

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: -Civ- _____

LUIS ARNULFO OCAMPO MARTINEZ,
Petitioner,

v.

PAM BONDI, in her official capacity as the Attorney General of the United States; **GARRETT 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; **KRISTI NOEM**, in her official capacity as the Secretary of the U.S. Department of Homeland Security; **DAREN K. MARGOLIN**, in his official capacity as Director of the Executive Office for Immigration Review (EOIR), United States Department of Justice, **DOUGLAS FREIZER**, in his capacity as Acting Patrol Agent in Charge at the Dania Beach Border Patrol Station.

Respondents.

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

Pursuant to 28 U.S.C. § 2241 (Expedited Review Requested)

AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Petitioner **LUIS ARNULFO OCAMPO MARTINEZ**, by and through undersigned counsel, submits this emergency verified petition for writ of habeas corpus, and alleges as follows:

INTRODUCTION

This Petition seeks a writ of habeas corpus to remedy Petitioner's ongoing detention notwithstanding a federal jury acquittal and an Order of Immediate Release and temporary Stay issued by the Honorable District Judge David S. Leibowitz in Case No. 4:25-MJ-05030-DSL,

issued on February 6, 2026. In the absence of any statutory authority permitting continued custody or removal, Petitioner's detention is unlawful and warrants immediate judicial intervention.

The petitioner respectfully requests immediate release on the grounds that ongoing detention is unlawful, unreasonable, ultra vires, and in violation of the Due Process Clause.

Petitioner is a Honduran national and long-time Temporary Protected Status ("TPS") beneficiary, whose TPS remains valid and in effect pursuant to a federal court order vacating DHS's attempted termination of TPS for Honduras. Despite this protection—and despite an automatic regulatory stay of a decades-old in-absentia removal order—DHS continues to detain Petitioner with no lawful removal authority and no legitimate detention purpose.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 et seq. (habeas corpus), 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. § 2241 (habeas corpus). 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.
3. Civil immigration *detention challenges* (habeas petitions, conditions-of-confinement claims, bond-related due-process claims, etc.) are not barred by 8 U.S.C. § 1252(g) — the provision that strips jurisdiction over claims “arising from” the Attorney General’s decision to “commence proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.* (AADC), 525 U.S. 471 (1999).

EXHAUSTION OF REMEDIES

4. No exhaustion is required for the petitioner's habeas claim because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden*, 785 F. 3d 467, 474 (CA11 2015)," and because "a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim,' " *Boz v. United States*, 248 F. 3d 1299, 1300 (CA11 2001), abrogated on other grounds recognized by *Santiago-Lugo*, 785 F. 3d, at 474–75 n. 5 (citation omitted).
5. No statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner's habeas claims seek to remedy.
6. Further, "[b]ecause the BIA does not have the power to decide constitutional claims—like the validity of a federal statute— . . . certain due process claims need not be administratively exhausted." *Warsame v. U. S. Att'y Gen.*, 796 Fed. Appx. 993, 1006 (CA11 2020); accord *Haitian Refugee Ctr., Inc. v. Nelson*, 872 F. 2d 1555, 1561 (CA11 1989), aff'd sub nom. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U. S. 479 (1991) (exhaustion had "no bearing" where petitioner sought to make a constitutional challenge to procedures adopted by the INS).
7. The petitioner urgently seeks and is entitled to habeas relief because he has no meaningful opportunity to challenge the constitutionality of his detention through any available administrative process. See *Boumediene v. Bush*, 553 U. S. 723, 783 (2008).
8. And with respect to the petitioner's APA claim, an agency's failure to take action is reviewable agency action, *Norton v. S. Utah Wilderness Alliance*, 542 U. S. 55, 61–62 (2004), and there are no administrative remedies available that the petitioner is required to exhaust under *Darby v. Cisneros*, 509 U. S. 137 (1993).



REQUIREMENTS OF 28 U.S.C. § 2243

9. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
10. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F. 3d 1116, 1120 (CA 9 2000)(citation omitted); *See also, Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990).

VENUE

11. Venue is proper in this District under 28 U.S.C. § 1391(e) and § 2241(d), as Petitioner is in the physical custody of Respondents and is detained at the Dania Beach Border Patrol Station, located within this District, and the acts complained of occurred here.

PARTIES

12. Petitioner **LUIS ARNULFO OCAMPO MARTINEZ** (A# ) consolidated with A# ) is a Honduran national who was re-arrested and is currently detained by DHS/CBP at Dania Beach Border Patrol Station, since February 6, 2026, immediately post a jury acquittal in federal criminal court. Petitioner has resided in the Florida Keys for approximately three decades.
13. Respondent **PAM BONDI** is sued in her 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 Bondi shares responsibility for the implementation and enforcement of the immigration laws and is a legal custodian of the petitioner.

14. Respondent **GARRETT 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. 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.
15. Respondent **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.
16. Respondent **KRISTI NOEM** is sued in her official capacity as the 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 the U.S. Customs and Border Protection (CBP) is a sub-agency of the DHS, Secretary Noem is a legal custodian of the petitioner.
17. Respondent **DAREN K. MARGOLIN** is sued in his official capacity as Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals.
18. Respondent **DOUGLAS FREIZER** is sued in his official capacity as the Acting Patrol Agent in Charge at the Dania Beach Border Patrol Station. In that official capacity, Respondent has immediate custody of Petitioner and is responsible for Petitioner's continued detention.

FACTUAL ALLEGATIONS

A. The 1998 In-Absentia Removal Order and 1999 TPS Grant

19. Petitioner is a Honduras national, who entered into the United States in February 1998.
20. Petitioner was ordered removed in absentia on September 30, 1998.

21. On or about April 1999, DHS (Former INS) granted Petitioner Temporary Protected Status (TPS) pursuant to INA § 244, based on Honduras's designation.
22. Petitioner has maintained TPS continuously for over two decades, receiving employment authorization and lawful protection from removal.
23. TPS for Honduras was originally scheduled to terminate on September 8, 2025; however, as of the filing of this Complaint, TPS for Honduras remains valid and active.
24. DHS issued valid Employment Authorization Documents (EAD) under Category A12¹ containing expiration date as of **June 30, 2024**. **Exhibit A.**
25. On December 31, 2025, a federal judge vacated DHS's TPS termination decision, effectively preserving TPS protections and automatic EAD extensions. See² *National TPS Alliance et al. v. Noem et al.*, No. 25-cv-05687-TLT (N.D. Cal.).
26. On January 16, 2026, DHS/USCIS published on its official website that "[T]he validity of Employment Authorization Documents (EADs) issued under the TPS designation of Honduras with an original expiration date ... **June 30, 2024**, is extended per court order. *National TPS Alliance et al. v. Noem et al.*, No. 25-cv-05687-TLT (N.D. Cal.). **Exhibit B.**
27. As a result, Petitioner remains protected from deportation, notwithstanding the 1998 removal order.

B. July 1, 2025 Arrest by CBP

28. On July 1, 2025, at approximately 6:30 a.m., Petitioner was driving his work van to his job in Key West, Florida, when he was intercepted near 8th Avenue in Key West by U.S. Border Patrol Agent Bruno Cabral, who was conducting patrol duties.

¹ USCIS category **A12** refers to an Employment Authorization Document (EAD) issued to individuals who have been granted Temporary Protected Status (TPS).

² DHS USCIS Official published decision: <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-honduras>


29. CBP arrested Petitioner and issued:

- Form I-200, Warrant for Arrest of Alien; and
- Form I-203, Order to Detain or Release Alien. **Exhibit C**

15. CBP Agent Cabral also prepared and signed Form I-213, Record of Deportable/Inadmissible Alien, recounting the encounter. CBP Agent also stated that Petitioner had a 1998 removal order but **suppressed**³ that the Petitioner had a valid and active TPS protection in place as of July 1, 2025. **Exhibit D**.

16. The narrative authored by Agent Cabral led to federal criminal charges against Petitioner.

C. Federal Criminal Prosecution and Acquittal

17. On July 2, 2025, the United States filed a criminal complaint in the Southern District of Florida, Case No. , charging Petitioner with 18 U.S.C. § 111(a)(1) (Forcibly Assaulting a Federal Officer). **Exhibit E**.

18. Petitioner was transferred into the custody of the United States Marshals Service (Florida).

19. After five months of detention, the government filed a Superseding Indictment on December 4, 2025, adding a charge under 18 U.S.C. § 1001(a)(3) (False Statements). **Id.**

20. On February 5–6, 2026, the Honorable David S. Leibowitz presided over a two-day jury trial. The jury returned unanimous NOT GUILTY verdicts on all counts

21. In open court, the Hon. Judge Leibowitz ordered Petitioner's immediate release.

D. DHS Rearrest and Continued Detention

22. Immediately following acquittal—after 5:00 p.m. on a Friday, DHS officers took Petitioner into custody pursuant to an immigration detainer— NOT served upon the Petitioner or to his undersigned counsel despite numerous requests.

³ Form I-213 contains the Petitioner's fingerprint and personal information with an Alien number that was consolidated on the Respondents' records (Alien File).

23. In open court, recognizing the due process concerns, Judge Leibowitz entered a temporary stay prohibiting DHS from deporting Petitioner over the weekend.
24. Undersigned counsel was able to confer by phone with Petitioner, on February 7, 2026.
25. Petitioner remains detained under DHS/CBP custody, now held at the Dania Beach Border Patrol Station.

LEGAL FRAMEWORK

26. TPS beneficiaries **shall not be removed** from the United States during the period in which their status is in effect. See INA § 244(a)(1)(A).
27. An in-absentia removal order is **automatically stayed** upon the filing of a motion to reopen based on lack of notice. See 8 C.F.R. §§ 1003.23(b)(4)(ii), (iii)(C).
28. Where removal is legally barred, DHS lacks authority to detain under INA § 241, and prolonged detention under § 236(a) without process violates due process.

CLAIMS FOR RELIEF

COUNT I

Unlawful Detention – 28 U.S.C. § 2241

29. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
30. Petitioner is detained without statutory authority.
31. Removal is barred because:
 - a) Petitioner's TPS is valid and protected by federal court order; and
 - b) The 1998 removal order is subject to an automatic regulatory stay.
32. DHS therefore cannot lawfully detain Petitioner under INA § 241, as the removal period is not running.

33. Continued detention under § 236(a) is likewise unlawful where DHS cannot effectuate removal.

34. Petitioner's detention is arbitrary, *ultra vires*, and unconstitutional.

COUNT II

Violation of Due Process (Fifth Amendment)

35. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

36. Petitioner has been detained for 7 months and 6 days, acquitted by a jury, and ordered released by a federal judge.

37. Continued civil detention under these circumstances serves no legitimate government interest and constitutes punishment without due process.

38. Detention following acquittal, where removal is legally barred, shocks the conscience and violates fundamental fairness.

39. The Fifth Amendment provides that “[n]o person” shall be “deprived of life, liberty, or property, without due process of law.”

40. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

41. Moreover, “[t]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693.

COUNT III

Violation of the Administrative Procedure Act Failure to Observe Required Procedures

5 U.S.C. § 706

42. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.
43. DHS action detaining Petitioner and threatening removal directly contravenes INA § 244, 8 U.S.C. 1254a governing TPS protections.
44. DHS's conduct is:
 - a) Not in accordance with law;
 - b) In excess of statutory authority; and
 - c) Arbitrary and capricious.
45. A Honduran national granted Temporary Protected Status ("TPS") is statutorily shielded from removal for the duration of that designation. Congress expressly provided that, during the period in which TPS is in effect, "the alien shall not be removed from the United States" and "shall not be detained by the Attorney General on the basis of the alien's immigration status." 8 U.S.C. § 1254a(a)(1).
46. Any attempt by DHS to remove or detain a TPS beneficiary without first lawfully rescinding TPS protections constitutes agency action "without observance of procedure required by law" and must be set aside under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(D). The APA mandates that agencies adhere to notice-and-comment rulemaking before adopting or implementing policies that alter substantive rights or obligations. See 5 U.S.C. § 553(b), (c). TPS designations, extensions, and terminations are effectuated exclusively through such formal rulemaking published in the Federal Register. Absent a duly promulgated termination of Honduras's TPS designation—or an individualized TPS withdrawal based on statutory ineligibility—DHS may not unilaterally disregard TPS protections through *ad hoc* enforcement action. Any removal effort undertaken outside that framework is ultra vires, procedurally defective, and unlawful.

47. Petitioner is entitled to declaratory and injunctive relief confirming that TPS Honduras prohibits his removal and detention for removal purposes.

48. Accordingly, because Petitioner remains a TPS beneficiary and DHS has neither terminated the Honduras TPS designation (due to court order) nor followed the procedures required to strip Petitioner of TPS protections, his detention and threatened removal violate the INA and the APA and must be enjoined.

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. 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;
- E. Grant the writ of habeas corpus;
- F. Order Petitioner's immediate release within twenty-four (24) hours of the Court's order;
- G. Declare that DHS lacks statutory authority to detain or remove Petitioner while TPS and regulatory stays are in effect;
- H. Enjoin DHS from re-detaining Petitioner absent lawful authority;
- I. Grant such other and further relief as the Court deems just and proper.

Dated: February 8, 2026

/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 in Spanish. On the basis of that 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: February 8, 2026

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