UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KLEIBER ALEXANDER ARIAS GUDINO,

Petitioner,

v.

CRAIG LOWE, *in his official capacity as* Warden, Pike County Correctional Facility; BRIAN MCSHANE, *in his official capacity as* Acting Field Office Director, Philadelphia Field Office, United States Immigration and Customs Enforcement; TODD M. LYONS, *in his official capacity as* Acting Director, United States Immigration and Customs Enforcement; KRISTI NOEM, *in her official capacity as* Secretary of Homeland Security; PAMELA BONDI, *in her official capacity as* United States Attorney General,

Respondents.

No. 1:25-cv-571 (KM/DFB)

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

Petitioner Kleiber Alexander Arias Gudino ("Petitioner" or "Mr. Arias Gudino") seeks emergency relief from this Court because he has been detained for three weeks in Respondents' custody in clear violation of black-letter law. Mr. Arias Gudino is a Venezuelan national properly granted Temporary Protected Status ("TPS"). The Immigration and Nationality Act ("INA") unambiguously prohibits both the removal of a noncitizen granted TPS and their detention based on their immigration status. As the statute states, "[a] [noncitizen] provided temporary protected status . . . ***shall not be detained*** by the Attorney General on the basis of the [noncitizen's] immigration status in the United States." 8 U.S.C. § 1254a(d)(4) (emphasis added); *see also* 8 U.S.C. § 1254a(a)(1)(A) (stating that the government "shall not remove the [noncitizen] from the United States during the period in which [TPS] status is in effect.").

Despite the clear statutory language, Respondents detained Mr. Arias Gudino following a violent early-morning raid on his home, where officers from U.S. Immigration and Customs Enforcement ("ICE") broke down his door at 4:00 a.m. and arrested him in front of his family and his crying one-and-a-half-year-old U.S. citizen daughter. ICE then secreted him away to the Pike County Correctional Facility, where he remains detained. Over the past three weeks, Respondents have stonewalled his and his attorney's attempts to learn the basis of his detention and

have provided him no procedure by which to meaningfully challenge it. Respondents have not alleged that United States Citizenship and Immigration Services ("USCIS") has withdrawn his TPS or that ICE has revoked his order of supervision ("OSUP"), which the agency issued last year when it concluded that his continued detention was not justified and released him from custody.

Such an arbitrary and unlawful deprivation of liberty cannot stand under the Constitution and laws of the United States. Mr. Arias Gudino is likely to prevail on his claims that his detention violates the TPS statute, the Administrative Procedure Act ("APA"), and the Due Process Clause. He will suffer irreparable harm if he remains subject to arbitrary detention, and both the balance of the equities and the public interest weigh in his favor. Following courts around the country that have released noncitizens that ICE detained despite having valid TPS, *see* Ex. A, TPS Orders, this Court should issue an order pursuant to Fed. R. Civ. P. 65 directing Respondents to immediately release Mr. Arias Gudino.

STATEMENT OF FACTS

I. TPS for Venezuela was duly designated and remains in effect.

Congress created TPS in 1990 "for nationals of designated countries experiencing an ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions." *Saget v. Trump*, 375 F. Supp. 3d 280, 297 (E.D.N.Y. 2019) (citing 8 U.S.C. § 1254a). Pet. ¶17. The statute authorizes the DHS Secretary to designate countries for TPS and periodically extend designations based on

findings related to instability or disaster. *See* 8 U.S.C. § 1254a(b).

To be eligible for TPS, a national of a country that has been designated for TPS must: (1) be a national of the TPS-designated country; (2) have been present in the United States on the date of the initial designation, redesignation, or extension; (3) be otherwise admissible into the United States;[1] and (4) register within a specified time frame. 8 U.S.C. § 1254a(c)(1)(A); 8 C.F.R. § 244.2; Pet. ¶18.

In individual cases, there are only three bases on which DHS may withdraw TPS from a noncitizen to whom the status has been granted: (1) DHS finds that the TPS holder was not in fact eligible for TPS; (2) the TPS holder did not remain continuously physically present in the United States after being granted TPS; or (3) the TPS holder fails without good cause to register with DHS annually within 30 days of each 12-month period after being granted TPS. 8 U.S.C. § 1254a(c)(3); Pet. ¶32. The exclusive procedure for revoking TPS is withdrawal by United States Citizenship and Immigration Services ("USCIS") in compliance with 8 C.F.R. § 244.14.

DHS first designated Venezuela for TPS—following the direction of

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[1] *See* 8 U.S.C. § 1254a(c)(2)(A), 8 C.F.R. § 244.3(a) (providing that the following inadmissibility grounds do not apply to TPS: public charge, 8 U.S.C § 1182(a)(4); labor certification grounds, 8 U.S.C § 1182(a)(5)(A); unqualified physicians, 8 U.S.C § 1182(a)(5)(B); and documentation requirements, 8 U.S.C § 1182(a)(7)(A)(i)).

President Trump at the end of his first term—in early 2022. Pet. ¶22; *see also* Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure, 86 Fed. Reg. 13574, 13575 (Mar. 9, 2021). Then-Secretary Kirstjen Nielsen found that "Venezuela is currently facing a severe humanitarian emergency" and "has been in the midst of a severe political and economic crisis for several years . . . marked by a wide range of factors." *Id.* at 13576.

After two additional designations, most recently in January 2025, DHS suddenly changed course following the inauguration of the second Trump administration. On January 28, 2025, Respondent Noem purported to "vacate" the most recent extension of TPS, duly announced on January 17, 2025 by then-Secretary Alejandro Mayorkas. *See* Extension of the 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 5961 (Jan. 17, 2025). Respondent Noem's action, published in the Federal Register on February 3, 2025, was the first purported vacatur of a TPS designation since the status was created in 1990. Vacatur of 2025 Temporary Protected Status Decision for Venezuela, 90 Fed. Reg. 8805 (Feb. 3, 2025).

That vacatur has now been postponed indefinitely. On March 31, 2025, a court in the North District of California postponed the effective date of the vacatur pending its adjudication of a lawsuit challenging the vacatur on its merits. *See* Order Granting

Plaintiffs' Motion to Postpone, *Nat'l TPS Alliance v. Noem*, No. 25-cv-1766 (EMC) (N.D. Cal. Mar. 31, 2025), ECF No. 93. Therefore, TPS for Venezuela remains in effect, and any Venezuelan properly granted TPS—including Mr. Arias Gudino—continues to benefit from TPS's protections.

II. Mr. Arias Gudino Properly Applied for and Was Granted TPS, and Remains Eligible for TPS.

Mr. Arias Gudino applied for Temporary Protected Status *pro se* on November 3, 2023, shortly after the October 3, 2023 extension of Venezuela's designation for TPS. Extension and Redesignation of Venezuela for Temporary Protected Status, 88 Fed. Reg. 68130 (Oct. 3, 2023); Pet. ¶35. His application was granted on January 20, 2025. *See* ECF No. 1-1, TPS Approval Notice.

Mr. Arias Gudino was in ICE detention from April 15, 2024 to November 15, 2024 pending the resolution of his removal proceedings. *See* Pet. ¶¶39-44; Arias Gudino Decl. ¶¶5-7. He ultimately chose to request a removal order rather than face prolonged detention and separation from his family while litigating his asylum claim. *Id.* At the expiration of the 90-day "removal period," during which he was subject to mandatory detention, ICE released Mr. Arias Gudino pursuant to regulations that require the release of a noncitizen with a final removal order where "there is no significant likelihood that the [noncitizen] will be removed in the reasonably foreseeable future." 8 C.F.R. § 241.4(i)(7); *see also id.* 241.13(g)(1) ("Unless there are special circumstances justifying continued detention, [DHS]

shall promptly make arrangements for the release of the [noncitizen] subject to appropriate conditions."); *Zadvydas v Davis*, 533 U.S. 678, 699 (2001) ("[I]nterpreting [8 U.S.C. § 1231(a)(6)] to avoid a serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute."). Pet. ¶44.

ICE issued Mr. Arias Gudino an order of supervision ("OSUP"), which provides the conditions for his release. *See* 8 C.F.R. § 241.4(j); Pet. ¶45. Mr. Arias Gudino was later placed on ICE's Intensive Supervision Appearance Program ("ISAP") and fitted with an ankle monitor.[2] Pet. ¶45. ICE removed the ankle monitor shortly after Mr. Arias Gudino was granted TPS. *Id.*

III. Mr. Arias Gudino began building a new life in the United States after he was granted TPS.

Mr. Arias Gudino's release from detention gave him "a fresh start." Pet. ¶47; ECF 1-2, Arias Gudino Decl. ¶8 He "wanted to do things right because [he] saw that this country had given opportunities to [his] family." Pet. ¶47; Arias Gudino Decl. ¶8. Mr. Arias Gudino "wanted to work, get [his] papers, and start [his] life" in the United States. *Id.* "[He] complied with the requirements that [he]

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[2] *See* U.S. Immigr. and Customs Enf't., *Intensive Supervision Appearance Program*, U.S. DEP'T OF HOMELAND SEC. *available at* https://www.dhs.gov/sites/default/files/2022-06/ICE%20-%20Intensive%20Supervision%20Appearance%20Program%2C%20FYs%202017%20-%202020.pdf (Apr. 11, 2022).

was given [from ICE] and knew it was important to stay in touch with [his] attorneys." Ex. B, Suppl. Decl. of Kleiber Alexander Arias Gudino ¶2 ("Suppl. Arias Gudino Decl.")

Following his release from ICE custody, on January 20, 2025, USCIS granted Mr. Arias Gudino's application for TPS. Pet. ¶48; Arias Gudino Decl. ¶10. After the TPS grant, Mr. Arias Gudino felt "really happy since [he] thought it meant [he] could remain in the United States with [his] family, including [his] mother, siblings, and [his] one-and-a-half-year-old daughter." Pet. ¶48; Arias Gudino Decl. ¶10. He also "understood that it meant [he] couldn't be deported from the U.S." Suppl. Arias Gudino Decl. ¶2. Mr. Arias Gudino received a work permit and requested a social security card, although it was only delivered to his home after he was unlawfully detained. Pet. ¶49; Arias Gudino Decl. ¶11. He hoped to find work in construction and "begin a new chapter" supporting his family, including his mother, siblings, and one-and-a-half-year-old daughter. *Id.*

During that time, Mr. Arias Gudino was offered the opportunity to participate in pre-trial intervention ("PTI"), a New Jersey diversion program that permits the dismissal of charges against first-time offenders who complete court-mandated programming. Suppl. Arias Gudino Decl. ¶7. Upon successful completion of the PTI, which formally began on April 1, 2025, Mr. Arias Gudino's pending shoplifting charge from April 2024 will be dismissed. Pet. ¶56.

At no time did ICE notify Mr. Arias Gudino that his OSUP had been revoked, which ICE is required to do if it intended to re-detain him. *See* 8 C.F.R. § 241.4(l)(1) (An order of supervision can only be revoked where "the [noncitizen is] notified of the reasons for revocation of his or her release or parole.").[3]

IV. ICE unlawfully detained Mr. Arias Gudino and has rebuffed his efforts to learn why he is detained.

ICE violently upended the new life Mr. Arias Gudino was building with his family when it arrested him in an early-morning raid at his home and secreted him off to prison in violation of the TPS statute. At around 4:00am that morning, Mr. Arias Gudino was asleep in his home with his family when he heard "loud knocking and banging, with a voice saying, 'open the door, police' in English." Pet. ¶58. Arias Gudino Decl. ¶12. ICE officers then broke down the door and entered Mr. Arias Gudino's home. *Id.* ¶58. Mr. Arias Gudino "had [his] daughter in [his] arms when ICE officers took her from [him]." Pet. ¶59; Arias Gudino Decl. ¶13. His one-and-a-half-year-old daughter "was crying" as he "tried to explain that she is an American citizen, but it did not matter." *Id.* The ICE officers took Mr. Arias Gudino outside into the cold. *Id.* "Once [he] was on the ground, ICE officers handcuffed him." *Id.* ICE then transported Mr. Arias Gudino to Pike County

[3] The noncitizen must also "be afforded an initial informal interview promptly after his or her return to [ICE] custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l)(1).

Correctional Facility, where he remains detained in jail-like conditions. Pet. ¶62; Arias Gudino Decl. ¶14.

Starting from the moment he was removed from his home and continuing to the present, Mr. Arias Gudino and his counsel have repeatedly alerted ICE that his detention is prohibited by the TPS statue and have fruitlessly asked ICE why it is nonetheless detaining him. After he was dragged from him home, Mr. Arias Gudino, still only wearing underwear, told ICE officers that he had TPS and asked why he was being arrested, "but the officers did not reply and just laughed at [him]." Pet. ¶60; Arias Gudino Decl. ¶14. One ICE officer, who spoke Spanish, told Mr. Arias Gudino that even though he had TPS, "[he] was going to be deported anyway." *Id.*

In response to repeated inquiries from counsel, Ms. Rebecca Schectman ("Ms. Schectman"), agency employees have offered only fragmentary and unsupported statements that he no longer has TPS. On March 15, 2025, for example, an employee of ICE's New York City Field Office emailed Ms. Schectman that Mr. Arias Gudino "is detained because he is statutorily ineligible for temporary protected status." Pet. ¶65; ECF No. 1-3, ICE Emails. Several days later, the same employee stated via email: "Per relevant statutory and regulatory provisions the Department has made the decision as discussed below." Pet. ¶66; ICE Emails. As state, Mr. Arias Gudino remains eligible for TPS.

Moreover, using a tablet provided by the jail for communication, Mr. Arias Gudino sent ICE a message on March 17, 2025 asking "what was going to happen to [him]." Arias Gudino Decl. ¶16. On March 18, 2015, he received a response stating only that his case was "pending." *Id.* On or around March 23, 2025, ICE sent him a message stating that he had a final order of removal. *Id.* Mr. Arias Gudino sent another message, in which he stated that he had TPS and asked why he was being detained. *Id.* On March 25, 2025, he received a response from ICE stating that he had TPS and a final order of removal. *Id.* On March 25, 2025, Mr. Arias Gudino again messaged ICE asking why he was being detained if he had TPS and asking that he be released so that he can care for his mother. *Id.* None of these messages even purport to provide a basis for Mr. Arias Gudino's detention.

Mr. Arias Gudino's unlawful detention has taken a severe emotional toll. He has been "torn away from [his] life and family" just when he felt he had "a new chance to demonstrate that [he is] a good person and deserve a chance to remain with [his] family." Suppl. Arias Gudino Decl. ¶8. Mr. Arias Gudino is detained at the Pike County Correctional Facility in a cold cell with insufficient food. *Id.* ¶4. He has difficulty sleeping and has nightmares. *Id.* ¶5. Mr. Arias Gudino is "very worried about [his] family." *Id.* ¶6. His mother "is so stressed and preoccupied" and worries about "how she will survive without [his] help while trying to support herself and [his] 12-year-old brother alone." *Id.* When he speaks to his one-and-a-

half-year-old daughter, "she cries and says [his] name." *Id.*

Mr. Arias Gudino also fears that his detention will make it difficult to comply with his PTI diversion requirements because he can only call his probation officers during certain hours and must pay for his calls with his dwindling funds. *Id.* ¶7 As part of his PTI arrangement, Mr. Arias Gudino must check in with a probation officer telephonically and pay $20 monthly in court fees. *Id.* On the first day of his PTI, April 1, 2025, he attempted to call from immigration detention, but received no answer. *Id.*

The essential fact in this case remains that Mr. Arias Gudino has been properly granted TPS and remains eligible for TPS. Respondents have now deprived Mr. Arias Gudino of his liberty for three weeks even though it is indisputable that he has TPS. Mr. Arias Gudino's contacts with the criminal legal system—which all predate the grant of TPS—did not result in criminal convictions, let alone the type of conviction that affects eligibility for TPS. In any event, USCIS has not sought to withdraw his TPS grant, nor has ICE sought to withdraw his OSUP. He asks to be "let [] out of detention so that I can care for my family, complete my PTI requirements, and demonstrate that I am a good person." Suppl. Arias Gudino Decl. ¶9.

ARGUMENT

Mr. Arias Gudino is entitled to a temporary restraining and preliminary

injunction order directing his immediate release from Respondents' arbitrary and unlawful detention. To warrant preliminary relief, Mr. Arias Gudino must "demonstrate that [he] can win on the merits (which requires a showing significantly better than negligible but not necessarily more likely than not) and that [he] is more likely than not to suffer irreparable harm in the absence of preliminary relief." *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017), *as amended* (June 26, 2017) (footnotes omitted). If these two "'most critical'" factors are met, the Court balances them alongside the possibility of harm to other interested parties from the grant or denial of an injunction and the public interest. *Id.* When the government is the opposing party, "[t]hese [final two] factors merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009). An injunction is warranted if, on balance, the four factors taken together weigh in favor of preliminary relief. *Reilly*, 858 F.3d at 179. "These same factors are used to determine a motion for a temporary restraining order." *Miller v. Skumanick*, 605 F. Supp. 2d 634, 641 (M.D. Pa. 2009).

All four factors weigh in favor of a temporary restraining order or preliminary injunction. *First*, Mr. Arias Gudino likely to succeed on the merits of his habeas petition for the following reasons: (1) Mr. Arias Gudino has been properly granted TPS and remains eligible for TPS, and TPS for Venezuela has not been terminated and will remain in effect *sine die*; (2) Respondents' putative attempt to withdraw his TPS through informal emails from an ICE employee is a clear violation of the APA

that, in any event, is not supported by the facts; (3) Mr. Arias Gudino's detention is also a clear violation of substantive due process because his detention serves no valid statutory or regulatory purpose and is therefore quintessentially arbitrary; and, finally, (4) Mr. Arias Gudino's detention is a clear violation of procedural due process because Respondents have affirmatively refused to provide him notice of the basis for his detention and an opportunity to contest it.

Second, without emergency relief, Mr. Arias Gudino will suffer irreparable harm in the form of a severe deprivation of his constitutional rights and his liberty and through his separation from his family, including his mother and infant daughter. *Third and fourth*, no interested parties will be harmed from a preliminary injunction and the public interest will be served by the Government's continued detention of Mr. Arias Gudino in clear violation of his statutory and constitutional rights.

If the Court finds that Mr. Arias Gudino is entitled to a TRO and preliminary injunction, the Court should order his immediate release.

I. Mr. Arias is likely to succeed on the merits of his petition.

A. Mr. Arias Gudino is likely to succeed on his claim that the TPS statutes forbids his detention.

Mr. Arias Gudino shows a likelihood of success on his claim that his detention is unlawful because it violates the unambiguous language of the TPS statute. Because Mr. Arias Gudino has been granted TPS, Respondents are forbidden from detaining him on the basis of his immigration status. *See* 8 U.S.C.

§ 1254a(d)(4) ("[A noncitizen] provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the [noncitizen]'s immigration status in the United States.") (emphasis added). This unambiguous statutory prohibition is sufficient to resolve this habeas corpus proceeding. Respondents have done exactly what the statute prohibits and must therefore release Mr. Arias Gudino immediately.

Mr. Arias Gudino was properly granted TPS. He remains eligible for TPS, and TPS for Venezuela remains in effect. As such, Mr. Arias Gudino cannot be subject to removal or to civil immigration detention. *See* 8 U.S.C. § 1254a(d)(4). The prohibition on detaining a TPS holder remains in place even if the TPS holder has a final removal order or lacks other immigration status. As the statute unambiguously states, the government "shall not remove the [noncitizen] from the United States during the period in which [TPS] status is in effect." 8 U.S.C. § 1254a(a)(1)(A); *see also* 8 U.S.C. § 1254a(a)(5) (providing the government has no authority to "deny temporary protected status to [a noncitizen] based on the [noncitizen]'s immigration status"); 8 U.S.C. § 1254a(g) (stating that TPS statute constitutes the exclusive authority for affording nationality-based protection to "otherwise deportable" noncitizens).

USCIS granted Mr. Arias Gudino TPS on January 20, 2025 after finding that he met the statutory criteria. *See* ECF 1-1, TPS Approval Notice. USCIS determined

(1) that Mr. Arias Gudino is a national of Venezuela, a country designated for TPS; (2) that he was present in the United States on the day TPS for Venezuela was redesignated; and (3) that he is otherwise admissible to the United States. *See id.*; 8 U.S.C. § 1254a(c)(1)(A). Furthermore, USCIS properly determined that Mr. Arias Gudino's conviction for disorderly behavior in violation of the New York City Administrative Code did not render him ineligible for TPS. *Cf.* 8 U.S.C. § 1254a(c)(2)(B) ("[A noncitizen] shall not be eligible for temporary protected status under this section if the Attorney General finds that—(i) the [noncitizen] has been convicted of any felony or 2 or more misdemeanors committed in the United States, or (ii) the [noncitizen] is described in section 1158(b)(2)(A) of this title [persecution, criminal, and security bars to asylum].").[4]

Since Mr. Arias Gudino was granted TPS on January 20, 2025, nothing has occurred that would render him ineligible for TPS or justify a withdrawal of his TPS. None of the three bases for withdrawal at 8 U.S.C. § 1254a(c)(3) applies to Mr. Arias Gudino, nor has DHS even claimed that one does. Accordingly, USCIS's reasoned, proper, and justified decision to grant TPS to Mr. Arias Gudino remains valid and dispositively precludes his detention.

As the Petition and subsequent events make clear, *see* Pet. ¶¶22-30, the

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[4] *See also* Ann Block, et al., *The Impact of Crimes on Eligibility* for Temporary Protected Status, IMMIGRANT LEGAL RES. CTR. (March 2023), https://www.ilrc.org/resources/community/impact-crimes-tps-eligibility.

designation of Venezuela for TPS was unquestionably in effect when Respondents detained Petitioner and remains in effect at the present time. DHS's putative vacatur of TPS, which would have taken effect on April 7, 2025, has been postponed *sine die*. *See* Order Granting Plaintiff's Motion to Postpone, *Nat'l TPS Alliance v. Noem*, No. 25-cv-1766 (EMC), ECF No. 93. TPS for Venezuela therefore remains in effect.

Faced with a similarly unambiguous violation of 8 U.S.C. § 1254a, several other district courts have ordered the immediate release of Venezuelans detained despite their valid TPS. *See* Ex. A, Order Granting Petitioner's Temporary Restraining Order, *Cardenas Barrera v. Castro*, No. 2:25-cv-266 (MLG/KRS), at 2 (D.N.M. Mar. 15, 2025), ECF No. 24 ("Because Petitioner possesses [TPS], and given the information currently before the court, it appears that he should not be detained."); Order, *Sanchez Puentes v. Charles*, No. 1:25-cv-509 (LMB/LRV) (E.D. Va. Mar. 20, 2025), ECF No. 15 ("For the reasons stated in open court, the Petition for a Writ of Habeas Corpus . . . is hereby GRANTED; and it is hereby ORDERED that petitioners . . . be and are RELEASED from custody."); Order, *Gil Rojas v. Venegas*, No. 1:25-cv-56 (S.D. Tex. Apr. 2, 2025), ECF No. 18 ("The Court holds that Petitioner is a Venezuelan national with valid Temporary Protected Status and was wrongfully detained under 8 U.S.C. 1254a(a)(l)(A). The Court further holds that Respondents produced no evidence that Petitioner is a danger to the public."). In

another case, the court ordered the government to show cause within three days (five days after filing) as to why a petition for habeas corpus should not be granted to a detained Venezuelan with valid TPS status. *See* Order to Show Cause, *D.T.G. v. Joyce*, No. 1:25-cv-02161 (JLR) (S.D.N.Y. Mar. 17, 2025), ECF No. 6. The government then immediately released the petitioner rather than respond to the order to show cause. *See* Order, *D.T.G. v. Joyce*, No. 1:25-cv-02161 (JLR) (S.D.N.Y. Mar. 18, 2025), ECF No. 13. Petitioner's counsel is not aware of any case in which a district court denied a petition seeking the release of a noncitizen detained despite having valid TPS. Mr. Arias Gudino's case is no different. If the government does not voluntarily release him, the Court should order his immediate release.

Mr. Arias Gudino's detention violates the plain language of the TPS statute. He had, and continues to have, TPS status, yet Respondents are unlawfully detaining him. The Court should therefore order his immediate release.

B. Mr. Arias Gudino is likely to succeed on his claim that any putative withdrawal of his TPS violates the APA.

To the extent that ICE's emails constitute a putative withdrawal of Mr. Arias Gudino's TPS, the Court should readily conclude that Respondents have violated the APA, 5 U.S.C. § 706(2).

Respondents' unsubstantiated statements that Mr. Arias Gudino is "statutorily ineligible for temporary protected status," *see* Pet. ¶65, made via email in response to his attorney's urgent inquiries and to his own inquiries through a tablet provided

by the jail, cannot withdraw his TPS. Regulations provide the procedure by which DHS may withdraw TPS from a noncitizen to whom it has granted the status – and DHS officials have not followed that procedure.

First, USCIS, the DHS branch that adjudicates immigration benefits applications like TPS, has sole authority to withdraw TPS. *See* 8 C.F.R. § 244.14(a). Indeed, ICE, which is in charge of enforcing immigration laws, has no authority to revoke any visa, immigrant status, or non-immigrant status. *Cf.* 8 C.F.R. § 287.5 (listing powers exercised by immigration officers); And an agency "may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law.") *FDA v. Brown and Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000) (quotation marks and citation omitted).

Second, when USCIS revokes an individual's immigration status, it must provide written notice of the withdrawal and serve it personally on the TPS holder. 8 C.F.R. § 214.14(b)(1); *see also* 8 C.F.R. § 103.8(a)(2) (listing means by which USCIS may perform personal service).

Third, if the basis for withdrawal is a ground of deportability that renders the noncitizen ineligible for TPS, "the decision shall include a charging document which sets forth such ground(s) with notice of the right of a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings." 8 C.F.R. § 244.14(b)(3). "If the basis for withdrawal does not constitute such a

ground, the [noncitizen] shall be given written notice of his or her right to appeal to [USCIS's Administrative Appeals Unit ("AAU")]." *Id.*

Respondents' putative withdrawal further violates the APA because it is devoid of any reasoning or explanation. To the extent that Respondents claim to have withdrawn Mr. Arias Gudino's TPS, they have withheld the basic information that agencies are required to produce when they adjudicate rights and obligations: the legal basis for their decision, the factual basis for their decision, and the standard they applied. *Cf. Motor Vehicles Mfrs. Ass'n of United States Inc., v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.") (quotation marks and citation omitted). All that Respondents have provided to Mr. Arias Gudino or his counsel are informal, conclusory statements that Mr. Arias Gudino is "statutorily ineligible" for TPS.

The Court should therefore reject any claim that Mr. Arias Gudino does not currently have TPS as a clear violation of the APA.

C. Mr. Arias Gudino is likely to succeed on his claim that his detention violates his right to substantive due process.

This Court should grant the writ and order Mr. Arias Gudino's immediate release because his detention violates federal law, *see* 28 U.S.C. 2241(c)(3). If the Court nonetheless choose to address constitutional questions, it should conclude that

Mr. Arias Gudino is likely to succeed on the merits of his claim that his detention violates the substantive component of the Due Process Clause for at least two related reasons. *First*, his detention does not bear a reasonable relation to the purposes of civil immigration detention because it is prohibited by statute. *Second*, the agency has already concluded that Mr. Arias Gudino's detention is not justified, and nothing has changed since that time.

1. Mr. Arias Gudino's detention bears no reasonable relation to the special justifications for immigration detention because his detention and removal is prohibited by statute.

First, Mr. Arias Gudino's detention does not bear a reasonable relation to the special justifications for immigration detention. Civil detention, including immigration detention, must "'bear[] a reasonable relation to the purpose[s] for which the individual [was] committed.'" *Zadvydas*, 533 U.S. at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). As the Supreme Court has explained in *Zadvydas v. Davis*, the purpose of civil immigration detention for an individual who has been ordered removed is to mitigate flight risk and danger to the community during the limited period when the government seeks to execute their deportation. *Id.* However, when that individual's removal is not reasonably foreseeable—as is the case here—detention serves no legitimate government purpose, and the noncitizen must be released. *See id.* at 700–01. Because the INA forbids Mr. Arias Gudino's removal on the basis of his immigration status, *see* 8 U.S.C. § 1254a(d)(4),

his removal is not foreseeable, and his detention is not reasonably related to a legitimate government interest.

2. The government's last word remains that Mr. Arias Gudino's detention is not justified.

Second, even if the Court looks beyond the clear statutory language against detaining and deporting a noncitizen with valid TPS, Respondents have not and cannot show that Mr. Arias Gudino's detention is otherwise necessary to mitigate flight risk or danger to the community.

First, when ICE released Mr. Arias Gudino on OSUP in November 2024, it applied a set of regulations, 8 C.F.R. §§ 241.4 and 241.13, that were drafted "to comply with the due process concerns illuminated in *Zadvydas*," *i.e.*, to protect noncitizens' interest in freedom from arbitrary detention. *D'Allesandro v. Mukasey*, 628 F. Supp. 2d 368, 394 (W.D.N.Y. 2009). In applying these regulations, ICE already engaged in an analysis as to flight risk and danger—before they released Mr. Arias Gudino in November 2024.

As for flight risk, the government necessarily determined that Mr. Arias Gudino's removal was not reasonably foreseeable. *See* 8 C.F.R. § 241.13(g)(1) (requiring a noncitizen to be released from immigration detention, absent special circumstances, if the agency determines that "there is no significant likelihood that the [noncitizen] will be removed in the reasonably foreseeable future"). As the *Zadvydas* Court made clear, a determination that removal is not reasonably

foreseeable essentially means that flight risk is not at issue. *See Zadvydas*, 533 U.S. at 679 ("The first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility."). Moreover, the regulations specifically required the government to conclude that "[Mr. Arias Gudino] does not pose a significant flight risk if released." 8 C.F.R. § 241.4(e)(6) (listing criteria for release on an OSUP). Mr. Arias Gudino's detention therefore cannot be justified on the basis that he is a flight risk.

Second, as to danger, the regulation also required the government to conclude that Mr. Arias Gudino "is presently a non-violent person," "is likely to remain nonviolent if released," and "is not likely to pose a threat to the community following release." 8 C.F.R. § 241.4(e)(2)-(4). The government thus also concluded that Mr. Arias Gudino's detention is not justified based on its interest in mitigating danger to the community. Mr. Arias Gudino has received TPS (which excludes people with many convictions) and has complied with his OSUP requirements. He is not a danger to the community.

Having released Mr. Arias Gudino on an OSUP to protect his due process rights, the government is limited in its authority to re-detain him. It can only do so if, "on account of changed circumstances, the [agency] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably

foreseeable future." 8 C.F.R. § 241.13(i)(2).[5] The government has made no individualized determination in this case. Nor could it. There have been no changed circumstances regarding the foreseeability of Mr. Arias Gudino's removal because he continues to benefit from TPS and the statutory prohibition of his removal.

* * *

The Court need not consider the violation of Mr. Arias Gudino's substantive due process rights because the clear language of the TPS statute resolves this case. Nonetheless, Respondents are depriving Mr. Arias Gudino of substantive due process because his detention violates the TPS statute and has continued despite the absence of any showing—indeed in the absence of any *possibility* of showing—that his confinement serves legitimate governmental purposes.

D. Mr. Arias Gudino is likely to succeed on his claim that his detention violates his right to procedural due process.

1. Respondents have affirmatively refused to provide Mr. Arias Gudino notice of the basis for his detention and a procedure by which to challenge it.

Although Mr. Arias Gudino's clear statutory right to be free from detention resolves this case, he also shows a likelihood of success on his claim that Respondents have flagrantly disregarded his right to procedural due process. Due

[5] *See also Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023) (holding that, to satisfy the requirements at 8 C.F.R. § 241.13(i)(2), the government must adduce specific facts supporting "(1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future.").

process requires notice and an opportunity to be heard before an individual is deprived of a protected interest. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). At the time they detained Mr. Arias Gudino and throughout their ongoing deprivation of his liberty, Respondents have refused to provide notice of the reason for his detention and have failed to provide him any procedure by which he could meaningfully challenge it.

Courts have found due process violations in circumstances far less offensive than these, including where ICE in fact had a basis to detain a noncitizen, but failed to provide the noncitizen notice of the basis or to comply with regulatory requirements. In *Jimenez v. Cronen*, for example, ICE arrested several noncitizens pursuant to 8 U.S.C. § 1231(a) on the grounds that it was reinstating their prior removal orders. 317 F. Supp. 3d 626, 643-47 (D. Mass. 2018). ICE, however, failed to provide the noncitizens notice that the orders were being reinstated and to provide an opportunity to be heard at a custody review required by regulation. *Id.* Noting that the regulation in question "was promulgated in an effort to provide [noncitizens] the procedural due process that courts had found to be constitutionally required," the court held that "it [was] most appropriate that the court exercise its equitable authority to remedy the violations of petitioners' constitution rights to due process

by promptly deciding itself whether each should be released." *Id.* at 655, 657.[6]

Mr. Arias Gudino merits relief *a fortiori*. Respondents have not simply bypassed procedural hurdles to lawful detention, as in *Jimenez*, but have detained Mr. Arias Gudino in clear violation of his statutory rights. After three weeks in ICE custody, Mr. Arias Gudino has received absolutely no process and no administrative procedure by which to contest the deprivation of his liberty. ICE and DHS have affirmatively refused to provide notice of the basis for his detention. They have also disregarded their own determinations pursuant to the INA that Mr. Arias Gudino's detention is not warranted. These acts and omissions are clear due process violations.

2. Mr. Arias Gudino's due process claims relate back to the time he was detained and cannot be redressed by a *post hoc* rationalization of his detention.

Respondents' violation of Mr. Arias Gudino's due process rights relates back to the time that he was taken into custody and cannot be cured by any *post hoc* rationalization. Due process requires, at a minimum, notice and an opportunity to be heard *at the time* of detention, not weeks or months later if a basis for detention subsequently emerges. One court, for example, rejected ICE's attempts to correct its

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[6] *See also Gayle v. Johnson*, 81 F. Supp. 3d 371, 385 (D.N.J. 2015), *vacated and remanded on other grounds* 838 F.3d 297 (3d Cir. 2016) (finding a due process violation where the form ICE provided upon detention did not provide notice of whether the noncitizen was subject to mandatory detention); *Lopez v. Sessions*, No. 18-cv-4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) (finding a due process violation where ICE re-detained petitioner "without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond").

initial unlawful detention of a noncitizen where the agency sought to provide him notice of its intent to reinstate his removal order well after he filed a petition seeking release. *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 365 (S.D.N.Y. 2019). As the court concluded, "[the writ of habeas corpus] relates back to when Petitioner was first unlawfully detained, and it can be used to equitably redress that unlawful detention." *Id.*[7] The court further noted that "the Supreme Court has repeatedly upheld prisoners' rights to challenge the constitutionality of their detentions, and allow[ed] courts to implement corrective remedies, regardless of whether there were other bases for the petitioners to be subsequently detained." *Id.* at 366.

Because Mr. Arias Gudino benefited from the protections of TPS and of his OSUP at the time he was detained (and continues to do so), Respondents could only have detained him by following constitutionally necessary regulations to remove those protections. "[W]hen an agency promulgates a regulation protecting fundamental statutory or constitutional rights of parties appearing before it, the agency must comply with that regulation." *Leslie v. Att'y Gen of the United States*, 611 F.3d 171, 180 (3d Cir. 2010). Both 8 C.F.R. § 244.14,[8] which provides the

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[7] *See also id.* ("[D]epriving [a noncitizen] with substantial ties to the United States of *both* written notice and a hearing *before* detaining him. . . fundamentally violates the Due Process Clause of the Fifth Amendment because it deprives him of any way to meaningfully contest the basis for his detention.").

[8] 8 C.F.R. § 244.14(b) contains several provisions clearly tethered to the right to notice and an opportunity to be heard. *First*, the regulation provides that, when

procedure for withdrawing TPS, and 8 C.F.R. § 241.4(l),[9] which provides the procedure for revoking of an OSUP, are constitutionally necessary regulations that protect noncitizens' due process rights. *See, e.g.*, *Jimenez*, 317 F. Supp. 3d at 655 ("8 C.F.R. § 241.4 was promulgated in an effort to provide [noncitizens] the procedural due process that courts had found to be constitutionally required."); *D'Alessandro*, 628 F. Supp. 2d at 395 (finding that procedures in 8 C.F.R. § 241.4 are constitutionally necessary); *Bonitto v. Bureau of Immigr. & Customs Enf't*, 547 F. Supp. 2d 747, 757 (S.D. Tex. 2008) (same). Respondents' failure to comply with these regulations at the time Mr. Arias Gudino was detained is dispositive of the legality of his continued detention.

Respondents have indicated any intention to comply with these safeguards or

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USCIS withdraws TPS, the "[w]ithdrawal . . . shall be in writing and served by personal service pursuant to 8 CFR 103.8(a)(2)." 8 C.F.R. § 244.14(b)(1). *Second*, if the withdrawal is based on criminal grounds, the regulation requires "notice of the right of a *de novo* determination of eligibility for [TPS] in deportation or exclusion proceedings." 8 C.F.R. § 244.14(b)(3). "If the basis for withdrawal does not constitute such a ground, the [noncitizen] shall be given written notice of his or her right to appeal to the AAU." 8 C.F.R. § 244.14(b)(3).

[9] 8 C.F.R. § 241.4(l) protects the same due process interests by providing for written notice "of the reasons for revocation" of an OSUP and for an "initial informal interview promptly after [re-detention] to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l)(1). Several courts have found that the procedures in 8 C.F.R. § 241.4, which govern detention after the removal period more generally, are constitutionally necessary.

to offer any process by which Mr. Arias Gudino could ascertain the basis for his detention and meaningfully challenge it. Because they did not comply with their own constitutionally required regulations at the time they detained Mr. Arias Gudino, Respondents "cannot enjoy the poisonous fruits of their unlawful acts." *Martinez*, 385 F. Supp. 3d at 369 (analogizing ICE's attempt to remedy its failure to comply with constitutionally necessary regulations to efforts to introduce evidence "attained in violation of agency rules connected to Fourth, Fifth, or Sixth Amendment rights."). Respondents' unlawful conduct cannot be excused. It continues to taint Mr. Arias Gudino's ongoing detention and to deprive him of due process.

* * *

As with his substantive due process claim, the Court need not reach this violation of procedural due process rights because the clear language of the TPS statute resolves this case. Nonetheless, Respondents have violated the core of procedural due process by failing to provide Mr. Arias Gudino notice of the basis for his detention and an opportunity to contest it. No subsequent justification for his detention can remedy this violation, which relates back to the time he was detained.

II. Mr. Arias Gudino will suffer irreparable harm if a preliminary injunction is not granted.

Absent a preliminary injunction directing his immediate release, Mr. Arias Gudino will continue to suffer irreparable harm from Respondents' flagrant violation of the TPS statute and of his constitutional rights. Respondents' deprivation of Mr.

Arias Gudino's liberty constitutes irreparable harm. "The violation of a fundamental constitutional right constitutes irreparable injury." *Buck v. Stankovic*, 485 F. Supp. 2d 576, 586 (M.D. Pa. 2007). No right is more fundamental than the right to freedom from unreasonable government detention. *See Zadvydas*, 533 U.S. at 690; *cf. Susquehanna Valley All. v. Three Mile Island Nuclear Reactor*, 619 F.2d 231, 245 (3d Cir. 1980) ("[P]laintiffs' . . . allegation of irreparable harm to their constitutional right to 'life and liberty' meets the irreparable harm standard."). Unlawful immigration detention is in itself irreparable harm. *See, e.g.*, *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (holding that plaintiffs demonstrated "irreparable harm by virtue of the fact that they are likely to be unconstitutionally detained for an indeterminate period of time"); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (granting a preliminary injunction for an immigration detainee and concluding that "loss of liberty . . . is perhaps the best example of irreparable harm"). For every day that Petitioner remains in detention, this irreparable harm compounds.

Mr. Arias Gudino will separately suffer irreparable injury due to his separation from his family. Mr. Arias Gudino's separation from his family is causing him emotional distress. He is particularly distressed by his separation from his mother and his one-and-a-half-year-old daughter, for whom he provides financial support. Detention also makes it difficult for him to comply with the requirements of his PTI. As he is unable to earn money, he will struggle to pay his required

monthly court fees or to pay for periodic phone calls to his probation officer. Moreover, already on the first day of his PTI, he was unable to reach the probation officer during the timeslot he was given by the jail to place the phone call. Mr. Arias Gudino will continue to suffer irreparable harm absent action by the Court.

III. The remaining factors weigh in favor of a TRO and preliminary injunction.

The remaining factors—the possibility of harm to other interested parties and the public interest—also weigh in favor of granting a TRO and preliminary injunction directing Mr. Arias Gudino's immediate release. *First*, Respondents will not be harmed by releasing Mr. Arias Gudino. By enacting the non-detention provision of the TPS statute, Congress clearly indicated that the government does not have an interest in detaining noncitizens granted TPS. In Mr. Arias Gudino's case, his removal has not become reasonably foreseeable because he has TPS and cannot be removed. Moreover, the government has already concluded that his detention is not warranted. The government will not be prejudiced by a requirement to respect the will of Congress and to abide by its own determinations in this case. The injuries to Mr. Arias Gudino caused by his unlawful detention far outweigh any prejudice the government may claim to suffer in releasing him.

Second, the public interest is served by a TRO and preliminary injunction ordering Mr. Arias Gudino's release. "As a practical matter, if a plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it

almost always will be the case that the public interest will favor the plaintiff." *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 n.8 (3d Cir. 1994). Mr. Arias Gudino shows a clear likelihood of success on the merits and will clearly suffer irreparable harm if the Court does not order his release. Moreover, preventing the ongoing deprivation of Mr. Arias Gudino's right to liberty serves the public interest. "In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights." *Council of Alt. Pol. Parties v. Hooks*, 121 F.3d 876, 883-84 (3d Cir. 1997). The public has an interest in ensuring that the government respect the fundamental due process principle that no one can be subject to unlawful detention and that no one can be deprived of their liberty without notice and an opportunity to be heard.

IV. The proper remedy is immediate release.

The proper remedy for Respondents' lawless detention of Mr. Arias Gudino is to order his release. "It is clear, not only from the language of [28 U.S.C.] §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (ordering release where detention became unlawful once condition release date had passed); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention]

is, of course, release.") (citation omitted); *Martinez*, 385 F. Supp. 3d at 372 ("[T]here is no appropriate remedy to fix the egregious violations of Petitioner's fundamental rights other than for the Court to issue his immediate release from custody").

Mr. Arias Gudino's claims strike at the heart of the freedom that habeas corpus has historically been used to vindicate. Because the TPS statute expressly prohibits his detention, no alternative administrative procedure can provide him an effective remedy. Moreover, Respondents have not even indicated that they intend to allow Mr. Arias Gudino to avail himself of any such procedure. And, as laid out *supra* Part I.D, any process initiated in response to this litigation would not remedy Respondents' disregard of both the TPS statute and the Due Process Clause at the time they detained Petitioner and at present. As the other courts addressing the detention of valid TPS holders have concluded, the appropriate remedy is immediate release. *See* Ex. C, TPS Orders.

CONCLUSION

Mr. Arias Gudino merits a TRO and preliminary injunction directing his release. He shows a clear likelihood of success on his claim that Respondents are detaining him in clear violation of the TPS statute. While the statute's clear prohibition on detaining a TPS holder resolves this case, Mr. Arias Gudino also shows a likelihood of success on his claims that his detention violates the APA and the Due Process Clause. The other factors for a temporary restraining order and

preliminary injunction weigh in his favor. Mr. Arias Gudino therefore respectfully requests that the Court issue an order pursuant to Fed. R. Civ. P. 65 directing Respondents to immediately release Mr. Arias Gudino.

Dated: April 7, 2025

Respectfully submitted,

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***Application for general admission pending.*