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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Alexis Jesus Rojas Medina Petitioner, v. John MATTOS, Warden, Nevada Southern Detention Center; Jason KNIGHT, Acting Las Vegas/Salt Lake City Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE)) Joseph B. EDLOW, Director, USCIS; Kristi NOEM, Secretary, United States Department of Homeland Security, Pamela BONDI, Attorney General of the United States; Daren K. Margolin Director, Executive Office for Immigration Review Respondents.	PETITION FOR WRIT OF HABEAS CORPUS AND FEDERAL TORT CLAIM Case No. Agency Case Number: A[redacted]

I. INTRODUCTION

1. Utah Counsel are licensed to practice in and reside in Utah. Their applications for admission to the U.S. District Court of Nevada have been filed and are pending.

2. Petitioner Alexis Jesus Rojas Medina resided in Utah and retained counsel for both criminal defense and immigration matters prior to having been arrested and transported by Immigration and Customs Enforcement (ICE) to Nevada for detention because ICE does not have a detention facility in Utah.

3. Petitioner was forced to retain counsel for criminal defense when he was mistakenly arrested by Utah law enforcement officials for a crime committed by his twin brother.

4. After establishing the mistaken identity, Petitioner was released and exonerated by Utah law enforcement. *See* Exhibit B. Order to Dismiss with Prejudice. ("Alexis Jesus Rojas Medina is not the offender in this matter, having been mistaken for his twin brother and arrested in his place. Alexis Jesus Rojas Medina has not committed the alleged offenses in the Information in this matter.")

5. Thereafter, in flagrant violation of 8 U.S.C. 1254a(d)(4) ICE officials detained Petitioner.

6. Defendants detained Petitioner in direct violation of the law, despite their explicit knowledge and recognition that A) Petitioner had no criminal convictions and B) Petitioner held a valid grant of Temporary Protected Status. *See,* Exhibit A. (TPS Approval Notice 4/23/2025 to 10/02/2026) and Exhibit D (Sworn Affidavit of John K. West, Esq.)

7. Petitioner is a presently detained by ICE at the Nevada Southern Detention Center.

8. Petitioner, by and through the above-named counsel of record, submits this Petition for Writ of Habeas Corpus against the above-named Respondents for unlawful detention in contravention of the laws and Constitution of the United States.

II. JURISDICTION

9. Petitioner is in the physical custody of Respondents, detained at the Nevada Southern Detention Center in Pahrump, Nevada.

10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the United Sates Constitution (the Suspension Clause).

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*, and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

12. Pursuant to *Burden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court of Nevada, the judicial district in which Petitioner is currently detained. Thus, a resident of Utah and an attorney who resides in Utah are forced to file this action in Nevada solely because ICE moved the Petitioner from Utah to Nevada.

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in Nevada.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondent must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative relief in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

V. PARTIES

16. Petitioner Alexis Jesus Rojas Medina is a citizen of Venezuela who has been in immigration detention since September 9, 2025. After arresting Petitioner in Salt Lake City, Utah, ICE transferred Petitioner to the Nevada Southern Detention Center on September 11, 2025.

17. Respondent John Mattos is employed by CoreCivic as Warden of the Nevada Southern Detention Center, where Petitioner is detained. Mr. Mattos has immediate physical custody of Petitioner. He is sued in his official capacity.

18. Respondent Jason Knight is the Acting Director of the Las Vegas Field Office of ICE's Enforcement and Removal Operations Division. As such, Mr. Knight is responsible for Petitioner's detention and removal. He is sued in his official capacity.

19. Respondent Joseph B. Edlow is the Director of United States Citizenship and Immigration Services (USCIS). As such, Mr. Edlow is responsible for application and enforcement of Temporary Protected Status (TPS). He is sued in his official capacity.

20. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA) and oversees ICE, which is responsible for Petitioner's detention, and USCIS, which is responsible for administering Temporary Protected Status (TPS).

21. The Department of Homeland Security (DHS) is the principal federal department responsible for implementing and enforcing the INA, including the detention and removal

of noncitizens. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

22. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review (EOIR) and the immigration court system operate as a component agency. She is sued in her official capacity.

23. Respondent Daren K. Margolin is the Director of the Executive Office for Immigration Review (EOIR), which is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redetermination in bond hearings and appeals thereof. Mr. Margolin is sued in his official capacity.

VI. SUMMARY OF FACTS AND PROCEEDINGS

24. Petitioner, Mr. Rojas Medina, is a national of Venezuela. Following years of persecution because of his political activity against the Maduro regime – persecution that included being shot by government-sanctioned paramilitary forces and unlawful detention and injury at the hands of Venezuelan National Guard – Mr. Rojas Medina left Venezuela in 2018, ultimately coming to the United States, where he entered without a visa on August 14, 2022. (*See* Exhibits E & F.)

25. On August 14, 2022, shortly after his entry without inspection, Mr. Rojas Medina was detained by U.S. Immigration Authorities. (Exhibit F.)

26. Although those Immigration Authorities had the legal authority to immediately place Mr. Rojas Medina in Expedited Removal proceedings pursuant to 8 U.S.C. § 1225 (b)(1), they made a different choice.

27. Rather than placing Petitioner in Expedited Removal proceedings, the U.S. Immigrations and Customs officials who detained Mr. Rojas Medina on August 14, 2022, instead chose to release him into the United States with a parole document valid for one year. (Exhibit F).

28. Mr. Rojas Medina thereafter applied for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act.

29. The Department of Homeland Security (DHS), U.S. Citizen and Immigration Services (USCIS), granted Mr. Rojas Medina TPS status on April 23, 2025, delivering him a form I-797A Notice of Action indicting that his TPR status is valid from April 23, 2025, to October 2, 2026. Exhibit A.

30. On August 26, 2025, Utah police, confusing Mr. Rojas Medina for his twin brother, arrested him and booked him into Salt Lake County jail on charges of aggravated assault and domestic violence in the presence of a child. (*See* Exhibits B & C).

31. Ms. Margin Marin Rodriguez, Mr. Rojas Medina's domestic partner retained criminal counsel, Jeremy Deus. Exhibit C.

32. Mr. Deus advised the Judge of Utah's Third District Court, and the Salt Lake District Attorney's office of the mistaken identity. Exhibit C.

33. Following a brief investigation, those officials agreed with Mr. Deus that Mr. Rojas Medina's arrest was, in fact, a case of mistaken identity. The actual suspect in the criminal case was Mr. Rojas Medina's twin brother, Alexander Jesus Rojas Medina, who also lives in Utah. Exhibit C.

34. Because Mr. Rojas Medina and his brother share the same birth date, very similar names, and had recently resided at the same address in Salt Lake City, police had filed the charges against the wrong brother. Exhibit C; Exhibit B.

35. The Salt Lake District Attorney's office notified Salt Lake Third District Court of the case of mistaken identity, and District Court Judge Coral Sanchez issued an order on September 7, 2025, dismissing with prejudice all charges against Mr. Rojas Medina. A written order issued on September 17, 2025, declared, in part: "Alexis Jesus Medina Rojas is not the offender in this matter, having been mistaken for his twin brother and arrested in his place. Alexis Jesus Rojas Medina has not committed the alleged offenses in the Information in this matter." (*See* Exhibit B).

36. Despite the Utah Third District Court's order dismissing all charges against Mr. Rojas Medina, he was not released from Salt Lake County Jail on Friday, September 7, 2025, as Judge Coral Sanchez had ordered. Exhibit D.

37. Instead, on Tuesday, September 9, 2025, ICE officers took custody of Mr. Rojas Medina from Salt Lake County Jail. Exhibit D.

38. Attorney John K. West from Stowell Crayk, PLLC, immediately reached out to ICE contacts in Salt Lake City to inquire about Mr. Rojas Medina's detention and inform ICE that (1) all charges against Mr. Rojas Medina had been dismissed, as his arrest had been a case of mistaken identity, and (2) that he held valid TPS status. (*See* Exhibit D).

39. Because he is in valid TPS status, ICE is statutorily prohibited from detaining Mr. Rojas Medinas. 8 U.S.C. § 1254a (d)(4) states: "an 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."

40. An ICE official in Salt Lake City acknowledged to attorney West that ICE was aware Mr. Rojas Medina was not his brother, the actual suspect of the alleged charges, and that ICE was equally aware that Mr. Rojas Medina had valid TPS status. (*See* Exhibit D).

41. Nevertheless, the ICE official advised Mr. West that they would be detaining Mr. Rojas Medina and transporting him to the Nevada Southern Detention Center. *Id.*

42. Thereafter (on September 9, 2025), ICE issued Mr. Rojas Medina a Notice to Appear (NTA), and filed it with the Immigration Court, directing him to appear before an immigration judge in Las Vegas, Nevada, on October 15, 2025. (*See* Exhibit G).

43. Mr. Rojas Medina was transferred by ICE on September 11, 2025, to the Nevada Southern Detention Center, where he remains detained.

44. On information and belief, Petitioner alleges that *despite* ICE's explicit recognition that Mr. Rojas Medina had been legally cleared of all charges, (Exhibit D), ICE officials deliberately forwarded inaccurate and misleading arrest information to USCIS.

45. The basis for the above assertion is that on September 11, 2025, DHS processed a notice to Mr. Rojas Medina informing him of USCIS's decision to withdraw his TPR status on the basis of the criminal charges referenced above in paragraph 29, namely one count of aggravated assault, two counts of domestic violence in the presence of a child, and one count of destruction of property. (Exhibit J).

46. As stated previously, all of these charges were dismissed with prejudice by the court on September 7, 2025, based on a definitive factual finding that Mr. Rojas Medina did not commit the offenses, which are instead properly alleged to have been committed by his twin brother. (*See* Exhibit B).

47. 8 U.S.C. § 1254a authorizes Temporary Protected Status. Once granted, "USCIS may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon occurrence of any of the following: (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status." 8 CFR § 244.14(a)(1).

48. Mr. Rojas Medina has not been convicted of any felony or 2 or more misdemeanors in the United States.

49. Mr. Rojas Medina has been granted lawful TPS status, and ***no lawful basis exists*** for the termination of that lawful TPS status.

50. Petitioner's counsel on September 24, 2025, filed a form I-290B Notice of Appeal or Motion to the Department of Homeland Security asking DHS to reconsider its decision to withdraw Mr. Rojas Medina's TPS status because DHS's action was made without legal justification and constituted plain error.

51. Also on September 11, 2025, (the day Petitioner was transported to Nevada Southern Detention Center) ICE-OPLA filed a Motion to Dismiss/Terminate the Removal Proceedings under INA 240 that they had initiated two days before. (Exhibit H).

52. Although the immigration court order declares that the motion was unopposed by the respondent, Mr. Rojas Medina was in the process of being transported from Salt Lake City to Nevada at the time of the order, and he has advised his family that no one ever asked him whether he objected to DHS's Motion to Dismiss.

53. Nor was Mr. Rojas Medina provided with an opportunity to consult with counsel at any point during his detention in Salt Lake City, prior to being transported to Nevada.

54. The Immigration Judge immediately signed the proposed order Dismissing Removal Proceedings against Mr. Rojas Medina. (*See* Exhibit H)

55. Petitioner's counsel filed an appeal of the September 11, 2025, immigration court order granting DHS's Motion to Dismiss with the Board of Immigration on October 1, 2025. (*See* Exhibit I), due to the complete lack of due process embodied in the government's utter failure to provide Mr. Rojas Medina an opportunity to consult with counsel and respond to the government's Motion to Dismiss.

56. Subsequent to the September 11, 2025, dismissal order, Mr. Rojas Medina informed Petitioner's counsel that DHS was allegedly intent on processing him for expedited removal, notwithstanding the fact that Mr. Rojas Medina has been present continuously in the United States for more than two years, AND is presently in valid TPS status, rendering him ineligible for expedited removal.

57. Petitioner also reported to his wife that officials at the detention center have told him that he would not be granted a credible fear interview, as mandated by law in expedited removal actions, for "two to three months." Petitioner also said that officials and other inmates have reported to him that other detainees who have passed their credible fear interviews, meaning that the interviewing office found a credible fear, have nonetheless been sent to Mexico to await processing of their asylum/withholding of removal petitions there. (*See* Exhibit E).

58. Most recently, on October 15, 2025, Petitioner reported to counsel that he was served with a new Notice to Appear, dated October 9, 2025, informing him that ICE was again initiating a removal action against him under INA Section 240, despite the fact that Petitioner has a pending appeal of the Immigration Court's September 11, 2025, decision

dismissing the previous 240 removal action. Because Petitioner does not read English, he was not able to provide full details about the contents of the new NTA, though he indicated that he was ordered to appear before an Immigration Judge in November.[1]

59. Due to the Defendants' malfeasance and incompetence, Petitioner has been detained without bond, in violation of the law with no lawful or valid basis for his detention, since September 9th.

60. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released immediately from DHS detention, as he is presently detained in direct violation of the law.

VII. LEGAL FRAMEWORK
A. TEMPORARY PROTECTED STATUS (TPS)

61. 8 U.S.C. § 1254(a)(1)(A) states that Attorney General of the United States "may grant the alien temporary protected status in the United States and shall not remove the alien from the United States during the period in which such status is in effect."

62. 8 U.S.C. § 1254a (d)(4) states: "An 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."

63. 8 CFR § 244.14(a)(1) states that, once granted, "USCIS may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon

[1] Petitioner's counsel has sought specifics on the Executive Office for Immigration Review's Case Portal website. Unfortunately, the new NTA has not yet been uploaded to the Electronic Record of Proceedings. That electronic system does show that a new charging document was filed on October 9, 2025, although it is uncertain whether the Immigration Court legally can or will accept a new Notice to Appear where a prior Notice to Appear was already filed and remains pending.

occurrence of any of the following: (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status."

64. Pursuant to 8 U.S.C. §1254(a)(c)(2)(B)(i), aliens are not eligible for TPS if the Attorney General finds that "the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States."

65. Mr. Rojas Medina has not been convicted of any felony or 2 or more misdemeanors in the United States, nor has he failed to comply with or violated any other terms that would make him ineligible for TPS status.

66. The government's initial and continued detention of Mr. Rojas Medina has been, throughout, a knowing and explicit violation of 8 U.S.C. 1254(d)(4).

67. The affirmative and deliberate actions of the Defendants and their employees, in affirmatively intervening to notify USCIS of Petitioner's arrest, while failing to clarify the mistaken nature of that arrest and the complete lack of factual support for the allegations against Petitioner, constitutes official government action taken in knowing and explicit violation of the law.

68. USCIS' abrupt termination of Petitioner's Temporary Protected Status, without basis in law or fact, without any notice or opportunity to rebut the false allegations, is an arbitrary and capricious agency action, a clear violation of the law and of Petitioner's constitutional right to due process of law.

B. CIVIL DETENTION PROVISIONS OF THE INA

69. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

70. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V.

71. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law").

72. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 678.

73. The Supreme Court, thus, "has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); see also *Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

74. In 1996, acting within the recognized constraints of constitutional due process, Congress rebalanced and codified three explicit detention regimes for noncitizens. Illegal

Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. 1., No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

75. First, as found in 8 U.S.C. § 1225, the statute provides for detention without bond of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other arriving aliens.

76. Second, 8 U.S.C. § 1226 authorizes the issuance of administrative warrants for the detention of noncitizens for standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a.

77. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).

78. This case concerns the detention provisions at §§ 1225 and 1226.

79. The detention provisions at § 1226 and § 1225 were enacted as part of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) of 1996, Pub. 1., No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

80. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 State. 3 (2025).

81. Following enactment of IIRIRA, EOIR drafted new regulations establishing that, in general, people who entered the country without inspection were not subject to the border detention regime of § 1225 and that they were instead subject to the detention provisions of § 1226. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

82. Individuals arrested and detained pursuant to the procedures of § 1226 are presumed to be entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes, in which case they are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

83. The regulations published at 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997) were consistent with the constitutionally reviewed procedures of decades of prior practice, in which noncitizens present in the U.S.—noncitizens who were not "arriving aliens" as defined at 8 C.F.R. § 1001.1(q)—were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see* also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1251(a)).

84. Those regulations are consistent with the record of Congressional intent, as documented in the Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, Part I (March 4, 1996) and in the Report of the Conference Committee, Report No. 104-828 (September 24, 1996).

85. The Congressional record shows that Congress was very aware during the drafting of IIRIRA of the constitutional parameters within which they were working. That includes the robust precedent establishing that persons present in the U.S., regardless of their manner of entry, are constitutionally entitled to due process of law, including when they are subject to civil detention. See, e.g., *Yick Wo v. Hopkins*, 118 U.S. 356, (1886); *Yamataya v. Fisher*, 189 U.S. 86 (1903); *Plyler v. Doe*, 102 S. Ct. 2382 (1982).

86. In the decades that followed implementation of IIRIRA, the common interpretation of the law was that 8 U.S.C. § 1226 applied to nearly everyone who entered the United States

without inspection, because individuals who entered the United States without inspection are not arriving aliens, because they never actually apply for admission at a port of entry. *See, e.g., Pelico v. Kaiser,* 25-cv-07286-EMC Order Granting Motion for Preliminary Injunction at 5-7 (N.D. Cal. Oct 03, 2025). ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In fact, the government has conceded in other contexts that "DHS's long-standing interpretation has been that 1226(a) [discretionary detention] applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended." Dkt. No. 17 (citing Solicitor General, Transcript of Oral Argument at 44:24-45:2, Biden v. Texas, 597 U.S. 785 (2022) (No. 21-954)).)

87. As a result, individuals like the Petitioner, detained on the U.S. border after having entered the U.S. without inspection, were routinely arrested pursuant to 8 U.S.C. § 1226, placed in standard removal proceedings and given bond hearings, unless their criminal history rendered them ineligible.

88. That practice was consistent with many more decades of prior practice, in which noncitizens who were not "arriving aliens" as defined at 8 C.F.R. § 1.2 and 1001.1(q) were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1251(a)).

89. Despite the regulations and the nearly three decades of practical implementation, DHS, on July 8, 2025, published a notice titled "Interim Guidance Regarding Detention Authority for Applicants for Admission." The notice was disseminated internally, to all ICE employees. Exhibit K.

90. As noted in *Vasquez v. Feeley, supra, note 1* ftnt 2: "The memo was leaked to the American Immigration Lawyers Association ("AILA"). *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, AILA Doc. No. 25071607 (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regardingdetention-authority-for-applications-for-admission *[https://perma.cc/5GKM-JYGX]*.

91. Judge Boulware describes the contents of this notice as follows:

> The Notice indicated that DHS, in coordination with the DOJ, 'revisited its legal Position' on the INA and determined that § 1225(b)(2), rather than § 1226, is the applicable immigration authority for any alien present in the U.S. 'who has not been admitted. . . whether or not at a designated port of arrival.' Accordingly, 'it is the position of DHS that such aliens are subject to [mandatory] detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.' The Notice further provides '[t]hese aliens are also ineligible for a custody redetermination hearing (bond hearing) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that 'arriving aliens' have historically been treated.'

Vasquez v. Feeley, supra note 1, pp 8-9.

92. As Judge Boulware also noted in *Vasquez*, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision, *Matter of Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025). In that precedent decision, the Board of Immigration Appeals formally agreed with the statutory interpretation as laid out in the July 8, 2025, ICE memo.

93. In other words, as of September 5, 2025, despite the conflicting regulatory language, express Congressional intent, and long-standing constitutional due process requirements, it is now the explicit legal position of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) that all non-citizens present within the United States who have not been lawfully admitted are subject to mandatory detention without bond, regardless of the length of their physical presence or their ties to the United States.

94. Notwithstanding his TPS status, his original entry without inspection, the government's explicit choice--after initially detaining him near the border in August 2022—to *not place him in expedited removal proceedings*, and instead to release him into the U.S. with a parole document, Petitioner is presently detained without bond, based on this new government policy and legal interpretation of 8 U.S.C. § 1225(b)(2)(A) mandating that all non-citizens present within the United States without lawful admission be detained without bond.

95. As Judge Boulware noted in *Vasquez* at 10-11, "since the July 8, 2025, DHS Guidance Memo, Petitioner asserts most IJs in Las Vegas have rejected DHS' new interpretation of 1225(b)(2), and instead found jurisdiction under 1226(a)" *Id.* at 10-11.

96. Furthermore, it has become clear that Immigration Judges, following the BIA decision in *Yajure Hurtado*, are no longer authorized by their superiors within EOIR to grant bonds to individuals in Petitioners' factual circumstances.

C. CONSTITUTIONAL DUE PROCESS

97. In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that

risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976).

98. As to the first *Mathews* factor, the private interest affected by the government action, "Petitioner's liberty interest in remaining free from governmental restraint is of the highest constitutional import." *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 (same) (quoting *St. John v. McElroy*, 917 F.Supp. 243, 250 (S.D.N.Y. 1996)). Petitioner has been detained for several weeks, preventing him from seeing and supporting his partner and child, from working, and otherwise participating in his community.

99. As to the second *Mathews* factor, this Court must look to the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards. As explained above, the current procedures have resulted in an erroneous deprivation of Petitioner's liberty interest in remaining free from detention.

100. DHS has offered no evidence or rationale for why Petitioner's detention is necessary to protect an interest of the government.

101. As to the third *Mathews* factor, the government's interest in maintaining the "current" procedure is minimal here. This "policy and procedure" has not been officially published by DHS and was only discovered by press observation of an intraoffice memo issued on July 8, 2025. (*See* Exhibit K)

102. In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show prejudice. "To show prejudice, [a Petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).

103. Had ICE never detained Petitioner, recognizing his TPS status, and had ICE and the Immigration Court not dismissed the Notice to Appear to initiate expedited removal proceedings, Petitioner would have had, at a minimum, access to immigration court procedures to seek bond under the review of an immigration judge. And, given the absence of any criminal record, the IJ would certainly have found that he did not represent a danger to the community and would have granted bond.

104. Petitioner has no other forum in which to seek judicial review of the constitutional and legal issues raised by his detention and his continued detention on the basis of Defendants' actions, memos, and decisions.

105. In this case, Petitioner has relied in good faith on the prior actions taken by DHS to release him into the U.S., and thereafter to grant him TPS, the conditions of which he has not violated.

106. The ex post facto application of DHS' new policies and legal interpretations to subject Petitioner to mandatory detention and expedited removal are a clear violation of Petitioner's constitutional rights to due process and freedom from ex post facto law.

107. Moreover, Petitioner remains in removal proceedings pursuant to 8 U.S.C. § 1229a, pending his appeal to the Board of Immigration Appeals of the Immigration Judge's Order Dismissing the Notice to Appear filed against him in those proceedings.

108. Should the BIA uphold the IJ's Order Dismissing the Notice to Appear in § 1229a or INA 240 proceedings, there is not now, and may never be, a final order of removal against him for a Court of Appeals to subject to judicial review via a Petition for Review pursuant to 8 U.S.C. § 1252.

109. This forum may therefore be Petitioner's sole avenue for judicial review of DHS' ex post facto application of this administration's orders and policy changes to reconsider and unilaterally readjudicate, with no change in Petitioner's circumstances, the procedural choices the government made in 2022, when he was initially detained and released.

110. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas at* 690.

111. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released immediately.

112. This petition is therefore Petitioner's sole means of seeking judicial review of DHS' unconstitutional actions and legal claims in this matter.

CLAIMS FOR RELIEF

COUNT I
Unlawful Withdrawal of TPS Status

113. Petitioner incorporates by reference the facts and law set forth in the preceding paragraphs.

114. As noted above, USCIS granted Mr. Rojas Medina TPS on April 23, 2025, valid through October 2, 2026, provided Mr. Rojas Medina did not engage in behavior that would otherwise make him ineligible for TPS, in the discretion of DHS. (Exhibit A).

115. In its September 11, 2025, letter informing Mr. Rojas Medina of its decision to withdraw his TPS status, USCIS relied on charges of domestic violence to justify its decision to reverse its decision to exercise discretion in granting Petitioner TPS status. (Exhibit J).

116. However, the Utah Third District Court, acting on motion of the Salt Lake District Attorney, dismissed those charges with prejudice, declaring in its order that Mr. Rojas Medina definitively did **not** commit the charged offenses and finding that his twin brother, Alexander Jesus Rojas Medina, is the person appropriately charged with the offenses. (*See* Exhibit B)

117. Given the fact that Mr. Rojas Medina categorically did not commit the alleged offenses nor engage in the alleged dangerous behavior that USCIS relied upon to withdraw his TPS status, there exists no basis to revoke his TPS status, and USCIS's decision to withdraw his TPS status constitutes plain error. 8 U.S.C. § 1254(a)(c)(2)(B)(i).

118. Moreover, DHS was aware prior to making that decision that Mr. Rojas Medina did not commit the alleged offenses that formed the basis of its decision to withdraw his TPS status. Exhibit D.

119. As explained above, Attorney John West spoke with an official in ICE's Salt Lake City office on September 9, 2025, just after Mr. Rojas Medina was taken into ICE custody, and informed the official that the Third District Court has dismissed the charges against Mr. Rojas Medina and found that he was charged in a case of mistaken identity. The ICE official responded, after saying she consulted with assigned ICE officers and attorneys, that ICE knew Mr. Rojas Medina's identity and were aware that he was not his brother. Nonetheless, ICE apparently either did not share that information with other offices within DHS, like USCIS, or all parties within DHS involved in this matter simply failed

to investigate this exculpatory information prior to rushing to detain Mr. Rojas Medina and withdraw his TPS status unlawfully. (*See* Exhibit D).

120. Regardless, it is clear that under the law USCIS has, in fact, no legal justification for withdrawing Mr. Rojas Medina's TPS status. And, because Mr. Rojas Medina's TPS status was lawfully granted until October 2, 2026, he cannot "be detained by the Attorney General on the basis of [his] immigration status in the United States." 8 U.S.C. § 1254a(d)(4).

121. For these reasons, Petitioner's detention is unlawful as violative of his legal rights as a holder of Temporary Protected Status.

COUNT II

Unconstitutional and Ultra Vires Application of 8 U.S.C. § 1225(b)(2)(A) and Governing Regulations Regarding Mandatory Detention

122. Petitioner incorporates by reference the facts and law set forth in the preceding paragraphs.

123. Petitioner entered the United States without inspection. He has been present within the United States for more than two years.

124. Petitioner was issued a Notice to Appear in removal proceedings pursuant to 8 U.S.C. § 1229a, which was subsequently dismissed by the IJ in advance of the Petitioner being placed into expedited removal proceedings. Exhibits H; Exhibits I.

125. Respondents' novel interpretation of 8 U.S.C. § 1225(b)(2)(A) as authority for now detaining Petitioner without bond violates the regulations and is an unconstitutional interpretation of the statutory language, without basis in prior precedent or the record of Congressional intent.

COUNT III

Violation of the Fifth Amendment Right to Due Process of Law

126. Petitioner restates and realleges all paragraphs as if fully set forth here.

127. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d. 653 (2001).

128. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

129. The Ninth Circuit has also held that "[r]emaining confined in jail when one should otherwise be free is an Article III injury plain and simple[.]" *Gonzalez v United States Immigr. & Custome Enf't.* 975 F.3d 788, 804 (9th Cir. 2020) (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)).

130. Petitioner has a fundamental interest in liberty and being free from official restraint.

131. The Government's continued detention of Petitioner, without bond or even access to request bond, is a clear violation of his constitutional right to due process under the law.

132. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

133. Respondents' continued detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the

noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

134. There is no credible argument that this Petitioner—who has no criminal record—cannot be safely released back to his community and family.

135. For these reasons, continued detention of Petitioner violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter.

b. Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately based on his legal protection as a holder of Temporary Protected Status against detention based on his immigration status.

c. Declare that the Petitioner's re-detention by ICE without any showing of changed circumstances or individualized determination of danger or flight risk violates the Due Process Clause of the Fifth Amendment.

d. Declare that the Respondents' retroactive application of the January 2025 Designation to Petitioner and application of expedited removal action against the Petitioner are illegal and unconstitutional.

e. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval.

f. Issue an Order temporarily restraining Respondents from subjecting Petitioner to the Credible Fear process of 8 U.S.C. § 1225, until such time as this case and the issues it presents are adjudicated on the merits.

g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under the law; and

h. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 15th day of October, 2025.

STOWELL CRAYK PLLC

/s/ Marti L. Jones
Attorney for Petitioner

GARIN LAW GROUP

/s/ Kaleb D. Anderson
Attorney for Petitioner

EXHIBIT LIST

A. USCIS Approval Notice I-797A Granting TPS, dated April 23, 2025

B. Third District Court Stipulated Amended Order to Dismiss with Prejudice, dated September 17, 2025

C. Utah Court Docket

D. John West Affidavit, dated September 30, 2025

E. Affidavit of Margin Marin Rodriguez.

F. DHS Immigration Entry Documents

G. DHS Form I-862, Notice to Appear, dated September 9, 2025

H. EOIR Salt Lake City Immigration Court Order on Motion to Dismiss, dated September 11, 2025

I. EOIR-26, Notice of Appeal from a Decision of an Immigration Judge, dated October 1, 2025

J. I-290B Motion to Reconsider/Reopen

K. USCIS Notice of Intent to Withdraw TPS.

L. Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025)

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