

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Jean Emmanuel Pierre,

Petitioner,

v.

25-cv-02248

Pamela Bondi, Attorney General;

Kristi Noem, Secretary, U.S. Department  
of Homeland Security;

Peter Berg, Director, Ft. Snelling Field  
Office Immigration and Customs  
Enforcement;

and,

Eric Tollefson, Sheriff of Kandiyohi  
County,

Respondents.

MEMORANDUM IN SUPPORT  
OF EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING  
ORDER

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**INTRODUCTION**

Pursuant to Counts 1 and 4 of Petitioner's Petition for Habeas Corpus, Petitioner Jean Emmanuel Pierre requests a Temporary Restraining Order to (i) enjoin Respondents from moving Petitioner outside of the geographic boundaries of the District of Minnesota.

Temporary Protective Status (“TPS”) holders cannot be detained, 8 U.S.C. § 1254a(d)(4), and noncriminal aliens are eligible for bond so long as they are not arriving aliens. 8 U.S.C. § 1226(a)(2)(A). Petitioner is a noncriminal TPS holder who was initially admitted on a B2 visitor visa before departing and reentering the United States pursuant to TPS travel authorization. 8 U.S.C. § 1254a(f)(3). He cannot be detained and even if he could, he would be eligible for bond. As Petitioner is likely to prevail on the merits of his case, unlawful detention is an irreparable harm, and the government has no interest in unlawfully detaining Petitioner anywhere, this TRO should be granted.

### **FACTS**

Petitioner, a native and citizen of Haiti, was lawfully admitted as a B-2 visitor on January 25, 2010. Petitioner’s initial application for TPS was filed on June 25, 2010, and denied on September 28, 2010. A little more than a year later, on November 15, 2011, Petitioner applied for TPS again and was approved on January 11, 2012. TPS Haiti was extended again, and Petitioner’s status was extended on January 23, 2013, July 23, 2014, January 23, 2016, January 22, 2018, with the final approval running through July 22, 2019.

On January 18, 2018, while Petitioner held TPS, Respondents sought to terminate TPS Haiti, see Termination of the Designation of Haiti for Temporary Protected Status, 83 Fed. Reg. 2,648 (Jan. 18, 2018), but were enjoined from doing

so in Ramos v. Nielsen, 321 F.Supp.3d 1083 (N.D. Cal. Oct. 3, 2018), which challenged the termination of TPS for Haiti, among other countries. The district court ordered the automatic extension of TPS during the pendency of the case through the issuance of a preliminary injunction on October 3, 2018, meaning that Petitioner maintained his TPS status pursuant to that injunction.

In order to comply with the court's injunction, Respondents announced that "Beneficiaries under the TPS designation for Haiti will retain their TPS while either of the preliminary injunctions in Ramos or Saget remain in effect, provided that an alien's TPS is not withdrawn because of individual ineligibility." 85 Fed. Reg. 79,208 (Dec. 9, 2020). This extended Pierre's TPS, pursuant to the Ramos injunction, through October 4, 2021. Id. While Petitioner's TPS was extended, Petitioner applied for and received TPS travel authorization on July 1, 2021. Using this travel authorization, Petitioner travelled outside of the United States and returned on August 10, 2021, through the Ft. Lauderdale Port of Entry. Upon his arrival at the Fort Lauderdale airport, U.S. Customs & Border Protection stamped "paroled until August 8, 2022" on Petitioner's TPS travel document, though this was not the correct legal description of his entry status.

On November 16, 2022, USCIS specifically announced the "[e]xtension of the designation of Haiti for TPS from Feb. 4, 2023, through Aug. 3, 2024, and the redesignation of Haiti for TPS from Feb. 4, 2023, through Aug. 3, 2024" but noted

that “[f]ailure to submit an application under the new designation of Haiti, however, does not affect the continuation of the validity of the TPS and TPS documents through June 30, 2024 if the individual was granted TPS under the 2011 designation for Haiti that the court has continued as long as the injunction exists, and as described in this notice.” 87 Fed. Reg. 68,717 (Nov. 16, 2022).

More recently, Respondents “extend[ed] the designation of Haiti for Temporary Protected Status (TPS) and redesignat[ed] Haiti for TPS for 18 months, beginning on August 4, 2024, and ending on February 3, 2026.” 89 Fed. Reg. 54,484 (July 1, 2024). “The extension allow[ed] existing TPS beneficiaries to retain TPS through February 3, 2026, if they otherwise continue[d] to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish[ed] to extend their status through February 3, 2026, [had to] re-register during the 60-day re-registration period” that ran “from July 1, 2024, through August 30, 2024.” *Id.* Petitioner filed his application during the mandatory 60-day period for seeking an extension of his 2011 TPS benefit by filing on July 31, 2024. This extension application remains pending.

On April 1, 2025, Respondents took Pierre into custody when USCBP encountered Pierre in North Dakota. Respondents served its Notice to Appear on Pierre, alleging that he is an arriving alien because of his authorized travel. Plaintiff sought a custody redetermination hearing before the immigration court

sitting in Ft. Snelling, Minnesota and the immigration court denied the request, asserting Petitioner is an arriving alien. Petitioner filed two motions to reconsider his bond decision, and a motion to terminate proceedings, all of which were denied. Petitioner has filed an additional motion to reconsider the denial of his motion to terminate. This motion remains pending.

## ARGUMENT

### **I. A Temporary Restraining Order is Appropriate.**

“[T]he standard for analyzing a motion for a temporary restraining order is the same as a motion for a preliminary injunction.” Tumey v. Mycroft AI, Inc., 27 F.4th 657, 665 (8th Cir. 2022). The relevant factors are: 1) the likelihood of irreparable harm; 2) the likelihood of success on the merits; 3) relevant hardships, and 4) public interest. See Dataphase Systems Inc. v. CL Systems Inc., 640 F.2d 109, 112 (8th Cir. 1981). The Eighth Circuit has held that the first two factors are particularly important as they comprise what is known as the “traditional test” employed to evaluate the necessity of a Temporary Restraining Order (“TRO”). Id. at 12. Petitioner maintains that weighing of these factors militates towards the Court granting this motion.

#### **1) Likelihood of Irreparable Harm**

At the outset, “the equitable balancing test a court must conduct using the Dataphase factors requires an initial determination that threatened irreparable harm

exists.” Gelco Corp. v. Coniston Partners, 811 F.2d 414, 420 (8th Cir. 1987). It most certainly does in this case.

As Minnesota federal district courts have recognized “a loss of liberty ... is perhaps the best example of irreparable harm.” Matacua v. Frank, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018). See also Farella v. Anglin, 734 F. Supp. 3d 863, 885 (W.D. Ark. 2024). Indeed, “[f]reedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause,” Zadvydas v. Davis, 533 U.S. 678, 679 (2001). Petitioner has been detained since April 1, 2025, despite holding TPS, which statutorily prohibits such detention. Moreover, he has been denied a bond hearing, for which he is statutorily eligible. On April 10, 2025, April 11, 2025, and May 15, 2025, Respondents denied Petitioner access to relief from detention to which he is accorded a right under the law.

Since that time, he has remained “detained at the Kandiyohi County Jail, which is ‘not meaningfully different from a penal institution for criminal detention.’” Ararso U.M. v. Barr, No. 19-CV-3046 (PAM/DTS), 2020 WL 1452480, at \*4 (D. Minn. Mar. 10, 2020) (citing Jamal A. v. Whitaker, 358 F. Supp. 3d 853, 860 (D. Minn. 2019)). This is despite a total absence of criminal history or contacts with law enforcement. This is irreparable harm on its own, but Petitioner will be further harmed if Respondents are not enjoined from transferring him to a detention facility in another state.

Petitioner is aware of other detained aliens similarly fighting both removal and detention, who have been transferred around the country, causing loss of access to their counsel and support networks, and significantly delaying any proceedings and due process they are owed. See Khalil v. Joyce, et al., 1:25-cv-01935-JMF (S.D.N.Y. Mar. 8, 2025); Ozturk v. Hyde, No. 25-1019, 2025 WL 1318154 (2d Cir. May 7, 2025); Khalil v. Joyce, No. 25-CV-01963, 2025 WL 972959 (D.N.J. Apr. 1, 2025).

In-person meetings between immigrants and their attorneys are necessary for all aspects of representation in immigration proceedings including: (1) conducting an assessment of clients' legal claims and eligibility for relief; (2) interviewing clients to obtain a lengthy personal declaration that often details traumatic facts about physical, sexual, and other violence; (3) counseling clients as to their legal options and developments in their case; (4) obtaining signatures on applications and release forms when seeking client records from outside agencies; and (5) preparing clients to testify in court, including to face cross-examination by an experienced ICE attorney. A transfer further impedes these vital attorney-client exchanges by limiting the means by which Petitioner and his attorneys can communicate confidentially. Moving Petitioner out of this District, therefore, inhibits these crucial attorney-client communications. Given the time sensitive nature of continued unlawful detention, this too is irreparable harm.

The aforementioned issues establish irreparable harm and justify the prompt issuance of a TRO in this matter ordering Respondents not to transfer Petitioner out of Minnesota. Thus, this Court should issue a TRO to prevent irreparable harm to Petitioner arising from deprivations of due process in violation of Petitioner's Fifth Amendment rights.

Plaintiff avers that he has demonstrated the requisite irreparable harm.

## **2) Likelihood of Success on Merits**

“While no single factor is determinative, the probability of success factor is the most significant” in determining whether to grant a TRO or preliminary injunction. Home Instead, Inc. v. Florance, 721 F.3d 494, 497 (8th Cir. 2013). Analyzing the likelihood of a party's success on the merits is not an inquiry aimed at pinning down the mathematical probability that a plaintiff will prevail on the merits. Rather, the court seeks to ascertain whether the “balance of equities so favors the movant that justice requires the Court to intervene to preserve the status quo until the merits are determined.” Dataphase Systems, 640 F.2d at 113 (8th Cir. 1981).

### **a. Petitioner Holds TPS and Cannot be Detained**

Petitioner is almost assured to succeed on the merits of his case. First, under the applicable law and guidance, Petitioner holds TPS and cannot be detained as a result. As a preliminary matter, “[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." 8 U.S.C. § 1254a(d)(4). If Petitioner holds TPS, his detention is unlawful.

TPS is generally authorized for "not less than 6 months and not more than 18 months." 8 U.S.C. § 1254a(b)(2)(B). Subsequent to an initial designation, the Attorney General conducts a review of the designation and either terminates the designation or extends the designation through publication in the Federal Register. See 8 U.S.C. § 1254a(b)(3)(A). If the designation is not terminated, "the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months)." 8 U.S.C. § 1254a(b)(3)(C).

The statutes further make it clear that benefits accruing from TPS remain in effect "during the initial period of designation of the foreign state (or part thereof) involved **and any extension of such period.**" 8 U.S.C. § 1254a(d)(2). As long as Petitioner held TPS and the TPS designation for Haiti has been extended, then Petitioner cannot be detained.

Petitioner held TPS through July 22, 2019. In 2018, the first Trump administration sought to terminate the TPS designation for Haiti but was enjoined from doing so in Ramos v. Nielsen, 321 F.Supp.3d 1083 (N.D. Cal. Oct. 3, 2018). Under the terms of the injunction in Ramos and the subsequent Federal Register notices, "Beneficiaries under the TPS designation for Haiti will retain their TPS

while either of the preliminary injunctions in Ramos or Saget remain in effect, provided that an alien's TPS is not withdrawn because of individual ineligibility." 85 Fed. Reg. 79,208 (Dec. 9, 2020). Petitioner was such a beneficiary and his TPS was extended pursuant to Ramos.

Subsequent to this action, Respondents "extend[ed] the designation of Haiti for TPS and redesignat[ed] Haiti for TPS for 18 months, beginning on August 4, 2024, and ending on February 3, 2026." 89 Fed. Reg. 54,484 (July 1, 2024).<sup>1</sup> Petitioner applied to extend his TPS pursuant to this extension on July 31, 2024. As such, the benefits of his Temporary Protected Status have continued to run through "any extension of [the initial designation] period." 8 U.S.C. § 1254a(d)(2). Accordingly, his detention is unlawful.

This is consistent with recent precedents from around the country. In Rojas v. Venegas, the Southern District of Texas held that "a Venezuelan national with valid Temporary Protected Status and was wrongfully detained under 8 U.S.C. 1254a(a)(1)(A)." No. 1:25-CV-00056, 2025 WL 996421, at \*1 (S.D. Tex. Apr. 2, 2025). Similarly, in Sanchez Puentes v. Garite, the Western District of Texas held that "[t]he TPS statute unambiguously provides that "[a]n alien provided temporary protected status under this section shall not be detained by the Attorney

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<sup>1</sup> The subsequent partial vacatur of TPS shortened the period of the TPS extension from February 3, 2026, to August 30, 2025, but that is irrelevant here. See 90 Fed. Reg. 10,511 (Feb. 24, 2025).

General on the basis of the alien's immigration status in the United States.” No. EP-25-CV-00127-DB, 2025 WL 1203179 (W.D. Tex. Apr. 25, 2025) (citing 8 U.S.C. § 1254a(d)(4)). Finally, in Laguna v. Lyons, the Western district of Texas once again held that “[t]he TPS statute 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.’” No. 1:25-CV-00558-RP-SH, 2025 WL 1173438, at \*1 (W.D. Tex. Apr. 17, 2025).

The gist is simple. If the statute says Petitioner cannot be detained, then he cannot be detained.

**b. Petitioner is not an arriving alien and is therefore entitled to a bond hearing.**

Petitioner was first admitted to the United States on B-2 visitor visa on January 25, 2010. Since that time, he has held TPS, and in 2021, Petitioner departed the United States pursuant to valid TPS travel authorization and reentered the United States on August 10, 2021. Respondents erroneously claim that this travel transformed Respondent from a B-2 nonimmigrant admitted to the United States into an arriving alien paroled into the country pursuant to 8 U.S.C. § 1182(d)(5). Respondents are wrong as a matter of statutory interpretation and administrative caselaw.

The statutory framework makes this clear. As one of the benefits of TPS

status, “the alien may travel abroad with the prior consent of the Attorney General.” 8 U.S.C. § 1254a(f)(3). As a matter of statutory interpretation, it is clear that TPS travel authority, bestowed pursuant to and 8 U.S.C. § 1254a(f)(3), and advanced parole, under 8 U.S.C. § 1182(d)(5), are different things. As a matter of plain language, a TPS holder “**may travel abroad** with the prior **consent** of the Attorney General.” 8 U.S.C. § 1254a(f)(3). The parole provision notes that “[t]he Secretary of Homeland Security may, ... in his **discretion parole into the United States** temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien **applying for admission** to the United States ... .” 8 U.S.C. § 1182(d)(5) (emphasis added).

While the TPS travel authorization contemplates a person who is already in the United States’s ability to travel abroad without abandoning TPS status with the “consent” of the Attorney General, the parole authority is a wholly different power delegated to the “discretion” of the Secretary of Homeland Security, which contemplates the parole of a person asking for admission to the United States into the United States from a place outside of the country’s borders. One applies to those already in the United States, the other facially applies to those seeking entry “into the United States.” They are not the same.

If that were not clear enough on its face, “a grant of TPS to a noncitizen

who has entered the United States unlawfully is not a lawful ‘admission’ to the United States, as would make the noncitizen eligible for adjustment to LPR status.” Sanchez v. Mayorkas, 593 U.S. 409 (2021). “[A] grant of TPS does not constitute an ‘admission’ into the United States.” Id. at 413 (citing Sanchez v. Secretary U. S. Dept. of Homeland Security, 967 F.3d 242, 252 (2020)). Therefore, an applicant for TPS is not “applying for admission to the United States” as contemplated for parole under 8 U.S.C. § 1182(d)(5).

This is further born out in subsequent legislation. In the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Congress enacted a provision specifically addressing travel abroad for TPS recipients at section 304(c), which provides:

- (1) In the case of an alien described in paragraph (2) whom the [Secretary of Homeland Security] authorizes to travel abroad temporarily and who returns to the United States in accordance with such authorization—
  - (A) the alien shall be inspected and admitted **in the same immigration status the alien had at the time of departure if—**
    - (i) in the case of an alien described in paragraph (2)(A), the alien is found not to be excludable on a ground of exclusion referred to in section 301(a)(1) of the Immigration Act of 1990, or
    - (ii) in the case of an alien described in paragraph (2)(B), the alien is found not to be excludable on a ground of exclusion referred to in section

244A(c)(2)(A)(iii) of the Immigration and Nationality Act; and

(B) the alien shall not be considered, by reason of such authorized departure, to have failed to maintain continuous physical presence in the United States for purposes of section 244(a) of the Immigration and Nationality Act if the absence meets the requirements of section 244(b)(2) of such Act.

(2) Aliens described in this paragraph are the following:

(A) Aliens provided benefits under section 301 of the Immigration Act of 1990 (relating to family unity).

(B) Aliens provided temporary protected status under section 244A of the Immigration and Nationality Act ...

Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, § 304(c), Pub. L. No. 102-232, 105 Stat. 1733 (amending 8 U.S.C. § 1254a, Note 3) (emphasis added).

Clearly, Petitioner was admitted, pursuant to 8 U.S.C. § 1254a(f)(3), “in the same immigration status” that he was admitted in when he departed the United States pursuant to the Attorney General’s consent under 8 U.S.C. § 1254a(f)(3): that is as a B-2 overstay. That B-2 admission, while overstayed, still remained valid as an “admission” for all purposes of the Act. That is the status with which Petitioner returned to the United States through Fort Lauderdale on August 10, 2021.

The Department of Homeland Security’s own reasoning in Matter of Z-R-Z-

C-, confirms this analysis. Adopted Decision 2020-02 (AAO Aug. 20, 2020). In that decision, the Department of Homeland Security expressly held that “[a] Temporary Protected Status (TPS) recipient who is granted authorization to temporarily travel abroad and subsequently reenters the United States using a Department of Homeland Security (DHS)-issued travel document resumes the same immigration status the alien had at the time of departure,” further noting that “[a] TPS recipient’s immigration status does not change upon reentry, even if the DHS-issued, TPS-based travel document or the DHS-issued arrival document refers to parole.” Id. Specifically, the Department reasoned that “notwithstanding the advance parole designation reflected on the travel document, such return from TPS-authorized travel does not result in a parole status.” Id. at 7.

The Department also pointed to a pair of advisory opinions issued by Immigration and Naturalization Service’s General counsel confirming that “Congress did not intend TPS-authorized travel to ‘be treated the same way as the grant of advance parole.’” Id. at 4-5 (citing Memorandum from Grover Joseph Rees III, General Counsel, INS to James A. Puleo, Assoc. Comm’r, Examinations, INS, Travel Authorization for Aliens Granted TPS, INS Gen. Counsel Op. No. 92-10, 1992 WL 1369349, at 1 (Feb. 27, 1992)). See also id. at 5 (citing Memorandum from Paul W. Virtue, Acting General Counsel, INS to Lawrence J. Weinig, Acting Assoc. Comm’r, Examinations, Travel Permission for Temporary Protected Status

(TPS) Registrants, INS Gen. Counsel Op. No. 93-51, 1993 WL 1503998, at 1 (Aug. 4, 1993) (“a TPS recipient ‘who travels abroad and then returns is to be ‘inspected and admitted in the same immigration status the alien had at the time of departure.’”).

Finally, Petitioner clearly does not fit the regulatory definition of an “arriving alien.” Respondents define that term as “an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.” 8 C.F.R. § 1.2. When Petitioner arrived at the border, he was seeking “admit[ion] in the same immigration status the alien had at the time of departure,” MITNA, § 304(c)(1)(A), Pub. L. No. 102-232, 105 Stat. 1733 (1991), but when he was allowed to enter the country, pursuant to 8 U.S.C. § 1254a(f)(3), he was “admitted in the same immigration status the alien had at the time of departure,” *id.*, and having been admitted, he is no longer seeking admission. The “arriving alien” provision does not apply.

Because the arriving alien provision is inapplicable, “the Attorney General ... may release [Petitioner] on bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General.” 8 U.S.C. §

1226(a)(2)(A). If he were an arriving alien, that would not be the case. See 8 C.F.R. § 1003.19 (h)(2)(i)(B) (“an immigration judge may not redetermine conditions of custody imposed by the Service with respect to ... [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act”).

Because Petitioner first entered the United States in B-2 nonimmigrant status, he was readmitted to the United States in an overstayed a B-2 nonimmigrant status upon his return from authorized travel under 8 U.S.C. § 1254a(f)(3). He was not transformed into an arriving alien by dint of his authorized travel, so he is eligible for a bond today.

### **3) Relevant Hardships and Public Interest**

“The balance of the equities and the public interest ... factors merge [when] the federal government is the party opposing the injunction.” Missouri v. Trump, 128 F.4th 979, 996–97 (8th Cir. 2025). These factors require the Court to consider “whether the movant’s likely harm without a preliminary injunction exceeds the nonmovant’s likely harm with a preliminary injunction in place.” Cigna Corp. v. Bricker, 103 F.4th 1336, 1347 (8th Cir. 2024).

The harms to Petitioner have been articulated, supra § 1, and they are severe. In contrast, “[t]here is generally no public interest in the perpetuation of unlawful agency action.” Missouri v. Trump, 128 F.4th at 997. The Eighth Circuit

has also noted that the federal interest in an action is “minimal” where the plaintiff has illustrated a “strong likelihood of success in showing it exceeds agency authority.” *Id.* As that is precisely the case here, all factors favor the issuance of a TRO.

### **CONCLUSION**

The evidence compels the conclusion that Petitioner, who has demonstrated a strong likelihood of success on the merits, will suffer significantly and irreparably in the absence of a TRO. As such, a TRO must be granted, enjoining Respondents from moving Petitioner outside of Minnesota.

Respectfully submitted,

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