

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ADRIAN GIL ROJAS;

Petitioner,

v.

William JOYCE, in his official capacity as District Director of New York, Immigration and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General.

Respondents.

Case No. 1:25-cv-03937

**FIRST AMENDED
PETITION FOR
WRIT OF HABEAS
CORPUS**

INTRODUCTION

Petitioner Adrian Gil Rojas is a Venezuelan national who under the clear terms of federal statute cannot be either lawfully detained or deported and whose detention—as an individual with no criminal history and who cannot be lawfully removed—serves no purpose. He was granted Temporary Protected Status (TPS) in May 2024 and, although Respondents purported to withdraw that status on the eve of a hearing in an earlier habeas lawsuit, he has filed a timely appeal of the withdrawal and continues to enjoy TPS protection. A federal judge ordered his release *after* the notice of withdrawal of TPS status and Mr. Gil Rojas was released from custody on April 4, 2025. His family, including his two-year-old son, were overjoyed to reunite with him in New York. But despite that judge’s clear order, and Mr. Gil Rojas’s full compliance with monitoring by Respondents since that time, he was suddenly redetained during a regular check-in in Manhattan on May 12, 2025 and now faces not only detention and separation from his family but unlawful removal.

Because Mr. Gil Rojas has filed a timely appeal of the withdrawal of his TPS, his detention is *still* unlawful and the district court's order releasing him remains applicable. To the extent Respondents are unable to verify the status of his appeal, two weeks after it was received at a U.S. Citizenship and Immigration Services (USCIS) lockbox facility, that delay is their own fault and is not a lawful basis to again detain Mr. Gil Rojas.

Because Mr. Gil Rojas cannot be lawfully detained or removed, he files this habeas petition now seeking release from custody and other relief.

PARTIES

1. Petitioner Adrian Gil Rojas is citizen of Venezuela who lives in New York City. He was ordered released from custody by a federal court judge in the Southern District of Texas on or about April 2, 2025. He was detained by Respondents on May 12, 2025 and remains in Respondents' custody in the Southern District of New York.
2. Respondent William Joyce is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Genalo's address is New York ICE Field Office Director, 26 Federal Plaza, 7th Floor, New York, New York 10278.
3. Respondent Kristi Noem is named in her official capacity as the Acting Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a legal custodian of the Petitioner.

Respondent Wolf's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, District of Columbia 20528.

4. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal and custody proceedings and for the standards used in those proceedings. As such, she is the custodian of Petitioner. Respondent Barr's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

JURISDICTION

5. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Petitioner was detained by Respondents on January 13, 2025.

6. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

7. Venue is proper in this Court because Mr. Gil Rojas is currently detained in the Southern District of New York, where he was taken into custody at an routine check-in appointment at in Manhattan on May 12, 2025.

SPECIFIC FACTS ABOUT PETITIONER

8. Mr. Gil Rojas is a Venezuelan citizen and father to a two-year-old son. He came to the United States on or about April 30, 2023. He applied for Temporary Protected Status on Nov. 27, 2023. His application was granted on May 16, 2024. *See* Exh. A to Flores Decl.

9. Mr. Gil Rojas has no criminal record in any country. He has no gang affiliation or membership. Gil Rojas Decl. at ¶ 2-3.

10. In September 2023, Mr. Gil Rojas was witness to the killing of his boss and friend Wayne Haupt Sr., who was killed in a hit-and-run by a former employee in upstate New York. Mr. Gil Rojas cooperated fully with law enforcement and was a trial witness against the perpetrator in May 2024, helping to secure his conviction and a sentence of 20 years to life imprisonment. *See* Exh. B to Flores Decl. (letter from Assistant U.S. Attorney describing Mr. Gil Rojas's assistance to law enforcement and "crucial" trial testimony).

11. Mr. Gil Rojas missed an immigration court hearing in Buffalo, New York on Sep. 10, 2024, which resulted in the issuance of in an absentia removal order. On March 11, 2025, he filed a motion to rescind his in absentia order. That motion alleged exceptional circumstances for Mr. Gil Rojas's failure to appear in court, relating in part to his trauma and fear stemming from his role in the criminal prosecution. The motion was denied by an immigration judge on April 4, 2025 and Mr. Gil Rojas filed a timely appeal to the Board of Immigration Appeals. Exh. C to Flores Decl. That appeal remains pending.

12. ICE officers took Mr. Gil Rojas into custody at his home in Manhattan on or around January 22, 2025. Officers entered an apartment Mr. Gil Rojas and his partner and son shared with several other families in search of another individual and then knocked on Mr. Gil Rojas's bedroom door. Gil Rojas Decl. at ¶ 15. He opened it holding his two-year-old son. The officers took his son from him, handcuffed, fingerprinted and detained him, all without permission or consent. *Id.* Mr. Gil Rojas told them that he had TPS and showed them immigration paperwork. The officers ignored him. Mr. Gil Rojas's partner was not home at the time, which meant that his young son spent over 20 minutes with his father handcuffed and detained in front of him without a caretaker present, traumatizing and upsetting him. *Id.*

13. Mr. Gil Rojas remained in ICE custody for over 3 months. He was initially detained at Orange County Jail in Goshen, New York and subsequently transferred to El Valle Detention Center in Texas.

14. On March 14, 2025, Mr. Gil Rojas and numerous other people were placed on what they were told was a removal flight to Venezuela which ultimately could not take off due to a mechanical problem. Flores Decl. at 8. With the assistance of his counsel in New York, he filed a petition for a writ of habeas corpus and motion for a temporary restraining order for him in the Southern District of Texas. *Gil Rojas v. Vanegas et al.*, 1:25-cv-00056 (Sd. Tex. filed March 14, 2025). The judge granted a TRO halting his removal. As a result, Mr. Gil Rojas was not among the hundreds of individuals deported to El Salvador on March 15, 2025.

15. Notwithstanding the TRO, ICE attempted to unlawfully remove Mr. Gil Rojas at least two more times. Flores Decl. at ¶ 8. The first attempt was thwarted because it was raining heavily and the second, the next day, when assistant U.S. attorneys were able to intercede and forestall his removal in violation of a court order.

16. On April 2, after a hearing, the judge ordered that Mr. Gil Rojas be released from ICE custody in New York. Initial Order, *Gil Rojas v. Vanegas et al*, 1:25-cv-00056 (ECF No. 18). The judge subsequently amended the order to permit immediate release in Texas. Amended Order, *Gil Rojas v. Vanegas et al*, 1:25-cv-00056 (ECF No. 20). Mr. Gil Rojas was released from custody on April 4, 2025 and traveled back to New York to reunite with his family including his young son.

17. On April 1, while he was still detained, Mr. Gil Rojas with served with a notice stating that USCIS was withdrawing his TPS. Exh. D to Flores Decl. The basis was that “there are reasonable grounds for regarding [him] as a danger the security of the United States.” The notice further stated that records indicated Mr. Gil Rojas “was a member or affiliate of Tren de Aragua,” because he has “tattoos consistent with Tren de Aragua members and associates” and “[s]ocial media posts indicate [he] resided with a known Tren de Aragua member. Also, [he was] arrested at the same time and location as another Tren de Aragua member.” The notice further stated “If an appeal or a motion is not filed within 33 days, this decision is final.”

18. The allegations in the notice are baseless. Mr. Gil Rojas does have numerous tattoos, including images of his mother and son; a cross; a minion; and the superhero Deadpool, but they are personal expressions of love for his family; religious faith; cultural pride and individual interests. Gil Rojas Decl. at ¶ 5. Moreover, he has filed multiple declarations from experts in Tren de Aragua attesting that tattoos “have no connection to belonging to a specific organization or subculture,” whether particular Tren de Aragua members have tattoos is essentially random; and Mr. Gil Rojas’s particular tattoos are all common among young Venezuelans. Antillano Decl. at ¶ 17, 21-22; *see also* Samet Decl. at ¶ 11-17.

19. Mr. Gil Rojas did not knowingly reside with any gang member in the Manhattan apartment he and his family shared with four other families, none of whom he knew before moving to the apartment, and indeed barely interacted with their neighbors. Gil Rojas Decl. at ¶ 11-13. As far as Mr. Gil Rojas was aware, the apartment was simply a family-friendly environment in which he and his partner felt safe. *Id.* at ¶ 11.

20. At the hearing in federal district court the following day, the judge asked the Assistant U.S. Attorney (AUSA) “for the record, you as an officer of the court are not representing that he is a member of the gang; is that correct?” She responded, No, I am not representing that, no, Your Honor.” The judge then asked “Do you have any evidence that he was a member of the gang?” The AUSA responded “I do not.” Exh. H to Flores Decl. at 12-13 (hearing transcript).

21. The district court then ordered Mr. Gil Rojas’s release in a decision that cited the continued validity of his TPS status and the lack of any evidence that he posed a danger to the public. Order, *Gil Rojas v. Vanegas*, 1:25-cv-00056 (S.D. Tex. Apr 2, 2025) (ECF No. 18), attached as Exh. G to Flores Decl.

22. Mr. Gil Rojas via counsel filed a 290B appeal of USCIS’s withdrawal decision with the Office of Administrative Appeals on or about April 26, 2025. He mailed the appeal, which included a fee waiver application, by UPS overnight mail. Tracking information shows it was delivered on April 28, 2025. Flores Decl. at ¶ 6; Exh. E to Flores Decl. There is no means to submit the 290B appeal online; the filing can only be filed by mail to an address in Phoenix. The address is a post office box for submissions by U.S. mail and a street address for submissions by other carriers.¹ On information and belief, the address is for a lockbox facility that processes mail under the control and direction of USCIS.

¹ The address for non-USPS submission is USCIS Attn: I-290B (Box 21100), 2108 E. Elliot Rd. Tempe, AZ 85284-1806. See <https://www.uscis.gov/i-290b-addresses>.

23. As part of his appeal, Mr. Gil Rojas requested a copy of all documents underlying the negative determination in his case under 8 C.F.R. 103.2(b)(16)(i).

24. Neither Mr. Gil Rojas nor his counsel have received a receipt notice or other confirmation of receipt from USCIS. Flores Decl. at ¶ 6. An attorney with a large New York-based legal service provider avers in a declaration in support of the petition that in her experience it is normal for appellants and their counsel to experience a long delay in the issuance of a receipt or other confirmation of delivery for a 290B administrative appeal to USCIS. Chen Decl. at ¶ 2. She has experienced delays of a month or six weeks prior to receiving any confirmation of receipt. *Id.*

25. Because Mr. Gil Rojas has appealed the withdrawal of his TPS, he retains TPS protection. Under the regulations his “Temporary Protected Status benefits will be extended during the pendency of the appeal.” 8 C.F.R. 244.14(b)(3).

26. Petitioner maintains that he is neither a member nor an “affiliate” of TdA and in his appeal provided extensive evidence of his lack of gang affiliation. Exh. F to Flores Decl. (cover letter and index to filing). This included, inter alia, two expert declarations, both describing the lack of any connection between tattoos and TdA membership; several articles, also documenting the irrelevance of tattoos to TdA membership; a declaration from Mr. Gil Rojas, explaining that he lived in a Manhattan apartment building with numerous other occupants, none of whom he knew personally nor had ever met before moving in; and a letter from the Assistant District Attorney in the trial in which Mr. Gil Rojas provided testimony, detailing his assistance to law enforcement.

27. Following his release from custody in early April 2025, Mr. Gil Rojas reported to ICE at 26 Federal Plaza in Manhattan several times and complied fully with intensive supervision

through the ISAP program, including wearing a GPS bracelet; appearing for in-person appointments; and responding to home visits. Flores Decl. at ¶ 10.

28. Mr. Gil Rojas also did multiple interviews in the press about his experience, including with ABC and Univision. *Id.* at ¶ 11.

29. Mr. Gil Rojas appeared on May 12, 2025 for a scheduled check-in with ISAP in lower Manhattan. Late that morning, he was detained without any explanation or notice to counsel. When his counsel contacted ICE ERO, the only information provided was that he was being detained on the basis of his removal order, *id.* at ¶ 12—which of course already existed at the time of the prior court order releasing him. Mr. Gil Rojas via counsel then filed the instant litigation. He is currently detained at Orange County Jail in Goshen, New York.

LEGAL BACKGROUND TO TPS

30. 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).

31. 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.

32. 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”).

33. 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).

34. After the election the 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.² That decision was the first vacatur of a TPS extension in the 35-year history of the TPS statute. DHS published it via notice in the Federal Register on February 3, 2025. 90 Fed. Reg. 8805.

35. 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.³ On February 5, 2025, DHS published a notice in the Federal Register purporting to terminate the 2023 Venezuela Designation. 90 Fed. Reg. 9040. 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

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

³ USCIS, *Temporary Protected Status Designated Country: Venezuela*, available at <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela>.

Amendment. *See National TPS Alliance v. Noem*, No. 3:25 CV 01766 (N.D. Cal.). On March 31, the District Court for the Northern District of California stayed DHS's decisions attempting to terminate Temporary Protected Status (TPS) for Venezuela. *See National TPS Alliance (NTPSA) v. Noem*, --- F.Supp.3d ---, 2025 WL 957677 (N.D. Cal. Mar. 31, 2025).

36. That order, applicable nationwide, meant that Venezuelan TPS holders whose TPS was set to expire on April 2, 2025, no longer faced an imminent end to their TPS protections. Under the Court's order, TPS protections for Venezuela will remain in place at least until the final adjudication of the merits in that case. The federal government has appealed the decision to the Ninth Circuit, which set the case for oral argument in July 2025, and has sought a stay of the district court order in the Supreme Court.

37. Although USCIS can move to withdraw TPS from individuals, that withdrawal can be appealed to the Administrative Appeals Office. "Temporary Protected Status benefits will be extended during the pendency of the appeal." 8 C.F.R. 244.14(b)(3).

LEGAL FRAMEWORK

38. The TPS statute unambiguously 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). It is hard to imagine a clearer statutory mandate proscribing detention.

39. The Court need not delve further in an attempt to understand other aspects of Petitioner's immigration status, because TPS protection remains valid even if the TPS holder has a final removal order or lacks other immigration status. 8 U.S.C. 1254a(a)(1)(A) (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)(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).

40. 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 v. Davis*, 533 U.S. 678, 690 (2001).

41. Petitioner's detention violates the Fifth Amendment's protection for liberty. Immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Where, as here, the government has no authority to deport Petitioner, detention is not reasonably related to its purpose. At a bare minimum, "the Due Process Clause includes protection against *unlawful* or arbitrary personal restraint or detention." *Zadvydas v. Davis*, 533 U.S. 678, 718 (2001) (Kennedy, J., dissenting) (emphasis added). Where federal law explicitly prohibits an individual's detention, their detention also violates the Due Process Clause.

42. It is irrelevant for purposes of this case that Petitioner's TPS status may expire or is on appeal. 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, because litigation has now commenced to challenge the government's attempt to end TPS for Venezuela, 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.

CLAIMS FOR RELIEF

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

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

44. 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.

45. 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. The statutory protection from detention remains in place during the pendency of an appeal of USCIS’s decision to withdraw TPS status. 8 C.F.R. 244.14(b)(3).

46. 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

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

48. 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 v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

49. 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; because it lacks any statutory authorization; and because he was not accorded sufficient process prior to his sudden re-detention by ICE.

50. Petitioner's detention also violates his right to due process because a federal court already ordered his release from custody on the basis of his TPS status and lack of any demonstrable danger to the community and no new circumstances justify his redetention in violation of that order.

COUNT THREE
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

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

52. The Administrative Procedure Act (APA) requires agencies to conclude "matters within a reasonable time," 5 U.S.C. § 555(b), and authorizes a federal court to "compel agency action unlawfully withheld or unreasonably delayed." *Id.* at § 706(1).

53. The failure of USCIS and Respondent Noem to issue a receipt notice or otherwise record the pendency of Mr. Gil Rojas's timely-filed appeal, which challenged the withdrawal of his TPS status, two weeks after its receipt, has inflicted serious harm on Petitioner because it contributed to Respondents' decision to detain him and again separate him from his family. It has also facilitated Respondents' violation of federal law by detaining Mr. Gil Rojas.

COUNT FOUR
**VIOLATION OF THE FIFTH AND SIXTH AMENDMENTS
TO THE U.S. CONSTITUTION**

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

55. The Fifth and Sixth Amendments to the U.S. Constitution prohibits punishment without criminal trial protections, including trial by jury and proof of charges beyond a reasonable doubt. *See Wong Wing v. United States*, 163 U.S. 228 (1896) (striking down imprisonment without trial of individuals already ordered removed).

56. Where the government takes actions with the intent of accomplishing traditional purposes of punishment, those actions constitute punishment, and no further inquiry is needed. *Smith v. Doe*, 538 U.S. 84, 92 (2003).

57. Retribution and deterrence constitute traditional aims of punishment, and are impermissible aims to justify civil confinement. *Kansas v. Crane*, 534 U.S. 407, 412 (2002); *Kansas v. Hendricks*, 521 U.S. 346, 372-73 (1997) (Kennedy, J., concurring)).

58. Removing or otherwise sending Petitioner anywhere where the government has contracted for Petitioner's continued imprisonment, absent full procedural protections of criminal proceedings, violates the Fifth and Sixth Amendments of the U.S. Constitution.

59.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. 2243;
3. Declare that Petitioner's detention violates the Immigration and Nationality Act, and

specifically 8 U.S.C. 1254a;

4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
5. Declare that Respondents' actions violate the Administrative Procedure Act;
6. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
7. Enjoin Petitioners from further detaining Petitioner so long as TPS for Venezuela remains in effect and he continues to hold TPS status and from detaining Petitioner without 30 days notice;
8. 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
9. Grant such further relief as this Court deems just and proper.

Dated: May 13, 2025

/s/ Paige Austin
Paige Austin
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CERTIFICATE OF SERVICE

I certify that on May 13, 2025, I electronically filed the attached the foregoing First Amended Petition for Writ of Habeas Corpus and accompanying Exhibits and Declarations with the Clerk of the Court for the United States District Court for the Southern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

/s/ Paige Austin

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