IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

JULIO CESAR SANCHEZ PUENTES, *et al* , Petitioners, v. SCOTT CHARLES, in his official capacity as Warden of the Caroline Detention Facility, *et al* , Respondents.	No. 1:25-cv-0509 (LMB/LRV)

FEDERAL RESPONDENTS' CORRECTED RESPONSE TO VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

Pursuant to this Court's March 24, 2025 order (Dkt. 6), Federal Respondents submit this corrected response to Petitioners' verified petition for a writ of habeas corpus (Dkt 1) ("Petition" or "Pet.") [1]

INTRODUCTION

Petitioners Julio Cesar Sanchez Puentes and Luddis Norelia Sanchez Garcia are in civil immigration detention pending proceedings to remove them from the country because U.S Immigration and Customs Enforcement ("ICE") has determined that they pose a threat to public safety Indeed, Ms Sanchez Garcia has admitted that she is affiliated with a transnational criminal and terroristic organization Such detention is squarely authorized by 8 U.S.C. § 1226(a) and its implementing regulations.

[1] The initial version of Federal Respondents' response contained a typo in the caption, which has been corrected in this version.

Nevertheless, Petitioners filed this habeas action to challenge their detention—and only their detention—on the ground that they are recipients of Temporary Protected Status ("TPS") and are therefore statutorily exempt from detention. This argument rests on a flawed understanding of the TPS statute That statute exempts TPS recipients from detention when the basis for it is the individuals' "immigration status." But Petitioners are not being detained on the basis of their immigration status—they are being detained because they pose a threat to public safety The TPS statute's detention exemption therefore does not apply by its own terms, defeating Petitioners' arguments for release The Court should deny the Petition.

BACKGROUND

I. Statutory and Regulatory Background

Temporary Protected Status The Immigration and Nationality Act ("INA") establishes a limited, temporary status, called Temporary Protected Status, for noncitizens who are nationals of designated countries that the Secretary of Homeland Security determines (i) are in the midst of an armed conflict; (ii) have experienced a natural disaster and the foreign state requests such designation; or (iii) present "extraordinary and temporary conditions . that prevent[] aliens who are nationals of the state from returning to the state in safety" 8 U.S.C. § 1254a(b)(1)(A)-(C).[2] A TPS recipient "shall be considered as being in, and maintaining, lawful status as a nonimmigrant," but only for purposes of adjustment or change of immigration status. *Id* § 1254a(f)(4) The statute also provides limited protection against detention, in that a TPS recipient "shall not be detained *on*

[2] Although the statutory text refers to the Attorney General, the authority pertaining to TPS designations, as well as detention and removal of noncitizens from the United States, has been transferred to the Department of Homeland Security. 6 U.S C § 251(2); *Dep't of Homeland Sec v. Thuraissigiam*, 591 U S 103, 109 n 3 (2020).

the basis of the alien's immigration status in the United States." *Id.* § 1254a(d)(3) (emphasis added).

Once granted, TPS status remains in effect until the termination of the designation, *id.* § 1254a(b)(3)(B), or the temporary status provided to the particular non-citizen is withdrawn, *id* § 1254a(c)(3). TPS status may be withdrawn from a particular non-citizen if the Secretary of Homeland Security determines, among other potential grounds, that "the alien was not in fact eligible for such status under this section." *Id.* § 1254a(c)(3)(A) In turn, a noncitizen is ineligible for such status if she or he "has been convicted of a felony or 2 or more misdemeanors committed in the United States, or the alien is described in section 1158(b)(2)(A) of this title." *Id.* § 1254a(c)(2)(B)(i)-(ii).[3] And if ineligible, the Secretary may initiate removal proceedings based on that ineligibility 8 C F.R. §§ 244 18, 1244.18. Should those removal proceedings result in a final order of removal, the noncitizen "may be removed from the United States" *Id* §§ 244.18(d), 1244 18(d)

Detention under the INA The INA generally authorizes detention of noncitizens during the pendency of removal proceedings. *See* 8 U.S.C § 1226. That provision establishes two types of detention authority· (1) discretionary detention pursuant to 8 U S.C § 1226(a), and (2) mandatory detention pursuant to 8 U.S.C. § 1226(c) Neither provision authorizes detention based on a noncitizen's immigration status. Instead, the decision to detain is based on an individual's risk of danger or flight, or on criminal convictions—*i.e* , reasons unrelated to an individual's immigration status. For example, section 1226(c) mandates detention of noncitizens convicted of specific

[3] Relevant here, 8 U.S.C § 1158(b)(2)(A)(iv) renders a noncitizen ineligible for TPS if "there are reasonable grounds for regarding the alien as a danger to the security of the United States."

criminal offenses or who have engaged in certain types of terrorist activities *Id.* § 1226(c)(1)(A)-(E).

Of import here, unlike detention under section 1226(c), detention under section 1226(a) is discretionary. *Id* § 1226(a) ("[A]n alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States ."). ICE and the immigration courts share this discretionary authority Upon initial apprehension of a removable noncitizen, ICE makes an individualized custody determination. *See* 8 C.F.R. § 236.1(c)(8), (g). ICE may release the noncitizen on bond if it determines that the noncitizen "would not pose a danger to property or persons, and is likely to appear for removal proceedings." *See id* § 236 1(c)(8). If ICE denies release on bond (or sets a bond the noncitizen believes is excessive), the noncitizen may seek review of the custody decision in immigration court through an individualized bond hearing at which he or she may call witnesses and present evidence. *See id* §§ 236.1(d)(1), 1236.1(d)(1) The presiding immigration judge is required to evaluate—based on the evidence presented at the hearing—various factors to determine whether the noncitizen poses a flight risk or a danger to the community, and whether the noncitizen warrants release as a matter of discretion *See id* § 1003 19(d); *see also Miranda v Garland*, 34 F.4th 338, 346-47 (4th Cir. 2022) If the immigration judge denies release on bond, the noncitizen may notice an appeal of that decision to the Board of Immigration Appeals ("BIA") *See* 8 C F R § 1003.19(f) The exercise of this discretionary judgment—whether by ICE, an immigration judge, or the BIA—is not subject to Article III judicial review. *See* 8 U S.C. § 1226(e).

II. Factual Background

Petitioners are natives and citizens of Venezuela, and more specifically, Ms Sanchez is from Aragua, Venezuela. FREX 1 ¶¶ 5-6. Around October 13, 2022, Petitioners encountered

Border Patrol agents after entering the United States without inspection. FREX 1 ¶ 7 They were temporarily held in Border Patrol's custody until their release due to a lack of available space in the detention facility FREX 1 ¶ 7.

Approximately two years later, in early 2024, Petitioners applied for TPS Mr Sanchez received TPS on August 1, 2024, and Ms Sanchez received it on May 7, 2024. FREX 1 ¶¶ 8-9 [4] Both Petitioners' TPS will end April 1, 2025, as United States Citizenship and Immigration Services ("USCIS") has issued decisions to withdraw their TPS as of that date. FREX 1 ¶ 10

On February 27, 2025, the United States District Court for the Western District of Texas issued arrest warrants for Petitioners for violations of 8 U S C § 1325. FREX 1 ¶ 13, Pet ¶ 26. Pursuant to those warrants, Border Patrol agents arrested both Petitioners on March 10, 2025. FREX 1 ¶ 13. After the arresting agents provided *Miranda* warnings to Petitioners, Ms. Sanchez agreed to speak with the agents. FREX 1 ¶ 14. During her interview, Ms. Sanchez stated, among other things, that she is associated with Tren de Aragua ("TDA"), a designated terrorist and transnational criminal organization known for conducting illicit activities and committing violent acts (*e g* , homicide, abduction, extortion, drug trafficking). FREX 1 ¶¶ 14, 16 This terrorist organization has engaged in and continues to engage in efforts to harm the United States; any of its members therefore pose a danger to the security of the United States FREX 1, ¶ 16

Petitioners were released from ICE custody on March 13, 2025, pending further investigation. FREX 1 ¶ 15 ICE's investigation concluded that Ms. Sanchez is a senior member of TDA and that Mr Sanchez is associated with TDA given that he resides with Ms Sanchez and has a child with her FREX 1 ¶ 16. On March 21, 2025, law enforcement officers arrested

[4] Petitioners applied for asylum in March of this year Both applications are pending FREX 1 ¶¶ 11-12

Petitioners after a traffic stop and took them into ICE custody at the Washington Field Office. FREX 1 ¶ 19 That same day, ICE issued and, around 4:00 pm, served on Petitioners Notices to Appear ("NTA") in removal proceedings FREX 1 ¶ 20. The NTAs charged Petitioners as removable under 8 U.S.C §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I) for arriving without being admitted or paroled and without possessing a valid visa or other entry document FREX 1 ¶¶ 17-18, 20 In connection with those removal proceedings, Ms. Sanchez is scheduled to appear for a master calendar hearing on April 8, 2025, and Mr Sanchez is set to appear for a master calendar hearing on April 29, 2025 FREX 1 ¶ 23. At their respective hearings, they will be able to request release from detention on bond FREX 1 ¶ 24. The presiding immigration judge at those proceedings will set the conditions, if any, for their release FREX 1 ¶23

Because the Field Office is only a temporary holding facility, ICE transferred Mr Sanchez to the Farmville Detention Center, where he is currently held on March 21, 2025, and ICE transferred Ms. Sanchez to the Caroline Detention Center, where she is currently held on March 21, 2025 FREX 1 ¶ 21 Due to their threat to public safety, ICE elected to continue their detention pursuant to 8 U.S.C. § 1226(a). FREX 1 ¶ 22.

ARGUMENT

The sole basis of this habeas proceeding is Petitioners' request for their immediate release from ICE custody, on the single alleged ground that their detention violates the INA—specifically, the TPS statute—and due process [5] As explained below, these arguments are without merit Petitioners' detention is lawful, and the Court should therefore deny the Petition.

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[5] Petitioners do not, because they cannot, challenge their removability or their removal proceedings more broadly in this action 8 U S C § 1252(b)(9); *see Johnson v. Whitehead*, 647 F.3d 120, 124 (4th Cir 2011) ("Congress has specifically prohibited the use of habeas corpus provisions as a way of obtaining review of questions arising in removal proceedings ") Nor would there be jurisdiction

I. Petitioners' Detention Complies With the INA.

Petitioners' statutory theory is simple: They are TPS recipients; the applicable statute prohibits detention of TPS recipients; they are being detained; ergo, their detention violates the TPS statute But Petitioners have overread the relevant statutory language: The statute does not say that federal immigration authorities may *never* detain a noncitizen with TPS status What the statute *actually* provides is that a TPS recipient "shall not be detained . *on the basis of the alien's immigration status* in the United States." 8 U.S.C. § 1254a(d)(4) (emphasis added) As explained below, Petitioners are not being detained on the basis of their immigration status Accordingly, their detention does not offend the statute.

As mentioned, ICE has issued Petitioners NTAs charging them as inadmissible under two sections of the INA, and therefore removable from the United States FREX 1, ¶¶ 17-18, 20. By statute, ICE (and by extension, immigration judges and the BIA) have discretion to detain them—subject to certain procedural protections, such as the opportunity for a bond hearing—pending the outcome of those removal proceedings in immigration court. *See* 8 U.S.C § 1226(a). Thus, unless Petitioners fall within an applicable exception to this default rule, their present detention is lawful.

The sole exception Petitioners invoke is the TPS statute The plain language of that statute prohibits detention only when "the basis of" that detention is the noncitizen's "immigration status." 8 U.S.C. § 1254a(d)(4) The INA does not define "immigration status" as such, but it does provide for how noncitizens may *adjust* status. *E.g* , *id.* § 1159(b) (setting out requirements for a refugee to adjust status to legal permanent resident). As the Fourth Circuit has explained, this particular provision "contemplates two statuses—an 'alien granted asylum' and an 'alien lawfully admitted

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to review ICE's determination as to the danger Petitioners pose (or their flight risk) for bond purposes 8 U.S.C. § 1226(e)

for permanent residence,'" *Cela v Garland*, 75 F 4th 355, 364 (4th Cir. 2023) (quoting *Mahmood v. Sessions*, 849 F 3d 187, 191 (4th Cir 2017))—in other words, an asylee/refugee and a permanent resident. Other recognized statuses include nonimmigrant, *see* 8 U S C. § 1255(j) (providing for adjustment of status from nonimmigrant to permanent resident), and immigrant, *see id.* § 1101(a)(15) (defining "immigrant") [6] In short, "immigration status" refers to the *legal* category into which a noncitizen's presence in this country falls. Thus understood, the TPS statute's prohibition of detention "on the basis of . . immigration status," *id* § 1254a(d)(4), means only that a noncitizen TPS recipient may not be detained simply because of the legal categorization of his or her presence in the country, or because immigration proceedings are ongoing to determine that legal categorization, *cf D B. v Cardall*, 826 F.3d 721, 736-37 (4th Cir 2016) (explaining that similarly worded statutory provision "support[ed] the argument that . . . custodial authority" extended only to noncitizens "in immigration proceedings").

This limited reading is consistent with what TPS is: "[A] 'temporary refuge' that ceases to shield an applicant from removal once it is withdrawn " *Duarte*, 27 F.4th at 1053 (citation omitted), *see Cervantes v Holder*, 597 F.3d 229, 231 (4th Cir. 2010) ("TPS is authorized by Section 244 of the Immigration and Nationality Act . . . , which allows eligible nationals of a foreign state to temporarily remain in the United States during the pendency of that state's designation for the TPS program.") In other words, TPS simply "freezes a[] [noncitizen]'s position within the immigration system"—"it does not erase the effects of a[] [noncitizen]'s previous unlawful entry or presence in the country." *Duarte*, 27 F 4th at 1053; *see Sanchez v Mayorkas*, 593 U.S 409, 414 (2021) ("[T]he

[6] Courts have also suggested that "immigration status" may include whether the noncitizen is subject to certain immigration orders such as parole or removal from the country. *See, e g., Duarte v Mayorkas*, 27 F.4th 1044, 1049, 1053-54 (5th Cir 2022); *Laroque v Sec'y, Dep't of Homeland Sec* , 2021 WL 7084102, at *5 (M D Fla. Oct 22, 2021), *R. & R adopted*, 2021 WL 7084106 (M.D. Fla. Dec. 2, 2021)

conferral of TPS does not make an unlawful entrant eligible . . . for adjustment to LPR status "). A removable noncitizen with TPS therefore remains removable; indeed, a TPS recipient "may even be ordered removed," but as a consequence of the "freeze[]" caused by TPS, "the order remains inexecutable so long as the [noncitizen] remains a TPS beneficiary." *Duarte*, 27 F 4th at 1053-54; *see United States v Guzman-Velasquez*, 919 F.3d 841, 843 (4th Cir. 2019) ("Once granted, the government 'shall not remove' an individual with TPS." (citation omitted)); *In re Sosa*, 25 I. & N. Dec. 391, 393 ("[T]he respondent is protected from execution of a removal order during the time her TPS status is valid, but she remains removable based on the charge of inadmissibility") It would therefore make little sense to permit detention of a TPS recipient solely on the basis of immigration status, *e g*, alleged removability. Indeed, because TPS insulates a removable noncitizen recipient from removal, such detention would conceivably last for the duration of the TPS designation itself—perhaps even indefinitely, something that the Supreme Court has indicated may raise constitutional difficulties. *Cf Zadvydas v Davis*, 533 U.S. 678, 682 (2001)

That concern is not implicated when, as here, the noncitizen's "immigration status" is not the "basis" of detention 8 U.S.C. § 1254a(d)(4). To be sure, the government contends that Petitioners are inadmissible and therefore removable But although their alleged lack of lawful immigration status is why they have been placed *in removal proceedings*, that status is not why they are being *detained* pending the outcome of those proceedings. Rather, Petitioners are being detained because the government has determined that they have ties to TDA—Ms. Sanchez admitted as much—and therefore pose a risk to public safety. FREX 1, ¶¶ 14, 16, 22 This safety risk is a ground for detention wholly independent of Petitioners' "immigration status" and is

therefore not subject to the TPS statute's detention restriction.[7] Accordingly, section 1226(a) controls here, and because that statute confers discretion to detain Petitioners pending the outcome of their removal proceedings, their present detention complies with applicable statutory authority

II. Petitioners' Detention Does Not Violate Due Process.

Petitioners' additional argument that their detention violates procedural due process is the flip-side of their statutory argument *See* Pet. ¶¶ 34-35 (alleging that detention is not narrowly tailored because Petitioners are not deportable due to TPS, and that TPS renders their detention unlawful and therefore in violation of due process). This argument fails for two reasons. First, because Petitioners are properly detained pursuant to 8 U S C § 1226(a), which is subject to procedural protections of which Petitioners have not availed themselves, they may not bring a due process claim at all. And second, even if such a claim were available, the applicable legal framework establishes that there has been no due process violation.

a. It is well established that "to state a claim for failure to provide [procedural] due process, a plaintiff must have taken advantage of the processes that are available to him . . . , unless those processes are . patently inadequate " *Manion v. N.C. Med. Bd.*, 693 F App'x 178, 181 (4th Cir. 2017) (citation omitted). Here, there is no basis to infer that Petitioners have taken this mandatory step. And "where 'there is a process on the books that appears to provide due process, the plaintiff cannot skip that process and use the federal courts as a means to get back what he wants '" *Ashley*

[7] ICE's regulations confirm this, as a noncitizen who is determined to be "deportable or inadmissible upon grounds which would have rendered the alien ineligible for [TPS] status as provided in 8 CFR [§] 244 4 may be detained . . . pending removal proceedings." 8 C F R § 244.18(d). Section 244 4, meanwhile, provides that a noncitizen "is ineligible for Temporary Protected Status" if he or she is "described in section 208(b)(2)(A) of the Act," *i e* , 8 U.S C § 1158(b)(2)(A) 8 C F R § 244.4(b). And that statutory provision includes noncitizens as to whom "there are reasonable grounds for regarding . . as a danger to the security of the United States " 8 U S C. § 1158(b)(2)(A)(iv) In brief, applicable regulations expressly provide that a TPS recipient determined to be security risk may be detained on that ground during removal proceedings.

v NLRB, 255 F. App'x 707, 710 (4th Cir 2007) (citation omitted). Accordingly, the fact that Petitioners have not availed themselves of the process available to them in connection with section 1226(a) detention—notably, the opportunity for a bond hearing before an immigration judge, 8 C.F.R. § 236.1(d)(1)—they may not bring a due process claim. *Irshaid v. Garland*, 2025 WL 756544, at *13 (E D Va Mar 10, 2025) (granting motion to dismiss).

b. Even if Petitioners could assert a due process challenge, the process available to them at this stage to seek release on bond is adequate. Indeed, the Fourth Circuit has expressly held that "the detention procedures adopted for § 1226(a) bond hearings provide sufficient process to satisfy constitutional requirements." *Miranda*, 34 F.4th at 346; *see id* at 358-65 (analyzing factors set out *Mathews v Eldridge*, 424 U.S 319 (1976)). The same analysis applies here. If anything, the government's interest at step three of the *Mathews* framework is even stronger in this case, as Petitioners pose a threat to public safety—the protection of which is a governmental interest of the highest order. *See, e g , Demore v. Kim*, 538 U.S 510, 518-19 (2003); *Carlson v Landon*, 342 U.S 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure Otherwise aliens arrested for deportation would have opportunities to hurt the United States during the pendency of deportation proceedings."). Accordingly, Petitioners fail to make out a due process violation concerning their detention pursuant to section 1226(a).

CONCLUSION

For these reasons, Federal Respondents respectfully request that the Court deny the Petition. If the Court is inclined to grant the Petition, Federal Respondents request that Petitioners be required to wear ankle monitors.

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Respectfully submitted,

ERIK S. SIEBERT
United States Attorney

By: /s/

MATTHEW J. MEZGER
PETER B. BAUMHART
Assistant United States Attorneys
Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: (703) 299-3741/3738
Fax: (703) 299-3983
Email: Matthew.Mezger@usdoj gov
Peter.Baumhart@usdoj.gov

Counsel for Federal Respondents