

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

AMR AES DERHEM NAJI,)	
)	
Petitioner,)	
)	
v.)	Civil Action No.: 5:25-cv-26
)	
WARDEN, Folkston ICE Processing)	
Center, et al.,)	
)	
Respondents.)	

REPLY IN SUPPORT OF MOTION TO DISMISS

On October 15, 2025, this Court ordered Respondents¹ to submit a reply in support of the motion to dismiss. Doc. 11. The Court also ordered Respondents to provide “information on whether Petitioner has been granted TPS status and any other relevant information regarding the Petition on or before October 24, 2025.” Doc. 11. Respondents submit this Reply in compliance with that Order and renew the request that the Court dismiss this habeas corpus petition.

I. Petitioner has not established prima facie eligibility for TPS status.

The Court ordered the parties to provide information about whether Petitioner has been granted TPS status. Doc. 11. As of this filing, Petitioner has not been granted temporary protected status (“TPS”) and his application is currently still pending. Respondents’ Exhibit 1, Declaration of Cara Selby (“Selby Dec.”), ¶ 5.

¹ In addition to naming the Warden of Folkston and Petitioner’s immediate custodian, Petitioner named other putative respondents, Doc. 1, ¶¶ 15–17. The Warden is the only proper respondent, as argued in the Motion to Dismiss. *See* Doc. 8 at 1 n.1. Nevertheless, because the Court has not yet dismissed the other respondents, this Response is filed on behalf of all respondents out of an abundance of caution.

Petitioner has not yet established his eligibility for TPS status, and USCIS has been unable to determine whether Petitioner is prima facie eligible for TPS status because he has not provided the required biometrics. *Id.*, ¶ 4. Therefore, at this time, the Court should find that he is not prima facie eligible for TPS status.

In an effort to resolve this matter, the Enforcement and Removal Operations (“ERO”) division of the United States Immigration and Customs Enforcement (“ICE”) is currently “in the process of facilitating the collection and submission of the petitioner’s biometrics to USCIS.” Respondents’ Exhibit 2, Crystal White Declaration (“White Dec.”), ¶ 22.

II. Petitioner’s detention remains lawful and constitutional.

The Court also ordered Respondent to file a Reply. Doc. 11. Therefore, Respondents submit that Petitioner’s arguments in his Response should be disregarded, and the Motion to Dismiss should be granted.

First, Petitioner argued that he has made a prima facie showing of TPS eligibility. Doc. 9 at 2. This is inaccurate. Applicants for TPS status must submit all required documentation. 8 C.F.R. § 244.9(a). A prima facie showing of TPS eligibility requires submission of biometrics, but Petitioner has not yet done this. *See Selby Dec.*, ¶¶ 3, 5. Although ERO is currently in process of facilitating the collection and submission of Petitioner’s biometrics, *see White Dec.*, ¶ 22, he cannot be considered prima facie eligible for TPS status at this time, *see Selby Dec.*, ¶ 4.

Second, Petitioner argues that his detention has been unlawfully prolonged. In support of this claim, Petitioner cites the Supreme Court’s decision in *Zadvydas v.*

Davis, 533 U.S. 678 (2001). Doc. 9 at 3. But *Zadvydas* does not apply to Petitioner's detention because he is not detained pursuant to a final order of removal. See *H.C. v. Warden, Stewart Det. Ctr.*, No. 4:22-cv-148, 2023 WL 2745176, at *5 (M.D. Ga. Mar. 31, 2023) ("*Zadvydas*, however, only applies to aliens subject to a removal under 8 U.S.C. § 1231, not aliens detained under 8 U.S.C. § 1225(b)(1)."), *report and recommendation adopted*, 2023 WL 3365166 (M.D. Ga. May 10, 2023). Further, Respondents argued in the Motion to Dismiss that the reasoning in *Zadvydas* should not be applied here because it was based upon an ambiguity that does not exist in § 1225(b)(1). See Doc. 8 at 6; *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). Petitioner has not responded to this argument.

Third, Petitioner argues that his TPS application status places him outside the scope of detention under 8 U.S.C. § 1225(b). Doc. 9 at 3. Petitioner cites no legal basis for this contention. In addition, the Petition did not argue that his TPS application status mandates his release from detention. See generally Doc. 1. Instead, the Petition asserted that the mere fact of his detention constituted sufficient violation of due process to justify Petitioner's release. Doc. 1, ¶¶ 50–53; see also Doc. 8 at 3 (arguing that detention pursuant to § 1225(b) does not violate due process). Petitioner should not be permitted to amend his Petition through a response. See *Burgess v. Religious Tech. Ctr., Inc.*, 600 F. App'x 657, 665 (11th Cir. 2015) ("We repeatedly have held that plaintiffs cannot amend their complaint through a response to a motion to dismiss.").

Fourth, Petitioner disputes Respondents' argument that he had failed to seek mandamus relief and argues that his mandamus claim addresses a clear duty by

Respondents to provide TPS benefits. Doc. 9 at 4. Respondents submit that the argument made in their Motion still stands: this amounts to an improper request for non-habeas relief via a habeas petition, and Petitioner has further failed to identify any specific action he asks Respondents to take on his behalf. Doc. 8 at 7–9. Petitioner’s Response fails to cite any mandamus relief specifically requested in his Petition, which on its face seeks only release. Doc. 1 at 11.² Even if this Court were inclined to agree with Petitioner that he is wrongfully detained, release remains the only relief available in habeas—not mandamus. *See Pierre v. Rivkind*, 825 F.2d 1501, 1504 (11th Cir. 1987).

Finally, Respondents appreciate the clarification that Petitioner is not challenging his removal. Doc. 9 at 4.

CONCLUSION

Therefore, Respondents ask that the Court dismiss the Petition.

Respectfully submitted, this 24th day of October, 2025,

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² The Petition does also seek a declaratory judgment that Petitioner’s detention is unlawful. Doc. 1 at 11. This is duplicative of his habeas relief, since it would have the same effect. It is also not appropriate mandamus relief.