

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FADEL ALI AL MASRI,)
Petitioner,)
v.)
KRISTI NOEM, Secretary of the Department) CIVIL ACTION NO.: 7:25-cv-00407
of Homeland Security ("DHS"); TODD)
LYONS, Acting Director of Immigration and)
Customs Enforcement ("ICE"); MIGUEL)
VERGARA, ICE Enforcement and Removal)
Operations, Harlingen Field Office Director;)
PAMELA BONDI, Attorney General of the)
United States; and WARDEN, EL VALLE)
DETENTION FACILITY,)
Respondents.)
)

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

Petitioner, Fadel Ali Al Masri, is a 26-year-old Lebanese national who has been detained by ICE at the El Valle Detention Facility since September 5, 2024. He is *prima facie* eligible for TPS because DHS designated Lebanon for TPS on November 27, 2024, based on unsafe conditions in the country. Despite filing his TPS applications in March and April 2025, ICE officers have repeatedly and deliberately refused to facilitate his biometrics appointments, effectively blocking adjudication of his TPS application. Absent immediate Court intervention, Petitioner faces irreparable harm: the denial or abandonment of his TPS application through no

fault of his own, continued unlawful detention beyond the statutory removal period, and further deterioration of his physical and mental health.

STATEMENT OF FACTS

Petitioner incorporates by reference the Factual Background from his Amended Petition for Writ of Habeas Corpus (filed September 5, 2025). [Dkt. 5]. Petitioner entered the United States without inspection on September 5, 2024. [See Ex. A ¶2]. He applied for asylum but was denied by an Immigration Judge on February 13, 2025, and withdrew his appeal on July 24, 2025, rendering his removal order final. [See Ex. B ¶3]. On November 27, 2024, DHS designated Lebanon for TPS, effective until May 27, 2026, due to ongoing extraordinary and temporary conditions. [See Designation of Lebanon for TPS, 89 Fed. Reg. 93641 (Nov. 27, 2024)]. Petitioner filed his first TPS application on March 1, 2025, but ICE refused to facilitate his biometrics appointment. [See Ex. A ¶5]. He re-filed on April 11, 2025, and was scheduled for biometrics on May 1, 2025. [See Ex. A ¶5; Ex. C]. ICE again refused to transport him or release his biometrics to the USCIS. Officer Samuel Leal told Petitioner: “I will not take you, and you will never leave prison.” [See Ex. A ¶5]. On August 28, 2025, Petitioner had another biometrics appointment scheduled. [See Ex. B ¶¶ 5-10]. ICE informed him only one day prior that they would not transport him, effectively ensuring denial of his TPS application. Petitioner has submitted multiple release requests—both *pro se* and through counsel—all denied without explanation. *Id.* Petitioner’s detention exceeds the 90-day removal period under 8 U.S.C. § 1231(a)(1)(A), with no significant likelihood of removal in the reasonably foreseeable future due to TPS protections.

LEGAL STANDARD

To obtain a TRO or preliminary injunction, Petitioner must demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if relief is denied; (3) that the threatened injury outweighs any harm the injunction might cause Respondents; and (4) that the injunction will not disserve the public interest. *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The same standard governs both TROs and preliminary injunctions. *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987). The decision lies within the Court's discretion. See *Moore v. Brown*, 868 F.3d 398, 402 (5th Cir. 2017).

For a TRO issued *ex parte*, Petitioner must also show that immediate and irreparable injury will result before Respondents can be heard in opposition, and counsel must certify efforts to provide notice or reasons why notice should not be required. Fed. R. Civ. P. 65(b)(1). Here, the urgency of preventing TPS denial and ongoing unlawful detention justifies *ex parte* relief, as detailed in the accompanying declaration.

ARGUMENT

I. Petitioner Is Substantially Likely to Succeed on the Merits

Petitioner's Amended Petition asserts violations of the INA, the APA, and the Fifth Amendment Due Process Clause. Each claim demonstrates a substantial likelihood of success.

A. TPS Eligibility and Statutory Protections

Petitioner is *prima facie* eligible for TPS under 8 U.S.C. § 1254a. He is a Lebanese national who entered the United States on September 5, 2024—before the continuous residence cutoff of October 16, 2024—and has remained continuously present since before the designation

date of November 27, 2024. [See 89 Fed. Reg. 93641 (Nov. 27, 2024)]. TPS provides lawful status and protection against removal. *Sanchez v. Mayorkas*, 593 U.S. 409, 412 (2021). Congress mandates that aliens establishing *prima facie* eligibility “shall be provided such benefits” pending final adjudication. 8 U.S.C. § 1254a(b)(4). ICE’s refusal to facilitate biometrics obstructs this statutory entitlement, rendering Petitioner’s detention unlawful.

B. Unlawful Detention Under the INA and *Zadvydas*

Under 8 U.S.C. § 1231(a)(1)(A), DHS must effect removal within 90 days of a final order. Detention beyond six months is presumptively unreasonable unless removal is significantly likely in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner’s detention, ongoing since September 5, 2024, and exceeding six months since the final order on July 24, 2025, violates this limit. Lebanon’s TPS designation, effective through May 27, 2026, legally bars removal. 8 U.S.C. § 1254a(a)(1)(A). Respondents cannot meet their burden to show foreseeable removal, as required by *Zadvydas*, 533 U.S. at 699–700.

In a similar case, the United States District Court for the District of Alaska held that a petitioner who had filed a *prima facie* TPS application, which legally barred his removal while pending, rendered his removal not reasonably foreseeable under *Zadvydas v. Davis*. *Salad v. Dep’t of Corr.*, 769 F. Supp. 3d 913, 925 (D. Alaska 2025). The court further waived the prudential exhaustion requirement, reasoning that requiring administrative review would cause irreparable injury given the unlawful detention. *Id.* Concluding that continued detention under 8 U.S.C. § 1231(a)(6) was unlawful because the petitioner’s removal was not likely in the reasonably foreseeable future, the court recommended granting the habeas petition and ordering the petitioner’s immediate release under appropriate supervision. *Id.*

C. APA Violations

ICE's actions in refusing to transport Petitioner to biometrics appointments are arbitrary, capricious, and contrary to law under the APA. 5 U.S.C. § 706(2)(A). Per intradepartmental agreements, ICE is responsible for facilitating biometrics for detained applicants. [See USCIS Policy Manual, Vol. 1, Part C, Ch. 2]. Officer Leal's statement—"I will not take you, and you will never leave prison"—demonstrates intentional obstruction, devoid of reasoned justification. Such conduct violates the APA's requirement for non-arbitrary agency action. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). (An agency rule is arbitrary and capricious if it conflicts with Congress's intent.)

D. Due Process Violations

The Fifth Amendment's Due Process Clause protects all persons, including noncitizens, from deprivation of liberty without due process. *Zadvydas*, 533 U.S. at 693. ICE's obstruction of TPS adjudication deprives Petitioner of a meaningful opportunity to be heard, violating procedural due process. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner). Moreover, indefinite detention without a foreseeable prospect of removal is "arbitrary and unreasonable," violating substantive due process. *See FM Props. Operating Co. v. City of Austin*, 93 F.3d 167, 174 (5th Cir. 1996). (If government action is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare, it should be declared unconstitutional.)

II. Petitioner Faces a Substantial Threat of Irreparable Harm

Irreparable harm must be actual and imminent, not speculative. *See Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011). ("In general, a harm is irreparable where there is no adequate remedy at law, such as monetary damages."). *Louisiana v. Biden*, 55 F.4th 1017, 1034 (5th Cir.

2022) (Irreparable harm is "more than speculative; there must be more than an unfounded fear on the part of the applicant."). Here, ICE's refusal to transport Petitioner to biometrics appointments (March, May, and August 2025) ensures his TPS application will be deemed abandoned, leading to denial of statutory protections and potential removal to an unsafe country. Loss of constitutional rights constitutes irreparable harm. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary). Additionally, Petitioner suffers ongoing physical and psychological harm from prolonged detention, including solitary confinement and untreated medical conditions, which courts recognize as irreparable. [See Ex. A ¶3].

III. The Balance of Equities Favors Petitioner

The threatened harm to Petitioner—loss of TPS, indefinite detention, and potential removal—far outweighs any burden on Respondents. Releasing Petitioner under supervision or facilitating biometrics imposes minimal administrative costs, especially as Petitioner has no criminal history and poses no flight risk or danger. By contrast, denying relief risks permanent loss of lawful status and exposure to harm in Lebanon, which DHS has deemed unsafe. *See* 89 Fed. Reg. 93641.

In a case involving a pending TPS application, the United States District Court for the Middle District of Pennsylvania emphasized the fundamental importance of due process in immigration detention. The court expressly stated that it was "compelled by the [petitioner]'s arguments and finds that the public interest and balancing of equities in this case favors issuing preliminary relief, as it is in the public's interest that individuals subject to immigration proceedings be afforded sound process and not be subjected to unlawful detention." *Gudino v.*

Lowe, No. 1:25-CV-00571, 2025 U.S. Dist. LEXIS 75099, at *35–36 (M.D. Pa. Apr. 21, 2025). In doing so, the court underscored that protecting constitutional rights and ensuring lawful procedures outweigh generalized assertions of governmental interests, thereby reinforcing the principle that detention must remain tethered to legitimate and lawful purposes.

IV. The Public Interest Favors Relief

The public interest lies in ensuring government compliance with federal statutes and constitutional protections. Enjoining ICE’s unlawful obstruction of TPS adjudication and prolonged detention upholds the rule of law and Congress’s humanitarian intent in enacting TPS. *See Nken v. Holder*, 556 U.S. 418, 436 (2009) (public interest includes lawful immigration enforcement). Granting relief ensures accountability and protects Petitioner’s rights.

CONCLUSION

Petitioner has demonstrated a substantial likelihood of success on his INA, APA, and Due Process claims; imminent irreparable harm; a favorable balance of equities; and alignment with the public interest. Accordingly, Petitioner respectfully requests that this Court:

1. Grant a Temporary Restraining Order enjoining Respondents from detaining Petitioner and ordering his immediate release under reasonable supervision, or alternatively, ordering Respondents to facilitate his TPS biometrics appointment without delay;
2. Set this matter for an expedited hearing on a Preliminary Injunction; and
3. Grant such other relief as the Court deems just and proper.

Respectfully submitted on the 11th day of **SEPTEMBER 2025**.

s/Amro Elsayed

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