concerns. He has had no opportunity to investigate conditions in potential third countries, gather evidence of potential persecution, or consult with counsel regarding protection claims. Any attempt to remove him to a third country without adequate notice and opportunity to seek protection would violate fundamental due process.

C. Stay of Removal Is Necessary to Preserve Mr. Torres' Rights

31. Upon information and belief, given ICE's demonstrated failure to follow required procedures in detaining Mr. Torres, there is substantial risk that ICE may attempt removal to a third country without providing the required protections. A stay of removal to any third country is necessary to ensure Mr. Torres receives the notice and opportunity to seek protection required by law.

32. This Court has authority to stay removal to protect statutory and constitutional rights. See *Nken v. Holder*, 556 U.S. 418 (2009). The factors for a stay overwhelmingly favor Mr. Torres: he faces irreparable harm if removed without opportunity to seek protection; he has demonstrated likelihood of success on his claims given ICE's regulatory violations; and the balance of equities favors protecting fundamental rights over the government's interest in expedited removal after two decades of U.S. habitation.

IRREPARABLE HARM AND NEED FOR EMERGENCY RELIEF

33. Upon information and belief, Mr. Torres faces imminent and irreparable harm absent emergency relief from this Court. Every day of unlawful detention constitutes irreparable injury to his fundamental liberty interests that cannot be adequately compensated through monetary damages. See *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects").
34. Moreover, Upon information and belief, Mr. Torres faces the imminent risk of removal to a third country without proper process. Once removed, any legal remedies would be meaningless as Mr. Torres would be permanently separated from his family, his home of almost 25-years, and any opportunity to pursue potential derivative citizenship claims. The Second Circuit has consistently recognized that removal itself constitutes irreparable harm. See

Issa v. Immigration & Customs Enforcement, 258 F.3d 52 (2d Cir. 2001).

35. The risk of removal to a third country without notice or opportunity to seek protection creates additional irreparable harm. Mr. Torres could be removed to a country where he faces persecution or torture without any opportunity to present these claims, violating both statutory protections and fundamental due process rights.

36. The balance of hardships strongly favors Mr. Torres, as Respondents will suffer no harm from complying with federal law and Due Process. The government has no legitimate interest in detaining someone who has complied with supervision for thirty-two years, poses no flight risk or danger, and cannot be removed to his designated country.

37. The public interest strongly favors enforcement of federal statutory protections and constitutional rights. As the *Zhu* court recognized just several days ago, permitting ICE to circumvent statutory time limits and regulatory procedures undermines the rule of law and threatens the liberty of all individuals subject to immigration enforcement.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Issue a writ of habeas corpus ordering Respondents to immediately release Mr. Torres from custody;
2. Declare that Mr. Torres' detention violates 8 U.S.C. § 1231, 8 C.F.R. § 241.4, and the Due Process Clause of the Fifth Amendment;

3. Issue a stay of removal to any third country pending Mr. Torres the opportunity to seek withholding of removal or protection under the Convention Against Torture;
4. Order that should Respondents seek removal to any third country, they must provide Mr. Torres with at least 30 days' advance written notice identifying the specific country and informing him of his right to seek withholding and CAT protection;
5. Order that Mr. Torres be afforded a meaningful opportunity to consult with counsel and present any applications for protection from removal to third countries before any removal is effectuated;
6. Award costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
7. Grant such other and further relief as this Court deems just and proper.

Dated: New York, New York

September 3, 2025

Respectfully submitted,



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Attorney Verification

I, Joshua Bardavid, authorized representative of Petitioner, affirm under penalty of perjury that:

The statement of facts contained in the Petition is true to my knowledge, except as to those matters that are stated in it on my information and belief, and as to those matters, I believe them to be true.

Dated: New York, New York

September 3, 2025

Respectfully submitted,



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