

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DOMILIO TERAN PEREZ,

Petitioner,

v.

DAVID HARDEN, Warden, Glades County
Detention Center, et al.

Civil Action No.: 2:26-cv-775

**PETITIONER'S REPLY TO GOVERNMENT'S
RESPONSE TO SHOW CAUSE ORDER**

Petitioner, through undersigned counsel, submits this Reply to the Respondents' Response to the Order to Show Cause. (Dkt. 10). Respondents' assert that Petitioner lacks Temporary Protected Status ("TPS") because his re-registration was not approved. That premise is incorrect as a matter of statutory law, binding precedent, and controlling declaratory relief. This case presents a narrow and dispositive issue. Whether the Government may detain a noncitizen when it lacks statutory authority to do so. Because Petitioner retains valid TPS, Respondents are statutorily barred from detaining him under 8 U.S.C. § 1254a(d)(4), and his continued detention is unlawful.

ARGUMENT

**I. PETITIONER HOLDS VALID TPS STATUS AND IS PROTECTED
FROM DETENTION UNDER FEDERAL LAW.**

Respondents' central claim—that TPS lapses if re-registration is not approved—is legally incorrect. Respondent's claim that Petitioner failed to timely re-register for TPS is factually incorrect too. Petitioner submitted his re-registration application on July 22, 2025, as evidenced by the I-797C receipt notice (Receipt Number: ). The NTPSA December 10

Judgment explicitly protects Venezuelan TPS holders who timely re-registered under the January 17, 2025 extension.

As courts have recognized, “once an applicant is granted TPS, they continue to be in a TPS status unless the Agency takes some action to terminate the status.” *Echeverria v. Janecka*, No. 1:25-CV-01832-KES-SAB (HC), 2026 WL 44896, at *1 (E.D. Cal. Jan. 7, 2026). TPS continues unless the Government affirmatively withdraws TPS through statutory procedures or DHS lawfully terminates the country designation. Neither occurred here. Moreover, Respondents improperly treat re-registration as a new adjudication of status. It is not. Re-registration is merely an administrative mechanism to confirm continued eligibility—not a prerequisite to maintaining TPS. Accordingly, the absence of approval on his July 2025 registration has no legal effect on TPS continuity. Respondents’ position would allow TPS protections to be extinguished through agency inaction alone, a result inconsistent with the statutory framework and due process.

Moreover, Petitioner’s TPS status remains valid due to the preclusive effect of the December 10, 2025 declaratory judgment in *National TPS Alliance v. Noem*, No. 25-cv-01766-EMC, 2025 WL 3539156 (N.D. Cal. Dec. 10, 2025) (hereinafter “NTPSA December 10 Judgment”). The NTPSA December 10 Judgment declared that the vacatur of the January 17, 2025 extension of TPS for Venezuela and subsequent termination of Venezuela’s 2023 designation were unlawful. The judgment has not been stayed and remains binding. As a member of the National TPS Alliance, Petitioner is entitled to the protections afforded by this judgment, which conclusively establishes that Petitioner retains TPS status. Under 8 U.S.C. § 1254a(d)(4), “[a]n alien provided temporary protected status under this section shall not be detained by the Attorney General on the basis of the alien’s immigration status in the United States.” This statutory prohibition is clear and unequivocal.

Thus, the factual and legal issues regarding whether Petitioner's TPS status was terminated following Respondent Secretary Noem's purported February 3, 2025, decision to "vacate" DHS's January 17 extension of TPS for Venezuela have already been decided. The Ninth Circuit has already decided the Respondent Noem lacked the statutory authority to terminate Petitioner's TPS, and therefore, because Petitioner timely registered to renew his TPS under the January 17, 2025, extension, Petitioner still has TPS and had TPS when he was unlawfully arrested by Respondents. But as established, Petitioner's TPS status has not been revoked, and that determination is final, absent an overturning decision on appeal. Allowing Respondents to argue that Petitioner does not have TPS and that Respondent Noem's TPS termination was not deemed unlawful pursuant to a final judgment would go against normal rules of preclusion and the established rule in the federal courts "that a final judgment retains all of its *res judicata* consequences pending decision of the appeal" *Tripati v. Herman*, 857 F.2d 1366, 1367 (9th Cir. 1988). Accordingly, because Petitioner's TPS status was never revoked, the validity of his TPS status is *res judicata*, and "the prohibition on removing noncitizens with TPS" under 8 U.S.C. § 1254a applies to him.

Furthermore, under 8 U.S.C. § 1254a(d)(4), a noncitizen granted TPS "shall not be detained . . . on the basis of the alien's immigration status." This language is mandatory and leaves no discretion. Petitioner challenges the Government's authority to detain him at all—not merely the procedures used. Where detention authority is absent, bond proceedings are irrelevant and cannot cure the violation.

II. THE NTPSA DECEMBER 10 JUDGMENT HAS PRECLUSIVE EFFECT.

The government's argument that the NTPSA December 10 Judgment does not have preclusive effect is legally flawed. Final judgments, including declaratory judgments, have preclusive effect even when they are on appeal. As the Fifth Circuit explained in *Comer v. Murphy*

Oil USA, Inc., “A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. [E]ven if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified.” 718 F.3d 460, 467 (5th Cir. 2013). Similarly, the Seventh Circuit has held that “a declaratory judgment is binding as to matters which were actually decided.” *Adams Outdoor Advert. Ltd. P’ship v. City of Madison, Wisconsin*, 56 F.4th 1111, 1117 (7th Cir. 2023). The NTPSA December 10 Judgment is a final judgment that has not been stayed. The government’s reliance on preclusion cases involving interlocutory orders is misplaced, as those cases do not apply to final judgments.

Accordingly, The December 10, 2025 declaratory judgment invalidated the Government’s attempted termination of TPS for Venezuelan nationals. That judgment remains final, operative, and unstayed, and therefore carries full preclusive effect. Respondents’ arguments regarding potential appellate outcomes are irrelevant. The judgment is binding now, and this Court must apply ordinary rules of preclusion.

III. THE GOVERNMENT’S ARGUMENTS REGARDING THE SUPREME COURT STAY ARE MISPLACED.

The government’s assertion that the NTPSA December 10 Judgment is non-final due to the Supreme Court’s stay of a prior order in the NTPSA litigation is incorrect. Respondents’ central argument is that the Supreme Court’s stay orders establish that Petitioner lacks valid TPS, which fundamentally mischaracterizes the nature and effect of the Supreme Court’s stay orders in *Noem v. Nat’l TPS All.*, 222 L.Ed.2d 1241 (U.S 2025). As an initial matter regarding this issue, the NTPSA December 10 Order followed—and therefore *could not have been subject to*—the Supreme Court’s stay decision on October 3, 2025.

On December 10, 2025, the district court in *NTPSA* issued a final judgment declaring the vacatur of the January 17, 2025, extension of TPS for Venezuela and termination of Venezuela's 2023 TPS designation unlawful. *Nat'l TPS All. v. Noem*, No. 25-CV- 01766- EMC, 2025 WL 3539156, at *3 (N.D. Cal. Dec. 10, 2025) ("NTPSA December 10 Order"). The district court specifically found it had jurisdiction to enter declaratory relief because such relief simply preserves the *status quo* and "does not materially alter the status of the case on appeal." *Id.* Crucially, this declaratory judgment was entered months after the Supreme Court's October 3, 2025, stay, which applied only to a earlier September 5, 2025, set-aside order.

In the NTPSA December 10 Order, the Ninth Circuit expressly elaborates why the declaratory relief in its order is not inconsistent with the Supreme Court's prior stay:

"The Court rejects the government's contention that the Supreme Court's order staying the partial final judgment precludes the issuance of declaratory relief. The basis for the Supreme Court stay has never been articulated; it could have stayed the final judgment for any number of reasons which may not bar declaratory judgment herein. For example, it could have stayed the final judgment simply based on its assessment of the balance of hardships, a factor that does not undermine declaratory relief. Furthermore, there are several reasons why the Supreme Court could have stayed the Court's final judgment setting aside the agency actions but still left open the door to declaratory relief – e.g., the Supreme Court could have agreed with the government that § 1252(f)(1) is a jurisdictional bar because a vacatur of agency action is functionally the same as an injunction, but § 1252(f)(1) does not necessarily prohibit declaratory relief (as the Ninth Circuit has held). Another possibility is that the Supreme Court could have taken issue with the vacatur of agency action because it operated as "universal"-type relief, *see Trump v. CASA, Inc.*, 606 U.S. 831 (2025), whereas declaratory relief would simply be an adjudication of a case or controversy between the parties. **While the Supreme Court's stay order is not a bar to the Court's issuance of declaratory relief, the Court does deem it prudent to issue a brief stay, but only so that a prompt appeal may be taken to the Ninth Circuit** (which is already scheduled to have oral argument in January 2026 on the government's appeal of the partial final judgment issued by this Court) and to give the Ninth Circuit the opportunity to consider any stay. A temporary stay is prudent given the relatively unique posture of this case wherein, e.g., Plaintiffs now seek an additional judgment which is a lesser form of remedy than that already granted."

Nat'l TPS All. v. Noem, 2025 WL 3539156 at 4 (emphasis added).

As noted, the district court judge delayed the effective date of the December 10 declaratory relief order for two weeks to give the government an opportunity to seek a stay of that order, yet *the government did not do so*. Therefore, absent any stay that is specific to the December 10 Order and unless overturned on appeal, the NTPSA December 10 Order is a binding decision with a preclusive effect in Petitioner's habeas petition.

Furthermore, in its decision on January 28, 2026, the Ninth Circuit clarified that the Supreme Court's emergency stay orders were "unreasoned" and were "not conclusive as to the merits." *Nat'l TPS All. v. Noem*, No. 25-5724, 2026 U.S. App. LEXIS 2164, at *16 (9th Cir. Jan. 28, 2026) (citing to *Trump v. Boyle*, 606 U.S. ---, 145 S. Ct. 2653, 2654 (2025)). The Court concluded that "the Supreme Court's October 3, 2025, stay order is not controlling as to the outcome of this case." *Id.* This goes directly against Respondent's argument that the Ninth Circuit's decision on January 28, 2026, remains stayed because the Government still has time to file a timely petition for writ of certiorari and the stay remains in effect under National TPS Alliance...*Nat'l TPS All.*, 146 S. Ct. 23." ECF No. 12 at 2. Assuming *arguendo* that Respondents are correct as to the Ninth Circuit's January 28 decision, Petitioner's claim is brought forth under the NTPSA December 10 Order, which is a final judgment that has not been overruled. Thus, Respondents have not refuted that Petitioner is not entitled to the declaratory relief under the NTPSA December 10 Order.

In other words, the NTPSA December 10 Judgment is a separate and independent declaratory judgment that was issued after the Supreme Court's stay. The NTPSA court explicitly delayed the effective date of the December 10 Judgment for two weeks to allow the government to seek a stay, but the government did not do so. The Supreme Court's stay of the earlier set-aside

relief under the Administrative Procedure Act does not affect the preclusive effect of the NTPSA December 10 Judgment. Declaratory relief under 28 U.S.C. § 2201 is distinct from relief under the APA and remains binding unless overturned on appeal.

IV. PETITIONER'S DETENTION VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

Petitioner's detention violates the Fifth Amendment's protection for liberty. As the Supreme Court held in *Zadvydas v. Davis*, "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." 533 U.S. 678, 690 (2001).

Petitioner's detention is not reasonably related to any legitimate government purpose, as the TPS statute explicitly prohibits the detention of individuals with valid TPS. Furthermore, the deprivation of Petitioner's liberty is not narrowly tailored to serve a compelling government interest, as required by the Due Process Clause.

WHEREFORE, Petitioner respectfully requests that this Court (1) Grant the *Petition for Writ of Habeas Corpus*; order Petitioner's immediate release; and Grant such further relief as justice requires.

Dated: April 10, 2026

Respectfully submitted,

/s/ Jose-Carlos Villanueva. /
JOSE-CARLOS VILLANUEVA, ESQ.
Fla. Bar No. 0034658
2332 Galiano Street, Second Floor
Coral Gables, Florida. 33134
Telephone: (305) 496-5400
Email: jcv@jcvpa.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record on this 10th day of April 10, 2026 *via* the CM/ECF system.

/s/ Jose-Carlos Villanueva /
JOSE-CARLOS VILLANUEVA