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INTRODUCTION

Petitioner files this motion for a temporary restraining order (“TRO”) ordering their immediate release. Petitioner is a Venezuelan national who holds Temporary Protected Status (“TPS”) under 8 U.S.C. § 1254a. The 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.” 8 U.S.C. 1254a(d)(4) (emphasis added).

While Respondent DHS Secretary Kristi Noem purported to vacate and terminate TPS for Venezuela, for the purposes of this habeas petition, that vacatur and termination must be deemed unlawful. On December 10, 2025, a federal district court issued a final judgment declaring Respondent Noem’s vacatur and termination unlawful in a case brought by National TPS Alliance on behalf of its members. *Nat’l TPS All. v. Noem*, No. 25-cv-01766-EMC, 2025 WL 3539156 at *3 (N.D. Cal. Dec. 10, 2025) (hereinafter “*NTPSA*” and “December 10 Order”). Petitioner is a member of the National TPS Alliance, so the *NTPSA* December 10 Order has preclusive effect in this habeas case as to the controlling question whether Petitioner retains TPS status. Because Petitioner’s TPS was never lawfully terminated, Petitioner retains TPS, and Petitioner’s detention is unlawful. This Court should therefore order Petitioner’s immediate release.

STATEMENT OF FACTS

Petitioner’s Immigration History

Petitioner is a native of Venezuela who has resided in the United States since prior to July 31, 2023. Petitioner applied for TPS in January 2024 and received an approval of her application on July 3, 2024. See ECF No. 1, at ¶19, Exh. E. Petitioner has consistently renewed TPS since this initial registration, including pursuant to the most recent January 17, 2025 extension,

which extended protection for Venezuelan TPS beneficiaries through October 2, 2026. Exh. A;

On December 3, 2025, Petitioner was arrested by ICE at a regularly scheduled check-in. While in detention, the government filed a Motion to Preterm her asylum application, which the Immigration Judge (IJ) granted over the Petitioners objection. He then ordered the removal of the Petitioner to Ecuador. ECF No. 4 at Exh. A. However, the removal order is not final. The Petitioner has been in ICE custody ever since.

Petitioner is a member of the National TPS Alliance, a membership organization of TPS holders. Exh. B

TPS for Venezuela

Venezuela was first designated for TPS on March 9, 2021, allowing Venezuelans residing in the U.S. since March 8, 2021 to apply for protection. 86 Fed. Reg. 13,574 (“2021 Designation”). On September 8, 2022, Venezuela’s 2021 designation was extended by 18 months. 87 Fed. Reg. 55,024. Venezuela was designated a second time on October 3, 2023, extending protection for the 2021 group and also allowing more recently arrived Venezuelans to apply. 88 Fed. Reg. 68,130 (“2023 Designation”).

On January 17, 2025, the DHS Secretary extended the 2023 Venezuela designation by 18 months, through October 2, 2026. 90 Fed. Reg. 5,961. In the extension order, DHS also streamlined the registration process for TPS holders by consolidating them into a single track, “allow[ing] existing beneficiaries of either the 2021 or 2023 TPS designation to seek an 18-month extension of status through October 2, 2026.” *Id.* at 5,962.

On February 3, 2025, Respondent Secretary Noem purported to “vacate” DHS’ January 17 extension of TPS for Venezuela. 90 Fed. Reg. 8805. On February 5, 2025, DHS published a

notice in the Federal Register purporting to terminate the 2023 Venezuela Designation. 90 Fed. Reg. 9040 (Feb. 5, 2025). On September 8, 2025, DHS published a notice in the Federal Register terminating the 2021 designation of TPS for Venezuela.¹ 90 Fed. Reg. 43225 (Sept. 8, 2025)

Legal Challenge to Venezuela's TPS Termination

On February 19, NTPSA and seven individual Venezuelan TPS holders challenged the vacatur and termination of Venezuela's 2023 designation 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) ("*NTPSA*"). On December 10, 2025, the district court in *NTPSA* issued a final judgment declaring the vacatur and termination unlawful. *Nat'l TPS All. v. Noem*, No. 25-CV-01766-EMC, 2025 WL 3539156, at *3 (N.D. Cal. Dec. 10, 2025). ("*NTPSA* December 10 Order"). The court stayed its order for two weeks to permit the government to appeal and/or seek a stay. *Id.* The government did neither.

Following the federal court's decision in *NTPSA*, counsel for Petitioner reached out to U.S. Attorney's Office for the Western District to alert them that, in light of the *NTPSA* December 10 Order, Petitioner was now detained in direct contravention of the TPS statute, and to request Petitioner's immediate release. Despite being on notice that Petitioner's continued detention is blatantly unlawful because she is a TPS holder, Respondents have not yet released her. *See* Exh. C.

STANDARD OF REVIEW

¹ The termination of Venezuela's 2021 designation is not at issue in this case because Petitioner held TPS under Venezuela's 2023 designation.

An ex parte Temporary Restraining Order (“TRO”) may be issued upon a showing that “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). “[T]he legal standards applicable to TROs and preliminary injunctions are substantially identical.” *Babaria v. Blinken*, 87 F.4th 963, 976 (9th Cir. 2023) (internal quotations omitted). The party seeking relief “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “The first factor under *Winter* is the most important—likely success on the merits.” *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C.Cir. 2014). Where the government is the opposing party, the third and fourth factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits.

The TPS statute is unambiguous: A TPS recipient “*shall not be detained . . . on the basis of the [noncitizen’s] immigration status.*” 8 U.S.C. § 1254a(d)(4) (emphasis added). Petitioner maintains TPS status despite the vacatur and termination of Venezuela’s TPS designation because, under the *NTPSA* December 10 Order—which has preclusive effect in this case—the vacatur and termination were unlawful. Accordingly, Petitioner is very likely to succeed in showing their detention is unlawful.

A final merits judgment, including a declaratory judgment, has preclusive effect on future proceedings involving the same parties. See 28 U.S.C. 2201 (“Any such declaration shall have the force and effect of a final judgment[.]”); *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023) (“the

point of a declaratory judgment ‘is to establish a binding adjudication that enables the parties to enjoy the benefits of reliance and repose secured by res judicata’”) (citing 18A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4446 (3d ed. Supp. 2022)). “[E]ven if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified.” *Comer v. Murphy Oil USA, Inc.*, 718 F.3d 460, 467 (5th Cir. 2013) (internal cites and quotations omitted); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003).

The NTPSA December 10 Order conclusively establishes that: “(1) the vacatur of the January 17, 2025 TPS extension for Venezuela was unlawful as was (2) the termination of Venezuela’s 2023 TPS designation on February 5, 2025.” NTPSA December 10 Order at 3. Accordingly, Petitioner’s TPS status has never been lawfully terminated, and it remains in effect. It necessarily follows that Petitioners’ detention is unlawful. 8 U.S.C. § 1254a(d)(4) (“An 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.”). For this reason alone, Petitioner is likely to succeed in this habeas case.

While this Court need not reach the constitutional claims, Petitioner has also established likelihood of success on those for three reasons. First, Petitioner’s detention lacks any reasonable relation to any lawful immigration purpose. 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). Just as clear as its anti-detention mandate, the TPS statute also contains a prohibition on removing noncitizens with TPS. See 8 U.S.C. §

1254a(a)(1)(A) (the government “shall not remove the [noncitizen] from the United States” while they have TPS protections); *see also* 8 C.F.R. § 244.5(b). Where, as here, the government has no authority to remove Petitioner, detention is not reasonably related to its purpose and violates due process.

Second, because the TPS statute bars the government from removing Petitioner, Petitioner’s continued deprivation of liberty cannot be narrowly tailored to serve a compelling government interest. 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, where there is no statutory purpose, let alone a compelling government interest, in Petitioner’s continued detention.

Finally, 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 necessarily violates the Due Process rights.

B. Petitioner Will Suffer Irreparable Harm.

Each day that Petitioner remains in ICE custody in violation of the INA and the Due Process Clause of the Constitution, Petitioner suffers irreparable harm. Deprivation of constitutional rights “for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 2690, 49 L. Ed. 2d 547 (1976). *See also* Wright, Miller, &

Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”).

While unnecessary to justify granting a TRO, Petitioner’s continued detention is also detrimental to her family, community, and well-being. Petitioner’s unconstitutional, unlawful, and unnecessary continued detention under these conditions constitutes irreparable harm justifying this emergency relief.

C. The Balance of Equities Tips Heavily in Favor of Petitioner and a TRO is in the Public Interest

The ongoing injury to Petitioner far outweighs any harm that will result to Respondents if the Court issues a TRO. Further, the issuance of a TRO does not disserve the public interest but rather promotes it because it upholds the rule of law. “[N]either equity nor the public’s interest are furthered by allowing violations of federal law to continue.” *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022); *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (“The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process”). In this case, the law is clear that Respondents have no authority to detain Petitioner. Granting the TRO promotes the rule of law.

I. CONCLUSION

For the foregoing reasons, this Court should issue a temporary restraining order and instruct Respondents to immediately release Petitioner.

Dated: January 26, 2026

Respectfully submitted,

/s/ Yasmin E. Voglewede

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