

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**

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner Brito Hidalgo ("Petitioner" or "Mr. Brito Hidalgo") files this motion for a temporary restraining order ("TRO") to immediately **enjoin his removal and order his release.**

Petitioner is a current Temporary Protected Status ("TPS") recipient and father to two U.S. Citizen children who are three years old and four months old. He is currently unlawfully detained in Respondents' custody and facing imminent unlawful removal.

Petitioner is a Venezuelan national and TPS recipient presently detained by Respondents in Port Isabel Detention Center in Los Fresnos, Texas. Respondent Noem and the U.S. Citizenship and Immigration Services (USCIS) approved Petitioner's application for TPS on June 7, 2024, notwithstanding his prior order of removal. *See* 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”).

Petitioner was arrested on July 25, 2025.

Respondents intend to execute Petitioner’s removal order notwithstanding Congress’s express command that the removal orders of TPS holders cannot be executed. *See* 8 U.S.C. § 1254a(a)(1)(A). Because Respondents have no discretion to execute Petitioner’s removal order as per § 1254a(a)(1)(A), Petitioner urges this Court to issue a temporary restraining order barring the execution of the removal order.

Petitioner’s ongoing detention also contravenes the statute. Federal law is clear: recipients of TPS “shall not be detained” for immigration purposes. 8 U.S.C. § 1254a(d)(4). Despite this clear statutory command, Respondents continue to detain Petitioner—a current Venezuela TPS holder—in their custody. Because there is no statutory authority for Petitioner’s detention, Petition urges this Court to issue a temporary restraining order that also orders his immediate release.

Respondents’ intent to remove Petitioner and their continued detention of Petitioner is prohibited by federal law and causing irreparable harm to him and his family, including his U.S. Citizen children. Petitioner requests this Court’s immediate intervention to ensure that Respondents comply with federal law by enjoining Petitioner’s unlawful removal and continued detention.

I. FACTUAL BACKGROUND

Petitioner arrived in the United States on or about December 2021. On October 25, 2023, he was issued an order of removal. He applied for TPS on December 5, 2022 . Exh A. His application was granted on June 7, 2024. Exh. A. He timely filed his re-registration application on January 21, 2025. Exh A.

As illustrated below, the procedural history of TPS for Venezuela is complicated. The most

important distillation for present purposes is that TPS remains in effect for individuals who have been granted and maintained TPS pursuant to the 2021 and 2023 Venezuela designations, which unquestionably includes Petitioner.

TPS for Venezuela

On March 9, 2021, then-DHS Secretary Mayorkas first designated Venezuela for TPS. 86 Fed. Reg. 13574 (“2021 Venezuela Designation”). The 2021 Venezuela Designation gave individuals who had continuously resided in the U.S. since March 8, 2021 the opportunity to apply for TPS, which would be valid until September 9, 2022. *Id.* DHS extended and broadened TPS protection for Venezuela twice after that initial designation. *See* 87 Fed. Reg. 55024; 88 Fed. Reg. 68130. The second extension gave TPS holders under the 2021 Venezuela Designation legal status and work authorization through September 10, 2025. 88 Fed. Reg. 68130.

On October 3, 2023, in an FRN extending the 2021 Venezuela Designation, then-DHS Secretary Mayorkas also re-designated Venezuela for TPS. 88 Fed. Reg. 68130. The 2023 Venezuela Designation allowed individuals to apply for TPS if they had continuously resided in the United States in the United States since July 31, 2023, and had continuously been physically present since October 3, 2023. *Id.* The 2023 Venezuela Designation afforded successful applicants TPS protections through April 2, 2025. *Id.*

On January 17, 2025, then-DHS Secretary Mayorkas extended the 2023 Venezuela Designation by 18 months, through October 2, 2026. 90 Fed. Reg. 5961.¹

On February 3, 2025, following a change in administration, the government reversed

¹ The January 17 Extension both extended the 2023 Venezuela Designation and streamlined the filing processes for the 2021 and 2023 Venezuela Designations by consolidating them. This meant that 2021 TPS holders also had the opportunity to register and get the benefit of the same October 2, 2026, date. 90 Fed. Reg. 5961.

course, and the new DHS Secretary Noem published an FRN purporting to “vacate” the January 17 Extension. 90 Fed. Reg. 8805. **On February 5, 2025**, Secretary Noem published an FRN terminating the 2023 Venezuela Designation. 90 Fed. Reg. 9040.

On February 19, 2025, the National TPS Alliance (NTPSA) and seven individual Venezuelan TPS holders challenged the vacatur and subsequent termination of TPS for Venezuela as 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). That litigation has been ongoing since February.

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 pending further litigation. *See NTPSA v. Noem*, 773 F.Supp.3d 807 (N.D. Cal. 2025). **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).

On September 5, 2025, a federal court granted plaintiffs’ motion for summary judgment in *NTPSA*, finding Secretary Noem’s vacatur and termination of TPS for Venezuela unlawful under the APA and setting it aside. *NTPSA v. Noem*, 3:25-cv-1766-EMC, 2025 WL 2578045 (N.D. Cal. Sept. 5, 2025). The judge declined to stay the decision, and the decision is not subject to the earlier Supreme Court stay of the APA postponement decision. *Id.* at 41. The direct result of this decision is that **the January 17 Extension of the 2023 Venezuela Designation immediately went back into effect, and individuals granted TPS under the 2021 and 2023 Venezuela Designations, like Mr. Brito Hidalgo, had their TPS benefits immediately reinstated pursuant to the extension.**

On September 12, 2025, the government sought an administrative stay and a stay pending

appeal of the September 5 final judgment 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).

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. As of the filing of this motion, the Court has not issued a decision on the government's application for a stay.

On October 1, 2025, Counsel for Mr. Brito Hidalgo reached out to the U.S. Attorney's Office for the Southern District of Texas on to alert them that, in light of the *NTPSA* order, Mr. Brito Hidalgo is a current TPS recipient and is detained in direct contravention of the TPS statute, and to request his immediate release. On October 2, 2025, undersigned counsel notified the U.S. Attorney's Office that upon information and belief, Mr. Brito Hidalgo was being staged for removal. *See* Ex. B. As of the time of this filing, they have been unable to confirm that Mr. Brito Hidalgo would not be unlawfully removed in violation of the TPS statute.

II. STANDARD OF REVIEW

A court may grant an ex parte TRO where "immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). Mr. Brito Hidalgo readily satisfies this requirement where his imminent removal would constitute immediate and irreparable injury, and is scheduled to take place today, upon

information and belief.

To obtain a TRO, as with a preliminary injunction, a plaintiff must show (1) a substantial likelihood of prevailing on the merits; (2) a substantial likelihood of irreparable injury if the injunction is not granted; (3) the threatened injury outweighs any harm that will result to the nonmovant if the injunction is not granted; and (4) the injunction will not disserve the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 129 S.Ct. 365, 374 (2008). The first two factors, substantial likelihood of prevailing on the merits and of irreparable harm, are the most critical. *Nken v. Holder*, 556 U.S. 418, 434 (2009). In this Circuit, the first factor, likelihood of success on the merits, is the most important. *Tesfamichael v. Gonzales*, 411 F.3d 169, 176 (5th Cir. 2005). Further, “where there is a serious legal question involved and the balance of the equities heavily favors [an injunction]...the movant only needs to present a substantial case on the merits.” *Lake Eugenie Land & Dev., Inc. v. BP Exploration & Prod. (In re Deepwater Horizon)*, 732 F.3d 326, 345 (5th Cir. 2013) (quoting *Weingarten Realty Investors v. Miller*, 661 F.3d 904, 910 (5th Cir. 2011)).

Mr. Brito Hidalgo warrants a TRO because his imminent removal and current detention are prohibited by law; he would be irreparably harmed by his unlawful removal, which his wife fears could result in his death, and he is irreparably harmed by his unlawful imprisonment, which has separated him from his family, including his youngest U.S. Citizen daughter who was only two months old at the time of his arrest; and because the balance of the equities and public interest plainly favor an order enjoining the government from continuing to violate federal law.

III. ARGUMENT

Respondents intend to remove Mr. Brito Hidalgo in violation of federal law. Section 1154a(a)(1) expressly prohibits the removal of persons who hold TPS status. In the case of a person

who has been granted TPS, the Secretary of Homeland Security “shall not remove the alien from the United States during the period in which such status is in effect...” 8 U.S.C. § 1154a(a)(1). Because Congress’s command to Respondents could not be any clearer, Mr. Brito Hidalgo is likely to succeed on the merits of his claim.

Mr. Brito Hidalgo will suffer irreparable harm if his removal is not enjoined. Respondents will suffer no harm since an order from this Court will simply instruct them to comply with federal law. Lastly, granting a TRO is in the public interest because it upholds the important principle that federal officers are bound to comply with the regulations that bind them. Accordingly, this Court should enter an order enjoining Respondents from executing Mr. Brito Hidalgo’s removal order.

A. Mr. Brito Hidalgo Is Likely to Succeed on the Merits Because His Detention and Imminent Removal Clearly Violate Federal Law.

The main issue before this Court is a clear legal question: whether Respondents are authorized to detain in ICE custody or remove Mr. Brito Hidalgo. The answer is no.

Mr. Brito Hidalgo is a Venezuelan national who currently holds TPS. *See* Exh. A. Although he has a final order of removal, 8 U.S.C. § 1254a(a)(1) protects Mr. Brito Hidalgo from removal and prevents the Department of Homeland Security from executing the removal order. Under these circumstances, it is plain that Respondents cannot remove Mr. Brito Hidalgo notwithstanding the existence of a removal order.

Notwithstanding the complicated history of TPS for Venezuela, what matters for purposes of this motion is that Mr. Brito Hidalgo is a current TPS recipient by function of the January 17 Extension, which extended the 2023 Venezuela Designation to October 2, 2026, and the September 5, 2025 final judgment in *NTPSA*, which set aside as unlawful DHS Secretary Noem’s vacatur and termination of TPS for Venezuela. *See National TPS Alliance v. Noem (NTPSA)*, 3:25-cv-1766-EMC, at *68 (N.D. Cal. Sept. 5, 2025) (“[T]he Court grants Plaintiffs’ motion for summary

judgment on the APA claims related to the Venezuela vacatur, [and] the Venezuela termination It finds those decision of Secretary Noem are unlawful and sets aside each of those agency actions.”). Together, these developments presently afford Mr. Brito Hidalgo the protections of TPS status, including the prohibition against his removal and detention. 8 U.S.C. § 1254a(a)(1)(A).

On June 7, 2024, Mr. Brito Hidalgo was granted TPS pursuant to the 2023 Venezuela Designation. His approval notice indicated his TPS status was valid until April 2, 2025, the day that the 2023 Venezuela Designation was set to expire. *See* Ex. A; 88 Fed. Reg. 68130. As discussed above, DHS Secretary Noem attempted to vacate and terminate TPS for Venezuela (including the January 17 Extension), but the September 5, 2025 *NTPSA* order set aside the Secretary’s actions, effectively reinstating the January 17 Extension.² Mr. Brito Hidalgo timely submitted his re-registration on January 21, 2025, consistent with the January 17 Extension FRN’s requirement. *See* Ex. A. Thus, Mr. Brito Hidalgo retains his TPS status. *See* 8 U.S.C. § 1254a(c)(3) (indicating DHS “shall withdraw” TPS for failure to register without good cause); *see also* 8 C.F.R. § 244.17.

The INA is similarly unambiguous on detention: A TPS recipient “*shall not be detained* by [DHS] on the basis of the [noncitizen’s] immigration status.” 8 U.S.C. § 1254a(d)(4) (emphasis added). Yet Respondents continue to do exactly what the statute forbids and detain Mr. Brito Hidalgo.

² It is irrelevant for purposes of this case that a court could stay the district court order at some point in the future. 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.

When the words of a statute are unambiguous, then . . . ‘judicial inquiry is complete.’” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (quoting *Rubin v. United States*, 449 U.S. 424 (1981)); *Fair Housing Rts. Ctr. V. Post Goldtex GP, LLC*, 823 F.3d 209, 214 (3d Cir. 2016) (“[W]e have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.”). Thus, Mr. Brito Hidalgo is likely to succeed on the merits of his claim that his imminent removal and continued detention clearly violate the TPS statute and are therefore unlawful.

B. Mr. Brito Hidalgo Faces Irreparable Harm.

. To show irreparable injury, a petitioner need show “only a significant threat of injury from the impending action, that the injury is imminent, and that money damages would not fully repair the harm.” *Humana, Inc. v. Avram A. Jacobson*, 804 F.2d 1390, 1394 (5th Cir. 1986). *See also Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2000) (“In general, a harm is irreparable where there is no adequate remedy at law, such as money damages.”).

In addition to being unlawful, Mr. Brito Hidalgo’s removal in violation of the TPS statute would deny him the ability to live and work in the United States, which his TPS status has afforded him. It would subject him to premature deportation to a country where his wife fears he could face death, as well as permanent separation from his children, including his four-month-old U.S. Citizen daughter and his three-year-old U.S. Citizen son. Exh. A. This harm is certainly imminent in light of the communication Mr. Brito Hidalgo received informing him of the government’s plans to remove him immediately. *Id.*

Further, Mr. Brito Hidalgo’s continued detention in contravention of the TPS statute has already resulted in months-long separation from his newborn daughter and his other children; separation from his partner of seven years; and separation from a community that loves him. *Id.* It has forced his partner to have to find employment while still recovering from recent childbirth,

and it has forced his whole family to leave their home and move into the basement of a family member. *Id.* No remedy other than immediate relief from unlawful deportation and release could restore the loss that Mr. Brito Hidalgo has experienced during this separation, including missing out on the first months of his daughter's life. Any continued detention will only compound this harm. Thus, Mr. Brito Hidalgo readily satisfies the irreparable harm requirement.

C. The Balance of Equities Tips Heavily in Mr. Brito Hidalgo's Favor and a TRO is in the Public Interest.

The threatened injury to Mr. Brito Hidalgo far outweighs any harm that will result to Respondents if the Court issues a TRO or an injunction. Further, the issuance of an injunction does not disserve the public interest but rather promotes it because it upholds the rule of law.

Mr. Brito Hidalgo is presently detained and Respondents have advised him that he will be removed **today, October 2, 2025**. Mr. Brito Hidalgo holds lawful status in the United States and is legally protected from removal. His removal in violation of federal law will result in separation from his family, the loss of his lawful status, the opportunity to contest his removal, and his right to pursue his asylum application.

The resulting harms to the Defendants are nonexistent or at most minimal. They are simply held to the rule of law. In addition, granting the injunction does not disserve the public interest but rather promotes it. It is in the public interest for government officials to comply with federal law. *MCR Oil Tools, L.L.C v. United States DOT*, 2024 U.S. App. LEXIS 14297 at *19 (5th Cir. June 12, 2024) ("There is a 'substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.'") (quoting *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022)). And in this case, the law is clear that Respondents have no authority to execute Mr. Brito Hidalgo's removal order. Granting the injunction promotes the rule of law. Petitioner therefore satisfies prongs 3 and 4 of the *Winter* test.

IV. CONCLUSION

For the foregoing reasons, this Court should issue a TRO immediately enjoining Respondents from removing Mr. Brito Hidalgo, and ordering his immediate release.

Dated: October 2, 2025

Respectfully submitted,

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**pro hac vice motion forthcoming*