

II. FACTS AND PROCEDURAL HISTORY

It is common ground that Petitioner, a Ukrainian citizen, came to the United States on August 13, 2022. Soon thereafter he received employment authorization. The parties also agree that after police arrested Petitioner on a *charge* of drunk driving, on January 26, 2025, DHS took him into custody and began removal proceedings. On February 24, 2025, Petitioner filed an application for TPS, on which no action has been taken. On May 22, 2025, the Immigration Judge terminated the proceedings. DHS appealed to the BIA, where the removal case remains.

III. ARGUMENT AND AUTHORITIES

A. Petitioner's prima facie TPS eligibility, which DHS has conceded, is established.

1. An applicant who "appears" TPS eligible is prima facie eligible.

DHS has extended Ukraine's TPS designation through October 19, 2026.¹ In the removal proceeding, DHS conceded that Petitioner is prima facie eligible for TPS, and entitled to its benefits:

DHS concedes that the [Petitioner] appears eligible for TPS under section 244(c) of the Immigration and Nationality Act (INA) and has applied for it. *Therefore, ... he is entitled to ... (A) temporary protected status in the United States which prevents removal during the period of TPS and (B) authorization for employment.*²

Yet in a footnote, Respondents suggest that DHS conceded only that Petitioner "*appeared*" eligible.³ Respondents confuse, or hope the Court will confuse, whether Petitioner's TPS application should be approved, with *prima facie TPS eligibility*. They overlook that if a TPS application *claims*

¹ *Extension of the Designation of Ukraine for Temporary Protected Status*, 90 Fed. Reg. 5936 (Jan. 17, 2025)

² DHS Opposition to Termination, p. 2, ¶ 3 (emphasis added).

³ Doc 7, p. 6, n. 1 (emphasis in original).

eligibility, the applicant *is*, by definition, *prima facie eligible*.⁸ Under 8 C.F.R. section 1244.1, *prima facie* means “eligibility *established with the filing* of a completed application for Temporary Protected Status *containing factual information that if unrebutted will establish a claim of eligibility*.”⁴ Therefore, if, *according to his application*, an applicant would be eligible, he *is* *prima facie eligible*. This is what Respondents overlook as they try to escape their obligation to extend temporary TPS benefits to Petitioner, despite having *expressly conceded* his *prima facie eligibility*.

To qualify, an applicant must: **1** be from a TPS designated country, **2** have been physically present since the TPS designation (October 23, 2023), and have resided in the U.S. by the specified date (August 16, 2023),⁵ **3** be admissible except for grounds waived by TPS,⁶ **4** not have a felony or multiple misdemeanor convictions,⁷ and, **5** register for TPS on time (January 17, 2025-March 18, 2025).⁸ Respondents have conceded that Petitioner has satisfied the first, second, and fifth requirements: They correctly state that Petitioner is from Ukraine, who came to the United States on August 22, 2022, and registered for TPS on time by filing his application on February 24, 2025.⁹

Petitioner is not inadmissible on any ground other than that charged in the removal proceeding, which the TPS provisions of the statute expressly waives.¹⁰ Petitioner satisfies the fourth requirement (**4**), relating to criminal convictions, because he never been convicted of *any* crime. No

⁴ 8 C.F.R. § 1244.1

⁵ 8 C.F.R. §§ 244.9, 1244.9. 8 U.S.C. §§ 1254a(c)(1)(A)(i), 1254a(c)(1)(A)(ii).

⁶ 8 U.S.C. § 1254a(c)(2)(A)(iii); 8 U.S.C. § 1254a(c)(1)(A)(iii).

⁷ 8 U.S.C. § 1254a(c)(2)(B)(i).

⁸ 8 U.S.C. § 1254a(c)(1)(A)(iv).

⁹ Response in Opposition to Petition for Writ of Habeas Corpus, Doc 7, p. 1; Doc 7, p. 2.

¹⁰ 8 U.S.C. § 1254a(c)(2)(A)(i).

one suggests otherwise, and Petitioner will remain TPS eligible even if convicted of the pending DWI.¹¹

2. *Withholding TPS benefits from Petitioner violates the statute and the regulations.*

The statute and the definition of prima facie require extension of TPS benefits to an alien whose application *claims* TPS eligibility.¹² Yet without authority, Respondents argue Petitioner is not entitled to TPS benefits because USCIS has not “reviewed” his application for prima facie eligibility.¹³ That is not so. If DHS were authorized to withhold TPS benefits as it has from Petitioner, it could easily vitiate the statute by deporting TPS applicants before reviewing their applications, or by refusing employment authorization for a significant portion of a nation’s TPS designation, as it has to Petitioner for over 5 months—over 25 percent of Ukraine’s TPS extension.¹⁴

Congress intended that TPS applicants receive TPS benefits *while their applications were adjudicated*. The only way for DHS to comply is to make prima facie determinations *upon the filing* of TPS applications. Significantly, DHS’ own regulations state that TPS benefits “shall” be extended “[u]pon the filing of an application for Temporary Protected Status.”¹⁵ And the regulatory definition of TPS, states that “[p]rima facie means eligibility *established with the filing* of” an application with information “*that if unrebutted will establish a claim of eligibility...*”¹⁶ This

¹¹ DHS administrative precedent holds that a *single* DWI misdemeanor conviction does not disqualify one from TPS. *Matter of S-A-M-*, ID# 1386826 (AAO May 22, 2018).

¹² 8 U.S.C. § 1254a(a)(4).

¹³ Doc 7, pp 5-6.

¹⁴ The parties agree Petitioner filed his TPS application on February 24, 2025, roughly 19 months before the end of Ukrainian TPS (October 19, 2026). Over five months have passed since he filed.

¹⁵ 8 C.F.R. § 244.5 (b).

¹⁶ 8 C.F.R. § 244.1 *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.”).

places the burden on DHS to rebut information in a TPS application. None of the information in Petitioner's TPS application has been rebutted, and Respondents cannot deny Petitioner TPS benefits while his application awaits action.

Respondents' reliance on their failure to "review" Petitioner's TPS application is a pretext to circumvent their obligation to provide TPS benefits while his application is pending.¹⁷ Their delay in deciding his TPS application suits their desire to continue Petitioner's indefinite detention, for until DHS decides the application, the Immigration Judge cannot *approve* it, as Respondents fear.¹⁸

B. Petitioner's continued detention is unlawful.

1. Demore v. Kim does not authorize Petitioner's continued detention.

Demore v. Kim did not sanction indefinite detention pending removal proceedings. Rather, it upheld the constitutionality of detaining a criminal alien who had conceded deportability for the "limited period" of his removal proceedings.¹⁹ Moreover, the *Demore* alien *could* and certainly *would* be promptly deported once his removal proceeding ended. Petitioner, however, cannot be removed because Ukraine's TPS designation forbids it. And in *Demore*, a removal order was all but certain because the alien had multiple criminal convictions and had conceded removability.²⁰ In contrast, entry of a removal order against Petitioner is rather unlikely, given his eligibility for

¹⁷ Candor requires undersigned counsel to confess his speculation that Respondents insist on withholding employment authorization from Petitioner to bolster their case for his indefinite detention.

¹⁸ The test the Immigration Judge used to decide whether to *terminate the removal proceedings* is the same as that employed to decide a TPS application, and there is no reason to believe the Immigration Judge would not grant it.

¹⁹ *Demore v. Kim*, 538 U.S. 510, 531 (2003).

²⁰ *Id.* at 513-14.

multiple forms of relief from removal.²¹

Demore expected the alien's detention would be brief, citing government data and statistics.²²

In view of this brevity, *Demore* upheld the mandatory-detention provision of criminal aliens.²³

Demore also involved much shorter detention than Petitioner's case, for he been detained for six months—already longer than the “five month” duration *Demore* contemplated.²⁴ And Petitioner's case will certainly take far longer than five months, as today the BIA has 3,687,750 active case.²⁵

2. Petitioner's continued detention violates substantive due process.

The legitimate purpose of detention during removal proceedings is to preserve the ability to remove an alien if so ordered.²⁶ When removal is not likely in the reasonably foreseeable future, detention serves no legitimate purpose.²⁷ *With or without* a removal order, it is “‘virtually certain that [Petitioner] will not be removable through the end of the most recent TPS designation.’”²⁸ His removal will be forbidden *beyond* that date if Ukraine's TPS is again extended, which is reasonably probable.²⁹

a. Salad v. Dep't of Corrections

²¹ It is unlikely Petitioner will ever be removed or even ordered removed, because he has relief from removal other than TPS. He has a strong asylum claim. Moreover, his wife is a lawful permanent resident through whom he will become eligible for adjustment of status.

²² *Id.* at 529.

²³ *Id.* at 529-31.

²⁴ *Id.* at 513.

²⁵ <https://tracreports.org/immigration/>

²⁶ *Demore*, 533 U.S. at 528. *See Foucha v. Louisiana*, 504 U. S. 71, 80 (1992).

²⁷ *Zadvydas v. Davis*, 533 U.S. 678, 700-01 (2001).

²⁸ *Salad v. Dep't of Corr.*, 769 F.Supp. 3d 913, 919 (D. AK., 2025).

²⁹ The war there shows no signs of abating, and the President recently commented that Ukrainians will likely be allowed to remain in the U.S. *Ukraine updates: Trump tells DW Ukrainians may remain in US*, July 30, 2025. [https://www.dw.com/en/ukraine-updates-trump-tells-dw-ukrainians-](https://www.dw.com/en/ukraine-updates-trump-tells-dw-ukrainians-remain-in-us)

Salad v. Dep't of Corr., decided March 7, 2025, involved a habeas challenge to the detention by Robel Ahmed Salad, of Somalia.³⁰ Salad, who had been arrested as he crossed the southern border, applied for asylum, which the Immigration Judge denied and the BIA left undisturbed.³¹ DHS later released him, but again arrested him weeks after he applied for TPS.³² Salad filed for a writ of habeas corpus two days later.³³ The Magistrate Judge found “no significant likelihood of removal in the reasonably foreseeable future.”³⁴ The District Court agreed:

Even if Salad’s TPS application is denied, Salad would have a right to appeal ... during which time he would remain unremovable. ... Because Salad could be granted TPS—and even if he is not granted TPS, his application likely will not be resolved for some time—the Federal Respondents have not shown a *significant likelihood* of Salad’s removal in the *reasonably foreseeable* future.³⁵

The Court therefore ordered Salad’s release, after just 30 days in jail.³⁶ Petitioner, who cannot be removed for at least 15 months (the end of Ukrainian TPS), has been jailed over six months.³⁷

b. Fugon v. Napolitano, cited by Respondents, hardly supports Petitioner’s detention.

Respondents suggest that *Fugon v. Napolitano* supports Petitioner’s continued detention.³⁸

may-remain-in-us/live-73463128;

³⁰ *Salad v. Dep't of Corr.*, 769 F.Supp. 3d 913, 914 (D. AK., 2025).

³¹ *Id.* at 916-17.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 917; 923.

³⁵ *Id.* at 923.

³⁶ *Id.* at 919, 924.

³⁷ *Salad* is apposite, although he was far-worse situated than Petitioner, who *won* his removal hearing, and still has other, unadjudicated statutory remedies to pursue, such as asylum, and adjustment of status, in addition to TPS.

Salad, 769 F. Supp. 3d at 919, 924.

³⁸ Doc. 7, pp. 4-5.

They are mistaken. Pio Fugon was a conditional permanent resident.³⁹ An Immigration Judge found he committed marriage fraud and ordered removal, which the BIA refused to reverse.⁴⁰

Fugon's first TPS application, which was denied.⁴¹ He filed a second TPS application and sought habeas relief.⁴² The court's denial of habeas relief had nothing to do with any effect the TPS application had on his detention.⁴³ Instead, the Government argued that Fugon's detention was proper because he had a final order of removal and could therefore be detained during the removal period.⁴⁴ The Court found that Fugon's habeas petition, filed *before* the end of the 90-day removal period, lacked merit.⁴⁵

3. *Petitioner cannot be removed without a decision on his application.*

Petitioner is entitled to a final decision on his TPS application. Having paid a fee to file it, he has a property interest in it, of which he cannot be deprived without due process.⁴⁶ Counsel for Petitioner has not found any decision allowing of anyone with a pending TPS application. Thus, for a separate reason, Petitioner cannot be removed in the foreseeable future and his detention serves no legitimate purpose.

4. *Petitioner's detention violates 8 C.F.R. section 244.18(d).*

8 C.F.R. section 244.18(d), states only *ineligible* aliens may be detained.⁴⁷

³⁹ *Fugon v. Napolitano*, No. 2:2010cv13935 – Document 11 (E.D. Mich. 2010), p. 2.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 5-6.

⁴⁶ *See Foucha v. Louisiana*, 504 U. S. 71, 80 (1992).

⁴⁷ 8 C.F.R. section 244.18(d).

C. Petitioner's continued detention threatens his health and risks irreparable harm.

Petitioner's chronic periodontal disease will worsen without proper treatment. His dental surgeon explains the disease leads to abscesses that "can cause life-threatening outcomes," *and* that he has an untreated abscess. When his untreated abscess worsens, it could endanger him. Unlawful detention itself is a sufficient irreparable injury, and here the injury is irreparable because harm to Petitioner's health cannot be remedied by any legal or equitable remedy.⁴⁸

**IV.
CONCLUSION**

Petitioner asks the court to recognize that because he cannot be removed in the reasonably foreseeable future his detention serves no legitimate purpose, and to order his release—particularly in view of his health and need for treatment.

Respectfully submitted,

/s/ Joseph Reina

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⁴⁸ See *Angstadt ex rel. Angstadt v. Mid-West Sch.*, 182 F. Supp. 2d 435, 437 (M.D. Pa. 2002). Petitioner's jailers refuse to allow the necessary treatment to go forward in the detention facility.

CERTIFICATE OF SERVICE

I certify that on August 5th, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

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