UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:26-cv-60336-DMM

LUIS ARNULFO OCAMPO MARTINEZ,

Petitioner,

vs.

PAM BONDI ET. AL.,

Respondents.
_____/

RESPONDENTS' RETURN/RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS, RESPONSE TO MOTION FOR TRO AND MEMORANDUM OF FACT AND LAW IN SUPPORT OF SAME

Respondents[1] files this Return to Petitioner's Petition for Writ of Habeas Corpus [DE 1] (hereinafter the "Petition"), response to Petitioner's Motion to Expedite Release Pending Habeas and for Temporary Restraining Order Preserving Jurisdiction (the "Motion") [DE 5][2], and response for this Court's Order to Show Cause [DE 4]. This action should be dismissed as Petitioner is properly detained pursuant to 8 U.S.C. § 1231(a)(2)(A).

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[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner claims to be currently detained at the Dania Beach Border Patrol Station. D.E. 1 at ¶ 11. If this is correct, the proper Respondent would be the warden of such facility. *See Rumsfeld v. Padilla*. Accordingly, Respondents Kristi Noem, Pamela Bondi, Garrett J. Ripa, Todd Lyons, and Daren K. Margolin must be dismissed as improper parties.

[2] Petitioner's request for a temporary injunction to "preserve jurisdiction" should be denied, because even if Petitioner were transferred to another facility, this Court would still retain jurisdiction over this case. *See Rasco v. Superintendent of Metro. Corr. Ctr., Miami, Fla.*, 551 F. Supp. 783, 784-85 (S.D. Fla. 1982). Notably, according to Petitioner he was detained at Dania Beach Border Patrol Station when he filed this Petition; however, Respondents records show that he has been detained at FSSFS facility since coming into DHS custody on or about February 11, 2026. That said, undersigned has not been able to receive or review all records concerning the location of Petitioner's custody prior to DHS custody and will supplement the record if any discrepancy is identified.

I. FACTUAL BACKGROUND

Petitioner, Luis Arnulfo Ocampo Martinez, is a native and citizen of Honduras. **Exhibit A**: Form I-213 dated 7.1.25; **Exhibit B**: Form I-213 dated 2.15.98. He last entered the United States without inspection on February 15, 1998. *Id.* When he last entered the United States, he was processed under the alias [redacted] and issued an alien registration number. *Id.* Petitioner was personally served with a Notice to Appear charging him as inadmissible to the United States pursuant to INA § 212(a)(6)(A)(i), as amended, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. **Exhibit C**: Notice to Appear. On September 30, 1998, the Petitioner was ordered removed in his absence. **Exhibit D**: Immigration Judge Order.

On or about February 22, 1999, the Petitioner applied for Temporary Protected Status (TPS) as a Honduran national. **Exhibit E**: Declaration of Deportation Officer Diego I. Avila. Petitioner filed this application under the name Luis A. Ocampo. *Id.* On March 29, 2000, U.S. Citizenship and Immigration Services approved his application for TPS. *Id.* Petitioner continuously re-registered for TPS. *Id.* On July 8, 2025, Secretary of Homeland Security Kristi Noem terminated Honduran TPS as of September 8, 2025.[3] On December 31, 2025, the U.S. Northern District of California issued an order vacating the Secretary's TPS termination decision in *National TPS Alliance et al. v. Noem et al.*, No. 25-cv-05687-TLT (N.D. Cal.). On February 9, 2026, the Ninth Circuit Court of Appeal in *National TPS Alliance et al. v Noem et al.*, 26-199 (9th Cir. 2026) stayed the district court's order thereby reinstating the termination of Honduran TPS.

[3] On July 8, 2025, the Department of Homeland Security (DHS) announced that the Secretary of Homeland Security (Secretary) terminated the designation of Honduras for Temporary Protected Status (TPS).https://www.federalregister.gov/documents/2025/07/08/2025-12621/termination-of-the-designation-of-honduras-for-temporary-protected-status. This termination is effective September 8, 2025.

Exhibit F: Ninth Circuit Court of Appeal Order Staying Order Vacating TPS Termination; **Exhibit G**: District Court Docket Entry Acknowledging Stay.

On July 1, 2025, Petitioner was encountered by Customs and Border Protection (CBP) as part of a routine patrol. Ex A, Form I-213 dated 7.1.25. On the same date, Petitioner was taken into CBP custody. **Exhibit H**: Form I-203. Petitioner was transferred into the custody of the U.S. Marshal Services pending the outcome of his criminal proceedings. Ex E. On July 2, 2025, a criminal complaint was filed against Petitioner in the Southern District of Florida for assaulting a federal officer pursuant to 18 U.S.C. § 111(a)(1). **Exhibit I:** Criminal Complaint for Case No. 25-cr-10034. On July 16, 2025, an Information was filed charging Petitioner for assaulting a federal officer in violation of 18 U.S.C. § 111(a)(1). **Exhibit J**: Information. On December 4, 2025, Petitioner was charged through a Superseding Indictment with providing false statements to a federal agency in violation to 18 U.S.C. § 1001(a)(3) and assaulting a federal officer in violation of 18 U.S.C. § 111(a)(1). On February 9, 2026, Petitioner was acquitted of all charges. **Exhibit K**: Judgment of Acquittal. On February 11, 2026, Petitioner was transferred to the custody of the Immigration and Customs Enforcement, Enforcement and Removal Operations (ICE ERO). **Exhibit L**: Detention History. Since then, Petitioner has been held in custody at the Florida Soft-Sided Facility-South in Ochopee, Florida. *Id.*

II. ARGUMENT

A. Petitioner's TPS Status has been Revoked and the referenced Decision to Vacate the Revocation Court has been stayed and under Appellate Review; offering Petitioner no Relief.

i. *TPS Alliance* Court's Order is Stayed by the 9th Circuit and the Secretary's Termination of Honduras's TPS Status Remains in Place.

Although Petitioner acknowledges that Temporary Protective Status to Honduras was terminated (effective September 8, 2025), he claims that "on December 31, 2025, a federal judge

vacated DHS's TPS termination decision, effectively preserving TPS protections and automatic EAD extensions. See *National TPS Alliance et al. v. Noem* et al., No. 25-cv-05687-TLT (N.D. Cal.)". DE 1 ¶ 25. However, this statement is misleading because the *National TPS Alliance* December 31, 2025 Order is currently in abeyance and of no force and effect as the Ninth Circuit Court of Appeal stayed the effect of such order (Ex F), and the district court acknowledged the stay (Ex G). Thus, the order vacating the termination of TPS designation relied upon by Petitioner is in abeyance and offers Petitioner no relief.

ii. The December 31, 2025 Order is Void and Erroneous as the District Court lacked Subject Matter Jurisdiction.[4]

In addition to the order being stayed and therefore lacking legal effect, it is apparent that the December 31 Order is void and was also entered erroneously. Specifically, in granting a stay, the Ninth Circuit found that for two reasons "the government is likely to succeed on the merits of its appeal". Ex F at 3. First, it was likely that "the district court lacked jurisdiction" to even hear the case based on the plain language of 8 U.S.C. § 1254a(b)(5)(A). *Id.*

§ 1254a(b)(5)(A) explicitly precludes any judicial review and states "[t]here is no judicial review of any determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection." Based solely on the statute's unequivocal language, the Ninth Circuit concluded "that the government has shown a likelihood of prevailing in its argument that the Secretary's action is unreviewable because it is a 'determination . . . with respect to the . . . termination . . . of a designation[] of a foreign state.'"

[4] Although the Petition does not appear to raise a challenge to DHS's decision to terminate the Honduras TPS status, because instead of challenging the decision it takes the position that such decision was vacated by the *National TPS Alliance* Court and therefore, not effective, to the extent that the Petition can be interpreted to raise such a challenge, this Court would lack subject matter jurisdiction to review the Secretary of DHS's decision to terminate Honduras TPS status pursuant to 8 U.S.C. § 1254a(b)(5)(A).

Ex F at 3-4 citing § 1254a(b)(5)(A). The Ninth Circuit distinguished its prior decision in *National TPS Alliance v. Noem (NTPSA III)*, No. 25-5724, 2026 WL 226573, at *9 (9th Cir. Jan. 28, 2026), a case relied upon by the National TPS Alliance, because that case involved a vacatur of a TPS designation by the DHS's Secretary; an action not explicitly precluded from judicial review under § 1254a(b)(5)(A) and also not expressly authorized. Ex F at 3-4. However, unlike vacatur, the termination of TPS designation is both expressly authorized by § 1254a(b)(3) and expressly excluded from judicial review by § 1254a(b)(5)(A). Consequently, the *National TPS Alliance* December 31, 2025 Order, relied upon by Petitioner, was entered without subject matter jurisdiction rendering it void. *See Christopher v. Stanley-Bostitch, Inc.*, 240 F.3d 95, 100 (1st Cir. 2001) ("[O]rders relating to the merits of the underlying action are void if issued without subject matter jurisdiction."); *OOO-RM Inv. v. Net Element Int'l, Inc.*, No. 14-20903-CIV, 2014 WL 12613282, at *1 (S.D. Fla. Sept. 25, 2014) (same); *Shirley v. Maxicare Texas, Inc.*, 921 F.2d 565, 568 (5th Cir. 1991) (same); *Nix v. United Health Care of Ala., Inc.*, 179 F. Supp. 2d 1363, 1366 (M.D. Ala. 2001) (same). Consequently, not only is the December 31, 2025 Order in abeyance, but it is also void.

Even if the district court had jurisdiction to enter the December 31, 2025 Order, its decision was erroneous because "the Secretary's decision-making process in terminating TPS for Honduras, Nicaragua, and Nepal was not arbitrary and capricious" according to the Ninth Circuit. Ex F at 4. Specifically, based on the evidence and arguments raised it appears that "the government can likely show that the administrative record adequately supports the Secretary's action, that the TPS statute does not require the Secretary to consider intervening country conditions arising after the events that led to the initial TPS designation, and that the Secretary's decision not to consider intervening

conditions does not amount to an unexplained change in policy." *Id.* As such, it appears that the order was not only void for want of jurisdiction, but also erroneously entered.[5]

In sum, the December 31, 2025 Order is (a) in abeyance and therefore lacks legal effect, (b) void as it was entered without subject matter jurisdiction and therefore lacks legal effect, and (c) erroneously entered. Consequently, it offers Petitioner no relief.

B. Petitioner is subject to detention 8 U.S.C. § 1231.

ICE's detention authority stems from 8 U.S.C. § 1231 which provides for the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days, which is known as the "removal period." During the removal period, ICE must detain the alien. 8 U.S.C. § 1231(a)(2) ("shall detain"). If the removal period expires, ICE can either release an individual pursuant to an Order of Supervision as directed by § 1231(a)(3) or may continue detention under § 1231(a)(6). ICE may continue detention beyond the removal period for three categories of individuals: (i) those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182; (ii) those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or (iii) those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6)(A).

As such, because Petitioner is present in the United States unlawfully, ICE has statutory authority to detain Petitioner to effectuate his removal order from the United States and he is not entitled to a bond hearing or release as § 1231(a)(6) does not require such process. *See Johnson v.*

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[5] Significantly, the Supreme Court recently stayed two similar orders from the Northern District of California vacating the termination of TPS designation by the Secretary of Homeland Security and holding such orders in abeyance until the appeal is concluded. *See Noem v. National TPS All.*, 146 S. Ct. 23 (2025); *Noem v. National TPS All.*, 145 S. Ct. 2728 (2025). Although these orders did not include their reasoning, it is clear that the Supreme Court, like the Ninth Circuit, believes the government will likely succeed on appeal.

Arteaga-Martinez, 596 U.S. 573, 574, 581 (2022) (holding § 1231(a)(6)'s plain text "says nothing about bond hearings before immigration judges or burdens of proof"). Petitioner's detention is therefore lawful under § 1231(a)(6) and this Court should dismiss his Petition.

C. Habeas Petition Claim (Count II) that Detention violates Due Process is Premature.

In Count II, Petitioner erroneously and conclusively claims his detention violated his due process rights citing *Zadvydas v. Davis*, 533 U.S. 678, 690-701 (2001) (holding that while the government cannot indefinitely detain an alien before removal, detention for up to six months is "presumptively reasonable"). DE 1 ¶¶ 40-41. However, *Zadvydas*'s is completely irrelevant as it is a post removal order case addressing the circumstances under which a prolonged detention may become a violation of due process. Here, Petitioner's 2-day detention[6] is presumptively reasonable. *Id.* Because Petitioner has been detained fewer than six months, his petition should be dismissed as premature to the extent she claims a prolonged detention. *See Phadael v. Ripa*, No. 24-CV-22227-RKA, 2024 U.S. Dist. LEXIS 109481, 2024 WL 3088350, at *3 (S.D. Fla. June 21, 2024)

Thus, Petitioner's Due Process challenge fails on two fronts. First, since he was only detained for 2 days before he filed the Petition, his detention falls well within the six month presumptively reasonable period established by *Zadvydas* making this Petition premature and subject to immediate dismissal. Second, there is no indication in the record that his removal is not reasonably foreseeable. *Callender v. Shanahan*, 281 F. Supp. 3d 428, 434-35 (S.D.N.Y. 2017)

[6] Petitioner claims he was detained on February 6, 2026 following his acquital [DE 1 ¶¶ 20-21] and filed his petition on February 8, 2026. Thus, he was detained for two days before raising a *Zadvydas* challenge. Notably, Petitioner wants to start the clock back in July 1, 2025; however, his detention pending the resolution of his criminal case does not factor here as it cannot be said to be a detention during the removal period. As of the date of this Return, Petitioner has been detained for nine (9) days from the date of his acquittal and turn over to DHS custody according to his Petition. As noted above, according to DHS's records, Petitioner came to DHS custody on February 11, 2026. DHS has been unable to verify Petitioner's custody prior to February 11, 2026; that said, it is possible Petitioner was held at Dania Beach on February 8, 2026 when he filed this Petition.

(holding that petitioner must present more than "mere assertions that removal is unforeseeable" to succeed on a due process challenge). In fact, Petitioner does not even address the unforseeability prong to establish that his detention violates due process. Thus, Count II is legally insufficient requiring dismissal.

D. Petition and Motion for TRO Must be Dismissed for Lack of Jurisdiction.

i. Court Lacks Jurisdiction to prevent execution on removal order.

Petitioner seeks an order that bars ICE from executing on Petitioner's removal order by requesting his immediate release and/or preventing him from being transferred in any way. DE 1 at pg 11 and DE 6. However, this Court is without jurisdiction to grant such relief. Federal law precludes a district court from interfering with government's decision or action to execute orders of removal. 8 U.S.C. § 1252(g). Section 1252(g) states that "no court shall have jurisdiction to hear any cause or claim by . . . any alien arising from the decision or action by [ICE] to . . . execute removal orders against any alien." 8 U.S.C. § 1252(g). This provision applies "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision." *Id.*

As the Eleventh Circuit explained, "Section 1252(g) bars review over "any" challenge to the execution of a removal order—and makes no exception for those claiming to challenge the government's "authority" to execute their removal orders." *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1273 (11th Cir. 2021) (holding that were there is challenge to the validity of a removal order, district courts lack jurisdiction to hear any "cause or claim brought by an alien arising from the government's decision to execute a removal order"). The petitioners in *Camerana* were in virtually identical situations as Petitioner, in that like here (a) they did not challenge the order for removal, (b) stayed in the U.S. via an order of supervision for years, and (c) filed habeas

petitions once DHS attempted to execute its orders of removals. Under these circumstances, the Eleventh Circuit found that the court lacked jurisdiction to interfere with the execution of the removal orders pursuant to section 1252(g). *Id.* at 1272-73.

Here, as the petitioners in *Camarena*, Petitioner does not challenge the validity or existence of the order of removal [DE 1 ¶ 15], but instead argues that DHS should be prevented from detaining Petitioner while he awaits execution of the removal order. D.E. 6. In essence, Petitioner asks the district court prevent DHS from executing its removal order by requiring an immediate release and enjoining his transfer. *Id.* Nevertheless, pursuant to Section 1252(g) as explained by *Camarena*, this Court lacks jurisdiction to grant such relief. *See also Rivera-Amador v. Rhoden*, No. 3:25-CV-1460-WWB-SJH, 2025 WL 3687452, at *3 (M.D. Fla. Dec. 19, 2025) (holding that section 1252(g) "divests the Court of jurisdiction" from enjoining respondents from detaining and deporting petitioner subject to a removal order); *Viana v. President of United States*, No. 18-CV-222-LM, 2018 WL 1587474, at *2 (D.N.H. Apr. 2, 2018) (Petitioner's "requested relief, a stay from removal, would necessarily impose a judicial constraint on immigration authorities' decision to execute the removal order, contrary to the purpose of § 1252(g)."); *Mapoy v. Carroll*, 185 F.3d 224, 230 (4th Cir. 1999) (holding that district court lacked jurisdiction to hear a challenge to execution of order of deportation pursuant to § 1252 (g)); *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *3 (S.D. Fla. Aug. 8, 2025) ("The Court finds that § 1252(g) deprives it of subject-matter jurisdiction over Respondents' decision to revoke the OSUP…").

Congress did not give courts jurisdiction to stay removals or reopen removal orders, and in fact, stripped district courts of the ability to interfere with ICE's execution of removal orders. As such, this court must deny any request by Petitioner interfering with the execution of the removal order (such as his immediate release) for lack of jurisdiction.

E. Petitioner failed to Exhaust his Administrative Remedies

Lastly, the Court should dismiss the petition for writ of habeas corpus for failure to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Petitioner argues that he is not required to avail himself of the administrative remedies available to him (*see* Petition at ¶ 16), and instead seeks an order requiring a bond hearing in the first instance from this Court. By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.38. As set forth in the EOIR Policy Memo 25-45 the BIA and IJs can consider constitutional challenges to the INA – such could include a Fifth Amendment challenge to the BIA's interpretation of 235(b)(2) in *Yajure Hurtado*. *See* https://www.justice.gov/eoir/eoir-policy-manual/memoranda-pm-list. Here, Petitioner's removal proceedings are pending, thus he has not availed himself of the administrative process and remedies available to him before proceeding to this Court in hopes of shopping for a more favorable forum. Accordingly, the Petition should be dismissed for failure to exhaust administrative remedies.

F. Petitioner's APA Claim (Count III) is Barred.

Petitioner also does not have standing to bring an APA claim. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5

U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

III. CONCLUSION

As mentioned above, the Petition should be dismissed because detention is lawful under § 8 U.S.C. § 1231(a)(2)(A) as Honduras's TPS designation has been terminated, and Petitioner has failed to exhaust his administrative remedies before seeking relief from the Court. Moreover, this Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(g) to order Petitioner's immediate release or to enjoin his transfer as it would interfere with DHS's execution of a removal order. Regardless, Respondents Pamela Bondi and Kristi Noem, must be dropped/dismissed as parties.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 13, 2026, I electronically filed the foregoing with the Clerk of Court using CM/ECF.

Respectfully submitted,

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