

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

E.A.A.P.,

Petitioner,

v.

Terrence DICKERSON, et al.,

Respondents.

Case No.: 4:25-cv-00136-CDL-AGH

**PETITIONER'S MEMORANDUM OF
LAW IN SUPPORT OF EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER**

ORAL ARGUMENT REQUESTED

INTRODUCTION

Petitioner E.A.A.P. (“Petitioner” or “Mr. A.”) is a young man who was granted Temporary Protected Status (TPS) in 2024. This status continues to protect him from detention and deportation. Yet Immigration and Customs Enforcement (ICE) detained Petitioner on or around March 20, 2025, and, upon information and belief, has stated an intent to remove Mr. A. Petitioner remains detained at Stewart Detention Center in Lumpkin, Georgia.

Mr. A.’s detention in ICE custody is patently unlawful. The TPS statute unequivocally states that “[a] [non-citizen] provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the [noncitizen]’s immigration status in the United States.” 8 U.S.C. § 1254a(d)(4) (emphasis added).

Respondents’ detention of Mr. A. violates the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment. Mr. A. faces a continued deprivation of liberty

in the face of that unlawful detention. Release from detention is the only meaningful way to protect Mr. A. from grave, irreparable harm. The egregious and patently unlawful nature of the detention justifies expedited review of Petitioner's Motion for a Temporary Restraining Order.

LEGAL BACKGROUND

Venezuelans living in the United States first received temporary protection from removal on January 19, 2021, when President Trump—on the last day of his first Administration—directed the Secretaries of State and Homeland Security to “take appropriate measures to defer for 18 months the removal of any national of Venezuela . . . who is present in the United States as of January 20, 2021,” with limited exceptions, and “to take appropriate measures to authorize employment for aliens whose removal has been deferred, as provided by this memorandum, for the duration of such deferral.” Memorandum re Deferred Enforced Departure for Certain Venezuelans, 86 Fed. Reg. 6845 (Jan. 19, 2021).

DHS then designated TPS for Venezuela on March 9, 2021, based on the Secretary's determination that “extraordinary and temporary conditions in the foreign state prevent [Venezuelans] from returning in safety” and that “permitting [Venezuelans] to remain temporarily in the United States” is not “contrary to the national interests of the United States.” *Id.* at 13575. The Secretary found that “Venezuela is currently facing a severe humanitarian emergency” and “has been in the midst of a severe political and economic crisis for several years . . . marked by a wide range of factors including: Economic contraction; inflation and hyperinflation; deepening poverty; high levels of unemployment; reduced access to and shortages of food and medicine; a severely weakened medical system; the reappearance or increased incidence of certain communicable diseases; a collapse in basic services; water, electricity, and fuel shortages; political polarization; institutional and political tensions; human rights abuses and repression; crime and

violence; corruption; increased human mobility and displacement (including internal migration, emigration, and return); and the impact of the COVID-19 pandemic, among other factors.” *Id.* at 13576.

DHS extended and broadened TPS protection for Venezuelans twice after that initial designation. DHS extended Venezuela’s TPS designation for 18 months on September 8, 2022, through March 10, 2024. 87 Fed. Reg. 55024. DHS again extended the 2021 designation of Venezuela for 18 months on October 3, 2023. At that time DHS also re-designated Venezuela for TPS for 18 months, allowing individuals who had come to the United States after March 2021 to become eligible for TPS. 88 Fed. Reg. 68130 (“2023 Venezuela Designation”). The extension of the 2021 designation ran from March 11, 2024 through September 10, 2025. The new 2023 re-designation ran from October 3, 2023 through April 2, 2025. Finally, on January 17, 2025, the DHS Secretary extended the 2023 Venezuela Designation by 18 months, through October 2, 2026. 90 Fed. Reg. 5961 (“January 2025 Extension”).

In support of that extension, the DHS Secretary found that “Venezuela is experiencing a complex, serious and multidimensional humanitarian crisis. The crisis has reportedly disrupted every aspect of life in Venezuela. Basic services like electricity, internet access, and water are patchy; malnutrition is on the rise; the healthcare system has collapsed; and children receive poor or no education. Inflation rates are also among the highest in the world. Venezuela’s complex crisis has pushed Venezuelans into poverty, hunger, poor health, crime, desperation and migration. Moreover, Nicolas Maduro’s declaration of victory in the July 28, 2024 presidential election—which has been contested as fraudulent by the opposition—has been followed by yet another sweeping crackdown on dissent.” *Id.* at 5963 (internal quotation marks and citations omitted).

After entering office, the Trump administration reversed course on TPS for Venezuela.¹ On January 28, 2025, the new DHS Secretary purported to “vacate” the January 2025 Extension of TPS for Venezuela. That decision was the first vacatur of a TPS extension in the 35-year history of the TPS statute. DHS published the decision via notice in the Federal Register on February 3, 2025. 90 Fed. Reg. 8805.

On February 1, 2025, the new Secretary “decided to terminate” the 2023 Venezuela Designation, ordering an end to the legal status of approximately 350,000 Venezuelans, effective on April 7, 2025.

On February 5, 2025, DHS published a notice in the Federal Register purporting to terminate the 2023 Venezuela Designation. 90 Fed. Reg. 9040.

On February 19, 2025, the National TPS Alliance and seven individual Venezuelan TPS holders sued the federal government, alleging that the vacatur and subsequent termination of TPS for Venezuela were contrary to the TPS statute in violation of the Administrative Procedure Act and unlawful under the Fifth Amendment. Plaintiffs moved to stay the recent vacatur and termination. The district court granted that motion, *National TPS Alliance v. Noem*, --- F.3d ---, 2025 WL 957677 (N.D. Cal. Mar. 31, 2025), and the Government appealed to the Ninth Circuit, *National TPS Alliance, et al. v. Noem, et al.*, No. 25-2120 (9th Cir). That appeal is pending. In the interim, the January 2025 Extension remains in effect, extending the 2023 Venezuela Designation to October 2, 2026.

¹ The first Trump administration also attempted to strip several hundred thousand people of their TPS status. That attempt ultimately proved unsuccessful, as everyone who held TPS in 2017 remained eligible for it by the end of the first Trump administration. *See generally Ramos v. Nielsen*, 709 F. Supp. 3d 871 (N.D. Cal. 2023) (explaining procedural history).

FACTUAL BACKGROUND

Mr. A. was born in Venezuela in 2000. He is 24 years old. Mr. A. came to the United States in April 2023 and was processed by immigration officials. He was served with a Notice to Appear, the charging document issued by DHS to initiate removal proceedings, which identified a September 6, 2023 court date before the immigration court in New York, New York.

Mr. A. first went to Denver, Colorado, to stay with a relative, although he intended New York City to be his final destination. However, after he arrived in Denver, the person who was going to receive him in New York City could no longer do so, so Mr. A. decided to stay in Denver. Ex. 1, Declaration of E.A.A.P., ¶ 6 (“E.A.A.P. Decl.”) He was later joined by his wife and young child. *See id.* ¶ 2. On February 8, 2024, the immigration court in Denver, Colorado issued Mr. A. a final order of removal *in absentia*; Mr. A. did not know that he had been scheduled for immigration court in Denver, Colorado, and did not learn that the immigration court had ordered his removal until later. *Id.* ¶ 9.

In February 2024, Mr. A. applied for Temporary Protected Status through U.S. Citizenship and Immigration Service (USCIS). On May 8, 2024, Mr. A. received a notice from USCIS granting him TPS status. *See* ECF No. 1-1. His TPS status was listed as active and valid through April 2, 2025. *Id.*²

After living for a little over a year in Colorado, Mr. A. and his family moved to Chicago, Illinois. The family lived there for approximately five months before moving to Wilmington, North

² Pursuant to the court’s order in *National TPS Alliance v. Noem*, --- F.3d ---, 2025 WL 957677 (N.D. Cal. Mar. 31, 2025), all TPS grants pursuant to the 2023 Designation, including Mr. A.’s, are currently extended until October 2, 2026. USCIS, *Temporary Protected Status Designated Country: Venezuela*, available at <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela>.

Carolina. Mr. A. had been living with his wife, who is now approximately four months pregnant, and their now two-year old child, up until the time of his arrest. E.A.A.P. Decl. ¶¶ 3, 12.

On or around March 20, 2025, as Mr. A. was arrested by unidentified agents in Wilmington, North Carolina. *Id.* at ¶ 13. They threw Mr. A. to the ground before handcuffing him. Upon information and belief, the officers then took Mr. A. to a county jail, then a jail in Raleigh, North Carolina. *Id.* Mr. A. was then transferred to Stewart Detention Center in Lumpkin, Georgia, where he continues to be detained. *Id.*

LEGAL STANDARD

Motions for temporary restraining orders are analyzed using a four-factor test: Courts consider whether petitioners have shown: (1) a likelihood of success on the merits; (2) that they are likely to suffer irreparable harm in the absence of such relief; (3) that the balance of equities tips in plaintiffs' favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (citing *Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir. 1994); accord *Friedenberg v. Sch. Bd. of Palm Beach Cnty.*, 911 F.3d 1084, 1090 (11th Cir. 2018) (citation omitted). "Where, as here, the 'balance of the equities weighs heavily in favor of granting the [injunction]' the Petitioner need[s] only show a 'substantial case on the merits.'" *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289, 1298 (11th Cir. 2005). Petitioner easily satisfies all four factors.

ARGUMENT

I. Mr. A. Is Likely to Succeed on the Merits.

A. Mr. A's Continued Detention Violates the Immigration and Nationality Act.

The INA explicitly bars Mr. A's detention, and his continued detention by Respondents violates the INA. The TPS statute unambiguously provides that "[a noncitizen] provided temporary

protected status under this section *shall not be detained* by the Attorney General on the basis of the [noncitizen]’s immigration status in the United States.” 8 U.S.C. § 1254a(d)(4) (emphasis added). It is hard to imagine a clearer statutory mandate proscribing detention.

TPS protection remains valid even if the TPS holder lacks other immigration status. 8 U.S.C. § 1254a(a)(1)(A) (the government “shall not remove the [noncitizen] from the United States during the period in which such [TPS] status is in effect.”); 8 U.S.C. § 1254a(a)(5) (TPS statute provides no authority to “deny temporary protected status to a[noncitizen] based on the [noncitizen]’s immigration status”). *See also* 8 U.S.C. § 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to “otherwise deportable” noncitizens). Mr. A.’s in absentia order of removal makes no difference to this analysis. Noncitizens who have removal orders are still eligible for TPS. *See* 8 C.F.R. § 244.2 (listing eligibility requirements for TPS, which does not exclude individuals with final removal order); *id.* § 244.48 (providing that noncitizens are ineligible for TPS if they are inadmissible to the United States barred from asylum for certain criminal or national, but not referencing the existence of removal orders). That removal order “remains inexecutable so long as the [noncitizen] remains a TPS beneficiary.” *Duarte v. Mayorkas*, 27 F.4th 1044, 1053–54 (5th Cir. 2022) (citing *Dhakal v. Sessions*, 895 F.3d 532, 537 n.8 (7th Cir. 2018); *Serrano v. U.S. Att’y. Gen.*, 655 F.3d 1260, 1265 (11th Cir. 2011); *see also Matter of Sosa Ventura*, 25 I. & N. 391, 393 (BIA 2010).

Section 2241(c)(3) of Title 28 authorizes the writ of habeas corpus for individuals who are detained in violation of federal law, which includes the INA. Mr. A.’s detention violates the INA’s prohibition on the detention of TPS holders solely on the basis of their immigration status, and release from detention is the sole remedy for this violation. *Munaf v. Geren*, 553 U.S. 674, 693

(2008) (“Habeas is at its core a remedy for unlawful executive detention.”). Mr. A is therefore likely to succeed on the merits that their detention violates the INA.

b. Mr. A.’s Continued Detention Violates the Constitution.

Persons in immigration detention are detained pursuant to civil immigration laws. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Individuals in civil detention who challenge their confinement are protected by the Due Process Clause of the Fifth Amendment. “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.” *Zadvydas*, 533 U.S. at 690; *see also Youngberg v. Romeo*, 457 U.S. 307, 315 (1982).

Mr. A.’s detention violates the Fifth Amendment’s protection of liberty for at least three related reasons. First, immigration detention must always “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). Where, as here, the government currently has no authority to deport Mr. A., detention is not reasonably related to its purpose.

Second, because Mr. A. is not “deportable” insofar as the TPS statute bars his deportation, the Due Process Clause requires that any deprivation of their 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” (emphasis in original)); *Demore*, 538 U.S. at 528 (applying less rigorous standard for “deportable [non-citizens]”). Mr. A.’s ongoing imprisonment obviously cannot satisfy that rigorous standard.

Third, at a bare minimum, “the Due Process Clause includes protection against *unlawful* or arbitrary personal restraint or detention.” *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting). Where federal law explicitly prohibits an individual’s detention, their detention also violates the Due Process Clause.

It is irrelevant for purposes of this case that Mr. A.’s TPS status may soon expire if the Government successfully defends in court its unprecedented attempt to vacate the January 2025 TPS Extension for Venezuela. Pursuant to court order, the January 2025 Extension remains in place, which extends the 2023 Designation until October 2, 2026. *See Nat’l TPS All.*, 2025 WL 957677 (granting stay of Respondent Noem’s vacatur of the January 2025 Extension). The TPS statute’s unambiguous command applies so long as the TPS holder’s status remains in effect. It contains no exception for people whose TPS status may soon expire.

For the foregoing reasons, Mr. A. is likely to succeed on the merits of his claim that their continued detention violates his Fifth Amendment due process right.

II. The Remaining Factors Weigh Heavily in Favor of Granting a Temporary Restraining Order.

A. Petitioner Will Suffer Irreparable Harm Absent A Temporary Restraining Order.

“There is, perhaps, no injury more substantial and less reparable than improper denial of the right to liberty.” *Garcia-Mir v. Meese*, 781 F.2d 1450, 1455 (11th Cir. 1986). The Eleventh Circuit has found that “unnecesar[y] incarceration[tion] is an “unnecessary deprivation of liberty clearly constitutes irreparable harm.” *United States v. Bogle*, 855 F.2d 707, 710–11 (11th Cir. 1988). Preemptive detention simply because someone *may* become subject to detention in the future does not provide a basis for detention now and is an “unnecessary deprivation.” *Id.*

Accordingly, Mr. A.—whose Fifth Amendment rights are being violated through a detention that (1) is not rationally related to any immigration purpose, (2) is not the least restrictive

mechanism for accomplishing any legitimate purpose the government could have in imprisoning Petitioners, and (3) lacks any statutory authorization—is suffering irreparable harm. “[I]f [Mr. A.’s] continued detention is indeed unconstitutional, every subsequent day of detention without remedy visits harm anew.” *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 711 (D. Md. 2016). The “continued loss of liberty” is also an irreparable harm. *See id.* (“Further, because the harm is loss of liberty, it is quintessentially the kind of harm that cannot be undone or totally remedied through monetary relief.”).

B. The Public Interest and Balance of Equities Weigh Heavily in Mr. A.’s Favor.

The final two factors generally “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009); *accord Air Force Officer v. Austin*, 588 F. Supp. 1338, 1356 (M.D. Ga. 2022). The balance of harms and public interest weigh strongly in favor of granting a temporary restraining order. *See Winter*, 555 U.S. at 24. In contrast to the irreparable injury facing Mr. A, the government will not be injured by an injunction. Rather, “the public interest is served when constitutional rights are protected.” *Dem. Exec. Comm. of Florida v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019) (citation omitted). Because Petitioner’s continued detention is unconstitutional and unlawful, both the balance of the equities and the public interest weigh in favor of emergency relief.

III. The Court Should Not Require Plaintiffs to Provide Security Prior to Issuing a Temporary Restraining Order.

2. Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” However, district courts retain discretion to waive the security requirement. *BellSouth Telecomms., Inc. v. MCIMetro Access Transmission*

Servs., LLC, 425 F.3d 964, 971 (11th Cir. 2005). District courts routinely exercise this discretion to require no security in cases brought by indigent and/or incarcerated people. *See, e.g., Schultz v. Alabama*, 330 F. Supp. 3d 1344, 1376 (N.D. Ala. 2018) (county prisoners), *affirmed in part and reversed in part on other grounds*, 42 F.4th 1298 (11th Cir. 2022); *Campos v. I.N.S.*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla. 1998) (indigent immigrants). This Court should do the same here.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the motion for a temporary restraining order and order his immediate release from custody, or in the alternative, restrain Respondents from transferring Petitioner outside this District.

DATED: April 27, 2025

Respectfully submitted,

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**pro hac vice* admission applications
forthcoming

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