United States District Court
Western District of Texas
San Antonio Division

Elimar Teresa Brito Mejias, Petitioner, v. Kristi Noem, *in her official capacity* as Secretary of the Department of Homeland Security, *et al.*, Respondents.	No. 5:26-cv-00212-JKP

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT

Federal Respondents provide the following response to Petitioner's habeas petition.[1] Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief sought and is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). This conclusion is appropriate under recent Fifth Circuit precedent. The Fifth Circuit Court of Appeals recently held that aliens, like the Petitioner, who entered the United States illegally and who are not "clearly and beyond a doubt entitled to be admitted," "shall be detained" under 8 U.S.C. § 1225(b)(2)(A), until the conclusion of their removal proceedings. *Buenrostro v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). The *Buenrostro* decision is binding precedent and

[1] The Department of Justice represents only federal employees in this action.

requires that the Court deny this habeas petition.[2]

Pursuant to the Court's Order for Service (ECF No. 7), Respondents reviewed the cases referenced in that Order and note said cases were decided prior to the Fifth Circuit's decision in Buenrostro v. Bondi, as such, there has been a material change to the legal landscape applicable to this case.

BACKGROUND

Petitioner is a native and citizen of Venezuela. ECF No. 1 ¶ 17, Exh. B. She entered the United States without inspection on or about January 18, 2022. ECF No. 1, Ex. B, p. 1. Petitioner was apprehended within hours of entering the United States. *Id.* Petitioner was issued a Notice to Appear on January 19, 2022, and was granted an Order of Release on Recognizance that same day. *Id.*, p. 2. On December 3, 2025, Petitioner was stopped by local police and later turned over to Immigration and Customs Enforcement (ICE) agents, who detained Petitioner. *Id.* ¶¶ 18-24. Petitioner is detained in the Dilley Immigration Processing Center in Dilley, Texas. *Id.* ¶ 2. Petitioner currently has a hearing scheduled in the Dilley Immigration Court on March 19, 2026 at 1:00 p.m. Exh. A, Executive Office of Immigration Review (EOIR) Automated Case Information (https://acis.eoir.justice.gov/en/caseInformation) (last accessed on February 19, 2026).

PETITIONER IS SUBJECT TO MANDATORY DETENTION

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[2] The *Buenrostro* decision is a published decision and precedential authority even though the mandate has yet to issue. *See, e.g., Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992) (explaining that even a stay in the issuance of a mandate does not impact the precedential value of published opinions); *Acute Care Ambul. Serv., L.L.C. v. Azar II*, No. 7:20-CV-00217, 2020 WL 7640206, at *13 (S.D. Tex. Dec. 3, 2020) (rejecting the argument that a Fifth Circuit decision is not controlling because "the mandate has yet to issue, and thus not properly relied upon as precedent.").

Petitioner seeks an order from this Court directing the Department of Homeland Security to immediately release Petitioner from immigration detention, or alternatively Petitioner asks this Court to order a bond hearing. Neither of these alternatives are appropriate and the Court should deny the petition in light of the recent Fifth Circuit precedent. The primary issue raised by Petitioner, namely that her detention pursuant to 8 U.S.C. § 1225 and the Board of Immigration Appeal's (BIA) decision in *Matter of Yajure Hurtado, 29 I&N Dec. 216 (B.I.A. 2025),* is unlawful, was rejected by the Fifth Circuit. *Buenrostro-Mendez v. Bondi*, No. 25-20496, No. 25-40701, 2026 WL 323330 at *1 (5th Cir. Feb. 6, 2026).

Petitioner's contention that detention should be governed by 8 U.S.C. § 1226, that Petitioner is being unlawfully detained and deprived of a bond hearing, and that the detention violates the United States Constitution were rejected in *Buenrostro*. *Id.* To the extent Petitioner claims she is not properly categorized as an applicant for admission, "the text and context of § 1225 contradict the [petitioner's] reading of the statute." *Id.* at *9.

The Fifth Circuit made clear that aliens present in the United States who have not been admitted by lawful means, remain "applicants for admission" who were "seeking admission." 2026 WL 323330 at *4. The court explained that "[w]hen a person applies for something, they are necessarily seeking it." *Id.* In so holding, the court rejected the reasoning that the phrase "seeking admission" in § 1225(b)(2)(A) uses the present tense and thus applies only to individuals "currently and actively seeking to be admitted to the United States when [they are] apprehended." *Id.* at *3. The Fifth Circuit held that "the everyday meaning of the statute's terms confirms that being an 'applicant for admission' is not a condition independent from 'seeking admission.'" *Id.* at *4.

Buenrostro, recognizing that the plain language of the INA controlled the analysis and outcome, also rejected arguments based on the Executive's past interpretation and application of § 1225 and § 1226. 2026 WL 323330 at * 8. "Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text." *Id* (citing, *Pereira v. Sessions*, 585 U.S. 198, 204, 138 S. Ct. 2105, 2111 (2018)). The Fifth Circuit observed that the Government's interpretation and application of § 1225(b)(2) "better honors" the intent of Congress's amendments to the INA—the full enforcement of § 1225(b)(2)'s plain terms "put aliens seeking admission lawfully on equal footing with those who entered without inspection." *Id.* at * 9.

Respondents acknowledge that many courts in the Western District of Texas have ruled otherwise in previous habeas cases. However, this significant development in the Fifth Circuit warrants this Court taking a different approach. "After reviewing carefully the relevant provisions and structure of the Immigration and Naturalization Act, the statutory history, and Congressional intent" the Fifth Circuit concluded that the detention authority relied upon by the government is lawful. *Buenrostro*, at *1.

The Fifth Circuit is not the only court to so hold. District courts around the country agree. *See Garibay-Robledo v. Noem*, -- F. Supp. 3d --, No. 1:25-CV-177-H, 2026 WL 81679 (N.D. Tex. Jan. 9, 2026) (Hendrix, J.) (holding that Petitioner, as an applicant for admission, is properly detained without bond under § 1225); *Singh v. Noem*, No. 2:25-CV-00157-SCM, 2026 WL 74558 (E.D. Ky. Jan. 9, 2026) (Meredith, J.) (holding that Petitioner, as an applicant for admission, is properly detained without bond under § 1225); *Cruz Rodriguez v. Olson*, -- F. Supp. 3d --, No. 1:25-CV-12961, 2026 WL 63613 (N.D. Ill. Jan. 8, 2026) (Pacold, J.) (holding that Petitioner was an applicant for admission seeking entry and thus subject to mandatory detention without bond); *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (Hendrix,

J.) (holding that nothing in the INA or Due Process Clause contradicts mandatory detention of applications for admission without bond under § 1225); *Naikpay v. Sukkar*, No. 2:25-CV-1167-KCD-DNF, 2026 WL 44820 (M.D. Fla. Jan. 7, 2026) (Dudek, J.) (holding that alien released on humanitarian parole and later re-apprehended remained an applicant for admission under § 1225); *Azizzadeh v. Rhoney*, No. 25-CV-1288 (JLS), 2026 WL 44324 (W.D.N.Y. Jan. 6, 2026) (Sinatra, Jr., J.) (holding that despite being in the United States, Petitioner is an applicant for admission and no bond hearing is required); *Zuniga v. Lyons*, No. 1:25-CV-221-H, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) (Hendrix, J.) (holding that alien residing in U.S. for 25-years remains an applicant for admission and shall be detained by § 1225 without entitlement to a bond hearing); *Montoya v.* Holt, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) (Dishman, J) (holding that Petitioner is unambiguously an applicant for admission and that detention without a bond hearing does not violate the Due Process Clause); *Masis Lucero, v. Field Office Director of Enforcement and Removal Operations*, No. 1:25-CV-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025) (Cole, J.) (holding that § 1225 applies to noncitizens present in the US but never admitted and requires detention through the end of removal proceedings); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.) (holding that § 1225, as the more specific statute, governs Petitioner's detention, which does not violate due process as it has not been shown to be indefinite); *E.R.J.B. v. Wofford*, No. 1:25-CV-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond hearings, due process is satisfied by the statutory scheme itself); *Padilla v. Galovich*, No. 25-CV-865-JDP, 2025 WL 3640960 (W.D. Wis. Dec. 16, 2025) (Peterson, J.) (holding that Petitioner, as an applicant for admission, is not entitled to a bond hearing under § 1225 despite an improper release on bond when he was transferred from expedited

removal into asylum proceedings); *Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (Cole, J.) (holding that because Petitioner was never lawfully admitted, detention is governed by § 1225 and bond hearings are unavailable as a matter of statute and due process); *Liang v. Almodovar*, No. 1:25-cv-09322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.)(holding that because no immigration officer has decided that Petitioner is clearly and beyond a doubt entitled to be admitted, he is subject to mandatory detention under § 1225); *P. B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) (O'Connor, J.) (holding that Petitioner, still awaiting her asylum hearing, is an application for admission that is seeking admission subject to mandatory detention under § 1225); *Delgado v. Noem*, No. 9:25-CV-00329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025) (Truncale, J.) (holding that petitioner is validly detained pending removal proceedings under § 1225 and § 1226 and that habeas was an improper means to challenge custody redetermination decisions); *Garcia v. U.S. Attn'y Gen.*, No. 2:25-CV-1053-KCD-DNF, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025) (Dudek, J.) (holding that Petitioner, who was apprehended at the border, is an applicant for admission subject to mandatory detention under §1225, and that one month of detention falls below the constitutional threshold for a potential due process violation); *Rodriguez v. Noem*, No. 9:25-CV-00320, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) (Truncale, J.) (holding that Petitioner is properly detained without a bond hearing as an applicant for admission subject to § 1225, that § 1226 would only permit a discretionary hearing, and that habeas relief is improper for the alleged procedural violation); *Oliveria v. Albarran*, No. 1:25-CV-01760 WBS AC, 2025 WL 3525923 (E.D. Cal. Dec. 9, 2025) (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond hearings, due process is satisfied by the statutory scheme itself); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.) (holding that Petitioner, as

an applicant for admission, is properly detained without a bond hearing under § 1225, which does not violate Due Process Clause); *Melgar v. Bondi*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025) (Buescher, J.) (holding that Petitioner is properly detained under § 1225, which does not require the alien to be actively seeking admission, even if he may also be subject to § 1226); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra Jr., J.) (holding that Petitioner is an application for admission that is seeking admission under § 1225 despite having lived illegal within the United States since 2004); *Chen v. Almodovar*, No. 1:25-cv-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.) (holding that a § 1225 "applicant for admission" includes both arriving aliens and aliens present in the United States that did not enter lawfully); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.) (holding that Petitioner is unlikely to prevail on the merits of his relief because he is an applicant for admission properly detained under § 1225 that has never received permission to enter the United States); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.) (holding that Petitioner's lengthy presence in the United States after failing to present himself for inspection cannot remove him from § 1225's mandatory-detention framework and that he is still "seeking admission"); *Suarez v. Noem*, No. 1:25-CV-00202-JMD, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) (Divine, J.) (holding that Petitioner is an alien, present in the United States, who has not been admitted, so § 1225 applies to him and detention without a bond hearing is mandatory); *Garcia v. Immigr. & Customs Enf't Dep't of Homeland Sec.*, No. 2:25-CV-1004-KCD-NPM, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025) (Dudek, J.) (holding that release on recognizance following apprehension at the border does not alter Petitioner's legal classification as an applicant for admission) *Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) (Joseph, J.) (holding that any alien physically present in the

United States who has not been admitted is an "applicant for admission," regardless of how long they have been in the country or whether they ever intended to apply or enter properly); *Alonzo v. Noem*, -- F. Supp. 3d --, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) (Shubb, J.) (holding that "applicant for admission" is a legal designation for purposes of the removal scheme that covers aliens present in the country but not yet admitted); *Valencia v. Chestnut*, -- F. Supp. 3d --, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (Shubb, J.) (holding that Petitioner is unlikely to succeed on his challenge to the INA and Due Process clause because an "applicant for admission" is a legal designation not a description of present conduct); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (Eskridge, J.) (rejecting Petitioner's argument that she was not "seeking admission" given her decades-long residence in the United States); *Ramos v. Lyons*, No. 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson, J.) (holding that § 1225 applies to an alien who is physically present in the United States but not lawfully admitted, regardless of how long they have been physically present here); *Olalde v. Noem*, No. 1:25-cv-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Divine, J.) (holding that § 1225 does not render the Laken Riley Act superfluous and that Petitioner is detained under § 1225 despite a long-established government practice of detaining under § 1226); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), (Whitehurst, M.J.), *report and recommendation adopted*, 2025 WL 3113644 (W.D. La. Nov. 6, 2025) (Joseph, J.) (holding that since Petitioner, who was detained upon entering the United States, is an applicant for admission under § 1225(b), there is no statutory entitlement to release on bond or to a bond hearing); *Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.) (holding that any alien physically present in the United States who has not been admitted is an "applicant for admission," regardless of how long they have been in the country or whether they intended to

apply or enter properly); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.) (holding that any alien physically present in the United States who has not been admitted is an "applicant for admission," regardless of how long they have been in the country or whether they intended to apply or enter properly); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.) ((holding that Petitioner is an applicant for admission despite his prior bond and that his detention does not violate Due Process because it is limited to the conclusion of his removal proceedings); *Chanaguano Caiza v. Scott*, No. 1:25-CV-00500-JAW, 2025 WL 3013081 (D. Me. Oct. 28, 2025) (Woodcock, Jr., J.) (holding that Petitioner is unlikely to succeed on the merits because, upon the automatic expiration of his parole, he was restored to the § 1225 detention status held at the time of parole); *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (Bencivengo, J.) (holding that Petitioner, as an alien present in the United States who has not been admitted, is an applicant for admission subject to mandatory provision under the plain text of § 1225(b)).

The Board of Immigration Appeals (BIA), the highest administrative body charged with interpreting and applying the immigration laws, also agreed in *Hurtado*. There, the BIA examined the plain language of § 1225, the INA's statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub L. No. 104-208, and DHS's prior practices. After doing so, the BIA held that "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." 29 I&N Dec. at 225.

TPS DESIGNATION FOR VENEZUELA WAS TERMINATED BY FEDERAL REGISTER NOTICE, AND *NTPSA* HAS NO PRECLUSIVE EFFECT IN THIS DISTRICT

Petitioner alleges she is a member of the National TPS Alliance and is represented in *National TPS Alliance v. Noem*. ECF No. 1, ¶ 17. Petitioner essentially alleges that she cannot be detained under the Immigration and Nationality Act ("INA") as a Temporary Protected Status ("TPS") beneficiary. However, Petitioner is no longer protected by the TPS designation. *See* https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela (last accessed February 19, 2026).

Temporary Protected Status

Congress has authorized the Secretary of Homeland Security to designate foreign countries for TPS under certain conditions. 8 U.S.C. § 1254a(b)(1).[3] TPS allows nationals of designated countries suffering from war, natural disasters, or other "extraordinary and temporary conditions" to seek temporary protection against removal. 8 U.S.C. § 1254a. While TPS protects recipients from removal while the designation is valid; it does not afford any pathway to family reunification, permanent residency, or citizenship. *Dhakal v. Sessions*, 895 F.3d 532, 537 (7th Cir. 2018).

Those found eligible for the TPS program are entitled to certain benefits, including temporary protection from removal and authorization to engage in employment in the United States. *See* 8 U.S.C. § 1254a(a)(1). But immigrants from designated countries are not automatically entitled to TPS benefits; they must submit a registration application for processing and approval. 8 U.S.C. § 1254a(c)(1)(A); *see also* 8 C.F.R. § 244.6. The non-citizen immigrant's TPS application must establish three basic criteria for eligibility: (1) she must have "been continuously physically

[3] Although the Immigration and Nationality Act originally granted this authority to the Attorney General, Congress later transferred it to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law No. 107-296, 116 Stat. 2135 (2002).

present in the United States since the effective date of the most recent designation" of the foreign country; (2) she must have "continuously resided in the United States since such date as the [Secretary] may designate;" and (3) she must be "admissible as an immigrant" and "not ineligible for temporary protected status" based on his criminal history or other delineated conduct (e.g., terrorist activity or religious persecution of others). 8 U.S.C. § 1254a(c)(1)(A); *see also* 8 C.F.R. § 244.2.

The statute also provides for temporary benefits during the pendency of a TPS application, but only after the non-citizen "establishes a prima facie case of eligibility." 8 U.S.C. § 1254a(a)(4)(B). This prima facie eligibility requirement distinguishes the TPS program from other immigration programs, where the filing of a benefits application is itself sufficient to trigger temporary benefits. Compare 8 U.S.C. § 1154(a)(1)(D) (granting employment authorizations to non-citizen immigrants who "filed a petition") with 8 U.S.C. § 1254a(a)(4)(B) (making temporary benefits available only once the non-citizen immigrant "establishes a prima facie case of eligibility").

Federal regulations explain that "temporary treatment benefits" under TPS are available during the pendency of full review of the application only "if the application establishes the alien's prima facie eligibility for Temporary Protected Status." 8 C.F.R. § 244.5(b).[4] To establish prima facie eligibility, the applicant must file "a completed application … containing factual information that if unrebutted will establish a claim of eligibility." 8 C.F.R. § 244.1. Over thirty years ago, during the public notice-and-comment proceedings concerning these regulations, regulators considered and expressly rejected commenters' suggestion "that temporary treatment benefits

[4] Congress has delegated to the Department of Homeland Security (of which USCIS and ICE are component agencies) the authority to establish regulations to implement and administer the Immigration and Nationality Act. See 8 U.S.C. § 1103(a)(3).

should be issued immediately upon the completion of an application which, on its face, establishes the alien's eligibility." 56 Fed. Reg. 23491-02, at 23493 (May 22, 1991). Instead, regulators concluded that a prima facie eligibility determination by immigration officials was necessary because such officials "must be able to make use of evidence that effectively rebuts the alien's claim to eligibility" before awarding temporary TPS benefits. *Id.* There currently exists no statute or regulation that requires USCIS to determine the prima facie eligibility of a TPS application within a particular timeframe.

TPS Designation for Venezuela

The Immigration and Nationality Act (INA) authorizes the Secretary of Homeland Security to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist. INA 244(b)(1), 8 U.S.C. 1254a(b)(1). The determination whether to designate any foreign state for TPS is discretionary, and there is no judicial review of "any determination of the [Secretary] with respect to the designation, or termination or extension of a designation, of a foreign state" for TPS. INA 244(b)(5)(A), 8 U.S.C. 1254a(b)(5)(A). In fact, the Secretary must continue to review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the conditions in the foreign state continue to meet the specific statutory criteria for TPS designation, TPS will be extended. *See* INA 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

When the Secretary terminates a country's TPS designation, beneficiaries return to the same immigration status or category that they maintained before TPS, if any (unless that status or

category has since expired or been terminated), or any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid on the date TPS terminates. *See id.*

On March 9, 2021, then-Secretary of Homeland Security designated Venezuela for TPS based on his determination that there existed "extraordinary and temporary conditions" in Venezuela that prevented nationals of Venezuela from returning in safety and that permitting such aliens to remain temporarily in the United States is not contrary to the U.S. national interest (Venezuela 2021 designation). *See Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure,* 86 FR 13574 (Mar. 9, 2021). On September 8, 2022, the Secretary extended the Venezuela 2021 TPS designation for 18 months. *See Extension of the Designation of Venezuela for Temporary Protected Status,* 87 FR 55024 (Sept. 8, 2022). On October 3, 2023, the Secretary extended the Venezuela 2021 TPS designation for another 18 months with an expiration date of September 10, 2025, and separately newly designated Venezuela for 18 months, (2023 designation) with an expiration of April 2, 2025, resulting in two separate and concurrent Venezuela TPS designations. *See Extension and Redesignation of Venezuela for Temporary Protected Status,* 88 FR 68130 (Oct. 3, 2023).

With the designations of TPS for Venezuela set to expire, the Secretary determined that the country no longer met the conditions for TPS designation in 2025. *Notice of Termination of the October 3, 2023, Designation of Venezuela for Temporary Protected Status*, CIS No. 2804-25. Among the reasons for TPS termination, the Secretary noted that TPS has allowed a significant population of inadmissible individuals without a path to lawful immigration status to settle in the United States, and the sheer numbers were resulting in inadequate local resources to meet the

demands caused by the increased numbers. *Id.* In total, DHS estimates that 348,202 Venezuelan nationals have been registered under the 2023 TPS designation alone. *See id.*

On February 19, 2025, the National Temporary Protected Status Alliance and seven individual TPS holders sued the federal government in the Northern District of California, alleging that termination of Venezuela's 2023 TPS violated the Administrative Procedure Act (APA) and the Fifth Amendment. *See* ECF 1 at. ¶ 17. On September 5, 2025, the district court granted the plaintiffs' motion for summary judgment on their APA claims, setting aside the vacatur of the January 17, 2025, extension and the termination of Venezuela's 2023 Temporary Protected Status. On October 3, 2025, the Supreme Court of the United States granted the defendant's motion for an emergency stay. That stay, per the Court's order, remains in effect pending the disposition of any petition for writ of certiorari the government may wish to file. *National TPS Alliance v. Noem*, 145 S. Ct. 2728 (Mem.) (2025). It is likely such review will be sought. On December 10, 2025, the Northern District of California entered declaratory judgment, declaring the vacatur and termination unlawful. *Nat'l TPS All. v. Noem, No. 25-CV-01766-EMC, 2025 WL 3539156 (N.D. Cal. Dec. 10, 2025)*. The district court stayed its declaration for two weeks to permit an appeal or a stay. *Id.* The government appealed, but it did not seek a stay, and the declaration went into effect on December 25, 2025, in that district.

NTPSA Has No Preclusive Effect in this District.

Petitioner essentially argues she is entitled to release from detention because she may not be removed nor detained as a TPS beneficiary. ECF No. 1 at ¶ 17. Petitioner appears to base the claim that she has TPS solely based on the order entered by the *NTPSA* court on December 10, 2025. *See id.* ¶ 17. This order, entered while the *NTPSA* court's prior order vacating the Venezuela TPS revocation was stayed by the Supreme Court and was on appeal to the Ninth Circuit, declared

that the Venezuela TPS revocation was unlawful. *NTPSA*, No. 25-CV-01766-EMC, 2025 U.S. Dist. LEXIS 256153, at *8. Petitioner essentially argues that the December 10 Order conclusively established that Petitioner's TPS status protects against detention. ECF No. 1 ¶ 17. That order, however, does not entitle Petitioner to habeas relief because Petitioner's claim is a core habeas claim that must be brought in the district where he is confined. Further, the parties in both actions were not the same—in fact, the only proper respondent to this Petition (his custodian) was not a party to the *NTPSA* action—and in any case, the *NTPSA* court's orders cannot have preclusive effect against parties over whom the *NTPSA* court lacked jurisdiction.

The Supreme Court has imposed two fundamental limits on federal court jurisdiction over core habeas claims. *First*, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). *Second*, a habeas petitioner must name the petitioner's *immediate* custodian—*i.e.*, the custodian who has actual custody over the petitioner and can produce the "corpus." *Padilla*, 542 U.S. at 435. "Failure to name the petitioner's custodian as a respondent deprives federal courts of personal jurisdiction" needed to issue relief. *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994); *Padilla*, 542 U.S. at 444. Thus, a federal district court is wholly without authority to issue the writ in favor of a habeas petitioner who seeks habeas relief in a judicial district in which he is not confined, and the immediate custodian is not located. *Padilla*, 542 U.S. at 442-43. And "[a] judgment entered without jurisdiction over the defendant is void." *S.E.C. v. Ross*, 504 F.3d 1130, 1139 (9th Cir. 2007).

Given that a challenge to the legality of detention is a core habeas claim, declaratory relief is inappropriate in the habeas context. *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (declaratory judgment action not appropriate to address "validity of a defense the State may, or may not, raise

in a habeas proceeding" in part because "the underlying claim must be adjudicated in a federal habeas proceeding"); *Fusco v. Grondolsky*, No. 17-1062, 2019 WL 13112044, at *1 (1st Cir. June 18, 2019) (declaratory judgment action must be dismissed when habeas available). Indeed, a declaratory judgment imposed from outside the district of confinement cannot be squared with the district-of-confinement requirement of habeas, where the relief is an order of release, 28 U.S.C. § 2241(a), not a declaration of legal rights that can later be enforced. *See Calderon*, 523 U.S. at 747; *Fusco*, 2019 WL 13112044, at *1; *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996) (holding that the "availability of a habeas remedy in another district ousted us of jurisdiction over an alien's effort to pose a constitutional attack . . . by means of a suit for declaratory judgment"); *Monk v. Sec'y of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) ("In adopting the federal habeas corpus statute, Congress determined that habeas corpus is the appropriate federal remedy for a prisoner who claims that he is 'in custody in violation of the Constitution . . . of the United States,' . . . . This specific determination must override the general terms of the declaratory judgment . . . statute.").

Here, Petitioner is confined *outside* of the Northern District of California by an immediate custodian who is also *outside* the Northern District of California and who was not named in the *NTPSA* litigation. Therefore, the *NTPSA* court lacked jurisdiction to issue habeas relief to any petitioner, including this Petitioner, confined in the Western District of Texas by an immediate custodian outside that District, and a court's judgment cannot be binding and preclusive against a party over which it lacked jurisdiction. *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 608 (1990). Indeed, another federal district court has already held that orders granting declaratory relief without vacatur "are advisory opinions because they do not redress the alleged harm and are not preclusive," and other courts have likewise declined to apply such declaratory judgments in

habeas actions brought outside the district where those judgments were issued. *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, --- F. Supp. 3d ----, 2025 WL 3683918, at *1 (N.D. Tex. Dec. 19, 2025); *see also Rodriguez v. Jeffreys,* No. 8:25-CV-714, 2025 WL 3754411, at *8-10 (D. Neb. Dec. 29, 2025); *Falcon v. Wofford,* No. 1:26-cv-00181-WBS-EFB, 2026 U.S. Dist. LEXIS 12056, at *4–7 (E.D. Cal. Jan. 22, 2026); *Morales v. Noem,* No., 2026 U.S. Dist. LEXIS 21488, at *22–24 (S.D. Fla. Jan. 29, 2026); *Godos v. Bondi,* No. 4:26-cv-00020-TWP-KMB, 2026 U.S. Dist. LEXIS 16643, at *5 (S.D. Ind. Jan 29, 2026); *J.A.S.V. v. Warden,* No. 4:26-cv-00132-CDL-CHW, 2026 U.S. Dist. LEXIS 21227, at *1 n.1 (M.D. Ga. Jan. 30, 2026); *Quintero v. Francis,* No. 25-CV-10107 (MKV), 2026 U.S. Dist. LEXIS 21584, at *18 (S.D.N.Y. Feb. 2, 2026).

In sum, the *NTPSA* court's declaratory judgment purporting to grant relief that is habeas at its core is a legal nullity outside the Northern District of California. At the time of filing this habeas petition, Petitioner was detained at an immigration detention facility in Dilley, Texas, which is in the Western District of Texas, not the Northern District of California. And Petitioner's immediate custodian is the Warden of the Dilley Immigration Processing Center, who was not a party to *NTPSA*. Subjecting Petitioner's immediate custodian to the judgment of the Northern District of California would be inconsistent with the immediate-custodian rule. *See Padilla,* 542 U.S. at 439-40; Doe, 109 F.4th at 1196.

Further, in finding that it had jurisdiction to issue declaratory relief notwithstanding that the matter was on appeal, the *NTPSA* court posited that granting a declaratory judgment for the same reasons it granted the order that was on appeal would "simply preserve[] the status quo (pending at the time of the appeal)[.]" *NTPSA,* No. 25-CV-01766-EMC, 2025 U.S. Dist. LEXIS 256153, at *8. Because the Supreme Court stayed the *NTPSA* court's original order pending appeal (and has since stayed it again pending further proceedings), the *NTPSA*'s declaratory judgment

order, which Petitioner argues provides relief functionally identical to that provided in the original (stayed) order, appears to be an attempt to evade the effect of the Supreme Court's stay. The status quo was not that Petitioner was entitled to relief at the time the *NTPSA* court granted declaratory judgment—the status quo was that he was not so entitled, pursuant to the Supreme Court's stay.

Petitioner's Detention During Removal Proceedings Comports with Due Process.

Petitioner's due process claim fails because she has not submitted any evidence that she is being detained for any purpose beyond the resolution removal proceedings, or that her detention will be any longer than it might take to carry out her removal.

As an initial matter, immigration detention, including detention during removal proceedings, has survived Due Process review, and detention periods of 180 days or longer have been upheld as constitutional. *See, e.g., Jennings*, 583 U.S. at 323 ("This Court has never held that detention during removal proceedings is unconstitutional. To the contrary, this Court has repeatedly recognized the constitutionality of that practice.") (Thomas, J., concurring in part and concurring in the judgment) (citations omitted); *see also Demore v. Kim*, 538 U.S. 510, 523 (2003) (explaining that detention is 'a constitutionally valid aspect of the deportation process'); *accord, Reno*, 507 U. S. at 305–06; *Shaughnessy*, 345 U. S. at 215; *Carlson*, 342 U. S., at 538, 542; *see also Parra*, 172 F.3d at 958 (detention during removal proceedings constitutional). Petitioner is currently in removal proceedings[5], and this detention is neither prolonged, nor indefinite.

Congress created a detention system where applicants for admission, including those who entered the country unlawfully, are detained for removal proceedings under § 1225 and foreign nationals who have been admitted to the country are detained under § 1226. The Court has

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[5] As noted *supra*, Petitioner has an Individual Hearing scheduled before the Dilley Immigration Court on March 19, 2026. *See* Exh. A.

confirmed that detention pending removal proceedings do not violate due process when such proceedings have a definite end point. *See Demore*, 538 U.S. at 531 ("Detention during removal proceedings is a constitutionally permissible part of that process."); *see also Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (even after foreign national is ordered removed and detention may be indefinite, detaining him for up to 180 days is presumptively valid). As the Court summarized in *Cirrus Rojas*:

> Given the caselaw and the well-defined procedures governing (and limiting) Cirrus Rojas's detention, the Court rejects his due process challenge. Consistent with *Zadvydas* and *Demore*, Cirrus Rojas has a recognizable liberty interest in connection with his pre-removal detention. But as *Demore* held, and *Parra* explains, that liberty interest is limited. Cirrus Rojas is an alien who was found in the United States without authorization and is subject to removal proceedings. Consistent with federal law, he is being provided with the opportunity to oppose removal and using that opportunity to pursue an asylum claim. As explained in *Parra*, Cirrus Rojas's liberty interest is limited, and he has the key to his release in his own pocket; he can choose to accept removal to his homeland under Section 1229a.

Cirrus Rojas, 2025 WL 3033967, at *12 (citing *Parra*, 172 F.3d at 958).

In this regard, petitioner has not submitted any evidence that she is being detained for any purpose beyond the resolution removal proceedings, or that she might be detained any longer than it might take to carry out her removal to Venezuela. *Cf. Chaviano v. Bondi*, No. 25-cv-22451, 2025 WL 1744349, at *8 (S.D. Fla. June 23, 2025) (noting how hearings before an immigration court and opportunities for credible-fear interviews, together with a one-month detention, was not a sufficient basis for finding a due process violation, particularly where "detention, even for far longer periods, pending immigration proceedings" did not violate due process).

Petitioner has been given notice of the charges against her, has access to counsel, may attend hearings with an immigration judge, and has the right to appeal any determination made by an immigration judge. Petitioner has put forth no arguments to the contrary that her detention violates the due process clause in any way, absent the protections the TPS program to which she

does not qualify.

Petitioner fails to show that her detention while he awaits the conclusion of his removal proceedings violates due process. *Demore*, 538 U.S. at 531 (no due process violation in detaining foreign national pending removal proceedings); *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999) ("The private interest here is not liberty in the abstract, but liberty *in the United States* by someone no longer entitled to remain in this country but eligible to live at liberty in his native land[.]"). Conversely, the United States has "a powerful interest in maintaining the detention in order to ensure that removal actually occurs." *Parra*, 172 F.3d at 958. As a result, the Court should deny any relief sought pursuant to argument that petitioner's right to due process has been violated.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

"A person seeking habeas relief must first exhaust available administrative remedies." *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018) (citing, *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (per curiam)). Exhaustion has been a long-standing prerequisite to habeas relief. *Id.*

There are approximately 3.74 million cases pending in immigration court. See, https://www.justice.gov/eoir/pr/eoir-announces-significant-immigration-court-milestones (Sept. 4, 2025). Federal district courts are not intended nor equipped to be the reviewing court for all immigration bond determinations or decisions related to the institution of removal proceedings. 8 USC § 1226(e) (district courts do not have jurisdiction to review discretionary decisions made by immigration judges regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole). Challenges to removal proceedings, the government's evidence, and the merits of asylum claims are properly addressed to the immigration court and should be administratively exhausted before presenting in district court. *Hinojosa*, 896 F. 3d at 314 (5th Cir.

2018); *see Cortez v. Lynch*, No. 1:25-CV-822, 2026 WL 82039 (S.D. Ohio Jan. 12, 2026) (McFarland, J.) (declining to review Petitioner's detention-based claims due to his failure to exhaust administrative remedies); *Pastor v. Dir. of Detroit Field Off.*, No. 4:25-CV-02761, 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025) (Calabrese, J.) (holding that Petitioner must first pursue challenge before BIA for exhaustion and that such exhaustion is not futile); *Bartolon v. Bondi*, No. 1:25-CV-747, 2025 WL 3674604 (S.D. Ohio Dec. 18, 2025) (McFarland, J.) (holding that Petitioner's failure to exhaust claims with BIA precluded judicial review of habeas claims); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264482 (N.D. Tex. Oct. 24, 2025) (Hendrix, J.) (holding that Petitioner does not demonstrate grounds for excusing exhaustion and must first advance his request for relief to BIA).

As noted *supra*, Petitioner currently has an immigration hearing scheduled on March 19, 2026. *See* Exh. A. Petitioner must first seek relief with the immigration court or the BIA, fully exhausting administrative remedies before coming to this Court.

APA CHALLENGES MAY NOT BE ASSERTED AS HABEAS PETITIONS

In this proceeding, Petitioner expressly challenges her civil detention. *See, e.g.*, ECF 1. Such a challenge must be brought in the form of a petition for a writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that when a detainee "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus"); *see also, e.g.*, *Miller v. Commw. of Pa.*, 588 F. App'x 96, 97 n.1 (3d Cir. 2014) ("Relief in the form of . . . release from custody indicates a challenge to 'the very fact or duration of [one's] physical imprisonment' and may be sought *only* through a petition for a writ of habeas corpus[.]" (emphasis added) (quoting *Preiser*, 411 U.S. at 500)). Put simply, "release

from ICE custody . . . is a remedy that is *only* available through a habeas petition." *Armando C. G. v. Tsoukaris*, No. 20-5652, 2020 WL 4218429, at *7 (D.N.J. July 23, 2020) (emphasis added).

Petitioner purports to assert a claim under the Administrative Procedure Act ("APA")—a civil claim. ECF No. 1 ¶¶ 60-66. This she may not do, as a civil APA claim is not cognizable in the habeas context. *See, e.g.*, *Mesina v. Wiley*, 352 F. App'x 240, 241-42 (10th Cir. 2009) (holding that petition asserting APA claim "does not state a habeas claim").

Petitioner's Habeas Petition is Not The Proper Vehicle To Present Fourth Amendment Claims

Lastly, Petitioner raises some novel Fourth Amendment arguments. ECF No. 1 ¶¶ 67-78. Petitioner argues that her apprehension without a judicial warrant and without probable cause, violates the Fourth Amendment. *See id.* These claims are without merit.

First, the basis of Petitioner's argument – that his *warrantless arrest* on civil immigration grounds was unlawful – is not cognizable in this habeas petition, which vests jurisdiction in this Court solely to review the legal propriety of Petitioner's *current detention*. The question is not whether her detention was unlawful in the past. "[T]he great and central office of the writ of habeas corpus is to test the *legality of the prisoner's current detention* [emphasis added]." *Walker v. Wainwright*, 390 U.S. 335, 336 (1968).

In habeas, the Court does not review all possible previous errors, it asks only whether the confinement is justified. *See Lane v. Williams*, 455 U.S. 624, 631, (1982) (explaining that where detainment or its consequences have expired, a habeas petition is moot); *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) (distinguishing between backward-looking remedies and habeas); *Lindh v. Murphy*, 521 U.S. 320, 342, (contrasting backward-looking actions like damages with "the writ of habeas corpus is prospective in nature," and it "*does not compensate for past wrongful incarceration* ..[emphasis added]..") (Scalia, J., dissenting). Whatever the

circumstances and facts before now, they are thus irrelevant to resolution of the legality of the Petitioner's current detention.

CONCLUSION

Based on the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's habeas petition and dismiss this case with prejudice.

Dated: February 19, 2026.

Respectfully submitted,

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