IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

W.J.C.C., *Petitioner–Plaintiff*,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; PAMELA BONDI, Attorney General of the United States, in her official capacity; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity; U.S. DEPARTMENT OF HOMELAND SECURITY; TODD LYONS, Acting Director of the Director of U.S. Immigration and Customs Enforcement, in his official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; BRIAN MCSHANE, in his official capacity as acting Philadelphia Field Office Director for U.S. Immigration and Customs Enforcement; MARCO RUBIO, Secretary of State, in his official capacity; U.S. STATE DEPARTMENT; PETE HEGSETH, Secretary of Defense; U.S. DEPARTMENT OF DEFENSE; LEONARD ODDO, in his official capacity as the Facility Administrator of the Moshannon Valley Processing Center;

Respondents–Defendants.

Case No. 3:25-cv-153

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner-Plaintiff W.J.C.C. ("Petitioner") is a Venezuelan man in immigration custody who is at risk of imminent removal under the President's Proclamation invoking the Alien Enemies Act ("AEA") and who remains detained solely because the government has alleged, without any evidence whatsoever, that he is involved with the [redacted]

[redacted] Petitioner challenges his imminent removal under the AEA without due process, and he separately challenges his continued detention without bond on due process grounds.[1]

2. The Supreme Court has made clear that individuals subjected to the Proclamation are entitled to "due process" to challenge their designation as alien enemies, through habeas, and that they must be given "notice . . . within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025).

3. And the Supreme Court recently held that those detained under the AEA have "particularly weighty" interests in light of the potential for "indefinite detention," and thus the government's protocol of "notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *A.A.R.P. v. Trump*, 2025 WL 1417281, at *2 (May 16, 2025).

4. Applying this precedent, this Court has already issued a temporary restraining order in this case, initially on May 22 and extended on June 4, enjoining the government "from removing W.J.C.C. pursuant to the AEA and the Proclamation, unless Respondents first provide: 1) twenty-one (21) days' notice and an "opportunity to be heard" to W.J.C.C., (2) notice to W.J.C.C. that clearly articulates the fact that he is subject to removal under the Proclamation and the AEA, 3) notice to W.J.C.C. in English and Spanish . . . and 4) notice to W.J.C.C.'s counsel of all the forgoing." Dkt. No. 21 at 2. Petitioner has moved to convert this temporary restraining order into a preliminary injunction, Dkt. No. 22, and seeks through this petition to ultimately convert it into a permanent injunction.

[1] In accordance with Federal Rule of Civil Procedure 15, and consistent with this Court's order, Dkt. No. 21, Petitioner hereby files this amended petition as a matter of right, removing some claims and adding others.

5. Additionally, Petitioner challenges his purportedly mandatory detention without bond, which will result in his indefinite detention absent this Court's intervention. During Petitioner's hearing in Immigration Court on May 14, 2025, Immigration and Customs Enforcement ("ICE") asserted, for the first time and without prior notice to Petitioner's counsel, that the Immigration Judge ("IJ") lacked jurisdiction to even consider Petitioner's bond request due to its allegation that Petitioner is associated with the [redacted]. Based solely on this single-sentence allegation in Petitioner's I-213 and without any documentary evidence substantiating it, the IJ agreed with ICE and denied the bond request for lack of jurisdiction under 8 C.F.R. § 1003.19(h).

6. Petitioner's detention without bond in these circumstances flatly violates his due process rights. Under binding Third Circuit precedent, the government bears the initial burden to demonstrate by a "preponderance of the evidence" that a non-citizen is statutorily ineligible for bond. *Gayle v. Warden Monmouth County Correctional Institution*, 12 F.4th 321, 334 (3th Cir. 2021). Yet the IJ found Petitioner ineligible for bond without *any* evidence that Petitioner is involved with the [redacted] let alone evidence meeting this high standard.

7. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of habeas corpus. Petitioner seeks an order from this Court affording him sufficient due process prior to any removal under the AEA. Additionally, he asks this Court to order a constitutionally adequate hearing at which the government must prove its [redacted] allegation by a preponderance of the evidence in order to deprive the Immigration Court of jurisdiction to grant Petitioner bond.

JURISDICTION

8. This case arises under the Alien Enemies Act ("AEA"), 50 U.S.C. §§ 21-24; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*; and the Due Process Clause

of the Fifth Amendment to the U.S. Constitution.

9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 et seq. (habeas corpus); art. I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); 28 U.S.C. § 1346 (United States as defendant); 28 U.S.C. § 1361 (mandamus); 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1651 (All Writs Act).

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

VENUE

11. Venue is proper in this District under 28 U.S.C. § 2241; 28 U.S.C. § 1391(b); and, 28 U.S.C. § 1391(e)(1) because at the time of filing of this petition, the Petitioner is detained in the Respondents' custody within the Western District of Pennsylvania; a substantial part of the events and omissions giving rise to the claim occurred in this district; and Respondents are agencies of the United States or officers of the United States acting in their official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is clearly not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added). Petitioner specifically requests that this Court issues an OSC compelling the government to respond to this amended petition within 14 days, by June 25, 2025.

13. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The "Great Writ" has been referred to as "perhaps the most

important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963), overruled on other grounds, *Wainwright v. Sykes*, 433 U.S. 72 (1977).

PARTIES

14. Petitioner is a Venezuelan national who is detained at Moshannon Valley Processing Center. The government has accused him of being affiliated with [redacted] Petitioner, however, denies any association with [redacted] Because of the government's accusations and recent actions against him, Petitioner is at grave risk of being classified as an alien enemy under the AEA, transferred out of the District, and summarily deported under the Proclamation to El Salvador or to a third country.

15. Respondent Donald Trump is the President of the United States. He is sued in his official capacity. In that capacity, he issued the Proclamation under the Alien Enemies Act. Injunctive relief is not sought against the President.

16. Respondent Pamela J. Bondi is the U.S. Attorney General at the U.S. Department of Justice, which is a cabinet-level department of the United States government. She is sued in her official capacity.

17. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security, which is a cabinet-level department of the United States government. She is sued in her official capacity. In that capacity, Respondent Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103.

18. Respondent U.S. Department of Homeland Security ("DHS") is a cabinet-level department of the United States federal government. Its components include ICE. Respondent DHS is a legal custodian of Petitioner.

19. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants during their removal procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his official capacity.

20. Respondent ICE is the subagency of DHS that is responsible for carrying out removal orders and overseeing immigration detention. Respondent ICE is a legal custodian of Petitioner.

21. Respondent Marco Rubio is the Secretary of State at the U.S. Department of State. He is sued in his official capacity.

22. Respondent U.S. Department of State, which is a cabinet-level department of the United States government.

23. Respondent Pete Hegseth is the Secretary of Defense, which is a cabinet-level department of the United States government. He is sued in his official capacity. In that capacity, Respondent Hegseth oversees the Department of Defense and acts as the principal defense policy maker and advisor.

24. Respondent U.S. Department of Defense ("DOD") is a cabinet-level department of the United States federal government.

25. Respondent Brian McShane is the acting director of ICE's Philadelphia Field Office, which is responsible for ICE activities in the Philadelphia Area of Responsibility, which encompasses Delaware, Pennsylvania, and West Virgina and its detention facilities, including Moshannon Valley Processing Center. Respondent McShane is an immediate legal custodian responsible for the arrest and detention of Petitioner. He is sued in his official capacity.

26. Respondent Leonard Oddo is the Facility Administrator of the Moshannon Valley

Processing Center, which detains individuals suspected of civil immigration violations pursuant to a contract with ICE. He is sued in his official capacity.

27. Petitioner repeats and realleges all paragraphs above and incorporates them by reference in the following claims:

STATEMENT OF FACTS

28. Petitioner W.J.C.C. is a 26-year-old citizen of Venezuela. Throughout Petitioner's immigration proceedings in front of the Annandale and Elizabeth Immigration Courts, multiple people that know him have attested to his good character, trustworthiness, and hard-working nature. He had no criminal history in Venezuela. Petitioner is not and has never been a member of [redacted]

29. Petitioner entered the United States in May 2023 and has lived here continuously since then. He settled in Maryland and got a job at a restaurant, where he worked until he was detained.

30. In [redacted] 2024, Petitioner was arrested in Maryland for [redacted] In [redacted] 2024, he entered into a "probation before judgement agreement" under [redacted] for this offense, which does not qualify as a conviction for immigration purposes because it does not satisfy the definition of a conviction under 8 U.S.C. § 1101(a)(48)(A). He attended all required court appearances before and after this agreement.

31. In May 2024, ICE detained Petitioner and served him with a Notice to Appear ("NTA") in Immigration Court. Dkt. No. 13-1. He was detained in Virginia from May 2024 until September 2024 and had his removal proceedings in the Annandale Immigration Court. At no point during these proceedings did ICE ever allege he was involved in the [redacted]

32. Through counsel, Petitioner sought bond from the Immigration Court. In August 2024, the IJ granted Petitioner bond in the amount of $10,000, which required findings that Petitioner was neither a danger to the community nor a flight risk. Dkt. No. 13-2. Petitioner paid the bond and was released from ICE custody in September 2024. He went to live with his longtime friend in Maryland. Petitioner's removal proceedings were transferred to the non-detained docket, for which his next hearing would have been on May 17, 2025.

33. In November 2024, Petitioner was arrested in Maryland for [redacted] He was not jailed for the offense. He appeared in [redacted] as instructed and did not [redacted] Ultimately, he pled guilty to the offense in [redacted] 2025 and was sentenced to two days in jail.

34. [redacted] ICE re-detained Petitioner and sent him to Moshannon Valley Processing Center ("Moshannon"), where his removal proceedings are within the Elizabeth Immigration Court. In April 2025, through counsel, Petitioner moved for bond.

35. The night before the bond hearing was set to occur, DHS submitted to the Immigration Court Petitioner's I-213 "Record of Deportable/Inadmissible Alien," which Petitioner's counsel saw for the first time. The I-213 contains the following two consecutive and irreconcilable lines:

> *"[Petitioner] states that he is not a member of a gang. No gang affiliation is suspected."* Dkt. No. 1-2 at 7.
>
> *"[Petitioner] is suspected to be an associate/member of the* [redacted] *due to his associates and having gang symbols on his vehicle, property and clothing."* Id.

36. Having been unaware of this spurious allegation, Petitioner temporarily withdrew his bond request on April 22 so that he could address the allegation. [redacted] On May 1, Petitioner resubmitted his bond request.

37. The hearing on the bond request occurred on May 13, 2025, before IJ Panopoulos in the Elizabeth Immigration Court. IJ Panopoulos stated at the beginning of the hearing that "it does appear that I have jurisdiction in this case." Ex. 1, Transcript of Bond Proceedings at 1.[2] But DHS counsel argued that the IJ lacked jurisdiction under 8 C.F.R. § 1003.19(h)(2)(i)(C) because ICE claims he is a member of the [redacted] *see infra* ¶ 46, which the Trump Administration designated as a terrorist organization.

38. When IJ asked DHS counsel to explain her position, she stated "I believe that because that has been listed in his I-213, the Government does have reason to believe that he is a member of and affiliated with this gang." Ex. 1 at 2. Petitioner's counsel pointed out the internal inconsistencies within the I-213, namely the immediately preceding sentence stating "[n]o [redacted] affiliation is suspected." [redacted] at 7. DHS counsel argued that this phrase was "alluding to the fact that Respondent indicates he is not a [redacted]" Ex. 1 at 3. Petitioner's counsel then argued that the foundation of this allegation, which DHS counsel did not describe at any point, appears to be that Petitioner owns [redacted] and that he put the [redacted] [redacted] Petitioner vigorously denied any involvement with [redacted]

39. IJ Panopoulos then stated that the "procedures set forth in *Gayle*, they would appear to apply in this case." *Id.* Recognizing that DHS's argument was "highly unusual," he stated that

[2] Immigration counsel for Petitioner arranged for the transcription of the bond hearing, based on the Digital Audio Recording (DAR) provided by the Immigration Court. *See* Ex. 2. Petitioner's counsel will share the DAR with Respondents' counsel upon request and is willing to provide the audio file to the Court through a medium the Court deems appropriate.

"then the question becomes does the bond record have evidence indicating that the bar may apply." *Id.* at 4. IJ Panopoulos found that the I-213 suffices as the government's "evidence" of the bar applying, affording it the "presumption of regularity" and "full faith and credit." *Id.* Later, IJ Panopoulos stated that "given the statements in the I-213, I do believe that that is sufficient as a matter of law in order for DHS to meet that burden of proof indicating that the evidence indicates that that bar would apply in this case." *Id.* at 5. IJ Panopoulos stated that "the burden of proof shift[ed] to [W.J.C.C.] to show by a preponderance of the evidence that the bar does not apply in this case." *Id.* at 4. At no point after making this erroneous finding did IJ Panopoulos give Petitioner's counsel the opportunity to meet this misallocated burden.

40. On May 14, IJ Panopoulos issued a one-page order denying Petitioner's bond application due to "[l]ack of jurisdiction pursuant to 8 C.F.R. 1003(h)(1)(i)(C) ("Aliens described in section 237(a)(4) of the Act")).[3] Dkt. No. 13-9.

41. On May 21, 2025, Petitioner's commissary account at Moshannon was abruptly closed, indicating he would be imminently transferred to another detention center. Dkt. No. 1-2 at 2. Based on this development as well as ICE's [redacted] accusation in the I-213, Petitioner filed an Emergency Motion for Temporary Restraining Order arguing that he was at imminent risk of removal under the AEA without meaningful review. Dkt. No. 2.

42. On May 22, this Court issued a temporary restraining order enjoining Petitioner's removal and blocking his transfer outside of the Western District of Pennsylvania. On June 4, the Court extended the TRO until June 19. Dkt. No. 21. On June 9, Petitioner moved for a preliminary injunction. Dkt. No. 22.

[3] This citation is incorrect. The correct citation, referenced during the bond hearing, is 8 C.F.R. § 1003.19(h)(2)(i)(C).

43. Petitioner's individual hearing on the merits of his application for asylum and similar relief is scheduled for August 6, 2025. Petitioner also has an application for Temporary Protected Status pending with U.S. Citizenship and Immigration Services. Finally, he is awaiting a response to his Freedom of Immigration Act ("FOIA") request for his A-file, which comprises DHS's records pertaining to Petitioner's immigration case.

LEGAL BACKGROUND

Statutes and Regulations

44. 8 U.S.C. § 1226 governs the detention of non-citizens pending their removal proceedings. 8 U.S.C. § 1226(a) provides non-citizens the right to seek bond. 8 U.S.C. § 1226(c) subjects certain non-citizens to mandatory detention without bond. Most of the mandatory detention grounds are based on criminal convictions. *See* 8 U.S.C. § 1226(c)(1)(A)-(C). Meanwhile, 8 U.S.C. § 1226(c)(1)(D) applies to non-citizens who are "inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title," which describe conduct related to terrorism, regardless of the lack of arrest or conviction.

45. 8 U.S.C. § 1226a also governs the "[m]andatory detention of suspected terrorists." To apply, it requires that the Attorney General, who cannot delegate the authority beyond the Deputy Attorney General, certify a specific non-citizen as a terrorist. *See* 8 U.S.C. § 1226a(3)-(4).

46. Regulations issued by the Department of Justice govern bond proceedings in immigration court. The regulations state that "an immigration judge may not redetermine conditions of custody imposed by [DHS] with respect to the following classes of [non-citizens]" and then lists non-citizens "described in section 237(a)(4) of the Act,"[4] 8 C.F.R. § 1003(h)(2)(i)(C).

[4] Throughout this petition, Petitioner cites to the U.S. code corollary for this INA cite, 8 U.S.C. § 1227(a)(4).

47. 8 U.S.C. § 1227(a)(4) describes deportability grounds for terrorism and cross references § 1182(a)(3). 8 U.S.C. § 1182(a)(3)(B) describes grounds of inadmissibility for non-citizens who have "engaged in terrorist activity" or are "member[s] of a terrorist organization." 8 U.S.C. § 1182(a)(3)(B)(i)(I)-(V). Those provisions reference later provisions in the same section, which define "terrorist organization" as an organization "designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization . . ." and "engage in terrorist activity" as a set of activities including "to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity." 8 U.S.C. § 1182(a)(3)(B)(iv)-(vi).

Third Circuit Caselaw

48. In *Gayle*, two non-citizens detained in New Jersey sought habeas relief on behalf of a putative class of non-citizens detained under § 1226(c) while litigating substantial challenges to their removability. 12 F.4th at 326. After an intervening appeal and remand regarding class certification, the U.S. District Court for the District of New Jersey certified the class and granted partial summary judgement in favor of the Plaintiffs, holding that § 1226(c) is not *per se* unconstitutional as applied to the putative class but finding that the government must establish probable cause that a non-citizen is properly detained under § 1226(c). *Id.* at 327. Plaintiffs appealed, challenging the due process holdings and seeking to impose a higher standard of proof on the Government.

49. On appeal, the Third Circuit affirmed the District Court's holding that § 1226(c) does not violate due process, even for those who have a substantial defense to removal, but reversed as to the standard of proof. *Id.* at 330. The Third Circuit held that the "reason to believe"

standard articulated in *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999) is constitutionally inadequate because it "effectively shifts the entire burden of proof onto the detainee." *Gayle*, 12 F.4th at 332. It further held that the "probable cause" standard imposed by the District Court and defended by the government is "too low a bar given the interests at stake." *Id.*

50. Applying the *Mathews* due process analysis, the Third Circuit concluded that "[t]o comport with due process, the Government must show by a preponderance of the evidence that the detainee is properly included within § 1226(c) as both a factual and a legal matter . . . It must show, in other words, that it is more likely than not both that the detainee in fact committed a relevant offense under § 1226(c) and that the offense falls within that provision as a matter of law." *Id.* at 333. *Gayle* remains the governing law of the Third Circuit, and the District Court entered an order consistent with the Third Circuit's opinion earlier this year. *Gayle v. Elwood*, No. 3:12-cv-2806, Dkt. No. 163 (D.N.J. Mar. 5, 2025)

ARGUMENT

51. Petitioner's detention without the opportunity to seek bond violates his due process rights because the IJ did not apply the proper standard before declaring him ineligible for bond.

52. At the May 13 hearing, the IJ clearly misapplied *Gayle*. First, at no point did the IJ state that DHS bears the initial burden of proof to demonstrate a mandatory detention ground by a preponderance of the evidence. Rather, the IJ appears to have applied the traditional "reason to believe" standard from *Joseph*, which *Gayle* expressly found inadequate. *See* Ex. 1 at 4 ("[T]hen the question becomes does the bond record have evidence indicating that the bar may apply."). The IJ then placed the burden on Petitioner to "show by a preponderance of the evidence that the bar does not apply in this case," which is the opposite of what *Gayle* demands. *Id.*

53. Second, the IJ improperly collapsed the two prongs of the *Gayle* analysis into one. *Gayle* makes clear that DHS must first show, by a preponderance of the evidence, that the non-citizen "*in fact committed a relevant offense*" before reaching the legal question of whether "the offense falls within that provision as a matter of law." *Gayle*, 12 F.4th at 333 (emphasis added). The IJ spent several minutes questioning the DHS attorney as to the President's designation of [redacted] as a Tier I terrorist organization and how that designation related to their jurisdictional argument. But *never* did the IJ determine whether Petitioner is actually involved with [redacted] in the first place, nor did he even ask DHS to substantiate its allegation to that effect. Thus, the IJ manifestly failed to hold the government to its burden of proof with respect to the first prong of the *Gayle* analysis.

54. Proving a factual assertion by a "preponderance of the evidence" means proving that it is "more likely than not" to be true. *Gayle*, 12 F.4th at 333; *see also United States v. Simpson*, 113 F. 4th 350, 354 (3rd Cir. 2024) ("The preponderance of the evidence standard simply asks: 'Is it more likely that something happened than not?'"). Before this standard "can be satisfied in the first instance, the factfinder must evaluate the raw evidence, finding it to be sufficiently reliable and sufficiently probative to demonstrate the truth of the asserted proposition with the requisite degree of certainty." *Concrete Pipe and Products of California, Inc. v. Constructions Laborers Pension Trust for Southern California*, 508 U.S. 602, 622 (1993).

55. The "preponderance of the evidence" standard is frequently applied in the context of federal detention hearings. Since the Trump administration began arbitrarily prosecuting Venezuelan non-citizens for illegal entry into the United States under 8 U.S.C. § 1325, numerous federal magistrate judges across the country have found that the government's allegations of [redacted] membership could not justify the prosecuted non-citizens' pretrial detention by a preponderance

of the evidence. *See, e.g., United States v. Mejias-Mejias,* No. 1:25-mj-611, 2025 WL 846435, at *5 (D. Md. Mar. 18, 2025) (ordering pre-trial release of Venezuelan non-citizen alleged to be [redacted] member); *United States v. Ortega-Lopez*, No. 2:25-mj-330, 2025 WL 1263710, at *3 (D.N.M. May 1, 2025) (initially finding that government did not meet burden to justify detention of alleged [redacted] member based on photos from social media).

56. A single sentence in a document produced by ICE comes nowhere close to meeting the "preponderance of the evidence" standard. Here, that sentence appears in the Form I-213, "Record of Deportable/Inadmissible Alien." The I-213 serves as a record of a person's apprehension by immigration authorities and is akin to an arrest report issued by a police officer. Like an arrest report, an I-213 is created early in the course of investigation and is not generated by a neutral arbiter.

57. Numerous courts have questioned the reliability of such arrest documents. S*ee, e.g., Olivas-Motta v. Holder*, 746 F.3d 907, 918–19 (9th Cir. 2013) (Kleinfeld, J., concurring) ("It has long been clear that police reports are not generally reasonable, substantial, and probative evidence of what someone did" and "something as potentially inaccurate as a police report cannot be clear and convincing evidence") (internal quotations omitted); *Prudencio v. Holder*, 669 F.3d 472, 483–84 (4th Cir. 2012) (Police reports "often contain little more than unsworn witness statements and initial impressions" and "because these submissions are generated early in an investigation, they do not account for later events, such as witness recantations, amendments, or corrections."); *Garces v. U.S. Att'y Gen.*, 611 F.3d 1337, 1350 (11th Cir. 2010) ("Absent corroboration, the arrest reports by themselves do not offer reasonable, substantial, and probative evidence"); *Banat v. Holder*, 557 F.3d 886, 891 (8th Cir. 2009) ("Reliance on reports of investigations that do not provide sufficient information about how the investigation was conducted are fundamentally

unfair."); *Francis* v. *Gonzales*, 442 F.3d 131, 143 (2d Cir. 2006) (RAP sheets are products of "agencies whose jobs are to seek to detect and prosecute crimes" and thus "do not necessarily emanate from a neutral, reliable source"); *United States v. Bell*, 785 F.2d 640, 644 (8th Cir. 1986) (Police reports are "inherently . . . subjective" given the "personal and adversarial" relationship between police officers and those whom they arrest and are therefore not "reliable evidence of whether the allegations of criminal conduct they contain are true"); *Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995) ("[W]e are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein.").

58. While the IJ referred to typically giving I-213s the presumption of reliability under agency precedent, *see* Ex. 1 at 4, any such presumption is easily overcome here. The document itself contains contradictory information, asserting both that "[n]o gang affiliation is suspected" and on the next line that Petitioner "is suspected to be an associate/member of the [redacted]" Dkt. No. 1-2 at 7. It also states both that Petitioner had "submitted an I-589 Asylum Form"—which is a form used to assert a fear of return to one's native country— and that he "does not a claim fear of returning to Venezuela." *Id.* at 6-7. The document is contradictory on its face and thus patently unreliable.

59. Moreover, even one presumptively reliable document is insufficient to meet the heavy burden of showing [redacted] membership by a preponderance of the evidence. After all, the Supreme Court has been quite clear that the words of an unnamed source are insufficient to meet even the probable cause standard, let alone the higher preponderance of the evidence standard applicable here. *Illinois v. Gates*, 462 U.S. 213, 239 (1983) (An officer's statement that he "received reliable information from a credible person" does not provide probable cause to issue a warrant.). Instead, to meet the lower probable cause standard, the adjudicator must be able to

independently judge the credibility of the information and reliability of the information provided. *United States v. Harris*, 403 U.S. 573, 600 (1971).

60. The statement in the I-213 that Petitioner "is suspected to be an associate/member of the [redacted] due to his associates and having gang symbols on his vehicle, property and clothing" does not even indicate *who* suspects that he is a [redacted] member, nor does it explain *what* gang symbols allegedly were on his vehicle, property and clothing, nor does it explain *how* the declarant knows that those symbols are associated with the [redacted] This unnamed source providing no information upon which a neutral adjudicator might be able to independently judge its reliability is simply insufficient to meet even the lower probable cause standard, let alone the higher preponderance of the evidence standard.

61. Moreover, reliance on the I-213 to meet the preponderance of the evidence standard infringes on Petitioner's constitutional and statutory right to cross-examine adverse witnesses. *See* 8 U.S.C § 1229a(b)(4) ("[T]he [non-citizen] shall have a reasonable opportunity to examine the evidence against the [non-citizen], to present evidence on the [non-citizen]'s own behalf, and to cross-examine witnesses presented by the Government . . ."); *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) ("In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses."). "If a petitioner is not able to examine the evidence against him, to present evidence on his own behalf, or to cross-examine witnesses to the extent of his statutory rights under 8 U.S.C § 1229a(b)(4), then he has failed to receive a full and fair hearing consistent with due process." *Rusu v. I.N.S.*, 296 F.3d 316, 321 n.7 (4th Cir. 2002) (citing *Jacinto v. INS*, 208 F.3d 725, 727-28 (9th Cir. 2000)). Where, as here, DHS fails to even make the author of the I-213 available for cross-examination,

the I-213 cannot serve as the basis for a finding that the government has shown by a preponderance of the evidence that the Petitioner is a member of TdA.

62. Accordingly, the procedures employed at Petitioner's May 13 hearing, including the IJ's failure to hold the government to its burden of proving by a preponderance of the evidence that Petitioner was properly included in the class of people ineligible for bond due to being a [redacted] member, violated Petitioner's due process rights. And his continued detention as a result of this flawed hearing violates his due process rights.

63. Petitioner does not ask this Court to independently determine whether he is in fact a [redacted] member. Rather, he asks merely for a constitutionally adequate hearing at which the government must prove this allegation by a preponderance of the evidence in order to render him ineligible for bond. Otherwise, based solely on ICE's unsubstantiated allegation, Petitioner will remain detained without any evaluation of whether he is a danger to the community or flight risk.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Violation of Due Process Under the Fifth Amendment With Respect to Petitioner's Imminent Removal under Alien Enemies Act

64. In denying Petitioner meaningful procedural protections to challenge and prevent his imminent removal, the Proclamation violates due process. U.S. Const. amend. V.[5]

65. Consistent with his due process rights, Petitioner must receive adequate notice and an opportunity to be heard before he is removed under the AEA.

[5] This claim has been briefed extensively in Petitioner's Memorandum in Support of Motion for Temporary Restraining Order, Dkt. No. 3, and Memorandum in Support of Motion for Preliminary Injunction, Dkt. No. 23.

SECOND CLAIM FOR RELIEF

Violation of Due Process Under the Fifth Amendment With Respect to Petitioner's Detention Without Bond

66. At Petitioner's May 13 hearing, the IJ did not require the government to meet its burden of proof before subjecting Petitioner to mandatory detention without bond.

67. Thus, Petitioner's continued detention without any evaluation of whether he poses a danger or flight risk violates the Due Process Clause.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Declare that Respondents' implementation of AEA removals pursuant to the Proclamation violates Petitioner's due process rights;

(2) Enjoin Respondents from removing Petitioner pursuant to the Proclamation without adequate notice and an opportunity to be heard;

(3) Declare that the procedures employed at Petitioner's May 13 hearing violated his due process rights;

(4) Order that Petitioner receive a constitutionally adequate hearing at which 1) the government must prove by a preponderance of the evidence that Petitioner is a member of a terrorist organization or engaged in terrorist activity *and* that Petitioner is ineligible for bond as a matter of law; 2) that if the government cannot satisfy this burden, the IJ must determine whether Petitioner is a flight risk or danger to the community; and 3) that if the IJ finds that Petitioner is not a flight risk or danger to the community, he must be released from Respondents' custody.

(5) Grant such further relief as the Court deems just, equitable, and appropriate.

Dated: June 11, 2025

Respectfully submitted,

/s/ *Ian Austin Rose*
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Pro bono Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, W.J.C.C., and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: June 11, 2025

Respectfully submitted,

s/ Ian Austin Rose

Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this First Amended Petition for a Writ of Habeas Corpus and all attachments using the CM/ECF system, which will electronically serve the filing on counsel for Respondents, the U.S. Attorney's Office for the Western District of Pennsylvania.

Dated: June 11, 2025

Respectfully submitted,

s/ Ian Austin Rose

Pro Bono Counsel for Petitioner