

1 CASSANDRA LOPEZ (SBN 260919)
AL OTRO LADO
 2 511 E. San Ysidro Blvd, #333
 San Ysidro, CA 92173
 Telephone: 619.730.5891
 3 Fax: 619.345.4693
 Email: cassandra.l@alotrolado.org

4 Attorney for Mr. Leira Pena

5 UNITED STATES DISTRICT COURT
 6 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

7 LUIS JOSE LEIRA PENA,
 8 *Petitioner,*
 9 v.
 10 JEREMY CASEY, Facility
 administrator at the Imperial
 Regional Detention Facility,
 11 PATRICK DIVVER, Director of the
 U.S. Immigration and Customs
 Enforcement San Diego Field Office,
 12 TODD LYONS, acting Director of
 U.S. Immigration and Customs
 Enforcement, and MARKWAYNE
 13 MULLIN, Secretary of the U.S.
 Department of Homeland
 Security

'26CV3194 TWR VET

**VERIFIED EMERGENCY
 PETITION FOR A WRIT OF
 HABEAS CORPUS, ORDER TO
 SHOW CAUSE WITHIN THREE
 DAYS**

15
 16
 17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

INTRODUCTION

1. Petitioner Luis Jose Leira Pena petitions for a writ of habeas corpus seeking his release from U.S. Immigration and Customs Enforcement (ICE) custody. ICE is a component agency of the Department of Homeland Security (DHS).

2. U.S. Customs and Border Protection (CBP), another component agency of DHS, released Mr. Leira Pena on parole in 2022.

3. Mr. Leira Pena arrived in the U.S. seeking asylum, withholding of removal, or protection under the Convention Against Torture because he feared he will be persecuted by the Venezuelan government and associated groups if he returns to Venezuela.

4. Mr. Leira Pena filed his asylum application in 2023. Ex. A. He has no criminal history.

5. On or about April 15, 2026, DHS officers arrested Mr. Leira Pena as he walked out of a gas station. The officers did not provide him with prior notice that DHS was revoking his release or an opportunity to contest whether his re-detention was warranted.

6. The officers took Mr. Leira Pena into custody and detained him at the Imperial Regional Detention Facility (IRDF), where he remains today.

1 7. Due Process requires the government to provide noncitizens with
2 notice and a hearing prior to re-detention, and that re-detention without prior notice,
3 a showing of changed circumstance, or a meaningful opportunity to respond,
4 violates procedural due process under the Fifth Amendment. *See e.g.*
5 *Ramirez-Bibiano v. LaRose*, No. 25-CV-3429-JLS (SBC), 2025 WL 3632748, at *5
6 (S.D. Cal. Dec. 15, 2025); *Noori v. LaRose*, No. 25-CV-1824-GPC-MSB, 2025 WL
7 2800149, at *12 (S.D. Cal. Oct. 1, 2025).

8 8. DHS also granted Mr. Leira Pena Temporary Protected Status (“TPS”)
9 on August 5, 2024. Ex. B. Despite DHS efforts to terminate its TPS designation for
10 Venezuela, he continues to hold TPS. On December 10, 2025, the federal district
11 court of the Northern District of California granted declaratory relief and declared
12 unlawful the purported termination of TPS for Venezuela. *Nat’l TPS All. v. Noem*,
13 789 F. Supp 3d. 1108 (N.D. Cal. 2025)

14 9. TPS holders may not be either detained or deported so long as their
15 TPS is valid. The TPS statute provides that “[a]n alien provided temporary
16 protected status under this section *shall not be detained* by the Attorney General on
17 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.

1 1254a(a)(5) (TPS statute provides no authority to “deny temporary protected status
2 to an alien based on the alien’s immigration status”); 8 U.S.C. 1254a(g) (TPS
3 statute constitutes the exclusive authority for affording nationality-based protection
4 to “otherwise deportable” non-citizens).

4 10. Because *Nat’l TPS All. v. Noem* established that Venezuelan TPS
5 holders retain their TPS through October 2, 2026, Mr. Leira Pena is being
6 unlawfully detained in violation of the TPS statute.

6 11. Because Mr. Leira Pena’s detention is unlawful under the Fifth
7 Amendment and Immigration and Nationality Act, this Court should order his
8 immediate release.

9 **JURISDICTION AND VENUE**

9 12. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
10 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§
11 2201-02 (declaratory relief), and art. I sec. 9, cl. 2 of the United States Constitution
12 (Suspension Clause), as Mr. Leira Pena is presently in custody under the authority
13 of the United States and challenges his detention as in violation of the Constitution,
14 laws, or treaties of the United States.

14 13. The federal district courts have jurisdiction under Section 2241 to hear
15 habeas claims by individuals challenging the lawfulness of their detention by ICE.
16 *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

1 14. The Court should also reject any jurisdictional defenses the
2 government may assert under 8 U.S.C. §§ 1252(g) and (b)(9), because this
3 challenge does not seek review of any removal order and instead challenges
4 re-detention. *See Ramirez-Bibiano*, 2025 WL 3632748, at *2-3 (rejecting the
5 government’s challenges under 8 U.S.C. §§ 1252(g) and (b)(9) to habeas
6 jurisdiction). The Court also should waive any exhaustion requirement as futile for
7 the same reasons it did so in *Ramirez-Bibiano*. 2025 WL 3632748 at *3
8 (recognizing the Southern District of California finds exhaustion to be futile in this
9 context such that immediate judicial review of habeas petitions challenging
10 re-detention is required).

11 15. Venue is proper in the Southern District of California, pursuant to 28
12 U.S.C. §§ 1391 and 2241(d) because Mr. Leira Pena is detained at IRDF in
13 Calexico, California.

14 **REQUIREMENTS OF 28 U.S.C. § 2243 (IMMEDIATE ISSUANCE OF**
15 **WRIT OF HABEAS CORPUS OR OSC THEREON)**

16 16. The Court must grant the petition for writ of habeas corpus or issue an
17 order to show cause (“OSC”) to the respondents “forthwith,” unless the petitioner is
not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require
respondents to file a return “within three days unless for good cause additional
time, not exceeding twenty days is allowed.” *Id.*

1 28. He attended the January 30, 2023 appointment. The ICE officer there
2 told him that his next check-in date would be July 24, 2023.

3 29. Mr. Leira Pena went to the ICE office on July 24, 2023, but an officer
4 by the entrance to the office told him that the office was closed and that ICE would
5 send him something in the mail about his next appointment date.

6 30. Though Mr. Leira Pena kept his address updated with DHS, he never
7 received any other notice of any other check-ins from ICE.

8 31. Mr. Leira Pena submitted his asylum application to DHS in 2023. He
9 was given a biometrics appointment on November 2, 2023, which he attended. Ex.

10 A.

11 32. DHS subsequently granted Mr. Leira Pena work authorization. Mr.
12 Leira Pena obtained a social security card and a California Driver's license.

13 33. On October 30, 2023, Mr. Leira Pena also applied for TPS pursuant to
14 DHS' October 3, 2023 designation of Venezuela as a country to which Venezuelan
15 citizens should not be forced to return. Ex. B. TPS provides its holders work
16 authorization and protection against detention and deportation for the period of its
17 validity. DHS granted Mr. Leira Pena TPS on August 5, 2024. *Id.*

34. On January 17, 2023, DHS published a notice in the federal register
allowing for TPS for Venezuela holders to re-register for the status between January
17, 2025 and September 10, 2025. Re-registration extended the status of TPS for
Venezuelans until October 2, 2026.

1 35. Mr. Leira Pena submitted his TPS re-registration application to DHS in
2 July of 2025. As such, his TPS is valid until October 2, 2026.

3 36. Despite compliance with the terms of his parole and his active TPS,
4 DHS officers arrested Mr. Leira Pena on or about April 13, 2026 as he walked out
5 of a gas station convenience store.

6 37. DHS did not advise Mr. Leira Pena as to why he was being detained.
7 Nor did the agency provide Mr. Leira Pena any notice or opportunity to contest his
8 decision to detain him at any point prior to this arrest. ICE has detained him at
9 IRDF ever since.

8 **LEGAL FRAMEWORK**

9 38. “[T]he Due Process Clause applies to all ‘persons’ within the United
10 States, including aliens, whether their presence here is lawful, unlawful, temporary,
11 or permanent.” *Zadvydas v. Davis*, 533 U.S. 678 (2001). Accordingly, “[i]t is well
12 established that the Fifth Amendment entitles aliens to due process of law in the
13 context of removal proceedings.” *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025)
14 (internal quotation marks omitted) (citing *Reno v. Flores*, 507 U.S. 292, 306
15 (1993)). Due process “requires some kind of a hearing before the State deprives a
16 person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).

17 39. Traditionally, to determine what protections due process demands in a
given situation, courts consider three factors, the *Mathews* factors: (1) the private
interest that will be affected by the official action; (2) the risk of erroneous

1 deprivation of such interest through the procedures used, and the probable value of
2 additional safeguards; and (3) the government's interest, including the function
3 involved and that burdens that would be imposed by additional process. *See*
4 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). In applying these factors
5 specifically to the context of a person challenging immigration detention, courts
6 assess: (1) the petitioner's liberty interest in remaining out of custody; (2) the risk
7 of erroneous deprivation of that interest in remaining out of custody; and (3) the
8 government's interest in detaining the petitioner without affording pre-deprivation
9 notice, reasoning, and a hearing. *Ramirez-Bibiano*, 2025 WL 3632748 at *4–5.

8 A. **Courts Have Regularly Found that Summary Revocation of Parol**
9 **and Re-Detention Deprives Petitioners of Procedural Due Process**

10 1. Consistent with the traditional *Mathews* three-factor test, district courts
11 in the Ninth Circuit have formulated a bright-line Due Process rule: if a noncitizen
12 has been paroled into the U.S., the government may not revoke their parole or
13 re-detain them without first affording pre-deprivation notice and a hearing
14 establishing that the person is now a danger or flight risk—failure to provide this is
15 a violation of the person's Fifth Amendment Due Process rights requiring
16 immediate habeas relief. *See, e.g., Ramirez-Bibiano*, 2025 WL 3632748 (ordering
17 immediate habeas relief; holding the government's summary revocation of parole
and re-detention without pre-deprivation notice or a hearing establishing present
risk of danger or flight violates Fifth Amendment Due Process); *see also Noori*,

1 2025 WL 2800149 (granting immediate habeas release; holding the government’s
2 summary revocation of parole and re-detention without pre-deprivation notice,
3 reasons, and a hearing establishing present danger or flight risk violated due process
4 under *Mathews*); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130 1135–39 (W.D.
5 Wash. 2025) (granting TRO and ordering immediate release; applying *Mathews* to
6 hold that even though petitioner’s parole had expired, because he had previously
7 been paroled his re-detention without a pre-deprivation hearing establishing a
8 justification for re-detention violated due process under *Mathews*); *Fernandez*
9 *Lopez v. Wofford*, No. 1:25-CV-01226-KES-SKO (HC), 2025 WL 2959319, at *6
10 (E.D. Cal. Oct. 17, 2025) (ordering immediate habeas release; canvassing seven
11 cases establishing the principle that re-detention of a previously paroled noncitizen
12 without a pre-deprivation hearing establishing a change in the person’s risk of
13 danger or flight violates Due Process and requires immediate habeas relief).

14 2. In *Ramirez-Bibiano*, a case from this district, a noncitizen who had
15 been previously paroled into the U.S. was summarily re-detained after ICE revoked
16 his parole without notice, reasons, or an opportunity to be heard. *Ramirez-Bibiano*,
17 2025 WL 3632748 at *1, 4–5. The Court applied *Mathews*, granted immediate
habeas relief and attorneys’ fees according to proof, and ordered that any future
detention be supported at a hearing with the government bearing the burden to show
by clear and convincing evidence that the petitioner was a present danger or flight
risk. *Id.* at *4–5; *see also Maceo-Aguilera*, 26-CV-532-LL-MSB, 2026 WL 381633

1 (S.D. Cal. Feb. 11, 2026); *Alegria Palma v. LaRose et al.*, No. 25-CV-1942-BJC
2 (MMP), (S.D. Cal. Aug. 11, 2025); *Navarro Sanchez v. LaRose*, 2025 No.
3 25-CV-2396-JES-MMP, 2026 WL 2770629 (S.D. Cal. Sept. 26, 2025).

4 3. In *Noori* (S.D. Cal.), an Afghan national paroled into the U.S. after
5 assisting U.S. forces was arrested at a courthouse and re-detained following the
6 government's summary revocation of his humanitarian parole, without any
7 pre-deprivation notice, reasons provided, or opportunity to be heard, despite a clean
8 record and consistent compliance. 2025 WL 2800149 at *1–2. The Court held that
9 the government's summary parole revocation and re-detention violated due process
10 under *Mathews* given the lack of justification, notice, and an opportunity to be
11 heard. *Id.* at *9–12. The Court granted the habeas petition, ordered that the
12 government shall not re-detain the petitioner during the pendency of his removal
13 proceedings, and granted attorneys' fees according to proof. *Id.* at *14.

14 4. In *Ramirez Tesara*, a Venezuelan asylum-seeker who had been paroled
15 into the U.S. was re-detained as he appeared for a monitoring appointment, without
16 any pre-deprivation notice or hearing. 800 F. Supp. 3d at 1134. That court assessed
17 the petitioner's due process habeas claim under *Mathews* and concluded that
18 because he had been previously paroled, ICE could only have re-detained the
19 petitioner after a hearing before an immigration judge at which the government met
20 its burden to justify detention. *Id.* at 1135–38. ICE's summary re-detention
21 therefore violated Due Process and required the petitioner's immediate release. *Id.*

1 at 1138–39.

2 5. In *Fernandez Lopez*, an asylum-seeker from Chile who had been
3 paroled in 2021 was summarily re-detained by ICE in August 2025 after a
4 credible-fear interview. 2025 WL 2959319 at *1. Once again, applying *Mathews*,
5 and for the same reasons as the courts in *Ramirez-Bibiano*, *Ramirez Tesara*, and
6 *Noori*, that court granted a preliminary injunction as well as the habeas petition at
7 issue, and enjoined the government from re-detaining the petitioner absent a
8 pre-deprivation bond hearing at which the government must prove current danger or
9 flight risk by clear and convincing evidence. *Id.* at *5–8. That court also canvassed
10 cases from other district courts in the Ninth Circuit to state the *Mathews*-derived
11 rule that if the government has previously paroled a noncitizen, it may not re-detain
12 that person without first providing pre-deprivation notice and a hearing through
13 which the government establishes a change in the person’s risk of danger or flight.
14 *Id.* at *6. Failure to provide this pre-deprivation process is a violation of the
15 person’s Fifth Amendment Due Process rights and grounds for immediate habeas
16 relief. *Id.* at *6–8.

17 6. Taken together, the district courts of the Ninth Circuit have developed
the bright-line rule that **if a noncitizen has been paroled into the U.S., the
government may not revoke that person’s parole or re-detain them without
first providing pre-deprivation notice and a hearing establishing a change in
danger or flight risk by clear and convincing evidence.** To date, the courts to

1 have considered habeas petitions in this context have each applied the three-factor
2 *Mathews* test to reach what has now coalesced into a uniform rule of law. The
3 above rule incorporates and relies upon a *Mathews* analysis but streamlines the
4 statement of law so as not to require a step-by-step in-depth inquiry of each
Mathews factor.

5 7. This rule is grounded in the acknowledgment that the government’s
6 initial decision to grant parole “reflects a determination by the government that the
7 noncitizen is not a danger to the community or a flight risk.” *Fernandez Lopez*,
8 2025 WL 2959319 at *2. Absent “evidence that the noncitizen is in fact dangerous
9 or has become a flight risk,” “there is no evidence that these findings have
10 changed” and there is therefore no justification for re-detention. *Ramirez-Bibiano*,
11 2025 WL 3632748 at *4. Without establishing a change in circumstances via notice,
a hearing, and evidence, parole-revocation or re-detention of a previously paroled
person violates Fifth Amendment Due Process. *See id.*

12 8. Accordingly, where the Court finds that a petitioner has been
13 previously paroled and yet the government summarily revoked his parole or
14 re-detained him, a step-by-step *Mathews* analysis is unnecessary; it is already
15 incorporated into and performed by the bright-line rule established by
Ramirez-Bibiano, *Ramirez Tesara*, *Fernández López* and the many district court
16 cases it cites, and *Mathews*.

1 **B. Applying the *Mathews* Test to Parolees Re-detained Without**
2 **Process Results Confirms that the Government Violates the Fifth**
3 **Amendment in Such Cases.**

4 1. “Freedom from imprisonment—from government custody, detention,
5 or other forms of physical restraint—lies at the heart of the liberty [the Due Process
6 Clause] protects.” *Zadvydas*, 533 U.S. at 690. A noncitizen released by DHS has a
7 “significant liberty interest in remaining out of custody pursuant to his release.”
8 *Vicky*, 2026 WL 608589, at *2.

9 2. While “the initial decision to detain or release an individual may be
10 within the government’s discretion, the government’s decision to release an
11 individual from custody creates ‘an implicit promise,’ upon which that individual
12 may rely, that their liberty ‘will be revoked only if they fail to live up to
13 the...conditions of release.” *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1032 (N.D. Cal.
14 2025) (alternation marks omitted). A parolee has a protected liberty interest in
15 remaining out of custody absent a showing that he is a flight risk or a danger to the
16 community. *See, e.g., Fernández López*, 2025 WL 2959319 at *4-5 (finding that
17 petitioner released from immigration detention on parole had protected liberty
 interest in remaining out of custody, including if the authority for petitioner’s parole
 was § 1182(d)(5)(A)); *Noori*, 2025 WL 2800149, *4, 9-10 (finding that petitioner
 who was paroled from immigration detention under § 1182(d)(5)(A) had protected
 liberty interest in remaining out of custody).

 3. As to the first *Mathews* factor, Mr. Leira Pena possesses a protected

1 liberty interest in remaining out of custody, namely, “the most significant liberty
2 interest there is – the interest in being free from imprisonment.” *Velasco Lopez v.*
3 *Decker*, 978 F.3d 842, 851 (2d Cir. 2020). “Freedom from imprisonment—from
4 government custody, detention, or other forms of physical restraint—lies at the
5 heart of the liberty [the Due Process Clause] protects.” *Zadvydas*, 533 U.S. at 690.
6 While “the initial decision to detain or release an individual may be within the
7 government’s discretion, the government’s decision to release an individual from
8 custody creates ‘an implicit promise,’ upon which that individual may rely, that
9 their liberty ‘will be revoked only if they fail to live up to the...conditions of
10 release.” *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1032 (N.D. Cal. 2025) (alternation
11 marks omitted).

4. Here, as in *Ramirez-Bibiano*, Petitioner has a significant liberty interest
12 in remaining free of ICE custody under prior parole conditions. His initial “release
13 from ICE custody constituted an implied promise that [his] liberty would not be
14 revoked unless [he] failed to live up to the conditions of [his] release.” *Pinchi*, 792
15 F. Supp. 3d at 1034 (internal quotation marks omitted). In other words, Petitioner
16 gained a protected liberty interest in remaining out of custody absent a showing that
17 he is a flight risk or a danger to the community. *See, e.g., Fernández López*, 2025
WL 2959319 at *4-5 (finding that petitioner released from immigration detention
on parole had protected liberty interest in remaining out of custody, including if the
authority for petitioner’s parole was § 1182(d)(5)(A)); *Noori v. Larose*, 2025 WL

1 2800149, *4, 9-10 (S.D. Cal. 2025) (Curiel, J.) (finding that petitioner who was
2 paroled from immigration detention under § 1182(d)(5)(A) had protected liberty
interest in remaining out of custody).

3 5. As to the second *Mathews* factor, “the risk of an erroneous deprivation
4 of such interest is high” where “Petitioner’s parole was revoked without providing
5 him a reason for revocation or giving him an opportunity to be heard.”
6 *Ramirez-Bibiano*, 2025 WL 3632748 at *4; *see also Ramirez Tesara*, 800 F. Supp.
7 3d at 1137 (granting habeas petition and TRO because “re-detainment without a
hearing results in a risk of erroneous deprivation of [a] protected interest.”);
8 *Rodriguez Cabrera v. Mattos*, No. 2:25-CV-01551-RFB-EJY, 2025 WL 3072687, at
9 *12–13 (D. Nev. Nov. 3, 2025) (noting the government’s arbitrary re-detention
“creates an extreme risk of erroneous deprivation). In addition, when DHS grants a
10 noncitizen TPS, it necessarily determines “that he was not flight risk or a danger to
11 the community.” *Majano Mendoza v. Andrews*, No. 1:26-CV-01976-DAD-CSK,
2026 WL 747344, at *2 (E.D. Cal. Mar. 17, 2026).

12 6. As to the third *Mathews* factor, “the Government’s interest in detaining
13 Petitioner without notice, reasoning, and a hearing is ‘low.’” *Ramirez-Bibiano*, 2025
14 WL 3632748, at *5. The government may always re-arrest a petitioner if it provides
15 notice and a fair hearing. *Id.* (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970
16 (N.D. Cal. Nov. 22, 2019)). In addition, “[d]etention for its own sake, to meet an
administrative quota, or because the government has not yet established

1 constitutionally required pre-detention procedures is not a legitimate government
2 interest.” *Singh v. Noem*, No. 3:26-CV-00261-RBM-MSB, 2026 WL 296656, at *2
3 (S.D. Cal. Feb. 4, 2026) (quoting *Pinchi*, 792 F. Supp. 3d at 1036). Finally, “[i]n
4 immigration court, custody hearings are routine and impose a ‘minimal’ cost.”
5 *Singh v. Andrews*, No. 25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *8
6 (E.D. Cal. July 11, 2025).

7 7. As *Ramirez-Bibiano* recognized, where a noncitizen has been lawfully
8 paroled and there is no change in circumstances indicating danger or flight risk, the
9 Government’s interest in immediate re-detention without notice or hearing is low,
10 while the value of modest additional procedures is high. Applied here, the
11 government has not identified any change in circumstances to justify summary
12 revocation, and requiring notice and a brief hearing would not compromise its
13 ability to manage parole or ensure attendance but would meaningfully reduce the
14 risk of error. The third *Mathews* factor therefore weighs against detention without
15 pre-deprivation process in this case. See *Ramirez-Bibiano* 2025 WL 3632748;
16 *Mathews*, 424 U.S. at 335.

17 C. **DHS Cannot Lawfully Detain TPS Holders**

1. The TPS statute unequivocally prohibits the detention of TPS holders.
See 8 U.S.C. 1254a(a)(1)(A), (d)(4) (“[a]n alien provided temporary protected

1 status under this section **shall not be detained** by the Attorney General”¹)
2 (emphasis added).

3 2. TPS protection remains valid even if the TPS holder has a final
4 removal order or lacks other immigration status. 8 U.S.C. 1254a(a)(1)(A) (the
5 government “shall not remove the alien from the United States during the period in
6 which such [TPS] status is in effect.”).

7 3. On October 3, 2023, then-DHS Secretary Mayorkas designated
8 Venezuela for TPS, allowing Venezuelans residing in the United States to apply for
9 the status. 88 Fed. Reg. 68,130 (Oct. 3, 2023).

10 4. On January 17, 2025, the DHS Secretary extended the 2023 Venezuela
11 Designation by eighteen months. 90 Fed. Reg. 5,961 (“January 2025 Extension”).
12 This extension enabled existing beneficiaries to seek an extension of their status
13 through October 2, 2026. *Id.* at 5,962.

14 5. DHS cited Venezuela’s ongoing “complex, serious and
15 multidimensional humanitarian crisis,” which has “disrupted every aspect of life,”
16 and concluded that the “extraordinary and temporary conditions supporting
17 Venezuela’s TPS designation remain.” *Id.* at 5,963 (citation omitted).

18 6. On February 3, 2025, then-DHS Secretary Noem purported to “vacate”
19 DHS’ January 17 extension of TPS for Venezuela. 90 Fed. Reg. 8805 (Feb. 3,
20 2025). That decision was the first vacatur of a TPS extension in the 35-year history

¹ “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.

1 of the TPS statute.

2 7. On February 5, 2025, DHS published a notice in the Federal Register
3 purporting to terminate the 2023 Venezuela Designation. 90 Fed. Reg. 9040 (Feb. 5,
4 2025).

5 8. On February 19, 2025 the National TPS Alliance sued the federal
6 government, alleging that the vacatur of the January 17, 2025 extension of TPS for
7 Venezuela and subsequent termination of Venezuela’s 2023 TPS designation were
8 contrary to the TPS statute in violation of the Administrative Procedure Act and
9 unlawful under the Fifth Amendment. *Nat’l TPS All. v. Noem*, 798 F.Supp.3d
10 1108 (N.D. Cal. Feb. 2025). On December 10, 2025, the district court issued a
11 final judgment declaring the vacatur of the January 17, 2025 extension of TPS for
12 Venezuela and termination of Venezuela’s 2023 TPS designation unlawful. *Id.*

13 9. Declaratory judgment is a final judgment on the merits which defines
14 the legal duties among the parties and has a preclusive effect on future proceedings
15 involving the same issues. *See* 28 U.S.C. 2201 (“Any such declaration shall have
16 the force and effect of a final judgment[.]”); *Burlington Ins. Co. v. Oceanic Design
17 & Constr., Inc.*, 383 F.3d 940, 952 (9th Cir. 2004) (“A declaratory judgment is a
binding adjudication that establishes the rights and other legal relations of the
parties where those rights are in doubt.”) (cleaned up, citation omitted); *see also*
Jackson v. Hayakawa, 605 F.2d 1121, 1125 (9th Cir. 1979).

10. Numerous courts in this circuit have found that *Nat’l TPS All.*

1 precludes ICE from detaining persons who sought TPS re-registration under DHS’
2 January 2025 Extension, reasoning that their TPS remains valid until October 2,
3 2026. *See e.g. Gamarro Gamarro v. Casey*, No. 26-CV-0650-GPC-DEB, 2026 WL
4 370063, at *4 n.2 (S.D. Cal. Feb. 10, 2026); *Osorio Ortega v. Chestnut*, No.
5 1:26-CV-1085 DC CSK, 2026 WL 1192166, at *2 (E.D. Cal. May 1, 2026);
6 *Gonzalez v. Noem*, No. 5:26-cv-00357-JWH-AJR, 2026 WL 332223, at *2 (C.D.
7 Cal. Feb. 5, 2026).

8
9 11. For the foregoing reasons, this Court should find that Mr. Leira Pena
10 was re-detained in violation of the parole statute and order his immediate release.

11
12
13
14
15
16
17
CLAIMS FOR RELIEF

COUNT ONE

**VIOLATION OF DUE PROCESS
REVOCATION OF RELEASE WITHOUT PROCESS**

1. Mr. Leira Pena re-alleges and incorporates by reference each allegation contained above.
2. 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. “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 protects. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

- 1 3. The Fifth Amendment's Due Process clause prohibits the government from
2 revoking parole without first affording pre-deprivation notice and a hearing
3 in which a neutral decisionmaker determines whether the person is now a
4 danger or flight risk
- 5 4. DHS did not afford Mr. Leira Pena with notice or a hearing before
6 re-detaining him.
- 7 5. Mr. Leira Pena has a high liberty interest as DHS paroled him into the United
8 States, where he remained at liberty for thirty-three months.
- 9 6. DHS also granted Mr. Leira Pena Temporary Protected Status which
10 precludes his detention and deportation. Yet DHS re-detained him anyway.
- 11 7. The lack of process provided to Mr. Leira Pena before re-detention risks
12 erroneous deprivation of his liberty. DHS released Mr. Leira Pena in 2023
13 after presumably considering his dangerousness and flight. DHS again found
14 Mr. Leira Pena to not be a danger or flight risk when it granted him TPS. Mr.
15 Leira Pena has lived peaceably, without any legal or criminal issues in the
16 United States. Nothing indicates that Mr. Leira Pena is more dangerous or
17 presents any greater risk of flight than when DHS released him or when it
granted him TPS.
8. The cost to the government of additional process in this case is low. It must
simply provide Mr. Leira Pena with notice and a hearing before a neutral
decisionmaker to determine whether his dangerousness or flight risk has

1 increased before re-detaining him. Such hearings impose minimal cost to the
2 government.

3 **COUNT TWO**

4 **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**
5 **8 U.S.C. § 1254a**

6 9. Mr. Leira Pena realleges and incorporates by reference each and every
7 allegation contained above.

8 10. Section 1254a of Title 8 of the U.S. Code governs the treatment of TPS
9 holders, including their detention and removal under federal immigration law.

10 12. Section 1254a(d)(4) states “[a]n alien provided temporary protected
11 status under this section *shall not be detained* by the Attorney General on the basis
12 of the alien’s immigration status in the United States.” (emphasis added). There is
13 no exception to this rule provided in the statute.

14 13. Mr. Leira Pena is a TPS holder because he re-registered for TPS during
15 the period specified in DHS’ January 17 Extension. His TPS expires on October 2,
16 2026.

17 14. The federal district court for the Northern District of California has
declared DHS’ purported vacatur of TPS for Venezuela and its extension unlawful.

15 15. Thus, Mr. Leira Pena’s detention violates Section 1254a, and he is
entitled to immediate release from custody.

16 **PRAYER FOR RELIEF**

1 Petitioners pray that this Court grant the following relief:

- 2 1. Assume jurisdiction over this matter.
- 3 2. Order that Mr. Leira Pena shall not be transferred outside the Southern
4 District of California.
- 5 3. Issue an Order to Show Cause why this Petition should not be granted
6 within three days and set a hearing on this Petition within five days of the return
7 pursuant to 28 U.S.C. § 2243.
- 8 4. Declare that Mr. Leira Pena's current detention is unlawful.
- 9 5. Issue a Writ of Habeas Corpus ordering Respondents to immediately
10 release Mr. Leira Pena under the terms and conditions of his original release.
- 11 6. Order that DHS may not re-detain Mr. Leira Pena without proper
12 notice of the reasons that form the basis for revocation of release.
- 13 7. Order that DHS may not re-detain Mr. Leira Pena without a hearing
14 before a neutral decisionmaker at which the government must prove dangerousness
15 and irredeemable flight risk by clear and convincing evidence.
- 16 8. Order that DHS may not re-detain Mr. Leira Pena while his TPS
17 remains valid.
9. Grant such further relief as this Court deems just and proper.

//

Respectfully submitted,

Cassandra Lopez

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

Litigation Director
AL OTRO LADO
Telephone: 619.730.5891
Email: Cassandra.l@alotrolado.org
Date: May 22, 2026

VERIFICATION BY ATTORNEY ACTING ON MR. LEIRA PENA'S
BEHALF PURSUANT TO 28 U.S.C. §2242

I am submitting this verification on behalf of Mr. Leira Pena because I am his attorney. As Mr. Leira Pena's attorney, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: May 22, 2026

By: /s/ Cassandra Lopez