

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

**Giuliano Miguel GUTIERREZ
ZAPPATERRA,**

Petitioner,

v.

**Warden, ERO El Paso Camp East
Montana; Mary De Anda-Ybarra, Field Office
Director, El Paso Field Office, United States
Immigration and Customs
Enforcement; Todd M. Lyons, Acting
Director, United States Immigration and
Customs Enforcement; Kristi Noem,
Secretary of Homeland Security; Pamela Jo
Bondi, United States Attorney General, in
their official capacities,**

Respondents.

Civil Action No.: 3:26-cv-122

**PETITION FOR WRIT OF
HABEAS CORPUS**

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

INTRODUCTION

1. Giuliano Miguel Gutierrez Zappaterra is a Venezuelan national who holds Temporary Protected Status (TPS) under 8 U.S.C. 1254a. TPS holders may not be either detained or deported so long as their TPS is valid. The TPS statute 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). That protection remains available even if the TPS holder 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. While DHS Secretary Kristi Noem purported to rescind TPS for Venezuela, for the purposes of this habeas petition, Petitioner’s TPS status must be deemed valid. On December 10, 2025, the federal district court of the Northern District of California granted declaratory relief and declared unlawful Respondent Noem’s vacatur of the January 17, 2025, extension of TPS for Venezuela and subsequent termination of Venezuela’s 2023 designation in a case brought by the membership organization National TPS Alliance. *Nat’l TPS All. v. Noem*, No. 25-cv-01766-EMC, 2025 WL 3539156 at *3 (N.D. Cal. Dec. 10, 2025) (hereinafter “*NTPSA*” and “December 10 Order”). The December 10 Order in *NTPSA* has preclusive effect in Petitioner’s habeas case, controlling the legal question of whether members of the National TPS Alliance (*NTPSA*), such as Petitioner, retain their TPS status. This Court must thus find Petitioner’s detention unlawful and order his release.
3. Petitioner has now been detained by U.S. Immigration and Customs Enforcement (ICE) for approximately 61 days despite the unambiguous statutory command that TPS holders may not be either detained or deported.
4. Petitioner challenges his detention as a violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.

5. Petitioner respectfully requests that this Court grant a Writ of Habeas Corpus and order Respondents to release them from custody. Petitioner seeks habeas relief under 28 U.S.C. § 2241, which is the proper vehicle for challenging civil immigration detention. See *Rosales v. Bureau of Immigration and Customs Enf't*, 426 F.3d 733, 735 (5th Cir. 2005) (holding that noncitizens subject to final removal orders or immigration detention are "in custody" for purposes of § 2241 habeas jurisdiction); see also *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (recognizing constitutional limits on prolonged immigration detention and establishing habeas corpus as the remedy). The Fifth Circuit has consistently recognized that district courts have jurisdiction under § 2241 to hear due process challenges to the legality and duration of immigration detention. See *United States v. Imran*, No. 25-30370, slip op. at 2–3 (5th Cir. Jan. 12, 2026) (confirming district court jurisdiction under § 2241 to adjudicate due process claims challenging prolonged immigration detention).

CUSTODY

6. Petitioner is in the physical custody of Respondents. Petitioner is imprisoned at ERO El Paso Camp East Montana, an immigration detention facility, in El Paso, Texas. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

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

VENUE

8. Venue is proper in this District under 28 U.S.C. 1391 and 28 U.S.C. 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's

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) (“the proper respondent to a habeas petition is ‘the person who has custody over the petitioner’”) (citing 28 U.S.C. 2242) (cleaned up).

PARTIES

9. Petitioner Giuliano Miguel Gutierrez Zappaterra is currently detained by Respondents at Clark County Jail, an immigration detention facility located in El Paso, Texas. Petitioner has been in ICE custody since on or about November 10, 2025. While the specific grounds for Petitioner's apprehension by Department of Homeland Security remain unclear, Petitioner was issued a Notice to Appear on November 21, 2025, and has remained continuously detained at ERO El Paso Camp East Montana since that date.
10. Respondent Warden, ERO El Paso Camp East Montana, is the custodial officer responsible for the detention facility located at 6920 Digital Road, El Paso, Texas 79936, where Petitioner is currently detained. The Warden is Petitioner's legal custodian and is named in an official capacity.
11. Respondent Mary De Anda-Ybarra is the Field Office Director responsible for the El Paso Field Office of ICE with administrative jurisdiction over Petitioner's immigration case. She is a legal custodian of Petitioner and is named in her official capacity.
12. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.
13. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is a legal custodian of Petitioner and is named in her official capacity.
14. Respondent Pamela Jo Bondi is the Attorney General of the United States Department of

Justice. She is a legal custodian of Petitioner and is named in her official capacity.

STATEMENT OF FACTS

I. PETITIONER IS DETAINED DESPITE HAVING TEMPORARY PROTECTED STATUS FROM VENEZUELA

15. Petitioner came to the United States prior to July 31, 2023. Petitioner applied for and was granted Temporary Protected Status in the United States initially pursuant to the 2021 designation of TPS for Venezuela. Petitioner has consistently renewed TPS since this initial registration, including pursuant to the most recent January 17, 2025 extension, which extended protection for Venezuelan TPS beneficiaries through October 2, 2026. See **Exh. 3**. Petitioner's most recent I-94, which serves as proof of TPS registration, has been valid since his first approval up until September 10, 2025. See **Exh. 3**
16. Petitioner is a member of the National TPS Alliance. See **Exh. 5**
17. On November 10, 2025, at approximately 8:15 a.m., ICE officers executed an enforcement action at Petitioner's residence located at 361 Marshall Road, Apartment 1B, Bensenville, Illinois 60106, and took Petitioner into custody. Petitioner was subsequently issued a Notice to Appear on November 21, 2025. Since his arrest on November 10, 2025, Petitioner has remained in continuous ICE custody and was transferred to ERO El Paso Camp East Montana, located at 6920 Digital Road, El Paso, Texas 79936, where he is currently detained.
18. On December 3, 2025, Petitioner, through prior counsel, filed a Motion for Bond Redetermination arguing that the immigration court retained authority under 8 C.F.R. § 1236.1(d) to redetermine custody conditions. See *Matter of A-W-*, 25 I&N Dec. 45 (BIA 2009). The immigration proceedings were dismissed on January 15, 2026, and no action was taken on the bond motion. Petitioner has remained in continuous ICE custody from his

arrest on November 10, 2025, through the present date. Petitioner now seeks habeas relief under 28 U.S.C. § 2241 to challenge the lawfulness and continued duration of his detention.

II. TEMPORARY PROTECTED STATUS FOR VENEZUELA

19. On the last day of his first term, President Trump designated Venezuela for Deferred Enforced Departure—a form of nationality-based, discretionary relief from deportation—because Venezuela was experiencing “the worst humanitarian crisis in the Western Hemisphere in recent memory.” 86 Fed. Reg. 6,845, 6,845 (Jan. 19, 2021). President Trump’s action permitted approximately 300,000 Venezuelan refugees to live and work here for 18 months. Memorandum re Deferred Enforced Departure for Certain Venezuelans, 86 Fed. Reg. 6845 (Jan. 19, 2021).
20. Shortly afterwards, on March 9, 2021, then-DHS Secretary Mayorkas designated Venezuela for TPS, allowing Venezuelans residing in the U.S. since March 8, 2021 to apply for protection. 86 Fed. Reg. 13,574 (Mar. 9, 2021). He did so again on October 3, 2023, allowing more recently arrived Venezuelans to apply. 88 Fed. Reg. 68,130 (Oct. 3, 2023).
21. DHS twice extended the 2021 designation of TPS for Venezuela, providing protections through September 10, 2025, to TPS holders who initially registered in 2021. 87 Fed. Reg. 55,024 (Sept. 8, 2022); 88 Fed. Reg. at 68,130.
22. On January 17, 2025, the DHS Secretary extended the 2023 Venezuela Designation by 18 months, through October 2, 2026. 90 Fed. Reg. 5,961 (“January 2025 Extension”). DHS cited Venezuela’s ongoing “complex, serious and multidimensional humanitarian crisis,” which has “disrupted every aspect of life,” and concluded that the “extraordinary and temporary conditions supporting Venezuela’s TPS designation remain.” *Id.* at 5,963 (citation omitted).

23. In the extension order, DHS also streamlined the registration process for TPS holders by consolidating them into a single track, “allow[ing] existing beneficiaries of either the 2021 or 2023 TPS designation to seek an 18-month extension of status through October 2, 2026.” *Id.* at 5,962.

24. On February 3, 2025, just days after she took office, Respondent Secretary Noem purported to “vacate” DHS’ January 17 extension of TPS for Venezuela. 90 Fed. Reg. 8805 (Feb. 3, 2025). That decision was the first vacatur of a TPS extension in the 35-year history of the TPS statute.

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

26. On September 8, 2025, DHS published a notice in the Federal Register purporting to terminate the 2021 designation of TPS for Venezuela.¹ 90 Fed. Reg. 43225 (Sept. 8, 2025).

LEGAL CHALLENGE TO VENEZUELA’S TPS TERMINATION

27. On February 19, the National TPS Alliance and seven individual Venezuelan TPS holders sued the federal government, alleging that the vacatur of the January 17, 2025 extension of TPS for Venezuela and subsequent termination of Venezuela’s 2023 TPS designation 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. 25-CV-01766-EMC (N.D. Cal. Filed Feb. 19, 2025).

28. On December 10, 2025, the district court in *NTPSA* issued a final judgment declaring the vacatur of the January 17, 2025, extension of TPS for Venezuela and termination of

¹ The termination of Venezuela’s 2021 designation is not at issue in this case because Petitioner, having initially registered for TPS under Venezuela’s 2021 designation, became a beneficiary of Venezuela’s 2023 designation by re-registering during the designated registration period. Consequently, Petitioner’s TPS status remains valid and continuous under the current designation.

Venezuela's 2023 TPS designation unlawful. *Nat'l TPS All. v. Noem*, No. 25-CV-01766-EMC, 2025 WL 3539156, at *3 (N.D. Cal. Dec. 10, 2025) ("NTPSA December 10 Order"). The court stayed its order for two weeks to permit the government to appeal and/or seek a stay. *Id.* The government did neither.

29. Pursuant to the NTPSA December 10 Order, Petitioner retains TPS because Defendants' actions purporting to deprive them of that status—*i.e.*, the vacatur of the January 17, 2025, extension and the termination of Venezuela's 2023 designation—were unlawful.
30. The NTPSA December 10 Order controls as to the question of whether members of the National TPS Alliance—the lead plaintiff in NTPSA—retain their TPS status.
31. A declaratory judgment is a final judgment on the merits which defines the legal duties among the parties. See 28 U.S.C. § 2201 ("Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such"); *id.* ("any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration"). The Declaratory Judgment Act "has been understood to confer on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants." *Sherwin-Williams Co. v. Holmes Cnty.*, 343 F.3d 383, 387 (5th Cir. 2003) (quoting *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995)). A federal district court must determine "(1) whether the declaratory action is justiciable; (2) whether the court has the authority to grant declaratory relief; and (3) whether to exercise its discretion to decide or dismiss the action." *Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891, 895 (5th Cir. 2000).
32. A final merits judgment, including a declaratory judgment, has preclusive effect on future proceedings involving the same parties. *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023) ("the point of a declaratory judgment 'is to establish a binding adjudication that enables the parties

to enjoy the benefits of reliance and repose secured by res judicata,” citing 18A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4446 (3d ed. Supp. 2022)).

33. “A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. [E]ven if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. Accordingly, [a] case pending appeal is res judicata and entitled to full faith and credit unless and until reversed on appeal.” *Comer v. Murphy Oil USA, Inc.*, 718 F.3d 460, 467 (5th Cir. 2013) (internal cites and quotations omitted); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003).

LEGAL FRAMEWORK

34. The Court need analyze only one statutory provision to resolve this habeas petition. The TPS statute unequivocally prohibits the detention of persons with valid TPS, and Petitioner must be released. See 8 USC 1254a(a)(1)(A), (d)(4) (“[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General”) (emphasis added).² It is hard to imagine a clearer statutory mandate proscribing detention.
35. The Court need not delve further in an attempt to understand other aspects of Petitioner’s immigration status, because TPS protection remains valid even if the TPS holder has a final removal order or lacks other immigration status. 8 U.S.C. 1254a(a)(1)(A) (the government “shall not remove the alien from the United States during the period in which such [TPS]

² “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.

status is in effect.”). Indeed, individuals with a final order of removal are statutorily eligible for TPS and may not be denied TPS if otherwise eligible on the basis of that removal order. 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).

36. Should the Court nonetheless choose to address constitutional questions, it should also find that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
37. 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). Where, as here, the government has no authority to deport Petitioner, detention is not reasonably related to its purpose.
38. 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 on-going imprisonment obviously cannot satisfy that rigorous standard.

39. 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.
40. Petitioner may not be legally detained or deported, and this Court should order Petitioner’s immediate release him from ICE custody. *See* 28 U.S.C. 2241(c)(3) (authorizing writ for people detained in violation of federal law).

CLAIMS FOR RELIEF

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

41. Petitioners reallege and incorporate by reference each and every allegation contained above.
42. Section 1254a of Title 8 of the U.S. Code governs the treatment of TPS holders, including their detention and removal under federal immigration law.
43. Section 1254a(d)(4) states “[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien’s immigration status in the United States.” (emphasis added). There is no exception to this rule provided in the statute.
44. Thus, Petitioners’ detention violates Section 1254a, and he is entitled to immediate release from custody.

COUNT TWO

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

45. Petitioner reallege and incorporate by reference each and every allegation contained above.

46. 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).

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

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. 2243;
3. Declare that Petitioner's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. 1254a;
4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
5. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;

6. Enjoin Petitioners from further detaining Petitioner so long as the December 10 Order remains in effect;
7. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
8. Grant such further relief as this Court deems just and proper.

Dated: January 21, 2026

Respectfully submitted,

Respectfully submitted,

BY: /s/ Hector Benitez Canas

Hector Benitez Canas
Attorney for Plaintiff
Benme Legal PA
1695 NW 110th Ave, Suite 305
Doral, FL 33172
Tel +1 (786) 558-5625
Email: hbenitez@benmelegal.com

VERIFICATION

Hector Benitez Canas, under penalty of perjury, states the following:

1. I am an attorney admitted to practice before this Court. I am employed by Benme Legal PA, the attorney for the Plaintiff in the foregoing Complaint.
2. I affirm the truth of the contents of the foregoing Complaint upon information and belief. The sources of my information and belief are documents provided to me.

_____/s/ *Hector Benitez Canas*_____
Dated: January 22, 2026

Hector Benitez Canas, MO Bar # 72577
Attorney for Plaintiff

LIST OF EXHIBITS

Exhibit A— Notice to Appear (NTA) – Issued 11/21/2025

Exhibit B— I-94 (Most Recent – 07/07/2015 Entry)

Exhibit C— TPS Approval Notice (I-821) + I-94 Tear-Off (Valid: 09/10/2022–09/10/2025) and screenshot of re-registration case status

Exhibit D— EAD(s) – Category A12 (if legible)

Exhibit E— Proof of NTPSA Membership

Exhibit F— NTPSA Dec. 10 Order (Judge Chen – N.D. Cal.)

Exhibit G— Bond Motion Filed (12/23/2025)