

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: _____-Civ

OSMAN OMAR TORRES HUETE,
Alien No. 

Petitioner,

v.

PAM BONDI, in his official capacity as the Attorney General of the United States;
GARRET J. RIPA, in his official capacity as Field Office Director of U.S. Immigration and Customs Enforcement Miami Field Office;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement and Officer-in-Charge, Krome Detention Center, Miami, Florida;
KRISTI NOEM, in her official capacity as the Secretary of the U.S. Department of Homeland Security;

Respondents.

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS
Pursuant to 28 U.S.C. § 2241 (Expedited Review Requested)

The petitioner, **OSMAN OMAR TORRES HUETE**, submits this emergent verified petition for writ of habeas corpus, by and through undersigned counsel, and alleges as follows:

INTRODUCTION

Petitioner has been held in civil immigration custody by Respondents since October 16, 2025, despite a **final Immigration Judge's Order** issued on May 31, 2018, granting his **release upon a \$3,000 bond** and finding him neither a danger to the community nor a flight risk.

Petitioner was lawfully released pursuant to that order and has **fully complied with all DHS and Immigration Court requirements**. He also has a **pending affirmative asylum application**,

filed in May 2018, which remains under review by U.S. Citizenship and Immigration Services (USCIS).

Despite his lawful release and ongoing cooperation, DHS has **improperly initiated removal proceedings against Petitioner twice**—in 2018 and again in 2025—and in both instances, the **Immigration Judge terminated those proceedings** for lack of prosecution and improvident issuance. No valid or current Notice to Appear or removal proceeding is pending against Petitioner. Nevertheless, ICE has **re-detained him without any new order, changed circumstances, or statutory authority**.

Under **8 C.F.R. § 1003.19(i)(2)**, an Immigration Judge’s bond decision “shall remain in effect pending appeal,” and upon expiration of the appeal period without DHS action, the decision becomes **final and enforceable**. Accordingly, ICE was—and remains—legally obligated to comply with the 2018 Order by maintaining Petitioner’s release status under the bond and conditions imposed by the Immigration Court.

Moreover, ICE’s disregard of a final judicial order undermines the **separation of powers** and violates the constitutional guarantee that liberty cannot be deprived without due process of law. Once an Immigration Judge’s order is final, the executive branch must execute—not override—it. Any re-detention without a valid new finding of danger, flight risk, or changed circumstances is **arbitrary, unlawful, and unconstitutional**, constitutes a violation of the **Petitioner’s constitutional and statutory rights** under the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

Administrative officers, including ICE, must act within the limits of the law and may not disregard a valid and final Immigration Judge’s order. Because Petitioner’s present detention is **without lawful basis**, he respectfully seeks the issuance of a **writ of habeas corpus** from this Honorable Court to secure his immediate release.

JURISDICTION

1. This action arises under the Constitution for the United State of America, the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, title 8 of the Code of Federal Regulations, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701, *et seq.*

2. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1346(a)(2) (United States as defendant). This Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. §§ 2201-02 (declaratory relief); 28 U.S.C. § 2241 (habeas corpus); and 5 U.S.C. §§ 702, 706.

VENUE

3. Venue is proper in this District under 28 U.S.C. § 1391(e) and § 2241(d), as Respondents reside in Key West FL, Petitioner is detained in Krome Detention Center in Florida, and the acts complained of occurred here.

PARTIES

4. The petitioner **OSMAN OMAR TORRES HUETE** (A#  is a 32-year-old Honduran national currently detained by ICE at the Krome Detention Center, South Florida, since October 16, 2025—over 20 days with no individualized bond hearing and no removal order.

5. **PAM BONDI** is sued in his official capacity as the Attorney General of the United States, which encompasses the BIA and the Immigration Judges as sub-agencies of the Executive Office of Immigration Review (EOIR). Attorney General Sessions shares responsibility for the implementation and enforcement of the immigration laws, and is a legal custodian of the petitioner.

6. **GARRET J. RIPA** is sued in his official capacity as the Field Office Director for the U.S. Immigration and Customs Enforcement (ICE) Miami Field Office, and as the Officer-in-

Charge of the Krome Detention Center. In this capacity, he has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner.

7. **TODD LYONS** is sued in his official capacity as the Acting Director of ICE. In this capacity, he has responsibility for the enforcement of the immigration laws. As such, he is a legal custodian of the petitioner.

8. **KRISTI NOEM** is sued in her official capacity as the Acting Secretary of the U.S. Department of Homeland Security (DHS), the arm of the U.S. government responsible for the enforcement of the immigration laws. Because ICE is a sub-agency of the DHS, Secretary Noem is a legal custodian of the petitioner.

FACTUAL ALLEGATIONS

9. The Petitioner fled Honduras and entered the United States in March 2014 after surviving arson, shootings, and the 2015 murder of his father among other family members.

10. In April 2018, the petitioner was arrested by the Monroe County Sheriff Office for driving without a driver's license. ICE placed a detainer hold, and took him into their custody on or about May 22, 2018. Appx., Exh. A, 1 (DHS Immigration Detainer).

11. The same day that the petitioner was arrested and detained, the respondents drafted and emitted removability charges via a Notice to Appear. Appx., Exh. B, 2-4.

12. On or about May 22, 2018, DHS issued a Notice of Custody Determination denying release pending a final administrative determination. Appx., Exh. C, 5.

13. On May 31, 2018, the petitioner filed a motion for bond, which the Immigration Judge at the Krome Detention Center granted, finding the petitioner neither a danger to the community nor a flight risk. IJ ordered ICE to release the petitioner upon a \$3,000 bond and the condition that the petitioner not drive without a valid driver's license. Appx., Exh. D, 6. DHS

reserved appeal, which triggered additional 30 days detention. Although DHS reserved appeal, it filed neither a stay nor an appeal within the 30-day period.

14. The petitioner posted bond as ordered, and ICE released the petitioner from custody on or about June 1, 2018. Appx., Exh. E, 7-10. Release upon bond became **final and binding** when the DHS failed to file a timely appeal or stay within the thirty (30) days permitted under **8 C.F.R. § 1003.38(b)**. Once final, that order established the lawful terms of the Petitioner's custody and release. Neither DHS nor ICE possesses authority to disregard or unilaterally nullify a final order of an Immigration Judge. *Id.*

15. During the Feb. 5, 2019 hearing, the Immigration Judge Scott G. Alexander ordered that the proceedings be terminated because the Notice to Appear (see Exh. B) was improvidently issued.¹ Appx., Exh. F, 11. The Immigration Judge also took note that I-589 asylum application was pending with the USCIS. *Id.* The Immigration Judge also took no action on the petitioner's custody status. *Id.*

16. The petitioner duly and diligently filed his asylum application which is still pending before the DHS/USCIS since May 7, 2028. Appx., Exh. G, 12. The petitioner attended court hearings, biometrics appointment (Jun. 13, 2018), and recently paid the DHS recently imposed requirement of annual asylum fees (Oct. 7, 2025). Appx., Exhs. H-I, 13-16. The petitioner has fully complied with every condition until ICE agents seized him without warrant, hearing, or changed circumstances.

17. Despite the IJ's Order, ICE arbitrarily re-detained Petitioner without probable cause, new evidence of violation, or individualized determination, in violation of the Fifth

¹ An NTA is “improvidently issued” when it was issued in error, such as when:

- The person was not properly subject to removal proceedings;
- DHS lacked authority or factual basis to issue it; or
- The NTA was defective under law (e.g., missing time/place information, wrong respondent, etc.).

When an NTA is improvidently issued, the Immigration Judge may terminate proceedings under **8 C.F.R. § 239.2(a)(6)**.

Amendment Due Process Clause, the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., and Supreme Court precedent limiting prolonged or unjustified immigration detention.

18. This arbitrary re-detention violates the Fifth Amendment, 8 U.S.C. § 1231(a)(6), and Supreme Court limits on indefinite civil detention (Zadvydas v. Davis, 533 U.S. 678 (2001)). Immediate release is the only remedy.

19. On October 16, 2025, Petitioner was driving to work when he was intercepted and stopped by ICE agents who re-detained him without warrant, new charges, or explanation. As of October 30, 2025, DHS offered no release prompting the petitioner to submit a formal request.

20. On October 30, 2025, the petitioner submitted a formal Request for Parole, Release from Custody, or placement in the Alternatives to Detention (ATD) program—Appx., Exh. J, 17–20.

21. On November 1, 2025, ICE Deportation Officer Joseph Quinn denied the request, stating that it was denied “due to having no significant humanitarian or public benefit.” Appx., Exh. K, 21.

22. While in detention, neither DHS served a Notice to Appear nor EOIR issued a Notice of Hearing to the petitioner. On November 3, 2025, through undersigned counsel, petitioner learned for the first time that new removal proceedings were initiated on Oct. 16, 2025, however, said proceedings were again terminated “due to a failure to prosecute.” Appx., Exh. L, 22. which prompted the Petitioner to file his habeas petition.

23. The petitioner is still detained and recently transferred to Krome Detention Center from the South Florida Detention Facility (aka Alligator Alcatraz) without a removal proceeding properly pending against him.

24. An Immigration Judge has authority to consider a bond request from any alien who has been “arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a).

25. The regulations provide, “After an initial custody determination by the district director [of the DHS], including the setting of a bond, the [alien] may, at any time before an order under 8 CFR part 1240 becomes final, request amelioration of the conditions under which he or she may be released.” 8 C.F.R. § 1226(d)(1) Application to immigration judge (emphasis added).

26. The only justification for the Immigration Judge’s not taking jurisdiction over the petitioner’s request for bond would be that the petitioner is in fact not “detained pending a decision on whether [he] is to be removed from the United States.” 8 U.S.C. § 1226(a).

27. The petitioner is not detained pending a decision whether he is to be removed from the United States. Because the petitioner is not detained pending a decision whether he is to be removed from the United States, he is not lawfully detained pursuant to a grant of statutory authority.

28. ICE’s re-detention lacks any legitimate basis: no criminal activity, no missed check-ins, and no change in circumstances. This action reflects a pattern of arbitrary enforcement, depriving Petitioner of liberty without due process. As recognized in Zadvydas v. Davis, 533 U.S. 678 (2001), immigration detention must be reasonably related to removal and cannot become indefinite or punitive. Continued re-detention without justification violates the statutory 90-day removal period under 8 U.S.C. § 1231(a)(6) and ICE’s own policies mandating release absent exceptional circumstances. Petitioner seeks immediate release to prevent irreparable harm to his health, family, and community ties.

29. "It is central to the meaning of the rule of law, [and] not particularly controversial that a federal agency does not have the power to act unless Congress, by statute, has empowered it to do so." Succar v. Ashcroft, 394 F.3d 8, 20 (1st Cir. 2005) (citations and quotation marks omitted) (alteration in original). "[W]hen the record shows that a commissioner of immigration is exceeding his power, the alien may demand his release upon habeas corpus." *Gegiow v. Uhl*, 239 U.S. 3, 9 (1915).

30. The petitioner is not detained pursuant to lawful agency action for the prosecution of an immigration removal case. As the Supreme Court recognized in *Gegiow v. Uhl*, 239 U.S. 3, 9 (1915), executive officers must act "in harmony with the narrow limits of the statute," and may not detain individuals for reasons outside those limits. Here, ICE's re-detention of Petitioner, despite a final Immigration Judge's order of release and absent any new statutory basis, constitutes an unlawful and arbitrary exercise of power.

31. The petitioner is civilly detained solely for the purpose of punishment.

CLAIM FOR RELIEF

COUNT I: UNLAWFUL DETENTION IN VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND ITS IMPLEMENTING REGULATIONS

32. The allegations in paragraphs 1-31 are realleged and incorporated herein.

33. The petitioner's detention is not authorized by any statutory authority, and is thus in violation of the Immigration and Nationality Act and its implementing regulations, and in violation of the Administrative Procedure Act.

34. Therefore, the petitioner is being unlawfully detained and is entitled to a writ of habeas corpus.

COUNT II:
UNLAWFUL DETENTION IN VIOLATION OF
DUE PROCESS UNDER THE FIFTH AMENDMENT

35. The allegations in paragraphs 1-31 are realleged and incorporated herein.
36. The petitioner's civil detention is not authorized by any statutory authority, and he is detained solely for the purpose of punishment, in violation of the due process clause of the Fifth Amendment to the Constitution for the United States of America.
37. ICE's subsequent re-detention absent any new order, probable cause, hearing, or evidence of changed circumstances violates Petitioner's substantive due process rights under 8 C.F.R. § 1003.19(e), and is unreasonable, arbitrary, and unlawful. Non-punitive civil detention must bear a reasonable relation to a legitimate governmental interest—here, removal—which is not advanced by indefinite re-confinement of a compliant individual. Zadvydas v. Davis, 533 U.S. 678, 690 (2001) (detention becomes punitive if indefinite).

38. Therefore, the petitioner is being unlawfully detained and is entitled to a writ of habeas corpus.

COUNT III:
VIOLATION OF APA AND ICE POLICY (ACCARDI DOCTRINE)

39. The allegations in paragraphs 1-31 are realleged and incorporated herein.
40. An agency must follow its own regulations, procedures, and rules when exercising its authority. If an agency (such as DHS/ICE) fails to follow its own binding regulations, its action is "contrary to law" and invalid under the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A).

41. When an Immigration Judge grants release on bond, ICE is bound by regulation to comply with that order unless (i) DHS files a timely appeal to the BIA (8 C.F.R. § 1003.38), or (ii) DHS later conducts a **new custody review** based on **changed circumstances** (8 C.F.R. § 1003.19(e), § 241.4).

42. If ICE re-detains a noncitizen who was previously released under a final IJ bond order without conducting an individualized custody review, without new findings of danger or flight risk, or without changed circumstances, that action violates ICE's own binding regulations — and therefore the **Accardi Doctrine**.

43. Such re-detention is also “**arbitrary, capricious, [and] not in accordance with law**” under the APA, 5 U.S.C. § 706(2)(A). Agencies must follow their own rules affecting individual rights. Accardi v. Shaughnessy, 347 U.S. 260 (1954). ICE's blanket re-detention without review is contrary to law under the APA.

44. Therefore, the petitioner is being unlawfully detained and is entitled to a writ of habeas corpus.

PRAYER FOR RELIEF

WHEREFORE, the petitioner prays that the Court grant the following relief:

- (a) Assume jurisdiction over this matter;
- (b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;
- (c) Enter an Order to Show Cause against the respondents;
- (d) Schedule this matter for a temporary restraining order hearing;
- (e) Order the respondents to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the petitioner remains in the respondents' custody;
- (f) Grant the petitioner a writ of habeas corpus that orders his immediate release from the custody of the respondents;
- (g) Declare Petitioner's re-detention unlawful under the Fifth Amendment, 8 U.S.C. § 1231(a)(6), the INA, APA, and ICE policies;

- (h) Award the petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and
- (i) Grant any other and further relief that the Court deems just and proper.

Dated: November 4, 2025

s/ Regilucia Smith
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**VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I, Regilucia Smith, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I have discussed with the petitioner the events described in this petition. On the basis of those discussion, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 4, 2025

s/ Regilucia Smith
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