

moves the Court for a temporary restraining order prohibiting the Respondents from continuing to unlawfully detain him during the pendency of his Petition for Writ of Habeas Corpus.

I. STATEMENT OF FACTS

A. TPS for Venezuela remains in effect.

In 8 U.S.C. § 1254a(b)(1) and (c), Congress enacted a process to provide TPS for certain noncitizens designated by the Secretary of DHS “after consultation with appropriate agencies of the Government” As noted above, noncitizens holding TPS 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) (emphasis added).

Noncitizens who qualify for TPS are eligible for work authorization and “shall not [be] remove[d] from the United States during the period in which such status is in effect.” 8 U.S.C. § 1254a(a)(1)(A-B). Even qualifying individuals with a final order of removal are eligible for TPS and may not be denied TPS based upon a removal order. 8 U.S.C. § 1254a(a)(5) (TPS statute provides no authority to “deny temporary protected status to an alien based on the alien’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” non-citizens).

Venezuela was first designated by the Respondents as deserving TPS on or around March 9, 2021. *See Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure*, 86 FR 13574 (Mar. 9, 2021). The initial designation provided TPS for Venezuelans who had been continually physically present in the United States since March 9, 2021. This initial designation was extended twice, ultimately providing TPS holders lawful status and work authorization

through September 10, 2025. *See Extension and Redesignation of Venezuela for Temporary Protected Status*, 88 FR 68130 (Oct. 3, 2023).

On October 3, 2023, the Respondents redesignated Venezuela for TPS. *Id.* The redesignation extended TPS status to those Venezuelans physically present in the United States since October 2, 2023. The redesignation provided TPS status to qualified Venezuelans through April 2, 2025. However, on January 17, 2025, Secretary of Homeland Security Alejandro Mayorkas extended the redesignation by 18 months, or until October 2, 2026. *See Extension of the 2023 Designation of Venezuela for Temporary Protected Status*, 90 FR 5961 (Jan. 17, 2025). Secretary Mayorkas also consolidated the TPS designations for Venezuela allowing those 2021 designees to also receive the extension through October 2, 2026.

On January 28, 2025, the new Secretary of Homeland Security Kristi Noem vacated her predecessor's decision to consolidate and extend TPS for Venezuelans. *See Vacatur of 2025 Temporary Protected Status Decision for Venezuela*, 90 FR 8805 (Feb. 3, 2025). On February 5, 2025, Secretary Noem entered an order terminating the extension of the 2023 designation for Venezuelans with the effective date being April 7, 2025. *See Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status*, 90 FR 9040 (Feb. 5, 2025). Thus, Venezuelans falling under the 2023 designation were advised that their status expires on April 7, 2025. The 2021 designation was not terminated but was set to expire without an extension on September 10, 2025.

On February 19, 2025, the National TPS Alliance filed a class action lawsuit in the Northern District of California. Complaint, *Nat'l TPS All., et al. v. Noem, et al.*, No. 3:25-cv-01766-EMC (N.D. Cal. Feb. 19, 2025), ECF No. 1. The lawsuit alleged that Secretary Noem's orders vacating and terminating TPS violated the Administrative Procedures Act (APA). On March

31, 2025, the District Court entered an order postponing the Respondents' decision to vacate and terminate TPS for Venezuelans pending resolution of the lawsuit. *See Nat'l TPS All. v. Noem*, 773 F. Supp. 3d 807 (N.D. Cal. 2025). The Respondents appealed the District Court's order to the Ninth Circuit Court of Appeals. They also moved the District Court to stay its order postponing the termination and vacatur of TPS while the case is pending on appeal. *Nat'l TPS All. v. Noem*, No. 25-cv-01766-EMC, 2025 U.S. Dist. LEXIS 65363 (N.D. Cal. Apr. 4, 2025). The District Court and the Ninth Circuit both denied the government's motion to stay the order of postponement. *Id.*; *Nat'l TPS All. v. Noem*, No. 25-2120, 2025 U.S. App. LEXIS 9436 (9th Cir. Apr. 18, 2025).

On May 19, 2025, the Supreme Court of the United States granted the government's motion to stay the postponement of the order terminating TPS for Venezuelans. However, in its order granting the stay, the Supreme Court stated:

[t]his order is without prejudice to any challenge to Secretary Noem's February 3, 2025 vacatur notice [on Venezuela] insofar as it purports to invalidate EADs [employment authorization documents], Forms I-797, Notices of Action, and Forms I-94 issued with October 2, 2026 expiration dates [i.e., the date provided for by Secretary Mayorkas's extension]. See 8 U.S.C. § 1254a(d)(3).

Noem v. Nat'l TPS All., 221 L.Ed.2d 981, 981–82 (2025).

On remand, based on the above language from the Supreme Court order, the District Court granted the TPS holders' motion to preserve their status and rights under the TPS statute issued to them prior to Secretary's Noem's February 5, 2025, decision terminating TPS for Venezuela. *Nat'l TPS All. v. Noem*, No. 25-cv-01766-EMC, 2025 U.S. Dist. LEXIS 103572 (N.D. Cal. May 30, 2025). In other words, those TPS status holders who had already received TPS benefits retained their benefits. As the District Court stated: those TPS holders who "received TPS-related documentation based on the Mayorkas extension anytime up to and including February 5, 2025," retain TPS benefits. *Id.* at *19.

On September 5, 2025, the District Court entered a final order finding that the government's decision to terminate TPS for Venezuelans violated the APA. *Nat'l TPS All. v. Noem*, No. 25-cv-01766-EMC, 2025 U.S. Dist. LEXIS 174048 (N.D. Cal. Sep. 5, 2025). The Court specifically set aside, or vacated, Secretary Noem's decision to cancel TPS for Venezuelans. The District Court's final decision restores Secretary Mayorkas' January 17, 2025, extension of TPS for Venezuelans. Indeed, United States Citizenship and Immigration Services' (USCIS) website now reflects that the TPS extension is in place for Venezuelans who applied for benefits under the January 17, 2025 notice from Secretary Mayorkas. *See Exh. A, Temporary Protected Status Designated Country: Venezuela*, USCIS.GOV, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-venezuela> (last visited Sept. 18, 2025).

B. Petitioner was granted TPS and his TPS status remains in effect.

The Petitioner is a citizen of Venezuela who entered the United States on or about August 14, 2022. He timely applied for TPS benefits under the 2023 redesignation available for Venezuelans. On December 11, 2023, the Respondents issued him a work authorization valid from December 11, 2023, through April 2, 2025. *See Exh. B* (Employment Authorization Document or EAD).

On January 27, 2025, ten days after Secretary Mayorkas' announcement extending TPS for Venezuelans to October 2026, the Petitioner filed to renew his work authorization. *See Exh. C* (Form I-797, Receipt Notice). Under the District Court's order preserving benefits while litigation is ongoing, the combination of an EAD that expires on or before April 2, 2025, along with a USCIS filing receipt showing that an application for EAD renewal was received by USCIS on or before February 5, 2025, automatically extends TPS benefits through October 2, 2026. The Respondents

are aware of this extension. Indeed, USCIS posted the notice on their website acknowledging the extension of TPS benefits. *See Exh. D* (USCIS notice).

The Petitioner, therefore, is in TPS status based on at least two federal court decisions. First, the September 5, 2025, decision setting aside Secretary Noem's decision to vacate TPS for Venezuelans falling under the 2023 redesignation. Second, the Petitioner holds TPS status under the District Court's interim ruling preserving his TPS benefits while litigation is ongoing.

Nonetheless, on or around August 17, 2025, the Respondents arrested the Petitioner and placed him into custody in Pearsall, Texas at the STIPC. The Petitioner, through counsel, alerted the Respondents about the Petitioner's TPS status and his unlawful detention on multiple occasions. *See Exh. E* (Petitioner's counsel's emails to DHS). The Respondents did not respond. Although the Petitioner holds TPS protection, on September 10, 2025, ICE served him with a notice to appear (NTA) before an immigration judge (IJ) for a removal hearing. He has an initial master hearing set for September 29, 2025. The pending removal proceeding does not provide a basis for the Respondents to detain the Petitioner. 8 U.S.C. § 1254a(d)(4). Indeed, even if the IJ ultimately orders Petitioner removed, the TPS statute prevents the Respondents from executing the order for the duration of time while the Petitioner holds TPS. *See* 8 U.S.C. § 1254a(a)(1)(A); *see also Duarte v. Mayorkas*, 27 F.4th 1044, 1053–54 (5th Cir. 2022) (citing *Dhakal v. Sessions*, 895 F.3d 532, 537 (7th Cir. 2018) (“[A noncitizen] may even be ordered removed while under TPS, though the order remains inexecutable so long as the [noncitizen] remains a TPS beneficiary.”)). The Petitioner has been criminally charged twice for driving while under the influence of alcohol. However, the pending charges have not resulted in a conviction, and therefore, do not provide a basis for terminating TPS. *See* 8 U.S.C. § 1254a(c)(2)(B)(i) (providing that two or more **convictions** render a noncitizen ineligible for TPS).

II. ARGUMENT

A temporary restraining order (TRO) should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P. 65(b)(1)(A). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). The movant must establish four factors: “(1) a likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction will not disserve the public interests.” *Ladd v. Livingston*, 777 F.3d 286, 288 (5th Cir. 2015). When the government is the opposing party, the final two factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

Petitioner satisfies all four TRO factors. He is likely to succeed on the merits of his petition for the following reasons: (1) his detention violates the clear statutory mandate protecting TPS from immigration detention under 8 U.S.C. § 1254a, and (2) Petitioner’s detention is also a clear violation of substantive due process because his detention is not tailored to serve any compelling or legitimate governmental interest—indeed it is contrary to a statute passed by Congress—and is therefore unconstitutional. Next, the second prong is easily satisfied since the Petitioner is suffering—and will continue to suffer—irreparable harm from unlawful detention, including the deprivation of liberty, economic burdens, and separation from his community, as recognized by numerous courts in the immigration context. *See infra* II.B, at 10–11. Similarly, the third prong is met because the balance of equities strongly favors Petitioner, as halting unlawful detention imposes minimal burden on Respondents—indeed it will force them to comply with a statute passed by Congress—while allowing detention to continue inflicts profound and ongoing harm to

the Petitioner. Finally, the public interest supports immediate relief, as it is always in the public interest to ensure government agencies comply with laws passed by Congress and refrain from unlawfully detaining people who hold lawful status. As such, Petitioner is entitled to a TRO and preliminary injunction, and the Court should order his immediate release from unlawful detention.

A. Petitioner is likely to succeed on the merits of his petition.

i. Petitioner is likely to succeed because his detention obviously violates the INA.

The TPS statute is plain and unambiguous. It provides 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” and the government “**shall not remove** the alien from the United States during the period in which such status is in effect.” 8 U.S.C. §§ 1254a(a)(1)(A), (d)(4) (emphasis added). This categorical prohibition is all that is needed to resolve this habeas proceeding in favor of the Petitioner. As explained above, Petitioner was granted TPS on or about December 11, 2023, and Venezuela’s designation remains in effect. Respondents are therefore forbidden from detaining or removing Petitioner on the basis of his immigration status.

The government cannot rely on Petitioner’s two pending DUI charges to justify detention. Mere arrests or charges do not terminate TPS. By statute, only individuals “convicted of any felony or 2 or more misdemeanors” are ineligible. 8 U.S.C. § 1254a(c)(2)(B)(i). The Petitioner has no such disqualifying convictions. Accordingly, his TPS remains valid and protects him against both removal and detention. 8 U.S.C. §§ 1254a(a)(1)(A)–(B), (d)(4), (g).

Confronted with similar governmental actions to detain noncitizens in violation of 8 U.S.C. § 1254a, other district courts have ordered the immediate release of Venezuelans in lawful TPS status. *See, e.g., Sanchez Puentes v. Garite*, 780 F. Supp. 3d 682 (W.D. Tex. 2025) (“Therefore,

Petitioners' detention violates 8 U.S.C. § 1254a and 8 C.F.R. §244.14(b)(3).”); *Rojas v. Venegas*, No. 1:25-cv-00056, 2025 U.S. Dist. LEXIS 65294, at *2 (S.D. Tex. Apr. 2, 2025) (“The Court holds that Petitioner is a Venezuelan national with valid Temporary Protected Status and was wrongfully detained under 8 U.S.C. 1254a(a)(1)(A).”); *Gudino v. Lowe*, No. 1:25-CV-00571, 2025 U.S. Dist. LEXIS 75099, at *36–37 (M.D. Pa. Apr. 21, 2025) (“IT IS HEREBY ORDERED THAT Arias Gudino's motion for a preliminary injunction (Doc. 10) is GRANTED. IT IS FURTHER ORDERED that Respondents shall immediately release Arias Gudino from their custody.”). This Court should follow suit.

ii. *Petitioner is likely to succeed because his detention violates his right to substantive due process.*

The Petitioner’s statutory claim resolves this matter in the Petitioner’s favor, but should the Court disagree, the Petitioner’s confinement also violates the Due Process Clause of the Fifth Amendment. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. This guarantee includes a substantive component that forbids the government from infringing upon certain “fundamental liberty interests *at all*,” regardless of the procedures used, unless the infringement is narrowly tailored to serve a compelling governmental interest. *Reno v. Flores*, 507 U.S. 292, 301–02 (1993). Substantive due process protections apply equally to noncitizens within the United States. *See Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (“There are literally millions of [noncitizens] within the jurisdiction of the United States ... the Fifth Amendment as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law.”) (internal citation omitted). And, “freedom from imprisonment--from government custody, detention, or other forms of physical restraint--lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Here, Congress has expressly prohibited the detention and removal of individuals in TPS status while their TPS is in effect. *See* 8 U.S.C. §§ 1254a(a)(1)(A), (d)(4). Because Respondents have no statutory authority to detain or remove Petitioner, there is no compelling governmental interest to justify depriving him of his liberty. His continued detention therefore violates substantive due process.

Even under the rational basis standard, Petitioner prevails. 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). The Supreme Court explained in *Zadvydas*, that when a noncitizen’s removal is not reasonably foreseeable, detention serves no legitimate government purpose, and thus the noncitizen must be released. *Zadvydas*, 533 U.S. at 700–01. Since Congress has barred both detention and removal of TPS beneficiaries during the period in which TPS status is in effect, Petitioner’s confinement cannot be reasonably related to removal or any other legitimate purpose. It is therefore arbitrary, unlawful, and unconstitutional.

Nor can Respondents justify Petitioner’s detention on the ground that his TPS may someday be terminated. The statute’s command is unambiguous: so long as TPS remains in effect, the individual “shall not be detained” and “shall not be removed.” 8 U.S.C. §§ 1254a(a)(1)(A), (d)(4). It contains no exception for individuals whose status might be terminated in the future. And, as noted above, a court has set aside the government’s attempt to end TPS for Venezuelans.

Accordingly, Petitioner’s detention, whether reviewed under strict scrutiny or the rational basis standard, violates the Due Process Clause of the Fifth Amendment.

B. Petitioner will suffer irreparable injury as a result of his unlawful detention.

In the immigration context, unlawful detention alone constitutes irreparable injury. *See Gudino*, 2025 U.S. Dist. LEXIS at *32 (citing *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th

Cir. 2017) (finding that immigration detention can cause irreparable harm because individuals are likely to be detained unlawfully for an indefinite period and emphasizing economic harm)); *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012 (“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury’”). Courts have similarly recognized that threatened removal satisfies the irreparable injury requirement, including harms such as separation from family and home, uncertainty about legal status, and difficulties establishing a life in the United States, such as access to healthcare, education, and employment. *See, e.g., Nat’l TPS All. v. Noem*, 773 F. Supp. 3d 807, 836 (N.D. Cal. 2025) (describing harms from removal, including separation from family and communities, loss of authorization to work, and educational opportunities); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (loss of liberty due to detention is “perhaps the best example of irreparable harm”); *Carmona v. Bondi*, No. CV-25-00110-TUC-JGZ, 2025 U.S. Dist. LEXIS 44530, at *5 (D. Ariz. Mar. 12, 2025) (A detainee facing potential removal has shown irreparable injury).

In this case, the Petitioner will continue to suffer irreparable harm from the Respondents’ violation of the TPS statute and the Fifth Amendment’s Due Process Clause. Indeed, the deprivation of Petitioner’s fundamental liberty interest alone constitutes irreparable harm. In addition, he is separated from his community, is unable to work due to detention, and is facing ongoing uncertainty about his legal status, all of which further compounds the injury. Each of these factors independently constitutes irreparable harm warranting immediate injunctive relief.

C. The remaining factors weigh in favor of a TRO and preliminary injunction.

The remaining factors—the possibility of harm to other interested parties and the public interest—also weigh in favor of granting a TRO and preliminary injunction and directing the Petitioner’s immediate release. First, Respondents will not be harmed by releasing the Petitioner.

On the contrary, the Petitioner's release will bring the Respondents in conformity with law, which cannot be considered harmful. By enacting the non-detention provision of the TPS statute, Congress clearly indicated that the government does not have an interest in detaining noncitizens granted TPS. Moreover, since Petitioner is in lawful TPS status, he is also shielded from removal while his TPS remains in effect.¹ Therefore, the Respondents will not be prejudiced by a requirement to respect the will of Congress and to abide by its own determinations in this case. Any administrative burden imposed on Respondents by temporarily halting unlawful detention is minimal and far outweighed by the substantial harm Petitioner continues to suffer each day his liberty is denied. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

Second, the public interest is always served when the government acts lawfully. By granting a TRO and preliminary injunction ordering the Petitioner's release, the Court will order the government to follow the TPS statute requiring the Petitioner's release, which is necessarily in the public interest. "In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights." *Council of Alt. Pol. Parties v. Hooks*, 121 F.3d 876, 883–84 (3d Cir. 1997); *see also Deja Vu of Nashville, Inc. v.*, 274 F.3d at 400; *Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention. . ."). The government suffers no cognizable harm from being enjoined from unconstitutional conduct. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.").

¹ The Respondents may seek a removal order in a non-detained removal proceeding. However, under the statute, such removal order cannot be executed while in TPS status. *See Duarte*, 27 F.4th at 1053–54.

Moreover, “[a]s a practical matter, if a Plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor plaintiff.” *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 n.8 (3d Cir. 1994). Petitioner has shown a clear likelihood of success on the merits and will clearly suffer irreparable harm if the Court does not order his release. As such, the balance of equities and the public interest weigh decisively in favor of issuing a temporary restraining order and preliminary injunction.

D. Petitioner has complied with the requirements of Federal Rule of Civil Procedure 65.

Petitioner asks this Court to find that he has complied with the requirements of Fed. R. Civ. P. 65, for the purpose of granting a temporary restraining order. Pursuant to Rule 65(b)(1), this Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if a) “specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the Petitioner before the adverse party can be heard in opposition; and 2) the Petitioner’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Here, Petitioner’s verified petition clearly demonstrates immediate and irreparable injury. The undersigned also has attached a certification regarding notice to opposing counsel. *See Exh. F* (Email from Alejandra Martinez to U.S. Assistant Attorney Lacy L. McAndrew dated September 23, 2025). The U.S. Attorney’s Office represents Respondents in civil litigation in which they are named as respondents. While proper service may not have been made on Respondent’s counsel, for the purpose of Rule 65(b)(1), this Court should find that written notice has, in fact, been provided to the adverse party. In the event this Court finds that not to be the case, it should

nevertheless find that the requirements of Rule 65(b)(1)(A) and (B) have been met. *See Exh. G*, Declaration of Alejandra Martinez.

Rule 65(c) also states that the court may issue a preliminary injunction or 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. Under the circumstances of the instant suit, however, Petitioner respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to release Petitioner from unconstitutional detention, should not result in any conceivable financial damages to Respondents. *See, e.g., Enamorado v. Kaiser*, No. 25-cv-04072-NW, 2025 U.S. Dist. LEXIS 90261, at *6 (N.D. Cal. May 12, 2025).

III. CONCLUSION

For the foregoing reasons, this Court should find that Petitioner warrants a temporary restraining order and a preliminary injunction prohibiting the Respondents from continuing to detain him pending the resolution of his Writ of Habeas Corpus and to order that he be released from custody immediately. *See Munaf v. Geren*, 553 U.S. 674, 693 (2008) (“The typical remedy [for unlawful detention] is, of course, release.”).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on today's date, September 23, 2025, I electronically filed the above Motion for Temporary Restraining Order and Preliminary Injunction by using the Court's CM/ECF system which will automatically send a notice of electronic filing to Respondents' counsel.

/s/ Alejandra Martinez
Alejandra Martinez