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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

PEREZ GUZMAN,

Petitioner,

v.

**WARDEN, GLADES COUNTY
DETENTION CENTER, et. al.,**

Respondents.

Case No.: **2:26-cv-00835-KCD-DNF**

PETITIONER'S TRAVERSE

Petitioner, through undersigned counsel, respectfully submits this reply to Respondents' response on April 13, 2026. (ECF No. 14). This reply addresses the government's jurisdictional arguments, substantive detention claims, lack of valid Temporary Protected Status (TPS) claims, and proper remedy for Petitioner's unlawful arrest and detention. For the reasons stated below, the Court should deny Respondents' request to dismiss, grant the petition, and order immediate release.

I. Petitioner has valid TPS and is therefore protected from being detained or removed by Respondents.

Respondents argue that Petitioner "no longer benefits from the protection against detention that TPS allows." (ECF No. 14 at 9). Accordingly, the threshold question is whether Petitioner possesses valid TPS. The answer is clear: Petitioner held TPS at the time of his detention and still does.

A. *Former Secretary Noem’s vacatur of TPS for Venezuela was set aside.*

Respondents incorrectly assert that “TPS for Venezuela has been terminated.” (ECF No. 14 at 11). Respondent’s conclusion rests on a misinterpretation that TPS for Venezuela was terminated by Former DHS Secretary Noem on February 5, 2025, but that termination was set aside as unlawful in *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 Judgment”) because the court found it violated the Administrative Procedures Act.

On February 19, 2025, National TPS Alliance (“*NTPSA*”) and seven individual Venezuelan TPS holders sued the federal Government in the Northern District of California, alleging (as relevant for this case) that DHS’s termination of the 2023 Venezuela designation was contrary to the TPS statute, the Administrative Procedure Act, and the Fifth Amendment. *See Nat’l TPS All. v. Noem*, 798 F. Supp. 3d 1108, 1108 (N.D. Cal. 2025), *aff’d*, No. 25-5724, 2026 WL 226573 (9th Cir. Jan. 28, 2026). On December 10, 2025, the federal district court of the Northern District of California declared former DHS Secretary Noem’s “vacatur of the January 17, 2025, TPS extension for Venezuela was unlawful, as was the termination of Venezuela’s 2023 TPS designation on February 5, 2025.” *Id.* The December 10 Order in *NTPSA* holds that Venezuelan TPS holders who re-registered under the January 17, 2025, extension retain their TPS. *Id.*¹ The Order has a preclusive effect in Petitioner’s habeas case, controlling the legal

¹ On October 3, 2025, the Supreme Court stayed the district court’s order September 5 order “pending the disposition of the Government’s appeal. . . and disposition of a petition for a writ of certiorari, if such writ is timely sought.” *Noem v. Nat’l TPS All.*, 146 S. Ct. 23, 24 (2025). Notwithstanding the Supreme Court’s stay of the district court’s September 5 order, a few months after, the district court granted the plaintiffs’ motion for declaratory judgment on December 10, 2025. *NTPSA* December 10 Judgment at *1. Although the government has appealed this ruling, they **did not** seek a stay pending appeal. Nothing in the Supreme Court’s order (**before December 10**) staying the set-aside relief under the APA in a different order alters the *NTPSA* December 10 Judgment’s preclusive effect. *Consumers’ Rsch. Cause Based Commerce, Inc. v. FCC*, 109 F.4th 743, 755 (5th Cir. 2024) (“[The general rule in American jurisprudence is that a final judgment of a court can be given preclusive effect even while an appeal is pending.” (cleaned up) (citations omitted)), *rev’d on other grounds*, 606 U.S. 656 (2025).

question of whether members of the *NTPSA*, such as Petitioner, retain their TPS status.

Respondents—and this Court—are therefore estopped from reconsidering whether *NTPSA* members like Petitioner maintain their TPS status. This Court must therefore find that Petitioner, who is a class member under *NTPSA*, is protected from detention and removal under TPS because Former Secretary Noem’s termination of TPS for Venezuela was set aside as unlawful.

B. *Petitioner still has valid TPS that has not been revoked.*

Respondents appear not to dispute the holding in *NTPSA* but rather that Petitioner did not timely file to receive protection under *NTPSA*. Respondents incorrectly assert that Petitioner has lost his TPS status while also acknowledging that, “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).” (ECF No. 14 at 9-10). Respondents’ conclusion that Petitioner no longer has TPS protection rests on a misdated legal error and a misunderstanding of the procedural posture of *NTPSA*.

Once an individual’s initial TPS application is granted, there are only two ways in which they can lose TPS: (1) the United States Citizenship and Immigration Service (“USCIS”) may seek to withdraw TPS under a statutory withdrawal procedure, *see* 8 U.S.C. 1254a(c)(3); 8 C.F.R. § 244.14, or (2) if certain statutory requirements are met, the Department of Homeland Security may terminate an entire country’s TPS designation, *see* 8 U.S.C. § 1254a(b)(3)(B). An individual does not lose TPS merely because the DHS Secretary does not formally approve their re-registration. So long as the Secretary does not *legally* terminate TPS for a designated country, individuals from that country retain valid TPS. *See Echeverria v. Janecka*, No. 1:25-CV-01832-

KES-SAB, 2026 WL 44896, at *1 (E.D. Cal. Jan. 7, 2026) (agreeing that “once an applicant is granted TPS, they continue to be in a TPS status unless the Agency takes some action to terminate the status”); *Sanchez*, 593 U.S. at 412 (TPS “status protects [TPS holders] from removal and authorizes them to work here for as long as the TPS designation lasts”) (emphasis added); *see also* 8 C.F.R. § 244.17 (re-registrants maintain TPS by “attest[ing] to their continuing eligibility” with no further action required “unless USCIS requests that they do so”).

Respondents concede that “Petitioner sought re-registration ... on January 21, 2025,” but aver that this date falls outside of the “narrow period” during which TPS protections still apply. (ECF No. 14 at 12). The reliance on a “narrow period” is misplaced, as the dates stated by Respondents appear likely to be a clerical error. Respondents state Petitioner filed outside of the narrow period of *after* January 25, 2026, but *before* February 5, 2025. Respondents’ asserted window is chronologically impossible as written. A filing period that begins “January 25, 2026” and ends “February 5, 2025” runs backwards in time, so that formulation cannot be correct. Respondents did get the dates correct in an earlier part of their response: “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. 5961 (Jan. 17, 2025).” (ECF No. 10 at 10) (emphasis added). The Federal Register publication date, January 17, 2025, for the 2023 Venezuela Designation is clear. *Id.* Respondents’ internal inconsistency creates a factual impossibility as to the re-registration period and serves as their main basis—failure to timely re-register—as to why Petitioner is not protected under TPS.

Respondents have made no showing that USCIS has properly sought to withdraw Petitioner's TPS nor that the DHS has properly terminated TPS designation for Venezuela. *See* 8 U.S.C. 1254a(c)(3); 8 C.F.R. § 244.14; 8 U.S.C. § 1254a(b)(3)(B). Respondents concede that Petitioner "sought re-registration...on January 21, 2025..." which directly undercuts their assertion that Petitioner filed "outside" the relevant period. (ECF No. 14 at 12). But the government's failure to approve the re-registration of Petitioner's TPS does nothing to undermine his valid TPS. *See Salas Leon v. Chestnut*, No. 1:26-CV-01080-DC-AC, 2026 WL 523231, at *4 n.2 (E.D. Cal. Feb. 25, 2026) (ordering release pursuant to December 10 Judgment "[t]hough the approval notice has a stated expiration of April 2, 2025" because the petitioner re-registered). Accordingly, because both Petitioner and Respondent agree that Petitioner re-registered for TPS on January 21, 2025 (four days after the 2023 Venezuela Designation extension), Petitioner benefits from TPS through October 2, 2026.

C. Petitioner's arrest and detention are per se unlawful under 8 U.S.C. § 1254a.

Petitioner agrees with Respondent in that if Petitioner "was granted TPS and that the validity of his TPS was extended through October 2, 2026...ICE would not be permitted to detain Petitioner at this time. 8 U.S.C. § 1254a(a)(1)(A)." (ECF No. 14 at 9). Respondents erroneously state Petitioner "does not have current TPS status and he may be detained." (ECF No. 14 at 13). This is incorrect. As discussed above, Petitioner's TPS is valid under the December 10 Order, and therefore his arrest and current detention are in complete disregard of 8 U.S.C. § 1254a(d)(4), which holds that "[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." There is no exception to this rule provided in the statute.

Respondents' additional argument that Petitioner lost TPS protection because he did not receive documents bearing an October 2, 2026, expiration date by February 5, 2025, disregards 8 C.F.R. § 244.17 (re-registrants maintain TPS by “attest[ing] to their continuing eligibility” with no further action required “unless USCIS requests that they do so”). The statute does not condition TPS protection on the timely receipt of physical documents. Rather, TPS protection depends on whether the designation remains in effect and whether the individual qualifies under the statutory criteria. Under the TPS statute, an individual who is *prima facie* eligible for TPS is entitled to benefits “until a final determination with respect to the alien’s eligibility for such benefits [] has been made.” 8 U.S.C. § 1254a(4)(B); *see also* 8 C.F.R. § 244.1 (“*Prima facie* means eligibility established with the filing of a completed application for Temporary Protected Status containing factual information that if unrebutted will establish a claim of eligibility under section 244 of the Act.”). Thus, absent a final determination that Petitioner is not eligible for TPS (for which Respondents have not established a proper basis), he is *prima facie* eligible for TPS and may not be detained.

Accordingly, although Respondents have made “no final determination” as to Petitioner’s TPS eligibility, he nonetheless remains protected under the TPS statute based on his *prima facie* eligibility because Petitioner timely registered pursuant to the 2023 designation of TPS for Venezuela and Former Secretary Noem’s vacatur of TPS has been set aside. Because federal law unambiguously prohibits the detention or removal of anyone who has TPS under 8 U.S.C. § 1254a(a)(1), (d)(4), this Court should order Petitioner’s immediate release.

II. Respondents’ arguments as to the Court’s ruling in *Hernandez-Lopez* are not availing.

In their reply, Respondents concede and “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, No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025).” (ECF No. 14 at 4). Although Respondents “respectfully disagree with the Court’s decision in *Hernandez-Lopez*,” they have not presented any substantial arguments meriting any deviation from the Court’s ruling in that case. (*Id.* at *5). Although Respondents raised four of the same arguments the Court expressly rejected in *Hernandez-Lopez* “for preservation purposes,” Petitioner will briefly address them. (ECF No. 14 at 5).

This Court has jurisdiction to entertain and grant this habeas petition under 28 U.S.C. § 1331; *Id.* § 2241; the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; the All-Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. And this Court is not stripped of jurisdiction under 8 U.S.C. § 1252(g) to consider Petitioner’s claim, which is premised on challenging the procedural mechanics of his current detention and Respondents’ failure to “follow its own rulebook when it revoked his release.” *Gomez-Alcina v. Noem*, No. 2:25-cv-1164-KCD-DNF, 2026 U.S. Dist. LEXIS 43879, at *4 (M.D. Fla. Mar. 4, 2026); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (“We did not interpret [section 1252(g)] to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves.”) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). Respondents’ argument that “[t]itle 8 U.S.C. § 1252(b)(9) bars review” of Petitioner’s claims is misplaced. (ECF No. 14 at 5). As found in *Hernandez-Lopez v. Hardin*, “[t]he Eleventh Circuit has held ‘that the zipper clause only affects cases that involve[] review of an order of removal.’

Canal A Canal A Media Holding, L.L.C. v. U.S. Citizenship & Immigration Servs., 964 F.3d 1250, 1257 (11th Cir. 2020) is not challenging a removal order. Indeed, he doesn't have one."

Additionally, although the crux of Petitioner's claim is based on his unlawful detention under 8 U.S.C. § 1254a, Petitioner disagrees with Respondents' position that 8 U.S.C. § 1225(b)(2) mandates Petitioner's continued detention. Respondents' novel interpretation of § 1225(b)(2) is contrary to over 300 other decisions of district courts. *See Barco Mercado v. Francis*, 2025 WL 3295903, at *3 (S.D.N.Y. Nov. 26, 2025) (documenting over 300 cases in which courts have rejected the government's new interpretation of § 1225(b)). Petitioner was paroled into the U.S., released on recognizance with alternative to detention conditions, gained TPS, and complied with his conditions of release for over two years before ICE revoked his release without alleging violations. Respondents cannot now invoke § 1225(b)(2) to justify re-detention as if Petitioner remained an applicant for admission in the initial screening phase. In sum, under 8 U.S.C. § 1254a(d)(4), Petitioner is not subject to detention; however, should the Court find detention is warranted, such detention must fall under 8 U.S.C. § 1226(a).

III. Petitioner has a valid claim under the *Accardi* doctrine because Respondents' revocation of Petitioner's Release on Recognizance violated Due Process.

Respondents maintain "revocation authority is discretionary and ROR may be revoked even absent cause" (ECF No. 14 at 7). Respondents' position that a regulation permitting discretionary revocation at any time eliminates all procedural protections fundamentally misunderstands the constitutional constraints on executive detention.

Petitioner is not "deportable" insofar as the TPS statute bars his deportation. Furthermore, the Due Process Clause requires that any deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process "forbids the government to infringe certain

‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest”); *Demore*, 538 U.S. at 528 (applying less rigorous standard for “deportable aliens”). Thus, if the government releases based on an initial custody determination, as is the case here when Respondents released Petitioner in 2023 under a release “on his own recognizance”—revoking that release later without new information makes the revocation arbitrary. (ECF No. 14 at 7).

Respondents have already considered Petitioner’s facts and circumstances and determined that he was not a flight risk or danger to the community when they previously released him from custody and ordered him to complete routine ICE check-ins. There have been no changes to Petitioner’s facts and circumstances (nor have Respondents alleged any) that justify the revocation of his release on his own recognizance. And Petitioner provided a pre-deprivation process or notice by an authorized official under 8 C.F.R. § 1236.1(c)(9). No factors were not considered before his re-detention, raising concerns about its legality. *See e.g., Kumar v. Wamsley*, 2025 WL 2677089, at *3 (W.D. Wash. Sept. 17, 2025) (“As with other non-citizens who have been released from ICE custody and are in the United States, Petitioner has a strong private interest in not being re-detained. Petitioner acquired a due process interest in his continued liberty upon his initial release from ICE custody.”) Accordingly, because Respondents have not complied with their own regulations as to the revocation of Petitioner’s release on his own recognizance (his initial custody determination), under the *Accardi* doctrine, their regulatory violation renders his ongoing detention unlawful as a violation of due process.

IV. Immediate release is the appropriate remedy

The Attorney General has the authority to arrest and detain aliens with pending removal proceedings. *Jennings*, 583 U.S. at 303. But there is no legal justification to detain a noncitizen

who is not subject to removal. The law is clear: "An alien provided temporary protected status...shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States." 8 U.S.C. § 1254a(d)(4). Thus, because Petitioner is not subject to removal by virtue of his valid TPS, his arrest and detention are wholly unlawful.

Where a petitioner's arrest and detention are unlawful from the outset, the only commensurate and appropriate equitable remedy is immediate release, not a remand or a re-labeling of custody authority after the fact. Courts have repeatedly recognized that habeas relief must restore liberty where the government lacked lawful authority to detain in the first instance. See, e.g., *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 366, 371-73 (S.D.N.Y. 2019) (ordering release and explaining that courts may implement corrective remedies for unconstitutional detention "regardless of whether there were other bases for the petitioners to be subsequently detained"). Allowing continued detention in these circumstances would improperly reward statutory and constitutional violations rather than remedy them.

CONCLUSION

For these reasons, Petitioner respectfully moves the Court to grant his habeas petition and order Respondents to immediately release Petitioner from custody, or in the alternative, a bond hearing before a neutral decision maker with the burden of proof on the government to show that Petitioner is either a danger to the community or a flight risk by clear and convincing evidence.

Dated: April 23, 2026

Respectfully submitted,

/S/ Marlon Bayas

Marlon Bayas, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2026, I filed the foregoing Brief in Reply to Respondents' Response through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Dated: April 23, 2026

/S/ Marlon Bayas
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