

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**FRANHELI SEGUNDO MORALES
BARRIOS**

Petitioner,

v.

MARCOS CHARLES, Acting Executive
Associate Director, U.S. Immigration and
Customs Enforcement; KRISTI NOEM,
Secretary of the Department of Homeland
Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; PAMELA BONDI,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; DEVERY
MOONEYHAM, Limestone County Detention
Center,

Respondents.

Case No. 26-88

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Franheli Segundo Morales Barrios, a national of Venezuela who holds Temporary Protected Status (TPS) under 8 U.S.C. 1254a. 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. Despite this unambiguous statutory command, Petitioner has now been detained by U.S. Immigration and Customs Enforcement (ICE) since January 01, 2026.

3. Petitioner is charged with removability under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I), 8 U.S.C. §§ 1182(a)(6)(A)(i), 1182(a)(7)(A)(i)(I), for being present in the United States without admission or parole and for lacking valid entry and travel documents at the time of application for admission.

4. Based on this allegation in Petitioner’s removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and, therefore, ineligible to be released on bond.

6. Petitioner challenges his detention as a violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.

7. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who have already entered the United States and were released into the community by the Department of Homeland Security. DHS exercised its discretionary detention authority under INA § 236(a), codified at 8 U.S.C. § 1226(a), when it issued an Order of Release on Recognizance (Form I-220A), thereby determining that Petitioner was not subject to mandatory detention. Respondents lack statutory authority to disregard that determination and detain Petitioner under § 1225(b)(2)(A). Once DHS affirmatively exercised discretionary release authority under § 236(a), Petitioner could no longer be treated as subject to initial inspection detention under § 235(b).

8. On February 06, 2026, the Fifth Circuit held that § 1225(b)(2) does not provide a statutory right to a bond hearing for certain noncitizens deemed "applicants for admission." *Buenrostro-Mendez v. Bondi*, ___ F.4th ___, 2026 WL 323330 (5th Cir. Feb. 6, 2026). But the Fifth Circuit expressly declined to address whether detention under that provision, without an opportunity for an individualized custody determination, satisfies the requirements of procedural due process. That constitutional question remains open.

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

10. In the alternative, Petition asks this Court to hold that he is entitled to a prompt bond hearing before the Immigration Judge under § 1226(a) within seven days.

CUSTODY

11. Petitioner is in physical custody of Respondents. Petitioner is imprisoned at the Limestone County Detention Center, an immigration detention facility, in Groesbeck, Texas. Petitioner is under the direct control of Respondents and their agents. *See* Exhibit 1, Printout from ICE Online Detainee Locator System showing Petitioner’s current detention.

JURISDICTION

12. 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

13. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391 because Respondents are employees, officers, and agencies of the United States. At least one Respondent is in this District, Petitioner is Detained in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner currently is detained.

**REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE,
RETURN, HEARING, AND DECISION**

15. The Court should grant the petition for a writ of habeas corpus forthwith because Petitioner is a lawfully approved Temporary Protected Status (TPS) beneficiary whose continued detention is barred by statute. Congress has expressly provided that a noncitizen granted TPS “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). Where detention is expressly prohibited by federal law, continued confinement constitutes unlawful restraint warranting immediate habeas relief.

16. Section 2243 requires the Court to grant the writ or issue an order to show cause “forthwith,” unless it plainly appears that the petitioner is not entitled to relief. 28 U.S.C. § 2243. If a return is ordered, Respondents must respond within three days, absent good cause, and in no event later than twenty days. *Id.* Congress’s use of mandatory and expedited language reflects its intent that habeas review operate as a swift safeguard against unlawful executive detention.

17. This case presents precisely the circumstances requiring expedited judicial intervention. Respondents continue to detain Petitioner despite his valid TPS status and notwithstanding DHS’s prior exercise of discretionary authority under INA § 236(a), releasing him into the community. Respondents now rely on an erroneous classification under INA § 235(b), a provision that does not override the TPS statute’s detention bar and does not apply to individuals previously released into the interior of the United States.

18. Because Petitioner's detention rests on a pure question of law, whether a TPS beneficiary may be detained under § 235(b) notwithstanding the express prohibition in § 1254a(d)(4), no factual development is necessary, and administrative remedies cannot cure the defect. Continued detention under these circumstances is ultra vires and constitutionally arbitrary.

19. Habeas corpus exists to provide an immediate remedy for precisely this type of unlawful confinement. As the Supreme Court has recognized, habeas is "a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). Courts are therefore required to accord habeas petitions priority and prompt resolution. See *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000).

PARTIES

20. Petitioner Franheli Segundo Morales Barrios is currently detained by Respondents at the Limestone County Detention Center, an immigration detention facility in Groesbeck, TX. Petitioner has been in ICE custody since January 01, 2026, when he was arrested after a traffic stop. See Exhibit 2, Notice to Appear.

21. Respondent Devery Mooneyham is the Warden of the Limestone County Detention Center facility, where Petitioner is currently detained. He is a legal custodian of Petitioner and is named in her official capacity.

22. Respondent Marcos Charles is the Acting Executive Associate Director, Enforcement and Removal Operations. As such, Marcos Charles is the Petitioner's immediate custodian and is responsible for the Petitioner's detention and removal. He is named in his official capacity

23. 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.

24. 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.

25. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens

26. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

STATEMENT OF FACTS

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

27. Petitioner Franheli Segundo Morales Barrios is an eighteen-year-old native and citizen of Venezuela. He was born on 

28. Petitioner entered the United States on or about June 12, 2023, when he was fifteen years old, together with his family through the southern border at Eagle Pass, Texas. Upon entry, Petitioner voluntarily presented himself to U.S. immigration authorities, was apprehended, and processed by the Department of Homeland Security ("DHS").

29. Following processing, DHS issued an Order of Release on Recognizance, releasing Petitioner into the community pursuant to section 236 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226. Under that order, Petitioner was released on his own recognizance, without bond, and permitted to reside in the community while his immigration proceedings

remained pending. DHS made no finding that Petitioner posed a danger to the community or a flight risk. *See* Exhibit 3, Order of Release on Recognizance.

30. Since his release, Petitioner has continuously resided in the United States, primarily in Harris County, Texas, and has fully complied with all conditions imposed by DHS and other immigration authorities.

31. After his release, Petitioner enrolled in school and is currently a senior at Klein High School in Harris County, Texas. He has attended school continuously since his arrival in the United States and is an active member of his school community, including participation on the varsity soccer team. Teachers, administrators, and fellow students have expressed support for Petitioner and his return to school. *See* Exhibit 4, School Transcript; *see also* Exhibit 5, Teacher's Support Letters.

32. Petitioner has no criminal history whatsoever. He has never been arrested, charged, or convicted of any offense in the United States or in any other country. *See* Exhibit 6, Criminal Background Search.

33. On May 21, 2024, United States Citizenship and Immigration Services ("USCIS") approved Petitioner's application for Temporary Protected Status ("TPS") under the Venezuela designation. Petitioner thereafter timely re-registered for TPS on April 8, 2025, pursuant to the January 17, 2025, extension of TPS for Venezuela.

34. Petitioner is also a registered member of the National TPS Alliance, an organization whose members were plaintiffs in *National TPS Alliance v. Noem*, No. 3:25-cv-01766-EMC (N.D. Cal.). As a member of that organization, Petitioner is a direct beneficiary of the court's declaratory judgment issued on December 10, 2025, which held unlawful the attempted vacatur of the January 17, 2025, TPS extension and the termination of Venezuela's 2023 TPS

designation. The government did not appeal or seek a stay of that judgment. *See* Exhibit 7-National TPS Alliance Registration Confirmation.

35. On or about January 1, 2026, at approximately 1:00 a.m., Petitioner was stopped and apprehended by ICE officers in Spring, Texas, while traveling as a passenger in a vehicle. ICE officers did not present or execute a warrant for his arrest, nor was Petitioner informed that any warrant had been issued.

36. Petitioner was not accused of any criminal activity and was nevertheless taken into ICE custody. Despite his lawful TPS status and prior release on recognizance under INA § 236, Petitioner was transferred to the Limestone County Detention Center in Groesbeck, Texas, where he remains detained. *See* Exhibit 1, ICE Detainee Locator System Printout.

37. Petitioner's detention has caused immediate and severe harm. He has been separated from his family, removed from his home community, and prevented from attending school or completing his senior year of high school. He has also been unable to participate in his varsity soccer program and other school-based activities. *See* Exhibit 8, Petitioner Declaration.

38. The sudden and warrantless arrest and detention have caused Petitioner significant emotional and psychological distress, including anxiety, fear, and uncertainty about his future. These harms are particularly acute given Petitioner's young age, his lawful TPS status, and the fact that DHS previously determined, under INA § 236, that he was appropriate for release into the community.

39. Petitioner is a lawfully approved TPS holder, previously released on recognizance under INA § 236, with no criminal history and strong educational and community ties. Nevertheless, following a warrantless arrest, he remains detained by ICE without statutory or constitutional authority, despite clear protections under the TPS statute prohibiting detention and

removal during the period in which TPS is in effect. *See* Exhibit 9, TPS Approval and Receipt Notice.

II. TEMPORARY PROTECTED STATUS FOR VENEZUELA

40. 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).

41. 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).

42. 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.

43. 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).

44. 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.

45. 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.

46. 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).

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

LEGAL CHALLENGE TO VENEZUELA’S TPS TERMINATION

48. 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).

49. 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 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.

50. 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.

51. 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.

52. 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[.]"); *Burlington Ins. Co. v. Oceanic Design & Constr., Inc.*, 383 F.3d 940, 952 (9th Cir. 2004) (cleaned up, citation omitted) ("A declaratory judgment is a binding adjudication that establishes the rights and other legal relations of the parties where those rights are in doubt.").

53. 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)).

54. "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).

55. On January 28, 2026, the Ninth Circuit issued its published merits opinion in *National TPS Alliance v. Noem*, affirming that DHS exceeded its statutory authority under 8 U.S.C. § 1254a by vacating and terminating Venezuela’s TPS designation. *See* Exhibit 3 – Ninth Circuit Opinion in *National TPS Alliance v. Noem*, No. 25-5724. The Ninth Circuit held that the TPS statute does not authorize the Secretary to vacate an existing designation and that DHS’s actions were ultra vires and unlawful. In doing so, the court expressly rejected DHS’s reliance on the Supreme Court’s emergency stay orders, explaining that those stays did not resolve the merits and did not confer lawful authority on DHS to treat TPS as terminated.

56. These rulings apply directly to Petitioner’s case. Petitioner is a Venezuelan national who was granted TPS and timely re-registered under the Venezuela designation. DHS now seeks to justify his detention by asserting that TPS protections lapsed based on the very agency actions that federal courts have declared unlawful. Under the Ninth Circuit’s January 28, 2026, decision, those actions never had legal effect. Because TPS has not been lawfully terminated in accordance with the INA, Petitioner remains a TPS beneficiary entitled to the statute’s mandatory protections.

57. Accordingly, DHS’s continued detention of Petitioner contravenes 8 U.S.C. § 1254a(d)(4), which expressly prohibits detention of a TPS beneficiary on the basis of immigration status, and § 1254a(a)(1)(A), which bars removal during the period of TPS validity. Respondents may not rely on invalidated agency actions, or on non-merits stay order, to circumvent binding

statutory protections and controlling Ninth Circuit precedent. Petitioner's detention is therefore unlawful and ultra vires.

LEGAL FRAMEWORK

58. In our constitutional system, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception. *United States v. Salerno*, 481 U.S. 739, 755 (1987). That foundational principle is enshrined in the Fifth Amendment's Due Process Clause, which prohibits the Government from depriving any person of liberty without due process of law. U.S. Const. amend. V. The Due Process Clause applies to all persons within the United States, including noncitizens, regardless of whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)..

59. This habeas petition may be resolved by reference to the Temporary Protected Status statute alone. Congress has unequivocally provided that a noncitizen granted Temporary Protected Status "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). The statute further provides that the government "shall not remove the alien from the United States during the period in which such status is in effect." 8 U.S.C. § 1254a(a)(1)(A). There is no ambiguity in this statutory command, and no exception authorizing detention of a TPS beneficiary based on immigration status.

60. 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] 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).

61. 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).

62. 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.

63. 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.

64. 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.

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

66. Accordingly, the mandatory detention provision set forth at 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner. When Petitioner entered the United States in 2023 without inspection, the Department of Homeland Security exercised its discretionary detention authority under 8 U.S.C. § 1226(a) and affirmatively released Petitioner on his own recognizance.

67. That custody determination is governed by the statutory and regulatory framework implementing 8 U.S.C. § 1226(a). The statute authorizes the arrest and detention of a noncitizen pending a decision on removal and expressly permits release on bond or conditional parole. *See* 8 U.S.C. § 1226(a). DHS regulations implementing this provision authorize release on recognizance or bond pending removal proceedings. *See* 8 C.F.R. § 236.1(c). EOIR regulations further confirm that noncitizens detained under § 1226(a) are eligible for custody redetermination by an Immigration Judge unless mandatory detention applies. *See* 8 C.F.R. §§ 1236.1(d), 1003.19(a).

68. By releasing Petitioner pursuant to 8 U.S.C. § 1226(a), DHS necessarily determined that Petitioner was not subject to mandatory detention under 8 U.S.C. § 1225(b) and was eligible for discretionary release under the § 1226(a) framework. DHS may not later disregard that

determination and retroactively reclassify Petitioner as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), where both the statutory text and implementing regulations establish § 1226(a) as the applicable detention authority.

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

EXHAUSTION

70. "Of 'paramount importance' to any exhaustion inquiry is congressional intent. Where Congress specifically mandates, exhaustion is required. But where Congress has not clearly required exhaustion, sound judicial discretion governs." *McCarthy v. Madigan*, 503 U.S. 140, 144, 112 S.Ct. 1081 (1992); *Haitian Refugee Center v. Smith*, 676 F.2d 1023, 1034 (5th Cir. 1982) ("the exhaustion requirement is not a jurisdictional prerequisite, but a matter committed to the sound discretion of the trial court"). Here, Congress has not specifically mandated exhaustion before judicial review of custody determinations. Because exhaustion is not required by statute, sound judicial discretion must govern this Court's decision. There is an abundant body of law that supports this Court's jurisdiction over this case absent exhaustion.

71. First, exhaustion does not apply whereas here, a petition challenges only the agency action collateral to removal proceedings, such as bond. 8 U.S.C. § 1252(d)(1) applies only to challenges to a "final order of removal." Therefore, when a noncitizen files a habeas petition challenging detention, bond, custody, or other collateral issues, the exhaustion requirement does not apply. The Fifth Circuit held that unlike 28 U.S.C. § 2254, Section 2241's text does not require exhaustion. *See Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017). Accordingly, the Court retains jurisdiction without any statutory exhaustion barrier.

72. Second, exhaustion is not required where a petitioner raises a claim that agency would clearly reject. Here, the IJ's exercise of authority is clearly at odds - to deny Petitioner release on bond on the ground that the IJ has no jurisdiction or statutory authority pursuant to *Matter of Yajure Hurtado*, nor statutory authority to impose conditions other than monetary conditions directly contravenes the specific language of INA § 236(a) codified in 8 U.S.C. 1226(a), which confers the IJ such authority. *See Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (exhaustion is not required where a petitioner raises a claim that agency would clearly reject); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 496 (S.D.N.Y. 2025) (exhaustion is not statutorily required and was excused given that available remedies provided no genuine opportunity for adequate relief and the petitioner raised a substantial constitutional question); *Buenrostro-Mendez*, 2025 WL 2886346, at *3 (exhaustion was not statutorily required under the circumstances and the issue of statutory interpretation belongs in the province of the courts).

73. Finally, exhaustion of administrative remedies would be futile in this case because the BIA has no jurisdiction to adjudicate constitutional issues raised here. *See Mathews v. Eldridge*, 424 U.S. 319, 328-30 (1976) (A constitutional challenge to administrative action does not require exhaustion.); *Ramirez Osorio v. INS*, 745 F.2d 937, 939 (5th Cir. 1984) (holding that "exhaustion is not required when administrative remedies are inadequate").

CLAMS FOR RELIEF

COUNT ONE

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

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

75. 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.

76. 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.

77. 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

78. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

79. 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). Here, there is no question that the government has deprived Petitioner of her liberty

80. Petitioner’s detention is improper because he shouldn’t be detained at all, and the government is depriving him of a bond hearing. A hearing is, if anything, a right to be heard, and here the immigration judge is unable to consider whether she is even eligible for a bond, despite the law or entertaining counsel’s arguments. Like the accused in criminal cases, habeas is proper. *See Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).

81. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

82. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT THREE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND DUE PROCESS – UNLAWFUL RE-DETENTION AFTER RELEASE UNDER INA § 236(a)

83. Following his initial apprehension and processing by the Department of Homeland Security, Respondents exercised their discretionary detention authority under section 236(a) of the Immigration and Nationality Act, codified at 8 U.S.C. § 1226(a), and affirmatively released Petitioner on his own recognizance pursuant to an Order of Release on Recognizance (Form I-220A).

84. By issuing the Order of Release on Recognizance, DHS necessarily determined that Petitioner was not subject to mandatory detention, did not pose a danger to the community, and did not present a risk of flight. DHS further determined that Petitioner's continued presence in the community was appropriate while his immigration proceedings remained pending.

85. That discretionary custody determination constituted a final and operative exercise of DHS's detention authority under INA § 236(a). Nothing in the Immigration and Nationality Act authorizes DHS to rescind such a determination absent a material change in circumstances, a violation of release conditions, or new facts establishing danger or flight risk.

86. Nevertheless, Respondents later arrested and re-detained Petitioner without a warrant, without prior notice, and without alleging any changed circumstances, violation of conditions, or new factual basis justifying detention. At the time of re-detention, Petitioner had complied with all conditions imposed by DHS, remained free of any criminal history, and continued to present no danger or flight risk

87. Respondents' attempt to re-detain Petitioner amounts to an impermissible effort to retroactively nullify DHS's prior custody determination and to reclassify Petitioner under a different detention statute. Once DHS exercised its discretion to release Petitioner under INA § 236(a), Respondents were statutorily barred from later asserting that Petitioner was subject to mandatory detention under INA § 235(b) or any other provision absent new qualifying facts.

88. The Immigration and Nationality Act does not permit DHS to engage in release-and-re-detain tactics designed to evade statutory limits on detention authority or to defeat judicial review. Courts have repeatedly held that ICE may not lawfully re-detain individuals previously released under § 236(a) where no material change in circumstances exists and no statutory basis for mandatory detention applies.

89. Respondents' actions further violate the Due Process Clause of the Fifth Amendment, which prohibits arbitrary detention and requires that any deprivation of liberty bear a reasonable relationship to a legitimate governmental purpose. Where the government has already determined that detention is unnecessary to serve immigration objectives, continued imprisonment becomes punitive, irrational, and unconstitutional.

90. Because Respondents re-detained Petitioner without statutory authority, without a warrant, and without any individualized justification, his continued detention is ultra vires,

arbitrary, and unlawful. The only legally permissible remedy is Petitioner's immediate release under conditions no more restrictive than those previously imposed pursuant to INA § 236(a).

COUNT FOUR

CATEGORICAL IMMIGRATION DETENTION WITHOUT AN INDIVIDUALIZED HEARING VIOLATES PROCEDURAL DUE PROCESS

91. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

92. Procedural due process requires, at a minimum, an individualized determination at which the Government bears the burden of justifying continued detention. Courts assess the adequacy of process by balancing (1) the individual's private liberty interest, (2) the risk of erroneous deprivation under the procedures employed and the probable value of additional safeguards, and (3) the Government's interests. *Mathews v. Eldridge*, 424 U.S. 319, 333–35 (1976).

93. Here, Petitioner has been detained for months without any individualized custody hearing. The Government has never been required to demonstrate that Petitioner poses a danger to the community or a risk of flight, nor has it shown that detention remains reasonably related to a legitimate regulatory purpose. The absence of any individualized process creates an unacceptably high risk of erroneous deprivation of liberty and renders Petitioner's continued detention arbitrary and unconstitutional. Mandatory detention, standing alone, cannot substitute for constitutionally required procedural safeguards once detention becomes prolonged.

94. By extinguishing the Immigration Judge's custody determination through an automatic mechanism, the regulation transforms discretionary civil detention into mandatory confinement by default, in violation of the Fifth Amendment

INJUNCTIVE RELIEF

95. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

96. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir.1989). “To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest.” *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*

97. Respondents’ actions have caused Petitioner harm that warrants immediate relief

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Enjoin ICE from transferring Petitioner outside the Western District of Texas, Waco Division, while this matter is pending.
3. 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;
4. Declare that Petitioner’s detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. 1254a;

5. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
6. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
7. Alternatively, grant the Writ of Habeas Corpus requiring that Respondents release Petitioner on his own recognizance, parole, or reasonable conditions of supervision;
8. Enjoin ICE and/or Respondents from re-detaining Petitioner based on the same underlying allegations, absent a material change of circumstances and express leave of this court. In this case, this court should order that the only legal permissible remedy is renewed, immediate release;
9. 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
10. Grant such further relief as this Court deems just and proper.

Dated: February 12, 2026

Respectfully submitted,

/s/ Nelly C. Sanchez Estrada
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State Bar # 24135331
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Xavier Law Firm
25775 Oak Ridge Dr. Suite 120
The Woodlands, TX 77380
(281) 296-3741
Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Franheli Segundo Morales Barrios, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 12th day of February 2026.

/s/ Nelly C. Sanchez Estrada

Counsel for Petitioner

Nelly@xavierlawfirm.com

Xavier Law Firm

25775 Oak Ridge Dr. Suite 120

The Woodlands, TX 77380

(281) 296-3741 (281) 296-3741

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2026, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

U.S. Attorney's Office for the Western District of Texas
Stephanie Rico
Civil Process Clerk
Office of the United States Attorney
for the Western District of Texas
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216-5597

Warden, Limestone County Detention Center
Devery Mooneyham
910 North Tyus St.
Groesbeck, TX 76642

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

Dated this 12th day of February 2026.

/s/ Nelly Sanchez Estrada
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nelly@xavierlawfirm.com
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The Woodlands, TX 77380
(281) 296-3741 (281) 296-3741

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

FRANHELI SEGUNDO MORALES BARRIOS,

Petitioner,

Case No. 26-88

v.

MARCOS CHARLES, Acting Executive Associate
Director, Immigration and Customs Enforcement;
KRISTI NOEM, Secretary of the Department of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; PAMELA BONDI,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; DEVERY
MOONEYHAM, Warden of Limestone County
Detention Center,

Respondents.

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