

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

JORGE LUIS PEREZ GUZMAN,
Petitioner,

v.

Case No. 2:26-cv-835-KCD-DNF

WARDE, GLADES COUNTY DETENTION
CENTER, ET AL.,¹
Respondents.

FEDERAL RESPONDENTS' RESPONSE TO HABEAS PETITION

Petitioner Jorge Luis Perez Guzman challenges his ongoing detention by immigration authorities. He alleges that Immigration and Customs Enforcement ("ICE") has improperly detained him in violation of the Fifth Amendment to the U.S. Constitution, regulation, the Immigration and Nationality Act ("INA"), and the *Accardi* Doctrine. First, the Court lacks jurisdiction over these claims. But that aside, Petitioner was lawfully detained for the pendency of his removal proceedings consistent with statute, regulation and due process. Because his detention is lawful, the Petition should be dismissed.

Background

Perez Guzman is a citizen and national of Venezuela. *See* Motion for

¹ Interim Attorney General Todd Blanche is automatically substituted for his predecessor under Rule 25(d) of the Federal Rules of Civil Procedure.

Temporary Restraining Order, ECF No. 2, (“TRO Mtn.”), p. 3; *see also* Form I-213, Record of Deportable/Inadmissible Alien, attached as “Exhibit A” at p. 1. On or about October 4, 2022, Petitioner was encountered at or near El Paso, Texas while entering the United States without permission. Ex. A, p. 1. Due to lack of space in the detention center, Perez Guzman was paroled into the United States. *Id.*, pp. 1-2. A few months later—on August 14, 2023—a Notice to Appear was issued to Petitioner and he was given an order of release on recognizance (“ROR”). *See* Notice to Appear, attached as “Exhibit B” at p. 1; *see also* Order of Release on Recognizance, attached as “Exhibit C.” On November 30, 2025, ICE revoked Petitioner’s ROR and detained him while his ongoing removal proceedings remained pending. Petition, p. 2; TRO Mot., Petitioner’s Brief in Support of Habeas Petition, ECF No. 7, at ¶ 7. Though Petitioner was granted Temporary Protected Status (“TPS”) prohibiting his detention or deportation to Venezuela on December 6, 2024, as discussed in greater detail below, that status is no longer valid. *See* ECF No. 1-1, p. 20; *see also* Termination of Petitioner’s TPS, attached as “Exhibit D.”

On March 23, 2026, this matter commenced with the filing of a petition for writ of habeas corpus and a motion seeking a temporary restraining order. ECF Nos. 1, 2. This Court issued an order directing Respondents to show cause why the petition should not be granted and directing that response by April 13, 2026. ECF No. 7. Petitioner filed a brief elaboration on his habeas arguments on March 26, 2026. ECF No. 10. The government now timely responds to the Petition, brief, and the Court’s order to show cause.

Certified Habeas Return

ICE is detaining Perez Guzman under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

Discussion

I. Arguments Previously Raised in *Hernandez Lopez v. Hardin*.

Since the commencement of these proceedings, Petitioner has had his merits hearing in immigration Court. *See* Order of the Immigration Judge, attached as “Exhibit E.” Though Petitioner’s applications for relief were denied and he was ordered removed to the alternate country of Ecuador, Petitioner has reserved appeal. *Id.*, pp. 1, 3, 4. Accordingly, because he is still within his appeal period, this order is not yet final and he remains detained subject to 8 U.S.C. § 1225(b)(2)(A). In *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) the Board of Immigration Appeals (BIA) examined the plain language of Section 1225, the INA’s statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub L. No. 104-208, and DHS’s prior practices. After doing so, the BIA held that “under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant

bond to aliens, like the petitioner, who are present in the United States without admission.” 29 I&N Dec. at 225.² This Court should rule the same.

Respondents acknowledge that questions of law in this case, and the challenges to the government’s policy and practice, substantially overlap with *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025). It should be noted, however, that courts have recently ruled against petitioners in similar cases. *See, E.g., Lopez v. Dir. of Enf’t & Removal Operations*, No. 3:25-CV-1313-JEP-SJH, 2026 WL 261938, at *1 (M.D. Fla. Jan. 26, 2026); *Iraheta Morales v. Noem*, No. 25-62598-CIV-SINGHAL, 2026 WL 236307, at *3-9 (S.D. Fla. Jan. 29, 2026). Some decisions have started recognizing that there is no jurisdiction over this question to begin with. *Munoz Nataren v. Raycraft*, No. 4:26-cv-212, 2026 WL 214368, at *2 (N.D. Ohio Jan. 28, 2026); *Amaya-Velis v. Raycraft*, No. 4:26-cv-73, 2026 WL 100596, at *2-3 (N.D. Ohio Jan. 14, 2026).

Significantly, two circuits have now ruled that aliens who have not been admitted to the United States are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) regardless of whether the alien is already present in the United States. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026);

² On February 18, 2026, U.S. District Court for the Central District of California issued an order stating the court “hereby VACATES *Matter of Yajure Hurtado* as contrary to law under the APA.” *See Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *12 (C.D. Cal.). This order has been temporarily stayed pending a ruling on the government’s emergency motion for a stay pending appeal, insofar as the district court’s judgment extends beyond the Central District of California. *See Bautista et al. v. Dep’t. of Homeland Sec., et al.*, No. 26-1044 (9th Cir. 2026), Dkt. 5. The Federal Respondents submit *Yajure Hurtado* remains persuasive authority in this Court regarding the proper interpretation of 8 U.S.C. § 1225(b)(2).

Avila v. Bondi, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026). Other circuits—including the Eleventh—have active appeals on the matter. *See e.g., Pizzaro Reyes v. ERO*, No. 25-1982 (6th Cir.); *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.).

Respondents respectfully disagree with the Court’s decision in *Hernandez-Lopez*. That said, in the interest of judicial economy and to expedite the Court’s consideration of this matter, Respondents make the following arguments for preservation purposes:³

1. Title 8 U.S.C. § 1252(g) bars review of Perez Guzman’s claims. *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-CV-830-KCD-NPM (M.D. Fla. Oct. 29, 2025) (Doc. 19 at 5-6).
2. Title 8 U.S.C. § 1252(b)(9) bars review of Perez Guzman’s claims. *Id.* at 7-8.
3. Perez Guzman failed to exhaust his administrative remedies. *Id.* at 8.
4. Perez Guzman is properly detained under 8 U.S.C. § 1225. *Id.* at 8-14.

Finally, Respondents contend that should this Court determine that Petitioner’s detention is subject to 8 U.S.C. § 1226, outright release is inappropriate. To the extent the Court orders a bond hearing before an Immigration Judge for the purpose of determining whether Petitioner is a flight risk or danger to the community—*see, e.g., Hernandez-Lopez*, 2025 WL 3022245, at *5—Respondents aver that such bond hearings are not conducted or managed by ICE, rather by the

³ A copy of the brief referenced is attached as “Exhibit F.”

Executive Office for Immigration Review, which is not a proper party to this suit. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (noting that for habeas petitions challenging detention, “the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official”).

II. Petitioner’s Arguments Outside the Scope of *Hernandez Lopez*.

A. Accardi Claims

Perez Guzman has not shown any deviation from the procedures set forth in 8 C.F.R. § 236.1. His claims of regulatory violation or a due process violation must fail. Perez Guzman relies on *United States ex rel. Accardi v. Shaughnessy*, where the Supreme Court established a doctrine—now known as the “*Accardi* doctrine”—that generally requires an agency to follow its regulations. *See* 347 U.S. 260 (1954). But the Supreme Court in *Accardi* did not determine the sweeping principle that agencies violate due process any time they fail to follow some regulation in a way that affects a party’s rights. As the Supreme Court has clarified, *Accardi* “enunciates[s] principles of federal administrative law rather than of constitutional law.” *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92 n.8 (1978). “*Accardi* is based on administrative law principles, not constitutional due process requirements.” *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 212 (D.D.C. 2020) (explaining limits on the *Accardi* doctrine). Here, Perez Guzman has not shown that any arguable violation of the regulatory provision at issue that would amount to a due process violation.

In 2023, Petitioner was released—prior to entry of an order of removal—on his own recognizance pursuant to 8 U.S.C. § 1226(a)(2)(B). Ex. C. The supervision authority under which Petitioners released was effected is guided by the regulations at 8 C.F.R. § 236.1. This regulation permits the discretionary revocation of ROR “at any time” at which time the alien may be detained. 8 C.F.R. § 236.1(c)(9). Petitioner makes two flawed arguments. First, he suggests a lack of change to the facts and circumstances to justify his release. ECF No. 10, ¶ 50. But the regulation is very clear in that revocation authority is discretionary and ROR may be revoked even absent cause. 8 C.F.R. § 236.1(c)(9) (providing that an outstanding bond should be revoked and canceled *unless* a breach has occurred; in other words, revocation can be made with or without breach); *see also* 8 C.F.R. § 1236(c)(9) (same). Second, Petitioner casually suggests that there was some sort of deficiency in revocation of his ROR based on the official that revoked his release. ECF No. 10, ¶ 50. However, beyond that simple statement Petitioner offers nothing more to support the allegation. *Id.* Neither Respondents nor the Court can meaningfully address such a bare, unsupported suggestion. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (deeming insufficiently briefed issues abandoned). Even so, Respondents aver that the regulations provide an expansive list of individuals authorized to revoke release, to include an “officer in charge” which would be inclusive of the individual who revoked his release at his scheduled check-in appointment. 8 C.F.R. § 236.1(c)(9); 8 C.F.R. § 1236.1(c)(9); *see also* ECF No. 10, ¶ 14.

Here, having determined that it was appropriate to detain Petitioner—an alien seeking admission—pursuant to 8 U.S.C. § 1225(b)(2)(A), ICE revoked Petitioner’s ROR and detained him while removal proceedings played out. *See* Ex. C. Petitioner has not met his burden to demonstrate that his detention is unlawful based upon perceived regulatory deficiencies in the revocation of his release. His claims based in regulatory violation and the *Accardi* Doctrine and the Due Process Clause must fail.

Finally, even were there a regulatory violation, the proper relief would be ordering additional process, not outright release. *See Tran v. Warden, S. Side Det. Ctr.*, No. 2:25-CV-1224-KCD-NPM, 2026 WL 672969, at *9 (M.D. Fla. Mar. 10, 2026) (“The writ of habeas corpus is a profound remedy, not a penalty for bureaucratic typos.”). The remedy sought—release from custody—is “an overreach and not the appropriate cure.” *Tanha v. Warden*, No. 1:25-cv-02121-JRR, 2025 WL 2062181 at *6 (D. Md. July 22, 2025); *see also Tran v. Baker*, No. 1:25-CV-01598-JRR, 2025 WL 2085020, at *6-7 (D. Md. July 24, 2025), corrected, No. 1:25-CV-01598-JRR, 2025 WL 2087124 (D. Md. July 24, 2025) (holding errors in notice procedure “do not entitle [petitioner] to release from detention”). The proper remedy to any procedural deficiency would be—at most—ordering ICE to provide Perez Guzman with whatever additional process the Court deems appropriate. *See e.g., I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025) (“And while habeas is a proper vehicle to challenge detention that is without statutory authority or violative of the Constitution, it is not a proper vehicle for vindicating every procedural error the Government may have committed along the way.”).

B. Petitioner is No Longer Protected From Detention and Removal By TPS.

Petitioner asserts that he was granted TPS and that the validity of his TPS was extended through October 2, 2026 on account of ongoing litigation challenging former Secretary Noem's termination of TPS for Venezuela. *See* ECF No. 10, ¶¶ 11-30. If true, ICE would not be permitted to detain Petitioner at this time. 8 U.S.C. § 1254a(a)(1)(A). However, unfortunately for Mr. Perez Guzman, he no longer benefits from the protection against detention that TPS allows.

The Immigration Act of 1990 established a program for providing temporary shelter in the United States on a discretionary basis for aliens from designated countries experiencing ongoing armed conflict, environmental disaster, or “extraordinary and temporary conditions” that temporarily prevent those aliens’ safe return or, in the case of environmental disasters, temporarily render the country unable to handle adequately the return of its nationals. Pub. L. No. 101-649, 104 Stat. 4978. The statute authorizes the Secretary of Homeland Security, “after consultation with appropriate agencies of the Government,” to designate countries for TPS if he finds:

(C) . . . there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

8 U.S.C. § 1254a(b)(1)(C). When the Secretary designates a country for TPS, eligible aliens who are granted TPS may not be removed from the United States and are authorized to work for the duration of the country’s TPS designation, so long as they remain in valid temporary protected status. 8 U.S.C. § 1254a(a), (c); *see Sanchez v.*

Mayorkas, 593 U.S. 409, 412 (2021).

Venezuela was first designated for TPS in March 2021. 86 Fed. Reg. 13,574 (Mar. 9, 2021). This designation was extended twice: on September 8, 2022 and October 3, 2023. *See* 87 Fed. Reg. 55,024 (Sept. 8, 2022); 88 Fed. Reg. 68130 (Oct. 3, 2023). The 2023 extension also purported to re-designate Venezuela for TPS anew, opening up registration to Venezuelan nationals who up until that point would not have been otherwise eligible. 88 Fed. Reg. at 68130 (“initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since October 3, 2023, the effective date of this redesignation of Venezuela for TPS.”). The result of the 2023 Federal Registration was two separate designations: the 2021 designation (which was extended by way of the FRN) and the 2023 designation (which served as a redesignation under the FRN). *Id.*

On January 10, 2025, former DHS Secretary Alejandro Mayorkas issued a federal register notice (“FRN”) extending the 2023 Venezuela Designation for 18 months and allowing for a consolidated filing processes such that all eligible Venezuela TPS beneficiaries (whether under the 2021 or 2023 designations) could obtain TPS through October 2, 2026. 90 Fed. Reg. 5,961 (Jan. 17, 2025). The Executive Branch administration changed shortly thereafter with the inauguration of President Trump and former Secretary Kristi Noem replaced Mayorkas. Former Secretary Noem then purported to (1) vacate the January 2025 extension and consolidation and restore the status quo that existed prior to its publication, namely the two-track 2021 and 2023 designations; and (2) terminate the 2023 TPS designation for Venezuela. 90 Fed. Reg.

8,805 (Feb. 3, 2025); 90 Fed. Reg. 9,040 (Feb. 5, 2025). Litigation ensued and as a result of that litigation—as well as subsequent action taken by former Secretary Noem—TPS for Venezuela has been terminated. *See Nat'l TPS All. v. Noem*, 798 F. Supp. 3d 1108, 1131 (N.D. Cal. 2025), *aff'd*, 166 F.4th 739 (9th Cir. 2026) (order granting partial summary judgment); *Nat'l TPS All. v. Noem*, No. 25-cv-1766-EMC (N. D. Cal. May 30, 2025), Dkt. 162 at 10 (granting relief to those TPS holders who received TPS documentation based on the 2023 Mayorkas extension/re-designation up to and including February 5, 2025); *see also* 90 Fed. Reg. 43,225 (Sept. 8, 2025). However, a small subset of TPS recipients retain their status through October 2, 2026. This group includes individuals who both (1) filed applications to register or reregister for TPS after Secretary Mayorkas's extension FRN published (January 25, 2026) but before Secretary Noem's February termination was published (February 5, 2025); and (2) who—on or before February 5, 2025—were issued TPS-related EADs, Notices of Action, and Forms I-94 issued with October 2, 2026 expiration dates.

This is accurately reflected in United States Citizenship & Immigration Service's⁴ ("USCIS") TPS landing page which provides that for 2023 designation recipients, "TPS beneficiaries who received TPS-related employment authorization documents (EADs), Forms I-797, Notices of Action, and Forms I-94 issued with October 2, 2026, expiration dates on or before February 5, 2025 will maintain work authorization and their documentation will remain valid until October 2, 2026,

⁴ USCIS is the government agency responsible for processing applications for TPS.

pursuant to the U.S. District Court for the Northern District of California's order dated May 30, 2025.”⁵

Here, Perez Guzman was designated for TPS under the 2023 designation as he was not present in the United States in 2021, a prerequisite to eligibility under the 2021 designation. *See* ECF No. 1-1, p. 20; *see also* 86 Fed. Reg. 13,574 (Mar. 9, 2021). According to his approval notice, Petitioner's TPS was valid through April 2, 2025. ECF No. 1-1, p. 20. Petitioner seemingly suggests that subsequent federal litigation in the Northern District of California extended his TPS through early October 2026—*see* TRO Mtn. and ECF No. 10—however this conclusion is not accurate. As discussed above, only those who (1) filed applications to register or reregister for TPS after Secretary Mayorkas's extension FRN published (January 25, 2026) but before Secretary Noem's February termination was published (February 5, 2025); and (2) who—on or before February 5, 2025—were issued TPS-related EADs, Notices of Action, and Forms I-94 issued with October 2, 2026 expiration dates benefit from TPS through October 2, 2026 and Petitioner does not meet those criteria on either front.

As to the first requirement, though Petitioner sought re-registration, he did so on January 21, 2025, outside of the narrow period during which TPS protections still attach. *See* ECF No. 1-1, p. 23. As to the second requirement, Petitioner was not issued a TPS-related EAD, Notice of Action, or Forms I-94 with an October 2, 2026 expiration date on or before February 5, 2025. *See generally* Petition, TRO Mtn., and

⁵ *See* <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela> (last accessed April 13, 2026).

ECF No. 10. He therefore does not fall within the small subset of Venezuelans who continue to hold TPS at this time. This is bolstered by the fact that USCIS no longer recognizes Petitioner's prior grant of TPS as valid. *See* Ex. D, p. 2. Perez Guzman does not have current TPS status and he may be detained.

Conclusion

For the foregoing reasons the Court should deny the Petition. To the extent that the Court grants any relief, the only proper relief would be whatever notice and hearing requirement it believes proper—not outright release.

Date: April 13, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 13, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will furnish copies of these documents to all registered counsel of record.

Dated: April 13, 2026

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney