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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In the Matter of)

Marelino OSORIO REYES)

Petitioner,)

v.)

DANIEL BRIGHTMAN *et al.*,)

Respondents)

Case No. 3:25-CV-3721-CAB-BJW

**REPLY IN SUPPORT OF
PETITIONER'S HABEAS
PETITION AND EMERGENCY
RELIEF REQUESTED**

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I. INTRODUCTION

Petitioner, Marelino Osorio Reyes, filed a habeas petition and requested emergency relief with that petition. ECF No. 1. In response to Respondents' opposition (see ECF No. 6), Petitioner respectfully submits this reply and requests that the Court grant emergency relief and the petition.

Before addressing the legal arguments, Petitioner notes that on January 2, 2026, he filed a Notice of Supplemental Authority informing the Court that the termination of Temporary Protected Status ("TPS") for Honduras was vacated and set aside by the Order in *National TPS Alliance et al. v. Noem*, No. 25-cv-05687-TLT (N.D. Cal. Dec. 31, 2025). ECF No. 7. Because Petitioner held TPS prior to its unlawful termination, his TPS has been reinstated as a matter of law.

Petitioner seeks immediate release from immigration custody because that custody is unlawful and has already caused irreparable harm. Respondents' detention of Petitioner is impermissibly post hoc. Although Petitioner was initially arrested pursuant to a warrant issued under 8 U.S.C. § 1226, Respondents have attempted to retroactively justify his detention by relying on Petitioner's prior deportation and removal orders, while disregarding that the arrest on December 19, 2025 was executed pursuant to a warrant.

II. LEGAL ARGUMENTS

A. Petitioner's TPS Has Been Reinstated as a Matter of Law, Rendering His Continued Detention Unlawful

Respondents' opposition rests on the premise that Petitioner's TPS was terminated and that he is therefore subject to detention for purposes of removal.

1 Respondents assert that “ICE terminated Petitioner’s TPS status” on August 12,
2 2025, prior to the Secretary’s subsequent announcement regarding TPS for
3 Honduras. That assertion does not establish a lawful termination. ICE lacks
4 statutory authority to terminate or withdraw TPS. *See* 8 U.S.C. § 1254a (vesting
5 authority over TPS designation and termination with the Secretary of Homeland
6 Security); *see also* 8 C.F.R. § 244.1 (placing TPS adjudications within USCIS
7 authority).

8 Individual TPS may be withdrawn only by U.S. Citizenship and
9 Immigration Services following a written notice of intent and an opportunity to
10 respond. 8 C.F.R. § 244.14(a). Petitioner received no notice of intent to withdraw
11 TPS as required by regulation, and no lawful withdrawal occurred. An ICE
12 officer’s unilateral action therefore cannot extinguish a congressionally conferred
13 humanitarian status or supply a lawful basis for arrest or detention. *See City of*
14 *Arlington v. FCC*, 569 U.S. 290, 297 (2013) (agencies possess only the authority
15 delegated to them by Congress).

16 Alternatively, TPS may be terminated only on a countrywide basis by the
17 Secretary of Homeland Security through publication in the Federal Register. 8
18 U.S.C. § 1254a(b)(3)(B). Although there was a TPS termination made by
19 Secretary Noem, the United States District Court for the Northern District of
20 California vacated and set aside the Secretary’s termination of TPS for Honduras
21 in *National TPS Alliance et al. v. Noem*, No. 25-cv-05687-TLT (N.D. Cal. Dec.
22 31, 2025). As set forth in Petitioner’s Notice of Supplemental Authority, ECF No.
23 7, that decision nullifies the legal basis for actions predicated on the termination of
24 Honduras’s TPS designation and restores the status quo ante. *See* 5 U.S.C. §
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1 706(2) (agency action found unlawful must be “set aside”); see also *Nat’l Mining*
2 *Ass’n v. U.S. Army Corps of Eng’rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998)
3 (vacatur renders agency action void).

4 As a result of the vacatur of the Secretary’s termination of TPS for
5 Honduras, and in the absence of any lawful individual withdrawal, Petitioner’s
6 TPS is operative as a matter of law. TPS confers statutory protection from
7 removal. 8 U.S.C. § 1254a(a)(1)(A). While TPS is in effect, the government may
8 not execute a removal order against a TPS holder, notwithstanding the existence
9 of prior deportation or removal orders. *See, e.g., Ramos v. Nielsen*, 321 F. Supp.
10 3d 1083, 1098 (N.D. Cal. 2018).

11 Accordingly, Respondents’ reliance on 8 U.S.C. § 1231 and post-removal
12 detention principles fails as a matter of law. Because Petitioner’s TPS is presently
13 operative, Respondents lack statutory authority to detain him for purposes of
14 removal. His continued detention is unlawful, and habeas relief is warranted. *See*
15 *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

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17 **B. This Court Has Habeas Jurisdiction Because Petitioner Challenges**
18 **Unlawful Custody, Not the Execution of Removal Orders**

19 Respondents contend that this Court lacks subject matter jurisdiction under
20 8 U.S.C. § 1252(g), arguing that Petitioner’s claims arise from—or seek to
21 enjoin—the decision to execute a removal order. That contention mischaracterizes
22 the petition. Petitioner does not dispute the existence of his prior deportation or
23 removal orders, nor does he seek to enjoin their execution through this petition.
24 Instead, he challenges the lawfulness of his arrest and continued detention, which
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1 were initiated pursuant to a warrant issued under 8 U.S.C. § 1226 and provided to
2 Petitioner by Respondents. That warrant was submitted as an exhibit to the habeas
3 petition. See ECF No. 1-5. Petitioner seeks immediate release from custody on the
4 ground that Respondents lack statutory authority to detain him. Such claims fall
5 squarely within the core of habeas corpus. See 28 U.S.C. § 2241(c); *Pinson v.*
6 *Carvajal*, 69 F.4th 1059, 1072 (9th Cir. 2023).

7 Section 1252(g) is a narrowly circumscribed jurisdiction-stripping provision
8 that applies only to three discrete actions: the Attorney General’s decision or
9 action to commence proceedings, adjudicate cases, or execute removal orders.
10 *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999). As
11 the Supreme Court explained in *Reno*, Congress did not intend § 1252(g) to bar
12 review of all claims that merely relate in some way to removal, nor to foreclose
13 habeas review of unlawful detention collateral to those enumerated actions. *Id.* at
14 482.

15 Petitioner’s claims do not arise from a decision to execute a removal order.
16 They arise from Respondents’ lack of statutory authority to arrest and detain him,
17 where custody was initiated pursuant to a § 1226 warrant and Respondents now
18 seek to justify continued detention solely under 8 U.S.C. § 1231, notwithstanding
19 the reinstatement of Petitioner’s TPS. Where a petitioner challenges the legality of
20 custody itself and seeks release, habeas jurisdiction exists regardless of the
21 presence of a removal order. See *Zadvydas*, 533 U.S. at 688; *Nadarajah v.*
22 *Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006).

23 Moreover, § 1252(g) has no application where Congress has independently
24 suspended the execution of removal by statute. As explained above, TPS confers
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1 protection from removal as a matter of law. See 8 U.S.C. § 1254a(a)(1)(A).
2 Because Petitioner presently holds TPS, there is no lawful decision to execute a
3 removal order for this Court to review. Petitioner therefore does not seek to
4 interfere with the removal process; he seeks release from detention that Congress
5 has rendered unauthorized.

6 Finally, Respondents' suggestion that the petition is jurisdictionally unclear
7 is unfounded. The controlling inquiry is whether success on the petition would
8 necessarily result in release from custody. *Pinson*, 69 F.4th at 1072; *Nettles v.*
9 *Grounds*, 830 F.3d 922, 934 (9th Cir. 2016). Because Petitioner seeks immediate
10 release from unlawful detention—and because release is required if he prevails—
11 the petition plainly falls within this Court's habeas jurisdiction.

12 Accordingly, 8 U.S.C. § 1252(g) does not deprive this Court of jurisdiction,
13 and no clarification or additional briefing is necessary for the Court to adjudicate
14 Petitioner's claims.

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16 **C. Respondents Cannot Retroactively Justify Petitioner's Arrest and**
17 **Detention by Invoking Removal Orders While Ignoring the § 1226**
18 **Warrant That Initiated Custody**

19 Petitioner's custody did not begin as an exercise of post-removal detention
20 authority under 8 U.S.C. § 1231. It began with an arrest executed pursuant to a
21 warrant issued under 8 U.S.C. § 1226, which Respondents themselves provided to
22 Petitioner at the time of arrest and which Petitioner submitted as an exhibit to the
23 habeas petition. See ECF No. 1-5. The lawfulness of immigration custody depends
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1 on the statutory authority under which it is initiated, and Respondents cannot
2 evade judicial review by reframing the basis for detention after the fact.

3 Notably, Respondents' opposition does not address the § 1226 warrant at
4 all. They do not defend its validity, explain its issuance, or identify any statutory
5 basis authorizing Petitioner's arrest under § 1226 at the time custody began.
6 Instead, Respondents rely exclusively on the existence of Petitioner's prior
7 deportation and removal orders to justify continued detention. That omission is
8 significant. An unlawful or unauthorized arrest cannot be cured retroactively by
9 invoking alternative detention authority that was not relied upon at the time of
10 arrest. *See Nadarajah*, 443 F.3d at 1076 (immigration detention must be
11 authorized by statute).

12 Respondents' post hoc reliance on removal orders improperly collapses the
13 distinction between arrest authority and removal authority. Section 1226 governs
14 the arrest and detention of noncitizens pending a decision on removal, while §
15 1231 governs detention following a lawful decision to execute a removal order.
16 The government may not bypass the statutory limits of § 1226 by later asserting
17 that § 1231 applies, particularly where, as here, removal is statutorily barred by
18 Petitioner's reinstated TPS. Detention authority must exist at each stage of
19 custody and cannot be supplied retroactively. *See Zadvydas*, 533 U.S. at 688
20 (detention must rest on valid statutory authority).

21 Moreover, even assuming the existence of multiple removal orders,
22 Respondents identify no lawful basis for arresting Petitioner under § 1226 on
23 December 19, 2025, nor do they explain how custody lawfully transitioned from §
24 1226 to § 1231. Where the government fails to establish the statutory authority
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1 under which detention was initiated and maintained, habeas relief is appropriate.
2 *See Demore v. Kim*, 538 U.S. 510, 517 (2003) (immigration detention is
3 constitutionally permissible only where authorized by statute).

4 In short, Respondents' detention theory depends on impermissible post hoc
5 rationalization. They cannot ignore the § 1226 warrant that initiated custody, rely
6 instead on removal orders that were not executed at the time of arrest, and then
7 shield that custody from review by invoking jurisdiction-stripping provisions or
8 post-removal detention principles. Because Respondents have failed to establish a
9 lawful basis for Petitioner's arrest and continued detention, habeas relief is
10 warranted.

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12 **D. Respondents' Reliance on 8 U.S.C. § 1231 and Zadvydas Is Misplaced**
13 **Because Petitioner Is Not Lawfully Detained Under the Post-Removal**
14 **Statute**

15 Respondents contend that Petitioner is properly detained under 8 U.S.C. §
16 1231 and that his detention is presumptively reasonable under *Zadvydas*. That
17 argument fails because § 1231 applies only when the government is lawfully
18 detaining a noncitizen for purposes of executing a removal order.

19 As explained above, Petitioner's TPS is presently operative and bars
20 execution of any removal order. See 8 U.S.C. § 1254a(a)(1)(A). Where removal is
21 statutorily barred, the removal period does not begin, and § 1231 detention
22 authority does not attach. See 8 U.S.C. § 1231(a)(1)(B); *Prieto-Romero v. Clark*,
23 534 F.3d 1053, 1060 (9th Cir. 2008).

1 Moreover, Respondents have not shown how custody lawfully transitioned
2 from 8 U.S.C. § 1226 to 8 U.S.C. § 1231, particularly where arrest was initiated
3 under a § 1226 warrant and removal is not legally permissible. *Zadvydas*
4 addresses the temporal limits of lawful post-removal detention; it does not
5 authorize detention where the government lacks statutory authority to remove or
6 detain in the first instance. See *Zadvydas*, 533 U.S. at 688.

7 Accordingly, Respondents' reliance on § 1231 and *Zadvydas* fails as a
8 matter of law.

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10 **III. CONCLUSION**

11 For the foregoing reasons, Petitioner respectfully requests that the Court grant
12 Petitioner's habeas petition.

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15 Date: January 5, 2026

Respectfully submitted,

16
17 /s/ Rose M. Thompson

18 Rose M. Thompson
19 Attorney at Law

20 *Attorney for Petitioner*
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