IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KENTUCKY
LOUSIVLLE DIVISION

MICHAEL ALEXANDER CHACON RIOS, *Petitioner,* *v.* MIKE LEWIS, *et al.*, *Respondents.*	Case No. 4:25-cv-00108-RGJ

REPLY IN SUPPORT OF PETITION FOR A WRIT OF HABEAS CORPUS

The law governing Temporary Protected Status (TPS) is clear that a noncitizen in such status "shall not be detained." 8 U.S.C. § 1254a(d)(4). Rather than confront the merits of Petitioner's arguments, Respondent's mischaracterize the record and facts in this case. For the reasons explained below, these arguments are unpersuasive, and this Court should grant Petitioner a Writ of Habeas Corpus, compelling Respondents to release him from custody.

I. Petitioner has properly sought, and is eligible for, a Writ of Habeas Corpus.

Respondent's first argue that the petition should be denied for "failure to exhaust administrative remedies" because Petitioner "should have raised" the question of his eligibility for TPS "in his immigration court proceedings." Dkt. 8, p. 3. These arguments fail for several reasons.

First, the statute in question, 8 U.S.C. § 1254a(d)(4), has no exhaustion requirement. Exhaustion is required only when Congress specifically mandates it. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *Woodford v. Ngo*, 548 U.S. 81, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (2006) (where the Supreme Court held that Congress intended that the Prisoner Litigation Reform Act exhaustion requirement requires proper exhaustion). In all other instances, "sound judicial discretion governs." *McCarthy*, 503 U.S. at 144.

Further, there is no exhaustion requirement because no administrative agency exists to adjudicate a petitioner's constitutional challenges. *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995); *Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994). Neither an IJ nor the BIA can rule on a Petitioner's constitutional claim. *See Matter of C--*, 20 I&N Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues"); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow).

Second, as courts have consistently recognized, custody determinations and removal proceedings are distinct processes. Here, in his habeas petition, Petitioner challenges his *detention* as a violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment. Dkt. 1, p. 8-9. Such a challenge falls squarely within this Court's authority pursuant to 28 U.S.C. § 2241(a). Petitioner's ongoing removal proceedings and the relief sought therein are an entirely separate process to questions around the legality of his ongoing detention. Respondent's suggestion that Petitioner file a motion to terminate his removal proceedings, Dkt. 8, p. 4, does not resolve the question of whether his ongoing detention is valid. That question is properly presented before this Court.

The cases Respondents rely on are inapposite. In *Torrealba v. U.S. Dep't of Homeland Sec.*, the Court focused on the relief requested in finding that Petitioner had not exhausted administrative remedies. 2025 WL 2444114, at *9 (S.D. Ohio Aug. 25, 2025). Specifically, the Court noted that Petitioner requested an order directing Respondents to "place her in standard removal proceedings

under § 1229(a)" and provide her a removal hearing in those proceedings. *Id.* The Court found that these issues were properly litigated through her pending appeal to the Board of Immigration Appeals (BIA). Here, by contrast, Petitioner brings no such challenge to his ongoing removal proceedings. His claims relate solely to the legality of his ongoing detention. Courts have consistently recognized authority to rule on such challenges. *Hamama v. Adducci*, 912 F.3d 869 (6th Cir. 2018) (acknowledging that "the district court had jurisdiction over the detention-based claims and that this jurisdiction is an independent consideration that is not tied to whether the district court has jurisdiction over the removal-based claims.");[1] *Carrera-Valdez v. Perryman*, 211 F.3d 1046, 1047 (7th Cir. 2000).

Similarly, in *Castillo Lachapel v. Joyce*, also cited by Respondents, after filing his petition, Respondents "canceled" Petitioner's expedited removal order and did not contest that Petitioner was entitled to a bond hearing under § 1226(a), thus mooting one of his claims until a bond hearing was held. 2025 WL 1685576, 2025 U.S. Dist. LEXIS 115808 (S.D.N.Y. June 16, 2025). Again, that is not the issue here. While detention during removal proceedings is authorized under § 1226(a), the TPS statute clearly states that noncitizens with such status shall not be detained. That issue is not presented in any of the cases Respondents rely on.

II. Petitioner remains in active TPS status during the re-registration period and is therefore entitled to release.

Next, Respondents argue that Petitioner's TPS status expired on April 2, 2025, and that he "does not [currently] hold TPS". Dkt. 8, p. 6. These arguments misrepresent the facts in this case and the operation of the TPS statute.

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[1] In *Hamama*, the Sixth Circuit ultimately concluded that the detention-related claims were also barred from review; but that was because Section 8 U.S.C. § 1252(f)(1) bars claims seeking class-wide, non-habeas, injunctive relief, something Petitioner does not seek. *Hamama*, 912 F.3d at 877.

First, Respondent's latch on to Petitioner's prior statements that, in July 2025, his TPS status had expired. Dkt. 8, p. 4-6. These statements fail to account for the surrounding context and the subsequent holding in *NTPSA v. Noem*, No. 25-cv-01766, 2025 WL 2578045 (N.D. Cal. Sep. 5, 2025).

Respondents do not contest that Petitioner was granted TPS status "for the period of December 26, 2024, through April 2, 2025." Dkt. 8, p. 2. On January 17, 2025, then-DHS Secretary Mayorkas extended the 2023 Venezuela TPS designation through October 2, 2026. 90 Fed. Reg. 5961 ("January 2025 TPS Extension). If this extension had remained in effect, Petitioner would have held TPS status through October 2, 2026. However, on January 28, 2025, DHS Secretary Noem purported to "vacate" the January 17 extension and terminate the 2023 Venezuela designation. This meant that Petitioner was unable to re-register for TPS while Secretary Noem's termination was in effect. Secretary Noem's termination remained in effect until the recent holding in *NTPSA v. Noem*, which "set aside" the federal government's attempt to end TPS for Venezuela. 2025 WL 2578045.

The court's holding in *NTPSA* means that the January 2025 TPS extension is once again operative. This means that, for individuals who timely re-registered, their TPS status is extended through October 2, 2026. Petitioner meets these requirements, as he timely filed for re-registration on September 10, 2025. Exh. A, B.

Respondents focus on statements made in Petitioner's bond proceedings in July 2025, where counsel stated that his TPS status had expired. Dkt. 8, p. 5. However, the reason counsel made those representations was due to Secretary Noem's January 17 decision to terminate TPS. At the time of Petitioner's July 2025 hearing, Secretary Noem's termination decision remained in effect. Thus, that is the reason he stated that, *at that time*, his TPS status had expired. That is no

longer true under the court's September 5, 2025, *NTPSA* decision, which vacated the termination. Because of the *NTPSA* decision, the January 2025 extension is once again operative and extends TPS for Venezuela through October 2, 2026. 90 Fed. Reg. 5961. The January 2025 notice specifies that "TPS beneficiaries . . . who wish to extend their status through October 2, 2026, must re-register during the re-registration period described in the notice," which runs "from January 17, 2025, through September 10, 2025." *Id.* This is exactly what Petitioner has done.

To the extent Respondents argue that any aspect of the re-registration process somehow creates ambiguity over Petitioner's current TPS, such arguments are meritless. TPS recipients clearly retain their status during the re-registration process. Indeed, any reading to the contrary would conflict with the TPS statute, regulations, and Respondents' own re-registration form. Even TPS recipients who fail to re-register in the window must have their TPS formally withdrawn; they do not automatically lose their TPS protections. *See* 8 U.S.C. § 1254a(c)(3); *see also* 8 C.F.R. § 244.17 (specifying that re-registration is part of the ordinary process of maintaining TPS status). Respondents' re-registration form (Form I-821) includes two boxes registrants can check. The first box reads: "This is my initial (first time) application for Temporary Protected Status (TPS). I do not currently have TPS." The second reads: "This is my re-registration application for TPS. I currently have TPS, and am applying to re-register." *See* Form I-821, Application for Temporary Protected Statues, https://www.uscis.gov/i-821. None of the boxes would apply if someone who was previously granted TPS lost TPS benefits during the re-registration process.

Additionally, even if re-registrants did not retain TPS during the re-registration process (which they do), Petitioner would still be entitled to the protections of TPS because he has submitted an application that establishes his *prima facie* eligibility. The TPS statute and regulations indicate that even first-time applicants are entitled to benefits under the statute during the pendency

of a TPS application that establishes their *prima facie* eligibility. 8 U.S.C. § 1254a(a)(4)(B); 8 C.F.R. § 224.5(b). By completing a re-registration form, "applicants attest to their continuing eligibility" for TPS and "do not need to submit additional supporting documentation unless USCIS requests that they do so." 8 C.F.R. § 244.17(a). Petitioner has submitted his re-registration establishing his *prima facie* eligibility and would therefore still be entitled to the benefits of TPS during the pendency of his re-registration, even if he was considered an initial applicant. It is therefore crystal clear, under any interpretation of the TPS statute and implementing regulations, that Petitioner is currently entitled to the protections of TPS, including the provision that TPS recipients "shall not be detained." 8 U.S.C. § 1254a(d)(4).

Finally, Respondent's arguments regarding unsubstantiated allegations in its Form I-213 are a red herring and do not detract from the fact that Petitioner is entitled to release as a TPS beneficiary. First, by Respondent's own admission, Petitioner remained in TPS status through April 2, 2025, when the prior TPS designation was set to expire. Dkt. 8, p. 2, 4, 5. The I-213 to which Respondents point was issued in March 2025, one month *before* expiration of TPS, yet they admit Petitioner remained in TPS status after the Form I-213 was issued. Dkt. 8, Exh. 3. Thus, there is no merit to the suggestion that that the I-213, in and of itself, resulted in any change to Petitioner's TPS status.

Further, as described above, for TPS status to be revoked it must be formally withdrawn by the Attorney General through a procedure specified in the TPS regulations. 8 U.S.C. § 1254a(c)(3). That has not happened here. Petitioner's TPS status was never withdrawn and there has been no determination that he is "not in fact eligible for such status" pursuant to regulation. *Id.* This supports that Petitioner maintained valid TPS status through April 2025 and established *prima*

facie eligibility in his re-registration application, because there has been no withdrawal to indicate that his status has terminated.

Lastly, Respondent's statements that Petitioner was [redacted] stem solely from allegations in its Form I-213.[2] Petitioner has consistently denied any allegation that he is [redacted] Barebones allegations in an I-213 do not change the essential facts in this case – that Petitioner had TPS status and maintained that status when he timely re-registered. This is especially true where numerous courts have recognized the inherent unreliability of Form I-213. *See Pouhova v. Holder*, 726 F.3d 1007, 1013 (7th Cir. 2013) ("For example, it may contain information that is known to be incorrect, it may have been obtained by coercion or duress, it may have been drafted carelessly or maliciously, it may mischaracterize or misstate material information or seem suspicious, or the evidence may have been obtained from someone other than the [noncitizen] who is the subject of the form."); *Rodriguez-Casillas v. Lynch*, 618 F. App'x 448, 454 (10th Cir. 2015) (citing *Pouhova*, 726 F.3d at 1013) ("many factors may render a Form I–213 problematic"); *see also Barradas v. Holder*, 582 F.3d 754, 763-64 (7th Cir. 2009) (listing reasons the Form I–213 may not be inherently reliable); *Rosendo–Ramirez v. I.N.S.*, 32 F.3d 1085, 1088 (7th Cir. 1994) ("Since the I– 213 is supposed to be a record of a conversation with [a noncitizen], courts have evaluated its probative value by considering whether there is evidence that the form is inaccurate or that the information recorded in it was obtained by someone other than the [noncitizen] himself.").

[2] Similarly, to the extent Respondent's discuss Petitioner's arrest for battery in Berwyn, Illinois, these allegations are also a red herring. Dkt. 8, p. 2. That case was stricken after Petitioner was detained and there are no charges currently pending. Petitioner has no other criminal history outside of traffic violations.

CONCLUSION

None of Respondents' arguments prove sufficient to justify Petitioner's ongoing, unlawful detention in immigration custody. Because Petitioner's ongoing detention violates the INA and the Due Process Clause, this Court should grant his petition and order his immediate release.

Dated: October 3, 2025

s/ Colleen Cowgill
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CERTIFICATE OF SERVICE

I, Colleen Cowgill, hereby certify that on October 3, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notice of filing to all parties receiving electronic notice.

s/ Colleen Cowgill
Attorney for Petitioner