

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

**Giuliano Miguel GUTIERREZ  
ZAPPATERRA,**

*Petitioner,*

**v.**

**Warden, ERO El Paso Camp East  
Montana; Mary De Anda-Ybarra, Field Office  
Director, El Paso Field Office, United States  
Immigration and Customs  
Enforcement; Todd M. Lyons, Acting  
Director, United States Immigration and  
Customs Enforcement; Kristi Noem,  
Secretary of Homeland Security; Pamela Jo  
Bondi, United States Attorney General, in  
their official capacities,**

*Respondents.*

Civil Action No.: 3:26-cv-122-DB

**PETITIONER'S REPLY IN  
SUPPORT OF PETITION FOR  
WRIT OF HABEAS CORPUS**

**I. Introduction**

1. Petitioner, Giuliano Miguel Gutierrez Zappaterra, respectfully submits this Response in Opposition to Respondents' Response to his Petition for Writ of Habeas Corpus. Respondents seek to detain and remove Petitioner notwithstanding that he is a Temporary Protected Status beneficiary whose status remains protected by binding federal court declaratory relief. Respondents' position fails as a matter of law and rests on an incorrect account of the governing TPS framework.

2. Petitioner is a Venezuelan national who obtained TPS under the March 9, 2021, Venezuela designation and timely re-registered in 2025 under the January 17, 2025, Federal Register notice extending and consolidating the 2021 and 2023 Venezuela TPS designations. That notice provided protection through October 2, 2026. Extension of the 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 5961, 5967 (Jan. 17, 2025).
3. After Secretary Kristi Noem attempted to vacate the January 17, 2025, TPS extension and terminate the 2023 Venezuela TPS designation, the United States District Court for the Northern District of California set aside the challenged agency actions under the Administrative Procedure Act and entered judgment. *Nat'l TPS All. v. Noem*, 798 F. Supp. 3d 1108 (N.D. Cal. 2025).
4. On December 10, 2025, that court granted declaratory relief declaring that (1) DHS's vacatur of the January 17, 2025, Venezuela TPS extension was unlawful and (2) DHS's February 5, 2025, termination of the 2023 Venezuela TPS designation was unlawful. *Nat'l TPS All. v. Noem*, No. 25-cv-01766-EMC, Dkt. 340, at 3 (N.D. Cal. Dec. 10, 2025). Petitioner re-registered under the January 17, 2025, extension. Respondents therefore cannot rely on the vacatur and termination actions declared unlawful to treat Petitioner as lacking TPS for detention or removal purposes. (*See ECF No. 1-4 at 2, 6; ECF No. 1-6 at 3; ECF No. 1-7 at 3.*)
5. The TPS statute provides mandatory protections. While TPS remains in effect, the TPS beneficiary "shall not be removed from the United States," 8 U.S.C. § 1254a(a)(1)(A), and DHS may not detain the beneficiary "on the basis of [his] immigration status." *Id.* § 1254a(d)(4). The Board of Immigration Appeals has likewise recognized that TPS makes

an existing removal order “inexecutable so long as the alien remains a TPS beneficiary.”

Matter of Sosa Ventura, 25 I. & N. Dec. 391, 394 (BIA 2010).

6. This Court should reject Respondents’ attempt to continue detention and proceed toward removal in derogation of those statutory commands and the operative declaratory relief. Petitioner remains entitled to habeas relief and seeks immediate release from immigration detention.

## **II. Facts and Procedural History**

1. Petitioner is a Venezuelan national and a TPS beneficiary under the Venezuela designation framework addressed in the January 17, 2025, Federal Register notice extending TPS protection through October 2, 2026, for eligible beneficiaries who timely re-registered. Extension of the 2023 Designation of Venezuela for Temporary Protected Status, 90 Fed. Reg. 5961, 5967 (Jan. 17, 2025). ECF No. 1-4 at 2, 6; ECF No. 1-5 at 1; ECF No. 1-6 at 3.
2. Respondents contend Petitioner entered under the Visa Waiver Program in July 2015 and overstayed. ECF No. 1-2 at 1; ECF No. 1-3 at 1. Respondents further contend that ICE initiated VWP removal processing in November 2025, issued a Notice to Appear that was later dismissed as improvidently issued, and then served VWP paperwork reflecting an administrative removal order. ECF No. 7 at 2, 4–5.
3. Petitioner filed his Petition for Writ of Habeas Corpus seeking immediate release from ICE custody because TPS bars detention on the basis of immigration status and bars removal while TPS remains in effect. ECF No. 1 at 10–11; ECF No. 1 at 12–13.

4. On January 22, 2026, the Court entered a temporary stay of removal while it considers the habeas petition. ECF No. 2 at 2. Respondents now move to dissolve that stay and oppose the Petition on the merits.
5. Respondents also premise their opposition on the assertion that Petitioner's TPS "was terminated" and that he therefore stands as a non-TPS VWP overstay subject to execution of the alleged administrative removal order. That predicate fails under the governing TPS extension notice and the operative declaratory relief discussed below. ECF No. 1-7 at 3; ECF No. 1-4 at 2, 6; ECF No. 1-6 at 3.

### **III. Relevant Law**

#### **A. Temporary Protected Status bars removal and prohibits detention on the basis of immigration status**

19. Congress made TPS protection mandatory. While a beneficiary's TPS remains in effect, he "shall not be removed from the United States." 8 U.S.C. § 1254a(a)(1)(A). Congress also barred detention "on the basis of [his] immigration status." *Id.* § 1254a(d)(4). Those commands do not depend on discretionary enforcement choices.
20. The Board of Immigration Appeals recognizes that TPS renders an existing removal order inoperative during the TPS period because the order "remains inexecutable so long as the alien remains a TPS beneficiary." *Matter of Sosa Ventura*, 25 I. & N. Dec. 391, 394 (BIA 2010).
21. The January 17, 2025, Federal Register notice extended TPS protection for Venezuela through October 2, 2026, for eligible beneficiaries who timely re-registered. 90 Fed. Reg. at 5967. That notice supplies the governing period of protection for individuals within its scope.

**B. Section 2241 provides the vehicle to challenge unlawful immigration detention and obtain release.**

22. Section 2241 authorizes relief when a person is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Petitioner’s claim that his detention violates § 1254a(d)(4) is thus cognizable under § 2241.
23. The Supreme Court has repeatedly recognized habeas as the mechanism to test the legality of executive detention. *INS v. St. Cyr*, 533 U.S. 289, 301, 314 (2001). When the petitioner seeks immediate release from confinement, habeas provides the appropriate remedy. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).
24. Section 1252’s channeling provisions limit district-court review of removal orders, but they do not eliminate district-court jurisdiction over a properly framed detention challenge. *Jennings v. Rodriguez*, 583 U.S. 281, 294 n.4 (2018).

**C. Limits on district-court stays of removal do not eliminate habeas jurisdiction over custody.**

25. Respondents rely on recent Fifth Circuit authority reflecting that district courts lack jurisdiction to grant a stay of removal that functions as a vehicle to review or restrain a removal order. See *Imran v. Harper*, No. 25-30370, 2026 WL 93131, at \*1 (5th Cir. Jan. 13, 2026) (per curiam). However, the dispositive question remains whether the relief sought is a removal-order challenge or a custody remedy.

**IV. Argument**

**A. Petitioner’s detention does not comport with due process or statutory limits because TPS bars custody on the basis of immigration status.**

26. Respondents argue the VWP statute “mandates” detention until removal and forecloses any claim “to compel” release. That argument bypasses the controlling statute for a TPS

beneficiary. 8 U.S.C. § 1254a(d)(4). Respondents cannot convert a detention prohibited by statute into a mandatory detention regime by citing VWP provisions aimed at removal mechanics.

27. Respondents also attempt to reframe the case as a Zadvydas dispute about the length of post-order detention. That framing misses the claim. Petitioner does not seek release because removal is not “reasonably foreseeable.” Rather, Petitioner seeks release because Congress barred detention on the basis of immigration status while TPS remains in effect. 8 U.S.C. § 1254a(d)(4).

28. Respondents’ predicate assertion that Petitioner lacks TPS drives their entire merits position. The January 17, 2025, extension notice provides TPS protection through October 2, 2026, for eligible beneficiaries who timely re-registered. 90 Fed. Reg. at 5967. Respondents cannot treat Petitioner as a non-TPS overstay if the record shows he re-registered under that extension and remains eligible. ECF No. 1-4 at 2, 6; ECF No. 1-5 at 1; ECF No. 1-7 at 3; ECF No. 7 at 7–8.

29. *Matter of Sosa Ventura* confirms that a removal order against a TPS beneficiary “could not be executed during the period in which the respondent’s TPS status is valid.” 25 I&N Dec. 391, 397 (BIA 2010). The Fifth Circuit has adopted this principle, holding that such an order remains inexecutable so long as the alien remains a TPS beneficiary. *Duarte v. Mayorkas*, No. 18-20784, slip op. at 13 (5th Cir. Mar. 3, 2022) (citing *Dhakal v. Sessions*, 895 F.3d 532, 538 n.8 (7th Cir. 2018)). Detention for the purpose of executing an order that cannot lawfully be executed lacks statutory authority.

30. Petitioner therefore satisfies § 2241's requirement of custody "in violation of the ... laws ... of the United States." 28 U.S.C. § 2241(c)(3). The appropriate remedy is immediate release.

**B. Section 1252(g) does not strip this Court of jurisdiction over a custody claim seeking immediate release.**

31. Respondents invoke 8 U.S.C. § 1252(g) and argue this Court lacks jurisdiction because Petitioner supposedly challenges ICE's decision to execute a removal order. That mischaracterizes the Petition. Petitioner seeks release from unlawful detention and relies on a statutory prohibition on custody during TPS. 8 U.S.C. § 1254a(d)(4). A court can order release without adjudicating the validity of any removal order.

32. Section 1252(g) bars claims "arising from" the decision to "commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). The Supreme Court has held that this language "applies only to three discrete actions" and was "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 485 n.9 (1999). Petitioner does not challenge any discretionary enforcement decision. He contends that 8 U.S.C. § 1254a(d)(4) categorically prohibits his detention on the basis of immigration status, a statutory question that falls outside § 1252(g)'s narrow scope.

33. The relief Petitioner seeks confirms this Court's jurisdiction. Petitioner does not ask the Court to set aside the VWP order or adjudicate removability. He asks the Court to enforce Congress's detention bar for TPS beneficiaries and order his immediate release. *See* 8 U.S.C. § 1254a(d)(4). A challenge to the statutory authority to detain, as opposed to a discretionary detention decision, falls within the heartland of habeas review under §

2241. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–93 (2018) (holding that § 1226(e) does not bar challenges to the statutory framework permitting detention).

**C. Section 1252(b)(9) and related channeling provisions do not require dismissal because Petitioner does not seek review of a removal order.**

34. Respondents next contend that any constitutional challenge connected to a VWP order must be brought through a petition for review in the court of appeals. Petitioner agrees with the proposition as stated and does not seek removal-order review in this Court.

35. Section 1252(b)(9) channels to the courts of appeals questions “arising from any action taken ... to remove an alien from the United States.” 8 U.S.C. § 1252(b)(9). The Supreme Court has cautioned against reading § 1252(b)(9) so broadly that it swallows detention habeas and other claims that do not seek review of a removal order. *See Jennings*, 583 U.S. at 291–92. *See also Imran v. Harper*, No. 25-30370, slip op. at 2 (5th Cir. Jan. 13, 2026) (per curiam) (reaffirming that “district courts have subject-matter jurisdiction to review § 2241 petitions challenging the lawfulness of a noncitizen’s detention”).

36. Petitioner’s claim turns on a statutory detention prohibition applicable during TPS. 8 U.S.C. § 1254a(d)(4). That issue can be resolved without revisiting removability or the validity of any removal order, and it therefore remains properly before this Court under § 2241.

**V. The Stay of Removal Should Remain in Place Pending Resolution of the Habeas Petition.**

37. Respondents ask the Court to dissolve the stay of removal, citing recent Fifth Circuit authority reflecting district-court limits on stays that function as removal-order review. *See Imran*, 2026 WL 93131, at \*1.

38. The Court should maintain the stay for a narrower reason tied to habeas jurisdiction and effective relief. If Respondents remove Petitioner before the Court adjudicates his custody claim, removal would moot this proceeding and deprive the Court of the ability to grant the remedy sought: immediate release from unlawful detention. The Fifth Circuit has held that a habeas petition challenging detention, as opposed to the underlying removal order, becomes moot upon deportation because the petitioner is "no longer in custody." *Nieto-Ramirez v. Holder*, 586 F. App'x 141, 142 (5th Cir. 2014) (per curiam) (dismissing habeas appeal as moot where "claimed grounds for relief go only to her detention"). To "exercise habeas jurisdiction over a petitioner no longer in custody, the petitioner must demonstrate that he was in custody at the time he filed the petition and that his subsequent release has not rendered the petition moot." *Zalawadia v. Ashcroft*, 371 F.3d 292, 297 (5th Cir. 2004). Because Petitioner's claim goes to the lawfulness of his detention under 8 U.S.C. § 1254a(d)(4), removal would eliminate the case or controversy and preclude effective relief. The stay this Court entered on January 22, 2026, ECF No. 2, provides that Respondents "SHALL NOT (1) remove or deport Petitioner from the United States, or (2) transfer Petitioner from any facility outside the boundaries of the El Paso Division of the Western District of Texas, until the Court orders otherwise or this case is closed," thereby preserving the Court's jurisdiction to adjudicate the merits and grant effective relief.
39. In any event, the stay becomes unnecessary once the Court orders immediate release. Maintaining the stay pending decision preserves this Court's ability to grant meaningful relief on the detention claim.

## **VI. Conclusion**

40. Petitioner respectfully requests that the Court deny Respondents' Response, grant the Petition for Writ of Habeas Corpus, and order Petitioner's immediate release from ICE custody because his detention violates 8 U.S.C. § 1254a(d)(4).

Dated: February 5, 2026

Respectfully submitted,

Respectfully submitted,

BY:       /s/  Hector Benitez Canas      

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to:

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