

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

D.T.G.,

Petitioner,

v.

William P. JOYCE, Acting Director, New York City Field Office, U.S. Immigration and Customs Enforcement; Paul ARTETA, Director of the Orange County Correctional Facility; Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Sirce E. OWEN, Acting Director, Executive Office for Immigration Review, U.S. Department of Justice; and Pamela BONDI, United States Attorney General,

Respondents.

Case No. 25-cv-2161

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner D.T.G.¹ is a Venezuelan national 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 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. §

¹ Accompanying this petition is a motion to proceed by initials.

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”) for about 36 days.
3. Petitioner challenges his detention as a violation of the Immigration and Nationality Act (“INA”) and the Due Process Clause of the Fifth Amendment.
4. Petitioner respectfully requests that this Court grant him a Writ of Habeas Corpus and order Respondents to release him from custody. Petitioner seeks habeas relief under 28 U.S.C. § 2241, which is the proper vehicle for challenging civil immigration detention. *See Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (“Challenges to immigration detention are properly brought directly through habeas.”) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

CUSTODY

5. Petitioner is in the physical custody of Respondents. Petitioner is imprisoned at Orange County Correctional Facility (“OCCF”), an immigration detention facility, in Goshen, NY. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

6. This Court has subject matter jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; the Suspension Clause, U.S. Const. art. I, § 9, cl. 2; 28 U.S.C. § 1651 (All Writs Act); and 28 U.S.C. § 2201 (Declaratory Judgment).

VENUE

7. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because Petitioner is detained in this District; his immigration proceedings are venued at the New York (Varick) Immigration Court; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events giving rise to the claims and relevant facts in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (“[T]he proper respondent [to a habeas petition] is ‘the person’ having custody over the petitioner.”) (citing 28 U.S.C. §2242).

PARTIES

8. Petitioner D.T.G. is currently detained by Respondents at the Orange County Correctional Facility (“OCCF”), an immigration detention facility. He has been in ICE custody since on or about February 6, 2025.
9. Respondent William P. JOYCE is named in his official capacity as the Acting Field Office Director for ICE’s New York City Field Office, which has administrative jurisdiction over Petitioner’s immigration case. He is responsible for the administration of immigration laws and the execution of detention warrants and removal orders.
10. Respondent Paul ARTETA is named in his official capacity as the Sheriff of Orange County and the Director of OCCF, where Petitioner is currently detained.
11. Respondent Todd M. LYONS is named in his official capacity as the Acting Director of ICE. He directs ICE operations and is responsible for the administration of immigration laws.
12. Respondent Kristi NOEM is named in her official capacity as the Secretary of the United States Department of Homeland Security (“DHS”). She directs each of the component

agencies within DHS, including ICE.

13. Respondent Sirce E. OWEN is named in her official capacity as the Acting Director of the Executive Office for Immigration Review (“EOIR”). She is responsible for the policies and operations of the immigration courts.
14. Respondent Pamela BONDI is named in her official capacity as the Attorney General of the United States. She is responsible for the policies and operations of the Department of Justice (“DOJ”).

STATEMENT OF FACTS

15. Petitioner came to the United States on or around February 5, 2023, through an official port of entry, where he was granted humanitarian parole. He applied for Temporary Protected Status (“TPS”) on November 14, 2023. His application was granted on May 21, 2024. *See* Exh. A. DHS’s approval notice, which serves as proof of TPS registration, shows that his TPS has been valid since May 21, 2024, and remains valid through at least April 2, 2025. *See id.* Although the history and current procedural status of TPS for Venezuela may be somewhat complex, all that matters for purposes of this habeas petition is that TPS for Venezuela remains in effect, and that Petitioner continues to hold TPS status.
16. ICE officers took Petitioner into custody at his home in New York City on or around February 6, 2025, despite Petitioner having shown ICE proof of his valid TPS.
17. On March 7, 2025, Petitioner’s immigration attorney Austin Nielsen-Reagan, Staff Attorney at The Legal Aid Society, sent emails to both Petitioner’s assigned Deportation Officer, Michael V. Charles, and an outreach email account for the ICE New York City Field Office. *See* Exh. B, C. Mr. Nielsen-Reagan’s emails cited the TPS statute’s non-

detention provision and included a Form G-28 proof of legal representation. *See id.* On March 8, 2025, Mr. Nielsen-Reagan was informed that his email had been forwarded to the relevant supervisory officials at the ICE New York City Field Office. *See* Exh. C.

18. On March 13, 2025, by both mail and email, Mr. Nielsen-Reagan sent a more formal release request by both email and USPS Priority Mail Express to several ICE officials, including Respondent William P. Joyce, Acting Director for the ICE New York City Field Office. *See* Exh. D, E. That request included a Form G-28 as well as proof of Petitioner's valid TPS. *See id.*
19. To date, the most recent response received from anyone in the relevant supervisory chain for the ICE New York City Office came on March 11, 2025, from Acting Assistant Field Office Director Joseph T. Pujol, who stated, "Your clients [*sic*] case is still being reviewed. We will be sure to reach out once a decision has been made." Exh. D.² That response does not even attempt to justify Petitioner's detention.

LEGAL FRAMEWORK

20. The Court need analyze only one statutory provision to resolve this habeas petition. The TPS statute unambiguously provides that "[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien's immigration status in the United States." 8 U.S.C. § 1254a(d)(4) (emphasis added). It is hard to imagine a clearer statutory mandate proscribing detention.³
21. The Court need not delve further in an attempt to understand other aspects of Petitioner's

² On March 13, 2015, Deputy Chief Counsel for the ICE Office of the Principal Legal Advisor in New York City responded similarly to Mr. Nielsen-Reagan's attempts at outreach, stating merely that "the matter of custody is within [ICE Enforcement and Removal Operations' (ERO)] purview" and that their agency is "looking into this matter" and will follow up. Exh. F.

³ "Attorney General" in Section 1254a now refers to the Secretary of Homeland Security. *See* 8 U.S.C. § 1103; 6 U.S.C. § 557.

immigration status, because TPS protection remains valid even if the TPS holder 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, while Petitioner himself does not have an order of removal,⁴ even individuals with a final removal order are statutorily eligible for TPS and may not be denied TPS on the basis of that removal order if otherwise eligible. 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).

22. 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).

23. 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.

24. Second, because Petitioner is not “deportable” insofar as the TPS statute bars his

⁴ Petitioner’s removal proceedings are still pending before the New York (Varick) Immigration Court.

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.

25. Third, at a bare minimum, “the Due Process Clause includes protection against *unlawful* or arbitrary personal restraint or detention.” *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting) (emphasis added). Where federal law explicitly prohibits an individual's detention, their detention also violates the Due Process Clause.
26. It is irrelevant for purposes of this case that Petitioner's TPS status may expire in several weeks, if the government successfully defends in court its unprecedented attempt to vacate the January 2025 TPS Extension for Venezuela. The TPS statute's unambiguous command applies so long as the TPS holder's status remains in effect. It contains no exception for people whose TPS status may soon expire. And, as noted above, because litigation has now commenced to challenge the government's attempt to end TPS for Venezuela, it would not be appropriate for this Court (or any other) to speculate on the likely outcome of that litigation. Rather, it should decide this petition on the state of affairs as it currently exists, under which Petitioner remains a TPS holder, and has now been illegally imprisoned for around 36 days.

CLAIMS FOR RELIEF

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

27. Petitioner realleges and incorporates by reference each and every allegation contained above.
28. 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.
29. Section 1254a(d)(4) states that “[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien’s immigration status in the United States.” (emphasis added). There is no exception to this rule provided in the statute.
30. Thus, Petitioner’s 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**

31. Petitioner realleges and incorporates by reference each and every allegation contained above.
32. 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).
33. Petitioners’ 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, Petitioner respectfully requests that this Court: grant the following relief:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court pending the resolution of this case;
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. Enjoin Petitioners from further detaining Petitioner so long as TPS for Venezuela remains in effect and he continues to hold TPS status;
8. Award Petitioner his costs and reasonable attorney's fees pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
9. Grant such further relief as this Court deems just and proper.

Dated: March 15, 2025

Respectfully submitted,

/s/ Sayoni Maitra

Sayoni Maitra

THE LEGAL AID SOCIETY

Immigration Law Unit

49 Thomas St., 5th Floor

New York, NY 10013

Tel: (929) 656-1667

Email: smaitra@legal-aid.org

Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys at The Legal Aid Society and have reviewed his case materials and communicated with Austin Nielsen-Reagan, one of the other attorneys on his case. Mr. Nielsen-Reagan has discussed with Petitioner the events described in this Petition. On information and belief, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's TPS status, are true and correct to the best of my knowledge.

Dated: March 15, 2025

Respectfully submitted,

/s/ Sayoni Maitra

Sayoni Maitra

THE LEGAL AID SOCIETY

Immigration Law Unit

49 Thomas St., 5th Floor

New York, NY 10013

Tel: (929) 656-1667

Email: smaitra@legal-aid.org

Counsel for Petitioner