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Hon. Anthony J. Brindisi
(filed via ecf)

Dorante Henriquez v. Venturella, et al., 9:26-cv-1709 (AJB)

Dear Judge Brindisi:

Please accept this letter in reply to the Government's response.

Violation of Due Process Due to Lack of Individualized Determination

The Response herein notes this Court's prior decision in *Lazarte v Venturella,* 2026 US Dist. LEXIS 197273 (NDNY 2026) and Judge D'Agostino's decision in *Ampuero v. Venturella,* No. 9:26-cv-1267(MAD) (NDNY 2026.) Both decisions granted release to the petitioners who, like Mr. Dorante Henriquez, were paroled into the United States, because their subsequent detention violated their right to due process. Yet Respondents claim this case is somehow different because of the nationwide termination of TPS for Venezuelans in November, 2025. (Response, at 2)

As discussed below, caselaw shows that the TPS termination does *not* constitute a material change of circumstances justifying re-detention, and does *not* constitute an individualized determination. Therefore, Petitioner requests immediate release based on the violation of his right to due process.

Petitioner entered the United States in July, 2023, and was released on parole, which was valid until July, 2024. He timely filed for asylum in July, 2024, and that application is still pending. Petitioner was granted TPS in March, 2024, which expired in April, 2025. (Response at 1, FN 2) Then TPS for Venezuelans in Petitioner's circumstances was terminated on a nationwide basis in November, 2025. (*Id*) Petitioner has no criminal history, and there was no

evidence that he posed any danger or flight risk *before*[1] *the government decided to detain him* on September 10, 2026.

There are several recent cases where noncitizens were granted immediate release based on due process violations where the basis for their detention was, as in the instant case, that TPS for their nationality had been terminated nationwide. See, i.e. *Lazo v. Noem,* 818 F. Supp.3d 328 (EDNY 2/2/26); *Navarro v. Noem,* 2026 US Dist. LEXIS 35352 (WDWA 2/20/26); *Paso v. Warden, Ca;. City Det. Ctr.,* 2026 US Dist. LEXIS 177003 (EDCA 8/7/26.) In *Lazo v. Noem,* the court stated:

> "*…Several months after Noem terminated TPS for Honduras effective September 8, 2025, ICE agents arrested [petitioner] without any notice, opportunity to be heard, or individualized determination…*
>
> ICE's detention…deprived him of his significant liberty interest in remaining free from detention – the paramount interest triggering the procedural due process protections of the Fifth Amendment. …
>
> ***
>
> Courts apply the *Matthews v. Eldridge* balancing test [in the civil immigration context]…
>
> With regard to the first factor, [petitioner] invokes 'the most significant liberty interest there is – the interest in being free from imprisonment.' *Velasco Lopez* [*v. Decker*, 978 F.3d 842 (2nd Cir. 2020)] at 851.
>
> ***
>
> There is a high risk of erroneous deprivation… Respondents did not provide him with any notice of opportunity to be heard …before ICE detained him… There is little cost and significant benefit from providing a procedural safeguard that any detention be *preceded by* an individualized determination by an ICE officer as to whether [the petitioner] poses a flight or safety risk. …
>
> …[Nothing] has changed since his TPS was last renewed… aside from termination of that status on account of Noaem's termination of TPS for all Honduran nationals…. Respondents therefore fail to demonstrate that ICE detention of [petitioner] without any notice of opportunity to be heard advances *any* government interests
>
> Weighing all of the *Matthews v. Eldridge* factors – the significant liberty interest at stake, the high risk of erroneous deprivation, and Respondents' failure to demonstrate that [petitioner's] detention was required to advance any legitimate government interest… - Respondents' detention of [petitioner] with no notice or opportunity to be heard and *no showing of changed material circumstances following his more recent renewal of his TPS, violates his Fifth Amendment right to due process. …*
>
> ***
>
> …A bond redetermination…*would not remedy the core constitutional violation at issue here.* [Petitioner's] detention was unlawful from its inception because ICE detained him under the wrong statute [Section 1225(b)] and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a). Accordingly [the

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[1] Respondents allege that Petitioner briefly fled when they stopped his car, but what is argued herein is that he should be released because there was no individualized determination *before* Respondents targeted him for arrest and stopped his vehicle, rendering the arrest and subsequent detention unlawful.

situation] necessitates both *release* and narrow injunctive relief guarding against re-detention in violation of this Court's determination that [petitioner] is not subject to mandatory detention under Section 1225(b)." *Lazo,* supra, at 332, 346-349, emphasis supplied.

And in *Navarro v. Noem,* supra, the court stated:

"…According to the government, on November 20, 2025, US Citizenship and Immigration Services terminated petitioner's TPS. …The record does not reflect that any notice was provided to petitioner. Petitioner has no criminal history and there is no evidence of any failure to comply with his parole reporting requirements…

On January 2, 2026, petitioner was apprehended in a targeted operation after grocery shopping. …

***

When petitioner was released from ICE custody for over two full years on interim parole, he 'took with him a liberty interest which is entitled to the full protections of the [D]ue [P]rocess [C]lause.' (*Ramirez Tesara v. Wamsley,* 800 F.Supp.3d 1130, at *3 (WDWA 2025.) The fact the government allowed petitioner to remain in the community for almost two and a half years after issuing the parole, granted him a TPS, as well as work authorization as his asylum application is pending, only strengthens this interest….

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…Deportation Officer Reed states that 'USCIS terminated Petitioner's TPS on November 20, 2025'… *However, the TPS had an expiration date on April 2, 2025…. The sequence of events shows the government would not have made an individualized determination to terminate petitioner's TPS in November, because it had already expired in April.*

***

The Court holds that the arrest and detention of petitioner… has created a significant risk of an erroneous deprivation of petitioner's liberty interest. The second *Matthews* factor weighs in petitioner's favor.

***

The Court holds that the government's interest in re-detaining a noncitizen without a pre-detention hearing, is low. …While a pre-detention process would impose some administrative burden, that burden is minimal when weighed against the fundamental liberty interest at stake and the high risk of erroneous deprivation.

***

Petitioner's re-detention occurred without meaningful notice, without a meaningful opportunity to be heard, and *without any individualized finding that the termination of his TPS would allow for him to be re-detained pending his asylum application.* This violated the Due Process Clause…

…The government shall release petitioner from custody within 24 hours of the filing of this Order…" *Navarro,* supra, at *4, 12-16, emphasis supplied.

As in *Lazo* and *Navarro,* supra, the nationwide termination of TPS did *not* justify Petitioner's re-detention, as there was no change in material circumstances showing he posed any increased risk, and there was no individualized determination. (And as in *Navarro,* Petitioner's TPS had already expired in April, 2025, months before it was terminated nationwide.) There was

a clear violation of Petitioner's right to due process. And, as stated in *Lazo, supra,* a bond hearing would not remedy the core constitutional violation at issue here.

Therefore, it is respectfully submitted that this Court should order release, as occurred in *Lazarte, Lazo*, and *Navarro.*

Respectfully submitted,

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