

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

KLEIBER ALEXANDER ARIAS
GUDINO,

Petitioner,

v.

CRAIG LOWE, *in his official
capacity as* Warden, Pike County
Correctional Facility, *et al.*,
Respondents.

Case No. 1:25-CV-571

Hon. Karoline Mehalchick,
U.S. District Judge

**OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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Respondents oppose Petitioner Kleiber Alexander Arias Gudino's motion for a temporary restraining order and preliminary injunction requesting immediate release. Injunctive relief is an extraordinary and drastic remedy, which is unnecessary here, where the Petitioner cannot demonstrate a likelihood of success on the merits or irreparable harm.

Immigration and Customs Enforcement are lawfully detaining Gudino based on a violation of the conditions of his supervised release. In the event that Gudino's temporary protected status is withdrawn during the pendency of this motion practice, the legal basis for his habeas petition will vanish, and the Respondents will request dismissal based on mootness. Significantly, Gudino may challenge both the revocation of his supervision, and any potential withdrawal of his temporary protected status, through the administrative process, negating any reason for this Court to intervene. Therefore, Respondent¹ respectfully request that the Court deny and dismiss Gudino's motion.

¹ "In habeas challenges to present physical confinement – 'core challenges' – the default rule is that the proper respondent is the warden of the facility where the prisoner is being held." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Petitioner requests release from confinement. See Doc. 1, Complaint, at 31, ¶¶ 90-92; Doc. 13, Brief in Support of Temporary Restraining Order or Preliminary Injunction, at 31-32. As such, Warden

I. Procedural History

On March 31, 2025, Gudino, an immigration detainee in the custody of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) at the Pike County Correctional Facility, Hawley, PA, filed this instant petition requesting an order holding unlawful the “Respondents’ putative withdrawal of Petitioner’s TPS”; “immediately release[ing] Petitioner from custody”; and “enjoining Respondents from further detaining Petitioner so long as TPS for Venezuela remains in effect and he continues to hold TPS.” Doc. 1, Complaint, at 37. On April 2, 2025, the Honorable Daryl F. Bloom, United States Magistrate Judge, issued an Order to Show Cause directing Respondents to respond to the Petition within twenty-one days, or on or before April 23, 2025. Doc. 5, Order dated April 2, 2025.

On April 7, 2025, Petitioner filed a motion for a temporary restraining order and preliminary injunction. *See* Docs. 10, 13. Specifically, Petitioner requests that this Court issue a temporary

Lowe is the only proper respondent, and the rest of the Respondents should be dismissed.

restraining order and preliminary injunction “directing his release.” Doc. 13 at 32.

On April 8, 2025, the parties appeared before this Court for a scheduling conference. Following the conference, this Court issued an Order directing the Respondents to file opposition to Plaintiff’s motion for a temporary restraining order and preliminary injunction on or before April 11, 2025, with a hearing on the merits scheduled for April 15, 2025. Doc. 15, Scheduling Order. This opposition is filed in accordance with that Order.

II. Pertinent Statutory Background

Temporary Protected Status in General

Pursuant to 8 U.S.C. § 1254a, the Attorney General of the United States “may designate any foreign state or part of a foreign state for Temporary Protected Status” (TPS). *Mejia Rodriguez v. United States Department of Homeland Security*, No. 18-21038, 2019 WL 2211052, at * 2 (S.D. Fl. May 22, 2019). “TPS shields foreign nationals present in the United States from removal during armed conflict, environmental disasters, or other extraordinary conditions in their homelands.” *Sanchez v. Secretary United States Department of Homeland Security*,

967 F.3d 242, 244-45 (3d Cir. 2020), *aff'd sub nom.*, 593 U.S. 409, 141 S.Ct. 1809 (2021) (citing 8 U.S.C. § 1254a).

“To qualify for TPS, an alien who is a national of a designated country must (1) be continuously present in the United States since the effective date of the most recent designation of that country; (2) continuously reside in the United States from the date that the Secretary designates; (3) be admissible as an immigrant, subject to certain exceptions; and (4) register during an appropriate registration period, ‘to the extent and in a manner which the [Secretary] establishes.’” *Villegas-Menjivar v. U.S. Atty. Gen.*, 348 Fed.Appx 105, 107 (11th Cir. 2009) (quoting 8 U.S.C. § 1254a(c)(1)(A)(i)-(iv)). *See also United States v. Orellana*, 405 F.3d 360, 363 (5th Cir. 2005) (listing requirements). Once a noncitizen is granted TPS, the Attorney General shall not detain the individual on the basis of the noncitizen’s immigration status. 8 U.S.C. § 1254a(d)(4).

But “TPS may be withdrawn if the Attorney General finds that a registered alien is statutorily ineligible.” *Id.* at 364; *see also Mejia Rodriguez*, 2019 WL 2211052 at *2 (“TPS may be withdrawn if the person ‘was not in fact eligible at the time such status was granted, or at any

time thereafter becomes ineligible for such status.”) (quoting 8 C.F.R. 244.14(a)(1)). 8 C.F.R. § 244.4 provides that a noncitizen is ineligible for TPS if he has been convicted of any felony or two or more misdemeanors, 8 C.F.R. § 244.4(a), or is a noncitizen described in INA § 208(b)(2)(A). 8 C.F.R. § 244.4(b). Section 208(b)(2)(A) includes a provision that a noncitizen is ineligible if “there are reasonable grounds for regarding the alien as a danger to the security of the United States.” INA § 208(b)(2)(A)(iv).

Recent Events regarding TPS for Venezuela

On March 9, 2021, then Secretary of Homeland Security Alejandro Mayorkas designated Venezuela for TPS. *See* 86 Fed. Reg. 13574, 13577 (Mar. 9, 2021). Secretary Mayorkas extended TPS for Venezuela in September 2022, *see* 87 Fed. Reg. 55024, 55027 (Sept. 8, 2022); October 2023, *see* 88 Fed. Reg. 68130, 68131 (Oct. 3, 2023); and January 2025, *see* 90 Fed. Reg. 5961 (Jan. 17, 2025). Secretary Mayorkas also redesignated Venezuela for TPS, which allowed individuals who had continuously resided in the United States since July 31, 2023, to apply. *See* 88 Fed. Reg. 68130, 68131.

On January 28, 2025, Secretary of Homeland Security Kristi Noem vacated Secretary Mayorkas's January 2025 extension of TPS for Venezuela. *See* 90 Fed. Reg. 8805 (Feb. 3, 2025). Three days later, on February 1, 2025, Secretary Noem terminated the 2023 redesignation. *See* 90 Fed. Reg. 9040 (Feb. 5, 2025). With the termination, Venezuela's redesignation was scheduled to end on April 7, 2025. *Id.* at 9044.

On March 31, 2025, the District Court for the Northern District of California issued a nationwide postponement of the termination of TPS for Venezuela. *See National TPS Alliance v. Noem*, --- F.Supp.3d ---, 2025 WL 957677 (N.D. Cal. Mar. 31, 2025). As a result, TPS remains in effect for Venezuelans who were previously provided such status. *Id.*

President Trump's Designation of Tren de Aragua as a Foreign Terrorist Organization

On February 20, 2025, President Trump designated eight international cartels and transnational organizations as Foreign Terrorist Organizations (FTOs) and Specially Designated Global Terrorists (SDGTs). Presidential Memorandum, Designation of International Cartels, available at <https://www.state.gov/designation-of-international-cartels/> (February 20, 2025). In that memorandum,

President Trump designated Tren de Aragua (TdA) as an FTO and SDGT. *Id.*

III. Factual Background

Gudino, a native and citizen of Venezuela, entered the United States at Eagle Pass, Texas, on or about August 3, 2022. Exhibit 1, Notice to Appear at 1; Exhibit 2, I-213 Record of Deportable/Inadmissible Alien at 2. Border Patrol Agents encountered Gudino near the border, and he admitted that he was not a United States citizen and entered the country by crossing the Rio Grande River. Exhibit 2 at 2. Gudino was placed under arrest. *Id.* Border Patrol Agents provided Gudino with a Notice to Appear, and he was released on his own recognizance with reporting instructions to the closest ICE office near his intended destination. *Id.*

The Notice to Appear charged Gudino as removable from the United States pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), as a noncitizen present in the United States without being admitted or paroled. Exhibit 1 at 1. A Border Patrol Agent served Gudino with the Notice to Appear on August 5, 2022, and he was instructed to appear before an immigration judge of the United States Department of Justice on December 7, 2022, at New York, NY. *Id.*

On November 3, 2023, Gudino filed for temporary protected status with United States Citizenship and Immigration Services (USCIS). See Doc. 1, Exhibit 1.

On January 3, 2024, the Honorable Randa Zagzoug, a United States Immigration Judge, issued a removal order for Gudino. Exhibit 3, Removal Order dated January 3, 2024. Judge Zagzoug's removal order indicated that Gudino did not appear for his hearing, but DHS submitted evidence relating to Gudino and established his removability. *Id.* at 1. Judge Zagzoug ordered Gudino removed to Venezuela. *Id.* at 2.

On April 12, 2024, the Paramus (New Jersey) Police Department arrested Gudino, and he was indicted for organized retail theft, shoplifting, theft, and receiving stolen property. Exhibit 4, I-213 Record of Deportable/Inadmissible Alien at 3. *See also* Doc. 1 at 20, ¶ 56. According to Gudino's Petition, he was accepted into a pre-trial intervention, judicial diversion program. *Id.*

The day after his arrest, April 13, 2024, ICE Enforcement and Removal Operations (ERO) officers encountered Mr. Gudino at the Bergen County (New Jersey) jail. Exhibit 4 at 3. ICE ERO informed Gudino that he was being detained for failure to follow the instructions

of his initial release. *Id.* ICE ERO transported Gudino to the Elizabeth Contract Detention Facility. *Id.* Ultimately, Gudino was detained at Moshannon Valley Processing Center during litigation of his immigration status. *See* Exhibit 5, Notice to EOIR, at 1.

In the intervening time period, Gudino moved to reopen his immigration matter on May 6, 2024. *See* Exhibit 6, Motion to Reopen. Gudino claimed in his motion that he did not believe he had to attend his immigration court hearing because he had applied for TPS. *Id.* at 2. Judge Zagzoug granted Gudino's motion on May 13, 2024. Exhibit 7, Order dated May 13, 2024, at 1-2.

On July 30, 2024, Gudino appeared for a hearing before the Elizabeth, New Jersey immigration court, where he conceded the allegations contained within the Notice to Appear, admitted the allegations, and conceded the charge of removability. *See* Exhibit 8, Gudino Motion to Advance, at 3, ¶ 3. The Honorable Adam Panopoulos, United States Immigration Judge, granted Gudino's motion to move up his hearing date in order to enter a removal order on August 13, 2024. Exhibit 9, Order dated August 13, 2024.

On August 15, 2024, Judge Panopoulos ordered Gudino removed to Venezuela. Exhibit 10, Removal Order dated August 15, 2024. Judge Panopoulos found that Gudino was inadmissible under INA § 212(a)(6)(A)(i), in that he was a noncitizen who was present in the United States without being admitted or paroled. *Id.* at 1. The parties waived the issuance of a formal oral decision, *id.*, and both parties waived an appeal. *Id.* As such, Gudino's removal order was considered administratively final. *See* 8 U.S.C. § 1231(a)(1)(A), (B).²

Gudino remained in ICE custody until November 15, 2024, at which point he was released under an Order of Supervision. *See* Exhibit 11, Order of Supervision. The Order of Supervision contained several conditions, including reporting requirements to an ICE office and limitations on travel. *Id.* at 1. More significantly, an Addendum was included with Gudino's Order of Supervision, which included specific conditions for the Petitioner. *Id.* at 3. ICE required that Gudino "not associate with know [sic] gang members, criminal associates, or be associated with any such activity," and that Gudino "not commit any crimes while on this Order of Supervision." *Id.* At the end of the

² INA § 212(a)(1)(A), (B).

Addendum, it notes that “[a]ny violation of these conditions may result in you being taken into Service custody,” and Gudino signed it. *Id.*

On January 20, 2025, USCIS approved Gudino’s application for temporary protected status. *See* Doc. 1, Exhibit 1.

On March 13, 2025, the Honorable Robert W. Lehrburger, United States Magistrate Judge, issued a search warrant for the ground floor and first floor apartments of 1463 St. Lawrence Avenue, Bronx, New York. Exhibit 12, Search Warrant, at 1. Notably, the search and seizure of the location was related to suspected violations of 18 U.S.C. § 922(g), Possession of a Firearm by a Prohibited Person; 21 U.S.C. § 846, Drug Trafficking Conspiracy; and 18 U.S.C. § 924(c), Use and Possession of a Firearm in Furtherance of a Drug Trafficking Crime. *Id.* Attachment A to the Search Warrant indicates that evidence suspected of being present at the location included firearms, ammunition, controlled substances and their packaging, and proceeds of drug trafficking. *Id.* at 4.

A Federal Bureau of Investigation Task Force executed the search warrant on March 14, 2025, *see* Exhibit 13, I-213 Record of Deportable/Inadmissible Alien at 2, and Gudino was present at the location. *Id.*

The FBI Task Force contacted ICE ERO, and informed ICE that the search warrant was related to an investigation of TdA. *Id.* New York ERO officers responded and took Gudino into custody. *Id.* At this time, his supervision was revoked.

On April 8, 2025, and April 9, 2025, ICE ERO provided Mr. Gudino with official documentation of his Revocation of Release. *See* Exhibit 14, Notice of Supervision Revocation; Exhibit 15, Updated Notice of Supervision Revocation. Gudino's supervision was revoked on March 14, 2025, related to his known association with TdA, TdA gang members, and their criminal activity. Exhibit 15 at 1.

Upon information and belief, following Gudino's detainment, USCIS began a review of the Petitioner's TPS and whether it should be withdrawn for national security reasons given his association with a gang designated as a FTO and SDGT, and a decision on that potential withdrawal is forthcoming.

IV. Questions Presented

- A. Whether the Court should deny injunctive relief given the unlikelihood of success of Gudino's Petition and the alternative means by which he can challenge his detention?**

- B. Whether the Court should deny injunctive relief because has not established irreparable harm, a lack of injury to a third party, or that such an injunction would serve the public interest?**

V. Legal Standard

Injunctive Relief.

“A preliminary injunction ‘is an extraordinary remedy[] [that] should be granted only in limited circumstances.’” *Del. State Sportsmen’s Ass’n v. Del. Dep’t of Safety & Homeland Sec.*, 108 F.4th 194, 200 (3d Cir. 2024) (quoting *Mallet & Co. v. Lacayo*, 16 F.4th 365, 391 (3d Cir. 2021)). Because the remedy is “extraordinary and drastic,” “the movant bears the burden of making ‘a clear showing.’” *Id.* at 202 (emphasis in original) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)). “Furthermore, when the preliminary injunction is directed not merely at preserving the status quo but, as in this case, at providing mandatory relief, the burden on the moving party is particularly heavy.” *Punnett v. Carter*, 621 F.2d 578, 582 (3d Cir. 1980) (citing *United States v. Spectro Foods Corp.*, 544 F.2d 1175, 1181 (3d Cir. 1976)).

District courts have discretion to issue or deny preliminary injunctions, but “precedent guides this discretion.” *Id.* at 201. The

United States Court of Appeals for the Third Circuit recognizes four factors that influence the district court's discretion:

1. A reasonable probability of success on the merits of the claim for which injunctive relief is sought;
2. An irreparable harm in the absence of preliminary relief;
3. A balancing of the equities associated with the possibilities of harms to other interested persons resulting from the grant or denial of injunctive relief; and
4. An assessment of the public interest.

Transcon. Gas Pipe Line Co., LLC v. Pa. Env'tl. Hearing Bd., 108 F.4th 144, 150 (3d Cir. 2024) (quoting *Reilly v. City of Harrisburg*, 858 F.3d 173, 175 (3d Cir. 2017)).

“The first two considerations – a reasonable probability of ultimate success and some harm that cannot be remedied in either law or equity following resolution on the merits – operate both as essential elements and as factors that guide the exercise of equitable discretion.” *Id.* “[T]he failure of the moving party to make either of those threshold showings is fatal to the issuance of a preliminary injunction.” *Id.* *See also Del. State Sportsmen's Ass'n*, 198 F.4th at 202 (“The first two factors are the ‘most critical.’”) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)).

“[A] court then considers the remaining two factors and determines in its sound discretion if all four factors, taken together, balance in favor

of granting the requested preliminary relief,” *Reilly*, 858 F.3d at 179, and the “balance of equities and consideration of the public interest... are pertinent in assessing the propriety of any injunctive relief, preliminary or permanent.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 32 (2008). Nevertheless, “[t]he burden lies with the plaintiff to establish every element in its favor, or the grant of a preliminary injunction is inappropriate.” *P.C. Yonkers, Inc. v. Celebrations the Party & Seasonal Superstore, LLC*, 428 F.3d 504, 508 (3d Cir. 2005).

VI. Argument

A. **The Court should deny Gudino’s motion for injunctive relief because he is unlikely to succeed on the merits.**

This Court should deny Gudino’s motion for injunctive relief because he will not be successful on the merits. First, Gudino is lawfully detained for a violation of his order of supervision. Second, in the event that USCIS withdraws Gudino’s TPS, he is a noncitizen subject to a final order of removal, and the Attorney General may effectuate that removal. Finally, to the extent Gudino’s Petition can be interpreted as a challenge to his underlying order of removal, this Court lacks jurisdiction to render a stay on his removal order or grant injunctive relief. 8 U.S.C. § 1252(g) bars this Court from issuing a stay or an injunction of a removal order.

1. **Gudino will not be successful on the merits because he is lawfully detained based on a violation of the conditions of his supervision.**

Petitioner argues that he is being unlawfully detained because he has TPS. Doc. 1 at 2, ¶ 1; Doc. 13 at 1. While 8 U.S.C. § 1254a(d)(4) provides that an individual with TPS may not be detained based on his immigration status, this provision does not prevent the Attorney General from detaining a noncitizen on another basis. Here, ICE's detention of Gudino is lawful because he violated conditions of his supervision. *See* 8 C.F.R. § 244.4(l)(1) ("Any alien ... who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody.").

Gudino was released on an Order of Supervision on November 15, 2024, *see* Exhibit 11, and he acknowledged the conditions of that supervision. *Id.* at 3. Specifically, ICE required that Gudino "not associate with know [sic] gang members, criminal associates, or be associated with any such activity," and that Gudino "not commit any crimes while on this Order of Supervision." *Id.* Yet, on March 14, 2025, Gudino violated the conditions of his supervision by being in a location

during the execution of a search warrant with known gang members who were found to be engaged in criminal activity. Exhibit 13 at 2.

Contrary to Petitioner's assertions, ICE followed the necessary regulations in revoking Gudino's supervision. *See* 8 C.F.R. § 241.4(l). On April 8, 2025, and April 9, 2025, ICE served Gudino with notices regarding the revocation of his release and the reasons for the revocation. *See* Exhibits 14-15. *See also* 8 C.F.R. § 241.4(l)(1) ("Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole."). Furthermore, upon information and belief, ICE scheduled Gudino for his informal interview, which was moved in order to accommodate the Petitioner's attorney. *Id.* ("The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.").

Perhaps most importantly, Gudino has the opportunity to administratively challenge the revocation of his supervision. 8 C.F.R. § 241.4(l)(3). Pursuant to regulations, a review of Gudino's custody will occur within "approximately three months after release is revoked." *Id.*

The Petitioner is not being detained based solely on his immigration status. Rather, Gudino is being detained because he associated with known gang members, and he was present during their criminal activity, which were violations of the terms of his Order of Supervision. Thus, Gudino is not being detained on the basis of his immigration status, and his detention does not violate 8 U.S.C. § 1254a. If Gudino wishes to challenge the basis for his revocation, he may do so through the administrative process.

2. In the event Gudino's TPS is withdrawn, the basis for his habeas petition will become moot.

Gudino claims that he is being unlawfully detained because he has TPS. Doc. 1 at 2, ¶ 1; Doc. 13 at 1. But if USCIS withdraws Gudino's TPS, the Petitioner is a noncitizen subject to a final order of removal, *see* Exhibit 10, and it is within the Attorney General's power to effectuate such removal. *See* 8 U.S.C. § 1231(a)(2)(A) ("Under no circumstances during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title."). Without such TPS, the basis of Gudino's

underlying petition will vanish, this matter will be moot, and the petition should be dismissed.

At the outset, Respondents do not argue that any email communications between the Petitioner and ICE serve as a basis for withdrawal of Gudino's TPS. *See* Doc. 13 at 18-19. As explained in the Petitioner's brief in support of the motion for a temporary restraining order and preliminary injunction, there is a process by which USCIS may withdraw TPS. *Id.* Again, in the event that TPS is withdrawn, an administrative process exists by which a noncitizen may challenge the withdrawal. *See* 8 C.F.R. § 244.14. A habeas petition is not the proper vehicle.

To the extent that the Petitioner argues that Gudino is not a flight risk or danger to the community in the event that TPS is withdrawn, those arguments are without merit. First, Gudino has been placed on supervision with conditions on two separate occasions. *See* Exhibit 2 at 2; Exhibit 11 at 3. Both times, Gudino failed to comply with the conditions, and both times he was detained by law enforcement related

to criminal activity.³ Second, while Petitioner is correct in stating that he had been out on supervision since November 2024, Doc. 13 at 21, he is incorrect in asserting that he has followed the conditions of that supervision. *Id.* As discussed at length, on March 14, 2025, Gudino violated the terms of his supervision by being in a location during the execution of a search warrant with known gang members who were found to be engaged in criminal activity. *See* Exhibit 11 at 3; Exhibit 13 at 2. His presence at the location further highlights his danger to the community. Moreover, given the fact that Gudino is now aware that TPS withdrawal is being considered, he is less likely to follow any conditions of supervision or return to court on a further release.

In the event that USCIS withdraws Gudino's TPS during the pendency of motion practice or this habeas petition, and the basis for Petitioner's relief is resolved, the Respondents will request that the Court deem this matter moot, deny the motion, and dismiss the petition.

3. This Court lacks jurisdiction to stay removal orders pursuant to 8 U.S.C. § 1252(g).

³ It should be noted that in addition to failing to comply with the conditions of supervision, Gudino is currently on pre-trial diversion for his New Jersey indictment. *See* Doc. 1 at 20, ¶ 56.

To the extent that this habeas petition may be construed as a challenge to Gudino's administratively final order of removal, this Court lacks jurisdiction to review the Attorney General's effectuation of that order, and the petition should be dismissed. "In 1996, Congress amended the Immigration and Nationality Act to add § 1252(b)(9) and (g). It aimed to prevent removal proceedings from becoming 'fragment[ed], and hence prolong[ed].'" *Tazu*, 975 F.3d at 296, *citing Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999). Because of that amendment, "[f]ederal district courts rarely have jurisdiction to hear disputes relating to removal." *E.O.H.C. v. Secretary United States Department of Homeland Security*, 950 F.3d 177, 180 (3d Cir. 2020).

8 U.S.C. § 1252(g) is narrowly tailored to limit the ability of federal courts to consider challenges to the decisions or actions of the Attorney General in three specific categories. Specifically, 8 U.S.C. § 1252(g) bars federal district courts from hearing "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders*" (emphasis added).

In *Tazu*, the Court of Appeals for the Third Circuit addressed the impact of 8 U.S.C. § 1252(g) on the jurisdiction of federal district courts. 975 F.3d at 296. After an initial legal entry, Tazu was ordered to voluntarily depart, but the order transferred to a removal when he failed to leave the United States. *Id.* at 294. Following an unsuccessful appeal to the BIA, the petitioner remained in the country for another six years before being detained for removal. *Id.* Tazu filed a motion to reopen with the BIA, which was denied. *Id.* When the petitioner's country of origin failed to cooperate with the government, he was placed on supervised release. *Id.* at 294-95. While on supervised release, the petitioner began the process of applying for an unlawful presence waiver through family contacts. *Id.* at 295. When the petitioner was detained for removal shortly thereafter, he filed a habeas corpus petition challenging his detention and requesting a stay of his removal order. *Id.* The petitioner argued that his due process rights were being violated by removing him during his application for a provisional waiver. *Id.* The petitioner challenged both his removal order and the timing of the execution of that order. *Id.* at 296.

The Third Circuit dismissed Tazu’s petition, finding that the district court lacked jurisdiction to consider a habeas claim and that the appropriate avenue was a petition for review of the removal order in the Court of Appeals. *Id.* at 296-300.⁴ The Third Circuit explained that if a petitioner challenged the Attorney General’s decision or action in one of the three specific categories listed above, 8 U.S.C. § 1252(g) funneled review of that matter into the Court of Appeals and removed the district court’s jurisdiction. *Id.* at 296. Notably, the Third Circuit also found that a district court was barred from reviewing a challenge to the timing of the execution of the removal order. *Id.* at 297 (“the discretion to decide whether to execute a removal order includes the discretion to decide when to do it”).

Since *Tazu*, the Third Circuit, courts in the Middle District of Pennsylvania, and other federal district courts in the circuit have dismissed petitions challenging immigration detention due to a lack of jurisdiction. *See Hector G.M. v. Warden Elizabeth Detention Center*, 2021 WL 5320854, *1 (3d Cir. 2021) (“Congress has jurisdictionally

⁴ Tazu also pursued a review of his petition, but in the Second Circuit. *Id.* The Third Circuit indicated that the petition of review in the Second Circuit was the appropriate venue for these challenges. *Id.*

excluded habeas petitions as a means of challenging the execution of removal orders, so we will affirm the judgment of the District Court dismissing this case on jurisdictional grounds.”); *Dannu v. ICE*, 2021 WL 916191, *4 (M.D. Pa. March 10, 2021) (Wilson, J.) (citing *Tazu*, Judge Wilson stated that the Court did not “have jurisdiction to stay Dannu’s removal.”); *Sydykov v. Immigration and Customs Enforcement*, 2021 WL 2222732, 3* n. 2 (M.D. Pa. June 2, 2021) (Wilson, J.) (“this Court does not have jurisdiction to review the decisions of the IJ or the BIA as to [due process claim]”); *Romeo S. K. v. Barr*, 2020 WL 7640538, *4 (D. N.J. December 23, 2020) (“[b]ased upon the Third Circuit’s ruling in *Tazu*, I must find I lack jurisdiction under §1252(b)(9) and § 1252(g).”); *Stevens G. v. Anderson*, 2021 WL 3362556, *4 (D. N.J. August 3, 2021) (“Petitioner’s request for a restraining order staying his removal is a challenge to the Attorney General’s ability to execute an order of removal. Thus, based on *Tazu*, the Court lacks jurisdiction under § 1252(b)(9) and § 1252(g)”); and *Obado v. Superior Court of New Jersey Middlesex County*, 2022 WL 283133 (D. N.J. January 31, 2022) (holding that the Court did not have jurisdiction to terminate a Notice to Appear and halt immigration proceedings).

In *E.O.H.C.*, the Third Circuit further explained the typical manner in which an alien detainee may challenge his detention:

an alien must typically litigate his removal-related claims before an immigration judge. Then, after an order of removal, he may appeal to the Board of Immigration Appeals. Only after that may he file a petition for review with a court of appeals.

950 F.3d 177 at 180. Not only did the INA amendment bar “challenging removal orders in district court,” the revision to the statute removed jurisdiction of district courts “to review most claims that even relate to removal.” *Id.* at 184. “§ 1252(b)(9) provides that if a legal claim ‘aris[es] from any action taken or proceeding brought to remove an alien,’ then ‘[j]udicial review of all questions of law and fact ... shall be available only in judicial review of a final order’ of removal. Because judicial review of a final order of removal is available only in the court of appeals, district courts cannot review these ‘arising from’ claims either.” *Id.* Therefore, in this matter, 8 U.S.C. § 1252(g) bars this Court from placing a stay on the removal proceedings or granting injunctive relief.

As noted above, in the event that USCIS withdraws Gudino’s TPS, the Petitioner is a noncitizen subject to a final order of removal, and it is within the Attorney General’s power to effectuate such removal. 8 C.F.R. § 244.14(b) outlines the process by which a noncitizen may challenge

USCIS's decision to withdraw TPS, and a habeas petition is not the proper vehicle. While the basis of Gudino's underlying petition will be absent without TPS, this Court will also lack jurisdiction to stay or issue an injunction related to the Petitioner's underlying removal order.

B. Petitioner does not meet the legal criteria for imposition of a preliminary injunction where it has not established irreparable harm, a lack of injury to a third party, or that such an injunction would serve the public interest.

1. Gudino cannot demonstrate irreparable harm.

Gudino is also unable to satisfy the second requirement for injunctive relief, because he cannot show that he is likely to experience irreparable harm without the injunction. *See Adams v. Freedom Forge Corp.*, 204 F.3d 475, 484-85 (3d Cir. 2000) (plaintiff must “demonstrate[] a significant risk that he or she will experience harm that cannot adequately be compensated after the fact by monetary damages. This is not an easy burden.”). As the Third Circuit has explained:

In order to demonstrate irreparable harm the plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial. The preliminary injunction must be the *only* way of protecting the plaintiff from harm.

Campbell Soup Co. v. ConAgra, Inc., 977 F.2d 86, 91 (3d Cir. 1992) (quoting *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989)) (emphasis in original).

Here, as noted above, Gudino has administrative means by which to challenge the revocation of his release on supervision. Likewise, if his TPS is withdrawn, he will have an ability to challenge that decision through an administrative process. Therefore, Gudino cannot show irreparable harm with alternative means of challenging his detention.

2. Injunctive relief would harm a third party.

At the outset, because the Petitioner has not demonstrated either of the first two requirements for injunctive relief, the Court should deny Gudino's motion without consideration of the third and fourth factors. However, the third and fourth factors also do not favor injunctive relief.

Gudino has named several different Respondents, but they are all sued in their official capacities as representatives of the United States Government's immigration system. The real party of interest in this litigation is the administration, and its ability to execute immigration laws. Here, the Government's ability to effectively administer immigration laws will be harmed. The Congress has established detailed

mechanisms by which a noncitizen can challenge his revocation of supervision and/or withdrawal of TPS. The administrative process allows for the agencies to apply, interpret, or revise policies, regulations, or statutes without possibly premature judicial review. Furthermore, as noted above, the administrative process allows for greater efficiency in conducting the immigration system as a whole. If the Court grants Petitioner the relief he has requested, it would interfere with the agency's administration of this complex program.

Notwithstanding that fact, Gudino has already received a considerable amount of process. He has litigated his underlying removal order, received a release on an Order of Supervision, and received TPS, only to violate the conditions of his supervision and be on the cusp of losing TPS. Gudino now asks this Court to ignore administrative processes by which he can further challenge his detention and potential withdrawal of TPS. This Court should direct him back to those administrative remedies.

3. Denial of Gudino's motion serves the public's interest.

Additionally, a denial of Gudino's petition would serve the public interest, as it would confirm the statutory framework set forth by

Congress and ensure the removal proceedings are not fragmented. In *Tazu*, the Third Circuit noted that the amendment of the INA in 1996 was an attempt to streamline the immigration process and centralize it in one Court of Appeals. 975 F.3d at 296. By denying Gudino's petition, the Court would solidify the process by which the Congress has instituted as the avenue for immigration detainees to challenge their detention. Here, Gudino lacks a basis for an injunction.

VII. Conclusion

Due to the aforementioned reasons, the Court should deny Gudino's motion for injunctive relief.

Respectfully submitted,

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Dated: June 2, 2023

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

KLEIBER ALEXANDER ARIAS
GUDINO,

Petitioner,

v.

CRAIG LOWE, *in his official
capacity as* Warden, Pike County
Correctional Facility, *et al.*,
Respondents.

Case No. 1:25-CV-571

Hon. Karoline Mehalchick,
U.S. District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on April 11, 2025, she served a copy of the attached

**OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

via Electronic Filing:

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Vanessa Stine, Esq.

/s/ Stephanie Kakareka
STEPHANIE KAKAREKA
Legal Assistant