

**UNITED STATES DISTRICT COURT FOR
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

WILSON JOSE BRITO HIDALGO,

Petitioner,

v.

Jose Garcia Longoria, Jr., Officer in Charge, Port Isabel Detention Center; Miguel Vergara, Acting Field Office Director, San Antonio Field Office, United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of Homeland Security; PAMELA JO BONDI, United States Attorney General, in their official capacities,

Respondents.

Case No.:

**PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. §
2241**

**PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Wilson Jose Brito Hidalgo (“Petitioner” or “Mr. Mr. Brito Hidalgo”) is a Venezuelan Temporary Protected Status (TPS) recipient under 8 U.S.C. § 1254a and father of two U.S. Citizen children who is unlawfully detained in Respondents’ custody, and on information and belief, faces imminent removal from the United States.

2. Mr. Brito Hidalgo’s current detention directly contravenes the TPS statute, which unequivocally states TPS holders “shall not be detained” for immigration purposes. 8 U.S.C. § 1254a(d)(4).

3. Effectuating removal of Mr. Brito Hidalgo, who remains a valid TPS holder, would also clearly violate the TPS statute, which plainly states that Defendants “shall not remove” TPS holders during the period in which those protections are in effect. 8 U.S.C. § 1254a(a)(1)(A).

4. Statutory protections from detention and removal remain available even if the TPS holder has a final removal order or lacks other immigration status. *See id.*; *see also* 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”); 8 U.S.C. § 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to “otherwise deportable” non-citizens).

5. Despite this unambiguous statutory command, U.S. Immigration and Customs Enforcement (ICE) continues to unlawfully detain Mr. Brito Hidalgo, and, on information and belief, he faces imminent removal from the U.S.

6. Mr. Brito Hidalgo challenges his detention as a violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment.

7. Mr. Brito Hidalgo respectfully requests that this Court grant him a Writ of Habeas Corpus and order Respondents to enjoin his unlawful removal and release him from custody. Petitioner seeks habeas relief under 28 U.S.C. § 2241, which is the proper vehicle for challenging civil immigration detention. *See Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (“Challenges to immigration detention are properly brought directly through habeas”) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

CUSTODY

8. Mr. Brito Hidalgo is in the physical custody of Respondents. He is imprisoned at Port Isabel Detention Center, an immigration detention facility, in Los Fresnos, Texas. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

9. This Court has jurisdiction to consider this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2.

VENUE

10. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action have taken place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (“[T]he proper respondent to a habeas petition is ‘the person who has custody over the petitioner.’” (citing 28 U.S.C. § 2242) (cleaned up)).

PARTIES

11. Petitioner, Wilson Jose Brito Hidalgo, is currently detained by Respondents at Port Isabel Detention Center, an immigration detention facility in Los Fresnos, Texas. He has been in ICE custody since on or about July 25, 2025.

12. Respondent Jose Garcia Longoria, Jr., is the Warden of the Port Isabel Detention Center, where Petitioner is currently detained. He is a legal custodian of Petitioner and is named in his official capacity.

13. Respondent Miguel Vergara is the Acting Field Office Director responsible for the San Antonio Field Office of ICE, which is responsible for the Harlingen Sub-Field Office of ICE with administrative jurisdiction over Petitioner's immigration case. He is a legal custodian of Petitioner and is named in his official capacity.

14. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.

15. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is a legal custodian of Petitioner and is named in her official capacity.

16. Respondent Pamela Jo Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of Petitioner and is named in her official capacity.

STATEMENT OF FACTS

I. PETITIONER REMAINS DETAINED AND FACES IMMINENT REMOVAL DESPITE HAVING VALID TEMPORARY PROTECTED STATUS

17. Mr. Brito Hidalgo came to the United States on or about December 2021. He applied for Temporary Protected Status on December 5, 2022. His application was granted on June 7, 2024. TPS for Venezuela remains in effect, and Mr. Brito Hidalgo remains a valid TPS holder. *See infra* Section II-III.

18. Mr. Brito Hidalgo is a father to three children, including a four-month-old U.S. Citizen daughter and three-year-old U.S. Citizen son.

19. Mr. Brito Hidalgo received an order of removal on October 25, 2023 due to miscommunication with his lawyer that resulted in a missed deadline. Notwithstanding any order of removal, Mr. Brito Hidalgo remains statutorily protected from removal while he has valid TPS. 8 U.S.C. § 1254a(a)(1)(A); *see also* 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”); 8 U.S.C. § 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to “otherwise deportable” non-citizens).

20. On or about July 25, 2025, ICE arrested Mr. Brito Hidalgo while he was complying

with a routine ICE check-in, as he had on several prior occasions. At that appointment, ICE berated Mr. Brito Hidalgo and his wife before separating them and taking Mr. Brito Hidalgo into custody. At the time of the check-in and arrest, Mr. Brito Hidalgo's youngest U.S. Citizen child was only two months old.

21. Mr. Brito Hidalgo was originally detained at North Lake Correctional Facility. On or about October 1, 2025, ICE transferred him to Port Isabel Detention Center.

22. On October 1, 2025, undersigned counsel notified the U.S. Attorney's Office for the Southern District of Texas about Mr. Brito Hidalgo's valid TPS status. Undersigned counsel noted that his TPS rendered his detention unlawful, and would also render effectuating his removal unlawful.

23. On October 2, 2025, Mr. Brito Hidalgo called his partner to alert her that he had been told by officials at Port Isabel that he would be removed overnight between October 2 and October 3.

24. Undersigned counsel immediately contacted the U.S. Attorney's Office once more to confirm that Mr. Brito Hidalgo would not be removed in contravention of the statute. As of the time of this filing, they have been unable to confirm that Mr. Brito Hidalgo would not be unlawfully removed.

II. PETITIONER IS A CURRENT RECIPIENT OF TPS FOR VENEZUELA

25. Mr. Brito Hidalgo was granted TPS on June 7, 2024. It was originally valid through April 2, 2025, consistent with the 2023 Venezuela Designation. 88 Fed. Reg. 68130.

26. As a result of an operative federal court order, the January 17, 2025 Federal Register Notice (FRN) extending TPS for Venezuela is now back in effect. *See infra* Section III. The January 17 FRN extended the 2023 Venezuela Designation through October 2, 2026. 90 Fed.

Reg. 5961. Mr. Brito Hidalgo is a beneficiary of this extension and currently holds TPS.

27. One of the conditions of maintaining TPS is to re-register during designated re-registration periods. 8 U.S.C. § 1254a(c)(3); *see also* 8 C.F.R. § 244.17. The re-registration period for 2023 Venezuela Designation is January 10 through September 10, 2025. 90 Fed. Reg. 5961, at 5972 (“The re-registration period for existing beneficiaries runs from January 17, 2025, through September 10, 2025.”).

28. Re-registration does not constitute a new TPS application; TPS recipients are directed to re-register as a condition of maintaining ongoing TPS status. *See id.* (“TPS beneficiaries . . . who wish to extend their status through October 2, 2026, must re-register during the re-registration period described in the notice.”).

29. Mr. Brito Hidalgo timely filed his TPS re-registration with U.S. Citizenship and Naturalization Services (USCIS) on January 21, 2025.

III. TEMPORARY PROTECTED STATUS FOR VENEZUELA REMAINS IN EFFECT

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

31. On March 9, 2021, DHS designated TPS for Venezuela through September 9, 2022. 86 Fed. Reg. 13574 (“2021 Venezuela Designation”). This designation allowed individuals who

had continuously resided in the U.S. since March 8, 2021 and had been continuously physically present since March 9, 2021 to apply for TPS. *Id.* at 13575. This determination was based on the Secretary's determination that "extraordinary and temporary conditions in the foreign state prevent [Venezuelans] from returning in safety" and "permitting [Venezuelans] to remain temporarily in the United States" is not "contrary to the national interests of the United States." *Id.*

32. DHS extended and broadened TPS protection for Venezuela twice after that initial designation. On September 8, 2022, DHS extended the 2021 Venezuela Designation for 18 months—allowing recipients to keep TPS status through March 10, 2024. 87 Fed. Reg. 55024. On October 3, 2023, DHS again extended the 2021 Venezuela Designation for 18 months. Under the extension of the 2021 Venezuela Designation, TPS status continued through September 10, 2025.

33. Also on October 3, 2023, DHS re-designated Venezuela for TPS for 18 months. 88 Fed. Reg. 68130. The 2023 Venezuela Designation allowed individuals who had come to the United States after March 9, 2021 to become eligible.

34. Under the 2023 Venezuela Designation, approved applicants would have TPS status from October 3, 2023 through April 2, 2025.

35. On January 17, 2025, the DHS Secretary extended the 2023 Venezuela Designation by 18 months, through October 2, 2026. 90 Fed. Reg. 5961.

36. In support of the January 17 Extension, the DHS Secretary found, among other things, that "Venezuela is experiencing a complex, serious and multidimensional humanitarian crisis. The crisis has reportedly disrupted every aspect of life in Venezuela. Basic services like electricity, internet access, and water are patchy; malnutrition is on the rise; the healthcare system has collapsed; and children receive poor or no education. Inflation rates are also among the highest

in the world. Venezuela's complex crisis has pushed Venezuelans into poverty, hunger, poor health, crime, desperation and migration. Moreover, Nicolas Maduro's declaration of victory in the July 28, 2024 presidential election—which has been contested as fraudulent by the opposition—has been followed by yet another sweeping crackdown on dissent.” *Id.* at 5963 (internal quotation marks and citations omitted).

37. After the change in administration, the government reversed course on TPS for Venezuela. On February 3, 2025, the new DHS Secretary published an FRN purporting to “vacate” the January 17 Extension of the 2023 Venezuela Designation. 90 Fed. Reg. 8805. That decision was the first vacatur of a TPS extension in the 35-year history of the TPS statute.

38. On February 5, 2025, DHS published a notice in the Federal Register purporting to terminate the 2023 Venezuela Designation, ordering an end to the legal status of approximately 350,000 Venezuelans, effective in April. 90 Fed. Reg. 9040.

39. On February 19, the National TPS Alliance and seven individual Venezuelan TPS holders sued the federal government, alleging that the vacatur and subsequent termination of TPS for Venezuela were contrary to the TPS statute in violation of the Administrative Procedure Act (APA) and unlawful under the Fifth Amendment. *See National TPS Alliance (NTPSA) v. Noem*, No. 3:25 CV 01766 (N.D. Cal. Feb. 19, 2025).

40. On March 31, 2025, a federal court in the Northern District of California issued an order granting temporary relief under the APA, which postponed the vacatur and termination of TPS for Venezuela through the litigation. *See NTPSA v. Noem*, 773 F.Supp.3d 807 (N.D. Cal. 2025). As a result of this order, the January 17 Extension went back into effect on March 31, 2025.

41. On May 19, 2025, the Supreme Court issued a stay of the district court postponement in a one paragraph order. *See Noem v. NTPSA*, --- S.Ct. ----, 2025 WL 1427560

(Mem) (2025). As a result of this stay, Secretary Noem's vacatur and termination orders resumed effect while the *NTPSA* district court litigation on the merits resolved.

42. On September 5, 2025, a federal court granted plaintiff's motion for summary judgment in *NTPSA*, finding Secretary Noem's vacatur and termination of TPS for Venezuela violated the APA and setting it aside. *NTPSA v. Noem*, 3:25-cv-1766-EMC, 2025 WL 2578045 (N.D. Cal. Sept. 5, 2025). The district judge declined to stay the decision, and it went into effect nationwide immediately.

43. The direct result of this decision is that the January 17 Extension for Venezuela immediately went back into effect, and those granted TPS under the 2023 Venezuela Designation, like Petitioner, had their TPS benefits immediately reinstated pursuant to the extension.

44. The government appealed the district court's summary judgment order. On September 12, 2025, the government sought an administrative stay and a stay pending appeal before the Ninth Circuit Court of Appeals. Appellant's Motion for A Stay Pending Appeal and Motion for an Immediate Administrative Stay, *NTPSA v. Noem*, No. 25-5724, Dkt. 7-1 (9th Cir. Sept. 12, 2025). The Ninth Circuit denied the government's requests to stay the district court order. *NTPSA v. Noem*, No. 25-5724, Dkt. 23-1 (9th Cir. Sept. 17, 2025).

45. On September 19, 2025, the government proceeded to seek a stay of the district court order before the Supreme Court, including seeking an immediate administrative stay. Application to Stay the Judgment, *Noem v. NTPSA*, No. 25A326 (Supreme Court Sept. 19, 2025). That application has been fully briefed before the Court, and the Court has not issued any stay in the case, including an administrative stay, as of the filing of this Petition.

46. Accordingly, the district court's September 5, 2025 final order setting aside the vacatur and termination of TPS for Venezuela remains in effect, and the January 17 Extension of

TPS for Venezuela remains operational. *See NTPSA v. Noem*, 3:25-cv-1766-EMC, 2025 WL 2578045 (N.D. Cal. Sept. 5, 2025).

LEGAL FRAMEWORK

47. The Court need analyze only two statutory provisions to resolve this habeas petition. First, the TPS statute unambiguously provides that a noncitizen “provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the [noncitizen’s] immigration status in the United States.” 8 U.S.C. § 1254a(d)(4) (emphasis added).¹ It also directs that Respondents “*shall not remove* the [noncitizen] from the United States during the period in which such status is in effect.” 8 U.S.C. § 1254a(a)(1)(A) (emphasis added). It is hard to imagine a clearer statutory mandate proscribing detention and removal.

48. This Court need not delve further in an attempt to understand other aspects of Petitioner’s immigration status because TPS protections remain valid even if the TPS holder has a final order of removal or otherwise lacks other immigration status. 8 U.S.C. § 1254a(a)(1)(A) (the government “shall not remove the alien from the United States during the period in which such [TPS] status is in effect.”); 8 U.S.C. § 1254a(a)(5) (TPS statute provides no authority to “deny temporary protected status to 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). For that reason alone, this Court should grant the writ and order Petitioner’s immediate release. *See* 28 U.S.C. § 2241(c)(3) (authorizing writ for people detained in violation of federal law).

49. Should the Court nonetheless choose to address constitutional questions, it should

¹ “Attorney General” in Section 1254a now refers to the Secretary of Homeland Security. *See* 8 U.S.C. § 1103; 6 U.S.C. § 557.

also find that Petitioner's detention violates the Due Process Clause of the Fifth Amendment. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

51. Second, because Petitioner is not "deportable" insofar as the TPS statute bars his deportation, the Due Process Clause requires that any deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying less rigorous standard for "deportable aliens"). Petitioner's on-going imprisonment obviously cannot satisfy that rigorous standard.

52. Third, at a bare minimum, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas v. Davis*, 533 U.S. 678, 718 (2001) (Kennedy, J., dissenting) (emphasis added). Where federal law explicitly prohibits an individual's detention, their detention also violates the Due Process Clause.

53. It is irrelevant for purposes of this case that a court could stay the district court order at some point in the future, if the government successfully defends in court its unprecedented

attempt to vacate the January 17 Extension. The TPS statute's unambiguous command applies so long as the TPS holder's status remains in effect. It contains no exception for people whose TPS status may soon end. And, as noted above, because a federal court has found the government's attempt to end TPS for Venezuela unlawful, it would not be appropriate for this Court (or any other) to speculate on the likely outcome of appeals in that litigation. Rather, it should decide this petition on the state of affairs as it currently exists, under which Petitioner remains a TPS holder, and is currently illegally imprisoned.

CLAIMS FOR RELIEF

COUNT ONE VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT – 8 U.S.C. § 1254a(d)(4)

54. Petitioners reallege and incorporate by reference each and every allegation contained above.

55. Section 1254a of Title 8 of the U.S. Code governs the treatment of TPS holders, including their detention and removal under federal immigration law.

56. Section 1254a(d)(4) states that a noncitizen “provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the [noncitizen's] immigration status in the United States.” (emphasis added). There is no exception to this rule provided in the statute.

57. Thus, Petitioners' detention violates Section 1254a, and he is entitled to immediate release from custody.

COUNT TWO VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT – 8 U.S.C. § 1254a(a)(1)(A)

58. Petitioners reallege and incorporate by reference each and every allegation

contained above.

59. Section 1254a(1)(1)(A) states the government “*shall not remove* the [noncitizen] from the United States during the period in which such [TPS] status is in effect.” There is also no exception to this rule provided in the statute.

60. Thus, Petitioner’s imminent removal violates Section 1254a, and he is entitled to enjoinder of his removal from the U.S.

**COUNT THREE
VIOLATION OF DUE PROCESS –
DETENTION SERVES NO STATUTORY PURPOSE**

61. Petitioner realleges and incorporates by reference each and every allegation contained above.

62. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

63. Petitioners’ detention violates the Due Process Clause because it is not rationally related to any immigration purpose; because it is not the least restrictive mechanism for accomplishing any legitimate purpose the government could have in imprisoning Petitioner; and because it lacks any statutory authorization.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Immediately enjoin Petitioners from removing or further detaining Petitioner;

3. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
4. Declare that Petitioner's detention violates the Immigration and Nationality Act;
5. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
6. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
7. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
8. Grant such further relief as this Court deems just and proper.

Dated: October 2, 2025

Respectfully submitted,

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**pro hac vice motion forthcoming*