

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

JANFRANK BERRIOS LAGUNA,

Petitioner,

V.

TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement, in his official capacity; PAMELA BONDI, United States Attorney General, in her official capacity; KRISTI NOEM, Secretary of Homeland Security, in her official capacity; MIGUEL VERGARA, Field Office Director, San Antonio Field Office, in his official capacity; CHARLOTTE COLLINS, Warden at the T. Don Hutto Residential Center, in her official capacity.

Respondents.

Case No. 1:25-cv-00558

PETITION FOR A WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C.
§ 2241

INTRODUCTION

1. This case is about the illegal detention of an immigrant with valid immigration status. Petitioner is a Venezuelan national who holds Temporary Protected Status (TPS) under 8 U.S.C. 1254a. The TPS statute provides that “[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien’s immigration status in the United States.” 8 U.S.C. 1254a(d)(4) (emphasis added). That protection remains available even if the TPS holder has a final removal order or lacks

other immigration status, because the government “shall not remove the alien from the United States during the period in which such [TPS] status is in effect.” 8 U.S.C. 1254a(a)(1)(A). *See also* 8 U.S.C. 1254a(a)(5) (TPS statute provides no authority to “deny temporary protected status to an alien based on the alien’s immigration status”); 8 U.S.C. 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to “otherwise deportable” non-citizens).

2. Despite this unambiguous statutory command, Petitioner has now been unlawfully detained by U.S. Immigration and Customs Enforcement (ICE) since January 15, 2025.
3. Petitioner challenges his detention as a violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.
4. Petitioner respectfully requests that this Court grant him a Writ of Habeas Corpus and order Respondents to release him from custody. Petitioner seeks habeas relief under 28 U.S.C. 2241, which is the proper vehicle for challenging civil immigration detention. *See Shokeh v. Thompson*, 369 F.3d 865, 869 (5th Cir.), vacated on other grounds, 375 F.3d 351 (5th Cir. 2004); *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001).

CUSTODY

5. Petitioner is in the physical custody of Respondents. Petitioner is imprisoned at T. Don Hutto Residential Center, an immigration detention facility located at 1001 Welch Street, Taylor, Texas 76574. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

6. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. 1331; 28 U.S.C. 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2.

7. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens who challenge the lawfulness of their detention under federal law. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas*, 533 U.S. at 687; *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015).

VENUE

8. Venue is proper in this District under 28 U.S.C. 1391, 28 U.S.C. 2242, and Rule CV-3(b)(3) of the local rules of the Western District of Texas because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner’s immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. Rule CV-3(b)(3) (“[a] § 2241 petition must be filed in the division that includes the county in which the petitioner is in custody.”). *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (“the proper respondent to a habeas petition is ‘the person who has custody over the petitioner’”) (citing 28 U.S.C. 2242) (cleaned up).

PARTIES

9. Petitioner is currently detained by Respondents at T. Don Hutto Residential Center, an immigration detention facility located at 1001 Welch Street, Taylor, Texas 76574. He has been in ICE custody since on or about July 15, 2024.
10. Respondent Charlotte Collins is the Warden of the T. Don Hutto Residential Center, where Petitioner is currently detained. She is a legal custodian of Petitioner and is named in her official capacity.
11. Respondent Michael Vergara is the Field Office Director responsible for the San Antonio Field Office of ICE with administrative jurisdiction over Petitioner’s immigration case. He is a legal custodian of Petitioner and is named in his official capacity.

12. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.
13. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is a legal custodian of Petitioner and is named in her official capacity.
14. Respondent Pamela Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of Petitioner and is named in her official capacity.

STATEMENT OF FACTS

I. PETITIONER REMAINS DETAINED DESPITE HAVING TEMPORARY PROTECTED STATUS FROM VENEZUELA

15. Petitioner came to the United States in May 2023. He applied for Temporary Protected Status, and his application was granted on January 15, 2025. The government extended this TPS designation by 18 months, through October 2, 2026. *See* 90 Fed. Reg. 5961 (Jan. 17, 2025). Although the history and current procedural status of TPS for Venezuela may be somewhat complex, *see infra* Section II, all that matters for the purposes of this habeas petition is that TPS for Venezuela remains in effect, and that Respondents continue to detain Petitioner despite the fact that he continues to hold TPS status.
16. ICE officers took Petitioner into custody in Travis County on July 15, 2024.
17. On August 8, 2024, an immigration judge granted Petitioner voluntary departure, but because he was unable to secure a flight, an alternative order of removal took effect as of that date.
18. On February 27, 2025, Attorney Kristy Blumeyer-Martinez sent an email to the U.S. Attorney's Office for the Western District of Texas via Assistant United States Attorney Lacy McAndrew, notifying AUSA McAndrew that Petitioner had TPS status, his detention by ICE was unlawful, and that if ICE did not immediately release him, RAICES would file

federal litigation challenging his unlawful detention.

19. On February 28, 2025, paralegal Jennifer Briseno mailed letters via certified mail to Warden Charlotte Collins and the Field Office Director and Enforcement and Removal Operations Director of the ICE San Antonio Field Office notifying them of the same.
20. On March 15, 2025, attorney Jonathan Levy sent an email to both the Assistant Field Office Director and Supervisory Detention Deportation Officer for ICE at the T. Don Hutto Residential Center. The message included as an attachment the letter previously sent to the U.S. Attorney's Office for the Western District of Texas, the ICE Field Office Director, and the ICE Enforcement and Removal Operations Field Office Director.
21. To date, Petitioner has not received a response from anyone in the relevant supervisory chain under Respondents' supervision.

II. TEMPORARY PROTECTED STATUS FOR VENEZUELA REMAINS IN EFFECT

22. Venezuelans living in the United States first received temporary protection from removal on January 19, 2021, when President Trump—on the last day of his first Administration—directed the Secretaries of State and Homeland Security to “take appropriate measures to defer for 18 months the removal of any national of Venezuela . . . who is present in the United States as of January 20, 2021,” with limited exceptions, and “to take appropriate measures to authorize employment for aliens whose removal has been deferred, as provided by this memorandum, for the duration of such deferral.” Memorandum re Deferred Enforced Departure for Certain Venezuelans, 86 Fed. Reg. 6845 (Jan. 19, 2021).
23. DHS then designated TPS for Venezuela on March 9, 2021, based on the Secretary's determination that “extraordinary and temporary conditions in the foreign state prevent [Venezuelans] from returning in safety” and “permitting [Venezuelans] to remain

temporarily in the United States” is not “contrary to the national interests of the United States.” 86 Fed. Reg. 13574 at 13575. The Secretary found that “Venezuela is currently facing a severe humanitarian emergency” and “has been in the midst of a severe political and economic crisis for several years . . . marked by a wide range of factors including: Economic contraction; inflation and hyperinflation; deepening poverty; high levels of unemployment; reduced access to and shortages of food and medicine; a severely weakened medical system; the reappearance or increased incidence of certain communicable diseases; a collapse in basic services; water, electricity, and fuel shortages; political polarization; institutional and political tensions; human rights abuses and repression; crime and violence; corruption; increased human mobility and displacement (including internal migration, emigration, and return); and the impact of the COVID-19 pandemic, among other factors.” *Id.* at 13576.

24. DHS extended and broadened TPS protection for Venezuela twice after that initial designation. DHS extended Venezuela’s TPS designation for 18 months on September 8, 2022, through March 10, 2024. 87 Fed. Reg. 55024. DHS again extended the 2021 designation of Venezuela for 18 months on October 3, 2023. At that time DHS also re-designated Venezuela for TPS for 18 months. 88 Fed. Reg. 68130 (“2023 Venezuela Designation”) (allowing individuals who had come to the United States after March 2021 to become eligible). The extension of the 2021 designation ran from March 11, 2024 to September 10, 2025. The new 2023 re-designation ran from October 3, 2023 through April 2, 2025. Finally, on January 17, 2025, the DHS Secretary extended the 2023 Venezuela Designation by 18 months, through October 2, 2026. 90 Fed. Reg. 5961 (“January 2025 Extension”).

25. In support of that extension, the DHS Secretary found that “Venezuela is experiencing a complex, serious and multidimensional humanitarian crisis. The crisis has reportedly disrupted every aspect of life in Venezuela. Basic services like electricity, internet access, and water are patchy; malnutrition is on the rise; the healthcare system has collapsed; and children receive poor or no education. Inflation rates are also among the highest in the world. Venezuela’s complex crisis has pushed Venezuelans into poverty, hunger, poor health, crime, desperation and migration. Moreover, Nicolas Maduro’s declaration of victory in the July 28, 2024 presidential election—which has been contested as fraudulent by the opposition—has been followed by yet another sweeping crackdown on dissent.” *Id.* at 5963 (internal quotation marks and citations omitted).
26. After the inauguration, the U.S. federal government reversed course on TPS for Venezuela. On January 28, 2025, the new DHS Secretary purported to “vacate” the January 2025 Extension of TPS for Venezuela.¹ That decision was the first vacatur of a TPS extension in the 35-year history of the TPS statute. DHS published this vacatur via notice in the Federal Register on February 3, 2025. 90 Fed. Reg. 8805.
27. On February 1, 2025, the new Secretary “decided to terminate” the 2023 Venezuela Designation, ordering an end to the legal status of approximately 350,000 Venezuelans, effective in April 2025.²
28. On February 5, 2025, DHS published a notice in the Federal Register purporting to terminate the 2023 Venezuela Designation. 90 Fed. Reg. 9040.

¹ USCIS, *Temporary Protected Status Designated Country: Venezuela*, available at <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela>.

² USCIS, *Temporary Protected Status Designated Country: Venezuela*, available at <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela>.

29. On February 19, the National TPS Alliance and seven individual Venezuelan TPS holders sued the federal government, alleging that the vacatur and subsequent termination of TPS for Venezuela were contrary to the TPS statute, in violation of the Administrative Procedure Act. and unlawful under the Fifth Amendment. *See National TPS Alliance v.*

✓

status is in effect.”) (emphasis added). Indeed, individuals with a final order of removal are statutorily eligible for TPS and may not be denied TPS on the basis of that removal order if otherwise eligible. 8 U.S.C. 1254a(a)(5) (TPS statute provides no authority to “deny temporary protected status to an alien based on the alien’s immigration status”). *See also* 8 U.S.C. 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to “otherwise deportable” non-citizens). For that reason alone, this Court should grant the writ and order Petitioner’s immediate release. *See* 28 U.S.C. 2241(c)(3) (authorizing writ for people detained in violation of federal law).

33. Should the Court nonetheless choose to address constitutional questions, it should also find that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690.
34. Petitioner’s detention violates the Fifth Amendment’s protection for liberty, for at least three related reasons. First, immigration detention must always “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore*, 538 U.S. at 527 (citing *Zadvydas*, 533 U.S. at 690). Whereas here the government has no authority to deport Petitioner, detention is not reasonably related to its purpose.
35. Second, because Petitioner is not “deportable” insofar as the TPS statute bars his deportation, the Due Process Clause requires that any deprivation of Petitioner’s liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process “forbids the government to infringe certain ‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement is narrowly

tailored to serve a compelling state interest”); *Demore*, 538 U.S. at 528 (applying less rigorous standard for “deportable aliens”). Petitioner’s on-going imprisonment obviously cannot satisfy that rigorous standard.

36. Third, at a bare minimum, “the Due Process Clause includes protection against *unlawful* or arbitrary personal restraint or detention.” *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting) (emphasis added). Where federal law explicitly prohibits an individual’s detention, their detention also violates the Due Process Clause.
37. It is irrelevant that the government may, at some unknown time in the future, successfully terminate Petitioner’s TPS. The TPS statute’s unambiguous command applies so long as the TPS holder’s status remains in effect. It contains no exception for people whose TPS status may soon expire. And, as noted above, a court has postponed the government’s attempt to end TPS for Venezuelans in the course of litigation to challenge that decision. It would not be appropriate for this Court (or any other) to speculate on the likely outcome of that litigation. Rather, it should decide this petition on the state of affairs as it currently exists, under which Petitioner remains a TPS holder, and has now been illegally imprisoned for over 80 days.

CLAIMS FOR RELIEF

COUNT ONE **VIOLATION OF THE IMMIGRATION AND NATIONALITY** **ACT – 8 U.S.C. § 1254a**

38. Petitioner realleges and incorporate by reference each and every allegation contained above.
39. Section 1254a of Title 8 of the U.S. Code governs the treatment of TPS holders, including their detention and removal under federal immigration law.
40. Section 1254a(d)(4) states “[a]n alien provided temporary protected status under this

section *shall not be detained* by the Attorney General on the basis of the alien's immigration status in the United States." (emphasis added). There is no exception to this rule provided in the statute.

41. Thus, Petitioner's detention violates Section 1254a, and he is entitled to immediate release from custody.

COUNT TWO
VIOLATION OF THE DUE PROCESS CLAUSE
OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

42. Petitioner realleges and incorporates by reference each and every allegation contained above.

43. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally Reno*, 507 U.S. 292; *Zadvydas*, 533 U.S. 678; *Demore*, 538 U.S. 510.

44. Petitioner's detention violates the Due Process Clause because it is not rationally related to any immigration purpose; because it is not the least restrictive mechanism for accomplishing any legitimate purpose the government could have in imprisoning Petitioner; and because it lacks any statutory authorization.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. 1254a;
3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
4. Grant a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner

from custody due to Respondents' custody of Petitioner being in violation of law, as authorized by 8 U.S.C. 2241(a);

5. Enjoin Respondents from further detaining Petitioner so long as TPS for Venezuela remains in effect and he continues to hold TPS status;
6. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
7. Grant such further relief as this Court deems just and proper.

Dated: April 14, 2025

Respectfully submitted,

/s/ Kristy Blumeyer-Martinez

Kristy Blumeyer-Martinez

State Bar of Texas No. 24087177

kristy.blumeyermartinez@raicestexas.org

Javier Hidalgo

State Bar of Texas No. 24111033

javier.hidalgo@raicestexas.org

**THE REFUGEE AND IMMIGRANT
CENTER FOR EDUCATION AND
LEGAL SERVICES (RAICES)**

P.O. Box 786100

San Antonio, TX 78278

Telephone: (210) 469-4218

Telephone: (210) 469-4042

Facsimile: (210) 625-6835

Facsimile: (210) 910-6588

Kassandra Gonzalez

Texas Bar No. 24116439

TEXAS CIVIL RIGHTS PROJECT

P. O. Box 17757

Austin, Texas 78760

(512) 474-5073 ext. 182

(512) 474-0726 (fax)

kassandra@texascivilrightsproject.org

Erin D. Thorn

Texas Bar No. 24093261

TEXAS CIVIL RIGHTS PROJECT

1017 W. Hackberry Ave.
Alamo, Texas 78516
(956)-787-8171 ext. 127
(512) 474-0726 (fax)
erin@texascivilrightsproject.org

Jonathan Levy
Texas Bar No. 24087921
AMERICAN GATEWAYS
314 E. Highland Blvd.
Austin, Texas 78752
(737) 356-3399
(512) 387-2650 (fax)
jonathanl@americangateways.org

Attorneys for Petitioner

Verification by Jonathan Levy Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I have discussed with Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's TPS status, are true and correct to the best of my knowledge.

Dated: April 14, 2025

/s/ Jonathan Levy