UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

GUSTAVO A. GOMEZ CARRERO,

Petitioner,

v.

TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement;
JASON STREEVAL, Warden, Stewart Detention Center; and
GEORGE STERLING, Atlanta Field Office Director, U.S. Immigration and Customs Enforcement,

Respondents.

C.A.F.N._____
Agency # [redacted]

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

Petitioner Gustavo A. Gomez Carrero, through undersigned counsel, files this Petition for Writ of Habeas Corpus to remedy his unlawful detention by enjoining Respondents from continuing to detain him and to release him from custody, and to stay his removal. As good cause, Petitioner states the following:

1. Petitioner is a Venezuelan national who holds Temporary Protected Status (TPS) under 8 U.S.C. § 1254a. Based on the plain text of 8 U.S.C. § 1254a(d)(4), his detention is unlawful. The statute provides that "[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." 8 U.S.C. § 1254a(d)(4) (emphasis added). This protection remains available even if the TPS recipient has a final removal order or lacks other immigration status, because the government "shall not remove the alien from the

United States during the period in which such [TPS] status is in effect." 8 U.S.C. § 1254a(a)(1)(A); *see also* 8 U.S.C. § 1254a(a)(5) (TPS statute provides no authority to "deny temporary protected status to an alien based on the alien's immigration status"); 8 U.S.C. § 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to "otherwise deportable" non-citizens).

2. U.S. Immigration and Customs Enforcement (ICE) detained Petitioner, despite the unambiguous statutory command, for 7 days.

3. Petitioner also faces unlawful detention because the Department of Homeland Security ("DHS") has concluded he is subject to mandatory detention.

4. Respondents have classified Petitioner as subject to mandatory detention on the theory that he is detained under 8 U.S.C. § 1225(b)(2)(A), and that no bond redetermination hearing is available before EOIR as such a person is subject to mandatory detention. This is consistent with the new DHS policy issues on July 8, 2025, instructing anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

5. Further on September 5, 2025, the Board of Immigration Appeals ("BIA") affirmed the DHS policy by issuing a precedent decision with *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that an immigration judge ("IJ") has no authority to consider bond requests for any person who entered the United States without admission, as such a person is subject to mandatory detention.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act ("INA"). 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like

Petitioner who previously entered, were released pursuant to the authority contained in 8 U.S.C. § 1226 and are now residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

7. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying 8 U.S.C. § 1226(a) to those like Petitioner. Thus Petitioner challenges his detention as a violation of the INA.

8. Petitioner also challenges his detention as a violation of the Due Process Clause of the Fifth Amendment.

9. Petitioner respectfully requests that this Court grant him a Writ of Habeas Corpus and order Respondents to release him from custody. Petitioner seeks habeas relief under 28 U.S.C. § 2241, which is the proper vehicle for challenging civil immigration detention. *See Soberanes v. Comfort,* 388 F.3d 1305, 1310 (10th Cir. 2004) ("Challenges to immigration detention are properly brought directly through habeas.") (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

CUSTODY

10. Petitioner is in Respondents' physical custody. Petitioner is detained at Stewart Detention Center, an immigration detention facility, in Lumpkin, Georgia. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

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

12. 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.

13. Congress has preserved judicial review of challenges to detention. *See Jennings v. Rodriguez,* 138 U.S. 830, 841 (2018).

VENUE

14. Venue in the Middle District of Georgia is appropriate under 28 U.S.C. §§ 1391, 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioners' immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("[T]he proper respondent to a habeas petition is 'the person who has custody over the petitioner'") (citing 28 U.S.C. § 2242) (citation modified).

PARTIES

15. Petitioner Gustavo A. Gomez Carrero is currently detained by Respondents at Stewart Detention Facility. **Exhibit A – ICE Online Detainee Locator System Search Results for Petitioner.** ICE detained Petitioner on or about October 21, 2025, after the U.S. Citizenship and Immigration Services (USCIS) issued a negative credible fear finding and transferred him to Stewart Detention Center in Lumpkin, Georgia.

16. Respondent Todd M. Lyons is the Acting Director of ICE. He is Petitioner's legal custodian and is named in his official capacity.

17. Respondent Jason Streeval is the Warden of Stewart Detention Center, where Petitioner is currently detained. He is Petitioner's legal custodian and is named in his official capacity.

18. Respondent George Sterling is the Field Office Director of the Atlanta Field Office of ICE, which holds administrative jurisdiction over Petitioner's immigration case. He is Petitioner's legal custodian and is named in his official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. Neither the INA nor the applicable federal habeas corpus statute requires administrative exhaustion for immigration detention-based claims. *Compare* 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only prior to challenging a removal order in circuit court), *with* 28 U.S.C. § 2241 (including no requirement for administrative exhaustion); *see also Santiago-Lugo v. Warden,* 785 F.3d 467, 474-75 (11th Cir. 2015) ("It is no longer the law of this circuit that exhaustion of administrative remedies is a jurisdictional requirement in a § 2241 proceeding.").

FACTS AND PROCEDURAL HISTORY

I. PETITIONER WAS DETAINED DESPITE HAVING TEMPORARY PROTECTIVE STATUS FROM VENEZUELA.

20. Petitioner is a 49-year-old native and citizen of Venezuela.

21. He first entered the United States on or around July 24, 2021, through San Luis, Arizona. DHS detained Petitioner and issued a Notice and Order of Expedited Removal. However, DHS did not execute or serve Petitioner with this document. **Exhibit B - Notice and Order of Expedited Removal.**

22. DHS released Petitioner pursuant to 8 U.S.C. § 1226. DHS served Petitioner with a Notice of Custody Determination and Order of Release on Recognizance on August 2, 2021. **Exhibit C – Notice of Custody Determination and Exhibit D – Order of Release on Recognizance.**

23. Petitioner sought relief from removal by filing a Form I-589, Application for Asylum, Withholding of Removal, and Relief under the Convention Against Torture. USCIS dismissed Petitioner's I-589 on June 16, 2025. **Exhibit E - Notice of Dismissal of Form I-589.**

24. USCIS subsequently issued a Notice of Credible Fear Interview scheduled for October 21, 2025. **Exhibit F - Form G-56 Notice of Credible Fear Interview**. At the interview, USCIS issued a negative credible fear finding, detained Petitioner, and referred the case to the IJ. **Exhibit G – Record of Negative Credible Fear Finding and Request for Review by Immigration Judge.**

25. Petitioner applied for Temporary Protected Status ("TPS") on December 1, 2023, and timely filed his re-registration on January 19, 2025, as required by 90 Fed. Reg. 5961. **Exhibit H - Approval Notice for I-821 Application for Temporary Protected Status and Receipt Notice for Re-registration.**

26. USCIS extended the validity of Employment Authorization Documents (EAD), and thus TPS status, for certain applicants.[1] As of October 29, 2025, the USCIS website states:

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[1] The January 17, 2025, Federal Register notice extended the 2023 Venezuela TPS designation to October 2, 2026, and opened re-registration. 90 Fed. Reg. 5961. Although DHS later vacated that notice at the end of January 2025, subsequent court orders in September and October 2025 blocked termination and prompted USCIS to recognize TPS and work authorization for certain Venezuela 2023 re-registrants. 90 Fed. Reg. 43225.

> Pursuant to the U.S. District Court for the Northern District of California's order dated May 30, 2025, if you re-registered under the previously vacated Jan. 17, 2025 Extension of the 2023 Designation of Venezuela, and you have a pending Form I-765 EAD renewal application that was received before Feb. 6, 2025, and a Form I-797 Receipt Notice dated before Feb. 6, 2025, that automatically extends the validity of your EAD issued under the TPS designation of Venezuela with an original expiration date of Sept. 10, 2025 or April 2, 2025 for up to 540 days.

Exhibit I – USCIS, Temporary Protected Status Designated Country: Venezuela.

Upon information and belief, Petitioner filed Form I-756 along with his I-821 re-registration filed on January 19, 2025. **Exhibit H - Approval Notice for I-821 Application for Temporary Protected Status and Receipt Notice for Re-registration.** Thus his EAD with expiration date of April 2, 2025, was extended for up to 540 days.

27. Although the history and current procedural status of TPS for Venezuela is complicated, *see infra* Section II, all that matters for the purposes of this habeas petition is that TPS for Venezuela remains in effect, and that Petitioner continues to hold TPS status.

28. On October 23, 2025, Petitioner's counsel emailed Atlanta and Stewart ICE ERO Offices that Petitioner cannot be lawfully detained due to his valid TPS status and cited the TPS statute.

29. To date, counsel has not received a response from either ICE ERO Office.

II. TEMPORARY PROTECTIVE STATUS FOR VENEZUELA REMAINS IN EFFECT.

30. Venezuelans living in the United States first received temporary protection from removal on January 19, 2021, when then-President Trump 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 was facing a humanitarian emergency:

> [Venezuela] 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 2012 designation. On September 8, 2022, DHS extended Venezuela's TPS designation for 18 months through March 10, 2024. 87 Fed. Reg. 55024. On October 3, 2023, DHS again extended the 2021 designation of Venezuela for 18 months. At that time DHS also re-designated TPS for Venezuela, creating the 2023 Venezuela TPS Designation, for 18 months. This allowed individuals who had come to the United States after March 2021 to

become eligible for TPS. 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 2024 election the U.S. 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 notice of the *vacatur* via notice in the Federal Register on February 3, 2025. 90 Fed. Reg. 8805.

35. On February 19, 2025, the National TPS Alliance and seven individual Venezuelan TPS holders sued the federal government, alleging that the vacatur and subsequent termination

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

of TPS for Venezuela were contrary to the TPS statute in violation of the Administrative Procedure Act and unlawful under the Fifth Amendment. *Nat'l TPS All. v. Noem*, No. 3:25-cv-01766 (N.D. Cal. filed Feb. 19, 2025) (procedural history summarized in the court's order). Plaintiffs moved to stay the recent vacatur and termination. *Id.*

36. On March 31, 2025, the U.S. District Court for the Northern District of California granted plaintiffs' motion to postpone the DHS decision to vacate the 2023 TPS extension, keeping work authorization valid for individuals granted TPS under the 2023 designation. *Nat'l TPS All. v. Noem*, No. 3:25-cv-01766 (N.D. Cal. Mar. 31, 2025).

37. On May 19, 2025, the U.S. Supreme Court granted the government's emergency stay of the district court's March 31 order, pending appeal in the Ninth Circuit. Despite the Supreme Court stay of the broader preliminary relief, the District Court ordered that TPS beneficiaries who received TPS-related documentation on or before February 5, 2025, will maintain TPS and their documentation will remain valid while litigation is pending. *Nat'l TPS All. v. Noem*, No. 25-2120 (April 18, 2025) (order denying motion for stay pending appeal).

38. On September 5, 2025, the U.S. District Court for the Northern District of California issued a final order setting aside the Secretary's decision and allowing the 2023 TPS designation of Venezuela to continue. *Nat'l TPS All. v. Noem*, No. 3:25-cv-01766 (N.D. Cal. Sept. 5, 2025).

39. On September 10, 2025, DHS appealed the District Court's merits ruling to the Ninth Circuit.

40. On September 19, 2025, the Trump Administration filed an emergency appeal/application with the U.S. Supreme Court following the district court's merits decision.

41. On October 1, 2025, USCIS updated its TPS Venezuela webpage to reflect the district court's September merits ruling and Ninth Circuit posture at that time, stating that beneficiaries under the 2023 designation (and 2021 beneficiaries who re-registered under the January 17 notice) had TPS extended through October 2, 2026, with EADs automatically extended through April 2, 2026. **Exhibit I – USCIS, Temporary Protected Status Designated Country: Venezuela.**

42. On October 3, 2025, the U.S. Supreme Court granted a stay pending appeal. This allowed DHS to treat the 2023 TPS designation as expired; the protections that had briefly been restored under the District Court's and Ninth Circuit's orders were invalidated, and work authorization for most 2023 TPS recipients ended. *Noem v. Nat'l TPS All.*, No. 25A326 (U.S. Oct. 3, 2025) (order granting stay).

43. On October 10, 2025, USCIS reflected the effect of the Supreme Court's October 3 stay and clarified the 2021 designation status. 2021 TPS Venezuela EADs expiring September 10, 2025, March 10, 2024, or September 9, 2022, remained valid until November 7, 2025. DHS will not extend the 2021 TPS designation beyond the 60-day transition period referenced in the September 8, 2025, Federal Register notice 90 Fed. Reg. 43225, 43231.[3]

44. As of October 27, 2025, the USCIS website states that TPS beneficiaries who received TPS - related EADs, Forms I-797, and Forms I-94 with an October 2, 2026, expiration date issued on or before February 5, 2025, continue to maintain that status and document validity during the litigation. This included EADs with a "Card Expires" date of April 2, 2025, accompanied by a timely I-765 receipt qualifying for up to a 540-day auto

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

extension. **Exhibit I – USCIS, Temporary Protected Status Designated Country: Venezuela.**

LEGAL FRAMEWORK

I. TPS UNDER 8 U.S.C. § 1254a

45. The Court need analyze only one statutory provision to resolve this habeas petition. 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.[4]

46. The Court need not delve further 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).

47. 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.

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[4] "Attorney General" in Section 1254a now refer to the Secretary of the Department of Homeland Security. *See* 8 U.S.C. § 1103; 6 U.S.C. § 557.

"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).

48. Petitioner's detention violates the Fifth Amendment's protection for liberty, for at least three related reasons. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Whereas here, the government has no authority to deport Petitioner, detention is not reasonably related to its purpose.

49. Second, because Petitioner is not "deportable" insofar as the TPS statute bars his deportation, the Due Process Clause requires that any deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying less rigorous standard for "deportable aliens"). Petitioner's ongoing imprisonment cannot satisfy that rigorous standard.

50. Third, 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.

51. It is irrelevant for purposes of this case that Petitioner's TPS status may expire in several weeks. The TPS statute's unambiguous command applies so long as a TPS holder's status remains in effect. It contains no exception for people whose TPS status may soon expire.

Rather, it should decide this petition on the state of affairs as it currently exists, under which Petitioner remains a TPS holder, and has now been illegally imprisoned for 6 days.

II. DETENTION UNDER 8 U.S.C. §§ 1225(b), 1226(a)

52. Further, the INA proscribes three basic forms of detention for most noncitizens in removal proceeds.

53. First, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under 8 U.S.C. § 1225(b)(2).

54. Second, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled tc a bond redetermination hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

56. This case concerns the detention provisions at §§ 1225(b)(2) and 1226(a).

57. Congress enacted 8 U.S.C. §§ 1225(b)(2) and 1226(a) as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. 8 U.S.C. § 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

58. Following the enactment of the IIRIRA, EOIR drafted new regulations stating that those entering the country without inspection were considered detained under 8 U.S.C. §

1226(a) and not under 8 U.S.C. § 1225. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

59. Thus in the decades that followed, most who entered without inspection and were placed in standard removal proceedings received bond hearings unless their criminal history rendered them ineligible for release under 8 U.S.C. § 1226(c). This practice was consistent with many more decades of prior practice in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ 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 8 U.S.C. § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

60. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected the well-established interpretation of the statutory framework and reversed decades of practice. The new policy, "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[5] states that all individuals who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225(a)(1). They are, therefore, now subject to the mandatory detention provision under 8 U.S.C. § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

[5] *Available at* https://www.https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission

61. On September 5, 2025, the BIA issued a published decision adopting this same position. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA held that all noncitizens who entered the United States without admission or parole are considered applicants for admission, subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and ineligible for a bond redetermination hearing before an immigration judge. *Id.*

62. ICE and the BIA have adopted this position even though numerous federal courts have rejected this very conclusion. For example, after IJ's in the Tacoma, Washington, Immigration Court stopped providing bond hearings for individuals who entered the United States without inspection and have since resided here, the U.S. District Court of the Western District of Washington found that such a reading of the INA was likely unlawful. That court ruled that 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

63. DHS's and DOJ's interpretation defies the plain reading and intent of the INA. As the *Rodriguez Vazquez* court and others have explicitly reasoned, the plain text demonstrates that 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), applies to Petitioner and those like him.

64. Accordingly, federal courts have roundly rejected Respondents' erroneous interpretation of the INA since ICE implemented its July 8, 2025 memo. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL

2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Santos v. Noem*, No. 3:25-CV-01193 SEC P, 2025 WL 2642278 (W.D. La. Sep. 11, 2025); *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 LX 465474 (D.N.M. Sep. 17, 2025); *Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 LX 422663 (D. Me. Sep. 21, 2025).

65. 8 U.S.C. § 1226(a) applies by default to all individuals "pending a decision on whether the [noncitizen] is to be removed from the United States." Such removal hearings are held under 8 U.S.C. § 1229a, to "decid[e] the inadmissibility or deportability of a[] [ncncitizen]."

66. The text of 8 U.S.C. § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). That subparagraph references such people and makes clear that, by default, they are eligible for a bond redetermination hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a

statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

67. 8 U.S.C. § 1226, therefore, leaves no doubt that it applies to those charged with inadmissibility, including those present without admission or parole.

68. By contrast, 8 U.S.C. § 1225(b) applies to non-citizens arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspection at the border of those "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

69. Accordingly, the mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A) does not apply to those like Petitioner who already entered, were released pursuant to the authority contained in 8 U.S.C. § 1226 and are now residing in the United States.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C. § 1254a)

70. Petitioner realleges and incorporate by reference each and every allegation contained above.

71. 8 U.S.C. § 1254a governs the treatment of TPS holders, including their detention and removal under federal immigration law.

72. Upon information and belief, Petitioner renewed his EAD at the time of his re-registration under the previously vacated January 17, 2025, extension of the 2023 designation of Venezuela. Upon information and belief, Petitioner thus has a pending I-765 EAD renewal application that was received before February 6, 2025. **Exhibit H - Approval Notice for I-821 Application for Temporary Protected Status and Receipt Notice for Re-registration.**

73. Accordingly, his EAD with an expiration date of April 2, 2025—and thus his TPS status—was extended for up to 540 days. **Exhibit I – USCIS, Temporary Protected Status Designated Country: Venezuela; Exhibit J – Petitioner's Employment Authorization Document.** Petitioner's TPS therefore remains valid until approximately September 24, 2026, 540 days from the expiration date of his EAD.

74. 8 U.S.C § 1254a(d)(4) states 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." (emphasis added). **There is no exception to this statutory provision.**

75. Thus, Petitioners' detention violates Section 1254a, and he is entitled to immediate release from custody.

COUNT TWO

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C. § 1226(a))

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

77. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to inadmissibility. As relevant

here, it does not apply to those who previously entered the country, were released under 8 U.S.C. § 1226(a), and were residing in the United States when again apprehended. Such noncitizens are detained under 8 U.S.C. § 1226(a), unless they are subject to 8 U.S.C. § 1225(b)(1), 1226(c), or 1231.

78. The application of 8 U.S.C. § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT THREE

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

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

80. 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).

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays 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. As to count one, declare that Petitioner's detention violates the Immigration and Nationality Act, specifically 8 U.S.C. § 1254a, and enjoin Respondents from further detaining Petitioner;

4. As to count two, declare that Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful and is properly governed by 8 U.S.C. § 1226(a); issue a Writ of Habeas Corpus requiring that Respondents provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days; and if Respondents fail to do so, then immediately release Petitioner;

5. As to count three, declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

6. Retain jurisdiction over this case to ensure compliance with all of this Court's orders;

7. Award attorney's fees and costs as permitted under the Equal Access to Justice Act and on any other basis justified under law; and

8. Grant any and all further relief that is necessary or appropriate.

Respectfully submitted this 29th day of October, 2025.

/s/ Marshall Lewis Cohen
Marshall Lewis Cohen
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Attorney for Petitioner
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Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. 2242

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

/s/ Marshall L. Cohen

Date: October 29, 2025