UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

KLEIBER ALEXANDER ARIAS GUDINO, Petitioner, v. CRAIG LOWE, *in his official capacity as* Warden, Pike County Correctional Facility, *et al.*, Respondents.	Case No. 1:25-CV-571 Hon. Karoline Mehalchick, U.S. District Judge

RESPONSE TO PETITIONER'S HABEAS PETITION

Respondent[1] opposes Petitioner Kleiber Alexander Arias Gudino's habeas petition because United States Immigration and Custom Enforcement (ICE) lawfully detained Gudino based on a violation of the conditions of his supervised release and the withdrawal of his temporary protected status, and ICE provided the Petitioner with appropriate notice

[1] "In habeas challenges to present physical confinement – 'core challenges' – the default rule is that the proper respondent is the warden of the facility where the prisoner is being held." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Petitioner requests release from confinement. *See* Doc. 1, Complaint, at 31, ¶¶ 90-92; Doc. 13, Brief in Support of Temporary Restraining Order or Preliminary Injunction, at 31-32. As such, Warden Lowe is the only proper respondent, and the rest of the Respondents should be dismissed.

of his detention. Therefore, Respondent respectfully requests that the Court deny and dismiss the habeas petition.

I. Procedural History

On March 31, 2025, Gudino, a former immigration detainee in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) at the Pike County Correctional Facility, Hawley, PA, filed this instant petition requesting an order holding unlawful the "Respondents' putative withdrawal of Petitioner's TPS"; "immediately release[ing] Petitioner from custody"; and "enjoining Respondents from further detaining Petitioner so long as TPS for Venezuela remains in effect and he continues to hold TPS." Doc. 1, Complaint, at 37. On April 2, 2025, the Honorable Daryl F. Bloom, United States Magistrate Judge, issued an Order to Show Cause directing Respondent to respond to the Petition within twenty-one days, or on or before April 23, 2025. Doc. 5, Order dated April 2, 2025.

On April 7, 2025, Petitioner filed a motion for a temporary restraining order and preliminary injunction. *See* Docs. 10, 13. Specifically, Petitioner requested that the Court issue a temporary

restraining order and preliminary injunction "directing his release." Doc. 13 at 32.

On April 8, 2025, the parties appeared before the Court for a scheduling conference. Following the conference, this Court issued an Order directing the Respondent to file opposition to Petitioner's motion for a temporary restraining order and preliminary injunction on or before April 11, 2025, with a hearing on the merits scheduled for April 15, 2025. Doc. 15, Scheduling Order. On April 11, 2025, Respondent filed opposition to the motion for a temporary restraining order and preliminary injunction. Docs. 17-18. On April 13, 2025, Petitioner filed a reply brief, Doc. 19, and the parties each filed a notice of case-related developments on April 14, 2025. *See* Docs. 21-22. On April 15, 2025, the Court held a hearing with the parties. On April 18, 2025, at the Court's request, the parties filed supplemental briefs regarding an additional question regarding the Petitioner's Order of Supervision. Docs. 24-26.

On April 21, 2025, this Court issued an Order granting the Petitioner's motion for a preliminary injunction[2] and requiring his

[2] Petitioner's request for a temporary restraining order was deemed moot. Doc. 29.

immediate release. Doc. 29, Order. In its Memorandum, the Court found that a preliminary injunction was appropriate because Gudino was likely to succeed on the merits of a potential procedural due process violation for failure to timely and properly provide notice of a revocation of supervision, faced irreparable harm in his continued detention, and the public interest and balancing of equities favored release. *See generally* Doc. 28, Memorandum, at 7-28.

In its Memorandum, this Court found that – notwithstanding the potential due process violation – ICE had sound legal justifications for its detainment of Gudino. *See id.* at 12-19. First, the Court found that even in light of the Petitioner's temporary protected status (TPS), ICE could detain Gudino for a violation of his Order of Supervision. *Id.* at 12-13 ("Reading the statute and regulations as a harmonious whole, the Court finds that 8 C.F.R. § 241.4(l)(1) contains a carveout for 8 U.S.C. § 1254a(d)(4), which allows noncitizens who are subject to orders of supervision and who violate those conditions to be returned to custody.") (internal quotations omitted). Second, the Court found that ICE could detainee a noncitizen whose TPS was withdrawn. *Id.* at 16 ("[T]he Court finds it unambiguous that drafters did not intend to define non-detention

as a benefit of TPS."). Third, the Court found that based on Supreme Court and United States Court of Appeals for the Third Circuit caselaw, detention of immigration detainees was related to a legitimate government purpose. *Id.* at 18-19 ("Arias Gudino has not shown that his detention is unrelated to a legitimate government purpose, and he has not yet been detained beyond the six-month limit determined to be presumptively reasonable in [*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)][.]").

In finding that the Petitioner had a reasonable likelihood of success on the merits, this Court held that ICE's failure to provide a notice of revocation to Gudino within twenty-six (26) days of his detention violated procedural due process. *Id.* at 19-24. Specifically, the Court stated as follows:

> Respondents' examples of notice all occurred ***nearly a month*** after Arias Gudino was detained. These notices are also dated ***after*** the April 8th status conference with the Court, where Respondents alleged, for the first time, that Arias Gudino was a suspected member of TdA.

Id. at 22 (emphasis in original) (internal citations omitted). The Court further indicated that the Government would not be harmed by requiring an agency to follow its own regulations. *Id.* at 23.

In a footnote, the Court also included the United States Citizenship and Immigration Services' (USCIS) decision to withdraw the Petitioner's TPS as a *post hoc* justification for revocation of his release. *Id.* at 23, n. 8 ("The regulation cited by Respondents states that the government must give notice 'upon revocation [of release].' 8 C.F.R. § 241.4. The government cannot avoid this requirement by through a *post hoc* additional justification for a revocation, and then give a detainee notice of its post hoc justification after initially failing to give notice and detaining them."). Citing a matter from the Southern District of New York, *Martinez v. McAleenan*, 385 F.Supp.3d 349, 364 (S.D.N.Y. 2019), the Court indicated that "[p]reventing the government from presenting *post hoc* justifications for detention on the eve of a hearing does not create a substantial burden on the government." *Id.*

In granting the Petitioner's motion for a preliminary injunction, the Court ordered Gudino's immediate release from custody. *See id.* at 28. *See also* Doc. 29. The Court's Memorandum did not address why the alleged procedural due process violation could not be remedied outside of immediate release.

On April 23, 2025, Respondent filed an unopposed motion to extend his time to file a response to the Petitioner's underlying habeas petition. *See* Doc. 30, Unopposed Motion. On April 24, 2025, the Court granted Respondent's petition, extending the time to respond to on or before May 7, 2025. Doc. 31, Order. As such, this Response is timely.

II. Pertinent Statutory Background

Temporary Protected Status in General

Pursuant to 8 U.S.C. § 1254a, the Attorney General of the United States "may designate any foreign state or part of a foreign state for Temporary Protected Status." *Mejia Rodriguez v. United States Department of Homeland Security*, No. 18-21038, 2019 WL 2211052, at * 2 (S.D. Fl. May 22, 2019). "TPS shields foreign nationals present in the United States from removal during armed conflict, environmental disasters, or other extraordinary conditions in their homelands." *Sanchez v. Secretary United States Department of Homeland Security*, 967 F.3d 242, 244-45 (3d Cir. 2020), *aff'd sub nom.*, 593 U.S. 409, 141 S.Ct. 1809 (2021) (citing 8 U.S.C. § 1254a).

"To qualify for TPS, an alien who is a national of a designated country must (1) be continuously present in the United States since the

effective date of the most recent designation of that country; (2) continuously reside in the United States from the date that the Secretary designates; (3) be admissible as an immigrant, subject to certain exceptions; and (4) register during an appropriate registration period, 'to the extent and in a manner which the [Secretary] establishes." *Villegas-Menjivar v. U.S. Atty. Gen.*, 348 Fed.Appx 105, 107 (11th Cir. 2009) (quoting 8 U.S.C. § 1254a(c)(1)(A)(i)-(iv)). *See also United States v. Orellana*, 405 F.3d 360, 363 (5th Cir. 2005) (listing requirements). Once a noncitizen is granted TPS, the Attorney General shall not detain the individual on the basis of the noncitizen's immigration status. 8 U.S.C. § 1254a(d)(4).

But "TPS may be withdrawn if the Attorney General finds that a registered alien is statutorily ineligible." *Id.* at 364; *see also Mejia Rodriguez*, 2019 WL 2211052 at *2 ("TPS may be withdrawn if the person 'was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status.'") (quoting 8 C.F.R. 244.14(a)(1)). 8 C.F.R. § 244.4 provides that a noncitizen is ineligible for TPS if he has been convicted of any felony or two or more misdemeanors, 8 C.F.R. § 244.4(a), or is a noncitizen described in INA § 208(b)(2)(A). 8

C.F.R. § 244.4(b). Section 208(b)(2)(A) includes a provision that a noncitizen is ineligible if "there are reasonable grounds for regarding the alien as a danger to the security of the United States." INA § 208(b)(2)(A)(iv).

Recent Events regarding TPS for Venezuela

On March 9, 2021, then Secretary of Homeland Security Alejandro Mayorkas designated Venezuela for TPS. *See* 86 Fed. Reg. 13574, 13577 (Mar. 9, 2021). Secretary Mayorkas extended TPS for Venezuela in September 2022, *see* 87 Fed. Reg. 55024, 55027 (Sept. 8, 2022); October 2023, *see* 88 Fed. Reg. 68130, 68131 (Oct. 3, 2023); and January 2025, *see* 90 Fed. Reg. 5961 (Jan. 17, 2025). Secretary Mayorkas also redesignated Venezuela for TPS, which allowed individuals who had continuously resided in the United States since July 31, 2023, to apply. *See* 88 Fed. Reg. 68130, 68131.

On January 28, 2025, Secretary of Homeland Security Kristi Noem vacated Secretary Mayorkas's January 2025 extension of TPS for Venezuela. *See* 90 Fed. Reg. 8805 (Feb. 3, 2025). Three days later, on February 1, 2025, Secretary Noem terminated the 2023 redesignation.

See 90 Fed. Reg. 9040 (Feb. 5, 2025). With the termination, Venezuela's redesignation was scheduled to end on April 7, 2025. *Id.* at 9044.

On March 31, 2025, the District Court for the Northern District of California issued a nationwide postponement of the termination of TPS for Venezuela. *See National TPS Alliance v. Noem*, --- F.Supp.3d ---, 2025 WL 957677 (N.D. Cal. Mar. 31, 2025). As a result, TPS remains in effect for Venezuelans who were previously provided such status. *Id.*

President Trump's Designation of Tren de Aragua as a Foreign Terrorist Organization

On February 20, 2025, President Trump designated eight international cartels and transnational organizations as Foreign Terrorist Organizations (FTOs) and Specially Designated Global Terrorists (SDGTs). Presidential Memorandum, Designation of International Cartels, available at https://www.state.gov/designation-of-international-cartels/ (February 20, 2025). In that memorandum, President Trump designated Tren de Aragua (TdA) as an FTO and SDGT. *Id.*

III. Factual Background

Gudino, a native and citizen of Venezuela, entered the United States at Eagle Pass, Texas, on or about August 3, 2022. Exhibit 1, Notice

to Appear at 1; Exhibit 2, I-213 Record of Deportable/Inadmissible Alien at 2. Border Patrol Agents encountered Gudino near the border, and he admitted that he was not a United States citizen and entered the country by crossing the Rio Grande River. Exhibit 2 at 2. Gudino was placed under arrest. *Id.* Border Patrol Agents provided Gudino with a Notice to Appear, and he was released on his own recognizance with reporting instructions to the closest ICE office near his intended destination. *Id.*

The Notice to Appear charged Gudino as removable from the United States pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), as a noncitizen present in the United States without being admitted or paroled. Exhibit 1 at 1. A Border Patrol Agent served Gudino with the Notice to Appear on August 5, 2022, and he was instructed to appear before an immigration judge of the United States Department of Justice on December 7, 2022, at New York, NY. *Id.*

On November 3, 2023, Gudino filed for temporary protected status with United States Citizenship and Immigration Services (USCIS). See Doc. 1, Exhibit 1.

On January 3, 2024, the Honorable Randa Zagzoug, a United States Immigration Judge, issued a removal order for Gudino. Exhibit 3,

Removal Order dated January 3, 2024. Judge Zagzoug's removal order indicated that Gudino did not appear for his hearing, but DHS submitted evidence relating to Gudino and established his removability. *Id.* at 1. Judge Zagzoug ordered Gudino removed to Venezuela. *Id.* at 2.

On April 12, 2024, the Paramus (New Jersey) Police Department arrested Gudino, and he was indicted for organized retail theft, shoplifting, theft, and receiving stolen property. Exhibit 4, I-213 Record of Deportable/Inadmissible Alien at 3. *See also* Doc. 1 at 20, ¶ 56. According to Gudino's Petition, he was accepted into a pre-trial intervention, judicial diversion program. *Id.*

The day after his arrest, April 13, 2024, ICE Enforcement and Removal Operations (ERO) officers encountered Mr. Gudino at the Bergen County (New Jersey) jail. Exhibit 4 at 3. ICE ERO informed Gudino that he was being detained for failure to follow the instructions of his initial release. *Id.* ICE ERO transported Gudino to the Elizabeth Contract Detention Facility. *Id.* Ultimately, Gudino was detained at Moshannon Valley Processing Center during litigation of his immigration status. *See* Exhibit 5, Notice to EOIR, at 1.

In the intervening time period, Gudino moved to reopen his immigration matter on May 6, 2024. *See* Exhibit 6, Motion to Reopen. Gudino claimed in his motion that he did not believe he had to attend his immigration court hearing because he had applied for TPS. *Id.* at 2. Judge Zagzoug granted Gudino's motion on May 13, 2024. Exhibit 7, Order dated May 13, 2024, at 1-2.

On July 30, 2024, Gudino appeared for a hearing before the Elizabeth, New Jersey immigration court, where he conceded the allegations contained within the Notice to Appear, admitted the allegations, and conceded the charge of removability. *See* Exhibit 8, Gudino Motion to Advance, at 3, ¶ 3. The Honorable Adam Panopoulos, United States Immigration Judge, granted Gudino's motion to move up his hearing date in order to enter a removal order on August 13, 2024. Exhibit 9, Order dated August 13, 2024.

On August 15, 2024, Judge Panopoulos ordered Gudino removed to Venezuela. Exhibit 10, Removal Order dated August 15, 2024. Judge Panopoulos found that Gudino was inadmissible under INA § 212(a)(6)(A)(i), in that he was a noncitizen who was present in the United States without being admitted or paroled. *Id.* at 1. The parties waived

the issuance of a formal oral decision, *id.*, and both parties waived an appeal. *Id.* As such, Gudino's removal order was considered administratively final. *See* 8 U.S.C. § 1231(a)(1)(A), (B).[3]

Gudino remained in ICE custody until November 15, 2024, at which point he was released under an Order of Supervision. *See* Exhibit 11, Order of Supervision. The Order of Supervision contained several conditions, including reporting requirements to an ICE office and limitations on travel. *Id.* at 1. More significantly, an Addendum was included with Gudino's Order of Supervision, which included specific conditions for the Petitioner. *Id.* at 3. ICE required that Gudino "not associate with know [sic] gang members, criminal associates, or be associated with any such activity," and that Gudino "not commit any crimes while on this Order of Supervision." *Id.* At the end of the Addendum, it notes that "[a]ny violation of these conditions may result in you being taken into Service custody," and Gudino signed it. *Id.*

On January 20, 2025, USCIS approved Gudino's application for temporary protected status. *See* Doc. 1, Exhibit 1.

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[3] INA § 212(a)(1)(A), (B).

On March 13, 2025, the Honorable Robert W. Lehrburger, United States Magistrate Judge, issued a search warrant for the ground floor and first floor apartments of 1463 St. Lawrence Avenue, Bronx, New York. Exhibit 12, Search Warrant, at 1. Notably, the search and seizure of the location was related to suspected violations of 18 U.S.C. § 922(g), Possession of a Firearm by a Prohibited Person; 21 U.S.C. § 846, Drug Trafficking Conspiracy; and 18 U.S.C. § 924(c), Use and Possession of a Firearm in Furtherance of a Drug Trafficking Crime. *Id.* Attachment A to the Search Warrant indicates that evidence suspected of being present at the location included firearms, ammunition, controlled substances and their packaging, and proceeds of drug trafficking. *Id.* at 4.

A Federal Bureau of Investigation Task Force executed the search warrant on March 14, 2025, *see* Exhibit 13, I-213 Record of Deportable/Inadmissible Alien at 2, and Gudino was present at the location. *Id.*

The FBI Task Force contacted ICE ERO, and informed ICE that the search warrant was related to an investigation of TdA. *Id.* New York ERO officers responded and took Gudino into custody. *Id.* At this time, his supervision was revoked.

On April 8, 2025, and April 9, 2025, ICE ERO provided Mr. Gudino with official documentation of his Revocation of Release. *See* Exhibit 14, Notice of Supervision Revocation; Exhibit 15, Updated Notice of Supervision Revocation. Gudino's supervision was revoked on March 14, 2025, related to his known association with TdA, TdA gang members, and their criminal activity. Exhibit 15 at 1.

Following Gudino's detainment, USCIS began a review of the Petitioner's TPS and whether it should be withdrawn for national security reasons given his association with a gang designated as a FTO and SDGT. On April 14, 2025, USCIS withdrew the Petitioner's TPS. Exhibit 16, Decision dated April 14, 2025.

IV. Questions Presented

A. Whether ICE had a legal justification for detaining the Petitioner despite his TPS?

B. Whether ICE violated the Petitioner's due process rights?

C. Whether this Court lacks jurisdiction over the Petitioner's Administrative Procedure Act cause of action?

V. Argument[4]

A. ICE was legally justified in detaining Petitioner despite his TPS.

This Court should deny Gudino's habeas petition because ICE was legally justified in its detainment of the Petitioner. First, ICE was able to lawfully detained Gudino for a violation of his order of supervision. Second, with USCIS's withdrawal of Gudino's TPS, he is a noncitizen subject to a final order of removal, and the Attorney General may effectuate that removal. To the extent that the Petitioner seeks to appeal USCIS's withdrawal of his TPS, Gudino is not entitled to non-detainment as a benefit.

1. Despite Gudino's TPS, ICE may lawfully detain the Petitioner based on a violation of the conditions of his supervision.

Petitioner argues that he is being unlawfully detained because he has TPS. Doc. 1 at 2, ¶ 1. While 8 U.S.C. § 1254a(d)(4) provides that an individual with TPS may not be detained based on his immigration status, this provision does not prevent the Attorney General from detaining a noncitizen on another basis. Here, ICE's detention of Gudino

[4] The Respondent's position is that the Court's decision on the Petitioner's motion for a preliminary injunction and temporary restraining order was a prima facie determination on the underlying habeas petition. As such, questions of law persist that this Court must definitively determine.

is lawful because he violated conditions of his supervision. *See* 8 C.F.R. § 244.4(l)(1) ("Any alien ... who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody.").

Gudino was released on an Order of Supervision on November 15, 2024, *see* Exhibit 11, and he acknowledged the conditions of that supervision. *Id.* at 3. Specifically, ICE required that Gudino "not associate with know [sic] gang members, criminal associates, or be associated with any such activity," and that Gudino "not commit any crimes while on this Order of Supervision." *Id.* Yet, on March 14, 2025, Gudino violated the conditions of his supervision by being in a location during the execution of a search warrant with known gang members who were found to be engaged in criminal activity. Exhibit 13 at 2.

In this Court's ruling on the Petitioner's motion for a preliminary injunction and temporary restraining order, it agreed that ICE could detain a noncitizen with TPS for a violation of an order of supervision.

> The Court is tasked with interpreting statutes "'as a symmetrical and coherent regulatory scheme.'" *Argueta-Orellana v. Att'y Gen. United States*, 35 F.4th 144, 148 (3d Cir. 2022) (quoting *Food & Drug Admin. V. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 569 (1995)). The Court must read 8 U.S.C. § 1254a(d)(4) and 8 C.F.R. §

> 241.4(l)(1) together and "'fit, if possible, all parts into an harmonious whole.'" *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 100 (2012) (quoting *F.T.C. v. Mandel Bros., Inc.*, 359 U.S. 385, 389 (1959)). Reading the statute and regulations as a "harmonious whole," the Court finds that 8 C.F.R. § 241.4(l)(1) contains a carveout for 8 U.S.C. § 1254a(d)(4), which allows noncitizens who are subject to orders of supervision and who violate those condition to be returned to custody. This makes sense, as to construe otherwise would render the Order of Supervision pointless and without any effect at all. Further, such a construction is not in conflict with § 1254a(d)(4), as that provision is addressing the detention of an immigrant in the context of documentation of immigration status.

Doc. 28 at 12-13.

The Petitioner was not being detained based solely on his immigration status. Rather, Gudino was being detained because he associated with known gang members, and he was present during their criminal activity, which were violations of the terms of his Order of Supervision. Thus, Gudino was not being detained on the basis of his immigration status, and his detention does not violate 8 U.S.C. § 1254a.

2. Given USCIS's withdrawal of Gudino's TPS, ICE may detain the Petitioner.

Petitioner claims that he is being unlawfully detained because he has TPS. Doc. 1 at 2, ¶ 1; Doc. 13 at 1. On April 14, 2025, USCIS withdrew Gudino's TPS. Exhibit 16. While the Petitioner maintains his TPS benefits during any administrative appeal of USCIS's decision, his

benefits are limited by regulation, and he is not entitled to non-detainment. *See* C.F.R. § 244.10(f); 8 C.F.R. § 244.14.

TPS benefits are limited by regulation, *see* C.F.R. § 244.10(f) (benefits limited to temporary stay of removal and temporary employment authorization), and ICE is specifically entitled to detain a petitioner whose TPS is withdrawn on the basis of 8 C.F.R. § 244.4. *See* Exhibit 16; *see also* 8 C.F.R. § 244.18(d) ("An alien who is determined by USCIS deportable or inadmissible upon grounds which would have rendered the alien ineligible for such status as provided in... 8 C.F.R. § 244.4 may be detained under the provisions of this chapter pending removal proceedings.").

In this Court's ruling on the Petitioner's motion for a preliminary injunction and temporary restraining order, it agreed that ICE could detain a noncitizen whose TPS has been withdrawn and is seeking an administrative appeal.

> Under 8 C.F.R. § 244.10(e), "temporary treatment benefits" include work authorization and a stay of deportation. 8 C.F.R. § 244.10(e). The regulation does not mention non-detention as a benefit. 8 C.F.R. § 244.10(e). Further, the TPS statute, 8 U.S.C. § 1254a, describes the "benefits and status during a period of temporary protected status" and non-detention is not included. 8 U.S.C. § 1254a(f)(4). Congress only chose to mention the right to not be detained on the basis of immigration status in the subsection

> regarding documentation of TPS status, two subsections earlier in the statute. 8 U.S.C. § 1254a(d)(4). Congress contemplated an unnamed potential benefit, non-detention, and did not include it in not one, but two, provisions in the applicable statutory and regulatory scheme, 8 C.F.R § 244.10 and 8 U.S.C. § 1254a(f). Congress's intent to not include non-detention as a benefit is an appropriate conclusion. *See Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) ("We do not read the enumeration of one case to exclude another unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it.") (citing *United Dominion Indus., Inc. v. United States*, 532 U.S. 822, 836 (2001)). Again, reading the statute as a "harmonious whole," *Roberts*, 566 U.S. at 100, the Court finds it unambiguous that drafters did not intend to define non-detention as a benefit of TPS. *See* 8 U.S.C. § 1254a(f)(4); 8 U.S.C. § 1254a(d)(4).

Doc. 28 at 15-16.

ICE is lawfully authorized to detain a noncitizen whose TPS is withdrawn. Here, ICE is provided specific authorization to detain Gudino due to the basis of USCIS's withdrawal of his TPS.

* * *

Despite the Petitioner's TPS, ICE had lawful authority to detain him. In the absence of a due process violation, this Court should deny the Petitioner's habeas petition or, in the alternative, allow additional time for ICE to correct any procedural due process violation of Gudino's rights.

B. ICE did not violate Petitioner's due process rights.

Petitioner claims that ICE violated his substantive and procedural due process rights. Doc. 1 at 34-36. Gudino claims that his substantive due process rights have been violated because he could not be detained under 8 U.S.C. § 1254a(d)(4), and his immigration detention did not serve a legitimate purpose. *Id.* at 34-35. Gudino further claims that ICE violated his procedural due process by failing to provide notice of the reason for his detention.

1. ICE did not violate the Petitioner's substantive due process rights.

ICE did not violate the Petitioner's substantive due process rights because he was lawfully detained under a violation of his Order of Supervision and related to the withdrawal of his TPS. While "[i]t is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings," *Demore v. Kim*, 538 U.S. 510, 523 (2003), the Supreme Court has "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Id.* Here, the immigration regulatory scheme explicitly authorizes detention for a noncitizen's violation of an order of supervision and where TPS is withdrawn under 8 C.F.R. § 244.4.

ICE detained the Petitioner for a violation of his Order of Supervision, specifically that he "not associate with know [sic] gang members, criminal associates, or be associated with any such activity." Exhibit 11. *See also* Exhibit 15. On March 14, 2025, members of an FBI Task Force executing a search warrant related to TdA took Gudino into custody at the location, Exhibit 13 at 2, and ICE violated Gudino based on a violation of his conditions. Exhibit 15 at 1. "Here, the immigration regulatory scheme explicitly authorizes detention based upon a violation of a supervision order," Doc. 28 at 17; therefore, ICE's detention, which was based on a violation of his Order of Supervision, was tied to a legitimate government purpose of government protection. *Id.* at 17-18.

Similarly, after the withdrawal of the Petitioner's TPS pursuant to 8 C.F.R. § 244.4, ICE was entitled to detain the Petitioner. *See* Exhibit 16; *see also* 8 C.F.R. § 244.18(d) ("An alien who is determined by USCIS deportable or inadmissible upon grounds which would have rendered the alien ineligible for such status as provided in... 8 C.F.R. § 244.4 may be detained under the provisions of this chapter pending removal proceedings."). 8 C.F.R. § 244.4 finds that a noncitizen is ineligible for TPS if they are a noncitizen described in Section 208(b)(2)(A)(iv) of the

Immigration and Nationality Act ("there are reasonable grounds for regarding the alien as a danger to the security of the United States"). USCIS's withdrawal of Gudino's TPS specifically cites his membership in TdA as the basis for his national security threat. Exhibit 16 at 1-2. Because ICE is explicitly authorized to detain a noncitizen whose TPS was withdrawn under 8 C.F.R. § 244.4, its detention of Gudino was tied to a legitimate government purpose of government protection.

2. ICE did not violate the Petitioner's procedural due process rights.

The Petitioner argues that ICE violated his procedural due process rights by failing to provide notice of his detention. Doc. 1 at 35-36. But on April 8, 2025, and April 9, 2025, ICE provided the Petitioner with written documentation of the notice of the revocation of his supervision. *See* Exhibits 14-15. Moreover, when USCIS officially withdrew the Petitioner's TPS, it provided him with a written decision on April 14, 2025. *See* Exhibit 16. As noted above, ICE had legal justification for detaining the Petitioner based on both a violation of his Order of Supervision and the withdrawal of his TPS.

In revoking the Petitioner's Order of Supervision, ICE followed the necessary immigration regulations. *See* 8 C.F.R. § 241.4(l). On April 8,

2025, and April 9, 2025, ICE served Gudino with notices regarding the revocation of his release and the reasons for the revocation. *See* Exhibits 14-15. *See also* 8 C.F.R. § 241.4(l)(1) ("Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole."). Furthermore, upon information and belief, ICE scheduled Gudino for his informal interview, which was moved in order to accommodate the Petitioner's attorney. *Id.* ("The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification."). Perhaps most importantly, Gudino has the opportunity to administratively challenge the revocation of his supervision. 8 C.F.R. § 241.4(l)(3). Pursuant to regulations, a review of Gudino's custody will occur within "approximately three months after release is revoked." *Id.*

In this Court's ruling on the Petitioner's motion for a preliminary injunction and temporary restraining order, it found that the timing of ICE's notices to Gudino was insufficient to avoid the risk of erroneous deprivation.

> Arias Gudino was detained on March 14, 2025. The Southern District of New York held that where an immigrant is only given a

> rationalization for their detention well after they were detained by ICE, the risk of 'erroneous deprivation... [is] extremely high" because petitioner now must challenge their deprivation "within prison, where his access to his belongings, the courts, and to counsel is severely limited." *Martinez*, 385 F.Supp.3d at 364. Respondents' examples of notice all occurred ***nearly a month*** after the Arias Gudino was detained. (Doc. 1, at 2; Doc. 17, at 22). These notices are also dated ***after*** the April 8th status conference with this Court, where Respondents alleged, for the first time, that Arias Gudino was a suspected member of TdA. (Doc. 1 at 2; Doc. 17, at 22). The Court again notes that there has recently been at least one notable instance where an individual was wrongly detained by ICE and removed to El Salvador. [*Noem v. Abrego Garcia*, 604 U.S. ---, 2025 WL 1077101, at *1 (April 10, 2025)].

Doc. 28 at 22.

The Respondent respectfully disagrees with this Court's analysis of the risk of erroneous deprivation. While not discussed, the immigration regulations do not set any specific timeline for the notice requirement with respect to a noncitizen's revocation of an order of supervision. *See* 8 C.F.R. § 241.4(l). Notwithstanding that fact, ICE served Gudino with his notices twenty-six (26) days after his initial detainment.

This case is also distinguishable from the Southern District of New York matter. In *Martinez*, ICE detained the petitioner on a reinstated order of removal. 385 F.Supp.3d at 353. Two months after ICE had taken the petitioner into custody, the petitioner filed his habeas petition. *Id.* Approximately two months later, ICE provided the petitioner with

written documentation of their intention to reinstate the order of removal. *Id.*

Here, Gudino was not taken into custody related to a reinstated order of removal. Members of an FBI Task Force took Gudino into custody during the execution of a search warrant related to an investigation of TdA and notified ICE. Exhibit 13 at 2. ICE documentation from that same day details that the FBI Task Force informed ICE ERO that it believed Gudino was TdA, *id.*, and Gudino's association with known gang members was a violation of his supervision. Exhibit 11. Gudino's custody was not an administrative decision made by ICE, such as the reinstatement of a removal order. Therefore, unlike in *Martinez*, ICE's notice of revocation would have always come after he was in detention.

The *Martinez* timeline is also distinguishable from the facts here. There, the petitioner had been detained for two months before filing his habeas petition, and ICE did not provide justification for his detainment for two months after the commencement of that petition. *Martinez*, 385 F.Supp.3d at 353. That is not the case here. While ICE provided notice of the revocation after the commencement of Gudino's petition, that

petition was filed seventeen (17) days after his detainment. ICE's notices came twenty-six (26) days after Gudino's initial detainment, six (6) days after the government was served with his petition.

The Court also notes that USCIS's decision to withdraw Gudino's TPS serves as another *post hoc* justification for his detainment. Doc. 28 at 23, n. 8. This assumes that USCIS made that decision after the commencement of Gudino's habeas petition. Gudino was taken into custody on March 14, 2025, when the FBI Task Force informed ICE ERO that the Petitioner was a member of TdA on March 14, 2025. Exhibit 13 at 2. It would be unremarkable for USCIS, a separate entity from ICE, to make a determination on a TPS withdrawal within one month, or thirty-one (31) days. Exhibit 16.

Respondent respectfully disagrees with the Court's analysis of the potential procedural due process outlined in its Memorandum related to the Petitioner's motion for a preliminary injunction and temporary restraining order. ICE followed the immigration regulations and provided the Petitioner with notice. Even if this Court finds that a procedural due process violation has occurred, the appropriate remedy is allowing Respondent an opportunity to rectify that violation.

3. Even if this Court finds that Respondent committed a procedural due process violation, it cured that violation.

The Respondent respectfully submits that even if a procedural due process violation occurred, the Respondent cured that violation. The Third Circuit has stated that "a procedural due process violation is not complete unless and until the [s]tate fails to provide due process because the state may cure a procedural deprivation by providing a later procedural remedy." *Bonilla v. City of Allentown*, 359 F.Supp.3d 281, 297 (E.D. Pa. Feb. 13, 2019) (quoting *Marchionni v. SEPTA*, No. 98-6491, 2000 WL 730348, at *2 (E.D. Pa. Jun. 7, 200) (quoting *Zinermon v. Burch*, 494 U.S. 113, 126 (1990). Here, even if a procedural due process violation occurred between March 14, 2025, and April 9, 2025, ICE remedied that violation by providing notice to the Petitioner of the legal justification for his detainment. *See* Exhibits 14-15. Having provided the legal justifications, the Petitioner had administrative remedies by which he could contest that legal justification.

C. Petitioner's Administrative Procedure Act claim must be dismissed because no final agency action has taken place.

The Petitioner's habeas petition includes a cause of action under the Administrative Procedure Act for a "putative withdrawal" of Gudino's

TPS. *See* Doc. 1 at 32-33. On April 14, 2025, USCIS withdrew Gudino's TPS. Exhibit 16. Per regulation and that decision, the Petitioner has until May 17, 2025, in order to appeal the decision to the Administrative Appeals Unit. *Id.* at 2. If the Petitioner fails to appeal the decision, the decision will become final. If the Petitioner appeals, the withdrawal will become final only upon the decision of the AAU. As such, without final agency action, this claim should be dismissed.

5 U.S.C. § 704 governs agency actions that are reviewable. The statute provides:

> Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

5 U.S.C. § 704.

Jurisdiction under the APA is available for review of "final agency action." The Supreme Court has explained the finality requirement as follows:

> As a general matter, two conditions must be satisfied for agency action to be "final": First, the action must mark the "consummation" of the agency's decision-making process, Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp., 333 U.S. 103, 113 (1948)—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which "rights or obligations have been determined," or from which "legal consequences will flow," Port of Boston Marine TerminaAssn. v. Rederiaktiebolaget Transatlantic, 400 U.S. 62, 71 (1970).

Bennett v. Spear, 520 U.S. 154, 178 (1997). Because the agency action in this case is not final, the Court should dismiss Petitioner's APA cause of action.

VI. Conclusion

Due to the aforementioned reasons, the Court should deny Gudino's habeas petition.

Respectfully submitted,

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Dated: May 7, 2025

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

KLEIBER ALEXANDER ARIAS GUDINO, Petitioner, v. CRAIG LOWE, *in his official capacity as* Warden, Pike County Correctional Facility, *et al.*, Respondents.	Case No. 1:25-CV-571 Hon. Karoline Mehalchick, U.S. District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on May 7, 2025, she served a copy of the attached

RESPONSE TO PETITIONER'S HABEAS PETITION

via Electronic Filing:

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/s/ Stephanie Kakareka
STEPHANIE KAKAREKA
Legal Administrative Specialist