UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 26-cv-60336-DMM

LUIS ARNULFO OCAMPO MARTINEZ,
Petitioner,

v.

PAM BONDI, at al.
Respondents.
_____/

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN AND REPLY/MEMORANDUM IN FURTHER SUPPORT OF MOTION FOR TRO [DE 10]

Petitioner, **LUIS ARNULFO OCAMPO MARTINEZ**, through undersigned counsel, respectfully submits this Traverse to Respondents' Return [DE 10] and Reply in further support of his Motion for Temporary Restraining Order.

Respondents' Return rests on four fundamentally flawed premises, each of which is legally and factually incorrect:

1. Petitioner is lawfully detained under the post-removal-order authority of 8 U.S.C. § 1231;
2. This Court lacks jurisdiction under 8 U.S.C. § 1252(g);
3. The Ninth Circuit's stay of the Northern District of California's December 31, 2025 order vacating TPS termination renders Temporary Protected Status irrelevant and offers "no relief" [DE 10 at 3–6]; and
4. Petitioner's detention is constitutionally insignificant because immigration custody purportedly began only "two days" before the habeas filing.

Each premise fails under settled law and the undisputed record. Petitioner has been continuously restrained of his liberty by federal executive authority since **July 1, 2025**—over seven months. It is undisputed that, from at least 1999 through February 9, 2026, Petitioner enjoyed

valid and effective Temporary Protected Status ("TPS") for Honduras under 8 U.S.C. § 1254a, conferring lawful presence, protection from removal, and immunity from detention predicated on immigration status. [DE 1-2].

On July 1, 2025, CBP officers arrested and detained Petitioner administratively—without a judicial warrant, without probable cause supporting removability, and without any executable removal order—while TPS protections were fully operative. [DE 10-6 (Form I-213); DE 1-5 (Forms I-200 and I-203); DE 10-8 (DHS Order to Detain)]. Custody was then transferred to the U.S. Marshals solely for pending federal criminal proceedings arising from an alleged assault on the arresting officer. [DE 10-5 at 4, ¶¶ 16–17]. Throughout that criminal custody, DHS maintained an immigration detainer to ensure continuity.

Immediately upon Petitioner's unanimous jury acquittal on all charges on February 6, 2026, and notwithstanding an on-the-record judicial order of release and brief administrative stay issued in open court, CBP officers retook physical custody based on the **original July 1, 2025 administrative arrest authority**—without new probable cause, without any independent basis for removability, and in direct override of the Article III court's release directive. This immediate re-detention constitutes continued, uninterrupted federal immigration restraint, not a new commencement of custody.

When this habeas petition was filed on February 8, 2026, the following facts were indisputable:

- TPS protections remained legally operative due to the Northern District of California's December 31, 2025 vacatur order;
- DHS itself had publicly acknowledged continued TPS validity and extension [DE 1-4];
- Removal was statutorily barred under 8 U.S.C. § 1254a(a)(1);
- The 1998 in-absentia removal order was subject to an automatic regulatory stay upon filing of Petitioner's Motion to Reopen [Exhibit A attached; 8 C.F.R. § 1003.23(b)(4)(ii)]; and

- No statutory authority existed—under § 1231 or otherwise—for Petitioner's continued detention.

The Ninth Circuit's stay, issued the following day (February 9/11, 2026), is prospective only and cannot retroactively validate detention that was unlawful *ab initio* from July 1, 2025 onward. Habeas jurisdiction attached at filing, and the legality of custody must be assessed based on the law and facts then existing. A post-filing appellate development cannot cure the initial absence of statutory authority or erase seven months of continuous restraint in violation of due process.

For these reasons, and as more fully set forth below, Respondents lack any lawful basis for Petitioner's continued custody. The writ should issue, and the Court should grant immediate release.

I. RESPONDENTS' REQUEST TO DISMISS THE NAMED SUPERVISORY OFFICIALS SHOULD BE DENIED.

Respondents' request to dismiss Kristi Noem, Pamela Bondi, Garrett J. Ripa, Todd Lyons, and Daren K. Margolin as improper parties should be rejected outright. Although *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), generally requires naming the immediate physical custodian in core habeas actions, that rule is not jurisdictional and does not compel dismissal here. In immigration detention cases filed in the Southern District of Florida, courts routinely retain or permit claims against high-level DHS and ICE supervisory officials who exercise legal custody, control over removal policy, and authority to grant release — especially where, as here, the petition challenges systemic TPS termination decisions and seeks both immediate release and injunctive relief. Petitioner named these exact officials because they possess the power to effectuate the relief requested, and the precise "immediate custodian" remains disputed and unverified in Respondents' own filings [DE 10, at 1 n.2 & 7 n.6], conceding incomplete records and possible Dania Beach Border Patrol custody as late as February 8, 2026). Dismissing the named parties would serve no purpose other than procedural fragmentation, particularly since this Court retains jurisdiction over the action

regardless of any facility transfer. *See Rasco v. Superintendent*, 551 F. Supp. 783 (S.D. Fla. 1982) (cited by Respondents themselves). The request for dismissal should therefore be denied so that complete relief may be ordered against all parties with actual authority over Petitioner's custody.

II. FACTUAL BACKGROUND

A. CORRECTIONS TO RESPONDENTS' MATERIAL FACTUAL MISSTATEMENTS

Respondent's Return contains several inaccuracies and omissions in the factual background that are material to Petitioner's claims of unlawful detention and the propriety of continued custody. These discrepancies are not minor; they directly impact the legal basis for detention (e.g., entry status, timing of acquittal, and custody transfer), the applicability of statutory authority, and the context for Petitioner's emergency motion. Petitioner submits the following corrections, supported by attached evidence.

i. **Entry and Admission to the United States** Respondent asserts: "*he last entered the United States without inspection on February 15, 1998.*" [DE 10 at 2]. This is incorrect and relies on an unreliable Form I-213 dated July 1, 2025 [DE 10-1] and [DE-1-6], which is subject to review and rebuttal in EOIR proceedings and here. **Correct fact**: Petitioner last entered the United States on May 14, 2019, and was duly inspected and admitted by DHS/CBP. **Evidence**: Attached Exhibit B: Official DHS Form I-94 (Admission Record) reflecting lawful admission on May 14, 2019. This document directly contradicts the outdated I-213 and establishes Petitioner's inspected/admitted status at the most recent entry. The **legal consequence** is that any reliance on pre-1998 entry without inspection is misplaced, potentially altering the grounds of removability or detention authority under the Immigration and Nationality Act.

ii. **Date of Acquittal** Respondent asserts: "*On February 9, 2026, Petitioner was acquitted of all charges.*" [DE 10 at 3]. **This is incorrect.** Petitioner was acquitted on Friday, February 6, 2026, after 5:00 p.m. **Evidence**: Attached Exhibit C: Transcript Excerpt from Jury Trial

(Feb. 6, 2026) and Verdict Form (Feb. 6, 2026). **Legal consequence**: The accurate acquittal date is critical because it marks the end of criminal custody — yet Petitioner experienced no release into liberty. As confirmed on the record by government counsel during the jury trial: "*...there is still an immigration detainer.*" (Transcript Excerpt from Jury Trial (Feb. 6, 2026), attached as Exhibit C, at page 6, lines 12-13. This on-the-record acknowledgment, made directly to the judge at the moment the federal court effectively set Petitioner free from criminal charges, demonstrates that the immigration detainer — lodged on July 1, 2025 [DE 10-8]— ensured **immediate resumption of federal restraint** without any meaningful break or period of freedom.

The legal effect is that immigration detention authority attached **effectively on July 1, 2025** — the date Respondents arrested and detained Petitioner, placed the immigration detainer hold through Form I-200 and I-203 [DE 1-5], and transferred/maintained custody pending criminal judgment. Upon acquittal on February 6, 2026, CBP agents took back physical custody directly from U.S. Marshals without release, rendering this a single, **continued detention** under immigration authority from July 1 onward. This seamless continuity undermines Respondent's claimed February 11, 2026, transfer date and is material: it triggers the start of any prolonged detention clock (e.g., for *Zadvydas*-like "reasonably foreseeable removal" analysis or due process review) from July 1, 2025; raises potential violations from lack of prompt individualized custody review (valid TPS), or justification following the initial detention; and supports Petitioner's entitlement to habeas relief for unlawful or indefinite continued custody absent a break in restraint or adequate process.

iii. **Timing and Nature of Custody Transfer to ICE/ERO** Respondent asserts: "*On February 11, 2026, Petitioner was transferred to the custody of the ICE/ERO. Exhibit L: Detention History. Since then, Petitioner has been held in custody at the Florida Soft Side Facility South in Ochopee, Florida.*" [DE 10 AT 3]. **This is incorrect.** CBP agents took

custody of Petitioner directly from the U.S. Marshal's hands and transferred him from the Florida Keys after 6:00 p.m. on February 6, 2026 (the date of acquittal). On Saturday, February 7, 2026, undersigned counsel contacted the CBP Station in Marathon Key, FL, and was informed that Petitioner had been transferred to the Dania Beach CBP Station the same night due to lack of overnight housing at Marathon. Counsel then contacted CBP Dania Beach Station (954-496-8300) at approximately 11:58 a.m. and 12:03 p.m. on February 7, 2026, and spoke directly with Petitioner. On February 11, 2026, at 1:46 p.m., counsel again contacted CBP Dania Beach to convey attorney-client privileged information and was informed that Petitioner was in-transit to an undisclosed location, prompting the emergency motion for stay. The district judge (Leibowitz) issued a brief administrative stay halting deportation until the earliest of Thursday, February 12, 2026. A CBP agent verbally acknowledged the stay and confirmed Petitioner was in transit but could not disclose further details. **Evidence**: See undersigned counsel's Declaration—attached as Exhibit D, detailing the foregoing communications and timeline. **Legal consequence**: The correct sequence shows immediate post-acquittal transfer to CBP custody on February 6, not ICE on February 11. This raises questions about the basis and duration of initial civil immigration custody, potential due process violations in the transfer process, and whether the government's timeline supports continued detention without prompt review. It also contextualizes the necessity and timing of Petitioner's emergency motion.

These corrections demonstrate that Respondent's Return is not fully accurate, warranting careful judicial scrutiny. Petitioner requests that the Court consider the attached evidence and, if material facts remain disputed, grant an evidentiary hearing.

III. COUNTERARGUMENT

A. RESPONDENTS LACK ANY STATUTORY AUTHORITY TO DETAIN PETITIONER BECAUSE HIS VALID TPS STATUS PRECLUDED REMOVAL

AND ANY DETENTION PREDICATED ON THE 1998 IN ABSENTIA REMOVAL ORDER

Respondents devote multiple pages to arguing that the Northern District of California lacked jurisdiction to vacate the termination of Honduran TPS and that the Ninth Circuit's stay of that vacatur renders Petitioner's TPS status irrelevant. This argument misses the mark entirely. Petitioner does not ask this Court to review or disturb the TPS termination decision itself. Petitioner asks only whether Respondents had statutory authority to detain him on the date this habeas petition was filed. That narrow detention question is squarely within this Court's 28 U.S.C. § 2241 jurisdiction.

i. The Ninth Circuit's Stay Is Strictly Prospective and Does Not Retroactively Erase Petitioner's Valid TPS Status During the Period of Detention

The Ninth Circuit's February 9, 2026 stay of the Northern District of California's December 31, 2025 order vacating the TPS termination [DE 10-7] operates prospectively only. A stay pending appeal "suspends the effect of a judgment going forward" but "does not retroactively erase the legal effect of that judgment prior to the stay." It halts future action from the date of issuance; it does not unwind the period during which the district court's vacatur governed (December 31, 2025 through February 9/11, 2026).

During that entire window—and indeed from the inception of Petitioner's custody on July 1, 2025 through the original (later-vacated) termination effective date of September 8, 2025—Petitioner was a fully protected TPS beneficiary under 8 U.S.C. § 1254a(a)(1). He enjoyed statutory immunity from removal and from any detention predicated solely on immigration status or the 1998 removal order. The stay merely reinstated termination prospectively while the appeal continues; it cannot retroactively declare that Petitioner was never a TPS holder or that Respondents possessed lawful detention authority at any point during his confinement. Respondents' attempt to use the stay to sanitize the entire custody chain is legally untenable.

ii. Respondents Conflate Authority to Terminate TPS with Authority to Detain

Respondents' foundational premise is incorrect. A grant of TPS creates a protected liberty interest. While TPS remains in effect, the beneficiary "shall not be removed from the United States" and "cannot be detained by DHS on the basis of his or her immigration status." 8 U.S.C. § 1254a(a)(1)(A); USCIS TPS Fact Sheet. Arbitrarily detaining a TPS beneficiary based on an *in-absentia* removal order issued without proper notice (a procedural due-process violation) ignores the supervening legality of the TPS grant.

iii. C. Section 1231 Detention Authority Does Not Apply Because the Removal Period Has Never Commenced

Respondents assert detention authority under 8 U.S.C. § 1231(a)(2) and (a)(6). That is incorrect as a matter of statutory structure. Section 1231 detention applies only once the **"removal period" begins**. The removal period begins only when (1) the removal order is administratively final and (2) there is no judicial or regulatory stay preventing execution.

Here, even assuming arguendo that TPS termination is currently operative, the removal period has never commenced:

- The 1998 in-absentia removal order is administratively final but has been inexecutable since 1999.
- Petitioner has filed and served a Motion to Reopen that *in-absentia* order. Exhibit A.
- Filing that motion triggers an **automatic regulatory stay** of removal under 8 C.F.R. § 1003.23(b)(4)(ii).
- Immigration proceedings remain pending.

Because removal is legally stayed, the removal period has not begun. Without a running removal period, § 1231(a)(2) or (a)(6) detention authority is unavailable. Respondents' entire theory collapses at step one.

iv. Mandatory Detention of a TPS Beneficiary While Removal Is Statutorily Barred Violates Due Process

Even if § 1231 somehow applied, subjecting a TPS holder to mandatory detention—while TPS expressly authorizes him to remain in the United States—creates an irreconcilable statutory contradiction and violates the Due Process Clause of the Fifth Amendment. TPS is not a mere discretionary benefit; it is a statutory shield against both removal and status-based detention. Respondents had no authority to initiate detention on July 1, 2025, and no authority to continue it after acquittal on February 6, 2026.

B. THE GOVERNMENT CANNOT RETROACTIVELY VALIDATE UNLAWFUL DETENTION THROUGH A POST-FILING APPELLATE STAY

It is black-letter law that habeas jurisdiction attaches at the time of filing, and the legality of detention must be assessed based on the facts and law existing then. The government cannot retroactively cure or justify unlawful detention through a subsequent appellate development, such as the Ninth Circuit's February 9, 2026 stay of the Northern District of California's December 31, 2025 vacatur order in *National TPS Alliance et al. v. Noem et al.*, No. 25-cv-05687-TLT (N.D. Cal.). To hold otherwise would permit the Executive to "detain first, litigate later, and retroactively justify"—a result incompatible with core habeas principles, the Suspension Clause, and basic fairness.

i. Detention Legality Is Fixed at Filing and Inception

This habeas petition was filed on February 8, 2026. At that precise moment:

- The Northern District of California's December 31, 2025 order vacating the termination of Honduran TPS was fully operative and in force.
- DHS had acknowledged Petitioner's continued TPS validity [DE 1-4].
- Petitioner remained statutorily protected from removal and from detention predicated on immigration status or the 1998 in-absentia removal order under 8 U.S.C. § 1254a(a)(1).

Detention was therefore unlawful *ab initio* from July 1, 2025 (initiation of custody) and remained so on the filing date. The Ninth Circuit's stay—issued the very next day (February 9, 2026)—came too late to alter that reality. Habeas review focuses on the lawfulness of custody when judicial intervention is invoked; an intervening change (here, a stay pending appeal) may govern prospective custody but cannot retroactively sanitize past unlawful restraint.

The stay itself is strictly prospective and forward-looking. It suspends the district court's vacatur going forward but does not unwind the period during which that vacatur governed (December 31, 2025–February 9, 2026). It does not declare TPS void *ab initio*, invalidate good-faith reliance on the vacatur during its operative period, or authorize retroactive enforcement of termination. Respondents' theory—that the stay retroactively restores detention authority—would impermissibly rewrite history and erase the legal shield TPS provided throughout Petitioner's confinement.

ii. Applying the Stay Retroactively Violates Principles of Non-Retroactivity and Fairness

Even analogizing to the Supreme Court's retroactivity framework in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), retroactive application is improper. Courts first ask whether clear congressional intent supports retroactivity (here, none exists for stays pending appeal in TPS cases). If not, courts assess whether the change "attach[es] new legal consequences to events completed before its enactment." Applying the stay retroactively would do exactly that: it would validate detention that was unlawful when this petition was filed, impair vested protections under TPS, and impose new disabilities on past events (custody from July 1, 2025 onward).

The government cannot benefit from a post-filing appellate development to justify custody that was unlawful from inception. At every moment of detention, valid TPS status deprived Respondents of statutory authority under the 1998 removal order or 8 U.S.C. § 1231. The stay does not—and cannot—erase that reality.

Because detention was unlawful when habeas jurisdiction attached and when custody began, and no post-filing change can retroactively cure it, Respondents lack any lawful basis for continued custody. Petitioner is entitled to immediate release, and the Court should grant the requested temporary restraining order to prevent irreparable harm.

C. RESPONDENTS MISCHARACTERIZE THE DURATION OF DETENTION – PETITIONER HAS BEEN IN CONTINUOUS RESTRAINT SINCE JULY 1, 2025

Respondents' Return [DE 10-5 ¶ 22] asserts that Petitioner's immigration detention began only on February 11, 2026, reducing seven months of liberty deprivation to "two days" or less. This framing is factually inaccurate and legally untenable. The record demonstrates **continuous executive restraint** from July 1, 2025, onward—initiated by DHS itself—without any meaningful break in custody or period of liberty. The government may not artificially segment confinement periods to evade constitutional scrutiny or statutory requirements for detention authority.

i. Chronological Timeline of Continuous Restraint

The factual record, drawn from Respondents' own exhibits and Petitioner's evidence, establishes uninterrupted custody:

- **July 1, 2025**: DHS arrested, detained, and processed Petitioner while Honduran TPS remained fully in effect. DHS issued Forms I-200 (Warrant for Arrest of Alien) and I-203 (Order to Detain or Release Alien). [DE 10-8; DE 1-5]. Petitioner was held based on immigration enforcement authority. [DE 10-6].
- **July 2, 2025**: Custody was transferred to U.S. Marshals following DHS's immigration enforcement narrative and processing. (DE 10-5 ¶¶ 16–17). This transfer did not end restraint; it continued under federal executive control pending criminal proceedings, with an immigration detainer ensuring seamless transition upon resolution.

- **December 31, 2025**: DHS purported to terminate Honduran TPS, but the Northern District of California's *vacatur* order that same day rendered TPS protections legally operative and in effect.
- **January 16, 2026**: DHS itself acknowledged continued TPS validity and extension due to the court order. [DE 10-4]. TPS protections under 8 U.S.C. § 1254a(a)(1) shielded Petitioner from removal and status-based detention throughout this period.
- **February 6, 2026**: Jury acquitted Petitioner of all charges. Immediately after acquittal (after 5:00 p.m.), CBP officers took custody directly from U.S. Marshals in the Florida Keys and transferred him that Friday night to the Dania Beach CBP Station. See Counsel's Declaration and phone log, Exhibit D. There was no release into the community or period of liberty—restraint remained continuous. Once Hon. Leibowitz declared the Petitioner freedom, Respondents' counsel at open court raised that the immigration detainee was still in place (implying that DHS was taking custody), which led the district judge to issue an administrative stay. Exhibit C.
- **February 8, 2026**: This habeas petition was filed while TPS was legally in effect due to the operative district court *vacatur*. No statutory authority existed for detention under 8 U.S.C. § 1231(a)(2) or otherwise.
- **February 9-11, 2026**: Ninth Circuit stay reinstated TPS termination prospectively. Petitioner filed Motion to Reopen the 1998 in-absentia removal order (DE 11-2), triggering an automatic regulatory stay under 8 C.F.R. § 1003.23(b)(4)(ii). DHS transferred Petitioner from Dania Beach CBP to the Florida Soft Side Facility South in Ochopee.

This timeline shows **seven months of continuous executive restraint** initiated by DHS on July 1, 2025, without interruption. The brief handoff to U.S. Marshals for criminal proceedings did not sever the chain—immigration authority (via detainer and initial arrest and administrative

order to detain) ensured continuity. Post-acquittal, CBP's immediate takeover on February 6, 2026, confirms no break occurred.

ii. Legal Consequences of Continuous Restraint

In habeas corpus proceedings under 28 U.S.C. § 2241, courts evaluate the **reality** of liberty deprivation, not artificial labels or segmented timelines imposed by the government. Prolonged or indefinite civil detention without adequate process violates due process. Here:

- Respondents' July 1, 2025 DHS Order to Detain [DE 10-8] explicitly initiated immigration-based custody.
- The government cannot ignore this to claim detention began only on February 11, 2026—doing so would allow arbitrary segmentation to avoid scrutiny of the full duration.
- From July 1, 2025, through the present, Petitioner has endured over seven months of restraint while TPS protections barred removal and status-based detention for much of that period.
- Respondents failed to account for the legality of continued detention on February 6, 2026 (post-acquittal),or provide any record justifying CBP custody on July 1, 2025 and February 6, 2026—despite Petitioner's protected status and the absence of a running removal period under § 1231.

This continuous confinement, lacking statutory authority at key points (e.g., during valid TPS and stayed removal), renders detention unlawful *ab initio* and prolonged. The Court should reject Respondents' minimized timeline and recognize the full duration for purposes of due process analysis, entitlement to release, or a bond hearing.

Respondents' attempt to reduce seven months of continuous restraint to "two days" is unsupported by the record and contrary to habeas principles. Petitioner has been deprived of liberty since July 1, 2025, without lawful basis throughout significant portions of that time. Combined

with prior arguments (valid TPS during detention initiation, inapplicability of § 1231, prospective-only stay), this entitles Petitioner to immediate release and the requested TRO.

D. CONTINUED DETENTION VIOLATES THE FIFTH AMENDMENT DUE PROCESS CLAUSE

Civil immigration detention is constitutionally permissible only if it is nonpunitive, serves a legitimate regulatory objective (such as ensuring appearance at proceedings or preventing danger), and removal is reasonably foreseeable. *Demore v. Kim*, 538 U.S. 510, 521 (2003) (upholding brief mandatory detention during removal proceedings where it serves limited regulatory purposes); *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001) (indefinite civil detention without foreseeable removal raises serious due process concerns). Here, none of these conditions are satisfied:

- Petitioner was acquitted by a federal jury on all charges on February 6, 2026, with no criminal conviction.
- No individualized finding exists of flight risk or danger to the community.
- Removal is legally stayed by Petitioner's pending Motion to Reopen the 1998 in-absentia order, triggering an automatic regulatory stay under 8 C.F.R. § 1003.23(b)(4)(ii).
- No removal logistics are underway, and removal remains inexecutable.

Under these circumstances, continued detention serves no legitimate regulatory purpose and amounts to punishment without due process, violating the Fifth Amendment. *Zadvydas*, 533 U.S. at 690 ("[F]reedom from physical restraint 'lies at the core of the liberty' protected by the Due Process Clause"); see also *Jennings v. Rodriguez*, 583 U.S. 281, 340–41 (2018) (Breyer, J., dissenting) (prolonged detention without individualized review raises grave constitutional concerns even under statutory schemes).

i. *Zadvydas* Is Not the Ceiling of Due Process Protections

Respondents erroneously and conclusively claimed the Petitioner's claim under *Zadvydas* is premature and subject to immediate dismissal because the Petitioner, according to Respondents

incomplete records, has been detained for only 2 days before the petition was filed.[1] Respondents invoke *Zadvydas*'s six-month presumptively reasonable period for post-removal-order detention under 8 U.S.C. § 1231(a)(6). But *Zadvydas* addressed only post-removal-period detention where a final order exists and **removal is theoretically possible.** 533 U.S. at 701. This case is fundamentally different:

- The removal period has never commenced (no administratively final and executable order due to the statutory stay).
- Removal cannot legally proceed.
- No individualized custody determination has been made.

Even under *Zadvydas*, indefinite or prolonged civil detention absent a legitimate purpose or foreseeable removal "shocks the conscience" and violates substantive due process. 533 U.S. at 690–91. Petitioner's over-seven-month restraint—spanning acquittal and continued custody without process—far exceeds any permissible regulatory justification.

ii. Count II (Prolonged Detention Claim) Is Not Premature

Contrary to Respondents' assertion, Count II is ripe and not premature simply because the nominal duration post-acquittal appears short. Petitioner filed his Motion to Reopen immediately after acquittal, actively challenging the underlying removal order and triggering the automatic stay under 8 C.F.R. § 1003.23(b)(4)(ii). This renders removal inexecutable and foreseeability highly questionable. The claim is not about waiting for six months under *Zadvydas*; it concerns

[1] Detention began when DHS issued forms I-213, I-200 and I-203 on July 1, 2025 — the date DHS first exercised immigration authority. [DE 1-5; DE 1-6; DE 10-8]. This is prolonged detention claim (over 7 months of continuous civil detention with no foreseeable removal due to the automatic stay on your Motion to Reopen and TPS history). The I-200/I-203/I-213 documents prove DHS initiated civil detention without proper authority (especially if warrantless or lacking probable cause beyond TPS status).

the absence of any lawful basis for detention from inception (July 1, 2025) and the ongoing violation of due process in light of acquittal and stayed removal. Courts routinely entertain such claims where continued restraint lacks statutory or constitutional foundation, regardless of exact length. *See Zadvydas*, 533 U.S. at 701 (presumption rebuttable even before six months if no foreseeable removal).

iii. "Continuous Restraint" or "Due Process"

Respondents' attempt to minimize the detention to "two days" is a fallacy. Unlike the typical case in which ICE merely lodges an immigration detainer after an individual is already in criminal custody (a request that does not itself create federal custody), here DHS directly arrested and detained Petitioner on July 1, 2025, pursuant to civil immigration authority [I-200, I-203, I-213; DE 10-8]. That initial administrative arrest — issued while Petitioner enjoyed full TPS protections that expressly prohibit status-based detention (8 U.S.C. § 1254a(a)(1)(B)) — commenced continuous federal immigration restraint. The subsequent transfer to U.S. Marshals was solely for criminal processing; the immigration detainer and original arrest order **ensured seamless continuity**. Upon acquittal on February 6, 2026, CBP immediately retook custody based on the same July 1, 2025 administrative authority, without any new process or break in liberty deprivation. This is not a standard post-criminal detainer case; it is seven-plus months of uninterrupted civil immigration detention that was unlawful from its inception."

E. SECTION 1252(g) DOES NOT STRIP THIS COURT OF JURISDICTION

Respondents contend 8 U.S.C. § 1252(g) bars review because Petitioner seeks to interfere with "execution" of a removal order. This misstates the petition. Petitioner does not challenge the validity or execution of the 1998 order itself; he challenges the lawfulness of his present civil detention under statutory, regulatory, and constitutional limits on DHS authority.

Section 1252(g) strips jurisdiction only over claims "arising from the decision or action ... to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). In *Reno*

v. American-Arab Anti-Discrimination Committee, 525 U.S. 471, 482 (1999), the Supreme Court held this provision applies narrowly to three discrete discretionary actions—not to all immigration-related claims. Challenges to the legality of detention (distinct from execution of removal) fall outside § 1252(g)'s bar. Courts routinely entertain § 2241 habeas petitions contesting detention authority without running afoul of § 1252(g). Petitioner's core claim—that no statutory basis exists for custody given TPS history, acquittal, and stayed removal—is precisely the type of habeas review Congress preserved.

F. NO ADMINISTRATIVE EXHAUSTION IS REQUIRED

Section 2241 imposes no statutory exhaustion requirement. *Santiago-Lugo v. Warden*, 785 F.3d 467, 474 (11th Cir. 2015) ("Section 2241 itself does not impose an exhaustion requirement"). Exhaustion is a judicially created prudential doctrine, waivable where it would be futile or where the agency lacks authority to grant relief. *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir. 2001) (per curiam) (exhaustion not required "where the administrative remedy will not provide relief commensurate with the claim"), abrogated on other grounds as recognized in *Santiago-Lugo*, 785 F.3d at 474–75 n.5.

Here, exhaustion would be futile: The BIA cannot order release from allegedly unlawful DHS detention in this posture, nor can it address constitutional claims or grant the immediate release/TRO Petitioner seeks. With liberty at stake and ongoing detention, swift habeas review is imperative. No exhaustion bars this petition.

G. THE FEDERAL JURY VERDICT CONFIRMS THE ABSENCE OF ANY DETENTION JUSTIFICATION

On February 6, 2026, a federal jury unanimously acquitted Petitioner of all charges stemming from the July 1, 2025 DHS arrest. The criminal prosecution collapsed entirely. A federal judge ordered immediate release, yet DHS/CBP rearrested Petitioner within minutes without any new process. There exists:

- No conviction.

- No individualized danger or flight-risk finding.
- No bond determination.
- No executable removal authority (due to TPS stay).

Continued detention post-acquittal—absent any legitimate regulatory purpose—is arbitrary, punitive, and unconstitutional under the Fifth Amendment.

H. EVEN ASSUMING ARGUENDO CURRENT TPS TERMINATION, DETENTION REMAINS UNAUTHORIZED

Even if TPS termination is operative now (independent of filing-date protections), detention lacks authority:

- The 1998 removal order remains subject to the pending Motion to Reopen.
- Automatic stay prevents execution (8 C.F.R. § 1003.23(b)(4)(ii)).
- The removal period has not begun.
- § 1231 detention is unavailable.

Respondents' TPS arguments fail to salvage their position.

I. THIS COURT RETAINS AUTHORITY TO ORDER RELEASE

Federal courts possess inherent habeas authority under 28 U.S.C. § 2241 to order release when detention is unlawful. Petitioner seeks no reopening of removal proceedings or challenging of the 1998 removal order—only release from custody unsupported by statute or constitution. This relief falls squarely within the Court's power.

III. CONCLUSION

Respondents' Return rests on:

- Misapplication of § 1231 authority.
- Incorrect jurisdictional and exhaustion arguments.
- Artificial shortening of detention duration.
- Retroactive cure theories inconsistent with habeas principles.

Petitioner has endured over seven months of continuous restraint. He was acquitted by a jury. Removal is legally stayed. No statutory or constitutional basis supports continued detention.

The writ should issue.

WHEREFORE, Petitioner respectfully requests that this Court:

1. Grant the Petition for Writ of Habeas Corpus;
2. Order immediate release from custody;
3. Grant the requested temporary restraining order; and
4. Grant such other and further relief as justice requires.

Respectfully Submitted on February 23, 2026

/s/ Regilucia Smith
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CERTIFICATE OF SERVICE

I, HEREBY certify that on **February 23, 2026**. I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

/s/ Regilucia Smith
Regilucia "Reggie" Smith, Esq.